
GENERAL NOTICE

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

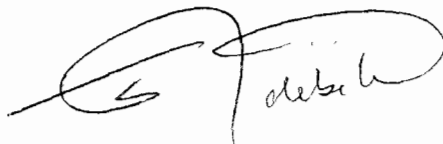
Or hand deliver any comments to;

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.¹ 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.

¹ Road Traffic Management Corporation (RTMC) at 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."*²

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.

² 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.³

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.

³ 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 model⁴. 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

⁴ 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
TOTAL	R13 620	59.2c

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.⁵ 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.⁶

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.⁷ 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*".⁸ 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.⁹ 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.¹⁰ 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.¹¹ The first MVA legislation was aimed "*at the protection of those who cannot*

⁵ Road Traffic Management Corporation. Accident statistics for 2007.

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

⁷ *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 6, par 6.3, p. 105.

⁸ Section 3 of the Road Accident Fund Act, 56 of 1996.

⁹ *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 6, par 6.26 - 6.28, p. 108–109.

¹⁰ *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 6, par 6.28, p. 109.

¹¹ *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".¹²

Since its commencement, the legal basis of the compensation system for MVA victims has remained relatively unchanged.¹³ 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).¹⁴ 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.¹⁵

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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¹² 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.

¹³ 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.

¹⁴ 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.

¹⁵ 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 document¹⁶ 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.

¹⁶ 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,¹⁷ 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.¹⁸

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.¹⁹ 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.*"²⁰

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.*"²¹

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

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

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

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

²¹ *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.²² 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.²³ Claims prescribe after 5 years, unless the claimant issues summons to interrupt prescription.²⁴ 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.

²² 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".

²³ 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.

²⁴ 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 ²⁵ 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%
Total	162 338	100.0%	100.0%	11 814	100.0%	100.0%

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.

²⁵ 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 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.²⁶

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.²⁷ This general fuel levy is a specific excise tax on fuel products imposed in terms of the Customs and Excise Act 91 of 1964.²⁸

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.²⁹ The RAF fuel levy can be viewed as a compulsory contribution to social security benefits which is used only for the

²⁶ 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.

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

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

²⁹ *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.³⁰ The volume of fuel used seems to lag the overall growth in the gross domestic product (GDP).³¹ 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.³² 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."*³³

³⁰ *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 9, par 9.7, p. 182.

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

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

³³ *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*".³⁴ 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.³⁵ 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*".³⁶ 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

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)
Operating surplus / (loss) for year	(4 306)	(3 135)	(1 300)	1 497	(1 859)	(7 587)
Accumulated deficit	23 026	19 333	21 573	22 728	24 448	31 125

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 years³⁷. Negative cash-flows were recorded in 2003,

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

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

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

³⁷ 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: 2003-2008³⁸

	R Million					
	2003	2004	2005	2006	2007	2008
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.³⁹

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."*⁴⁰ 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."*⁴¹

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.

³⁸ 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.

³⁹ Calculated from information provided in the *RAF Annual Report 2008*.

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

⁴¹ *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.⁴² This constitutes a four-fold increase over 11 years.

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

	R Million				
	2004	2005	2006	2007	2008
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.⁴³ 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".⁴⁴

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

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

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

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

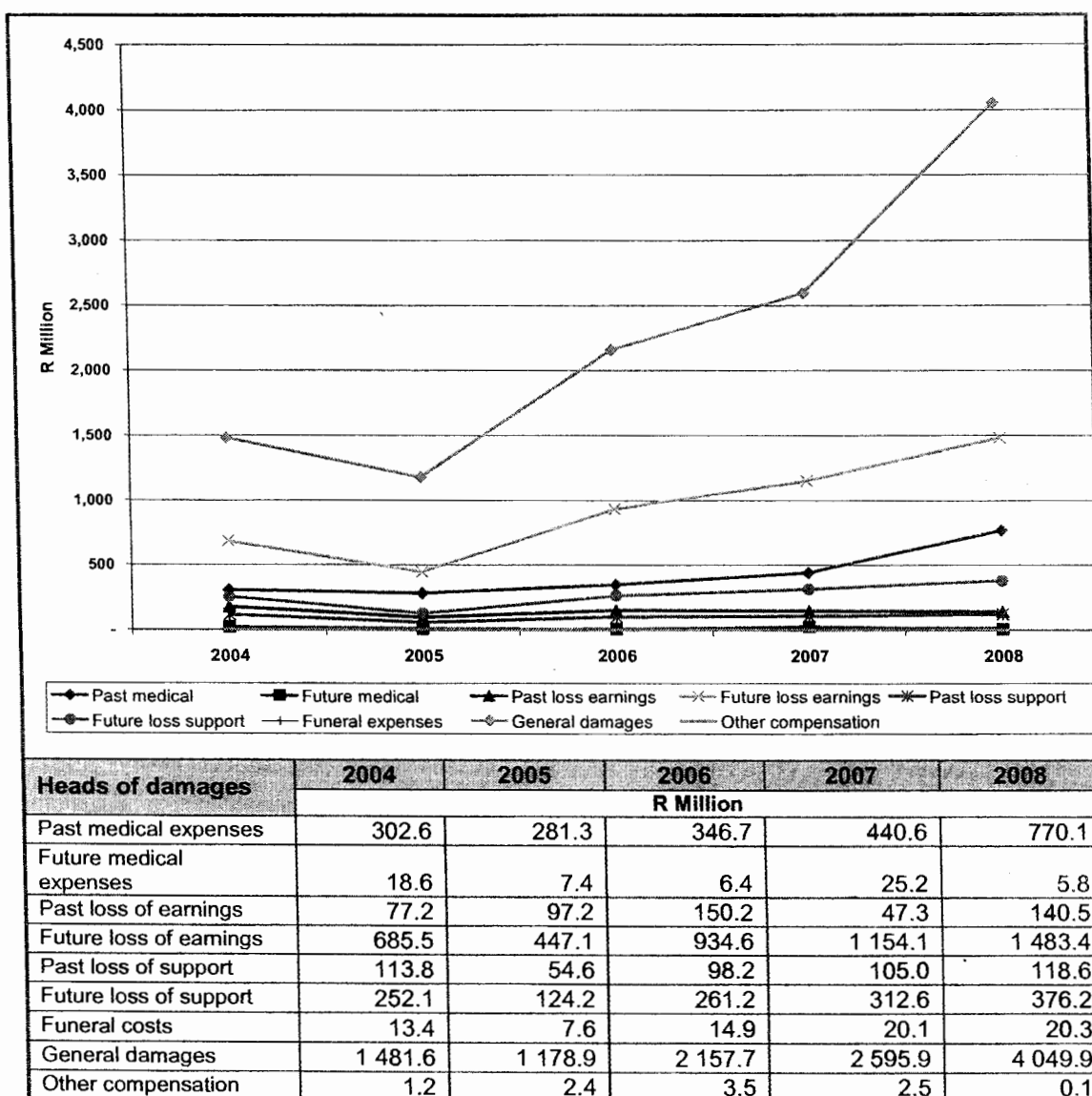
which was earmarked for debt (R1.2 billion for diesel rebates due to the South African Revenue Service (SARS)) and outstanding structured settlements totalling R1.3 billion. At 31 March 2008, current liabilities of the RAF exceeded current assets by R6.7 billion (in the previous year it was R1.6 billion)⁴⁵.

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.

⁴⁵ RAF Annual Report, 2008.

In 2008 general damages constituted 59% of total compensation paid compared with 38% in 1999.⁴⁶

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.⁴⁷ 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*".⁴⁸

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.

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

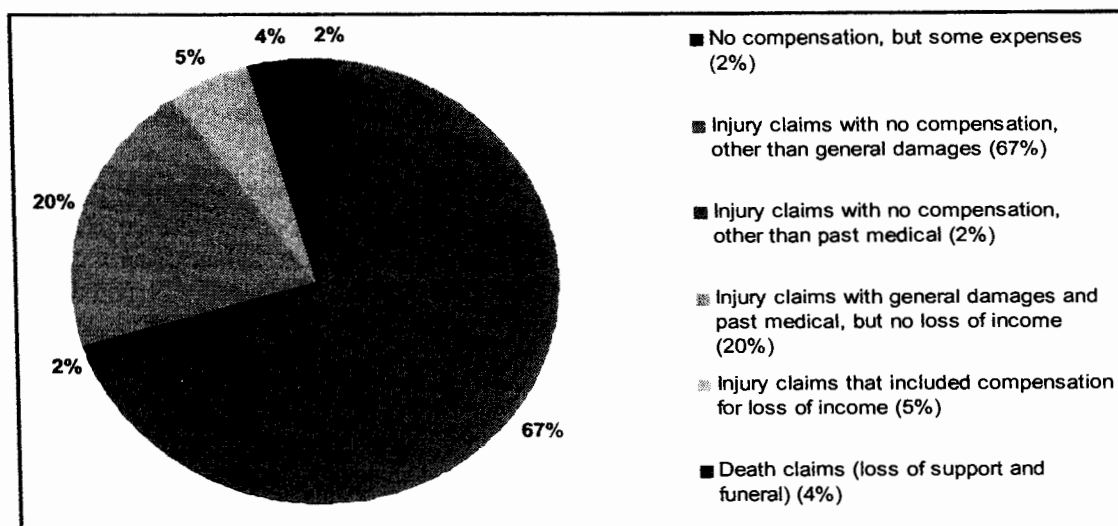
⁴⁷ Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 35, par 35.59, p. 1115, p. 1104.

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

2.6.1 Composition of payments

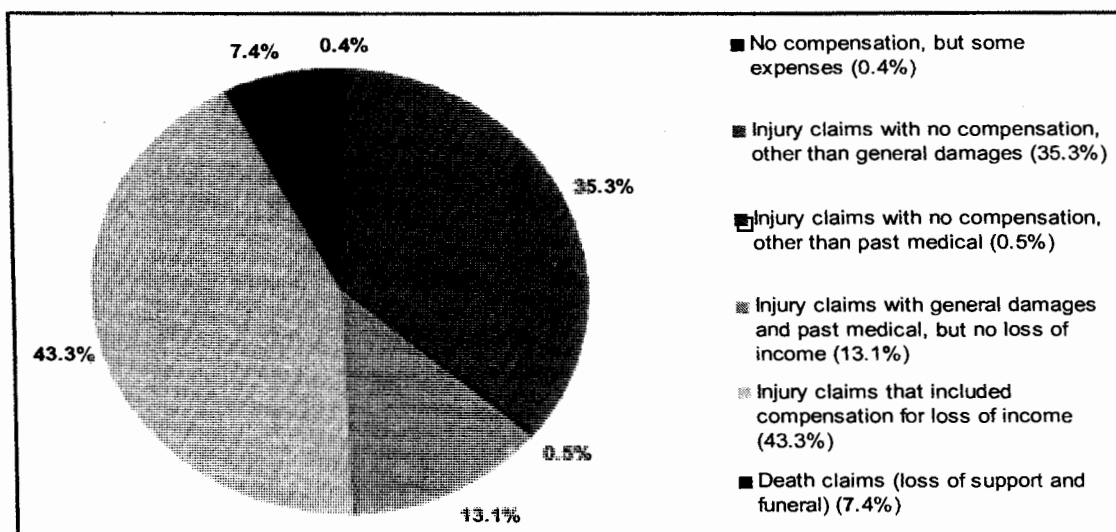
The two graphs below show the number of claims and amounts paid per category of personal injury and loss of support claims in the 2008 financial year.

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 amount⁴⁹ paid per claim was R17 586.

⁴⁹ 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.⁵⁰
- 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.⁵¹
- 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

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

⁵¹ 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).⁵² 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	% of total amount paid	Cumulative %	Average paid	Legal costs as % of total paid
				R Million			Rand	
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:

- a. The greatest proportion of claims (55.8%) have a value of less than R25 000, including the legal costs paid
- b. Claims under R25 000 accounted for only 13.6% of monies paid out
- c. 84.1% of the total number of claims are smaller than R50 000 and account for 29.2% of the total amount paid
- d. 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)
- e. Only 8% of the claims exceed R100 000 per individual claim, but these account for almost two-thirds (62%) of the total amount paid
- f. Just over 2% of the RAF's claims exceed R500 000 per individual claim, but account for 41% of the claims payments
- g. 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
- h. 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

⁵² 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	R 1 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."⁵³ 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).

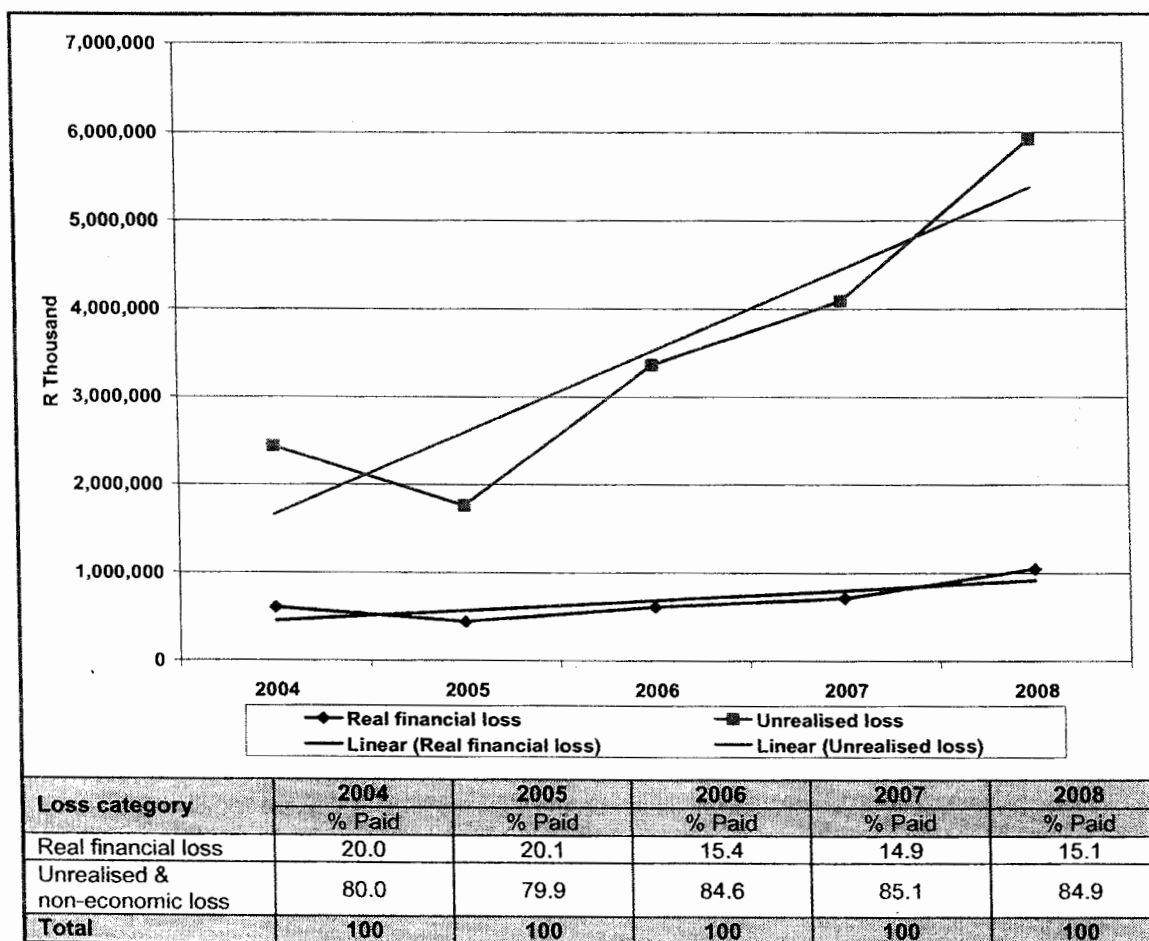
⁵³ Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 8, par 8.29, p.169.

The RAFC concluded that “smaller claims are submitted in respect of less serious injuries or where claimants’ income is low or non-existent.”⁵⁴

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.⁵⁵ 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.⁵⁶ In addition, current legislation

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

⁵⁵ 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.

⁵⁶ 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"⁵⁷ 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.

⁵⁷ *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.

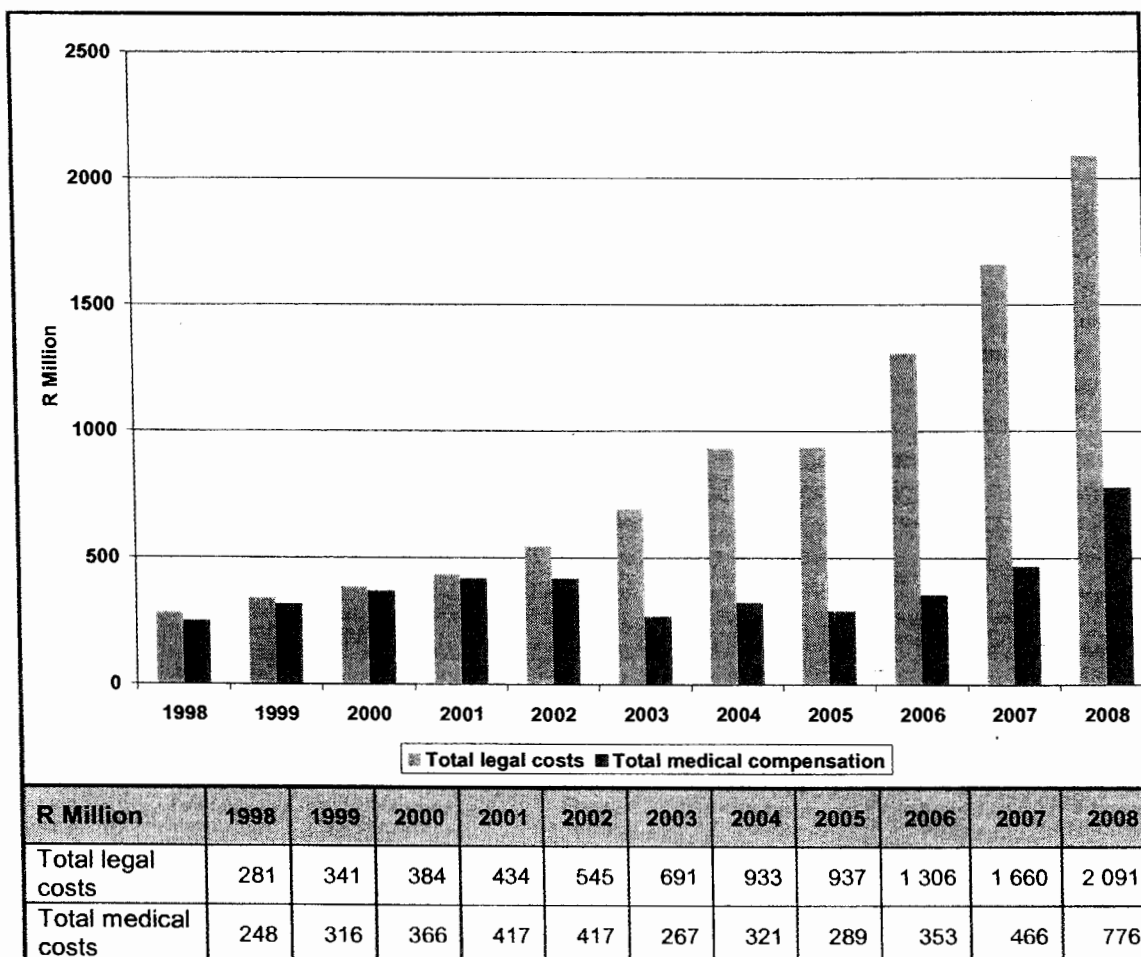
Table 2.9 Comparison of total delivery cost and compensation paid: 1998 – 2008

	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."*⁵⁸ 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"*.⁵⁹

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.⁶⁰ In essence, *"fault, rather than need, is the focus of the system."*⁶¹ 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."*⁶² 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.⁶³

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.⁶⁴ 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."*⁶⁵

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*

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

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

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

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

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

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

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

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

the average member of public".⁶⁶ The claims procedure is cumbersome, time consuming and expensive, and often results in expensive litigation.⁶⁷

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."*⁶⁸

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.⁶⁹ 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."*⁷⁰

⁶⁶ 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.

⁶⁷ 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.

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

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

⁷⁰ 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.⁷¹ 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.⁷² 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*"⁷³. The RAFC found that the "*principles and practices of the current scheme of road accident compensation themselves contain the seeds of abuse*".⁷⁴

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.*"⁷⁵

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*".⁷⁶

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.

⁷¹ The greater the disability, the larger is the potential financial pay-out.

⁷² *Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 17, par 17.7, p. 430.*

⁷³ *Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 13, par 13.137, p. 347.*

⁷⁴ *Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 13, par 13.138, p. 347.*

⁷⁵ *Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 17, par 17.29, p. 434.*

⁷⁶ *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.⁷⁷ 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.⁷⁸

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.⁷⁹ 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.⁸⁰ 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 19.14.⁸¹ 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

⁷⁷ Casualty statistics for 2007 of the Road Traffic Management Corporation.

⁷⁸ See road safety at www.arrivealive.co.za/pages.aspx?i=1033/.

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

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

⁸¹ 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.⁸²

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.⁸³

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*".⁸⁴ 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.⁸⁵ 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.⁸⁶ 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.⁸⁷

⁸² Commission for Global Road Safety, *Make Roads Safe Report*, 2006, p. 8 at www.makeroadssafe.org.

⁸³ 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).

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

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

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

⁸⁷ 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.⁸⁸

Alcohol consumption per capita in South Africa is high, and the WHO estimates that South Africa ranks 6th highest out of 46 African countries.⁸⁹ Nearly one-half of accidents and almost 60% of pedestrian fatalities can be linked to excessive use of alcohol.⁹⁰ 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.⁹¹

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

⁸⁸ World Health Organisation. Leaflet: Facts – Road safety – Alcohol.

⁸⁹ Drawn from WHO interactive database.

⁹⁰ Department of Transport, 2006. *National Road Safety Strategy*, p.26

⁹¹ 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 2008.⁹²

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 accidents⁹³
- b. Pays claims of medical service providers for treatment rendered or goods supplied to injured road accident victims⁹⁴
- 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 thereof⁹⁵
- 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.*”⁹⁶ The RAFC concluded that, despite being a social insurance fund, it “*provides virtually no medical benefits.*”⁹⁷ While it could potentially be a major role-player in the provision and funding of

⁹² RAF Annual Report 2008.

⁹³ Section 17(1) of the RAF Act.

⁹⁴ Section 17(5) of the RAF Act.

⁹⁵ Section 17(4) of the RAF Act.

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

⁹⁷ 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.⁹⁸

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.⁹⁹ 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.¹⁰⁰

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."*¹⁰¹ A further concern related to the potential for revenue retention by the public sector facilities that treat injured road users.¹⁰²

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.¹⁰³ 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.¹⁰⁴

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"*.¹⁰⁵ 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.¹⁰⁶

The Taylor Committee¹⁰⁷ 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.¹⁰⁸ 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

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

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

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

¹⁰¹ 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.

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

¹⁰³ 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.

¹⁰⁴ National Treasury. 2008. *Estimates of National Expenditure 2008*. Vote 14 Health, p. 275.

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

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

¹⁰⁷ 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.

¹⁰⁸ 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.

on a per capita basis.¹⁰⁹ 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.¹¹⁰

The RAFC also recorded that less than 50% of all professional nurses and fewer than 25% of general practitioners work in the public sector¹¹¹, 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.¹¹²

Although a few public sector hospitals charge higher income patients earning above R72 000 per annum fees for their services¹¹³, 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.¹¹⁴ 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."*¹¹⁵

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"*.¹¹⁶

¹⁰⁹ 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.

¹¹⁰ 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.

¹¹¹ *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 28, par 28.34, p. 889.

¹¹² Department of Health, Meeting on 28 August 2008.

¹¹³ Department of Health, Meeting on 28 August 2008.

¹¹⁴ *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 27, par 27.240, p. 878.

¹¹⁵ *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 27, par 27.243, p. 879.

¹¹⁶ 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.¹¹⁷

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.¹¹⁸

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

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

¹¹⁸ 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.¹¹⁹

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*".¹²⁰

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

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.¹²² In addition, compensation paid by the RAF to claimants in respect of medical costs, may not necessarily be spent on healthcare,¹²³ 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.

¹¹⁹ *Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.160, p. 862.*

¹²⁰ *Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.171, p. 864.*

¹²¹ *Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.172, p. 864.*

¹²² *Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.160, p. 861.*

¹²³ *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.¹²⁴ 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*".¹²⁵

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*".¹²⁶ 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

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

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

¹²⁶ 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.