

Towards a reasonable, affordable, equitable, and sustainable road accident compensation system

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ABSTRACT

The Road Accident Fund (RAF) is South Africa's fault-based, publicly administered road injury compensation scheme, funded by a fuel levy. It is widely acknowledged as financially unsustainable, administratively inefficient, and inequitable in benefit allocation. This paper assesses the RAF against the Road Accident Fund Commission's four criteria: reasonableness, affordability, equity, and sustainability, and compares it with two alternatives: the no-fault Road Accident Benefit Scheme (RABS) and compulsory third-party insurance (CTPI) provided by private insurers. Using actuarial, economic, legal, and institutional perspectives, the paper benchmarks the loss of income and medical benefits against South Africa's broader social security systems and surveys over a dozen international compensation models. It examines funding methods, including fuel levies, mandatory insurance, and hybrid arrangements, and evaluates each model's distributional equity and its prospects for long-term financial sustainability. RAF performance is evaluated in light of governance failures between 2020 and 2025, cost escalation from inflated loss of income awards, and payment delays that significantly reduce the real value to victims. RABS offers structured, no-fault benefits with a greater emphasis on medical treatment and rehabilitation, which could be less costly than the RAF. However, constitutional concerns arise if common law rights to sue are removed without equivalent compensation. CTPI, by contrast, is fault-based but benefits from actuarial funding discipline, competitive cost control, and efficient claims management; however,

compliance and uninsured vehicle risk remain challenges, necessitating residual state coverage. Actuarial estimates indicate that RAF benefit costs quadrupled in real terms between 2010 and 2020, primarily due to a decline in claims defence efficiency. The original RABS design could cap costs; CTPI could achieve significant savings through market efficiency. No single model fully meets all four criteria. Without prescribing a specific model, the paper concludes that a hybrid approach should be adopted for future accident compensation, combining the strengths and mitigating the weaknesses of the RAF, RABS, and CTPI systems, supported by sound governance reform and actuarial oversight to ensure long-term sustainability.

KEYWORDS

Road Accident Fund, Road Accident Benefit Scheme, compulsory third-party insurance, loss of income, fault, no-fault, reasonable, affordable, equitable, sustainable

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1. INTRODUCTION

Road accidents are a global catastrophe. The damage caused by these accidents costs the world's economies about 3% of their GDP each year.¹ Since at least 1942, the South African legislature has provided for structures with the primary aim of giving compensation to victims who have suffered damage from others' negligent driving.² The Road Accident Fund (RAF) is the latest of such structures, and has the constitutional duty of upholding such victims' rights to human dignity by providing them with compensation.³ This research

1 As estimated according to the World Health Organization Global Status Report on Road Safety 2015; available at https://www.afro.who.int/sites/default/files/2017-06/9789241565066_eng.pdf. In South Africa the costs have been estimated at 3.4% of GDP according to the 2016 research and development report on the cost of crashes in South Africa, available at https://www.rtmco.co.za/images/rtmc/docs/research_dev_rep/September%202016.pdf

2 In the words of the Constitutional Court, "The stated primary concern of the legislature in enacting these statutes [starting with the Motor Vehicle Insurance Act of 1942] is, and has always been, "to give the greatest possible protection ... to persons who have suffered loss through a negligent or unlawful act on the part of the driver or owner of a motor vehicle." From *Engelbrecht v Road Accident Fund and Another* (CCT57/06) [2007] ZACC 1; 2007 (6) SA 96 (CC); 2007 (5) BCLR 457 (CC) (6 March 2007) at paragraph 23.

3 And the legislature has a duty to 'respect and protect right to human dignity of the victims of road accidents, by providing for them to be compensated by a properly administered public fund.' *Road Accident Fund and Another v Mdeyide* (CCT 10/10) [2010] ZACC 18; 2011 (1) BCLR 1 (CC) ; 2011 (2) SA 26 (CC) (30 September 2010) at paragraph 80.

examines the extent to which South Africa's constitutional duties to road accident victims are being met, and applies actuarial expertise to consider how South Africa could move towards a reasonable, affordable, equitable and sustainable road accident compensation system.

1.1 State involvement with road accident injuries

1.1.1 Many valid reasons exist for the state to intervene and provide benefits to persons injured in road accidents. These reasons fall outside the scope of this paper and are discussed in detail in the Report of the Road Accident Fund Commission (RRAFC).⁴

1.1.2 Armstrong & Tess (2008) discuss fault and no-fault schemes in the context of factors such as the delivery system and determination of benefits for various injuries, including road accident injuries. A no-fault scheme generally provides benefits to all injured parties regardless of who caused the accident. Fault-based schemes offer benefits to those who did not cause the accident. In some instances, the injured party may have their benefits reduced due to their contributory negligence.⁵

1.1.3 Once the state has opted for a fault-based, no-fault-based, or a hybrid system, road accident benefits can be given through a state monopoly scheme, compulsory third-party insurance (CTPI) offered by private or state insurers, or a hybrid strategy. Benefits can be structured as defined benefits, where compensation is based on a predetermined schedule or formula, or as common law-based, where compensation is determined on a case-by-case basis. Benefits might be capped⁶ or uncapped.⁷

1.1.4 It has been a topic of debate as to whether the current RAF scheme should be considered as a type of CTPI for drivers or if instead it should be considered as a form of social security for all. Social security, sometimes considered synonymous with social protection,⁸ means different things to different people.⁹ Social security may be defined as encompassing all collective arrangements (public or private) that protect individuals and households from the financial consequences of predictable social risks, including loss of

4 Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 15, pp.387–394

5 Apportionment of Damages Act 34 of 1956

6 Section 17(4)(c) of the Road Accident Fund Amendment Act 19 of 1996 as amended in 2005

7 Section 60 of the Transport Accident Act 111 of 1986 in Tasmania, Australia

8 Definitions of various relevant terms including social security, social protection, social insurance, social assistance and can be found in the glossary of International Labour Organization's World Social Protection Report 2024–26 available at https://www.ilo.org/sites/default/files/2024-09/WSPR_2024_EN_WEB_1.pdf. That glossary states that the two terms social protection and social security are generally used interchangeably. Under the definition of social security it points out that access to social security is mainly the responsibility of governments, but indicates that privately run institutions may play a role.

9 The 2014 research report titled Social protection and growth: Research synthesis available at <https://www.social-protection.org/gimi/gess/Media.action?id=15727> states that 'Social protection means different things to different people but is generally concerned with consumption smoothing, protection from risk and reducing poverty and vulnerability.'

work-related income due to old age, disability, unemployment or accidents.¹⁰ In the South African context, it includes both non-contributory social assistance (such as the state disability grant) and contributory social insurance schemes (such as the unemployment insurance fund), together with employer and privately funded protection mechanisms. The RAF, though commonly described as a public insurance arrangement, sits between these categories: it functions like a social insurance mechanism in providing income protection financed by compulsory contributions, yet its financing mechanism extends this contribution liability across the entire economy, not only to insured drivers.

1.1.5 The benefits provided by structures such as the RAF simultaneously protect the estates of at-fault drivers from liability (for bodily injuries they cause), and offer compensation to the victims of at-fault drivers for their bodily injuries suffered. The RAF was born from a context of CTPI which it followed, and hence the RAF is commonly considered as a type of third party motor liability insurance protection to drivers (Vivian, 2007). However, it is not hard to imagine that victims may not receive the compensation due if such a scheme were not in place, as at-fault drivers may not have a large enough estate to provide sufficient compensation of income support or medical care for the rest of a victim's life. Hence this research will frequently consider benefits from both the perspective of the at-fault driver, and also from the separate perspective of the victim of the accident.

1.1.6 Chapter six of the RRAFC¹¹ and its appendix contain numerous opinions submitted, debating whether a road accident compensation scheme should be considered a benefit to the at-fault drivers (as third-party liability insurance) or the victims (as social security). The chapter concluded that it does both at the same time, compensating the wrongdoing motorist and ensuring that compensation is available to the victims; but that:

Insurance and delictual principles and practices are no longer wholly applicable or appropriate in the South African context and there has been a conceptual shift from liability insurance to social security, from protection of the wrongdoer to acceptance of the need to provide protection and support for all victims of road accidents.

Hence, it is becoming increasingly relevant to consider the victims as being the beneficiaries.

1.2 Criteria to be met by a scheme for victims of road accidents

1.2.1 As noted in the preamble to the RABS Bill:¹²

there is a need for an effective benefit system, which is reasonable, equitable, affordable and sustainable in the long-term, which optimises limited resources and facilitates timely

10 International Labour Organization (2012). Social security for all: Building social protection floors and comprehensive social security systems. Geneva: International Labour Office, Social Security Department. Voluntary private insurance plays a role in the higher levels of social security or social protection, as indicated, for example, in the figure on page 3 of that document, and examples of benefits are mentioned in page 6 there.

11 Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 6, pp.112–117

12 Road Accident Benefit Scheme Bill B17B of 2017

and appropriate health care and rehabilitation to lessen the impact of injuries and which provides financial support to reduce the income vulnerability of persons affected by injury or death from road accidents

1.2.2 The above criteria find their origins in the RRAFC:¹³

The recommendations of the Commission are to be assessed against the four criteria of 'reasonable, equitable, affordable and sustainable'. Each of these criteria must be given due consideration by the Commission, both individually and in concert with each other in an integrated system.

1.2.3 The RRAFC interpreted the defining criteria for a compensation system for road users as follows:

A reasonable system of road accident compensation should acknowledge the symbiotic relationship between road accident compensation and the broader system of social security and its objectives ... should be moderate, with no extremes of generosity or meanness ... sensible in its ambitions and reflective of both the needs and resources of the South African society ... it should be purposive ...

An affordable system should be within the financial means of road users and South African society as a whole. The system ... must provide value to road users.

A sustainable system must be accessible and efficiently administered and facilitative of health care and rehabilitation as also the alleviation of financial hardship and anxiety. It should reinforce the broader system of social security ... be financially and morally viable.

In an equitable system... there must be a relationship between the funding of the system and the demands made thereon. The treatment of ... victims and their families must be impartial, unbiased and fair ... some congruence between benefits for road accident victims and those available for other South Africans in need.¹⁴

1.3 Problem statement

The purpose of this paper is to assess whether the status quo, as administered by the existing RAF, adheres to the criteria of reasonable, equitable, affordable, and sustainable. With respect to sustainability, a central policy question is one of how benefits are to be financed sustainably over time, whether through pay-as-you-go, partially funded or fully funded models.¹⁵ We assess the policy alternatives of the no-fault defined benefits

¹³ Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 1, pp.10–11

¹⁴ Ibid., Executive Summary, par 2, pp.XI–XII

¹⁵ This paper does not go into detail on potential funding models in the sense of what level of assets should ideally be kept in relation to the liabilities but does give consideration to ways in which the needed funds can be sourced or financed, see section 6 below. A description of possible funding models in general for social security can be found in the joint technical publication of the International Labour Office and the International Social Security Association titled 'Actuarial mathematics of social security pensions' by S Iyer (1999).

introduced in the RABS Bill, as well as standalone CTPI. The outcome of that analysis will inform whether any of the alternatives are appropriate for the state to pursue.

1.4 Different systems considered in this paper

1.4.1 The first system assessed is the status quo, as administered by the existing RAF. The RAF is a statutory, public compensation scheme funded by a levy on fuel. It operates on a fault-based liability model.¹⁶

1.4.2 Note that, throughout this paper, ‘RAF’ refers to the RAF Scheme (as defined in the RAF Acts and Regulations), as well as the RAF Entity introduced in the said Acts, whose purpose is to administer the RAF Scheme.

1.4.3 The second system is a no-fault benefit scheme similar to what was proposed in the RABS Bill,¹⁷ which was intended to replace the RAF. RABS was designed to provide defined benefits to all accident victims, regardless of fault, through an administrative process rather than litigation, thereby promoting timely payment and equitable access to benefits.

1.4.4 The RRAFC noted that:¹⁸

The Commission does not take the view that it is the function of a State established scheme of road accident benefits to redeem every insult, remedy each affliction, restore full well-being and return the road accident victim to the position in which he or she or dependants were prior to the road 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.

1.4.5 A third alternative is CTPI, operated by private insurance companies under a government mandate. In the event of an accident, victims would typically claim against the at-fault driver’s insurance policy, rather than a central fund or insurer. A CTPI system leverages the insurance industry’s existing infrastructure and regulatory insight. The challenge is to ensure both affordable premiums and compliance.

1.4.6 In systems where compulsory insurance is used, experience suggests that achieving full coverage is challenging.¹⁹ It is for this reason that a parallel mechanism, such as a state fund for uninsured drivers, is maintained in some countries.²⁰

16 <https://www.raf.co.za/Legislation/Pages/Legal-Framework.aspx>

17 Bill B17B-2017 available at <https://pmg.org.za/files/B17B-2017.pdf>

18 Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 17, p. 434

19 National Association of Insurance Commissioners (2006). Uninsured Motorists: A Growing Problem for Consumers

20 House of Commons Library Briefing Paper (17 November 2015). Uninsured drivers and the Motor Insurers Bureau

1.5 Topics for further research not covered in this paper

1.5.1 Several important issues fall outside the scope of this paper and require separate study.

1.5.2 Under the current RAF system, dependants can claim for Loss of Support due to the death of a breadwinner. Loss of Support claims involve unique social, practical, legal, and actuarial aspects. The exclusion of Loss of Support claims in this paper is deliberate and may be a topic for further research.

1.5.3 Further research required is the complexity of medical benefits within a road accident compensation framework, especially in light of South Africa's planned National Health Insurance (NHI). The RAF currently provides for medical expenses through direct payments or undertakings to cover future treatment. The responsibilities between the NHI and the road accident compensation framework must be delineated. The handling of existing medical undertakings will also require consideration in any transition. Designing a fair solution for the RAF's legacy medical claims is a research question beyond the scope of this paper.

1.5.4 To date, the RAF has been allowed to operate with a significant unfunded liability, which is simply one of an array of financing methods available to governments. The lack of a formal solvency framework for the RAF and the absence of an explicit state guarantee if it cannot pay claims are in stark contrast to the stringent solvency margins imposed on insurance companies. A comparative analysis is necessary to evaluate the impact of these differences on long-term sustainability. These financial and regulatory considerations were beyond our immediate scope, but are identified as topics for further research.

1.5.5 Any change to the compensation systems, whether it is a switch to a RABS-like benefit system, CTPI, or a hybrid model, will have to contend with the run-off of the RAF's existing backlog of claims. The transition will require a carefully structured run-off process. Financing the run-off and preventing it from undermining any new system is a significant concern. Measures may include dedicated funding streams or negotiated settlements to clear backlogs. A substantial hurdle is governance and institutional reform. Strengthening governance could involve overhauling the RAF's management structure, enhancing transparency and accountability, and improving claims processing efficiency through the adoption of better technology and anti-fraud measures. Regardless of the road accident compensation model chosen, that system will not achieve its objective unless it is well governed. Future research and policy work should explore governance reforms to ensure that whichever scheme is implemented is administered effectively and sustainably in the long term.

1.6 Structure and rationale of the paper

1.6.1 This paper is designed to examine the current RAF, as well as policy alternatives to the RAF model. It accomplishes this by analysing the economic and actuarial aspects of road accident compensation in South Africa, taking into account the legal and

institutional dimensions. Sections 2 to 11 are organised in a sequence that progresses from background and evidence to comparative assessment and policy conclusion.

1.6.2 Section 2 surveys international models of road accident compensation. It reviews the systems in place in over a dozen jurisdictions, classifying them by their use of fault or no-fault principles, the role of public versus private funding, and the presence of residual mechanisms for uninsured or hit-and-run claims. The comparative analysis offers insights into best practices, common pitfalls, and the typical features of sustainable and equitable systems. The South African model is situated within this international context to assess its anomalies and possibilities for reform.

1.6.3 Section 3 looks at the framework of income protection offered to South Africans after injury or disability. It describes statutory benefits available through social assistance and insurance, such as disability grants, the Compensation Fund, and unemployment insurance. It also investigates private-sector systems, including group and individual disability insurance. This section sets the baseline against which every loss-of-income component of the road accident compensation plan must be evaluated and clarifies the extent to which road accident victims are already protected by other methods.

1.6.4 Section 4 discusses how medical and rehabilitation treatments are obtained and funded after an injury. It compares the RAF's reimbursement approach to the benefits offered by public healthcare, the Compensation for Occupational Injuries and Diseases Act (COIDA), and private medical insurance plans. The responsibilities of emergency response, hospitalisation, and long-term rehabilitation are assessed, as are the limitations of both public and private systems. This section emphasises the necessity of early and effective care for recovery, as well as the financial consequences of delayed treatment, positioning medical care as crucial to any appropriate compensation system.

1.6.5 Section 5 documents the oversight failures and institutional weaknesses of the RAF from 2020 to 2025. It draws upon audit reports, court judgments, parliamentary investigations, and official correspondence to compile a comprehensive record of governance breakdowns, accounting irregularities, and operational dysfunction. This evidence demonstrates that the current system is collapsing in practice, emphasising the need for structural reform.

1.6.6 Section 6 examines the financing of road accident compensation schemes, with a particular focus on the fuel levy used to finance the RAF. It evaluates the fiscal merits and limitations of the fuel levy, considers alternative models such as mandatory insurance and general taxation, and reflects on hybrid arrangements. The impact of vehicle electrification and the declining relevance of fuel consumption as a tax base are also considered. The long-term financial feasibility of the options under review are evaluated.

1.6.7 Section 7 initiates the comparative evaluation by examining the affordability of each model. It evaluates whether the costs associated with the RAF, RABS, and CTPI can be met without imposing excessive burdens on road users or public finances. The analysis assesses the sufficiency of each model's funding sources (such as the fuel levy

or insurance premiums) in relation to its benefit payouts, identifying any cost-containment measures and risks of cost escalation.

1.6.8 Section 8 continues the comparative evaluation by assessing the reasonableness of the three compensation models: the status quo RAF, the proposed no-fault RABS, and CTPI administered by private insurers. It considers whether each model provides appropriate protection to both motorists and victims, whether the benefits are reasonable given the contributions, and whether the rights and responsibilities are balanced in a manner consistent with constitutional and social expectations.

1.6.9 Section 9 examines the equity implications of the three models. It investigates who pays into and who benefits from the RAF, RABS, and CTPI systems, identifying any cross-subsidies between different groups. This analysis contrasts the perspectives of contributors to each scheme (such as fuel levy payers or insured drivers) with those of claimants who receive compensation, evaluating whether each scheme achieves a fair and impartial distribution of benefits in line with broader social equity objectives.

1.6.10 Section 10 concludes the comparative evaluation by assessing sustainability. It examines whether each model can sustain itself over time without accumulating unfunded liabilities or necessitating recurring political intervention. It considers solvency, intergenerational fairness, and responsiveness to changes in technology, demographics, and accident trends.

1.6.11 The final section integrates the findings of the previous sections to identify the extent to which each of the three models meets the long-term policy objectives of a road accident compensation system that is reasonable, equitable, affordable, and sustainable.

2. INTERNATIONAL MODELS OF ROAD ACCIDENT COMPENSATION

2.1 Road accident statistics

2.1.1 The Global Status Report on Road Safety²¹ indicates approximately 1.16 million road deaths across 172 countries in 2021. Road traffic accidents cost most countries approximately 1% to 3% of their gross domestic product, and in some instances as high as 6%.²² Figure 1 provides the population (P), number of road deaths (D), and death rate per 100 000 (R) for the regions of Africa (AFR), Americas (AMR), Eastern Mediterranean (EMR), Europe (EUR), South-East Asia (SEA), and Western Pacific (WPR).

2.1.2 Worldwide, more than 50% of fatalities are among vulnerable road users such as pedestrians, cyclists and users of two- and three-wheelers, as summarised in Figure 2.²³

21 World Health Organization. Global status report on road safety 2023. Geneva: WHO; 2023. Available from: <https://www.who.int/publications/i/item/9789240086517>

22 Ibid., p.4

23 Ibid., p.5

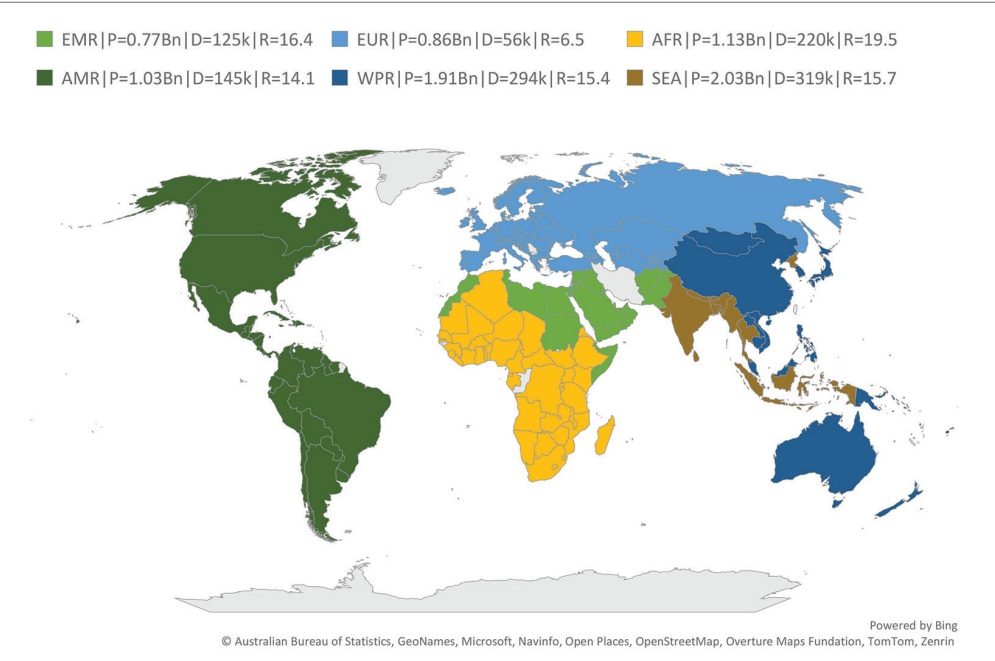


FIGURE 1. Distribution of road deaths

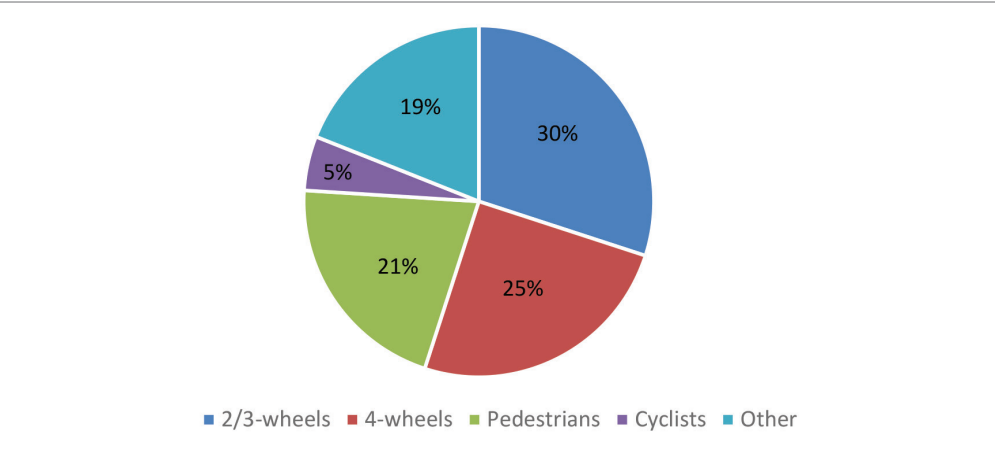


FIGURE 2. Fatalities by road user type

2.1.3 The World Health Organization notes that annually 20 to 50 million people suffer non-fatal injuries, with many incurring a disability.²⁴ Road traffic injuries

24 World Health Organization. Road traffic injuries. Fact sheet. Geneva: WHO; [updated 26 June 2024; cited 27 June 2025]. Available from: <https://www.who.int/news-room/fact-sheets/detail/road-traffic-injuries>

are the leading cause of death for children and young adults aged 5–29 years.²⁵ Two-thirds of road traffic fatalities occur among people of working age (18–59 years).²⁶ Males are typically three times more likely to be killed in road crashes than females.²⁷

2.1.4 More than 90% of road traffic deaths occur in low- and middle-income countries. As shown in Figure 1, road traffic death rates are highest in the Africa region and lowest in the Europe region. Even within high-income countries, people from lower socioeconomic backgrounds are more likely to be involved in road traffic crashes.²⁸

2.2 State intervention

2.2.1 Zimolo (2010) traces the introduction of compulsory Motor Third Party Liability (MTPL) insurance back to 1908 in the Austro-Hungarian Empire, coinciding with the early era of motorisation. In the aftermath of World War I, Denmark adopted similar legislation in 1918, followed by Finland in 1925, Norway in 1926, Massachusetts in 1927, and both the Republic of Austria and Sweden in 1929. The United Kingdom implemented its MTPL scheme in 1930. During the 1930s, several European countries followed suit, including Switzerland, Liechtenstein, Luxembourg, the former Czechoslovakia, the Principality of Monaco, Latvia, Germany, and, specifically for public transport, France and Belgium, with Belgium formalising its regime in 1947.

2.2.2 Governments worldwide recognise their responsibility to ensure access to emergency trauma care following accidents, as timely medical intervention has a significant effect on the long-term effect that injuries will have on the well-being of the individual.²⁹ Many nations have developed trauma networks, ambulance services, and specialised emergency departments to provide immediate care for accident victims. However, disparities persist, with low- and middle-income countries often lacking adequate infrastructure and trained personnel (Phelan et al., 2022). Discussing the provision of healthcare in different countries is beyond the scope of this paper.

2.2.3 As shown in sections 2.3 to 2.8, the cover available in most countries is in the form of CTPI covering individuals for damages caused to third parties. Apart from the cost of medical treatment, benefits payable to the injured third party typically cover Loss of Income, non-monetary losses such as pain and suffering, and expenses associated with proving these losses. Such benefits may or may not include losses incurred by the policyholder. In many countries, coverage for property damage suffered by third parties is also provided, but this is considered outside the scope of this paper.

25 Ibid.

26 Ibid.

27 Ibid.

28 Ibid.

29 World Health Assembly. Emergency care systems for universal health coverage: ensuring timely care for the acutely ill and injured (WHA 72.16). Resolution adopted at the Seventy-Second World Health Assembly, Geneva, 28 May 2019. Geneva: World Health Organization; 2019. Available from: https://apps.who.int/gb/ebwha/pdf_files/WHA72/A72_R16-en.pdf

2.2.4 Individuals, particularly in countries where public health is not considered sufficient, often take out private health insurance (or medical aid) to cover medical costs. In some countries, it is compulsory to take out private health insurance. Where medical expenses resulting from a road accident are covered by private health insurance, the principle of *res inter alios acta* (which translates to ‘a matter between others does not concern us’) is usually invoked to argue that benefits received from third parties should not reduce the damages paid by CTPI. In such cases, the liability insurer will thus cover the private medical costs, either by paying them directly to the injured party (who might have to reimburse the health insurer) or by paying them directly to the health insurer.

2.2.5 Most countries also have an insurance sector where individuals can take out voluntary insurance to cover losses resulting from their injuries. This is particularly prevalent in countries where benefits provided by third-party liability insurance are capped, and some individuals require cover above such caps. Such individual (first-party) insurance can either be for a fixed sum assured or for actual losses up to a specified maximum sum insured. The benefit can also be payable for losses exceeding some threshold (for example, ‘uninsured/underinsured benefits’, where benefits are only payable if more than the amounts covered by the third-party liability insurance of the wrongdoer). Such policies can either cover the explicitly insured for losses due to injuries caused by a road accident or cover the insured for losses irrespective of the cause. There are various types of policies available covering temporary or permanent disability, either on a group or individual basis. In some countries, pension funds also provide such cover.

2.2.6 Although insurance companies are expected to compensate victims, the state may have to intervene when the relevant insurer is insolvent or otherwise unable to pay or when the at-fault driver (or vehicle) is uninsured or not identifiable. This intervention is usually done through a guarantee fund (Zimolo, 2010).

2.2.7 How different countries intervene is discussed in 2.3 to 2.8 below, grouped by the regions reflected in Figure 1 above. For each region, the three countries with the highest number of deaths in nominal terms are selected. The 18 chosen countries account for close to 70% of road deaths worldwide.

2.3 Africa region

2.3.1 Nigeria’s compulsory third-party insurance for personal injury is governed by the Motor Vehicles (Third Party Insurance) Act.³⁰ Under that law, every motor vehicle must be covered by a third-party liability policy insuring against death or bodily injury to any third party. The Insurance Act³¹ extends coverage to third-party property damage up to a minimum of ₦1 million. Okiche (2013) notes that despite the legal obligation for all motorists in Nigeria to possess a valid certificate of insurance, law

30 Motor Vehicles (Third Party Insurance) Act 53 of 1945 enacted on 1 April 1950

31 Section 68 of the Insurance Act, 2003

enforcement agencies have failed to enforce this requirement adequately. The author notes that this failure is evident in the widespread circulation of fraudulent insurance documents: even though police checkpoints are often situated less than one kilometre apart along major highways, it is estimated that up to 90% of Nigerian motorists still operate vehicles with fake insurance papers.

2.3.2 Ethiopia mandates third-party motor insurance for personal injury through the Vehicle Insurance Against Third Party Risks.³² This law requires all vehicle owners to maintain insurance that covers bodily injury, death, and property damage caused to others in the event of an accident on the road. Under the current scheme, the minimum compensation for third-party victims is fixed by statute: for any one person's death, the payout must be at least Birr5 000 and may not exceed Birr40 000, the same Birr40 000 maximum applies to any single person's bodily injury, and property damage is covered up to Birr100 000 per accident.³³ Ethiopia's system also established the Road Safety and Insurance Fund Service to pay claims to victims of hit-and-run or uninsured vehicles, providing a safety net for those who would otherwise receive nothing.³⁴

2.3.3 The Democratic Republic of Congo's (DRCs) compulsory third-party injury insurance system is grounded in the Insurance Code.³⁵ Under Article 108 of the Insurance Code, any person whose use of a motor vehicle could cause injury or damage to others must carry an active liability insurance policy before the car is allowed on public roads. Article 111 indicates that third-party policies must provide unlimited coverage for personal injuries or death (there is no cap on compensation for bodily injury). Article 131 provides that victims of physical injury involving one or more land motor vehicles, including drivers, shall be compensated for the injuries to their person that they have suffered, without their fault being raised against them, except in cases where they deliberately sought the harm sustained. Article 501 establishes a Motor Vehicle Guarantee Fund for unidentified or uninsured drivers. The main issue with the DRC's system is low compliance with one of the lowest insurance penetration rates in Africa.³⁶

2.4 Eastern Mediterranean region

2.4.1 In Pakistan, third-party motor vehicle insurance for bodily injury is compulsory under the Motor Vehicles Act.³⁷ The Securities and Exchange Commission of Pakistan (SECP) is proposing amendments to the Motor Vehicles Act,³⁸ to improve the implementation of the compulsory motor third-party liability insurance scheme.

32 Vehicle Insurance Against Third Party Risks, Proclamation No. 799/2013, 23 July 2013

33 Ibid., section 16.1

34 www.rosifs.gov.et

35 Insurance Code Law No. 15/005 of 17 March 2015

36 <https://www.atlas-mag.net/en/article/the-congolese-insurance-market>

37 Chapter VIII of the Motor Vehicles Act, 1939

38 Securities and Exchange Commission of Pakistan. Press Release SECP for increasing claim amount for road accident victims, 10 August 2018

Currently, all motor vehicle owners must have this insurance to compensate road accident victims, but the existing compensation limit of Rs20 000 for bodily injury and death is deemed insufficient. Additionally, the legal process for determining liability is lengthy and costly, leading to widespread non-compliance and the prevalence of fraudulent insurance policies.³⁹ The proposed amendments aim to introduce a no-fault option, enabling victims or their legal heirs to receive compensation without a court order, regardless of fault, and to increase the compensation limit for death claims to Rs500 000. The SECP also plans to introduce a schedule with enhanced compensation limits for bodily injuries and impose heavy penalties on fraudulent insurers.

2.4.2 Iran's Motor Third-Party Liability Insurance Law mandates that all owners of land transport motor vehicles, including trailers and railway trains, insure their liability for damages caused to third parties resulting from accidents. The law classifies damages into two categories: personal injuries and property damage. Personal injuries encompass medical treatment expenses, compensation for bodily impairment, and death, with indemnities determined based on court judgments under Islamic Penal Law. Property damages cover direct losses to objects owned or legally possessed by individuals. The concept of 'Dieh' (blood-money) is integral, serving as compensation for unintentional harm or injury, with amounts specified under Islamic law. Insurance companies are obligated to provide coverage that aligns with these legal requirements, ensuring victims receive appropriate compensation.⁴⁰

2.4.3 Egypt introduced a Unified Insurance Law in 2024,⁴¹ according to which, compulsory insurance is mandated for all licensed motor vehicles (Article 40), covering death, bodily injury resulting in disability, and third-party property damage (excluding vehicle damage) under standard policy terms. Valid cross-border insurance documents are accepted if they remain effective in Egypt, cover civil liability as defined, and identify the Egyptian insurance pool (Article 41). Owners must obtain this insurance upon licensing or renewal (Article 42), exclusively from insurers licensed by the Financial Regulatory Authority (FRA) and operating collectively through a central insurance pool (Article 43), which issues standardised policies (Article 44) and ensures coverage during the licence period and renewal grace period (Article 45). The FRA sets premium rates and may allow risk-based adjustments, subject to ministerial approval (Article 46). The pool must pay compensation of EGP100 000 for death or total permanent disability, proportional amounts for partial disability, and up to EGP20 000 for property damage within 30 days of proper notification and documentation; the FRA may increase these limits by up to 50% (Article 47). Victims may pursue further civil claims beyond these limits (Article 48). Where multiple vehicles are at fault, the victim may claim from any

39 <https://www.brecorder.com/news/40278543/status-of-motor-third-party-insurance-in-pakistan-importance-of-motor-third-party-insurance>

40 <https://www.iraninsuranceint.com/Other/Laws/Motor-TPL-Insurance-Law>

41 Egypt Law No. 155/2024

involved insurer or the Guarantee Fund, which then shares the costs equally (Article 52). Full compensation remains payable if death or permanent disability occurs within one year and is medically linked to the accident (Article 53). The Government Guarantee Fund (Article 61) compensates victims where the responsible vehicle is unidentified, uninsured, exempt from licensing, or insured by an insolvent company, and may recover payments from vehicle owners. It must adjudicate claims within one month of receipt.

2.5 European region

2.5.1 CTPI for motor vehicles is mandated in all European countries. The introduction of such schemes is closely tied to the long history of motor vehicle use in Europe. In the United Kingdom, the requirement for motor vehicle owners to hold third-party liability insurance was first established under the Road Traffic Act, 1930. Ireland followed suit with a similar provision in the Road Traffic Act, 1933. Germany introduced mandatory third-party motor vehicle insurance in 1939⁴² and France in 1958.⁴³ The European Economic Community (EEC), later the European Union (EU), required all member states to mandate such coverage from 1973 onward.⁴⁴

2.5.2 To facilitate cross-border travel, the Green Card insurance system was established in 1949.⁴⁵ Under this system, a motorist with insurance from any Green Card member country is automatically covered in all participating countries, which comprise every European nation except Kosovo, as well as six non-European countries.⁴⁶ Statutory minimum cover is updated every five years, currently requiring minimum sums insured of €1 300 000 per injured party, €6 450 000 per accident, and €1 300 000 for property damage.⁴⁷ France and Belgium use the Green Card system as their national insurance system.

2.5.3 Directive 2009/103/EC of the European Parliament⁴⁸ relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, prescribes minimum third-party liability insurance cover in EU countries. The Directive does not regulate issues of civil liability, including compensation awards, which are decided by EU countries, or 'comprehensive cover' for physical injury of the driver or damage to vehicles. There are no EU-wide rules on additional optional car insurance.

2.5.4 Participation rates vary among European countries, with the highest number of uninsured vehicles being around 8% in Greece and Ireland, followed by Italy

42 Straßenverkehrsgesetz (Germany), 1939

43 Loi n° 58-208 du 27 février 1958 relative à l'obligation d'assurance automobile (France)

44 <https://www.cobx.org/sites/default/files/2022-11/MID-1-1972.pdf>

45 <https://www.cobx.org/article/4130/green-card-system-final>

46 Participating countries include most European countries, and some neighbours, in most cases bordering the Mediterranean Sea. The official position is that the green card system could be joined by the countries 'west of the Urals and the Caspian Sea and countries bordering the Mediterranean Sea', but this rule is not followed strictly (for example Iran falls outside of the area as described).

47 <https://www.cobx.org/sites/default/files/2023-06/MinimumAmountOfCoverage-2023-05-22.pdf>

48 <https://www.cobx.org/sites/default/files/2022-11/Consolidated-MID-after-MID-5-2009.pdf>

and Cyprus with around 5%. Only three of the remaining 25 countries for which the percentage of insured vehicles was available had more than 2% uninsured vehicles.⁴⁹

2.5.5 Every European country has a motor insurance guarantee fund to protect victims of accidents caused by uninsured or hit-and-run drivers (Zimolo, 2010). These national guarantee funds, required under EU law, step in to compensate injured parties for personal injury or property damage when the at-fault vehicle is unidentified or not insured. Guarantee funds are typically financed by the insurance industry, usually as levies expressed as a percentage of premiums. In other cases, funding is provided through fixed fees or other schemes; for instance, in Norway, fines on owners of uninsured vehicles are deposited into the national motor guarantee fund.

2.5.6 Whittaker (2024) notes that in Russia, compensation for personal injury due to road accidents is governed by the compulsory third-party liability insurance system known as OSAGO. This system provides up to 500 000 roubles for personal injuries, excluding compensation for pain and suffering. Victims may claim additional damages by suing the wrongdoer directly. Compensation for Loss of Income is calculated as a percentage of the victim's average monthly income based on the degree of occupational or functional disability, which state medical institutions assess. Payments are made monthly, but may be converted to a lump sum (not exceeding three years of payments) under specific circumstances. The Civil Code allows for adjustments based on changes in the victim's work capacity or inflation. Notably, compensation is also available for child victims based on the national subsistence income level.

2.5.7 Birishik (2021) notes that in Turkey, compulsory motor third-party liability insurance is governed by the Law on Road Traffic and requires coverage for bodily injury and property damage caused to third parties by motor vehicles in motion. However, the law specifies several exclusions, including claims by the vehicle owner, damage to close relatives, property not legally the driver's responsibility, damage resulting from racing or inspections, cargo losses, and moral damages. The author notes that while the insurance covers repair costs and bodily harm, it does not extend to losses such as reduced vehicle value or Loss of Income, unless separately insured. Overall, Turkey's regime strikes a balance between victim protection and liability limits, supported by statutory exclusions and a guarantee mechanism. Turkey operates a statutory Assurance Account that serves as a compensation fund for victims of road accidents involving uninsured or unidentified motor vehicles.⁵⁰ This mechanism ensures protection where compulsory motor third-party liability insurance is lacking or where the liable vehicle cannot be identified.

2.5.8 Both civil law and statutory insurance mandates govern Uzbekistan's framework for road-accident injury compensation. The Law of the Republic of Uzbekistan⁵¹

49 <https://www.mibi.ie/ireland-may-have-highest-level-of-uninsured-in-eu/>

50 Insurance and Private Pension Regulation and Supervision Authority. (2020). Activity report 2020

51 The Law of the Republic of Uzbekistan No. ZRU-155 of 21 April 2008

requires all vehicle owners to carry compulsory civil liability insurance that covers harm to life or health caused to others in accidents. This insurance provides indemnification up to statutory limits, and a state-sanctioned guarantee fund intervenes with compensation payments if the insured party's coverage is unavailable or insufficient (for instance, if the vehicle was uninsured or the insurer is insolvent). The Uzbekistan Constitution⁵² provides that justice in the Republic of Uzbekistan shall be carried out only by the court.

2.6 Region of the Americas

2.6.1 Except in New Hampshire, all states in the United States require drivers to carry personal liability automobile insurance as a prerequisite for vehicle registration and operation, with many states also mandating additional coverage: 17 require personal injury protection (car insurance that covers medical bills and related costs for the policyholder and passengers after a car accident, regardless of who was at fault); and 20 require uninsured and/or underinsured motorist coverage, while collision and comprehensive coverage generally remain optional.⁵³ Minimum liability coverage requirements, known as financial responsibility limits, vary widely by state.⁵⁴ The auto insurance market is segmented into three risk-based categories: the standard market (covering most drivers), the non-standard market (higher-risk drivers, such as those with prior transgressions or limited driving experience), and the residual market (for those unable to secure coverage elsewhere due to extremely high risk). Premiums are typically highest in the residual market, lower in the non-standard market, and lowest in the standard market. The standard and non-standard segments together form the voluntary market, distinct from the residual market.⁵⁵ There is no national guarantee fund to protect innocent road accident victims when the at-fault party lacks sufficient insurance. Recent empirical studies of the United States' personal injury compensation system reveal that the structure and regulation of liability coverage significantly influence both affordability and outcomes. The Casualty Actuarial Society (2018) identifies stark disparities in claim severity across states, particularly those operating no-fault systems with a verbal threshold (a rule that allows car accident victims to sue for injuries only if their injuries meet specific severe medical conditions defined by law), such as New York and Florida. In such states, bodily injury claim severity averaged over \$31 500, which is double the national average, primarily due to statutory restrictions on litigation that result in a smaller but more seriously injured claimant pool. Claim frequency was lower in no-fault states due to these litigation thresholds. Personal injury protection claims were strongly correlated with lawyer density and road congestion, particularly in verbal threshold states.

52 Article 130 of the Constitution of the Republic of Uzbekistan at <https://constitution.uz/en/clause/index>

53 Federal Insurance Office. (2017). Study on the affordability of personal automobile insurance. U.S. Department of the Treasury, page 5. https://home.treasury.gov/system/files/311/FINAL%20Auto%20Affordability%20Study_web.pdf

54 Ibid.

55 Ibid.

2.6.2 Whittaker (2024) notes that in Brazil, compensation for motor vehicle accident injuries is primarily provided through Danos Pessoais causados por Veículos Automotores de via Terrestre (DPVAT). This mandatory no-fault insurance offers limited coverage for personal injury regardless of fault. The maximum benefit for permanent disablement under DPVAT is a lump sum of 13 500 Brazilian Real, a figure that has remained unchanged since 2007 and is not adjusted for inflation. DPVAT does not compensate for pain and suffering; to obtain additional damages, such as Loss of Income, a victim must pursue a civil claim under Brazil's Civil Code by proving the defendant's negligence. Article 950 of the Code provides for a pension or lump sum to compensate for reduced work capacity, with annuities commonly awarded until retirement. However, social security often compensates victims for earnings loss, and any amounts received from DPVAT or social security may be deducted from civil damages. All DPVAT payments are managed by Brazil's state-owned bank, Caixa Econômica Federal, and are deposited into digital social savings accounts opened in the name of the accident victims.

2.6.3 In Mexico, the Federal Roads, Bridges, and Motor Transportation Law⁵⁶ mandates that all vehicles that transit on federal roads, highways, and bridges must have insurance that guarantees compensation to third parties for damages that may be caused to their property and persons by the operation of the vehicle. The procurement of the insurance is the responsibility of the vehicle owner. Article 64 states that the right to receive compensation, as well as the determination of the amount, shall be subject to the provisions of the Civil Code for the Federal District in matters of common law, and to the provisions applicable throughout the Republic in matters of federal jurisdiction. The provisions of Article 502 of the Federal Labour Law apply and stipulate that the death benefit is equal to 5000 days of salary.⁵⁷ A government national survey revealed that only around one-third of Mexicans have any form of motor insurance.⁵⁸ However, many accidents in Mexico involve uninsured motorists, leaving victims inadequately protected.⁵⁹ Efforts continue to strengthen enforcement and encourage higher voluntary insurance limits to better safeguard road accident victims.

2.7 South-East Asia region

2.7.1 As noted by Whittaker (2024), in India, personal injury compensation for road accidents is governed primarily by the Motor Vehicles Act, 1988, as amended by the Motor Vehicles Amendment Act, 2019. The Act mandates third-party liability

56 Article 63 of the Federal Roads, Bridges, and Motor Transportation Law, available at: <https://docs.mexico.justia.com/static/pdf-js/web/index.html?file=/federales/leyes/ley-de-caminos-puentes-y-autotransporte-federal.pdf>

57 Article 502 of the Mexican Federal Labour Law

58 <https://www.gob.mx/conducef/prensa/seguero-obligatorio-de-responsabilidad-civil-vehicular-primer-acercamiento-a-la-cultura-de-la-prevencion>

59 <https://theyucatantimes.com/2023/10/mexican-association-of-insurance-institutions-says-70-of-cars-in-mexico-are-uninsured/>

insurance for all motor vehicles. It provides for compensation through two mechanisms: (1) no-fault liability, under Section 140, which ensures immediate compensation for death up to a limit or grievous injury up to a limit without needing to prove fault; and (2) fault-based claims under Section 166, allowing victims to seek higher compensation by proving negligence. Claims are adjudicated by Motor Accident Claims Tribunals established under legislation. The legislation aims to ensure timely and equitable compensation for victims of motor accidents. Compensation for non-serious injury is calculated using a judicially developed formula incorporating: (i) actual post-tax income, (ii) a standardised percentage for prospects based on age, (iii) a statutory multiplier, and (iv) a tribunal-determined percentage loss of earning capacity, which may differ from the assessed percentage of permanent disability assessed on a functional basis.

2.7.2 Chapter IX of the Road Transport Act governs the compensation framework for road traffic accidents in Bangladesh,⁶⁰ which establishes a no-fault mechanism centred around a Financial Assistance Fund. Under Section 52, victims injured or killed in motor vehicle accidents, or their legal representatives, are entitled to compensation or reimbursement for treatment costs from this fund, irrespective of fault. Section 53 mandates contributions from vehicle owners, either annually or as a lump sum, based on vehicle classification. This obligation is enforced through penalties, including the cancellation of registration or permits. The Fund is managed by a government-appointed Board of Trustees, which determines compensation amounts and oversees the disbursement of funds. The Fund is financed by government grants, fines, and contributions from vehicle owners and transport associations. Section 59 outlines an application-based claims process, permitting emergency disbursements by the Chairperson and entitling claimants to review, appeal, and binding arbitration under Section 61. Section 60 permits, but does not mandate, separate motor vehicle insurance for property and passenger loss; however, compensation for vehicle damage is explicitly excluded from coverage under the Fund. The system further obligates immediate treatment of the injured and reporting by the driver or representative. Overall, the Act reflects a hybrid model that combines administrative and insurance-based elements, leaning toward a public compensation regime with limited avenues for civil litigation related to accidents.

2.7.3 Indonesia maintains a social insurance fund for road accidents through the state-owned insurer Jasa Raharja.⁶¹ Jasa Raharja is the primary guarantor for traffic accident victims, as stipulated in Law No. 33 of 1964 and Law No. 34 of 1964.⁶² Protection is provided through two coverage programmes, namely Passenger Accident Insurance for Public Transportation and Legal Liability Insurance for Third Parties. A small levy on vehicle registration and fuel finances the fund. Fixed benefits are paid on a no-fault basis. Sutomo &

60 Road Transport Act No. XLVII of 2018

61 <https://www.jasaraharja.co.id/en/about>

62 <https://www.jasaraharja.co.id/en>

Purwoto (2010) critically assess Indonesia's road accident compensation system, noting that the system lacks incentives for safer driving and excludes coverage for property damage or non-injury losses. Despite accumulating large financial surpluses (with only approximately 18% of funds disbursed to victims), the system does not invest in accident prevention. Sutomo & Purwoto (2010) highlight systemic flaws, including the flat-rate standard cost structure that fails to penalise risky drivers, public unawareness of entitlements, and inefficient claims processing. They call for reform toward a third-party insurance model with differentiated risk-based premiums, broader benefit coverage, private sector involvement, and institutional strengthening to align with international best practices and improve road safety outcomes.

2.8 Western Pacific region

2.8.1 Whittaker (2024) notes that China's compensation system for road traffic accidents is based on a dual insurance model comprising compulsory motor vehicle third-party liability insurance and optional commercial motor vehicle liability insurance. Under Article 1213 of the Civil Code, the compulsory insurance provides compensation up to a statutory limit of 180 000 Yuan, while any excess liability must be covered by commercial insurance or directly by the wrongdoer. Compensation for non-serious injuries is calculated using a fixed formula: the per capita disposable income of urban residents in the relevant province from the year before the accident, multiplied by 20 years (reduced for claimants older than 60), and adjusted using a disability compensation coefficient graded from I (100%) to X (10%) depending on injury severity. Claims are uniformly assessed using urban income levels since 2022, and no allowances are made for merit-based or promotional income increases. Li (2019) notes that the Road Traffic Accident Relief Fund is a government-established mechanism in China designed to provide financial assistance to victims of road traffic accidents, particularly in situations where the responsible party cannot be identified, is uninsured, or has fled the scene. Li discusses deficiencies in China's current system, particularly the limited scope and uneven administration of the Road Traffic Accident Relief Fund. He advocates for unified legislation, centralised administration, and more precise articulation of victims' legal entitlements to ensure effective and equitable relief for traffic accident victims within China's social security framework.

2.8.2 Vietnam's compulsory motor vehicle insurance system, as regulated by Decree No. 67/2023/ND-CP,⁶³ mandates all vehicle owners to purchase civil liability insurance covering third parties and passengers (Article 5), with coverage capped at VND150 million per person for injury or death and up to VND100 million for property damage depending on the vehicle type (Article 6). Insurers must compensate non-

63 Government of Vietnam, Decree No. 67/2023/ND-CP dated 6 September 2023 on Compulsory Civil Liability Insurance of Motor Vehicle Owners, Compulsory Fire and Explosion Insurance, and Compulsory Insurance for Construction Investment Activities

contractual third-party damages and injuries to passengers (Article 7), except in cases like intentional harm, driving without a valid licence, intoxication, or use of narcotics. Insurance is valid for one to three years, with shorter terms allowed in specified cases (Article 9). In the event of an accident, advance payments must be made within three working days for health and life damage (Article 12), and full indemnification follows within limits and conditions prescribed in Annexure VI. Insurance claims require comprehensive documentation from both policyholders and insurers (Article 13). The Motor Vehicle Insurance Fund, funded by insurer contributions (1% of premiums), supports humanitarian payouts, safety education, and infrastructure, with strict rules on spending allocations and governance.

2.8.3 The compensation system for road accident victims in the Philippines is primarily governed by compulsory motor vehicle liability insurance, as outlined in the Insurance Code (Presidential Decree 612)⁶⁴ and the Land Transportation and Traffic Code (Republic Act No. 4136).⁶⁵ Insurance Memorandum Circular No. 2024-01 issued by the Philippine Insurance Commission⁶⁶ increased the benefits under the Compulsory Motor Vehicle Liability Insurance scheme, effective 24 March 2024. The third-party liability limit was increased to ₱200 000 for all motor vehicles, with detailed schedules for indemnities covering death, bodily injury, permanent disability, and incidental expenses. A no-fault indemnity of ₱30 000 per person was introduced, ensuring compensation without proof of negligence. Existing contracts are automatically amended to include the new benefits, while premium adjustments will be considered after the implementation data are reviewed.

2.9 Conclusion

2.9.1 The international survey of road accident compensation systems reveals a diverse range of approaches, but with consistent patterns in how countries structure their schemes. Most rely on CTPI, with variations in benefit caps, financing mechanisms, and the extent of public versus private administration.

2.9.2 Many systems employ standardised formulae based on income bands, statutory multipliers, or medically assessed degrees of disability, prioritising administrative efficiency, equity, and cost containment over highly individualised compensation. While South Africa's current fault-based RAF system is not unusual internationally, the courts' reliance on speculative career projections in quantifying damages is distinctive and may undermine the criteria of reasonableness, affordability, and sustainability.

64 https://lawphil.net/statutes/presdecs/pd1974/pd_612_1974.html

65 https://lawphil.net/statutes/repacts/ra1964/ra_4136_1964.html

66 Insurance Commission (2024). Insurance Memorandum Circular No. 2024-01: Increase in the Benefits for Compulsory Motor Vehicle Insurance Coverage. Republic of the Philippines, Department of Finance

3. INCOME PROTECTION FOR INJURY IN SOUTH AFRICA: SOCIAL SECURITY AND PRIVATE INSURANCE SYSTEMS

3.1 Introduction

3.1.1 Table 1 reflects total non-life insurers' premium income and the net fuel levy used to fund the RAF. The RAF fuel levy has experienced substantial real growth since 2002, increasing from R7.9 billion to approximately R49 billion in 2024 (in 2024 prices), reflecting a sixfold rise. Over the same period, the number of registered self-propelled vehicles has only doubled, indicating that revenue growth has primarily resulted from successive levy increases rather than a broadening contributor base.

3.1.2 In the sections that follow, consideration is given to coverage, qualifying conditions, the source of funding, benefits, and the administration of various state social security benefits in respect of temporary and permanent disablement from the perspective of the injured party. This analysis establishes a benchmark against which the RAF or alternative compensation systems can be evaluated. Understanding the scope, adequacy, and limitations of these income protection mechanisms helps to clarify the gaps that a road accident compensation framework must fill to be considered reasonable, equitable, affordable, and sustainable.

3.2 Social Assistance Act

3.2.1 Benefits under the Social Assistance Act⁶⁷ are administered by the South African Social Security Agency (SASSA), a national public entity that reports to the Department of Social Development. SASSA is responsible for the application, assessment, approval, and payment of social grants, including disability and other means-tested grants. The process involves verifying the applicant's identity, assets, residency status, and income against the eligibility criteria outlined in the Social Assistance Act and its accompanying regulations. Medical assessments are required for disability-related grants, while financial means tests ensure that only those who genuinely need assistance receive it. Payments are made monthly, typically via direct deposit into bank accounts or through designated pay points. SASSA also handles reviews, appeals, and fraud prevention related to social assistance benefits.

3.2.2 A person qualifies for a disability grant if they are aged 18 to 59, a South African citizen, permanent resident, or refugee living in South Africa, and have a medically confirmed disability – either permanent (lasting over 12 months) or temporary (lasting 6 to 12 months). If previously declined on medical grounds, they must show a significant deterioration in their condition. They must be unable to support themselves or work due to the disability, must not unreasonably refuse suitable employment, and must not refuse necessary medical or other recommended treatment without good reason.⁶⁸

⁶⁷ Social Assistance Act 13 of 2004

⁶⁸ Regulations relating to the application for and payment of Social Assistance and the requirements or conditions in respect of eligibility for Social Assistance, *Government Gazette* No. 46549 of 31 May 2022 in Government Notice No. R.2119

TABLE 1. Non-life insurers’ premium income and net RAF levies

Financial year ending	Non-life insurers’ premium income (millions) ⁶⁹	RAF net fuel levies after rebates (millions) ⁷⁰	RAF net fuel levies after rebates (adjusting by inflation to 2024 millions)	Number of self-propelled vehicles at calendar year end ⁷¹	RAF fuel levy in April of the preceding year (per litre) ⁷²
31/03/2002	R27 273	R2 441	R7 861	6 245 392	R0.215
31/03/2003	R36 417	R2 860	R8 355	6 417 484	R0.215
31/03/2004	R35 973	R3 512	R10 218	6 677 239	R0.265
31/03/2005	R42 795	R4 566	R12 897	7 128 791	R0.315
31/03/2006	R45 053	R5 552	R15 168	7 653 044	R0.365
31/03/2007	R51 460	R7 011	R18 054	8 133 723	R0.365
31/03/2008	R63 057	R8 222	R19 150	8 357 564	R0.415
31/03/2009	R71 513	R8 845	R18 857	8 600 031	R0.465
31/03/2010	R77 121	R12 566	R25 476	8 816 366	R0.640
31/03/2011	R79 316	R14 474	R28 187	9 150 805	R0.720
31/03/2012	R85 269	R16 989	R31 205	9 539 615	R0.800
31/03/2013	R89 840	R17 883	R31 020	9 909 923	R0.880
31/03/2014	R100 290	R20 278	R33 168	10 249 504	R0.960
31/03/2015	R106 617	R22 614	R35 550	10 565 967	R1.040
31/03/2016	R110 996	R33 113	R48 981	10 801 558	R1.540
31/03/2017	R115 784	R33 230	R46 315	11 028 193	R1.540
31/03/2018	R128 434	R37 251	R50 012	11 267 812	R1.630
31/03/2019	R133 966	R43 139	R55 413	11 490 827	R1.930
31/03/2020	R143 972	R41 178	R50 789	11 487 211	R1.980
31/03/2021	R150 958	R42 089	R50 303	11 712 017	R2.070
31/03/2022	R166 647	R47 932	R54 053	11 726 721	R2.180
31/03/2023	R186 886	R48 472	R51 051	11 884 210	R2.180
31/03/2024	R205 016	R49 083	R49 083	12 093 217	R2.180

3.2.3 The maximum state disability grant is R2 310 a month, effective from 1 April 2025.⁷³ The disability grant is subject to a means test.⁷⁴ For a single person, no disability grant is payable if assets exceed R1 524 600, effective 1 April 2025. A single person is also subject to an income means test calculated by the formula $D = 1.6A - 0.4B$, where A is the maximum disability grant a year, B is the annual income of the applicant, and D is the yearly social grant

69 South African Reserve Bank. Selected historical macroeconomic time series. Series KBP2753 (quarterly)

70 Road Accident Fund Annual Report 2006, p.33; Road Accident Fund Annual Report 2012, p.22; Road Accident Fund Annual Report 2015, p.42; Road Accident Fund Annual Report 2020, p.41; Road Accident Fund Annual Report 2024, p.36

71 Road Traffic Management Corporation. The State of Road Safety in South Africa Annual Reports 2005 to 2024; 2002–2004 data from <https://www.arrivealive.co.za/documents/31jan2005-regunrdwthyevehs.pdf>

72 South African Reserve Bank. Tax Chronology of South Africa 1979–2025, p.35

73 Government Gazette No. 52370 of 24 March 2025 in Government Notice No. R.6031

74 Government Gazette No. 46459 of 31 May 2022 in Government Notice No. R.2119, p.40

payable, which must not exceed A. No grant amounting to less than R100 per month is payable. Currently, this implies that a person with an income exceeding R9 240 per month cannot qualify for a disability grant, and the maximum grant of R2 310 is reached if the income is R3 465 per month or lower. Carswell et al. (2021) note that means-testing does very little to reduce the benefits.

3.2.4 As for most national government expenditure, funding for social grants is financed through general tax revenues collected and managed by the South African Revenue Service and allocated via the National Treasury (Woolard et al., 2011).

3.2.5 The total number of South Africans in receipt of a state disability grant was 1 049 646 in March 2025.⁷⁵ The National Treasury estimates expenditure of R28.6 billion on disability grants over the period from 1 April 2024 to 31 March 2025.⁷⁶

3.3 Compensation for Occupational Injuries and Diseases Act

3.3.1 Benefits under COIDA⁷⁷ are administered primarily by the Compensation Fund, which operates under the Department of Employment and Labour, or by licensed mutual associations in specific sectors.⁷⁸ When an employee is injured or contracts an occupational disease, the employer must report the incident and submit the relevant claim documents to the appropriate authorities.⁷⁹ The Compensation Fund assesses the claim, arranges for medical examinations, and determines the compensation payable, whether for temporary incapacity, permanent disablement, medical costs, or death benefits.⁸⁰ Under COIDA, medical costs for occupational injuries or diseases are reimbursed in line with gazetted tariffs determined by the Director-General after consultation with health associations.⁸¹ Payments are made directly to affected workers, medical service providers, or dependants. The Compensation Fund is also responsible for monitoring compliance, maintaining employer records, and ensuring the financial sustainability of the scheme.⁸²

3.3.2 Temporary disablement under COIDA refers to a condition where an employee is temporarily unable to perform their work due to an occupational injury or disease, but is expected to recover. To qualify, the disablement must last more than three days, as no compensation is payable for periods of less than three days. Compensation is provided as periodic payments for a maximum of 24 months. The employer is responsible for paying the employee during the first three months of disablement and is reimbursed by the Compensation Fund. If the disablement persists beyond 12 months, the Director-

75 South African Social Security Agency Fact Sheet Issue No. 3 of 2025

76 National Treasury 2025 Budget Review, p.56

77 Compensation for Occupational Injuries and Diseases Act 130 of 1993

78 Rand Mutual Assurance Company Limited for the mining and metals industries and Federated Employers Mutual Assurance Company (RF) Proprietary Limited for the construction industry

79 Sections 80 and 81 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993

80 Chapter VI of the Compensation for Occupational Injuries and Diseases Act 130 of 1993

81 Section 75 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993

82 Chapter III of the Compensation for Occupational Injuries and Diseases Act 130 of 1993

General may extend the period of compensation. Compensation ceases when the employee recovers, resumes work at the same level of earnings, or is awarded permanent disability benefits.

3.3.3 Permanent disablement is defined as the lasting inability of an employee to perform work as a result of an occupational injury or disease. Under COIDA, compensation for permanent disability depends on the degree of impairment. Employees assessed as 1% to 30% permanently disabled receive a lump sum, while those assessed as 31% to 100% disabled receive a monthly pension. The degree of disablement is determined using Schedule 2 of COIDA, which lists standard percentages for common injuries. If the injury is not listed or if it uniquely affects an employee’s specific occupation, the Director-General will determine the disablement percentage based on the nature of the work and the impact of the injury. Any compensation already paid for temporary disablement is not deducted from the permanent disablement award.

3.3.4 Table 2 provides the disability benefits, payable for life⁸³ under COIDA effective from 1 April 2025.⁸⁴

TABLE 2. COIDA benefits for temporary and permanent disablement

Nature and degree of disability	Nature of benefits	Manner of calculating benefits	Maximum compensation	Minimum compensation
Temporary and total disablement	Periodical payments	75% x monthly earnings at the time of the accident x number of days off/total days in a month	R39 573 a month (maximum earnings cap of R633 168 a year x 75%/12)	R5 543 a month (minimum earnings floor of R88 688 a year x 75%/12)
Permanent disablement of 1% to 30%	Lump sum	15 x monthly earnings at the time of the accident x permanent disability percentage/30%	R443 239 (maximum for 30% permanent disability)	R110 824 (minimum for 30% permanent disability)
Permanent disablement of 31% to 100%	Monthly pension	75% x monthly earnings at the time of the accident x permanent disability percentage	R39 573 a month (maximum for 100% permanent disablement)	R5 543 a month (minimum for 100% permanent disablement)

3.3.5 For the financial year ending 31 March 2024, the Compensation Fund paid R1.4 billion in respect of pensions and R260.1 million in non-medical compensation payments.⁸⁵ There is no split between pensions for Loss of Income and pensions for Loss of Support.

83 Note that the COID disability benefit is not only payable until some assumed retirement age, but for life.
84 *Government Gazette* No. 52607 of 9 May 2025 in Notice 3184 of 2025
85 Compensation Fund Annual Report 2023/2024, p.12

3.3.6 COIDA contributions are collected annually from employers by the Compensation Fund. Employers are required to register with the Compensation Fund and submit a return of earnings each year, declaring the total amount of employee remuneration paid during the assessment period. Based on this declaration and the employer's risk classification (determined by industry type), an assessment fee is calculated using a prescribed tariff. The employer is then invoiced and must pay the assessed contribution by the due date. Employers who fail to comply may face penalties, interest, or legal action. Employees of non-compliant employers remain entitled to benefits. Total contributions collected from employers, together with interest and penalties on those contributions, amounted to R13.5 billion for the financial year ending 31 March 2024.⁸⁶

3.4 Unemployment Insurance Fund Act

3.4.1 Benefits under the Unemployment Insurance Fund Act⁸⁷ are administered by the Unemployment Insurance Fund (UIF), which operates under the Department of Employment and Labour. When a contributor becomes unemployed, underemployed or is unable to work due to parental commitments, illness, or adoption leave, they may apply for UIF benefits. Claims are submitted online or at labour centres, where eligibility is verified based on the claimant's contribution history and reason for unemployment.

3.4.2 The maximum period that UIF benefits for disability can be paid for is 365 days within a four-year cycle, provided the contributor has sufficient credits. A contributor accrues one day of benefit for every four days of employment as a contributor.⁸⁸ The UIF uses an income replacement rate (IRR) formula to calculate the percentage of daily income that a contributor will receive, where the daily income is capped at R17 712 x (12/365 days) = R582.31 per day.⁸⁹ The IRR formula = $29.2 + 7\,173.92 / (232.92 + Y)$, where Y is the average monthly salary over the last 6 months x 12/365. The value of IRR fluctuates between 38% and 60%. The daily benefit that a contributor receives is equal to the IRR multiplied by the average daily rate of pay, limited to R582.31 per day. The maximum benefit for a day is R221.28.⁹⁰

3.4.3 Employees and employers each contribute 1% of earnings to the UIF up to a maximum salary of R17 712 a month.⁹¹ That limit has been in place since 1 June 2021. For formal employers the contribution is collected by the South African Revenue Service. For employees earning more than R17 712 a month, the UIF contribution is limited to R177.12 per month for both the employee and the employer, for a total contribution of R354.24 per month.

86 Compensation Fund Annual Report 2023/2024, p.97

87 Unemployment Insurance Act 63 of 2001

88 Section 13(3) of the Unemployment Insurance Act 63 of 2001

89 Department of Employment and Labour. Fact Sheet on Calculation of Normal UIF Benefit Payments, p.2

90 Ibid.

91 *Government Gazette* No. 44641 of 28 May 2021 in *Government Notice* No. 475

3.4.4 Total unemployment insurance contributions collected during the year ending 31 March 2023 were R23.651 billion, inclusive of interest and penalties on contributions. Total benefit payments were R15.649 billion, of which R396 million was in respect of illness.⁹²

3.5 Disability cover in the life retail insurance segment

3.5.1 Most life insurers offer capital disability cover (a lump sum payout if the policyholder becomes totally and permanently disabled) alongside life cover. Many policies also feature partial disability payouts, paying a portion, such as 50% of the sum assured, for particular severe but not total impairments. In all cases, underwriting (including a health and lifestyle assessment) is performed at policy inception, and factors such as age, medical history, smoking status, occupation, and participation in high-risk hobbies influence eligibility and premiums. Typically, entry ages range from young adulthood, with coverage ceasing at retirement age (often 65 or 70).

3.5.2 Many life insurers provide income continuation benefits that replace a percentage of the policyholder's salary if they are unable to work due to injury or illness. The benefit is usually a monthly payment of around 75% of pre-disability earnings (up to a capped amount). These policies typically kick in after a deferred period (up to 6 months) and can continue paying until recovery or retirement age if permanently disabled. A standard design is an 'own occupation' definition for the first 12 or 24 months of the claim (the benefit pays if you cannot perform your current job), switching to an 'any suitable occupation' test thereafter. Income protection is often offered as an optional rider on life policies. Since the benefit is intended to replace income and not exceed it, insurers impose policy limits – for example, limiting coverage to 75% of the gross salary.⁹³ This is a built-in check to prevent over-insurance and moral hazard.

3.5.3 Disability policies sometimes provide additional benefits such as waivers for life insurance premiums or retirement fund contributions. These benefits are often optional.

3.5.4 Insurers may also include the funding of rehabilitation programmes, benefits such as assistive device coverage, and trauma counselling for victims of violent incidents or serious accidents.

3.5.5 To obtain disability cover, individuals usually must be South African residents within insurable age limits and must satisfy underwriting. Insurers emphasise honesty at the application stage, as non-disclosure of a medical condition could lead to a claim denial. Once insured, coverage is typically worldwide, covering injuries from any cause (except for standard exclusions such as criminal acts, war, or self-inflicted injuries).

92 Unemployment Insurance Fund Annual Financial Statements for the year ended 31 March 2023, pp.185–186

93 Note that this benefit is usually tax-free – so for higher earners with low fringe benefits, 75% of salary can be close to, or even exceed, pre-morbidity after-tax earnings.

3.6 Disability cover in the short-term insurance segment

3.6.1 Outside of the life insurance segment, short-term insurers offer personal accident insurance as a distinct product. These policies fall under the ‘accident and health’ class of non-life insurance, which is typically offered as one-year renewable contracts (similar to motor or property insurance policies). Personal accident insurance typically covers death, permanent disability, and sometimes temporary disability or medical expenses resulting solely from accidental injury (violent, external, and unintended events). Unlike life policies, these do not cover illness-related losses – they pay only if injury or death is caused by an accident, which is why non-life insurers can sell them under South African law.

3.6.2 Personal accident policies generally pay a lump sum benefit for permanent disablement (often according to a schedule of impairments). If the injury is not disabling, many policies will pay a percentage of the sum assured for specific losses.

3.6.3 Personal accident insurance is available as a standalone cover for individuals and also as group policies for businesses. On an individual basis, policies can be purchased directly from insurers or through brokers, banks and retailers. The policyholder chooses the sum insured and premium. Some short-term personal accident plans are fairly affordable for modest lump sum amounts, since the risk pool is limited to accidents. Personal accident benefits are sometimes bundled with other insurance: for example, some homeowner or liability policies include personal liability cover if you accidentally injure others.

3.6.4 An advantage of accident-only cover is that health underwriting is minimal, since illness is excluded; insurers generally do not require medical examinations. Age is the main factor in determining premiums. Premiums are based on the sum insured and, in some cases, on occupation risk. Insurers may also consider an applicant’s driving record or lifestyle if relevant to accident risk.

3.6.5 Short-term insurers also provide various types of Liability Insurance (for example, Personal Liability or Product Liability), which indemnify the policyholder against claims for common-law damages brought by third parties. These policies respond where the insured is found legally liable for injury, death, or property damage caused by their negligence, omission, or wrongful act. In such cases, the insurer undertakes to pay compensation to the third party, up to the policy limits, and usually covers the legal defence costs incurred in managing or settling the claim. Liability insurance plays an important social and economic role by transferring the financial burden of accidental harm away from individuals and businesses to a collective risk pool. It thereby ensures that victims of negligent conduct can obtain compensation, while allowing policyholders to manage potentially catastrophic financial exposures. In commercial contexts, liability cover also underpins consumer and occupational safety regimes by ensuring that producers, service providers, and professionals can meet their legal obligations to the public without facing insolvency due to a single adverse event.

3.7 Group disability schemes

3.7.1 Businesses may purchase group personal accident insurance for their employees. A group personal accident policy typically provides a defined lump sum if a covered person is disabled in an accident. Group accident cover is often used to supplement COIDA by covering accidents that happen off-duty or commuting, or to provide benefits above the statutory limits. It can also protect the company from liability by giving employees or their families a no-fault benefit.

3.7.2 Employers can arrange group disability cover for employees, either as a lump-sum disability benefit or as a group disability income benefit. The group disability income benefit operates similarly to individual income protection. Group life schemes often waive medical underwriting up to a free cover limit for employees. On a group basis: if an employee becomes disabled (through injury or serious illness) and cannot work, the policy will pay them a monthly income, typically around 75% of their salary until retirement age (with offsets for any other income). Some group policies offer a lump sum (usually a multiple of the salary) in the event of permanent disability. Group disability cover often comes with premium waivers and sometimes rehabilitation and return-to-work support provided through the insurer's case management.

3.7.3 Group disability schemes have unique features. Enrolment is tied to employment, as new employees are added to the scheme, often with limited underwriting. Invariably, there is a free cover limit so that all members are automatically covered up to a specific benefit amount. Pre-existing conditions may apply for a specified period, such as no disability claim in the first year of membership due to conditions present before joining the scheme. The premiums are credibility-weighted blends of experience and book rates, with larger schemes being purely experience rated.

3.7.4 Group disability schemes may provide additional benefits, such as salary replacement benefits for short-term injuries. For instance, some plans may provide a temporary income benefit for up to 24 months for employees who are temporarily disabled but expected to recover. This acts as short-term disability cover, bridging the gap before a permanent disability is confirmed. Private group benefits operate separately from social insurance. If an employee is injured on duty, they may be eligible to receive COIDA benefits and also benefits under a group disability policy.

3.8 The private insurance claims process

3.8.1 For private disability insurance or personal accident policies, the claims process is handled between the insured and the insurance company. In the event of a disability claim, the policyholder submits a claim form with supporting evidence such as medical reports and details of the accident. The insurer's claims assessors will evaluate the claim in accordance with the policy terms. In a retail policy, the policyholder is typically the insured, and benefits are paid directly to them. In a group policy, the policyholder is the employer. In some cases, the payment is made to the employer, who then passes it on

to the claimant. In other cases, the insurer makes direct payments to the claimant and the pension fund. Generally, there is no need for legal assistance in routine claims. Disputes can be taken up with the National Financial Ombud if a claim is unfairly denied. There is no offset feature present between, for example, a private accident insurance policy payout and claiming benefits from the RAF.

3.8.2 Claiming compensation for personal injury caused by a third party's negligence often involves legal processes. For example, in 'slip and trip' cases, private law firms are usually engaged by the injured person to handle the claim, typically on a no-win-no-fee basis. The lawyer will lodge a claim against the property owner or business, and their insurer or legal team will respond. Much of the process involves attorneys negotiating with the responsible party's insurer to settle or proceeding to court if necessary.

3.8.3 A key distinction is that with third-party liability claims, negligence must be proven, and the process can be adversarial. Thus, attorneys become involved to protect the claimant's rights and to navigate the complexities of insurance law.

3.9 Private insurance benefit administration nuances

3.9.1 For income protection or monthly disability benefits, insurers often manage claims with ongoing assessment. They may require periodic proof that the claimant remains disabled before paying continuing monthly benefits. Some insurers assist claimants with rehabilitation and retraining; it is in both parties' interest for the person to regain some earning ability. In group disability cases, insurers may collaborate with the employer's human resources department or an occupational therapist to facilitate a return to work if possible.

3.9.2 Insurance companies administer private personal injury policies through claims departments, and benefits are paid according to the contract terms. When it comes to claiming injuries caused by others, the administration shifts to a legal process involving the other party's insurer. Both mechanisms form part of the broader landscape of personal injury compensation, with private insurance providing a first-party safety net and liability insurance (with lawyers) addressing third-party damages.

3.10 Conclusion

3.10.1 The above analysis highlights the fragmented and inconsistent treatment of disability and income loss across South Africa's social security and insurance landscape. Each framework, whether social assistance, social insurance, or private insurance, operates with its own definitions, eligibility criteria, and benefit scales, resulting in substantial inequities among individuals experiencing comparable forms of disablement. From a policy perspective, this lack of coherence undermines fairness and transparency in the broader disability protection system. It is beyond the scope of this paper to resolve the full structural misalignment between the disability grant, COIDA, UIF, and private-sector schemes. Table 3 summarises these systems on key dimensions including eligibility, benefits, funding, and administration.

TABLE 3. Summary of protection mechanisms for injury and disability

Scheme	Qualifying conditions	Benefit type	Funding source	Administrative body
SASSA disability grant	Ages 18–59, citizen/permanent resident/refugee, medically assessed disability, means test	Monthly cash grant (max R2 310/month)	General taxation	SASSA (Department of Social Development)
COIDA	Injury/disease in course of employment, reported by employer, >3 days disablement	Temporary income (75% of salary); lump sum or pension for permanent disablement	Employer contributions (risk-rated)	Compensation Fund / Mutual Associations (Department of Labour)
UIF	Unemployment, illness, maternity, adoption, or death; 1+ year contributions	Daily income replacement (IRR-based, capped at R221.28/day)	1% employee + 1% employer up to R17 712/month salary	UIF (Department of Labour)
Private life insurance	Underwritten at policy inception, subject to terms (such as occupation, health)	Lump sum for total/partial disability; monthly income protection for some policies	Monthly premiums by individuals or employers	Private life insurers
Private accident insurance	Accidental injury/death only; no medical under-writing; renewable annually	Lump sum based on injury schedule; optional temporary disability cover	Annual premiums by individuals or employers	Short-term insurance companies

4. MEDICAL AND REHABILITATION BENEFITS FOR INJURY:
PUBLIC AND PRIVATE PROVISION IN SOUTH AFRICA

4.1 Introduction

4.1.1 The South African health sector operates within a dual framework of public and private provision, reflecting the country’s socio-economic inequalities and complex health challenges.⁹⁴ The public healthcare system, funded primarily through general taxation, serves the majority of the population, while a smaller, wealthier segment accesses comprehensive care through private medical schemes.⁹⁵ The National Department of Health, working through provincial health departments, is responsible for policy, funding allocation, and service delivery in the public sector (Whittaker, 2021), with the planned NHI aiming to achieve universal health coverage. Within this context, the provision of timely emergency care, sustained rehabilitation, and equitable access to essential medical services remains a critical national challenge, particularly in ensuring that accident victims, regardless of their income or insurance status, receive the necessary treatment to restore their health and productive capacity.

4.1.2 The RAF ‘makes very little contribution to the provision of healthcare services’ because the majority of injured road users are treated at no cost to the RAF in the

94 American Academy of Actuaries, International Association of Actuaries, Society of Actuaries (2020). International Health Care Funding Report, p.36

95 Shapiro, D (2019). Small area model for estimation of proportion of population covered by medical schemes [Dataset]. South Africa: Insight Actuaries

public sector.⁹⁶ The majority of injured road users (80%) are treated in the public sector within the constraints of the national and provincial budgets.⁹⁷ These may be performed free at point of service or require copayments. In the latter case, problems with invoicing may make reclaiming the out-of-pocket expenses impossible and the public healthcare system is not set up administratively to invoice the RAF. According to the RRAFC, the current system is inequitable because it mostly reimburses the medical expenses of those who are already insured. The public health sector bears the most significant financial burden of the costs associated with road accident injuries, yet receives no payment for the resources used.⁹⁸

4.1.3 Coverage under COIDA extends to nearly all employees in South Africa – including part-time workers, legally employed foreign nationals, and, following a 2020 Constitutional Court ruling,⁹⁹ domestic workers. Injuries must occur ‘in the course and scope’ of employment, and coverage includes work-related travel and certain commuting accidents. Employers must report injuries promptly so that employees can receive the necessary benefits.

4.2 Healthcare funding in South Africa

South Africa’s public healthcare system is the safety net for injured persons without private medical scheme cover. An overview of healthcare funding in South Africa is illustrated in Figure 3.¹⁰⁰

4.3 Public healthcare access and rehabilitation

4.3.1 Van Rensburg et al. (2024) observe that emergency medical services (EMS) for road accidents are primarily delivered by government-operated ambulance services in each province, supplemented by private providers. A national toll-free emergency number (112) coordinates dispatch, but ambulance response is managed provincially. At crash scenes, EMS personnel (including paramedics) provide on-site stabilisation and basic or advanced life support, then transport victims to hospitals for further care (Zhou et al., 2021). There is considerable variation in EMS resources and response. Generally, well-resourced urban areas and private services often deliver faster, advanced care, whereas rural and underserved regions experience delays and limited capacity (Van Rensburg et al., 2024).

4.3.2 In the acute phase at public hospitals, trauma patients are usually taken to the nearest emergency department, as there is no unified trauma system and only a

96 Report of the Road Accident Fund Commission 2002 Volume 2, Chapter 27, par 27.178, p.865

97 Ibid., par 27.178–179, p.865

98 Ibid., Chapter 28, par 28.110, p.905

99 *Mahlangu and Another v Minister of Labour and Others* (CCT306/19) [2020] ZACC 24; 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC); (2021) 42 ILJ 269 (CC); 2021 (2) SA 54 (CC)

100 See footnote 94, adapted to 2023

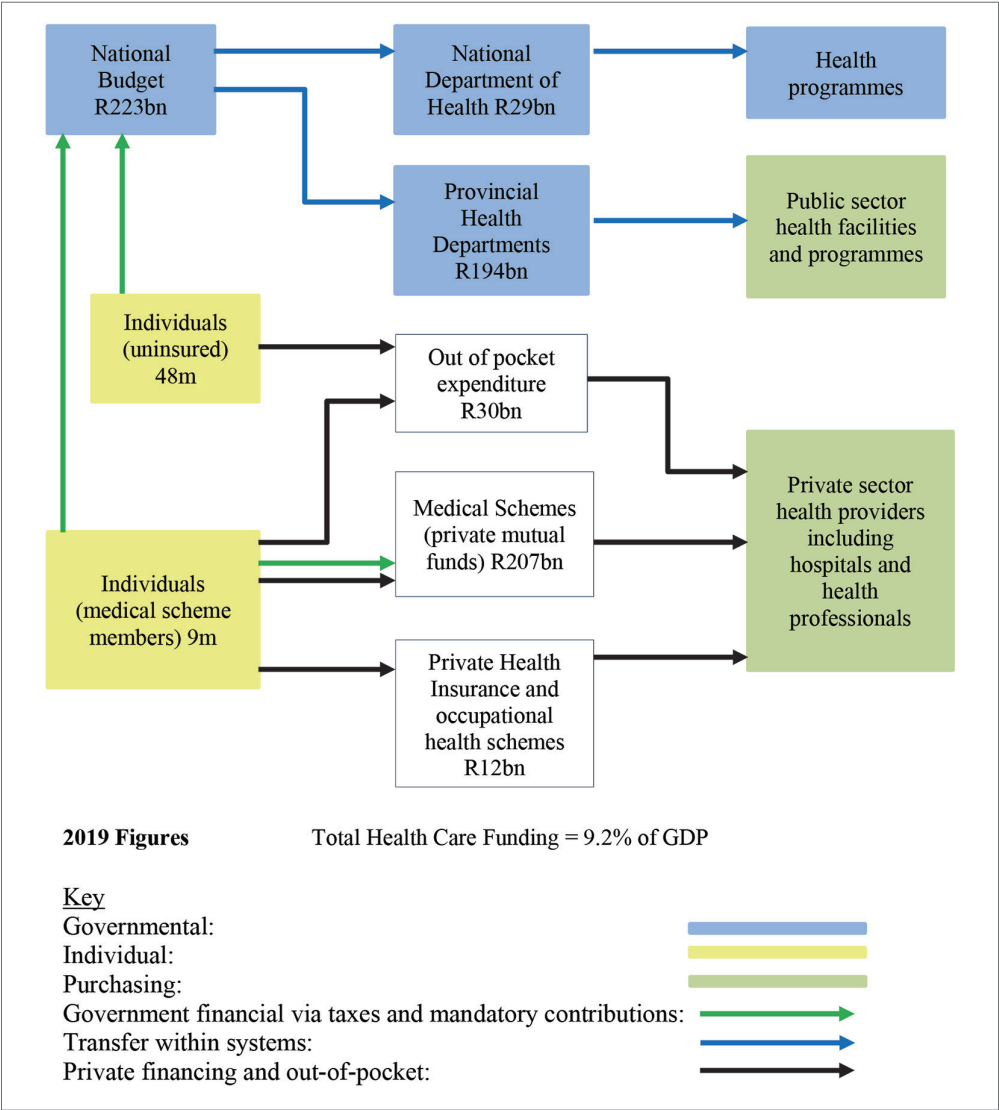


FIGURE 3. Health care funding in South Africa

limited number of dedicated trauma centres in South Africa (Zhou et al., 2021). Major tertiary hospitals in cities function as trauma referral centres, equipped to perform emergency surgeries such as orthopaedic interventions, provide critical care, and manage severe injuries with multidisciplinary teams. Public-sector emergency and surgical care for accident victims is offered free of charge or with only minimal co-payments, ensuring that even uninsured patients receive treatment (Van Rensburg et al., 2024).

4.3.3 After the acute phase, many road accident survivors require rehabilitative care to recover function, such as physiotherapy and occupational therapy. Public-sector

rehabilitation services are available through hospitals and community health centres, but they remain under-resourced relative to the need (Louw et al., 2023). As shown in Figure 3, the public health sector receives under half of national health funding while serving over 80% of the population. This imbalance has led to chronic shortages of rehabilitation professionals and a scarcity of specialised long-term care facilities, resulting in suboptimal continuity of care due to inefficient referral systems (Louw et al., 2023). Patients in low-income or rural communities may wait weeks to access even basic rehabilitation services, whereas those with private insurance can obtain faster and more comprehensive care. Delays may have a significant impact on the prospects of an injured person returning to work. These inequities highlight persistent challenges in access, equity, and resource constraints for post-crash emergency and rehabilitative care in South Africa.

4.4 Private healthcare access and rehabilitation

4.4.1 In terms of the Medical Schemes Act,¹⁰¹ private medical scheme members have full cover for in-hospital emergencies as part of Prescribed Minimum Benefits (PMBs). Any sudden, life-threatening emergency medical condition must be covered in full by the scheme without requiring co-payments from the member or the use of their savings. In practice, schemes will cover emergency care at cost, at least until the patient is stable (often the first 24 hours of admission), even if the patient is treated at a hospital outside the scheme's network. Members are also protected from penalties for not using a designated service provider in an emergency. All associated in-hospital costs related to a qualifying emergency are included under this mandatory benefit package.

4.4.2 For PMB conditions that require rehabilitation, medical schemes are obliged to provide coverage in accordance with applicable clinical guidelines, typically encompassing the acute phase of in-hospital rehabilitation. However, long-term or maintenance rehabilitation, particularly beyond the initial recovery period, is often not comprehensively covered and may need to be funded from members' day-to-day benefits or medical savings accounts. In addition to hospital-based rehabilitation, schemes may fund ancillary therapies such as physiotherapy, occupational therapy, or speech therapy during or shortly after hospitalisation. Some benefit options also include limited coverage for step-down facility care or home nursing following discharge, though the duration and extent of such benefits vary significantly by plan. More comprehensive options may also offer limited access to a psychologist or counsellor as part of post-acute recovery support.

4.4.3 Rehabilitation services play a crucial role in bridging the gap between acute care and long-term recovery. In practice, schemes tend to focus funding on the short-term, clinically directed phase of rehabilitation, while ongoing or maintenance therapy is often constrained by benefit limits or member co-payments. Comprehensive benefit options are generally more generous, incorporating multidisciplinary post-acute support

101 Medical Schemes Act 131 of 1998

such as step-down care, home-based nursing, and limited psychological or counselling services. These additional supports enhance continuity of care and promote both physical and psychosocial recovery.

4.5 Road Accident Fund

4.5.1 The RAF is obligated by law to compensate road accident victims for their proven damages, including reasonable past medical and hospital expenses.¹⁰² However, in practice, the RAF seldom reimburses public healthcare institutions directly for treatment provided to accident victims, nor does it pay medical schemes for benefits they have already funded. As a result, RAF payments for medical expenses are effectively confined to private sector costs incurred by claimants who were treated privately and who have not been reimbursed by another source. South African courts have held that if a claimant's medical aid scheme has paid those expenses, that collateral benefit does not reduce the RAF's liability.¹⁰³ In *Discovery Health v RAF*¹⁰⁴ the High Court dismissed Discovery Health's attempt to enforce an earlier court order, which had declared unlawful the RAF's refusal to pay past medical expenses when medical schemes had already covered those. Discovery Health argued that the RAF was still breaching the earlier order by issuing new internal directives of the same effect. However, the Court held that the new directives were based on different legal grounds and not covered by the original order, so the RAF was not in breach. It also ruled that medical schemes are not indemnity insurers and therefore cannot rely on insurance principles, such as subrogation, to recover what they have paid. Notably, the Court emphasised that whether the RAF must reimburse such expenses depends on considerations of fairness and policy. Discovery Health has since been granted leave to appeal that ruling.¹⁰⁵

4.5.2 For future medical expenses, the RAF uses a system of undertakings to manage its liability. Under Section 17(4)(a) of the RAF Act,¹⁰⁶ the RAF may furnish the claimant with an undertaking to pay for all future hospital treatment, medical services, and medical goods arising from the injury, as and when those costs are incurred. Instead of a lump-sum award, the claimant can thus claim ongoing reimbursement for actual future expenses, which the RAF Act permits either to be paid to the claimant or directly to the service provider. The primary purpose of this mechanism is to resolve the quantification issue for future care, ensuring that the RAF neither underpays nor overpays for medical expenses that cannot be predicted with precision.

102 *Van Tonder v Road Accident Fund* (1736/2020; 9773/2021) [2023] ZAWCHC 305

103 *Ibid.*

104 *Discovery Health (Pty) Ltd v Road Accident Fund and Another* (2023/117206) [2024] ZAGPPHC 1303; [2025] 2 All SA 113 (GP); 2025 (3) SA 225 (GP)

105 *Discovery Health (Pty) Ltd v Road Accident Fund and Another* (Leave to Appeal) (2023-117206) [2025] ZAGPPHC 363

106 Road Accident Fund Act 56 of 1996

4.5.3 Amendments to the RAF Act introduced a capped tariff tied to public healthcare rates. Section 17(4B)(a) provides that compensation for non-emergency treatment is limited to the tariffs for health services provided by public health establishments. In practice, this means the RAF uses the standard rates charged in public hospitals as the maximum reimbursable cost for medical procedures, even if the claimant received private care. For emergency medical treatment, the RAF must pay reasonable costs agreed upon with the providers, taking into account the RAF's ability to pay. These rules ensure that claimants are covered for emergency interventions while also preventing overcharging by capping routine treatment costs at public-sector levels. Additionally, regulations address special categories of medical-related expenses based on reasonable quotations. All future medical undertakings issued by the RAF adhere to the prescribed tariffs. The RAF's liability for medical costs is confined to regulated rates and defined limits, a policy aimed at containing costs and promoting equitable, uniform compensation.

4.5.4 In the financial year ending 31 March 2024, the RAF paid R1.7 billion in medical expenses, including R800 million in supplier claims. Supplier claims typically include direct payments to third-party service providers such as healthcare providers, hospitals, and other medical suppliers. During the period from 31 March 2007 to 31 March 2024 inclusive, medical expenses and supplier claims averaged 9.0% of total claims paid by the RAF. Hence, less than 10% of RAF expenditure is allocated to medical costs.

4.6 Compensation for Occupational Injuries and Diseases Act

4.6.1 COIDA provides South African employees with access to comprehensive medical, emergency, and rehabilitation benefits for injuries or diseases arising in the course of employment. These benefits include coverage for all reasonable medical expenses (doctor visits, surgery, medication, hospitalisation), emergency transportation, and longer-term rehabilitation services. Recent amendments have formalised rehabilitation and reintegration programmes, supporting injured workers' return to employment or independence.¹⁰⁷

4.6.2 The Compensation Fund finances all medical, rehabilitation, and compensation benefits. Healthcare providers must bill the Compensation Fund directly and adhere to COIDA's formal claims and billing procedures to receive payment.

4.6.3 Medical services under COIDA are paid according to a regulated tariff schedule, which often falls below private healthcare rates. While the Compensation Fund covers the full cost of approved treatment within tariff limits, providers cannot bill injured workers for any shortfall. COIDA ensures broad and sustained access to medical and rehabilitative therapy, even if reimbursement rates are lower than those in the private sector.

107 Compensation for Occupational Injuries and Diseases Amendment Act 10 of 2022

4.7 Conclusion

The medical and rehabilitation benefits discussed above span a wide range of eligibility criteria, funding mechanisms, and administrative structures. Table 4 provides a comparative overview of these systems. It highlights both overlap and fragmentation in medical benefits available to road accident victims, helping identify gaps or redundancies that any reformed compensation framework must take into account to ensure reasonableness, equity, and sustainability.

TABLE 4. Medical benefits

Scheme	Eligibility	Scope of cover	Funding source	Administered by
RAF medical benefits	Injury from a motor vehicle accident; past & future expenses covered under Section 17 of the RAF Act	Past expenses reimbursed; future care via undertakings; capped to public sector tariffs	Fuel levy via the National Treasury	RAF
Public healthcare (NDoH & provinces)	All residents, especially those who are uninsured or indigent, receive services provided at no cost or a low cost.	Emergency & trauma care, hospitalisation, rehabilitation; limited rehabilitation access in rural areas	General taxation via the National Budget	National & provincial health departments
COIDA medical benefits	Workplace injury or disease; the employer must report the incident	Complete medical and rehabilitation care per tariff; mandatory rehabilitation for return-to-work	Employer contributions to Compensation Fund	Compensation Fund (Department of Labour)
Private medical schemes	Registered scheme member; may vary by benefit option	Prescribed Minimum Benefits for emergencies and chronic conditions; elective care varies	Member premiums (and employer, in some cases)	Private medical schemes (regulated by Council of Medical Schemes)
Private accident insurance	Accident-only coverage; available to individuals or groups	Lump sum for treatment/ rehabilitation (if included); accidental events only	Policyholder premiums	Short-term insurers
Group medical/ Rehabilitation benefits	Employee in a covered group scheme	Includes step-down care, physio, OT, mental health; employer-funded plans vary	Employer-paid premiums or cost-sharing	Private insurers/ employers

5. ROAD ACCIDENT FUND OVERSIGHT (2020–2025)

5.1 Introduction

5.1.1 This section summarises key oversight developments involving the RAF from 2020 to August 2025. Drawing upon reports from the Auditor-General of South Africa (AGSA), the Special Investigating Unit (SIU), the Standing Committee on Public Accounts (SCOPA), and the judiciary, it highlights sustained concerns regarding the RAF’s financial reporting practices, executive conduct, procurement irregularities, systemic governance failures, and accountability deficits. These findings offer a comprehensive

overview of institutional dysfunction and oversight lapses affecting the RAF's statutory performance during this period.

5.1.2 In addition to major governance issues, the RAF has been plagued by serious inefficiencies in claims handling, resulting in interminable delays for accident victims. The backlog of unsettled claims stretches into hundreds of thousands.¹⁰⁸ Judges have noted that RAF-related cases now clog court rolls far into the future, mainly due to delays in the RAF's processing of claims.¹⁰⁹ Although the RAF initiated a turnaround strategy from 2020 aiming to streamline claims handling and reduce reliance on costly litigation, progress has been limited. Oversight authorities and civil society observers¹¹⁰ have pointed out that the RAF's core problems lie in its inefficient administration and poor processes. The continued combination of financial misreporting, audit disputes, and operational inefficiencies in claims handling underscores the RAF's failure to fulfil its mandate of providing timely and sustainable compensation to road accident victims in South Africa.

5.2 Accounting methodology

5.2.1 In December 2021, the RAF launched a judicial review application challenging the AGSA audit outcome for the 2020/21 financial year.¹¹¹ The dispute arose from the RAF's decision to alter its accounting methodology, switching from IFRS 4 to IPSAS 42. This change led to a drastic reported reduction in the RAF's liabilities from R327 billion in 2019/2020 to R34 billion in 2020/2021. The AGSA issued a disclaimer audit opinion, rejecting the RAF's use of IPSAS 42. The RAF initially applied to prevent the publication of the audit report (Part A) and later sought to have the disclaimer of the AGSA opinion set aside (Part B).

5.2.2 In 2022, the High Court dismissed Part A,¹¹² holding that the AGSA could not be restrained from fulfilling its constitutional duties. Although the RAF appealed to the Supreme Court of Appeal (SCA), the matter became moot with the publication of the audit report, resulting in the withdrawal of the appeal in April 2023. The RAF again sought an urgent interdict to prevent publication of the AGSA's audit for 2021/2022, but this too was dismissed with costs. The RAF continued pursuing Part B of the original judicial review, seeking to overturn the disclaimer.

5.2.3 On 19 April 2024, the High Court delivered a decisive judgment¹¹³

108 Road Accident Fund Annual Report 2024, pp.31–32

109 *M T v Road Accident Fund; H M v Road Accident Fund* (37986/2018) [2020] ZAGPJHC 286; [2021] 1 All SA 285 (GJ); 2021 (2) SA 618 (GJ)

110 Organisation Undoing Tax Abuse comments on the draft Road Accident Fund Amendment Bill, 2023 dated 6 October 2023

111 Auditor-General South Africa. Standing Committee on Public Accounts (SCOPA) briefing session on Road Accident Fund (RAF), 18 September 2024

112 *Road Accident Fund v Auditor-General of South Africa and Others* (19778/2022) [2022] ZAGPPHC 737

113 *Road Accident Fund v Auditor-General of South Africa and Others* (1452/2022) [2024] ZAGPPHC 358; [2024] 3 All SA 914 (GP)

against the RAF, dismissing its challenge with punitive costs. The court found that the RAF was not entitled to change its accounting standard unilaterally and affirmed that this authority lies exclusively with the Accounting Standards Board. It ruled that the AGSA acted lawfully and rationally in applying the applicable standard, and that the RAF's financial reporting under IPSAS 42 was unjustified. The court emphasised that audit standards must align with those designated by the Accounting Standards Board to preserve the integrity of public financial oversight.

5.2.4 The RAF applied for leave to appeal in May 2024, asserting that there were reasonable prospects of success. On 24 June 2024, the High Court rejected the application and issued a further cost order, citing no compelling reasons for the SCA to hear the case. In July 2024, the RAF submitted a petition directly to the SCA. In 2026, the RAF ultimately withdrew its appeal and abandoned the accounting court battle against the AGSA.¹¹⁴

5.2.5 The matter is not merely one of accounting presentation or classification. From an actuarial standpoint, two substantive issues arise. The first issue concerns the recognition of the RAF's liability for compensation in respect of accidents that have already occurred, regardless of whether the final amounts have been determined. This relates to the full value of incurred but unpaid claims. The second issue concerns the absence of an estimate of the total cost of current benefits. Without such an estimate, it is not possible to assess or manage the cost of providing these benefits appropriately.

5.3 Special Investigating Unit ongoing investigations

5.3.1 Proclamation No. R. 44 of 2021,¹¹⁵ issued by the President of South Africa under the Special Investigating Units and Special Tribunals Act, mandates the SIU to probe serious allegations of maladministration, corruption, and unlawful conduct at the RAF. The investigation covers a range of issues, including irregular or fraudulent payments to claimants, agents, and service providers; violations of Treasury regulations or RAF policies; unlawful or wasteful expenditure of public funds; and contraventions of the Prevention and Combating of Corrupt Activities Act, 2004. The SIU is empowered to investigate any related conduct by RAF officials or other parties that occurred between 1 April 2018 and the date of the proclamation, to recover losses suffered by the RAF or the State. The SIU is also reviewing R837 million in potentially irregular RAF contracts and has identified five key focus areas: duplicate payments, procurement irregularities, fraudulent claims, inflated invoices with possible collusion, and suspect payments to service providers.

114 <https://www.news24.com/business/economy/raf-finally-pulls-the-plug-on-accounting-court-battle-with-auditor-general-20260130-0970>

115 Department of Justice and Constitutional Development. Proclamation by the President of the Republic of South Africa No. R. 44: Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996): Referral of Matters to Existing Special Investigating Unit. *Government Gazette* No. 45617, 10 December 2021

5.3.2 In 2023, preliminary findings of the SIU¹¹⁶ indicated probes into extensive corruption and maladministration at the RAF, including R340 million in duplicate payments to 102 law firms and sheriffs, of which only R18 million had been recovered. As of April 2023, acknowledgements of debt totalling R68 million have been signed, without exempting legal practitioners from civil or criminal consequences. One referral has been made to the National Prosecuting Authority (NPA) with ten more under consideration, alongside five potential referrals to the Legal Practice Council (LPC). These occurrences resulted from the RAF's flawed payment system, which led to premature payments before the statutory 180-day waiting period expired, resulting in the same claim being paid twice. The SIU has also uncovered serious misconduct, including the misappropriation of trust funds and payments routed through improper channels, resulting in 12 criminal referrals to the NPA and five referrals to the LPC.

5.3.3 On 25 April 2025, the SIU provided an update on the ongoing RAF investigation.¹¹⁷ The SIU noted that it had completed investigations into multiple high-value contracts awarded by the RAF, uncovering extensive procurement and tender irregularities. Contracts for services, including legal outsourcing (panel attorneys), office furniture, cleaning, fleet, and information technology systems, have all been flagged for wasteful and possibly unlawful expenditure. These contracts collectively amount to hundreds of millions of rands and have been finalised for referral to civil litigation for potential cancellation and recovery of losses.

5.3.4 The SIU further notes that the RAF has consistently failed to cooperate with the SIU's investigation, delaying responses, ignoring subpoenas, and defaulting on payments due to the SIU (R4.4 million outstanding). This non-cooperation has hampered investigative progress. Additionally, the SIU highlighted significant systemic governance concerns, including delayed or non-existent reconciliation of bank payments, misuse of employee credentials after termination, ransomware attacks compromising data integrity, and executive appointments that bypassed vetting. The SIU reiterated its systemic recommendations, including bank reconciliation and improved claim vetting, none of which had been implemented by the time the report was issued. These failings have not only led to financial losses which will ultimately be recouped in fuel levies, but also inflicted socio-economic harm on legitimate victims due to delays and unjustified non-payments.

5.4 Standing Committee on Public Accounts inquiry

5.4.1 On 24 June 2025, Parliament's SCOPA¹¹⁸ resolved to launch a full committee inquiry into serious allegations of maladministration and financial misconduct

116 Special Investigating Unit, Media Statement: SIU preliminary investigations on RAF finds over R340 million in duplicate payments to law firms, 19 April 2023

117 Special Investigating Unit. SIU update on the Road Accident Fund investigation, 25 April 2025

118 Standing Committee on Public Accounts, Media Statement: SCOPA resolves to launch inquiry into RAF financial matters, 24 June 2025

at the RAF. SCOPA noted that this step was prompted by the RAF's ongoing failure to provide the committee with transparent, comprehensive, and truthful disclosures, thereby frustrating Parliament's constitutional oversight function.

5.4.2 Among the committee's concerns were the irregularly vetted appointment of senior executives with questionable records, including histories of imprudent financial decision-making. The RAF had also declined to provide full disclosure of key financial information, such as details of funds under its management and their intended use. Furthermore, the RAF had left crucial senior management positions vacant for prolonged periods, undermining operational accountability and governance. These structural gaps allegedly enabled irregular financial decisions to be made without proper oversight, while undermining both internal control systems and broader constitutional governance.

5.4.3 On 1 July 2025, SCOPA¹¹⁹ adopted detailed terms of reference for an inquiry into alleged maladministration, financial misconduct, and misuse of public funds at the RAF during the 2020/21 to 2024/25 financial years, with scope to consider earlier events impacting this period. The inquiry, described as inquisitorial rather than adversarial, covered seven key areas: governance failures, legal and financial compliance, procurement irregularities, legal costs, fraud and whistleblower reports, automation in claims, and human resources governance. Witnesses, including RAF board members, executives, whistleblowers, and experts, testified under oath; SCOPA had the power to subpoena uncooperative individuals. While legal counsel were allowed to advise witnesses privately, they were not allowed to address the committee directly. Hearings were open to the public and broadcast online to ensure transparency, and affected parties had the opportunity to respond to provisional findings before the final report was issued. SCOPA emphasised the inquiry's aim to expose the truth and hold the RAF accountable. The inquiry began in October 2025 and is still ongoing at the time of writing.

5.5 Suspension of the CEO of the Road Accident Fund

5.5.1 Mr Collins Phutjane Letsoalo, the Chief Executive Officer (CEO) of the RAF, was placed on special leave on 27 May 2025 and subsequently suspended by the RAF Board on 3 June 2025 for allegedly defying its authority by refusing to attend a SCOPA meeting in Parliament. Letsoalo launched an urgent court application on 6 June 2025 to have the suspension declared unlawful, irrational, and unreasonable, and to interdict the RAF from advertising the CEO position. The matter was first heard on 17 June 2025 and later postponed to 24 June 2025. The judgment was delivered on 26 June 2025 by Justice Moshwana, who dismissed the application with costs.¹²⁰

119 Standing Committee on Public Accounts, Media Statement: SCOPA adopts terms of reference for inquiry into RAF financial matters, 1 July 2025

120 *Letsoalo v Road Accident Fund and Another* (086260/2025) [2025] ZAGPPHC

5.5.2 The High Court held that the RAF Board lawfully exercised its contractual power under clause 21 of Letsoalo's fixed-term contract to effect a precautionary suspension. The Court further found no factual or legal basis for Letsoalo's claim to a right of reappointment. He had failed to produce a resolution from the Board confirming such a decision and had warranted in his contract that he did not expect renewal. The Court also noted that Letsoalo had failed to join the Minister of Transport as a necessary party to the proceedings, notwithstanding that the Minister, in terms of the RAF Act, is the statutory authority vested with the power to appoint and remove the CEO. Because the relief sought by Letsoalo directly implicated the Minister's appointment powers, his failure to include the Minister in the application rendered the proceedings procedurally defective and incapable of granting effective relief.

5.5.3 In a 27 June 2025 media statement,¹²¹ the CEO expressed intense criticism of the Pretoria High Court judgment that upheld his suspension. While asserting that he felt vindicated in exposing judicial bias and procedural irregularities, Letsoalo accused Judge Moshwana of hostility, bias, and a disregard for constitutional rights, particularly his right of access to courts under Section 34 of the Constitution. He alleged the judgment was predetermined and criticised the conduct of the hearing. In addition, Letsoalo's statement announced his intention to appeal the judgment and to report Judge Moshwana to the Judicial Service Commission. He characterised the court process as a spectacle and an abuse of power, referencing previous negative encounters with the same judge. Despite the outcome, he reaffirmed his resolve to expose institutional injustice, portraying himself as a whistleblower under siege but bolstered by public support.

5.6 Dissolution of the RAF board and appointment of an interim board

5.6.1 On 15 July 2025, Minister of Transport Barbara Creecy announced the dissolution of the RAF Board, citing persistent governance issues that undermined its ability to fulfil its statutory duties. The challenges included costly litigation, poor handling of the CEO's suspension, Default Judgments that increased financial strain, and deep divisions within the Board. As a result, Minister Creecy exercised her authority by initiating steps to ensure continuity, including requesting the National Treasury to appoint an interim Accounting Authority and launching a recruitment process for a new Board. An expert advisory committee reviewed the RAF's operations to recommend improvements. The Minister reaffirmed efforts to stabilise the institution and finalise the Road Accident Benefit Scheme Bill, which aims to simplify access to benefits for victims of road accidents.¹²²

121 Letsoalo, C. Media statement in response to Moshwana J judgment on suspension from the Road Accident Fund, 27 June 2025

122 National Department of Transport, Media Statement: Creecy dissolves RAF board, 15 July 2025

5.6.2 On 8 August 2025, Minister Creecy appointed an Interim Board for the RAF for six months or until a permanent board is in place, following the July 2025 dissolution of the previous board due to governance failures. The new board, chaired by Kenneth Brown with Nonhlanhla Mabusela-Aikhuere as Vice-Chairperson, was tasked with restoring governance and financial stability, providing strategic direction, filling critical executive positions, and cooperating with ongoing and future SIU probes. The board will address systemic issues such as frequent Default Judgments, review and strengthen control systems, and contribute to the development of a sustainable operational model for the RAF, in alignment with forthcoming legislative reforms under the proposed RABS Bill.¹²³

5.7 Legal battles

5.7.1 The RAF has been at the centre of several significant legal disputes shaping the interpretation and implementation of its statutory mandate. The judgments in these matters not only clarify the rights of claimants but also expose systemic failures in RAF administration and policy formulation. Below is a summary of the most recent judicial outcomes and pending appeals.

5.7.2 Two recent Western Cape High Court decisions¹²⁴ have reaffirmed that the RAF remains liable for past medical expenses, even if a medical scheme has paid them. This is in contrast to a Gauteng High Court ruling¹²⁵ that medical schemes are not indemnity insurers, and the principles of subrogation and *res inter alios acta* do not automatically apply.

5.7.3 In *Road Accident Fund and Others v Hlatshwayo and Others*,¹²⁶ the Supreme Court of Appeal overturned a High Court personal costs order against the CEO and Board of the RAF for the late settlement of two third-party claims. The High Court had held an inquiry into the costs occasioned by the RAF's delayed settlements, attributing blame in part to the cancellation of its former panel of attorneys and the recall of files without adequate replacement capacity. This disrupted litigation processes, led to non-attendance at judicial case management hearings, and resulted in last-minute settlements. The SCA held that the full court erred by holding the RAF Board liable without joining it to the proceedings, by improperly inferring bad faith from decisions surrounding the panel's termination, and by overstepping its judicial function into matters of executive policy. While the SCA set aside the personal cost orders against the CEO and Board, it affirmed

123 South African Government News Agency, Media Statement: Creecy announces interim RAF board appointment, 8 August 2025

124 *Moss v Road Accident Fund* (18326/2019) [2025] ZAWCHC 110 & *Basson v Road Accident Fund* (5213/2021) [2025] ZAWCHC 229

125 *Discovery Health (Pty) Ltd v Road Accident Fund and Another* (2023/117206) [2024] ZAGPPHC 1303; [2025] 2 All SA 113 (GP); 2025 (3) SA 225 (GP)

126 *Road Accident Fund and Others v Hlatshwayo and Others* (724/2023; 724B/2023) [2025] ZASCA 17; [2025] 2 All SA 333 (SCA)

that the RAF itself should bear the full costs of the inquiry, as its procedural failures, including the mishandling of litigation following the withdrawal of panel attorneys, were the proximate cause of the unnecessary costs.

5.7.4 In *Road Accident Fund v Chipofya*,¹²⁷ the Western Cape High Court dismissed the RAF's application to rescind a consent judgment awarding R1.46 million in damages to an undocumented Malawian national injured in a road accident. The RAF argued that it was unaware of the respondent's illegal immigration status at the time of settlement. Still, the court found this claim to be false and misleading, noting that the RAF had full knowledge of the respondent's status and identity discrepancies before settlement. The Court held that the RAF's delay of over 500 days in bringing the rescission application was unreasonable and unexplained, and that the settlement agreement, once made an order of court, constituted a final compromise. The Court reaffirmed that the phrase 'any person' in Section 17(1) of the RAF Act includes undocumented foreigners, and that eligibility for compensation under the RAF is not contingent upon immigration status. The rescission application was deemed an abuse of process intended to avoid execution and was dismissed with costs.

5.8 Conclusion

The RAF has been the subject of unprecedented multi-agency scrutiny, revealing systemic failures across financial management, governance, legal compliance, and institutional accountability. The convergence of adverse audit opinions, forensic investigations, parliamentary inquiries, and litigation outcomes signals a crisis of public trust in the RAF's operations. Despite repeated recommendations from oversight bodies, including the AGSA and SIU, implementation has been sporadic or non-existent, with senior leadership often obstructing accountability mechanisms. The SCOPA inquiry and litigation should be pivotal in determining whether accountability and structural correction can ultimately be achieved.

6. FUEL LEVY AND FINANCING MODELS

The possible creation of a State corporation was mooted only because there seems to be no other practical way in which claims can be administered if they are paid from a levy on petrol.¹²⁸

6.1 Introduction

6.1.1 Before addressing the four evaluation criteria of reasonableness, affordability, equity, and sustainability, it is necessary to first comment on the fuel levy, as

¹²⁷ *Road Accident Fund v Chipofya* (22125/18) [2025] ZAWCHC 235

¹²⁸ Report of the Commission of Inquiry into Certain Aspects of Compulsory Motor Vehicle Insurance 1981 Chapter 9, p.18

this financing mechanism affects all four dimensions. The fuel levy has historically been the primary means by which South Africa has funded road accident compensation, and it continues to offer the advantages of administrative simplicity, stable revenue collection, and a clear link between road usage and contributions. Importantly, a fuel levy can serve as the core financing instrument not only for the current RAF model but also for a restructured RABS, a CTPI framework, or a hybrid arrangement that combines public and private elements. Its continued use, whether in its existing form or as part of a diversified financing structure, must therefore be evaluated in terms of how it influences affordability for motorists, fairness in incidence across users, fiscal sustainability over time, and the reasonableness of benefits achievable within the resources it provides.

6.1.2 The Motor Vehicle Accidents Act¹²⁹ introduced a fuel levy as the financing mechanism for compensation, replacing the existing compulsory motor vehicle insurance system in place from 1946 to 1986. The shift to a fuel levy resulted from recommendations made in a minority report of the Grosskopf Commission of Inquiry (GCOI).¹³⁰

6.1.3 This section provides an analysis of the advantages and disadvantages of a fuel levy financing mechanism, drawing on the findings of the Grosskopf Commission of Inquiry report. It also compares the fuel levy approach with alternative financing models. The aim is to assess whether a fuel levy remains a viable option for South Africa today.

6.2 Grosskopf Commission of Inquiry

6.2.1 The GCOI's terms of reference explicitly included:¹³¹

The desirability or otherwise of imposing a levy on fuel for internal combustion engines in the place of compulsory insurance of motor vehicles, which levy is to be utilized for the payment of compensation for certain losses or damage caused by motor vehicles.

6.2.2 The majority report of the GCOI recommended against adopting a fuel levy, a position that the Department of Mineral and Energy also supported. A dissenting report by Commissioner J. Keyser advocated in favour of a fuel levy. Despite the majority view, the South African government implemented a levy on each litre of fuel sold, effective from 1986.

6.2.3 Under the fuel levy model, a surcharge is added to the price of motor fuel (petrol and diesel), collected at the point of fuel sale and then transferred to the RAF. A history of the fuel levy is set out in Table 1.

129 Motor Vehicle Accidents Act 84 of 1986

130 Report of the Commission of Inquiry into Certain Aspects of Compulsory Motor Vehicle Insurance 1981 Annexure A

131 Report of the Commission of Inquiry into Certain Aspects of Compulsory Motor Vehicle Insurance 1981 Chapter 2, p.2

6.3 Advantages of a fuel levy

6.3.1 The GCOI acknowledged that ‘on the face of it such a system has many advantages’. The advantages discussed below include broad coverage, administrative simplicity, equitable cost distribution, ring-fencing of funds, and potential for expansion.

6.3.2 A fuel levy effectively ensures close to universal contributions from all road users. The GCOI noted that under a levy, ‘evasion would certainly be more difficult’, particularly for petrol-driven vehicles. In South Africa’s prior system, some drivers failed to maintain insurance, leaving victims at risk. The levy promotes social solidarity in sharing the costs of accidents caused by the road system.

6.3.3 Financing the system through a fuel levy can be more streamlined than an insurance-based scheme. The levy is collected through the existing fuel sale infrastructure, rather than by managing millions of individual insurance policies. The GCOI observed that ‘one can, however, accept that the total costs of collection would probably be lower than at present’.

6.3.4 A fuel levy spreads the financial burden across all drivers in approximate¹³² proportion to their road use. This can be seen as equitable – those who drive more (and thus put others at risk more often and benefit from the road network) pay more into the pool. Heavy vehicles that consume more fuel also pay more, roughly correlating with the greater damage they can cause due to greater momentum, damage to roads, and higher passenger counts. In a developing country, a fuel levy was also viewed as a way to keep contributions manageable; instead of an upfront insurance premium (which lower-income drivers might struggle to pay), the cost is spread over time through fuel purchases.

6.3.5 As noted in the RAF Act, the fuel levy is a direct charge on the National Revenue Fund for credit of the RAF, meaning the money is ring-fenced for injury compensation. In effect, the levy creates a ‘deep pocket’ that stands behind all drivers, which is supposed to ensure victims are compensated up to the statutory limits. This was in line with the original aim of compulsory third-party schemes to provide ‘the greatest possible protection’ to road users against uninsured losses.

6.3.6 A fuel levy pairs with a no-fault compensation system as contributions are not tied to individual risk profiles. The GCOI was not tasked with implementing a no-fault scheme; however, if policymakers chose to adopt a no-fault model, the fuel levy would provide a broad-based financing source.

6.4 Disadvantages of a fuel levy

6.4.1 The GCOI identified serious drawbacks and uncertainties with the fuel levy financing model. The disadvantages discussed below include issues of equity, exclusions, efficiency, and sustainability.

¹³² Approximate since the litres of fuel used per kilometre travelled varies with vehicle type and driving behaviour. More details on that can be found in section 9.2.

6.4.2 A flat fuel levy is not sensitive to individual risk. Low-risk drivers essentially subsidise high-risk drivers. As noted by the Department of Transport:¹³³

There is no rational correlation between the fuel levy, the risks created by individual motorists and the type and extent of cover. The current system is fraught with discrimination, as those in the second economy find it difficult, if not impossible, to prove losses suffered. This results in the poor subsidising wealthy road users whose contributions are not related to their claims for projected losses

6.4.3 Vehicles that do not use petrol or diesel, such as electric vehicles, would not contribute under a pure fuel levy. Interestingly, the GCOI had already flagged this issue in 1981, stating that ‘many vehicles ... such as trailers and vehicles driven by electricity do not use liquid fuel and would thus not make a direct contribution to the fund’. In today’s context, this issue is becoming more significant with the rise in electric vehicle sales. This illustrates how a levy tied to fossil fuel consumption may be a declining revenue source in the future. While this is true of fuel levies in general, an analysis of cross-subsidies between certain categories of vehicles in South African vehicle population can be found in section 9.2.

6.4.4 The GCOI found it ‘impossible to reach a firm conclusion’ on whether the new system would truly be cheaper. While the collection of funds might be more affordable when bundled with fuel sales, the claims handling costs were a big unknown. The proposed State fund would perform essentially the same tasks as insurers (investigating accidents, processing claims, paying compensation). To yield savings, the state entity would have to operate more efficiently than the competitive insurance industry was doing. The evidence presented to the GCOI did not convincingly demonstrate that a government monopoly would be more cost-effective. On the contrary, if the new fund ended up understaffed or under-resourced to cut costs, service to the public could deteriorate – an outcome the Commission warned must be avoided. The majority of commissioners were ultimately not persuaded that the fuel levy model would ‘bring about an improvement on the present system’ in terms of either cost or service delivery. Experience has shown that these concerns were indeed prophetic, despite the GCOI acknowledging that they were ‘without prophetic gifts’.

6.4.5 A critical long-term issue is whether the fuel levy can keep pace with the growing cost of claims. The RAF faces an actuarial deficit of hundreds of billions of rands.¹³⁴ The fuel levy is a form of hypothecated tax, and political pressures may limit its growth. If not adjusted adequately, this may result in a financing gap where claims cannot

133 Department of Transport. Strategy for the Restructuring of the Road Accident Fund as Compulsory Insurance in Relation to the Comprehensive Social Security System. *Government Gazette* No. 29017 of 8 September 2006

134 <https://www.businessday.co.za/news/2025-10-22-parliament-probes-rafs-r300bn-financial-cover-up/>

be paid timeously. By the early 2000s, the RAF had accumulated a multi-billion-rand deficit,¹³⁵ essentially because liabilities (claims) exceeded what the levy (set at a fixed cents per litre) could cover. Currently, the annual income of the RAF just about covers that year's claim payouts,¹³⁶ without significant reserves for unpaid claims (comparing Table 1 with Table 8).¹³⁷ The pay-as-you-go nature means today's fuel buyers pay for today's claims; if those claims skyrocket (due to higher accident rates, larger payouts or increased processing of past incidents) without a matching levy increase, the fund becomes unable to pay claims as and when due. Since the fuel levy is sometimes accused of being a regressive tax,¹³⁸ it is subject to socio-political challenges, as it directly affects the cost of transport and goods, which can be unpopular and affect the economy.

6.4.6 In the GCOI's final analysis, the above disadvantages led the majority to conclude that a fuel levy scheme was not superior to the existing insurance system. To fully evaluate the fuel levy model, it is necessary to compare it with other financing mechanisms. The following sections will examine mandatory private insurance, general taxation, and hybrid models.

6.5 Mandatory private insurance

6.5.1 Under mandatory private insurance, each vehicle owner or driver is required by law to purchase insurance that covers third-party injury or death (as was the case in South Africa before 1986, and is still the norm in many countries like the United Kingdom).¹³⁹ While private insurance is traditionally funded through individual premiums, advances in technology now make it feasible for a fuel levy to serve as a financing mechanism for privately administered schemes, an approach that overcomes the original rationale for establishing a state corporation to manage levy-based compensation.

6.5.2 The advantage of private insurance is that it adheres to market principles of risk-based pricing: premiums can be adjusted based on the driver's risk profile (age, driving record, vehicle type), which is arguably fairer to individuals than a flat levy. It also fosters competition among insurers, which can drive efficiency and innovation in claims handling. As noted by the GCOI:

¹³⁵ The funding level had fallen to under 5% in 2003, and again from 2019, see section 10.2 below.

¹³⁶ And there have been indications that the annual income may not be enough to cover that year's required payouts, such as in this *Business Day* article: www.businessday.co.za/bd/national/2025-04-02-raf-says-it-cannot-pay-claimants-because-of-sars-appeal

¹³⁷ The Road Accident Fund Act makes no mention of the words 'funding,' 'funded' or 'reserves' so as to require any particular funding method (such as fully funded, partially funded or pay-as-you-go). In Section 5 of the Act titled 'financing of the fund' it merely indicates the source of funds is to be the RAF fuel levy or loans.

¹³⁸ In July 2025 the Minister of Finance was asked whether the proposed increase in the fuel levy was justifiable in that it may disproportionately affect the poor (<https://pmg.org.za/committee-question/31300/>). The Minister responded with an argument that fuel taxes tend to be progressive as higher income earners, who own private motor vehicles, spend more on fuel.

¹³⁹ Section 143 of the Road Traffic Act 1988

Firstly, the idea of a State corporation to administer third party claims did not come about because of complaints about the way in which claims are being handled by members of the Consortium

6.5.3 The GCOI noted expert opinions that competition among multiple companies tends to yield cheaper and more effective service than a single-state monopoly. Additionally, a private insurance scheme does not rely on government finances – the costs are borne by those insured and allocated based on risk, thereby relieving the state of direct fiscal responsibility.

6.5.4 The disadvantages of the insurance model include the very issues that prompted calls for reform in South Africa: not all drivers comply, leading to uninsured vehicles; enforcement can be difficult, and victims can be left uncompensated if hit by an uninsured or hit-and-run driver.

6.5.5 Private insurance involves higher transaction costs – marketing, policy administration, profit margins – which ultimately are built into premiums. In the 1970s and 1980s, South Africa saw insurer insolvencies and market withdrawal due to inadequate premiums and rising claims (Vivian, 2007).

6.5.6 A private insurance regime puts the onus on individuals to purchase and renew policies and on the state to ensure compliance (for example, through vehicle registration checks or traffic enforcement). This can be administratively intensive. The GCOI suggested that integrating insurance with vehicle registration could enhance compliance, a hybrid approach that some jurisdictions employ (but this makes it an annual lump sum which may be difficult to afford). If compliance is high, the insurance model limits public expenditure (no tax needed), but if compliance is low, a sizeable portion of victims may go uncompensated.

6.5.7 Private insurance funding allows for tailoring costs to risk and leveraging private sector efficiency. Still, it can fail the equity test (from the victims' perspective as they are unprotected if drivers are uninsured or insolvent) and may have higher overall system costs when factoring in legal disputes and profit loads. The GCOI ultimately found that merely tweaking the insurance system might not address fundamental issues, such as universal coverage, which is why the fuel levy was considered.

6.6 General taxation

6.6.1 Similar to social grants and public healthcare, road accident fund compensation could be funded out of general government tax revenue (such as personal or corporate income tax, VAT, or sin taxes, perhaps even as a top-up to the existing RAF fuel levy). An advantage of this approach is that if it is funded from income tax, then the system is progressive (higher earners contribute more than low-income earners). General taxation avoids the complexities of creating a special levy or insurance mandate – funding is allocated in the national budget.

6.6.2 There are several disadvantages of funding through general tax revenue. Firstly, without a dedicated funding stream, road accident compensation must compete with other budget priorities each year, risking underfunding. Secondly, removing a direct user contribution could dilute the user-pays principle, which in turn may potentially reduce incentives for road safety. Thirdly, general tax funding means people who do not drive at all (or even those who do not use the roads) would still pay for road accident victims, which could be seen as inequitable.

6.6.3 The GCOI did not consider pure general taxation, likely because a dedicated solution was sought to ensure the funds would directly assist road accident victims. In practice, South Africa's fuel levy model is a form of dedicated taxation – a middle ground between private insurance where funds are collected per individual according to their risk or exposure, and broad public funding where funds provided may not have any link to expected damage.

6.7 Hybrid models

6.7.1 An example of a hybrid system is requiring a base level of cover through a public fund (using a fuel levy) and mandating private insurance for additional cover. For example, one might have a government-funded no-fault benefit for personal injury up to a specific limit and still require drivers to carry private liability insurance for catastrophic damages (such as in New York, see ¶2.6.1).

6.7.2 The advantage of such a system is that basic compensation is guaranteed for all victims, and private insurance handles excess damages or specific loss types. The Department of Transport previously suggested this in that the fuel levy would remain the primary funding mechanism and provide basic benefits. However, those who want to insure against higher risks (such as high-income earners) can take out private top-up insurance. This kind of hybrid can balance equity and sufficiency (everyone gets something) with individual responsibility (extra cover at one's own cost).

6.7.3 A crucial aspect of hybrid schemes in practice is the role of a guarantee fund for uninsured cases within an insurance model. The United Kingdom's Motor Insurers' Bureau¹⁴⁰ is an example: it is funded by a levy on all motor insurers (ultimately passed on to policyholders) to compensate victims of uninsured or unidentified (hit-and-run) drivers. This effectively socialises the risk of non-compliance within a private system. However, there may be a level of non-compliance above which such a guarantee fund ceases to be viable, as the required levy on the remaining compliant portion of the population would become unaffordable.

6.7.4 A disadvantage of such a hybrid system involving CTPI is that it still relies on high compliance (purchasing the required insurance) and does not eliminate the fundamental duplication of costs (collecting both taxes and premiums).

140 <https://www.mib.org.uk/reducing-uninsured-driving/what-we-do/>

6.8 Road traffic safety – accident prevention funding

As previously noted by the Actuarial Society of South Africa,¹⁴¹ the fundamental problem is the high rate of accidents. An alternative approach is a focus on prevention funding – for example, channelling some fuel levy revenue to road safety improvements or requiring insurers to invest in safety, thereby reducing accidents and future costs. Various road safety initiatives have been implemented by the RAF, including awareness programmes, practical safety training for motorcyclists, youth engagement programmes and driver wellness initiatives.¹⁴² A recent example includes the RAF's programme to paint livestock.¹⁴³

6.9 Administrative feasibility

6.9.1 The GCOI evaluated whether a fuel levy-funded system would be feasible and efficient. As indicated in the opening quote to section 6, the only reason for the formation of a state corporation to administer claims was that no other way was seen as practical if funded by a fuel levy. While integrating levy collection with existing fuel tax mechanisms is straightforward, administering claims is more complex. The RAF has faced challenges, including backlogs, high legal costs, inefficiencies, fraud, collusion, and corruption, as covered in section 5. Although private insurance may face similar problems, a public fund requires significant administrative investment to function effectively.

6.9.2 The levy system avoids duplicative insurance processes and could benefit from economies of scale, with no commissions or dividends. This is a potential advantage in terms of reasonableness and affordability. However, a lack of competition may reduce cost efficiency. In practice, the RAF's cost-to-compensation ratio remains high, with significant funds lost to legal and administrative expenses.¹⁴⁴

6.9.3 The fuel levy's passive collection ensures nearly universal compliance, unlike private insurance, which requires enforcement. South Africa's experience demonstrates that levy collection is effective, but disbursement remains problematic, underscoring the need for robust governance that extends beyond funding mechanisms.

6.10 Conclusion

The fuel levy has provided a stable, broad-based mechanism for funding the RAF for four decades. It achieves near-universal compliance, distributes the burden approximately proportionately to road use, and supports a public compensation mandate without the administrative overhead of maintaining individual insurance policies. However, the levy's

141 Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 4, p.71

142 Page 13 of the 2023/2024 RAF Annual report, available at [https://nationalgovernment.co.za/entity_annual/3987/2024-road-accident-fund-\(raf\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3987/2024-road-accident-fund-(raf)-annual-report.pdf)

143 *The Mercury* (17 March 2025). Road Accident Fund empowers youth to promote road safety

144 <https://www.gov.za/news/media-statements/transport-road-accident-fund-achievements-07-jun-2021> where it is noted that the RAF collects R43 billion a year through the fuel levy of which R26 billion, or 60% of this annual revenue is spent on the actual compensation of claimants.

limitations, including a declining revenue base due to vehicle electrification, and lack of sensitivity to personal risk, are becoming increasingly pronounced. As claims costs escalate and the RAF's liabilities outpace income, the continued exclusive reliance on a flat fuel surcharge appears increasingly unsustainable, particularly in the absence of structural reforms to claims processing and benefit design.

7. AFFORDABILITY

7.1 Introduction

7.1.1 In sections 7 to 10, three different alternative systems of road accident compensation: the RAF, RABS, and CTPI, are assessed against the four criteria specified in the RRAFC.¹⁴⁵ The ensuing sections examine affordability (section 7), reasonableness (section 8), equity (section 9), and sustainability (section 10).

7.1.2 In section 7, consideration is given to the affordability, per accident year, of the RAF (section 7.2), RABS (section 7.3), and CPTI (section 7.4). The cash flow (for example, in the case of the RAF, the annual levies received minus the payments made during the year) is not a fair reflection of affordability. To assess the affordability of providing one year's benefits, consideration must be given to all payments that will be made in respect of accidents occurring during that year. The actual cost for each accident year is only known once all claims for that particular accident year have been finalised and paid, which is typically long after the accident year. The cost of benefits is usually estimated in the regular actuarial valuations.

7.1.3 The other criteria (reasonableness, equity, and sustainability) all consider some aspects of affordability. Section 8 considers a system to be reasonable from a driver/owner's perspective if the cost of providing the benefits is not significantly more than the value of the benefits, thus considering affordability in the sense of comparing the cost and benefits for drivers/owners. Section 9 considers a system to be equitable if cross-subsidisation is insignificant; that is, if the ratio between premiums paid and expected benefits received does not differ significantly depending on individual characteristics (for example, vehicle type, income, age). In section 7, we consider the overall affordability of the scheme, in other words, the total amount that it costs the whole population. Long-term affordability is the main prerequisite for sustainability, discussed in section 10.

7.1.4 The RRAFC¹⁴⁶ eloquently stated that:

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.

¹⁴⁵ Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 1, pp.10–11

¹⁴⁶ Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 14, par 100, p.370.

7.1.5 To provide unlimited General Damages and medical benefits to try to restore a victim to the position that they were in before the accident is theoretically unaffordable. The skewed distribution of income implies that it is practically unaffordable to provide benefits that are a function of unlimited personal income. Considering the limited resources available, some limits or exclusions are necessary to make any system affordable.

7.1.6 According to a global publication by Swiss Re,¹⁴⁷ cost ratios (administrative expenses as a percentage of total payouts) were as follows for different systems of compensation for personal injury and illness: Tort system: 54%; Life and health insurance: 23%; Workers' compensation: 17%; Social security systems: 3%. Social security benefits are expected to have much lower administration expenses.

7.2 Affordability of the Road Accident Fund

7.2.1 Unfortunately, the post-2020 RAF management decided to discontinue annual actuarial valuations. Expected total amounts payable in respect of claims arising from accidents since April 2020 were thus not available. The authors consider this total cost of benefit plus expenses to be the most crucial figure that should be reported and taken into consideration by the RAF management. It is a critical oversight that this figure is not presented in the RAF Annual Reports.

7.2.2 The estimated cost of benefits in respect of pre-2020 accidents was also not clear in the annual reports. The figures shown in the notes to the financial statements for each of the years 2010–2020¹⁴⁸ are repeated in column 2 of Table 5.

7.2.3 The estimated cost of annual claims increased from R9 900 million in 2010 to R70 486 million in 2020. Increasing the R9 900 million in 2010 with the Consumer Price Index would have resulted in R16 300 million in 2020. The R70 486 million is thus more than four times as much as inflation-adjusted 2010 figure.

7.2.4 The figures in column 2 can be interpreted as the risk premium required by the RAF to pay claims for the particular year, as estimated at the end of the specific year. The R70 486 million estimate for the 2020 accident year is almost 50% of the total gross premium of all non-life insurance companies in South Africa, which was R143 972.¹⁴⁹

7.2.5 The numbers shown in Table 5 were calculated by the actuaries when doing the valuation of the outstanding claims liability at the end of each particular accident year. As more information becomes available, these estimates can be updated. For example, as shown in the 2016 RAF Annual Report,¹⁵⁰ the R15.2 billion estimated for the 2013 accident year was updated to R15.9 billion in 2014, to R19.7 billion in 2015, and to

147 The Economics of Liability Losses – Insuring a Moving Target: Sigma No 6/2004

148 The value for 2020 in column 2 of Table 5 is from the RAF Annual Report 2020, Page 221, row 6 column 7 of table, read together with Note 3. The other values in this column are from similar tables in the 2010–2019 RAF Annual Reports.

149 See footnote 69: Table 1, column 2, for 31/03/2020 Non-life insurers' premium income (millions)

150 RAF 2016 Annual Reports, p.236

R25.5 billion in 2016. The latter estimate of R25.5 billion is more accurate than the initial estimate, as almost 40% of the expected ultimate payments would have been made by then, and nearly all claims would have been reported. By 2025, most claims for the 2013 accident year are finalised, implying that a current actuarial estimate for ultimate 2013 accident year claims will be very accurate. Such updated figures were not published in later RAF annual reports; however, considering the subsequent increases in the outstanding claims reserve, the R25.5 billion probably still significantly underestimated the 2013 claims.

TABLE 5. Annual cost of providing benefits

Accident year	Estimate ¹⁵¹ of present value of all payments from the accident year (R millions)	Ratio of RAF net fuel levy after rebates to the estimated present value of all payments from the accident year ¹⁵²
2010	R9 900	1.27
2011	R9 100	1.59
2012	R11 400	1.49
2013	R15 200	1.18
2014	R17 800	1.14
2015	R20 303	1.11
2016	R30 100	1.10
2017	R38 546	0.86
2018	R48 321	0.77
2019	R59 871	0.72
2020	R70 486	0.58

7.2.6 It is difficult for the actuaries to predict how the quality of claims handling will change over time. In 2008, one of the authors was present at a meeting where actuaries from three different firms discussed the increase in the RAF’s outstanding claims liability from R24 billion in 2007 to R31 billion in 2008, considering various projection models. One of the models assumed that the position would continue to deteriorate at the same pace as between 2004 and 2008, resulting in an estimate over R500 billion in 2028. The actuaries present noted that such deterioration implicitly implied that the RAF would stop defending most claims, resulting in default judgments in the majority of cases, which seemed an extremely unrealistic assumption. Unfortunately, this is precisely what has happened, even necessitating a dedicated roll for RAF default judgement cases from April 2023.¹⁵³

151 The discounted estimates are based on the estimated payments, adjusted with inflation from the accident year until the time they are expected to be paid, and discounted with interest back to the end of the accident year.

152 See Table 1 and footnote 70 above.

153 Gauteng Division of the High Court, Johannesburg, Directive DJP/21/2012/lr: Establishment of a dedicated Road Accident Fund Default Judgment Court, 26 April 2023

7.2.7 As explained in ¶¶7.2.8–7.2.10, the updated estimates for each accident year, as more information becomes available, are due to the change in the RAF’s efficiency to defend claims. The actual annual cost of the RAF during any financial year can be considered to be the estimated amount of claims that will be paid in respect of accidents that occurred that year, plus the increase in the estimates of earlier accident years that are due to the change in the RAF’s efficiency to defend claims during the particular year. These figures are shown in Table 6.

TABLE 6. Inflation-adjusted cost of benefits

Financial year	Estimate of present value of all payments from the accident year ¹⁵⁴ (R millions) [Column 2]	Column 2 adjusted with consumer price inflation to March 2025 (R millions) [Column 3]	Adjustment to earlier years’ estimates due to change in basis ¹⁵⁵ (R millions) [Column 4]	Total inflation-adjusted (R millions) [Column 5]
2010	R9 900	R20 623	R600	R21 873
2011	R9 100	R18 209	R2 700	R23 612
2012	R11 400	R21 515	No separate values ¹⁵⁶	
2013	R15 200	R27 092	R5 100	R36 181
2014	R17 800	R29 916	R12 200	R50 420
2015	R20 303	R32 795	R12 235	R52 558
2016	R30 100	R45 748	R16 248	R70 443
2017	R38 546	R55 202	R10 859	R70 753
2018	R48 321	R66 659	–R2 212	R63 608
2019	R59 871	R79 021	–R4 551	R73 014
2020	R70 486	R89 329	–R5 576	R82 262

7.2.8 From 2014 to 2017, the figures in column 4 of Table 6 show a significant deterioration due to increased amounts paid. This was partially corrected from 2018 to 2020. This deterioration could have been due to some factors under the control of the RAF and some external factors.

7.2.9 Some of these external factors, for example, the actions of claimant attorneys, advocates, courts, and expert witnesses, are significantly influenced by the general quality of claims handling of the RAF. Some other external factors – for example, the quality of medical treatment insofar as it affects the injured person’s ability to work and earn, as well as road safety – are not currently affected by the RAF. However, money

154 As in Table 5 above. See footnote 151.
155 Shown in RAF Annual Report, either as ‘Change in Basis’ (2010), ‘Experience Deviation’ (2011), ‘Unexpected Increase’ (2013–2017) or ‘Average claim amounts reduced’ (2018–2020)
156 The RAF 2012 Annual Reports shows the experience deviation and change in basis is displayed together with an amount for re-opened claims that were previously incorrectly closed. The latter was said to make up most of the R22 billion.

correctly spent on improving these factors may well reduce losses by more than the amount spent. Other factors – for example, the general labour market (as it affects loss of income assumptions) – are outside the control of the RAF.

7.2.10 There was no indication of any increase in the number of road accidents over this period (Road Traffic Management Reports do not consistently show injuries, but showed a reduction in the number of road fatalities, decreasing from 13 967 in 2010¹⁵⁷ to 12 503 in 2019¹⁵⁸). There were also no legislative changes affecting benefits payable by the RAF. The labour market did not improve during this period, hence providing no reason to increase earnings assumptions. We are not qualified to comment on the quality of medical treatment.¹⁵⁹ The authors did not find evidence of any external factors that are to blame for the deteriorated situation. The main reason for the underestimation and the rapid increase in the cost of RAF benefits (quadrupling in real terms between 2010 and 2020) thus seems to be factors under the control of the RAF board and management. In this paper, this is referred to as a ‘deterioration in the RAF’s efficiency to defend claims’. Unfortunately, no comparative figures were available for the period since April 2020. The events described in section 5 above indicate that the situation may have deteriorated significantly between 2020 and 2025.

7.2.11 The RAF Annual Reports showed that the total amount paid on claims increased from R11.4 billion in the 2010 financial year to R44 billion in the 2020 financial year. If these figures are adjusted for inflation, the real increase is 134%. Considering all the annual statistics, 87% of the 134% increase occurred over the three years from 2013 to 2016, and the remaining 13% occurred over the other seven years.

7.2.12 The ‘Forward by the Chairperson’ in the RAF 2023 Annual Report¹⁶⁰ included a section ‘Progress of Implementing 2020–2025’, indicating that the situation has improved since 2020. However, many of these statements are misleading, as indicated by the authors’ observation after each statement:

Statement 1:

The litigation strategy of using an internal RAF panel of attorneys was abandoned. The new strategic focus is on claims investigation and settlement. In matters where litigation is required, RAF entered into a collaboration agreement with the State Attorney’s office to manage RAF litigation. The model is being implemented and already resulted in reduced legal costs in the first 2 years of implementation.

157 Road Traffic Management Corporation (2023). State of Road Safety in South Africa January 2023 to December 2023, p.8

158 Road Traffic Management Corporation (2023). State of Road Safety in South Africa January 2023 to December 2023, p.9

159 In many of the actuarial reports done by the authors in respect of loss of income, we noted that minor injuries led to unexpected long-term effects. This could be due to a decline in effective medical treatment or exaggeration in medico-legal reports.

160 RAF 2023 Annual Report, p.4

The authors' observation

Abandoning the litigation strategy led to a significant increase in default judgments, which in turn led to increased claim amounts. Claim settlements are considered in further detail in 8.2.13–14 below and the effect on average costs in 8.2.15–17.

Statement 2:

RAF also moved away from a model outsourcing actuarial function to an actuarial panel that was costing the Fund R10 000 per calculation and around R180 million per year. In terms of the new strategy, actuarial function is considered core business. Capacity has now been created internally with an insourcing budget of R51 million per annum, thus saving the Fund R129 million.

The authors' observation

In the authors' experience, the actuarial reports to estimate the quantum of loss of income usually lead to significant savings (in some cases, more than R1 million per claim), especially in cases where the claimant had calculations made based on overoptimistic opinions of medical or psychology experts or specific instructions of claimant attorneys.¹⁶¹

Statement 3:

A Claims Investigation Unit has been established. This is to ensure quality accident investigations previously outsourced to a panel of assessors for many years without any value for money. This panel would have amounted to R1 billion over a five-year period.

The authors' observation

The authors have little knowledge of the determination of merits and cannot comment on the financial implications of using an internal accident investigation unit versus external assessors. It should be taken into account that saving R200 million per year on investigating claims would not be a good idea if it leads to significantly increased claim amounts exceeding the savings.

Statement 4:

As with all major organisational overhauls, the journey to recovery and transformation required a rigorous interrogation and review of all systems. With decades of incohesive and unchecked processes, numerous loopholes were identified that were being exploited by opportunistic third parties, to the detriment of the organisation and, most importantly, road accident victims. In the 2021/22 financial year, RAF secured a strategic partner to implement the Integrated Claims Management System (ICMS), one of the RAF's flagship projects named Project Bokamoso. Major phases of this project were successfully

¹⁶¹ In the authors' opinion, most attorneys intend to get fair settlements for their clients. However, there are some who will try to get as much as possible and even advertise that they do, even if they know that there is no loss or a very minor loss.

implemented in February 2022, with the first go-live phase planned to be rolled out during November 2023.

The authors' observation

Effective systems are crucial in claims administration. The authors have limited knowledge about this project, but want to warn that, due to the complex nature of RAF claims, excessive automation may lead to adverse selection, where overestimated results will be accepted by claimants and underestimated results will be contested.

7.2.13 The RAF Amendment Act, effective from 1 August 2008, was expected to lead to a significant reduction in the number of personal¹⁶² claims, mainly due to restricting General Damages to the seriously injured. This is seen in the following numbers:¹⁶³ the annual number of personal claims during the nine accident years ending March 1999 to March 2008 was relatively stable, with a mean of 128 834 and a standard deviation of 27 595. For the five accident years from March 2010 to March 2014, the numbers remained stable, with a mean of 47 857 and a standard deviation of 6 142.

7.2.14 Since 2014, the RAF Annual Reports showed the following number of claims registered and finalised per financial year, but not claim numbers per accident year.

TABLE 7. Claims registered and finalised

Financial year	Claims registered	Claims finalised
2015	65 243	62 436
2016	72 484	71 664
2017	73 538	73 860
2018	42 078	92 101
2019	29 230	103 423
2020	80 370	102 086
2021	27 890	51 306
2022	41 149	35 210
2023	37 678	40 107
2024	26 808	18 256

7.2.15 The decrease in claims registered and finalised during the 2021 financial year was probably due to the COVID lockdown.

162 Claim numbers shown in this section are for Personal Claims. In some sections, the RAF combines Personal and Supplier claims, but the authors find this extremely misleading as these two types of claims are completely different.

163 The RAF has not shown the number of claims per accident year in any recent Annual Reports. The latest available claim numbers per accident year were shown in their 2014 Annual Report Graph B28, p.62

7.2.16 The RAF annual reports give much detail on average amounts, but this can be somewhat misleading.¹⁶⁴ The averages provided in the RAF annual reports represent the total amount paid divided by the number of payments. Table 8 shows the values for ‘All Claims’ and for ‘Loss of Income’ from 2010 until 2024.

TABLE 8. Number of payments and average payment

All claims				Loss of income		
Financial year	Total paid R millions	Number of claims	Average /claim	Total paid R millions	Number of claims	Average /claim
2010	R11 400	290 710	R39 214	R2 500	7 695	R324 886
2011	R12 800	270 479	R47 323	R3 300	8 251	R399 952
2012	R12 500	225 905	R55 333	R3 200	7 191	R445 001
2013	R15 000	227 855	R65 831	R4 600	8 636	R532 654
2014	R22 000	211 099	R104 217	R7 700	11 865	R648 968
2015	R28 000	242 869	R115 288	R10 300	14 072	R731 950
2016	R33 000	230 936	R142 897	R13 300	17 926	R741 939
2017	R31 000	261 843	R118 392	R10 800	16 663	R648 143
2018	R34 600	311 004	R111 253	R12 300	17 787	R691 516
2019	R42 600	374 036	R113 893	R15 900	20 702	R768 042
2020	R44 000	318 576	R138 115	R17 200	20 791	R827 281
2021	R35 500	151 176	R234 826	R18 400	16 943	R1 085 994
2022	R43 400	170 331	R254 798	R20 700	21 315	R971 147
2023	R46 400	177 247	R261 782	R22 000	20 957	R1 049 769
2024	R45 600	159 122	R286 573	R21 600	19 486	R1 108 488

7.2.17 The payments in respect of a single claim are made up of different components. For example, payments in respect of the injuries of one person can include several payments directly to medical suppliers, and to experts who provide medico-legal reports; usually a single payment to the claimant attorney for past medical expenses, general damages, loss of income and taxed costs to prove the claim; in some cases, interim payments for medical payments or loss of income; and payments in terms of an undertaking provided to cover future medical costs. We understand that Table 8 uses the number of payments, excluding undertaking payments, rather than the number of claims. This approach counts a claim more than once when dividing the total payments by the number of claims, thereby understating the average amounts.

7.2.18 The figures in Table 8 are only comparable between different years if the number of payments per claim remains relatively constant throughout the period. This has not been the case. Firstly, if the number of payments is divided by the number

164 They combine Personal and Supplier claims and consider the number of payments rather than the number of claims.

of finalisations, the number of payments per claim has increased significantly. A better measure of the change in the average cost per claim per financial year would thus be to divide the total amount paid by the number of personal claims finalised, changing the figures in Table 9 as follows.

TABLE 9. Average claims paid and average Loss of Income claims paid

Financial year	Total payments / personal claims finalised			Loss of income payments / personal claims finalised		
	Total paid R millions	Number of finalisations	Average /claim	Total paid R millions	Number of finalisations	Average /claim
2010	R11 400	85 397	R133 494	R2 500	85 397	R29 275
2011	R12 800	74 162	R172 595	R3 300	74 162	R44 497
2012	R12 500	52 445	R238 345	R3 200	52 445	R61 016
2013	R15 000	47 159	R318 073	R4 600	47 159	R97 542
2014	R22 000	53 230	R413 301	R7 700	53 230	R144 655
2015	R28 000	62 436	R448 459	R10 300	62 436	R164 969
2016	R33 000	71 664	R460 482	R13 300	71 664	R185 588
2017	R31 000	73 860	R419 713	R10 800	73 860	R146 223
2018	R34 600	92 101	R375 675	R12 300	92 101	R133 549
2019	R42 600	103 423	R411 901	R15 900	103 423	R153 738
2020	R44 000	102 086	R431 009	R17 200	102 086	R168 485
2021	R35 500	51 306	R691 927	R18 400	51 306	R358 633
2022	R43 400	35 210	R1 232 604	R20 700	35 210	R587 901
2023	R46 400	40 107	R1 156 905	R22 000	40 107	R548 533
2024	R45 600	18 256	R2 497 809	R21 600	18 256	R1 183 173

7.2.19 Note that all the above discussion about the affordability of the RAF only considers the actual cost to the RAF and ignores other costs by the government or by private medical aids that the RAF does not pay. One such additional cost is funded by the Department of Justice, having to incur all the costs associated with the court (such as salaries of judges) to deliver default judgments to determine quantum. Another, significantly larger, additional cost is that medical benefits are primarily funded through the health budget and medical aids.

7.3 Affordability of Road Accident Benefit Scheme benefits

7.3.1 RABS are based on principles of solidarity¹⁶⁵ but also removes the right to take civil action against the driver/owner.¹⁶⁶ Affordability is therefore considered from a social security point of view as well as from the driver/owner’s point of view.

165 Draft policy of restructuring the RAF as compulsory social insurance in relation to the comprehensive social security system, *Government Gazette* No 32940, 12 February 2010, Section 10, p.12
166 Road Accident Benefit Scheme Bill B17B of 2017, section 35

7.3.2 In 2009,¹⁶⁷ the cost of RABS benefits was estimated at R13 620 million per year by one of the authors, while at the same time calculating the value of RAF benefits at R7 236 million per year. In 2012, the cost of the RABS benefits was updated to R15 442 million per year (35% above the estimate of R11 400 million for RAF benefits at the time). However, as shown in ¶7.2.2 above, the cost of the RAF increased significantly thereafter, due to reasons not expected to affect RABS benefits. Various actuarial reports accessible to the authors indicated that RABS benefits would have cost less than RAF benefits. The latest estimates available to the authors were as of September 2018, when RABS benefits were estimated at R38 833 million per year, 39% lower than RAF benefits valued at R53 812 million per year in the same report. It thus seems that drivers/owners will receive the same benefit (indemnity against civil action by the injured) for a significantly lower price. RABS will therefore be more affordable to drivers/owners when compared to RAF. However, note that being more affordable is dependent on the indemnity of civil action.

7.3.3 The income support benefits of RABS are significantly lower than the common law loss of income benefits, increasing the need of potential victims to pay more by taking out disability insurance.

7.3.4 Purely from a social security point of view, affordability is not an issue if such benefits are funded by the potential ‘wrongdoers’ – as proposed by RABS. The question should be asked whether, considering the limited resources, the country can afford to pay higher social security benefits to persons injured in road accidents that are not due to the fault of another driver/owner? (Currently under the RAF, compensation is only made to those who are injured due to the fault of someone else, in this sense moving to RABS would broaden the base of people eligible for road accident compensation benefits.) The RABS proposal is that the owners/drivers will also fund these no-fault benefits, so it should not place any further strain on the social security budget. From a social security perspective, the benefits need not be higher than those payable to individuals injured in accidents other than road accidents. If RABS becomes unaffordable for drivers/owners, the lowering of benefits to at-fault injured persons can be considered.

7.3.5 RABS benefits are based on proposals of the RRAFC. The RRAFC 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.¹⁶⁸ 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.’¹⁶⁹

167 Draft policy of restructuring the RAF as compulsory social insurance in relation to the comprehensive social security system, *Government Gazette* No 32940, 12 February 2010, Section 8.6, p.95

168 Report of the Road Accident Fund Commission 2002 Volume 2, Chapter 27, par 27.240, p.878.

169 Ibid, par 27.243, p.879

7.3.6 The initial¹⁷⁰ proposed RABS draft designed medical benefits to be on a defined-contribution basis, providing benefits for a given budgeted price. Healthcare services were to be made available to the injured through contracted public and private medical service providers at a fixed annual amount. In 2009, the fixed amount was estimated at R6 billion for trauma and general hospital care, R300 million for rehabilitation, and R1 billion for long-term care, which at the time was equivalent to the estimated cost of RAF benefits. The RABS administrator was to pay these contractors at the annual prices agreed upon, which were to be aligned with the fuel levies received by the administrator. The available funds would thus have determined the contract prices and resulting services. The medical benefits were therefore designed to be affordable.

7.3.7 Similarly, the income support benefit mitigated the affordability risk by not guaranteeing annual benefit increases but leaving these as discretionary depending on available funds.

7.3.8 However, RABS medical benefits, as proposed in Section 37 of the latest RABS Bill,¹⁷¹ revert to ‘the Administrator shall be liable to pay for healthcare services reasonably required for treatment, care and rehabilitation of injured persons provided in the Republic.’ The latest design thus no longer guarantees the affordability of medical benefits. The latest design, however, did not include discretionary inflationary increases.

7.3.9 A defined contribution design, as in 2009, will not necessarily cost less, but will guarantee affordability. The annual amount available to provide medical benefits can be determined, and the available funds should be allocated to strive for the best overall emergency medical care, rehabilitation, and long-term assistance. To determine the annual amount available for healthcare, discussions with all relevant parties and negotiations with potential service providers in each geographical area will be necessary. The extent to which a RABS Administrator must be involved will depend on alternative measures of control and guaranteeing reasonable benefits.

7.4 Affordability of compulsory third-party insurance benefits

7.4.1 Benefits in terms of common-law damages, as provided by CTPI, are very similar (or slightly higher if fewer limits) to those currently provided by the RAF. One would thus expect affordability to be similar to that of the RAF benefits. However, affordability is expected to differ for reasons discussed below.

7.4.2 Private insurers usually charge a gross premium, consisting of a risk premium (that covers the expected cost of claims) plus loadings for expenses, profit, and contingencies. The authors’ experience suggests that risk premiums for motor liability insurance are typically in the range of 60% to 70% of gross premiums, and furthermore

170 Draft policy of restructuring the RAF as compulsory social insurance in relation to the comprehensive social security system, *Government Gazette* No 32940, 12 February 2010, 6.5.2 p.55 and 8.5 p.74

171 Bill B17B-2017 available at <https://pmg.org.za/files/B17B-2017.pdf>

that private insurers should be able to write profitable business by adding 50% to the risk premium.

7.4.3 Table 6 showed that the estimated risk premium, in 2025 terms, if the claims experience is similar to what it has been at the RAF, was in the order of R20 billion in 2010, increasing to about R32 billion in 2015 and, thereafter, increasing significantly to about R90 billion in 2020. The estimated risk premium thereafter is unknown. An expenses, profit, and contingency loading of 50% to the risk premium (which can also be expressed as 33% of the total premium) is the norm for CTPI. If costs could be reduced by settling fairly, rather than at current inflated levels, then that will probably outweigh CTPI related profit additional costs – leading to CTPI being more affordable than RABS.

7.4.4 As discussed in section 2, a significant number of vehicles in developing countries do not comply with CTPI. The reason for not complying is often that the less affluent owners/drivers consider CTPI too expensive. It is unfair to allow vehicles on public roads if they cannot afford the damage that they cause. If one really cannot afford the cost of the damages caused, one should not be on the road. Collecting CTPI premiums through a mechanism such as a fuel levy will promote CTPI compliance. Suppose a large proportion of vehicles do not comply. In that case, CTPI might become unaffordable for complying citizens, who will also have to purchase accident coverage in the event of being injured by an uninsured vehicle. In some states in the USA, insurance policies covering injuries resulting from an uninsured vehicle are available,¹⁷² which is expected to be more affordable than disability coverage that pays out for any accident.

7.4.5 Non-compulsory products could be more affordable when compared to compulsory products because policyholders do not have to purchase the product if they consider it to be overpriced. If compulsory, the product must be purchased, irrespective of the price. Should the state make a product compulsory, some steps should be taken to prevent exorbitant pricing, such as regulating premiums or premium loadings.

7.4.6 Ideally, premiums should not be prescribed by the state. As noted in ¶10.4.4, fixed premiums were a key factor in the reluctance of private insurers to continue underwriting CTPI in South Africa during the 1960s. It is crucial to create a competitive market. Such a market should prevent excessive pricing that can be prevalent in monopolistic or oligopolistic markets.

7.5 Conclusion

7.5.1 Considering the tables in section 7.2 above, the RAF, in its current form, is unaffordable.

7.5.2 RABS benefits were initially designed to be affordable (on a defined contribution basis). The latest version of RABS departed from the original design, and the medical benefits are similar to those of the RAF. Initial estimates were that RABS would

172 <https://www.iii.org/article/background-on-compulsory-auto-uninsured-motorists>

be more costly than the RAF, but due to the alarming increases in RAF settlements, RABS will now probably cost less.

7.5.3 CTPI is likely to be more affordable than the current RAF system. One would expect private insurers to be significantly more efficient in defending claims. The authors' opinion is that the efficient handling of claims should result in a risk premium of less than half the 2020 level, approximately R90 billion (in current terms). These savings are expected to significantly exceed the required loading, making it much more affordable. However, note that if CTPI can be provided at an affordable level, this implies that the RAF should also be able to operate on an affordable level if managed appropriately.

7.5.4 To assess affordability, we consider three aspects: firstly, the benefits themselves should not exceed what is required. RAF loss of income benefits have increased out of control. RABS income support benefits seem excessive for unemployed persons, far exceeding other social security benefits (§9.4.3 below contains more detail). Benefits under CTPI will be similar to those under RAF, but hopefully, private insurers will be better equipped to defend claims.

7.5.5 Secondly, the cost of determining, administering, and paying the benefits should be insignificant when compared to the actual benefits. Results show that this depends more on the administrator's competency than on the benefits themselves.

7.5.6 Thirdly, the actual cost (which can only be determined long after the accident when all benefits have been finalised) should not significantly exceed original expectations. RAF benefits currently cost more than four times what would have been expected in 2010, at a time when they were already considered high. RABS benefits were designed to be affordable. Benefits provided on a defined-benefit basis should not lead to insolvency; however, benefit reductions will not be popular and might put the constitutionality of removing the right to take action against the wrongdoer into question. Private insurers are expected to defend claims in a manner that allows them to be kept under control; however, this is not guaranteed. Any change in the system should guard against the risk of them being unable to control costs.

8. REASONABLENESS

8.1 Introduction

8.1.1 The reasonableness of a road accident compensation depends on its purpose and nature. There are different perspectives on whether a system of road accident compensation constitutes a form of liability insurance for the benefit of the negligent motor vehicle driver or whether it forms part of a broader social benefits framework, indemnifying the drivers as well as compensating the injured parties. The RAF has a dual purpose and nature regarding road accident legislation – providing insurance to the negligent driver, as well as providing benefits to the victims of road accidents. Although the RAF is based on a fault-based structure standing in for the negligent driver/owner, the beneficiaries are the victims to whom the benefits are paid. Consideration is therefore

given to the reasonableness of the system regarding both the drivers/owners and the injured parties. RABS has a no-fault social benefit nature, and the only relevance to drivers/owners is that they are expected to fund RABS, in return for which they obtain indemnity against having to compensate the victim for the injuries caused. The purpose of liability insurance is to protect the policyholder from financial loss when at fault in an accident. By compelling liability insurance, CTPI also benefits injured parties by increasing the chance of recuperating losses. Although RABS is designed to provide social benefits to the victims and CTPI is designed to provide indemnity to drivers/owners, the reasonableness of benefits is considered in respect of both parties – the third-party injured person as well as the first-party insured driver/owner.

8.1.2 Reasonableness depends on the perspective being considered:

- From the perspective of the entity that pays the levy/premium, the system is reasonable if the levy/premium paid is not significantly more than the expected value of the benefit. In the case of the driver/owner, this implies that the levy/premium should not significantly exceed the expected compensation that victims could have demanded from the driver/owner, if not insured.
- From the perspective of the injured third party entitled to benefits, the system is reasonable if the compensation received is in line with the value of the losses caused by the wrongful driver/owner. The injured party also wants to retain his/her constitutional right to a dignified life.
- From the perspective of the entity that provides benefits, the system is reasonable if the premium/levy income received is sufficient to provide the specified benefits that must be paid, as well as the administration and legal costs. The fund or insurer must, therefore, not be forced to accept levies or premiums that are insufficient to cover the benefits they have to provide.
- From the perspective of the government and the general population, the constitutional rights of victims should not be impeded.¹⁷³ From this perspective, a system will be reasonable if it provides human dignity by allocating the limited resources to victims where it is needed the most; and advance human rights – by not taking away some rights of individuals without providing a benefit of similar value.

8.2 Reasonableness from the perspective of the negligent driver/owner

8.2.1 **RAF:** From the perspective of the negligent driver/owner, the RAF is there to compensate the injured party on behalf of the negligent driver in return for being paid the fuel levy. The RAF is a non-profit organisation, so the levy is only applied to the benefits paid by the RAF and the administration and legal costs incurred by the RAF. Therefore, if the benefits paid by the RAF do not overcompensate victims and if the administrative and legal costs incurred by the RAF to determine such reasonable

¹⁷³ South African Constitution, Chapter 1 Section 1a

compensation are justified, then the system will be reasonable for the combined group of drivers/owners who fund it. Even if the combined levy paid by all road users were reasonable, there should not be excessive cross-subsidisation between different drivers/owners for the system to be reasonable for each driver/owner. As discussed in §6.3.4, the fuel levy is an appropriate rating factor when calculating equitable premiums for third-party motor liability insurance. However, additional rating factors (for example, vehicle use, type of vehicle, age of driver) will lead to premiums more reflective of the underlying risks.

8.2.2 The fact that the RAF is not actuarially funded also implies that different generations of drivers probably subsidise each other, as levies paid are used to pay claims in respect of accidents that occurred in the past. This implies cross-subsidisation between different generations of drivers/owners.

8.2.3 There is often a significant delay from the accident date until benefits are paid. Some claims related to accidents that occurred more than 20 years ago are still pending settlement. A system will only be reasonable to a driver/owner (paying a levy now) if there is a high degree of certainty that the RAF will be able to fulfil its obligation to pay the injured party in the future and that the injured party cannot sue the wrongdoer in the future, should the RAF not fulfil its obligation. As discussed in Chapter 10.3, the sustainability of the RAF is questionable, which makes the RAF unreasonable for drivers/owners in the absence of any explicit government guarantee.

8.2.4 **RABS:** The RAF 2020 Annual Report¹⁷⁴ described the early history of RABS as follows:

The Road Accident Fund Commission (RAFC) completed its work in 2002, concluding that the current scheme of arrangement, being based on fault, insurance principles and common law, is inequitable, wasteful and open to abuse. The key change proposed by the RAFC was a move away from the insurance-based system of compensation to a system of defined and structured benefits paid on a no-fault basis.

Pursuant to the recommendations of the RAFC, Cabinet in 2011 approved a policy (the Policy) setting out the proposal for a new motor vehicle accident benefit scheme called the Road Accident Benefit Scheme (RABS), which was intended to replace the current motor vehicle accident compensation system administered by the RAF.

The RABS Bill was developed pursuant to the Policy and introduced in Parliament in 2017. The RABS Bill lapsed in 2018 during the transition between the 5th and the 6th Administration, but was revived in 2019 and is currently before the PCoT for further processing

8.2.5 The Portfolio Committee on Transport, after reconsidering RABS, resolved on 19 August 2020 to reject the Bill in its entirety, citing concerns raised during

174 Road Accident Fund Annual Report 2020, p.56

deliberations and indicating that amending the existing Road Accident Fund Act would be a more prudent approach.¹⁷⁵ The Committee recommended that the National Assembly should not pass the Bill.

8.2.6 As noted in ¶5.6.1, the Minister of Transport reaffirmed efforts to stabilise the RAF and finalise the Road Accident Benefit Scheme Bill, aimed at simplifying access to benefits for road accident victims.

8.2.7 Section 28 of the previously withdrawn RABS Bill states that:

No civil action for damages in respect of bodily injury or death of any person caused by or arising from a road accident shall lie against—

- (a) the owner or driver of a vehicle involved in the road accident; or
- (b) the employer of the driver.

8.2.8 No-fault RABS will be expanded to pay benefits to persons who are injured without anyone being at fault, but will still be funded by owners/drivers through a fuel levy. At-fault cyclists and pedestrians will thus start to receive benefits without making any contributions. However, as discussed in section 7.3, RABS benefits are expected to cost less than RAF benefits. It seems reasonable for drivers/owners to be charged a lower premium and still be indemnified against having to compensate the victim for any injuries caused. Additionally, at this lower cost, the wrongful driver will also receive no-fault benefits that they are not entitled to under the current fault-based RAF.

8.2.9 Compared to the RAF, RABS appeared to be more reasonable to drivers/owners. However, the following three factors can lead to RABS becoming unreasonable to drivers/owners:

- Firstly, it is uncertain whether abolishing the right to sue the wrongdoer will infringe on the Constitutional rights of victims. If injured persons retain the right to sue, the total burden on drivers/owners would increase substantially, as they would be expected to fund both a no-fault system and also carry separate liability insurance. Given the limited scope of the benefits to cover Loss of Income and the exclusion of General Damages, it is uncertain whether it will be possible to introduce RABS in its current form, which includes abolishment of the right to sue. If RABS is introduced and the right to sue is not abolished, it will be unreasonable to drivers and vehicle owners. Section 2 shows that few, if any, of the ‘no-fault’ systems of road accident compensation introduced in different jurisdictions abolish entirely the concept of ‘fault’ or delict or tort liability.
- Secondly, it should be noted that current RAF benefits are funded on a pay-as-you-go basis, where current fuel levies are used to compensate victims of past accidents. On the other hand, it is understood that RABS will be actuarially funded. This implies much higher fuel levies will be required when RABS is introduced, and the RAF is still in run-

175 Portfolio Committee on Transport, Report on the Road Accident Benefit Scheme Bill [B 17B – 2017], 21 August 2020

off. Such double levies will be unreasonable towards drivers/owners during the first five years after changing from RAF to RABS.

—Thirdly, some cross-subsidisation will still be present, for example, between cargo and passenger vehicles. However, such cross-subsidisation will probably be at more acceptable levels than the current RAF.

8.2.10 With CTPI, private insurance companies typically provide common-law damages, making it broadly similar to the benefits currently offered by the RAF. For reserving and reinsurance purposes, CTPI benefits are usually subject to limits, though these limits are generally not lower than the current RAF benefits. As a result, most of the considerations discussed above, excluding those explicitly related to the operational failures of the RAF, are equally relevant to CTPI.

8.2.11 From the perspective of the negligent driver, CTPI is likely to be more affordable than the current RAF system (section 7.4). This is because private insurers have an incentive to defend claims actively and settle them efficiently, which is likely to result in fewer over-settlements compared to the RAF. The associated cost savings from better claim management may well exceed the profit margins required by private insurers. Moreover, the timely settlement of claims helps reduce legal costs, providing better value for money and making the system more reasonable from the standpoint of both the driver and vehicle owner. It should also be noted that hit-and-run accidents have a similar financial effect to accidents involving uninsured vehicles, as both fall outside the scope of direct insurer recovery.

8.2.12 Private insurance companies determine premiums by considering many allowable rating factors. If premiums of one insurer allow for cross-subsidisation, then the adversely affected policyholders will select against that particular insurer, which will not only decrease premium volumes but also profitability. This usually leads to minimising cross-subsidisation, implying more reasonable premiums.

8.2.13 The insurance industry in South Africa is well-regulated (Horvey & Odei-Mensah, 2025). The risk that insurers will not fulfil their promises long after receiving premiums should not be a significant concern. However, it should be noted that this regulation implies that private insurers should be actuarially funded. This means that the requirement of a ‘double-levy’ for about five years after changing from RAF to CTPI will also be required. However, unlike the case with RABS, this problem can be addressed through financial reinsurance or private sector capital. Different ways of achieving this are beyond the scope of this paper.

8.2.14 It is likely that a significant number of vehicles will not comply with legislation introducing CTPI. Law-abiding citizens are not expected to subsidise non-compliant drivers/owners. Even if all drivers/owners comply, there will still be some hit-and-run accidents. As long as measures are in place to ensure that premiums are not set at levels leading to exorbitant profit, and as long as law-abiding citizens are not expected

to subsidise non-compliant drivers/owners, CTPI should be reasonable towards drivers/owners.

8.2.15 Without insurance, most drivers/owners will not be able to bear the burden of compensating the victims to whom they did wrong. If CTPI is considered reasonable towards drivers/owners (as it is under the conditions mentioned above), then for private passenger vehicles, a system (such as RAF or RABS) can be considered reasonable if the levy is similar or lower than the premium that the driver/owner would have paid under CTPI for the same benefits. The same applies to commercial cargo vehicles, although in this case, the actual cost will likely be passed on to customers, potentially the general public. Commercial passenger carriers will include this cost in their fares, payable by passengers who are also the beneficiaries of RAF or RABS benefits paid in the event of an accident.

8.2.16 **Uninsured drivers/owners:** An uninsured driver/owner can only lose the entirety of their estate, which may be far less than the damages caused by their negligent driving. The argument has been made that the maximum benefit that the RAF provides to a driver/owner is the amount of damages that they would have had to pay if the RAF did not exist, and that a poor driver/owner should pay a lower premium. The authors consider it reasonable to expect all drivers to contribute proportionately to the expected damages caused, not limited to the amount that they can afford before filing for bankruptcy.

8.2.17 **Administration of benefits:** The deterioration in the RAF's efficiency to defend claims over the past 25 years is discussed in detail in section 7.2. It should be noted that this quality of administration started from a low base, as stated by the RRAFC:¹⁷⁶

The point was made in a number of submissions that the quality of administration is essential to the ultimate success of any scheme of road accident compensation. There was considerable scepticism about the capacity of the current RAF to achieve the required quality. RAF Management itself conceded that 'virtually every aspect of the Fund's structure, operational mode and culture presented problematically'.

There is always the potential for failure. However, the Commission prefers to take the approach that it is feasible, by a combination of legislative directions and guidelines, to ensure high quality decision-making, effective external scrutiny of the administering authority and a departure from the traditional adversarial approach to the resolution of benefit claims so as to achieve the objectives of the scheme.

8.2.18 The reasonableness of any system not only depends on the underlying system, but also on how it is administered. This maladministration is the primary reason the RAF is not reasonable. If a similar body were to administer RABS, the reasonableness would also be adversely affected. The reasonableness of CTPI depends on the quality of administration of the insurers involved.

176 Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 41, p.1321

8.3 Reasonableness from the perspective of the injured

8.3.1 From the perspective of the injured person, consideration is given separately to medical benefits (section 8.4), Loss of Income (section 8.5), General Damages (section 8.6), and professional fees incurred by the injured person to prove the claim (section 8.7).

8.3.2 The RAF reimburses past medical costs, issues undertakings¹⁷⁷ to pay future medical costs, compensates for Loss of Income, pays General Damages for serious injuries, and professional fees to prove a claim. In respect of injured persons, it is estimated¹⁷⁸ that 6% goes to medical benefits, 53% to Loss of Income, 28% to General Damages, and 13% to professional fees.

8.3.3 RABS intends to facilitate medical treatment (including rehabilitation) and pay an income support benefit, all on a no-fault basis. Medical benefits would exceed 50% of total benefits paid.¹⁷⁹

8.3.4 Benefits payable in respect of CTPI are expected to be for the same heads of damage as currently paid by the RAF, except that, instead of undertakings, insurers usually pay a lump sum equal to the expected present value of future benefits. The percentages paid in respect of each head of damage will be expected to differ from those paid by the RAF, because better defence of claims is expected to affect Loss of Income much more than it will affect medical benefits.

8.3.5 It is likely that a significant number of vehicles will not comply with CTPI legislation. This will necessitate that road users, including drivers, passengers, cyclists, and pedestrians, obtain first-party injury insurance to protect themselves. It is unreasonable for access to compensation to depend on whether the wrongdoer is insured.

8.4 Reasonableness of medical benefits provided to the injured

8.4.1 The RRAFC¹⁸⁰ considers:

The major objective of a scheme of road accident compensation is to promote the rapid and effective rehabilitation of road accident victims and to ameliorate the unavoidable consequences of accidents by establishing a comprehensive system of benefits. The legislation cannot be self-executing. The administration of the legislation will shape the nature of the scheme.

8.4.2 The most critical need of injured persons is to avoid long-term effects from their injuries, which is heavily affected by the quality of medical care received during

¹⁷⁷ Road Accident Fund Act, 1996 (Act No. 56 of 1996), Section 17(4)(a)

¹⁷⁸ This is calculated from amounts paid during the five years April 2019 to March 2024 as shown in the RAF Annual Reports, excluding amounts paid in respect of deaths and excluding RAF costs.

¹⁷⁹ Presentation: Road Accident Benefit Scheme (RABS), delivered by the Actuarial Society of South Africa, 31 May 2018

¹⁸⁰ Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 41, p.1321

the golden hour¹⁸¹ (following the accident) and the rehabilitation that follows thereafter. Better medical treatment will reduce loss of earning capacity and loss of enjoyment of life, potentially saving more on the required payments for Loss of Income and General Damages compared to the cost of facilitating better medical treatment.

8.4.3 The RAF reimburses past medical expenses (either directly to the injured claimant or supplier claims to service providers) and usually undertakes to reimburse future medical expenses as they are incurred. However, the RAF medical benefits are not reasonable at all, for various reasons:

- In practice, reimbursement only occurs long after the treatment.
- Due to the complexity of the claims process, many eligible expenses are not claimed at all, resulting in the financial burden being shifted to public healthcare, private medical schemes or the injured party who has paid out of pocket.
- As discussed in section 4, the current system hardly provides support for rehabilitation, which is critical to the long-term recovery of an injured person.
- Injured persons often lack the financial means to pay upfront and claim later, which means that they frequently do not receive the necessary treatment at all.

8.4.4 Many of the issues described above are not systemic, but rather the result of poor management. Evidence shows that timely and effective trauma care and rehabilitation significantly enhance functional recovery and the probability of early return to work, which in turn can lead to a meaningful reduction in projected Loss of Income and General Damages. For example, a study of major-trauma survivors in South Africa revealed that about three-quarters had returned to work within six months, with higher physical-function scores at discharge strongly predicting the outcome (Bharath et al., 2025).

8.4.5 RABS is designed to facilitate access to medical care, although it will be limited to what is affordable within the system. Actuarial estimates in 2018 showed RABS expected expenditure on medical and rehabilitation as 12.8 billion, compared to R4.2 billion by RAF.¹⁸² With a much higher amount spent on medical benefits, it is to be expected that medical benefits provided by RABS will be significantly better than those offered by the RAF. Compared to the RAF, RABS thus appears to be much more reasonable to injured parties. Part A of the Road Accident Benefit Scheme Bill¹⁸³ specifies that the Administrator must pay for required and appropriate treatment, care, and rehabilitation. The Administrator may enter into agreements with public and private sector healthcare services to provide the services.

8.4.6 Section 37(1) of the Bill obliges the Administrator to fund ‘emergency

181 Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 29 covers the golden hour and Chapter 30 covers rehabilitation in detail.

182 National Treasury. Submission to the Portfolio Committee on Transport on the Road Accident Benefit Scheme Bill, 5 July 2018, p.4

183 Section 37 to Section 40 of the Road Accident Benefit Scheme Bill (B17B–017)

and acute care,' including pre-hospital care and inter-facility transfers. This provision emphasises the importance of immediate medical attention to preserve life and bodily function in the critical period following an accident. Additionally, the Bill envisions comprehensive rehabilitation through Section 37(1)(f) and 40, which allows for ongoing rehabilitative care and the development of an 'individual treatment and rehabilitation plan' tailored to the beneficiary's medical, functional, and vocational needs. This approach underscores a shift from lump-sum payouts to structured and continuous medical support, promoting recovery and reintegration into society.

8.4.7 CTPI will be based on reimbursing past medical costs, similar to the RAF. This means that medical expenses are typically covered after the fact, rather than enabling upfront access to care. As a result, CTPI may lead to less effective medical treatment when compared to a model in which a portion of the premium or levy is directly allocated to improving medical services themselves, rather than reimbursing costs. Private insurers aim to make a profit and are expected to refund only the medical expenses necessary to settle the claims.

8.5 Reasonableness of Loss of Income benefits to the injured

8.5.1 The RAF pays a Loss of Income benefit equal to the present value of the difference between the injured person's expected income had the accident not occurred and their expected income having regard to the accident, limited to a maximum annual loss (R373 822 with effect from 31 July 2025¹⁸⁴). While, in theory, this is reasonable, in practice, the injured person's Loss of Income is often overestimated. In the authors' experience, overestimation is particularly common in cases involving children, individuals who are not seriously injured, and in instances where expert witnesses produce standardised reports without adequately considering the injured person's specific circumstances.

8.5.2 Giesler & Schreiber (2014) estimated that the projected ultimate income that children injured in road accidents would have earned (had they not been injured), on which their Loss of Income compensation was based, was more than double that of the projected ultimate income of all children of the same age. Later estimates by Schreiber¹⁸⁵ showed that the apparent 100% overstatement of ultimate income increased to 400% by 2020. Section 10.2 provides a more detailed consideration of this overestimation.

8.5.3 The Road Accident Fund Amendment Act¹⁸⁶ limit on annual Loss of Income implies that high earners often receive less than their actual Loss of Income. Considering the limited resources, skewed income distribution, and unavailability of unlimited reinsurance coverage, the authors think it is reasonable to have limits on Loss

184 Board Notice 813 of 2025, *Government Gazette* No. 53038, 25 July 2025

185 Lisa Schreiber, 'Accuracy of historic career path predictions', presented at the Prediction of Cognitive, Educational and Occupational Achievement: A Forensic Perspective workshop (Earnings Stream), hosted by Neuropsychology SA, March 2020

186 Section 17 of the RAF Act (as amended by the Road Accident Fund Amendment Act 19 of 2005)

of Income compensation. It is also worth noting that individuals who earn enough to have their losses capped often have private insurance or income protection arrangements in place to cover such losses.

8.5.4 Long delays in receiving compensation are problematic, as the compensation is not received when it is most needed. A prime example of this is for self-employed individuals who do not have access to sick leave, as the lack of income during their recovery period can lead to long-term adverse effects on their earnings, even after they have physically recovered.

8.5.5 The experience of the authors is that, on average, Loss of Income paid by the RAF that is based on estimates by psychologists is usually more than the reasonable amount of the expected loss, but often unreasonable when considering the long delay and the high professional fees that the injured person must incur to prove the loss. As mentioned in section 8.4, the apparent overcompensation is unreasonable towards the drivers/owners who pay the fuel levies.

8.5.6 RABS provides for both temporary and long-term income support benefits.¹⁸⁷ These benefits are based on after-tax income immediately before the accident, but not less than 'average annual national income', and are limited to a cap.

8.5.7 Section 42(5) of RABS defines the temporary income support benefit to be equal to the above defined income, commencing after a deferred period of 60 days (but not earlier than age 18) and continuing for a period specified by a medical practitioner, but only to a maximum of two years after the accident and not after age 60.

8.5.8 Section 43(5) of RABS defines the long-term income support benefit to commence after a deferred period of two years (but not earlier than age 18) and continuing until a maximum age of 60. Item 2 of Schedule 1 of RABS defines the annual benefit equal to 75% of the income described above, minus the post-accident earning capacity.

- 8.5.9 The income benefits appear unreasonable for several reasons:
- **Disparity with other disability systems:** It seems inequitable that a person who is injured in a motor vehicle accident they caused should receive a higher disability benefit than individuals who are disabled due to illness or other non-accident-related causes.
 - **Calculating the benefits** as 75% of capped income earned before the accident, minus uncapped earning capacity after the accident, seems unfair. Many higher earners who still have some earning capacity will not receive any benefit. Inadequate coverage for higher earners: For individuals earning above the statutory cap, it is arguably unfair to receive a benefit significantly below their actual Loss of Income, while simultaneously losing the common-law right to sue for the shortfall.
 - **Mismatch with actual Loss of Income outcomes:** The formula produces results that diverge significantly from actual Loss of Income. Some individuals may receive much more than they would have otherwise lost, while others receive much less. As two extreme

187 Section 41 to Section 42 of the Road Accident Benefit Scheme Bill (B17B-017)

examples, a person who was disabled before the accident and incurred minor injuries in the accident, who was already receiving disability benefits before the accident, will continue to receive their disability benefits and, in addition, receive an annual benefit equal to 75% of the average national income. On the other hand, a person who earns three times the cap and is injured to the extent that their earning capacity is reduced by 75% will not receive any benefit.

— **Children and students are particularly disadvantaged:** Income support benefits for children and students are typically low compared to their potential Loss of Income.

8.5.10 The recipients of income support benefits are not entitled to inflationary increases, but the Minister of Transport may, subject to affordability, allow for inflationary increases. Other state social security benefits also do not receive guaranteed increases. The proposed increase, although not guaranteed, is consistent with the current practice for state old-age and state disability benefits.

8.5.11 Some individual claims seen by the authors involved cases where the claimant did not receive appropriate medical treatment following the accident. In such cases, the claimant's Loss of Income is often due not only to the injuries sustained in the accident but also to the consequences of inadequate medical care. Where a claimant's common-law Loss of Income significantly exceeds the RABS income support benefit, and where the inadequate treatment can be seen as medical negligence, injured parties may be inclined to sue the state for medical negligence in addition to claiming RABS benefits.

8.5.12 CTPI: Loss of Income benefits will be based on the same principles as current RAF benefits. In many cases, it is expected that benefits will be lower than the current RAF benefit, due to more competent defending of claims. These are lower than current benefits and should be reasonable to the injured parties, as they will still have access to the courts if they consider the benefit to be lower than their expected loss.

8.6 Reasonableness of General Damages to the injured

8.6.1 Under the current RAF system, General Damages are awarded for non-pecuniary losses such as pain and suffering, emotional shock, disfigurement, loss of amenities of life, and loss of earning capacity. These damages aim to compensate for subjective harm and are assessed through judicial precedent, resulting in widely varying awards that depend on judicial discretion and the skill of advocacy. Actuaries practising in this field will have heard many contrasting explanations for the difference between future Loss of Income and future loss of earning capacity. It has become customary to consider all future loss of earning capacity as a Loss of Income, subject to the annual cap on income loss.

8.6.2 When a wrongdoer causes pain and suffering, it is reasonable for the victim to be compensated. Victims would typically expect (and may even be entitled to) such compensation, even in cases where the injury is not severe. However, due

to the relatively high legal costs associated with awarding General Damages in cases involving non-serious injuries, the Road Accident Fund Amendment Act¹⁸⁸ restricts these benefits to victims who are seriously injured. This limitation is both reasonable and practical, unless such a benefit can be provided at a cost that is reasonable relative to the value of the benefit.

8.6.3 **RABS:** General Damages are not typically aligned with the principles of social security: they are traditionally awarded as compensation by the wrongdoer, not as part of a general benefit system. It would therefore be unreasonable to provide General Damages on a no-fault basis, as doing so undermines the concept of fault-based accountability. However, it is equally irrational to remove the common-law right to sue for General Damages in cases where the injured party was harmed due to someone else's negligence. Suppose a person is entitled to sue for General Damages when harmed by any other negligent party. Why should an exception be made when a negligent driver or vehicle owner causes the harm?

8.6.4 **CTPI:** A fault-based system will allow for General Damages. For the non-seriously injured, the costs incurred in proving negligence are disproportionately high compared to the benefit. Although it is reasonable for non-seriously injured persons to expect compensation for General Damages, the disproportionate costs require some limits (similar to RAF benefits) or a simplified solution to reduce disproportionate professional fees.

8.7 Reasonableness of covering fees incurred by the injured

8.7.1 **RAF:** Given the complexity of the claims process, few injured persons can claim successfully without legal assistance and multiple medico-legal reports. In light of the RAF and court requirements, claimants are effectively forced to incur such costs to substantiate their claims properly. The current practice of the RAF, refusing to reimburse any costs incurred by claimants who lodge claims directly (without legal representation), or in cases where a summons has not been issued, is unreasonable and forces claimants to have no option but to incur professional legal fees.

8.7.2 It is reasonable for the RAF to cover professional fees. It is unreasonable for the RAF to insist on expert reports before settling claims, but refuse to cover the costs of such reports unless the claimant has legal representation and a summons has been issued.

8.7.3 **RABS:** Section 64 of the RABS bill specifies that:

Unless otherwise provided in this Act, the Administrator shall not be liable to contribute to the costs of an injured person, claimant or beneficiary, including his or her medical and legal costs, to prepare and submit a claim or an appeal or to meet any requirement in this Act.

The Administrator must assist the injured person, claimant or beneficiary to obtain the documents required to submit a claim and to process a benefit.

188 See footnote 186 above.

The Administrator must pay the reasonable and necessary costs associated with obtaining the documents contemplated ...

8.7.4 This is only reasonable if the administrative process of claiming benefits is not costly to the injured. In a no-fault system, such costs are expected to be significantly lower than in a fault-based system, as negligence on the part of the insured driver does not need to be proven. However, the injured party will still have to prove that he/she was in a road accident before qualifying for benefits.

8.7.5 CTPI: Professional fees are expected to be covered under CTPI. However, these are expected to be significantly lower than those incurred by the RAF, as one would expect many more settlements to result in fewer cases going to court, as well as fewer bureaucratic hurdles to submit claims. Insurers will likely also have sufficiently qualified staff to investigate claims and base them on facts rather than speculation.

9. EQUITY

9.1 Introduction

9.1.1 This section analyses who pays and benefits from the current RAF structure (and proposed RABS structure) to discover the cross-subsidies involved. Since either of these would be financed by means of a fuel levy, a big part of the analysis of the equity of these structures is an analysis of the equity of financing via a fuel levy. Section 6 contains a discussion of general considerations related to the use of a fuel levy, including points raised by previous commissions. This section looks at the specific South African vehicle population and their fuel use and accident likelihood together with the benefits of the RAF and proposed RABS structures, and is quantitative in nature. One analysis in this section is from the viewpoint of the drivers/owners, considering them as the primary beneficiaries, viewing the RAF as third-party liability insurance. A second analysis is from the viewpoint of the injured, considering them as the primary beneficiaries, viewing the RAF as a system in place to ensure that those injured in road accidents receive compensation. This second view is not unreasonable, as without such a system, an at-fault driver may not be able to sufficiently compensate a victim, either due to insufficient financial means or because they may otherwise escape accountability.

9.1.2 From the viewpoint of the driver/owner, section 9.2 looks at whether levies paid by different vehicle categories subsidise each other. Under both the RAF and the proposed RABS, benefits are funded by fuel levies and in return, the driver/owner receives indemnity against being held liable for damages caused by their negligent driving. The risk of causing damage is not the same for all vehicles. For each group of vehicles, the proportion of total premiums paid is compared to the proportion of benefits received. Neither the levies nor the benefits are known for each group of vehicles, and assumptions are made to estimate these proportions.

9.1.3 After section 9.2, having considered how much vehicle drivers benefit

from the RAF as third-party liability cover compared to what they pay, we consider another angle, that of the victims, in section 9.3. As mentioned in §1.1.6 the viewpoint of victims is an increasingly relevant angle.

9.1.4 Potential road accident victims who only cycle or walk to their destinations do not pay anything toward the protection they receive under either scheme.¹⁸⁹ This is even though around 40% of road fatalities involve pedestrians (Bantjes et al., 2024). Moreover, the National Household Travel Survey indicates that a significant proportion of travel in South Africa is undertaken on foot.¹⁹⁰ From a third-party liability perspective, these cyclists and pedestrians do not cause any damages, and it is thus equitable for them not to contribute. From the victims' perspective, they are the beneficiaries of the scheme. When comparing cross-subsidisations among these beneficiaries, we considered it more practical to examine households rather than individuals. Accordingly, section 9.3 compares the expected relative contributions paid by each household to the relative expected benefits as victims. To understand cross-subsidies in terms of this criterion, multivariate analysis is used to fit a linear regression model, and the expected ratio is determined based on different household features. The section 9.3 equity results will differ according to whether the benefits are per current RAF design or per the proposed RABS design.

9.1.5 The comparisons discussed above (per vehicle and household) use fuel levies as the contributions and are hence applicable to both RAF and the proposed RABS. Fuel levies can also be used to fund CTPI. However, private insurance companies typically determine premiums by considering multiple rating factors. If fuel levies are implemented, they will likely be at a lower level and then supplemented by additional premiums that vary among drivers, depending on other rating factors. If premiums of one insurer allow for cross-subsidisation, then the adversely affected policyholders will select against that particular insurer, which will not only decrease premium volumes but also profitability. This usually leads to minimising cross-subsidisation, implying more equitable premiums.

9.1.6 In section 9.4, we briefly comment on some further forms of cross-subsidisation – including between generations and between different ways of being injured.

9.2 Viewpoint of the driver/owner

9.2.1 This section aims to discover the proportion of RAF fuel levies paid by drivers of different vehicle types, and to compare that to the likely cost of damage caused by such drivers. Neither the levies nor the cost of damage caused by the different vehicle

¹⁸⁹ For people who sometimes drive and sometimes cycle or walk, they only pay RAF levies in approximate proportion to their trips by motor vehicle, with their exposure to accidents while walking or cycling not incurring any additional expense per kilometre travelled.

¹⁹⁰ Of nearly 42 million household members represented, 17 million (40%) had 'walking all the way' as their main mode of travel, followed by 11 million who used a taxi, and 6 million who used a car. Statistics South Africa, 2022. National Household Travel Survey 2020: Statistical Release P0320. Revised March 2022. Pretoria: Statistics South Africa

types were readily available. These were estimated as set out in a different working paper,¹⁹¹ that explains the assumptions, procedures, and results in more detail. This paper provides a brief explanation of the results.

9.2.2 The percentage of damage caused, in terms of potential RAF claims against such drivers/owners, was assumed to be directly proportional to the number of fatal accidents associated with such vehicles per annum. Note that by this assumption we are not assuming that only fatal accidents cause damage or major injuries. Rather, since both fatal and non-fatal accidents are caused by the same factors: exposure on the road and mistakes/accidents on the road, the number of fatal accidents per exposure will be positively correlated to the number of non-fatal accidents per exposure. In this way the frequency of any sub-type of accident can serve as a proxy for the frequency of all types of accidents. As data are not available on non-fatal accident types per vehicle, we assume that the number of non-fatal accidents for a vehicle type will be proportional to the number of fatal accidents for that vehicle type. This is in line with the approach in the 2016 research and development report on the cost of crashes in South Africa¹⁹² which uses the count of fatalities to estimate economic damage. That report found historical ratios of 4.6 serious injuries and 14.9 slight injuries for each fatality. Also note that the number of vehicles involved in fatal crashes is around 1.3,¹⁹³ and that nearly 90% of fatal crashes can be attributable to human factors.¹⁹⁴ Together, this means that the majority of vehicles involved in fatal accidents had at-fault drivers. It is then not unreasonable to assume a link between the distribution of vehicles involved in fatal accidents, and the distribution of vehicle types that received third party liability benefits due to damage cause by at-fault driving.¹⁹⁵

9.2.3 The proportion of levies paid per vehicle type was inferred from the kilometres travelled per annum per vehicle type multiplied by a fuel-economy measure per vehicle type. Both kilometres-travelled and fatalities per vehicle type are publicly available from the Road Traffic Management Corporation (RTMC) for the years 2001–

191 Working paper 'Comparative Analysis of RAF Contributions and Benefits per Vehicle Type', Rodda, D

192 See Fnt 1; https://www.rtmco.co.za/images/rtmc/docs/research_dev_rep/September%202016.pdf

193 The average number of vehicles involved in any fatal vehicle crash is in the region of 1.3, with an average of 1.2 fatalities per fatal crash, and the average number of vehicles involved in any vehicle crash in general is around 1.7 (p.32 of the 2016 cost of crashes report, and p.10 of the 2010 RTMC report 'Fatal Crashes in Context' available at https://www.rtmco.co.za/images/rtmc/docs/research_dev_rep/South-African-Fatal-Crashes-in-Context---Dec2021---Fin.pdf).

194 See, for example, page 17 of the 2023–2024 Festive State of Road Safety Report available here: https://www.rtmco.co.za/images/rtmc/docs/traffic_reports/festive/2023---2024-Festive-State-of-Road-Safety-Report-.pdf

195 The authors did some sensitivity tests and found the core results would not change if it was assumed that a big proportion of vehicles involved in fatal accidents were innocent. For those tests it was assumed that the innocent vehicles were then distributed according to the kilometres driven per year per vehicle type, and that only the remaining at-fault vehicle drivers were receiving RAF benefits.

2008.¹⁹⁶ Multiplying the kilometres by the fuel economy derived from Merven et al. (2012), resulted in the following percentage of RAF fuel levies paid by each vehicle type (Table 10).

TABLE 10. Estimate of RAF levies paid by vehicle type

Vehicle type	2001	2002	2003	2004	2005	2006	2007	2008	Average
Motorcars	44%	43%	43%	42%	42%	41%	40%	39%	42%
Minibuses	7%	7%	7%	7%	6%	6%	6%	6%	6%
Buses	2%	2%	2%	2%	2%	3%	3%	3%	2%
Motorcycles	1%	1%	1%	1%	1%	1%	1%	1%	1%
LDVs	25%	25%	25%	25%	25%	25%	25%	25%	25%
Trucks	22%	23%	23%	24%	24%	25%	26%	27%	24%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%

9.2.4 The RTMC data also contain, for each of these years, how many vehicles of each type were involved in fatal accidents, amounting to somewhere between 10 000 and 15 000 vehicles each year. The proportion of fatal accidents per vehicle type were calculated as in Table 11,¹⁹⁷ and these percentages serve as a proxy for the proportion of benefits¹⁹⁸ afforded to at-fault drivers.

TABLE 11. Estimated proportion of fatal accidents by vehicle type

Vehicle type	2001	2002	2003	2004	2005	2006	2007	2008
Motorcars	50%	49%	49%	51%	53%	52%	53%	49%
Minibuses	11%	12%	12%	13%	12%	11%	10%	10%
Buses	3%	2%	2%	2%	2%	3%	2%	2%
Motorcycles	2%	2%	2%	2%	2%	2%	2%	2%
LDVs	23%	23%	24%	21%	20%	21%	21%	25%
Trucks	12%	12%	12%	11%	10%	11%	11%	11%
Total	100%	100%	100%	100%	100%	100%	100%	100%

9.2.5 If a vehicle type pays a higher percentage of the RAF's levies than that vehicle's estimated share of benefits, then they may be subsidising drivers of other vehicle

¹⁹⁶ Data available at: https://www.arrivealive.co.za/documents/Vehicles_in_Crashes_2001_2008.xls
¹⁹⁷ The source data indicates that 99.8% of vehicles-kilometres driven are by one of the six types of vehicles in the table, the vehicles of other types were excluded from analysis, and if the type of vehicle involved in a fatal accident was unknown per records, that vehicle was also excluded from the counts in the analysis.
¹⁹⁸ Note that Table 11 already implicitly incorporates the higher likelihood of causing damage when driving vehicles with more passengers – the authors calculated separately that buses have the highest rate of experiencing a fatal accident per vehicle-kilometre driven (count of buses involved in fatal accidents divided by kilometres driven by buses), followed by minibuses. But buses compensate for than by paying more in RAF levies per kilometre driven, using more than twice as much fuel per kilometre driven compared to minibuses.

types. Table 12 shows the percentage of levies paid per vehicle type, divided by the estimated percentage of RAF benefits for that vehicle type. Ratios exceeding 100% indicate that they are paying more than the benefits they are receiving.

TABLE 12. Percentage of RAF levies divided by estimated benefits by vehicle type

Vehicle type	2001	2002	2003	2004	2005	2006	2007	2008
Motorcars	88%	88%	88%	83%	78%	78%	74%	79%
Minibuses	59%	56%	57%	50%	55%	57%	60%	60%
Buses	91%	107%	117%	124%	118%	99%	126%	128%
Motorcycles	31%	32%	30%	33%	28%	29%	25%	25%
LDVs	109%	107%	101%	115%	122%	120%	118%	97%
Trucks	183%	188%	202%	210%	230%	221%	236%	241%
Total	100%	100%	100%	100%	100%	100%	100%	100%

9.2.6 The winners in the equity side are motorcycles and minibuses, which in 2008 paid 0.6% and 6% of the RAF levies, respectively, but made up 2% and 10% of the expected benefits, respectively. Motorcycles accounted for 1.4% of the kilometres driven (benefiting from a much lower fuel use per kilometre), and minibuses accounted for 5.6% of the kilometres. The clear losers in the cross-subsidies are trucks and, to a lesser extent, buses, which subsidise everyone else, paying more per rand benefit than other drivers. Trucks are charged particularly highly, as they contributed 25% of the RAF levies in 2008 but truck drivers only receive an estimated 10% of the benefits. It is understood that road freight, comprising trucks and light duty vehicles (LDVs), consume about half the national use of petrol and diesel, and hence provide half the RAF levies.¹⁹⁹ From the point of view of the victims, considered more in section 9.3, this represents a significant subsidy from firms to households. With the decline in rail volumes observed in recent years²⁰⁰ truck contributions to the RAF may be more now than the 24% in 2008 in Table 10, which was already up from 22% in 2001.

9.2.7 In social security it is common to have some cross subsidies from lower risk to higher risk groups in the principle of solidarity. This is socially acceptable in the case, for example, where the rich may be subsidising the poor. On the other hand, there may be a public feeling of unfairness if the safe drivers are forced to cross-subsidise third party insurance for risky drivers to significant degrees, and trucks cross-subsidising everyone else does seem inequitable.

9.2.8 Vehicle drivers under RABS would have the same benefits as they do under RAF in the sense that they avoid the legal responsibility of having to reimburse

199 For example, see Figure 0–25 in South Africa’s 2016 Integrated Energy Plan available at: https://www.dmre.gov.za/Portals/0/Energy_Website/files/IEP/2016/Integrated-Energy-Plan-Report.pdf

200 For example, see p.6 in the 14 August 2024 overview presentation by Transnet available at: https://static.pmg.org.za/240814_TRANSNET.pdf

claimants for their wrongful driving. However, they would be expected to pay less in levies (according to estimates that put the total RABS costs lower than the total RAF costs). Hence, the analysis already done applies equally to the RABS.

9.3 Equity among households

9.3.1 Having considered in the previous section how much vehicle drivers benefit from the RAF as third-party liability cover compared to what they pay, consideration is now given to another angle, that of the households, comparing the relative contributions of each household with the estimated benefits paid to each household (in the form of compensation).

9.3.2 Utilising publicly available nationally representative survey data²⁰¹ we could estimate the rand contribution, directly and semi-directly, to RAF levies of each sampled household. This includes both fuel purchases (of which a portion goes directly to RAF levies) and public transport expenses (of which a portion goes semi-directly to the RAF through the fare's contribution to the fuel of the taxi or bus²⁰²). Expenditure is recorded at the household level in the survey; therefore, RAF levies paid were calculated at the household level, not the individual level.

9.3.3 To get an estimate of the expected benefits that a household qualifies for, consideration is given to the individuals in each household in the same data. Individual benefits were added to get a household benefit. Instead of attempting to calculate the actual expected benefits due to each individual, the proportion of total expected RAF benefits due to each individual is estimated. Two main assumptions are required in this regard. Firstly, it is assumed that the total RAF benefits nationally are comprised of 50% general damages and medical-related benefits, and 50% loss of income (LoI) related benefits.²⁰³ It is assumed that total claim amounts for general damages and medical-related benefits are on average

201 We chose to use the latest StatsSA Living Conditions Survey of 2014/2015 as it is the most recent survey we found that makes nationally representative income and expenditure microdata publicly available.

202 Assumed, on the conservatively high side, to be 35% of public transport expenditure going to fuel. There are various ways to arrive at that rough estimate, one is to take the transaction capital estimate of R40bn spend on fuel by the taxi industry annually in the 2022 financial year (<https://techfinancials.co.za/2022/05/18/how-much-does-the-minibus-taxi-industry-spend-annually-to-buy-fuel/>) and divide that by the R117bn assumed annual revenue of the taxi industry, which is R90bn revenue in 2017 terms increased to R117bn in increased revenue in more recent year terms (R90bn in 2017 comes from <https://businesstech.co.za/news/wealth/163271/how-much-money-taxis-make-in-south-africa/>). The latest 'Taxi fare (minibus taxi)' portion of the CPI index was 63.5 in March 2017, and 82.9 in March 2022, a 30.5% increase. Another method is to note that fuel accounts for 41% of a minibus taxi's direct operating costs according to the Green Cape report 'Enabling the electrification of the minibus taxi industry in South Africa to unlock the potential for local manufacturing' <https://greencape.co.za/wp-content/uploads/2025/02/Electrification-of-minibus-taxi-industry-industry-brief.pdf> (R2.49 for diesel and R3.58 for maintenance per kilometre). Assuming a 20% profit margin gives an estimate of 34% of revenue going to fuel costs.

203 Per the 2024 RAF Annual Report, only 10% of claim payments made were for death claims (predominantly loss of support claims) or medical claims. Those benefits are not considered in this research.

the same for each type of individual, but that the percentage chance of being in an accident is higher for the group aged 18–60, less for the group aged above 60, and lowest for those aged 18 and under, according to RTMC fatality statistics.²⁰⁴ The second main assumption relates to the LoI benefit: it is assumed that the true expected claim amount for a person will be a fixed proportion of their maximum possible claim amount in the case of 100% disablement. In other words, if one person had double the national median potential LoI claim for maximum 100% disablement (without considering the RAF income cap), their expected LoI claim (after incorporating residual earning capacity) would also be double the national median expected LoI claim (after incorporating residual earning capacity).

9.3.4 To calculate the maximum potential LoI benefits, standard actuarial assumptions²⁰⁵ were applied to get annuity factors to apply to individuals' income from work or business to estimate the lump sum that would be awarded if they were disabled in an accident and the RAF had to provide full LoI benefits to provide for their entire income from salary, wage or business. Such assumptions incorporate the common practice nowadays of industrial psychologists providing optimistic, potentially overstated expectations for loss of future income for children injured in road accidents. Non-income-earning children under 25 were assumed to be eligible for a starting income averaged between the highest income earner in their household and that of an average person starting a job with a basic level of post-matric qualification.²⁰⁶ Lost income was assumed to increase at an annual real rate of around 3% for ages from 18 to 45 (the level at which income would double between the ages of 22 and 45, a standard assumption). Children under the age of 18 were assumed to have their income deferred until age 18 (being discounted to the present day for the years before age 18). This method would be used to get the maximum potential benefit for each individual, and then multiplied by their respective relative chance of being in an accident (based on whether they were over 60, under 18, or between) to give a number that is assumed to be proportional to the individual's actual expected LoI benefit.

9.3.5 Since we were only interested in the proportion of expected RAF benefits that each qualifies for (as a proportion of the total expected benefits of the whole population) and not the rand amount, the only scaling that needed to take place was such as to ensure that the total expected general damages and medical benefits assumed for the population was 50% of the total expected benefits. The total expected LoI benefits were the other 50%. To do this, one constant was derived to multiply by the probability of accident for each individual to get expected general damages and medical benefits, and a different constant to multiply by the product of maximum LoI benefit and probability

204 These probabilities of being involved in a fatal accident reflect the fact that children and the elderly travel less.

205 As used in the authors' work in calculation of estimation of damages in RAF cases.

206 This average was assumed to be R150 000 in the year of the survey, not far from the average found in a study mentioned in the article available at <https://businesstech.co.za/news/wealth/109405/how-much-you-should-be-earning-in-your-20s-in-south-africa/>

of accident to get expected LoI benefit, such that the total expected RAF benefits were R20 billion, of which R10 billion was for general damages and medical, and the other R10 billion for expected LoI. (This after applying the relevant sample weights, that is, multiplying the potential benefit per person by the number of individuals that the sampled individual is representative of, so that the R20 billion is an expected total benefit for the entire population.) Note that we only consider injury claims in this paper. However, results will not differ significantly if Loss of Support and Funeral benefits are added, as the total amounts are small compared to injury claims.

9.3.6 Finally, these rand benefits were aggregated per household to get the expected benefit for each household and divided by the total R20 billion benefit to get a percentage of the total benefit expected for each household. (The percentages are independent of the chosen total.)

9.3.7 If one were to judge the fairness of the amount of RAF levies paid per household against the criteria of levies needing to be proportional to the expected benefits, then each one percent of levies paid would need to correspond to one percent of expected benefits. In other words, the ratio of the percentage of levies paid to the percentage of expected benefits would be 100% if fair in this sense; if above 100%, it would mean they are paying more than their risk and cross-subsidising those with a ratio less than 100%.

9.3.8 To understand cross-subsidies in terms of this criterion, a multivariate analysis was performed to fit a linear regression to get the expected ratio based on different household features. Various features were available for the regression, but lasso regression with cross-validated hyperparameter tuning (and the application of the 'one-standard error' rule) excluded all but the final four variables (excluding any that are highly correlated with them). These chosen variables were:

- 1) an indicator variable showing whether the household owned a motor vehicle, equal to one if they did and zero if not,
- 2) the number of members in the household,
- 3) the age of the household head, and
- 4) the annual expenditure of the household.

Once these features were decided upon, a weighted least squares linear regression model²⁰⁷ was fitted with feature standardisation excluding only the mean. The result is that the constant in the linear model represents the average 'expected proportion levies paid to proportion benefits' ratio for a household with average characteristics, and the coefficients for each feature indicate how a unit increase in that feature increases or decreases the expected ratio.

9.3.9 The final model fitted had an R-squared of 0.307, and the following form, with all the features highly significant:

207 With sample household weights as the weights.

$$\begin{aligned} E(\text{Ratio of \% levies to \% benefits under RAF}) = & \\ & 1.0478 \\ & + 0.0218 \text{HeadAge} \\ & - 0.2078 \text{Household Size} \\ & + \frac{2.529}{R1000000} \text{Annual Expenditure} \\ & + 2.0602 \text{OwnsMotorVehicle} \end{aligned}$$

9.3.10 A SHAP (Shapley Additive exPlanations) plot of feature importance is shown in Figure 4. Motor vehicle ownership (‘Owns_Car’ in the SHAP plots) is the most influential factor, followed by household expenditure. Larger households tend to reduce the ratio, while older household heads tend to increase it. High expenditure and motor vehicle ownership increase the ratio.

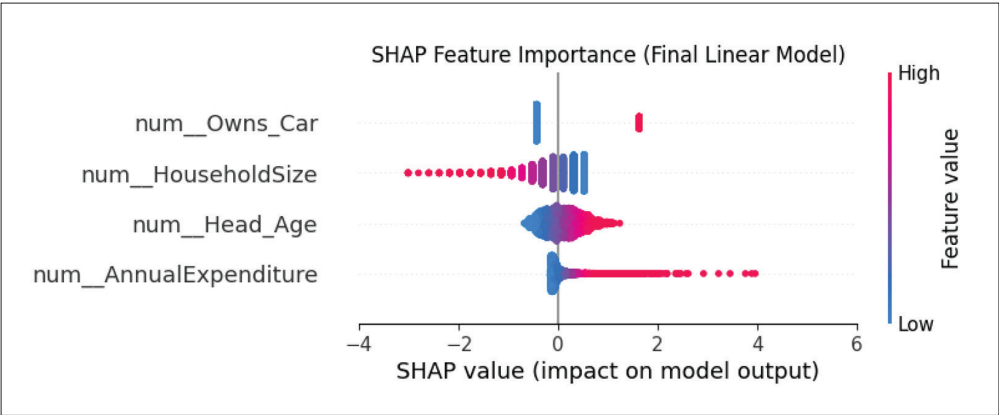


FIGURE 4. SHAP plot of feature importance for expected percentage levies to percentage benefits ratio for RAF benefits

9.3.11 Motor vehicle owners, more affluent and higher spending households, and households with older heads tend to be net contributors to the RAF (higher levies per unit of expected benefit). In comparison, larger households and non-owners are net beneficiaries. Qualitatively, lower-spending and larger households can qualify for sizable general damages and medical benefits per member, despite lower expected LoI awards and lower contributions to the RAF. Older households have fewer remaining LoI years, raising levies per unit of benefit.

9.3.12 Poor households, pedestrians, and even individuals with no income still receive substantial benefits from the RAF, particularly in the form of medical benefits and general damages. Relative to their contributions, these groups gain access to benefits that exceed their share of payments into the system. While it is true that wealthier households, who spend more overall, subsidise poorer households in this sense, this is not the whole

picture as the percentage of income spent on transport or levies may be higher for poor households despite their lower rand value contributions.

9.3.13 To test equity in the proportion-of-income sense, we compare RAF levy contributions against household income. Assuming national household income of R2.296 trillion²⁰⁸ and annual RAF benefits of R20 billion,²⁰⁹ a uniform contribution rate of 0.87% of income would be required if all households contributed equally. Figure 5 shows that actual contributions deviate from this benchmark because trucks and light commercial vehicles provide about half of all RAF levies, and individuals as a whole pay significantly less than their proportional share. Nevertheless, the burden on the poor remains higher. Excluding households with zero income, and averaging the proportion of income spent on RAF levies, the poorest decile pays 3.14% of income towards RAF levies, compared to just 0.66% in the second decile, and under 0.38% for the wealthiest decile. In other words, the system is regressive when measured against income: poorer households sacrifice a greater share of their limited income to sustain the scheme.

9.3.14 When we instead consider RAF levies as a share of expenditure (Figure 6), the system appears more balanced. The poorest households spend a lower share of their total consumption on RAF levies than the richest, as their spending is more heavily tilted toward public transport, where the levy is diluted. However, when viewing total transport spend against income (Figure 7), the imbalance is stark: the lowest-income households spend up to one-third of their income or more on transport, while the highest earners spend only about 1%. This contrast suggests that an income-based funding model may better align with equity, especially as LoI benefits are directly linked to earnings.

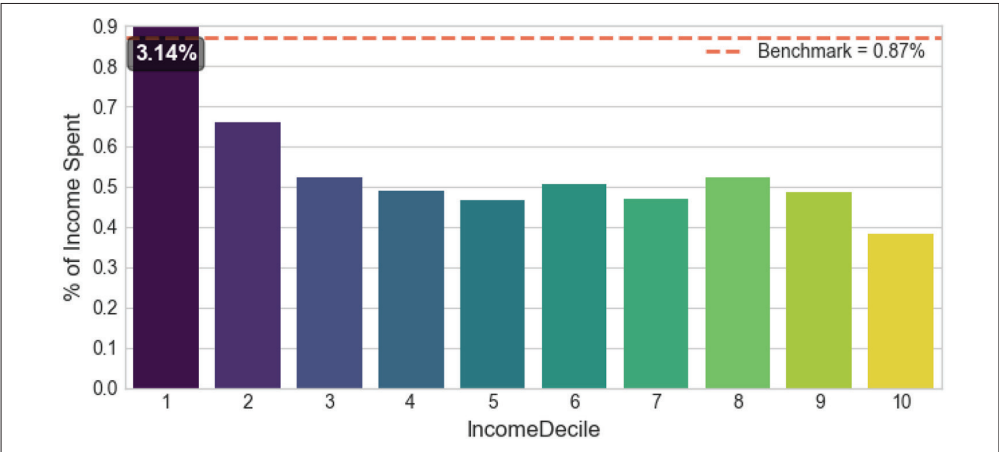


FIGURE 5. Average percentage of income spent on RAF levies by income decile

208 Per the LCS 2014/2015 survey, which may be understated.
209 Not necessarily the actual cost of accidents incurred in 2014/2015, but close to the R22 billion of claims paid in 2014 per Table 8 above, and the R20.303 billion of estimated claims incurred in 2015 per Table 5 above.

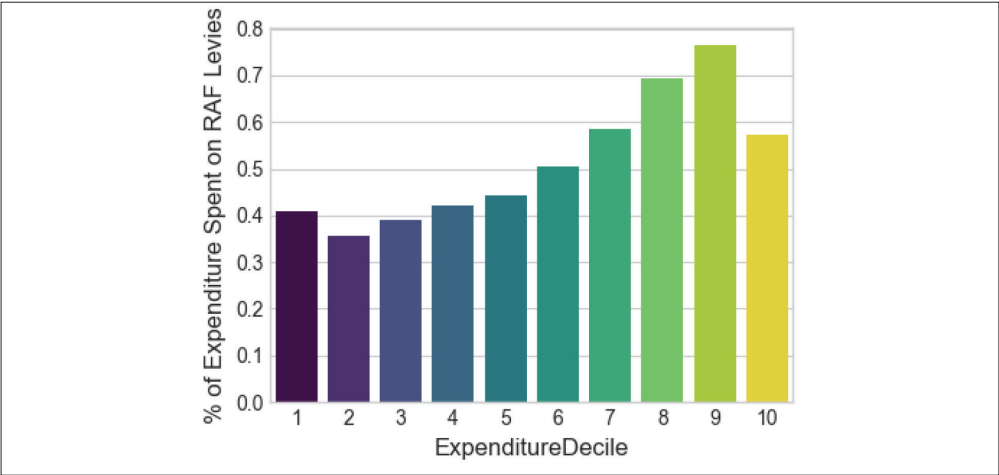


FIGURE 6. Average percentage of expenditure spent on RAF levies by expenditure decile

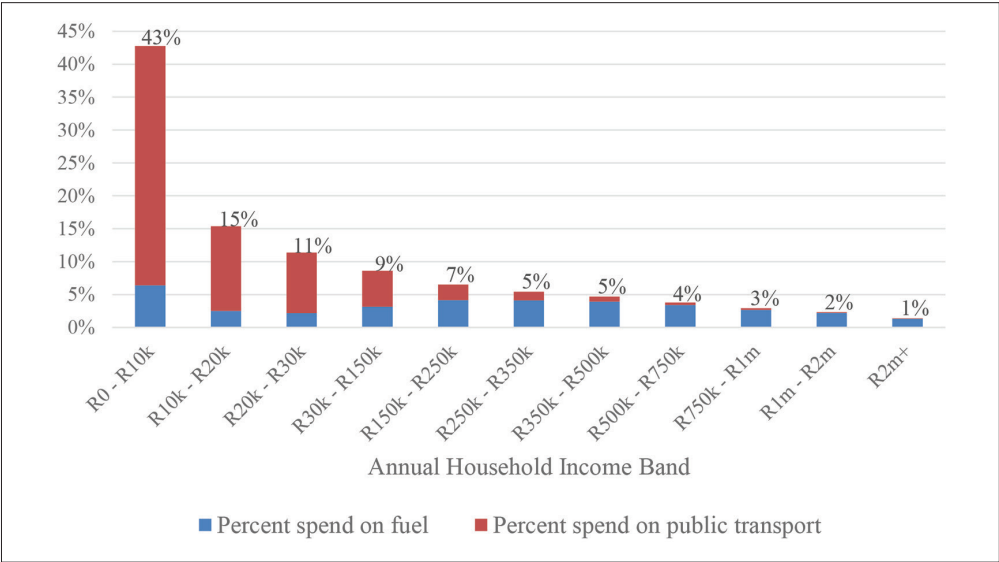


FIGURE 7. Fuel and public transport costs as a percentage of annual household earnings

9.3.15 Following the same data and methodology as in section 9.2.2, but with RABS-appropriate assumptions, we again fitted a model to explain who pays more per percent of expected benefit. The following adjustments were made to the assumptions to end up with the RABS version of the expected benefits per household:²¹⁰

— For LoI benefits under RABS:

210 These adjustments are made in accordance with the Road Accident Benefit Scheme Bill B17B-2017 available at <https://static.pmg.org.za/B17B-2017.pdf>

- Children injured in vehicle accidents are assumed:
 - to earn the national average income of R50 000 per year (not the average between R150 000 and that of the highest earner in the household as we assumed for RAF),
 - from the year they would turn 18 (not 25), and
 - increasing only with inflation, nothing above inflation, (whereas our RAF scenario assumes 3% annual real increase until age 45).
 - People older than 18 years old who are seriously injured and have less than R50 000 income per year (including those earning nothing) qualify for LoI benefits as if their income were R50 000 per year, that being the national average in the sample.
 - No one is assumed to have income benefits that increase by any amount above inflation; a real rate of 2.5% is used for the whole time period for which benefits are due.
 - Income is assumed to be paid until age 60 (not 65 as the RAF scenario assumed).
 - The first two months of income are removed since under RABS, the benefits only start from 60 days after the date of the accident.²¹¹
 - Pre-accident income (or the minimum R50 000 per year, whichever is greater) is reduced by application of multiplication by 75% before further calculations are applied.
 - There is a strict cap on income, which was assumed, per early 2014 terms, to not be allowed to be above R213 675 (with the RAF calculations it is the expected present value (EPV) of each future year's benefits that is capped, not the starting income, resulting in a less strict cap under RAF. For our earlier scenario we excluded the cap to show that even in that case the rich subsidise the poor, even more so in the capped case).
- It was assumed that the fixed benefits of rehabilitation and medical make up 70% of the total benefits, and LoI makes up only 30%. (The RABS Bill proposed extensive rehabilitation benefits in addition to the standard medical benefits provided by RAF, which, in a way, replace the general damages component that RABS no longer provides.) One justification of the 70%–30% split is that while the fixed component is expected to remain similar at 50% of the current RAF benefits, the maximum possible LoI benefits under RABS are, per our model, on average 43% of the level of maximum benefits under RAF.²¹² If we were to assume similarly that the expected RABS LoI benefits were to reduce to the same 43% of the RAF expected LoI benefits, then the new proportion of

total expected RABS benefits that are LoI is $\frac{(43\% \times 50\%)}{50\% + (43\% \times 50\%)} = 30\%$. In other words,

²¹¹ Section 41.(5)(c)(i)

²¹² Note this is not assuming a higher average claim under RABS due to no longer needing to apportion losses due to fault. It has been estimated in the RRAFC (chapter 19, p.522) that only 1% of claims have been repudiated due to not finding fault, but it could be that a much higher percentage of claims would get a higher award if there were no lowering of the award due to less than 100% fault on the side of the wrongful driver.

since we are only interested in the proportion of expected benefits due to each household in the next exercise, and not the rand value of the benefits due, this assumption meant we could set scaling constants to make the fixed portion of benefits R700m and the LoI portion R300m.

- The percentage of levies contributed to RABS by each household remained unchanged from the RAF scenario, as both schemes are assumed to be funded by a fuel levy, and even if that fuel levy were to reduce, all households would be relieved by an equal proportion and the percentage paid by each household would remain the same as under the RAF scenario.

9.3.16 Following the same methodology, including the same cross-validation and one-standard error rule application, results in a model that now only selects two explanatory variables: motor vehicle ownership and annual household expenditure. In the RAF scenario, household head age and household size were also chosen. This could be explained by the facts that:

- 1) RABS has less optimistic/inflated proposed benefits for predicting what an injured child's income would have been if not for the accident, and bigger households may have a larger number of children, and
- 2) RABS no longer assumes above inflation increases, lowering the extra benefit younger victims currently get under RAF. In this sense, RABS results are a flattening of the benefit differentiation, making them less personalised.

9.3.17 In this two-feature linear model, the constant is lower at 0.9621 (compared to 1.0478 in the RAF scenario), implying that a household of average characteristics pays a lower percentage of levies for each percentage of benefits as compared to RAF. This may indicate that RABS is more pro-poor, allowing the richer to play a more significant role in subsidising. This subsidisation by the rich is also apparent in the much higher coefficient,

nearly double, next to annual expenditure, of $\frac{3.887}{R1000000}$ (for RAF it was $\frac{2.529}{R1000000}$). The

SHAP feature importance plot, Figure 8, also indicates this, with the richest households expected to pay 600 percentage points more than an average household per percentage of expected benefit. Despite having fewer parameters, the RABS model had a higher R-squared of 0.35 (compared to 0.307 for RAF) reflecting the higher ease of calculating benefits under RABS as opposed to RAF.

9.3.18 In order to more directly compare the RAF scenario with the RABS scenario, we fitted a linear model with the same features as with the RAF scenario and the result was as follows, with an R-squared of 0.379 and all the features still highly significant:

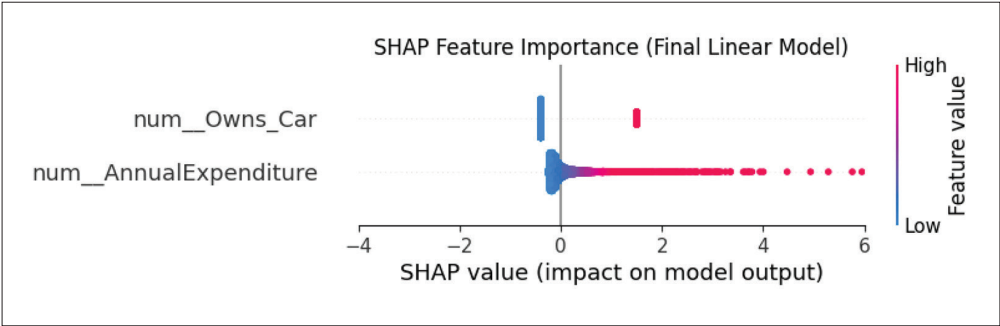


FIGURE 8. SHAP feature importance plot for the two-feature model of RABS percentage of levies to percentage of RABS benefits

$$\begin{aligned} E(\text{Ratio of \% levies to \% benefits under RABS}) = & \\ & 0.9550 \quad (\text{RAF : } 1.0478) \\ & + 0.0118 \text{ Head Age} \quad (\text{RAF : } 0.0218) \\ & - 0.1610 \text{ Household Size} \quad (\text{RAF : } -0.2078) \\ & + \frac{3.946}{\text{R}1000000} \text{ Annual Expenditure} \quad (\text{RAF : } 2.529 \text{ per Rm}) \\ & + 1.8295 \text{ OwnsCar} \quad (\text{RAF : } 2.0602) \end{aligned}$$

9.3.19 Figure 9 gives the SHAP feature importance plot for the four-feature version of the percentage of levies to percentage of benefits linear model under the RABS scenario. Comparing this version to the SHAP plot for the RAF scenario, it can be observed that expenditure moves up to become more important than the age of the household head

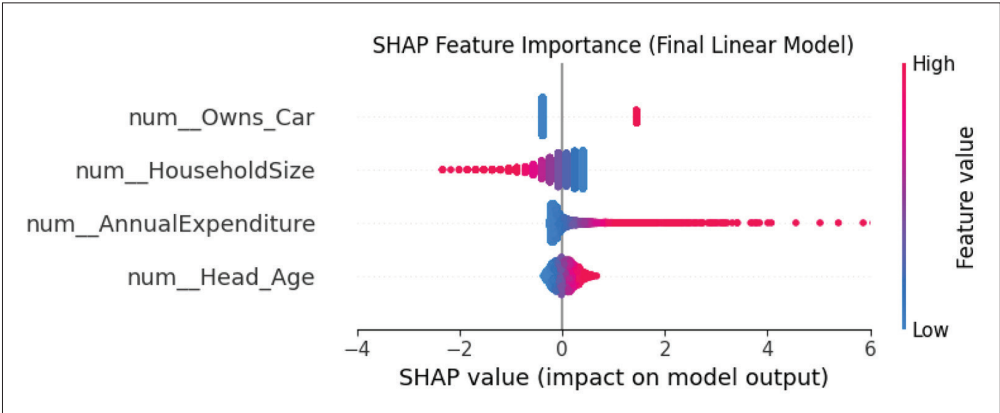


FIGURE 9. SHAP plot of feature importance for expected percentage levies to percentage benefits ratio for RABS benefits

(which was last in the RAF plot). Additionally, the three other features have a lesser impact in RABS than in RAF, with their high extreme feature value points being closer to the middle (resulting in a lower effect on the ratio) than in the RAF scenario. This is reflective of the fact that RABS benefits are flatter than RAF benefits. A big reason for this is that they do not allow any above inflation increases in assumed income, whereas RAF awards generally assume above inflation increases, making the benefits much higher for younger people than older people, and hence much more for bigger households compared to RABS.

9.3.20 When considering how much potential victims pay for the expected benefits they receive, a move to RABS would make the benefits more equitable in the sense of being more pro-poor (with more cross-subsidies from the higher spending rich to the poor), less cross-subsidisation between generations (such as from old to young), and less cross-subsidisation from small households to large households. However, if funded by fuel levies, it would still involve large cross subsidies from those who own a motor vehicle to those who don't. If this is to be seen as a social security benefit for the whole population it may be worthwhile financing it in a way that does not have such cross-subsidisation from vehicle owners or trucking companies to the rest of the population. A progressive general tax might be a potential financing candidate, but that has its own considerations, as discussed in section 6.

9.4 Other forms of cross-subsidisation

9.4.1 The fact that the RAF is not actuarially funded implies that different generations of drivers probably subsidise each other, as levies paid are used to pay claims in respect of accidents that occurred in the past. This implies cross-subsidisation between different generations of drivers/owners.

9.4.2 If a person has suffered a loss due to the wrongful act of another person, the benefits that they receive differ depending on whether this was due to a road accident or some other wrongful act. As an example, consider a person who has suffered general damages of R500 000, and one year's loss of earnings where they would have earned R1 million had they not been injured, but can now only earn R400 000 for the year. If this was not due to a road accident (or work place incident covered under COIDA) but some other wrongful act,²¹³ they could claim a common law loss of R1 100 000 (the R500 000 general damages plus the R1 million minus R400 000 loss of income). If it was due to a road accident, they will not be able to take action against the wrongdoer. The loss that they can claim from the RAF (applying the current limit of R375 000²¹⁴) is R875 000 (the R500 000 general damages plus the R375 000 loss of income). Assuming the same R375 000 will be applied as an income limit under RABS, they will receive zero (no general damages and

²¹³ For example, medical negligence or slip-and-fall.

²¹⁴ As per *Government Gazette* BN.813 of 2025 the limit on the annual loss of income is R375 105, effective 31 July 2025. For simplicity we use R375 000.

loss of income of R375 000 minus R400 000). Under both RAF and RABS they will not be able to take any action against the wrongdoer. Taking away their common law right seems justified under RAF (receiving R875 000, as opposed to the R1 100 000 that they would have received, provided the wrongdoer had the means to pay them). However, taking away their common law rights under RABS seems unfair. It seems unequitable for a person injured in a road accident to get zero, while a person injured to the same extent in another way (not in a road accident) receives R1 100 000.

9.4.3 Consider a second similar example, but where the person would not have earned any income, is now disabled, and where the injury was due to their own fault – so they cannot claim any common law damages and will not be entitled to any RAF benefits. Under RABS they will receive 75% of average national income – which could be in the order of R3 750 per month. If it was some other injury (not a road accident) they would have received a state disability grant of R2 310 per month. It seems unequitable for a person injured due to their own fault in a road accident to get more than 60% more than a person injured in some other way.

10. SUSTAINABILITY

10.1 The meaning of sustainability

10.1.1 A scheme can be considered sustainable if it will be able to meet its financial obligations over the long term without requiring a significant increase in contributions (Clements et al., 2014). Characteristics of a sustainable fund include solvency, a stable funding policy, and the ability to adapt to a changing environment. The future number of claims, as well as the amounts payable per claim, are unknown. Actuarial valuations are required to measure the sustainability of such a scheme with uncertain liabilities.

10.1.2 A sustainable compensation scheme should ideally be solvent, meaning it holds sufficient assets to meet its liabilities as they fall due. Solvency promotes inter-generational equity and reduces reliance on future revenue streams. For private or fully funded schemes, insolvency implies a significant risk of default and poses both legal and moral hazards. However, for a government-backed scheme such as the RAF, the risk of outright failure is mitigated by the state's ability to raise taxes or reallocate expenditure. However, providing R500 billion to a historically mismanaged entity like the RAF, without structural reform and governance safeguards, risks deepening fiscal leakage rather than resolving the underlying issues. Moreover, even when assets do not match liabilities, the accurate quantification of the outstanding claims liability is essential for fiscal planning, actuarial control, and transparent evaluation of the long-term sustainability and fairness of the system. Ignoring these liabilities is fiscally irresponsible, akin to operating a defined benefit pension scheme without understanding its member obligations. The government cannot ignore solvency without serious fiscal and social consequences.

10.1.3 To be sustainable, a scheme must also be adaptable to a changed

environment. HERE and Swiss RE²¹⁵ discuss how the growth of car connectivity and advanced driver assistance systems (ADAS) can affect motor insurance. More driver data will become available, and roads might become safer. Motor vehicles might no longer require drivers, which, in the long term, will have a significant impact on fault-based schemes based on negligence.

10.1.4 The current method of actuarially calculating the correct lump sum to be paid in LoI and damages claims uses a real discount rate of 2.5% after tax. This has been in use for a long time and accords with the legal requirements of consistency, predictability and reliability.²¹⁶ Koning et al. (2022) applied statistical techniques to assess the applicability of this rate and concluded that it is the best single value to use and represents the long-term average real return on government bonds in South Africa. In contrast, some market commentators have suggested that with current real rates on government-issued long-term inflation-linked bonds at over 4%, an after-tax rate above 2.5% might be more appropriate when discounting. One academic, in pursuing this line of thought, has suggested that accident victims could be instructed to purchase a monthly annuity (perhaps reducing the lump sum offered if they opt for a lump sum rather than monthly payments), in which case insurance companies could compete for the lump sum to provide the guaranteed annuity.²¹⁷ This view is worth considering. A detailed discussion is beyond the scope of this document and may warrant further consideration, but we will comment in brief. Currently the longest-dated RSA-government-issued inflation-linked bond available matures in 2058 and can be bought at yields to maturity over 4% in real terms. Annuity providers could invest in government-issued inflation-linked bonds, thereby eliminating inflation and investment risk, and offer such an annuity to accident victims at a lump sum that is potentially cheaper than the lump sum calculated using a 2.5% discount factor. Alternatively, a well-managed RAF or an alternative could take on that role themselves, investing or outsourcing to asset managers, which would allow them to invest lower lump sums than currently disbursed, yet still provide the required level of monthly benefits to claimants.²¹⁸ Such activity would not be different from what defined benefit pension or disability schemes currently undertake to ensure benefits are paid out when needed.

215 HERE and Swiss Re, *The Future of Motor Insurance: How Car Connectivity and ADAS Are Impacting the Market*, Swiss Re Ltd. and HERE Deutschland GmbH, 2016

216 *Khoza v MEC for Health, Gauteng* (216/17) [2018] ZASCA 13, par 13

217 <https://www.businesslive.co.za/bd/opinion/columnists/2025-07-03-brian-kantor-how-to-drive-the-road-accident-fund-to-success/>

218 If monthly payments are disbursed by the RAF, there would be the added benefit of the RAF Fund being tax-exempt according to section 16 of the RAF Act, and thus not having the yield on the bonds reduce due to tax. There are complications however, for example rules may need to be introduced to allow the RAF disbursements to be tax-free in the hands of recipients, whereas currently the lump sums are taxed, which is why a net of tax lower rate is used to ensure their benefits are as directed by the courts after tax.

10.2 Sustainability of the Road Accident Fund

10.2.1 In any given financial year of the RAF, there are three categories of claims liability for which payment has not been made:²¹⁹

- Claims where liability has been incurred, but not yet reported (IBNR claims)²²⁰
- Claims that have been reported, but not yet settled and paid (RBNP)²²¹
- Claims lodged and the RAF has accepted liability to pay and settled the amount payable, but the payment has not been made (or part of the payment or costs is still outstanding).

10.2.2 Internationally, it is standard accounting practice to create a provision for outstanding claims in the insurance and pension fund industries. In its submission to the RAFC, the Actuarial Society of South Africa advised that it is generally accepted accounting practice for any business entity to reflect its income, expenditure, assets, and to recognise the known and anticipated liabilities. Financial statements that ignore such liabilities for outstanding claims would be ‘misleading in the extreme’ and ‘create a false sense of security’.²²²

10.2.3 To be considered solvent, such a scheme should hold assets to cover the outstanding liabilities. The tables below show the assets, liabilities, and deficit of the RAF and its predecessors from 1985 until 2024. Tables 13 to 15 show that the RAF and its predecessors, namely the Motor Vehicle Accident Fund (MVA) and the Multilateral Motor Vehicle Fund (MMF), have never held such assets. The required fuel levy has been insufficient to pay claims as they fall due and has never been sufficient to build up the required reserve. The RAF has thus always been technically insolvent. As noted by the Melamet Commission²²³ with respect to the outstanding claims liability of R2.5 billion in 1990/1991:

The situation is undoubtedly that the financial position of the MMF is disastrous and that this is not something that has happened just recently.

10.2.4 In the authors’ experience, reasons for some of the year-to-year shifts in the Outstanding Claims Liability of the RAF and its predecessors are:

- Missing data in 2004 led to an underestimation of the liability.
- Increased settlement delays led to irregular payment patterns from 2006 to 2009, requiring more complex valuation methods from 2009, as methods used earlier led to underestimation.

219 Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 11, par 11.30, p.240

220 The accident has happened and persons were injured or killed (and damages incurred), but the RAF has no knowledge of the claim because it has not been submitted.

221 The claim has been lodged and is in the process of assessment and administration; liability has arisen at the date of accident and while the settlement process runs, payment remains outstanding.

222 Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 11, par 11.33, p.241

223 Report of the Commission of Inquiry into the affairs of the Multilateral Motor Vehicle Accident Fund by the Honourable Mr Justice DA Melamet, 22 April 1992, p.39

TABLE 13. Financial performance of South African MVA Fund: 1985–1989 (R million)²²⁴

Financial year ended	Assets ²²⁵	Liabilities ²²⁶	Deficit	Funding level (assets / liabilities)
1985	276	630	–354	44%
1986	223	745	–522	30%
1987	243	850	–607	29%
1988	259	0	259	NA
1989	354	0	354	NA

TABLE 14. Financial performance of MMF: 1990–1997 (R million)²²⁷

Financial year ended	Assets	Liabilities	Deficit	Funding level (assets / liabilities)
1990	426	1 695	–1 269	25%
1991	396	2 500	–2 104	16%
1992	251	3 250	–2 999	8%
1993	316	3 450	–3 134	9%
1994	617	4 400	–3 783	14%
1995	817	5 000	–4 183	16%
1996	1 003	7 350	–6 347	14%
1997	1 267	8 500	–7 233	15%

- Management did not recognise this liability for the years ending 1988 and 1999 and, from 2021 onwards, only recognised the amount payable where the RAF has accepted liability to pay and settle the claim, but the payment has not been made. The 1988 and 1989 Liabilities were later restated, respectively, as 1 000 and 1 260. Actuarial estimates for 2022 to 2024 have not yet been obtained.
- The government introduced legislative changes to the current RAF compensation system. The Road Accident Fund Amendment Act of 2005 was promulgated with effect from 1 August 2008 to improve the future financial position and sustainability of the RAF – primarily by abolishing general damages for the non-seriously injured and placing a R160 000 annual limit on loss of earnings. However, this led to an unexpected increase in the loss of earnings paid to those who were non-seriously injured and no longer qualified for general damages. The number of loss of earnings payments in 2024 was more than three times that of 2008.

224 Department of Transport (1996). Draft White Paper on the Multilateral Motor Vehicle Accidents Fund, p.17

225 Until 1998: Assets less creditors and non-claim provisions; Thereafter: Assets

226 Until 1998: Outstanding Claims Reserve; Thereafter: Total Liabilities

227 Transport Portfolio Committee: Road Accident Fund Briefing, 9 November 2009, available at: <https://pmg.org.za/committee-meeting/3875/>

TABLE 15. Financial performance of RAF: 1998–2024 (R million)²²⁸

Financial year ended	Assets	Liabilities	Deficit	Funding level (assets / liabilities)
1998	1 629	10 014	−8 385	16%
1999	1 927	11 083	−9 156	17%
2000	1 959	12 440	10 481	16%
2001	1 617	14 952	−13 335	11%
2002	1 432	18 092	−16 660	8%
2003	784	23 810	−23 026	3%
2004	768	19 333	−18 565	4%
2005	1 708	21 573	−19 865	8%
2006	4 360	22 728	−18 368	19%
2007	4 207	24 448	−20 241	17%
2008	3 297	31 125	−27 828	11%
2009	3 396	43 231	−39 835	8%
2010	3 878	46 208	−42 330	8%
2011	4 567	48 584	−44 017	9%
2012	8 572	73 661	−65 089	12%
2013	10 717	84 220	−73 503	13%
2014	7 694	98 492	−90 798	8%
2015	7 367	117 614	−110 247	6%
2016	9 796	155 048	−145 252	6%
2017	9 198	189 191	−179 993	5%
2018	9 806	216 147	−206 341	5%
2019	11 219	273 334	−262 115	4%
2020	10 657	332 391	−321 734	3%
2021	15 663	31 497*	−15 834	50%*
2022	12 314	27 713*	−15 399	44%*
2023	11 878	35 702*	−23 824	33%*
2024	12 774	36 320*	−23 546	35%*

*From 2021 the liability values only recognise claims due for payment and exclude unsettled claims.

- The rapid increase from 2011 until 2018, as addressed in section 7.2 and by Whittaker (2024), is mainly due to an increase in the number of Loss of Income claims in respect of non-serious injuries, and by estimating ‘potential’, rather than ‘likely’ income, when determining the quantum of claims for LoI.
- The further rapid increase from 2018 until 2020 (and probably continuing until 2026, but this will only be known once the 2021–2026 figures are estimated) has been mainly due to the RAF decision not to defend claims anymore but to rely on Default Judgments.

228 RAF Annual Reports

10.2.5 The historic performance shown in the preceding paragraphs, as well as the affordability discussed in section 7.2, clearly show that the RAF in its current form is unsustainable. The two important questions to address are:

- 1) Can the RAF be changed to become sustainable? (see ¶¶10.2.6 to 10.2.10), and
- 2) What will happen if the RAF cannot be sustained? (see ¶¶10.2.11 to 10.2.13)

10.2.6 For the RAF to become stable again, it will have to become effective in assessing and paying claims. Reasonable offers should be made. These offers should not be too low, thereby forcing claimants not to accept offers but to issue summons and incur unnecessary costs. For those cases that do go to court, the RAF should defend the claims appropriately, preventing unnecessarily high settlements. The ability of a State entity to efficiently defend claims has been questioned on many occasions.

10.2.7 The Grosskopf commission suggested that a State corporation should be established to deal with claims. However, Parliament rejected this proposal because it was considered that the Fund did not have, and would find it challenging to recruit, sufficiently experienced staff to handle claims. The management of claims was done by private insurers who acted as agents for the central fund, which insured the benefits.

10.2.8 The RRAFC²²⁹ reported that the Melamet Commission took the view that the allocation system to agents was unsatisfactory and that a more equitable system, with an element of competition, should be devised. The Commission recommended that the MMF negotiate new appointments and arrangements with each agent. It did not recommend that the MMF should assume all functions of agents and become the sole administrator of road accident compensation in South Africa.

10.2.9 During the period from 1992 until 1997, the RAF gradually took over the function of the agents. The RAF took over some of the experienced staff of the agents and also appointed and trained new staff to manage the claims. Most of the staff managing claims had legal qualifications, which is considered necessary given the nature of these claims. Tables 13 to 15 show that the RAF was in a much better financial state in the 1990s, whereafter it deteriorated further and further, especially from 2012 onwards, until its current state – where it does not know what the cost of current benefits are, does not investigate or defend claims but leaves it to the courts by way of Default Judgments and where the RAF does very little to promote adequate medical treatment and rehabilitation.

10.2.10 If the RAF could revert to pre-2012 competency levels of handling claims, the annual cost of claims would be less than a quarter of what they were in 2020 (when last estimated). Radical changes in managing the RAF will be required for this to be possible. Only time will tell whether the RAF can revert to such levels and answer the first question posed in ¶10.2.5 – and become sustainable.

229 Report of the Road Accident Fund Commission 2002 Volume 1, Chapter 39, par 109, p.1279

10.2.11 What will happen if the RAF is not sustainable? Even if the current dispensation is changed, the effective handling of claims under the RAF Act will need to be restored to manage claims in respect of accidents that occur prior to any change. Even if the current RAF Act is not sustainable, the RAF (or alternative entities managing claims under the current RAF Act) has no choice but to be sustainable in the medium term.

10.2.12 The authors are not legal experts, but it seems possible that, in the absence of the RAF, those claimants who did not receive adequate treatment after a road accident could take action against the Department of Health. Those claimants who cannot take such action could probably take action against the government if it does not provide the benefits they promised in return for taking away the victim's right to sue the wrongdoer.

10.2.13 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.'²³⁰ The RAF is obliged to make payment irrespective of its ability to do so.²³¹ In reality, political and economic considerations determine the level of the fuel levy, instead of the RAF's statutory and financial liability in terms of the compensation scheme.²³² In the absence of sufficient assets or a Government guarantee to cover the outstanding liability, the RAF is technically insolvent. Even if the RAF were to stop being responsible for paying claims in respect of new accidents, continued funding will be required until all claims in respect of older accidents have been settled.

10.3 Sustainability of Road Accident Benefit Scheme benefits

10.3.1 The Road Accident Fund Commission was appointed 'to find long term and sustainable solutions to complex problems' ... and 'to reconsider in its entirety the system of benefits and/or compensation for victims of road accidents.'²³³ The purpose of RAFC was thus to find a sustainable solution. The findings of the RAFC were then used to design RABS. So, by design, RABS is supposed to be sustainable.

10.3.2 To improve sustainability, medical benefits were originally of a defined contribution nature (section 7.3.6). In that initial design, if the amounts available for medical benefits would be insufficient to provide the intended benefits, then the benefits would be reduced – instead of relying on increased contributions. Similarly, inflationary increases would not be guaranteed (section 7.3.7) but depend on funds being available. However, this concept, contained in the original benefit design, no longer appears evident in the latest proposed RABS Bill (section 7.3.8). The removal of this concept reduces sustainability to some extent.

²³⁰ Ibid., Chapter 11, par 11.130, p.258

²³¹ Ibid., Chapter 11, par 11.131, p.258

²³² Ibid., Executive Summary, par 21, p.XV

²³³ Department of Transport. 1998. White Paper on the Road Accident Fund. Notice 170 of 1998, *Government Gazette* 18658 of 4 February 1998, p.12

10.3.3 The RABS Bill proposes that a State administrator administer the benefits. The question of whether a State-run entity will be able to administer RABS efficiently will have a significant effect on the sustainability of RABS.

10.3.4 RABS intends to provide no-fault benefits for injured persons who are not currently entitled to compensation. However, these additional benefits will only result in lower overall costs if the existing fault-based benefits are reduced. If the abolition of the victim's right to sue is successfully challenged in the Constitutional Court, fault-based benefits will remain in place, and the new no-fault benefits will therefore represent an additional cost rather than a replacement. In such a case, the sustainability of RABS would be in doubt, as total system costs would exceed those of the current framework. The authors therefore conclude that the sustainability of RABS depends on the successful abolition of the victim's right to sue the wrongdoer.

10.3.5 In 2003, the Cabinet accepted, in principle, the recommendations of the RAFC. The Department of Transport undertook further work through an Interdepartmental Committee for Road Accident Victims, which worked closely with the government's social security cluster. This work culminated in a document, 'Strategy for the restructuring of the Road Accident Fund as compulsory social insurance in relation to the comprehensive social security system', published on 8 September 2006. In 2014, the RABS Bill was first published for public comment. In 2017, it was officially introduced to Parliament as Bill B17–2017; it was tabled in the National Assembly in 2018, but faced strong opposition until it lapsed in 2019. Despite revival efforts, the RABS Bill was ultimately withdrawn due to widespread criticism and lack of support. In 2025, the Minister of Transport announced plans to revive RABS. Even if the Bill is implemented, the question must be asked whether the widespread criticism and opposition that led to a delay of more than 22 years since its acceptance in principle will also threaten its sustainability.

10.3.6 A state system of social security can offer a safety net only. A social benefit scheme providing no-fault cover to persons injured in road accidents will have to place limits on benefits. This implies that, for some injured persons, the actual benefits received might be significantly less than the actual loss suffered. The injured would have to try to recoup the balance by claiming it from the wrongdoer. Taking away the victim's right to take such action against the wrongdoer may be considered unconstitutional. The possible unconstitutionality of taking away this right was one of the reasons why the RABS bill was withdrawn.

10.3.7 RABS has been designed to be sustainable, but the aspects discussed in this section can impede this sustainability and must be considered in more detail.

10.4 Sustainability of compulsory third-party insurance benefits

10.4.1 CTPI was required in South Africa from its inception with the Motor Vehicle Insurance Act in 1946 until immediately prior to the Motor Vehicle Accident

Act 84 of 1986. The Melamet Commission Report²³⁴ summarises the South African history of CTPI provided by the private insurance industry.

10.4.2 The Motor Vehicle Insurance Act 29 of 1942 came into effect on 1 May 1946 with the object 'to provide for compensation for certain loss or damage caused unlawfully by means of motor vehicles and for matters incidental thereto'. The Act introduced compulsory insurance for owners of motor vehicles to purchase cover for persons who sustained bodily injuries or suffered damages due to the death of breadwinners arising from negligent driving.

10.4.3 Until 1965, this was treated as regular insurance business. The premium was controlled by the government, which refused a request (due to claims experience) for a 20% premium increase in 1964. The insurance market then ceased to transact this business. The government then established the MVA Fund, which assumed the risks and acted as reinsurer for a 'consortium' of designated insurers. These insurers issued insurance cover and tokens as before and received commission as agents of the MVA Fund. This was reflected in the Compulsory Motor Vehicle Insurance Act, 1972 (Act 56 of 1972).

10.4.4 The Melamet Commission emphasised that the sole reason why the insurance industry did not provide MVA insurance was that the industry considered the premium that it was allowed to charge to be inadequate. The Commission noted that the MVA business until 1965 was run off and final results varied among companies, but overall, there was a small surplus.

10.4.5 The South African insurance market is well-regulated²³⁵ to monitor the solvency, and hence the sustainability of private insurers.

10.4.6 The profit incentive will encourage insurers not to set premiums too low, while the competitive private insurance industry should prevent premiums that are too high. Adequate premiums are required for solvency and sustainability, while affordable premiums are required for compliance by drivers/owners, which in turn is also required for sustainability.

10.4.7 Significant changes in fault-based systems are expected as car connectivity and advanced driver assistance systems become more prevalent. Insurers define benefits in policy documents, compared to public administrators (like the RAF), who need to define benefits in Acts or Regulations. Private insurers can thus quickly adapt the benefits to respond to a changing environment. Private insurers can also adapt premiums by considering new rating factors that are appropriate to a changed environment. This adaptability improves relative sustainability.

10.4.8 In most other jurisdictions, road accident compensation is generally financed by CTPI premiums paid by owners of motor vehicles to private insurance

234 Report of the Commission of Inquiry into the affairs of the Multilateral Motor Vehicle Accident Fund by the Honourable Mr Justice DA Melamet, dated 22 April 1992

235 Short Term Insurance Act, Act No. 53 of 1998

companies.²³⁶ Such arrangements require a high level of compliance, as well as additional administrative capacity to collect premiums and resources to enforce compliance. Even where a high level of compliance is present, a system that collects premiums from drivers must still contend with uninsured vehicles and hit-and-run accidents. Prior to 1 May 1986, drivers or owners of uninsured vehicles were personally liable for the losses or damages caused to victims of road accidents.²³⁷

10.4.9 CTPI provided by private insurers can be sustainable as long as government interference in setting premiums is treated with care. Setting premiums too low was the reason that private CTPI collapsed in 1965. Actuarial reserving should initially be conservative to improve solvency levels, as the period between the accident and settlement dates can be significantly longer for third-party bodily injury claims compared to third-party vehicle damage currently underwritten by private insurers.

10.4.10 Private insurance can be used to augment social benefits. The claimant might then receive benefits from three sources (leading to overcompensation in some cases): first, social benefits; second, from the liability insurer of the wrongdoer; and third, from their disability insurance. Such insurance will be very costly for the responsible citizen, who will have to contribute to the social scheme, their motor liability insurance, as well as their disability insurance.

10.5 Conclusion

10.5.1 Considering the figures in section 7.2 above, the RAF, in its current form, is unsustainable. Drastic measures are required to make the RAF sustainable, at least until all benefits that they have to pay under the RAF Act have been settled.

10.5.2 RABS was initially designed to be sustainable. However, RABS will probably not be sustainable if the victims' right to sue the wrongdoer is taken away.

10.5.3 Considering the well-developed and well-regulated South African non-life insurance market, CTPI is likely to be more sustainable than the current RAF system. If the State interferes with premium levels, then a delicate balance between setting premiums too high (and becoming unaffordable) and too low (threatening solvency) is crucial.

11. CONCLUSION

11.1 Table 16 provides a comparative summary of the RAF, RABS, and CTPI in terms of reasonability, affordability, equity, and sustainability for two primary stakeholders: negligent drivers/vehicle owners and injured persons.

²³⁶ Report of the Road Accident Fund Commission 2002 Volume 1, p.179 & Chapter 9, par 9.32, p.187

²³⁷ Ibid., Chapter 9, par 9.65, p.197

TABLE 16. Drivers and injured persons

Stakeholder	Criterion	RAF	RABS	CTPI
Drivers/owners	Reasonableness	Indemnity via levy, but fund unstable.	No-fault, capped benefits, faster care.	Insurance covers if compliant.
	Affordability	Fuel levy inadequate; costs outpace income.	Lower defined benefits, but double-pay risk.	Risk-based premiums, costly for high-risk.
	Equity	Flat levy causes inequity and cross-subsidies.	Standardised benefits, more pro-poor.	Aligns with risk; regressive for poor.
	Sustainability	Financially unstable; reliant on bailouts.	Originally designed to be sustainable.	Solvency of insurers well-regulated.
Injured persons	Reasonableness	Broad damages but delayed and costly litigation. Medical benefits insufficient.	No-fault, prompt but capped payouts.	Full damages if insured; gaps if driver uninsured.
	Affordability	Victims don't pay but legal fees reduce awards.	Low-cost admin, no litigation fees.	Victim relies on driver's insurance.
	Equity	High earners recover more; poor get less.	Equal treatment, more for poor victims.	Compensation tied to income; poor left out.
	Sustainability	Huge liabilities threaten future payouts.	Basic but continuous support.	Solvent but uninsured victims excluded.

11.2 Table 17 extends the analysis for the state, society, and fund administrators.

TABLE 17. State, society and fund administrators

Stakeholder	Criterion	RAF	RABS	CTPI
State	Reasonableness	State scheme, but not geared towards social security.	Removes right to sue; constitutional test.	Respects legal rights; private liability.
	Affordability	Deficits burden public finances. Overstatement of Lol claims.	Costly transition, long-term control.	Shifts cost to insurers/ motorists.
	Equity	Regressive levy as a % of income (but not expenditure).	More progressive and needs-based.	Market-based, inequitable for poor.
	Sustainability	Unsustainable, accumulating debt.	Budget discipline prevents debt.	Sustainable with regulation and compliance.
Society	Reasonableness	Inefficient, costly, delays for victims.	Focus on care and rehab, not lawsuits.	Private contracts efficient if insured.
	Affordability	Fuel levy burden growing.	Lower national spend via capped benefits.	Costs borne by motorists, not taxpayers.
	Equity	Benefits captured by wealthy claimants.	Egalitarian redistribution.	No safety net for uninsured victims.
	Sustainability	Public confidence eroding.	Stable if benefits within budget.	Social gaps if many uninsured.

Fund administrators	Reasonableness	Poor governance, inefficiency.	Simpler structure but admin risk.	Efficient private claims handling.
	Affordability	High admin, legal and expert costs for claim investigation.	Cheaper admin, standardised claims.	Loading costs, but offset by competition.
	Equity	Inconsistent, inequitable claims, more admin.	Equal treatment through clear rules.	Varies by insurer; regulators promote fairness (Treating Customers Fairly)
	Sustainability	Persistent deficits and mismanagement.	Sustainable if discipline enforced.	Industry solvency protects continuity.

11.3 **Medical benefits:** RABS is the best solution for trauma care. It is impractical and unreasonable to let the level of benefit depend on fault. RABS will also be able to provide more efficient rehabilitation. Applying funds directly to create adequate facilities is far more reasonable than reimbursing medical costs long after the event.

11.4 **Loss of Income:** The State’s priority is to allocate limited resources to where it is needed the most – in the way of social security benefits. However, it is unreasonable to remove a victim’s right to take action against the wrongdoer, but then provide benefits well below the actual loss. RABS benefits are unreasonable because, in some cases (for example, the unemployed), they provide benefits far exceeding the actual loss. In contrast, in other cases (high earners with a significant loss), they can provide no benefits at all. Theoretically, RAF and CTPI benefits should be the same. However, the deterioration in the RAF’s ability to defend claims has implied that they overcompensate many claimants, especially the non-seriously injured and children. CTPI is expected to be more affordable; however, low compliance would affect affordability, as law-abiding citizens who comply might want to take out additional insurance in case an uninsured driver injures them. Either the RAF must be fixed, or a solution must be found to protect victims of uninsured drivers.

11.5 **General Damages:** RABS does not provide any General Damages. It seems unreasonable to take away someone’s common-law right to sue for general damages without providing any alternative benefit. RAF and CTPI benefits are expected to be similar.

11.6 None of the systems will provide reasonable benefits on their own, and a combination of systems is required. Currently, the RAF is supposed to provide all benefits, but in practice, the State and private medical aids provide a large proportion of the required medical benefits.

11.7 Different components of each of RAF, RABS, CTPI and service delivery by the state (especially for medical benefits) are required for different lines of accident benefits to meet the requirements of a reasonable, affordable, equitable, and sustainable compensation scheme.

11.8 To address these challenges, policy consideration should be given to introducing a limited form of compulsory private insurance as a supplementary financing stream. Such a hybrid model, where the fuel levy continues to support a baseline of coverage and private insurance addresses excess or specific risks, could improve equity, enhance financial sustainability, and align better with risk-based principles. This would not only diversify revenue sources but also reduce fiscal pressure on the RAF while ensuring that catastrophic losses, currently excluded,²³⁸ are more comprehensively addressed.

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²³⁸ Catastrophically high losses arising from road accidents are currently not covered in full due to caps on the current RAF benefits and in the proposed RABS benefits.

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