



THE ASSOCIATION FOR THE PROTECTION OF ROAD ACCIDENT VICTIMS

A VOLUNTARY ASSOCIATION NOT FOR GAIN INCORPORATED IN TERMS OF THE COMMON LAW

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1. INTRODUCTION

Quite a few theories for the financial RAF's precarious financial position have been bandied about. The main driving force behind efforts to reform the crash victim compensation system has consistently been the actuarial deficit, the notion that the current system is inequitable favouring the wealthy and that the legal profession is to blame for the financial hole in which the RAF finds itself.

2. DEFICIT

The RAF deficit is regularly used to make the point that the current compensation system is unsustainable. It is said to currently stand at R343.2 billion. It is quite strange that where the road crash compensation system is widely accepted as being a social security system, this funding model is used. This is a remnant from the time that the compensation was short term insurance driven. Since 1986 when the Motor Vehicle Accidents Act 84 of 1986 was promulgated the system has been fuel levy funded. If the actuarial funding model for the RAF holds good, it should apply to all social security benefits such as housing and grants – this is clearly not the case. The RAF being a social benefit scheme and like other social benefit schemes is not pre-funded but funded on a pay-as-you-go basis. This means that the fuel levy the RAF receives every year is not specifically for crashes in a specific financial year. If a previous year's crashes create greater liability than expected, the fuel levy should be adjusted accordingly to make up for the shortfall. If the following year's accidents are less costly than the statistical expectation the fuel levy can then be reduced in future years. Accepting that the RAF is funded on a pay-as-you-go basis, that fuel levies can be adjusted and will not cease immediately, outstanding claims

provisions can be disregarded. Evaluation and management of the finances of the RAF should be based on income and expenditure of the entity over time. The size of a mathematical estimate of outstanding claims at a specific point in time should not play a role. A month later the estimate in any case would be different.

3. INEQUITABLE AND FAVOURS THE WEALTHY

It is incontrovertible that the compensation dispensed by the RAF in terms of the Road Accident Fund Act 58 of 1996 is entirely based on common law. It follows that when it is said the RAF compensation is inequitable, that the preposterous allegation is made that the common law is inequitable. The notion that the RAF crash compensation system favours the rich is a perception and not based on reality. The basis of the compensation paid by the RAF is the nature and consequences of injury and/or death sustained in a road crash and disregards the social and/or financial status of the crash victim. If a victim receives a large award it merely means that that victim was seriously injured and is being financially and otherwise placed in the position, he/she was prior to the crash inasmuch as the payment of money can achieve this. The 2018 RAF Annual Report shows that 85% of the claims paid have a value between R1 000 and R5 0000 and that only 4,67% of claims exceed R500 000. Bearing in mind that large settlements are mostly a function of devastating injury and death, it can hardly be said that this represents a bias favouring the wealthy.

4. Real cause

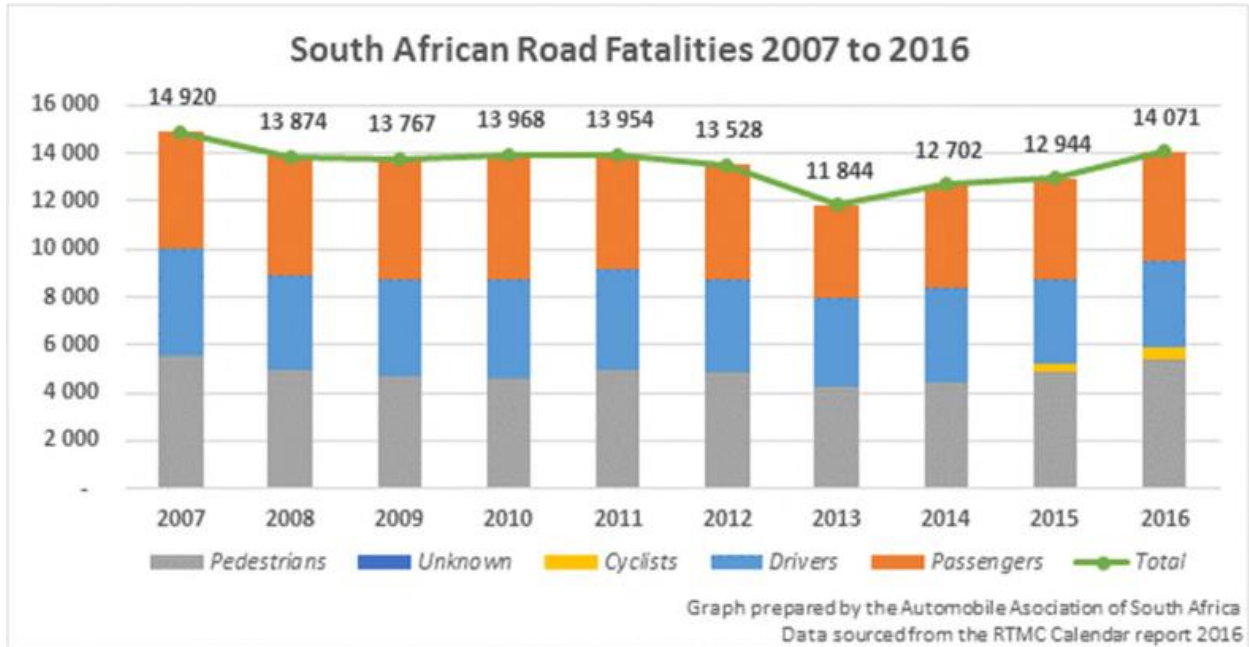
4.1 Road crashes, injury and death

It is quite clear that when the actuarial method of judging the adequacy of funding is employed, the number of possible claims against the RAF plays a determining role. This is a function of the number of road crashes on South African roads. It is simple logic that the financial welfare of the RAF is inextricably tied to what happens on South African roads. This simple truth has over decades when the deficit was used to promote an agenda for reform of the compensation system been largely ignored. The following table graphically shows key moments in the legislative framework governing RAF and its predecessors and illustrates this phenomenon:

Year	Total crashes	Deaths	Seriously injured	Slightly injured	Actuarial deficit
1946	39405	815	2328	10809	Unknown
1972	218436	8713	19369	47105	Unknown
1986	372668	9413	27302	75656	Unknown
1996	520774	9848	38473	86728	R10 billion
2015	1708414	13591	62520	202509	R130 billion
2017	1643000	14050	Unreported	Unreported	R215 billion

It is strange, to say the least, that the root cause of the financial exposure of the RAF has received little or no attention. Notwithstanding laudable efforts by the RAF to in a small way

contribute to road safety, all efforts have not yielded measurable results (see p118 of the 2108 RAF Annual Report). If at all fatalities seem to have an upward tendency – with 14 050 people dying on our roads in 2017 and 16% more persons killed on our road during December 2018. The following table indicates that South Africa is fighting a losing battle in this regard:



4.2 Claims flooding

The death and injuries on our roads give rise to a multitude of claims so that the Road Accident Fund is overwhelmed. The following table illustrates the number of claims and annual carry-over of uncompleted claims.

Year	Number	Outstanding
2007	170418	341146
2008	267133	297072
2009	294771	261390
2010	209981	209186
2011	222634	244652
2012	172859	253111
2013	150312	No data
2014	147186	232285
2015	173743	217710
2016	188864	217182
2017	202100	213877

4.3 RAF productivity

If the staff numbers at the Road Accident Fund is taken and compared with the number of claims annually, claims finalised per staff member emerges. Admittedly, taking the total staff compliment as a measure is inaccurate but nonetheless creates some measure of organisational productivity.

4.4 Unnecessary litigation

The lack of productivity is supported by the high incidence of litigated claims – nearly 24% (2144 cases) of the total of claims submitted in 2018 became the subject of litigation in the NGHC:

Month	RAF	Other	Total Civil	RAF %	Days	RAF p/d	Heard	RAF on roll %
Jan	299	60	359	83.29%	22	14	1	0.33%
Feb	2414	451	2865	84.26%	21	115	16	0.66%
Mar	1898	389	2287	82.99%	20	95	19	1.00%
Apr	1477	192	1669	88.50%	18	82	7	0.47%
May	3092	397	3489	88.62%	21	147	8	0.26%
June	2197	283	2480	88.59%	21	105	9	0.41%
July	563	111	674	83.53%	22	26	6	1.07%
Aug	3461	431	3892	88.93%	21	165	7	0.20%
Sept	1340	242	1582	84.70%	17	79	8	0.60%
Oct	1584	265	1849	85.67%	20	79	1	0.06%
Nov	3280	420	3700	88.65%	21	156	1	0.03%
Dec	761	123	884	86.09%	18	42	1	0.13%
Average	1864	280	2144	86.15%	20	92	7	0.44%

From the preceding it is clear the RAF's spending of its budget on litigation (R8,8 billion) can be avoided by proper case management and early settlement of claims rather than settling claims on the steps of a court. The preceding table refutes the assertion that the RAF's legal bill is the consequence of lawyers dragging it through the courts.

5. Conclusion

The real cause of the RAF's financial predicament apart from indifferent claims administration is not because a certain system of compensation has been adopted and applied or that it is the fault of lawyers. The root of the problem is to be found in the thousands of claims resulting from the thousands of annual car crashes on our roads and the resultant thousands of claims arising from these crashes. By attempting to adapt the compensation system without paying attention to the root cause of unsustainability, is tantamount to putting a band aid on a festering wound. No compensation system however fashioned or constituted will be sustainable in the face of a flood

of claims. A study of compensation systems of Namibia and Swaziland touted by the proponents of RABS reveal a common feature – they have very low claim levels in the order of 3000 claims per annum. The solution lies in addressing the root cause and that calls for a serious rethink of how we as South Africans and our government view road safety. After all road safety is a constitutional right and the government owes its citizens the duty that our roads become safe.

Prof. Hennie Klopper

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