



**PRESS RELEASE BY THE LAW SOCIETY OF SOUTH AFRICA**  
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**ROAD ACCIDENT FUND AMENDMENT BILL 2023**

**INTRODUCTION**

On 8 September 2023 the Department of Transport published a draft Road Accident Fund Amendment Bill 2023 for public comment to be made by 8 October 2023.

It is of extreme importance that the general public and the relevant civic associations are made aware of the dire consequences that will follow the enactment of this Bill and that they voice their objections so that this Bill can be stopped in its tracks, or at least proceed to a full public participation process.

The Bill contains a number of significant changes, which will have far-reaching implications if enacted. The rights of all drivers, passengers and pedestrians to claim compensation for injuries they suffer in a motor vehicle accident will be taken away. In its place will be significantly reduced “social benefits”.

Despite the fact that only very limited social benefits will be paid –

- the innocent injured party is still denied a common law claim against the guilty party for the balance of his or her loss;
- all claimants will still have to prove that their injuries were suffered as a result of the negligence of the driver or owner of a motor vehicle;

- all those using the roads will nevertheless, either directly or indirectly, still have to contribute to the Road Accident Fund (the RAF) by way of the fuel levy, which is currently R2.18 per litre.

The Fund receives more than R45 billion per year via the fuel levy.

The poor and disempowered, who make up the vast majority of claimants and who are compelled to use public transport, will bear the brunt of the consequences of these amendments. They will be forced into the public health system, as the prescribed tariffs will not cover the actual costs incurred at a private hospital. Under the present system, many receive treatment at dedicated private healthcare facilities. They will not receive any lumpsum payments and it is very likely that, if they are not able to produce a salary slip, they will receive no compensation for loss of earnings. In other words, they will receive no benefit at all, even though they may suffer devastating injuries and are the very people that the Fund should protect.

The proposed legislation also unfairly discriminates against the working classes who are dependent on public transport to get to work or who are conveyed in motor vehicles during the course of their employment.

Those who can afford it will be compelled to take out private accident cover for medical and other expenses as well as accident benefits. This is likely to be very costly, as there will be no reimbursement of expenses covered from the Fund. Medical aids will more than likely exclude cover or the cost thereof will have to materially increase to preserve the funds in the pool for all members.

Road accident victims will be uniquely discriminated against by the proposed legislation. Their rights to be compensated for harm suffered by the fault of another will be taken away. Persons who suffer harm from medical negligence or are injured in train or plane or boat accidents or in shopping centres, hotels, construction sites, holiday resorts, private homes or by electrocution or pollution and by a host of other causes, have unfettered rights to seek compensation from the person or entity who caused them harm. Innocent motor vehicle accident victims, alone, do not have this right, despite the fact that they pay premiums that add up to the tune of R45 billion per year.

## **SOME PROPOSED CHANGES TO THE CURRENT COMPENSATION SYSTEM**

### 1. **CURRENT**

The Fund is a state backed insurer which steps into the shoes of the wrongdoer and compensates the innocent injured party subject to some caps in respect of loss of income.

### **PROPOSED**

The object of the Fund has been changed from the payment of compensation (as a statutory insurer) to the provision of social benefits (welfare) – this despite the fact that road users continue to pay a significant premium by way of the fuel levy.

### 2. **CURRENT**

Injuries sustained in a motor vehicle accident anywhere in the Republic of South Africa by any person are covered.

### **PROPOSED**

Only persons injured on a public road may claim – injuries suffered in motor vehicle accidents in parking areas, sports fields, farm roads, driveways, private estates, game reserves or any other private road are not covered. Persons who are not citizens or direct permanent residents are not covered. Persons crossing a highway are not covered. Persons injured in a hit and run are not covered. Pedestrians, drivers and cyclist who may test over the legal limit for alcohol and their dependants are not covered.

### 3. **CURRENT**

Uncapped compensation for general damages for pain and suffering, loss of amenities of life, disfigurement and shock paid to those who have suffered serious injuries.

### **PROPOSED**

No payment for pain and suffering, loss of amenities of life, disability, disfigurement or shock, regardless of how catastrophic the injuries might be.

### 4. **CURRENT**

Loss of earnings and support, past and future, are paid by way of a lumpsum, affording the injured claimant or dependants the freedom and dignity to take charge of their own future.

### **PROPOSED**

No lumpsum payments for future loss of earnings or support. Future earnings or loss of support will be paid as an annuity (monthly payments). The Fund has the right to continually reassess its liability to continue to pay. If the injured claimant is a breadwinner and dies, the pension will cease, leaving dependants destitute.

5. **CURRENT**

All medical and other expenses reasonably incurred that arise directly from the accident are covered.

**PROPOSED**

Medical and other expenses will be subject to a prescribed tariff, which will not cover the actual costs incurred. All future expenses to be pre-authorised in terms of a procedure to be prescribed and subject to restrictions and exclusions.

6. **CURRENT**

In terms of the common law, expenses covered by medical aids must be paid by the Fund and in terms of the rules of the medical scheme, re-imbursed to the medical aid to go back into the pool of funds available for the benefit of all members.

**PROPOSED**

No cover for expenses covered by medical aid/insurance. This will have dire consequences for all medical aid members, not just road accident victims. Medical aids may be forced to exclude cover for motor vehicle accident expenses.

7. **CURRENT**

Costs incurred to inter the deceased in a grave are covered.

**PROPOSED**

Fixed capped benefits for funeral expense.

8. **CURRENT**

Any person injured as a result of the negligence of a driver or owner may claim.

**PROPOSED**

No compensation if there is a claim in terms of the Consumer Protection Act. No compensation if injured whilst filming a movie or advertisement. Claims for passengers who may be covered by the operator's passenger liability insurance to be reduced by the extent of the cover.

9. **CURRENT**

The claimant is free to prosecute his or her claim in a court of law.

**PROPOSED**

Jurisdiction of the courts largely ousted by the establishment of alternative dispute resolution procedures followed by referral to the office of the Road Accident Fund Adjudicator (yet to be established).