



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

1. BACKGROUND

- 1.1. Government's policies to reform the current common law-based compensation system and to align it with the principles of other social insurance funds.
- 1.2. Substantial changes are planned to promote values of equity, human dignity and social solidarity, and to improve administrative arrangements.
- 1.3. The overall aim is to provide effective benefit scheme which is reasonable, equitable, affordable and sustainable in the long term. Provision of relevant and appropriate services for persons affected by injury or death in collisions; reduce income vulnerability of injured/disabled people (and so fight poverty) and to support employment.
- 1.4. The Policy document seeks to transform the current structural problems of the compensation system for road users and to align a revised benefit scheme to the principles of the Constitution.
- 1.5. The Policy aims to expand the social security safety net within the constraints of limited resources, provide more appropriate social support and introduce measures to use public resources more economically and effectively.

- 1.6. At present claims against the RAF for bodily injury and personal loss arising from accidents are based on common law of wrongdoing (delict) and liability insurance principles. The remedy is both ineffective for claimants and inappropriate for claimants and inappropriate for claims on social security scheme.
- 1.7. Not only is the common law based claim complex, time consuming, expensive and fraught with practical difficulties, but the outcome is unpredictable and unreliable.
- 1.8. The immediate focus is on fault and blame to determine the cause of the accident and to exclude at-fault road users from compensation. As a result, injured persons are unable to access medical care in time while dependents of persons killed in road accidents are left to fend themselves.
- 1.9. Claims are received and administered in a litigious and dispute –ridden environment and many cases take years to be finalised and paid. This prolongs hardships and severely impacts the poor and vulnerable.

2. INTRODUCTION

- 2.1. The Task Team on Public Transport received the presentation on 29 March 2010. Government requested that the Task Team engage on the subject matter on an expedited manner as there were tight timelines on the matter.
- 2.2. Upon receipt of the Presentation the Task Team recommended that Nedlac be granted an extension to the matter.
- 2.3. The Department of Transport then gave an extension of end of April 2010 to engage on the subject.

- 2.4. The Task Team acknowledged the urgency of the matter and agreed on giving comments to the Policy document.
- 2.5. The Task Team met twice; 29 March 2010 and 15 April 2010.
- 2.6. The Task Team comprised of the following:
 - 2.6.1. **Labour:** Sibusiso Gumede, Gary Wilson, Jane Barrett and Assaria Mataboge.
 - 2.6.2. **Business:** Eric Cornelius, Thami Skenjana, Kganki Matabane and Prof Walters
 - 2.6.3. **Government:** Terence Gow and Tshepiso Thipe (RAF unit DOT)
 - 2.6.4. **Community:** Thulani Mabuza, Tshepo Nkwe, Dorah Ndaba and Joseph Williams.

3. AREAS OF AGREEMENT

- 3.1. Constituencies agreed that the Department of Transport will incorporate instances where claim could be based on non authorised vehicle being involved in an accident.
- 3.2. Constituencies agreed that there would be no necessity in outlining or giving a benchmark on reasonable assisted devise. The rationale is borne with an understanding that injuries differ significantly.
- 3.3. Constituencies agreed that punitive damages should be inserted in the policy document as a means to deter negligence. Furthermore agreed on the need to work with Arrive Alive campaign and the traffic enforcement agencies.

3.4. Nedlac will invite the relevant Law enforcement agency from the Department of Transport to engage on how to improve or deter accidents on the road.

4. AREAS OF DISAGREEMENT

There were no areas of disagreement

5. RESERVATIONS

There were no reservations

6. LEGAL DRAFTING

Constituencies agreed that there was no need for legal drafting

7. RECCOMENDATION

The Department of Transport should sensitise the employers/employees in the industry on job security and retention as fears were suggesting job losses on the implementation of this subject matter.

8. CONCLUSION

8.1. This report concludes the consideration of the restructuring of the Road Accident Fund in NEDLAC. The next step is to submit it to the relevant Ministers in terms of Section 8 of the Nedlac Act, No. 35 of 1994.

8.2. It is acknowledged that the NEDLAC parties may continue to advocate their views in the public consultation and Parliamentary processes.