

Alarm raised over amendments to Road Accident Fund Act

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22 Sep 2023

Lawyers warn of "dire consequences" for South African road users.



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- **The Law Society of South Africa has raised the alarm over proposed changes to the Road Accident Fund Act.**
- **The amendment bill removes the rights of drivers, passengers and pedestrians to claim compensation for injuries but proposes the fund provide “social benefits” instead.**
- **Public and civic groups have been urged to submit comments before 8 October.**

The Law Society of South Africa (LSSA) has urged members of the public and civic associations to formally object to proposed amendments to the Road Accident Fund Act which, if approved, will have “dire consequences” for all South African road users.

The draft amendment bill was gazetted earlier this month by the transport minister. It proposes major changes to how the fund operates and how it will pay claims.

According to the LSSA, it proposes significant changes to the existing law, including removing the rights of drivers, passengers and pedestrians to claim compensation for injuries they have suffered. Instead, it proposes that the fund will only provide significantly reduced “social benefits”.

And, says the LSSA, an innocent injured party would still be denied the common law claim against the guilty party for the balance of his or her loss.

Yet all road users contribute directly or indirectly to the fund through the fuel levy, estimated to be about R45bn a year.

“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,” the LSSA says in its [statement](#).

Claimants will also not receive any lump sum payments and, if they are not able to produce a payslip, it was unlikely that they would receive compensation for loss of earnings.

The LSSA said 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.”

The LSSA said 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 to the fund.”

At present, injuries sustained in a motor car accident anywhere in South Africa by any person are covered by the Fund.

The Bill now excludes injuries suffered in motor vehicle accidents in parking areas, sports fields, farm roads, driveways, private estates, game reserves or any other private road.

People who are not citizens or permanent residents are also 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 dependents are not covered.

The Bill also proposes doing away with payments for pain and suffering, loss of amenities of life, disability, disfigurement or shock.

It also does away with lump sum payments for loss of earnings or support, replacing them with monthly payments, and giving the fund the right to continually reassess its liability to continue to pay.

While at present all medical and other expenses reasonably incurred that arise directly from the accident are covered, these will now be subject to a prescribed tariff. Any future medical expenses have to be pre-authorised.

The LSSA said the Bill also largely ousts the role of the courts in determining contested claims, establishing instead alternative dispute resolution procedures followed by referral to be a yet-to-be established Road Accident Fund Adjudicator.

Co-chair of the KZN Personal Injury Lawyers Association Anthony De Sousa said the biggest issues around the Bill was what was not known, such as what “social benefits” were and what the treatment tariffs would be.

“We don’t know what we are signing up for”.

“What also worries me is the people it excludes, such as pedestrians crossing highways. They don’t do that for fun. They do it because they have no choice and are trying to get to work or home.

“They are poor people and if they are knocked down, they really need help. To exclude them is just weird.”

He said while there may be a case not to cover motorists who don’t have licences, or who are over the legal alcohol limit, the Bill also proposed that their dependents are not covered, such as a child who is injured.

“The kids are not at fault, but suddenly they have no claim.”

He said the approach seemed to be: “Let’s try and save some money”.

“We pay a lot of money to the fund in terms of the levy. If you were to take that money and take up an insurance policy, you would probably get better cover and better value for money.

“I don’t think, no matter how they change it, it won’t work until they sort out the dysfunctionality, the administrative inefficiencies in the fund. You can change it to whatever system. They cannot properly administer it and run it.

“If they did their jobs properly, the fund would be saving itself a bucket load of money.”

De Sousa said the association was presently putting together its formal response to the proposals.

Collen Msibi, spokesperson for the Department of Transport said, “The bill is out for comments. The department will welcome all views and suggestions for its consideration.”

Comments and objections can be sent to Lindiwe Twala at twala@dot.gov.za or Trevor Mphahlele at mphahlelet@dot.gov.za.

The deadline for comments is 8 October.

Published originally on [GroundUp](#).