

REPUBLIC
OF
SOUTH AFRICA



REPUBLIEK
VAN
SUID-AFRIKA

Government Gazette Staatskoerant

Vol. 372

PRETORIA, 7 JUNE 1996
JUNIE

No. 17240

GENERAL NOTICE

NOTICE 705 OF 1996

DEPARTMENT OF TRANSPORT

DRAFT WHITE PAPER ON THE MULTILATERAL MOTOR VEHICLE ACCIDENTS FUND

This draft White Paper is presented to the general public for discussion. Written comments can be submitted to the Director-General: Department of Transport, Private Bag X193, Pretoria, before or on 31 July 1996.

PREFACE

The Multilateral Motor Vehicle Accidents Fund (MMF) is the successor to the Motor Vehicle Accidents Fund and its counterparts in the erstwhile TBVC States, and came into effect on 1 May 1989 by virtue of the provisions of the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 and similar legislation in the TBVC States. The Road Accident Fund Bill, 1996 recently served before Parliament. That Bill recognises that the MMF is no longer founded on a multilateral agreement between five Member States and consequently changes the name of the MMF to the Road Accident Fund, but this document will continue to refer to the MMF. The purpose of the MMF and its predecessors is to compensate victims of motor vehicle accidents (MVA's) on the terms and conditions as provided for in the various acts governing such compensation.

The MMF is the result of a long historical development spanning some fifty years, commencing with the introduction of compulsory MVA insurance in 1942 and culminating in the present system of victim compensation. Over the years the system of compensation of MVA victims has been subjected to numerous commissions of inquiry (an approximate average of one commission of inquiry every seven years), the latest of which was the Melamet Commission in 1992. There have been many amendments to the governing acts. Despite the implementation of the recommendations of the various commissions of inquiry and regular amendments of the governing acts, the financial condition of the system has progressively deteriorated.

This Draft White Paper seeks to identify and analyse the causes of such deterioration anew and to suggest effective and lasting solutions to the problems facing the compensation system, including measures to facilitate and simplify the system and to maximise the proportion of the available resources which reaches the victims by way of compensation. At the same time it is intended to invite and generate widespread interest, discussion, and constructive and concrete proposals which may guide the Government in the fundamental review of the compensation system for the victims of MVA's.

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INTRODUCTION**CHAPTER I**

1. OVERVIEW OF CONTENTS

1.1 By way of introduction to the subject, this Chapter gives brief legal and financial histories of motor vehicle accident (MVA) compensation.

1.2 In order further to orientate the reader, Chapter II gives a brief exposition of the current legal base and claims procedure, with an indication of the general nature of the problems arising in each area.

1.3 Chapter III analyses in some detail the financial results in recent years, casting light on the causes and magnitude of many of the problems.

1.4 In Chapter IV all these problems are discussed in greater detail, and solutions are advanced to make the delivery of MVA compensation more efficient, affordable, and understandable for the general public, and to bring the MMF to a sound financial condition.

1.5 Chapter V summarises all the proposals made in this document.

2. LEGAL HISTORY**Summary**

2.1 The table below summarises the main events relating to the legal history of MVA compensation:

New Act	Amendment Acts	Commissions of Inquiry
Motor Vehicle Assurance Act, 29 of 1942	27 of 1952 31 of 1959 60 of 1964 14 of 1966 46 of 1966 30 of 1969	Corder (1954) Du Plessis (1962)
Compulsory Motor Vehicle Insurance Act, 56 of 1972	22 of 1974 94 of 1974 87 of 1976 69 of 1978 23 of 1980 2 of 1982 4 of 1983	Wessels (1976) Grosskopf (1985)
Motor Vehicle Accidents Act, 84 of 1986		Viviers (1987)
Multilateral Motor Vehicle Accidents Fund Act, 93 of 1989	Proc. 102 of 1991 Act 22 of 1992 Proc. 62 of 1993	Melamet (1992)

Motor Vehicle Assurance Act 29 of 1942

2.2 In view of the threat posed by vehicular traffic to road users, public pressure was exerted during 1934 on Parliament to introduce an MVA victim compensation system. This was in step with developments elsewhere in the world. The main thrust was that protection be afforded mainly to persons not in or on a particular

vehicle, i.e. pedestrians. This particular point of view should be viewed against the socio-economic conditions which prevailed at the time. At that stage of South Africa's development the motor vehicle was a relatively new mode of transport and compared with the situation today there were very few on the roads. Public transport other than by rail or tramway was not commonplace.

2.3 The Act came into effect on 1 May 1946. The reason for the delay in introducing the Act and its coming into operation was the intervening Second World War.

2.4 The object of the Act as stated in the long title was:

"To provide for compensation for certain loss or damage caused unlawfully by means of motor vehicles and for matters incidental thereto."

2.5 The legal basis of the Act was the law of delict as modified in certain respects by the Act. A significant dimension of the Act was the introduction of compulsory insurance in order to ensure that claimants were assured of recovery of the damages they were entitled to.

2.6 The 1942 Act was amended by Act 27 of 1952, Act 31 of 1959, Act 60 of 1964, Act 14 of 1966, Act 46 of 1966 and Act 30 of 1969.

2.7 The most notable amendment of the 1942 Act was during the sixties when it became apparent that certain

insurers had insufficient income to cover claims, resulting in the liquidation of a number of companies, while other insurers had engaged in certain malpractices to the detriment of the public. This gave rise to the establishment in 1965 of the MVA Fund which acted as total reinsurer of those companies which undertook compulsory MVA insurance. Added to this an agreement was reached with eleven insurance companies which formed a consortium. The consortium companies were given the sole right to undertake third party insurance. The initial number of eleven was extended to sixteen during 1966. In addition agreements were concluded by the Minister of Transport (and subsequently the State President), the MVA Fund and the consortium by which the internal operation of the third party compensation system was agreed.

2.8 The Act was the subject of two commissions of inquiry i.e. the Corder Commission of Inquiry in 1954 and the Du Plessis Commission of Inquiry in 1962.

Compulsory Motor Vehicle Insurance Act 56 of 1972

2.9 The 1972 Act was promulgated to consolidate the Act relating to third party claims, and essentially re-enacted the 1942 Act as amended from time to time. The Act came into operation on 2 June 1972.

2.10 The long title of the 1972 Act was more extensive than its predecessor's, and stated that the Act was:

"To provide for the compulsory insurance of certain motor vehicles in order to ensure the payment of

compensation for certain loss or damage unlawfully caused by the driving of such motor vehicles; for the payment of compensation where the loss or damage is caused by the driving of an uninsured or unidentified motor vehicle; and for incidental matters."

2.11 The legal basis consequently remained unchanged from that of the 1942 Act. The policy of allowing only certain approved insurance companies' forming a consortium to effect third party insurance was retained in this Act, as well as the underwriting of the risks of the consortium by the MVA Fund. The Act also provided for an advisory committee and a committee charged with the fixing of insurance premiums. The Act further introduced the notion that the motor vehicle and not the owner or driver is insured.

2.12 The 1972 Act was amended by the Compulsory Motor Vehicle Insurance Amendment Act 22 of 1974 (introduction of lift clubs), the Second General Law Amendment Act 94 of 1974 (condonation of prescription), Act 87 of 1976 (reimbursement of extra-territorial claims by MVA Fund) and the Compulsory Motor Vehicle Insurance Amendment Act 69 of 1978. The latter Act introduced the following aspects:

- * Insurance passes with ownership;
- * Insurance by other persons than the owner;
- * The concept of "special circumstances" in relation to condonation of prescription;
- * Prescription subject to the Act and not to the

Prescription Act 68 of 1969;

- * Payment of interest in respect of compensation;
- * Compensation of national servicemen;
- * Exclusion of liability under certain prescribed circumstances;
- * Validity of claims;
- * Increased benefits for passengers of motor vehicles.

Three further amendment acts were passed in the early eighties.

2.13 The 1972 Act was subjected to two commissions of inquiry, being the Wessels Commission of Inquiry in 1976 and the Grosskopf Commission of Inquiry in 1985.

Motor Vehicle Accidents Act 84 of 1986

2.14 At the conclusion of the inquiry of the Grosskopf Commission of Inquiry in 1985 the Government was presented with two reports. The majority report essentially recommended that the *status quo* be maintained while the minority report held that the system of compulsory insurance be scrapped in favour of a system funded by fuel levies. Subsequent to the submission of the report but prior to the official publication thereof, the financial statements of the then MVA Fund were published. These statements reflected an operating loss (expenditure over income) of R82,6 million for the 1982/3 financial year and R217 million for the year 1983/4. These results indicated that for the system to become and remain solvent the premiums would have had to be increased by 200% or 300%. Under the then prevailing

circumstances such a step was politically unacceptable. As a result of these considerations the Government opted for the fuel levy funded system. Considerable pressure was however exerted by the insurance industry and the legal profession to retain aspects of the insurance based system and to incorporate and amalgamate the former with the proposed system. This resulted in a compromise which included the agency system in the Motor Vehicle Accidents Fund Act 84 of 1986 which came into operation on 1 May 1986 and which repealed the Compulsory Motor Vehicle Insurance Act 56 of 1972.

2.15 The object of the MVA Act of 1986 as stated in the long title was:

"To provide for the payment of compensation for certain loss or damage unlawfully caused by the driving of certain motor vehicles; and to provide for incidental matters."

2.16 The object of the Act did not differ materially from its predecessors and did not change the legal basis of claims. Claims were still based on delict. The Act, however, radically changed the method by which payments of claims were to be funded. Instead of compulsory insurance, claims were to be funded by a levy on fuel of 2,6 cents per litre on petrol and 1,7 cents per litre on diesel. All provisions relating to insurance were deleted from the Act. The material insurance based provisions of the Act regarding liability were, however,

retained. Consequently the MVA Act of 1986 did not differ essentially from the 1972 Act which it repealed.

2.17 The Act remained unchanged until it was suspended by virtue of section 3 of the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989. There was one inquiry in relation to the 1986 Act, namely the Viviers Commission of Inquiry.

Multilateral Motor Vehicle Accidents Fund Act 93 of 1989

2.18 Due to the existence of the TBVC States and the geographical situation of these states in relation to the Republic of South Africa, it became desirable to introduce a uniform compensation system. At the same time certain provisions of the MVA Act of 1986, notably those dealing with prescription, were causing difficulties in practice. These considerations led to the promulgation of this act which came into operation on 1 May 1989.

2.19 The Act as such does not indicate the object thereof in respect of compensation. However the introductory article to the Agreement between the SATBVC States which is given the force of law by virtue of section 2 of the Act reads as follows:

"The payment of compensation for certain loss or damage unlawfully caused by the driving of certain motor vehicles within the area of jurisdiction of the Contracting Parties shall after the date of inception of the MMF, be governed and administered by the MMF on a

multilateral basis according to the terms and conditions of this Agreement."

2.20 The Agreement contained in the Act does not deviate from the method of funding and the legal basis for liability established by the preceding MVA Act of 1986.

2.21 The Act was amended in 1991 (simplification of provisions regarding prescription and the extension of the prescriptive period to three years), in 1992 (receipt of fuel levies monthly instead of quarterly), and in 1993 (implementaton of certain recommendations of the Melamet Commission of Inquiry).

3. MELAMET COMMISSION OF INQUIRY

3.1 The MMF Act and the whole delivery system of MVA compensation were the subject of an inquiry in 1991/2 headed by Mr Justice Melamet. At the same time the Auditor-General conducted a wide-ranging audit of the system, going into some greater detail on certain matters. The main finding of these investigations was that there was widespread inefficiency, negligence, irregularity, and fraudulence in the conduct of some role players in the system. More specifically:

(a) Attorneys

Certain attorneys acting on behalf of claimants unnecessarily delayed the lodging of claims; ran up unnecessary legal costs; grossly overstated claims; submitted fraudulent claims; and rendered highly

inflated accounts to the MMF (and its agents) and to their own clients.

(b) Medical Specialists

Certain medical specialists, known to prepare medico-legal reports exclusively for claimants, quoted estimates of future medical expenses which were many multiples of estimates obtained by MMF agents from other medical specialists.

(c) Assessors

Certain assessors (private investigators) assisted in lodging fraudulent claims and rendered inflated and false accounts.

(d) Agents

Certain agents were negligent by failing at times to discover and prevent the malpractices listed in items (a)-(c) above; maximized their profit on the handling fees received from the MMF by shifting investigative work from their internal staff (whose expenses are met out of the handling fees) to external attorneys and assessors (whose expenses are reimbursed by the MMF); and practised poor housekeeping, with files in respect of claims that they handled on behalf of the MMF being in total disorder.

(e) MMF

Whilst no fraud was found in the MMF itself, and whilst its quality of claims handling was found to

be good, the MMF was severely criticized for not monitoring the quality of work done by its agents; for having made ill-advised investments; for lack of reliable statistics; and generally for poor direction and management.

3.2 As suggested by the Melamet Commission, a new Board of Directors, chief executive officer, and senior management were appointed to improve the direction and management of the MMF and to consider and implement the other recommendations made by the Commission. In fact, of the 29 recommendations, 23 have been implemented, apart from many other steps that have been taken to improve the management of the MMF. Within the current legal framework we have reached the ceiling on improvements to how the MMF is managed. The following recommendations of the Melamet Commission have not been implemented or are being reconsidered in this document:

- (a) "That an agreement be entered into with the S.A. Insurance Association whereby its Ombudsman also acts for the MMF." (Noting the limited mandate of the Ombudsman, the Board considered such a step of little use.)
- (b) "That 'hit-and-run' cases be dealt with by the agents." (This is discussed in paragraph 21 below).
- (c) "That the Central Energy Fund pay over the amount of the annual fuel levy at the beginning of each

year to enable the MMF to establish reserves".

(This was rejected by the 5 Member States of the MMF at the time as impractical - the CEF could hardly pay over fuel levies in advance of receiving them from the oil companies).

- (d) "That every effort be made so that the MMF creates reserves equal to at least one year's estimated expenditure". (This is dealt with in paragraph 14 below).

- (e) "That at this stage no limitation on compensation be imposed by the MMF. However, the position should be closely monitored and this recommendation be reconsidered if the situation so demands."

"That no limitation be placed on claims by foreigners (non-residents) without considering the national interest". (See paragraph 27 below).

- (f) "That the lengthening of the period of prescription be reviewed by the MMF in order to return it to a more effective and realistic period in keeping with the need to bring matters to speedy finality, both from the point of view of the claimant and the MMF. This is essential also from the point of view of decreasing the 'long tail' liabilities and the burgeoning outstanding claims." (See paragraph 24.2 below).

- (g) "That the MMF review all the limiting and exclusionary provisions in the Schedule, and in so

doing take into account the economic practicabilities of the matter." (See paragraph 29 below).

(h) "That the MMF give consideration to the simplification of the prescribed claim forms to make them manageable by members of the public themselves and to limiting the fees payable to attorneys for the initial submission of claims up to the stage where the claims are rejected by the MMF or its Agent." (See paragraph 31 below).

(i) "That the no-fault system in relation to damages caused by or arising from the motor accident should not be introduced at this stage". (See paragraph 30 below).

4. FINANCIAL HISTORY

4.1 The current financial aspects of the compensation system will be discussed in greater detail in Chapter III. In this section a brief overview is given of the financial results of the system in the recent past.

4.2 No statistics regarding the financial position of the compensation system are readily available for the period 1942 to 1965, since these statistics were kept by the individual insurance companies. The following statistics for the 5 years preceding the take-over by the MMF relate to the RSA as constituted at the time, excluding the TBVC countries which had their own individual compensation systems.

Period preceding the establishment of MMF: 1984 TO 1989

R million

	Financial Year ending 30 April				
	1985	1986	1987	1988	1989
Income	136	131	229	281	380
less Expenditure	269	299	314	415	545
Operating Loss	133	168	85	134	165
Deficit beg. of yr.	221	354	522	607	741
Deficit end of yr.	354	522	607	741	906
Provision for Outstanding Claims	630	745	850	1 000	1 260
less Nett Resources*	276	223	243	259	354
Deficit end of yr.	354	522	607	741	906

*Assets less creditors and non-claim provisions

The financial history of the MMF

4.3 The following is a brief summary of the financial results of the MMF for the period 1.5.1989 to 30.4.95, starting with the deficit of R966 million which the MMF inherited from its five predecessors on 1 May 1989 (the RSA contributing a deficit of R906 million and the TBVC states a total deficit of R60 million):

R million

	Financial Year ending 30 April					
	1990	1991	1992	1993	1994	1995
Income	457	480	526	791	1 157	1 217
less Expenditure	761	1 314	1 422	927	1 805	1 616
Operating Loss	303	835	895	136	648	400
Defct. beg. of yr.	966	1 269	2 104	2 999	3 135	3 783
Defct. end of yr.	1 269	2 104	2 999	3 135	3 783	4 183
Provision for Outstanding Claims	1 695	2 500	3 250	3 450	4 400	5 000
less Nett Resources*	426	396	251	316	617	817
Defct. end of yr.	1 269	2 104	2 999	3 135	3 783	4 183

*Assets less creditors and non-claim provisions

LEGAL BASE AND CLAIMS PROCEDURE

CHAPTER II

5. LEGAL BASE

5.1 The present MVA compensation system indemnifies the driver of a motor vehicle against the liability incurred as a result of loss or damage caused to a "third party" (i.e. the victim). The common law principles of delictual liability are incorporated in the legislation, and the MMF is - generally speaking - liable only to the extent that such driver was negligent. Acts such as the Apportionment of Damages Act 34 of 1956, the Assessment of Damages Act 9 of 1969 and certain principles of insurance law form part of the system's legal base.

5.2 Although the provisions of the current legislation on MVA compensation are essentially still the same as those enacted in the Motor Vehicle Assurance Act, No. 29 of 1942, the legislation has been amended frequently over the past fifty years (see paragraph 2) - often to accommodate the effect of a Court judgement or to cater for specific issues. This has resulted in a complex framework of rules and exceptions, some of which have become less meaningful, while others are qualified by intricate definitions and interpretations formulated by the Courts. The current legislation is very complex, with the result that the whole system has become extremely legalistic and virtually incomprehensible to the average member of the public for whose general benefit this social legislation is intended.

5.3 The lack of certainty pervading the legislation, the many confusing and antiquated provisions resulting in real or perceived unfairness, the common law basis of compensation, and the open-ended liability of the MMF have all encouraged costly and time consuming litigation. This culture of litigation that has developed around MVA compensation is diverting far too much of the MMF's finite resources away from the intended beneficiaries (see paragraph 26 below). It is estimated that victims often benefit by less than two-thirds of what the MMF pays out in total.

5.4 As mentioned in paragraph 5.1 above, the delictual basis of the system requires a determination of the respective degrees of fault of the victim and the (other) driver, and the victim's claim is reduced by his or her own degree of fault. However, in the practical application of the legal base there is a tendency to erode the principles of delict: There is a tendency to place emphasis not so much on the common law liability of the wrongdoer (who is often regarded as a largely anonymous and relatively unimportant "chief witness" whose position as "defendant" has been completely absorbed by his or her insurer), but rather on the victim's needs or rights. Such an approach may well be socially desirable, but it deviates from the common law principles of delictual liability as envisaged in the present legislation, and it exposes the system to greater liability than originally intended by the legislator. The legislation itself deviates from its common law basis

in that the victims of hit-and-run accidents are specifically provided for, in the absence of which they would have had no claim at all. Government wishes the compensation system to serve society better by improving the legal base of the system.

6. CLAIMS PROCEDURE

6.1 As a result of the history of the system, its legal basis and the distortion of that legal basis, the present claims procedure is time consuming, cumbersome, and very expensive to administer:

- (a) At present a claimant has 3 years from the date of accident to lodge a valid claim if the wrongdoer or owner of the offending vehicle has been identified, and 2 years in the case of hit-and-run accidents. This dissimilarity causes much confusion and administrative inconvenience. With certain exceptions (see paragraph 24.2 below) claims prescribe 5 years after the accident unless summons is served on the MMF or its Agent. The periods involved in this "two-tier" system of prescription are far too long: Because the system is fault-based, extensive investigations have to be done to determine the degree of negligence of the insured driver (i.e. the wrongdoer). Documents and information from a variety of sources need to be obtained and witnesses need to be traced, in order that the accident can be reconstructed and its cause established. With the passage of these long prescription periods documents are destroyed, information discarded, and witnesses and insured

drivers become untraceable. Often "assessors" or private investigators have to be appointed to trace witnesses or insured drivers, and to locate documents and other information. Much of this time, effort, and expense can be avoided if victims were to lodge their claims much sooner after the accident.

- (b) The MMF Act lays down procedural requirements with which a claimant has to comply in order to lodge a valid claim. These requirements are extensive and complicated, but nevertheless necessary *in the context of current legislation*: they combat fraud, and contain the levels of cost, time spent, and litigation below those which would otherwise be the case. The judiciary, however, interprets most of the requirements to be directive rather than peremptory, thereby reducing the positive effect these requirements may have had on the present system's shortcomings.

- (c) After lodgement a claim enters an investigative period. The merits (the cause of the accident, in particular the respective degrees of negligence) and the quantum (the value of the damages suffered) are to be established. As seen in sub-paragraphs (a) and (b) above, these investigations can be extensive. The need to use external experts for both merit and quantum investigation and evaluation causes costs to soar, especially if the amount claimed seems clearly exaggerated and the MMF calls for a second opinion from experts nominated by

itself. Opposing teams of experts take time and effort to settle difference, and costs continue to escalate.

- (d) The settlement of a claim is probably the most painstaking part of the process. Fluctuating and seemingly divergent Court pronouncements regarding both merits and quantum promote serious differences of opinion between claimants' attorneys and the MMF. In addition, many claimants' attorneys insist on compensation in excess of a reasonable amount (see paragraph 24.1(e)), whilst the MMF - as custodian of public money - is constrained to conduct its affairs in accordance with the relevant legislation. This adversarial situation often frustrates attempts at amicable settlement, and invites costly litigation which is instituted with little hesitation. Such litigation also contributes considerably to the congested court rolls (see paragraph 24.1(f)).
- (e) It should be mentioned that the claimant's attorney personally is rarely exposed to cost penalties in cases of unnecessary litigation. With an exploitable system, clients ignorant of the law, and with little personal risk to the legal practitioner personally, there is little to stop the MMF from being inundated with inflated and unrealistic claims (see paragraph 24.1(e) below). The best efforts of the MMF to settle reasonably before litigation are often ignored, and even in cases where the MMF is successful in court, legal costs can almost never be recovered from claimants.

FINANCIAL ANALYSIS

Chapter III

7. HIGH ACCIDENT RATE

7.1 A major cause of the MMF's financial problems is the high road accident rate in the RSA, and it is worthwhile taking a closer look at that before proceeding to the financial results. According to the Automobile Association's Annual Traffic Safety Audit 1992, South Africa's road fatality rates in 1992 compared as follows with those of a number of other countries:

Country	Per 100 000 Population	Per 100m Vehicle-km	Per 100 000 Vehicles
Australia	12,09*	1,51*	21,63*
Canada	13,81*	0,87*	21,51*
France	15,93	2,03	28,45
Germany	13,20	1,63*	25,34
Britain	8,16*	1,11*	18,90*
Japan	9,20	1,69*	14,60
USA	16,35*	1,19*	21,53*
Brazil	3,93*	10,50*	31,10*
Chile	12,05*	8,27*	151,49*
Egypt	7,92	n.a.	222,67
Kenya	7,63*	35,90*	589,94*
RSA	31,78	10,37	181,83

*These figures relate to various years prior to 1992.

7.2 Whilst these statistics should be treated with some caution, it is clear enough that there is much room for improvement in our accident rate. This in turn would naturally reduce the claims being made on the MMF. Conversely, if one looks upon the fatality rates per 100 million vehicle-kilometres as a rough indication of the relative levy to be placed on each litre of fuel sold, the levy in RSA should be 5-10 times as high as it would need to be in some developed countries.

7.3 According to the Central Statistical Service the number of traffic collisions, and the resultant injuries and deaths, in RSA have progressed as follows over the past 5 years (these figures exclude the erstwhile TBVC States):

Years	COLLISIONS			CASUALTIES			
	Total	Resulting in injury or death	Property Damage only	Deaths	Serious Injuries	Slight Injuries	Total
1990	433 287	89 013	344 274	11 157	32 343	87 273	130 773
1991	444 541	91 428	353 113	11 069	34 765	90 612	136 446
1992	429 485	83 804	345 681	10 142	32 792	93 470	136 404
1993	433 027	84 368	348 659	9 443	33 383	84 914	127 740
1994	468 032	90 938	377 094	9 981	36 548	91 892	138 421

Whilst there were some gratifying improvements in 1992 and 1993, there is clearly an urgent need to arrest and reverse these high statistics, generated as they are by a vehicle population of some 6 million.

7.4 The State of Victoria in Australia has in recent years improved its accident rate dramatically by the introduction of road-safety measures which concentrate on road user education (for both present and future

drivers), revision and vigorous enforcement of its traffic law, and the re-engineering of roads to remove so-called black spots. Over a recent period of 5 years Victoria have managed to reduce the number of road accident deaths and injuries by nearly half. Whilst South Africa may not be able, for a variety of reasons, to achieve the same measure of success, it seems certain that material benefits can be gained by implementing (with appropriate adjustments to local conditions) at least some of the facets of the Victoria programme. In fact, the Province of KwaZulu-Natal has recently initiated studies to that end, and the Government supports this exercise in principle.

7.5 It is understood that Victoria's Transport Accident Commission (the counterpart of our MMF) contributes to the funding of the road-safety measures taken there: it is seen as an "investment" in the reduction of road accidents and claims arising therefrom. At present, the MMF Act does not permit the application of MMF funds for that purpose, but it seems desirable and it is Government's intention that the Act be amended to permit such application of MMF funds, provided that such "investment" be made like any other: with due care and diligence, and with a reasonable expectation of an appropriate "yield" in the shape of lower and fewer claims.

7.6 The rehabilitation of injured MVA victims is another aspect which deserves more attention and finance. At present the MMF pays for the cost of ongoing therapy to

individual victims, but it is thought the community might be better served if such treatment were co-ordinated and provided in dedicated rehabilitation centres. Again the MMF Act does not permit of the financing of such centres, and it is proposed that the Act be amended for that purpose. Any actual engagement in such an enterprise will, however, require careful thought, planning, and control.

8. FUEL LEVY INCOME

8.1 Apart from investment income generated by assets held by the MMF from time to time, the MMF's sole source of income is the levy on fuel sold. It is in fact not so much a dedicated levy specifically raised to finance the operations of the MMF, but rather that part of the general fuel tax which is channelled to the MMF. As a matter of computational convenience, it is expressed as a rate per litre of fuel sold. In recent years the rates have been pitched at the following levels:

<u>Date Applicable</u>	<u>Petrol Levy c/l</u>	<u>Diesel Levy c/l</u>
1 May 1989	3,6	2,1
1 April 1990	3,4	1,9
1 November 1990	4,0	2,2
1 April 1992	6,0	3,8
2 April 1993	9,0	5,8

These rates have yielded the following levy income during the financial years indicated:

<u>Year ended 30 April</u>	<u>Levy Income</u>
	(R million)
1990	404
1991	426
1992	489
1993	763
1994	1 111
1995	1 181

8.2 There is much to be said for this method of financing the MMF's liabilities:

- (a) It is reasonably equitable, in that the levy paid by a motorist is more or less in proportion to the average risk (measured by time, distance, and speed on the road) of causing injury to, or the death of, another road-user.
- (b) The levies are collected in the most efficient manner, the MMF receiving bulk payments from the oil companies at the end of each month. This stands in stark comparison to the collection of individual premiums from motorists with its concomitant delays, expenses (which could easily exceed 20% of the premium), omissions, and losses.
- (c) The problems of uninsured and hit-and-run vehicles when dealing with individual policies and premiums do not arise under the levy system. Each motorist will have made a contribution to the Fund at the time of purchasing fuel.

- (d) It is more convenient for the motorist to have the cost of the insurance spread over the year as fuel is purchased, rather than paying a large premium once a year.

8.3 The fuel levy system can, however, be criticised on the following grounds:

- (a) In certain instances fuel is sold (and the levy paid as part of the general tax on fuel) for purposes bearing little or no relation to road accidents. One thinks here especially of the bulk usage of diesel for such purposes as rail and sea transport, and machinery. If one takes the view that the "MMF levy" is a special addition to the price of fuel, it seems unfair that these non-road users of bulk diesel should pay the same price at the fuel pump as road users. The official view, however, is that the "MMF levy" is not a special addition to the fuel price, but merely a part of general fuel tax (or, for that matter, general tax revenue) which is passed on to the MMF to finance its operations. Even so, it does follow that transport by rail is on this account at a disadvantage to transport by road, since in the former case appropriate liability insurance is a cost not incurred by the latter. Previous experience has shown that differential prices at the pump are not practicable and are wide open to abuse. The other alternative of refunding the "MMF levy" seems more manageable, but will require

elaborate audit. If any such relief were to be granted, the levy rate on road users would naturally have to be increased to raise the same revenue as before.

- (b) The existence of the MMF actually serves two purposes: firstly it indemnifies the wrongdoer against a possibly very large claim from the victim, and secondly it ensures that the victim will gain satisfaction against a wrongdoer who is otherwise uninsured and has little or no means. In paragraph 20.1 it is suggested that the victim have a *direct* claim against the MMF (i.e. injury/death insurance), rather than a claim against the wrongdoer in the first instance (i.e. legal liability insurance). If that should become so, it does mean that pedestrians - who constitute approximately one-half of all claimants - make no specific contribution for this cover in their capacity as pedestrians. This nevertheless accords with Government's current stance that victims of road accidents should be compensated out of general tax revenue, regardless of the channel employed to finance that compensation.
- (c) The levy income of the MMF is dependent upon both the levy rate per litre, and the number of litres of fuel sold. Judging by the progression of the levy income over the past 6 years, the volume of fuel sold increased for this purpose by under 3% p.a. on average. In contrast, the MMF's claims

paid over that period increased on average by more than 21% p.a. It is clear that reliance cannot be placed on only the growth in the volume of fuel sold to meet the escalating cost of claims: the rate per litre itself also needs regular upward adjustment like the price of other goods and services. This is not so much a criticism of the fuel levy system, but rather a consequence of the general inflation in the economy, and in particular of the high inflation of the MMF's claims expenditure. Paragraph 11.3 returns to this subject.

9. INVESTMENT INCOME

9.1 The contribution of investment income to total income has been relatively minor since the MMF has never been able to build up a meaningful portfolio of assets. Investment income (i.e. dividends and interest and realised gains/losses) amounted to the following in recent years:

<u>Year ended 30 April</u>	<u>Investment Income</u> (R million)
1990	53
1991	54
1992	37
1993	28
1994	45
1995	35

As at 30 April 1995 the MMF's investments also reflected unrealised gains of nearly R32 million.

9.2 The investment income exhibits an erratic progression partly because the nett cash flow (i.e. new investible funds) has fluctuated wildly from -R145 million in 1992 to +R302 million in 1994, and partly because of the performance of the stock exchange in that market value fluctuations influence the realised gains/losses. Apart from a liquid reserve of R100 million which the MMF itself invests in the money market, the balance of the portfolio investments is managed on behalf of the MMF by 4 leading professional investment managers. At the 1995 year-end they managed assets with a market value of R551 million.

10. EXPENDITURE

10.1 On the expenditure side matters progressed as follows during the financial years ended 30 April of the years indicated:

R million								
	1990	1991	1992	1993	1994	1995	Total	%
Claims - paid	370	487	638	692	812	985	3 984	50,8
- increase in provision for outstanding claims	369	803	750	200	950	600	3 672	46,8
Claims - incurred	739	1 290	1 388	892	1 762	1 585	7 656	97,6
Administrative Expenses	22	24	34	35	43	31	189	2,4
Total Expenditure	761	1 314	1 422	927	1 805	1 616	7 845	100,0

These items of expenditure are analysed in turn in the following paragraphs.

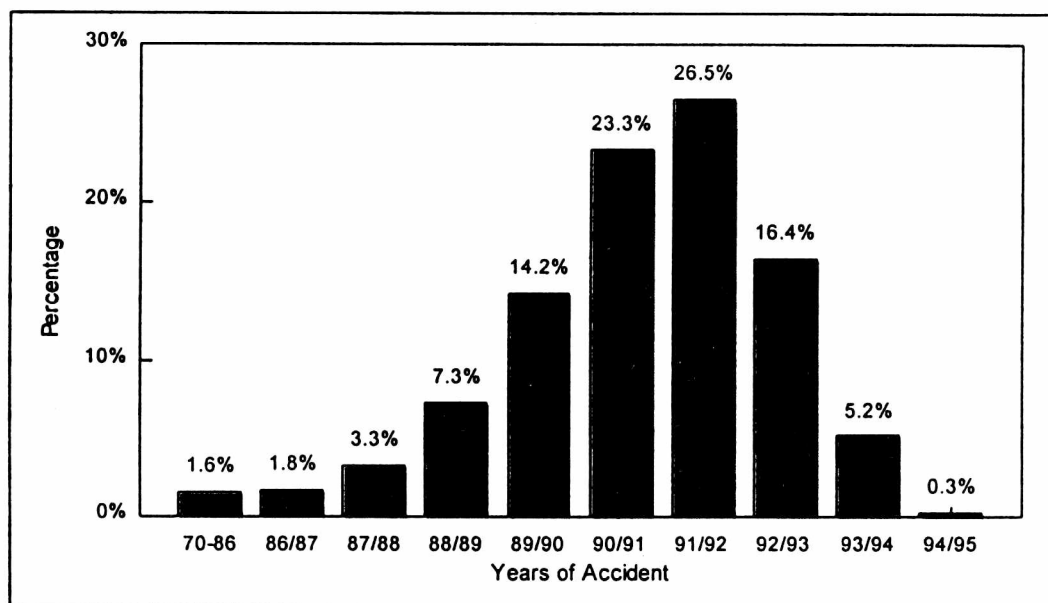
11. CLAIMS PAID

"Long-tail" insurance business

11.1 This item reflects the amount paid in claims during the relevant financial year, regardless of when the accident occurred or when the claim was lodged. Although

the settlement pattern varies somewhat from year to year, the following analysis of claim amounts paid during 1994/5 according to the years in which the accidents occurred is typical:

Percentage of Claims Paid in 1994/5 relating to Years in which Accidents occurred



This illustrates well the so-called "long tail" nature of this kind of insurance business: claims are settled on average 3,8 years after the accident, and claims might still be outstanding 10 years or more after the accident took place. There are many reasons for this long delay in settling claims, and paragraph 24 returns to this subject.

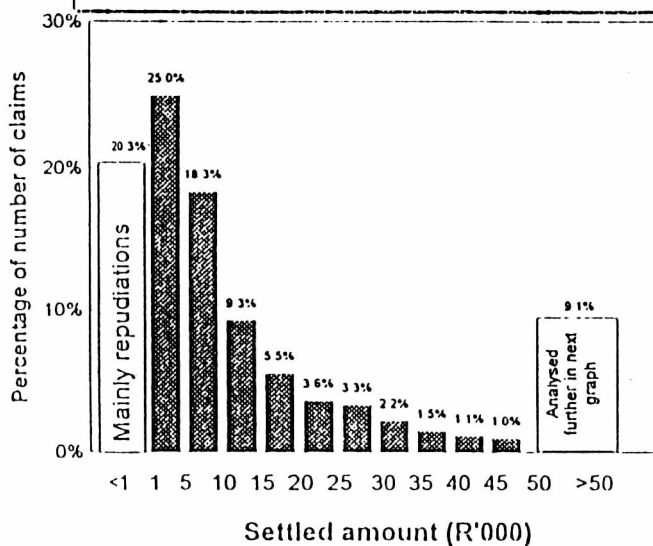
Skew distribution

11.2 The distribution by size of individual claim is extremely skew. The table and the four graphs hereunder typically illustrate the number of claims and the amounts paid in respect of various categories of size of

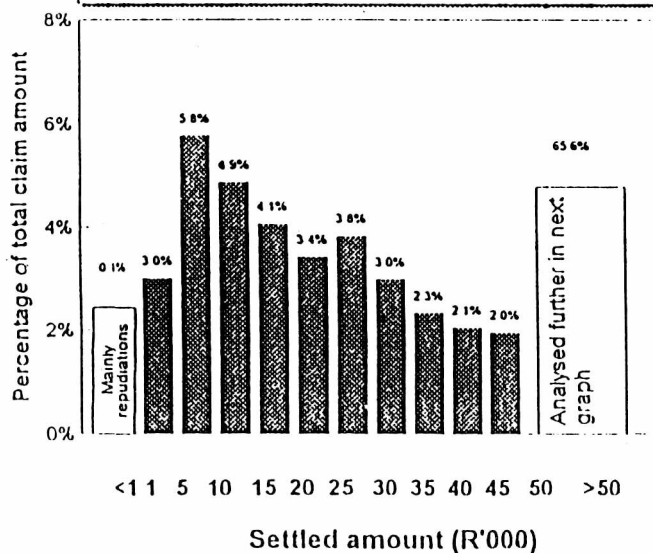
**Distribution of Claim Size by Numbers and by Total
Amounts**

Number	%	Cumula- tive %	Claim Size R	Total Amount (Rm)	%	Cumula- tive %
6 556	20,3	20,3	0- 1 000	0,8	0,1	0,1
8 079	25,0	45,2	1 001- 5 000	22,8	3,0	3,0
5 936	18,3	63,6	5 001- 10 000	43,6	5,8	8,9
2 998	9,3	72,8	10 001- 15 000	36,7	4,9	13,7
1 776	5,5	78,3	15 001- 20 000	30,7	4,1	17,8
1 155	3,6	81,9	20 001- 25 000	25,9	3,4	21,2
1 058	3,3	85,1	25 001- 30 000	29,0	3,8	25,1
701	2,2	87,3	30 001- 35 000	22,7	3,0	28,1
473	1,5	88,8	35 001- 40 000	17,7	2,3	30,4
366	1,1	89,9	40 001- 45 000	15,5	2,1	32,5
312	1,0	90,9	45 001- 50 000	14,8	2,0	34,4
1 527	4,7	95,6	50 001-100 000	106,9	14,1	48,6
545	1,7	97,3	100 001-150 000	65,9	8,7	57,3
273	0,8	98,1	150 001-200 000	47,0	6,2	63,5
138	0,4	98,5	200 001-250 000	30,7	4,1	67,6
101	0,3	98,8	250 001-300 000	27,8	3,7	71,2
76	0,2	99,1	300 001-350 000	24,7	3,3	74,5
66	0,2	99,3	350 001-400 000	24,8	3,3	77,8
41	0,1	99,4	400 001-450 000	17,2	2,3	80,1
25	0,1	99,5	450 001-500 000	11,8	1,6	81,6
165	0,5	100,0	500 001-	138,9	18,4	100,0

Distribution of claim size by numbers

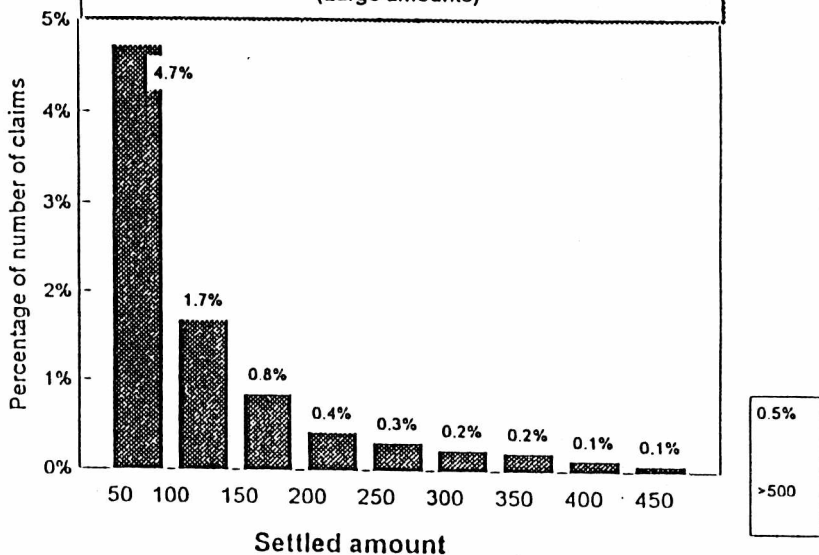


Distribution of claim size by amount

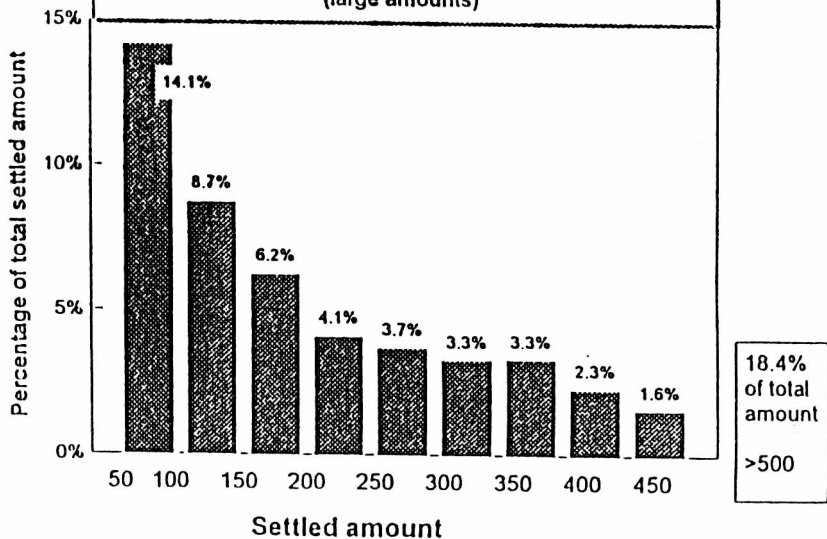


Distribution of claim size by numbers

(Large amounts)

**Distribution of claim size by amount**

(large amounts)



individual claim. (For purposes of this exercise claim amounts include settlement costs, but bulk payments to Provincial Authorities in respect of medical treatment are ignored). It is noticeable that for example 91% of the number of claims are smaller than R50 000, and that they account for only 34% of the total amount paid; or conversely, the highest 9% of claims occasion nearly two-thirds of the total amount paid.

Claims Inflation

11.3 It is seen that the amount of claims paid increased on average by 21,6% p.a. over the period. This high rate is due *inter alia* to the growing number of accidents and claims, the exceptionally high rate of inflation in medical costs, higher awards by the courts and the latter's approach to the interpretation of the legal provisions.

12. SETTLEMENT COSTS

12.1 The amount of claims paid each year comprises both the compensation paid to victims and the cost involved in proving and agreeing those settlements. These settlement costs are made up of the fees paid to external professions like attorneys, advocates, doctors, actuaries, etc., but do not include the internal administrative expenses of the MMF or its Agents. Over the past 6 years these amounts were made up as follows:

	R million							
	1990	1991	1992	1993	1994	1995	Total	%
Compensation	311	409	539	560	654	798	3 268	82,0
Settlement costs	59	78	99	132	158	187	716	18,0
Claims Paid	370	487	638	692	812	985	3 984	100,0

12.2 It is seen that over the years settlement costs increased from some 19% to more than 23% of the compensation paid to victims. A sample analysis over the past year shows that the settlement costs are paid to the various parties in the following proportions:

Attorneys	:	72,8%
Advocates	:	8,7%
Medical Experts	:	11,3%
Actuaries	:	1,7%
Other professionals:		1,3%
Assessors	:	3,8%
Others	:	<u>0,4%</u>
Total	:	<u>100,0%</u>

Paragraph 26 reverts to the question of these high settlement costs.

13. HEADS OF DAMAGES

13.1 The compensation paid to victims can be sub-divided into 5 main heads of damages as follows:

- * Medical costs include the cost of hospitalisation, medicine, surgery, therapy etc., and also the related cost of home and car alterations, equipment, an attendant etc.
- * Loss of income reflects the income lost and that likely to be lost in future by the injured victim.
- * Loss of support reflects the maintenance lost and that likely to be lost in future by the dependants of the deceased victim.
- * Funeral costs reflect the necessary costs thereof.
- * The amounts paid under the head of general damages reflect the compensation paid in respect of pain and

suffering, loss of amenities of life, disfigurement, and other non-financial loss or inconvenience. Thus compensation for general damages is a financial consolation for non-financial loss. Paragraph 28.2 reverts to this issue.

13.2 The compensation paid over the past year can be analysed as follows:

	<u>% of Compensation</u>	<u>% of Claim</u>
Medical Costs:	27,7	22,3
Loss of Income:	25,2	20,3
Loss of Support:	17,3	13,9
Funeral Costs:	0,3	0,3
General Damages:	29,5	23,7
Settlement Costs:	<u>-</u>	<u>19,5</u>
Total	<u>100,0</u>	<u>100,0</u>

14. INCREASE IN PROVISION FOR OUTSTANDING CLAIMS

14.1 As can be seen from the graph in paragraph 11.1 only a miniscule proportion of claim payments made in a given financial year relate to accidents that occurred in that year. Nearly all claim payments relate to accidents that took place in previous years, but have only now "filtered through" and become due and payable. Between the date of accident and the date of settlement such a claim may be said to be "in the pipeline": the liability to pay the claim has already arisen, but payment thereof is still outstanding. If assets were available now to pay the claim when it becomes due and payable, such an

outstanding claim could be said to be fully funded since upon settlement of the claim the nett assets would not be disturbed: both the assets and the provision would reduce by the settlement amount. In the absence of such a provision the settlement of the claim would cause an "unexpected" strain in the form of a reduction in the nett assets. This also means that the balance sheet would not have presented the financial condition fairly and fully, and Government deprecates such misleading reporting.

14.2 It is generally accepted insurance accounting practice to create a provision for outstanding claims. In terms of the Insurance Act, 1943 insurers are also required to create such a provision and to cover it with assets. More specifically:

- (a) In Chapter 3 of its report the Melamet Commission criticises the fact that the MMF's provision for outstanding claims is not fully funded.
- (b) In each Annual Report of the MMF the Auditor-General qualifies his audit report since the MMF's liabilities are not fully funded.
- (c) In paragraph 30.1 of his report of 12 October 1994 to the Minister of Finance the Chief Executive of the Financial Services Board and Registrar of Insurance urges that the MMF fully fund its liability in respect of outstanding claims. In terms of the Financial Supervision of the MMF Act 8 of 1993 the MMF is deemed to be an insurer and the provisions of the Insurance Act 27 of 1943 are applicable to the MMF, subject to the directions of

the Registrar. Due to the technical insolvency of the MMF the Registrar has not yet been able to apply to it the solvency standards contemplated by the Insurance Act, and has indicated endorsement of Government's efforts to bring about the MMF's solvency.

- (d) In its findings on the Auditor-General's report on the MMF as at 30 April 1993 Parliament's Joint Standing Committee on Public Accounts recommends likewise.

The Government accepts these informed and authoritative opinions, and intends making all endeavours to finance the MMF's deficit as quickly as circumstances permit. This is discussed further in paragraph 40.

14.3 Voices have been raised that this funding policy is unnecessarily strict in the case of an institution like the MMF because it is a creature of Parliament which cannot and will not allow the MMF becoming unable to honour its claims. They can point to the MMF's positive cash flow over the past 3 years and its latest nett resources of R817 million, and argue that it is "good enough" if the MMF operates on a pay-as-you-go basis, meeting the current year's cash payments out of the current year's income with little or nothing in reserve. Government does not, however, agree with this line of reasoning. Good housekeeping and sound budgetary and fiscal policy require that a Government meet current expenditure out of current income, and current expenditure includes setting aside enough funds to meet

claims that arose in that year, even if they are not yet due and payable. Financing liabilities on a pay-as-you-go basis is an exercise in "rolling" taxpayers' money: we would be mortgaging the future to pay for the past, since we would be asking motorists to pay over the next 5 years for claims that arose in the past 5 years. It would also not avoid payment of the requisite "premiums" - merely defer it. And although the requisite fuel levy rates on the pay-as-you-go basis are initially lower than those on the funded basis, the former rates overtake the latter within a few years for lack of the supplementary investment income available on the funded basis. One then has the worst of both worlds: higher levy rates and an ever-growing deficit.

14.4 The provision for outstanding claims, and thus the increase in that provision from year to year as shown in paragraph 10.1, was calculated by the MMF's consulting actuaries, who employed various internationally accepted techniques. It was, however, an extremely complicated exercise, for the following reasons among others:

- (a) As indicated in paragraph 11.1, little or nothing is known at the end of a financial year about the claims that arose in that year. As time passes and more becomes known about those claims, projections can be made with greater confidence - but it is evident that the more recent years of accident, which constitute the greater part of the total liability, give the actuary little to go by. It should be borne in mind that the provision for outstanding claims includes a provision for so-

called claims "incurred but not reported", i.e. to say the claim has not yet even been lodged and may remain unknown for up to 2 or 3 years - and even 24 years in the case of an injured minor - before it prescribes and can be ignored. The actuary thus has to be guided by the development of claims that arose in earlier years of accident with a more mature and meaningful body of statistics.

- (b) Not that this can be done by rote: account has to be taken of factors like legislative changes (e.g. the extension of the prescription period from 2 to 3 years during the financial year 1991/2); tendencies in court interpretations and awards; the progression of road accident statistics; inflation; and the rates at which claims are lodged and actually settled. These factors may alter materially after the initial provision for a given year of accident was quantified, and the quantum may be sensitive in various degrees to such alterations.

It is therefore a complex exercise of aiming at a moving target and adjusting course as the picture becomes clearer. This also explains the wide fluctuations in the progression of the provision. It is nevertheless the best estimate available, and one can do no better than to be guided by actuarial science in much the same way as life assurance and pension funds are (although these latter funds have of course much firmer statistics to go by).

14.5 The table below compares, for each year of accident,
 * the original provision made at the end of the year of
 accident for accidents in that year

with

* the sum of the actual payments made in succeeding years
 in respect of those claims and the latest provision for
 the claims remaining outstanding as at the end of the
 financial year 1994/5.

R million										
Year of accident	Original provision	Payments made during:						Provision end 1995	= Total	Total/ Orig.Prov
		1990	1991	1992	1993	1994	1995			
1989	472	36	113	166	151	104	68	96	735	155,7%
1990	571		41	123	192	159	133	162	810	141,8%
1991	860			33	128	216	218	298	893	103,9%
1992	1 005				37	163	250	565	1 015	101,0%
1993	1 093					34	153	829	1 016	93,0%
1994	1 414						48	1 320	1 368	96,7%
1995							3	1 629		
Pre 1989							64	101		
Total							937	5 000		

It is seen that the original provisions made at the end of 1989 and 1990 in respect of claims which arose in those respective years were rather seriously underestimated. For example, as at the end of the financial year 1994/95 the MMF had paid a total of R638 million and made a further provision of R96 million in respect of accidents which occurred during the financial year 1988/89, whereas the original provision made at the end of that year of accident was only R472 million. This can be explained in part by a greater actual number of accidents and claims, and higher actual settlement amounts than expected. It bears repeating that the information available at the end of a year of accident on which the original provision for claims in respect of those accidents is based, is almost non-existent, since

only very few of the smaller and simpler claims are lodged in the year of accident. The provisions in respect of later years of accident so far seem more accurate, but it must be remembered that the patterns of actual payments for these years are still less developed.

15. ADMINISTRATIVE EXPENSES

15.1 This item includes both the MMF's own internal expenses and the handling fees paid to its Agents, and can be analysed as follows:

	R million					
	1990	1991	1992	1993	1994	1995
MMF	4	5	8	10	15	19
Agents	18	19	26	25	28	12
Total	22	24	34	35	43	31

15.2 The MMF's own expenses grew rapidly as a result of the following:

- (a) During the period all open or pending claim files handled by three Agents (President, Protea, and Fedgen) were taken over by the MMF for further attention.
- (b) Over the period the quota of claims handled by the MMF itself increased from some 10% to approximately 42%.
- (c) The MMF upgraded its management, inspectorate, and computer hardware and software on a considerable scale.

15.3 The relatively slow growth in the Agents' expenses is partly ascribable to the decrease in their collective quota (see paragraph 15.2(b) above), and partly to the new practice of paying the handling fee in two tranches, half at lodgement and half at finalization of a claim.

16. IMBALANCE BETWEEN INCOME AND EXPENDITURE

16.1 Comparing total income with total expenditure, one obtains the following results:

	R million					
	1990	1991	1992	1993	1994	1995
Income	457	480	526	791	1 157	1 217
-Claims paid & expenses	391	511	671	727	855	1 016
=Nett cash flow & depreciation	66	(31)	(145)	64	302	201
-Increase in provision for outstanding claims	369	803	750	200	950	600
= Operating Loss	303	835	895	136	648	400

16.2 The following ratios are interesting:

	1990	1991	1992	1993	1994	1995
(a) Provision for outstanding claims/ Claims pd. & expenses:	4,3	4,9	4,8	4,7	5,1	4,9
(b) Nett Resources/ Provision for outstanding claims:	25%	16%	8%	9%	14%	16%

Ratio (a) shows that the provision for outstanding claims amounts to some 5 times the most recent year's cash expenditure. This means that if the MMF should completely cease operations from a given date, it would nevertheless have to continue payments on the latest annual scale for another 5 years or so in respect of accidents which had occurred prior to that date. This again illustrates the "long tail" nature of "claims in the pipeline". Ratio (b) shows the extent to which the

provision for outstanding claims is covered by existing assets, or the degree of solvency of the MMF.

16.3 It is clear from the above that the income allocated to the MMF is completely inadequate to meet its obligations. It is quite impossible for the MMF to continue on its present course and to accumulate a growing deficit of this order of magnitude. Drastic measures have to be taken either to increase the income or to curtail the expenditure, or a meaningful combination of the two remedies should be employed in order to redress the gross imbalance between income and expenditure. Government intends employing such a combination as set out in paragraph 40.

PROPOSALS

CHAPTER IV

17. GOVERNMENT INVOLVEMENT

Compulsory Insurance

17.1 The question might well be posed why Government should become involved at all in the compensation of losses arising from MVA's. After all, losses occur and needs arise as a result of accidents taking place in a variety of ways, circumstances, and places. The reason for Government involvement in MVA compensation lies in the following:

- (a) South Africa's social security system is relatively underdeveloped, and in the absence of special measures to aid MVA victims many of them would be inadequately cared for.
- (b) By and large MVA's occur on public roads and in places frequented by the general public, the accident often taking place through no fault of the victim (often there is no fault on either side).
- (c) MVA's take place on a massive scale, and constitute a large proportion of all accidents. The sheer weight of numbers affected by (a) above makes specific measures desirable (see paragraph 7.3).

In line with international practice, the Government will therefore continue to concern itself with a compulsory

system of MVA compensation (as it does, for other reasons, with accidents taking place in the course of employment).

17.2 In most countries the government's involvement in MVA compensation takes the shape of legislation requiring motorists to purchase a policy of insurance indemnifying the motorist against a claim from a victim. In some countries these policies are to be purchased from insurance companies in the private sector who underwrite the risk for own account; in other countries there is a central government-owned insurance company or statutory fund (as in RSA) which underwrites the risk. In the case of a central insurer, the premiums are often collected together with the motor vehicle's annual licence fee. As far as is known, the RSA, Botswana, and Namibia are the only countries which "collect the premiums at the point of sale of fuel", so to speak. As mentioned in paragraph 8.2(b), this latter method of financing MVA compensation is most efficient, and the Government intends continuing to deliver MVA compensation to society through a statutory fund financed out of tax revenue.

Government Guarantee

17.3 It is recognised that it is politically impossible for the Government to avoid providing for the payment of claims arising from past accidents, since the road-using public have been paying for the insurance cover through a levy on fuel purchased. And there appears to be no reason to believe that such payment could be done more efficiently than through the MMF. It seems, therefore,

that the issuing by the Government of an explicit guarantee to the MMF in respect of claims arising from past accidents, would not increase the effective liability of the Government in respect of such claims. On the other hand a formal guarantee of the liabilities of the MMF would make the Government's balance sheet more meaningful and would remove the recurring criticism of the MMF (e.g. by the Auditor-General) that it is trading in a state of insolvency. It is therefore Government's intention that it should assume the responsibility to enable this statutory fund to discharge its liabilities, and new legislation emanating from this White Paper should recognize this explicitly.

Responsible Ministry

17.4 At present the income and the expenditure of the MMF are determined in terms of two separate Acts. This dichotomy does not make for good communication and management, and it is proposed that both the income and the expenditure of the MMF be co-ordinated and centralised in one ministry. And in as much as the MMF is an insurer financed out of tax revenue, the Ministry of Finance seems the most appropriate. This Ministry administers inter alia the Insurance Act through the agency of the Financial Services Board, which reports to the Minister of Finance on the MMF as well as on all other insurers.

18. GENERAL SCOPE OF COMPENSATION

Property Damage

18.1 In the more developed countries compulsory MVA insurance usually includes indemnity not only in respect of injury or death, but also damage to property (mostly damage to the other vehicle). Whilst such wider cover certainly seems desirable, it is thought to be inopportune at this stage:

- (a) At present the MMF's expenditure far exceeds its income, and later in this Chapter proposals are made to redress this situation and to pre-fund its liability. In order to keep the fuel levy rates at reasonable levels, it is necessary to limit the existing benefits in various ways. The inclusion of benefits in respect of property damage would necessitate further cuts in these other benefits; alternatively, judging by the experience both here and in other countries, it may well double the expenditure.
- (b) Apart from financial considerations, the Government does not wish to involve itself in statutory insurance any more than on a socially desirable minimum level.
- (c) The highly developed private motor insurance industry can provide the cover on a competitive basis.

18.2 The matter may well be re-considered once the MMF is in a sound financial condition.

Hit-and-Run Accidents

18.3 The current legislation provides cover not only in respect of an accident where the owner or driver of the other vehicle has been identified ("ID Claims"), but also where the owner or driver has not been identified ("H&R Claims"). In other countries where motorists are required to purchase insurance, H&R Claims and claims against uninsured motorists present problems since the culpable party's insurer cannot be identified or insurance may not exist. Sometimes special arrangements are made for these problem cases. As mentioned in paragraph 8.2(c), the fuel levy system can be said to avoid these problems and in any event it is Government's intention that victims of H&R accidents should also be compensated.

18.4 There are currently some legal, evidential, and procedural differences between ID Claims and H&R Claims which produce all manner of practical difficulties, and whilst there would naturally be a greater burden of proof of validity in the case of H&R Claims, the differences should be kept to an absolute minimum in order that ID Claims and H&R Claims may be processed as far as possible in identical ways.

19. INSURED EVENT

19.1 As mentioned in paragraph 17.1, Government concerns itself directly with -

- (a) accidents arising as a result of the driving of a motor vehicle; and
- (b) accidents arising during the course of employment; but not
- (c) any other accidents.

19.2 Good law requires that these three areas be delineated very clearly so that everybody understands the scope of each. Furthermore there should be no gap, overlap, or right of recourse among the three areas: The present situation where the Compensation Commissioner has a right of recourse against the MMF is illogical and onerous to administer, and, having identified whether the accident falls under (a) or (b) above, the responsible insurer should simply pay the benefits available in terms of the relevant legislation. This would also counteract possible duplicate claims. Harmonisation of the benefits under (a) and (b), and possible extension to (c) are considered long-term options that may be considered in the light of future economic conditions.

19.3 There are other instances where "double compensation" may arise:

- (a) In the event of injury or death, certain benefits may become payable from other public funds. There should be better communication between the administrators of such funds and the MMF, so that the former are aware of benefits paid by the MMF in

any particular instance and so that payments from the two sources of social benefits dovetail properly.

- (b) Benefits may also become available in terms of the victim's contract of service, private insurance, medical aid etc., or they may be paid gratuitously. It is proposed that all such benefits be ignored when determining the amount of benefits payable by the MMF, but it is recommended that employers and medical aid funds improve communication with the MMF in order that undesired or unintended double compensation does not occur from their end.

Exclusions and Limitations

19.4 There are, however, certain instances where it is considered inappropriate to pay benefits from the public funds of the MMF, and where special limits or total exclusions should apply, e.g.:

- * attending or participating in organised motor sport;
- * drunk or reckless driving;
- * unlicensed driver;
- * driving an unlicensed or stolen vehicle;
- * causing intentional harm with a vehicle;
- * failure to wear a seatbelt;
- * failure to report the MVA to the police.

20. INSURED PARTY

20.1 As mentioned in paragraph 5.4, the insured party under the current law (i.e. the negligent driver) has for

all practical purposes become irrelevant - except in so far as the insured party's testimony assists in determining the degree of the claimant's contributory negligence. It is therefore proposed that the victim himself or herself should be the insured party, having a direct claim against the MMF instead of against the (insured) negligent driver. This changes the nature of the insurance from legal liability cover (in favour of the other motorist) to injury or death cover (in favour of the victim or the victim's dependants).

20.2 In paragraph 30 it is argued that the MMF's benefits should be available on a no-fault basis, i.e. without apportioning guilt to the victim and reducing the benefit accordingly as at present. The testimony of the (other) motorist is nevertheless still required to assist in the investigation of the validity of the claim against the MMF, and this motorist's continued co-operation is still required, albeit in less detail.

21. INSURER

21.1 As mentioned in paragraph 3.2(b), the Melamet Commission recommended that all MVA claims (and not only the non-hit-and-run cases) be handled by Agents, and that the MMF confine itself to the checking of the Agents' work and seeing to it that they maintain the requisite standards. Government does not agree with this view, for the following reasons:

- (a) It is in principle bad insurance practice for a risk carrier (the MMF) to delegate the function of claim settlement to another party (the Agent) who

has no financial interest in the matter other than maximizing the profit that can be made on the administrative or handling fee (see paragraph 3.1(d)). This view accords with that of the Registrar of Insurance in paragraph 13 of the latter's report of 12 October 1994 to the Minister of Finance. It should be remembered that the Agents do not underwrite the benefits for their own account: they perform the administrative function of receiving, investigating, and settling claims, and the MMF then reimburses them with the settled amount. In effect, the MMF hands over its cheque-book to the Agent.

(b) Government accepts that Agents seek to make a profit by being involved in MMF claims handling. However, if the MMF itself handles the claims no such profit leaves its funds.

(c) The MMF has shown that its claims handling ability is superior to that of the Agents. The following statistics relate to non-hit-and-run claims submitted since 1.5.94 and finalised up to 31.12.95:

	<u>Agents</u>	<u>MMF</u>
Number of claims lodged:	43 218	20 154
Number of claims finalised:	9 626	5 466
% finalised	22,3	27,1

This shows that the MMF's speed of finalization is more than one-fifth faster than that of the Agents. A high speed of finalisation could, however, be

indicative of superficial investigation, and therefore it is also necessary to look at the average settlement amounts:

<u>Agents</u>	<u>MMF</u>
R11 905	R8 873

Since the MMF's average settlement amount is less than 75% of that of the Agents, it is clear that the MMF is alert to fraudulent and inflated claims, and probably investigates claims more thoroughly in order to get as close to the truth as possible. Such investigation can, of course, be time consuming and expensive, and therefore one should again look at the speed of finalization (see above) and at the average amounts of settlement costs:

	<u>Agents</u>	<u>MMF</u>
Average settlement costs		
- of claimants:	R1 410	R1 142
- of insurer:	R 178	R 100

All the above indicate that the MMF handles its claims more effectively and efficiently.

- (d) In 1992 an Agent's entire business was liquidated, and the MMF had to take over the further handling of thousands of disorderly pending claim files. Since then four Agents with closed portfolios of claim files (i.e. no new claims were added to the existing stock of pending claims) have decided to transfer the files to the MMF for further

attention, and two Agents who were still receiving new claims have taken the same decision. The main reasons given for this loss of interest are that it is inconvenient and difficult to maintain this specialist kind of department which has no connection with the Agent's core business, and the risk of having to refund monies to the MMF (in the event of its inspectorate ascertaining that money has been misspent) has become too great: the MMF recovers R½ - R1 million per annum from its Agents.

- (e) The new system of MVA compensation contemplated in paragraphs 33 - 39 is even less amenable to being administered by Agents than the current.

21.2 Government has therefore decided that the MMF equip itself with the requisite manpower and systems in order to handle the entire new benefit dispensation by itself. The manner in which the run-off of existing claims is to be dealt with is a matter for negotiation between the MMF and the existing Agents.

22. THE MMF'S BOARD OF DIRECTORS

22.1 The Melamet Commission recommended in 1992 that the Board be composed of at least 6 persons from the private sector who have extensive experience in the fields of insurance, commerce, investments, law, accounting or actuarial science. The MMF Act was accordingly amended in April 1993 and Article 19 now provides for this recommendation. A new Board was appointed in July 1993 for a period of 3 years, consisting of members of these

professions (one actuary, one attorney, one advocate, one orthopaedic surgeon, one academic in business science, two chartered accountants and two chartered insurers). The present Board is therefore composed of members of specific professions or disciplines. The Director-General: Transport and the Chief Executive Officer of the MMF also serve on the Board.

22.2 To date sectional interests, i.e. interest groups, bodies and organisations have been able - through the parliamentary process - to make submissions when amendments to the Act or new legislation is considered. It has, however, been suggested that sectional interests not only be heard at the time of framing legislation but also be involved in the management of the MMF by being represented on the Board. Late in 1995 the Minister of Transport extended a public invitation to submit views on how the Board should be composed. The reaction was varied: some respondents felt that the Board should be composed of only professional experts, whilst others felt that a combination of professional experts and interest groups is more desirable. The interest groups that were mentioned include claimants, the legal profession, the medical profession, hospitals, the Actuarial Society of South Africa, the South African Institute of Chartered Accountants, the Police, the Institute of MVA Assessors, the MMF's Agents, the South African Insurance Association, the general public, graduates in the humanities and social sciences, consumer bodies, taxi associations, the Road Hauliers Association, trade unions, housewives' leagues, the Automobile Association,

Disabled People South Africa, Drive Alive organisation, medical aid societies, etc.

22.3 Having carefully considered the suggestions in the preceding paragraph, Government holds the view that the prime responsibility of the MMF's Board is the professional governance of the MMF, and agrees with the Code of Corporate Practices and Conduct issued by the King Committee that "non-executive directors should bring an independent judgement to bear on issues of strategy, structure, performance, resources, and standards of conduct, and bear a collective responsibility to provide effective corporate governance". The Board is not a forum where diverse and conflicting special interests can be pleaded and resolved: Cabinet decides the levy income of the MMF, and Parliament determines the level of benefits by way of legislation. The duty of the MMF is to execute those decisions of Parliament, and to manage efficiently the vast public funds entrusted to it. In discharging its duty, the MMF may not deviate from the applicable legislation or professional standards. It is therefore of the utmost importance that members of the Board act with impartiality and efficiency; they contribute their respective professional skills to the deliberations of the Board, but they do not plead the interests of those professions or any particular interest group. The current Act requires a Director's independence to be beyond doubt, and Government believes it should remain so. The Board will therefore continue to be composed of experts who can make professional and technical contributions to its deliberations. It has

been decided, though, to widen the spectrum of expertise by including on the Board persons who can make professional input on matters like road safety, road users, and disabled persons.

23. PRESENT SYSTEM INEFFICIENT

23.1 The present system of MVA compensation exacts a high price in terms of time, effort, and expense. The following illustrates this:

- (a) Claims are settled on average 3,8 years after the accident. Some remain outstanding for 10 years and more.
- (b) The investigation necessary to establish the validity, merits (degree of the victim's fault), and quantum of a claim is often a complex and long drawn out process, involving the diverse services of assessors, doctors, neurologists, orthopaedic surgeons, occupational therapists, actuaries, engineers, etc., and in the event of litigation, attorneys, junior advocates, and senior advocates. In addition to reports from the police, ambulance, hospital, employer, etc., reports from these experts are also required.
- (c) The factors mentioned in (a) and (b) above manifest themselves in high costs. It is estimated that the victim receives on average less than two-thirds of the total amount expended by the MMF in relation to the claim.

These are discussed in turn below.

24. SETTLEMENT DELAYS

Procedures

24.1 There are many factors contributing to the inordinately long periods taken to settle most of the claims:

- (a) The victim may delay to lodge a claim, or to instruct an attorney to do so.
- (b) Some attorneys delay the documentation and lodging of claims (see paragraph 3.1(a) above). Although such documentation can be difficult and time consuming, it is known that some attorneys simply accumulate claims and leave matters to the last minute before lodging the claim just before it prescribes (i.e. 3 years after the accident in the case of ID Claims, and 2 years in the case of H&R Claims).
- (c) The documentation, when eventually received, is often of poor quality: it is incomplete, lacking in evidence, or self-contradictory. The claims handler has no alternative - at this late stage, 3 years and more after the accident when probably memories have faded, records have been destroyed, witnesses have moved, cars have disappeared, and road intersections and signs have changed - to try and piece together the evidence available and

reconstruct the accident. By then, this process is of course much more difficult and time consuming.

- (d) The claims handler at the MMF or an Agent may delay matters further by not reacting smartly to the lodged claim or to other correspondence from the claimant's attorney, or by not completing the documentation expeditiously where he or she has to do so himself or herself. No doubt this was the case up to 1992/3, and the MMF still receives complaints from claimants' attorneys that certain Agents are lax in this respect. However, the internal control measures installed at the MMF now make such a complaint a rare event (the statistics in paragraph 21.1(c) show that the MMF settles claims faster than the Agents), whilst the MMF's Inspectorate continuously monitor and report upon this aspect of the Agents' conduct. There is, of course, no incentive - rather the reverse - for an Agent purposely to delay settlement of the claim.
- (e) Even when the investigations have been completed and the insurer is in a position to offer a settlement amount, the claimant's attorney often refuses the offer, claiming an amount perhaps 10 times greater (see paragraph 3.1(a)): Inflated claims are a common occurrence. As an example, as at the end of April 1996 the MMF had finalised 150 large claims (i.e. claims for R1 million and more), which had been lodged since 1 May 1994 and under which a total of R313,3 million had been claimed,

for a total settlement amount of only R31,2 million. These claims had thus been inflated by an average factor of 10.

- (f) If settlement cannot be reached amicably, the matter goes to Court. Long queues in most of the Divisions can mean a delay of another 6 to 12 months. According to figures obtained from the Registrars of the Witwatersrand Local Division and the Transvaal Provincial Division of the Supreme Court, between one-quarter and one-third - and at times a greater part - of the civil court rolls is occupied by summonses issued against the MMF or an Agent. In contrast, litigation in respect of other types of insurance is a rare event indeed.

Prescription

24.2 It has been mentioned that ID Claims and H&R Claims prescribe after 3 and 2 years respectively, unless a valid claim had been lodged. In the case of ID Claims prescription does not run against a minor, which means that a claim can remain unknown and be lodged as long as 24 years after the accident. (The reinsurers of the MMF are objecting more and more vociferously against this aspect of their liability). It is obviously in the interest of claimants, their medical suppliers, and the MMF that these long delays in settlements be reduced drastically. Many private insurance policies require a claim to be reported as soon as possible and in any event within one month of the insured event taking place.

24.3 Even if MVA compensation should be paid on a no-fault basis (as is proposed in paragraph 30) and investigation of contributory negligence is thus no longer required, it remains necessary to establish that the accident falls within the ambit of MVA loss for which the MMF is liable (see paragraph 20.2). There seems to be no reason - apart from the victim being in a coma or being unable for some other good and valid reason - why victims cannot submit a claim form within 3 months of the accident, giving some minimum prescribed information to enable the claims handler -

- (a) to verify (and perhaps investigate) the nature of the accident soon after the event;
- (b) to reassure the victim and confirm that the claim has been admitted in principle;
- (c) to start settling the medical bills (directly or otherwise);
- (d) to commence paying the benefit in respect of loss of income.

As an aside, such earlier notification will considerably facilitate the calculation of the MMF's provision for outstanding claims.

24.4 Of course, in many instances it may well not be possible at this early stage to quantify entirely the benefits payable by the MMF. Neither is that the purpose

of this proposed initial claim form (ICF). As will be seen later on, it is envisaged that up to 18 months be allowed for the medical condition of the victim to stabilize, before the claim can be settled finally. This ICF can be viewed as the first phase of the total claim, which is separated from a possible second phase in order to speed up settlement of the smaller and less complex claims.

24.5 It is proposed that a penalty be introduced if this ICF is not submitted within 3 months of the accident, and that there be no claim if the ICF is not submitted within 12 months of the accident (subject to certain exceptions). It will be necessary -

- (a) to publish this new requirement widely, and again from time to time, in order that the public be well informed of the need to submit an ICF timely;
- (b) to limit the information called for on the ICF to the absolute minimum that will serve its purpose;
- (c) to make the form as simple, clear, and "user friendly" as possible so that - without prejudice to the claimant - it does not require legal advice for its completion; and
- (d) to simplify and clarify the benefits, conditions, and procedures - amplified by pamphlets - so that claimants clearly understand their entitlement and how to go about obtaining it.

24.6 The period of prescription can be made 3 years in all instances, but it should nevertheless remain a condition precedent for the payment of benefits that the ICF be completed in all respects and submitted within 12 months of the accident. Prescription should also run against minors in all instances, and parents or guardians should be mindful of their responsibility to their children or charges.

24.7 It is also thought that hospitals and other medical suppliers with unpaid bills might be well placed to render assistance in the completion of the ICF, to MVA patients who are unable to read and write.

25. HEAVY BURDEN OF PROOF

25.1 Chapter II and paragraph 23.1(b) illustrated the complexity and vast scope of the current requirements in order to establish the validity, merits, and quantum of a claim. While all this may be necessary under the present dispensation, it would be well to simplify and clarify these requirements by designing new benefits, conditions, and procedures. The delivery system should be streamlined so that it becomes "victim friendly", without opening a door to inflated or fraudulent claims, and without encouraging differences of opinion and litigation.

25.2 To this end, the benefits will be spelt out clearly and, where appropriate, standardized. During the first phase (up to 18 months) of the claim, there will be no

need to take a long-term view of the victim's probable future medical expenses or loss of income - they will simply be settled on an incurred basis at the prescribed scales as soon as it is established that it was an MVA and what the medical expenses and loss of income amount to from time to time. This may well dispense with some 90% of claims and more.

25.3 Should the victim still suffer loss after 18 months - and this will be a small minority of claims - medical evidence will become necessary in order to deal with the long-term or permanent disability of the victim, but again the benefits and the conditions attaching thereto will be as clear and objectively ascertainable as possible.

26. HIGH SETTLEMENT COSTS

26.1 Paragraph 12.1 indicated that settlement costs currently constitute 19,0% of claims paid. These are the fees paid to professional experts and others in order to substantiate claims, and are collectively styled "legal costs".

26.2 The legal costs the MMF Act requires the MMF to pay to a claimant, are what are called the claimant's party and party costs (including both fees and disbursements). These costs are calculated in accordance with tariffs fixed and published in terms of the Rules of the Supreme Court and of the Magistrates' Courts. They do not cover all the costs an attorney may charge the client. These other additional costs, called attorney and

client costs, which the MMF is not liable for, are recovered by the attorney directly from the client and are in effect usually deducted by the attorney from the compensation paid by the MMF to the client. These additional costs to the claimant are not reflected in the MMF's accounts.

26.3 Paragraph 24.1(f) referred to the congestion of Court rolls by contested MMF claims. The figures mentioned in paragraphs 26.1 and 26.2 do not reflect the cost to the general taxpayer of maintaining Courts for this purpose and on this scale, nor the inconvenience and costs caused to other civil litigants.

26.4 Late in 1994 the MMF established a Legal Costs Section with the function of auditing legal bills of cost. As at the end of April 1996 this Section had assessed 3 218 bills for a total amount of R19,4 million, but which were settled for R14,8 million after assessment - a savings of nearly 24%. Whilst this Section more than pays its way, the cost of just more than R1 000 000 p.a. to maintain this Section is another "legal cost" which enters the MMF's books under general administrative expenses.

26.5 The whole system of MVA compensation is not only legalistic, but operates in an environment which is litigious in the extreme. It is the serious intention of Government to reduce the need for litigation to an absolute minimum in order to maximize the benefits to MVA

victims and so that the tax revenue entrusted to the MMF serves the purpose it was intended to.

27. UNDERLYING PHILOSOPHY

Need for Capping

27.1 Aggregating the financial results for the past 6 financial years, one obtains:

R million

Income over period	4 628
Expenditure over period	7 845

Income thus covered expenditure to the extent of only 59%, i.e. to say the fuel levy rates per litre should have been some two-thirds higher. The increase in the provision for outstanding claims as at the end of the 1995 financial year includes corrections for previous under- and overestimates (see paragraph 14.4), and therefore does not reflect the specific experience in that year. In an attempt to arrive at a measure of the specific experience for the 1995 financial year, the expenditures shown in the table in paragraph 10 above have been smoothed as follows:

R million

	1990	1991	1992	1993	1994	1995	Total
Actual	761	1 314	1 422	927	1 805	1 616	7 845
Smoothed	761	924	1 123	1 365	1 658	2 014	7 846

Hence the income of R1 217m for the 1995 financial year covered 60% of the smoothed expenditure for that year, much in line with the aggregates for the 6 year period as mentioned above.

27.2 It can therefore be reasonably stated that the levy rate on petrol should have been increased from 9 c/l to 15 c/l as from 1 May 1995, and should thereafter increase by some 15% p.a. (depending upon the growth in the volume of fuel sold and the rate of claims inflation) in order to avoid further operating losses. That would still leave the accumulated loss of R4 183m as at 30 April 1995 unfunded. It seems clear that this course of action is not feasible. The only alternative is to limit the benefits that are intended to be financed out of the fuel levy.

27.3 It should be noted that the benefits currently available from the MMF are generous: apart from the limit of R25 000 on claims which passengers have against their own drivers, claims for losses in respect of income, support, and medical expenses are unlimited (another aspect to which the MMF's reinsurers are objecting more and more). In addition, the MMF compensates for non-economic or "general damages", i.e. in respect of pain and suffering, loss of amenities, etc. And on the assumption that the average motorist drives 20 000 km per annum in a vehicle consuming 10 litres of petrol per 100 km, the average "premium" paid for this cover amounts to R180 per annum. By contrast, the current annual premium for a city motorist in e.g. the state of Victoria, Australia, is A\$286 or more than R700, even though Victoria's fatality rate of 1,07 per 100 million kilometres is about one-tenth of South Africa's. In addition, the benefits paid there are subject to many

thresholds and ceilings, which makes it all the more difficult to explain why our premium is a quarter of theirs.

Other Major Considerations

27.4 Government seeks a system that is not only economically viable, stable, and sustainable in the long term, but one which also -

- (a) channels the available resources primarily to the more seriously injured and the poorer section of the population;
- (b) removes the special limit currently applying to the claim which a passenger has against his or her own driver;
- (c) removes the reduction in benefit as a result of the apportionment of the victim's own contributory negligence, i.e. the benefits should be available on a no-fault basis;
- (d) reduces the legal and other settlement costs to a bare minimum; and
- (e) speeds up and facilitates the settlement procedure.

These considerations are discussed below.

28. SERIOUSLY INJURED AND POORER VICTIMS

28.1 It was shown in paragraph 27.2 that capping is unavoidable, but it can be introduced selectively in order to reduce the impact on those members of society who have the greater needs. It is therefore proposed in paragraph 33 that the acute medical treatment of victims immediately after the accident should not be subject to any limit, and that a generous allowance remain available for ongoing, long-term medical and related expenses thereafter (see paragraph 34). Likewise, although it is necessary to cap the benefit in respect of loss of income or support, the approach in paragraphs 35, 36, and 37 of replacing such loss up to the first R2 500 per month fully covers a large proportion of the poorer population (see paragraph 35.2).

28.2 It is considered in the best public interest to maximize the compensation for *real financial loss* like medical expenses and loss of income as in the preceding paragraph, and to discontinue compensation for *non-financial "loss"* like pain and suffering i.e. so-called general damages. Government also wishes to remove the constraints on certain passenger claims and the apportionment of guilt as mentioned in paragraph 27.4(b) and (c). These latter two proposals naturally increase the cost of benefits. If the system should continue to deliver compensation for general damages, this would result in either a substantially higher fuel levy rate than would otherwise be necessary, or further and rather drastic caps would have to be introduced on medical

expenses and income replacement, and the proposed relaxation on passenger claims and on apportionment of guilt would be jeopardized. There are, of course, more ways than one to cut up the proverbial cake and to channel the available resources; but, given a finite levy income based on tolerable levy rates, any increase in one benefit necessarily takes place at the expense of another. As will be seen from paragraph 40.1, general damages currently absorb some 25% of the benefit expenditure, and Government believes this significant amount can be applied more effectively in other ways for the benefit of the community.

28.3 As indicated in paragraph 28.1 above, the proposed caps on compensation for loss of income would provide adequate benefits to at least 72% of the population. (see paragraph 35.2). Those members of society who wish, for example, to secure income replacement above the proposed limit of R2 500 per month, are in a position to do so by purchasing voluntary, additional private insurance - at least to cover their own loss.

28.4 If the common law right to claim the excess loss over the cap from the "guilty" party in a vehicle accident remains, the circumstances leading to the original introduction of compulsory third party insurance will return. In the first place a poor or middle-income "guilty" party may be left destitute by a large excess claim from a high-income person, and secondly such excess claim may never be paid because the "guilty" party does not have the necessary means to do so. This

consideration is of particular importance to the country's vast transport industry (see paragraph 29.1). It could therefore seem desirable that there should be no recourse at common law for losses in excess of the benefits paid by the MMF, similarly to the situation under the Compensation for Occupational Injuries and Diseases Act 130 of 1993.

28.5 The thought that there should be no recourse at common law may not necessarily be as radical as it may appear at first glance, nor may it necessarily be as prejudicial to the public at large, for the following reasons:

- (a) There is already, under the present system, no recourse against the guilty party personally, because he or she is fully insured by the MMF (with the exception of the limited passenger claims).
- (b) It could be argued that it is socially more desirable, and more advantageous to the poorer section of the population, that these victims be assured of *guaranteed benefits, payable on a no-fault basis*, which compensate them for all or nearly all the loss they have suffered. The right to sue a wrongdoer does not guarantee satisfaction, and where the victim might obtain satisfaction the wrongdoer could be left destitute and dependent upon inadequate social benefits. The wealthier section of the population could top up their benefits by way of voluntary private insurance

against their own loss. The private insurance industry is likely to rise to the occasion and design and market policies providing suitable injury and death cover for residents and tourists alike.

- (c) If a member of the public neglects to obtain such top-up cover, and suffers loss due to a road accident, he or she would be the only one suffering consequential losses.

If, however, the common law right to claim against the wrongdoer for loss in excess of the MMF benefit remains intact, it follows that the road user would have to purchase not only additional private *injury insurance* to cover his or her own loss, but also additional private *legal liability insurance* to indemnify himself or herself against such claims from victims: the right to sue (as victim) carries with it the risk of being sued (as wrongdoer). This latter insurance would be very expensive since the private insurer would foresee the possibility of the policyholder being liable for claims of R10 million and more if he or she happened to cause loss to a high income earner (resident or tourist). This insurance is not likely to be available for unlimited amounts, so that the road user will still be at risk above a certain amount. The insurance is also not generally available, and the transport industry would yet again be faced with the problems which paragraph 29 below seeks to solve.

28.6 As can be concluded from the foregoing the question whether the victim should retain his or her common law right to claim the excess loss above the cap from the driver who is to blame for the loss, presents Government with a most difficult dilemma, and Government does not wish to express a preference without a proper open debate and input by the public at large.

29. PASSENGER CLAIMS

29.1 Due to financial constraints the claim which a passenger can institute against the MMF as a result of the negligence of the passenger's own driver is currently limited to R25 000. For any loss in excess of that amount, the passenger proceeds at common law against the owner or driver. It is very difficult for some sectors of the transport industry to secure private insurance against such claims: availability fluctuates, and it is very expensive. And a large claim could ruin an uninsured transport business. If a second vehicle is involved, the victim has an unlimited claim against the MMF. This is anomalous. It is also anomalous that a vehicle out of control should cause a passenger to have a limited claim, but the pedestrian victim an unlimited claim. It is proposed that this distinction be removed, and that passengers qualify for the same capped benefits as any other victim of an MVA - regardless of whether another vehicle was involved or not, and regardless of a fare having been paid or any other distinction.

30. NO-FAULT BENEFITS

30.1 In line with a number of other countries, Government believes that the RSA should also move to a no-fault MVA compensation system, i.e. that victims should qualify for the capped benefits regardless of who is to blame and the degree thereof. The reasons for this proposal are outlined below:

- (a) A substantial proportion of MVA victims are compensated inadequately (or not at all) because of their inability to prove fault on the part of the alleged wrongdoer. Regardless of the merits of the victim's case, the fact remains that he or she has suffered a financial loss (medical expenses and loss of income) which may leave him or her destitute. The purpose of a public compensation system is primarily to address such needs, and not to ascertain the percentage guilt of the wrongdoer in order to quantify the benefit payable.
- (b) Even if the victim were in fact 100% innocent, the absence of corroborating evidence or the unwillingness of a witness to testify may cause the victim to forfeit a large part (or all) of his or her claim.
- (c) Establishment of fault requires the reconstruction of the accident. Reliance has to be placed on the varying and sometimes questionable powers of observation and memory of the persons involved and of bystanders, who are required to testify at

length to an event of a few seconds that occurred perhaps years ago. The persons involved tend to present their conduct in the most favourable light. In Court, the unfamiliar and disconcerting atmosphere and the rigours of cross-examination may adversely affect the ability to report accurately on the events, which may cause the testimony to be found unconvincing or even unreliable. Even if the facts of the collision can be reconstructed reliably, the standards applied to determine negligence and the apportionment of guilt are imprecise. Too often the conclusions reached are quite simply artificial and speculative.

- (d) Using fault as a method of determining liability presupposes that a wrongdoer had ample opportunity to consider the respective merits of the various courses of action open to him or her. This presumption may be equitable and efficient for other delictual claims, but it is quite unrealistic in the case of split-second MVA's.
- (e) In any event, fault is not the only cause of accidents: traffic density, road surface, weather conditions, mechanical defects, and inadequate road signage among others all play their part.
- (f) The need to prove fault can be very costly in terms of time, effort, and expense.

- (g) Making medical treatment available on a no-fault basis would dramatically improve the delivery of trauma treatment, since the trauma units at private hospitals would be assured of payment of their bills on a certain scale once it has been ascertained that the patient had been involved in an MVA.
- (h) The introduction of no-fault liability in the context of MVA compensation would not be a radical departure from the principles of existing South African law: existing examples of no-fault liability can be found in the liability of an employer for the wrongful conduct of an employee; of an owner for damage caused by an animal; of a principal for the delict of an agent; of the media for defamation; of the suppliers of electricity, air travel, nuclear energy, etc.

30.2 It is noteworthy that internationally benefits or compensation paid on a no-fault basis are nearly always subject to predetermined statutory maxima or caps.

30.3 No-fault benefits can be said to encourage fraudulent claims. For this reason, it should be made a statutory offence to submit a fraudulent claim.

31. MINIMIZING LEGAL COSTS

31.1 The large proportion of the MMF's expenditure paid by way of legal costs is wasteful (see paragraph 26 above). The system simply cannot afford it, and it is

Government's intention to structure the benefits, and the conditions and procedures pertaining to the payment thereof, in such a manner as to make litigation and even legal advice unnecessary in all but a few possible exceptions. This should not be construed as Government being opposed to legal advice or the legal profession, but merely as bringing this social legislation closer to the beneficiaries for whom it is intended and giving the taxpayer better value for money by way of higher benefits than would otherwise be affordable.

32. TAC IN VICTORIA, AUSTRALIA

32.1 The new benefits proposed, and the conditions attaching thereto, are discussed in the following paragraphs. Government gratefully acknowledges the considerable time spent and effort made by officials of the Transport Accident Commission (TAC) in Victoria, Australia, in explaining its history and the measures taken to improve its financial condition. In the late 1980's TAC was in much the same position as the MMF currently is, having to deal with high accident rates and a large deficit. Since then the combination of road safety and rehabilitation measures and the restructuring of its benefits and conditions (especially the introduction of thresholds and caps) have made for a success story which we should try and emulate as much as our different circumstances permit: Victoria's road accident rates are now of the lowest in the world, and TAC's liabilities are fully funded. As mentioned in paragraph 7.5 Government believes that the MMF should be enabled likewise to "invest" in road safety measures, and

the formulation of the proposals below reflects many similarities with Victoria's current MVA compensation system (as it does with our own workers compensation system).

33. MEDICAL EXPENSES

33.1 It is proposed that *medical expenses in the narrow sense*, i.e. hospitalisation, medical consultations, prescribed medicines, surgery, and therapy be reimbursed -

- * at a maximum of the scale of benefits employed by the Compensation Commissioner (all damages and benefits should be calculable and payable in South African rands);
- * to the extent that these expenses are incurred in RSA; and
- * without an aggregate limit during the first 18 months after the accident; but
- * only after a threshold of (say) R100 had been reached, in order to avoid the administration of the very large number of really minor injury claims.

34. PERMANENT IMPAIRMENT BENEFIT

34.1 After the initial period of 18 months most victims' medical conditions should have stabilised, enabling an informed medical opinion to be formed on the degree of permanent impairment and hence the likely future needs in the way of home and car alterations, an attendant, prostheses, ongoing therapy, and possible future surgery. Circumstances can vary widely here, and the MMF should at its option decide whether to undertake to reimburse such

future reasonable expenses as and when and if they are incurred (e.g. a possible hip replacement in 10 years' time), or whether to settle the claim by way of a cash lump sum representing the present value of future reasonable medical and related expenses (e.g. in the case of paraplegia). Either way, the benefit would be subject to a maximum calculated at -

Permanent Impairment % x [R1 000 000 - (R10 000 x age at accident)]

- where the Permanent Impairment % is determined according to the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, the guidelines of the Compensation Commissioner, or in other similar manner; and where the expression in square brackets is subject to a maximum of R800 000 for ages under 20 and a minimum of R200 000 for ages over 80.

34.2 The monetary figures above have been established with reference to the experience of the MMF, and are thought to cover the reasonable expenses likely to be incurred by the seriously injured, without going as far as bionic arms, voice-activated light switches, computers, a second and third attendant, heated swimming pools, etc. It should also be borne in mind that subsequent medical attention is available in provincial hospitals at subsidized rates.

35. LOSS OF EARNINGS

35.1 It is proposed that only up to R2 500 of gross monthly earned income be taken into account for purposes of calculating this benefit, and in order to avoid this benefit becoming unemployment insurance the victim must be able to prove the loss under this head by way of a current pay slip and a tax assessment or form IRP5 for the most recent fiscal year, where available. Minor short-term claims will be avoided by imposing a threshold of 30 days following the date of accident, in respect of which no benefit will be paid (many employed persons would in any event enjoy sick leave benefits during such period). The benefit is payable in the first place for a maximum of 18 months.

35.2 The monetary amount of R2 500 p.m. should be seen against the background of statistics obtained from the Central Statistical Service and the Human Sciences Research Council, according to which at least 85% of the economically active population earned below R30 000 p.a. in 1991, and some 72% of households (which may include more than one breadwinner) earned below that figure in 1994. In the light of the extremely skew distribution of claims illustrated in paragraph 11.2 above, it is clear that the limit of R2 500 p.m. will fully compensate the vast majority of the population.

36. PERMANENT LOSS OF EARNINGS OR EARNING CAPACITY

36.1 As soon as the victim's medical condition has stabilised, or in any event after 18 months since the accident, the victim will become eligible for this

benefit. The percentage permanent impairment will again be determined as in paragraph 34.1 above, and provided it is at least (say) 10%, the Permanent Impairment % will be multiplied by the actual earnings prior to the accident or by the expected earnings if there were no actual earnings, such earnings being subject to a maximum of R2 500 per month. The MMF may at its option pay this benefit either by way of monthly instalments up to age 65, or by way of a lump sum calculated with reference to a temporary annuity table specified in the Act.

37. LOSS OF SUPPORT

37.1 In the event of the death of a breadwinner, the dependants (as defined) collectively will qualify for a total monthly benefit of R1 875 or 75% of the deceased's pre-accident earnings, whichever is the smaller. In the normal course of events the total monthly benefit will be paid to the surviving spouse until the spouse reaches age 65 or until the deceased would have reached age 65, whichever occurs first; or - at the option of the MMF - the spouse may receive a lump sum calculated with reference to a temporary joint annuity table specified in the Act. Where there are children but no surviving spouse, or where the MMF has reason to believe that the surviving spouse will neglect the maintenance of the children, the monthly benefit may be paid to the appointed guardian or the Master of the Supreme Court.

38. FUNERAL EXPENSES

38.1 It is proposed that a fixed benefit of R3 000 be paid for this purpose.

39. ADJUSTMENT FOR INFLATION

39.1 All the monetary amounts mentioned in the preceding six paragraphs have been pitched at levels considered suitable early in 1996. These may well be adjusted in the light of inflation and the finances of the MMF when the new benefits actually come into force and annually thereafter.

40. FINANCIAL EFFECT

40.1 It has been estimated on certain assumptions that the limitations and relaxations proposed above will have the following approximate effects on the finances of the MMF:

	% Savings on current level <u>of expenditure</u>	% Addition to current level <u>of expenditure</u>
Paying Medical Expenses at Compensation Commis- sioner rates	3,6	
Cap on Permanent Impair- ment Benefit	2,8	
Cap on Loss of Earnings Benefit.....	19,1	
Scrapping compensation for General Damages	25,0	
Savings on Settlement Costs ..	<u>20,0</u>	
Total	70,5	
Making above benefits no-fault	25,0	
Removing distinction of passenger claims	<u>4,0</u>	
		<u>Total 29,0</u>
Nett Savings	<u>41,5</u>	

It is estimated, therefore, that the proposed benefits would result in a nett savings of 41,5% in spite of the substantial improvements in certain respects.

40.2 This nett reduction in the claims of the MMF will manifest itself in a *slower increase* in the provision for outstanding claims as soon as the new benefits become applicable. In fact, since claims would be settled sooner in future, the provision for outstanding claims would reduce for some 4 years from the effective date (at the expense of the cash flow), before rising again. Claims arising before the effective date will naturally run their course on the present benefit scale for a number of years.

40.3 The tables at the end of this chapter show that, on certain assumptions, the deficit will just be fully funded by the end of the financial year 2006/7. The approach has been to assume that the new dispensation will apply to accidents occurring on or after 1.5.97, and to enquire what levy rates would be necessary to achieve a fully funded position within a decade or so. On the assumption that the petrol levy rates available as from 1.5.96 would be 12 c/l (with a proportionate adjustment in the levy rate for diesel), and on the further assumptions shown below, the calculations show it would be necessary to increase the levy rates by 8,8% p.a. as from 1.5.97.

The other assumptions are:

- * Inflation of individual claim amounts: 12,5% p.a.
- * Growth in number of accidents: 6,0% p.a.
- * Expense inflation: 12,5% p.a.
- * Growth in volume of fuel sold: 4,0% p.a.
- * Investment return: 15,0% p.a.
- * Settlement pattern:

Years after accident:	0	1	2	3	4	5	6	7	8	9
Current benefits:	0%	4%	14%	24%	25%	13%	7%	4%	4%	5%
New benefits:	25%	50%	25%							

40.4 It should be noted that investment income plays a material role in funding the deficit. The provisions for outstanding claims are shown at their discounted values, not the nominal amounts payable over future years which were used earlier in this document. If this provision is funded and backed by income yielding assets, it is quite permissible - and indeed correct - to discount these future payments to a present value.

40.5 It must be realised that the assumptions are unlikely to be borne out precisely by the actual future experience over the next decade, and fresh calculations will be made from year to year. It is particularly difficult to estimate future events when human behaviour comes into play.

40.6 The following table compares the levy rates as projected for the proposed new benefits with those that would be required if the MMF's liabilities were to be fully funded at about the same date but without changing

the current benefit structure (i.e. with no capping, passenger claims remain limited, and apportionment of guilt is still applied).

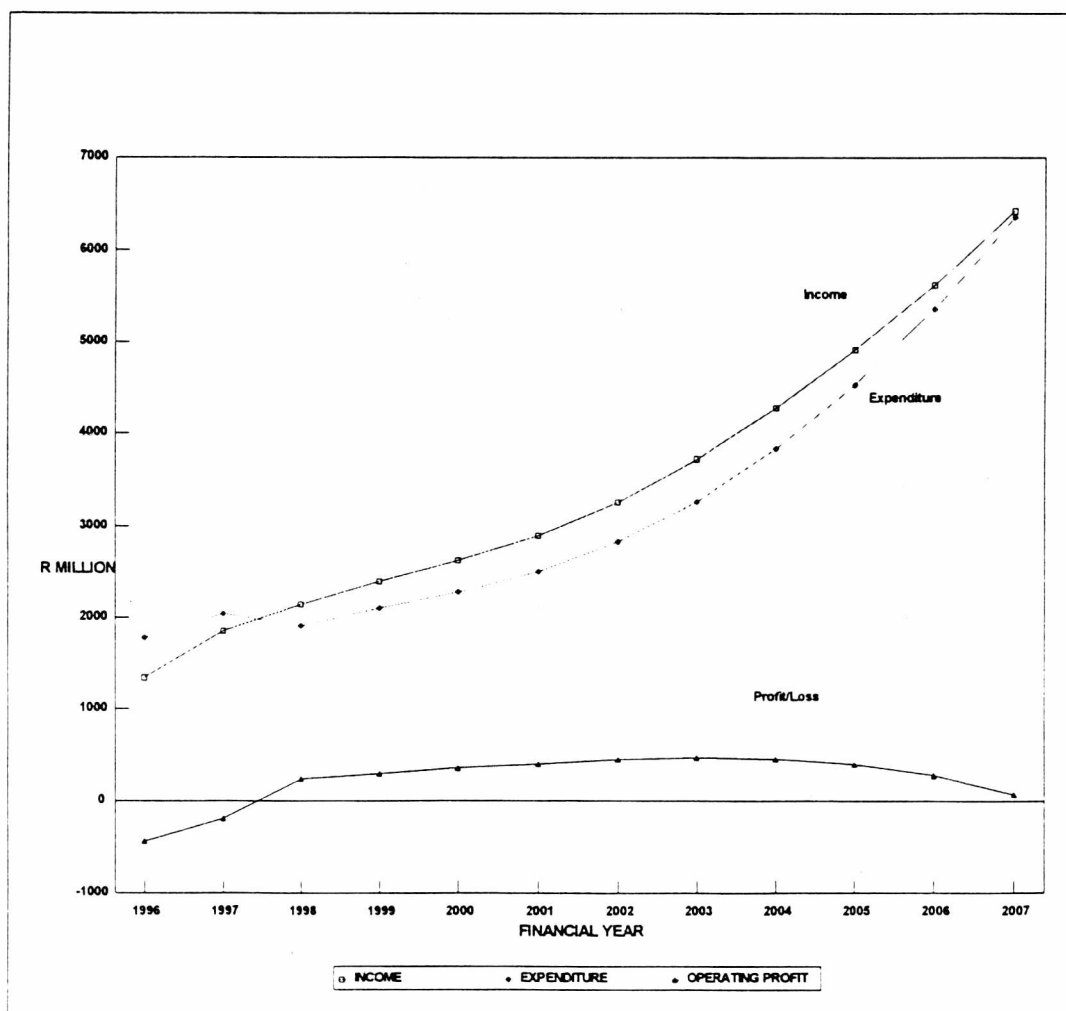
Projected petrol levy rates (c/l)

<u>Year</u>	<u>for new benefits</u>	<u>for current benefits</u>
1996/7	12,0	12,0
1997/8	13,1	13,7
1998/9	14,3	15,7
1999/0	15,5	17,9
2000/1	16,9	20,5
2001/2	18,4	23,4
2002/3	20,0	26,7
2003/4	21,7	30,5
2004/5	23,6	34,9
2005/6	25,7	39,9
2006/7	28,0	45,6

PROJECTED INCOME STATEMENTS: 1.5.1995-30.4.2007

(R million)

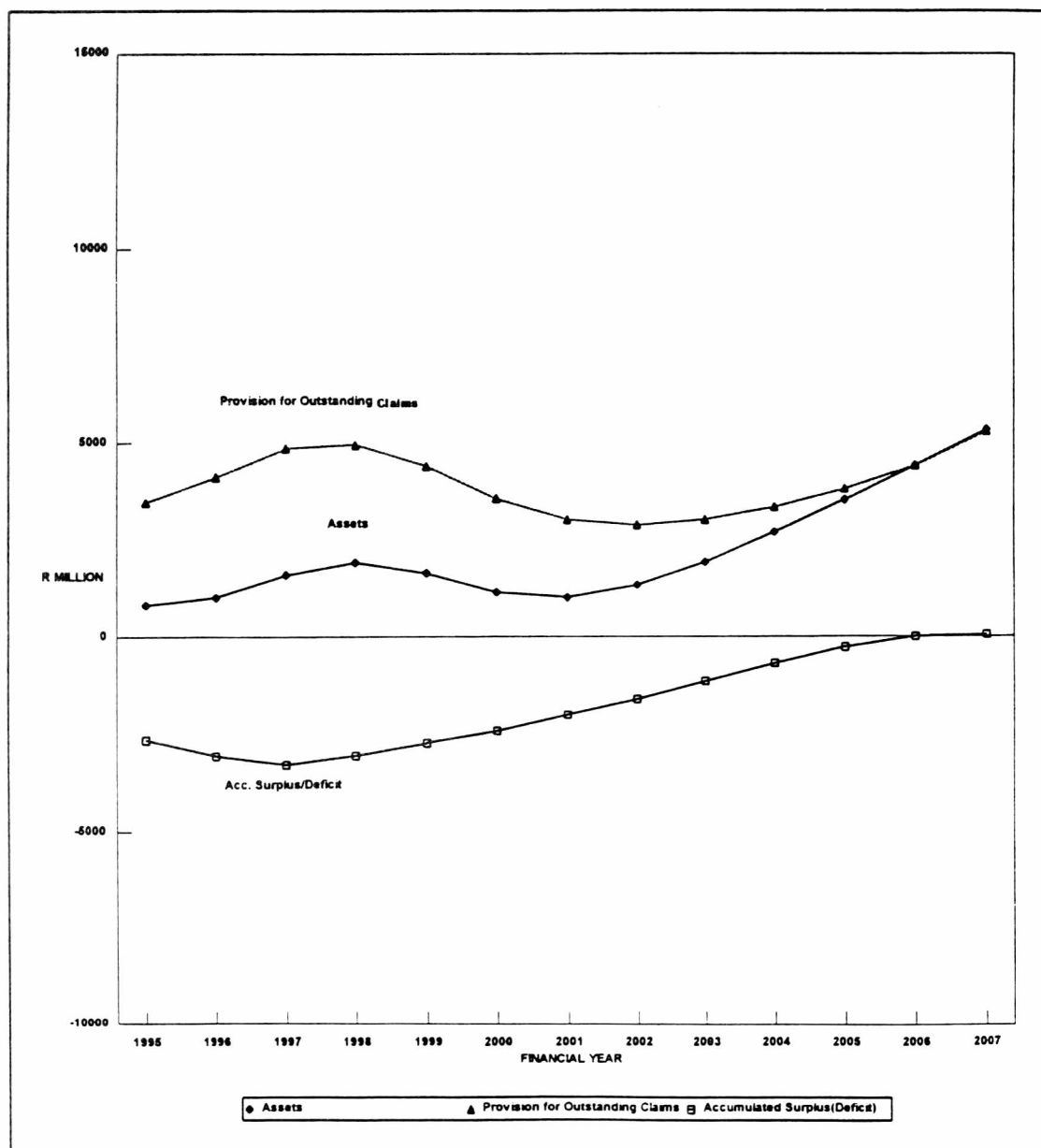
Financial Year ending 30 April:	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Levy Income	1 200	1 664	1 889	2 138	2 419	2 737	3 097	3 504	3 965	4 487	5 077	5 744
Investment Income	131	184	246	250	197	152	164	229	323	434	553	679
Total Income	1 331	1 848	2 135	2 388	2 615	2 889	3 261	3 733	4 288	4 920	5 630	6 423
Claims Paid	1 108	1 236	1 757	2 605	3 040	2 968	2 854	3 041	3 432	3 977	4 615	5 363
Administrative Expenditure	40	45	51	57	64	72	81	91	103	115	130	146
Increase in Claims Provision	618	754	97	(562)	(833)	(547)	(112)	143	306	436	613	849
Total Expenditure	1 765	2 035	1 905	2 100	2 271	2 492	2 824	3 275	3 841	4 528	5 357	6 358
Operating Profit (Loss)	(434)	(187)	230	288	344	396	437	458	447	392	272	65
Petrol Levy c/l	9,0	12,0	13,1	14,3	15,5	16,9	18,4	20,0	21,7	23,6	25,7	28,0



PROJECTED BALANCE SHEETS: 30.4.1995-30.4.2007

(R million)

Date 30 April:	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Assets	850	1 034	1 601	1 928	1 653	1 164	1 013	1 339	1 940	2 693	3 521	4 406	5 320
Provision for Outstanding Claims	3 500	4 118	4 872	4 969	4 407	3 573	3 026	2 914	3 057	3 363	3 799	4 412	5 261
Accumulated Surplus(Deficit)	(2 650)	(3 084)	(3 271)	(3 041)	(2 753)	(2 409)	(2 013)	(1 575)	(1 118)	(670)	(279)	(6)	59
Petrol Levy c/l		9,0	12,0	13,1	14,3	15,5	16,9	18,4	20,0	21,7	23,6	25,7	28,0



SUMMARY OF PROPOSALS

CHAPTER V

The following briefly summarizes the main content of the more important proposals made herein:

1. Government will continue to provide certain benefits to victims of MVA's through a statutory fund, the MMF (to be restyled the Road Accident Fund (RAF)), funded by fuel levies taken from the general tax on fuel (paragraph 17.2).
2. The Board of Directors of the RAF will continue to be composed of professionals, but covering a wider field of expertise (paragraph 22.3).
3. The RAF will be enabled to fund road safety measures and rehabilitation centres (paragraphs 7.5 and 7.6).
4. The agency system for current claims is to be phased out, and all claims arising as from 1.5.97 will be dealt with by the RAF (paragraph 21.2).
5. The period of prescription will be 3 years in all instances (whether it is a hit-and-run claim or not, and regardless of the age of the injured or deceased party), and the Initial Claim Form (ICF) must be lodged within 3 months of the accident failing which a penalty will apply. There will be

no claim if the ICF is not lodged within 12 months of the accident. Exception will be made for late lodgement for good reason (paragraphs 24.5 and 24.6).

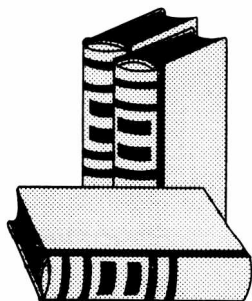
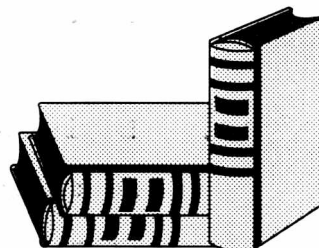
6. Initial acute medical treatment without an aggregate limit will be available in South Africa for the first 18 months after the accident, reimbursement taking place at the rates employed by the Compensation Commissioner (paragraph 33).
7. A permanent impairment benefit will cover reasonable ongoing medical and related expenses after the 18 months, either by way of an undertaking or in a cash lump sum, subject to a maximum calculated with reference to the severity of the impairment and the age of the injured party (paragraph 34).
8. Loss of earnings during the first 18 months after the accident will be compensated up to a maximum of R2 500 per month. Thereafter permanent loss of earnings or earning capacity up to the said limit will be compensated, taking into account the severity of the impairment (paragraphs 35 and 36).
9. Loss of support will be compensated up to a maximum of R1 875 per month (paragraph 37).
10. A fixed funeral benefit of R3 000 will be available (paragraph 38).

11. General damages will not be compensated (paragraph 28.2).
12. All benefits will be available on a no-fault basis (paragraph 30).
13. No distinction will be drawn between passenger claims and any other claim (paragraph 29).
14. It remains an unresolved issue, fraught with difficulties, whether the victim's right to proceed at common law against the guilty driver in respect of the excess loss above the cap, should remain intact or should be abolished by law. Government looks to the general public for guidance in this regard (paragraphs 28.4, 28.5 and 28.6).
15. The insured party is to be changed from the wrongdoer to the victim (paragraph 20.1).
16. The claims procedure should be made as user-friendly as possible, without leading to inflated or fraudulent claims (paragraph 25.1).
17. The RAF's total liabilities, including the provision for outstanding claims, are to be funded over a decade or so. Starting with the base rate of 12 c/l on petrol as from 1.5.96, current estimates show that the fuel levy rates are to be

increased by 8,8% p.a. as from 1.5.97 (paragraph 40).

18. Legislation will be introduced to make the foregoing applicable to all accidents occurring as from 1.5.97.

Where is the largest amount of meteorological information in the whole of South Africa available?



Waar is die meeste weerkundige inligting in die hele Suid-Afrika beskikbaar?

*Department of Environmental Affairs and Tourism
Departement van Omgewingsake en Toerisme*

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