

# **ALIGNMENT OF RISK BENEFITS PROVIDED BY SOCIAL SECURITY AGENCIES**

**An evaluation performed for the Inter-  
departmental Task Team on Social  
Security**

**DRAFT FOR DISCUSSION**

**SOCIAL SECURITY AND RETIREMENT  
REFORM PROJECT MANAGEMENT UNIT**

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**ABBREVIATIONS**

COIDA	Compensation for Occupational Injuries and Diseases Act
DOH	Department of Health
DOL	Department of Labour
DOT	Department of Transport
DSD	Department of Social Development
IDTT	Interdepartmental Task Team [on Social Security]
ILO	International Labour Organisation
NSSF	National Social Security Fund
NT	National Treasury
RAF	Road Accident Fund
RAFA	Road Accident Fund Act
SARS	South African Revenue Services
SASSA	South African Social Security Agency
SOAP	State Old Age Pension
UIF	Unemployment Insurance Fund
UIFA	Unemployment Insurance Fund Act

## **1. INTRODUCTION**

### **Background**

- 1.1 South Africa has a number of contributory and non-contributory social security arrangements and interventions which provide important protections from certain unpredictable contingencies causing harmful social reversals affecting families and in particular children. These contingencies include the death of a breadwinner, the disability of a breadwinner, loss of employment, loss of income due to pregnancy or sickness, and medical expenses resulting from illness and injury.
- 1.2 Existing social security interventions however only provide protection against these contingencies conditional upon the occurrence of very specific triggers such as a road accident or an injury at the workplace. Several social security institutions therefore provide benefits for death and disability at different levels and in different ways triggered by narrow events. In some instances the triggers overlap generating entitlement and risk management (double-dipping) complications.
- 1.3 Contributory social security entitlements also overlap with employer-related benefits for survivor (death), disability, maternity, medical cover and illness benefits.
- 1.4 The narrow evolutionary path of certain contributory social security interventions has however not been irrational and instead reflects how social interventions have been prioritized over time to deal with clearly identifiable problems. Compensation for work-related injuries and diseases has evolved from the need to avoid damages claims arising from employer negligence and dangerous working conditions (e.g. mines). Similarly socialized third-party insurance for road accidents flowed from the need to ensure that third-parties harmed by negligent drivers would be compensated.
- 1.5 Social and economic conditions have now evolved in South Africa to the point where it stands to benefit from a significant rationalization social security interventions, with consequential improvements in social protection. This rationalization requires that adjustments to the system be considered holistically to capture potential economies of scale and efficiency improvements resulting from greater standardization, transparency and access.
- 1.6 This purpose of this report is to examine three contributory social security funds which provide equivalent and related benefits with the purpose of making recommendations on a more holistic approach. The social security funds are the Road Accident Fund (RAF), the Unemployment Insurance Fund (UIF), and the Compensation Fund (CF). The rationalization of arrangements between these three funds is also seen as necessary to the development and implementation of social insurance arrangements for old age, survivor and disability benefits.

### **Terms of Reference**

- 1.7 The evaluation provided in this report specifically addresses the following:
  - The development of a matrix of current benefits offered by RAF, UIF and CF. Such a matrix should provide specific details on:

- Qualification criteria for accessing the different benefit types;
  - Definitions used for dependants;
  - Value of benefit, payment method i.e. lump sum, monthly
  - Contributors and the extent of contributions required,
  - Claims experience per benefit type for each fund
  - Provisions for recovery of benefits from other entities or third parties
  - Key cost drivers and overall costs incurred by each entity
- Analysis of existing risk mitigation strategies adopted by each entity, including re-insurance and reserve funding.
  - Analysis of similarities and differences in the benefits
  - Specific proposals on how benefits can/should be aligned, including a cost benefit analysis of aligning /integrating or not. The key risks associated with the alignment/integration processes.
  - A proposed trajectory of how alignment/integration can be achieved.
  - Identify the key risks associated with the alignment/integration process, and make recommendations for mitigating such risks.
  - The proposals should be supported with evidence of international best practice

### **Assumptions**

- 1.8 Although this analysis occurs within the context of proposals for mandatory contributions toward general retirement, survivor, and disability benefits, this is not the central focus of this evaluation. However, as the issue is material to the central focus of this assessment it is addressed to the extent possible based on available options provided by the Department of Social Development (DSD) and National Treasury (NT).
- 1.9 Certain of the social security funds, most notably the RAF, have implemented significant benefit reforms. This analysis only examines the most recent changes, assuming that previous benefit entitlements, to the extent that they affect the liabilities of the various funds, will continue to be paid out in accordance with the rules that applied at the time.
- 1.10 The full benefit offering of the three funds will be examined, including the indemnification of medical expenses, unemployment benefits, survivor benefits, disability benefits, maternity benefits, adoption benefits (which is a form of maternity benefit), funeral benefits (which is a form of survivor benefit), and sickness benefits (which focuses on income replacement rather than indemnification of medical expenses).



## 2. SOCIAL SECURITY FUNDS

### Overview

- 2.1 This section provides a high-level overview of the three social security funds, their objectives, and their benefit areas. The purpose is to highlight their past and present social focus to clarify why they exist and why their benefits take the form they do. This is especially important in explaining why similar benefits are offered in differently and at varying levels of generosity. The benefit summaries provided in this section are not detailed and focus purely on explaining the nature of the entitlements and key offsets. **Section 3** provides a more detailed evaluation of benefit differences.

### Unemployment Insurance Fund

#### *Administration and supervision*

- 2.2 The UIF operates with a similar governance arrangement to the CF, with a Commissioner, regarded as an employee of the Department of Labour (DOL), appointed by the Minister to directly manage the fund. However, the Director General is the accounting officer and retains all the authority to manage the fund.
- 2.3 As with the CF, provision is made within the relevant act<sup>1</sup> for a board. The composition of board is inclusive and independent of the Minister and the DOL, but, as with the CF, has no powers of oversight and, in terms of **section 48**, can only advise the Minister on various policy matters.

*“(1) The Board must—*

- a) advise the Minister on—
- b) unemployment insurance policy; and
  - policies arising out of the application of this Act;*
  - policies for minimizing unemployment; and*
  - the creation of schemes to alleviate the effects of unemployment;*
- c) make recommendations to the Minister on changes to legislation in so far as it impacts on policy on unemployment or policy on unemployment insurance; and
- d) perform any other function which may be requested by the Minister for purposes of giving effect to this Act.

*(2) The powers and duties of the Board must be exercised and performed subject to—*

- a) the provisions of this Act and its constitution contemplated in section 50;

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<sup>1</sup> Unemployment Insurance Act, 2001.

- b) any directions issued by the Minister; and
- c) any guidelines determined by the Director-General.”

***Purpose and focus***

- 2.4 The unemployment insurance framework offers a range of benefits all of which relate to income support related to the unavoidable loss of employment. The benefits are temporary in nature and not intended to minimize the harm resulting from periods of employment loss. The rationale is to support re-entry into employment of persons presumed to be capable of re-employment.
- 2.5 Within this framework those instances where employers require temporary relief to deal with employees requiring absences from work due to illness and maternity are also supported. Without this support employers would either suffer financial hardship or employees would unnecessarily exit employment. In this way the relationship between the requirements of the labour market and the family are harmonized through risk pooling these contingencies between employees and employers.

***Benefits offered***

- 2.6 The benefits offered through the UIF involve the following:
- Unemployment benefits;
  - Illness benefits;
  - Maternity benefits;
  - Adoption benefits; and
  - Survivor benefits (“dependents benefits”).
- 2.7 All benefits reflect alternative contingencies that could result in the loss of employment for some period. Payments are periodic in nature and based on a percentage replacement of income (Income Replacement Rate or IRR) in accordance with a sliding scale based on income. The sliding scale ranges from 60% for the lower income earners to 38% for the highest income earners at a ceiling monthly income of R12,478.<sup>2</sup>
- 2.8 The maximum days for which the UIF will pay for an unemployment benefit is 238. An employee accumulates a compensable day (credit) for every six days worked or 61 days (credits) per year.
- 2.9 The calculation of the IRR, subject to the ceilings, are used to determine the periodic payments for illness, maternity, adoption and survivor benefits, with differences involving only the number of days compensated. As many of these benefits overlap with employee benefits, the UIF can offset any private or

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<sup>2</sup> UIF, 2009a.

equivalent compensation. There is however no private or public equivalent to unemployment insurance.

- 2.10 Although the UIF does not overtly provide for disability benefits, it does provide compensation for loss of earnings due to illness, which in some instance may overlap with temporary disability payments and compensation for injuries resulting from road accidents and accidents at the workplace.

### **Compensation Fund**

#### ***Administration and supervision***

- 2.11 The Compensation Fund (CF) does not operate independently of the DOL, with overall accountability vesting with the Director General. To support the Director General, the Minister has the power to appoint a Commissioner and any further staff. A person designated by the Minister may also appoint further staff. This Commissioner is effectively a DOL official with limited authority and autonomy.
- 2.12 A relevant act<sup>3</sup> in **section 12** also makes provision for an *advisory board* with *no powers of oversight*. Although the board involves inclusive representation, an oversight role can be performed only upon request by the Minister.

*“1) The Board shall advise the Minister regarding-*

- d) matters of policy arising out of or in connection with the application of this Act;
- e) the nature and extent of the benefits that shall be Payable to employees or dependants of employees, including the adjustment of existing pensions;
- f) the appointment of assessors;
- g) the amendment of this Act.

*2) The Board may at the request of the Director-General advise him regarding the performance of a particular aspect of his functions.”*

#### ***Purpose and focus***

- 2.13 The CF, which is responsible for executing core functions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 (COIDA) provides compensation for workplace and related injuries and diseases. The existence of COIDA removes the hurdle from employees of seeking compensation from employers for any injury or disease that may have resulted from poor working conditions or employer negligence. Any such claim would have been based on the common law right to seek damages in such instances. However, COIDA provides a no-fault benefit which permits compensation even in those instances where the employee was negligent.

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<sup>3</sup> Compensation for Occupational Injuries and Diseases Act, 1993.

2.14 The benefit configuration derives from the need to compensate for all contingencies that could result from an accident or health risk including medical indemnity, loss of earnings, and loss of support. The benefits are generous as the affected workforce and their families would have no other form of support if coverage of this form were not available. Conversely, many employers could be put out of business if they were to face ongoing litigation and successful damages claims. COIDA is consequently a pragmatic intervention which seeks to pool the risks associated with workplace related accidents and acquired diseases across all employers. In this way both employees and employers are protected.

#### ***Benefits offered***

2.15 The COIDA, which permits benefits to be provided through the CF, approved private mutual funds, and certain employers (mines in the case of occupational health care) entitles employees to a wide range of generous benefits. These are as follows:

- Medical indemnity (covers all medical expenses for accidents and injuries on duty wherever they are treated);
- Disability (temporary and permanent);
- Survivor benefits (loss of support to a spouse/partner and dependent children); and
- Funeral benefits.

2.16 Injuries that result in relatively minor temporary or even permanent disability (i.e. less than 31% according to a schedule) are compensated as lump sums, while substantial disabilities (more than 30%) involve periodic payments of 75% of income at the time of the accident to a ceiling of R6,064.50 per month. The percentage of disability is determined in accordance with the extent to which the disability impacts on the ability to work.

2.17 Survivor benefits are calculated at 40% replacement income and last until the death of the surviving spouse/partner where there are dependent children. Where there are no children a lump is paid out equivalent to 75% replacement income for two months.

2.18 Surviving children in the absence of a spouse/partner are entitled to a periodic benefit to age 18 equivalent to that for a surviving spouse/partner.

2.19 Funeral benefits are available to survivors at actual cost up to a maximum one-off payment of R5,350.

#### **Road Accident Fund**

##### ***Administration and supervision***

2.20 The RAF operates with full autonomy from the Department of Transport (DOT) with full powers of oversight provided to an independent and broadly representative board. The minister of Transport appoints the Chief Executive Officer (CEO), who is also an *ex officio* member of the board, but only on recommendation by the board. The board consequently has full authority to run

the RAF and to approve operational decisions made by the CEO and to delegate their powers and duties to the CEO. In addition the board can provided the minister with advice on policy matters relating to the fund, a function which it shares with the DOT.

- a) “1) *The Board shall, subject to the powers of the Minister, exercise overall authority and control over the financial position, operation and management of the Fund, and may inter alia-*
- b) make recommendations to the Minister in respect of-
  - i) *the annual budget of the Fund;*
  - ii) *any amendment of this Act;*
  - iii) *the entering into an agreement with any institution referred to in section 9;*
  - iv) *[deleted by the Road Accident Fund Amendment Act, 2005 (Act No. 19 of 2005)];*
  - v) *any regulation to be made under this Act;*
- c) terminate the appointment of any agent and determine the conditions on which such appointment is effected or terminated;
- d) approve the appointment, determination of conditions of employment and dismissal by the Chief Executive Officer of staff of the Fund on management level;
- e) approve internal rules and directions in respect of the management of the Fund;
- f) approve loans made or given by the Fund;
- g) approve donations for research in connection with any matter regarding injuries sustained in motor vehicle accidents;
- h) determine guidelines in relation to the investment of the money of the Fund; and
- i) delegate or assign to the Chief Executive Officer and any member of the staff of the Fund any power or duty of the Board as it may deem fit, but shall not be divested of any power or duty so delegated or assigned, and may amend or withdraw any decision made by virtue of such delegation or assignment.”

### ***Purpose and focus***

- 2.21 Historically the RAF has operated as a mandatory risk pooling mechanism to ensure that third-party damages claims against negligent motor vehicle drivers can be funded. This is clearly expressed in **section 3** of the Road Accident Fund Act:

*“The object of the Fund shall be the payment of compensation in accordance with this Act for loss or damage wrongfully caused by the driving of motor vehicles.”*

- 2.22 Although quite clearly this risk pooling served a rational public purpose by acting exclusively as an underwriter of a common law right to claim damages, it retained the procedural inefficiencies associated with the calculation and apportionment of damages.
- 2.23 The most recent amendments to the Road Accident Fund Act have however sought to eliminate these inefficiencies by delinking benefit entitlements from the common law right to damages by expanding benefits and broadening entitlements. The new framework fundamentally transforms the fund from a third-party mandatory insurance fund into a social security arrangement.
- 2.24 This is a fundamental change of focus from an excessive interest in who caused a road accident to mitigating the consequences of a road accident regardless of cause. Recognition is consequently given to the impact a road accident may have on the life chances of a negligent driver's family which is a socially more valuable and cost-effective orientation.

***Benefits offered***

- 2.25 The benefits covered are similar in nature to those offered through the COIDA, although the benefit levels differ. In both instances claims result from accidents (COIDA however also compensates for diseases) which cause severe injury, disability, and death as follows:
- Medical indemnity;
  - Disability (temporary and permanent);
  - Survivor benefits (loss of support to a spouse/partner and dependent children); and
  - Funeral benefits.
- 2.26 The shift of emphasis from a fault-based system to social security allows for immediate indemnification of medical expenses, increasing access to private sector medical providers for all road accident victims.
- 2.27 The maximum disability benefit is calculated on a similar basis to that for COIDA with a different ceiling, i.e. 75% of income up to an income ceiling of R144,000. As a monthly benefit ceiling this amounts to R9,000 versus R6,064.50 for COIDA.
- 2.28 Survivor benefits are provided to dependant spouses/partners at 50% of the breadwinners income at time of death, which is higher than replacement of 40% in the case of COIDA. However, periodic payments are offered for 15 years or to age 60, whichever is sooner where COIDA pays benefits to the death of the spouse/partner.
- 2.29 Funeral benefits are available to a maximum value of R10,000.

## Discussion

- 2.30 The three funds have very different and important social security objectives. Both the CF (COIDA) and the RAF cover health expenses, while the UIF explicitly provides income-replacement sickness benefits. The CF and RAF indirectly provide sickness benefits where a temporary disability is involved.
- 2.31 Disability and sickness benefits are both subsets of a claim for loss of income, which is the trigger benefits, subject to some verification of the sickness, injury, or disability that is the cause of the loss of income.
- 2.32 All three funds provide survivor benefits at different replacement rates and for different periods. However, only the RAF and COIDA cover funeral expenses, which are a form of survivor benefit.
- 2.33 The UIF provides certain benefits unavailable through the CF and RAF, namely for maternity, adoption, sickness, and unemployment. As the unemployment benefits are unique to the UIF these are not evaluated separately in this report. However, maternity, adoption, and sickness benefits although described require no significant evaluation as they do not really overlap with benefits offered through the other social security arrangements.

**Figure 2.1: Benefit overlaps between the UIF, COIDA, and RAF**

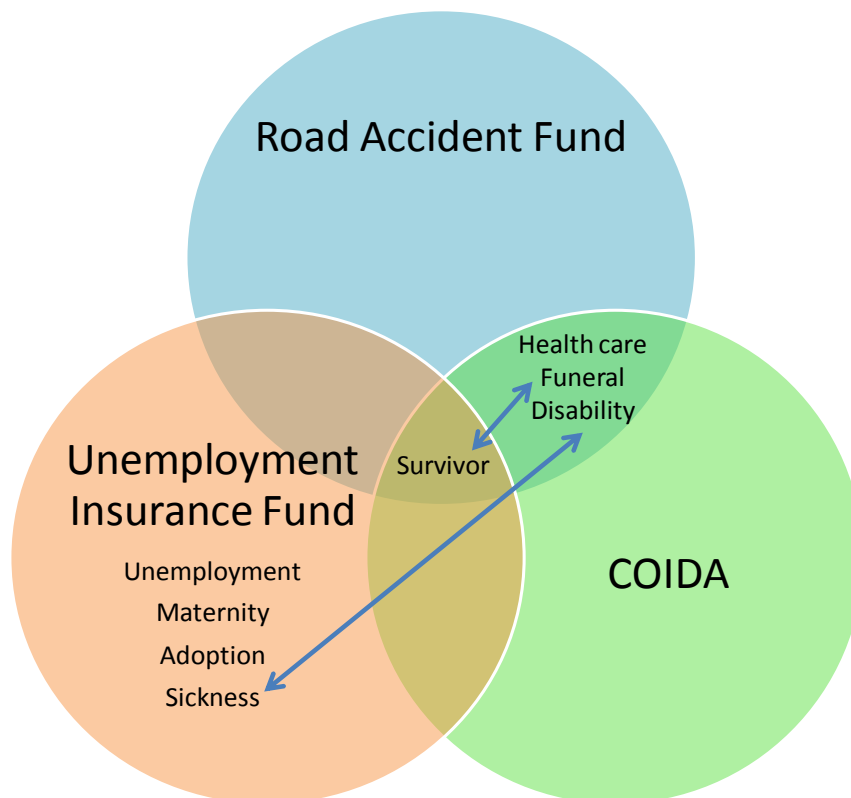


Table 2.1: Summary of benefits offered by the UIF, CF and RAF

Social security benefit type	UIF	CF	RAF
	Loss of employment	Work Injury	Road Accident
Adoption	√		
Disability		√	√
Funeral		√	√
Health care		√	√
Maternity	√		
Old age			
Sickness	√	√ (implicit)	√ (implicit)
Survivor	√	√	√
Unemployment	√		



### 3. DISABILITY

#### Overview

3.1 Only two contributory social security arrangements offer disability benefits, the RAF and COIDA (CF). This section evaluates these two arrangements in detail with a view to harmonizing the benefits and ensuring effective integration between the two social security regimes. Note is also taken of potential relationships to private contributory arrangements and non-contributory benefits offered through the Social Assistance Act via the South African Social Security Agency (SASSA).

#### Disability definitions

3.2 Disability claims are driven by a need to compensate a beneficiary for *loss of income*. In such instances a beneficiary is alive, removing the need to compensate dependents, but either partially or totally unable to support themselves. Such an instance only occurs where claimant suffers an ongoing affliction of some form which removes them from the labour market.

3.3 For such an assessment to be made some form of scale is required relating any disability to the extent to which it affects the ability of the claimant to work. The existence of a disability is not compensable unless it relates to the ability to work. For instance the loss of a finger will affect a concert pianist differently to a portrait painter.

3.4 Historically the RAF did not apply any form of scale as the estimates of earnings loss were open to dispute in the courts and an apportionment based on fault. Amendments to the Road Accident Fund Act in 2006 sought to place a ceiling on periodic benefits at R160,000 per annum irrespective of loss.<sup>4</sup> The policy framework going forward however seeks to adopt an approach based on “occupational disability” but retains the idea of a ceiling, which is conceptually similar to COIDA.

3.5 The COIDA applies a categorical list of percentages of permanent disablement (see **annexure A** which provides **schedule 2** of the COIDA) regardless of the former occupation of the injured employee. This removes discretion from the assessment but may not be fair to all people. To mitigate against potential unfairness the DG, in terms of **section 50** of COIDA, after consultation with the CF Board has a discretion to deviate from the schedule where appropriate.

3.6 The COIDA also provides for specific definitions of disablement:

- “**permanent disablement**”, in relation to an employee and subject to section 49, means the permanent inability of such employee to perform any work as a result of an accident or occupational disease for which compensation is payable”.

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<sup>4</sup> DOT, 2009, p.8.

- “**temporary partial disablement**”, in relation to an employee, means the temporary partial inability of such employee as a result of an accident or occupational disease for which compensation is payable to perform the whole of the work at which he or she was employed at the time of such accident or at the commencement of such occupational disease or to resume work at a rate of earnings less than that which he or she was receiving at the time of such accident or at the commencement of such occupational disease”.
  - “**temporary total disablement**”, in relation to an employee, means the occupational disease for which compensation is payable to perform the work at which he was employed at the time of such accident or at the commencement of such occupational disease to or work similar thereto”.
- 3.7 **Section 9** of the *Social Assistance Act*, applicable to non-contributory social grants, defines disability more broadly:
- “A person is, subject to section 5, eligible for a disability grant, if he or she-*
- (a) has attained the prescribed age; and*
  - (b) is, owing to a physical or mental disability, unfit to obtain by virtue of any service, employment or profession the means needed to enable him or her to provide for his or her maintenance.”*
- 3.8 As with the contributory arrangements, the Social Assistance Act relates disability to an ability to earn. However, it makes no provision, in the definition, for partial disablement in the same manner as COIDA. It is in essence a definition of *total disablement*.
- 3.9 The criteria and approach used to determine permanent disability is a requirement common to the RAF, COIDA and SASSA and differences of approach cannot be rationally justified on the basis of different entitlements. *Consideration consequently needs to be given to common criteria. In order to standardize the assessment of common criteria a shared process for all social security arrangements should be considered, which should include a shared dispute resolution process.*
- Benefit regime for loss of earnings**
- 3.10 A final detailed framework is not yet in position for the RAF as regulations based on the latest amendments to the Road Accident Fund Act are yet to be promulgated. Only the information prepared by the DOT for the IDTT is therefore used.
- 3.11 The RAF distinguishes between past and future loss of earnings with the former applying to the period the relevant person is off work from the date of the accident to the date of calculation, and the latter thereafter. This is a technical distinction applied no doubt for administrative purposes and is consequently ignored for the purposes of the benefit comparison below as the criteria should be the same for both the past and future loss of earnings.
- 3.12 In the case of both COIDA and RAF periodic payments for permanent disability is to the death of the beneficiary. The alternative benefit arrangements are summarized in **table 3.1** in three categories for ease of comparison:

- *Temporary 100% disability*: Which indicates provision for support where a disability may dissipate over time. Such awards are subject to re-assessment when a benefit may be removed or converted into an award based on a permanent disability.
  - *Permanent disability from 0% to a potential floor value*: Which provides for minor but permanent disabilities.
  - *Permanent disability from a floor to 100%*: Which provides for severe permanent disabilities.
- 3.13 The most recent proposals of the DOT consider a structure very similar to that of the COIDA, with differences only in the minimum and maximum benefits, which are not insignificant. The ceilings for periodic benefits for COIDA and RAF are R6,064.50 and R12,000 respectively.
- 3.14 However, there is no clarity from the DOT on any floor degree of permanent disablement which would distinguish between a lump sum and a periodic benefit. In the case of COIDA a degree of disablement of 30% establishes this differential.<sup>5</sup>
- 3.15 For periodic benefits above 30% disablement benefits are provided a proportion of the maximum entitlement in accordance with the percentage of disablement, i.e. an assessment of 40% disablement would result in an award equivalent to 40% of the award at 100% disablement.

**Table 3.1: Comparison of loss of income benefits provided by COIDA and RAF (2009)**

Degree of disablement	COIDA	RAF
<b>Temporary : 100%</b>	75% of the monthly earnings to a maximum of R6,064.50 per month	A pension limited to a maximum of 75% of income replacement subject to a monthly min and max of R1,000 and R12,000 respectively.
<b>Permanent : &gt;=floor</b>	For disablement less than or equal to 30% a <i>lump sum</i> is paid based on 15 times monthly earnings to a min and max of R12,375 and R67,950 respectively apportioned to the degree of disablement assuming with 30% disablement equal to the max.	Not provided, but regulations indicate that 30% is also regarded as a threshold
<b>Permanent :</b>	For disablement from 30% to	A pension limited to a maximum

<sup>5</sup> Regulations to the existing Act available on the RAF website however indicate that 30% is considered as a threshold for differentiating between a lump sum and periodic benefit.

Degree of disablement	COIDA	RAF
<floor<100%	100%, 75% of the monthly earnings to a min and max of R618.75 and R6,064.50 respectively apportioned to the degree of disablement	of 75% of income replacement subject to a monthly min and max of R1,000 and R12,000 respectively.

### Offsets from related benefits

- 3.16 Presently the Road Accident Fund Act makes provision in **section 18(2)** for an offset of the award in cases where an applicant is covered by an award derived from COIDA or occupational benefits.

*“(2) Without derogating from any liability of the Fund or an agent to pay costs awarded against it or such agent in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed in or on the motor vehicle concerned and who was an employee of the driver or owner of that motor vehicle and the third party is entitled to compensation under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), in respect of such injury or death-*

*(a) the liability of the Fund or such agent, in respect of the bodily injury to or death of any one such employee, shall be limited in total to the amount representing the difference between the amount which that third party could, but for this paragraph, have claimed from the Fund or such agent, or the amount of R25 000 (whichever is the lesser) and any lesser amount to which that third party is entitled by way of compensation under the said Act; and*

*(b) the Fund or such agent shall not be liable under the said Act for the amount of the compensation to which any such third party is entitled thereunder.”*

- 3.17 **Section 53(1)** of the COIDA allows the DG to take account of other awards in determining the amount of compensation. However, no formula is specified indicating that this is discretionary.

*“In awarding compensation to an employee in respect of permanent disablement or in reviewing an award for compensation, the Director-General may take into account any compensation awarded in terms of this Act or any other law to the employee as a result of permanent disablement.”*

- 3.18 Whereas the RAF clearly stipulates an award calculation approach taking account of COIDA, COIDA allows for a general discretion to adjust awards. *The two acts are not in conflict, but will be affected if the disability benefits are made to be equivalent. In such circumstances it may be better to stipulate where the principal liability lies where there is an overlap. The choice of which fund should take responsibility for the principal liability could be affected by any retention of differential benefits. In such an instance the fund with the more generous benefits should take on the principal liability. Where benefits are uniform COIDA could retain responsibility for its claims but consider a shared operational platform.*

### Findings

- 3.19 The recent reforms of the RAF have created the opportunity for the full harmonization of benefits with COIDA regarding the disability regime. If this were to occur the disability assessment processes could be streamlined, with consideration given to shared assessment and claims management platforms. Annual changes in the benefit regime could also be achieved through a single legislative instrument. However, this route would potentially require that the regime offering lower benefits adjust to the greater entitlement.

## 4. SURVIVOR AND FUNERAL COSTS

### Overview

- 4.1 This section reviews survivor and funeral cover as both derive from the death of a breadwinner and give rise to the need to provide some form of compensation for *loss of support*. As noted in **section 2**, all three social security arrangements provide for some form of survivor benefit apart from coverage for funeral expenses which are offered only through the RAF and COIDA.
- 4.2 The historical focus of three funds, which is principally not to provide general social security benefits, has coloured their approach to the determination of entitlements and their level of benefit. Although very much a social security fund, COIDA had a rationale derived from the law of delict, not dissimilar to the origins of the RAF.
- 4.3 Survivor benefits were consequently seen as a form of claim for damages rather than a social security benefit seen as important to social protection and development goals. Although both arrangements have substantially altered focus to support the logic of social security, their assessment processes and benefit entitlements continue to reflect elements of this original rationale.
- 4.4 The UIF by contrast has always been guided by social security objectives, but with a narrow focus on insurance protection for periods of involuntary unemployment. Were the logic of this focus to be strictly adhered to there would be no consideration by the UIF of maternity, sickness, and survivor benefits. As such the UIF has a broader social security mandate which seeks to mitigate the affects on families, and not merely the employed individual, from unavoidable contingencies inherent in the modern labour market.
- 4.5 An important question that needs to be resolved going forward, given the social security focus of all three arrangements, is whether a survivor benefit should be established in its own right, rather than as a consequential benefit related to road accidents, workplace accidents, and residual entitlements through the UIF.

### Definitions

- 4.6 Central to loss of support determinations are the definitions of the principal entitlement and eligible dependents. An eligible dependent is invariably any person that was financially dependent on the deceased breadwinner and where a reasonable duty of support existed. Consequently, merely establishing some form of family bond is not a basis for compensation.
- 4.7 The COIDA defines a dependent as follows in **section 1**:

*(xv) "dependant of an employee" means-*

*(a) a widow or widower who at the time of the employee's death was married to the employee according to civil law;*

*(b) a widow or widower who at the time of the employee's death was a party to a marriage to the employee according to indigenous law and custom, if neither the husband nor the wife was a party to a subsisting civil marriage;*

- (c) *if there is no widow or widower referred to in paragraph (a) or (b), a person with whom the employee was in the at the time of the employee's death living as husband and wife;*
- (d) *a child under the age of 18 years of the employee or of his or her spouse, and includes a posthumous child, a step-child, an adopted child and a child born out of "wedlock";*
- (e) *a child over the age of 18 years of the employee or of his or her spouse, and a parent or any person who in the opinion of the Director-General was acting in the place of the parent, a brother, a sister, a half-brother or half-sister, a grandparent or a grandchild of the employee;*
- (f) *a parent of the employee or any person who in the opinion of the commissioner was acting in the place of the parent, and who was in the opinion of the Director-General at the time of the employee's death wholly or partly financially dependent upon the employee; (iv)*

4.8 The *Road Accident Fund Act* does not specifically define a dependent due to the historical focus on providing insurance for general damages where dependency was argued as part of the damages claim. Essentially these issues were pronounced upon by the Courts.

4.9 The *Unemployment Insurance Act* in **section 1** only provides a definition for a dependent child, referred to as a "child."

*"child" means a person as contemplated in section 30(2) who is under the age of 21 years and includes any person under the age of 25 who is a learner and who is wholly or mainly dependent on the deceased;"*

4.10 Adult dependents are not defined, but only referred to in **section 30** as a spouse or life partner. This section also clarifies the entitlement for a child (as defined).

*"(1) The surviving spouse or a life partner of a deceased contributor is entitled to the dependant's benefits contemplated in this Part..."*

*"(2) Any dependent child of a deceased contributor is entitled to the dependant's benefits contemplated in this Part and-*

*(a) there is no surviving spouse or life partner; or*

*(b) the surviving spouse or life partner has not made application for the benefits within six months of the contributor's death."*

4.11 The child benefit is consequently only available where the adult dependent, which is either the spouse or life partner, fails to claim a benefit or is deceased.

4.12 Key differences between the three regimes are as follows:

- The RAFA does not specifically define either an adult or child dependent, although these categories of person are implicitly recognized through the availability of the benefit.
- The COIDA explicitly defines the categories of spouse/life partner including recognition of customary marriages. The language used in the definition is consistent with recognition of a single spouse or life partner and does not contemplate multiple spouses or life partners, even where it recognizes customary marriages.

- The silence of the RAFA on a definition, coupled with its explicit focus (to date) on damages claims, suggests that all the categories recognized by both the COIDA and the UIF would be regarded as adult dependents, including multiple spouses/life partners.
- The UIF, in a similar fashion to the COIDA, refers only to spouses and life partners in the singular avoiding the contingent liabilities potentially allowed by the RAFA.
- The COIDA makes reference to “widow” and “widower” without defining them, relying on the ordinary definitions of these words. This is indicative of the period when the when these provisions were drafted. In contrast the UIFA merely recognizes a spouse and a life partner, reflecting more recent terminology, but also fails to define the words.
- The child dependent has a different age limit in COIDA and the UIFA, with the former being 18 and the latter 21.
- The UIFA also accommodates child dependents who are learners to the age of 25, provided a relationship of financial dependence persists with the contributor. No such accommodation is provided for in the COIDA. Given the very general entitlement available in terms of the RAFA it is possible that the courts would have accepted the UIFA definition in damages claims.
- The COIDA accommodates children over the age of 18 and adults, who are not the spouse or life partner, where they act as a parent. No equivalent provision is made in the UIFA. It is possible that that the RAFA implicitly makes provision for what the COIDA makes explicit. A court would make a determination based on financial dependency and a duty of support.

#### **Loss of support – survivor and funeral benefits**

- 4.13 All three social security arrangements offer benefits to financially dependent survivors of one form or another. These are summarized in **table 4.1**.
- 4.14 As with disability benefits the distinction between past and future awards in the case of the RAFA is dispensed with as this has little bearing on the nature of the award.
- 4.15 There are significant differences in entitlement between the three arrangements relating to the percentages of income involved, the benefit ceilings, and the time periods applicable to periodic payments. The following are important:
- In the case of adult dependents the COIDA distinguishes between adult dependents with children and those without. The former are provided with a periodic benefit while the latter receive a lump sum valued significantly less than the former. This benefit approach implicitly protects families with children more than those without, possibly assuming that a surviving adult dependent is capable of supporting themselves more effectively.
  - In the case of periodic benefits (for adults and children) the income replacement rate is different in all three instances, with the COIDA at 40%,



UIFA based on a sliding scale between 38% and 60%, and the RAFA at 50%. However, all three are roughly in the same range.

- The monthly ceiling awards also differ in all three instances with the COIDA at R6,064, the UIFA at R14,478, and the RAFA at R8,000. Here the difference between the UIFA and the other two funds is significant. The COIDA and RAFA are however in range.
- A significant difference exists in the periods over which periodic benefits are payable. The UIFA offers the lowest benefit as it merely offers a payout of the remaining unemployment credits that were due to the contributor. This limits any benefit to 238 days or less. By far the greater protection is offered through the COIDA and RAFA. However, even here the differences are significant. Whereas the COIDA provides protection to the death of the surviving adult dependent, the RAFA provides protection for 15 years or to age 60, whichever occurs first.
- For child dependents the COIDA and RAF provide protection to age 18, with the former recognizing child dependency beyond 18 in the case of disability. The UIFA is however limited to a maximum benefit equivalent to the unemployment credits (days) accumulated by the contributor.
- Funeral benefits are offered on a similar basis by both the COIDA and the RAFA, but the ceiling differs, with the former at R5,350 and the latter at R10,000. No funeral benefits are offered through the UIFA.

Table 4.1: Survivor benefits provided for loss of support by social security arrangements

Entitlement	COIDA	UIFA	RAFA
<b>Benefit : Loss of support – adult dependent</b>	<p><i>No children :</i></p> <p>Lump sum : 2 x monthly income x 75% subject to min 618.75 and max 6,064.50</p> <p><i>With children :</i></p> <p>Periodic : 40% of monthly income x 75% subject to min 618.75 and max 6,064</p>	<p>Periodic : Ranges from 38% (high income) to 60% (low income) to income ceiling of R14,478 per month</p> <p>(same as for the general unemployment benefit)</p>	<p>Periodic : 50% of deceased's income to threshold of R192,000 (equates to a ceiling benefit of R8,000 per month)</p>
<b>Limitations</b>	<p><i>No children :</i> Once-off</p> <p><i>With children :</i> To death of the dependent</p>	<p>Entitlement calculated on the basis of 61 days for each year worked to a ceiling of 238 days</p> <p>(same as for the general unemployment benefit)</p>	<p>For 15 years, but not after age 60</p>
<b>Benefit: loss of support – child dependent</b>	<p><i>Child :</i> 20% of monthly income x 75% subject to min 618.75 and max 6,064 to <u>each child</u> with the total award never greater than the maximum adult dependent award</p> <p><i>Child acting as parent :</i> Lump sum : Percentage dependence as a portion of</p>	<p>Ranges from 38% (high income) to 60% (low income) to income ceiling of R14,478 per month</p> <p>(same as for the general unemployment benefit)</p>	<p>Not clear from latest proposals, but likely to equivalent to the adult dependent benefit</p>

<b>Entitlement</b>	<b>COIDA</b>	<b>UIFA</b>	<b>RAFA</b>
	R28,680.00		
<b>Limitations</b>	Available where there is no adult dependent  To age 18 except for disabled child dependent where the benefit continues	Available where there is no adult dependent  Entitlement calculated on the basis of 61 days for each year worked to a ceiling of 238 days  (same as for the general unemployment benefit)	Available where there is no adult dependent  To age 18 (age of majority)
<b>Funeral benefits – to survivor incurring the expense</b>	Lump sum : Actual expenses to a maximum of R5,350.00	No provision	Lump sum : Actual expenses to a maximum of R10,000

## **Findings**

### ***Summary***

4.16 Although there is some convergence on similar benefit arrangements between the three social security arrangements, material differences remain. These are broadly identified here as:

- Definitions of dependency;
- Distinctions between adult dependents with and without children;
- Benefit replacement rates;
- Benefit ceilings;
- Periods applicable to periodic benefits; and
- Availability of funeral benefits.

### ***Definitions of dependency***

4.17 Resolving differences in the definitions of dependency appears to be a relatively straightforward matter and would benefit from taking the following into account:

- A definition of dependency, whether child or adult, which incorporates two elements, financial dependency and a duty of support.
- The adoption of a single age limit for child dependency, with an allowance for learners to age 25.
- Recognition of a child under the age of 25 or a grandparent acting as a parent.
- Clarification that only one adult dependent can be a beneficiary.
- Specific definitions of “spouse” and “life partner”. References to widower and widow are not required.
- Consideration could be given to a single category of adult dependent which would include the following:
  - A spouse as defined;
  - A life partner as defined (which would include customary marriages);
  - A child over the age of 18 and under the age of 25 acting as a parent; and
  - A grandparent acting as a parent.

### ***Benefit convergence***

4.18 Although the method by which the UIFSA calculates periodic benefits is not dissimilar to the COIDA and RAFA, its period of entitlement is far less. However, its potential beneficiaries overlap and exceed both the other arrangements. Consequently, if the UIFSA were to offer benefits for similar periods to the COIDA, there would be no further reason for the COIDA or RAFA to offer

benefits. However, the financial liability and administrative implications would dramatically altered. Such a benefit is presently under consideration through a proposed National Social Security Fund (NSSF).

- 4.19 Complete benefit convergence appears possible between the COIDA and RAFA without a dramatic change in their liabilities. However, convergence with the UIFA appears more complex and is tied up with the development of a universal benefit.
- 4.20 The higher monthly benefit ceiling offered via the UIFA is offset by the greatly reduced period over which benefits are paid. However, a uniform benefit, prior to the consideration of a universal benefit, at a replacement rate of 50% to a monthly benefit ceiling of R8,000 appears reasonable and would not significantly change the liabilities of the COIDA. However, to prevent a negative impact on lower-income beneficiaries of the UIFA, consideration could be given to a uniform 60% replacement rate with a lower income ceiling.
- 4.21 It appears reasonable for the RAFA to consider providing periodic benefits along the lines of the COIDA. It is unlikely that any significant financial savings are achieved through the present period limits.
- 4.22 The distinction between adult dependents with and without children within the COIDA is not unreasonable. However, the level of benefit offered is very different between the two and consideration could be given to an enhancement to bring it in line with the RAFA. In particular consideration should be given to a periodic award, applicable to both the COIDA and RAFA in the region of 5 years (regardless of age) at a 50% replacement rate to a specified ceiling award.
- 4.23 Funeral benefits involve fairly trivial entitlements and can be harmonized between the RAFA and COIDA fairly easily. Consideration could be given to providing an equivalent benefit through the UIFA. However, such a benefit is not rationally related to its present mandate where dependent benefits merely involve paying out the value of the credits accumulated by the contributor.

## 5. SICKNESS

### Overview

- 5.1 Sickness benefits are formally only provided for through the UIFA. Some overlap will however exist for both the COIDA and RAFA where compensation is available for lost income due to injury or disease. However, no side-by-side comparison of benefits between the funds is possible as only the UIFA makes special provision while the arrangements in respect of COIDA and RAFA are covered in **section 3** of this report.
- 5.2 A central distinction between the benefits offered via UIFA and the other funds is that the illnesses envisaged are more general than the medical conditions likely to arise from road accidents, accidents at the workplace, or workplace-related diseases. This makes the UIFA benefit unique and important, as it reduces the imperative for an employer to remove a seriously ill employee from the workforce.

### Benefits offered

- 5.3 The benefits offered through the UIFA are as follows (**section 20**):
- (1) *For purposes of this Part, the period of illness must be determined from the date the contributor ceases to work as a result of the illness.*
- 5.4 The right to the benefit is indicated in **section 21**:
- (1) *Subject to section 14, a contributor is entitled to the illness benefits contemplated in this Part for any period of illness if—*
    - (a) *the contributor is unable to perform work on account of illness;*
    - (b) *the contributor fulfils any prescribed requirements in respect of any specified illness; and*
    - (c) *application is made for illness benefits in accordance with the prescribed requirements and the provisions of this Part.*
  - (2) *A contributor is not entitled to illness benefits—*
    - (a) *if the period of illness is less than 14 days; and*
- 5.5 The calculation of illness benefits are provided for in **section 22**:
- (2) *When taking into account any sick leave paid to the contributor in terms of any other law, or any collective agreement or contract of employment, the illness benefit may not be more than the remuneration the contributor would have received if the contributor had not been ill.*

### Findings

- 5.6 The sickness benefit offered through the UIFA, although subject to some overlap with loss-of-income benefits offered through COIDA and the RAFA it is sufficiently different for it to remain unaltered. There is furthermore no requirement to introduce a similar benefit into the COIDA or RAFA as it is incompatible with their narrower mandate.

## 6. MATERNITY AND ADOPTION

### Overview

- 6.1 *Maternity and adoption* benefits are not dissimilar in nature from the sickness benefit discussed in **section 5**. These benefits offer financial compensation that protect the continued employment of individuals facing important family obligations. The UIFSA offers equivalent protection to families irrespective of whether the child is born to the contributor or adopted by the contributors family (provided the child is under 2 years of age). No equivalent benefit is offered via any other social security arrangement and is incompatible with their mandates.

### Benefits offered

#### *Maternity*

##### 24. *Right to maternity benefits*

(1) *Subject to section 14, a contributor who is pregnant is entitled to the maternity benefits contemplated in this Part for any period of pregnancy or delivery and the period thereafter, if application is made in accordance with prescribed requirements and the provisions of this Part.*

(3) *When taking into account any maternity leave paid to the contributor in terms of any other law or any collective agreement or contract of employment, the maternity benefit may not be more than the remuneration the contributor would have received if the contributor had not been on maternity leave.*

(4) *For purposes of this section the maximum period of maternity leave is 17,32 weeks.*

(5) *A contributor who has a miscarriage during the third trimester or bears a still-born child is entitled to a maximum maternity benefit of six weeks after the miscarriage or stillbirth.*

#### *Adoption*

- 6.2 The right to adoption benefits is outlined in **section 24**:

(1) *Subject to section 14, only one contributor of the adopting parties is entitled to the adoption benefits contemplated in this Part in respect of each adopted child and only if—*

(a) *the child has been adopted in terms of the Child Care Act, 1983 (Act No. 74 of 1983);*

(b) *the period that the contributor was not working was spent caring for the child;*

(c) *the adopted child is below the age of two; and*

(d) *the application is made in accordance with the prescribed requirements and the provisions of this Part.*

(2) *The entitlement contemplated in subsection (1) commences on the date that a competent court grants an order for adoption in terms of the Child Care Act, 1983 (Act No. 74 of 1983).*

- (4) *When taking into account any leave paid to the contributor in terms of any other law or any collective agreement or contract of employment, the benefit may not be more than the remuneration the employer would have paid the contributor if the contributor had been at work.*

### **Adoption**

6.3 Right to adoption benefits is outlined in **section 27**:

- (1) *Subject to section 14, only one contributor of the adopting parties is entitled to the adoption benefits contemplated in this Part in respect of each adopted child and only if—*
- (a) *the child has been adopted in terms of the Child Care Act, 1983 (Act No. 74 of 1983);*
  - (b) *the period that the contributor was not working was spent caring for the child;*
  - (c) *the adopted child is below the age of two; and*
  - (d) *the application is made in accordance with the prescribed requirements and the provisions of this Part.*
- (2) *The entitlement contemplated in subsection (1) commences on the date that a competent court grants an order for adoption in terms of the Child Care Act, 1983 (Act No. 74 of 1983).*
- (4) *When taking into account any leave paid to the contributor in terms of any other law or any collective agreement or contract of employment, the benefit may not be more than the remuneration the employer would have paid the contributor if the contributor had been at work.*

### **Findings**

6.4 The *maternity* and *adoption* benefits offered through the UIFSA are unique and involve no overlap with either the COIDA or the RAFA.



## 7. HEALTH CARE

### Overview

- 7.1 Compensation for health care expenses is offered only through COIDA and the RAFA. In both instances compensation is paid on a fee-for-service basis wherever the expenses has been incurred. Significant administrative bottlenecks occur in both funds due to the practice of collapsing the benefit payment into the final determination of the complete award (for both medical and non-medical benefits).
- 7.2 However, health care service providers cannot manage the liabilities and risks associated with the resultant delays with the result that private providers can be reluctant to make services available. Furthermore, despite both funds having near equivalent health care liabilities (trauma-related emergencies) administrative arrangements are separate and in many instances out of date (by comparison to equivalent private sector platforms).
- 7.3 Due to the time delays in funding medical claims opportunities for the real time reconciliation between the RAF, CF, mutual funds (providing benefits in terms of the COIDA), and medical schemes are lost. In addition, the opportunities for harmonizing benefit entitlements, tariffs, service provider contracts, and operations between all funders are substantially diminished. These issues are to be distinguished from other benefits offered by the CF and RAF as health care funding, administration, and contracting is specialized with very unique risks (particularly in the area of cost management).
- 7.4 The COIDA has one significant difference with the RAFA in medical benefits in that it caters for diseases as well as injuries. The identification and compensation of this contingency is complicated substantially by the potential time gap between the work-related instances causing the disease and its ultimate diagnosis. The time gap will often make it difficult to definitively determine causality as the individual concerned may have already retired, or changed employment several times.

### Benefits – injuries/medical aid

#### COIDA

- 7.5 The COIDA defines “medical aid” (in **section 1**) as medical services and should therefore not be confused with the application of this term to vehicles offering medical insurance.<sup>6</sup>

*"medical aid" means medical, surgical or hospital treatment, skilled nursing services, any remedial treatment approved by the Director-General, the supply and repair of any prosthesis or any device necessitated by disablement, and ambulance services where, in the opinion of the Director-General, they were essential; (xv)"*

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<sup>6</sup> Historically medical aid schemes were regulated health insurance vehicles which are now defined as “medical schemes” in accordance with the **Medical Schemes Act No.131 of 1998**.

- 7.6 The COIDA allows certain medical expenses to be incurred by the employer, as in the case of medical transport (**section 72**), while for the rest it provides for compensation either through the CF, a mutual fund, or an exempted employer. The latter two instances are permissible only if the benefits provided are not less than what would be provided through the CF. Compensation is available for a period of two years (**section 73(1)**) and allows for treatment which may reduce the extent of any disability (as this would facilitate early return to work, or reduce the need for disability-related compensation) (**section 73(2)**).

***“Conveyance of injured employee***

*72. (1) If an employee meets with an accident which necessitates his conveyance to a hospital or medical practitioner or from a hospital or medical practitioner to his residence, his employer shall forthwith make the necessary conveyance available.*

*(2) The Director-General or the employer individually liable or mutual association concerned, as the case may be, shall pay the reasonable cost (as determined by the Director-General) incurred in respect of that conveyance.*

*(3) Any employer who fails to comply with subsection (1) shall be guilty of an offence.*

***Medical expenses***

*73. (1) The Director-General or the employer individually liable or mutual association concerned, as the case may be, shall for a period of not more than two years from the date of an accident or the commencement of a disease referred to in section 65(1) pay the reasonable cost incurred by or on behalf of an employee in respect of medical aid necessitated by such accident or disease.*

*(2) If, in the opinion of the Director-General, further medical aid in addition to that referred to in subsection (1) will reduce the disablement from which the employee is suffering, he may pay the cost incurred in respect of such further aid or direct the employer individually liable or the mutual association concerned, as the case may be, to pay it.”*

- 7.7 A central feature of any allowable medical benefit involves two determinations:

- The extent of needed services; and
- The prices of the services covered.

- 7.8 The COIDA grants wide discretion to the DG to make determinations on needed services without guidance in **section 75**.

*“75. All questions regarding the need for, and the nature and sufficiency of, any medical aid supplied or to be supplied in terms of this Chapter shall be decided by the Director-General.”*

- 7.9 The application of this provision would presumably require that some competent review structure be constituted to make determinations on medical necessary interventions, or that some equally competent process to establish prospective

determinations of what would be regarded as an appropriate medical intervention in certain predictable instances.<sup>7</sup>

- 7.10 The determination of the prices to be paid for medical aid (as defined) is provided for in **section 76** with an important legal innovation. Firstly prices (or fees) are determinable by the DG “after consultation”, indicating that the process is not a negotiation.<sup>8</sup> The very important provision is contained in **section 76(3)** which curtails the liability of a COIDA medical claim in respect of both funders (CF, Mutual Funds, employers) and patients by prohibiting any balance-billing of patients outside of the needs-determination by the DG (provided for in **section 75**) and the tariffs determined by the DG (provided for in **section 76(2)**).

*“76. (1) Subject to the provisions of this section, the cost of medical aid shall be calculated in accordance with a tariff of fees determined by the Director-General.*

*(2) The tariff of fees for medical aid affecting the Medical Association of South Africa, the Chiropractic Association of South Africa and the Dental Association of South Africa shall be determined after consultation with those associations.*

*(3) If the Director-General or an employer individually liable or a mutual association is liable in terms of this Act for the payment of the cost of medical aid-*

*(a) no amount in excess of that determined in the tariff of fees or, if no amount has been determined for particular medical aid, no amount in excess of that deemed reasonable by the Director-General, shall be recoverable for the medical aid concerned;*

*(b) no amount in respect of the said cost shall be recoverable from the employee or an employer other than an employer individually liable.*

- 7.11 The combined effect of **section 76** is compel the DG and providers to resolve the matter of pricing and service provision without any transfer of risk onto employees. The resulting protections for employees are substantial.

- 7.12 The COIDA, in **section 77** prohibits the collection of any contribution from an employee for medical aid supplied in terms of Act. This interesting provision could establish a financial and criminal liability for any employer where a medical scheme (established in terms of the **Medical Schemes Act No.131 of 1998**) established by them compensates for any medical condition arising from an occupational injury or disease.

*77. (1) An employer who demands or receives from an employee a contribution towards the cost of medical aid supplied or to be supplied in terms of this Act, shall be guilty of an offence.*

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<sup>7</sup> Standardised procedures and treatments can be specified in relation to the diagnoses of particular conditions in accordance with standardised diagnostic categories, e.g. ICD 10.

<sup>8</sup> In practice this is however likely to take the form of a negotiation, as providers are able to exercise counter-balancing power through the threat of refusing to treat COIDA cases.

(2) *If an employer has been convicted of contravening subsection (1), the Director-General may in the prescribed form issue an order against that employer for the payment of the amount that he received contrary to the provisions of subsection (1), and section 61(2) and (3) shall then apply mutatis mutandis in respect of such order and amount.*

- 7.13 Overall the medical aid benefits offered through the COIDA are generous and ensure that the best health services in the country are available to all employees, regardless of income, in cases of an occupational injury.
- 7.14 **Section 78** of the COIDA allows an employer to provide medical services directly to employees, through on-site services, and be either reimbursed or given a reduction in *assessments*<sup>9</sup>.

### ***RAFA***

- 7.15 The proposed framework for medical cover offered through the RAFA involves a dramatic departure from previous approaches. In the past the entitlement to compensation for medical expenses was determined in accordance with the common law right to seek damages, and consequently unlimited apart from any apportionment based on who caused the road accident. As such medical expenses could be apportioned on the basis of fault, with the underlying medical liability based on actual medical expenses incurred.
- 7.16 Prior to 2005 the RAFA was amended to limit the overall claim in certain instances to R25,000. However, from 2005 expenses were indemnified on an unlimited basis, in accordance with specified tariffs schedules determined separately from the RAFA<sup>10</sup>, but nevertheless retained the fault-based apportionment of damages.
- 7.17 The fault-based determinations however impacted on providers risks of non-payment in treating road accident victims. As a consequence patients without a medical scheme were predominantly transferred to public health institutions while those with medical scheme cover, where the risk of non-payment was considerably reduced, were treated in private facilities. As the patients without medical scheme cover were predominantly, but not exclusively, entitled to free or very subsidized tariffs at a public hospital, no financial liability was created for the RAF in respect of the bulk of road accident victims. However, patients with medical scheme cover were entitled to recover the cost of treatment in private services from the RAF, distorting the fairness of the system. Essentially the fault-

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<sup>9</sup> Assessments are the contributions made by employers to fund the CF.

<sup>10</sup> These were the Uniform Provider Fee Schedule (UPFS) determined by the DOH for public health services and the National Health Reference price Schedule (NHRPL) determined by the Council for Medical Schemes (CMS) for medical schemes. The NHRPL was replaced by the Reference Price List (RPL) to be published by the Minister of Health. However, no RPL was ever formally published subsequent to the NHRPL due to disputes with health care providers.

based system was causing a bias in access to services in favour of persons with medical scheme cover.

- 7.18 Removing the fault-based determinations, as proposed by the DOT<sup>11</sup>, will remove this distortion, but greatly increase the liability for medical expenses as now all road accident victims will be entitled to seek reimbursement for expenses incurred in a private facility. The existing RAFA however, due to its basis in the law of damages, fails to contain many of the provisions found in the COIDA for determining need, setting tariffs, and preventing the transfer of risk through balance-billing and over-servicing onto beneficiaries. Aside from this, the future medical liability, in relation to injuries, will be in principle no different to that provided for by the COIDA.
- 7.19 However the narrow contingency-based entitlement of both COIDA and RAFA, which requires an assessment of liability before approving reimbursement in the case of emergency treatment, creates the risk of unfunded liabilities for private service providers who must treat before they can be assured of payment. *As the bulk of medical claims will start as emergency cases, a structural inefficiency in funding service providers is created due entirely to addressing only a sub-category of emergency-service/trauma needs, i.e. those only resulting from road accidents and injuries on duty.*

#### **Benefits – occupational diseases**

- 7.20 Occupational diseases, which include those listed (in schedule 3 to the Act) diseases likely to have arisen at that the workplace, are covered through the COIDA. To facilitate access to the cover a presumption of causality is structured to favour the employee, or former employee. However, a requirement exists for a claim to be made within 12 months of a diagnosis.<sup>12</sup>

*65. (1) Subject to the provisions of this Chapter, an employee shall be entitled to the compensation provided for and prescribed in this Act if it is proved to the satisfaction of the Director-General-*

- (a) that the employee has contracted a disease mentioned in the first column of Schedule 3 and that such disease has arisen out of and in the course of his or her employment; or*
- (b) that the employee has contracted a disease other than a disease contemplated in paragraph (a) and that such disease has arisen out of and in the course of his or her employment.*

*(2) If the employee has contracted a disease referred to in subsection (1) and the commissioner is of the opinion that the recovery of the employee is being delayed or that his temporary total disablement is being prolonged by reason of some other disease of which the employee is*

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<sup>11</sup> DOT, 2009, p.7.

<sup>12</sup> This could be regarded as unfair in certain circumstances as many claimants will for the first time experience symptoms close to or after retirement. These individuals may in fact be unaware of their right to claim for quite some time, and may even be living in a rural area.

suffering, he may approve medical aid also for such other disease for so long as he may deem it necessary.

(3) If an employee has contracted a disease referred to in subsection (1) resulting in permanent disablement and that disease is aggravated by some other disease, the Director-General may in determining the degree of permanent disablement have regard to the effect of such other disease.

(4) Subject to section 66, a right to benefits in terms of this Chapter shall lapse if any disease referred to in subsection (1) is not brought to the attention of the commissioner or the employer or mutual association concerned, as the case may be, within 12 months from the commencement of that disease.

(5) For the purposes of this Act the commencement of a disease referred to in subsection (1) shall be deemed to be the date on which a medical practitioner diagnosed that disease for the first time or such earlier date as the Director-General may determine if it is more favourable to the employee.

#### **Presumption regarding cause of occupational disease**

66. If an employee who has contracted an occupational disease was employed in any work mentioned in Schedule 3 in respect of that disease, it shall be presumed, unless the contrary is proved, that such disease arose out of and in the course of his employment.

- 7.21 As none of the other funds examined in this report cover occupational diseases there is no possibility of an overlap. However, there is a potential overlap with medical schemes and the **Occupational Diseases and Mine Workers Act (ODMWA)** both of which fall under the jurisdiction of the Minister of Health. Legislation underpinning both these funding systems provide for chronic diseases, but with a focus on quite different income groups. However, whereas the **Medical Schemes Act No.131 of 1998** protects families, both COIDA and ODMWA exclusively protect employees.
- 7.22 However, whereas COIDA protects employees in mining and industry ODMWA only protects employees in the mining industry suffering from mining-related lung diseases. **Table 7.1** provides a very high-level comparison of entitlements published by a major mining house indicating both the extent of the overlap in terms of benefits and significant differences in the level of cover with ODMWA much lower. As both COIDA and ODMWA eliminate the possibility of damages claims against employers the level of benefit has important social implications.

**Table 7.1: Difference between COIDA and ODMWA**

	<b>ODMWA (administered by DOH)</b>	<b>COIDA (administered by DOL)</b>
<b>Cover</b>	Mining related occupational lung diseases	Accidents and occupational diseases only (mining and industry) except for that covered by ODMWA (miners only).
<b>Follow-up of ex-employees</b>	Biennial and free	Nil
<b>Low-fence for</b>	65% lung function	80% lung function (i.e. 20%

	<b>ODMWA (administered by DOH)</b>	<b>COIDA (administered by DOL)</b>
<b>compensable lung disease</b>	(i.e. 35% loss)	loss)
<b>Maximum earnings for calculation of benefit</b>	R2,500	R15,820
<b>Lump sum benefits paid</b>		
<b>Min</b>	First degree: R39,300 (Max)	R14,531 (for 30% PD)
<b>Max</b>	Second degree: R86,500 (Max)	R132,924 (for 30% PD)
<b>Pensions</b>	Not paid	Min: R1,411 Max: R11,865
<b>Medical costs</b>	Life-long costs, paid by owner of mine, for occupational lung disease diagnosed in service	Maximum of two years costs, paid by the COIDA fund
<b>Funeral costs</b>	Nil	R9,200 (Max)
<b>Post mortem benefits</b>	Routinely provided for and free. Compensation paid, irrespective of cause of death	Not provided routinely. Compensated only if occupational disease caused death

Source: AngloGold Ashanti

- 7.23 The retention of two incomplete social security arrangements for occupational diseases has little merit, particularly where the entitlements and procedures overlap and differ. It has also been concluded that the partial protection offered undermine the development of preventive strategies, which would be far more socially productive. The views of the Committee of Inquiry into a National Health and Safety Council were endorsed by the subsequent Committee of Inquiry into a Comprehensive System of Social Security which reported in 2002:

*“The Report of the Committee of Inquiry into a National Health and Safety Council concluded that the system of compensation under COIDA and ODMWA has not maximised its potential to promote prevention activities. It found that the ODMWA compensation system contributed significantly to the poor control of health hazards in the mining industry.”*

- 7.24 Since the publication of these reports little has changed and the system remains fragmented. *It seems logical to consider the option of consolidating social security protection for occupational diseases into a single legislative and institutional framework. This could be achieved through placing the responsibility for this function entirely within COIDA or ODMWA. Such consolidation would need to involve both medical aid and loss of income.*
- 7.25 Furthermore, the weak linkage with medical schemes and their mandatory minimum benefit framework represents a lost opportunity for standardizing and broadening coverage and cost. *At present the determination of legislation, benefits, and administrative processes with respect to COIDA, RAFA, ODMWA, and the medical schemes occurs independently of each other, which appears sub-optimal.*

### **Administration**

- 7.26 The platforms for administering medical benefits operate independently and inefficiently within the CF, RAF, the COIDA-related mutual funds, and

ODMWA. The administrative systems are largely in-house and outdated by comparison to the available administrative capacity supporting medical schemes. *Consideration consequently needs to be given to the establishment of a single administrative platform to service the medical obligations CF, RAF, and ODMWA.*

### Price/tariff determination

- 7.27 Benefits involving the purchase of medical aid require that consideration be given to how the prices for these services are set. The RAFA and COIDA however have different approaches, with a tariff schedule actually determined by the DG of DOL in the case of the CF, while the RAF relies on tariff schedules determined through other processes.

**Table 7.2: Approaches to health care price determination**

	COIDA	RAFA
<b>Tariffs for hospital facilities and professional fees</b>	Determined by DG annually and published in a gazette after consultation with the relevant stakeholders	Uses the Uniform Patient Fee Schedule (UPFS) (for public services) and the National Health Reference Price (NHRPL) (for private services)
<b>Balance billing</b>	Not permitted	There are no negotiations Permitted as the tariff schedules limit the liability of the fund only
<b>Medical devices</b>	Indirectly captured in some instances through facility fee negotiations (e.g. use of all-inclusive per diems), but no price schedule negotiated or set	No negotiation
<b>Medicines</b>	No negotiation	No negotiation
<b>Hospital consumables</b>	No negotiation	No negotiation

- 7.28 In the case of the CF the legislative provisions are good and result in a structure that prevents risks being transferred to the covered population. However, the legislation doesn't clearly empower the fund (or the Commissioner or DG) to set more than just facility and professional fees. Consequently prices for medical devices, medicines, and hospital consumables are not influenced by the CF.

- 7.29 The no-balance-billing provisions contained within the COIDA confer substantial market power on the fund, which however it fails to make use of. Firstly, the negotiations appear to be fairly limited in nature with limited technical input. Secondly, important prices are not subjected to negotiation, exposing the fund to potentially avoidable systemic price increases.



- 7.30 The RAFA does not have the no-balance-billing provisions of the COIDA, reducing the quality of the medical aid protection offered. It has furthermore failed to determine or negotiate its own tariffs and. More recently the RAF has adopted the UPFS for public sector tariffs and the NHRPL for private sector tariffs. However, in the case of the NHRPL there is a gap between the tariffs charged by providers and the value of the NHRPL, leaving beneficiaries to pay the difference.
- 7.31 A significant problem with the use of the NHRPL is that it is a reference price schedule and not an administered price. Therefore the blanket application of this schedule may result in challenges on the basis of administrative fairness. Particularly as providers have successfully blocked the publication of the most recent version on the basis of unfair process by the DOH.
- 7.32 The RAF has essentially not developed the internal capacity to negotiate tariffs and prices, leaving it vulnerable to decisions made elsewhere. However, it has identified the need to set its own tariff as part of its future reforms.
- 7.33 However, even were the RAFA to develop a similar arrangement to the COIDA, were the two funding arrangements to continue to set prices separately they would continue to suffer the following structural disadvantages:
- Despite both funds covering virtually the same contingencies, they lose the benefits of their combined market;
  - The economies of scale required to negotiate complex reimbursement arrangements is undermined – leaving both funds vulnerable to default reimbursement arrangements; and
  - In the absence of a no-balance-billing provision in the RAFA the quality of the cover and the market power of the RAF to negotiate appropriate prices is reduced.
- 7.34 *Consideration therefore needs to be given to the following legislative amendments:*
- *The RAFA should fund benefits on a no-balance billing basis;*
  - *Both the RAFA and COIDA should be able to set reimbursement prices for hospital services, professional fees, hospital consumables not included in the facility fees, medicines, medical devices and products, and equipment; and*
  - *The RAF and CF should be able to jointly negotiate and determine tariffs and prices, and make use of a single tariff and price schedule.*

### **Findings**

- 7.35 The existing system for providing medical aid through the RAFA, COIDA, and ODMWA is severely fragmented, with material consequences for access to emergency health services and treatment for occupational diseases.
- 7.36 The COIDA and ODMWA cover very similar occupational health contingencies but offer different levels of benefit, have different institutional and funding arrangements, and report via different departments. Very little justification for this

fragmented approach exists and indications are that the establishment of effective arrangements for the prevention of occupational diseases is severely hindered as a consequence.

- 7.37 Access is hindered structurally in the case of accident-related injuries by the narrow eligibility criteria. For service access not to be hindered the RAF and CF need to be able to make a determination on eligibility before the circumstances of a road or workplace-related accident can be verified. As a consequence no private medical service is able to avoid funding uncertainty in relation to patients in need of very expensive treatment.
- 7.38 The removal of the fault-based approach to funding medical expenses greatly enhances the ability of the RAFA to improve the efficiency and fairness of its cover.
- 7.39 The RAFA has no provision equivalent to that in the COIDA which requires that there is no balance-billing in respect of the patient. This both reduces the potential market power of the RAF to negotiate tariffs and prices and transfers substantial risk onto the patient.
- 7.40 The RAF does not negotiate its own tariffs despite being a fund with substantial market power in relation to hospital-based services. It furthermore lacks the capacity to do so.
- 7.41 Despite covering predominantly the same medical conditions (trauma-related emergencies) the RAF and CF do not combine their market power to establish a single negotiation platform for setting prices, tariffs and reimbursement arrangements.

## 8. PRESCRIPTION PERIODS

- 8.1 Prescription periods are used to mitigate against the accumulation of unknown liabilities over time which could upset the balance between current revenue and liabilities. Prescription periods therefore do not eliminate liabilities, and should not be designed to do so.
- 8.2 The three social security arrangements are summarized in **table 8.1** and indicate that both the COIDA and RAFA have the same prescription period of 12 months, while the UIF allows for up to 3 years from the date of an accident (apart from funeral expenses which are 12 months).

**Table 8.1: Prescription periods for COIDA, RAFA, and UIF**

	Prescription period
<b>COIDA</b>	12 months from the date of the accident 12 months from the diagnosis of an occupational disease
<b>RAFA</b>	3 years from the date of the accident 2 years for hit and run For funeral expenses - 12 months from the date of the accident
<b>UIFA</b>	For loss of support: 6 months for an adult dependent, with an additional 14 days in the case of a child dependent For unemployment: 6 months from the loss of employment

Sources: COIDA, RAFA, UIF

- 8.3 The 12-month prescription period adopted by the DOL for both COIDA and the UIF appears reasonable, assuming reasonable access, with the 2 to 3-year period of the RAFA somewhat excessive. *Given the proposed reforms to the RAFA, which would result in simplified procedures and access, there seems no reason for a period less than 12 months.*
- 8.4 *Based on the above, it appears reasonable to propose that consideration be given to a harmonization of prescription periods to 12 months from the relevant trigger with a view to greater integration and coordination between the three social security arrangements over time.*
- 8.5 *An exception should however be made in the case of occupational diseases, where consideration needs to be given to the condonation of a claim occurring after 12 months to cater for the structural disadvantage many of the potential claimants are likely to experience in accessing these benefits. Given the general poor performance of the social security system in both preventing and covering this contingency more risk should be accepted here than would be reasonable in the case of an accident.*

## 9. REFORM STRATEGY OPTIONS

### Overview

- 9.1 Based on the analysis and findings thus far there is considerable scope for both streamlining key social security arrangements, but also for significantly improving their efficiencies and social impacts. Although apart from the area of occupational diseases, the consolidation of social security funds does not seem appropriate at this stage, given their fairly specialized mandates.
- 9.2 However, notwithstanding this general conclusion, there are grounds for consolidation of functions into a single fund applicable to specific benefit areas. There are also grounds to consider expanding the contingencies in certain instances to improve access to certain benefits and the potential efficiencies in managing them, e.g. emergency health care services.
- 9.3 This section provides a reform proposal by benefit type, indicating how the potential authority and accountability for benefit area could or should be distributed between the various social security entities.
- 9.4 Taking account of the findings thus far, the very different approaches taken to funding similar contingencies (e.g. loss of income or support, medical aid) has resulted in very different legislative provisions, and very different operational processes. *Little need exists for these differences, and a general review of all the relevant legislation is required to ensure that a single standard prevails in all instances.*

### Policy-decision-making

- 9.5 There are presently several legislative instruments amended through at least three different departments related to the social security organizations discussed in this report. This fact alone, which affects how policy is developed, causes inconsistencies between what are closely related areas of legislation. *This can only be addressed by consolidating certain functions into fewer departments.*
- 9.6 Inconsistencies in the present policy-making framework are as follows:
- The DOT does not have social security as a core function, reducing the extent to which it can effectively prioritize policy in relation to the RAFA;
  - The responsibility for occupational diseases falls within the domain of two departments, DOL and DOH, with the consequence that neither providing adequate policy support.
- 9.7 *If there is no policy consolidation, a strong coordination mechanism would be required with consideration given to a general social security laws amendment process where all affected departments develop the framework together.* This may be required as an interim measure, although in the medium- long-term policy consolidation is needed.

### Reform recommendations

- 9.8 **Table 8.2** outlines the indicative reform approach for arising from this report with a provisional risk assessment.

Table 8.2: Reform framework

Reform	Recommendation	Risks and implications
<b>Loss of income</b>	<p>The distinction in benefit entitlements between COIDA and RAFA should be entirely removed, with value of the benefit set at the higher of the two with entitlements available until the death of the recipient.</p> <p>The value of the benefit should ultimately be the same as the <i>general mandatory contributory disability benefit</i> that would be administered by the proposed National Social Security Fund (NSSF).</p> <p>The establishment of a common framework would require equivalence in the following areas:</p> <ul style="list-style-type: none"> <li>• Definitions of temporary disablement;</li> <li>• Definitions of permanent disablement, by degree of disablement;</li> <li>• Rand and income ceilings;</li> <li>• Any tiers that involve structural differences in benefit entitlements (e.g. lump sums for persons with 30% or less disablement, and periodic benefits for those above);</li> <li>• The pro-rating of benefits based on the proportion of occupational disability;</li> <li>• The assessment regime;</li> <li>• Processes to re-evaluate an assessment; and</li> <li>• The appeals process.</li> </ul>	<p>Although there will be an increase in benefit and possible take-up, this could be offset by excessive administrative and legal costs presently incurred through the RAF.</p>
	<p>Until such time as a general mandatory contributory disability benefit is in place, the liability for the loss of income claim should be distributed as follows:</p> <ul style="list-style-type: none"> <li>• Resulting from road accidents should fall to the RAF, irrespective of whether it was an</li> </ul>	

Reform	Recommendation	Risks and implications
	<p>injury on duty;</p> <ul style="list-style-type: none"> <li>• Injuries on duty aside from road accidents should fall to the CF, or agents acting in terms of the COIDA.</li> </ul>	
<p><b>Loss of support</b></p>	<p>The distinction in benefit entitlements between COIDA and RAFA should be removed. The UIFA should be adjusted to equal the benefits offered through COIDA and RAFA. The most significant adjustment here would involve the removal of the linkage to UIF credits for determining the time period for which benefits are eligible.</p> <p>However, doing this would establish a <i>de-facto</i> general contributory survivor benefit for loss of support operated through the UIF for the income groups qualifying for these benefits. It would also dramatically increase the cost of the benefit which could not be funded from existing contributions. Taking this into account, the following is recommended:</p> <ul style="list-style-type: none"> <li>• The COIDA, RAFA, and UIFA benefits be made equivalent in respect of monthly income replacement, and Rand floors and ceilings;</li> <li>• The COIDA and RAFA benefits be paid out for life, with the 15 year or age of 65 ceiling entitlement applicable to RAFA removed;</li> <li>• The liability for claims should be distributed as follows: <ul style="list-style-type: none"> <li>▪ Those resulting from road accidents, irrespective of whether it arose from an injury on duty, should be covered by the RAF;</li> <li>▪ Those resulting from injuries on duty, excluding road accidents, should be covered by the COIDA;</li> <li>▪ Any claim that fails to result from either a road accident or injury on duty, should</li> </ul> </li> </ul>	<p>Although there will be an increase in benefit and possible take-up, this could be offset by excessive administrative and legal costs presently incurred through the RAF.</p> <p>Consideration could be given to funding as portion of any increased cost from the excess of contribution over benefit presently occurring within the UIF.</p>

Reform	Recommendation	Risks and implications
	<p>be covered by the UIF;</p> <ul style="list-style-type: none"> <li>At the point where a generalized social security entitlement is implemented via the NSSF, the UIF, RAFA, and COIDA benefits would be entirely subsumed, provided their benefits are either less or equal to the general entitlement.</li> </ul>	
<b>Funeral benefits</b>	<p>This benefit is presently only funded through the COIDA and RAFA. The benefit should be made equivalent in the two funds, with the liability distributed as follows:</p> <ul style="list-style-type: none"> <li>The RAFA should cover all deaths resulting from road accidents irrespective of whether they involve an injury on duty;</li> <li>The COIDA should cover all deaths resulting from injuries on duty except for those resulting from road accidents.</li> </ul>	No risks can be identified.
<b>Unemployment</b>	No changes are required for unemployment benefits and should continue to be administered through the UIF.	No risks can be identified.
<b>Maternity</b>	No changes are required for maternity benefits and should continue to be administered through the UIF.	No risks can be identified.
<b>Adoption</b>	No changes are required for adoption benefits and should continue to be administered through the UIF.	No risks can be identified.
<b>Sickness</b>	No changes are required for sickness benefits and should continue to be administered through the UIF. However, a reconciliation process should be set up to remove any overlapping claims resulting from loss of support claims through the COIDA (disability and occupational diseases), and RAFA.	No risks can be identified.

Reform	Recommendation	Risks and implications
<b>Medical aid</b>	<p>The ideal scenario would be for the establishment of a general accident benefit that is universally available and not subject to the limiting contingencies of road accidents and injuries on duty. Were such a generalized benefit to be introduced it would subsume the cover provided through COIDA, RAFA, medical schemes, and the public sector. In the case of medical schemes, emergency services must be covered as a statutory minimum benefit and these are already funded on a contributory basis.</p> <p>It is therefore recommended that a framework be implemented that moves the cover of emergency care into a more rationalized framework, without in any way distributing existing risk pools or coverage. The following framework is proposed:</p> <ul style="list-style-type: none"> <li>• Medical aid benefit entitlements offered through the COIDA and RAFA should be made identical, apart from the trigger.</li> <li>• The approval mechanism for emergency medical aid for injuries on duty and road accidents should be by way of immediate phone authorization, and separated from the approval processes for loss of income and support. The approval should explicitly involve more liberal criteria than required for loss of income and support. This would move the entitlement some way toward a general medical aid benefit for emergency care.</li> <li>• A single administrative platform should be established to service both COIDA and RAFA on an agency basis. This platform should also be responsible for negotiations with providers, and have a governance structure which includes the Commissioners and COIDA and RAFA. The COIDA and RAFA would consequently focus on the determination of policy rules and procedures, while the administrative platform would implement them. It would be expected that many of the operations would be outsourced.</li> </ul>	<p>This is a significant reform that would require a careful financial assessment of the various costs and changes in liability. However, the establishment of this framework will permit the establishment of a more coherent health insurance framework for emergency services, which should reduce the costs of existing cover, increase the efficiencies of the provider system, and reduce the premiums of medical schemes (resulting from the avoidance of double-dipping and fraud).</p>



Reform	Recommendation	Risks and implications
	<ul style="list-style-type: none"> <li>• The distribution of the liability for medical aid claims should be as follows:               <ul style="list-style-type: none"> <li>▪ The RAFA should cover all medical aid claims resulting from road accidents irrespective of whether they involve an injury on duty or medical scheme claim;</li> <li>▪ The COIDA should cover all medical aid claims resulting from injuries on duty excluding road accident claims;</li> <li>▪ Medical schemes would be able to reclaim road accident claims from the RAF and injury on duty claims from the CF (or one of the agents operating in terms of the COIDA) even where they initially took responsibility for the claim;</li> <li>▪ Medical schemes would only be entitled to reclaim expenses in accordance with the statutory tariff schedules.</li> </ul> </li> <li>• The administrative platform established for the RAF and COIDA would integrate on a real time basis with private medical scheme administrators to ensure that all claims are properly reconciled.</li> </ul>	
<b>Occupational diseases</b>	<p>It is recommended that a single institution takes responsibility for all occupational diseases. Given the linkage to the protection of employees, rather than generalized health cover, it is recommended that this function be consolidated under the COIDA, with operational responsibility for loss of income and support managed through the CF.</p> <p>It is also proposed that the medical aid component of this arrangement be managed through the administrative platform proposed for accidents and emergencies.</p>	<p>The implementation of a coherent framework to deal with occupational diseases should seek to minimize any increased entitlements by implementing an effective system of prevention which is not possible at present.</p>
<b>Prescription periods</b>	<p>It is recommended that a standard prescription period of 12 months apply to all funds, with an</p>	<p>No risks can be identified of any</p>

<b>Reform</b>	<b>Recommendation</b>	<b>Risks and implications</b>
	<p>additional 4 months in the case of child dependents.</p> <p>However, in the case of occupational diseases a more liberal approach should be adopted given the structural difficulties faced by affected low-income individuals in realizing they have a right to claim. An option is for a limitation on backdated claims, with a focus on medical expenses and loss of income going forward after the initial prescription period.</p>	<p>significance.</p>

**Concluding remarks**

- 9.9 The proposed framework outlined in this section is indicative and forms a point of departure for further discussion. In large part it seeks to rationalize existing arrangements sufficient to establish a medium- to long-term solution which is both scalable and affordable. Nevertheless, the structural changes to the institutions implied by the changes are significant and require considerable joint decision-making by all the departments and organizations concerned to proceed expeditiously.
- 9.10 An important consideration in this framework is the need to ensure compatibility with reforms to general social security entitlements which could influence how investments are made within institutions with narrower but affected mandates. This is of particular importance in the case of disability and survivor benefits, which will be influenced by proposed broader reforms to social security.

## REFERENCES

### Documents

Committee reports of the Taylor Committee into a social security system for South Africa (Taylor Committee), *Committee Report No 11: Coverage against employment injuries and diseases*, 2002.

Department of Labour, *UIF briefing, Task Team 2*, 2009a.

Department of Labour, *Compensation for Occupational Injuries and Diseases Act*, presentation to the inter-departmental task team on social security, 2009b.

Department of Transport, *Alignment and or integration of benefits*, submission to the inter-departmental task group on social security, 2009.

### Legislation

Department of Labour:

- *Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993 as amended.*
- *Unemployment Insurance Act No. 63 of 2001.*

Department of Transport:

- *Road Accident Fund Act No. 56 of 1996 as amended.*

**ANNEXURE A: SCHEDULE 2 OF THE COIDA**

<b>Injury</b>	<b>Percentage of permanent disablement</b>
Loss of two limbs	100
Loss of both hands, or of all fingers and both thumbs	100
Total loss of sight	100
Total paralysis Injuries resulting in employee being permanently bedridden	100
Any other injury causing permanent total disablement	100
Loss of arm at shoulder	65
Loss of arm between elbow and shoulder	65
Loss of arm at elbow	55
Loss of arm between wrist and elbow	55
Loss of hand at	50
Loss of four fingers and thumb of one	50
Loss of four fingers	40
Loss of thumb—	
both phalanges	25
one phalanx	15
Loss of index finger—	
three phalanges	10
two phalanges	8
one phalanx	5
Loss of middle finger—	
three phalanges	8
two phalanges	6
one phalanx	4
Loss of ring finger—	
three phalanges	6
two phalanges	5
one phalanx	3
Loss of little finger—	
three phalanges	4
two phalanges	3
one phalanx	2
Loss of metacarpals—	
first, second or third (additional)	4
fourth or fifth (additional)	2
Loss of leg—	
at hip	70
between knee and hip	45 to 70
below knee	35 to 45
Loss of toes—	
all	15
big, both phalanges	7
big, one phalanx	3
toes other than big toes four toes	7
three toes	5
two toes	3
one toe	1

<b>Injury</b>	<b>Percentage of permanent disablement</b>
Loss of eye-	
whole eye	30
sight	30
sight except perception of light	30
Loss of hearing-	
both ears	50
one ear	7

Total permanent loss of the use of a limb shall be treated as the loss of the limb.

Any injury to the left arm or hand and, in the case of a left-handed employee, to the right arm or hand, may in the discretion of the Director-General be rated at ninety per cent of the above percentage.

If there are two or more injuries the sum of the percentages for such injuries may be increased, in the discretion of the Director-General.

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