

APN 702: MINIMUM DISCLOSURE REQUIREMENTS AND RECOMMENDED EARNINGS INFORMATION REQUIREMENTS FOR EXPERT ACTUARIAL REPORTS BEFORE THE COURTS IN ROAD ACCIDENT FUND MATTERS

Classification

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Abstract

This APN considers the minimum disclosure requirements and recommended earnings information requirements in order to complete an expert actuarial report for court purposes in matters involving the RAF.

Purpose

The purpose of this APN is to assist Fellow members and Associate members of the Actuarial Society of South Africa ("actuary" or "actuaries") in discharging their professional responsibility and acting in the public interest in relation to expert actuarial reports for court purposes in matters involving the RAF.

Legislation or Authority

Road Accident Fund Act 56 of 1996 as amended.

Application

Actuaries providing expert actuarial reports to the courts in matters involving the RAF.

Disclaimer

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Author

Damages and Compensation Committee of the Actuarial Society of South Africa ("ASSA").

Status

Version 1 Effective from 1 December 2023

1 BACKGROUND TO ACTUARIAL PRACTICE NOTE

- 1.1 In *Twine and Another v Naidoo and Another*¹ the court states:
The prevalence of expert testimonies has, however, produced challenges for the courts, some of which are fundamental to its duties and functions as a justice producing institution. This is particularly so as an entire industry of alleged experts selling their skills, knowledge and/or experience to litigants has developed, especially in personal injury cases where the defendant is the Road Accident Fund. Most of the challenges faced by the court arise from the fact that the basic principles about the role, relevance and value of an expert's testimony are often ignored by the alleged experts themselves and by the parties calling them. This, unfortunately, has resulted in the unnecessary wastage of court time and the unnecessary incurrence of costs by parties.
- 1.2 The principles regarding expert witness work as set out in paragraph [18] of *Twine and Another v Naidoo and Another* referenced above are not intended as legal justification of this APN. It is, however, included as a forewarning of potential reputational risk to the Actuarial Society of South Africa and its members.
- 1.3 In reports missing the minimum earnings requirement, it may be appropriate to present hypothetical calculations or estimates based on reasonable assumptions. However, these should be clearly labelled as such and should be based on the best available information.

2 THE INDUSTRIAL PSYCHOLOGIST AND MINIMUM DISCLOSURE REQUIREMENTS

- 2.1 Where an actuary is instructed to use, or relies on a report from an industrial psychologist for their calculations, the following statement, or a similar disclosure, must appear in the actuary's report, as appropriate:
- 2.1.1 I/We was/were instructed to prepare calculations based on the recommendations of the industrial psychologist's report. Performing calculations on these bases should in no way be construed that I/we certify the likely career paths but for and having regard to the accident to be realistic.

¹ *Twine and Another v Naidoo and Another* (38940/14) [2017] ZAGPJHC 288; [2018] 1 All SA 297 (GJ)

3 RECOMMENDED EARNINGS INFORMATION REQUIREMENTS

3.1 Where actual past income is used as a predictor of future income, the actuary should be in possession of one or more of the following pieces of documentary evidence pertaining to a plaintiff's earnings, prior to completing an expert actuarial report before the court in a matter involving the Road Accident Fund ("RAF"):

3.1.1 Personal income tax returns or assessments (ITR12 or ITA34).²

3.1.2 Income tax certificates (IRP5 or IT3).²

3.1.3 Business income tax returns or assessments (ITR14 or ITA34C).²

3.1.4 Copies of payslips.²

3.1.5 Copies of bank statements.²

3.1.6 Copies of income statements.³

3.1.7 Copies of invoices issued to or by the plaintiff.³

3.1.8 An employer's certificate.

3.1.9 Copies of a printout of payments from the employer.

3.1.10 Proof of any living expenses.

3.1.11 Proof of Unemployment Insurance Fund contributions (UI-19 form).

3.1.12 For plaintiffs working in the informal sector (i.e., 'unbanked' or 'cash' businesses), acceptable verifiable evidence would include, but is not limited to:

- Affidavits from customers, clients, suppliers, or colleagues verifying employment and average income levels.
- Affidavits from competitors or other informal businesses within the same or immediate geographical location as the plaintiff.

Where the above is not available, actuarial judgement may be applied regarding proof of income from credible 3rd parties, with valid linkages to the claimant.

3.1.13 A report from an assessor verifying average income and average expenses.

² *Gwenstshu v Road Accident Fund* [2021] ZAGPPHC 571

³ *Adv Cawood NO obo Nell v Road Accident Fund* [2023] ZAGPPHC 68