RABS
2017 - 9

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Your ref:

Our ref: A Cook/PIC/RABS Bill

27 November 2017

Ms Valerie Carelse

Mr K Kgantsi

Per e-mail: vcarelse@parliament.gov.za
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Dear Sir/ Madam

COMMENTS: RABS BILL

I refer to the above and include comments from members of the Law Society of the Northern Provinces for your kind attention.

Yours faithfully,

ANETTE COOK
LEGAL OFFICIAL: PROFESSIONAL AFFAIRS

ATTENTION: THE CHAIR, PORTFOLIO COMMITTEE ON TRANSPORT

27 NOVEMBER 2017

RE: COMMENTS ON THE ROAD ACCIDENT BENEFIT SCHEME (RABS) [B 17 – 2017].

The object of the Road Accident Benefits Scheme Bill (RABS) (Bill) is defined as follows:

The main objectives of the Bill, amongst others include, to provide an effective benefit scheme in respect of bodily injury or death caused by or arising from road accidents, which benefit scheme is **reasonable, equitable, affordable and sustainable**, exclude from civil liability certain persons responsible for bodily injuries or death caused by or arising from road accidents and the establishment of the Administrator **[Emphasis added].**

The LSNP submits the following comments at the hand of key questions put to the Department of Transport (DoT) on the 20th of June 2017 and the subsequent answers given to the Portfolio Committee on Transport, in order to test, whether the object of the RABS Bill, can be met based upon the current RABS Bill.

In order to simplify the comments and conclusion we will address the relevant issues under particular questions (the full report including the response by the DoT and other sources referred to, are attached, for ease of reference and will be referred to throughout the course of this discussion).

Questions:

1. **How was the medical costs impact on RABS determined given that the medical tariffs are not yet finalized?**

   Response: A draft medical tariff was developed in 2014 based on the average benefit rates for private medical schemes members. The projected medical costs for RABS was actuarially determined and updated based on the average benefit rates for private medical schemes

members; the number of road accidents; the medical expense claim experience under the RAF Act; and, allowing for an increase in such claims because of the introduction of no-fault.

The Constitutional Court, in respect of the challenge to the non-emergency tariff (public health tariff) under the RAF Act, in the matter of *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC)*, stated that:

> *"It is indisputable that imposing public health tariffs on road accident victims amounts to restricting them to treatment at public health institutions, if they cannot fund the healthcare themselves. In some instances, that restriction will be perfectly reasonable and adequate.*
>
> *However, the overwhelming and undisputed evidence demonstrates that road accident victims who are rendered quadriplegic or paraplegic require specialised care for life without which there can be life-threatening complications which if unattended lead to their inevitable demise.*
>
> *To this charge, the respondents have no effective answer. They acknowledge the vast disparity between private and public healthcare establishments and explain how they propose to improve public healthcare establishments. What they do not do, is to meet head-on the complaint that quadriplegic or paraplegic road accident victims would not easily survive the health care services at public hospitals.*
>
> *Another important, but not individually decisive, consideration is that actuarial evidence demonstrates that an implementation of the UPFS tariff would save the Fund no more than 6% of its total compensation bill. This relatively meagre saving seen against other compelling factors makes it unreasonable to consign quadriplegics and paraplegics to a possible death by reducing their adequate access to medical care in pursuit of a financial saving of a negligible order. The respondents do not suggest that there is a historical or present unfairness related to giving serious spinal injury accident victims access to private health care services whilst public health provision is being progressively improved.*

I am satisfied that the UPFS tariff is incapable of achieving the purpose which the Minister was supposed to achieve, namely a tariff which would enable innocent victims of road accidents to obtain the treatment they require. UPFS is not a tariff at which private health care services are available; it does not cover all services which road accident victims require with particular reference to spinal cord injuries which lead to paraplegia and quadriplegia. The public sector is not able to provide adequate services in a material respect. It must follow that the means selected are not rationally related to the objectives sought to be achieved. That objective is to provide reasonable healthcare to seriously injured victims of motor accidents."

The proposed market related tariff under the RABS dispensation will ensure that the Constitutional Court's concerns are addressed.

12. Comment: The RAF has not yet consulted on the tariff?

Response: The Committee has given guidance that the Department and the RAF must not act ahead of the legislative process.

This guidance accords with the provisions of section 14 of the Interpretation Act, No. 33 of 1957 which provides for such formal consultations only once the law has been signed by the President, where after the Minister (not the RAF) in terms of section 60 of the Bill can commence engagement of the Minister of Health and the public consultation in terms of the Promotion of Administrative Justice Act, No. 3 of 2000.

In the interim, the RAF has prepared a draft tariff as discussed in the response to question 2 above. There has also been engagement (not consultation as contemplated above) with various stakeholders in respect of the draft tariff. The tariff will be updated and treatment protocols and policies will be developed, which documents will serve as the basis for formal consultation by the Department, in due course.

LSNP : COMMENTS

The delivery of quality Healthcare is one of the primary functions of RABS. The healthcare referred to should be private healthcare services in accordance with the judgement in *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC),*

It is said the Road Accident Fund Scheme Administrator (RABSA): "*will cooperate with public and private sector providers to enable the delivery of quality healthcare to road accident victims across South-Africa, at affordable cost".*

However, since more patients use public services, more resources will be channeled to the public health sector for treating road accident patients (see par 6.5.6, page 56 of the Government Gazette, 12 February 2010, *see annexure **"T1"** and **"T2"***).

Since the judgement in the Constitutional Court, in the matter of *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC),* there has been no:

Consultation process;

Procurement process, as required in Section 31 (1) of the RABS Bill and/or Section 217 of the Constitution (*see annexure **"T3"** to **"T5"***).

The Procurement process as defined in the terms of Section 217, of the Constitution, to mean:

(1)When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2)Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for —

(a) categories of preference in the allocation of contracts; and

(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

(3)National legislation must prescribe a framework within which the policy referred to in subsection (2) may be implemented.

The reprimand by the Portfolio Committee, as opposed to "guidance given not to act ahead of the legislative process" was not in relation to the tariff, but rather a warning to the Dot / RAF to stop its

wasteful expenditure on advertising campaigns, branding (*see annexure **"T6"**, branded lifts and toilets in RAF, Head Office etc.*) and tender processes which may influence the public into thinking that RABS is fully functional

The fact that the DoT sites Section 14 of the Interpretation Act, in their answer on this point is opportunistic and cannot apply in the case of a fundamental and problematic element of the RABS Bill, prior to the inception of the Bill (see ***"T7"*** and ***"T8"***).

In the implementation of the RABS Bill the DoT simply cannot rely on the exception available in Section 14, as:

The single medical tariff is such an integral part of the RABS Bill, the RABSA cannot, reasonably function and/or deliver the benefits in Part A, Health Care Services (Section 30, 31, 32 and 33) without the tariff having been secured, prior to the inception thereof;

It will be placing the funding model of a combined RAF/RABS liability at enormous risk as RABSA would be unable to determine what their liability would be under a no-fault system;

The RABSA will need to determine their liability in relation to so called balance-billing (excess between agreed tariff and the actual account payable for non-contracted service providers (Section 32));

Road accident victims would be at risk of civil liability having to cover the excess payable to service providers not covered by the RABSA.

Section 32 (1)(b) states that the RABSA will only be liable to pay non-contracted health care providers a "reasonable tariff" – Road accident victims, especially the poor and indigent victims will be facing the biggest challenges having to cope with the burden of having to pay the excess on these medical bills;

Until a single tariff has been procured it will be unsure whether a monetary cap will have to be introduced upon healthcare services.

In a no-fault system certain parameters will have to be introduced to ensure that the RABSA remains adequately financed to ensure the sustainable the delivery of healthcare services Chapter 6, Part A;

If a cap is introduced the immediate question would be whether private healthcare providers would be willing to engage the DoT, facing the real financial risk of engaging an entity that cannot guarantee any long term financial security;

In reality the RABSA, within its wide powers of discretion, may reduce any benefit subject to affordability, in order to ensure the financial viability of RABS (Section 40(2)(c));

The road accident victims run the further risk of having their benefits reduced at any stage in order to assist the RABSA to maintain their contractual agreements with service providers;

Having regard to the high costs of medical care especially in the emergency, acute and rehabilitative phase and with the aim of keeping the RABSA as cheap as possible to administer, it is doubtful that RABSA would be able to engage private health care providers on an acceptable tariff.

Without a tariff it would be impossible to do a proper costing of RABS, even with the DoT's best intentions to offer a tariff which will be "*on par with what the large medical schemes pay*" (page 78, of 2014 comments)

Further, the following comment was made by the DoT (in 2014) in reply to a comment made on the tariff by the South African Private Ambulance & Emergency Services Ass (SAPAESA) during the previous round of comments:

"This aspect is best dealt with in **the tariff which will be published for public comment in due course**"**[our emphasis]**

Since 2014, no tariff has been published comment which begs the question - Why the delay?

The answer is to be found in a report, prepared for National Treasury, by Mr. Alex van den Heever [*see full report attached annexure **"T9"***]

ADMINISTERED PRICES

HEALTH : A report for National Treasury, ALEX VAN DEN HEEVER

Preface

This report was prepared for National Treasury to support its assessment of administered prices in South Africa.

The objective of the study was to assess the processes involved in setting prices in regulated industries.

The existing process for centrally bargained medical scheme tariffs is flawed, inflationary, and open to special interest manipulation. It exists within a regulatory vacuum, resulting in both medical scheme and service providers engaging in a confusing set of interactions which rarely benefit the public. [our emphasis]

5. REVIEW OF TARIFF SETTING VIA MEDICAL SCHEMES IN SOUTH AFRICA

5.1 Overview

Two key areas of fee setting affect the final price of purchase for many health goods and services.

The first involves the fees paid for professional services such as doctors, surgeons, dentists, specialists, etc.

The second relates to tariffs paid for hospital services. Outside of this are a not insignificant range of goods and services which are not influenced in any way by the final purchaser – pharmaceuticals, laboratory tests, gases, etc.

5.2 Medical schemes and tariff setting

Medical schemes are insurance vehicles and therefore "reimburse" members for actual costs incurred. This reimbursement need not involve payment of the full price paid or cost incurred. Medical schemes have therefore traditionally operated not as purchasers of health care but the

insurers of purchasers of health care. As a consequence the "tariff" set centrally by the Representative Association of Medical Schemes (RAMS – now Board of Health Funders (BHF)) were not prices.

However, as many medical scheme members would not be able to pay health care service provider unless reimbursed by a medical scheme, the tariff set by RAMS (now BHF) has the effect of being a price. Where doctors were "contracted in" (see below) the tariff operated unambiguously as a price, as the reimbursement rate matched the final amount paid. However, doctors contracted in on out on a voluntary basis, reflecting the true nature of the tariff as reimbursement.

The almost continuous and seemingly irresolvable conflict in price determination between service suppliers and medical schemes stems largely from the unavoidable requirement placed on the market to set fees centrally. Given the vast number of procedures, equipment and consumables, a degree of uniformity in pricing is required to ensure that medical schemes and service providers can cope with huge volumes of invoices. If a different price schedule existed for every medical scheme, service suppliers would be given a near impossible administrative task. However, to negotiate a single schedule in a manner acceptable to all parties is virtually impossible. [our emphasis]

Until 1993 RAMS had the statutory authority to publish the official price list for all medical schemes. This status was removed from them in 1993, after which they could only publish a recommended schedule of benefits. Schemes did not have to adhere to the prices. RAMS was permitted to perform this function, in terms of competition legislation, only as long as they did not enforce the price list on schemes. **Individual schemes could negotiate separate tariffs with service providers if they wished. However, this was nearly impossible to do, and consequently the RAMS schedule of fees effectively became uniform throughout the market. [our emphasis]**

In response to this hospital groups and medical professionals set their fees in accordance with their own processes. These tariffs are normally higher than the RAMS fees and medical scheme members are "balance billed" the difference. Threats to significantly increase the levels of balance billing are often used by service suppliers to

extract concessions from RAMS, now BHF, to increase their schedule of fees [our emphasis].

In return, **medical schemes penalise service providers that balance bill** by making the member pay the bill first before any reimbursement occurs.**[our emphasis]**

The DoT made the following remarks in reply to a comment by the Board of Health Care Funders on the issue of balance billing:

"by not allowing for balance billing the RABS tariff will become a fixed tariff which will be objectionable form the Competition Act perspective"

The report by Alex van den Heever continues:

This practice, especially if it becomes widespread, has severe impacts on hospital cash flow.

5.4 Concluding remarks

The complexity of medical scheme claims processing makes the establishment of a central bargaining mechanism for a range of prices inevitable. However, this process comes with in-built instability, as it is not possible to please everyone, particularly with medical costs rising significantly in real terms. This results in irreconcilable differences which can only be resolved through government intervention.

6. SUMMARY OF FINDINGS AND RECOMMENDATIONS

The existing process for centrally bargained medical scheme tariffs is both flawed, inflationary, and open to special interest manipulation. It exists within a regulatory vacuum, resulting in both medical scheme and service providers engaging in a confusing set of interactions which rarely benefit the public.[our emphasis]

LSNP: COMMENTS

It is evident that negotiating a medical tariff is "virtually impossible" and even if some tariff is negotiated, taking into account medical costs rising significantly there will always be irreconcilable differences which will most certainly result in an agreement that will be found to be, uncompetitive.

Further, balance billing, as envisaged by the DoT, will place the road accident victim service providers, at serious financial risk and will most certainly jeopardize and the relationship between the RABSA and the suppliers of healthcare services.

To administrate a no-fault based "medical scheme" as envisaged by RABS having regard to the enormous number of procedures, equipment and consumables, will require an exceptional level of service delivery from the RABSA, as it would be taking on a "near impossible administrative task".

The DoT, has to date, not offered any reasonable explanation nor given a convincing argument on how they intend to ensure that these exceptional levels of service delivery are to be achieved and maintained without backsliding into the same administrative slump road accident victims currently experiencing under RAF and COID (various comments were raised in 2014 on this point and one would have expected that he DoT would have attended to the proper benchmarking of the RAF's performance and capability to deal with RABS (see annexure ***"T10"*** Scheme Viability as per the Road Accident Fund Commission Report 2002, Volume 1), .

We have not seen the results of the "skills gap analysis" that were supposed to be done in 2014 to determine whether the transitional system between RAF and RABS will succeed.

We do, however, know the DoT maintains the RABSA will be a better system than the current RAF - but without a proper strategy plan, costing analyses and the benchmarking of performance, this promise will amount to nothing more than "lip service" in the face of the huge administrative task RABSA would have to be able to maintain. (Chapter 7) (See *annexure* ***"T11"*** *and* ***"T12"***, Benchmarking and Recommendations, as per the Road Accident Fund Commission Report 2002, Volume 2 par 41.113 to 41.121).

Having regard to the above it is clear why the DoT is shying away from the consultation process and rather placing their hope on taking a shortcut (Section 14 of the Interpretation Act).

For this is the reason why they have been unable to secure the required tariff despite "engagements with various stakeholders" (the Portfolio Committee would be well advices to have insight into this process to determine and see whether the private health care has an appetite for RABS).

If the DoT has not been able to secure the tariff in the 3(three) years since the first comments in 2014 what are chances of the DoT to secure a tariff after the signing the Bill into a law and how long this process will take.

The approach by the DoT to start "*such formal consultations only once the law has been signed by the President, of the RABS Bill" is* not only presumptuous in the face of certain failure but also renders the RABS Bill, fatally flawed, as it will not be able to deliver on one of its principal objectives. The lack of an agreed tariff will render RABS without a bargaining position with private medical service providers.

Without an acceptable pre-determined medical tariff private healthcare service providers will not find the RABSA's advances appealing and road accident victims will remain subjected to public healthcare for as long as this procurement process may last.

The affordability of all other Benefits are dependent on the medical tariff.

The delay in the ability of the DoT to secure an acceptable tariff, will sentence road accident victims to treatment in the public health sector, defeating the purpose of RABS to deliver quality Healthcare services.

This delay/inability to secure an acceptable tariff renders the RABS Bill unenforceable and the RABS Bill, unconstitutional.

The RABS Bill cannot be passed until this tariff is secured as it will most certainly be struck down.

see: *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC)*

"……. seen against other compelling factors makes it unreasonable to consign quadriplegics and paraplegics to a possible death by reducing their adequate access to medical care in pursuit of a financial saving"

And further,

"I am satisfied that the UPFS tariff is incapable of achieving the purpose which the Minister was supposed to achieve, namely ***a tariff which would enable innocent victims of road accidents to obtain the treatment they require.*** *UPFS is not a tariff at which private health care services are available; it does not cover all services which road accident victims require with particular reference to spinal cord injuries which lead to paraplegia and quadriplegia. The public sector is not able to provide adequate services in a material respect"* ***[our emphasis]***

2. How will no-fault create savings considering that there will be more claims?

Response: The Committee's attention is invited to slide 78 of the presentation, copied below for ease of reference:

Expected Cost Impact

Table 1-Expected Annual cost accidents (R' million)

Accident Outcomes	Head of Damage	Annual cost of Current RAF Act	Annual cost after implementation of Amendment Act	Annual cost after implementation of RABS Bill
Fatality	LOS	4 389	4 376	4 406
	Funeral	167	115	174
Disability	General Damages	10 321	10 338	-
	LOE	12 163	12 163	9 474
Serious injury	Medical	4 247	5 545	5 474
	Extra RABS Rehabilitation			7 280
Operational expenses	Professional fees	4 574	4 491	1 652
	Administration	1 980	1 997	1 980
Total	Total	37 821	39 046	30 440
Additional Cost or Saving			1 225	(7 381)
%Cost/ Saving			3%	-20%

Under the RABS scheme many more road crash victims and their families will receive cover, due to the removal of fault and also due to the fact that both employed persons and those persons who cannot prove an income will be covered. The savings from the removal of general damages and from the reduction on expenditure on intermediaries will be used to fund the increased volume of claims. Therefore, regardless of the fact that many more persons will now receive cover, effectively, there will be **a net cost savings of 20%**, even after taking the increased volume of claims into account. **[emphasis added, by DoT]**

In the matter of the *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC),* the following was stated:

> *"Another important, but not individually decisive, consideration is that actuarial evidence demonstrates that an implementation of the UPFS tariff would save the Fund no more than 6% of its total compensation bill. This relatively meagre saving seen against other compelling factors makes it unreasonable to consign quadriplegics and paraplegics to a possible death by reducing their adequate access to medical care in pursuit of a financial saving of a negligible order"* **[our emphasis].**

We have as yet not seen any of the assumptions made by the State Actuary nor was their report submitted, in the interest of transparency, and as a result we are left to speculate on the assumptions and contingencies applied.

It is unclear how many claims per year the State Actuary budgeted for in their report.

One aspect is clear, the DoT relies on is a substantial legal cost saving emanating from the introduction of RABS.

As is illustrated in these comments RABS will be prone to judicial review and constitutional scrutiny from the inception and the RABSA will be liable to pays the costs, subject to the orders made by the Courts.

We note the DoT managed only a 20 % saving on their "best or worst case scenario" which constitutes a relatively small saving in the face of the potential disastrous financial results RABS could have on treasury and taxpayers if the DoT did not do a proper research or costing of RABS.

By applying the following simple illustration, on the impact of legal fees on RABS (review process on an unopposed basis) under a "no-fault" system, RABS will face dire financial consequences, despite the DoT's best intentions to reduce RABSA's legal bill.

Impact of legal fees on RABS (review process on an unopposed basis) under a "no-fault" system

- Minimum cost for an unopposed review of a matter amounts to R50 000.00;
- During the 2016/2017 financial year, 73860 personal claims were lodged with the RAF (*see annexure **"F1"***)
- Increase the amount by 2/3 to allow for "no-fault" which will result in 98480 claims pa under RABS;
- On average 1/2 of these claims will go on review: R 50000.00 X 49240 claims = **R 24620000 pa** on legal fees.

The DoT will argue that this is improbable as RABSA will ensure proper representation and attention to road accident victims. Representatives of the RAF working in public hospitals with the sole purpose to assist victims has indicated that they experience the same frustration in having to obtain hospital records etc. in order to facilitate their campaign.

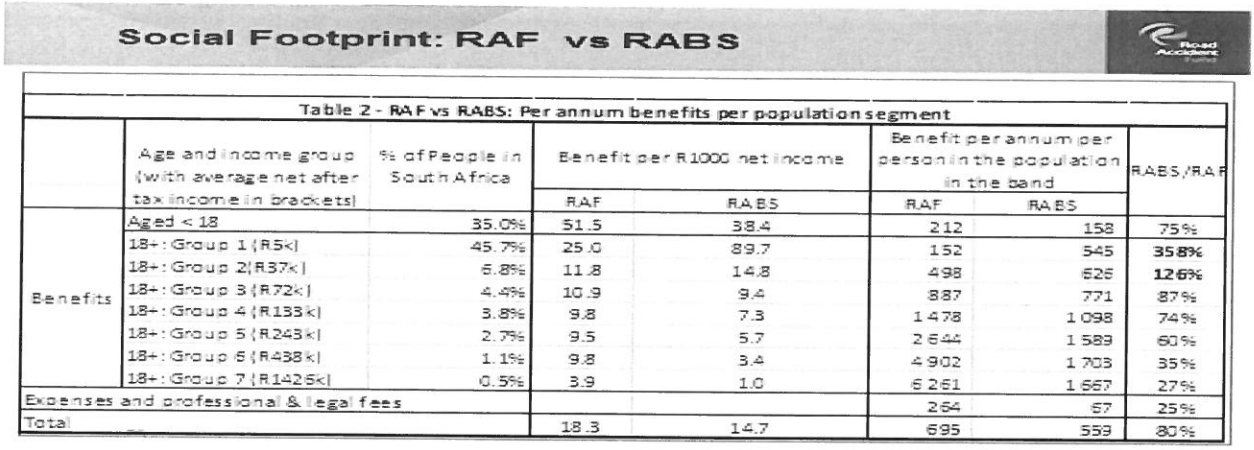
Further, the comments on the answers submitted by the DoT on Question 13 and 14 *(supra)* will put this argument in perspective.

The DoT will have to accept that legal practitioners will always play a part in the system and will be waiting to address the shortcomings of the RABSA.

As such, a realistic costing exercise needs to be applied, as a 20% seems very little compared to the reality of the impact of RABS on the South-African public and fiscus.

3. **Question: How is the RABS Bill pro-poor when unemployment is high and the minimum wage is R3 500 p/m?**

Response: The Committee's attention is invited to slide 78 of the presentation, copied below for ease of reference:



Social Footprint: RAF vs RABS

Table 2 - RAF vs RABS: Per annum benefits per population segment

	Age and income group (with average net after tax income in brackets)	% of People in South Africa	Benefit per R1000 net income		Benefit per annum per person in the population in the band		RABS/RAF
			RAF	RABS	RAF	RABS	
Benefits	Aged < 18	35.0%	51.5	38.4	212	158	75%
	18+: Group 1 (R5k)	45.7%	25.0	89.7	152	545	**358%**
	18+: Group 2 (R37k)	6.8%	11.8	14.8	498	626	**126%**
	18+: Group 3 (R72k)	4.4%	10.9	9.4	887	771	87%
	18+: Group 4 (R133k)	3.8%	9.8	7.3	1 478	1 098	74%
	18+: Group 5 (R243k)	2.7%	9.5	5.7	2 644	1 589	60%
	18+: Group 6 (R438k)	1.1%	9.8	3.4	4 902	1 703	35%
	18+: Group 7 (R1426k)	0.5%	3.9	1.0	6 261	1 667	27%
Expenses and professional & legal fees					264	67	25%
Total			18.3	14.7	695	559	80%

Under the current RAF Act no claim exists for loss of income compensation for those who are unemployed and those who earn the minimum wage are compensated at the minimum wage level R3 500 (which equates to R42 000 per annum). Under the RABS dispensation both those who are unemployed and those who earn below the threshold of R52 527 per annum will receive a benefit calculated based on a deemed income of R52 527 per annum, i.e. higher than the minimum wage level. **Under the RABS dispensation the benefit for the poor is substantial, as compared to the current RAF dispensation**. As illustrated in the above slide, the benefit to the lowest income group (which includes unemployed persons) is increased by 358% under RABS, as compared to the current position under the RAF **[our emphasis].**

COMMENT: LSNP

The submissions made by the DoT are misguided and a blatant attempt to influence the decision makers and public alike, into thinking the RABS Bill is: "pro-poor".

Contrary to this submissions by the DoT, **the current RAF Act, does cater for the unemployed** and in fact offers better relief for road accident victims across the board especially those who suffered a loss of earnings all as a result of a serious accident.**[our emphasis]**

In order to illustrate the point a comparative study was done based upon the available assumptions made by the DoT and by applying the rule of law, as catered for in the Road Accident Fund Act 56 of 1996 (as amended).

RAF COMPENSATION PER ANNUM	RABS COMPENSATION PER ANNUM
Employable and unskilled	
Minimum Wage R3500.00 pm (R42 000 pa)	75% of ANNI (R39 395.00 pa)
Employable and semi-skilled or skilled (including students)	
Earnings significantly above minimum wage	75% of ANNI (R39 395.00 pa)
Compensation multiple times higher than RABS	
Unemployable even before accident	
Social welfare system applies	75% of ANNI (R39 395.00 pa)
Middle Class	
Earnings between R100 000.00 and R350 000.00 pa	R75 000.00 – R250000.00 pa)
Compensation higher than RABS	75% of equivalent under RAF
Retirement 63 - 65	Calculated until age 60
High Earner	
R750 000.00 pa	R187 500 pa (75% of cap)
Assume Cap R250000	
Compensation R250 000.00	
High Earner (50% residual earning capacity)	
Before accident earnings R750 000.00pa	Compensation is based on 75% of
After accident earnings R375 000.00;	capped earnings prior to accident

Cap R250 000.00

X capped earnings R250 000.00

Z after earnings R375000.00

Z is bigger than X - no compensation

*See full report by Wim Loots, Actuary, attached as annexure **"F2"** to **"F5"***

The drive to implement the RABS Bill is bolstered under the pretense that it will offer the Average Annual National Income (AANI) to the unemployed.

"*The purpose of the Average Annual National Income cap is to provide a pre- defined benefit without RABS having to embark on a costly, protracted and speculative exercise to establish the claimants earning capacity. Not recognizing claims of students, persons between jobs, etc. would escalate RABS's vulnerability to a constitutional challenge if no earning capacity is recognized.*"

(*Page 32 of the 2014, comment summary by the DoT*).

The DoT acknowledges that, if the ANNI is reduced, the RABS Bill will be prone to a Constitutional challenge.

Closer scrutiny and having regard to comments made by the DoT in reply to the 2014 submissions *(see extract below)* reveals that the DoT acknowledges that by offering the AANI on a 'no-fault" basis, might be prove to be too expensive and already considered at that stage to reduce the figure, which of course opens RABS up to a further Constitutional challenge.

R DU PLESSIS	DoT
Deemed average annual national income for low earners – This is a reference to paragraph 36 (3) of the Bill. By definition, an average national income will be an amount such that approximately half (+/-) of the working population earns more, and half of the working population earns less. I use the term 'approximately' because under certain circumstances, mathematically speaking, the statement does not hold exactly. I do not see the motivation for having the lower earning half of the population to be deemed having earned halfway (+/-) between the lower and the upper half of earners. This is a perverse incentive for low earners to be road accident victims, and an invitation for fraudulent behavior.	**Input obtained from True South Actuaries:** *"Yes – I agree, but this is a philosophical / policy point and not an actuarial one."*
One may also look at this from a mathematics point of view. South African citizens have a very wide spread of earnings levels, from the very poor to the outrageously rich. However, our Gini coefficient is extremely high, if not the highest in the world. The conclusion is that we have an extraordinary large proportion of poor citizens, and a small proportion of very rich citizens.	**"Agree"[our emphasis]**
Should we set a relatively high minimum benefit level in terms of the scheme a disproportionately large liability will end up in the lap of the scheme. That is a result of us substituting a large/wide tapering level of earnings with a relatively high and constant level of earnings over the whole of the extent of the tapering, exceeding every level of earnings in the taper itself.	**"Agree it will be costly."[our emphasis]**
I suggest that a benefit level commensurate with the current state disability grant be applied, instead of average national earnings. In my view, it does not make sense for the state to treat citizens disabled as a result of a road accident in a manner different (and more favorable) from other disabled citizens. If the claimant wishes a higher benefit level, the onus of proof should revert to the claimant.	"R1350 per month * 12 = R16,200, which is much lower than the national **average earnings and will significantly impact on the cost of the scheme. But again, this is not an actuarial point it is a policy one. I would support such a recommendation as I am sort of anticipating that the funding exercise (funding both RABS and RAF for a long period) will point to the need to go back to the drawing board." [emphasis by DoT]**

4. **Comment**: The removal of general damages and limitation of benefits in the RABS Bill is not pro-poor.

Response: The response to question 3 above must be read with this response.

General damages is a form of compensation paid under the common-law delictual claim for pain and suffering, loss of amenities of life, or disfigurement. It is important to note that general damages does not relate to a loss in respect of the claimant's estate due to medical and related costs, or loss of earnings, for which benefits are provided under the RABS Bill.

Under the RABS dispensation general damages will not be available to any crash victim (irrespective of income status), so that all South Africans, and especially the poorer sectors of society currently excluded under the current RAF Act, will benefit under the RABS scheme.

Under the current RAF dispensation those who are unemployed and those who cannot prove income (and these are usually the informal traders and street vendors) cannot be compensated for loss of income. These are the people in groups 1 (net annual income below R5 000) and group 2 (net annual income below R37 000) per the table in slide 78 of the presentation, copied in response to question 3 above.

The removal of the requirement to prove an income under RABS will therefore broaden access to benefits by road crash victims in the above groups. A minimum income will be deemed at the level of R52 527 per annum.

As shown in the last column of the table in slide 78 of the presentation, these two groups' benefits increase by 358% and 126% respectively under the RABS dispensation, as compared to the current RAF scheme. Also, as shown in the second column, these two groups represent 52.5% of the South African population. Therefore, removing general damages does not disadvantage the poor, quite the contrary, more than half of the population will be better off.

The second column from last of the table in slide 78 of the presentation also shows that groups 1 and 2 (the poor) will receive the largest increase in benefits under the RABS dispensation when compared to RAF. Higher income earners will still receive higher benefits than the lower income groups, although benefits of the higher income earners under the RABS dispensation will be lower relative to the current RAF scheme.

The removal of general damages is necessary to ensure that the RABS scheme is aligned to social security principles, instead of compensating for something which is not a loss, removing general damages and limiting benefits will ensure that the RABS scheme will provide cover for thousands more people, whilst remaining affordable and sustainable.

It is insightful to note that the Constitutional Court, in the context of worker compensation, has already in the matter of *Jooste v Score Supermarket Trading (Pty) Ltd 1999 (2) SA 1 (CC)* given the nod to the substitution for the common law delictual claims of statutory benefits. The court stated as follows:

> *"But that argument fundamentally misconceives the nature and purpose of rationality review and artificially and somewhat forcibly attempts an analysis of the import of the impugned section without reference to the Compensation Act as a whole. It is clear that the only purpose of rationality review is an inquiry into whether the differentiation is arbitrary or irrational, or manifests naked preference and it is irrelevant to this inquiry whether the scheme chosen by the legislature could be improved in one respect or another. Whether an employee ought to have retained the common-law right to claim damages, either over and above or as an alternative to the advantages conferred by the Compensation Act, represents a highly debatable, controversial and complex matter of policy. It involves a policy choice which the legislature and not a court must make. The contention represents an invitation to this Court to make a policy choice under the guise of rationality review; an invitation which is firmly declined. The legislature clearly considered that it was appropriate to grant to employees certain benefits not available at common law. The scheme is financed through contributions from employers. No doubt for these reasons the employee's common-law right against an employer is excluded. Section 35(1) of the Compensation Act is therefore logically and rationally connected to the legitimate purpose of the Compensation Act, namely, a comprehensive regulation of compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment. It may be mentioned in passing that courts in the United States of America, Canada and Germany have found similar legislation providing for worker compensation and limiting the right of the worker to claim common-law damages not to be irrational or arbitrary."*

Furthermore, in the judgment by the Constitutional Court in *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC)*, in relation to challenges brought against the abolition of the residual common law claim against the wrongdoer; the limitation of common law claims for loss of income and support; and, the non-emergency medical tariff, the following comment was made:

"I have earlier sketched the history of legislation that regulated third party insurance since 1942. It is a tale of numerous commissions of inquiry and frequent reform involving intricate and competing policy and legislative options. After more than six decades a fair, effective and financially viable scheme of compensation remains elusive. However, if on all accounts the impugned legislative scheme is an incremental measure towards reform and is a rational step in that direction, the lawmaker should be permitted reasonable room or leeway to advance the reform. This does not, however, mean that the mere fact that a prevailing system is but a step in the wake of a wonderful legislative ideal can for that reason only ever justify the violation of constitutional rights in the interim.

We must keep in mind not only the government's intermediate purpose in enacting this legislation, but also its long-term objective. The primary and ultimate mission of the Fund is to render a fair, self-funding, viable and more effective social security service to victims of motor accidents. The new scheme is a significant step in that direction. On all the evidence it is clear, and the Minister and the Fund assure us, that the ideal legislative arrangement should not require fault as a pre-requisite for a road accident victim to be entitled to compensation for loss arising from bodily injury or death caused by the driving of a motor vehicle. Therefore, the abolition of the common law claim is a necessary and rational part of an interim scheme whose primary thrust is to achieve financial viability and a more effective and equitable platform for delivery of social security services.

On balance, I am satisfied that the abolition of the common law claim is rationally related to the legitimate government purpose to make the Fund financially viable and its compensation scheme equitable."

LSNP: COMMENTS

The retention of a victim's right to sue the wrongdoer will probably be one of the first constitutional challenges RABS will face, if introduced unchanged.

Noteworthy is the fact that the majority (commissioners Satchwell and Sithole) recommended that road accident victims and their families be allowed to retain their common law rights to compensation and further that the wrongdoer must not be indemnified under the proposed scheme (Chapter 18, page 503 of the Road Accident Fund Commission Report, *see annexure **"G1"***).

Yet, the DoT is unflinching on this issue, persisting with the same arguments they made in response to the 2014 submissions.

It seems that the DoT religiously relies on the judgement in *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC)* without having regard to the fact that under RABS, the DoT will be faced with a totally different set of facts and rules of law.

The DoT is arguing that the abolition of general damages will allow the RABSA to offer the AANI to the unemployed and by doing so will funnel more resources to a wider road accident victim base (*see annexure **"G2"*** paragraph 20.63 of the Road Accident Fund Commission Report, which confirms that no existing no-fault system ensures that more compensation/benefits are devoted to victims).

However, as illustrated road accident victims will receive much less under RABSA, always at risk of adjustments in order to maintain affordability.

RABS offers the injured victim no long term financial security nor any chance of financially rehabilitation especially in the light of the long waiting periods (Section 47(1) and 55(5)).

We note that the Average Annual National Income (AANI) is retained in the current RABS Bill (Section 35).

In the absence of the report by the State Actuary, it is impossible to know what assumptions were made to determine the viability of maintaining, paying the ANNI, under a no-fault system, or what the probability is that this amount will be reduced to ensure the longevity of RABS.

We request to have insight into the State Actuary's report or at least to **allow for a peer review** of the report as is the usual business practice.

5. Question: How can the Committee tell if the financial model for RABS is financially viable?

Response: The Committee's attention is invited to slide 77 of the presentation, copied above in the response under question 2. The RAF's Statutory Actuary determined the annual cost of claims under the current RAF Act and also under the proposed RABS dispensation. The table in the slide shows the annual cost for each category of claim (heads of damage), as well as the total cost. The annual cost of the current scheme is R37,8 billion as compared to the projected cost of RABS of R30.4 billion. As shown in the table, the cost savings are predominantly a result of cost savings due to the elimination of general damages, and a large reduction in expenditure on professional and third party fees. The Committee's attention is further invited to slide 80 of the presentation, copied below for ease of reference.

LSNP: COMMENTS

- As illustrated in the comments to Question 2 *infra,* the DoT is very presumptuous in their submission that the RABS will be more affordable, as a new untested Scheme having to enter a very volatile environment, could prove quit the contrary in fact, RABS could easily double or triple the State's financial liability. (See *annexure **"G3"*** page 579, Chapter 20 of the Road Accident Fund Commission Report, paragraph 20.73);

9. Question:

The R10 000 funeral benefit is inadequate. What informed the level of the benefit? The Department must reconsider the level of the benefit taking into account the costs associated with this benefit? The Department must also consider whether the award is a benefit or a donation.

Response: The R10 000 benefit was based on the average value of a claim paid by the RAF at the time the Bill was drafted and the No-Fault Policy was approved. The table below shows the actual average value of a funeral claims paid by the RAF over the last five years:

RAF Funeral Cost Payments						
Financial Year	2017	2016	2015	2014	2013	2012
Average Value	R 15 264	R 13 732	R 12 367	R 11 245	R 10 425	R 9 259

The average value has since increased from R9259 in 2012 to R15 264 in 2017. Consideration can be given to increase the value of the funeral benefit from R10 000 to either R15 000 or R20 000. The table below shows the impact of the change in the projected RABS scheme savings due to the change in the funeral benefit:

RABS Funeral benefit options			
	Current	Option 1	Option 2
Funeral benefit	R 10 000	R 15 000	R 20 000
Projected annual funeral benefit cost	174	261	348
Projected RABS cost savings (total)	7.38billion	R7,29billion	R7,21billion
Projected RABS cost savings (%)	20%	19,3%	19,1%

Thus a change in the value of the funeral benefit has a small impact on the overall savings of the RABS scheme.[our emphasis]

LSNP: COMMENTS

In 2014, one Kholekile Monakali, made the comment that "the R10000,00 benefit is inadequate".

The DoT responded by stating: **"The R 10 000.00 cap is what the scheme can afford"[our emphasis]**

Yet, after being confronted in Parliament on this question their response were:

"a change in the value of the funeral benefit has a small impact on the overall savings of the RABS scheme".

The fact that the DoT easily manipulates the figures to allow a benefit that prove in 2014 to costly to be adjusted at will, illustrated the importance of having transparency in the costing process.

Stakeholders should be placed in possession of the State Actuary's report to allow for constructive and meaningful input, in response to the invitation by the Portfolio Committee.

Failure by the DoT to submit all relevant documentation to stakeholders and the Portfolio Committee Members will render the consultative process flawed.

13. **Comment:** the presentation stated that the Administrator must assist claimants to claim. However, section 42(3) of the RABS Bill refers to "if necessary" and not "must", therefore the Administrator may elect not to assist claimants.

Response: Section 5 places the following duty on the Administrator:

"The Administrator must—

(a) assist injured persons, dependents and immediate family members to submit

Claims..."

Consequently, a general duty rest on the Administrator to assist claimants. However, section 42(3) provides as follows:

> *"If necessary, the Administrator may assist any injured person or other qualifying person to submit a claim in accordance with this Act, including making an application for the appointment of a curator if the qualifying person is unable to prepare and submit a claim in terms of this Act."*

The above section is qualified to accommodate instances where the claimant elects to use the services of an attorney, or someone else, or wishes not to rely on the assistance of the Administrator. It is not the intention of the Act to remove a claimant's election to use the services of someone other than the Administrator to assist him, or her, with the claim.

Furthermore, the section also refers to the appointment of a curator, which will not be necessary in very instance.

Consequently, the use of the word "must" would not be appropriate.

LSNP: COMMENTS

This question was one of the most prevalent comments during the 2014 round of comments and quite noticeable that different stakeholders and legal minds alike, shared the same sentiment:

"The RABS Bill lacks the support the DoT is claiming it affords"

Now, if so many informed and educated people draws that inference, we can only but imagine what an absolute challenge negotiating the RABS Bill will be for the ordinary road accident victim.

Noteworthy, is that the inference is not based upon the desire to maintain the *status quo* but a genuine concern that the RABS Bill, certainly does not speaks to the poor and will most certainly have devastating effects on the poor South-African road accident victim who cannot afford "top-up" insurance.

It is our submission that if it is indeed the intention of the RABSA to assist road accident victims unconditionally in the preparation and lodgment of their claims, the DoT must remove all wording from the Bill that creates doubt on this issue and could be used by the RABSA to reject or fail to process any claims as per Section 43(2).

We further submit that the word "may" assist in Section 42(3) must read "must" assist - the road accident victim will always have the option to engage an attorney or otherwise, at any stage in the process and as such the explanation by the DoT, does not hold water, either RABSA must assist the victim or they don't.

14. Comment:

There appears to be a conflict between the presentation and the Bill since section 56 of the RABS Bill states that the Administrator will not be liable for legal costs, yet in the presentation it states that the Administrator will pay for medical reports.

Response: Section 56 reads as follows:

"Unless otherwise provided in this Act, the Administrator shall not be liable to contribute to the costs of an injured person, claimant or beneficiary, including his or her medical and legal costs, to prepare and submit a claim or an appeal or to meet any requirement in this Act."

The underlined wording in the above extract qualifies the application of the section and signifies that there will be instances where the Administrator will be liable for such costs, i.e. in all instance specifically provided for in the Act. For instance, section 29(a) provides that the Administrator is liable to provide the healthcare services provided for in Part A of Chapter 6. These healthcare services are specified in section 30(1) and are listed in slide 45 of the presentation, copied below for ease of reference:

Scenario: Medical Treatment

Scenario	RAF	AA	RABS
At common law a claiment is entitled to proven past and future medical treatment costs and necessary cost related to changes to the home, vehicle and workplace.	Proven past and future medical treatment and related costs Undertakings, are subject to apportionment. E.g. payment of 50% of cost by RAF and balance to be paid by claiment	Proven past and future medical treatment and related costs Undertakings – same as RAF	Medical and related treatment costs, including but not limited to— (a) transport required to receive any health care service (b) pre-hospital care and inter-facility transfer (c) emergency and acute care (d) hospitalisation and outpatient services (e) accommodation required to receive any health care service (f) rehabilitative care (g) vocational ability assessment and training (h) long-term personal care (i) assistive devices (j) structural changes to homes, vehicles and the workplace (k) medical reports required under this Act Treatment Plans

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Note item (k) which requires the Administrator to pay for medical reports required under the Act. Consequently, section 56 does not create a conflict.

LSNP: COMMENTS

The DoT in their explanation of Section 56, refers the Portfolio Committee to Sections 29(a) which provides that the Administrator is liable to provide the healthcare services provided for in Part A of Chapter 6, 30(1)

The DoT fails to explain to the Portfolio Committee that Section 29 and 30 **only applies once the claim has been accepted** by the RABSA.**[our emphasis]**

In other words none of the benefits under Part A, Chapter 6 (paying for medical reports etc.) applies prior to a claim being accepted by the RABSA (see Section 43(2) and 56).

The explanation given by the DoT has the startling effect that wording in Section 56: *"Unless otherwise provided in the Act"*, is of no consequence.

The wording could just as well have been deleted from the Bill, as it affords the road accident victim no hope of being able to engage the RABSA without complying with Section 43.

The poor victims are immediately disqualified from claiming as they would not be able to afford the costs involved in the preparation and lodging of a claim against the RABSA.

Section 56 should simply have read:

"the Administrator shall not be liable to contribute to the costs of an injured person, claimant or beneficiary, including his or her medical and legal costs, to prepare and submit a claim or an appeal or to meet any requirement in this Act."

Further, **Section 42(2)** reads as follows:

"the Administrator shall not be liable for the provision of a benefit until a claim for such benefit is submitted in the manner set out in the rules".

Section 43(2) reads as follows:

"The Administrator shall not be obligated to process any claim until a claimant has complied with any requirement imposed on him or her in terms of this section"

The wording of the current RABS Bill, is cleverly formulated in such a way rather to discourage claiming as opposed to accommodate and invite victims, unconditionally, under a "no-fault" system, as one is led to believe in the advertising campaigns of the DoT/RAF.

The fact that a victim was involved in an accident under the RABS Bill takes him/her no way closer to a benefit despite being "no-fault" based.

RABS Bill, NOT "PRO-POOR"

- Without clear financial assistance thousands of poor victims, if not all will, be disqualified from claiming as they will not be able to engage the RABSA and comply with the stringent requirements in the Bill in particular Section 43;

- In the absence of any strategy plan to prove the RAF/RABSA will cope with the additional workload under a "no fault" system it is doubtful whether the needs of road accident victims will be addressed and the poor will again be subjected to a failed system;

- The following is stated on page 1328 par. 41.58 in the Road Accident Fund Commission Report: *"The theme has emerged throughout this report that the claimant and the disburser of benefits are in grossly unequal bargaining positions."(see annexure **"G4"**)*

- And further in par. 41.59 on the same page: When referring to the administrative process of a claim being dealt with by the administrator it was said: *"With the best will in the world, one cannot expect that any administrators of road accident benefits will do this with enthusiasm and vigor."*

- Having regard to the thousands of claims prescribing in the hands of the RAF and the prolific under settlement of direct claims, the inference made to the drive by the RAF to solicit direct claims, to prove RABS will be successful, is totally misplaced (*see annexure **"G5", "G6" and "G7"***);

- The DoT made the following comment in response to the 2014 comments: "*The removal of the fault-requirement will lead to more claims. The additional liability will be managed through benefit design.*" (See *annexure **"G3"*** page 579, Chapter 20 of the Road Accident Fund Commission Report, paragraph 20.73);

- This means the RABSA offers no long term financial security to the unemployed as the Benefits are subject to review and affordability (Section 36(7));

- RABSA offers no financial rehabilitation, lump sum payments are only made, subject to Section 36(10);

- Road accident victims suffering from the financial impact of a catastrophic road accident will not be able to recover his or her actual loss (Section 28);

- The unemployed currently enjoys better coverage for damages than the limited structured benefit on offer by the RABSA.

18. Question:

Has the no-fault dispensation proposed in terms of the RABS Bill been benchmarked against other jurisdictions?

Response: The principle of fault and no-fault was benchmarked against other countries by the Satchwell Commission, who recommended a move to no-fault. Cabinet then approved a policy on "no-fault" which policy provides for defined benefits designed for South African conditions. The RABS Bill was developed based on the principles set out in the approved policy.

LSNP: COMMENTS

The Satchwell Commission recommended in par. 41.177, Volume 2, page 1338, that appropriate benchmarking practices and standard should be incorporated within the management practice of the administrative authority of the RABS. The standards should be subject to scrutiny by both the Board and the relevant Parliamentary Portfolio Committee, which would ensure that service delivery attains and maintains the highest possible level.

We are yet to see what benchmarking practices, as recommended by the Road Accident Fund Commission, had been applied and adhered to by the DoT.

Refer to Annexure ***"T10", "T11"*** *and* ***"T12"***)

LSNP: GENERAL COMMENTS

Section 35(5)(c)(i)

Despite various stakeholders including NEDLAC raising concerns about the exclusion of benefits for the first 60 days after the accident the DoT failed to address this issue.

Section 35(7) and **38(14)**

We submit that victims must at least be guaranteed inflationary adjustments.

Section 47(1)

Various interested parties including NEDLAC raised concerns on this issue (2014) yet the period remains at 180 days, without a credible explanation by the DoT;

We submit this period should be reduced to 120 days as victims will be severely prejudiced by the unreasonable long delays in processing their claims for benefits.

Section 56

Without financial assistance in the preparation and lodgment phase of the claim the vast majority of victims will be excluded from engaging the RABSA.

If the intention of the Bill is offer financial assistance, in the preparation and lodgment phase the wording should reflect the intention without causing any uncertainty.

The following issue has not been addressed in the current RABS Bill despite being part of the previous comments made by the LSNP (2014):

A medical service provider who wishes to claim direct for services is obliged to submit a claim with full details of the accident, including the registration details of all vehicles involved, the names addresses and contact details of all drivers and witnesses and the part they played in the accident, the names and contact details of all witnesses and the details of the South African Police station investigating the accident. It is very unlikely that this information will be readily available, particularly when emergency and acute phase treatment and services are provided.

Kindly indicate what was the State Actuary's response was to the following question posted in 2014, by one R DU PLESSIS:

"Funding - It is proposed (section 5, page 9 of the policy paper) that the present fuel levy as source of funding of the RAF be discontinued once the RABS comes into effect. Furthermore, it is suggested that the fiscus should address the accrued RAF liability. However, the fiscus has the responsibility to look after a large number of issues in funding. To dump a R42.33 billion liability (as per section 2 page 6 of the policy paper) on the fiscus will create havoc on our public finances. If the RAF liability has to fall into the queue, it may happen that such liability be put on the backburner.

My recommendation is that the RAF liability should continue to be funded by a fuel levy for as long as it takes the RAF liability to unwind. In the interim my view is that two streams of funding from fuel sold be maintained".

Section 55(5)

Despite NEDLAC's disagreement this period remains 180 days.

A proposal was made that the time must be reduced to 120 days.

"qualifying person" *should mean "any person who has a claim in terms of this Act"*

Minister of Health (Public Health Sector)

We submit that the Minister of Health, Department of Health should be consulted on the issue of available resources and service delivery having regard to the fact that, if the relevant Department fails to secure a tariff, public health would have to cater for RABS on a national level, with little or no infrastructure.

We submit that, contrary to the DoT's advice, RABS cannot be functionally implemented prior to the introduction of NHI (if the approach is maintained to only start the procurement process after the Bill had been signed by the President).

RABS literally is a "hospital pass" from the Department of Transport to the Department of Health and we need assurance that the expectations of RABS can be met by public health bearing in mind that the DoT will still be depending on public health in areas where there are no private health care and/or rehabilitation facilities available (refer to Health Care Provision, par. 11 of the Government Gazette, 12 February 2010 (*annexure **"H1"***)

Regulatory Impact Assessment (RIA)

This issue was also raised by numerous stakeholders in the 2014 commenting stage.

A Regulatory Impact Assessment (RIA) is a method to assess the significant impacts – both positive and negative – of a regulatory measure. RIA systematically examines the effects likely to arise from regulatory interventions such as new laws, amendments to existing laws, regulations and even policies and frameworks and communicates this information to decision makers and the public. Thus, RIA makes transparent the benefits of different regulatory options for various stakeholders, the implications for compliance and the state's cost of enforcement. RIA also encourages public consultation to identify and measure benefits and costs. The Organisation for Economic Cooperation and Development (OECD) has published guidelines on undertaking RIAs. (see annexure ***"H1"***).

Having regard to the significant impact of the RABS Bill, we respectfully submit that the RABS Bill cannot be reasonably signed into as a Law, without having been subjected to a Regulatory Impact Assessment and the Relevant Portfolio Committee will be well advised to propose such an intervention in the spirit of transparency and proper costing analysis.

CONCLUSION

It is evident that the RABS Bill is not "pro-poor".

Little or no information is available to assess and ensure that the DoT has attempted to ensure that proper "benchmarking" has taken place as to ensure that the services on offer, the claim process and administration will ensure a viable scheme.

We are not convinced, based upon the available information that RABS will relieve financial losses.

Having regard to the above based upon the current RABS Bill none of the Strategic Objectives (see *annexure **"H3"*** will reasonably be achieved).

In the interim the legal fraternity is hard at work, engaging the RAF directly, and on an amicable basis to bury the *"adversarial hatchet"* in order to assist and advice on ways to save money in the interest of all parties concerned.

If these engagements are continued and guidelines implemented, the RAF will be as affective and productive as possible, ensuring that all victims are properly compensated whilst at the same time saving on day to day expenditure (will result in a saving of more than 20% on the current legal costs etc.)

Latest statistics show that the RAF is in fact saving money (*see annexure **"H4"***) whilst still offering the widest possible cover without having to incentivise being in an accident, as intended by the RABS Bill.

A lot still needs to be done by the DoT to ensure that the RABSA is more equitable balancing the advantage of flexibility in the determination of non-economic losses (and application of thresholds/caps) with the affordability and equity objectives of the scheme (page 582 par. 20.88 of the Road Accident Fund Commission Report 2002, Volume 1).

We sincerely hope that the Portfolio Committee will value the contributions of the legal fraternity and use them as a point of reference and a measure to ensure that the rights of all South-African citizens and victims of car accidents, are protected, under the Law.

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Sir,

RE: COMMENTS ON THE ROAD ACCIDENT FUND BENEFITS SCHEME BILL, 2017

We are a firm of attorneys who do a fair amount of claims against the Road Accident Fund. In our comment, we will refer to both the current Act and the RABS system to illustrate the problems we have identified with RABS. Our comment is as follows:

1. **SUBMISSION OF CLAIMS:**

   1.1. Under the current Act the Road Accident Fund would have 120 days to investigate the validity of the injured's claim.

   1.2. The RABS system allows for a 180 days of investigation. This is a difference of 8 weeks and in our opinion it is not only unnecessary but also unfair.

2. FAULT BASED COMPENSATION SYSTEM:

2.1. The current system requires the claimant to prove fault on the side of another motor vehicle driver before he will succeed with his claim, either wholly or partially. From the very beginning of any form of legal structure, it has been a principle that a person, who causes damage to another person, should not be entitled to compensation.

It has been accepted by communities world-wide. The person causing the harm or damages has never been entitled to compensation.

The *boni mores* is based on this fact.

2.2. Abolishing the fault based system and allowing all persons who suffer damages would be very expensive, and would open a door for fraudulent claims. More than that, people might be lured into causing road accidents themselves to obtain compensation.

The South African Community accepts that drunk drivers, robbers and fraudsters should not be compensated when they cause harm.

3. QUANTUM:

3.1. Currently claimants are entitled to past and future medical expenses in accordance with the schedule of the Road Accident Fund Act and Regulations. Most Medical Aids claim back the money they have expensed either through the service providers or the claimants. Although the tariff might be less then what they expensed, at this stage they are still approving payments on behalf of their members for treatment in motor vehicle accidents.

3.2. Under RABS, healthcare service providers shall be those that are appointed by the Administrator. In our opinion, it is uncertain whether the Medical Aids will still be willing to approve claims for medical expenses incurred in motor vehicle accidents. Medical Insurance amounts to "sickness insurance" and in accordance with most contracts we have read, they are not obliged to pay out claims for motor vehicle accidents.

This has the possibility of leaving all Claimants who were injured in motor vehicle accidents in the hands of the Provincial or State Hospitals. Not only is this to the Claimants detriment but it would also place a huge burden on the already underfunded and understaffed healthcare by government.

3.3. Regarding future loss of earnings, under the current Act one can claim the real loss provided that it is proven, and obviously limited to the CAP as defined in the regulations. This already decreased claims for future loss of earnings for individuals who earn a relatively high income.

Under RABS, the amount is further limited in that a person would only qualify for 75% of his loss of earnings (even though he might have a total loss), also within a capped amount. Under RABS no lump sum payments would be made whereas the Amendment Act allowed for lump sum payments. The monthly payments allowed would cease upon the demise of the claimant or the injured.

Here we deem it necessary to set out an example:

Mr X gets injured in a motor vehicle accident and he is totally unfit to work i.e. he has a total loss of income. His claim then gets approved and he receives his monthly payouts being 75% of what he used to earn. Immediately, an obviously reduced income.

After some time Mr X passes away due to circumstances unrelated to the accident. The monthly payouts stop and his family are at a total loss of income.

Under the current Act, he would have received a lump sum which would have sustained his family after his demise.

During the workshop held in Centurion (in 2014), this was one of the suggested highlights of RABS. Money would be saved where plaintiffs pass away due to non-accident related reasons. This is constitutionally wrong. Had the accident not occurred, the claimant would still have been earning an income with which he would support his family. Under RABS, the family would be destitute.

A further limitation of future loss of earnings is that the allowed monthly payments would cease once the claimant reaches the age of 60 years. Nowadays, and in our experience, most people work well beyond the age of 60 and sometimes even past the age of 65 years. Should these monthly payments cease at the age of 60, the average income earner would then have to rely on state pension, which would in all probability, be less than the 75% monthly pay outs he has been receiving. Again a claimant is left destitute, and this at the ripe age of 60 years.

Prokureurs, Notarisse, Boedelberedderaars, Aktevervaardigers / Attorneys, Notaries, Administrators of Estates, Conveyancers

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Making matters worse during the period that the claimant receives his pay outs (before the age of 60) inflationary increases are not allowed. The minister may from time to time make adjustments to the amounts payable. This is subject to affordability, obviously judged by the Administrator of RABS.

3.4. Loss of support claims, which probably should be tampered with the least, as a family has lost a bread winner, are at a serious disadvantage.

According to Schedule 1 to the proposed Act, Section 3(f), a dependant who is a surviving spouse is entitled to a family support benefit for a period of 15 years calculated from the date of death of the bread winner or until he or she reaches the age of 60, which ever period is the shortest (paid out by way of monthly instalments).

A widow, whose husband passes away at the age of 25, would from the age of 40 no longer receive any family support benefits.

Children entitled to family support benefits, will only receive this benefit until they reach the age of 18. Under the current system, and in our experience, approximately 50% of all dependants that reach the age of 18, enrol for further or tertiary studies. This usually amounts to an additional three years.

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Although very controversial, it seems that the stage is being reached where there is some clarity regarding the seriousness of injuries. This is currently paid out as a lump sum. Abolishing the right to claim general damages again from the wrongdoer, will in all probability not pass the Constitutional test.

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In this matter our client submitted his claim with the Road Accident Fund directly. On 22/10/2009 (when the Mvumvhu decision was pending) SP Shabangu was notified that, after paying the suppliers claims, the amount left to be claimed was an amount of R3,113.00.

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Of great concern is the fact that we had to appoint a *curator ad litem,* on medical opinion, and at the finalisation of the matter, a trust was created for SP Shabangu. The RAF was oblivious to this fact.

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This again proves the fact that the Road Accident offer was not fair and after legal assistance, the plaintiff received proper compensation.

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It is obvious what injustice Mr Dube would have endured, had he not been represented.

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More importantly, attorneys would not be interested in acting on behalf of claimants.

The direct effects thereof are that attorneys would no longer be assisting any claimants in MVA matters.

During the workshop on RABS, it was pointed out that attorneys working on contingency fee agreements are one of the main causes of high damages awards and high legal costs.

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In short we would suggest:

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3. Tourists to buy their own insurance;
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5. Introduce schemes within the Road Accident Fund to motivate claims handlers to make offers on files timeously.
6. Consider involving insurance companies in the private sector, as was the case previously.

We sincerely hope that our suggestions are considered.

Mr Basson is available to discuss any of the above, should you wish to do so.

Yours faithfully

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MARAISBASSON ING | INC

OUR REF:
Mr. Basson/adb/BA.0019

YOUR REF:

2017-11-27

The Law Society of the Northern Provinces

By E-mail: anette@lsnp.org.za

Sir,

RE: COMMENTS ON THE DRAFT ROAD ACCIDENT FUND BENEFITS SCHEME BILL, 2017

The above-mentioned matter refers.

We attach hereto our comments on the RABS Bill directed to the Department of Transport.

We hope that you find our comments useful.

Kindly acknowledge receipt.

Yours faithfully

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Kabelo Seretlo

Subject: FW: Commentary on RABS Bill

From: Mj Mashao [mailto:mattorneys@telkomsa.net]
Sent: 24 November 2017 05:31 PM
To: anette@lsnp.co.za
Cc: Bezuidenhout, Hester <communication@lsnp.org.za>
Subject: Commentary on RABS Bill

Good day

Re: Road Accident Benefit Scheme Bill, B 17 of 2017/ Personal Comments from a Personal Injury Practitioner.

I hereby do wish to pose the following questions in comment to your communique emailed to us on the 24th November 2017 regarding the proposed RABS, bill.

1. What research was done to bring the bill into being and how long was this research.
2. Does the result of the research conducted indicate what's wrong with the current Raf Act.
3. Did the research take into account the common principles and rights of the Plaintiff to sue for damages against the Defendant/Wrongdoer, i.e following the RAF Act the Fund steps into the shoes of the wrongdoer, that is the insured driver. Will the introduction of RABS not result in the Plaintiff going personally against the Defendant.
4. The RABS system introduces liability without fault to be borne by the State, why should a person who is at fault be compensated, will this not lead to even more fraudulent claims.
5. How does the bill contemplate to address hit and run claims, issues of prescription etc.
6. Is petrol still to be levied to finance the RABS system, if this is in the affirmative will the levy decrease seeing that liability of the system would have decreased also.
7. Does this proposed bill know and take into account that the current RAF system employs directly or indirectly millions of people.
8. What will happen to the current claims against RAF, settling of these claims can obviously not be once off, there cannot be money
for that. The RABS system will result to acceleration of the current claims and we as practitioners know that even in ten years the
claims and their costs will never be addressed, cases on the court roll of RAF are always far ahead into the future.
9. Lastly were the researchers and people who ultimately came to decide manufacturing this bill not implicated in the State of Capture report
of the Public Protector, Advocate Thuli Mandosela.

The above is my personal opinions and questions about RABS, I opine that this proposed system was introduced by people who wanted to channel the petrol levy
to other areas of government spending/ or perhaps people currently involved in looting of state coffers find the petrol levy too dangling a carrot to resist.
The bill was not well thought out, it does not point specifically say what is wrong with the current system. The bill will result in a civil strife because of massive unemployment
it will create.

In conclusion I am writing this at the risk of being contradicted by those who can come forth with opinions to defeat what is above said by me.

MJ MASHAO ATTRONEY, MEMBER OF LSNP IN GOOD STANDING, NUMBER 18797

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OUR REF:
Mr. Basson/adb/BA.0019

YOUR REF:

RABS
2017-10

2017-11-27

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BY POST:
Department of Transport
Private Bag X193
PRETORIA
0001

BY HAND
RABS Bill
Ground Floor
Forum Building
159 Struben Street
PRETORIA

E-MAIL: KgantsiK@dot.gov.za
FAX: 012 309 3502

The Minister
Department of Transport

FAX: (012) 328 3194

Sir,

RE: COMMENTS ON THE ROAD ACCIDENT FUND BENEFITS SCHEME BILL, 2017

We are a firm of attorneys who do a fair amount of claims against the Road Accident Fund. In our comment, we will refer to both the current Act and the RABS system to illustrate the problems we have identified with RABS. Our comment is as follows:

1. **SUBMISSION OF CLAIMS:**

   1.1. Under the current Act the Road Accident Fund would have 120 days to investigate the validity of the injured's claim.

   1.2. The RABS system allows for a 180 days of investigation. This is a difference of 8 weeks and in our opinion it is not only unnecessary but also unfair.

2. FAULT BASED COMPENSATION SYSTEM:

2.1. The current system requires the claimant to prove fault on the side of another motor vehicle driver before he will succeed with his claim, either wholly or partially. From the very beginning of any form of legal structure, it has been a principle that a person, who causes damage to another person, should not be entitled to compensation.

It has been accepted by communities world-wide. The person causing the harm or damages has never been entitled to compensation.

The *boni mores* is based on this fact.

2.2. Abolishing the fault based system and allowing all persons who suffer damages would be very expensive, and would open a door for fraudulent claims. More than that, people might be lured into causing road accidents themselves to obtain compensation.

The South African Community accepts that drunk drivers, robbers and fraudsters should not be compensated when they cause harm.

3. QUANTUM:

3.1. Currently claimants are entitled to past and future medical expenses in accordance with the schedule of the Road Accident Fund Act and Regulations. Most Medical Aids claim back the money they have expensed either through the service providers or the claimants. Although the tariff might be less then what they expensed, at this stage they are still approving payments on behalf of their members for treatment in motor vehicle accidents.

3.2. Under RABS, healthcare service providers shall be those that are appointed by the Administrator. In our opinion, it is uncertain whether the Medical Aids will still be willing to approve claims for medical expenses incurred in motor vehicle accidents. Medical Insurance amounts to "sickness insurance" and in accordance with most contracts we have read, they are not obliged to pay out claims for motor vehicle accidents.

This has the possibility of leaving all Claimants who were injured in motor vehicle accidents in the hands of the Provincial or State Hospitals. Not only is this to the Claimants detriment but it would also place a huge burden on the already underfunded and understaffed healthcare by government.

3.3. Regarding future loss of earnings, under the current Act one can claim the real loss provided that it is proven, and obviously limited to the CAP as defined in the regulations. This already decreased claims for future loss of earnings for individuals who earn a relatively high income.

Under RABS, the amount is further limited in that a person would only qualify for 75% of his loss of earnings (even though he might have a total loss), also within a capped amount. Under RABS no lump sum payments would be made whereas the Amendment Act allowed for lump sum payments. The monthly payments allowed would cease upon the demise of the claimant or the injured.

Here we deem it necessary to set out an example:

Mr X gets injured in a motor vehicle accident and he is totally unfit to work i.e. he has a total loss of income. His claim then gets approved and he receives his monthly payouts being 75% of what he used to earn. Immediately, an obviously reduced income.

After some time Mr X passes away due to circumstances unrelated to the accident. The monthly payouts stop and his family are at a total loss of income.

Under the current Act, he would have received a lump sum which would have sustained his family after his demise.

During the workshop held in Centurion (in 2014), this was one of the suggested highlights of RABS. Money would be saved where plaintiffs pass away due to non-accident related reasons. This is constitutionally wrong. Had the accident not occurred, the claimant would still have been earning an income with which he would support his family. Under RABS, the family would be destitute.

A further limitation of future loss of earnings is that the allowed monthly payments would cease once the claimant reaches the age of 60 years. Nowadays, and in our experience, most people work well beyond the age of 60 and sometimes even past the age of 65 years. Should these monthly payments cease at the age of 60, the average income earner would then have to rely on state pension, which would in all probability, be less than the 75% monthly pay outs he has been receiving. Again a claimant is left destitute, and this at the ripe age of 60 years.

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RABS 2017-11

Valerie Carelse

From: Kirstie Haslam <KHaslam@dsclaw.co.za>
Sent: Thursday, 30 November 2017 3:51 PM
To: Valerie Carelse
Subject: SUBMISSIONS IN RESPECT OF THE ROAD ACCIDENT BENEFIT SCHEME BILL B17-2017
Attachments: Scan_Itec17113015470.pdf; RABS SUBMISSIONS 2017 - THROWING THE BABY OUT WITH THE BATH WATER.docx

Importance: High

Good day

Kindly have regard to the attached covering letter and written submissions, which I would be grateful if you could forward to the Chairperson of the Portfolio Committee for Transport.

Many thanks

Kirstie Haslam
DIRECTOR

PLEASE TAKE NOTE THAT OUR OFFICES WILL CLOSE FOR THE FESTIVE SEASON AT 13h00 ON FRIDAY, 15 DECEMBER 2017 AND WILL REOPEN AT 08h00 ON WEDNESDAY, 10 JANUARY 2018.

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Our Ref Your Ref	Kirstie Haslam/RABS Bill 2017
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Date	30 November 2017

The Chairperson
The Portfolio Committee of Transport
3rd Floor, W/S 3/79
90 Plein Street
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Per email: Valerie Carelse
vcarelse@parliament.gov.za

Dear Madam

WRITTEN SUBMISSIONS REGARDING THE ROAD ACCIDENT BENEFIT SCHEME BILL, B17-201

1. Kindly find enclosed herewith my submissions as described above.
2. These submissions relate to the plight of the most vulnerable road accident victim, the seriously injured child. The RABS scheme as envisaged by the Bill will have a devastating impact on the rights of children and cannot be justified with reference to the expressed rationale for it's introduction, as set out in the Preamble.
3. Seriously injured children will be entitled to severely limited benefits and will without a doubt be consigned to lives of abject poverty and inadequate living conditions.
4. The Committee is urged to carefully consider the fate of children under the envisaged scheme. It is hoped that they will come to the conclusion that with reference in particular to the rights of the injured child, the RABS Bill B17-2017 cannot and should not be supported.

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5. I thank you in advance for your consideration of the attached submissions.

Yours faithfully
DSC ATTORNEYS

KIRSTIE HASLAM (Ms)

WRITTEN SUBMISSIONS REGARDING THE ROAD ACCIDENT BENEFIT SCHEME BILL, B17 - 2017

For the attention of:

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Valerie Carelse
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From:

Kirstie Haslam

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THROWING THE BABY OUT WITH THE BATH WATER - THE VOICELESS VICTIMS OF THE ROAD ACCIDENT BENEFIT SCHEME 2017

Introduction

The revised Road Accident Benefit Scheme Bill ("the Bill") was re-published during 2017 and an invitation for comments was issued on 2 November 2017. The Preamble to the Bill records the rationale for the introduction of the scheme as follows:

1. The present fault-based system of compensation as provided for in the Road Accident Fund Act 56 of 1996 ("the Act") is not effectively achieving the purpose for which it was created;
2. There is a need for a reasonable, equitable, affordable and sustainable, effective benefit system which inter alia provides financial support to reduce the income vulnerability of persons affected by injury or death from road accidents (own emphasis);
3. There is a need to expand and facilitate access to benefits by providing them on a no-fault basis (own emphasis);
4. There is a need to simplify claims procedures, reduce disputes and create certainty by providing defined and structured benefits;
5. There is a need to establish administrative procedures for the expeditious resolution of disputes that may arise and to consequently alleviate the burden on the courts.

It cannot be surprising that, in view of the fact that only cosmetic changes were effected to this version of the Bill, following the fierce and well-motivated opposition which it's predecessor faced (including from NEDLAC), there remains considerable opposition to the scheme which is envisaged in the Bill, from a number of quarters and on a variety of grounds. These comments are focussed solely on the envisaged impact

of the scheme on that sector of the population which, to the writer's knowledge, has not yet enjoyed the consideration which it deserves, namely children who have been injured in a road accident[1], despite previous submissions having been made in 2014 in this regard.

The Constitutional Backdrop to Considering the Position of Children

Being one of the youngest Constitutions in the world, South Africa had the opportunity to formulate its Bill of Rights with international tendencies and practices in the backdrop. Children and their rights are protected through section 28 of the Constitution. Section 28(2) of the Constitution deals with the main consideration which must be taken into account when dealing with children, which mimics the form and substance of major international conventions and treaties.[2]

Although the notion of the best interests of the child forms the backbone of section 28(2), it is open to interpretation. In ***S v M*** the Constitutional Court interpreted section 28 to mean: "*[S]tatutes must be interpreted...in a manner which favours protecting and advancing the interests of children; and the courts must function in a manner which at all times shows due respect for children's rights*".[3] To determine the best interests of a child in specific circumstances, courts should examine the "*real life situation of the particular child involved.*"[4] It is clear that the notion of the best interest of the child cannot be the only consideration when it comes to actions affecting children. It should however, in the words of our Constitution - which goes further than The Convention on the Right of the Child (one of the most widely ratified conventions in the world) - be a consideration with paramount importance.[5]

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1 These submissions consequently do not address the plight of children who have suffered a loss of support as a result of the death of a breadwinner / parent. Other submissions address this issue and in particular the comments of the Law Society of South Africa ("LSSA") are supported

2 Constitution of the Republic of South Africa, 1996;. Article 3 Convention on the Rights of the Child (1989)

3 S v M (Centre for Child Law as Amicus Curiae) 2008 (3) SA 232 at paragraph 15

4 Id at paragraph 24

5 Section 28(2) of the Constitution of the Republic of South Africa, 1996. Article 3 of The Convention on the Rights of the Child (1989) available at: http://www.ohchr.org/en/professionalinterest/pages/crc.aspx

Although the above remarks relate to the *interpretation* of statutes the same principles must apply when the legislature considers passing legislation which will impact on the rights of children.

The "Bath Water" – the Present Dispensation

In terms of the present dispensation children are entitled to recover the full extent of their losses, i.e future anticipated medical and related expenses (covered by the statutory Section 17(4)(a) Undertaking issued in terms of the Act), future anticipated loss of earnings / earning capacity and general damages for pain and suffering and loss of amenities of life, subject to a determination of the issue of liability and the thresholds and caps to benefits introduced on 1 August 2008[6].

As far as establishing liability is concerned, the following bears mentioning:

1. Children would ordinarily become victims of road accidents either as passengers in motor vehicles or as pedestrians. Where they are injured as passengers, only a notional 1% negligence on the part of their own driver or, in the case of a collision involving more than 1 vehicle, any other insured driver, needs to be established in order to secure recovery of their full proven damages as described above;

2. Where a child is injured as a pedestrian and is **less than 7 years of age** there is an irrebuttable presumption that the minor is *doli incapax*, i.e deemed not to be accountable for their actions. In such an instance, again only a notional 1% negligence on the part of the insured driver is sufficient to establish the Fund's liability for his or her full damages as aforesaid;

3. Where a child is injured as a pedestrian and is **between the ages of 7 and 14** there is a rebuttable presumption that the minor is *doli capax*, i.e accountable for their actions and consequently the possibility of an apportionment of

[6] On this date the Road Accident Fund Amendment Act 19 of 2005 came into operation

negligence arises, i.e a child may recover his or her proven damages subject to the respective degrees of negligence on their part versus that of the insured driver;

4. Where a child is injured as a pedestrian and is **above the age of 14** he or she is treated on an even par with an adult as far as the evaluation of the respective degrees of negligence, if any, are concerned.

The damages which an injured child is entitled to recover, as previously described, are as follows:

1. Past (incurred) hospital, medical and related expenses

   These expenses are usually borne by the child's parents, who may claim recovery thereof in their own right;

2. Future anticipated hospital, medical and related expenses

   Customarily the child (notionally via their guardian parent or Court appointed Curator or Trustee) is issued a statutory Section 17(4)(a) Undertaking in this regard. In the case of children it is often the case that it is anticipated that treatment will only be required in the distant future, however, the need for such treatment is foreshadowed in medico-legal reports obtained by the attorney on his / her behalf at the time of the institution of the claim. The Fund however only incurs liability for such expenses at the time that the treatment, goods or services are actually provided;

3. Future loss of earnings / earning capacity

Should a child sustain a moderately severe to severe or otherwise life-changing injury, this can have a profound impact on their schooling, academic performance and consequently his or her future employment prospects. Such a claim is proved with reference to relevant expert medical opinion as well as other appropriate expert opinion, which takes all circumstances into account as they pertain to the specific injured child. Once it is established that future losses are anticipated, such losses are actuarially quantified by comparing anticipated uninjured (i.e had the accident not occurred) earnings to anticipated injured (i.e now that the accident has occurred) earnings. Where there is a negative difference between these two income streams this amounts to a future loss of earnings / earning capacity. The calculation furthermore takes account of the following:

- Mortality rates;
- The effect of inflation;
- Future tax liability;
- General contingency deductions to account for the relative uncertainty of future events (in the case of children, higher contingency deductions are applied to account for the additional uncertainty which arises)

The damages arising as a result of future loss of earnings / earning capacity are capitalised, i.e only that amount which, if awarded today and carefully invested would be expected in time to grow to the extent of the actual loss, are awarded.

4. <u>General damages for pain & suffering and loss of amenities of life</u>

The pain and suffering which a child endures following injury in a motor vehicle collision is often particularly distressing by virtue of their tender age and their inability to fully understand and appreciate the extent of their injuries and the need for hospitalisation and further treatment, which can be invasive and painful

to endure. Children are also often required to spend time in facilities where they receive ongoing treatment following discharge from hospital, particularly where such treatment cannot be administered at home as both parents have to work and cannot provide care to their child. This means extended periods away from home with limited contact with loved ones, which further compounds their distress. This is so even where there is eventual optimal recovery with no anticipated future reduction in working / earning capacity. Even following their return home, the child's ability to take part in sports and everyday leisure activities can be diminished, thereby impacting on their socialisation and general well-being. These losses are significant notwithstanding the fact that the child's future work capacity may be unaffected.

Discussion of the Present Dispensation as far as it relates to Children

It is important to acknowledge at the outset that children comprise a significant proportion of road accident victims, often in situations where they are entirely vulnerable and blameless.

Statistics relating to the number of injured minor claimants regrettably remain difficult to access at the time of the drafting of these submissions but should be obtainable from the Road Accident Fund. As a crude estimation, a leading firm of actuaries which provides services to claimants as well as the Road Accident Fund previously confirmed that of a cohort of their most recent 1000 new instructions, 133 were for loss of income calculations for claimants under the age of 20 (it must be stressed that these were therefore instances where the injured minor had indeed suffered a future loss of earnings / earning capacity and therefore excludes those instances where children were injured but were, by virtue of their recovery, only entitled to recover general damages).

It is submitted that the present dispensation is inherently reasonable and equitable vis-à-vis children and takes account of the relevant constitutional principles which apply to their rights. The system allows for the recovery of future anticipated losses within a reasonable period following the injury and provides certainty and finality. As indicated above, even where the child escapes long-term disability the initial recovery period following traumatic injury can be hugely disruptive and distressing to a child and it is only fair and correct that they be compensated for this. In matters where only general damages are awarded to the child these funds are often used to improve their quality of life and provide much needed funds for education.

Past accident-related treatment costs are recoverable upon proof thereof. Should a parent be forced to miss work in order to care for their injured child and lose income as a result thereof, such losses can also be claimed in their own right. As far as future treatment is concerned, this is compensated at the time that the loss is actually incurred. The injured party is entitled to seek treatment from a medical practitioner of his or her choosing which includes private facilities, thereby reducing the strain on the already heavily over-burdened public health structure.

Where future loss of earnings is awarded it is furthermore a relatively simple process to establish a Trust to administer the claim proceeds to the benefit of the injured minor and ensure that they will be accessible and available at a future date when they are needed either to replace or supplement earnings. This is actively encouraged in our practice and is in most instances achieved.

The former Chief Executive Officer of the Road Accident Fund, Dr Eugene Watson, regrettably fostered the notion that compensation for future loss of earnings was akin to a lottery win with such claims succeeding with "minimal proof" and further denigrated the validity of the opinions furnished by Industrial Psychologists. These views are, with respect, without substance and cannot be supported to provide justification for the implementation of RABS.

The Position of Children as envisaged in the proposed Road Accident Benefit Scheme 2017

Other submissions have dealt extensively with the anticipated difficulties which will arise as far as access and entitlement to health care services is concerned. These submissions therefore focus primarily on the impact of the scheme's approach to compensating loss of income where the road accident victim is a child, with concluding comments regarding the equity and reasonableness of the scheme in general, the abolition of claims for general damages, the claims process and further removal of the common law claim for any damages exceeding the stringent limits provided for in the scheme.

1. Income benefits provided for in the scheme

The scheme provides for Temporary Income Support (**section 35**) and Long-Term Income Support (**section 36**).

By virtue of the provisions of **sections 35(5)(c)(iii)** and **36(7)(c)(ii)** an injured minor will never qualify for Temporary or Long-Term Income Support as "*...any period before the injured person reached the age of 18 years...*" is expressly excluded. This completely ignores the fate of those usually less fortunate children who are forced to leave school prematurely due to personal or financial circumstances and who earn an income to help to support their families.

Further, as income support is only payable to "*...an injured person...*" (defined in **section 1** as "*a person who suffered a bodily injury*") the scheme provides no compensation whatsoever for those parents who lose income by virtue of caring for their injured child(ren).

An injured child's entitlement to compensation for lost income is therefore limited to Long-Term Income Support only, as provided for in **section 36**, and only once they reach the age of majority.

2. Long-Term Income Support

The Administrator in it's sole discretion determines it's liability to pay Long-Term Income Support in the manner and subject to the conditions imposed by the provisions of **section 36**.

The earliest opportunity to submit a claim for Long-term Income Support will be once the child reaches the age of majority upon reaching the age of 18. The time frame for submission of such a claim is thereafter limited to one year following attaining the age of majority (**section 46(3)**)[7].

In the dispensation envisaged by the scheme it is considered highly unlikely that any appropriate investigations (into the nature, extent and long term prognosis of injuries suffered in childhood) will be conducted prior to a child reaching adulthood, in light of the fact that no benefits will be claimable during this time. Notwithstanding this fact, an 18 year old claimant who suffered injuries in a road accident as a child will be required to comply with the following conditions in order to merit consideration for any benefits:

[7] A new deeming provision has been introduced, presumably to align the Bill with recent apposite judgements of the High Court, whereby s46(2) provides that "*...A claim shall be deemed not to arise until the qualifying person has knowledge of the facts from which the claim arose...*". The proviso to this section is however important, which provides that "*... a qualifying person shall be deemed to have such knowledge if he or she could have acquired it by exercising reasonable care*"

- Full and proper completion of claim forms and compliance with procedures anticipated to be detailed in rules to be promulgated by the Board of the RABS, as provided for in **section 61**;
- Proof of pre-accident income in the manner provided for in **section 36(2)(b)(i)**, failing which for purposes of assessing the claimant's entitlement to benefits their income shall be deemed to be the average annual national income (previously in 2014 prescribed at R43 965 per annum or R3 663.75 per month) (**section 36(3)**);
- The claimant must furnish proof of any income earned post-accident
- The claimant must furnish confirmation that his or her inability to earn an income is due to physical or psychological injury caused by or arising out of a road accident (another person with the requisite knowledge of the reasons for the claimant's disability may furnish this confirmation in the event that the injured person is unable to do so) (**section 36(1)(b)(ii)**);
- The claimant must furnish any such further specialist medical report which the Administrator may call for, either to establish the causal relationship between the childhood injury and the alleged inability to earn an income or to assess the claimant's present work ability (**section 36(1)(c)**);
- The claim must include an assessment by an occupational therapist (or other suitable expert) relating to the claimant's post-accident vocational ability (**section 36(1)(d)** read with **section 36(2), (3) and (4)**).

What is immediately apparent is the emphasis which is placed on post-accident work ability in the absence of any comparison to the injured person's pre-accident ability. There is therefore no longer any scope for a loss of earning *capacity* as has been long recognised in our law – only loss of income is compensated, within very narrow constraints.

Logistical difficulties are foreseen regarding the production of the duly completed claim forms and medical reports, particularly where the childhood injury is sustained several years or more prior to the institution of the claim. Access to records may be problematic and without such records medical practitioners may be unwilling or unable to complete the required reports or

confirm the necessary causal relationship between the original injury and the present day reduction in work ability.

It has to be accepted that in the overwhelming majority of cases, the injured child will (once he or she is old enough to claim) - at most be entitled to receive Long-Term Income Support calculated with reference to the average annual national income (deemed income). Assuming therefore a total inability to work and earn an income, this will amount to a monthly benefit of R3 663.75 (2014 terms) up to the age of 60. There can be no doubt that a beneficiary will never be able to afford to fund a private pension from these limited monthly payments which means that upon reaching the age of 60 they will be reliant on a State pension for the rest of their lives. Similarly, access to private medical aids would be impossible, inevitably leading to increasing burdens being placed on the public healthcare system.

The Long-Term Income Support beneficiary is furthermore not entitled to inflationary increases on the benefit amount as aforesaid unless the Administrator exercises it's discretion to adjust the benefit to take account of the effects of inflation, subject to affordability (**section 36(9)**).

The average annual national income of R43 965 is less than the lowest quartile of unskilled employees as per Robert Koch's 2014 Corporate Survey Earnings (Basic Salary R49 000 per annum) [or the highest quartile of unskilled labourers / median quartile of machinists in the clothing industry and similar examples, with reference to Koch's suggested earnings assumptions for non-corporate workers] and 30% less than the starting salary of a government employee employed as a general worker.[8]

In those instances where the road accident victim injured in childhood is nevertheless able to earn an income (and to reiterate, in this instance post-accident prospective work ability is taken into account), this annual earning capacity must be calculated by the Administrator (**section 36(5)(a)**) and is then

[8] The Quantum Yearbook by Robert J Koch 2014. The 2017 edition records this figure as R60 000 currently

deducted from the above described maximum benefit payable (i.e actual loss is ignored).

Using a straight forward practical example, a diligent average to well-performing scholar with pre-accident prospects of pursuing some form of tertiary education who is limited (post-accident) to menial unskilled work earning R3 663.75 or more per month will receive no income support benefits whatsoever in terms of the scheme.

Such an approach will therefore essentially rob the injured person of any right to economic freedom and dignity and will relegate them to a life of veritable poverty, leaving them reliant on the charity of others in order to enjoy any meaningful quality of life.

3. The equity and reasonableness of the scheme vis-à-vis children

For inter alia the reasons indicated above the proposed scheme cannot be considered to be either reasonable or equitable to injured children. The limited benefits which a child can expect to recover are in no way comparable to those to which they are entitled under the present dispensation, notwithstanding the fact that it is fault-based. In our considerable collective experience it is very rare that the issue of liability has to be resolved in the Courts in matters involving children – in many instances full liability is admitted, alternatively negotiations between the attorney representing the child and the Road Accident Fund will result in a settlement of the issue, albeit perhaps on an apportioned basis. The general damages component of the successful claim can be utilised to supplement the apportioned statutory Undertaking for future medical and related expenses as well as to fund educational aids and other assistive devices which can help to restore the child's functioning to pre-accident levels as far as it is possible to do so.

The iniquity of the limitation on compensation for future lost earnings is self-evident. This in fact extends further than only minor children and applies equally to those young adults who have gained entry into a tertiary education facility but who become victims of road accidents prior to attaining their qualification and entering the labour market. These students will also be restricted to the deemed income in terms of **section 35(3)** when it comes to calculating income support benefits due to them.

Proponents of the scheme are wont to draw selective comparisons with the COIDA[9] legislation when it comes to assessing the overall equity and reasonableness thereof. Such comparisons are however potentially dangerous as the history, development and requirements of COIDA differ significantly from that of road accident compensation. It merits pointing out that in the much quoted decision of the Constitutional Court in the matter of ***Jooste v Score Supermarket Trading (Pty) Ltd (Minister of Labour intervening)***[10] the court held that COIDA is important social legislation "*...which has a significant impact on the sensitive and intricate relationship amongst employers, employees and society at large...*". There is no such sensitive relationship when it comes to victims of road accidents. Furthermore, in a number of respects RABS does not compare favourably at all to COIDA, as illustrated in the examples below:

1. In terms of section 36(1)(a) of COIDA an employee retains their right to recover damages from a third party who caused their occupational injury or disease [**common law rights abolished in RABS**];
2. An employee may be entitled to increased compensation if his or her injury / disease is caused by the negligence of the employer (section 56) – further, section 56(4)(b) implies that an employee may be awarded total compensation up to the amount of his actual pecuniary loss [**no such provision in RABS**];

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[9] Compensation for Occupational Injuries and Diseases Act 130 of 1993

[10] CCT 15/98 1999 (2) SA 1

3. Section 58 allows for advances on compensation where it is considered equitable [**no corollary in RABS**];
4. The manner of calculating earnings for the purposes of determining the benefit due to the employee in section 63 is more favourable in terms of taking into account additional benefits received by virtue of their employment;
5. COIDA does not go so far as to dictate a treatment plan / regime or medical practitioner, unlike RABS;
6. Section 91(5) specifically allows for appeals to the High Court having jurisdiction in respect of decisions made by a presiding officer in relation to objections and appeals against decisions of the Director-General, whereas RABS only allows for a right of review in the event of an unfavourable decision being made by the envisaged Appeals Committee (**section 55(6)**);
7. A distinction particularly relevant to the scope of these submissions (i.e the position of children and by extension, young (adult) students) is the manner in which employees **in training** or **under the age of 26 years** are compensated for permanent disablement in terms of section 51, as opposed to the position of scholars or students under RABS. In terms hereof where the employee was an apprentice or in the process of being trained for any trade, occupation or profession, their earnings "*...shall be calculated on the basis of the earnings to which a recently qualified person or a person in the same occupation, trade or profession with five years more experience than the employee would have been entitled at the time of the accident, whichever calculation is more favourable to the employee...*". Similarly, where the employee is a person under the age of 26 years, their "*...earnings shall be calculated on the basis of the earnings to which a person of 26 years of age would normally have been entitled if at the time of the accident he had been performing the same work as the employee or a person in the same occupation, trade or profession with five years more experience than the employee, whichever calculation is more favourable to the employee...*". Inherent in these provisions is an acknowledgment of the iniquity of restricting a trainee / young employee's entitlement to disability benefits to the level of income which is earned whilst in training or at the start of their career.

At an earlier briefing session on RABS presented by representatives from the Road Accident Fund and the Department of Transport ("DOT"), the then Deputy Director-General of the DOT motivated the imposition of the envisaged caps on compensation for lost earnings by stating that the emphasis must shift to private insurance in order to supplement the limited benefits provided for under the scheme. This is however impossible from a child / young students' perspective. Twelve of the countries' top long-term insurers were contacted in order to enquire about the availability of insurance cover for children or students' future earnings / earning capacity and no such products exist or are available.

4. The claims process

The stated imperative of simplifying the claims process is not achievable in terms of RABS. The process is balanced heavily in favour of the monolithic scheme, not only in terms of the wide-ranging investigative and interrogatory powers granted to it, but furthermore in the following respects:

1. The responsibility for submitting a claim rests with the claimant in terms of **section 42**. The Administrator is not obliged to render assistance with the submission of claims but "may" do so, in it's own discretion;
2. In contrast to the Administrator's unfettered power to terminate, suspend or review benefits granted under the scheme "*at any time*", a claimant / beneficiary only has a single right of appeal (to the scheme's Appeals Committee) after being notified of a decision by the Administrator (or following the expiry of the prescribed 180 day period provided for in **section 47(1)**). Following this appeal the claimant / beneficiary has no further legal recourse save for the limited scope of the courts' review jurisdiction;
3. There is no sanction available to a claimant / beneficiary should the Administrator fail to process a claim timeously, save to submit an appeal to the Appeals Committee within 30 days from the expiry of the 180 day period referred to above;
4. Neither the Administrator nor it's officials will be liable for any act or omission done in the execution of their duties unless intentional wrongdoing is proved

(**section 57**), which places an extremely heavy burden of proof on an aggrieved party.

There is little doubt that in light of the limited avenues available to an aggrieved claimant / beneficiary there will certainly be a reduction in the number of disputes.

5. The abolition of the common law claim

The removal of the road accident victim's right to sue for those damages which exceed the limited compensation provided for under the scheme is irrational and cannot be supported. Insurance cover is readily available for motorists who wish to protect themselves against potential claims yet, in contrast to the reported move to emphasise private insurance as far as supplementing the road accident victim's own lost earnings is concerned, there is no corollary in respect of the wrongdoer, who is completely indemnified from any claim barring material damages. This illustrates particular imbalance when one considers the unavailability of insurance cover for children's future loss of earnings / earning capacity as explained previously.

6. The abolition of claims for general damages

The role and importance of awards for general damages for pain and suffering and loss of amenities of life is referred to above. The abolition of such claims under the scheme will further serve to consign seriously injured children to lives of enforced poverty and inadequate living conditions.

Conclusion

It is submitted that for the reasons mentioned in other detailed submissions as well as those alluded to herein, the proposed scheme will not meet it's stated objective as contained in the preamble to the RABS Bill, set out in the Introduction above, in the following several key respects as far as minor and young road accident victims are concerned:

- The scheme is neither reasonable nor equitable – children will be treated unequally merely by virtue of their age (because they have not entered the labour market at the time of injury);
- The scheme will not reduce injured childrens' income vulnerability and may in fact compound it;
- There will not be any expansion of access to benefits – in most instances a child's access to benefits is in fact reduced;
- The process will arguably result in less certainty in light of the Administrator's unfettered right to review, suspend or terminate benefits, in contrast with the "once and for all" rule which applies in the current dispensation (save for those future expenses recoverable under the statutory Undertaking in terms of the present dispensation).

KIRSTIE HASLAM
ATTORNEY
DSC ATTORNEYS
CAPE TOWN

30 November 2017

RABS
2017-12

Valerie Carelse

From: Karin Verster <KarinV@acuideas.co.za>
Sent: Tuesday, 14 November 2017 11:55 AM
To: Valerie Carelse
Cc: Peter Olyott
Subject: ROAD ACCIDENT BENEFIT SCHEME BILL - COMMENT
Attachments: RABS Comment Letter 14.11.2017.pdf

Good day

Kindly find herewith attached our comments on the Road Accident Benefit Scheme Bill.

Regards

Karin Verster
Senior Manager Product R & D
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a Division of Indwe Intermediary Support Services

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ATTENTION: VALERIE CARELSE

14 November 2017

VIA E-MAIL: vcarelse@parliament.gov.za

COMMENTS: DRAFT ROAD ACCIDENT BENEFIT SCHEME BILL, 17-2017

Indwe Intermediary Support Services (Pty) Ltd. has scrutinized the document as published on 3 November 2017 and would like to comment as follows:

Chapter 5 – Liability of administrator and other persons
Section 27(4)
Our understanding of this limitation of liability is that illegal immigrants who do not hold the necessary permits or visas will only have emergency healthcare benefits whilst he/she is alive and therefore no other benefit would be payable to such person under the proposed Bill. This by implication could raise issues about such person's right to recover against the wrongdoer with reference to Section 28.

Income Support Benefits & Family Support Benefits
Sections 34, 35, 36, 37 & 38
Our understanding is that persons not permanently resident in the RSA (injured and dependents) would not be entitled to these benefits. This by implication could raise issues about such person's right to recover against the wrongdoer with reference to Section 28.

Chapter 9 – General Provisions
We are of the view that the provisions of Section 57 would not would not pass muster if tested in the Constitutional Court.

We are of the view that the definition of "vehicle" as defined in the proposed Bill which is similar to the definition under the current RAF Act is too loosely structured which might lead to different views on the interpretation as is evident from case law emanating from the RAF Act.

With regard to the definition a "road accident" we are of the view that specific mention should be made to exclude liability arising from manufacturing defects from this proposed Bill, e.g. the Ford Kuga incidents and driverless cars of the future.

In line with current legislation, Section 10 of the Income Tax Act would need to be revised for exemption from income tax on RABS benefits paid to claimants.

We thank you for the opportunity to comment and would appreciate if you could acknowledge receipt of this letter.

Regards
Peter Olyott

Acuideas is a division of Indwe Intermediary Support Services (Pty) Ltd, Co Reg No: 2000/000267/07, VAT Reg No: 4140/177/32/2
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RABS

2017 - 13

Valerie Carelse

From: Amith Haribhai <a.haribhai@riskhouse.co.z
Sent: Thursday, 30 November 2017 2:05 PM
To: Valerie Carelse
Subject: RE: Call for comments: RABS bill
Attachments: B17-2017_Road_Accident_Benefit_Scheme RiskHouse Actuaries COMMENTS.PDF

Dear Ms. Valerie Carelse

I trust that this email finds you well.

Please see attached RiskHouse Actuaries' comments on the *Road Accident Benefit Scheme (RABS) Bill [B 17 – 2017].*

Kind regards
Amith

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From: Alpha Kunaka [mailto:alpha@truesouth.co.za]
Sent: 09 November 2017 19:39
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Cc: Wim Loots <wim@wlac.co.za>
Subject: Call for comments: RABS bill

Dear Member

There has been call for comments on the Road Accident Benefit Scheme (RABS) Bill by the Portfolio Committee on Transport. The Committee is reviewing the Bill at Parliamentary level. Further details are available at the following link: https://pmg.org.za/call-for-comment/613/

ASSA previously provided a response on the Bill to the Department of Transport, which is attached. The Bill was subsequently amended (although not significantly) and the latest version is attached.

ASSA would like to provide comments to the Portfolio Committee, before the closing date of the 30th November. We ask that members provide us with their comments for incorporation in ASSA's response on or before Monday 20th November.

Comments can be forwarded to the Secretary of the Damages and Compensation Committee, Alpha Kunaka, at alpha@truesouth.co.za.

On behalf of Wim Loots (Chairman: Damages and Compensation Committee),

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COMMENTS B17-2017_Road_Accident_Benefit_Scheme

30/11/2017

No	Section reference	COMMENT
1.	General – Financial Viability	• The Department of Transport published the Road Accident Benefit Scheme (RABS) Bill during 2014. The bill provides for a new benefit scheme called the RABS to compensate victims of road accidents and will replace the Road Accident Fund ("RAF"). • RABS is intended to replace the current fault based system, which often results in extensive and costly litigation, prolonged claims finalization and high administrative costs. • The current dispensation in terms of the Road Accident Fund Act 56 of 1996, as amended, ("RAF act") currently provides for liability of the RAF upon proving that the road accident was caused by the fault of the driver of another motor vehicle. • Under RABS, fault on the part of the claimants or any other person involved in the accident will not be considered (a no-fault system). • Part of this change includes moving from a lump sum payment basis to a periodic payment/structured benefit basis. *Administrative Costs:* As an example from international Life and Non-Life Insurers, the following highlights the difference in administrative costs between the approach of lump sum payments vs. periodic payments: • An insurer's costs to manage a periodical payment award will be far greater than those to manage a lump sum payment. This is because they will need to set up systems to make the regular payments, keep track of the claimant's address, monitor any changes in the claimant's medical condition, and even ensure that the claimant is still alive. o This will mean that the loss expenses allocated to a case are going to be greater if compensation is paid via periodical payments than if it is paid via a lump sum. • Therefore, a similar situation of additional administrative costs may occur for the Department of Transport should the structured benefit/periodic payments structure be adopted. One of the pillars of assessing the financial viability of the RABS bill could therefore be based on balance between the projected saving of reduced litigation costs vs. the increased costs of administration.
2.	Moral Hazard/Anti Selection	• The RABS bill proposes to replace the existing fault based system for road accidents with a no-fault system. A major unknown in this regard is the effect of no-fault on the number of claims. • The high accident rate South Africa and the current high

		unemployment may lead to a significant increase in claims. • In terms of motor vehicle accident cover, an unemployed person may attempt to elicit no-fault based compensation for loss of income. Given the high unemployment rates in South Africa, there may be a significant number of staged accidents in order to obtain monthly payments from the RABSA. o This is a significant fraud risk, and will work against the overall objective of social security by potentially encouraging people to stage and/or deliberately cause injury & deaths due to road accidents. • Statutory compensation for accidents in the workplace ('COID benefits') is also provided on a no-fault basis, but claimants have to be employed in order to participate in the benefits structure. The moral risk is thus much lower for COID benefits.
3.	Moral Hazard/Anti Selection	• In order to provide a balance the potential moral risk it is advisable that no-fault cover be at first introduced at a low level (perhaps at the level of current state disability benefits). • Further compensation could then be recommended based on specific protocol of claims underwriting, which could then be formally assessed, on a case by case basis, with a singular panel of experts.
4.	Solvency Management	It is important to note that in either instance; of a lump sum payment or a periodic payment/structured benefit basis, an actuarial assessment would be required to estimate the annuitized value of the periodic payments - which will then be used as a key input to assess the solvency of the scheme, in aggregate. This would be in addition to the commutation values currently required in Sections 35 (5) (e), 36 (10), and 38 (10) of the bill.
5.	Retirement funding	• As there is a limitation for claims to be provided until retirement age (Age 60), the RABS should consider providing for a minimum % of the monthly benefit to be placed in some form of retirement funding vehicle - perhaps with the underlying assets in South Africa Government Bonds, or similar. • The accumulated value of this retirement fund could then be made available to the claimant, upon retirement.

6.	Special cases	Compensation on a fault basis could be available in specific special cases (in addition to the no-fault benefits), for the following cases where the approach proposed by the RABS bill of basing benefits on historic benefits is deficient: • Children (under 18) • Students (under 21), young workers at the start of their careers (under 27) (subject to satisfactory proof of educational qualifications). In the current bill, benefits are based on historic earnings which may penalise children, students, young workers at the start of their careers and those about to commence higher-paying jobs. This may have a particularly harsh effect on poorer families who may have invested significantly in the education of their children.
7.	Family support benefits	• The family support benefit ceases when a child turns 18. This means that it may end before the child completes school and/or further education. ○ Consideration should be given to extending the duration of this benefit up to the age of 21. ○ This is particularly an issue for disabled children. • Foster children should also be included within the RABS bill.
8.	Maximum claim period for widows and parents	• There is a maximum claim period of 15 years for widows, which may be penal for young widows who may not have the skills to secure employment. ○ This claim period could be extended to normal retirement age, as defined by the RABS bill (Age 60), subject to a vocational assessment after 15 years.
9.	Average National Income (AANI)	• A number of actuaries involved in quantifying loss of support and loss of earnings claims for the Road Accident Fund (RAF) have commented that the AANI is large relative to the current and projected incomes of many RAF claimants. • For individuals earning less than the value of the Average National Income (AANI), there is a strong incentive for claimants to not disclose, or attempt to not disclose their actual income. ○ The current AANI is large relative to the current incomes of many RAF claimants. ○ It is unclear how the RABS bill plans to deal with this likely scenario. Otherwise, we welcome the requirement for more robust documentary proof of pre-accident income (as outlined in the RABS bill).