**National Assembly**

**Question No 3627**

**Ms B M van Minnen (DA) to ask the Minister of Transport:**

Considering that the Road Accident Fund (RAF) has claimed to the Standing Committee on Public Accounts that it is not a state-sponsored insurer, but a social benefit scheme and the RAF is described in its official government website clearly and publicly as providing indemnity insurance to personal injury and death insurance (details furnished), what are the reasons that the RAF is thus involved with litigation against the Attorney-General to deny the assertion with regard to the Generally Recognised Accounting Practice standards? NW4444E

**REPLY**

On 4 February 1998, the Department of Transport issued a white paper on the Road Accident Fund which was approved by Cabinet on 21 January 1998. In the preface to this paper, it is stated: *“The system has evolved from the original private insurance to public compensation. The demands of a new socio-economic and constitutional dispensation - and with them, the constraints on public spending – require a transition from a delict-based compensatory system to a system of affordable state benefits.”*

The white paper further went on to state that *“the RAF in future will have elements of social welfare in the form of state benefits and risk cover… the main objective of the RAF is to provide adequate medical care and benefits to road accident victims, within an affordable and sustainable financial framework.”* It was also communicated that a Road Accident Fund Commission would be set up by government to reconsider in its entirety the system of benefits and or compensation for victims of road accidents.

From 1942 to 1986 the RAF effectively operated as a compulsory insurance fund, where owners were required to purchase third party insurance. From 1986 the former system of compulsory third party insurance was replaced with a system of statutory assumption of liability by the Fund, and was instead of insurance premiums, financed by Fuel Levies.

The object of the RAF, per section 3 of the Road Accident Fund Act, is *“the payment of compensation,* ***in accordance with this Act****, for loss or damage wrongfully caused by the driving of motor vehicles.”* The liability of the RAF, if applicable, are therefore towards persons injured in motor vehicle accidents and not the wrong doer who caused the accident. Kindly note that the contributor to the fuel levy is not the beneficiary, the beneficiary gets this benefit without contributing any “premium”.

The honourable member should recognise the provisions of Sections 17 to 24 of theact that creates conditions for RAF to be liable. The benefits only flow after all thoseconditions are met. It therefore follows that RAF’s liability cannot be at the time of the accident but only when all conditions are met by the victim or claimant.

Thereafter, *Section 21(1) of the RAF Act States “No claim for compensation in respect**of loss or damage resulting from bodily injury to or the death of any person caused**by or arising from the driving of a motor vehicle shall lie (a)against the owner or driver**of the motor vehicle; or (b)against the employer of the driver.”*

A significant characteristic of insurance is that the insurer accepts risk on behalf of apolicy holder in exchange for a premium or contribution. The insurer has the ability toadjust the premiums in relation to the risk accepted.

The RAF, however, receives no premium or contribution from the persons whoparticipate in and benefit from the scheme. The Fuel Levy received is not adjustableby the RAF and is not in any way reflective of or connected to the risk the Fund acceptsaccording to the RAF Act. The principles of insurance therefore do not apply to RAFas will be demonstrated below.

The Insurance Act, No. 18 of 2017 (“the IA”), which commenced on 1 July 2018defines an insurer as “… a person licensed to conduct insurance business under thisAct, and includes, unless specifically otherwise provided for in this Act, Lloyd's, aLloyd's underwriter and a reinsurer”.

The RAF is not an insurer as contemplated in the IA, i.e. the RAF is not issued with alicense to conduct its business, but derives its mandate from an Act of Parliament.The RAF performs a public function [as contemplated in paragraph (b)(ii) of thedefinition of “organ of state” as per section 239 of the Constitution of South Africa,1996] and is listed as a national public entity [as prescribed in Part A of Schedule 3of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (the PFMA)].

The issue of whether the RAF is an insurer was comprehensively considered andsettled by the Road Accident Fund Commission, appointed on the 01 June 1999 toinquire into the Road Accident Fund system (the Satchwell commission). TheSatchwell commission received various submissions from stakeholders on thismatter, including AGSA, who we must add were vehemently opposed to a Pay-As-You-Go system. The commission nonetheless concluded in their 2002 report that, “apragmatic approach suggests that the proposed road accident benefits schemeshould function as a partly funded scheme within a comprehensive system of socialsecurity…”. It further concluded, “A pay-as-you-go approach will situate the schemewithin the context of a system of social security”

The Prudential Authority is the regulator of the Road Accident Fund in accordancewith the Financial Supervision of the Road Accident Fund Act No.8 of 1993. Inparagraph 2.3.3 of its Directive 1 (RAF), the Prudential Authority states, *“In assessing**the viability and sustainability of the RAF and its compliance with the provisions of the**STI Act (Short Term Insurance Act) identified under paragraph 2.2* ***c*onsideration willbe given to the status and nature of the RAF as a public entity that isfundamentally a social security fund.”**

Section 2.3.3 goes on to state *“In assessing the RAF’s compliance with the prudential**requirements of the STI Act, consideration will be given to the fact that*

* The RAF’s business model is not based on insurance principles as the premium payable (in this case the fuel levy) does not directly correlate to the benefits provided.”

The classification of the RAF as either an insurer or a social benefit has material implications on the accounting standards that should be used to develop accounting policies in its annual financial statements. The fact that RAF is a social benefit is actually common cause between the AGSA and RAF. This is confirmed by the fact that RAF is not allowed to apply GRAP 19 because the standard specifically excludes social benefits.

The AGSA has, recently inexplicably changed its the position that the RAF is an insurer, and its benefits are not social benefits. It should be noted that in determining which accounting standard to apply, the nature of the RAF is not as important as the nature of the transaction or event. Once the AGSA issued its finding, the RAF then declared a dispute as provided for in the Public Audit Act. The RAF then followed the dispute resolution process as set out by the AGSA. This process, however, was unsuccessful and consequently, the AGSA has issued a disclaimer of opinion on the 2020/21 Annual Financial Statements. In protection of the RAF’s rights and those of the “users of financial statements”, and in compliance with the PFMA, specifically Section 55 (2) (a), the RAF was left with no option but to reluctantly approach the courts for resolution of the dispute.

The Minister has recently instructed the Board to withdraw from the litigation and pursue less confrontational dispute resolution mechanisms. The parties are engaging in that process at the moment.