



## THE ASSOCIATION FOR THE PROTECTION OF ROAD ACCIDENT VICTIMS

A VOLUNTARY ASSOCIATION NOT FOR GAIN INCORPORATED IN TERMS OF THE COMMON LAW

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### **National Economic Development & Labour Council (NEDLAC)**

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cc Mr Makaya, Community Constituency Coordinator  
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**27 November 2015**

### **COMMENT ON THE RABS BILL**

1. The Association for the Protection of Road Accident Victims ("APRAV") was established in June 2014 by concerned parties responding to the Road Accident Benefit Scheme ("RABS") Bill, published by the Department of Transport on 9 May 2014 (See [www.aprav.co.za](http://www.aprav.co.za)).
2. Over the last 12 months APRAV focussed on a few key strategies –
  - a) established a close working relationship with all members of the Portfolio Committee on Transport as well as all role players within all relevant structures within the parliamentary law making process;
  - b) establish a working relationship with all key stakeholders within the medico legal industry;
  - c) providing detail comment and input into the drafting of the 'RABS' Bill; and
  - d) inform the public of their rights and the implications of the 'RABS' Bill.
3. We would like to reiterate, that APRAV supports the Government and the Department of Transport's conviction, that the current RAF 'system' requires change. We further recognise that, i.e. the claims procedure should be easier to follow for the public, the 'system' cost should be reduced, the time it takes for a claim to be settled should be shortened, etc. However, for the sake of all road users and those injured in road incidents, any changes to the current RAF 'system' (the public's current rights) should be fully researched, realistic, affordable to South Africa, carefully planned and be very transparent.

4. We attended numerous Portfolio Committee on Transport meetings, met with relevant ANC Members and opposition party members, of said committee, provided detailed comment and input and had dozens of meetings with industry role players all over South Africa. It is clear to the executive members of APRAV, that the RABS Bill is not reasonable, fair, equitable, practical, sustainable or cost effective. The RABS Bill, in its current form, has far-reaching adverse effects on the Republic of South Africa, the public in general and specifically all road users.
5. We wish to point out that RABS was published for comment during 2013 and 2014 but that:
  - The Bill has never been considered by the Parliament's Portfolio Committee on Transport,
  - There have been no proper and valid public consultations regarding RABS and
  - The bill as it currently stands is without any amendments in response to the comments elicited by its last publication in 2014.
6. We are of the view that consideration by your body of this bill is premature. Notwithstanding this position we take this opportunity to provide an executive summary of key input we believe NEDLAC should be aware off, in considering comment and proposals on RABS in its current form: (1) Impact on the economy; (2) Impact on workers/road users/public; (3) the Constitutional issues; and (4) the key unanswered questions.

## **7. Impact on the economy – can South African afford RABS?**

- 7.1 Government is approaching the road accident compensation question from entirely the wrong angle.
  - It is a known fact that South Africa rates is one of the worst countries as far as road safety is concerned.
  - The government is constitutionally bound to ensure a safe environment for its citizens – this includes safe road travel.
  - The government is not complying with this constitutional duty and has in the past not succeeded in significantly curbing road traffic related injuries and deaths.
  - If accidents can be effectively reduced, the compensation of road accident victims will not be an issue requiring special social legislation such as RABS.
  - In addition, there will be undoubted considerable benefits for the entire South African economy. We submit that the South African road accident victim faces double jeopardy in that he/she is overly exposed to danger while travelling on our roads and when he/she is injured, the government, notwithstanding government's failure to comply with its constitutional duty to prevent road accidents, is curtailing his/her rights by introducing legislation such as the Road Accident Fund Amendment Act of 2005 and now RABS.
  - By increasing the fuel levy by 50 cents per litre from 1 May 2015, the government is spending approximately R10 billion p.a. more on the consequences of road accidents while the RTMC is underfunded and road traffic law enforcement is less than ideal and ineffective.
  - Furthermore, the method of funding needs reconsideration. Fuel levy income is set to gradually diminish and may even eventually disappear altogether due to technological advances. We think that rather than promoting a system change which is to the detriment of its citizens and splurging on the consequences of road accidents, the government should concentrate on the prevention of road accident casualties. This will have incalculable beneficial consequences and obviate the need to expend considerable energy and resources on the consequences of road accidents.

Apart from the wrong approach, we are of the view that the Honorable Minister of Transport misidentifies the actual causes of the funding crisis in the road accident victim compensation system (RAF).

- In the first instance, the road accident victim compensation reform process is entirely driven by the perception that the system faces a R46 billion deficit.
- This deficit is an actuarial figure which is calculated on the basis that the compensation system is insurance based. This is not the case.
- The compensation system is and has always been a dedicated tax funded social benefit scheme. If this is accepted, the Government cannot use a lack of funds as a reason to change a system which has proven to be equitable and effective for more than 50 years.
- It cannot use the actuarial shortfall argument when dealing with other constitutional obligations to provide social security such as housing, care grants and medical care so how can it do so when dispensing social benefits to road accident victims?

7.2 Furthermore, the current RABS bill is based on the RAF Commission Report of 2002. The commission recommended in its report that further research be done before a no fault system is introduced. No further research has been done and RABS is now based on information which is more than 13 years old. This creates a real risk that a system which is not based on current facts has being designed and is being promoted as being novel and the ultimate solution for the perceived woes facing the road accident compensation system in our country.

7.3 The proponents of RABS base their argument that the South African road accident compensation compares unfavorably with other countries such as Australia, Canada and the USA who are all no fault based. However, it seems as if the following World Health Organisation and World Bank statistics are simply ignored:

Country	Casualties per 100 000 vehicles	Population	Unemployment	GDP in \$b
Australia	7	23 630 169	5,8%	1 560 597
Canada	9.3	35 524 732	6,5%	1 826 769
USA	13.6	323 583 004	6,2%	16 800 000
<b>South-Africa</b>	<b>165.4</b>	<b>53 139 528</b>	<b>25,5%</b>	<b>350 630</b>

- The accident rate and GDP alone suggest that a very careful consideration of the financial implications and affordability of no fault in South Africa is deserving of very incisive and meticulous scrutiny.
- More so, if the fact that some jurisdictions who have opted for no fault reverted to fault and that in other voices for the change in the no fault approach have arisen. Note that 5 states in the USA and 1 in Australia implemented no-fault systems and then reversed it due to the cost involved!
- This truly a situation of “act in haste and repent at leisure”. We are not entirely against a no fault system but in view of the quoted statistics, affordability and a real concern with probable diminished benefits, we cannot due to support a no fault system until such time as the casualty rate approaches those of countries who employ no fault compensation.
- In addition, the important policy question as far as South Africa is concerned, is whether no fault sits well with the enforcement of road traffic legislation compliance by South African drivers and the improvement of road safety and whether no fault will result in indirectly rewarding careless and negligent drivers for the lack of compliance with the rules of the road with tax money.
- **How can South-Africa then afford a no fault system?**

- 7.4 We have roughly estimated the cost of the introduction RABS. Because of the high unemployment rate we estimate the non-employment benefit (“no-fault”) in terms of RABS alone to be in the order of R20 billion p.a. If medical costs, loss of support, loss of employment income, funeral expenses and legal costs are added, RABS benefits exceed the available budget of R30 billion p.a. by a very large margin.
- Our concern is that due to the limited budget, the only way that RABS will be able to function will be through the limitation of rights and benefits.
  - In this regard we observe a trend in past government actions (see the introduction of limitations with the Road Accident Fund Amendment Act of 2005) that budgetary aims are achieved at the expense of the rights of road accident victims and we are deeply concerned that the introduction of RABS means a further erosion and worsening of the position of the road accident victim in South Africa – especially for the more productive tax-paying section of this constituency.
  - Apart from the affordability of RABS we are concerned that RABS is not aligned to the needs of the average South African road accident victim and in essence seeks to compensate ignoring the profile of the average South African road accident victim.
  - It also abolishes the constitutionally enshrined common law rights of the road accident victim and his/her constitutional right to access to the courts.
  - We contend that the government’s failure to protect the road user’s constitutional right against harm and the introduction of RABS present a double jeopardy to road accident victims and is not at all a reflection of a government that cares for its citizens.
- 7.5 During the CEO of the RAF’s annual submission to the Transport Portfolio, Dr. Eugene Watson admitted that the Fund’s Actuaries have not yet quantified RABS.
- During a recent, so called public consultation session held in George on the 18th of September 2014, Mr. Chris Willemse of the RAF confirmed that RABS will not be dependent on NHI as a pre-requisite for its implementation.
  - Mr. Willemse admitted in Kroonstad on the 25th of September 2014, that no tariffs had been agreed upon between RAF and any private sector, as it would be premature in the light of the fact that the Act is still in its early stages of development.
  - According to Mr. Willemse confirmed that RABS will be funded by the fuel levy and the current and remaining RAF claims from Parliamentary concessions.
  - We can accept that it would be an impossible task to quantify RABS, at this point in time, as many of the larger expenditures like health care cannot be qualified before service level agreements and tariffs had been agreed upon by RABS and the private sector.
  - Question is : How can the RAF say that this would be a more affordable alternative to the current RAF system of compensation if they are nowhere close to know how much the system is going to cost the taxpayer?
- 7.6 Consecutive commissions of enquiry into the compensation system held that no fault is unaffordable as it would just about double the government’s compensation bill. We call on NEDLAC and Government to enter into a dialogue with APRAV and all industry role players (South African Law Society, Orthopaedic Association of South Africa, Medico-legal Society of South Africa, National Taxi Council of South Africa, just to name a few) and all other interested parties to explore a suitable solution to compensation of the South African road accident victim so that the best interests of the road accident victim and our country may be served and assured. **(APRAV has been working on solutions and all our analyses and research are available to NEDLAC!)**

## 8. Impact on the workers/road users/public – RABS versus RAF?

### 8.1 The myth that ‘no fault’ means full and automatic benefits to all

- Do we really want to compensate the hijacker and habitual criminal? Would this be appropriate for South African circumstances?
- No service level agreements had been secured between RABS and private health care victims under RABS will be no better off than under the current system.
- To speak of pre-determined benefits is a fallacy, as each and every individual victim’s circumstances and requirements differ and change as they progress through the trauma of an accident and the recovery period that follows.
- RABS would be able to review, revise and terminate the claimants’ benefits with a system of medical peer review that is supposed to facilitate objectivity and consistency of the medical and disability assessments.
- The fact that the administrator may withdraw benefits at any given time (taking into account budget constraints and changes in personal circumstances) would imply that the road accident victim would have no long term financial security under the RABS administrator.

### 8.2 Making available timely and appropriate healthcare benefits based on a reasonable tariff

- Road accident victims currently enjoy access to immediate medical care and do not have to qualify under stringent rules to qualify for long term medical care.
- Under RABS a victim will receive emergency medical care and would have to apply for long term medical care under the RABS – Administrator.
- Under the current RAF Act a road accident victim is far less at risk of being held liable for medical expenses as it would be covered by his claim, in terms of RABS only a “reasonable tariff” would be paid to contracted health care providers. This would imply that if a patient ends up receiving treatment from a non-contracted service provider, the victim would be responsible to pay the excess.
- A victim would be expected to finance further medical treatment until such time that a claim has been approved. A cumbersome system of claiming for payment and pre-authorization will most likely result in delays.
- The nature and extent of treatment falls within the sole discretion of the administrator. This will imply that the injured will be denied the freedom to choose the nature and extent of treatment.

### 8.3 Simplify claim procedure

- “No fault” is supposedly the “silver bullet” the RABS Administrator will be depending on for the quick and effortless administration of claims.
- In reality the victim would still have to prove that he/she was in an accident by submitting the statutory required documents, in exactly the same way as a current victim would have to do **(Section 43(2): 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).**
- Further, a victim would still be required to prove a nexus between the accident and injuries. To be able to do this medical reports and the necessary police documentation would have to be obtained and submitted at the victim’s own expense, as the administrator will not pay for any of these costs.

- No costs would be paid towards legal fees and as such a road accident victim would be required to prepare, lodge and champion his or her own claim - RABS affords no financial assistance to formulate and file a claim (**Section 44(1) & (2) of the RABS Act**: These claims will be lodged unrepresented and the victim would be at the complete mercy of the RABS Administrator.
- Having regard to these requirements the high rate of illiteracy (it has been reported that the functional illiteracy in South Africa approaches 60%) and an unemployment levels at 25, 5% it would be very difficult for the regular road accident victim to prepare a claim, let alone afford it.
- RABS is complicated and does nothing to simplify the claim procedure in fact it rather discourages than invites road accident victims from claiming from the administrator.
- In terms of Section 48(1) the administrator is not obliged to even reply to a claim and the victim must accept that, if he has not heard from the administrator within 180 days, his claim had been denied.
- The fact that RABS has no accountability and leaves the victim totally vulnerable and at the mercy of the RABS Administrator.
- Only a road accident victims that can afford to go to court will have access to the judiciary, adding insult to injury by making him or her, a victim twice, first being involved in an accident and secondly being denied benefits by RABS.

#### **8.4 Wider cover to persons in road accidents**

- The fact that “no fault” applies under RABS does not mean wider cover, as the victim would still have to prove a nexus and compliance with the Act, before qualifying for any benefits.
- No fault is not the answer that would magically dispel all the RAF’s current problems.
- It is certainly not a fit and proper substitute for general damages as it affords no compensatory advantage for the road accident victim under RABS.
- We currently have a no fault driven compensation system in COID. Notwithstanding the system being no-fault, there have been problems in the office of the Compensation Commissioner with the payment of workplace related injury and death compensation. There are considerable delays and doctors are owed millions of Rand. Consequently, it is not the system that determines efficacy but the administration. RABS envisages a continuation of the administration of RABS by the current RAF. Reports in the media indicate that the RAF has an unsympathetic attitude and currently easily settles matters not handled by attorneys to the detriment of road accident victims. Its administration is in a shambles to the extent that the courts have on numerous occasions severely criticised and penalised the RAF with cost orders for its lackadaisical approach to road accident claims administration. It takes the RAF an average of 55 months to complete claims. The outcome of its failure to exercise good practice has resulted in an annual legal bill of R4,7 billion. It owes its own service providers in excess of R5 billion.

#### **8.5 The myth of fewer exclusions from benefits**

In reality, RABS introduces far more exclusions and less benefits than the current road accident victim enjoy.

- The claims of children are limited to emergency medical care;
- General damages are abolished;
- Funeral expenses are limited to R 10 000.00;
- Loss of earning capacity “career pathing” is abolished;
- Benefits terminate on death of the beneficiary(leaving the dependants destitute);
- Claims for loss of income support are capped;

- The claims of foreigners are limited to emergency medical care;
- Save for emergency medical care road accident victims older than 60 years have no claim.
- Save for emergency medical care victims who earn more than R 219820.00 per annum, will have no claim against RABS;
- Loss of support benefits are forfeited after 15 years or the dependent reaching the age of 60, whichever comes first;
- Loss of support benefits are terminated when a dependent child turns 18;
- No contribution towards legal or administrative costs.

It will provide a benefit which would not cover the full extent of the loss as the purpose is to encourage an injured victim to return to their workplace as to curb the culture of dependency. This is a wonderful concept but what about the people who were not employed, lost their jobs subsequent to the accident or simply cannot secure employment?

- It is unclear how the administrator will deal with people who are economically inactive at the time of the accident;
- As the RABS Act currently stands it will have devastating consequences for children, students and young adults. If the victim is a final year graduate student and left incapacitated after a motor vehicle accident he would be regarded as an unemployed person and his income benefits would be based upon the annual national income without the prospect of having his academic history and/or prospective income taken into account. By excluding “career pathing” which is manifestly unjust victims in this category will not be able to afford additional top-up insurance and will result in a higher rate of dependency on the state as an alternative income resource.
- The whole system will for its success be dependent on administrative efficiency as the system is entirely administratively driven and heavily relies on actions and responses from a (largely illiterate) claimant. No adequate administrative capacity exists within the RAF which will continue in the guise of RABS-administrator. In fact the RAF administration is bloated and in some instances officials are generously compensated at the expense of the taxpayer. E.g. the RAF CEO’s remuneration exceeds that of the State President by 75% and tops that of the President of the United States.

#### **8.6 Defined benefits which promote affordability**

- A victim will never truly be financially independent as he will be continually scrutinized by the Administrator on an ongoing basis.
- Children under the age of 18 and people over 60 are excluded from income benefits, it is a well-known fact that many people over the age of 60 are still economically active.
- Even though a child under the age of 18 would ordinarily not qualify for this benefit, RABS will not take the child’s particular circumstances (careers of parents etc.) into account when evaluating his/her loss of income.
- Benefits are forfeited the moment a beneficiary dies (the result would be that the family of a beneficiary would be left destitute). The benefits received should fall into the estate of the deceased in order to support the families of beneficiaries should they fall away.
- Annual inflationary adjustments cannot be guaranteed and will be subject to affordability. We are of the opinion that benefits should be adjusted annually in line with inflation. Funeral benefits are limited to R 10 000.00, under the RABS Administrator. However, funeral expenses are costly and in many cases the cost of a casket alone can be in excess of R 10 000.00. Under the current system the RAF pays for necessary funeral expenses, which if proven, may be in excess of R 10 000.00 (this includes the plot, the service and transport costs of the deceased). According to the 2013/2014

annual report by the RAF the average funeral claim is R 11 245.00. The report confirms that funeral expenses increased by 11% per year since 2010.

- Income benefits will be capped and general damages be abolished under RABS to ensure affordability.
  - The perception exists that the current compensation system favors the rich at the expense of the poor. Ostensibly based on this perception, the compensation of higher than average income earners have since 2008 been restricted to the national average income (currently R237 850.00 p.a.). Interestingly, the limit under COIDA is presently R332,479.00 p.a. In fact, the cap engenders systemic discrimination. High income earners only receive a portion of their loss while low income earners are fully compensated. The higher the earnings, the larger the proportionate limiting effect. The cap also affects dependents whose loss of maintenance are now not fully compensated but based on a capped income of their breadwinner. The latter phenomenon, as far as we are concerned, falls foul of s 28 of the Constitution.
  - According to the 2013/2014 RAF annual report the average value of a personal claim was R 194 6786.00 per claim.
  - Only 3.8% of all claims finalized exceeded R500 000,00 and in value is less than 50% of compensation paid (page 71 of the RAF's 2013/2014 annual report). There is nothing sinister in this phenomenon. It is simply a reflection of the fact that high income earners are more likely to own a motor vehicle, travel more and be exposed to motor vehicle accidents. Why should the seriously injured (only they qualify for this level of compensation) including the quadriplegic and paraplegic road accident victims (also cynically referred to by protagonists of RABS as instant millionaires) be made a victim twice?
  - Once by negligent driving and then by being discriminated against and denied the social security they as citizens are equally entitled to.
  - The RAF Commission found that a typical South African road accident victim likely to be a black male approximately 29 years of age who is lightly injured and if employed, earns less than R8 000,00 per month. Thus, a sizeable section of road accident victims have no income whatsoever.
  - Only 3% of road accident victims earned more than R270 000,00 per annum.
  - Pedestrians constitute 40% (second largest group after passengers) of all road accident victims. Pedestrians are indicated as the highest socio economic risk group because of high rates of unemployment (60% unemployed) with an average income of less than R4 000,00 per month.
  - According to the RAF's 2013/2014 financial report the total pay-outs on general damages has decreased over the past three financial years. This may reflect the fact that currently fewer typical road accident victims are being compensated.
  - On average the amount of claims in respect of general damages has decreased by 26% per annum from 2010. It is expected that the RAF Amendment Act will result in further decreases in general damages payouts.

## 8.7 Rehabilitation is the key or is it?

- Rehabilitation, which includes vocational rehabilitation, is apparently a primary objective of RABS. This presupposes that all victims are employed or employable. It also ignores that approximately the vast majority of road accident victims are not occupationally affected as a result of their injuries. How this sits with an unemployment figure approaching 26% is not explained. Furthermore, it is estimated that only 16% of all road accident victims will actually qualify for rehabilitation. This focus on rehabilitation in our view is window-dressing hiding the fact that under RABS fewer victims will receive severely limited compensation.
- The first step in rehabilitation is appropriate and adequate medical treatment. RABS is reliant on a non-existent NHS. Public health facilities are incapable of providing the health care required to ensure that injuries and their consequences are not exacerbated by inadequate health care subsequent to an accident.
- Our question is, how do they plan to achieve this goal when there are no or little supportive structures in place?
- Secondly, is the intention of RABS to attempt to restore the claimant to his/her pre-accident condition by means of rehabilitation and/or vocational rehabilitation in order to prevent paying benefits in the end?
  - With this last question, it should be kept in mind that only 16% of claims constitute serious injuries, requiring some kind of rehabilitation.
  - From *this* percentage, only a small part would be suitable candidates for vocational rehabilitation. Seeing that such great emphasis is put on rehabilitation in the Bill, it appears that there might be a perception that rehabilitation will restore function, when in fact it facilitates the process of recovery from injury, yet will in only a few cases restore full function.
  - Although rehabilitation is necessary for all serious injuries to some extent, it is not a miracle maker that will erase the injury and automatically reinstate full function. They will need training from private facilities or colleges – does RABS, in such a scenario, intend to pay for training where before the accident they were unqualified (thus not restoring function, but dramatically enhancing opportunities for some individuals which might be considered “lucky” by some)?
  - It is thus clear that our current health care system is lacking from the very foundation. It would be an enormous task to develop a holistic health care system which is according to RABS already in place and such a project needs to be rolled out at a national level.
- It is our belief that people with disabilities in general and road accident in particular, should be provided the full benefit of specialized medical care, rehabilitation and when appropriate vocational rehabilitation and we offer our full support in developing such a system but are mindful of the fact that it will take years to develop (recognizing the cost and complexity of the framework of establishing National Health Insurance, Governments green paper proposes a 14 year transition period).
- Dr. Eugene Watson, CEO of the RAF, told the Business Day Live on 2 July 2014 that general damages will not be awarded under RABS to ensure that sufficient resources are available to prioritize rehabilitation. With only 16% of all road accident victims that could benefit from rehabilitation it is doubtful that rehabilitation is an adequate substitute for abolishing general damages – what about the other 84%?

**See the attached actuarial comparison published recently comparing benefits under the current RAF system & the proposed RABS**

## **9. The Constitutional issues – RABS will not withstand a Constitutional Court challenge!**

- 9.1.** The issue regarding the **discrimination between different classes of road accident victims** – Section 9(1) of the Constitution. This approach is in direct conflict with section 9(1) of the Constitution. The fact that a road accident victim is denied non-pecuniary loss as opposed to a victim of occupational accident, medical malpractice, rail accident or assault who will still qualify for non-pecuniary loss.
- 9.2.** The fact that **General Damages is abolished under RABS**. RABS abolishes this right to achieve a financial saving. Financial constraints provides no ground for the curtailment of common law rights. The legislature must provide an adequate and compensatory advantage should they wish to abolish common law rights. RABS affords no compensating advantage whatsoever and to the contrary severely restricts the road accident victim's rights.
- 9.3.** The fact that a road accident victims **right to claim the excess of his claim from the wrongful party**. The RABS bill abolishes the road accident victim's right to claim compensation not paid by RABS while for example Section 36(1)(a) of COIDA, retains such rights.
- 9.4.** There is a **constitutional duty on RABS to ensure that claims are processed timeously and effectively and to ensure that benefits are allocated as soon as possible**.
- 9.5.** The fact that a road accident victim is **prevented and/or limited in his right to access the Courts – Section 34 of the Constitution**. Under RABS the road accident victim has no legal recourse or sanction to compel the Administrator (RABS) to attend to his or her claim.
- 9.6.** In terms of RABS no claim may be submitted within 60 (sixty) days of the cause of action. The administrator then has 180 days (six months) to decide whether or not benefits may be allocated – in terms of the Act the administrator need not even reply to the claim the road accident victim must accept that his claim was denied if not replied to within the prescribed period.
- 9.7.** The **right to bodily integrity**, fact that a victim will not be able to choose where and how he/she would like to receive medical treatment – **Section 12(2) of the Constitution**.
- 9.8.** The fact that a **child's right to support is affected** as no support is payable to a child living abroad regardless of the fact that the deceased had a legal obligation to pay support – **Section 28 of the Constitution**.
- 9.9.** The **Freedom Charter**, which was adopted by the Congress of the People, Kliptown on 26 June 1955. On page 3 of this charter, it is stated that "all shall be equal before the law. No-one shall be imprisoned, deported or restricted without a fair trial. No-one shall be condemned by the order of any Government official." – RABS will in no way be able to satisfy this standard.

## 10. There are many unanswered questions: What is DOT/RAF not telling NEDLAC?

**However, we are only going to raise one - How exactly do they costs RABS without a medical tariff being decided upon?**

RABS is touted as a less expensive alternative to the current system. However, no official costing of the RABS system has been published! Thus it cannot be questioned, scrutinized or even just checked.

- The RAF commission report and our preliminary calculations seem to indicate that, while emphasis is heavily being placed on universal entitlement and promised benefits, the fiscal implications of a no fault system of compensation is being grossly underestimated and underplayed.
- In the absence of a funding model and actual and actuarial calculations, no one, including NEDLAC, can scrutinise, let alone interrogate, the likely cost of RABS.
- This is a vital to be well informed on the cost implications to the road users and workers/tax payers of South Africa.
- Already in anticipation of RABS the government has increased the fuel levy in 2015 by an unprecedented 50c/l.
- It is realistic to accept that in view of the fact that all injured will now qualify for some form of compensation, the burden on the South African economy, in the absence of a drastic reduction of the casualty rate, is set to increase rather than decrease?

Alternative forms of revenue will have to be found to fund compensation as we think that the levy has now reached (if not over reached) its realistic economic ceiling. In addition

- RABS affords benefits out of dedicated tax funding to an unemployed section of the population who should realistically be compensated out of the general fiscus thereby partially shifting the burden of social security of the unemployed to the already beleaguered motorist using a very expensive formula and affording benefits which exceed current social security funding of the unemployed.
- RABS does not dovetail with current social security legislation and it is unclear how benefits and double-dipping is going to be regulated.
- RABS seeks to de-privatise road accident compensation by excising professionals with concomitant loss of income and income tax. This will no doubt have inestimable knock-on effect on employment, the economy and the fiscus in general. It is estimated that approximately R11bn is involved.
- Finally because of the way that RABS is structured, new contractual relationships is called for opening up the possibility of tenderpreneurship and personal enrichment at the expense of the motorist.

In view of these considerations it would be extremely unwise to entertain the implementation of RABS without first doing a Regulatory Impact Assessment (RIA).

## 11. What is the solution?

APRAV formed a Solutions Task Team in July 2014, under the guidance of Prof. Hennie Klopper. The key focus areas are, to:

- a) Facilitate input and alignment on the current (main) problem areas hampering the system.
- b) Ensure some level of consensus on the most effective solutions/alternatives (changes to the current system).
- c) Gain understanding of the possible quick win changes versus the longer term solutions.
- d) Secure and ensure public involvement.
- e) Engage all key government decision makers on a way forward to 'fix' the current system.
- f) Set-up the next steps to drive implementing changes for improvement, together with government, the public and the medico-legal industry.

The objectives are:

- a) Better application of the ± R30b annual RAF budget.
- b) Cut down the average of 55 months it takes to settle a RAF claim.
- c) Reduce process costs in determining fault and quantum.
- d) Provide for system-driven and 'automatic' claims settling for the ± 80% less severe injuries for which claims are lodged.
- e) Streamline the process in general.
- f) Significantly reduce the volume of claims clogging up the courts.
- g) Ensure the public's bodily integrity (as per the constitution) and social security (also as per the RAF Act).
- h) Ensure that the public and claimant's rights are protected and not diluted, with regards to injuries sustained in road incidents.

APRAV formed 5 sub-committees under the guidance of its Solutions Task Team Head: Prof. Hennie Klopper. These are Sub-Committees on Medical, Financial, Inter-Governmental Liaison, and Constitutional & Claimants/Public. (See the attached annexure for the scope of these solution's research teams.)

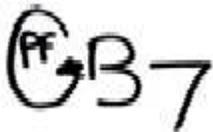
## 12. In conclusion

For the record, currently thousands of direct claims are left unattended, are under settled or left to prescribe by the RAF.

- Is this a taste of things to come under RABS?
- Criminal charges have been laid against the CEO of the RAF and the Board for acting outside of the Act and misrepresenting their mandate.
- The RAF does not have the resources nor do they have a legal mandate to facilitate or to administrate these claims and are a clear indication of what could be expected under the Benefit Scheme. These charges have been escalated to the Hawks under Case number: 491/04/2015 and 715/04/2015.

**For the sake of being thoroughly informed of all the key issues involved in the RABS Bill but even more so, for the sake of the public and all road users in South Africa we hope that you would consider the contents of this letter before making a choice on RABS.**

Yours sincerely



Pieter FC de Bruyn  
Chairman

APRAV

