

# Road Accident Benefit Scheme Bill: briefing and discussion

## Portfolio Committee on Transport

18 February 2020 - Chairperson: Mr M Zwane (ANC)

### Meeting summary – RAF/RABS

On the RABS Bill, most Members objected to adopting a no-fault system. One reminded the meeting of the prevalence of the “no-fault system” which had been implemented 20 years ago in many developed countries such as the United States and Australia, and asked Members and officials to be mindful of the fact that these very countries had now gone back to using the “fault system.” They questioned the affordability of the new bill, enquired about the criteria for benefits, and the public participation process. Some Members were concerned that the new Bill would make the Road Accident Fund become another failed state-owned entity, like South African Airways and Eskom. The reason why lawyers were objecting to the bill was highlighted and debated.

### Meeting report – detailed RAF/RABS discussions

#### **A: The Department of Transport’s delegation team presented: RABS Bill**

Mr Chris Hlabisa, Deputy Director-General: Road Transport, Department of Transport (DoT) introduced his Department’s delegation team, amongst whom was Adv Adam Masombuka, Acting Chief Operations Officer, who would be presenting Members with the Road Accident Benefit Scheme Bill.

Adv Masombuka provided the background to the amendment bill. The existing compensation system for loss or damage resulting from bodily injury or death caused by the wrongful driving of motor vehicles was the result of a long historical development spanning more than 70 years, commencing with the introduction of compulsory motor vehicle accident insurance in 1942, and culminating in the present compensation system established by the Road Accident Fund Act, 1996 (Act No. 56 of 1996), and managed by the Road Accident Fund (RAF). Over the years, the compensation system had been subjected to numerous commissions of inquiry, but despite the many amendments to the respective governing Acts to implement the recommendations of the various commissions, the flaws inherent in a fault-based system of compensation persisted, and the financial state of the compensation system had progressively deteriorated.

The RAF followed four criteria -- reasonable, equitable, affordable and sustainable.

#### *Reasonable*

- Proposed system of compensation should acknowledge the symbiotic relationship of road accident compensation with the broader system of social security and its objectives;
- The system should be reflective of the needs and resources of South Africa.

#### *Equitable*

- There must be proportionality between the funding of the system and demands made thereon.
- Impartial and unbiased treatment of road accidents victims and their families.
- There should be a balance of benefits across all of South African society who were in need.

#### *Affordable*

- System of compensation must be within the financial means of road users and South African society, including the State.

### *Sustainable*

- It must be an efficient, accessible and easy administration process;
- It should facilitate health care and rehabilitation, and alleviate financial hardship;
- Reinforce the broader system of social security;
- Must be a long lasting in its availability to road accident victims;

Cabinet had subsequently adopted a policy for the Road Accident Benefit Scheme, which was published for general information in 2011. The policy was aimed at providing a scheme of structured and defined benefits to those seriously affected by road accidents in accordance with social insurance principles, and not liability insurance principles as embodied in the existing compensation system. The Road Accident Benefit Scheme Bill (RABS Bill) gave effect to the policy.

The objective of the Bill was to provide a social security scheme for the victims of road accidents; to establish the Road Accident Benefit Scheme Administrator, to administer and implement the scheme; to provide a set of defined benefits on a no-fault basis to persons for bodily injury or death caused by, or arising from, road accidents; to exclude liability of certain persons otherwise liable for damages in terms of the common law; and to provide for matters connected therewith.

Consultations on the bill were made by the Department. The Bill was published for public comment on 8 February 2013, and a national RABS workshop was held on 19 March 2013. Following requests by the public, the initial 60-day comment period was extended by a further 60 days. Certain of the commentators said that the Bill lacked detail. A decision was consequently taken to republish a revised Bill with draft regulations, rules and forms, to enable the public to get a better understanding of what RABS would entail.

The revised Bill, and a draft set of regulations, rules and forms, was published on 9 May 2014. A national RABS workshop was held on 19 June 2014. Focused stakeholder consultations were held with industry groupings from commuter interests, the insurance industry, the funeral industry, disability groups, the medical industry and the legal fraternity. Following requests by the public, the initial 60-day comment period was extended by a further 90 days. National RABS workshops were held in Zwelitsha Township (Eastern Cape), Empangeni, Pietermaritzburg, Durban, Mahikeng, Rustenburg, Potchefstroom; Giyani; Polokwane; Upington; Kimberley; Nelspruit; Emalahleni; Cape Town; Vredenburg (Western Cape), George, King William's Town, Port Elizabeth, Kroonstad, Manguang, Springs and Soweto.

The Bill was tabled for consideration by the National Economic Development and Labour Council (NEDLAC), which issued its final report on 28 January 2016. The Department of Transport also consulted the Departments of Home Affairs, Health, Social Development and Labour, and the National Treasury. Public hearings on the Bill were held in May and June 2018 at Parliament with stakeholders who, in addition to their written submissions, further requested to make oral representations of their submissions on the Bill. The Portfolio Committee on Transport further conducted public hearings in all nine provinces during the period from 24 July 2018 to 14 August 2018, in order to help it shape the outcome of the Bill.

The Department also provided Members with slides outlining the objective and summary of each chapter of the Bill.

## **B: Member's comments**

Mr C Hunsinger (DA) acknowledged the urgent need for the issue of the Road Accident Fund to receive attention. He observed that amongst the more than 40 recommendations made by the Satchwell Commission Report in 2002, only a few had been incorporated into the Bill currently being presented. He reminded the meeting of the prevalence of the "no-fault system" which had been implemented 20 years ago in many developed countries such as the United States and Australia, and asked Members and officials to be mindful of the fact that these very countries had now gone back to using the "fault system." Members needed to consider if the recommendations made in the Satchwell Commission Report were still relevant in 2020, since there had been changes to roads, drivers' behaviours, and a large and increasing number of road accidents, etc.

Mr Hunsinger queried the four criteria -- equitable, affordable, sustainable and reasonable -- included in the presentation, commenting that there were only a few of the benefits in the proposed bill, compared to the current Road Accident Fund that would meet those four criteria. He believed that this proposed bill would benefit only the state, as it would be putting claimants in a worse position. The benefits were fewer and narrower. The cabinet had adopted a policy on RAF, but although he recognised the need to "jack up" the changes to Fund, he did not think that including the "no fault system" and the removal of common law was a viable option.

South Africa could not afford a dual system which would ultimately impact on motorists. Once people realised that they could benefit more under the old Road Accident Fund, no one would opt for the new act.

Mr Hunsinger said that the bill had failed the public participation process. There had been no mention about the public participation during which 58% had said "No" to the new act, 19% had supported amending the existing legislation, and only 24% had said "Yes" to the proposed bill. He commented that this proposed bill makes no sense in terms of its financial affordability implications. The Department had undertaken no consultation with National Treasury. He therefore asked the Committee to avoid a dual system and the financial issues around benefits, and to support what had transpired in the public participation process.

Mr L McDonald (ANC) acknowledged the very bad situation of the Road Accident Fund, but commented that the RAF was the only state-owned entity (SOE) that was still working. His view was that since there was already a bill on the RAF, there was no need to run a parallel Act. Furthermore, the country could not afford to run another road accident fund, since it was already struggling to manage the current RAF.

Mr K Sithole (IFP) said that among his own constituency, there was not even one person who supported the proposed bill. They had all indicated their wish to amend the existing bill. He said that even departmental officials were not even aware of what was going on in the bill.

Mr M Chabangu (EFF) asked why the general public had not been consulted during the public participation process, since they were the victims who were mostly affected. He enquired about the criteria for the appointment of the board and asked if they would be the same as those that applied to other SOEs. Would there be transparency in the appointment process? He enquired about the lapse of the bill, and wanted to know what had caused this.

Mr P Mey (FF Plus) said that the RAF owed more than R471 billion to claimants, and taxpayers could not be expected to subsidise that amount. He suggested doing away with the RAF and replacing it with new legislation. Motor vehicle owners must be asked to take out their own insurance.

Mr T Mabhena (DA) pointed out some flaws in the proposed bill. Sections 34(3) and 38(3) both dealt with benefits which stated that the administrator should not take into account any income which was earned illegally by the breadwinner. However, in terms of the current practice in common law, one cannot be compensated based on income earned illegally. He therefore enquired about the inconsistency between

this bill and the common law. Regarding the dual system, even if the bill was adopted, South Africa would still be compensating people for the next three to four decades for the current RAF. He suggested the bill to be sent for a second reading, and Members be briefed on the bill again. Currently there were a lot of flaws in the bill.

Ms N Nolutshungu (EFF) expressed her support for amending the current Road Accident Fund bill. She raised a point on Treasury's concern, that this bill had failed public participation. She asked the Department why they had ignored public participants. Her proposal was to amend the bill.

### **C: Department's response**

Mr Hlabisa agreed that the bill should be reviewed. However, in the absence of the Acting Chief Executive Officer, he was not in a position to respond to Members' questions.

Adv Masombuka acknowledged all the valid points made by Members. However, he made a few corrections to their inputs. Firstly, since the bill had been consulted in the Fifth Parliament and the Department was bringing it to the Sixth Parliament to sign the bill, the bill had been properly consulted. The Department had consulted with National Treasury, so he asked Members to be mindful of what had transpired in the Fifth Parliament. Secondly, he pointed out that most people who were vocally against the proposed bill were lawyers. The reason of their opposition was because if the system was switched over to the "no-fault system," there would be no role for lawyers to play and thus cut off their means of survival. That was why lawyers were up in arms, which the Department was aware of. He would advise this Parliament not to consider what the previous Parliament had said, but to deliberate on the issue themselves.

Mr Hunsinger said he recognised that the situation of lawyers taking advantage of loopholes to maximise their business profit should be fixed. However, it need not be fixed by the removal of common law, nor by changing the Road Accident Fund. It could be changed by amendments to the existing bill. He reminded the officials of the good work been done by lawyers around claims against the RAF. He had some examples which involved victims being underpaid for claims, and receiving the appropriate amounts only after legal intervention. He suggested the Department should review its regulations on payment approvals, as he understood that there were payments made without approvals. On the consultation with Treasury, he said that he could attest to it that Treasury had not been consulted and had been disappointed about their involvement in this bill. He therefore urged the Department to consider amending the current bill.

The Chairperson recognised the importance and urgency of finalising the bill, but reminded Members and officials that they had to bear people's interest at heart. This discussion would therefore not be finalised at today's meeting and would be discussed again next week.

### **D: Final comments by committee members**

Mr Hunsinger said Members had been given documents on the Amendment Bill, but found it very hard to follow the development of those amendments. He showed the Committee a copy of the format and suggested that Members be given a similar copy to make the amendments appear clearer.

The Department responded that Bill 7B 2016 should be the version that Members should be comparing the amendments against.

The Chairperson commented that the Committee wanted to help the Department to pass the bill, but Department also had to make an effort to help Members see the amendments more clearly.

Mr Hunsinger expressed the view that since the National Land Transport Act (NLTA) was to be revived, the recommendation was that there was little chance of changing any of its content, given the timing.

The amendment bill needed to be passed and processed, because the 2010 version was a rushed version. He suggested immediate changes should be considered and included in the Committee report in order to manage the different participants and stakeholders involved in public transport.

He had received a submission from SALGA which had also been shared with the DoT and the Committee. SALGA's concern was the bill's constitutionality in terms of the current three spheres of government. The concern arose in the local government sphere, as Section 11 seemed to suggest that the National Minister had the overriding power to meddle in local governments affairs. He thus suggested the Department should engage with SALGA.

Ms N Mphikasho, Parliamentary Legal Adviser, acknowledged the submission from SALGA. She explained that although SALGA's concern was for the Bill's possible unconstitutionality, which could undermine the power local municipalities, there was a section that provided for provincial governments to step into contracts in cases when local governments did not have the capacity to provide services. Parliament had accepted SALGA's submission and referred the Bill to the National Council of Provinces (NCOP). SALGA had then made another submission, and Parliament's legal unit had subsequently engaged with SALGA and provided an explanation. The bill was now constitutional, and the opinion could be made available to the Committee.

Mr Hunsinger suggested acknowledging SALGA's submission and including SALGA's input into the Committee report.

The Chairperson expressed his understanding of Mr Hunsinger's concern, but suggested that Members consider amending the bill after the current amendment bill was adopted

Mr Hunsinger said further amendments needed to be included in the Committee report, and that the current bill was inadequate to address the issues surrounding public transport.

Ms M Ramadwa (ANC) asked if Members could be provided with the reports from SALGA and submissions from lawyers so that they could be informed on the issue.

The Chairperson agreed and said the Committee could adopt this bill only for now, but it needed to make a note that this bill required amendment.

A Member asked if this practice was allowed -- the committee passing an amendment bill, but then immediately after that beginning another round of amendment.

Mr Hunsinger commented that there was always an option to start the bill all over from scratch.

The Chairperson commented that the bill would be finalised in the following week. He added that the agenda to adopt Committee inputs would not happen in the absence of the Director-General.

The meeting was adjourned.