



## APRAV MOMENT Newsflash 24 March 2020

APRAV fully supports the measures President Ramaphosa announced on Monday in our nation's efforts to contain the coronavirus. We believe these actions are wholly appropriate in the circumstances. We will continue to work on our solutions and communication initiatives and will track our mailbox and comments on social media as always. We will appreciate input and feedback during this time. It is an ideal opportunity to reflect and plan for a change in how we do things. There will be a 'new normal' once this crisis subsides...APRAV is gearing up for this! We will continue to 'meet weekly...but now on ZOOM!

The latest development and news on:

-  RABS the latest from Parliament
-  RAF Rescue work sessions
-  Major recent developments



The highly anticipated 'final' discussion in the PCoT on the way forward with the RABS Bill was planned to take place in the Portfolio Committee on Transport (PCoT) meeting scheduled for Tuesday 17 March 2020

**What we expected to happen...that the PCoT put the RABS Bill on 'hold' and instruct the Department of Transport to focus on 'Rescuing RAF'. We did not anticipate a major 'canning' of RABS...this will happen in a subtle manner.**

PARLIAMENT OF THE  
REPUBLIC OF SOUTH AFRICA

MEETINGS OF  
COMMITTEES

TUESDAY, 17 MARCH 2020

**Portfolio Committee on Transport**, (National Assembly), [Deliberations on the Civil Aviation Amendment Bill [B44-2018]; Committee finalization regarding the way forward for the processing of the Road Accident Benefit Scheme (RABS) Bill [B17B-2017]; Adoption of Committee programme for the second parliamentary term; Consideration and adoption of minutes of proceedings], Committee Room M314, Third Floor, Marks Building, 10:00-13:00

**What actually happened** on Tuesday 17 March 2020, in the PCoT meeting: After the last couple of PCoT meetings, where RABS was, surprisingly, on the agenda on very short notice very time (the afternoon before a PoCT meeting!), no Official(s) arrived for the meeting or attended an apology even. Not from the Department of Transport (DoT) or the RAF! Thus, the PoCT ended up not having any discussion on the matter. This endeared no PoCT Member to the RABS cause of the Officials involved.

A brief recap of what happened to the RABS Bill during 2019:

- Lapsed when the 5<sup>th</sup> Parliament ended
- Revived in October 2019 for the PCoT to make further decisions
- The new committee - largely unfamiliar with the unpopular (and unconstitutional) provisions - had some lively debate during meetings and challenged various aspects of the DoT's attempt to convince the committee to approve the bill in its current form.
- It was clear that RABS has lost a lot of favour amongst the decision makers in Parliament – even the Department of Transport's Deputy-Director-General presented on RABS in a manner that lacked focus, enthusiasm and seemed he was 'just going through the motion'.

Find the **meeting minutes** on [www.aprav.co.za](http://www.aprav.co.za)

**A brief recap of what happened to the RABS Bill in PoCT meetings earlier in 2020:**

- At the PoCT meeting on 18 February 2020, most Members objected to adopting a no-fault system. There was consensus about the urgent need for the Road Accident Fund to receive attention. A lot of interest and support for reviewing and amending the current RAF system.
- At the PoCT meeting on 26 February 2020, the DOT arrived with an even 'stronger' delegation to lead the discussion on RABS – including the Deputy Minister of Transport (previous Chairperson of the Portfolio Committee). The DoT's case for RABS was not well presented and was cut short by the Chairperson, Mr Zwane (DoT presented the same 'old' RABS material and views and offered no new insights, costings, research, facts, transition plan, etc...'same old same old'). The Chairperson then instructed the Committee Members to spend the next two weeks to review all options and to come back with a united proposal on the way forward...at the meeting on the 17<sup>th</sup> of March 2020.

**So, what next?**

- Parliament will be in recess until 13 April, but it considering Covid-19, it might be much longer.

- South Africa, for now, is on a 30-day 'social isolation'. BUT in the USA they expect the infections to "peak in 45 days" and in the UK the plan for an intensive "12 week" lockdown period...and SA is about 3-4 weeks behind the USA and UK 'curve' ...it seems more logical that in SA this period will be anything between 08 – 16 weeks.
- RABS is there for 'going nowhere slowly', 6 years later. This despite Transport Minister Fikile Mbalula's desire to finalise and implement this proposed Bill 'with speed' to 'transform' the system of compensating road accident victims to 'no-fault-based' and with defined benefits.
- Our main focus remains, to assist to identify and plan for sensible and sustainable solutions to 'Rescue RAF', in conjunction with all Members of the PCoT, RAF leadership and key stakeholders. This all will have to wait until we all have worked together to 'defeat' the COVID-19 virus.

## Legislation: RABS Bill process stalls again

**Publish date:** 18 March 2020

**Issue Number:** 4899

**Diary:** Legalbrief Today

Whatever remains of the 2017 Road Accident Benefit Scheme Bill's passage through Parliament and the role of the National Assembly's Transport Committee in taking the process forward could not be discussed at yesterday's committee meeting in the absence of Department of Transport officials. This is noting that, although adopted by the previous Parliament's National Assembly Committee on Transport, the Bill's 'B' [version](#) was not considered by the House before it rose for last year's elections. It therefore lapsed but was revived in October and is now before a new committee largely unfamiliar with the nuances underpinning some of its key provisions, reports Pam Saxby for [Legalbrief Policy Watch](#).

Against that backdrop – although not explicitly stated – input from suitably qualified departmental officials is apparently deemed pivotal to determining how best to proceed. This despite the committee having been briefed on the Bill last month. In addition, committee chair Mosebenzi Zwane wants all political parties represented on the committee to participate in the process of arriving at the necessary decision. Several were absent yesterday. This notwithstanding, according to a reliable source no substantive changes are likely to be made to the Bill – especially given Transport Minister Fikile Mbalula's [determination](#) to 'move ahead with speed' in finalising and implementing the proposed new piece of legislation. As has been widely reported, its purpose is to 'transform' the approach to compensating road accident victims from 'fault-based' to 'no-fault-based' with a set of defined benefits.

In view of measures now in place to control the spread of Covid-19, Parliament is likely to be in recess for the foreseeable future.



As previously announced, APRAV has been facilitating RAF Rescue work sessions planned for all the provinces. We value and appreciate the enthusiastic participation from our stakeholders that attended the following sessions:

Region	Date
<b>Pretoria</b>	<b>5 March</b>
<b>Johannesburg</b>	<b>11 March</b>
<b>Bloemfontein</b>	<b>12 March</b>






There was great representation from the whole spectrum of interested parties at all three the sessions. Well over a 100 attorneys, counsel, medical experts and other stakeholder joined to participate in discussions on finding solutions.

A special thank you to the following contributors that made the events possible:

- Pretoria Attorneys Association
- Johannesburg Attorneys Association & Webber Wentzel, Sandton
- Honey Attorneys, Bloemfontein

Unfortunately, due to the Corona Virus Pandemic, we've now had to cancel all further sessions, but we want to share some of the presentations and discussions that took place. Further Workshops will be rescheduled once we are able to.

**A reminder of why we embarked on this journey:**

- To create an opportunity for stakeholders to discuss the most appropriate solutions for the RAF.
- The ultimate outcome is a practical RAF 'Rescue plan' that will lay the foundation for a more sustainable system.
- A further outcome is to ensure coordination and alignment amongst stakeholders.
- Lastly, to give an update on the latest regarding the RABS Bill and RAF developments.

## Feedback from information sessions held in Pta, Jhb & Bfn

The programme covered:

1. Setting the scene
2. The RABS Bill – the latest from Parliament
3. RAF – behind the scenes feedback
4. Discussion on possible solutions – the RAF Rescue plan framework
5. The way forward and conclusion



### Setting the scene

APRAV has been fighting the RABS Bill for the past six years.

- While we are still keeping an eye on the RABS Bill, we are now primarily focussed on finding and proposing solutions on 'fixing the RAF'.
- The medico-legal field is a complex environment and in need of transformation.
- The Constitutional rights of 'Bodily Integrity' and a 'Safe Environment' (also on our roads) can never be compromised by any state agency, law or system (RAF).

We again thank everyone that regularly contribute financially or invest their time and expertise in APRAV's cause. This enabled APRAV to accomplish a major achievement that has never been done since 1994: All opposition parties aligning against the RABS by all by all walking out of Parliament, three times in one week; resulting in the RABS Bill lapsing. **To RABS now will be an uphill battle and it will not happen easily.**



### The RABS Bill – the latest from Parliament

Mr Ngoako Mohlaloga (Deputy Chairperson of APRAV) shared detail about the recent (2020) activities around the RABS Bill in parliament. APRAV attended two Portfolio Committee on Transport (PCoT) meetings recently. He explained that APRAV will continue to work in the 'corridors of Parliament', whether to resist the RABS Bill (in its current form) or advocating solutions to the current RAF system. He explained that there is consensus in the PCoT that the RABS Bill is no longer a viable solution to the RAF's challenges.

He explained that dialogue between all stakeholders is the only solution going forward and that even after all the legal applications, stakeholders will still have to discuss solutions going forward. He concluded that any changes to the RAF 'system' considered by the RAF leadership (Acting CEO), should be explained in detail and should happen in conjunction with a well thought through overall "RAF Rescue Plan" and that all stakeholders needs to be properly consulted and genuinely involved.

## RAF – behind the scenes

The new RAF Board recently asked Prof Hennie Klopper (Head of APRAV's Solutions' Task Team) to advise them on key RAF/RABS matters. He explained that this has never happened (and that he has been seen by previous RAF Boards as 'enemy number one, due to his critical publications about the RAF's performance'). He commented that this is a very positive development, as there is now at least a chance to influence the RAF's Board. He was able to share valuable information (factual and verifiable) at the February strategic session of the RAF board. He highlighted to the Board that the legislation never intended the system to 'dysfunction the way it currently does. One body cannot be Judge, Jury and Executioner.

Prof Klopper indicated that he was also able to provide the Acting CEO a 'wish list' of decisions and actions that will help the RAF to get out of the dire situation it currently finds itself in. Prof Klopper explained that, unfortunately, the RAF in 2002 decided to make litigation a tool for cashflow management and this added to the situation we currently find ourselves in. Getting to the point of settlement has been delayed as much as possible to prevent payments. The RAF currently owes more than 10 billion Rand for legal fees.

He added that prior to 2002, the culture in the RAF was to solve claims within six months. It was standard procedure to make an appointment with a claims-handler, have a meeting and progress from there. Claims handlers all had a legal background and landed in trouble if they were summonsed. Of the current 2 700 employees of the RAF, only 1 000 are graduates. He added that unless the leadership and management of the RAF has an intent, to settle claims, the current situation will not improve. Prof Klopper explained that the internal capacity of Claims Handlers will have to be increased, together with 'equipping' them with the necessary competencies.

He concluded that the intent of the RAF Act was and remains to get to a settlement.

## Possible APRAV solutions

Following a group discussion, the following comments in summary:

- The RAF was designed when there were only 1 million cars on our roads. There are now about 12 million.
- The current system was never designed to handle the current volume of road crash victims.
- It is therefore understandable that the need for a better system was recognised.
- However, the disastrous RABS Bill proposed has taught us what the solution should not look like.
- APRAV believes the current RAF system can be vastly improved to the point of a positive cash flow and ultimately even a saving on the fuel Levy.

There are many aspects to carefully consider. APRAV has a 'going in position' on discussing RAF solutions.

# RAF RESCUE – 12-POINT PLAN



## POSSIBLE FOCUS AREAS - SHORT-TERM



### Cost reduction

1. Create a single Expert Panel
2. Regulate legal and expert fees (cap)
3. Better manager (control) supplier claims
4. RAF to reduce legal fees & interest payment



### RAF functioning

5. Revise RAF SLA
6. Claims handler capacity & competencies
7. Introduce a revised settlement procedure
8. Re-introduce settlement mandates



### Courts & settlement agreements

9. Refine lodging process
10. Better manage prescription process
11. 17(3)(b) early settlement applied effectively
12. Amend current RAF regulations

- It was explained what the intention behind the 12-point plan is the key focus on
  - RAF budget saving (MTEF);
  - Impact on the Fuel Levy; and
  - Practical and implementable activities needed.
- The 'RAF Rescue Workshops' is the commencement of dialogue and coordination on a sensible and sustainable RAF Rescue process, involving all key stakeholders.
- Pieter de Bruyn from APRAV, explained that work sessions will be facilitated in all Provinces and that all key National organisations will be approached to get involved, i.e. the Orthopaedic Association of South Africa, the South African Medico Legal Association, SATACO and many others. APRAV will send formal letters to all these organisations.

## Possible mediation to support early settlement

Dr Herman Edeling, Neurosurgeon and SAMLA Director, shared information about **mediation** at the work session held in Johannesburg. He reported that in late-2019, SAMLA wrote to the Acting CEO of the RAF and made the following recommendations:

1. Get the behaviour of the RAF staff and panel attorneys in line with the letter and spirit of the RAF Act – to investigate claims properly and to conclude settlements swiftly.
2. Train Claims Handlers.

Dr Edeling explained that if a settlement between the RAF and a plaintiff attorney cannot be reached, such matters could be referred for mediation. This is a specialist function that requires professional and ethical training that is not traditionally offered at any tertiary training institution.

Dr Edeling recommends an official register; proper mediation training; and a code of conduct for experts – this will ensure adherence to approved national standards. The sanction for non-adherence will be removal from the register. He added that the concept of a peer review system is also being

considered. He concluded to explain that SAMLA has offered the Acting CEO of the RAF a pilot project to test the efficiency mediation, as a possible mechanism to speed up settlements. A pilot study of one hundred 'claims' is planned for the next few weeks.

## The way forward

The session all agreed that:

- The RAF is in 'ICU and on life support'.
- Unless all stakeholders align, 'this patient will die'.
- It cannot be business-as-usual.
- Some basics need urgent fixing.
- The political will to drive RABS has largely fizzled out.
- Changes to the RAF Act and Regulations seems the only workable solution.

The PCoT will have to insist that any changes to the RAF Act and Regulations, be referred for consultation and thorough consideration of its implications. The PCoT has the ultimate constitutional duty of oversight and neither the Acting CEO nor the DoT can and should be allowed to make decisions, with such massive implications for the public, in isolation. APRAV cautioned that 'we have to guard that changes to the RAF system is not simply RABS in disguise'.

## Conclusion

APRAV warned against a false sense of security on the RABS Bill. It was explained that the ailing RAF systems poses an even bigger risk – if not 'fixed very quickly!' There will have to be some compromises amongst all the stakeholders - there will have to be short term 'losses' for long term sustainability.

**APRAV's view on all these matters is to ask the question – 'What is the impact on the right of road crash victims?' This remains our primary focus.**

**When we have more clarity on the impact and duration of the Covid-19 crisis, we will announce dates for RAF Solutions workshops. Following the general Provincial Workshops (Pretoria, Johannesburg and Bloemfontein), specific task teams will be established to focus on a specific proposed solution. It will involve all key stakeholders for that specific proposal.**

Links to informative articles written by Prof Klopper

- <https://www.aprav.co.za/2019/03/04/is-the-road-accident-funds-litigation-in-urgent-need-of-review/>
  - <https://www.aprav.co.za/wp-content/uploads/2019/03/Prof-Klopper-article-RABS-Good-Bad-Ugly-cover-and-content-in-one-pdf.pdf>
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## Major recent developments

### **COURT ACTION FOLLOWING DECISION BY THE RAF – NOT TO CONTINUE WITH THE SERVICES OF PANEL ATTORNEYS**

The RAF notified all RAF Panel Attorneys, on 18 and 20 February 2020, to “hand over” all RAF related files in their possession. This decision was a total shock, although first raised in November 2019 already, to all in the field of 3rd party law and especially the hundred-and-one legal firms involved with this work. Further, there must be a few thousand RAF related cases before the courts in South Africa that may be affected by this decision. A few thousand legal professionals, an army of administrative and other support staff, earn their daily living in this field of work. Then it is easy to understand that this decision will not merely be accepted by those affected.

Despite the initial shock and accompanying disbelief that the RAF will indeed forge ahead to implement this decision, that is in fact what has transpired the past weeks. The RAF has actively pursued the implementation of this decision and it became clear that they are fixed on eliminating a panel of attorneys as service providers in their execution of their mandates in the RAF Act. This is clearly demonstrated by letters dated 17 March 2020, informing those firms who did not comply with this decision, in terms of an agreement reached earlier with the RAF, that they are in breach of the agreement.

On face value this seems to be a mere contractual dispute between the RAF and service providers. Unfortunately, this matter is far more complicated than meets the eye. Caught up in this turn of events are the years-long fights against the RABS Bill, to replace the RAF Act, the overburdened High Courts with RAF matters – and that less than 01% eventually goes on trial, the burgeoning legal bill of the RAF – which was mainly self-engineered by the RAF’s previous leadership (but surely not assisted by the RAF Panel Attorney’s own doing – there are stacks of scathing negative High Court Judge findings to demonstrate this well), etc.

Whatever ones view on the current situation is, what remains APRAV’s key focus is:

- Protect the constitutional rights of road users/road crash victims
- Resist the RABS Bill in parliament, until it complies with the Constitution, is properly researched, is in the interest of the public, etc.
- Informs the public of their rights in this regard.
- Try and constructively contribute to the sustainable improvement of the RAF to ensure the protection of the public’s rights, via the RAF Act; and
- Try and meaningfully play a national role to align and coordinate the above.

What the outcome of the current three applications, against the RAF’s decision to no longer use the services of a Panel of Attorneys, will be is not clear. There may be a short-term reprieve for these firms

but likely no more than that. It remains any State Agency's prerogative who they use as a service provider and that is at the heart of what is happening here. APRAV's position is very clear – all we do must be in the interest to balance the interest of the public of South Africa, with the realities of South Africa. In this there must be change in the RAF. Claims must take much quicker to settle, claims must cost less to finalise, more funds should end up in the pocket of the claimant, etc. BUT the Common Law must be protected and individual's right to legal representation, access to the courts and to receive proper medical treatment and input from relevant medical experts, MUST also be protected.

We appeal to all the stakeholders and urge them to resolve this matter in a manner that will not pose any risk to the claimants and victims of road crashes. We also appeal to the RAF to properly communicate it's plans and make sure that they secure the support of all the all stakeholders. In this regard, it is important to note that there are claimants and victims who have been waiting for many years to have their matters heard in court. It is thus important that RAF clarify how they will resolve these matters after May 2020.

In two of the applications against the RAF's decision explained above, interim relief is also sought, and these portions are serving before the North Gauteng High Court this week. The LSSA and BLA were allowed to join as amicus curiae. Judgement on the interim relief may be given as soon as next week. Many issues remain uncertain, i.e. will all 3 main review applications be consolidated to be heard together, will the court acknowledge the urgency argued etc. One thing is sure, once all legal battles in court are done, the RAF still needs an urgent review, the rights of the public must still be protected and all stakeholders must then engage in dialogue to make this work - there is no other way.

The first Judgment on these applications was expected on Friday 27 March, but the national lockdown may affect this too.



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