CONFIDENTIAL

The Office of the Honourable Judge President Mlambo
Palace of Justice
Pretoria

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PROPOSED NEW PRACTICE DIRECTIVE TO REGULATE THE CASE MANAGEMENT, TRIAL ALLOCATION AND ENROLMENT OF TRIAL MATTERS

1. The invitation to comment on this proposed Practice Directive refers.

2. 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).

1. During the past five years APRAV focussed on the following key strategies –
   1.1. Established a close working relationship with all members of the Portfolio Committee on Transport, as well as with key role players in the structures of the parliamentary law-making process;
   1.2. Established a working relationship with all key stakeholders within the medico-legal industry;
   1.3. Provided detail comment and input into the drafting of the 'RABS' Bill; and
   1.4. Informed the public of the negative implications of intended changes to legislation that can impact their rights as road users.

3. We reiterate that APRAV supports Government, the Department of Transport and the Courts' conviction that the current RAF system requires change. We recognise that the claims procedure should be easier for the public, 'system' costs should be reduced, the time it takes for claims 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, affordable, carefully planned and very transparent. This includes any changes to access to the courts.

4. Our fundamental point of departure is Sections 33 and 34 of the Bill of Rights.

5. Our primary focus of this comment is the negative impact this proposed Practice Directive will have on the rights of road users and more specifically road accident victims.

6. Our secondary point of departure is that the RAF Act (Act 56, of 1996) removes the public's right to sue the wrongdoer in any MVA. A dilution of the State's Constitutional obligation and legal remedy must be considered with the utmost care and in consultation with the public. The latter is one of our proposals before proceeding.

7. The severe impact on road accident victims and the public can be illustrated by the following:
   7.1. Around 37 members of the public are killed on South Africa's roads daily
   7.2. The South African deaths per 100 000 vehicles is 134 (the international norm is 7 - 14).
   7.3. It is estimated that 522 000 people are seriously injured and admitted to trauma units annually in South Africa (80% in state hospitals).
   7.4. It is estimated that another two million people are indirectly affected annually.
   7.5. Research conducted by the University of Pretoria confirmed that the majority of claimants are poorly educated, from rural areas, unskilled and in jobs that require manual labour.
   7.6. It is well documented, by various High Courts, that especially over the last six years, the Road Accident Fund simply ceased to execute its legal mandate of timeously evaluating claims and making reasonable settlement offers to claimants within the prescribed 120 days. This is the main cause of the ever-increasing number of cases on the court rolls – in all provinces.
   7.7. The provisions of the RAF Act, including the role of the courts, are the only mechanism where these vulnerable members of the public have a reasonable claim for loss of income or loss of support. This is the primary mechanism for Government to support these vulnerable citizens, as provided for in the Constitution and by law.

8. We believe that the crux of why the courts are overburdened with RAF matters are two-fold:
   8.1. The motor vehicle accident rate is spiralling out of control and leads to the gradual and constant increase in RAF claims. The claims are simply the outcome of this national crisis and not the cause of it.
   8.2. The RAF is misusing the court system by not fully executing its legal mandate.

9. In terms of the proposed Practice Directive the following:

9.1. A Claimant does not have the comfort of an early, fixed and credible trial date towards which all parties are required to work. Instead, the claimant's entitlement to a trial date is at the mercy of an overly procedure-driven process in which his/her case may be delayed at any moment due to the RAF's default or the views of an individual judge. Even after a trial date is provided the DJP is also still at liberty, in terms of the extremely open-ended par 14 of the directive, to deny a claimant his/her hard-sought trial date as close as six weeks prior thereto.

9.2. Imposing a duty on the Registrar to remind parties to file Notices of Intention to Defend / Plea's etc. is unduly onerous and probably unworkable. There is however no problem with having matters automatically entered into the case management stream once pleadings have closed.

9.3. The directive is seemingly a response to and an adaptation of the new Rule 37A which however, *prima facie,* creates a more litigant-friendly process than the directive.

9.4. Any case management protocol should provide for express directions regarding disputes surrounding the seriousness or otherwise of Plaintiffs' injuries. It is a notorious fact that the RAF habitually rejects the severity of the injury on the date of trial in order to delay the finalisation of matters. Any rejection which happens on or immediately prior to a hearing date should automatically invite consideration of a punitive costs order.

9.5. Fast-tracking the disposition of interlocutory applications is, and in particular, 11.7 and 24 are supported, recognising that it will never be in a Plaintiff's interest to delay a matter. The blanket "forfeiture" of all existing trial dates from the second term 2020 is arbitrary and possibly in breach of any of the effected claimants' rights in terms of sections 33 and 34 of the Constitution. Even if this course of action could be justified constitutionally, it sends a harsh and uncompromising message to the public which may not be in the interest of the court, or the concept of access to justice as a whole.

9.6. There being seemingly no rational basis for the arbitrary 31 March 2020 cut-off date, an earnest appeal should be made to rather introduce those cases into the case management system (to the extent that they are not already so enrolled) and place a moratorium on the allocation of new trial dates until a case management Judge is satisfied that a matter is indeed trial ready.

10. From a practical point of view, proposed changes to the overall 'mechanism' of allowing justice to specifically road accident victims, should:

10.1. Lead to the better application of the ± R34b annual RAF budget.

10.2. Cut down the average of 55 months it takes to settle a RAF claim.

10.3. Reduce process costs in determining fault and quantum.

10.4. Provide for system-driven and 'automatic' claims settling for the ± 80% less severe injuries for which claims are lodged.

10.5. Streamline the process in general.

10.6. Significantly reduce the volume of claims clogging up the courts.

10.7. Ensure the public's bodily integrity (as per the constitution) and social security (also as per the RAF Act).

10.8. Ensure that the public and claimant's rights are protected and not diluted, with regards to injuries sustained in road incidents.

11. Unfortunately, we believe the proposed Practice Directive will negatively impact almost every one of the above improvement outcomes.

12. Practical considerations we would like to put forward includes:

12.1. A case flow management system which provides an early, fixed and credible trial date (APRAV'S early research in this regard has already revealed that this is a feature of most successful case flow management systems worldwide).

12.2. It is probably premature to expect any meaningful statement of issues to be produced at the stage of entering the case management process (para 6.2). The RAF produces stock standard Pleas (and Special Pleas) and it is highly unlikely that medico-legal assessments on both sides would have been completed by then. There is however no problem with fast-tracking the resolution of the issue of liability, which as is correctly pointed out, is deliberately – most often baseless – disputed as a stratagem to avoid having to make interim payments. In the WC division the detailed memorandum of issues (legal and factual) is forthcoming at the end of the case management process. Once so defined and if certified as trial ready, neither party should be permitted to introduce disputes outside those issues.

12.3. Consider a Practice Directive to deal with merit and quantum together, thus reducing the number of trials significantly.

12.4. Reviewing the mandates available to RAF Claims Handlers to enable speedier and actual settlements of RAF claims, as intended and provided for by the longstanding, but much-ignored, provisions of this Act.

12.5. Drafting of a Settlement Guideline in terms of the AMA Guides to assist all parties involved (Prof. Hennie Klopper and an Industry Solutions Task Team has advanced this possible solution significantly).

12.6. Reduce medico-legal expert involvement to a single panel (reviewed annually by retired Judges).

12.7. Investigating the introduction of a multi-track method in RAF case flow management whereby simpler cases with no real disputes are identified and separated early on, with a view to remove these from

the system (even if by way of one-day trials on a fast-track). This will allow the courts to give greater attention to the more complicated and time-consuming matters.

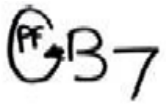
12.8. Facilitate cost management rules to be applied by all stakeholders involved in the process.

12.9. A detailed report is available in this regard.

13. Road crashes cost the South African economy R166 billion per year – just about enough money to bail out Eskom, fund SAA and the SABC, free education or possibly build some RDP houses with the change. Of the 166 billion, R34-billion is channelled via a R1,93 c/l fuel levy to the Road Accident Fund annually. But it is poorly and wastefully administered – when more should be channelled towards preventing the crashes and carnage on our roads in the first place. We would welcome an opportunity to discuss the issues raised in our letter – to illustrate that the volume of RAF cases on High Court roles can be significantly reduced, without denying the public access to the courts.

14. In conclusion, denying the public access to the courts is unconstitutional and definitely not aligned with the stated objective of the ANC to 'be a caring Government'. Please see the attached article "The RAF as Litigator".

Yours sincerely,



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