The struggle for road crash victims to get justice in terms of their Constitutional Rights continues. Road crash victims now became victims for a second time. Not only because the RAF closed for two months during the COVID-19 lockdown, but because a 'perfect storm' has been forming over the past year. The RAF seems to re-open their doors on 1 June 2020. Similar to the rest of the world around us, all stakeholders will have to adjust to a 'new' reality. This reality will include even more pressure on claimants and service providers. Claimants will have to bear the brunt of even more pressure and service providers (attorneys, experts, emergency services, etc.) will have to demonstrate calm heads and the utmost sensibility – more than ever before. The harsh reality is that all involved is under inhumane pressure in a world at risk of falling apart. None of us can allow this to happen to the RAF, but it will require all involved to align and work together. This is APRAV's take.

This 'perfect storm' for road crash victims has been developing for the past year or two. The COVID-19 lockdown simply made all the factors converge into the current high risk and high pressure position all find themselves in. Fortunately not all of what happened is bad for RAF claimants. A thorough and accurate understanding of the new realities - the good, the bad and the ugly - will be required to effect realistic alignment between the RAF, attorneys, claimants, medico-legal experts and all other key stakeholders. Since 2014, APRAV has shouted to those who cared to listen, that change is needed at the RAF. This is now not a luxury or an option anymore. The question is what, when and how? Our general approach remain the same as to why the RABS never progressed beyond a bad idea and a poorly written bill. Whatever changes to the RAF are now on the cards and even happening, it must be constitutional, lawful and must benefit road crash victims and the public at large. It must not reduce or limit the Common Law rights of the public and must be well researched based on sensible analyses of the mountain of information available from decades of operations and High Court judgements. Proper and transparent planning in conjunction with all key stakeholders must ensure that it will be practical for road crash victims. It is a massive risk to all tax and fuel levy paying South Africans and all role players should tread lightly (carefully) with the constitutional rights involved. Anything else will be irresponsible.

RAF not an "essential service" under the COVID-19 lockdown regulations?

South Africa's social security network consists of a few core components: Child & Disability Grants, UIF, Compensation Commissioner and RAF. An RAF claim is no different from payments by entities such as SASSA. The Constitutional Court found in the LSSA judgement in 2011 that the impairment to bodily integrity brought about by injuries sustained in motor vehicle accidents is the type of impairment of the right

contained in section 12(2)(b) of the Constitution for which the government is obliged to provide compensation. It was clearly intended to ensure that this compensation is seen as part of a socio-economic remedy. Government's focus on assisting the "public" and the "poor" during the COVID-19 lockdown is well known and documented. Conventional rules of budgeting and systems are currently geared towards alleviating the plight of the poor and the most vulnerable in the South African society. With the RAF there seemed to be a serious break in consistency and logic from Government. One could still maybe make sense of a 'closed RAF' during Level 5 of the lockdown, but the continued closure of the RAF was/is simply without valid justification. All efforts are made to support the public and key government mechanisms are employed in this effort. Just not for the RAF. Why? The lockdown resulted in several consequences for claimants:

- No claims could be lodged for two months. This adds up to about 13 000 claims of which some may now never make it past a claim application.
- Since the RAF was in lockdown and staff at home, no progress was made with existing claims.
- To the RAF's credit, based on feedback from some Plaintiff Attorney firms, some block settlements did happen (especially in the past 2-3 weeks). Some (unexpected) sensible offers to settle were also made as is intended in the RAF Act and as it 'used to be in the good old days' (pre-2008). This is a very encouraging development from the RAF 'system'.
- With far fewer vehicles on our roads, there will be far fewer road crash victims.
- Unfortunately, this also resulted in lower fuel levies. We estimate a 40% drop in the Fuel Levy in March, a 60% drop in April and around a 50% drop in May. We anticipate an increase to about 70% in June and thereafter a further gradual increase. Road travel will most likely not reach pre-lockdown levels during the rest of 2020.

So, what does this mean post-lockdown?

1. There are more road crash victims in need of support.
2. Some existing claims will take even longer to finalise now.
3. There is less money available for the payment of claims - whether direct to the public or via a legal representative.
4. Law Firms and Medico-legal experts will be under even more cashflow pressure for the remainder of this year at least.
5. The RAF's more constructive approach to block settlements and making sensible offers is a most welcome ray of sunshine in this dark storm. May it continue and escalate ten-fold!
6. Some service providers will be under immense pressure and tempted to revert back to summonsing the RAF to try and expedite payments. This will be the worst possible action for all involved. APRAV pleads with those contemplating this course of action, to rather engage with the RAF to expedite block settlements and to negotiate a payment schedule, in the context of the significantly more limited short-term available Fuel Levy.

Access to the courts are increasingly more difficult

Even before the lockdown, it became increasingly difficult to get an RAF case on a Court roll. The recent few Practice Directives in some High Courts, the past 12-montshs, impacted road crash victims' access to courts, one way or another. In many cases not positively. This is in the context the past few years that High Court roles were swamped with RAF cases. In this lies an unfortunate quagmire: It is no fault of a road crash victim that there are so (too) many road crash injuries and

fatalities in the country. In fact, South Africa is one of the most dangerous countries to venture in a vehicle on the public roads. Bottom line is, it is a road crash victims' constitutional right to seek a fair and reasonable loss of income (or support) payment from Government. This is no different to Government having to provide basic health care, or basic education, or safe roads! The consequence of this right is overburdened courts, especially the busiest High Courts in South Africa – Pretoria (North- Gauteng Division), Johannesburg (South Gauteng Division) and Cape Town (Western Cape Division). A study some time ago found that up to 84% of all cases in the North Gauteng High Court was RAF cases. There is thus a lot of sympathy that Deputy-Judge Presidents are trying to cope with this and had to try and find solutions to still dispense justice affectively. Unfortunately, this balancing act, thus far, did not turn out in favour of RAF crash victims.

Then there is the introduction of 'Caselines' – the new IT case management system in the High Courts. It was originally designed and implemented in the UK and then unfortunately transposed and forced on the SA legal profession without input or consultation. An initial flaw was the dependency on the Registrar, who has to 'invite' parties to register a matter. The plaintiff (victim) cannot simply login and register. This unfortunately causes additional RAF case backlogs - particularly in the North Gauteng court. Also, all RAF cases was removed from the court roles of the Mpumalanga and Limpopo High Court Divisions. With the latest lockdown practice directives only applicable to matters registered on Caselines, the impact on many victims are clear. Some matters are removed, simply because they are not on Caselines. Fortunately it seems as if some sensible system application changes were made during the past two weeks that are starting to facilitate faster effecting of justice. Well done to those Deputy-Judge Presidents, High Court Judges and legal practitioners involved! Effecting a technology change to manage overburdened court roles may just provide the quantum leap needed to balance many road crash victims and the Courts' ability to provide justice to them.

So, what does this mean post-lockdown:

1. It has become more difficult to litigate against the RAF. This is a road crash victims' constitutional right.
2. The 30 April regulation states, "Subject to the provisions of paragraph 6 and 7, all civil trials enrolled for hearing during the period of the national state of disaster may be removed from the roll, and their re-enrolment shall be in accordance with a procedure determined by the Head of Court." This is not supporting road crash victims to get their long awaited finality on their claims.
3. This will have additional cost implications and add to the frustration and difficulty to get RAF matters finalised in court.
4. Judges, legal practitioners and courts staff are getting used to and better at dispensing justice, electronically. A very positive development in the post-CIVID world.
5. What will happen in the courts after 01 June 2020 if all Panel Attorneys are no longer 'part of the system'?
6. It seems as if the Caselines system is better applied and effecting progress in the courts. The verdict on how this system introduction will conclude will only be know over time. Hopefully it will add the significant value it can.

7. Unfortunately, hundreds of RAF cases were removed from high courts roles across South Africa during the lockdown. Many of these claimants may now have to wait much longer to get their claims finalise.
8. There seems to be a slow but steady increase in alignment between the RAF, courts and plaintiff attorneys. Hopefully this in not simply a positive symptom of the lockdown but will expand and become a new normal.

Changes effected and planned by the RAF Acting CEO

The Acting CEO is busy changing the internal operational model of the RAF. Some or even much of this seems to be for the better! What is known is a focus on cancelling the services of the 'Panel Attorneys', expanding block settlements and introducing mediation. The cancellation (non-renewal) of Panel Attorney firms' service contracts is old news by now. The full effect of this on claimants are not clear yet and the conclusion in the Courts are far from over. Judgement was reserved in the main review application brought by the Panel Attorneys. We will know shortly the outcome of this case. However, even if it is in favour of the Panel Attorney applicants, it is likely to be a short-lived legal reprieve from the inevitable. The bottom line is that any State Department or Agency (RAF) can decide whether they want to use service providers or not and the RAF has this discretion. Add to this the many scathing High Court judgements lambasting Panel Attorneys for a myriad of reasons and it corroborates that the client might have just cause to not be overly satisfied with its service providers.

There are a few other concerns about the 'winds of change' at the RAF. Before a short explanation of the concerns, far more important are the key legislative questions involved in changing the RAF hopefully for the better and to the benefit of road crash victims. What are the rights and duties of the Minister, the Board and the CEO as per the RAF Act? What are the basic principles applicable to the amendment of primary legislation? What are the basic principles applicable to the amendment of subordinate legislation such as Regulations? What is the role of parliamentary oversight? What constitute meaningful parliamentary oversight - in the context that Parliamentary oversight was not effectively applied for almost a decade? While some ideas sound good, the concern is that others, in fact, may basically be RABS in disguise, i.e. eliminating lump sum payments and paying a monthly annuity (sound familiar!?). The biggest concern is the lack of transparency, the lack of key stakeholder involvement and the lack of oversight. No one person can or should ever be in a position to unilaterally and without thorough planning, stakeholder involvement and parliamentary oversight, make fundamental decisions on taxpayers money of R3.6b per month - even if all is well meant and intended. It is simply not 'good Government' and it is dealing with the public in a frivolous manner. Another concern is the deafening silence of the RAF during the lockdown. The fact that RAF claimants are viewed as non-essential remains mind boggling, especially in light of the focus on SASSA paying grants and introducing special grants, bailing out of businesses – from corporates to one-person informal businesses. Why not RAF claimants?

On the positive side there seems to be a long forgotten focus emerging slowly within the RAF, to do justice to the reasonable claim of a road crash victim. This is the reason the RAF exists in the first place! It has been many years since this seemed to have mattered to the RAF leadership. Perhaps that is changing now. It is unfortunate that 'perhaps' might be an appropriate choice of word, because it should not even have to be contemplated. The Acting CEO is seemingly wanting to improve the

RAF's service delivery and he is willing to take strong action to achieve this. Hopefully the manner in which he is trying to do this will not undo the much needed leadership and good intentions. A bit of trivia: about 70% of all change initiatives in South African organisations fail not because of what is done, but mainly because of how it is done.

So, what does this mean post-lockdown:

- The RAF seems on tract to open on 1 June 2020. At last and thank heavens!
- RAF staff, like in all organisations will have to adjust to the new normal and will all have to claw back through the two months of backlogs.
- The fight of the RAF Panel Attorneys in the courts will play out in the months ahead and will no doubt add pressure to 'the system'.
- On the above point, greater clarity is needed on how the many thousands of unrepresented claims will now make their way to a successful conclusion in the courts.
- How precisely the possible introduction of mediation, to speed up settlements, will work is still to be seen. Its voluntary nature and impact on the outcome of a settlement will be key in its success or not.
- The Acting CEO will undoubtingly forge ahead with his agenda for the RAF.
- On the above point, hopefully this agenda will be openly explained, thoroughly vetted by key stakeholders, be to the benefit of crash victims and happen under the guidance of the Portfolio Committee on Transport (as such a critical State Agency requires). Perhaps the 'termination of the Panel Attorney firms' can be seen as a mere operational matter, but many other matters 'in the air' will definitely constitute material changes that will have to go through the process of a change to the RAF Act or amending the RAF regulations. This means work for the Portfolio Committee on Transport and all we expect is that they execute their duty as per the Constitution.
- Lastly, we will actively support meaningful change at the RAF, also the Acting CEO, but it must be sensible and cannot happen behind closed doors.

We all have to balance our own and public safety to get South Africa working again. This includes the RAF.
We are very confident that these equally important issues can be balanced.
Let us all work together for the sake of swift justice to all road crash victims.
This is the only way and must happen in a united South Africa.

Recent articles in the media

We've again received support from journalists that writes objective factual articles - https://www.aprav.co.za/2020/05/08/thousands-of-road-accident-fund-cases-on-hold/ Unfortunately an article that misrepresented some facts appeared in the Cape Times in early May. It gave the impression that a court application was overturned and that APRAV was involved. This was obviously not the case and after making contact with the publication, the online article was removed and an apology given.

For further clarification: There has not been any court application to challenge that the RAF be declared an essential service under the COVID-19 lockdown regulations. APRAV has all along been of the opinion that this will not be successful unless the case goes to the Constitutional Court. This would have been a long process that would most likely outlive the lockdown period - not worth the effort and costs.

2nd letter to Ministers: Declare the RAF an essential service

APRAV recently (15 April) wrote an open letter to Ministers of Transport and of Cooperative Governance & Traditional Affairs, requesting that the Road Accident Fund (RAF) be allowed to operate as an essential service during the national lockdown. We received acknowledgement of receipt, but no answers. On 30 April we learned that the Minister of Transport did not classify the RAF as a Level 4 essential service. We found this lack of care and urgency for the plight of road crash victims unacceptable and wrote a second letter during the first week of May- https://www.aprav.co.za/reference-documents/ We've still not had feedback from any of the ministers, but indications are that the RAF will open on 1 June 2020. We will monitor this closely and hope that the RAF will provide a full service offering from then on.

Our petition attracted more than 10 000 signatures. Thank you for all the support!

We are sending the list and comments to Minister Mbalula today still. We all along anticipated that the RAF will have to 'open its doors' in Lockdown Level 03. So, we never intended the petition to be an instrument to effect this. However, we wanted the Minister of Transport, to understand that the public disagrees with the political decision to keep the RAF 'closed. Therefor, the petition campaign was a limited one and only driven via social media. If we needed 250 000 members of the public to have 'forced' the opening of the RAF, we would have ran an aggressive SMS and media campaign…if needed next time! Well, the Minster can easily ignore APRAV is he wants to but cannot that easily ignore 10 000 voters and members of the public.