# APRAV update 12 July 2021

## The current context…

In the context of the major turmoil in the country the past days, it just reminds us all how big the need is in South Africa for a Social Security 'network'. After managing a very low-key profile during the initial months of the global pandemic and lockdown, the RAF (and the Minister of Transport) has lately been very vocal an many issues and not all in the interest of road crash victims! APRAV's focus remain as before:

1. Ensure that the constitutional rights of road crash victims are protected.
2. Contribute to sustainable and sensible changes to the RAF system.
3. Maintain constructive relations with all Members of key Portfolio Committees.
4. Expose one-sided, poorly researched and 'clandestine' changes to the RAF Act, RAF Regulations and long-standing practices.

APRAV would like to reiterate that we fully support the Government and the Department of Transport's conviction that the current RAF system requires change. We specifically agree that the claims procedure should be easier for the public; the system costs should be reduced and the time it takes for a claim to be settled should be shortened.

The key focus areas from the RAF's 2020-25 Strategy are:

1. Improving efficiency on the current RAF Operating model by proposing new RAF Act Amendments and issuing of specific regulation to enhance efficiency and improve sustainability.
2. All new claims to be settled within 120 days.
3. Reduction of legal cost is very crucial to ensure that claims are settled timeously.
4. The Minister of Transport emphasised the need for the RAF to explore the option of an RAF Rehabilitation Centre. The Fund will consider and financially support various options and private-public partnerships aimed at improving rehabilitation outcomes for injured claimants.
5. The RAF will put more efforts on reduction of medical costs by developing the RAF Medical Tariffs, Implementation of Treatments Protocols and the introduction of the Medical Pre-authorisation.
6. A new Integrated Claims Management System will be implemented.
7. The organisational structure of the RAF will be reviewed to ensure that it is able to efficiently deliver on its mandate.
8. A revision of the current funding model will be undertaken, aimed at improving financial sustainability of the Fund by assessing various funding options.

All these objectives have merit one way or another but changing such a major component of the national social security network should be done in a manner that (from APRAV's 05 October 2014 letter to parliament) –

- adheres to all constitutional rights;
- protects (not dilute) road user rights and benefits;
- ensures optimum efficiency and effectiveness of the 'system' and especially those managing its operations;
- conducts the minimum research recommended by the RAFCOM (2002) to ensure that the South African realities in 2021 are fully considered;
- be 'pro-poor' in its practical application and not just be used as PR or as a tag line;
- draws from an industry's 70-year long expertise;
- consults the public of South Africa in an open, honest and transparent manner; and
- involves all stakeholders to ensure future buy-in.

The law is simple. The RAF CEO is legally obliged to execute the RAF Act (fully and without discretion) and must abide by stipulations of the RAF Act and the Constitution. The RAF CEO has zero discretion or authority to change the mandate, besides following the Constitutional and Parliamentary Rules for changing laws via the Department of Transport.

## Why what is happening now is more dangerous than what the 'RABS Bill' was before.

1. Besides last year's 81 000 non-serviced claims, there are about another 245 000 unattended claims from previous years (±305 000 total backlog claims). More and more claims are simply not attended to.
2. The magical 'elimination of the R305b RAF deficit is PR smoke & mirrors' according to Dawie Roodt, chief economist at Efficient Group. The RAF merely altered the way it calculates its potential liabilities, but its underlying financial position remains largely unchanged. So either the RAF lied for years and manipulated the public and Parliament for their own agenda or they are now in in excellent financial situation (and why would any change then be needed if all is going so well?)
3. It is now more difficult to file a RAF claim than ever before. The RAF Board is totally overstepping their legal mandate by trying to change the requirements for a legal claim in the RAF Act. The courts already started to weigh in on this.
4. It is clear that the RAF adopted a tactic to see how far rules can be 'bent' in the courts; who will accept what and push back on what; and is taking a legal 'shotgun' approach in the hope that something will hit. This is in reality a rejection of the Parliament's role in law-making and a very serious dilution of the balance of power between the spheres of government.
5. The RAF leadership seems to not blink to mislead and lie, even to Parliament. RAF CEO, Mr Collins Letsoalo on 7 May 2021 told the PCoT in his opening statement that the number one issue was 'Making the RAF claimant centric'. On being questioned during this session in Parliament, the CEO vehemently denied that the RAF tries to limit the public from lodging claims. While on the very same day, one of his many legal teams were trying its legal best to force a new set of unlawful requirements through in the Pretoria High Court that claimants must comply with before a claim is accepted. Although this absurd attempt by the RAF failed in court, thousands of lawfully submitted claims are being rejected by the RAF offices countrywide. What the CEO denied in Parliament, is still taking place daily.
6. The RAF wants fewer checks and balances and of course, to get rid of the public's rights to legal representation and access to the courts.

The list goes on and on.

## Where is this heading to for RAF Claimants?

- There is a dilution of several of their constitutional rights.
- The courts that are getting involved and 'making' law is a very worrying situation and have much broader implications that just the RAF.
- The RAF is attempting to be judge and jury on claims by deciding on a claim's validity; the compensation (if any); how and when it is paid; what the rules involved are; how it is monitored and how and what it reports on (if at all).
- It is increasingly more difficult for the public to lodge a RAF claim.
- It is getting more difficult for claimants to obtain legal representation.
- It is more difficult to get access to the courts.

The list goes on and on.

## The RAF‘s strategy seems to be…

Erode the current RAF Act and/or reintroduce the RABS Bill or something similar to RABS. Both paths are underway as you read this! It already started more than a year ago: erode the RAF Act until it looks like RABS or is in fact RABS. If that takes too long or if it is going very well, then (re-introduce) RABS or RABS II.

The RAF’s paths are leading to the decimation of road crash victim rights. It is a fairly simple strategy with volumes of court drama, PR spin and theatrics on the foreground, whilst the ‘real’ work is being done in the background.

A seasoned Advocate summed it up well “The RAF should provide the widest possible cover to crash victims but the RAF is hell bent on limiting the cover of road crash victims.” A prominent Attorney said: “In the past we had a weak RAF but with strong courts and now we have an aggressive RAF and courts that are unclear on their role”. This sums up the significant risks to the public, the rule of law and especially to road crash victims.

## How to navigate through this?

1. Protect the RAF Act (in the courts if needed).
2. Create a factual public narrative to counter the RAF’s ‘magic, self-gloating exercise and that attorneys are the cause of everything that is bad and wrong’.
3. Support road rash victims with lodging claims and follow the process provided for in the Act to settle these claims.
4. If the RAF refuses to accept a claim, send it by registered mail and make sure you keep the Post Office registered mail slip. The 60 days for the RAF to contest the claim starts then as well as the 120 days for the RAF to respond. Issue summons on day 120 and the RAF must either defend in court (which they will not be able to as no legal basis exists in law for what they are doing) or not turn up (what happens mostly) and default judgement is given against them. Either way the claim is lodged and in the system.
5. Support the current process to review the role of the judiciary in getting involved in this process.
6. Support sustainable, lawful and sensible solutions to counter RABS II (…both ‘paths’ mentioned above).

## What is likely to happen?

Despite the attempts to use the courts to make ‘new’ rules for the RAF, there is a limit to what can be achieved in this manner. The RAF must be close to this threshold. Despite the Minister of Transport’s recent utterances that he will “revive” the RABS Bill with Hon. MP Zwane (Chairperson of the Portfolio Committee on Transport), there is no legal basis or Parliamentary Practice Rule allowing for this lawfully (they will have to break the law to achieve this). The RABS Bill lapsed in law and by the Practice Rules of Parliament. Thus, both ‘paths’ ultimately lead to Parliament and the Portfolio Committee on Transport. This is where APRAV will engage (again)! Neither the Minister of Transport nor the RAF leadership can achieve what they want without changing material components of the RAF Act. That then means (to repeat an APRAV update from 2015):

1. A cabinet decision will be required to get ‘RABS II’ back on the legislative agenda.
2. A Green paper with proposed amendments (or a new bill aka RABS II) must be published by the Department of Transport. *By law*, the RAF has no role in this and their involvement - even via the CEO - is highly irregular and inappropriate and highly suspicious.
3. A white paper must be published for general comment.
4. The PCoT must invite all stakeholders to formally comment.
5. The Department of Transport must then publish an amended bill or amendment act for formal comment.

6. The Bill or Amendment Act must be referred to NEDLAC for discussion between the Government, organised Labour and organised business.
7. A determination must be made then what type of Bill this is in terms of the Constitution, depending on the impact…in this case (as was with RABS the case there is a national impact with financial implications…thus clearly a Constitution Section 74 and/or 76 Bill! - requiring the most stringent for of scrutiny, verification, debate and consensus.
8. National consultations must follow in all provinces.
9. Detailed debates will follow in a 1st Reading of the Bill or Act in PCoT.
10. This type of Amendment Act or Bill definitely warrants a Regulatory Risk Assessment to determine its Constitutional and legal compliances (never happened with RABS I)
11. Treasury must agree and support the funding for the amendments or the Bill (never happened with RABS I).
12. A PCoT report, supporting the Amendment Act or Bill, must then be approved by a majority in Parliament (this failed three times with RABS I and could not progress past this phase).
13. The Bill or Amendment Act is referred to the House of Provinces.
14. A Second Reading must happen in Parliament.
15. The Office of the President must ensure that what is in the Amendment Act or Bill is indeed constitutional and in the interest of the public, affordable, sensible and lawful.
16. The Amendment Act or Bill is signed into law.
17. Sometimes a 12–18-month period must be allowed for budgeting purposes before implementation.

**This is the only legal road to change the RAF Act or to 'revive' the RABS Bill or another 'new' Bill.**

## There are sustainable and sensible solutions to the RAF's difficulties!

We are disclosing for the first time that APRAV submitted letters with proposed solutions for the RAF to the Portfolio Committee on Transport already on 11 August 2020 and 08 February 2021. We have now decided to publish the latest letter to start making an overt and public case for these changes at the RAF. Paragraphs 8 and 9 of the last letter reads:

"The above 15 suggestions are all practically doable and will have an immediate positive impact on cash flow, medium term RAF expenditure and budget requirements as well as improved efficiency and service levels to the public. It would also lay a practical foundation for longer-term solutions and efficiency increases, i.e., accelerated process for minor injuries/smaller claims versus a more robust process for serious injuries/bigger claims; employing Information Technology and available Data Management Tools to provide 'real time' services and reduce the total claims period to - more than 36 months, etc.

The above vision for an RAF Centre of Excellence is very achievable within 03 – 05 years. However, the current practical problems and inefficiencies needs to be the starting point. As in many other well documented success story examples, it is not the RAF 'rocket science' that is the problem, but the basics. ***See the full letter of 08 February 2021 attached.*** APRAV has since received a formal acknowledgment of our letters from the Chairman of the PoCT and is awaiting a PoCT invitation to make a presentation on these solutions to the PoCT.

## What is APRAV busy doing (and has been throughout 'COVID')?

1. Continue to ensure that the PCoT is well informed on all relevant issues pertaining to the RAF and its legislative mandate; and not just what the RAF or The Department of Transport want them to know.
2. Expand the 'conversation' to the Portfolio Committees on Health, Social Welfare, Finance and Justice (and Correctional Services).

3. Promote short- and long-term solutions for the RAF. We are now going to drive a National Conference with all stakeholders to discuss, debate and validate solutions generated by the APRAV's Solutions processes.
4. Assist to facilitate national coordination amongst key role players.
5. Continue to build a narrative that is fact-based, solutions-driven and orientated to support road crash victims to counter the RAF's unbalanced narrative to the public and Parliament. View a recent 'APRAV' interview on SABC Morning Live where a fact-based and balance narrative is promoted https://youtu.be/jEvs_Uij-A8

## In closing

Thank you to all the long-standing partners and financial contributors who weathered the COVID lack-of-payment storm with APRAV and all the road crash victims. Your support now/again ensures that APRAV can continue the work we started in 2014 and resulted in the legislative 'defeat' of the RABS Bill (against all the odds and by making history in parliament – 3 times!). Those role players that fell by the wayside and those who never got involved should perhaps reconsider your support to APRAV.

We are continuing to work behind the scenes in our endeavours to protect the constitutional rights of road crash victims and promote lawful and sustainable changes to the 'RAF System'. However, we will have to make Parliamentary history (again) and achieve mission impossible (again), because that is what it will take (again). If this is key to the sustainability of your business/practice, important to your clients and in the interest of your staff, then assist and support APRAV (again).