THE ASSOCIATION FOR THE PROTECTION OF ROAD ACCIDENT VICTIMS

A VOLUNTARY ASSOCIATION NOT FOR GAIN INCORPORATED IN TERMS OF THE COMMON LAW

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To: The National Assembly (Parliament of South Africa)

Portfolio Committee on Transport

Attention: Chairperson, Hon. Mosebenzi Zwane

PO Box 15, Cape Town, 8000

08 February 2021

Dear Chairperson,

COST SAVING SOLUTIONS FOR THE ROAD ACCIDENT FUND (RAF)

1. The Association for the Protection of Road Accident Victims ("APRAV") was established in June 2014 and is a human rights organisation, focussing on the protection of the constitutional rights of road crash victims and road users in general. The constitutional rights of Bodily Integrity, a Safe Environment, Access to Courts and the public's Common Law right; are at the core in our approach. We also seek to support sensible and sustainable change to the functioning of the RAF and to coordinate and facilitate the involvement of all the stakeholders in the medico-legal industry.

2. The purpose of this letter is to request an opportunity to present our research findings and proposals on short-term RAF cost saving and improvements to the Committee. This is in support of the Committee's strategic objective regarding amendments to RAF related legislation (Act & Regulations).

3. The current challenges that are facing the RAF are well documented and well known. Some of the major contributory factors to the current 'perfect storm' for any road crash victim remain:

   (a) Escalating road crashes to 134 fatalities p/100 000 people (global average is 07 - 21).

   (b) The post-2008 approach by the RAF not to settle matters as required by the RAF Act. This resulted in a total acrimonious legal position for most RAF claimants and High Court rolls of 80%+ with RAF matters.

   (c) The RAF indicating that it will defend these matters in court and then less than 01% going on trial, resulting in a burgeoning legal bill, which amounts to billions of rands.

   (d) A further consequence of (b) above is that all claims, including minor claims, then resulted in the appointment of two sets of experts. This led to an escalation of the average cost of a claim.

   (e) All of the above led to the current situation where a claimant has to wait on average fifty-five (55) months to get the financial assistance provided for in the RAF Act.

   (f) The global COVID-19 pandemic has significantly added further delays in the management of claims.

4. The need for the RAF to sensibly transform for the benefit of road crash victims is widely publicised and accepted by all key stakeholders. We must all get involved in a well-coordinated, focussed and practical manner. To this end, APRAV has re-embarked on a 'Rescue RAF Initiative' that was halted by the national lockdown on 26 March 2020. The need to support the RAF and especially the road crash victims is too big to wait any longer. We created six (6) National Task Teams to focus on all aspects of the RAF's functioning. This is a very constructive initiative to align with the RAF leadership and for all to work together to help the RAF survive and become a centre of excellence. The Task Teams are:

   4.1. Patient treatment

   4.2. Functioning & process improvements (interaction with RAF & RAF internally)

   4.3. Settlement & litigation

   4.4. RAF Act & Regulation amendments

   4.5. Financial implications (RAF budget & Fuel Levy)

   4.6. Oversight & peer review process

   These Task Teams are led by APRAV's Solutions Head, Prof. Hennie Klopper (who published his latest national handbook for all Third Part Law Practitioners a few days ago – a copy of this national handbook will be provided to all the Members of the PCoT). Teams are made up by practitioners from all the relevant fields, including the Medico-Legal Society of South Africa (SAMLA), the Orthopaedic Society of South Africa, the Occupational Therapy Association of South Africa and the Neurosurgeons Society of South Africa, among others.

5. The Task Teams focussed on recommending short-term solutions and efficiency improvements as well as laying the foundation for long-term and systemic improvements. The main focus was to align the constitutional rights of road crash victims with the cost efficiency and public service delivery of the RAF.

6. RAF FUNCTIONAL ANALYSIS – A SUMMARY OF SOME OF THE CORE PROBLEMS

6.1. Medical / Healthcare:

6.1.1. Inadequate access to rehabilitation.

6.1.2. Inherent flaws & mismanagement of the RAF4 system.

6.2. Administration:

6.2.1. Revise the service provider SLA.

6.2.2. HPCSA Tribunals need to be reviewed – it is not working.

6.3. Functioning & Processes (RAF & RAF internal)

6.3.1. Summonses are not defended and victims' access to court should not be obstructed.

6.3.2. The Serious Injury appeals process is not working.

6.4. Settlement & Litigation

6.4.1. Increasing hurdles posed by Court directives are obstructing access to justice.

6.4.2. Legal costs are ballooning: "Like-for-like" instructions of experts; delays in instructing experts & specific authorisation re: Joint Minutes; etc.

6.5. RAF Act & Regulation amendments

6.5.1. Specialist Tribunal akin to Pension Funds Adjudicator.

6.5.2. Procedure revisit: Act & Regulations (i.e., lodgement, prescription etc.) must be amended.

6.6. Financial

6.6.1. The impact of unsafe roads and the extremely high number of road crashes.

6.6.2. Burgeoning legal bill and payments' deficit with COVID caused the perfect RAF 'storm' and its impact on payments needs to be mitigated by Government. This is a far bigger national priority than for example SAA!

7. SOME EXAMPLES TO SAVE RAF COSTS & INCREASE EFFICIENCY

7.1. Cost saving:

7.1.1. **Issue Guidelines to Claims Handlers on loss of income and loss of support parameters and calculations to curb the general over settlement on both classes of claims**. This alone could have a 10% positive impact on the billions of rands in the RAF's annual loss of income and loss of support bill.

7.1.2. **Review the Supplier Claims process.** In many cases, the government is paying itself by paying a middleman monthly commissions of millions of rands.

7.1.3. **Better regulate the costs of legal and medical service providers.** This can easily be regulated via a few National Industry organisations and should lead to a 10% cost saving on the R6 billion annual professional services fee, etc.

7.2. RAF functioning

7.2.1. **Train Claims Handlers and relevant RAF staff to apply the Loss of Income & Support Calculation Guideline** consistently in all provincial RAF offices.

7.2.2. **Increase Legal, Claims Handler and Financial capacity** within the RAF.

7.2.3. **Review RAF 1, RAF 4 forms and the Narrative Test format** as well as its application in practice, etc.

8. The above examples 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. an 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 of more than 36 months, etc.

9. The RAF can become a service Centre of Excellence within 03 – 05 years. However, the current practical problems and inefficiencies needs to be the starting point. As in many other well documented examples of success story, it is not the RAF 'rocket science' that is the problem, but the 'basics'.

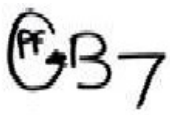
10. The information in 6 and 7 above is a fraction of the analyses, research information and science that we generated over the past couple of years. We think the PCoT will benefit greatly if we share a summary of the analyses and research conducted since 2014 on the RAF, the root causes for current challenges and the practical solutions to be considered.

11. Our only aim is to share our research findings and cost saving proposals with the Portfolio Committee, to support the Committee's role of oversight and governance regarding the RAF.

12. APRAV fully supports the urgent need to make the RAF more sustainable, effective and efficient. This includes the need to reduce the amount of time it takes to finalise a claim, cutting the cost of a claim, increasing alignment between all stakeholders and ensuring a primary focus on the road crash victim.

13. We believe that a 20-25% annual cost saving (about R6b-R7b per annum) in the short-term is very attainable by the RAF. We will provide all Members with a short briefing pack beforehand and would welcome an opportunity to explain our findings and cost saving proposals.

Yours sincerely,



Pieter de Bruyn
Chairperson

APRAV