

<http://www.aprav.co.za/article/8/the-effect-of-rabs:>

What will the effect of the RABS be?

The fact that a road accident victim was involved in a motor vehicle accident does not guarantee their claim under the RABS system. These victims would have to rely on RABS administrators for assistance and they would have very little influence on the outcome of their claims. In addition, road accident victims will be at the mercy of RABS administrators for treatment and rehabilitation. This RABS Bill will encourage an increase in unemployment as well as independency on the social grant system. In the end, the public will pay more but receive less benefits, the victim's common law right to claim general damages would be terminated and the loss of earning limited even further without any resources or claims.

There are many practical omissions and a general silence on exactly how the RABS intend on facilitating the total claim demands in the country and how the RABS will be integrated within the already ailing Public Health System.

Thus, claimants who need help the most will be forced by the rules of the benefit scheme to manage their own claims with no assistance.

The problem with RABS

The RABS Bill will:

- Replace the existing Road Accident Fund (RAF), which is based upon the common law claim for damages (i.e. based on compensation) with a Road Accident Benefit Scheme Administration (RABSA) which is based upon certain prescribed statutory benefits (i.e. based on granting a limited benefit) on a so-called 'no fault' basis.
- Allow the wrongdoer, even a wilful wrongdoer, from claiming benefits from the RABSA on equal footing to that of the victim, which will discourage road safety and compliance with the rules and regulations of road usage in South Africa.
- Exclude and or limit its liability to contribute to a road accident victim's cost, including legal or medical cost, to prepare and submit a claim or an appeal.
- Exclude a road accident victim's right to claim any damages suffered over and above the benefits provided for, from the wrongdoer, which will force a substantial number of road users to take out expensive personal insurance cover.
- Exclude a road accident victim's right to claim general damages for, amongst other things, pain and suffering, loss of amenities of life, emotional trauma, etc., from RABSA or the wrongdoer.
- Cripple the already overburdened Public Health Sector.

- Determine loss of income according to a prescribed formula at 75% of pre-accident earnings less a person's post-accident earning capacity (in this instance, students, children and the unemployed do not have pre-accident earnings and will be entitled to a pre-accident earning of approximately R49 000.00 per annum only, notwithstanding prospects of future employment and earnings), which excludes prospective future, inflation and any income to be earned after the age of 60, which loss of income is payable only in monthly instalments, rendering road accident victims dependent upon the RABSA, without the opportunity to invest and otherwise grow such income.
- Limit funeral contributions to R10 000.00.
- Terminate benefits granted upon the death of a beneficiary, leaving his or her estate deprived.
- Make it an offence by a driver, or if the driver is not the owner of the vehicle, then by the owner, to fail to report a road accident to the RABSA within 30 days after the accident. Alternatively within 30 days after being in a position to report same, which, if convicted, renders such driver and or owner liable to pay a fine not exceeding R50 000.00 or imprisonment for a period not exceeding three months.
- Force road accident victims to comply with numerous extensive and cumbersome procedures and requirements, without the assistance of legal or other experts, before he or she is entitled to claim.
- Provide that the RABSA will be the proverbial judge, jury and executioner which will manage road accident victims' claims, determine the nature and extent of benefits provided to them and internally hear and determine appeals from aggrieved persons, without the right to appeal to the courts.
- Exclude liability of the RABSA for any act or omission done in 'good faith' in the exercise of any power or performance of any duty imposed or conferred by or under the Bill, unless intentional wrongdoing is proved (thus, excluding the RABSA's liability for negligence in respect of a road accident victim's claim).
- Limits claims of a road accident victim to certain benefits 'as provided for in the Bill', which are limited benefits and insufficient to properly compensate road accident victims' for all the damages suffered.
- Unreasonably burden taxpayers at the expense of individual road accident victims, and in general, result in a pay-more-for-less effect.
- Severely restrict the rights of non-residents to claim benefits (non-residents include South Africans who are absent from the Republic for a period of longer than six months per year, for the three years preceding the road accident or any consecutive three year period thereafter).

- The RABSA will not inform a road accident victim of the outcome on whether his or her claim has been accepted or rejected. Should the RABSA fail to advise the road accident victim of the acceptance or rejection within 180 days, the claim is presumed to be rejected, obliging the vulnerable road accident victim to lodge an appeal within 30 days after such date of presumed rejection.

It may be unconstitutional as compared to similar existing legislation, notably the Compensation of Occupational Injuries and Diseases (COIDA) Act 193 of 1993. It abolishes the road accident victims' common law right to claim damages and manages victims' inferior benefits. Section 36(1)(a) of the (COIDA) Act retains the common law right and allows for benefits based on actual income while RABSA uses the concept 'national average', which does not exist.

The RABS Bill does not sufficiently take into account its implications on the social, economic, health and other related sectors of South Africa, nor does it take into account the realities facing the majorities of South Africans, such as unemployment, lack of transport and communication infrastructures. The financial implications of the proposed system have also not been disclosed to the public.

It essentially retains the governance and administration of the current RAF which takes approximately 55 months to finalise a claim and which costs the motorist who solely contributes to the proposed fund an outrageous amount. This, is contrary to the intention to introduce a social security scheme, where social security schemes are controlled and administered by government departments.

What are the key issues?

1. What will it cost the public?
 - What will RABS cost?
 - How will RABS be funded?
 - What are the funding assumptions for the proposed scheme?
 - How will the RAF improve its current inefficiencies and fruitless expenditure?
 - How will national average income be calculated?
 - How will the RAF's current balance sheet (± Rb 100 debt) be financed?
 - How will RABS's balance sheet be financed?
 - What will the impact be on the fuel levy? And how will it be used?
2. What benefits will the public receive?
 - All constitutional rights must be upheld.
 - The public must be well informed.
 - Fair recovery of actual damages suffered should be retained.
 - Everyone must have the right to claim, including children.
 - No fault does not replace compensation.
 - The victims' access to proper medical care and the implementation of, and where applicable, a lifelong treatment plan.

- Victims' practical ability to access the claims process, especially claimants who are illiterate, previously disadvantaged and have limited access to resources, i.e. transport and communication.
3. Who will assist and protect the claimants?
- 'No fault' has many requirements in order to comply and is not automatic or guaranteed.
 - Many of these requirements will make it very difficult for the public to claim.
 - The public will not be able to claim their actual losses.
 - The RAF or RABSA has no duty to inform the claimant or public of the outcome of the claim.
 - The RAF or RABSA will be judge and jury.
 - How will the RAF cope with the national demands, given that they currently are not coping with a fraction of the direct claims?
 - How will the transition be managed?
4. What about all the negative impacts?
- Additional pressure on the already ailing health system.
 - Additional pressure on the social grant system.
 - An increase in unemployment.
 - Litigation will simply shift from the RAF to the Department of Health.
 - Why some sections in the RABSA Bill contravenes a number of other laws as well as the constitution?
 - It will discourage tourism to SA.
 - It will discourage job creation.
 - How will it function without a link to the National Health Insurance (NHI)?
 - The exclusion of common law rights will dilute our good international constitutional stance.