ATTENTION: THE CHAIR, PORTFOLIO COMMITTEE ON TRANSPORT

27 NOVEMBER 2017

RE: COMMENTS ON THE ROAD ACCIDENT BENEFIT SCHEME (RABS) [B 17 – 2017].

The object of the Road Accident Benefits Scheme Bill (RABS) (Bill) is defined as follows:

The main objectives of the Bill, amongst others include, to provide an effective benefit scheme in respect of bodily injury or death caused by or arising from road accidents, which benefit scheme is **reasonable, equitable, affordable and sustainable**, exclude from civil liability certain persons responsible for bodily injuries or death caused by or arising from road accidents and the establishment of the Administrator **[Emphasis added].**

The LSNP submits the following comments at the hand of key questions put to the Department of Transport (DoT) on the 20th of June 2017 and the subsequent answers given to the Portfolio Committee on Transport, in order to test, whether the object of the RABS Bill, can be met based upon the current RABS Bill.

In order to simplify the comments and conclusion we will address the relevant issues under particular questions (the full report including the response by the DoT and other sources referred to, are attached, for ease of reference and will be referred to throughout the course of this discussion).

Questions:

1. **How was the medical costs impact on RABS determined given that the medical tariffs are not yet finalized?**

   Response: A draft medical tariff was developed in 2014 based on the average benefit rates for private medical schemes members. The projected medical costs for RABS was actuarially determined and updated based on the average benefit rates for private medical schemes

members; the number of road accidents; the medical expense claim experience under the RAF Act; and, allowing for an increase in such claims because of the introduction of no-fault.

The Constitutional Court, in respect of the challenge to the non-emergency tariff (public health tariff) under the RAF Act, in the matter of *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC),* stated that:

> *"It is indisputable that imposing public health tariffs on road accident victims amounts to restricting them to treatment at public health institutions, if they cannot fund the healthcare themselves. In some instances, that restriction will be perfectly reasonable and adequate.*
>
> *However, the overwhelming and undisputed evidence demonstrates that road accident victims who are rendered quadriplegic or paraplegic require specialised care for life without which there can be life-threatening complications which if unattended lead to their inevitable demise.*
>
> *To this charge, the respondents have no effective answer. They acknowledge the vast disparity between private and public healthcare establishments and explain how they propose to improve public healthcare establishments. What they do not do, is to meet head-on the complaint that quadriplegic or paraplegic road accident victims would not easily survive the health care services at public hospitals.*
>
> *Another important, but not individually decisive, consideration is that actuarial evidence demonstrates that an implementation of the UPFS tariff would save the Fund no more than 6% of its total compensation bill. This relatively meagre saving seen against other compelling factors makes it unreasonable to consign quadriplegics and paraplegics to a possible death by reducing their adequate access to medical care in pursuit of a financial saving of a negligible order. The respondents do not suggest that there is a historical or present unfairness related to giving serious spinal injury accident victims access to private health care services whilst public health provision is being progressively improved.*

> *I am satisfied that the UPFS tariff is incapable of achieving the purpose which the Minister was supposed to achieve, namely a tariff which would enable innocent victims of road accidents to obtain the treatment they require. UPFS is not a tariff at which private health care services are available; it does not cover all services which road accident victims require with particular reference to spinal cord injuries which lead to paraplegia and quadriplegia. The public sector is not able to provide adequate services in a material respect. It must follow that the means selected are not rationally related to the objectives sought to be achieved. That objective is to provide reasonable healthcare to seriously injured victims of motor accidents."*

The proposed market related tariff under the RABS dispensation will ensure that the Constitutional Court's concerns are addressed.

12. Comment: The RAF has not yet consulted on the tariff?

Response: The Committee has given guidance that the Department and the RAF must not act ahead of the legislative process.

This guidance accords with the provisions of section 14 of the Interpretation Act, No. 33 of 1957 which provides for such formal consultations only once the law has been signed by the President, where after the Minister (not the RAF) in terms of section 60 of the Bill can commence engagement of the Minister of Health and the public consultation in terms of the Promotion of Administrative Justice Act, No. 3 of 2000.

In the interim, the RAF has prepared a draft tariff as discussed in the response to question 2 above. There has also been engagement (not consultation as contemplated above) with various stakeholders in respect of the draft tariff. The tariff will be updated and treatment protocols and policies will be developed, which documents will serve as the basis for formal consultation by the Department, in due course.

LSNP : COMMENTS

The delivery of quality Healthcare is one of the primary functions of RABS. The healthcare referred to should be private healthcare services in accordance with the judgement in *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC),*

It is said the Road Accident Fund Scheme Administrator (RABSA): "*will cooperate with public and private sector providers to enable the delivery of quality healthcare to road accident victims across South-Africa, at affordable cost".*

However, since more patients use public services, more resources will be channeled to the public health sector for treating road accident patients (see par 6.5.6, page 56 of the Government Gazette, 12 February 2010, *see annexure **"T1"** and **"T2"***).

Since the judgement in the Constitutional Court, in the matter of *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC),* there has been no:

- Consultation process;
- Procurement process, as required in Section 31 (1) of the RABS Bill and/or Section 217 of the Constitution (*see annexure **"T3"** to **"T5"***).

The Procurement process as defined in the terms of Section 217, of the Constitution, to mean:

(1)When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2)Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for —

(a) categories of preference in the allocation of contracts; and

(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

(3)National legislation must prescribe a framework within which the policy referred to in subsection (2) may be implemented.

The reprimand by the Portfolio Committee, as opposed to "guidance given not to act ahead of the legislative process" was not in relation to the tariff, but rather a warning to the Dot / RAF to stop its

wasteful expenditure on advertising campaigns, branding (*see annexure **"T6",** branded lifts and toilets in RAF, Head Office etc.*) and tender processes which may influence the public into thinking that RABS is fully functional

The fact that the DoT sites Section 14 of the Interpretation Act, in their answer on this point is opportunistic and cannot apply in the case of a fundamental and problematic element of the RABS Bill, prior to the inception of the Bill (see ***"T7"*** and ***"T8"***).

In the implementation of the RABS Bill the DoT simply cannot rely on the exception available in Section 14, as:

- The single medical tariff is such an integral part of the RABS Bill, the RABSA cannot, reasonably function and/or deliver the benefits in Part A, Health Care Services (Section 30, 31, 32 and 33) without the tariff having been secured, prior to the inception thereof;
- It will be placing the funding model of a combined RAF/RABS liability at enormous risk as RABSA would be unable to determine what their liability would be under a no-fault system;
- The RABSA will need to determine their liability in relation to so called balance-billing (excess between agreed tariff and the actual account payable for non-contracted service providers (Section 32));
- Road accident victims would be at risk of civil liability having to cover the excess payable to service providers not covered by the RABSA.
- Section 32 (1)(b) states that the RABSA will only be liable to pay non-contracted health care providers a "reasonable tariff" – Road accident victims, especially the poor and indigent victims will be facing the biggest challenges having to cope with the burden of having to pay the excess on these medical bills;
- Until a single tariff has been procured it will be unsure whether a monetary cap will have to be introduced upon healthcare services.
- In a no-fault system certain parameters will have to be introduced to ensure that the RABSA remains adequately financed to ensure the sustainable the delivery of healthcare services Chapter 6, Part A;

- If a cap is introduced the immediate question would be whether private healthcare providers would be willing to engage the DoT, facing the real financial risk of engaging an entity that cannot guarantee any long term financial security;

- In reality the RABSA, within its wide powers of discretion, may reduce any benefit subject to affordability, in order to ensure the financial viability of RABS (Section 40(2)(c));

- The road accident victims run the further risk of having their benefits reduced at any stage in order to assist the RABSA to maintain their contractual agreements with service providers;

- Having regard to the high costs of medical care especially in the emergency, acute and rehabilitative phase and with the aim of keeping the RABSA as cheap as possible to administer, it is doubtful that RABSA would be able to engage private health care providers on an acceptable tariff.

- Without a tariff it would be impossible to do a proper costing of RABS, even with the DoT's best intentions to offer a tariff which will be "*on par with what the large medical schemes pay"* (page 78, of 2014 comments)

Further, the following comment was made by the DoT (in 2014) in reply to a comment made on the tariff by the South African Private Ambulance & Emergency Services Ass (SAPAESA) during the previous round of comments:

"This aspect is best dealt with in **the tariff which will be published for public comment in due course**"**[our emphasis]**

Since 2014, no tariff has been published comment which begs the question - Why the delay?

The answer is to be found in a report, prepared for National Treasury, by Mr. Alex van den Heever [*see full report attached annexure **"T9"***]

ADMINISTERED PRICES

HEALTH : A report for National Treasury, ALEX VAN DEN HEEVER

Preface

This report was prepared for National Treasury to support its assessment of administered prices in South Africa.

The objective of the study was to assess the processes involved in setting prices in regulated industries.

The existing process for centrally bargained medical scheme tariffs is flawed, inflationary, and open to special interest manipulation. It exists within a regulatory vacuum, resulting in both medical scheme and service providers engaging in a confusing set of interactions which rarely benefit the public. [our emphasis]

5. REVIEW OF TARIFF SETTING VIA MEDICAL SCHEMES IN SOUTH AFRICA

5.1 Overview

Two key areas of fee setting affect the final price of purchase for many health goods and services.

The first involves the fees paid for professional services such as doctors, surgeons, dentists, specialists, etc.

The second relates to tariffs paid for hospital services. Outside of this are a not insignificant range of goods and services which are not influenced in any way by the final purchaser – pharmaceuticals, laboratory tests, gases, etc.

5.2 Medical schemes and tariff setting

Medical schemes are insurance vehicles and therefore “reimburse” members for actual costs incurred. This reimbursement need not involve payment of the full price paid or cost incurred. Medical schemes have therefore traditionally operated not as purchasers of health care but the

insurers of purchasers of health care. As a consequence the "tariff" set centrally by the Representative Association of Medical Schemes (RAMS – now Board of Health Funders (BHF)) were not prices.

However, as many medical scheme members would not be able to pay health care service provider unless reimbursed by a medical scheme, the tariff set by RAMS (now BHF) has the effect of being a price. Where doctors were "contracted in" (see below) the tariff operated unambiguously as a price, as the reimbursement rate matched the final amount paid. However, doctors contracted in on out on a voluntary basis, reflecting the true nature of the tariff as reimbursement.

The almost continuous and seemingly irresolvable conflict in price determination between service suppliers and medical schemes stems largely from the unavoidable requirement placed on the market to set fees centrally. Given the vast number of procedures, equipment and consumables, a degree of uniformity in pricing is required to ensure that medical schemes and service providers can cope with huge volumes of invoices. If a different price schedule existed for every medical scheme, service suppliers would be given a near impossible administrative task. However, to negotiate a single schedule in a manner acceptable to all parties is virtually impossible. [our emphasis]

Until 1993 RAMS had the statutory authority to publish the official price list for all medical schemes. This status was removed from them in 1993, after which they could only publish a recommended schedule of benefits. Schemes did not have to adhere to the prices. RAMS was permitted to perform this function, in terms of competition legislation, only as long as they did not enforce the price list on schemes. **Individual schemes could negotiate separate tariffs with service providers if they wished. However, this was nearly impossible to do, and consequently the RAMS schedule of fees effectively became uniform throughout the market. [our emphasis]**

In response to this hospital groups and medical professionals set their fees in accordance with their own processes. These tariffs are normally higher than the RAMS fees and medical scheme members are "balance billed" the difference. Threats to significantly increase the levels of balance billing are often used by service suppliers to

extract concessions from RAMS, now BHF, to increase their schedule of fees [our emphasis].

In return, **medical schemes penalise service providers that balance bill** by making the member pay the bill first before any reimbursement occurs.**[our emphasis]**

The DoT made the following remarks in reply to a comment by the Board of Health Care Funders on the issue of balance billing:

"by not allowing for balance billing the RABS tariff will become a fixed tariff which will be objectionable form the Competition Act perspective"

The report by Alex van den Heever continues*:*

This practice, especially if it becomes widespread, has severe impacts on hospital cash flow.

5.4 Concluding remarks

The complexity of medical scheme claims processing makes the establishment of a central bargaining mechanism for a range of prices inevitable. However, this process comes with in-built instability, as it is not possible to please everyone, particularly with medical costs rising significantly in real terms. This results in irreconcilable differences which can only be resolved through government intervention.

6. SUMMARY OF FINDINGS AND RECOMMENDATIONS

The existing process for centrally bargained medical scheme tariffs is both flawed, inflationary, and open to special interest manipulation. It exists within a regulatory vacuum, resulting in both medical scheme and service providers engaging in a confusing set of interactions which rarely benefit the public.[our emphasis]

LSNP: COMMENTS

It is evident that negotiating a medical tariff is "virtually impossible" and even if some tariff is negotiated, taking into account medical costs rising significantly there will always be irreconcilable differences which will most certainly result in an agreement that will be found to be, uncompetitive.

Further, balance billing, as envisaged by the DoT, will place the road accident victim service providers, at serious financial risk and will most certainly jeopardize and the relationship between the RABSA and the suppliers of healthcare services.

To administrate a no-fault based "medical scheme" as envisaged by RABS having regard to the enormous number of procedures, equipment and consumables, will require an exceptional level of service delivery from the RABSA, as it would be taking on a "near impossible administrative task".

The DoT, has to date, not offered any reasonable explanation nor given a convincing argument on how they intend to ensure that these exceptional levels of service delivery are to be achieved and maintained without backsliding into the same administrative slump road accident victims currently experiencing under RAF and COID (various comments were raised in 2014 on this point and one would have expected that he DoT would have attended to the proper benchmarking of the RAF's performance and capability to deal with RABS (see annexure ***"T10"*** Scheme Viability as per the Road Accident Fund Commission Report 2002, Volume 1), .

We have not seen the results of the "skills gap analysis" that were supposed to be done in 2014 to determine whether the transitional system between RAF and RABS will succeed.

We do, however, know the DoT maintains the RABSA will be a better system than the current RAF - but without a proper strategy plan, costing analyses and the benchmarking of performance, this promise will amount to nothing more than "lip service" in the face of the huge administrative task RABSA would have to be able to maintain. (Chapter 7) (See *annexure* ***"T11"*** *and* ***"T12"***, Benchmarking and Recommendations, as per the Road Accident Fund Commission Report 2002, Volume 2 par 41.113 to 41.121).

Having regard to the above it is clear why the DoT is shying away from the consultation process and rather placing their hope on taking a shortcut (Section 14 of the Interpretation Act).

For this is the reason why they have been unable to secure the required tariff despite "engagements with various stakeholders" (the Portfolio Committee would be well advices to have insight into this process to determine and see whether the private health care has an appetite for RABS).

If the DoT has not been able to secure the tariff in the 3(three) years since the first comments in 2014 what are chances of the DoT to secure a tariff after the signing the Bill into a law and how long this process will take.

The approach by the DoT to start "*such formal consultations only once the law has been signed by the President, of the RABS Bill" i*s not only presumptuous in the face of certain failure but also renders the RABS Bill, fatally flawed, as it will not be able to deliver on one of its principal objectives. The lack of an agreed tariff will render RABS without a bargaining position with private medical service providers.

Without an acceptable pre-determined medical tariff private healthcare service providers will not find the RABSA's advances appealing and road accident victims will remain subjected to public healthcare for as long as this procurement process may last.

The affordability of all other Benefits are dependent on the medical tariff.

The delay in the ability of the DoT to secure an acceptable tariff, will sentence road accident victims to treatment in the public health sector, defeating the purpose of RABS to deliver quality Healthcare services.

This delay/inability to secure an acceptable tariff renders the RABS Bill unenforceable and the RABS Bill, unconstitutional.

The RABS Bill cannot be passed until this tariff is secured as it will most certainly be struck down.

see: *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC)*

"……. seen against other compelling factors makes it unreasonable to consign quadriplegics and paraplegics to a possible death by reducing their adequate access to medical care in pursuit of a financial saving"

And further,

"I am satisfied that the UPFS tariff is incapable of achieving the purpose which the Minister was supposed to achieve, namely ***a tariff which would enable innocent victims of road accidents to obtain the treatment they require.*** *UPFS is not a tariff at which private health care services are available; it does not cover all services which road accident victims require with particular reference to spinal cord injuries which lead to paraplegia and quadriplegia. The public sector is not able to provide adequate services in a material respect"* ***[our emphasis]***

2. How will no-fault create savings considering that there will be more claims?

Response: The Committee's attention is invited to slide 78 of the presentation, copied below for ease of reference:

Expected Cost Impact

Table 1-Expected Annual cost accidents (R' million)

Accident Outcomes	Head of Damage	Annual cost of Current RAF Act	Annual cost after implementation of Amendment Act	Annual cost after implementation of RABS Bill
Fatality	LOS	4 369	4 376	4 406
	Funeral	167	115	174
Disability	General Damages	10 321	10 338	-
	LOE	12 163	12 183	9 474
Serious injury	Medical	4 247	5 546	5 474
	Extra RABS Rehabilitation			7 280
Operational	Professional fees	4 574	4 491	1 652
expenses	Administration	1 980	1 997	1 980
Total	Total	37 821	39 046	30 440
Additional Cost or Saving			1 225	(7 381)
% Cost/ Saving			3%	-20%

Under the RABS scheme many more road crash victims and their families will receive cover, due to the removal of fault and also due to the fact that both employed persons and those persons who cannot prove an income will be covered. The savings from the removal of general damages and from the reduction on expenditure on intermediaries will be used to fund the increased volume of claims. Therefore, regardless of the fact that many more persons will now receive cover, effectively, there will be **a net cost savings of 20%**, even after taking the increased volume of claims into account. **[emphasis added, by DoT]**

In the matter of the *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC),* the following was stated:

> *"Another important, but not individually decisive, consideration is that actuarial evidence demonstrates that an implementation of the UPFS tariff would save the Fund no more than 6% of its total compensation bill. This relatively meagre saving seen against other compelling factors makes it unreasonable to consign quadriplegics and paraplegics to a possible death by reducing their adequate access to medical care in pursuit of a financial saving of a negligible order"* **[our emphasis].**

We have as yet not seen any of the assumptions made by the State Actuary nor was their report submitted, in the interest of transparency, and as a result we are left to speculate on the assumptions and contingencies applied.

It is unclear how many claims per year the State Actuary budgeted for in their report.

One aspect is clear, the DoT relies on is a substantial legal cost saving emanating from the introduction of RABS.

As is illustrated in these comments RABS will be prone to judicial review and constitutional scrutiny from the inception and the RABSA will be liable to pays the costs, subject to the orders made by the Courts.

We note the DoT managed only a 20 % saving on their "best or worst case scenario" which constitutes a relatively small saving in the face of the potential disastrous financial results RABS could have on treasury and taxpayers if the DoT did not do a proper research or costing of RABS.

By applying the following simple illustration, on the impact of legal fees on RABS (review process on an unopposed basis) under a "no-fault" system, RABS will face dire financial consequences, despite the DoT's best intentions to reduce RABSA's legal bill.

Impact of legal fees on RABS (review process on an unopposed basis) under a "no-fault" system

- Minimum cost for an unopposed review of a matter amounts to R50 000.00;
- During the 2016/2017 financial year, 73860 personal claims were lodged with the RAF (*see annexure **"F1"***)
- Increase the amount by 2/3 to allow for "no-fault" which will result in 98480 claims pa under RABS;
- On average 1/2 of these claims will go on review: R 50000.00 X 49240 claims = **R 24620000 pa** on legal fees.

The DoT will argue that this is improbable as RABSA will ensure proper representation and attention to road accident victims. Representatives of the RAF working in public hospitals with the sole purpose to assist victims has indicated that they experience the same frustration in having to obtain hospital records etc. in order to facilitate their campaign.

Further, the comments on the answers submitted by the DoT on Question 13 and 14 *(supra)* will put this argument in perspective.

The DoT will have to accept that legal practitioners will always play a part in the system and will be waiting to address the shortcomings of the RABSA.

As such, a realistic costing exercise needs to be applied, as a 20% seems very little compared to the reality of the impact of RABS on the South-African public and fiscus.

3. **Question: How is the RABS Bill pro-poor when unemployment is high and the minimum wage is R3 500 p/m?**

Response: The Committee's attention is invited to slide 78 of the presentation, copied below for ease of reference:

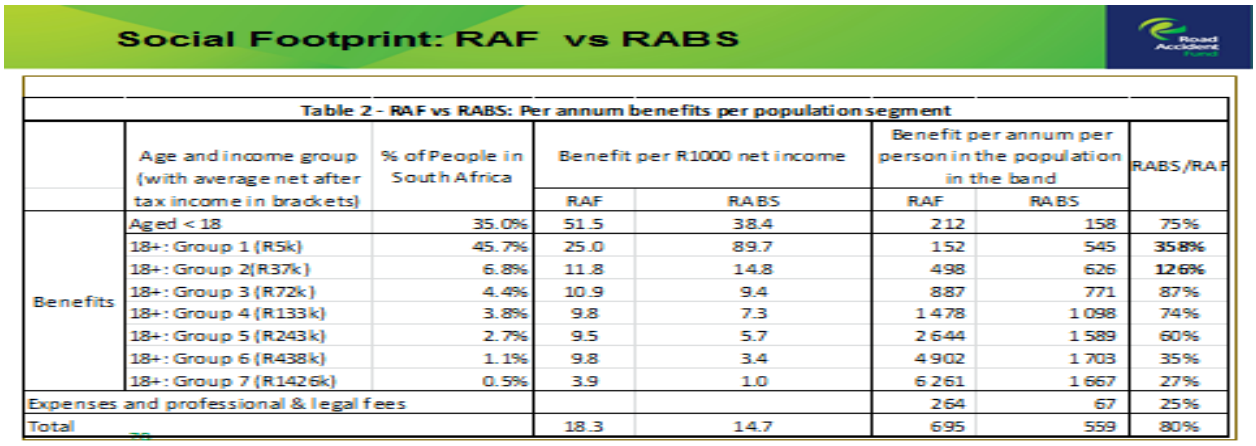


Table 2 - RAF vs RABS: Per annum benefits per population segment

	Age and income group (with average net after tax income in brackets)	% of People in South Africa	Benefit per R1000 net income		Benefit per annum per person in the population in the band		RABS/RAF
			RAF	RABS	RAF	RABS	
Benefits	Aged < 18	35.0%	51.5	38.4	212	158	75%
	18+: Group 1 (R5k)	45.7%	25.0	89.7	152	545	**358%**
	18+: Group 2(R37k)	6.8%	11.8	14.8	498	626	**126%**
	18+: Group 3 (R72k)	4.4%	10.9	9.4	887	771	87%
	18+: Group 4 (R133k)	3.8%	9.8	7.3	1 478	1 098	74%
	18+: Group 5 (R243k)	2.7%	9.5	5.7	2 644	1 589	60%
	18+: Group 6 (R438k)	1.1%	9.8	3.4	4 902	1 703	35%
	18+: Group 7 (R1426k)	0.5%	3.9	1.0	6 261	1 667	27%
Expenses and professional & legal fees					264	67	25%
Total			18.3	14.7	695	559	80%

Under the current RAF Act no claim exists for loss of income compensation for those who are unemployed and those who earn the minimum wage are compensated at the minimum wage level R3 500 (which equates to R42 000 per annum). Under the RABS dispensation both those who are unemployed and those who earn below the threshold of R52 527 per annum will receive a benefit calculated based on a deemed income of R52 527 per annum, i.e. higher than the minimum wage level. **Under the RABS dispensation the benefit for the poor is substantial, as compared to the current RAF dispensation**. As illustrated in the above slide, the benefit to the lowest income group (which includes unemployed persons) is increased by 358% under RABS, as compared to the current position under the RAF **[our emphasis].**

COMMENT: LSNP

The submissions made by the DoT are misguided and a blatant attempt to influence the decision makers and public alike, into thinking the RABS Bill is: "pro-poor".

Contrary to this submissions by the DoT, **the current RAF Act, does cater for the unemployed** and in fact offers better relief for road accident victims across the board especially those who suffered a loss of earnings all as a result of a serious accident.**[our emphasis]**

In order to illustrate the point a comparative study was done based upon the available assumptions made by the DoT and by applying the rule of law, as catered for in the Road Accident Fund Act 56 of 1996 (as amended).

RAF COMPENSATION PER ANNUM	RABS COMPENSATION PER ANNUM
Employable and unskilled	
Minimum Wage R3500.00 pm (R42 000 pa)	75% of ANNI (R39 395.00 pa)
Employable and semi-skilled or skilled (including students)	
Earnings significantly above minimum wage	75% of ANNI (R39 395.00 pa)
Compensation multiple times higher than RABS	
Unemployable even before accident	
Social welfare system applies	75% of ANNI (R39 395.00 pa)
Middle Class	
Earnings between R100 000.00 and R350 000.00 pa	R75 000.00 – R250000.00 pa)
Compensation higher than RABS	75% of equivalent under RAF
Retirement 63 - 65	Calculated until age 60
High Earner	
R750 000.00 pa	R187 500 pa (75% of cap)
Assume Cap R250000	
Compensation R250 000.00	
High Earner (50% residual earning capacity)	
Before accident earnings R750 000.00pa	Compensation is based on 75% of
After accident earnings R375 000.00;	capped earnings prior to accident

Cap R250 000.00

X capped earnings R250 000.00

Z after earnings R375000.00

Z is bigger than X - no compensation

*See full report by Wim Loots, Actuary, attached as annexure **"F2"** to **"F5"***

The drive to implement the RABS Bill is bolstered under the pretense that it will offer the Average Annual National Income (AANI) to the unemployed.

"*The purpose of the Average Annual National Income cap is to provide a pre- defined benefit without RABS having to embark on a costly, protracted and speculative exercise to establish the claimants earning capacity. Not recognizing claims of students, persons between jobs, etc. would escalate RABS's vulnerability to a constitutional challenge if no earning capacity is recognized."*

(*Page 32 of the 2014, comment summary by the DoT*).

The DoT acknowledges that, if the ANNI is reduced, the RABS Bill will be prone to a Constitutional challenge.

Closer scrutiny and having regard to comments made by the DoT in reply to the 2014 submissions *(see extract below)* reveals that the DoT acknowledges that by offering the AANI on a 'no-fault" basis, might be prove to be too expensive and already considered at that stage to reduce the figure, which of course opens RABS up to a further Constitutional challenge.

R DU PLESSIS	DoT
Deemed average annual national income for low earners – This is a reference to paragraph 36 (3) of the Bill. By definition, an average national income will be an amount such that approximately half (+/-) of the working population earns more, and half of the working population earns less. I use the term 'approximately' because under certain circumstances, mathematically speaking, the statement does not hold exactly. I do not see the motivation for having the lower earning half of the population to be deemed having earned halfway (+/-) between the lower and the upper half of earners. This is a perverse incentive for low earners to be road accident victims, and an invitation for fraudulent behavior.	**Input obtained from True South Actuaries:** *"Yes – I agree, but this is a philosophical / policy point and not an actuarial one."*
One may also look at this from a mathematics point of view. South African citizens have a very wide spread of earnings levels, from the very poor to the outrageously rich. However, our Gini coefficient is extremely high, if not the highest in the world. The conclusion is that we have an extraordinary large proportion of poor citizens, and a small proportion of very rich citizens.	**"Agree"[our emphasis]**
Should we set a relatively high minimum benefit level in terms of the scheme a disproportionately large liability will end up in the lap of the scheme. That is a result of us substituting a large/wide tapering level of earnings with a relatively high and constant level of earnings over the whole of the extent of the tapering, exceeding every level of earnings in the taper itself.	**"Agree it will be costly."[our emphasis]**
I suggest that a benefit level commensurate with the current state disability grant be applied, instead of average national earnings. In my view, it does not make sense for the state to treat citizens disabled as a result of a road accident in a manner different (and more favorable) from other disabled citizens. If the claimant wishes a higher benefit level, the onus of proof should revert to the claimant.	"R1350 per month * 12 = R16,200, which is much lower than the national **average earnings and will significantly impact on the cost of the scheme. But again, this is not an actuarial point it is a policy one. I would support such a recommendation as I am sort of anticipating that the funding exercise (funding both RABS and RAF for a long period) will point to the need to go back to the drawing board." [emphasis by DoT]**

4. **Comment**: The removal of general damages and limitation of benefits in the RABS Bill is not pro-poor.

   Response: The response to question 3 above must be read with this response.

   General damages is a form of compensation paid under the common-law delictual claim for pain and suffering, loss of amenities of life, or disfigurement. It is important to note that general damages does not relate to a loss in respect of the claimant's estate due to medical and related costs, or loss of earnings, for which benefits are provided under the RABS Bill.

   Under the RABS dispensation general damages will not be available to any crash victim (irrespective of income status), so that all South Africans, and especially the poorer sectors of society currently excluded under the current RAF Act, will benefit under the RABS scheme.

   Under the current RAF dispensation those who are unemployed and those who cannot prove income (and these are usually the informal traders and street vendors) cannot be compensated for loss of income. These are the people in groups 1 (net annual income below R5 000) and group 2 (net annual income below R37 000) per the table in slide 78 of the presentation, copied in response to question 3 above.

   The removal of the requirement to prove an income under RABS will therefore broaden access to benefits by road crash victims in the above groups. A minimum income will be deemed at the level of R52 527 per annum.

   As shown in the last column of the table in slide 78 of the presentation, these two groups' benefits increase by 358% and 126% respectively under the RABS dispensation, as compared to the current RAF scheme. Also, as shown in the second column, these two groups represent 52.5% of the South African population. Therefore, removing general damages does not disadvantage the poor, quite the contrary, more than half of the population will be better off.

   The second column from last of the table in slide 78 of the presentation also shows that groups 1 and 2 (the poor) will receive the largest increase in benefits under the RABS dispensation when compared to RAF. Higher income earners will still receive higher benefits than the lower income groups, although benefits of the higher income earners under the RABS dispensation will be lower relative to the current RAF scheme.

The removal of general damages is necessary to ensure that the RABS scheme is aligned to social security principles, instead of compensating for something which is not a loss, removing general damages and limiting benefits will ensure that the RABS scheme will provide cover for thousands more people, whilst remaining affordable and sustainable.

It is insightful to note that the Constitutional Court, in the context of worker compensation, has already in the matter of *Jooste v Score Supermarket Trading (Pty) Ltd 1999 (2) SA 1 (CC)* given the nod to the substitution for the common law delictual claims of statutory benefits. The court stated as follows:

> *"But that argument fundamentally misconceives the nature and purpose of rationality review and artificially and somewhat forcibly attempts an analysis of the import of the impugned section without reference to the Compensation Act as a whole. It is clear that the only purpose of rationality review is an inquiry into whether the differentiation is arbitrary or irrational, or manifests naked preference and it is irrelevant to this inquiry whether the scheme chosen by the legislature could be improved in one respect or another. Whether an employee ought to have retained the common-law right to claim damages, either over and above or as an alternative to the advantages conferred by the Compensation Act, represents a highly debatable, controversial and complex matter of policy. It involves a policy choice which the legislature and not a court must make. The contention represents an invitation to this Court to make a policy choice under the guise of rationality review; an invitation which is firmly declined. The legislature clearly considered that it was appropriate to grant to employees certain benefits not available at common law. The scheme is financed through contributions from employers. No doubt for these reasons the employee's common-law right against an employer is excluded. Section 35(1) of the Compensation Act is therefore logically and rationally connected to the legitimate purpose of the Compensation Act, namely, a comprehensive regulation of compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment. It may be mentioned in passing that courts in the United States of America, Canada and Germany have found similar legislation providing for worker compensation and limiting the right of the worker to claim common-law damages not to be irrational or arbitrary."*

Furthermore, in the judgment by the Constitutional Court in *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC)*, in relation to challenges brought against the abolition of the residual common law claim against the wrongdoer; the limitation of common law claims for loss of income and support; and, the non-emergency medical tariff, the following comment was made:

"I have earlier sketched the history of legislation that regulated third party insurance since 1942. It is a tale of numerous commissions of inquiry and frequent reform involving intricate and competing policy and legislative options. After more than six decades a fair, effective and financially viable scheme of compensation remains elusive. However, if on all accounts the impugned legislative scheme is an incremental measure towards reform and is a rational step in that direction, the lawmaker should be permitted reasonable room or leeway to advance the reform. This does not, however, mean that the mere fact that a prevailing system is but a step in the wake of a wonderful legislative ideal can for that reason only ever justify the violation of constitutional rights in the interim.

We must keep in mind not only the government's intermediate purpose in enacting this legislation, but also its long-term objective. The primary and ultimate mission of the Fund is to render a fair, self-funding, viable and more effective social security service to victims of motor accidents. The new scheme is a significant step in that direction. On all the evidence it is clear, and the Minister and the Fund assure us, that the ideal legislative arrangement should not require fault as a pre-requisite for a road accident victim to be entitled to compensation for loss arising from bodily injury or death caused by the driving of a motor vehicle. Therefore, the abolition of the common law claim is a necessary and rational part of an interim scheme whose primary thrust is to achieve financial viability and a more effective and equitable platform for delivery of social security services.

On balance, I am satisfied that the abolition of the common law claim is rationally related to the legitimate government purpose to make the Fund financially viable and its compensation scheme equitable."

LSNP: COMMENTS

The retention of a victim's right to sue the wrongdoer will probably be one of the first constitutional challenges RABS will face, if introduced unchanged.

Noteworthy is the fact that the majority (commissioners Satchwell and Sithole) recommended that road accident victims and their families be allowed to retain their common law rights to compensation and further that the wrongdoer must not be indemnified under the proposed scheme (Chapter 18, page 503 of the Road Accident Fund Commission Report, *see annexure **"G1"***).

Yet, the DoT is unflinching on this issue, persisting with the same arguments they made in response to the 2014 submissions.

It seems that the DoT religiously relies on the judgement in *Law Society of South Africa and Others v Minister for Transport and Another 2011 (2) BCLR 150 (CC)* without having regard to the fact that under RABS, the DoT will be faced with a totally different set of facts and rules of law.

The DoT is arguing that the abolition of general damages will allow the RABSA to offer the AANI to the unemployed and by doing so will funnel more resources to a wider road accident victim base (*see annexure **"G2"*** paragraph 20.63 of the Road Accident Fund Commission Report, which confirms that no existing no-fault system ensures that more compensation/benefits are devoted to victims).

However, as illustrated road accident victims will receive much less under RABSA, always at risk of adjustments in order to maintain affordability.

RABS offers the injured victim no long term financial security nor any chance of financially rehabilitation especially in the light of the long waiting periods (Section 47(1) and 55(5)).

We note that the Average Annual National Income (AANI) is retained in the current RABS Bill (Section 35).

In the absence of the report by the State Actuary, it is impossible to know what assumptions were made to determine the viability of maintaining, paying the ANNI, under a no-fault system, or what the probability is that this amount will be reduced to ensure the longevity of RABS.

We request to have insight into the State Actuary's report or at least to **allow for a peer review** of the report as is the usual business practice.

5. Question: How can the Committee tell if the financial model for RABS is financially viable?

Response: The Committee's attention is invited to slide 77 of the presentation, copied above in the response under question 2. The RAF's Statutory Actuary determined the annual cost of claims under the current RAF Act and also under the proposed RABS dispensation. The table in the slide shows the annual cost for each category of claim (heads of damage), as well as the total cost. The annual cost of the current scheme is R37,8 billion as compared to the projected cost of RABS of R30.4 billion. As shown in the table, the cost savings are predominantly a result of cost savings due to the elimination of general damages, and a large reduction in expenditure on professional and third party fees. The Committee's attention is further invited to slide 80 of the presentation, copied below for ease of reference.

LSNP: COMMENTS

- As illustrated in the comments to Question 2 *infra,* the DoT is very presumptuous in their submission that the RABS will be more affordable, as a new untested Scheme having to enter a very volatile environment, could prove quit the contrary in fact, RABS could easily double or triple the State's financial liability. (See *annexure **"G3"*** page 579, Chapter 20 of the Road Accident Fund Commission Report, paragraph 20.73);

9. Question:

The R10 000 funeral benefit is inadequate. What informed the level of the benefit? The Department must reconsider the level of the benefit taking into account the costs associated with this benefit? The Department must also consider whether the award is a benefit or a donation.

Response: The R10 000 benefit was based on the average value of a claim paid by the RAF at the time the Bill was drafted and the No-Fault Policy was approved. The table below shows the actual average value of a funeral claims paid by the RAF over the last five years:

RAF Funeral Cost Payments						
Financial Year	2017	2016	2015	2014	2013	2012
Average Value	R 15 264	R 13 732	R 12 367	R 11 245	R 10 425	R 9 259

The average value has since increased from R9259 in 2012 to R15 264 in 2017. Consideration can be given to increase the value of the funeral benefit from R10 000 to either R15 000 or R20 000. The table below shows the impact of the change in the projected RABS scheme savings due to the change in the funeral benefit:

RABS Funeral benefit options			
	Current	Option 1	Option 2
Funeral benefit	R 10 000	R 15 000	R 20 000
Projected annual funeral benefit cost	174	261	348
Projected RABS cost savings (total)	7.38billion	R7,29billion	R7,21billion
Projected RABS cost savings (%)	20%	19,3%	19,1%

Thus a change in the value of the funeral benefit has a small impact on the overall savings of the RABS scheme.[our emphasis]

LSNP: COMMENTS

In 2014, one Kholekile Monakali, made the comment that "the R10000,00 benefit is inadequate".

The DoT responded by stating: **"The R 10 000.00 cap is what the scheme can afford"[our emphasis]**

Yet, after being confronted in Parliament on this question their response were:

"a change in the value of the funeral benefit has a small impact on the overall savings of the RABS scheme".

The fact that the DoT easily manipulates the figures to allow a benefit that prove in 2014 to costly to be adjusted at will, illustrated the importance of having transparency in the costing process.

Stakeholders should be placed in possession of the State Actuary's report to allow for constructive and meaningful input, in response to the invitation by the Portfolio Committee.

Failure by the DoT to submit all relevant documentation to stakeholders and the Portfolio Committee Members will render the consultative process flawed.

13. **Comment:** the presentation stated that the Administrator must assist claimants to claim. However, section 42(3) of the RABS Bill refers to "if necessary" and not "must", therefore the Administrator may elect not to assist claimants.

Response: Section 5 places the following duty on the Administrator:

"The Administrator must—

(a) assist injured persons, dependents and immediate family members to submit

Claims…"

Consequently, a general duty rest on the Administrator to assist claimants. However, section 42(3) provides as follows:

> *"If necessary, the Administrator may assist any injured person or other qualifying person to submit a claim in accordance with this Act, including making an application for the appointment of a curator if the qualifying person is unable to prepare and submit a claim in terms of this Act."*

The above section is qualified to accommodate instances where the claimant elects to use the services of an attorney, or someone else, or wishes not to rely on the assistance of the Administrator. It is not the intention of the Act to remove a claimant's election to use the services of someone other than the Administrator to assist him, or her, with the claim.

Furthermore, the section also refers to the appointment of a curator, which will not be necessary in very instance.

Consequently, the use of the word "must" would not be appropriate.

LSNP: COMMENTS

This question was one of the most prevalent comments during the 2014 round of comments and quite noticeable that different stakeholders and legal minds alike, shared the same sentiment:

"The RABS Bill lacks the support the DoT is claiming it affords"

Now, if so many informed and educated people draws that inference, we can only but imagine what an absolute challenge negotiating the RABS Bill will be for the ordinary road accident victim.

Noteworthy, is that the inference is not based upon the desire to maintain the *status quo* but a genuine concern that the RABS Bill, certainly does not speaks to the poor and will most certainly have devastating effects on the poor South-African road accident victim who cannot afford "top-up" insurance.

It is our submission that if it is indeed the intention of the RABSA to assist road accident victims unconditionally in the preparation and lodgment of their claims, the DoT must remove all wording from the Bill that creates doubt on this issue and could be used by the RABSA to reject or fail to process any claims as per Section 43(2).

We further submit that the word "may" assist in Section 42(3) must read "must" assist - the road accident victim will always have the option to engage an attorney or otherwise, at any stage in the process and as such the explanation by the DoT, does not hold water, either RABSA must assist the victim or they don't.

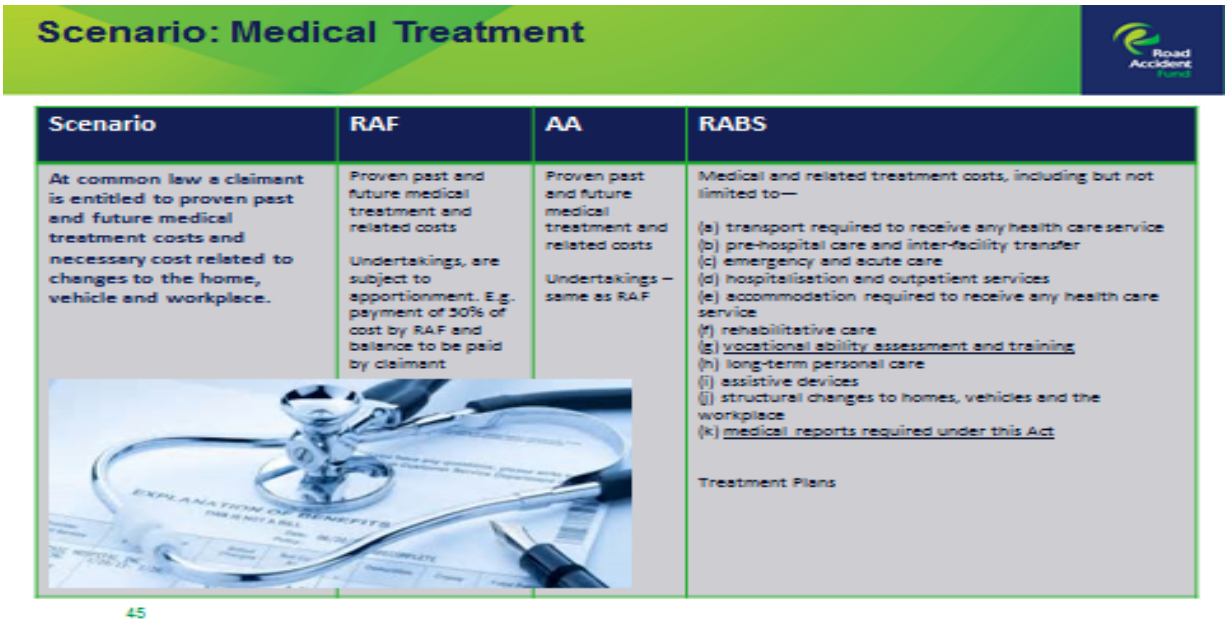
14. Comment:

There appears to be a conflict between the presentation and the Bill since section 56 of the RABS Bill states that the Administrator will not be liable for legal costs, yet in the presentation it states that the Administrator will pay for medical reports.

Response: Section 56 reads as follows:

"Unless otherwise provided in this Act, the Administrator shall not be liable to contribute to the costs of an injured person, claimant or beneficiary, including his or her medical and legal costs, to prepare and submit a claim or an appeal or to meet any requirement in this Act."

The underlined wording in the above extract qualifies the application of the section and signifies that there will be instances where the Administrator will be liable for such costs, i.e. in all instance specifically provided for in the Act. For instance, section 29(a) provides that the Administrator is liable to provide the healthcare services provided for in Part A of Chapter 6. These healthcare services are specified in section 30(1) and are listed in slide 45 of the presentation, copied below for ease of reference:



Scenario: Medical Treatment

Scenario	RAF	AA	RABS
At common law a claimant is entitled to proven past and future medical treatment costs and necessary cost related to changes to the home, vehicle and workplace.	Proven past and future medical treatment and related costs Undertakings, are subject to apportionment. E.g. payment of 50% of cost by RAF and balance to be paid by claimant	Proven past and future medical treatment and related costs Undertakings – same as RAF	Medical and related treatment costs, including but not limited to— (a) transport required to receive any health care service (b) pre-hospital care and inter-facility transfer (c) emergency and acute care (d) hospitalisation and outpatient services (e) accommodation required to receive any health care service (f) rehabilitative care (g) vocational ability assessment and training (h) long-term personal care (i) assistive devices (j) structural changes to homes, vehicles and the workplace (k) medical reports required under this Act Treatment Plans

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Note item (k) which requires the Administrator to pay for medical reports required under the Act. Consequently, section 56 does not create a conflict.

LSNP: COMMENTS

The DoT in their explanation of Section 56, refers the Portfolio Committee to Sections 29(a) which provides that the Administrator is liable to provide the healthcare services provided for in Part A of Chapter 6, 30(1)

The DoT fails to explain to the Portfolio Committee that Section 29 and 30 **only applies once the claim has been accepted** by the RABSA.**[our emphasis]**

In other words none of the benefits under Part A, Chapter 6 (paying for medical reports etc.) applies prior to a claim being accepted by the RABSA (see Section 43(2) and 56).

The explanation given by the DoT has the startling effect that wording in Section 56: *"Unless otherwise provided in the Act"*, is of no consequence.

The wording could just as well have been deleted from the Bill, as it affords the road accident victim no hope of being able to engage the RABSA without complying with Section 43.

The poor victims are immediately disqualified from claiming as they would not be able to afford the costs involved in the preparation and lodging of a claim against the RABSA.

Section 56 should simply have read:

"the Administrator shall not be liable to contribute to the costs of an injured person, claimant or beneficiary, including his or her medical and legal costs, to prepare and submit a claim or an appeal or to meet any requirement in this Act."

Further, **Section 42(2)** reads as follows:

"the Administrator shall not be liable for the provision of a benefit until a claim for such benefit is submitted in the manner set out in the rules".

Section 43(2) reads as follows:

"The Administrator shall not be obligated to process any claim until a claimant has complied with any requirement imposed on him or her in terms of this section"

The wording of the current RABS Bill, is cleverly formulated in such a way rather to discourage claiming as opposed to accommodate and invite victims, unconditionally, under a "no-fault" system, as one is led to believe in the advertising campaigns of the DoT/RAF.

The fact that a victim was involved in an accident under the RABS Bill takes him/her no way closer to a benefit despite being "no-fault" based.

RABS Bill, NOT "PRO-POOR"

- Without clear financial assistance thousands of poor victims, if not all will, be disqualified from claiming as they will not be able to engage the RABSA and comply with the stringent requirements in the Bill in particular Section 43;

- In the absence of any strategy plan to prove the RAF/RABSA will cope with the additional workload under a "no fault" system it is doubtful whether the needs of road accident victims will be addressed and the poor will again be subjected to a failed system;

- The following is stated on page 1328 par. 41.58 in the Road Accident Fund Commission Report: *"The theme has emerged throughout this report that the claimant and the disburser of benefits are in grossly unequal bargaining positions."(see annexure **"G4"**)*

- And further in par. 41.59 on the same page: When referring to the administrative process of a claim being dealt with by the administrator it was said: *"With the best will in the world, one cannot expect that any administrators of road accident benefits will do this with enthusiasm and vigor*."

- Having regard to the thousands of claims prescribing in the hands of the RAF and the prolific under settlement of direct claims, the inference made to the drive by the RAF to solicit direct claims, to prove RABS will be successful, is totally misplaced (*see annexure **"G5", "G6" and "G7"***);

- The DoT made the following comment in response to the 2014 comments: "*The removal of the fault-requirement will lead to more claims. The additional liability will be managed through benefit design*." (See *annexure **"G3"*** page 579, Chapter 20 of the Road Accident Fund Commission Report, paragraph 20.73);

- This means the RABSA offers no long term financial security to the unemployed as the Benefits are subject to review and affordability (Section 36(7));

- RABSA offers no financial rehabilitation, lump sum payments are only made, subject to Section 36(10);

- Road accident victims suffering from the financial impact of a catastrophic road accident will not be able to recover his or her actual loss (Section 28);

- The unemployed currently enjoys better coverage for damages than the limited structured benefit on offer by the RABSA.

18. Question:

Has the no-fault dispensation proposed in terms of the RABS Bill been benchmarked against other jurisdictions?

Response: The principle of fault and no-fault was benchmarked against other countries by the Satchwell Commission, who recommended a move to no-fault. Cabinet then approved a policy on "no-fault" which policy provides for defined benefits designed for South African conditions. The RABS Bill was developed based on the principles set out in the approved policy.

LSNP: COMMENTS

The Satchwell Commission recommended in par. 41.177, Volume 2, page 1338, that appropriate benchmarking practices and standard should be incorporated within the management practice of the administrative authority of the RABS. The standards should be subject to scrutiny by both the Board and the relevant Parliamentary Portfolio Committee, which would ensure that service delivery attains and maintains the highest possible level.

We are yet to see what benchmarking practices, as recommended by the Road Accident Fund Commission, had been applied and adhered to by the DoT.

Refer to Annexure ***"T10", "T11"*** *and* ***"T12"***)

LSNP: GENERAL COMMENTS

Section 35(5)(c)(i)

Despite various stakeholders including NEDLAC raising concerns about the exclusion of benefits for the first 60 days after the accident the DoT failed to address this issue.

Section 35(7) and **38(14)**

We submit that victims must at least be guaranteed inflationary adjustments.

Section 47(1)

Various interested parties including NEDLAC raised concerns on this issue (2014) yet the period remains at 180 days, without a credible explanation by the DoT;

We submit this period should be reduced to 120 days as victims will be severely prejudiced by the unreasonable long delays in processing their claims for benefits.

Section 56

Without financial assistance in the preparation and lodgment phase of the claim the vast majority of victims will be excluded from engaging the RABSA.

If the intention of the Bill is offer financial assistance, in the preparation and lodgment phase the wording should reflect the intention without causing any uncertainty.

The following issue has not been addressed in the current RABS Bill despite being part of the previous comments made by the LSNP (2014):

A medical service provider who wishes to claim direct for services is obliged to submit a claim with full details of the accident, including the registration details of all vehicles involved, the names addresses and contact details of all drivers and witnesses and the part they played in the accident, the names and contact details of all witnesses and the details of the South African Police station investigating the accident. It is very unlikely that this information will be readily available, particularly when emergency and acute phase treatment and services are provided.

Kindly indicate what was the State Actuary's response was to the following question posted in 2014, by one R DU PLESSIS:

"Funding - It is proposed (section 5, page 9 of the policy paper) that the present fuel levy as source of funding of the RAF be discontinued once the RABS comes into effect. Furthermore, it is suggested that the fiscus should address the accrued RAF liability. However, the fiscus has the responsibility to look after a large number of issues in funding. To dump a R42.33 billion liability (as per section 2 page 6 of the policy paper) on the fiscus will create havoc on our public finances. If the RAF liability has to fall into the queue, it may happen that such liability be put on the backburner.

My recommendation is that the RAF liability should continue to be funded by a fuel levy for as long as it takes the RAF liability to unwind. In the interim my view is that two streams of funding from fuel sold be maintained".

Section 55(5)

Despite NEDLAC's disagreement this period remains 180 days.

A proposal was made that the time must be reduced to 120 days.

"qualifying person" *should mean "any person who has a claim in terms of this Act"*

Minister of Health (Public Health Sector)

We submit that the Minister of Health, Department of Health should be consulted on the issue of available resources and service delivery having regard to the fact that, if the relevant Department fails to secure a tariff, public health would have to cater for RABS on a national level, with little or no infrastructure.

We submit that, contrary to the DoT's advice, RABS cannot be functionally implemented prior to the introduction of NHI (if the approach is maintained to only start the procurement process after the Bill had been signed by the President).

RABS literally is a "hospital pass" from the Department of Transport to the Department of Health and we need assurance that the expectations of RABS can be met by public health bearing in mind that the DoT will still be depending on public health in areas where there are no private health care and/or rehabilitation facilities available (refer to Health Care Provision, par. 11 of the Government Gazette, 12 February 2010 (*annexure **"H1"***)

Regulatory Impact Assessment (RIA)

This issue was also raised by numerous stakeholders in the 2014 commenting stage.

A Regulatory Impact Assessment (RIA) is a method to assess the significant impacts – both positive and negative – of a regulatory measure. RIA systematically examines the effects likely to arise from regulatory interventions such as new laws, amendments to existing laws, regulations and even policies and frameworks and communicates this information to decision makers and the public. Thus, RIA makes transparent the benefits of different regulatory options for various stakeholders, the implications for compliance and the state's cost of enforcement. RIA also encourages public consultation to identify and measure benefits and costs. The Organisation for Economic Cooperation and Development (OECD) has published guidelines on undertaking RIAs. (see annexure ***"H1"***).

Having regard to the significant impact of the RABS Bill, we respectfully submit that the RABS Bill cannot be reasonably signed into as a Law, without having been subjected to a Regulatory Impact Assessment and the Relevant Portfolio Committee will be well advised to propose such an intervention in the spirit of transparency and proper costing analysis.

CONCLUSION

It is evident that the RABS Bill is not "pro-poor".

Little or no information is available to assess and ensure that the DoT has attempted to ensure that proper "benchmarking" has taken place as to ensure that the services on offer, the claim process and administration will ensure a viable scheme.

We are not convinced, based upon the available information that RABS will relieve financial losses.

Having regard to the above based upon the current RABS Bill none of the Strategic Objectives (see *annexure **"H3"*** will reasonably be achieved).

In the interim the legal fraternity is hard at work, engaging the RAF directly, and on an amicable basis to bury the *"adversarial hatchet"* in order to assist and advice on ways to save money in the interest of all parties concerned.

If these engagements are continued and guidelines implemented, the RAF will be as affective and productive as possible, ensuring that all victims are properly compensated whilst at the same time saving on day to day expenditure (will result in a saving of more than 20% on the current legal costs etc.)

Latest statistics show that the RAF is in fact saving money (*see annexure **"H4"***) whilst still offering the widest possible cover without having to incentivise being in an accident, as intended by the RABS Bill.

A lot still needs to be done by the DoT to ensure that the RABSA is more equitable balancing the advantage of flexibility in the determination of non-economic losses (and application of thresholds/caps) with the affordability and equity objectives of the scheme (page 582 par. 20.88 of the Road Accident Fund Commission Report 2002, Volume 1).

We sincerely hope that the Portfolio Committee will value the contributions of the legal fraternity and use them as a point of reference and a measure to ensure that the rights of all South-African citizens and victims of car accidents, are protected, under the Law.