The RABS Bill

Moving to protect the interests of the vulnerable

The Department of Transport (DoT) published the revised Road Accident Benefit Scheme Bill, 2014 (the Bill) for public comment on 9 May 2014. The Bill provides for a new scheme and a new administrator, called the Road Accident Benefit Scheme Administrator (RABSA), which will replace both the Road Accident Fund (RAF) and the current compensation system administered by the RAF. The period for comment on the Bill closed on 6 October 2014.

The current scheme administered by the RAF is based on fault, insurance principles and common law, and remains inequitable, wasteful and open to abuse. The transformation of the scheme was recommended by the Road Accident Fund Commission in 2002 under the leadership of Judge Kathy Satchwell and ultimately endorsed by Cabinet. The scheme is necessary to address many of the challenges facing the RAF that are hampering its ability to deliver on its mandate in an effective and efficient manner.

Notwithstanding the intermittent, but necessary delays in introducing the benefit scheme, our government under the leadership of the African National Congress (ANC) remains steadfast – guided by its social transformation agenda – to implement a comprehensive social security system. The task at hand seeks to protect the most vulnerable in our society, address the challenges of poverty created by, among other, road crashes, inequality and to defend human rights as expressed in Chapter Two of the Constitution. It must be pointed out that the 53rd National Conference of the ANC noted that we have developed a framework comprehensive social security strategy that addresses retirement reform, unemployment, accident insurance and national health insurance. The Conference also resolved that the capacity of the State be increased to ensure the acceleration of the implementation of the comprehensive social security strategy.

The envisaged new scheme will be more reasonable, equitable, affordable and sustainable in the long term than the current RAF scheme. The Road Accident Benefit Scheme (RABS) aims to ensure expanded access to benefits by removing the requirement to establish ‘fault’ as a determinant to qualify for benefits; making available timely and appropriate healthcare benefits based on a reasonable tariff; simplifying claims procedures; providing wider cover to persons injured in road crashes; providing for fewer exclusions from benefits; providing defined benefits which promote affordability; reducing disputes by removing the ‘fault’ requirement; providing pre-determined benefits; and alleviating the burden on our courts through the establishment of an internal appeal procedure. In order to qualify for compensation, the current RAF scheme requires that claimants prove that the road crash was caused by the fault of the driver of another motor vehicle.

Accident victims under the RABS will qualify for benefits regardless of who caused the road crash and benefits will also not be reduced based on the victim’s ‘contributory negligence’, as is currently the case under the RAF compensation scheme. Consequently, thousands of public and private transport passengers and their dependants, previously excluded by virtue of fault, will in future reap the benefits that will be provided under the RABS.

In addition, the RABS will continue to provide the indemnity already provided under the RAF scheme, to owners and drivers who would otherwise be liable at common law for the bodily injuries or death caused by a road crash. However, it is important to note that this indemnity does not extend to criminal conduct, for which the wrongdoer will continue to be liable in accordance with the applicable law that regulates criminal conduct.

The new administrator, RABSA, will provide assistance to crash victims and family members in submitting claims and facilitating early and effective access to medical and vocational rehabilitation on behalf of injured crash victims. This intervention will see more crash victims re-entering employment and contributing positively to the mainstream economy. Under the RABS, defined benefits such as payment for healthcare services, income support benefits, family support benefits and a funeral benefit will be provided to crash victims and, or their families. To accommodate the additional liability, resulting from the additional number of claims that the scheme will pay due to the removal of the fault requirement and to assist with the affordability of the scheme in general, the RABS will not provide any benefit for pain and suffering, also referred to as ‘general damages’.

It is foreseeable that the RABS will benefit thousands of road crash victims who are currently excluded from the current RAF scheme. In real terms, the uncertainty of whether a crash victim will be supported is removed. Crash victims will not have to prove who was at fault and to what degree, as is the case now. Eligible crash victims will rest assured that their benefits will be fairly quantified as is the case for any other crash victims – not only at the time of finalising a claim, but also in respect of future medical care. Many dependants of unemployed breadwinners killed in road crashes, who are currently excluded from receiving compensation, will now be eligible for benefits.

Equally, the RABS will ensure that benefits intended for road crash victims and their dependants are in fact received by the intended beneficiaries, in contrast to the RAF scheme where numerous intermediaries often unfairly benefit at the expense of claimants and bring about significant delays in the receipt of compensation by such claimants. It is unsuitable for the RAF to continue on its present course and to accumulate a growing deficit and an inability to adequately meet its obligations.

The RABS is geared to move away from the insurance-based system of compensation which has been largely unchanged in South Africa since its inception in 1946, to a system of defined and structured benefits to curtail expenditure and bring about a financially sustainable and affordable scheme, able to offer a reasonable set of inclusive benefits. In order to realise the envisaged social transformation, our government is committed to speed up the implementation of the RABS to prepare the ground for a comprehensive social security system.

The Department of Transport is currently considering the comments received in respect of the Bill and is also conducting further research pertaining to certain aspects of the Bill.

Hon. Dipuo Peters, MP Minister of Transport

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