The Department of Transport and the Road Accident Fund (RAF) held a workshop on the Road Accident Benefit Scheme Bill (RABS Bill) in Centurion in June. The workshop formed part of the public consultation process on the Bill that was published in GenN337 GG37612/9-5-2014.

Cabinet approved the publication of the draft RABS policy on 18 November 2009 and the draft policy was published on 12 February 2010 for public comment. The policy was revised and approved by cabinet on 7 September 2011 and the final policy was published on 21 November 2011. Draft legislation was completed during 2012 and the draft legislation for RABS was initially published in the Government Gazette on 8 February 2013 for public comment for an extended period of 90 days. Based on comments received the draft legislation was reworked and published in the Government Gazette together with draft regulations for public comment for a period of 60 days. At the time of going to print, stakeholders and the public were to provide written comment on the proposals contained in the legislation before 8 July 2014 but on this day, the RAF issued a press release stating that due to huge public interest, the Department of Transport had extended the period for public consultation on the Bill by a further 90 days.

Social security

The deputy director-general of governance counsel at the Department of Transport, Dr Maria du Toit delivered the keynote address at the workshop. Dr du Toit said the RAF currently provides a safety net to the country by making compulsory third-party insurance cover available to all users of South African roads. This cover provides protection against injuries sustained or death arising from road crashes. Dr du Toit said that the cover is in the form of indemnity insurance to persons who cause an accident, as well as personal injury and death insurance to victims of crashes and their families.

According to Dr du Toit, when the RAF was established it displayed the symptoms of an undemocratic, unrepresentative and oppressive state, adding that in spite of various legislative changes the RAF system remained an unsustainable, unaffordable and unequal system of third-party insurance. ‘The RAF system is still underpinned by a legal dispensation that favours the rich, a system for which all South Africans should qualify equally,’ she said.

Dr du Toit said that all victims of car accidents needed to be treated in an equitable manner. ‘This is why we are transforming the existing insurance-based system of the RAF to the social security system of RABS,’ she noted.

According to Dr du Toit, the RAF has made huge strides towards providing a better and more efficient service to victims of road crashes but that there are certain underlying systemic problems that ultimately limit the effectiveness of the current scheme. She said that these systemic problems would be addressed through the RABS Bill which aims to provide for a new no-fault benefit scheme based on social security principles.

Dr du Toit said that the principle that underpins social security is that the government should look after you when you cannot do so. She explained that members of the public would not be allowed to double dip in government, so victims who had claimed from the South African Social Security Agency or the compensation fund would not be able to claim from RABS as well. Another change will be that those earning above the capped amount are perceived to be among the 4% of the population in the country that are defined as rich and will have to make provision through private insurance for losses more than the capped amount that RABS will be paying as income benefit.

Dr du Toit said that one of the systemic problems of the existing system was that presently, in order to claim from the RAF, victims of road crashes need to prove fault on the part of another driver of a motor vehicle. She noted: ‘In other words, although you are a citizen of this country, although you pay fuel levy like all other road users, you will not qualify for any benefits of a medical nature or other if you were at fault in the accident.’ Dr du Toit added that this requirement to prove fault delays the delivery of compensation to the innocent victim until the questions about the existence and extent of fault are resolved to the satisfaction of the RAF.

‘In difficult instances the question of fault may require claimants to approach the courts to provide a ruling to state who was at fault and to what extent. This further delays the delivery of compensation. The finding of fault is then reduced to percentages which can reduce the extent of the claim to which the crash victim is entitled,’ she said.

Another problem, she stated, was that the innocent victim presently needed to prove the quantum of damages with reference to the law. The law determines the appropriate compensation for the particular losses.

Dr du Toit noted that RABS will ensure that victims of motor vehicle accidents receive all the necessary medical interventions and treatment in order to rehabilitate to the extent that no victim should lose out on work or education opportunities, especially the youth.

To achieve this objective, she said, the following changes were envisaged:

- All victims of motor vehicle accidents will be eligible to claim from RABS irrespective of whether or not they are at fault in the accident. If the victim qualifies for any of the set benefits he or she will receive such benefit without having to prove fault on the side of another driver. These benefits include medical support, income support for the victim or dependents and a funeral benefit.
- General damages will no longer be compensated. Pain and suffering claims for non-pecuniary loss have already
been limited to serious injuries. With the RABS system these kinds of claims will not be accommodated, but all medical bills will be met.

- Payments will be done differently. There will no longer be a lump sum payment. 'RABS will not be creating immediate millionaires anymore, but we will support victims in their rehabilitation process all the way until it is done,' she said.

Dr du Toit indicated that payment would work as follows:

- Income support will happen monthly. The amount will be capped.
- Medical support benefits will be paid for directly by the Road Accident Benefit Scheme Administrator (RABSA) – which will replace the RAF – to the medical service provider in accordance with the treatment plan for each victim; there will be no payment responsibility for the victim.
- The funeral benefit will be a fixed amount that will be paid to the dependants or relatives without any cultural prejudice.

According to Dr du Toit by introducing a no-fault system of benefits the delays currently experienced by claimants will be eliminated, crash victims will immediately be able to receive benefits, service providers who currently wait until the claims of crash victims are finalised will be able to submit claims directly and be paid within reasonable periods.

The RAF: Fuel levy insufficient

The chief executive officer of the RAF, Dr Eugene Watson, provided a brief background on the RAF. He also presented an update of where the fund is currently and highlighted the need for RABS. Dr Watson said that the Fund’s core business was to pay compensation in accordance with the Act for loss or damage wrongfully caused by driving.

He added that the Act also provides compulsory cover to all users of South African roads – even if the users are not South African citizens – for injuries sustained or death arising from motor vehicle accidents within South Africa.

Dr Watson said that there have been various Constitutional Court and legal precedents which have shaped the RAF’s mandate.

According to Dr Watson, the RAF is funded by the fuel levy. In the 2013/14 financial year, the levy was 96c/l which equated to almost R 1, 9 billion a month and totaled R 20, 6 billion for the financial year. He said that the amount of claims processed totaled R 22, 2 billion, meaning that the levy was not enough.

Dr Watson said that the expenditure exceeded the net fuel levy by R 1, 9 billion due to a higher number of claims settled.

'Our expenditure is shaped by the number of vehicles and the number of road users,’ he said. Dr Watson added that claims processed increased by 47%, to R 22 billion, which is almost double what it was two years ago.

Dr Watson said that the fuel levy was large and that it was a substantial amount of money but was insufficient to address the RAF’s statutory obligations. ‘You begin to see the need for social security and assistance by our government to citizens,’ he noted. Dr Watson said that over 90% of the fund’s claims come from the court process. 'Many however continue to be excluded and this really is where the social significance or execution comes into play. There are many road crash victims and their families who are not eligible under our lawful assistance and support, especially those who have no income to have lost,’ he said. Dr Watson added that RAF claimants are often not the primary beneficiaries and compensation is not always used for rehabilitation.

Still speaking on the highlights from the 2013/14 financial year, Dr Watson said that the RAF call centre had answered 220 000 calls and that the RAF had seen over 20 000 accident victims in the past 12 months.

In the last year we received 147 000 new claims. The number continues to reduce. The year before it was 160 000 the year before that it was 172 000. It is really because of the Amendment Act now coming into play and certain injuries being excluded. We finalised 240 000 claims and reduced our backlog to 183 000 claims, which is well under half of what it was five years ago,’ he said.

Dr Watson also spoke on the challenges faced by the RAF and why the legislation needed to be changed. He said that the first big category of challenges related to the fault-based system. It has restricted access and long settlement periods. It can take up to five and a half years for a represented claim to be paid finally and there are spiraling costs; and most of these costs are all for the RAF’s account. There are multiple, complex and legalistic hurdles and uncertainty as to where the compensation is used. A lot of us here would have seen a "lotto" effect … you get a claimant they received a lump sum of one, two million rand and the first thing they do is buy a nice car, a nice house and some nice clothing and six to nine months down the line the money is finished and the claimant no longer has the resources needed to rehabilitate themselves,” he said.

Dr Watson added that the second big challenge relates to the compensation for loss of support and loss of earnings. He said that there is also an increase in prevalence for future loss of earning claims; minimal proof is often required and that industrial psychologist reports basically forecast career rejections. Thirdly, Dr Watson said that one fifth of all the money being paid relates to legal fees.

The fourth and the most significant challenge is financial sustainability. He said: ‘If you think about your medical scheme coverage, your contribution determines the benefit you will get, but if you look at the RAF the funding has absolutely nothing to do with how many cars are on the road, how far they travel, who travels in the car and how many other people are on the side of the road exposed to the car which is travelling. The beneficiary base is not constituted by contributors so you literally could be a person who has actually never had a car and never bought petrol, you never contributed to the fuelling but if you are injured in a crash, you can claim from the RAF.’

Dr Watson concluded by saying that the current system was not sustainable.

The RABS Bill: Towards a comprehensive social security system

RAF project manager at the Transport Department, Terence Gow gave a presentation on the Bill. He said that the Bill was a move towards a comprehensive social security system. It was needed because the current system was not only inefficient, but the RAF was also technically bankrupt. He added that the social security system was also used in other countries, adding that it would help with international benchmarking.
Mr Gow said that some of the changes that have been made to the RABS Bill include the following:

- A revision of the provisions related to foreigners. Foreigners that are legally in South Africa will receive emergency health-care services but they will not receive other further health care. They will be stabilised and then they will return to their country. Mr Gow said this mirrors the arrangement between other countries, where one will purchase insurance at the border to cover your passage for the time that you spend in that country.
- Average national income and the maximum income benefit have been stipulated in the regulations. Previously that was not stipulated.
- The term ‘beneficiary’ has been amended in order to ensure consistency.

Mr Gow said that RABS would provide for health-care services, income and family support benefits as well as funeral benefits.

Questions from the floor

The audience was given an opportunity to ask questions on the Bill. These ranged from how RABS would ensure that the money claimed reached the beneficiaries because in most cases the beneficiaries did not receive anything after the money is claimed. Some alluded to the fact that many legal practitioners would close offices because some of them relied on RAF matters to operate. Advocate Johan de Waal, who has been assisting the Transport Department in the drafting of the Bill, responded by saying that nothing in the new Bill excludes an attorney from assisting a beneficiary to lodge a claim, but added that whether there will be a requirement for such services is a different question. ‘It is not something that will need to be addressed in the legislation or in parliament. A beneficiary would be required to lodge his claim for benefits directly with an administrator and there is a positive duty placed on the administrator to assist claimants proactively with those claims. There is also provision in the Bill that would assist the administrator, at a very early stage, to have the necessary information and documentation to provide that assistance, which is currently not available at the RAF. So in terms of the RABS scheme, the RAF will be playing the role ... an attorney would have done in the past. The RAF will assist the claimant to bring the claim. The RAF will source the necessary documentation for the beneficiary. The RAF would take the hand of the beneficiary from the day that the claim was lodged right through until he is rehabilitated or until he dies,’ he said.

Most of the other questions involved clarifying certain sections of the Bill, and concerns that some of the comments submitted last year were not taken into account or considered in the redrafting of the Bill.

- Written comments on the Bill can be submitted via e-mail to rabsbill@dot.gov.za.