Polity.org.za

GENERAL NOTICE

NOTICE 815 OF 2011

DEPARTMENT OF TRANSPORT

POLICY FOR THE ROAD ACCIDENT BENEFIT SCHEME (RABS)

I, Joel Sibusiso Ndebele, Minister of Transport, hereby in terms of the powers vested in me, publish by means of a General Notice in the Government Gazette, the Policy for the Road Accident Benefit Scheme (RABS), for general information.

MR JS NDEBELE (MP)
MINISTER OF TRANSPORT

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

POLICY PAPER
FOR THE
ROAD ACCIDENT BENEFIT SCHEME

JUNE 2011

DEPARTMENT OF TRANSPORT

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

1. INTRODUCTION

This policy sets out the proposal for a new motor vehicle accident benefit scheme which will be called the Road Accident Benefit Scheme (RABS) and which will replace the current motor vehicle accident compensation system which is administered by the Road Accident Fund (RAF).

This policy results from a process that was set in motion before the Road Accident Fund Commission (RAFC) was appointed in 1999. The report of the RAFC was released in 2002 and the recommendations of the RAFC were approved, in principle, by Cabinet.

The recent confirmation by the Constitutional Court of the validity of the removal of the right of an accident victim to sue the wrongdoer for the balance of their common law damages, has also paved the way for the finalisation of the policy, as the principle is carried forward in this policy. The RABS legislation will provide a form of indemnity to those who are at fault in causing a road accident and it will not be possible for the victim to claim the balance of their common law damages (those damages suffered in excess of the benefits provided by RABS), from the wrongdoer.

A draft policy titled "Draft Policy on the Restructuring of the Road Accident Fund as Compulsory Social Insurance in Relation to the Comprehensive Social Security System" was published in the Government Gazette for public comments on 12 February 2010. Following receipt of comments the policy was amended and abbreviated in response to requests for a document that is less technical and contains less detail. This policy is the result of that process.

The current compensation system is open to abuse due to fraud, opportunistic claims, nuisance and over-inflated claims, mismanagement, professional malpractice and human failing. The structure of the current system also encourages perverse incentives. There is no financial incentive for injured accident victims to return to work or to undergo rehabilitation. A major driving force under the current system is to attempt to present the claimant to the RAF as a permanently disabled and maimed person (irrespective of their actual condition), whose capacity for earning an income and living a quality life has been irretrievably harmed, in an attempt to secure the highest possible monetary reward from public funds.

This policy proposes that RABS should provide a scheme of structured and defined benefits to those seriously affected by road accidents in accordance with *social insurance principles*, and not *liability insurance principles* as embodied in the existing compensation model. By not providing a benefit to the full extent of the loss, RABS will encourage the injured person to return to work, and will reduce a culture of dependency.

RABS will not focus on blameworthy conduct and expect persons who have made mistakes to be self-reliant. Based on principles of social solidarity, RABS will assist and support those in need. A no-fault model for road accident benefits will be adopted and beneficiaries will no longer need to prove fault on the part of a driver. This will ease the administrative load on RABS and speed up service delivery. Long delays in the settlement of claims will be eliminated by the fact that possible disputes requiring legal intervention will be removed and by the resulting streamlined administrative process.

In this way, the social security safety net will be expanded in order to "respect, protect, promote and fulfil" the right to social security entrenched in the Constitution of South Africa. RABS will make payments for health services directly to medical service providers and will make income and family support payments directly to the beneficiaries. RABS will make

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

periodic payments of structured benefits to beneficiaries instead of lump sum payments in order to ensure that beneficiaries' future needs are provided for.

It is anticipated that RABS will form part of an eventual comprehensive social security system, and that it will be necessary for the Road Accident Benefit Scheme Administrator (RABSA) to ensure ongoing alignment with such a system.

2. RATIONALE FOR INTERVENTION

Compulsory and fault-based motor vehicle accident (MVA) insurance was introduced in South Africa with effect from 1946. From the outset, the legislation was intended to protect innocent accident victims, who previously had to institute legal action against guilty drivers and who bore the risks of litigation against drivers who often were not in a financial position to compensate accident victims for their losses.

The legislation ensured that liability would be covered from a source other than negligent drivers and that injured accident victims were no longer at financial risk in pursuing their claims. It was also intended that the process of obtaining relief should change from a legal process to a more administrative process.

A major motivation in introducing the legislation was to address the adverse impact of injury and disability on road users and their families, and to care for and rehabilitate those injured in traffic accidents. Other considerations were to relieve pressure on hospitals which had to bear a burden in respect of accidents.

Over the years, despite legislative interventions and the appointment of seven commissions of enquiry, the system has failed to achieve its objectives. One of the main reasons for the failure of the system is that, since its commencement, the basis of the MVA compensation system has remained relatively unchanged, despite numerous legislative interventions to change certain liability provisions in the legislation.

The RAF currently administers the fault-based MVA compensation system, which it inherited from its predecessors in terms of the Road Accident Fund Act. The RAF pays compensation to injured road users for personal bodily injuries and pays compensation to dependants of breadwinners that have been killed in motor vehicle accidents.

The existing fault based system was the subject of a White Paper in the mid-1990s and was investigated by the Road Accident Fund Commission (RAFC) thereafter. In its 2002 report the RAFC described the system as unreasonable, inequitable, unaffordable and unsustainable.

The system has also been insolvent for almost three decades. The RAF's financial deficit has been growing rapidly and the stated deficit at 31 March 2010 was R42, 33 billion. One of the reasons why the system became financially unsustainable is that, except where its liability was limited (as was the case in respect of claims by certain passengers) the RAF was until fairly recently potentially liable for the full extent of an accident victim's claim for loss of income or support and non-pecuniary loss.

Due to the potential financial burden of these unrestricted claims (and the fact that these claims were cross subsidised by poorer road users), a cap on claims for loss of income, along with various other restrictions, *inter alia* on claims for non-pecuniary loss, was introduced with effect from 1 August 2008.

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

At the same time, the common law claim for the balance of the loss not paid by the RAF was abolished. This abolition of the balance of the common law claim was necessary in order to protect the substantial number of drivers who were contributing to the system through the fuel levy and would be exposed to considerable potential liability that would ordinarily arise as a result of a MVA in terms of the common law.

The recent amendments were challenged for being unconstitutional, but by the end of 2009, the Constitutional Court had dismissed most of the attacks and held that the removal of the common law right is constitutionally valid. The removal of the balance of the common law right will continue under the RABS.

Despite the fact that the recent legislative amendments have made significant changes and have addressed substantial issues affecting the RAF, they can only be regarded as interim solutions in order to improve the RAF's financial position, contain its liability and ensure its short term ability to pay claims into the future until the RABS is established.

Due to the requirement of having to prove fault, accident victims have often experienced delays in receiving compensation as they first had to establish fault on the part of a driver. Where there was a dispute, it was often necessary to resort to litigation in order to obtain a court ruling on the question of the extent of the negligence or fault.

Often these litigation processes could take years to conclude, resulting in extensive legal costs for both the accident victim and the RAF and its predecessors. While the outcome of this litigation was pending, the victims had to pay for medical and other expenses themselves. If road accident victims died, or were so disabled that they could not resume gainful employment, their families and loved-ones could suffer for many years waiting for compensation to be paid. In a developing country such as South Africa, a significant proportion of road users have not had the financial means to pay for appropriate healthcare and rehabilitation themselves while waiting for the legal process to be finalised.

While the original rationale for intervening in order to protect road accident victims remains valid, the benefits of the new RABS policy will address the socio-economic needs of all citizens and will not perpetuate existing disparities of wealth between road users. Since all citizens need to use the roads to participate in society, everyone is exposed to the risk of injury or death in road accidents. Those injured need to access emergency medical care, find appropriate healthcare and treatment, and often require rehabilitation to continue with their lives.

3. SOCIAL SECURITY AND SOCIAL SOLIDARITY

In principle, a social security system does not only include public schemes or measures. Social security arrangements consist of a range of collective and individual social, fiscal, occupational and welfare measures of private, public and mixed origin aimed at providing social cover to members of society.

A social insurance scheme should ideally be as inclusive as possible in order to promote social solidarity. It should cast a wide safety net to those in need and should also promote socially responsible behaviour.

A comprehensive approach should be adopted in order to make full use of the limited resources available to society. It is therefore reasonable that Government should seek to limit the extent of benefits to be financed through statutory social protection.

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

In defining and prescribing the social insurance benefits that will be financed and provided by RABS, Government will demarcate the scope and category of risks for which individuals may be expected to seek personal insurance, and which is therefore the appropriate product domain of the insurance industry.

South African society is characterised by great disproportions in income and lifestyle. It is therefore important that RABS should not only address deficiencies in the existing RAF system, but should also contribute to Government's broader social security reform processes.

In particular, the RABS policy confirms a commitment to:

- Expand access to benefits to a wider group of road accident victims by removing the requirement to prove fault; and
- Align RABS to the reform of social security, such as the reforms to be proposed in the Government Position Paper on Social Security Reforms as mentioned by the President in his 2011 State of the Nation Address.

RABS will support social inclusion as well as the notion that the risk of misfortune should become the comprehensive or collective responsibility of society as a whole. RABS will encourage the sharing of risks (risk-pooling) and limit cross-subsidisation of the rich by the poor. RABS will protect people from misfortune, distress and the significant risks to life caused by unemployment, illness, injury, disability and death of a breadwinner due to a road accident and provide security to individuals, families and communities.

4. STRATEGIC OBJECTIVES

By adopting a social insurance instead of a liability insurance approach for road accident benefits, services and payments can be directed to actual needs. Periodic payments will replace lump-sum payments. The system will indirectly increase the incentive for the injured person to earn an income, and so discourage a culture of dependency.

The strategic objectives of RABS include the following:

a. to facilitate access to timely and appropriate healthcare;
b. to enable and encourage rehabilitation; to prevent or reduce permanent disability and to advance the independence, earning capacity and social participation of persons injured in road accidents;
c. to provide long-term and life care for the seriously injured;
d. to relieve (not necessarily restore) loss of income and financial support by alleviating financial hardship of persons injured and of dependants as a result of the death of a breadwinner in a road accident;
e. to be accessible and be efficiently administered, with less resources spent on delivery costs, and more resources allocated to healthcare;
f. to be accountable to road users; to assist those injured in road accidents and provide relevant and timely service to claimants; and
g. to form part of an envisaged Comprehensive Social Security System (CSSS).

RABS benefits will be made available to eligible claimants on a no-fault basis, with no deductions or penalties applied for the road user's own negligence. RABS will be inclusive and provide universal benefits to all categories of road users, i.e. drivers, pedestrians, motorcyclists, cyclists and passengers. Bodily injury or death caused by or arising out of a road accident from whatsoever cause and which involves a motorised vehicle at any place,

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

anywhere in South Africa should be covered. No road user or category of road users will be excluded from the social security benefits of RABS.

Criminality on the road, reckless driving or irresponsible road use, should be addressed via the criminal justice system and not by limiting the social benefits of RABS.

5. FUNDING

The primary source of financing for the RABSA will be a dedicated fuel levy imposed on fuel sold. The levy will be collected by the South African Revenue Service (SARS).

RABSA's revenue requirement will be determined by the cost of providing benefits and their administration, calculated on an accrual basis. This includes provision for future costs associated with accrued claims.

RABSA will be fully funded, so that the contributions are sufficient to meet liabilities as they accrue. Accordingly, a funding model will link income to expenditure, liability and risk, and enable the scheme to build up reasonable reserves to cover contingencies. The level of contributions will be monitored to ensure affordability, solvency and sustainability.

Allowing for the estimated RABSA administration costs of approximately 10% of benefit payment, including legal and dispute resolution costs, the estimated total costs for RABS was calculated to be 82, 6 cents per litre for the financial year ending 31 March 2012. The cost will be influenced by the number of accidents, the severity of the injuries, medical risk management strategies and the level and type of benefit offered by RABSA.

The accrued liability of the current RAF will need to be financed to meet its funding requirements, which will require a dual funding arrangement once RABSA comes into effect. The liability and the income and expenditure streams of the RAF will be ring-fenced to ensure separate income, expenditure streams and reporting processes. This separation will enable transparency and aid effective management.

The RAF is presently funded by a fuel levy imposed on fuel sold but it will be discontinued and a new fuel levy will be allocated to RABSA when it is established. Provision will be made through the fiscus to address the accumulated unfunded liability of the RAF and to meet other funding requirements of the RAF as they arise.

The legal mechanisms to support the funding of the RAF contingent liability will be put in place alongside the promulgation of the RABSA Act.

6. BENEFIT STRUCTURE

RABS will offer the following benefits to victims of road accidents:

- Medical and healthcare services ;
- An income support benefit subject to thresholds and ceilings, which will be paid periodically. Defined benefit rules will create certainty about entitlement and will accommodate injured road users who are unemployed, economically inactive, children or students at the time of the collision.
- A family support benefit will be payable to a dependent spouse or partner in a civil partnership and children of a breadwinner killed in a road accident, subject to thresholds and ceilings and paid periodically.
- A flat-rate funeral benefit will be paid as a lump sum.

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

No payments will be paid for compensation for any non-pecuniary losses, such as payments for pain and suffering, loss of the amenities of life and disfigurement.

Benefits will only be provided in South Africa and will not be provided in other countries in order to ensure affordability and sustainability.

The practice of "double-dipping" should be eliminated in order to protect public resources. RABS benefits will not be provided if benefits are provided by any other statutory compensation or benefit schemes or schemes providing national health services.

Personal or private occupational insurance will be encouraged and RABS benefits will not be reduced by a claimant's receipt of injury, disability or life insurance payments from personal or private insurance cover. These discretionary products can supplement the limited benefits provided for by RABS and reduce exposure to the risk of economic loss.

Annual inflationary adjustments to benefits cannot be guaranteed, and will be subject to affordability.

6.1 MEDICAL AND HEALTHCARE SERVICES

RABSA will provide healthcare benefits ranging from hospital and emergency care, trauma and acute care through to rehabilitation and long-term care. Medical and healthcare providers will be paid in terms of a tariff designed for RABSA or adopted from another security scheme. Payments will be made directly to service providers.

RABSA will enable injured road users to have seamless access to emergency medical and appropriate healthcare.

A fee-for-service model will be utilised while data is collected to establish the feasibility of a capitation model or pre-payment model for RABS. RABSA will consider the introduction of a capitation model, if such a model is suggested for the proposed National Health Insurance System.

RABSA will support and facilitate access to quality healthcare by implementing quality assurance measures, protocols of treatment which set minimum standards, case management interventions and appropriate cost control measures as may be provided for in national health legislation.

The RABSA Board may also obtain advice on all aspects of healthcare provision and financing under the scheme. It should assess and make recommendations on the selection of service providers, the terms of service contracts and the standards of service delivery with providers. The Board should facilitate the monitoring of adherence to clinical standards, consider whether managed healthcare services will be cost effective and arrange for peer review sessions with healthcare service providers. It should investigate cost-effective mechanisms to finance the services and facilitate management of the medical databases and trauma registry once these are established.

Trained medical practitioners should use an acceptable assessment guideline or classification framework to describe the injury and its impact on the claimant.

RABSA should be able to review, revise or terminate a claimant's entitlement to benefits. In this regard, a system of medical peer review should facilitate objectivity and consistency of medical and disability assessments. It should also enable cases to be reviewed and assist in the resolving of disputes relating to assessments affecting entitlement to RABS benefits.

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

6.2 INCOME SUPPORT BENEFIT

The monthly income support benefit is calculated as follows:

- The income of the injured ,subject to a ceiling of R192 000
- The income support benefit for a 100% disabled road accident victim will be limited to 75% of the victim's income;
- For injuries resulting in a temporary inability to earn an income, the benefit will be linked to the duration of the disability and, in respect of injuries resulting in permanent disability, will be multiplied by a factor reflecting the degree of the loss of ability to earn an income. This factor will depend on the degree of disability and the actual income earned after the accident.
- A deemed minimum income based on the average national income will be used to calculate the income support benefit , if no proof of income can be provided by the claimant and for scholars and students who are not employed ;
- In respect of income between the deemed minimum income level and the income tax threshold, verifiable documentation in the form of payslips, employer certificates or affidavits (for those employed in the informal sector or the self-employed) will be required as proof.
- In respect of income above the income tax threshold, verifiable documentation in the form of IRP5 or IT3 documents, income tax returns or income tax assessments will be required as proof. The highest (after tax) income during the three tax years prior to the accident will be used. For the self-employed, a share of profits not subject to payment of personal income tax will also be taken into account if documentary proof is provided.
- RABS benefits will not be subject to further tax in the hands of the recipients.

A two month waiting period will apply in order for an injury to stabilise to some extent, to protect the RABS against frivolous claims and to avoid the high administration costs associated with small claims.

Entitlement to the income support benefit will only commence at age 18. Continued entitlement to the income support benefit should also be subject to participation in rehabilitation and vocational training programmes in order to encourage injured claimants to re-integrate into the labour market.

The income support benefit for permanent disability will continue until age 60, after which the state old-age pension will apply.

The income support benefit (for loss of income and loss of earning capacity) will be paid monthly. RABSA can consider, as a matter of business practice and policy, to offer a commutation of monthly benefits below a certain level of disability or level of income, in order to reduce the administrative burden and unnecessary costs associated with paying a large number of small benefits.

If it is not feasible to implement an income support benefit based on a suitable disability assessment model due to complexity, affordability or time constraints, an interim method of determining an appropriate income support benefit, based on the actual loss of income may be considered in order to avoid delays in implementation of the benefit scheme.

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

6.3 FAMILY SUPPORT BENEFIT

A monthly family support benefit will be payable to a dependent spouse, partner in a civil partnership and children of a breadwinner killed in a road accident. The benefit will be based on the income of the deceased prior to the accident and is determined as follows:

- A ceiling on income of the deceased in the amount of R192 000 per annum as used for the income support benefit will apply;
- The 75% multiplier used for the income benefit support will not apply;
- The spouse's monthly benefit will be equal to the income of the deceased multiplied by 2/(4+Z), where Z is the number of children entitled to a benefit;
- The spouse's benefit will further be reduced by half of the spouse's actual income;
- Each child's monthly benefit will be equal to the income of the deceased multiplied by 1/(4+Z);
- If there is no surviving spouse, each child's benefit will be equal to the income of the deceased multiplied by 1/ (2+Z), where Z is the number of children entitled to a benefit.

No waiting period will apply as the loss is immediate and irreversible. Entitlement to the benefit will be from the date of death of the deceased. Family support benefits will be based on income earned from employment. Investment income received from retirement or disability funds will not be included (for example, if a person who retired early prior to the accident dies before age 60, no family support benefit should be payable.)

A family support benefit will be payable to the surviving spouse or partner in a civil partnership for a maximum period of 15 years, until the age of 60, while benefits for children will be paid to the age of majority which is 18 years.

Consideration can be given to extending the benefit to the surviving spouse or partner in a civil partnership where the survivor suffers from a disability or lacks work skills to the date of cessation of the disability or impairment and to termination of the benefit upon remarriage.

6.4 FUNERAL BENEFIT

A flat-rate funeral benefit of R10 000 will be paid as a once-off lump sum to the family of the deceased. The funeral benefit should be provided as soon as possible after the death of the deceased so that arrangements can be paid for by the family. Legislation will govern who should receive the funeral benefit and will also provide for instances where the deceased has no surviving family members.

7. ADMINISTRATIVE MATTERS

An internal administrative review function will monitor decisions on benefits and claims practices. An aggrieved claimant should be afforded the right to an internal appeal or mediation process, and thereafter either another appeal to, or a review in, a court or another independent and impartial tribunal or forum. The approach of the appeal bodies should be to resolve disputes in a facilitative, constructive, cost- and time-effective manner.

The RABS claim procedures will be simple and accessible. Claimants should be able to administer their claims themselves, without professional assistance. Claim forms should be user-friendly and should provide sufficient information to enable RABSA to validate, assess and process a claim.

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

8. GOVERNANCE ARRANGEMENTS

The RABS will be administered by the Road Accident Benefit Scheme Administrator (RABSA) which will be a Schedule 3A entity.

The Minister of Transport will act as the Executive Authority for RABSA, while the Board of Directors will act as the Accounting Authority. RABSA will be accountable to Parliament for the performance and affairs of the entity. In addition, the Board will be responsible to the main stakeholders, i.e. the taxpayers and persons injured or affected by death in road accidents.

The Board will have effective control over the business and operations of RABSA and will provide strategic direction to the executive management in fulfilling the mandate of the entity. Clear provision should be made for oversight and supervision of administrative conduct, prudential financial management and risk exposure of RABSA, in keeping with arrangements for other financial service and social security institutions. The RABSA board should be composed of skilled persons with the highest integrity and expertise in financial management, healthcare funding, healthcare services, business management and social security. It is also proposed that the RABSA Board will include *ex officio* non-executive members who are officials of the National Department of Transport and the National Treasury.

Management of daily operations should vest in the Chief Executive Officer (CEO) and the executive management of RABSA, who should be responsible for the efficient and effective running of the organisation in accordance with strategic decisions of the Board. The Executive Authority should appoint the CEO of RABSA, upon recommendation by the Board. It will be expected of RABSA to design and maintain business processes, systems and practices in order to deliver social security benefits effectively and efficiently. RABSA should ensure that benefits are delivered in accordance with policy standards. It should monitor claims practices against policies, and should take corrective measures where necessary, in order to fulfil its mandate.

RABSA is also expected to establish a network of service providers, agents and partners with appropriate skills, capabilities and capacity to deliver benefits and services timely and effectively. In this regard, RABSA should link up with information systems across various agencies.

9. CONCLUSION

The requirement to prove fault has left a legacy of an ineffective and unsatisfactory motor vehicle accident compensation system which inadequately provides for the needs of road accident victims. The primary focus on wrongdoing raises the legal and delivery costs of the system. The present system has been found to be unreasonable, inequitable, unaffordable and unsustainable.

The removal of the requirement to prove fault and the defined and more transparent benefit structure will create certainty about entitlement. Poor and vulnerable persons will be able to access benefits, due to the structure of the benefits, simplified claims processes and in the event of disagreements, be able to utilise the dispute resolution procedures.

With its strong focus on healthcare, RABS will facilitate a curative approach through timely access to appropriate care and rehabilitation in order to enable a return to economic activity and reintegration into society, while ensuring that scarce resources alleviate real losses and meet basic human requirements.

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za