

Will the new RABS Bill be catastrophic for SA?

The ANC last week placed the RABS Bill back on the Order Paper in the National Assembly and in all probability will seek to pass the Bill this week. This is obscene, say lawyers, considering that drunk drivers will be rewarded at the expense of the innocent despite the widely reported opposition to this principle.



Kirstie Haslam, partner at DSC Attorneys

Kirstie Haslam, partner at DSC Attorneys says that it is extremely concerning to note that Parliament this week revived the lapsed RABS Bill which provides for a system of no-fault compensation for road accident victims.

“This is despite universal opposition to its introduction in the National Assembly last year, when it could not be voted on at least twice due to a mass walk-out by every single opposition party, and further in light of the public outcry surrounding the moral obscenity of rewarding drunk and reckless drivers for their conduct,” she explains.

Over and above this, Haslam says that the intended scheme is unaffordable. “By its own admission the Department of Transport acknowledges that the estimated 75% increase to the RAF fuel levy will only be the starting point and additional taxes will have to be introduced to fund it, offering little in return.”

Haslam asks: “How on earth does government plan to finance this monstrous scheme, when the taxpayer is already grossly over-burdened?”

“Government is trying to get blood from a stone with the imposition of seemingly limitless levies and taxes on road users and taxpayers, to no good end,” she says.

In the 2019 Budget Speech, Minister of Finance, Tito Mboweni announced an imminent increase in the RAF fuel levy of 5c/litre, noting that this was “not enough to match the fund’s R215 billion liability” and urged the prompt reintroduction of the RABS Bill in order to “help stabilise fuel prices.”

Haslam says that this is an alarming statement. “Firstly, the oft-quoted R200billion+ “liability” of the RAF has been used to mislead the public at large as well as Parliament.

“It cannot be stressed enough that the RAF is a pay-as-you-go system, not a fully funded one, and as such it is inappropriate to refer to accumulated liability in this context,” she adds.

“The fact is that since the introduction of the 2008 amendments to the RAF Act, the RAF has been cash flow positive in a number of years, including the last 2 reported years.”

Additionally, as mentioned before, based on the Department’s own – outdated – conservative calculations, Haslam says that a minimum 75% increase in the RAF fuel levy will be only the starting point in terms of funding RABS. This cannot by any imaginable means suggest stability.

With regard to other ramifications that the Bill will have on claimants she says that without a doubt there will overall be a drastic reduction in benefits payable to road accident victims, who will be required to negotiate a cumbersome and complex administrative process on their own.

She continues: “Inarguably, RABS seeks to exclude road accident victims’ rights and access to legal representation. Not only are victims not permitted to recover legal costs arising as a result of seeking legal assistance, but there are limited grounds upon which a victim may approach the Court for relief.”

South Africa’s road fatality statistics are amongst the highest in the world, ranking 38th internationally. In 2017, 14,050 people died on local roads. While statistics for road deaths in 2018 have not been released, she says that the Easter and December road death tolls strongly suggest that the 2018 figures will be up from 2017.

“This underscores how inappropriate it is for South Africa to even contemplate the introduction of a no-fault system,” says Haslam. “There are numerous examples of where no-fault systems have been introduced and have failed – including in first world countries with significantly lower road death tolls – with those countries reverting to a fault-based system.”

“I would strongly urge Minister Mboweni to closely scrutinise the proposed financing model for RABS and consider the impact on the man-in-the-street,” she adds. “There is every danger the introduction of RABS will make the horror stories of Eskom and other SOE’s pale into insignificance.”