

ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL (AARTO) [B 38-2015]:

SUBMISSIONS RECEIVED

Members of the Public	1. Mr Wayne Paul
	2. Mr Rowan Singh
	3. Mr Art Rajkumar
	4. Mr Gert Lombard
	5. Mr Karl Keppke
	6. Mr Bonginkosi Mokoena
	7. Ms Anne Parsons
	8. Mr Gareth Edwards
	9. Mr Leon Combrink
	10. Mr Henk van Herwaarden
	11. Mr Pieter Bredenkamp
	12. Mr Anton Valks
	13. Ms Avi Jagamath
	14. Mr Raynard Swanepoel
	15. Mr Dries Wolmarans
	16. Mr Cosmos Ndlovu
	17. Mr Orlando Edwards
	18. Ms Dintwe Mohutsioa
	19. Mr Henry DuBois
	20. Mr Woodhal Sahadew
	21. Mr Arulan Pillay
	22. Ms Bulelwa Zigana
	23. Catryn Meyer
	24. Cobus van der Walt
	25. Mr James Geach
Legal Institutions	26. Adv Bradley Smith (National Prosecuting Authority) / 27. Ms Sonja Matthee (Public Prosecutor) 28. NPA:KZN
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B38/A

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Valerie Carelse - Aarto Bill

From: Wayne Paul <waynepaul01@gmail.com>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/18 7:52 PM
Subject: Aarto Bill

To whom it may concern,

The bill is Flawed, Aarto infringements sent by ordinary mail is illegal.
JMPD is using this as mere Revenue Collection.

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**Valerie Carelse - Administrative Adjudication of Road Traffic Offences Amendment
[B 38-2015]**

From: "Rowan Singh" <orders@singtex.co.za>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/18 10:56 AM
Subject: Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38-2015]

Hi

I would like to comment on the above bill. One of the implications is that an sms / email will be sent for infringement notices. How would you be able to prove that I received that specific sms or email? Also sometimes I am not able to access my cell phone for weeks and I deal with land lines / post. I think the public will require further explanation as to how exactly the processes wanting to be implemented is going to work. What happens to individuals who do not have cell numbers registered on their names? What happens to individuals who do not have email addresses? Using an electronic medium would create more opportunities for criminals to target unsuspecting individuals.

Kind Regards
Rowan Singh



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Fax : (039) 6854829

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Valerie Carelse - Strong Objections to Aarto bill

From: "Art Rajkumar (AM)" <RajkumAM@telkom.co.za>
To: "vcarelse@parliament.gov.za" <vcarelse@parliament.gov.za>
Date: 2016/08/18 2:04 PM
Subject: Strong Objections to Aarto bill

Goodday

I want to strongly object to the amendment bill especially in receiving notifications via sms. Nobody should have access to your personal phone number not even government, full stop.

My telephone number is my private information, it does not belong to government, it belongs to me.

In closing I want it on record that government is treating road infringements as revenue generators yet waste billions of rands on corrupt, inflated tenders and unaccounted for expenditure.

Aarto is simply a way to extort money from honest hard working people by common thieves, they are already stealing billions yet want billions more

To hell with them, may they fall and never rise again!

Goodbye

This e-mail is subject to the Telkom SA SOC Ltd electronic communication legal notice,
available at : <http://www.telkom.co.za/TelkomEMailLegalNotice.PDF>

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Valerie Carelse - Administrative Adjudication of Road Traffic Offences Act, 1998, comments.

From: Gert Lombard <Gert.Lombard@durban.gov.za>
To: "vcarelse@parliament.gov.za" <vcarelse@parliament.gov.za>
Date: 2016/08/18 3:54 PM
Subject: Administrative Adjudication of Road Traffic Offences Act, 1998, comments.
Cc: "info@sa-etoll.co.za" <info@sa-etoll.co.za>, "aartoenquiries@rtmc.co.za"...

To whom it may concern,

The issue of illegal invoices by e-toll and traffic authorities is not controlled or legalised in the bill.

E-toll and traffic authorities issue Traffic Infringement based only on the number plate on a vehicle. If the vehicle is fitted with an illegal number plate or a duplicate of another registered vehicle, they don't care and issue a Traffic Infringement notice based on the number plate despite the fact that the vehicle in the photo or picture is not the registered vehicle and the innocent legal owner are summons or issued with Traffic Infringement notices. The innocent owner then battles to get this Traffic Infringements cancelled, in fact, with the computers one talk to it never get solved.

When informed via cell phone the innocent owner has no evidence of fraudulent invoices issued by the E-toll and traffic authorities and will make the correction of mistakes by E-toll and traffic authorities impossible.

The AARTO system is not operated correctly with the operators typing the registration number plate into the system but never verify the vehicle type in the photo or picture or on the Traffic Infringements notice issued by the traffic officer.

The traffic officers of authorised persons do not confirm the legality of the registration of a vehicle or the legality of the number plate of a vehicle before they issue the illegal invoices or Traffic Infringements notices.

Kind regards,

Gert Lombard
Pr (Tech) Eng
Chief Civil Engineering Technologist



Roads Provision West
Tel. 031 311 7630
Fax. 031 311 7321
Cell. 073 304 8434
Gert.Lombard@durban.gov.za

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Valerie Carelse - Public comments re - Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38-2015].

From: "kdk00002@mweb.co.za" <kdk00002@mweb.co.za>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/18 4:06 PM
Subject: Public comments re - Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38-2015].
Cc: <info@jip-sa.org>

Hi

I do have a comment as regards 2 sections of the above proposed legislation:

) by the insertion after the definition of "disqualification period" of the following definition: " 'electronic service' means— (a) communication by means of data messages, including data attached to, incorporated in or logically associated with, other data that may be electronically retrieved; (b) e-mail messages between the Authority and an addressee in an electronic communication format; or (c) text messaging by the Authority to the recipient's cellular telephone;"

"(2) A document which is sent [by registered mail] in terms of subsection (1), is [regarded] deemed to have been served on the infringer on the tenth day [after the date which is stamped upon the receipt issued by the post office which accepted the document for registration] after posting the said document or of the electronic service, and such electronic service reflected in the National Road Traffic Offences Register, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit."

I have concerns about the above proposed changes.

The main issue I have is that there is an assumption that the recipient of the "electronic service" does receive the message or information. This is not always the case and you may have a situation where a person can be prosecuted for something the person never received. The act is written in such a way the the recipient has to prove the non-receipt of the message.

This is illogical and against the principle of innocent until proven guilty. This can have serious repercussions for people that do not have the financial means or skills to defend themselves.

The other issue would that it would open the way for unscrupulous individuals to potentially "spoo" electronic communications to unsuspecting recipients.

Lastly in this day and age of people changing service providers how would AARTO even suggests maintaining the database of current mobile phone numbers and email addresses. Again a completely innocent change of a mobile phone number can cause undue distress when somebody is prosecuted when they never actually received the correspondence?

I hope these concerns are considered and this version of the proposed legislation is amended accordingly.

Best regards

Karl Keppke

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**Valerie Carelse - Administrative Adjudication of Road Traffic Offences Amend
[B 38-2015]**

From: Bonginkosi Mokoena <bongamh@gmail.com>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/18 10:28 AM
Subject: Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38-2015]

Hi

No one uses SMS service any more so you facing on many messages being ignored.

Not every motorist owns a phone and even if they did, most people are not as educated. How clear is the English these going to be sent in or are they going to receive them in all Eleven Languages???

Then there's the matter of reading such a long mail, which mostly annoys people in the first place hence the many ADVERTS THAT ARE SENT IN THIS WAY.

--

Kind Regards

Mail Add: BongaMH@Gmail.com

Valerie Carelse - AARTO Amendment Bill, 2015

From: Gareth Edwards <gareth24780@gmail.com>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/29 2:35 PM
Subject: AARTO Amendment Bill, 2015

To the Chairperson, Parliamentary Portfolio Committee on Transport, Parliament of South Africa, Cape Town.

Please find my comments on the AARTO Amendment Bill, 2015.

Clause 9(a) and (b) – Section 30(1) – “service of documents”

An electronic service is not a guaranteed or safe and reliable method of communication for the following reasons:

- 1 - Email may not be owned by the person in the case of corporate email. The email may be blocked as non-work related and the person may not ever receive the notification.
- 2 - Email address may be obsolete or closed.
- 3 - Email mailbox may be full and thus no extra email will be received.
- 4 - Email may be monitored by other persons and thus violates any confidentiality and may impact on reputation and character of the person.
- 5 - As data is not free, some people may only afford to "top-up" or buy data outside of the notification window and thus will not receive the message in time.
- 6 - Automated spam control. Some messaging systems identify mass mailers and automatically block these emails with no notification to the sender.
- 7 - SMS can only receive a limited number of characters and may not be sufficient to clearly indicate the desired intention of the message.
- 8 - Phones may not be online and may not have data in the period of sending.
- 9 - A mobile number is not guaranteed to be the person who is on a national database as contracts change and numbers are recycled at a rather rapid rate.
- 10 - Scam artists will take advantage of the new method of communication and will target south africans posing as the government to get funds directly to them.

To summarise: electronic communication can not be assumed to be as reliable as a system where the message is delivered in person and the person signs for it. If the SA Post Office has become unreliable, why not consider other private delivery companies?

AARTO Act by itself

As the constitution proclaims that everyone should be treated equally, until the AARTO act is in place nationally is it not unconstitutional being only enforced in Gauteng?

Thanks for taking the time to read my submission.

Valerie Carelse - Comments on AARTO Amendment Bill

From: "Leon Combrink" <lacombrink@gmail.com>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/17 5:31 PM
Subject: Comments on AARTO Amendment Bill

To Whom it may concern

I am concerned about the changes specifically to section 30 of the act. The changes effectively remove burden of proof of infringement notices from the issuer to the infringer. I do not believe that this provides for fair legal process, as providing proof of a negative (I did not receive) places a far larger burden on the infringer than the positive prove (I did send) previously required by means of registered mail or personal delivery. Registered mail and personal delivery are the only forms that will provide any form of documentable evidence that the notice in question has been sent at all. Consider:

1. How would an individual prove no sms was received other than by contacting service provider and trying to obtain logs, which may not even rule out device failure which caused the sms not to display correctly on their particular handset
2. How would an individual prove no letter was received by normal post? If the letter is lost, destroyed, etc how can the recipient give any documentary evidence?
3. How would an individual prove no email was received? Again by contacting mail providers and trying to obtain data logs. What if mail providers start seeing the high email volume as SPAM?

What if in the case of 1 and 3 above, there was device failure? What if in the case of 2 above we have another multi month postal worker strike and because of the act hundreds of thousands of infringement notices are deemed delivered 10 days after sending by normal post as the act provides.

The amendment provides that advice may be in the form of an affidavit, but will an affidavit then always be accepted as conclusive evidence in ALL cases that no notice was received?

Again positive proof is the easiest form of proof to obtain, and therefore moving away from personal delivery or registered mail will I believe just open up the system for abuse on all sides. The issuer will simply send out hundreds of letters, sms's and emails, and the alleged infringers will have to constantly be in charge of proving what they didn't receive. Once again honest road users, who are the smallest part of the problem with infringements, will do what is right, but the most lawless, who are the ones who should be most closely policed, will simply pop down to the police station with a useful template letter and change the date every so often as "proof" that they did not receive a notice.

Smss and emails are also the domain of the majority of scams to defraud honest people. Scammers do not use registered mail, because they can be traced. At the moment SARS is a common denominator in attempted fraud, as well as many banks who have to constantly warn against fraudulent behaviour. Extending these notices to sms and email (and even to some extent normal mail) creates a massive opportunity for fraudsters to manipulate the system and defraud people of their money under the guise that it is a payment for a traffic violation.

In summary, the shift in the burden of proof as well as the added risk of fraud is of great concern to me.

Kind regards
Leon Combrink

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Valerie Carelse - AARTO

From: "Henk van Herwaarden" <henk.van.herwaarden@gmail.com>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/28 9:01 AM
Subject: AARTO

Good day,

Regarding the changes in the AARTO amended bill I would like to comment.

1a "Electronic service"

There is no use of electronic service when email addresses printed on infringement documents are wrong. And this is (or was) the case.

I did indeed get an infringement document and the correspondence email address was wrong. After searching the internet, I did find the right address but unfortunately did NOT ONCE get reply or response to my enquiries made.

I am asking you what is the point of having the facilities but NO ONE CAPABLE of using it. Makes no sense if you don't train your staff to use it.

1c "text messaging"

It is a ridiculous poor way of communication if not the poorest there is. Useless and thanks to the commercial abuse, an absolute waste of time and money.

Below my standard reply to sms.

"Please note that SMS messages are not recognised as a proper professional business communication method and are therefore not monitored.

For information required please send me an email or try just phoning me, you have my number. Thanks"

Payments:

The reality is that documents are very often delivered in P.O. boxes only weeks or months after date of sending.

Bank claiming, they offer "service" to pay fines have a useless system that only keeps infringement numbers in the system for 30 days.

IN THAT TIME SOUTH AFRICAN POSTAL SERVICE DOES NOT EVEN MANAGE TO DELIVER THE PAPER INTO YOUR PO BOX!!! IT DOES NOT WORK!!!

I'm 100% convinced more fines would be paid if easy payment will be made possible.



Virus-free. www.avast.com

Valerie Carelse - AARTO amendment act

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From: Pieter Bredenkamp gm <pbkamp@gmail.com>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/26 3:23 PM
Subject: AARTO amendment act

Dear Madam,

My concern relates to electronic communication of documents. Clauses 1(d) and 9(a) have direct bearing.

The current act requires the use of registered mail, or the hand delivery of a document/warrant, which provides for a signature that proves delivery, and who accepted delivery. Emails and SMSs do not prove delivery, or prove who received the documents.

Assuming documents/notices were delivered, and entering items in the offences register, without proof of actual, correct execution of delivery opens the way to poor administration and judgments against parties who may well never have received any communication.

I thank you or your noting my concern.

Regards,
Pieter Bredenkamp

Valerie Carelse - Submission on proposed AARTO Amendment Bill

From: Anton Valks <valks@hwmecca.co.za>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/26 8:26 AM
Subject: Submission on proposed AARTO Amendment Bill

Thank you for the opportunity to view my opinion on the proposed amendments to, and further roll out of, AARTO. I wish the following to be considered:

1. Clause 1d which seeks to introduce a new definition called "electronic service" is opposed. Whereas advancements in the area of electronic communications resulted in potentially more effective and speedy ways of communication, this channel of communication in a legal process will open a host of new possibilities for a lot of people to be scammed. Delivering a notice to an alleged infringer is key to the whole process of prosecuting such a person. Any uncertainty in this process is unfair and inserts an element of injustice. Only smart phones will be able to receive an AARTO 03 infringement notice. Not all people have smart phones or emails.
2. Clause 9a which deals with amendments in the process of delivering infringement notices (section 30(1)) is opposed as the new processes are inherently fraught with uncertainty and unfairness in the proposed ways in which notices can be delivered. None of them will ensure certainty. The Post Office is notoriously inept and electronic communications can never verify that the real perpetrator have actually seen and received a notice. All sort of possible scenarios make electronic delivery totally unacceptable in any legal process.
3. Clause 9b which deals with amendments to the wording of section 30(2) is opposed. To suddenly change a process of how registered mail is delivered by deeming such notice to have been delivered after 10 days are absurd to the extreme. To also deem electronic notices as deemed to have been delivered is equally irrational. All it does is open a door for unfairness and injustice with serious implications for the alleged infringer. The only sure way to deliver an infringement notice is to issue it on the spot at the time of the transgression.

Whereas all road users have a direct interest in promoting road safety, any new legislation that is seen as only to strengthen the hand of the enforcer to fill its coffers without contributing to real change in behaviour of the transgressor will always be opposed. I have personally observed traffic officers partaking in illegal trappings motivated surely by the income generating aspect of it. I therefore urge authorities to consider the absolute emphasis on generating income from speed teapping under the guise of road safety to reconsider. It is proposed that legislation be consired that all monies received from road infringements be channelled to projects that will actually improve road safety and road conditions and does not end up in the coffers of the issuing authority to be spent as they deemed fit. Emphasis must be shifted from speed trapping only to include greater emphasis on combatting the real killers, e.g. driving under the influence, driving without a license, un-roadwoarthy vehicles, overtaking on solid lines, etc. More often than not, it is not speed only that causes fatalities, but rather a combination of speed and one or more of the factors mentioned. By removing the monetary incentive from issuing authorities, a more comprehensive approach to road traffic infringements can be achieved. To prosecute a speeding offender some time after the offence is only a money earning action. How can concealed speed camera change recless driving. Offenders should be stopped and they and their vehicles thoroughly checked with a notice being issued on the spot. This will ensure fairness as an offender can ensure everything was done in a legal way and will cause real change in user behaviour whilst stopping killers to continue on their merry way.

The whole AARTO act is to my opinion un-constitutional in that it shifts the "innocent until proven guilty"-principle, to one of "guilty until you can prove your innocence."

With kind regards

Anton Valks
P.O. Box 1229
Sedgefield
6573

(Sent from my iPad)

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Valerie Carelse - Submission Comments/Questions on the AARTO Amendment

From: "Avi Jagarnath" <27828511703@vodamail.co.za>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/25 3:52 PM
Subject: Submission Comments/Questions on the AARTO Amendment Bill

Dear Valerie,

As reported in the press, below are my submissions regarding the AARTO amendment bill

My concerns with "electronic service" include:

1. The current e-Natis licencing system have not been able to get my street address correct on the system for years. How can we be certain that my email address will be correctly stored by e-Natis?
2. How will my email address and cellular number be obtained from me?
3. Where will the above details be stored?
4. I constantly get SMS's intended for other people – how will I know that an infringement notice is actually intended for me?
5. Where will I be able to see the photograph of the alleged infringement?
6. Will I be able to submit correspondence back to the issuing authority, in the event that I dispute the infringement?
7. How will I know that the bank account details are accurate and I am not being scammed?
8. What happens if the notice is sent to the wrong email address? Am I still expected to be aware of it?

My concern with section 9 is:

1. The amendments place a huge responsibility on the correctness of the electronic service address (be it email or cellular number). How will this be verified? If the authorities get it wrong, who is responsible? I cannot defend myself if I don't know – how do I prove in an affidavit that the email address that the notice was sent to was wrong. In fact, at what point would I have to prove that if I have no knowledge of a notice? Could I get arrested and then find out? And what would be the process to have the error fixed? And how long would it take? Could I be imprisoned if the authorities make a mistake? Could my vehicle be attached?
2. Assuming the documentation is posted, given how utterly useless the SA Post Office are with delivering the post, how can it be assumed that I receive the notice within 10 days. I am currently (in August 2016) receiving letters by post from December 2015.

Section 10.32 (3)

1. Shouldn't the issuing authority be far more penalised if they don't comply with the act. As I read this, they issuer will still accrue the funds up until they comply. See general concerns point 2 below.

General concerns:

1. If the city of Johannesburg could not get the service of infringements correctly done through registered post, and yet still demanded I pay for a fine I was never notified about at 2 Am during a roadblock, and threatened me with arrest despite that being illegal in terms of AARTO as it currently stands, what guarantee do we have that they will actually implement these changes fairly and correctly. All these changes serve to do is to remove the need for the city to send through registered mail, and allows sending of traffic infringements via electronic means. But

they don't have my email address or cellular number ... so how will they actually send it to me?
And will I be forced to pay for fines (let's call it what it is) even if these are not sent to me (as happened to me previously)?

2. If the City of Johannesburg get this wrong again, then the income from fines will accrue to them until such time that they comply. But if they don't comply for 2 months, they still get an accrued income. That's hardly fair to me, who would still have to pay the fine regardless of whether it was communicated in a procedurally fair manner or not.

Regards,
Avinash Jagarnath

Valerie Carelse - AARTO Request for Public Input

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From: Raynard Swanepoel <u14007933@tuks.co.za>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/25 2:04 PM
Subject: AARTO Request for Public Input

Good day,

This organisation is taking advantage of students in the need for parking space. (University of Pretoria)

My infringement was for parking at a spot where it is not allowed but as can be seen in attached files there are no signs of the sort in the area.

Fellow students and I, received infringement notices from AARTO for parking next to campus. There are no other options as students are not allowed to park on campus and the assigned parking spaces are way to few to accommodate all the students in need.

This happens everyday and it is ridiculous. What are we as students supposed to do? We do not earn salaries to pay for fines like these and on a daily basis even worse. And we need to attend classes so we have to go to campus.

Regards,
Raynard Swanepoel

This message and attachments are subject to a disclaimer. Please refer to <http://www.it.up.ac.za/documentation/governance/disclaimer/> for full details.

Valerie Carelse - AARTO

From: "Dries Wolmarans" <dries@tiscali.co.za>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/30 8:57 AM
Subject: AARTO
Cc: <info@jp-sa.org>

Dear Valerie Carelse

I do not think that electronic service is an appropriate method of service as it is dependent on a service provider that I need to pay to ensure receipt of the message.

I am here referring to SMS and email format. None of these formats guarantees reception of the message.

Should a person be in arrears with a service provider, the message would never be delivered? The onus of confirmed delivery should rest on the AARTO Authority.

This cannot be dependent on a private for pay service provider.

Best regards

Dries Wolmarans

dries@tiscali.co.za

0824049069

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Valerie Carelse - Comment on AARTO

From: "Cosmos Ndlovu" <cosmosn@statssa.gov.za>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/30 11:51 AM
Subject: Comment on AARTO

Good day,

1. it is suggested that on road traffic camera officials should not hide themselves especially in a two way road traffic, as it causes an unnecessary shocking to a driver, where an accident can occur easily. Even an official is not safe in this matter because by the time he/she is trying to stop for charge the over speeding vehicle, he/she is coming from the onset bushes where a driver cannot see him/her at an early stage. Sometimes the vehicle following the one over-speeding can also hit pedestrians, or another vehicle because the preceded vehicle perform an emergency stop by an official.

2. On road cameras plus satellite/normal camera should be easily know and identifiable by the drivers. public should be indicated the difference on this.

3. Trucks should not be allowed to overtake up to a fast lane in a three or more lanes. sometimes a truck will try to overtake, and cause a traffic when the other truck does not limit its speed.

4. Most drivers are loosing sense of periodically looking at their mirrors etc. I suggest that there should a two hour course/refresher training on learners license since drivers tends to forget the proceedings on road signs. Some mistakes are caused by drivers, some are changes on learners course e.g. previously you should go faster once you see caution sign robot. These days you should stop once you see yellow robot if your vehicle is before stop street. Old drivers are not aware of such changes.

Therefore I suggest that a driver only apply for extension of drivers license only if he/she has a learners refresher certificate issued by AARTO, Valid ID book, and all other relevant currently used requirements.

5. Most of accidents are caused by Taxi (kombis) drivers. All taxis have a sign of road line permit as per its association, there must be a visible telephone number for the owner of the kombi plus toll-free number of AARTO or Metro where all other drivers can report bad driving. If the Kombi's owner attitude is not professional, a pedestrian/victim driver can report bad driving to the mentioned service officials. Once bad driving is reported several times within a week on the same kombi, AARTO/Metro should make a meeting with the owner and disciplinary action should exist.

6. On a freeway, all taxis,kombis, buses, trucks should have their own routes if the road has more that three drive ways.

7. Durban Metro should strategize on the issue of traffic every day when entering Durban town, especially west street. They must start concentrating on parking permit after 9am. from 7 to 9, they must all be visible on all robots controlling traffic for easily flow of vehicles. Even pedestrians are facing a challenge of crossing in the morning because drivers cannot stop on robots, sometimes robot closed while there is a traffic of vehicle, causing difficulties on pedestrians and other vehicles with right to cross. Sometimes Metro officials perform this task only if the robot is not working. This must be a norm everyday to them since vehicles are increasing every week now, people have money to sacrifice to buy vehicles because of taxi drivers attitudes.

Regards:
Cosmos Ndlovu

Valerie Carelse - AARTO Amendment Bill, 2015

From: "Edwards" <oledwards@netactive.co.za>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/30 9:48 AM
Subject: AARTO Amendment Bill, 2015

Please find my comments on the AARTO Amendment Bill, 2015.

Clause 9(a) and (b) – Section 30(1) – “service of documents”

I am not sure that an electronic service is safe and reliable and cannot guarantee to be a reliable method of communication for the following reasons:

1. Being a pensioner I leave my cell phone in safe places as I fear having them stolen and do not have it with me all the time;
2. My Email service provider from time to time blocks certain incoming addresses as they deem them to be unsolicited Email and thus I may not even see the AARTO communication. Which I believe is common practice with service providers and the introduction of this automated spam control will hinder the communication process
3. Some messaging systems identify mass mailers and automatically block these emails with no notification to the sender.
4. Email may not be owned by the person in the case of corporate email. The email may be blocked as non-work related and the person may not ever receive the notification.
5. An Email address may be obsolete or closed;
6. The Email mailbox may be full and thus no extra email will be received;
7. Email may be monitored by other persons and thus violates any confidentiality and may impact on reputation and character of the person;
8. As data is not free, some people may only afford to "top-up" or buy data outside of the notification window and thus will not receive the message in time;
9. SMS can only receive a limited number of characters and may not be sufficient to clearly indicate the desired intention of the message.
10. Phones may not be online and may not have data in the period of sending.
11. A mobile number is not guaranteed to be the person who is on a national database as contracts change and numbers are recycled at a rather rapid rate.
12. Scam artists will take advantage of the new method of communication and will target South Africans posing as the government to get funds directly to them.

Valerie Carelse - Administrative Adjudication of Road Traffic Offences Amendm
[B 38-2015]

18

From: Dintwe Mohutsioa <dintwe.mohutsioa@gmail.com>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/19 10:56 AM
Subject: Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38-2015]

Hi V Carelse

It really frustrates me when what is supposed to be for every citizen's digest is written in such complicated difficult manner which only a highly learned individual (specifically in Law or Law related domain) can masticate.

I cannot understand what is communicated in the gazette.

Until you write these important documents in simple plain English (and other 10 official languages) that everyone can comprehend then I see no value in publishing these files – more specifically this one.

People who will be affected by the contents of this document are drivers of vehicles and unfortunately not all drivers are or will be able to understand what is communicated to them.

Kind Regards,

Dintwe D Mohutsioa

B 38/15

20

From: DR Sahadew <woodysahadew@telkomsa.net>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/18 7:54 PM
Subject: AARTO traffic infringements

Good day. I do not agree with the idea to make SMS and EMAIL notifications acceptable forms legal notification for traffic violations. Thank you.
Woodhal Sahadew

Sent from my Huawei Mobile

Valerie Carelse - Comment on the Administrative Adjudication of Road Traffic (Amendment Bill)

21

From: Arulan Pillay <pillayal@gmail.com>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/22 4:43 PM
Subject: Comment on the Administrative Adjudication of Road Traffic Offences Amendment Bill
Cc: <info@jp-sa.org>

Hi,

My comment on the bill is as follows:

5.7 of the Bill states that it provides for the financing of the Authority by penalties issued and collections by issuing authorities. The problem with this is that it can drive the wrong behaviour from the authorities, in other words, stopping and harassing motorists without good justification and 'forcing' motorists to pay the bill, even though an offence may not have been committed.

The Authority should be fully funded from National Treasury - there should be no incentive for the traffic officers to do their daily jobs.

It can result in false claims by traffic officers and manipulating equipment to say motorists have been speeding for example, when they may have not been. The Authority could do this, especially in cases where they are short-funded.

I think the bill is one sided and only looks at the perspective of the Authority. It needs to be more balanced and include the perspective of the motorist.

Kind regards,
Arulan Pillay
pillayal@gmail.com

BSX/15

22

Valerie Carelse - Bill submission

From: Zigana Bulelwa <ZiganaB@aforges.co.za>
To: "vcarelse@parliament.gov.za" <vcarelse@parliament.gov.za>
Date: 2016/08/19 7:58 AM
Subject: Bill submission

Good day,

Thank you for the opportunity given to comment/give inputs on the Bill.

- Please can we not be charged for infringement if the roads are not clearly marked (i.e. barrier lines) "this is where there are cameras".
- Can the government also insure that road signs are clear & installed.

Regards,
Bulelwa

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Valerie Carelse - Aarto Amendment Bill

From: "Catryn Meyer" <traffin@telkomsa.net>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/31 11:42 AM
Subject: Aarto Amendment Bill

Good day

Re the sending of notifications of AARTO Infringement notices via sms: My cell is now out of order for over a month and in for repairs. If notifications is send to me via sms, I would have missed it. What will happen to people who do not owe a cell phone or computer/internet or do not have means of receiving notifications via e-mail?

I received about two month ago a sms re a new infringement that was issued. The registration number is my bosses wife's vehicle and is registered on her name. I phoned AARTO enquiries regarding this and was told my cell nr was not recorded on her e-natis profile. They could not explained how I got the sms. How many other infringement notifications where send to the wrong cell numbers?

How much will it cost us to print all the fines and is this not a way to put the burden of costs on the people in the street, some who cannot afford it. There is some companies that is renting out trucks to other companies, like our company. We have to have the printed fine to forward it to our clients in order to get driver's details for nominations.

Regards

CJP Meyer
0116153377

B38/15

24

Valerie Carelse - New laws a waste of money.

From: "Cobus v d Walt" <cowalt@cybersmart.co.za>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/22 1:02 PM
Subject: New laws a waste of money.

We can spend a billion on new laws and it is not going to change the situation. What this law is basically "monkey see, monkey do" Nothing original just copying what Europe has been doing for many years and that is due to the amount of vehicles and PROPER POLICING!!!!. It will not stop fatalities on our roads NOT AT ALL!!!!. In the new South Africa you all of a sudden come up with new fancy laws, that really does not work and is just instigated to get more money out of the public!!!!

This is the same with the E-Toll system which derived from the Weapon Scandal. (this was reported in an Australian News Paper) Not here!!!! Copied from the German Autobhan System where it is used on trucks only for road maintenance!!!! Due to trucks have to drive through Germany to get to their destinations in the rest of Europe. IT IS NOT ON CARS!!!!

So stop changing things that needs to be left alone. You realize that the major public in not cleaver enough and will just buy into the ideas!!!! WHO IS GOING TO BNEFIT OUT OF THIS???

NOT THE MOTORING PUBLIC.

B38/15
25

Valerie Carelse - AARTO Amendment Bill

From: "Duncan & Marion" <duncarion@telkomsa.net>
To: <vcarelse@parliament.gov.za>
Date: 2016/08/31 9:28 PM
Subject: AARTO Amendment Bill

I strongly object to the following portions of the proposed bill.

Section 1(d) Electronic service by means of data messages, emails, text messages cannot be taken as reliable. Commercial Banks make customers sign indemnities to protect them in the event the service provider fails to deliver the communication. It is strange that government now feels the need to use a form of communication when delivery cannot be guaranteed.

Section 30 (b) where the bill proposes for a registered mail item to have been deemed to be served after 10 days. This proposal is totally unacceptable. The South African Postal Service has been in total disarray for a number of years and no reasonable man would be so naive to think that a service has been rendered following a lapse of time.

The repeal of section 21 of the act and the treatment of offenders in terms of section 20(5) of the act is grossly unfair in that it assumes the registered owner of the vehicle is the offender.

I trust that my objections will receive due consideration.

James D S Geach
ID 5308055205084
Mobile 083 296 0845

B38/15
26

Valerie Carelse - AARTO Amendment Bill, B38 of 2015

From: "Bradley Smith (BE)" <bsmith@npa.gov.za>
To: "vcarelse@parliament.gov.za" <vcarelse@parliament.gov.za>
Date: 2016/08/30 12:42 PM
Subject: AARTO Amendment Bill, B38 of 2015
Attachments: ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES ACT with proposed amendments.docx; COMMENTS ON THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES 26 August 2016.docx

Dear Valerie,

The NPA circulated the chairpersons request for comment on the proposed amendments to AARTO to staff. Staff were invited to submit comments directly.

The comments provided in the annexure herein are my comments, and are set out in the annexure hereto.

I have also included a copy of the AARTO Act showing the proposed amendments as I believe this is the most effective way of considering the Bill.

I trust that this will be of assistance to the Portfolio Committee.

Kind regards,

Adv B Smith

Deputy Director of Public Prosecutions

National Prosecuting Authority

Tel: 012 845 6760

Fax: 012 843 2760

Cell: 076 689 5946

e-mail: bsmith@npa.gov.za

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The National Prosecuting Authority of South Africa

ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES ACT
NO. 46 OF 1998

[ASSENTED TO 9 SEPTEMBER, 1998]
[DATE OF COMMENCEMENT: 1 JULY, 2007]

(Unless otherwise indicated)

(English text signed by the President)

GENERAL NOTE

Government Gazette No. 33114 dated 16 April, 2010 was withdrawn by Government Gazette No. 33341 dated 30 June, 2010. The notice hereby withdraws the dates of commencement for ss 17–19, 19A–19B and 20–35 as 1 July, 2010 in the areas of City of Cape Town, eThekweni, Ekurhuleni and Nelson Mandela Bay Metropolitan Municipalities and 1 November, 2010 for the remainder of the Republic of South Africa.

as amended by

Administrative Adjudication of Road Traffic Offences Amendment Act,
No. 22 of 1999

Administrative Adjudication of Road Traffic Offences Amendment Act,
No. 24 of 2000

Administrative Adjudication of Road Traffic Offences Amendment Act,
No. 72 of 2002

ACT

To promote road traffic quality by providing for a scheme to discourage road traffic contraventions, to facilitate the adjudication of road traffic infringements, to support the prosecution of offences in terms of the national and provincial laws relating to road traffic, and implement a points demerit system; to provide for the establishment of an ~~agency Authority~~ to administer the scheme; to provide for the establishment of a board to represent the ~~agency Authority~~; and to provide for matters connected therewith.

ARRANGEMENT OF SECTIONS

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INTERPRETATION OF ACT

- 1. Definitions
- 2. Objects of Act

CHAPTER II

ROAD TRAFFIC INFRINGEMENT ~~AGENCY AUTHORITY~~

3. Establishment of ~~agency~~ Authority
4. Objects and functions of ~~agency~~ Authority
5. Subcontracting
6. Road Traffic Infringement ~~Agency~~ Authority Board
7. Functions of board
8. Appointment of registrar
9. Appointment of deputy registrars
10. Appointment of representations officers
11. Administrative staff and remuneration
12. Appointment of sheriffs
13. Financing of ~~agency~~ Authority
14. Bookkeeping, auditing and reporting
15. Banking account
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ADJUDICATION PROCEDURE

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18. Representations
19. Courtesy letter
- 19A. Options
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21. Warrant
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POINTS DEMERIT SYSTEM

24. Points demerit system

- 25. Prohibition on driving or operating motor vehicle
- 26. Notification
- 27. Cancellation of driving licence, professional driving permit and operator card
- 28. Reduction of demerit points
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GENERAL MATTERS

- 30. Service of documents
- 31. Penalties
- 32. Apportionment of penalties
- 33. Access to information
- 34. Regulations
- 35. Transitional provisions
- 36. Short title and commencement

**CHAPTER I
INTERPRETATION OF ACT**

1. Definitions.—In this Act, unless the context otherwise indicates—

“acceptable identification” means—

- (a) a temporary identity certificate or an identity document issued in terms of the Identification Act, 1986 (Act No. 72 of 1986);
- (b) a passport issued in terms of the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994);
- (c) in the case of a person not permanently resident in the Republic, an identity document issued by a foreign country or a traffic register number certificate;
- (d) in the case of—
 - (i) a company, a certificate of incorporation or name change issued in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
 - (ii) a close corporation, a founding statement or a certificate of name change issued in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984);
- (dA) a driving licence card issued in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (e) a traffic register number certificate issued in terms of any national or provincial Road Traffic Act, in the case of—

- (i) a person carrying on a business which, for the purpose of this definition, includes farming activities; or
- (ii) a body of persons not referred to in paragraph (c); or
- (f) ~~a photocopy of the applicable certificate or document referred to in paragraphs (a) to (e)~~ a clear, legible and certified copy of the applicable certificate or document referred to in paragraphs (a) to (e); Clause 1(a)

~~“agency” means the Road Traffic Infringement Agency, established by section 3; Clause 1(b); Clause 12 (a) – substitutes ‘agency’ with the word Authority wherever they occur.~~

“authorised officer” means—

- (a) a traffic officer or a traffic warden appointed in terms of the laws of any province;
- (b) a member of the service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (c) a national road transport inspector appointed in terms of section 37 (1) of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998), or any duly appointed provincial road transport inspector; or
- (d) a municipal police officer appointed under any law;

~~“Authority” means the Road Traffic Infringement Authority, established in terms of section 3; Clause 1(c)~~

~~“board” means the Road Traffic Infringement Agency-Authority Board, established by section 6;~~

“courtesy letter” means a courtesy letter contemplated in section 19;

“date of service” means the date on which an infringer has signed for the relevant document served on him or her under section 30; (Note: this conflicts with electronic and postal service provisions)

“demerit points” means demerit points contemplated in section 24;

“Director-General” means the Director-General of the national Department of Transport;

“disqualification period” means the period contemplated in section 25 during which a person is disqualified from driving or operating a motor vehicle or applying for a learner’s licence, driving licence, professional driving permit or operator card;

“electronic service” means—

- (a) communication by means of data messages, including data attached to, incorporated in, or logically associated with, other data that may be electronically retrieved;
- (b) e-mail messages between the Authority and an addressee in an electronic communication format; or
- (c) text messaging by the Authority to the recipient’s cellular telephone; Clause 1(d)

“enforcement order” means an enforcement order contemplated in section 20;

~~“infringement” means a major or a minor infringement~~ “infringement” means any act or omission in contravention of this Act or road traffic legislation; Clause 1(e)

“infringement notice” means an infringement notice contemplated in section 17;

“infringer” means a person who has allegedly committed an infringement;

“issuing authority” means—

- (a) a local authority contemplated in Chapter 7 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other applicable law;
- (b) a provincial administration; or
- (c) the Road Traffic Management Corporation, established under section 4 of the Road Traffic Management Corporation Act, 1999,

in so far as such authority, administration or Corporation is responsible for traffic matters;

~~“major infringement” means an offence categorised as a major infringement under section 29 (a); Clause 1(f); clause 12(b) substitutes ‘major infringement’ and ‘minor infringement’ with ‘infringement’ wherever they occur.~~

“MEC” means a member of an Executive Council of a province appointed in terms of section 132 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and who is responsible for road traffic matters;

“Minister” means the Minister of Transport;

~~“minor infringement” means an offence categorised as a minor infringement under section 29 (a); Clause 1(g); clause 12(b) substitutes ‘major infringement’ and ‘minor infringement’ with ‘infringement’ wherever they occur.~~

~~“national contraventions register” means the National Traffic Information System on which the offence details of every individual are recorded in terms of this Act; Clause 1(h); Clause 12(d) substitutes ‘national contraventions register’ with the terms ‘National Road Traffic Offences Register’ wherever it occurs.~~

“National Road Traffic Offences Register” means the National Road Traffic Offences Register administered by the Authority in which the details of infringements and offences of every infringer are recorded; Clause 1(i)

“offence” means an offence prescribed under section 29(a);

“penalty” means the administrative penalty payable for an infringement as contemplated in section 31;

“prescribed” means prescribed by regulation by the Minister under section 34;

~~“representations officer” means a person contracted by the agency in terms of section 5 or appointed by the Registrar in terms of section 10 to consider representations submitted by any person who, after having committed a minor infringement, elects to make a representation~~

“representations officer” means a person appointed in terms of section 10 to adjudicate on representations contemplated in sections 18; Clause 1(j)

“sheriff” means a sheriff appointed under section 12; and

“this Act” includes any regulation made in terms of section 34.

2. Objects of Act.—The objects of this Act are, despite the Criminal Procedure Act, 1977 (Act No. 51 of 1977)—

- (a) to encourage compliance with the national and provincial laws and municipal by-laws relating to road traffic and to promote road traffic safety;
- (b) to encourage the payment of penalties imposed for infringements and to allow alleged ~~minor~~ infringers to make representations;
- (c) to establish a procedure for the effective and expeditious adjudication of infringements;
- (d) to alleviate the burden on the courts of trying offenders for infringements;
- (e) to penalise drivers and operators who are guilty of infringements or offences through the imposition of demerit points leading to the suspension and cancellation of driving licences, professional driving permits or operator cards;
- (f) to reward law-abiding behaviour by reducing demerit points where they have been incurred if infringements or offences are not committed over specified periods;
- (g) to establish an agency-Authority to support the law enforcement and judicial authorities and to undertake the administrative adjudication process; and
- (h) to strengthen co-operation between the prosecuting and law enforcement authorities by establishing a board to govern the agency-Authority.

CHAPTER II

ROAD TRAFFIC INFRINGEMENT AGENCY-AUTHORITY

3. Establishment of agency-Authority.—(1) The Road Traffic Infringement Agency-Authority is hereby established as a juristic person responsible to the Minister.

(2) (a) The agency-Authority may do anything that is necessary to perform its functions in terms of any law, or assigned to it by the Minister.

(b) The Minister may, on request of an issuing authority, assign any function vested in such issuing authority in terms of this Act, to the agency-Authority.

(3) The agency-Authority must establish one national office, and may establish suboffices at provincial or municipal level.

4. Objects and functions of agency-Authority.—(1) The objects of the agency-Authority are, despite the Criminal Procedure Act, 1977 (Act No. 51 of 1977)—

- (a) to administer a procedure to discourage the contravention of road traffic laws and to support the adjudication of infringements as set out in subsection (2);
- (b) to enforce penalties imposed against persons contravening road traffic laws as set out in subsection (3);
- (c) to provide specialised prosecution support services as set out in subsection (4); and
- (d) to undertake community education and community awareness programmes in order to ensure that individuals understand their rights and options as set out in subsection (5).

(2) The agency-Authority performs its functions in terms of subsection (1) (a) by—

- (a) receiving notices from any issuing authority if an infringer has failed to comply with an infringement notice issued in terms of section 17;
 - (b) considering representations from an infringer in terms of section 18 with regard to an infringement notice relating to a ~~minor~~ infringement;
 - (c) issuing a courtesy letter in terms of section 19 to an infringer who has failed to comply with an infringement notice;
 - (d) issuing an enforcement order in terms of section 20 against an infringer who has failed to comply with the requirements of a notification contemplated in section 18 (7) or a courtesy letter contemplated in section 19 (2) (b), or who has failed to appear in court under the circumstances contemplated in section 22 (3);
 - ~~(e) issuing a warrant in terms of section 21 against an infringer who has failed to comply with an enforcement order; Clause 2(a)~~
 - ~~(f)~~ (e) revoking an enforcement order in terms of section 20 (9); and
 - ~~(g)~~ (f) updating the ~~national contraventions register~~ National Offences Register in the prescribed manner.
- (3) The ~~agency~~ Authority performs its functions in terms of subsection (1) (b) by—
- (a) serving a courtesy letter in terms of section 19 on an infringer who has failed to comply with an infringement notice; ~~and~~ Clause 2(b)
 - (b) serving an enforcement order in terms of section 20 on an infringer who has failed to comply with the requirements of a notification contemplated in section 18 (7) or a courtesy letter contemplated in section 19 (2) (b), or failed to appear in court under the circumstances contemplated in section 22 (3); ~~and~~ Clause 2(c)
 - ~~(c) executing a warrant in terms of section 21 against an infringer who has failed to comply with an enforcement order. Clause 2(d)~~
- (4) The ~~agency~~ Authority performs its functions in terms of subsection (1) (c) by—
- (a) assisting the prosecuting authorities to get persons who committed offences before the courts through serving of documents and keeping of records on its database;
 - (b) providing traffic law enforcement equipment and support services to issuing authorities;
 - (c) providing, at the request of the Office of a Director of Public Prosecutions, a person to testify as an expert witness in a trial on a charge relating to an offence; and
 - (d) providing training, where possible, to authorised officers or staff of the prosecuting authority.
- (5) The ~~agency~~ Authority performs its functions in terms of subsection (1) (d) by—
- (a) disseminating information regarding the role and functions of the ~~agency~~ Authority, and the rights enjoyed by individuals, in terms of this Act;
 - (b) applying efficient and equitable procedures to encourage compliance with this Act and fostering law abiding behaviour by road users; and

- (c) supporting road safety awareness programmes.
- (6) The ~~agency Authority~~ must, in order to properly perform its functions, establish the prescribed information management system and database which is connected with the ~~national contraventions register~~ National Road Traffic Offences Register, and utilise such database to create, process and maintain records with regard to any action performed by it in terms of this Act.
5. Subcontracting.—(1) The ~~agency Authority~~ may, subject to the business plan approved by the board, appoint agents, or contract with any person, to perform any function vested in it in terms of this Act or any other law.
- (2) The prescribed procedures must be followed in respect of any procurement or contract contemplated in subsection (1).
6. Road Traffic Infringement ~~Agency Authority~~ Board.—(1) A Road Traffic Infringement ~~Agency Authority~~ Board, to represent and control the ~~agency Authority~~, is hereby established, comprising—
- (a) five persons appointed by the Minister, who by virtue of their relevant experience and technical expertise are suitably qualified to perform the functions of the ~~Agency Authority~~ under this Act;
 - (b) a Director of Public Prosecutions, nominated by the National Director of Public Prosecutions, in consultation with the Minister; and
 - (c) the registrar of the ~~agency Authority~~.
- (2) Prior to the appointment of a person to the board, the Minister must—
- (a) by notice in the Gazette, publish his or her intention to appoint that person and invite public comment or objections within the period specified in the notice;
 - (b) forward a copy of the notice to the relevant Parliamentary Committees; and
 - (c) take into account any comment or objection received by him or her in accordance with such notice.
- (3) The members of the board contemplated in subsection (1) (a) hold office for a period not exceeding five years, whereafter they may be re-appointed.
- (4) A member of the board contemplated in subsection (1) (a), must vacate his or her office—
- (a) upon expiry of his or her term of appointment;
 - (b) if he or she is incapacitated by physical or mental illness;
 - (c) if his or her estate is sequestrated; or
 - (d) if he or she is nominated as a candidate for election as a member of Parliament, a provincial legislature or the council of a local authority.
- (5) The Minister may remove a member of the board contemplated in subsection (1) (a) from office if such member—
- (a) fails to perform his or her duties diligently or efficiently;
 - (b) is unable to perform his or her duties because of mental illness or disability; or

(c) has been absent without the permission of the chairperson from two consecutive meetings of the board, without good reason.

(6) The members of the board contemplated in subsection (1) (a) may resign on one month's written notice to the Minister.

(7) The Minister appoints a member of the board contemplated in subsection (1) (a) or (b) as the chairperson.

(8) The board meets at least twice per year or as often as may be required.

(9) The board determines its own procedures for meetings and decisions and may, in the absence of a chairperson, elect a member contemplated in subsection (1) (a) or (b) as acting chairperson.

(10) Members of the board who are not in the full-time employment of the State may be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

7. Functions of board.—(1) The functions of the board are—

- (a) to approve the business plan prepared by the registrar in terms of section 8 (2), and monitor the efficient and effective operation of the ~~agency~~Authority;
- (b) to monitor the success achieved by the ~~agency~~Authority in promoting compliance with road traffic laws;
- (c) to receive annual reports contemplated in section 8 (4), and to advise the registrar on measures to be taken to improve the ~~agency~~Authority's effectiveness;
- (d) to advise the Minister regarding amendments to this Act or any other road traffic legislation in order to improve the effectiveness of the ~~agency~~Authority;
- (e) to identify and recommend institutional, technical and logistical support which the ~~agency~~Authority may provide to assist the prosecution of road traffic offenders and the adjudication of offences by the courts; and
- (f) to consider any other matter which the board deems advisable in order to achieve the objects of this Act.

(2) The board must annually submit a report on the activities of the ~~agency~~Authority to the Minister for tabling in Parliament.

8. Appointment of registrar.—(1) The members of the board referred to in section 6 (1) (a) and (b) must appoint a person with the qualifications and experience determined by the Minister by notice in the Government Gazette as the registrar of the ~~agency~~Authority.

(2) The registrar oversees the functions of the ~~agency~~Authority in accordance with a business plan prepared by the registrar and approved by the board, and in particular—

- (a) the efficiency of penalty collection and supporting administrative procedures;
- (b) the operational and organisational functioning of the ~~agency~~Authority; and
- (c) the introduction of managerial and operational improvements to facilitate the implementation of this Act.

(3) The registrar may, in writing, assign a function contemplated in subsection (2) to a deputy registrar or deputy registrars.

(4) The registrar must annually submit a report concerning the activities and operations of the agency Authority to the board.

9. Appointment of deputy registrars.—(1) The board may appoint not more than 25 persons as deputy registrars.

(2) A person may not be appointed as a deputy registrar unless that person has the qualifications and experience determined by the Minister by notice in the Government Gazette.

10. Appointment of representations officers.—(1) The registrar may, subject to the business plan approved by the board, appoint such persons as representations officers as may be necessary.

(2) A person may not be appointed as a representations officer unless that person has the qualifications and experience determined by the Minister by notice in the Government Gazette.

11. Administrative staff and remuneration.—(1) The registrar must, subject to the business plan approved by the board, establish the administration of the agency Authority and may appoint such administrative staff members as may be necessary.

(2) The agency Authority may pay to the persons in its employ such remuneration and allowances, and may provide them with such pensions and other benefits, as the board may determine with the approval of the Minister acting in consultation with the Minister of Finance.

12. Appointment of sheriffs.—The Minister, after consultation with the registrar, may recommend to the Minister of Justice that such sheriffs or deputy sheriffs, as may be necessary to ensure the proper performance of the agency Authority's functions, be appointed in terms of the Sheriffs Act, 1986 (Act No. 90 of 1986).

13. Financing of agency Authority.—(1) The agency Authority is financed from—

- (a) fees paid to the agency Authority in terms of this Act;
- (b) deductions from penalties collected by the agency Authority as contemplated in section 32;
- (c) money appropriated by Parliament for that purpose;
- (d) donations received, which must be declared in the annual report contemplated in section 7 (2); ~~and~~ Clause 3(a)

(dA) penalties issued and collected by or on behalf of an issuing authority; and Clause 3(b)

- (e) money received from any other source.

(2) The agency Authority must utilise any money contemplated in subsection (1) in accordance with the statement of estimated expenditure referred to in subsection (3).

(3) The registrar—

- (a) must, subject to the business plan approved by the board, in each financial year, at a time determined by the board, submit a statement of estimated income and expenditure for the following financial year to the board for approval by the Minister acting in consultation with the Minister of Finance; and

- (b) may in any financial year submit adjusted statements of estimated income and expenditure to the board for approval by the Minister acting in consultation with the Minister of Finance.
- (4) The financial year of the agency Authority is determined by the Minister.
- (5) At the end of each financial year, the registrar must invest such amounts of any surplus funds of the agency Authority, as may be determined by the Minister in consultation with the Minister of Finance, in a separate account, from which payments may be made to any authority or body for the purpose of road safety or road traffic law enforcement.
- (6) Subject to subsection (5), any surplus funds of the agency Authority not invested for the purpose contemplated in that subsection, must be invested in the National Revenue Account.
14. Bookkeeping, auditing and reporting.—(1) The agency Authority must, in accordance with generally accepted accounting practice, keep such accounting and related records as are necessary to represent fairly the state of affairs and business of the agency Authority and to explain its transactions and financial position.
- (2) The registrar is the accounting officer of the agency Authority and is charged with the responsibility of accounting for all monies received and payments made by the agency Authority.
- (3) The accounting and related records of the agency Authority must be audited annually by an auditor registered in terms of section 15 (1) of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).
- (4) The Minister must notify the Minister of Finance of the establishment of the agency Authority in terms of this Act for the purposes of section 3 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992).
15. Banking account.—The agency Authority may, with the approval of the ~~Director General Board~~, open and maintain one or more accounts with a bank registered ~~finally~~ as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), in which must be deposited ~~the~~ money received by the agency Authority and money received from issuing authorities, driving licence testing centres and registering authorities, and from which payments by ~~it~~ the Authority or on its behalf may be made. Clause 4
16. Limitation of liability.—No employee of the agency Authority nor the agency Authority is liable by reason of any act done in good faith by such employee in terms of this Act.

CHAPTER III ADJUDICATION PROCEDURE

17. Infringement notice.—(1) If a person is alleged to have committed an infringement, an authorised officer or a person duly authorised by an issuing authority, must instead of a notice contemplated in section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and subject to section 23, serve or cause to be *served* on that person an infringement notice, which must—
- (a) specify the name and residential and postal address of the infringer, if known, at the time when the infringement was committed;
- (b) state the prescribed particulars of the infringement;

- (c) specify the amount of the prescribed penalty payable in respect of that infringement, the issuing authority to which the penalty is payable and the place where the penalty may be paid;
- (d) specify the prescribed discount which may be obtained if the penalty is paid not later than 32 days after the date of service of the infringement notice;
- (e) inform the infringer that the demerit points position may be ascertained from the ~~national contraventions register~~ National Road Traffic Offences Register at the office of any issuing authority, registering authority or driving licence testing centre;
- (f) inform the infringer that, not later than 32 days after the date of service of the infringement notice, the infringer may—
 - (i) pay the penalty, as reduced by the discount contemplated in paragraph (d), or make representations to the ~~agency Authority~~, in the case of a ~~minor~~ infringement;
 - (ii) pay the penalty, as so reduced, in the case of a ~~major~~ infringement;
 - (iii) make arrangements with the ~~agency Authority~~ to pay the penalty in instalments in the prescribed manner;
 - (iv) elect in the prescribed manner to be tried in court on a charge of having committed the alleged offence; or
 - (iv) provide information, in the prescribed manner, to the satisfaction of the issuing authority that he or she was not the driver of the motor vehicle at the time of the alleged infringement, coupled with the name, acceptable identification and residential and postal address of the alleged driver or person in control of the vehicle,

failing which the matter will be referred to the ~~agency Authority~~ and a courtesy letter will be issued in terms of section 19, whereafter the infringer becomes liable to pay both the penalty and the prescribed fee of the courtesy letter.

(2) If an infringer fails to comply with an infringement notice within the period contemplated in subsection (1) (f), the issuing authority must give notice of the failure, in the prescribed manner, to the ~~agency Authority~~ for further action in terms of section 19.

(3) If an infringer complies with an infringement notice by arranging to pay the penalty in instalments or by paying the penalty, as reduced by the discount contemplated in subsection (1) (d), the ~~agency Authority~~ must—

- (a) update the ~~national contraventions register~~ National Road Traffic Offences Register in the prescribed manner;
- (b) record the demerit points incurred by the infringer in terms of section 24 in the ~~national contraventions register~~ National Road Traffic Offences Register;
- (c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the ~~national contraventions register~~ National Road Traffic Offences Register in respect of the infringement in question; and
- (d) provide the infringer with a print-out of the demerit points incurred by him or her to date, together with an indication of the amount of points left before his or her driving licence, professional driving permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27.

- (i) that the penalty, the prescribed representations fee and the prescribed fee of the courtesy letter, if any, are payable to the agency Authority or that the arrangements are made with the agency Authority in the prescribed manner to pay in instalments, not later than 32 days after the date of service of the notification; and
 - (ii) that a failure to pay the penalty and fees or to make arrangements to pay in instalments will result in an enforcement order being *served* on the infringer and that the infringer will become liable to pay the penalty and fees and the prescribed fee of the enforcement order; and
- (c) if the infringer elects to be tried in court, which may only be done on the advice of the representations officer, that the provisions of section 22 apply.
- (8) If an infringer pays the penalty and fee as contemplated in subsection (7) (b) (i), or makes arrangements to pay in instalments, the agency Authority must—
- (a) update the ~~national contraventions register~~ National Road Traffic Offences Register in the prescribed manner;
 - (b) record the demerit points incurred by the infringer in the ~~national contraventions register~~ National Road Traffic Offences Register;
 - (c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the ~~national contraventions register~~ National Road Traffic Offences Register in respect of the infringement in question; and
 - (d) provide the infringer with a print-out of the demerit points incurred to date, together with an indication of the number of points left before his or her driving licence, professional driving permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27.
19. Courtesy letter.—(1) If an infringer has failed to comply with an infringement notice as contemplated in section 17 (1) (f) and the agency Authority has been notified of the failure in terms of section 17 (2), the agency Authority must issue a courtesy letter and serve it on the infringer.
- (2) A courtesy letter must—
- (a) inform the infringer that he or she has failed to comply with the infringement notice;
 - (b) give notice that the infringer must, not later than 32 days after the date of service of the courtesy letter—
 - (i) make representations in respect of a ~~minor~~ infringement;
 - (ii) pay the penalty and the prescribed fee of the courtesy letter to the agency Authority; or
 - (iii) notify the agency Authority in the prescribed manner that he or she elects to be tried in court; and
 - (c) state that a failure to comply with the requirements of the courtesy letter within the time permitted, will result in the registrar issuing an enforcement order in terms of section 20.
- (3) If an infringer pays the penalty and fee as contemplated in subsection (2) (b), the agency Authority must—

- (a) update the ~~national contraventions register~~ National Road Traffic Offences Register in the prescribed manner;
- (b) record the demerit points incurred by the infringer in the ~~national contraventions register~~ National Road Traffic Offences Register;
- (c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the ~~national contraventions register~~ National Road Traffic Offences Register in respect of the infringement in question; and
- (d) provide the infringer with a print-out of the demerit points incurred by him or her to date, together with an indication of the number of points left before his or her driving licence, professional driving permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27.

19A. Options.—Where an infringer exercises one of the options envisaged in sections 17 (1) (f), 18 (7) (b) or 19 (2) (b) within 32 days, which options—

- (a) include the option to pay fines and monies, if any, or to make arrangement to pay in instalments, the matter must be concluded without considering the other options; and
- (b) in any other case, including the option to be heard in court, this option must be ignored in order to conclude the matter out of court, corresponding to the administrative process envisaged in this Act.

19B. Payments.—(1) If an infringer makes an insufficient payment to the ~~agency~~ Authority in terms of this Act in respect of a fine or the cheque used for payment is dishonoured, a notice as prescribed must be *served* on the infringer, informing him or her—

- ~~(a) —that the full amount owed, including the prescribed fee for the notice, must be paid within 32 days of service of the notice; and~~
- ~~(b) —that failure to comply with the notice contemplated in paragraph (a) will lead to a warrant being issued against him or her in terms of section 21. Clause 5(a)~~

(2) If an infringer who has made arrangements to pay a fine or monies, if any, in instalments, fails to pay the instalments or makes an insufficient payment on an instalment or the cheque used for payment of that instalment is dishonoured, a notice as prescribed must be *served* on the infringer, informing him or her—

- (a) that the outstanding balance of the instalment, including the fee for the notice, must be paid within seven days of service of the notice or that arrangements must be made within that time for the payment thereof; and
- (b) that any payment referred to in paragraph (a) must be made as arranged and that subsequent instalments must be paid as originally arranged; ~~and, Clause 5(b)~~
- ~~(c) —that failure to comply with the notice will lead to a warrant in respect of the full amount owed being issued against him or her in terms of section 21. Clause 5(c)~~

20. Enforcement order.—(1) If an infringer fails to comply with the requirements of a notification contemplated in section 18 (7) or a courtesy letter contemplated in section 19 (2) (b) or has failed to appear in court as contemplated in section 22 (3) (a), as the case may be, the registrar must, subject to subsection (2)—

(a) issue an enforcement order, serve it on the infringer and update the ~~national contraventions register~~ National Road Traffic Offences Register accordingly;

(b) record the demerit points incurred by the infringer in the ~~national contraventions register~~ National Road Traffic Offences Register;

(c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the ~~national contraventions register~~ National Road Traffic Offences Register in respect of the infringement in question; and

(d) provide the infringer with a print-out of the demerit points incurred by him or her to date, together with an indication of the number of points left before his or her driving licence, professional driving permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27.

(2) No enforcement order is issued, unless the registrar is satisfied that—

(a) a notification contemplated in section 18 (7) or courtesy letter, as the case may be, has been *served* on the infringer in question;

(b) a period of at least 32 days has passed since the date of service of the said notification or courtesy letter, as the case may be;

(c) the applicable penalty and fees have not been paid;

(d) there are no pending representations in the case of a ~~minor~~ infringement;

(e) the infringer has not elected to be tried in court, or has elected to be tried in court and has failed to appear; and

(f) the infringer was at the time of the alleged infringement either the owner or operator of the motor vehicle or the driver of it.

(3) An enforcement order must—

~~(a)~~ state that the infringer on whom it is *served* may, not later than 32 days after the date of service of the order, pay the penalty, representations fee and the fees of the courtesy letter, if any, and the prescribed fee of the enforcement order to the ~~agency~~ Authority at the specified place and in the specified manner, and that the prescribed demerit points will be recorded in the ~~national contraventions register~~ National Road Traffic Offences Register; and

~~(b)~~ state that a failure to comply with the requirements of the enforcement order within the period contemplated in paragraph (a) will result in a warrant being issued to recover the applicable penalty and fees. Clause (6)

(4) If an infringer pays the penalty and fees as contemplated in subsection (3) (a), the ~~agency~~ Authority must record compliance with the enforcement order and update the ~~national contraventions register~~ National Road Traffic Offences Register in the prescribed manner.

(5) Subject to subsection (6), no—

(a) driving licence;

(b) professional driving permit; or

(c) licence disc,

may be issued to an infringer or in respect of a motor vehicle registered in the name of an infringer, if an enforcement order has been issued in respect of such infringer, until such enforcement order has been complied with or has been revoked.

(6) The provisions of subsection (5) do not apply in respect of an infringer who provides proof in the prescribed manner that he or she has in the meantime paid the penalty and fees specified in the enforcement order.

(7) An infringer on whom an enforcement order has been *served* may comply with it by paying the applicable penalty and fees to the local registering authority or driving licence testing centre.

(8) A local registering authority or driving licence testing centre must update the ~~national contraventions register~~ National Road Traffic Offences Register and notify the ~~agency~~ Authority in the prescribed manner if it has received any payment contemplated in subsection (7) and must pay over such payment to the ~~agency~~ Authority after deduction of the prescribed collection fee, within the prescribed period after which the ~~agency~~ Authority may charge interest at the prescribed rate.

(9) An enforcement order must be revoked by the registrar if—

- (a) the infringer applies to the ~~agency~~ Authority in the prescribed manner and submits reasons to the satisfaction of the registrar why an enforcement order must be revoked; or
- (b) the issuing authority applies in the prescribed manner for a revocation of the enforcement order,

and the infringer or the issuing authority, as the case may be, who applied for the revocation of an enforcement order, must be informed in the prescribed manner of the result of such an application.

(10) If an enforcement order is revoked, its consequences must be cancelled and if it involves the cancellation of a disqualification to drive or use a motor vehicle—

- (a) the ~~national contraventions register~~ National Road Traffic Offences Register must be updated; and
- (b) the infringer must be informed about it in the prescribed manner and his or her driving licence, professional driving permit or operator's card must be returned or the endorsement of a driving licence that is contained in an identity document must be cancelled, unless he or she has been disqualified otherwise.

~~21. Warrant.—(1) If an infringer on whom a notice contemplated in section 19B (1) or (2) or an enforcement order is served does not comply with the requirements of the notice contemplated in section 19B (1) (a) or (2) (a) or the provisions of the order contemplated in section 20 (3) (a), the registrar may, on the prescribed conditions, issue a warrant against the infringer, which is valid until such time it is served by the sheriff or is cancelled by the registrar—~~

- ~~(a) to seize and sell movable property to defray the penalty and fees due;~~
- ~~(b) to seize the driving licence or professional driving permit of the infringer;~~
- ~~(c) to deface the licence disc of a motor vehicle of which the infringer is the owner by removing the licence disc;~~
- ~~(d) to seize or deface the operator card of a motor vehicle of which the infringer is the registered operator;~~

~~(e) to immobilise the motor vehicle of which the infringer is the owner or registered operator, and the registrar must update the national contraventions register National Road Traffic Offences Register accordingly.~~

~~(2) The registrar may, upon issuance of a warrant in terms of subsection (1), report the infringer to a credit bureau.~~

~~(3) A warrant that has been issued under this section is regarded as process of execution for the purposes of Chapter IX of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), which applies with the necessary changes, and in such application a reference to—~~

~~(a) the judgment creditor or execution creditor, must be read as a reference to the agency Authority; and~~

~~(b) the judgment debtor or execution debtor, must be read as a reference to the infringer.~~

~~(4) Subject to the Rules of Court as defined in section 1 of the Magistrates' Courts Act, 1944, a warrant that has been issued under this section must be executed as prescribed.~~

~~(5) If a warrant has been executed, the registrar must record the payment of the penalty and fees from the proceeds of the execution in the national contraventions register National Road Traffic Offences Register.—Clause 7~~

~~(6) An infringer may, at any time prior to the execution of a warrant, comply with an enforcement order through the payment of the penalty and fees, including the prescribed cost of the warrant, and in the case of such compliance the warrant may not be executed.~~

22. Trial.—(1) If—

~~(a) an infringer elects to be tried in court—~~

~~(i) (a) under section 17 (1) (f) (iv), the issuing authority must cancel the infringement notice; or~~

~~(ii) (b) under section 18 (7) (c) or 19 (2) (b) (iii), the ~~agency~~ Authority must inform the issuing authority who must cancel the infringement notice; ~~or~~~~

~~(b) the execution of a warrant in terms of section 21 (1) produces no movable property to seize and sell or the infringer otherwise fails to comply with the enforcement order after execution of the warrant, the ~~agency~~ Authority must inform the issuing authority who must cancel the infringement notice,~~

and the issuing authority must prepare a summons in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). Clause 8

(2) Once a summons has been prepared in terms of this section, the Criminal Procedure Act, 1977, applies, and—

(a) the prosecutor must notify the issuing authority in writing in the prescribed manner of his or her reasons if he or she declines to prosecute;

(b) the clerk of the court must notify the issuing authority or the ~~agency~~ Authority of the outcome of the case, so that the ~~national contraventions register~~ National Road Traffic Offences Register may be updated; and

(c) no admission of guilt may be endorsed on a summons or may be accepted.

(3) If an infringer has been summoned to appear at criminal proceedings—

(a) in terms of subsection (1) (a), and fails to appear or attend, the court must not, despite the provisions of section 55 of the Criminal Procedure Act, 1977, issue a warrant for his or her arrest, but the clerk of the court must notify the issuing authority, which must inform the ~~agency~~ Authority, and the registrar must proceed to issue an enforcement order contemplated in section 20 (1); and

(b) in terms of subsection (1) (b), the case must be handled in terms of the Criminal Procedure Act, 1977.

(4) Despite any other law, an infringer who has been dealt with by means of administrative procedures in terms of this Chapter, does not incur previous convictions and may not be prosecuted again on the same facts.

23. Simultaneous commission of offence and infringement.—If a person is alleged to have committed an offence and an infringement arising out of the same set of facts, such person must, despite the provisions of this Act, be dealt with in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(Date of commencement of s. 23: 1 July, 2008 in the area of the City of Tshwane Metropolitan Municipality and 1 November, 2008 in the area of the City of Johannesburg Metropolitan Municipality.)

CHAPTER IV POINTS DEMERIT SYSTEM

24. Points demerit system.—(1) Any person who has committed an offence or an infringement, incurs the number of demerit points prescribed under section 29 (c) in accordance with subsections (2) and (3).

(2) Subject to subsection (4), demerit points are incurred on the date on which the penalty and fee, if any, imposed for the infringement are paid, including when partial or dishonoured payments, or arrangements to pay in instalments, are made, an enforcement order is issued or the infringer is convicted of the offence, as the case may be.

(3) (a) If a person has committed two or more infringements or is convicted by a court of two or more offences arising out of the same circumstances, demerit points are recorded, subject to paragraph (b), only in relation to one such infringement or offence, being, in any case where the same number of demerit points does not apply to all those infringements or offences, the infringement or offence to which the greatest number of demerit points applies.

(b) The demerit points in respect of offences or infringements by operators and drivers are recorded separately even if they arise out of the same circumstances.

(4) If a person appeals against a conviction by the court for an offence no demerit points are recorded unless the appeal is rejected or abandoned in which case demerit points are incurred in the prescribed manner.

(4A) For the purpose of recording the demerit points as contemplated in subsections (3) and (4), the clerk of the court must notify the ~~agency~~ Authority of the result of each prosecution and appeal.

(5) A print-out from the ~~national contraventions register~~ National Road Traffic Offences Register which is verified by the ~~agency~~ Authority is on the face of it evidence of the demerit points incurred

by a person, but nothing prevents a person from approaching the court on appeal or review in connection with the demerit points recorded against that person in the said register.

25. Prohibition on driving or operating motor vehicle.—(1) If a person incurs demerit points which, when added to the points previously recorded against that person in the ~~national contraventions register~~ National Road Traffic Offences Register and reduced as contemplated in section 28, exceed the total contemplated in section 29 (d), that person is disqualified with effect from 32 days after such excess points have been incurred, from driving or operating a motor vehicle.

(2) (a) The disqualification period equals in months the number of points by which the total referred to in section 29 (d) is exceeded, multiplied by three or such number as may be prescribed by the Minister.

(b) The Minister may prescribe different numbers under paragraph (a) in respect of a driver and an operator of a motor vehicle.

(3) A person who is disqualified in terms of this section—

(a) must immediately hand in any driving licence card or professional driving permit in the prescribed manner to the issuing authority contemplated in section 26 (2) for retention by such issuing authority during the disqualification period, produce any driving licence contained in an identity document to such issuing authority for endorsement as suspended or must remove the prescribed operator card and deal therewith in the prescribed manner; and

(b) may not apply for a driving licence, professional driving permit or operator card during the disqualification period.

(4) Any person who fails to comply with the provisions of subsection (3) (a) or who drives or operates a motor vehicle during his or her disqualification period is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

(5) Upon expiry of his or her disqualification period, a person referred to in subsection (3) may apply in the prescribed manner to the issuing authority to return his or her driving licence card or professional driving permit or to reissue an operator card.

26. Notification.—(1) A notice, as prescribed, must forthwith be sent by registered mail to a person who has incurred more than the number of demerit points referred to in section 29 (d), which notice must—

(a) inform that person of the number of demerit points incurred by him or her and of the offences or infringements for which those points have been incurred;

(b) inform that person that he or she may not drive or operate any motor vehicle during the disqualification period, and specify the length and expiry date of that period; and

(c) inform that person of the contents of section 25 (3) and (4) or 27, as the case may be.

(2) A notice referred to in subsection (1) must be sent by the ~~agency~~ Authority, who must notify the issuing authority within whose area of jurisdiction the person in question is resident.

27. Cancellation of driving licence, professional driving permit and operator card.—(1) (a) A person who incurs demerit points resulting in a disqualification in terms of section 25 to drive or operate a motor vehicle for a third time, must immediately hand in his or her driving licence card, professional

driving permit or operator card in the prescribed manner to the issuing authority or must submit any driving licence contained in his or her identity document to such issuing authority.

(b) A person who fails to comply with the provisions of paragraph (a) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

(2) An issuing authority must, upon receipt of a driving licence card, professional driving permit or operator card, as the case may be, take the necessary steps to destroy such licence, permit or card, and must submit any driving licence contained in an identity document to be endorsed as cancelled.

(3) Upon expiry of his or her disqualification period, a person contemplated in subsection (1) may reapply for and be issued with a driving licence, professional driving permit or operator card in terms of the applicable road traffic laws.

28. Reduction of demerit points.—If demerit points have been incurred by any person, the ~~agency~~ Authority must reduce the total number of points recorded in the ~~national contraventions register~~ National Road Traffic Offences Register against that person with one point for every three months, or such other number of points or period as may be prescribed, except for the time that the court has found that the process has been deliberately delayed by that person to obtain a reduction in points.

29. Categorisation of offences, infringements and demerit points.—The Minister, acting with the concurrence of the Minister of Justice and the MEC of each province, may for the purpose of this Act—

(a) prescribe offences, and categorise them into ~~minor~~ infringements, ~~major~~ infringements and other offences;

(b) prescribe the penalty, expressed as a single unit or multiple units accorded a monetary value, which must be imposed for each infringement, as contemplated in section 31;

(c) prescribe the demerit points which are incurred for each offence or infringement, as contemplated in section 24; and

(d) prescribe the total number of demerit points which, if exceeded, disqualifies a person from driving or operating any motor vehicle as contemplated in section 25.

CHAPTER V GENERAL MATTERS

30. Service of documents.—(1) Any document required to be *served* on an infringer in terms of this Act, must be *served* on the infringer ~~personally or sent by registered mail to his or her last known address~~ as prescribed, including by postage and electronic service. Clause 9(a)

(2) A document which is sent ~~by registered mail~~ in terms of subsection (1), is ~~regarded~~ deemed to have been *served* on the infringer on the tenth day after the date which is stamped upon the receipt ~~issued by the post office which accepted the document for registration~~ after posting the said document or of the electronic service, and such electronic service reflected in the National Road Traffic Offences Register, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit. Clause 9(b)

31. Penalties.—(1) The penalty prescribed under section 29 (b) for each infringement must, despite any other law, be imposed administratively in terms of Chapter III, subject to the discount contemplated in section 17 (1) (d).

(2) The laws on prescription are not applicable to penalties and fees payable in terms of this Act, and may be collected at any time.

32. Apportionment of penalties.—(1) ~~Any penalty received by the agency in terms of this Act must be paid over monthly, after deduction of an amount equal to the discount contemplated in section 17 (1) (d), to the issuing authority under whose authority the infringement notice was issued, and if it was not issued under the authority of such authority, to the issuing authority within whose area of jurisdiction the infringement was committed~~ Any penalty received by the Authority in terms of this Act must, as prescribed, be paid over to the issuing authority that issued the infringement notice, after deduction of an amount equal to the discount contemplated in section 17(1)(d).

(2) ~~Any fine received in respect of any conviction under the national and provincial laws relating to road traffic, must be paid over monthly to the issuing authority under whose authority the infringement notice was issued, and if it was not issued under the authority of such authority, to the issuing authority within whose area of jurisdiction the infringement was committed~~ Any prescribed fees or monies contemplated in section 13(1)(dA), collected by or on behalf of the issuing authority in terms of this Act must, as prescribed, be paid to the Authority.

(3) The penalty referred to in subsection (1) may be withheld by the Authority where there is evidence of non-compliance with this Act, until such time that the Act is complied with to the satisfaction of the Authority.

(4) Despite any other law, any monies received in respect of any conviction under the applicable road traffic legislation must be disbursed as prescribed. Clause 10

33. Access to information.—(1) Any person may, in the prescribed manner and upon payment of the prescribed fee, ascertain his or her demerit points position from the ~~national contraventions register~~ National Road Traffic Offences Register at the office of any local registering authority or driving licence testing centre.

(2) Any person who employs a person for the purposes of driving a motor vehicle may, with the written permission of such employee granted in the prescribed manner, ascertain the demerit points position of such employee in the manner contemplated in subsection (1).

34. Regulations.—The Minister may make regulations, which are not inconsistent with this Act, relating to any matter that may or must be prescribed in terms of this Act, including—

- (a) the manner in which any application, notification or submission is to be made, and the record to be kept of such application, notification or submission;
- (b) the manner in which any information regarding any offence or infringement is to be recorded in the ~~national contraventions register~~ National Road Traffic Offences Register, and the nature of such information;
- (c) the period for which any information or record is to be maintained in the said register;

- (d) the fees which may be charged for any document, order or action required to be issued, made or performed, and the manner in which record is to be kept of any receipt or payment of money;
- (e) the manner in which any payment is required to be made;
- (f) the manner in which any proof is required to be submitted; and
- (g) any other matter that the Minister considers necessary or expedient to prescribe or govern by regulation in order to achieve the objects of this Act.

35. Transitional provisions.—(1) Any notice issued in terms of section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), before the date of commencement of section 17, may be continued and finalised under that Act, but no such notice may be issued after that date in respect of an ~~offence or infringement~~. Clause 11

(2) Chapter IV only applies in respect of offences or infringements committed on or after the date of commencement of that Chapter.

36. Short title and commencement.—(1) This Act is called the Administrative Adjudication of Road Traffic Offences Act, 1998, and comes into operation on a date determined by the President by proclamation in the Gazette.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act and different areas of the Republic.

COMMENCEMENT OF THIS ACT

Date of commencement	The whole Act/ Sections	Proclamation No.	Government Gazette	Date of Government Gazette
1 July, 2007	Ss. 1–16 and 36	R.14	30033	2 July, 2007
1 November, 2008 (City of Johannesburg Metropolitan Municipality)	Ss. 17–19, 20–35	24	31197	1 July, 2008
1 July, 2008 (City of Tshwane Metropolitan Municipality)	Ss. 17–19, 20–35	R.25	31198	1 July, 2008
1 April, 2010 (City of Tshwane and City of Johannesburg Metropolitan Municipalities.)	Ss. 19A–19B Error! Not a valid link.	14	33084	1 April, 2010

COMMENTS ON THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES (AARTO)
AMENDMENT BILL [B 38-2015]

Clause 1(d) definition of 'electronic service' and related clauses

1. This clause expands current recognised methods of service of documents to *text messages to cell phones, e-mail messages and electronic data messages* (precisely what the latter are is not defined, but could possibly include messages via Apps that are installed on smart phones, tablets or computers. It may be too wide as 'data' could include radio messages).
2. As will be set out below the proposed amendments are not supported; and there is a need for proof service by means of some form of return of service.
3. This clause must be read together with the amendments proposed by **clause 9(a)** and **9(b)** of the Bill, as well as in the context of provisions which refer to the service of documentation, which includes those relating to—
 - (a) the infringement notice—
 - i. Section 17(1)(d) "specify the prescribed discount which may be obtained if the penalty is paid not later than 32 days after the **date of service** of the infringement notice";
 - ii. Section 17(1)(f) "inform the infringer that, not later than 32 days after the **date of service** of the infringement notice, the infringer may"; and
 - iii. Section 17(7)(b)(i) "not later than 32 days after the **date of service** of the notification".
 - (b) the courtesy letter—
 - i. Section 19(2)(b) "give notice that the infringer must, not later than 32 days after the **date of service** of the courtesy letter";
 - (c) options given to an infringer—
 - i. Section 19B (1) "the full amount owed, including the prescribed fee for the notice, must be paid within 32 days **of service** of the notice"; and
 - ii. Section 19B (2)(a) "must be paid within seven days **of service** of the notice";
 - (d) the enforcement order—
 - i. Section 20(2)(b) "a period of at least 32 days has passed since the **date of service** of the said notification or courtesy letter, as the case may be"; and
 - ii. Section 20(3) (*after the proposed deletion of 20(3)(b) by **clause 9** relating issue of a warrant*) "An enforcement order must state that the infringer on whom it is served may, not later than 32 days after the **date of service** of the order, pay the penalty, representations fee and the fees of the courtesy letter, if any, and the prescribed fee of the enforcement order";
 - (e) and most importantly, the service of documents—
 - i. Section 30 (1) (*after the proposed amendment by **clause 9(a)***) "Any document required to be served on an infringer in terms of this Act, must be served on the infringer ~~personally or sent by registered mail to his or her last known address~~ as prescribed, including by postage and electronic service"; and

ii. Section 30 (2) (after the proposed amendment by clause 9(b)) "A document which is sent by registered mail in terms of subsection (1), ~~is regarded~~ deemed to have been served on the infringer on the tenth day after the date which is stamped upon the receipt issued by the post office which accepted the document for registration after posting the said document or of the electronic service, and such electronic service reflected in the National Road Traffic Offences Register, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit".

4. It should also be read with each of the many provisions that deals with the requirement that documents must be served on the infringer, or caused to be served on the infringer, and should be distinguished from the physical service of an infringement notice on a person alleged to have committed an infringement.
5. The definition 'date of service' is defines in section 1 of the Act and means the date on which an infringer has *signed for* the relevant document served on him or her under section 30. This essentially invalidates all forms of electronic service, as well as unregistered mail where a 'date of service' is required or referred to. If the proposed amendment related to service is to be adopted, the definition of 'date of service' would also need to be amended to include instances of postal or electronic service where the recipient does not *sign for* the relevant document.
6. It is noted that the notification of an infringer by registered mail that demerit points have been recorded is not amended (sections 17(3)(c); 18(8)(c); 19(3)(c); 20(1)(c); 26(1)) which therefore *prima facie* conflicts, or at the very least creates confusion, with the proposed amendment by clause 9(a) '*as prescribed, including by postage and electronic service*' and clause 9(b) '*deemed to have been served*'.
7. The purpose of service or serving a document is in order to provide the recipient with the notice or document. The usual requirement is that there must be proof that the particular document has been served, referred to as 'return of service'. The proposed amendments do away with the requirement that there be return of service and replaces this with a presumption of 10 days in the case of postal or electronic service.
8. The challenge relating to the delivery of registered mail during the postal strike has no doubt had an influence on the reason for the proposed amendments, as well as the litigation following the ordinary posting of fines, courtesy letters and enforcement orders.
9. In addition, there is some suspicion that individuals are unwilling to sign for registered mail where they suspect that it may relate to a traffic violation, particularly where AARTO has been in operation.
10. Thirdly, the costs of service through registered mail is high and the use of ordinary postage would reduce these substantially, while significantly more savings that can be achieved through electronic service. These savings should, however, be considered in the light of a complex and repetitive administrative process (AARTO process) in Tshwane and Johannesburg against a simpler Section 56 Notice in terms of the Criminal Procedure Act, 51 of 1977 (CPA), process (a single notice is issued, which includes a court date) followed elsewhere.

11. The **primary challenge** is, however, the **presumption** that a document has been served in the case of ordinary postage or electronic service. There is no assurance that this particular document has been received by the intended recipient. Furthermore, postal and electronic service are also an **unreliable means of service**.
12. The postal strike affected the delivery of all mail and not just registered mail. Ordinary mail that was sent before or during the postal strike took months to be delivered, and certain mail was reportedly also lost during that period. There is no assurance that post will be delivered within 10 days or at all. My personal experience is that post gets 'lost'. There are also situations where the recipient is out of the country and will not receive post, the posts office has closed or moved, or the post box was not renewed. There is thus no certainty that the intended recipient has received the document.
13. Service through e-mail is also not reliable. Anybody who has had an e-mail account would attest that they have experienced mails that have been sent that were never received. In many instances service providers or employers use filters to prevent the receipt of mail that may be infected or unwanted. Often these functions are automated using algorithms which do not require human intervention. Furthermore, servers and equipment used for transmission of mails are not always reliable. Mail may be lost when computer servers crash, cyberattacks happen, and even the best global service providers and governments have not been immune. There is no acknowledgement or proof that the e-mail has been delivered to the intended recipient. I have experienced mails being 'lost', mails being sent by users, but not delivered, as well as server crashes, mails not being delivered due to security software, and – despite requesting a read receipt, not receiving this.
14. User issues may also include, mail boxes being too full, frequent changes of e-mail addresses, and the loss or theft of devices used to get mail.
15. Service through SMS is also not reliable. Cell phone service providers are unable to guarantee the delivery of SMS messages. Cell phone messages may be lost *en route* through poor network connectivity or other connection challenges. ICASA can attest to the challenges regarding connectivity. There is also no return receipt to show that the message has been received.
16. User issues also include, the frequent theft or loss of cell phone devices, changing of numbers or even operator issues, accidental deletion of mails, devices freezing and requiring to be restored, etc.
17. It would not be justifiable, in order to save costs, to provide in law for methods which do not have some assurance that the document has been received by the intended recipient.
18. While most people have a cell phone and/or e-mail, there are those who don't, particularly of an older generation. There are also persons who do not have an address where a postal deliveries take place. Such persons would be excluded in postal or electronic service and in these instances, personal service would be necessary.
19. Electronic means of service is not reliable, and the presumption of service may be unreasonable in view of the consequences that may follow. The person who has not been served with an infringement notice may be unaware that there has been an infringement, and all the processes

that follow the infringement notice may run their course, including the recording of demerit points and destruction of licence and permit, and prevention of issue of a motor vehicle licence, without the person having the opportunity to admit or deny the infringement.

20. The **law relating to civil procedure** as well as criminal procedure requires that there be **proof of service**. As this administrative process is very much a civil process with civil penalties, the same requirements as that for civil cases should apply. If there is no proof of service, then the processes that follow should not commence.
21. It should be noted that section 4(4) of the AARTO Act requires that the agency assist the prosecuting authorities to get persons before the courts through 'serving of documents'. The requirements of the Criminal Procedure Act with regard to service of documents would need to be adhered to.
22. Evidence of implementation of AARTO as well as the nature of the provisions, suggests that personal service seldom, if ever, takes place. The attempt is to get persons to pay their fines through notices, courtesy letters and orders. This means that those persons who can receive electronic service will be **disproportionately targeted**. The socioeconomic situation of persons should not place individuals in position where they are treated differently in terms of the law. This would furthermore contravene section 9 of the Constitution relating to equality in that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds.
23. While it is a requirement that there should be a registered address (captured on e-natis) for each licenced motor vehicle, it would **not be justifiable to require** every registered owner and licenced driver to have a **postal address, e-mail account, cell-phone or other electronic address**.
24. Furthermore, there is no obligation for owners of motor vehicles to **require users of their motor vehicles to provide them with e-mail, cell phone and other electronic addresses**, so that, in the event that they commit a traffic violation, they can be sent by mailed or electronically served with a notice, etc. This would be unreasonable. It would be quite absurd if every time you loaned your vehicle to a friend or an acquaintance that you required them to provide you with their postal address, e-mail address and cell phone number. The proposed amendments suggest that this will need to be the case.
25. In this regard, section 15(5) of the existing Act is also very onerous and unrealistic. I am certain that very few persons who permit friends to drive their vehicles adhere to this section. The requesting of 'acceptable identification' is probably only practiced in an employer/employee relationship.

Clause 1(b) and Clause 1(c), read with Clause 12 (a)

26. The deletion of the word 'agency' and substitution with 'Authority' may **create confusion** as in the AARTO Act the word is used to refer to other authorities. Furthermore, the name change will require considerable **expenditure relating to branding, signage**, etc. with no particular benefit.

36. Clause 4 provides for additional funding by adding to the fees from driving licence testing centres and registering authorities.
37. If this is one of the intended consequences of the amendment, there is no indication how the amount or percentage of fines that an issuing authority may be required to contribute is to be determined.
38. The concern regarding these amendments relates to the impact that this may have regarding service delivery. Traffic departments and vehicle licence testing centres have a particularly poor reputation for service delivery, often with too few staff to serve customers. My own personal experience, as well as many others in Tshwane for instance, is that the queue is 'cut' long before closing time – even as early as before lunch.
39. The payment of fees directly to the RTIA will not encourage municipalities and metro's to ensure that there are adequate staff to meet the needs of citizens who need to be served.
40. The accruing of interest between Government Departments or their agencies as provided for in section 20(8) of the Act is also an issue which should receive attention. This section is highly undesirable.

Clause 5(a); 5(c); 7; 8 (warrant)

41. The deletion of the clauses relating to a warrant removes one of the mechanisms for enforcement. This leaves only the penalty points and the outstanding fine together with administrative fees. Payment of the latter amounts is no longer through a judicial or civil process, but through declining to issue a licence, permit or licence disk (which results in the RTIA contributing to the commission of an infringement).
42. It should be noted that section 22(3)(a) refers to subsection (1)(a) and 22(3)(b) refers to subsection (1)(b), but clause 8 of the Bill proposes the deletion of (1)(b) and change in numbering of (1)(a)

Section 29(a) of the Act

43. The repeated word 'infringements' left from the deletion of 'minor' and 'major' infringements should be removed.

General Comments

44. What was proposed to be achieved by AARTO has been gradually watered down, the teeth meant to provide the mechanisms for administrative enforcement have been removed, and the legislation and regulations are being amended to try and patch a system which is not working. The history of test implementation, withdrawals and amendments speaks for itself. I suspect that there will be attempts to introduce further amendments during the Parliamentary process.
45. The objective of alleviating the burden on the courts of trying offenders for infringements has not materialised. What has materialised is a lack of general law enforcement.
46. Where law enforcement requires that an offender should be notified immediately or as soon as possible of the infringement, so that the behaviour may be corrected, the current processes are

designed to collect revenue. Thus, for example, the Notice 1204 of 7 December 2015 (published in the Government Gazette No. 39482) proposed the amendment of the 40 period after the commission of the offence within which AARTO forms should be issued, be changed to 90 days. The same proposed amendment proposed that multiple camera and electronic infringements be consolidated in a single notice. Section 31(2) furthermore provides that penalties and fees are not subject to prescription.

47. Members of the public have become disillusioned by traffic law enforcement which has primarily become a revenue generation system (and South Africa is not unique in this regard). The objective of the AARTO, although it may initially have been well intended, has been undermined by revenue generation objectives. This has largely created a distrust in traffic law enforcement. This applies both within AARTO areas and outside of these areas.
48. Thus, for instance, the common practice is for municipalities to outsource the speed enforcement through speed cameras to outside agencies. Alleged offenders are notified through post of an alleged infringement. A certain portion of offenders respond and pay such fines. Those who do not pay are not issued with a summons or any further process to ensure that they are held accountable. More than a year later those who did not pay are sent an SMS message from the agency notifying them that they have an outstanding fine and if they do not pay steps will be taken against them. A further percentage pay. No steps are taken against those who declined to pay.
49. The percentage of the income generated by the agency is used to fund the municipality whilst a portion is retained by the agency. If the costs of service so that the outstanding infringements would be enforced were to be incurred, this would reduce the income of the municipality and the agency. It is therefore not within their interests to ensure proper enforcement of infringements.
50. While the AARTO provides for certain additional tools, such as demerit points and suspension or destruction of documentation, it essentially props up the revenue generation model and does little to enhance better traffic law enforcement.
51. The additional administrative layer has not served to enhance law enforcement. It has created an artificial administrative structure which has to be propped up through sufficient administrative fees or funding from Government. It is not simple and efficient. The primary objective has become the collection of money for infringements – this does little to achieve the main aim of the enforcement of traffic violations: the safety of road users.
52. The additional administrative functions are also prone to error. Thus, for instance, a person who immediately paid his fine issued by Tshwane - before it was even captured on the administrative system - was issued with a notice and administrative costs. Despite providing proof of payment and submitting a representation, (there have been extensive complaints about a lack of feedback in respect of representations) the infringement was still reflected as unpaid a year later and the individual requested the intervention of the National Prosecuting Authority.
53. A further administrative challenge has been that related to issue of licences. Post offices which have acted as an agency with regard to the issue of vehicle licences, have refused to accept payment where there were fines outstanding. The Department of Transport have maintained

that it is possible to pay the annual vehicle licence fee without settling the fines for infringements, but the experience is that this has not been the case.

54. The withholding of the licence disk by municipal and metro authorities after receipt of licence fees results in the commission of an offence by motorists who are obliged in terms of the law to display a valid licence disk.
55. The e-natis system, which is the system on which registered addresses are recorded is prone to errors and remains flawed. This was highlighted in the publicity given to notices sent with regard to e-tolls where complaints were frequently with regard to notices being sent to incorrect addresses, vehicles being registered against persons who were not owners, etc. In order for AARTO to be effective the e-natis system needs to be accurate and reliable.
56. The potential of the AARTO system to place a disproportionate burden on 'good' citizens, in particular those who update their addresses, provide e-mail contact details and cell phone numbers, is a cause for concern. Unless there is adequate enforcement in respect of those who do not provide correct or updated details the enforcement of traffic violations will operate unfairly.
57. The support that was to be provided to the courts has not materialised. Many individuals in Tshwane who 'elected to go to court' have never appeared in court and those proceedings have come to an end.
58. In statistics provided to the NPA with regard to elections to be tried in court for the period April 2014 to March 2015 the following was reflected:

Issuing authority	Elections	Hearings	Percentage
JMPD	42 761	30 359	71%
TMPD	148 990	0	0%
GDoCS	5 762	0	0%
RTMC	2 682	0	0%
Total	200 195	30 359	15%

Both in Johannesburg and Tshwane magistrates had been identified and were available, and prosecutors in the employ of the Metro's given delegations by the NPA to prosecute. However, the number of cases concluded was dismal.

Alternatives

59. The additional administration regarding traffic violations which are served on drivers in person are of little value (i.e. the offences for which drivers are stopped). They only serve to delay the payment of the fine or the appearance in court where the commission of the violation was in issue. The AARTO process adds no additional value.
60. The penalty points that are recorded against drivers who pay the fine, or who fail to pay the fine and do not appear in court, could immediately accrue. An amendment providing a date other than a court date by which time the person must have paid the fine or indicated an election to appear in court, could be effected to avoid the Notice process provided in terms of section 56 of the CPA.

61. With regard to electronic or camera offences, it is imperative that these are served on infringers and that there be proof of service. The notices that are served could also provide, as in the suggestion above, a specific date by which the fine must be paid or for an election to appear in court be exercised.
62. It would be best to have specified a court date in advance, thereby avoiding the need for service of further documentation on the person electing to appear in court.
63. The representations process should also provide for the reduction of fines on good cause shown. If indigent persons can produce their pension slip or evidence of their income for purposes of reducing municipal rates and other fees, there should be a similar proviso in the case of infringements.
64. In order for law enforcement to have a significant impact on driver behaviour and road safety, each and every fine that is issued needs to be followed to its conclusion. The issue of huge numbers of fines, most of which remain unpaid and unenforced, has not done anything to reduce road fatalities and accidents.

B38115

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Valerie Carelse - Written submissions on AARTO

From: Mathee Sonja <SMathee@justice.gov.za>
To: "vcarelse@parliament.gov.za" <vcarelse@parliament.gov.za>
Date: 2016/08/31 7:17 AM
Subject: Written submissions on AARTO
Attachments: Comments on AARTO.docx

Sir/ Madam;

Please find attached my submissions with regard to the topic in question.

Thank you

Me S Mathee

Public Prosecutor

Worcester

Tel: 023 342 2325

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Written submissions/ comments on the Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38-2015]

The main aim of this Bill is that it seeks to amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definitions; to simplify the manner of service of documents; to provide for financing of the Authority; to provide for the appointment of penalties; to effect textual corrections; and to provide for matters connected therewith.

The Preamble to the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 describes the scope and aim of the Act as:

To promote road traffic quality by providing for a scheme to discourage road traffic contraventions, to facilitate the adjudication of road traffic infringements, to support the prosecution of offences in terms of the National and provincial laws relating to road traffic, and implement a points demerit system; to provide for the establishment of an agency to administer the scheme; to provide for the establishment of a board to represent the agency; and to provide for matters connected therewith.

The aforementioned seems to be the solution to the problem experienced nationwide on our roads and the mounting death toll due to road accidents. Although it is very comprehensive and speaks to every aspect of the offence from commission of the traffic violation to ultimate penalty, it is not going to change anything and is it my humble submission that it would in fact only worsen the problem.

Firstly I need to introduce myself. I am a prosecutor at a magistrate court and currently one of my duties entails the receipt and processing/ evaluation of traffic representations. I might give you a better idea of challenges experienced at ground level as well as the common perception of both the judiciary as well as the public.

I proceed to discuss section by section with reference to Act 46 of 1998 where in my humble opinion difficulty is going to arise or perhaps the human factor wasn't taken into account.

Section 17 – Infringement notice

I do not think the replacement of the Sec 56 and/or 341 should be replaced by the new Sec 28 notice.

The whole procedure described to issue the Sec 28 is way too intricate and complicated for the average man on the street to understand.

Currently the Sec 56 and 341 notices serve the purpose of allocating the accused /infringer, there and then with a date of payment and a court date. This notice also constitute a valid

return of service. Therefore no additional costs have to be incurred to send a notice via registered post.

The average person does not receive that many registered mail, general consensus is that it is only debt and creditors that find you through registered post. What measure is to be put in place if a person just refuse or fail to collect the registered item? Then additional cost has to be incurred. Who will ultimately follow up on which letters has been collected and what the reason for non-collection is?

I am sure many civil practitioners can attest to the trouble in finding someone that doesn't want to be found.

Why do you not retain the current way of doing things, keep with the current manner of giving "spot fines" that contain a date of payment as well as a court date, the periods can be extended from date of fine, to date of payment until ultimately the court date to give the infringer the appropriate time to either pay, make representations or appear in court.

It would also be good to give the infringer the option of paying the fine in instalments.

Thus in the spirit of the Sec 28 notice create a notice that serve as a spot fine but that also provide the opportunity to make payment in instalments. An arrangement to pay in instalments would then for all practical purposes are regarded as payment and the allocated court date will then be cancelled.

The problem I foresee is with such a comprehensive administrative process as is envisioned for the section 28 notice is that ultimately there is going to be a problem in the administration thereof. Unless the relevant support structures are put in place beforehand, it is just not feasible. Administration/paperwork has never been the strong suit of any department and unfortunately with the current structures there is going to be severe problems, with timelines and other administrative requirements.

Sec 18 – Representations

I am in full agreement that representations should take on a more formal format. The most representations which I receive – and decline- are to the effect: I cannot afford, please consider discount.

It firstly goes to show that the general public regard representations as firstly a given that they will receive some sort of relief and secondly that they can just write anything and a "discount" would be given.

The problem is that people want to do representations at all times; they do not keep the allocated time.

We need to fine a company or transport owner for every time a vehicle is not meeting requirements and based on the demerit system revoke/ suspend their operating licences. Unless they feel the infringement in their pockets they will not adhere to safety standards.

In conclusion I would like to state that in order to make a difference in the road death toll and to get people to adhere to traffic legislation we need to take a stand and enact legislation that shows the public that traffic violations are criminal offences and that it would be dealt with in such a fashion.

We need magistrates and prosecutors that firstly specialise in these offences and that will deal with these cases the same as with any other offence.

A uniform or National fine list will give a better indication of what is expected and will also rid the public of the notion that the officials make up fines as they see fit.

Serious consideration should be given to harsher penalties for driving without a valid driver's licence especially in the instance where a licence has been suspended due to the accumulation of demerit points.

Then only, once the public see that we are serious about traffic offences and that it is regarded as any other offence, then only will we be successful in making a change and creating safer roads.

Thank you for taking the time to read my input. I really hope that it gave you a better understanding of what is currently happening and how that will impact on any proposed legislation. (In my opinion)

I am very passionate about my work and especially traffic matters. I really feel that the adjudication of traffic offences/infringements are currently the "stepchild" of the judiciary and that it is not dealt with in a manner befitting the seriousness of the offences.

If you feel that I might have some meaningful input to give I would appreciate the opportunity to address the committee.

Sonja Matthee

Public Prosecutor

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B38/15

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**DIRECTORATE OF PUBLIC PROSECUTIONS
KWAZULU NATAL**



The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi boMzantsi Afrika
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MEMORANDUM

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**TO: THE PORTFOLIO COMMITTEE ON TRANSPORT
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**FROM: ADV. MOIPONE NOKO
DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL**

**SUBJECT: COMMENTS FROM DPP: KZN PROVINCE: AARTO
AMENDMENT BILL 38 OF 2015: ELECTRONIC SERVICE OF
DOCUMENTS**

DATE: 31 AUGUST 2016

Dear Ms Carelse

Only a few comments were received. This is understandable as we are experiencing crippling staff shortages and it is simply not possible to comprehensively respond at short notice to these complex amendments. A careful study of AARTO 46 of 1998 and various other acts is required before commenting on the amendments. Parts of AARTO have been implemented in a pilot project in the jurisdiction of the DPP: South Gauteng. The staff in that area may already have a rudimentary understanding of the act and will be able to meaningfully comment on the practical implications of the amendments.

www.npa.gov.za

The provision in the bill in respect of electronic service is clearly unconstitutional in that it violates an infringer's right to a fair trial. Justice Project South Africa has already indicated that these amendments together with various other sections of AARTO are unconstitutional and will be challenged.

The technology to be used is not as reliable as the drafters of the amendments believe them to be. The drastic consequences for an infringer who does not respond to notices deemed to have been received by him/her are cause for concern. There are many circumstances where "deemed service" will have costly and unfair results. I refer to some examples:



- The theft of communication lines is prevalent. Regular disruptions to internet access are part of the daily lives of many communities.
- The sender of an email may see it as delivered although the communication is somewhere in cyber space only to be received days later.
- Email accounts become dormant although proof of deliveries is still generated. What happens to an infringer who for a variety of valid reasons (out of the country, in a coma, access to internet lost, etc.) is unaware of communications? Can the law compel him/her to regularly access his/her electronic communications?
- Cell phone numbers are recycled as the available numbers are too little. Communications meant for the previous user are still forwarded to the new user – notwithstanding RICA processes.
- Cell phones are stolen on a daily basis. The numbers based on anecdotal evidence run into thousands!
- The opportunity for criminals to exploit electronic service are significant and cannot be underestimated. Many citizens are already exploited by fraudulent online scams. Hackers can clone any official site and direct communications and funds to themselves.

Traffic law enforcement officers already focus only on offenders who have fixed addresses, access to internet, etc. The bulk of offenders are simply never addressed as it is too difficult for officers to operate in rural areas and informal settlements. This averment is supported by the fact that in KZN only about 6% of fines generated by camera law enforcement are paid. This is not going to change. Law enforcers will continue to focus on the easy targets as their objectives are mainly financial. Municipal managers openly speak about revenue from law enforcement as an income stream – road safety is not the objective.

One of my colleagues expressed his views more vigorously as follows:

“But this is where the innocent until proven guilty principle becomes important. Is a person an infringer on the say so of traffic authorities or only when proven to have infringed? The latter must hold true. The he who alleges must prove principle cannot lose applicability whatever form of justice system the authorities may favour as regards traffic matters. They are trying via this act to collect money by force/under duress (almost extortion-pay or else we won't renew your licence) without having any regard to proving the commission of the 'infringement'.”

Section 9 of the Constitution provides that everyone is equal before the law. The current practise of selective law enforcement and prosecution referred to above in paragraph 4 will only become more pronounced. Such a system is unfair and lacks credibility. Traffic law enforcement already lacks credibility for these reasons.

Many of the activities described in the amendments will necessarily have to be performed by private organisations as local authorities already lack the capacity to perform the most basic types of law enforcement. The implementation of AARTO has been postponed many times simply because there is no budget for this costly exercise.

Guided by the Constitution, we in the National Prosecuting Authority ensure justice for the victims of crime by prosecuting without fear favour or prejudice and by working with our partners and the public to solve and prevent crime

Traffic law enforcement is under resourced and as a system is essentially broken. These amendments are simply creative ways whereby traffic law enforcers can generate revenue without doing visible policing. Imposing a 1st world model on a 3rd world problem is no solution. These amendments will lead to an increase in corruption and litigation its necessary corollary.

The following comments were also received:

- “My chief concern/objection relates to the proposed Clause 9. While the Act seems to seek to take Traffic matters outside of the Criminal Justice System, and to impose Civil liability in the event of default it still seems to ignore certain basic concepts such as innocent until proven guilty, and the many provisions in the CPA, Magistrates Court Act, Superior Court Practices Act etc. relating to what constitutes proper service of documents. Granted these relate to court related documents. But in my view fairness dictates that those modes of service are proper. It is in my view wholly improper to enact that service by way of SMS and email (the definition of 'electronic service' and clause 9 read together give rise to this) is adequate service. I do not believe that it is necessary to go into why I say so. In terms of clause 8 in certain circumstances summons will be issued in terms of the CPA. Imagine the issues of proper service then!”

and

- *“Equally the blasé way in which the word “infringer” is used concerns me. I note the definition of “infringement” in the Bill. “Infringer” may be defined in the Act, but I haven’t looked it up. The deeming provision in clause 9 relating to service on the 10th day after postage or electronic service is, in my humble view, just plain laughable. Reverse onus created? Not of proof of innocence but of service so it may survive constitutional challenge but is it proper/fair?”*

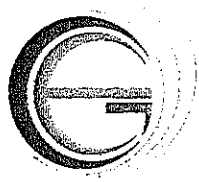
It is clear that the amendments have elicited strong reaction from some advocates. The consensus amongst prosecutors in KZN is that these amendments are appalling. Prosecutors in other provinces may have more accommodating views. If this is the case, I would suggest that the issues are discussed with representatives from all the provinces at an NPA (VGM) facilitated meeting. This will ensure that the NPA has a coherent approach. There is no time for such an approach now but I am sure that the last word has not been said about these amendments.

Kind regards

ADV. M. NOKO
DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

B38/15

29

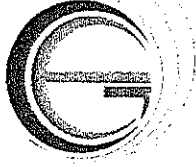


Commission for Gender Equality
A society free from gender oppression and inequality

**SUBMISSION TO THE PORTFOLIO COMMITTEE ON TRANSPORT ON THE
ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDEMENT
BILL [B 38 – 2015]**

31 AUGUST 2016

Kamraj@cge.org.za



Commission for Gender Equality
A society free from gender oppression and inequality

1. INTRODUCTION

The Commission for Gender Equality (CGE) is a Chapter 9 Institution and in terms of its mandate obliged to evaluate any proposed legislation and to make recommendations to any authority or organ of state with a view towards promoting gender equality and the status of women.

2. CLAUSE 1 - PROPOSED AMENDMENT TO SECTIONS 1 OF ACT 46 OF 1998 AND OTHER LAWS

- (i) The CGE does not support the use of the term **issuing authority** to describe a local authority because it leads to ambiguity which must be avoided when legislation is being drafted. In other words, ambiguity in any legislation does not meet the test for legality.

Accordingly, the CGE recommends that more appropriate terminology be used such as “municipal traffic authority” or “municipal traffic service”.

- (ii) The use of the term “infringement” and deletion of the definitions : **“major infringement”** well as **“minor infringement”** is supported because it is in keeping within the ethos of administrative law and also provides a substantive definition for conduct which is prohibited in terms of the principal Act and the Bill [B38 -2015].



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3. CLAUSE 2 : AMENDEMENT TO SECTION 4 OF ACT 46 OF 1998 AND LISTED ACTS

The proposed amendments are supported in their current format as these are necessary technical changes.

4. CLAUSE 3 : AMENDEMENT TO SECTION 13 OF ACT 46 OF 1998 AND LISTED ACTS

Sub – Clause (b) is not supported in its current form because the use of the term “issuing authority” is unsatisfactory.

It is proposed that the term “municipal traffic service” be substituted in place of “issuing authority”.

5. CLAUSE 6 : : AMENDEMENT TO SECTION 20 OF ACT 46 OF 1998 AND LISTED ACTS

This clause is supported in its current form.

6. CLAUSE 8 : AMENDEMENT TO SECTION 22 OF ACT 46 OF 1998 AND LISTED ACTS

The CGE recommends a revision to the proposed changes as follows :

- (i) At sub – clauses (a) and (b) the deletion of the words **issuing authority** and substitution of the words “municipal traffic service”



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- (ii) The CGE recommends a deletion of paragraph (c) at Subsection 20 (5) of Act 46 of 1998. The reason for this recommendation is that there is no rational connection between the payment of a car licence which is an indirect tax and the need to regulate infringements of road traffic rules, which is a statutory offence. Accordingly, this provision will result in administrative and constitutional challenges. These include :
- (a) Instances where the owner was not the driver and infringement notices were not received by the owner but despite this fact a licence disc is not issued. This can be challenged as procedurally unfair administrative action.
 - (b) Where licence discs are not issued and drivers still drive their vehicles. Then this can be challenged in terms of Section 6 of the Promotion of Administrative Justice Action Act if a driver / owner of the vehicle can prove that he or she was willing to pay the licence fee but an authority refused to issue the licence disc.
 - (c) The failure to issue a licence will result in further fines being issued for a failure to operate a motor vehicle without a valid licence. What may happen is that owners may continue to operate vehicles in defiance and it will become an administrative burden for the Municipality to deal with complaints, fines, prosecution and litigation in these matters. In this regard the many Municipalities do not have the capacity to deal with heightened administrative and litigation flowing out of issues associated with Section 20(5) (c) challenges.



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7. CLAUSE 9 : : AMENDEMENT TO SECTION 30 OF ACT 46 OF 1998 AND LISTED ACTS

The proposed amendment is supported in its current form.

8. CONCLUSION

The Commission thanks the Portfolio Committee on Transport for the opportunity to Comment on the Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38-2015] and takes this opportunity to wish the Honourable members a successful initiative.

Commission for Gender Equality

2016 : 08 : 31

D58/13

30

Valerie Carelse - Comments on the AARTO Amendment Bill August 2016

From: Lauren Olinsky <lauren@cancomsa.co.za>
To: "vcarelse@parliament.gov.za" <vcarelse@parliament.gov.za>
Date: 2016/08/31 12:17 PM
Subject: Comments on the AARTO Amendment Bill August 2016
Attachments: ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL- Comments.pdf

Good Day Madam

Please find attached our comments regarding the current AARTO Amendment Bill which is out for comment until the close of business today.

Kind Regards

LAUREN OLINSKY
Managing Director

Cell Phone: +27 82 901 9295
Office Number: +27 860 55 55 33
Fax Number: +27 86 601 8233
Skype Address: lauren.olinsky
CANCOM Is a Level 2 BBBEE Contributor



ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL - COMMENTS FROM CANCOM SA

BACKGROUND OF CANCOM:

- The administration and management of AARTO Infringements and related documents on behalf of their clients, including but not limited to: The South African Car Rental Industry, The South African Fleet Industry, The South African Automotive Industry.
- CANCOM have been administering the AARTO Infringement Notices and related documents on behalf of their clients for the last 9 years.

Amendment of section 1 of Act of 1998, as amended by section 1 of Act 22 of 1999 and Section 1 of Act 72 of 2002

1.(d)(b) e-mail messages between the Authority and an addressee in an electronic communication format;

COMMENTS:

- Who determines which e-mail address is used?
- Does this include the addressee being able to e-mail the Authority any nomination, representation, election to be tried in court etc... as well?

Amendment of section 1 of Act of 1998, as amended by section 1 of Act 22 of 1999 and Section 1 of Act 72 of 2002

1.(d)(c) text messaging by the Authority to the recipient's cellular telephone;

COMMENTS:

- Who determines which cellular telephone number is used?
- What information will be contained in the text message regarding infringements?
- What will the repercussions be should the nominated person change their cellular telephone number?
- For companies that have thousands of fines issued to them due to the nature of their business, how will a nominated person within that Company manage the hundreds or thousands of text messages that will inundate them?
- How will the recipient of the text messages be able to administer the required action posed by the text message?
- If a text message is an acceptable form of "electronic service" of infringements, will the AARTO 03 become null and void?
- If the AARTO 03 does not become null and void, and they are still issued accordingly and along with text messaging, when will the time lines of AARTO start – when the text is received or the AARTO 03 Infringement notice?

MEMORANDUM ON THE OBJECTS OF THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENEDMENT BILL, 2015

4. FINANCIAL IMPLICATIONS

- (b) Large fleet operators will benefit from the efficient service as the drastically reduced costs of submitting nominations will be electronic, thereby introducing efficiencies in their business operations.**

COMMENTS:

- Does the above clause include the nominations, representations, elections to be tried in court to be served via electronic means?
- If so, will the AARTO Act be amended accordingly?

CANCOM administers over 50,000 traffic infringements and fines per month and therefore have extensive knowledge regarding the administrative issues experienced on a day-to-day basis by both Industry, and the relevant Government Department. There are many possible solutions which we would be happy to share or consult on should the need arise.

We thank you for the opportunity in allowing us to submit comments.

Electronically Signed

LAUREN OLINSKY

Managing Director

B38/1
31

Valerie Carelse - FW: AARTO AMMENDMENT BILL COMMENTS AND RECOMMENDATIONS

From: Niel Louwrens <NLouwrens@tmtservices.co.za>
To: "vcarelse@parliament.gov.za" <vcarelse@parliament.gov.za>
Date: 2016/08/31 1:31 PM
Subject: FW: AARTO AMMENDMENT BILL COMMENTS AND RECOMMENDATIONS
Attachments: COMMENTARY ON AMENDMENT BILL AARTO 22.8.2016.docx

Appears that the first address was incorrect.
Please see mail below.

From: Niel Louwrens
Sent: 31 August 2016 11:39 AM
To: 'vcarelse@parliament.gov.za'
Subject: AARTO AMMENDMENT BILL COMMENTS AND RECOMMENDATIONS

Attached please find our comments on the proposed amendment bill for your kind attention and consideration.

Kind regards,

Adv. Niel Louwrens

Tel: +27 (0) 21 929 5300
Mobile: +27 (0) 83 444 5293
Fax: +27 (0) 86 627 5398



TMT Services and Supplies (Pty) Ltd | Reg. No. 2000/022850/07
website: www.tmtservices.co.za head office postal address: PO Box 224, Century City, Cape Town, 7446, South Africa
Directors: André Louw, Douglas Davey, Most Mashishi, Pieter Schuchlent, Peter Ummenhofer, Tuml Mphahlele

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COMMENTARY ON AMENDMENT BILL FOR ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES

1. DATE OF SERVICE

The date of service is defined by the current legislation and I quote:

"Date of Service" means the date on which the infringer has signed for the relevant document served on him under Section 30.

This definition **must be deleted** as this will become impossible with electronic service and the deeming provision contained in the current proposed amendment will not cover this loophole.

2. MANNER OF SERVING

The manners in which a document/notice can be served must be made as wide as possible and the addition of electronic service is to be commended. All the known forms of service that is permissible must be stated within the act.

It is unclear why the well-known

1. personal
2. non-personal service, as is contained within Section 54 of the Criminal Procedure Act, Act 51 of 1977, as well as the serving methodologies contained within the Magistrates Courts Act, Act 32 of 1944 is not also repeated within Section 30.?
3. It is recommended that it be stated explicitly, and so remove all doubt!

NOTE: It has to be noted that personal service, non-personal service and attachment is permissible in the current regulations, but that there is a disagreement whether this refers, especially also to AARTO3. Please remove this doubt.

It is strongly recommended that these methodologies of service should be retained. I do not have to remind anyone of the chaos caused by collapse of the post office. The trusted old method of handing someone a notice in order to notify him must remain in all three its formats of personal, non-personal and by attachment. This must be available for **ALL** notices

3. AMENDMENT OF SECTION 32 APORIONMENT OF PENALTIES

The proposed amendment of Section 32(3) is one-sided.

It has become very clear through the experiences of JMPD and Tshwane that in most instances the agency [or as amended the authority] is the body that is non-compliant with legislation.

One only has to take look at the answers given by the honorable minister of transport regarding the compliance of the RTIA with the serving of courtesy letters and enforcement orders after huge expenses have been incurred by an issuing authority.

This punitive measure must cut both ways and if the road traffic infringement authority do not comply with legislation, the issuing authority must have the right to retain funds in its possession until the road traffic infringement authority is compliant with legislation.

End of comments.



**ROAD TRAFFIC
INFRINGEMENT AGENCY**

Justice in Adjudication

Waterfall Edge B, Howick Close, Waterfall Office Park, Bekker Road, Midrand
P O Box 6341, Halfway House, 1685
Tel: +2787 285 0500, Fax: +2786 248 1309

Mr Denesh Naran
Chief Executive Officer
Tasima
PO Box 7665
CENTURION
0046

Ref: NCR Assessment
Enq: Mr Japh Chuwe
Tel: 087 285 0503
Email : japh.chuwe@rtia.co.za

Per e-mail to : denesh.naran@tasima.co.za;

Dear Mr Naran

**DRAFT ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES
AMENDMENT BILL, 2013**

1. Your letter with reference TAS – CEO- COR -052, dated 29 July 2014 bears reference.
2. We draw your attention to the fact that the draft AARTO Amendment Bill, 2013 was published in the Government Gazette No.36613 for public comments on 28 June 2013 and closed on 28 July 2013.
3. Further that different stakeholders within the transport fraternity (including your company) lodged their respective comments, which were taken into consideration when finalising the Amendment Bill.
4. That it was always common cause that the replacement in Section 1 of the Act for the definition of “national contraventions register” with the definition of “National Offences Register” was always part of the draft Amendment Bill to which all parties commented to during the open process for public comments.

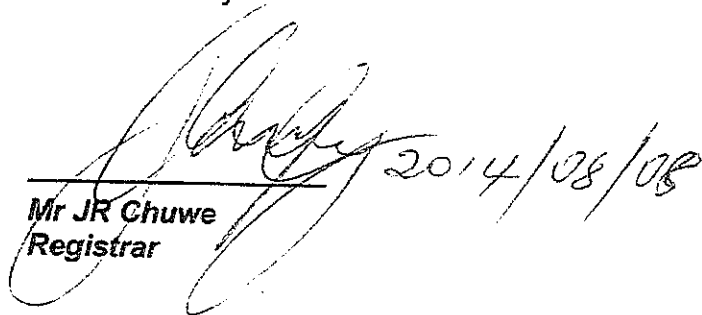
*Directors: Ms NE Rapoo (Chairperson), Mr JR Chuwe (Registrar), Adv TE Dicker,
Mr CM Manzini, Adv ML Bilikwana (Company Secretary)*

**DRAFT ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES
AMENDMENT BILL, 2013**

5. We confirm in reference to paragraph 1 of your letter that the replacement of National Contraventions Register with National Offences Register is nothing more than a naming convention. Further that it is not the intention of RTIA to neither encroach nor derogate the functionalities of the National Contraventions Register.
6. Further to the above, that the Road Traffic Infringement Agency, as custodians of the AARTO Act has the prerogative to make proposals for amendment to the legislation as implementation experience demands.
7. We note the assertions made in Paragraph 2 of your letter.
8. In response to paragraph 3 of your letter, we wish to draw your attention to the various meetings held with your Mr Gert van Eeden regarding the fixing of certain functionalities on the National Contraventions Register. These culminated in a formal letter dated 28 June 2013 containing enhancement requests by RTMC, TMPD, GDoCS and JMPD and which was signed by your Chief Operations Officer.
9. We dispute the assumptions made in paragraph 4 of your letter. We further refer you to the explanation offered in paragraph 5 and 6 of this letter. We also draw your attention to the fact that at no stage, whether by textual interpretation or reference in the AARTO Amendment Bill is the contemplation being made that the National Offences Register is intended to replace the National Contraventions Register.
10. We would like to draw your attention to the lack of factual basis of the whole substance of paragraph 5 of your letter. We further take exception to the presumptuousness and inflammatory undertones of the sentence in this paragraph which reads ***"The only change during this period appears to be the appointment of a Specialist Technical Advisor to the Registrar"***.
11. In response to paragraph 6, we would like again for you to take note of paragraph 5, 6 and 9 of this letter and refrain from making any innuendos to the Turnkey Agreement as such assertions are completely misplaced in the context of this and the foregoing correspondence in this regard.
12. In the light of the foregoing, the RTIA is unable to comply with the requests made by you in the letter dated 29 July 2014, for the reasons referred to in paragraphs 5, 6, 9 and 11 of this letter.
13. Finally that the allegations made in your letter dated 29 July 2014 are nothing but pure speculation. Further that it would have been materially beneficial to both entities if Tasima had sought audience with the Road Traffic Infringement Agency before placing such unfounded allegations in a dispute letter.

**DRAFT ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES
AMENDMENT BILL, 2013**

Yours sincerely

 2014/08/08
Mr JR Chuwe
Registrar

Copies to :

- Honourable Minister, Ms Dipuo Peters, MP
- Honourable Deputy Minister, Ms Sindisiwe Chikunga, MP
- Mr Mawethu Vilana, Acting Director General, Department of Transport, vilanam@dot.gov.za ;
- Mr Msondezi Futshane, Acting Deputy Director General : Road Transport, Department of Transport; futshanm@dot.gov.za and
- Mr Bulelani Didiza, Chief Information Officer, Department of Transport, didizab@dot.gov.za .

058/15

32

Valerie Carelse - RE: Draft Administrative Adjudication of Road Offences (AARTO) Amendment Bill, 2015, National Offences Register i

From: Gert van Eeden <gert@tasima.co.za>
To: Valerie Carelse <vcarelse@parliament.gov.za>
Date: 2016/08/30 1:12 PM
Subject: RE: Draft Administrative Adjudication of Road Offences (AARTO) Amendment Bill, 2015, National Offences Register definition
Attachments: AARTO Bill 2015 NCR_NRTOR definitions_Submission_20160830.pdf

Dear Valerie, I have made a much more user friendly submission as attached. Would be easier for the Committee members to read.

Please submit the attachment.

Kind regards

Gert van Eeden

+27 (0) 82 818 5095 (cell)

From: Valerie Carelse [vcarelse@parliament.gov.za]
Sent: 26 August 2016 04:02 PM
To: Gert van Eeden
Subject: Re: Draft Administrative Adjudication of Road Offences (AARTO) Amendment Bill, 2015, National Offences Register definition

Dear Mr van Eeden

Your comments on the Amendment Bill will be shared with the Committee.

Regards

Valerie V Carelse
Committee Secretary: PC on Transport

Tel: 27 (21) 403 3272
Fax: 086 514 2552
Cell: 083 709 8445
www.parliament.gov.za

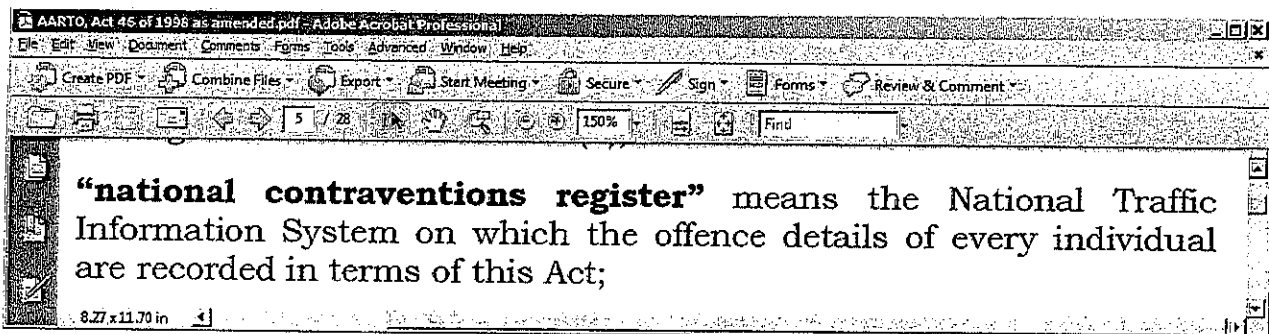


PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

>>> Gert van Eeden <gert@tasima.co.za> 2016/08/23 11:44 AM >>>
Dear Ms Carelse

Section 1 of the Administrative Adjudication of Road Traffic Offences (AARTO) Act, 1998 (Act No 46 of 1998) currently reads as follow:

“national contraventions register” means the National Traffic Information System on which the offence details of every individual are recorded in terms of this Act;



Please note the reference to the National Traffic Information System (i.e. the eNaTIS) in the definition.

Regulation 1 of the AARTO regulations issued in terms of Section 34 of the AARTO Act and published in *Government Gazette* No 31242 dated 16 July 2008, states: *“In these regulations, any word or expression which has been defined in the Act has that meaning and any word or expression defined in the National Road Traffic Act, 1996 or the Road Traffic Regulations, 2000 has that meaning,”*

Therefore, to remove any uncertainty now or in the future with regard the intention of the Minister, DoT and the RTIA or the appropriate system to be used to meet all the AARTO requirements as per the AARTO Act, it is proposed that the definition of "**National Offences Register**" should rather read as follow:

"National Offences Register" means the National Traffic Information System on which the details of infringements and offences of every infringer are recorded in terms of this Act"

Alternatively, this specific amendment should rather be removed from the Amendment Bill completely.

A future Registrar may want to use the opportunity to develop a completely separate system for AARTO whilst the eNaTIS already provides for all AARTO functionality. Obviously, this would merely open the opportunity for tender fraud.

For you kind consideration.

Regards
Gert

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**Administrative Adjudication of Road Traffic Offences (AARTO) Amendment
Bill, 2015**

[B 38-2015]

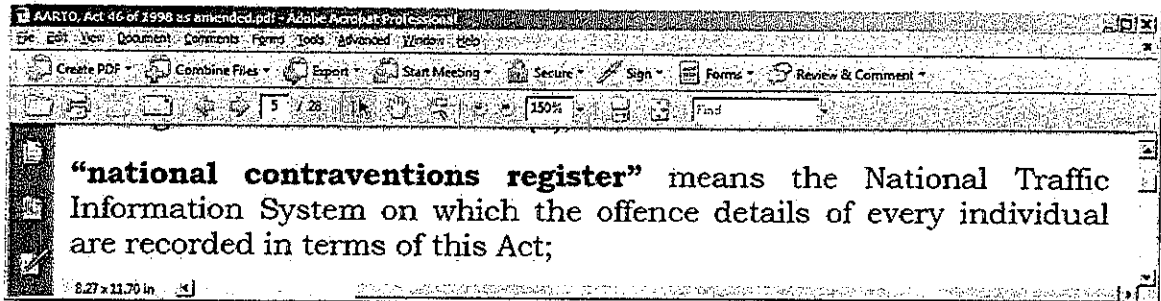
National Road Traffic Offences Register (NRTOR) definition

NATIONAL CONTRAVENTIONS REGISTER (NCR)

1. Section 1 (*“Definitions”*) of the Administrative Adjudication of Road Traffic Offences (AARTO) Act, 1998 (Act No 46 of 1998) currently reads as follow:

*“**“national contraventions register”** means the National Traffic Information System on which the offence details of every individual are recorded in terms of this Act;”.*

Note the reference to the National Traffic Information System (i.e. the eNaTIS) in the definition.



2. Regulation 1 of the AARTO regulations issued in terms of Section 34 of the AARTO Act and published in *Government Gazette* No 31242 dated 16 July 2008, states: *“In these regulations, any word or expression which has been defined in the Act has that meaning and any word or expression defined in the National Road Traffic Act, 1996 or the Road Traffic Regulations, 2000 has that meaning,”.*
3. Regulation 1 of the Road Traffic Regulations, 2000, states that:

“National Traffic Information System” means the computerised National Traffic Information System that is used as a register that supports the National Road Traffic Act, 1996 (Act No. 93 of 1996) and Regulations also known as the NaTIS and include but is not limited to the

- *register of authorised officers,*
- *register of motor vehicles,*
- *.....,*
- *register of operators,*
- ***register of contraventions,***
- *register of accidents and*
- *register of traffic register numbers;”*

4. Therefore, in terms of the current definition of the NCR in the AARTO Act, the eNaTIS is to provide for the functionality, information and data for the NCR as required by the AARTO Act and regulations.
5. The eNaTIS is a well-established State-owned system and is used throughout the country. The eNaTIS is administered by Tasima on behalf of the National Department of Transport (NDoT) and all Provinces.
6. A huge investment has already been made into the eNaTIS to provide all the functionality required to properly and effectively administer and operate the AARTO Act and regulations.

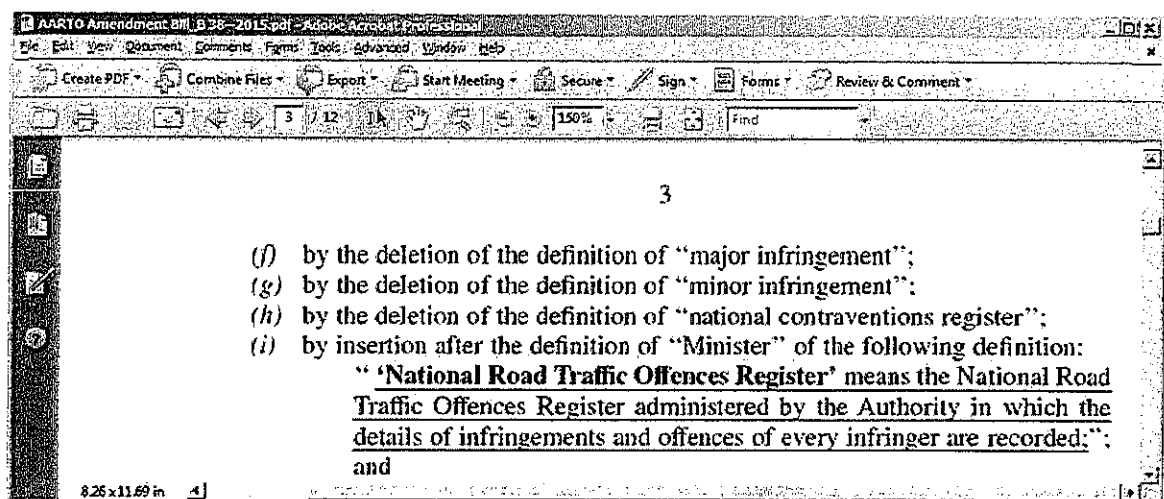
NATIONAL ROAD TRAFFIC OFFENCES REGISTER (NRTOR)

7. In sections 1(h) and 1(i) of the AARTO Amendment Bill, 2015 published in Government Gazette No. 39395 dated 12 November 2015, the RTIA intends to replace the definition of *“national contraventions register”* with the definition of *“National Road Traffic Offences Register”*.

8. In terms of the AARTO Amendment Bill, the “**National Road Traffic Offences Register**” means the *National Road Traffic Offences Register administered by the Authority in which the details of infringements and offences of every infringer are recorded;*”.

AND

9. “ ‘**Authority**’ means the *Road Traffic Infringement Authority, established in terms of section 3;*”. I.e. the RTIA.
10. Section 1 (h) deletes the definition of the “*national contraventions register*” (NCR) and section 1 (i) inserts the new definition of the “**National Road Traffic Offences Register**” (NRTOR).



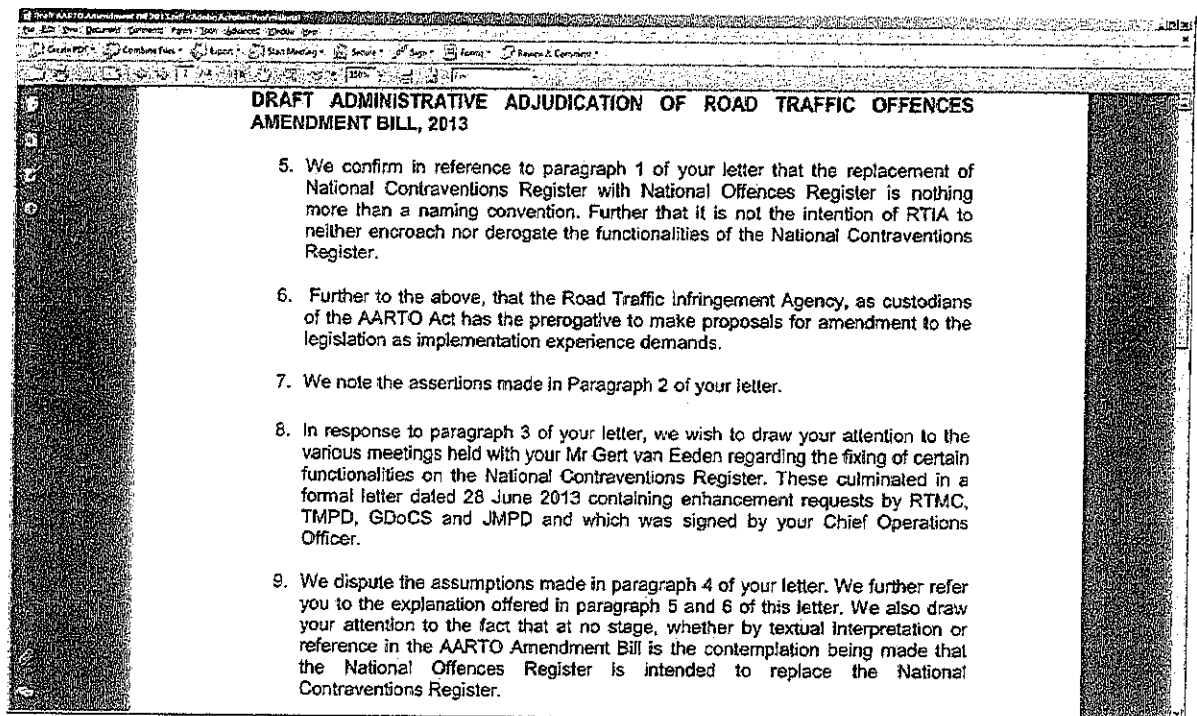
IMPLICATIONS

11. Note that the replacement of the definition of “*national contraventions register*” with the definition of “**National Road Traffic Offences Register**” as per the AARTO Amendment Bill implies the following changes:
- (i) The name of the system is changed; and

(ii) The reference to the National Traffic Information System (**eNaTIS**) is removed; and

(iii) The entity responsible for the administration of the “AARTO” system is changed from the NDoT to the RTIA.

12. In paragraph 5.6 of the memorandum on the objects of the AARTO Amendment Bill, it is stated: “*The Bill provides for the **National Road Traffic Offences Register** that is to be administered by the Authority. The National Road Traffic Offences Register records and contains all the electronic details of infringements and offences of every infringer throughout the country.*”
13. Therefore, anyone may derive that it is the intention of the Minister, the NDoT and the RTIA to establish a completely different system (NRTOR) which will provide the same or similar functionality as already provided for on the eNaTIS (NCR module) with the replacement in Section 1 of the Act for the definition of “***national contraventions register***” with the definition of “***National Road Traffic Offences Register***”.
14. However, the Registrar of the RTIA in a letter to Tasima dated 08 August 2014 with reference NCR Assessment, stated that the change is merely a naming convention change and that there is NO intention to replace the “***national contraventions register***” as provided for on the eNaTIS currently (refer to paragraphs 5 & 9):



15. The letter was copied to the Minister, the Deputy Minister and the acting Director-General of Transport. The letter is attached.
16. Therefore, a future Registrar will use the replacement of the definition of "***national contraventions register***" with the definition of "***National Road Traffic Offences Register***" as an opportunity to develop a completely separate system for AARTO whilst the eNaTIS already provides for all AARTO functionality.
17. In addition, a new system will cost the country hundreds of millions of Rands and have significant time implications for the long-overdue national roll-out of AARTO. Furthermore, significant changes will be required to the eNaTIS for the new "***National Road Traffic Offences Register***" to interface with the eNaTIS.
18. This implies that the investment made into the eNaTIS by the country to provide for the "***national contraventions register***" will have been **fruitless** and **wasteful**.
19. The functionality of the AARTO is so closely integrated with that of the eNaTIS that it does NOT make business sense to have two separate systems. The

number of interface transactions required will result in an impractical solution that will fail. The eNaTIS should be the sole system managing the national contraventions register (or the National Road Traffic Offences Register).

20. Gert van Eeden from eNaTIS (Tasima) should be invited to present the implications of such a scenario in the case where the separation of the systems is seriously considered as the separation will have significant implications.
21. Given the significant implications of the replacement of the definition of "**national contraventions register**" with the definition of "**National Road Traffic Offences Register**", one would have expected that the memorandum on the objects of the AARTO Amendment Bill would have gone into much more detail with regard to this specific change. It is almost as if it is mentioned as a "*by the way*" remark.

RECOMENDATION

22. Therefore, to remove any uncertainty now or in the future with regard to the appropriate system to be used to meet all the AARTO requirements as per the AARTO Act, it is proposed that the definition of "**National Road Traffic Offences Register**" should rather read as follows:

"National Road Traffic Offences Register" means the National Traffic Information System in which the details of infringements and offences of every infringer are recorded in terms of this Act"

23. Alternatively, this specific amendment should be removed in its entirety from the AARTO Amendment Bill, 2015. This will then also remove the requirement for extensive AARTO Regulation amendments to replace the reference to the "**national contraventions register**" with "**National Road Traffic Offences Register**".
24. The above recommendation has previously been submitted to the RTIA by Tasima with regard to the AARTO Act Amendment Bill, 2013 published in Government Gazette No. 36613 dated 28 June 2013. However, the recommendation has been ignored.