***RESPONSES TO PUBLIC COMMENTS ON THE AARTO AMENDMENT BILL – MARCH 2017***

***Comments from Business Unity South Africa***

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Comments** | ***Relevant Provision*** | **Response** |
| 1. | Date of Service & Electronic Service | Clause 1 | The electronic service will be offered as another method of service.  The efficiencies of electronic service have already been tested under “Electronic Communications Act, 2005” |
| 2. | Infringement | *Not Applicable* | AARTO is an administrative statute for CPA and NRTA. AARTO is not about money collection.  CPA high impact offences AARTO deals with low impact or minor offences.  AARTO was introduced to alleviate the burden on courts and it is to change the driver behaviour. |
| 3. | Sheriff | *New Clause page 6*  *4. Section 12* | This is linked to the repeal of section 21 of the Act which deals with issuance of warrants.  The appointment of sheriffs and issuance of warrants are outside of administrative scope and relate to court processes as regulated by the rules of the courts. The Sheriffs are appointed in terms of Sheriffs Act 90 of 1989. |
| 4. | Administering prescribed rehabilitation programmes for habitual offenders | *Clause 1 (4)* | Rehabilitation is not necessarily geared at habitual infringers they will instead be offered to every infringer (who want to accelerate the redemption of their points) on voluntarily basis.  The infringer will fund 90% of the cost of the programme. These rehabilitation programmes will be credited by the relevant body such as HWSETA and Health. |
| 5. | Repeal of Section 12 of the Act | *New Clause page 6*  *4. Section 12* | Already covered with item 3. |
| 6. | Business and email address of infringer | *Clause 1* | Already covered with item 1. |
| 7. | Representation is successful as a result of prescribed procedures not being complied with | *New Clause page 8*  *7. Section 18* | The issue of reserving is also based on the 180 day rule allowed by PAJA, however the AARTO 1 will not be subject to the re-issuance. |
| 8. | Amendment of Section 20 | *Clause 6* | Point taken |
| 9. | Section 25 of the Principal Act | *New Clause page 11 – 12*  *9. Section 25* | The amendment does not change in relation to redemption cycle. The amendment is being introduced to distinguish different classes of infringers. |
|  | Conclusion | The offences under NRTA were formally brought into AARTO through the Gazetting processes of Schedule 3 of the AARTO Act. | |
| Comments: **Driving.co.za** | | | |
|  | Introduction to the Amendment Bill | *Lack of explanatory memorandum.* | We will leave this to the Parliamentary legal advisor to respond to. |
| 1. | Section 30 of the Principal Act | *New clause in Page 2* | The electronic service is aimed as an alternative service option to an infringer who is able to transact this method of service i.e. by providing the email address or other electronic form of service amongst others, in terms of Regulation 32A. (SAPO provides this service as enunciated in point 12.4.1of the document). |
| 2. | Definitions “Infringements” | *New Clause Page 3* | The infringement is based on the classifications under schedule 3 of the Act. The offences are still excluded under the Amendment Bill and will still be dealt with under CPA. |
| 3. | Section 12 – removal of Sheriffs | *New Clause Page 6* | The removal of sheriff is linked to Section 21 “Warrants” because it traps the AARTO legislation to the court system. Such removal will not compromise the issue of service as the Act has sufficient mechanism to achieve that through multiple methods canvassed through the new Section 30. |
| 4. | Chapter IV A – Appeals Tribunal   * The Tribunal will not have sufficient capacity of referalls, which are expected to run into millions per annum. * The structure of the Tribunal will have to adhere to the Constitutional precept that the accused has to be afforded an opportunity of facing his/ her accuser in court / Tribunal ***(my emphasis)*** * The unintended consequences of the Tribunal funded by the revenues from RTIA, will result in the public perceiving the Tribunal to be interested in the revenue to be collected from every fine because of its dependence on such, for its sustainability. * The right of an infringer to be tried in court is thus severely hampered by the creation of the Tribunal. * The persons in charge of the Appeals Tribunal may not have the legal knowledge or capacity to adequately adjudicate on technical legal matters. | *New Clause Page 13* | * The capacity of the Tribunal will be reviewed from time to time and will have to adhere to the same timeline of 21 day adjudication period. The creation of the Tribunal will concomitantly incorporate the flexibility of making it a quasi-permanent structure as the situation demands (i.e. where large population of infringers opt to use it as an option in order to test the appellate mechanism under the Amended Act. * The Tribunal is not conceptually designed to be physically located in the various provinces, but will instead be located at a central point, where it will attend to all referalls from the adjudication processes. * It is also important to note that the Tribunal will function as an Administrative “High Court” – with an absolute referral function. * The funding model of the Tribunal will need to be adequately addressed, if being capitalised by RTIA will create misperception of bias by the marketplace i.e. how would it be if RTIA advance its surplus to NRF and the latter in turn affects the appropriate advances to the Tribunal, instead of RTIA. * The infringer is not intended to be divested of the right to a court appearance by the creation of the Tribunal. They will instead, have an unbridled right to approach court where they are not satisfied with the results of the Tribunal process. The Amendment Bill is not by design geared at contracting out of law as such – it merely creates all the required inexpensive administrative review mechanism to deal with the Representation or review of such before courts are approach for the same purpose. The right to be tried in court is not immune to the limitations of Section 36 of the Constitution. * The qualification requirements of the members of the Tribunal will not be lower than those of the Adjudications officers. |
| 5. | Section 11 of the Act – Agency Remuneration.   * Removal of the oversight role of the Minister of Transport and Minister of Finance in the determination of the Agency’s remuneration, likely to create wasteful expenditure | *New Clause Page 6* | Point taken |
| 6. | Section 18 (1) of the Principal Act | *New Clause Page 8*  *The reconstitution of the infringement processes in instances where such were flawed due to non-compliance to procedural formalities by the Agency, would result in infeasibility of the reconstitution of such i.e. drunken driving charges.* | The Amendment Bill does not contemplate the substitution of the role of the courts to deal with Offences. The interesting example (of drunken driving) made herein, fall within the realm of the CPA and consequently of that of the courts. |
| 7. | Section18 (7) (a) | *New Clause Page 8*  *The definition of the section needs to be reconstructed as it may be perceived to deny the right of the accused to be tried in court. The retention of the – right to be tried in court, creates the perception that the availability of that right is subject to the discretion of the Representation Officer.* | The interpretation of the wording will be examined and aligned if required. |
| Comments: **Justice Project South Africa** | | | |
| 1. | Section 30 of the Principal Act | *New Clause Page 2*  *The clause to read:* ***“electronic service”*** means service by means of an electronic communication as is contemplated in Section 19(4) of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) or service by means of an electronic interface with the National Road Traffic Offences Register as is provided by the Authority to anyone who wishes to subscribe to it, free of charge. | The contemplated electronic service will be offered, as with the other forms of service, based on the updated address information, in line with Regulation 32A. The type of service method will be far cheaper than the conventional service method currently applied. The transactional will however not change i.e. the infringer will still bear the cost of service. |
| 2. | Section 25 of the Principal Act | *New Clause Page 3*  *The inconsistent application of the traffic law enforcement in the country will result in infringers in some parts of the country being classified as habitual infringers than in other areas.* | The demerit points system will be centrally managed by RTIA, so as to avoid situations of inconsistent application of the proposed classification methods. |
| 3. | Section 29 (a) of the Principal Act | *New Clause Page 3*  *The distinction is made between the Infringement and offences and both distinctions be referenced to column 4 of schedule 3 of the Act.* | The proposal is quite sound and rational. |
| 4. | Paragraph (xiv) of the definitions under the Principal Act. | *New Clause Page 3*  *The definition to be limited to the following:*  *“Issuing Authority means” any authority assigned an issuing authority code by the Minister in Schedule 4 of this Act.*  *Proposing a further insertion of the definition of drivers licence, seeing that the Act contemplates a levy of demerit points to learner licence – with further implementation of probationary or graduated driving licence.*  *The definition to thus read “licence to drive” means any licence authorising the driving of a motor vehicle as is contemplated in the National Road Traffic Act.* | The proposal is quite sound and rational. |
| 5. | Section 12 of the Principal Act | *New Clause Page 6*  *Agrees to the repeal of Section 12 and proposes a substitution with* **Process Server –** who assists with the personal serving of documents in areas outside the jurisdiction of the Issuing Authorities.  **“Process server”** means a person who is appointed in terms of Section 15(2) of the Magistrates Court Act, 1944. | The proposal is quite sound and rational. The Agency already contemplated this function to be performed by the Youth Owned Enterprises in all the Issuing Authority jurisdictions. |
| 6. | Unrelated to the Amendment Bill | *Insertion of Road Traffic and Transport laws and municipal by – laws to Section 2(a).*  *Insertion of* ***“and fees*** **where applicable”** to Section 2(b).  Substitution of **[adjudication]** with **“finalisation”** of infringements in Section 2(c ).  Amendment of Section 2(d) seeing that the State Prosecutors already alleviate the burden on the courts of trying offenders for infringements to a large extent by considering the written and/or verbal representations made by alleged infringers.  The section to read ***“to alleviate the burden on the prosecutors in considering representations for infringements”***  Extension of the definition of Section 2(e ) to contemplate the learner’s licences as well as probationary driving licences / provisional driving licences.  The section proposed to read ***“ to penalise drivers and operators who are guilty of infringements or offences through the imposition of demerit points leading to the suspension or cancellation of licences to drive, professional driving permits and operator cards”***  *Section 2(f) to amended to read* ***“to reduce demerit points where they have been incurred if infringements or offences are not committed over a specified periods”*** , as the current reading of the Section in terms of **[reward law – abiding behaviour by reducing demerit points]**, was a misnomer, because the Agency does not have a proper rewards system in this regard.  Section 2(g) to be amended to exclude **[and to undertake the administrative adjudication process]** seeing that the involvement by the Agency in the adjudication processes gives rise to conflicts of interests. To correspondingly repeal Section 4(1)(a).  Section 2(h) to be amended to exclude **[strengthen co-operation between the prosecuting and law enforcement authorities by establishing a board]** and to read “establish a Board to govern the affairs of the Authority”, because the Board has nothing to do with the strengthening co-operation between the prosecuting and law enforcement authorities.  Section 3(2)(b) to be deleted because it will make it possible for the Authority to issue infringement notices and act as accuser, judge and executioner. | We will leave these proposals to the discretion of the Committee.  Amending the adjudication function attacks the very existence of the Agency as well as the AARTO model, which has been implemented in this fashion in other leading jurisdictions around the World.  The proposal is quite sound and rational, because the sub section may be viewed to be geared at being misaligned to the model of AARTO. |
| 7. | Section 4 of the Principal Act | *New Clause Page 4*  *Proposes the deletion of* ***[issuing an enforcement order in terms of section 20 against]*** and substituting it with **“Instructing the issuing authority to cause a summons in terms of Section 54 of the Criminal Procedure Act”** to be issued 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). | The proposal cannot be accommodated because it is misaligned with the AARTO model and further seeks to take traffic law enforcement back to CPA. |
| 8. | Establishment of Rehabilitation programmes. | *New Clause Page 5*  *The rehabilitation programmes to be included in the Regulations and also to be properly defined in terms of substance, operating and funding model.* | The Agency will include these in the Regulations as soon as the Amendment Bill has been finalised. |
| 9. | Section 11 of the Principal Act | *New Clause Page 6*  *Not to exclude the Minister of Minister in the authorisation of the remuneration regime of the Agency. Seeing that the Agency collects public revenue and is also funded partially by Treasury.* | The proposal is sound and rational. |
| 10. | Section 12 of the Principal Act | *New Clause Page 6*  *Not to repeal Section 12, but instead expand the Section to include* ***“process servers”****. The latter to be appointed in terms of Section 15(2) of the Magistrates Court Act(Act 32 of 1944) to serve AARTO Documents in all jurisdictions where the service of such documents is to be achieved by means of personal service.* | The Agency has already devised a model in conjunction with SAPO, in order to implement personal service of AARTO documents through the Youth Owned entities.  The Agency will further ascertain the extent to which Section 15(2) of the Magistrates Court Act allows for the appointment of such Enterprises as “process servers”. |
| 11. | Section 17 of the Principal Act | *New Clause Page 8*  *Deletion of Section 17(1)(f)(iv) is unconstitutional as it offends Section of the Constitution.* | The Agency deleted this subsection in order to perfect all the administrative structures before resort to the Court is explored by the infringer. The intention of the Section is therefore not to muscle out the right to court review. Section 17 is somehow also geared at achieving the Audi Alteram Partem principles in terms of Section 17(1)(f)(i) and (v) **(We however need to create a face to face mechanism of adjudicating AARTO 01 – by having the face to face engagement between the infringer and the peace officer who issued the fine)** |
| 12. | Section 17 of the Principal Act ***(Comment however unrelated to the amended section)*** | *The expansion of Subsection 5 to include* ***[without having ascertained that such person is not disqualified from driving]*** | The proposal is sound and rational. |
| 13. | Section 18 of the Principal Act | *New Clause Page 8*  *The rerun of the serving process where the infringer had initially prevailed owing to the non-adherence by the Agency with the prescribed procedures, will offend against the principles of natural justice of legality, which holds that if there is any doubt, the accused must be given a benefit of the doubt.*  *New Clause Page 8*  *Attack on Section 18(7) not to include the advisory for the infringer to elect to be tried in court. The author suggests the following insertion* ***“that failure to pay the penalty and fees or to make arrangements to pay in instalments will result in a summons to appear in court being issued and served on the alleged infringer”***  *The author is of the view that the Appeals Tribunal would never acquire the independent status of the courts owing to the fact they will be funded by the Agency*  *Furthermore that the bias and lack of autonomy of the Representation officers (as evidenced in the Fines 4U matter) disqualifies them from administering processes under this subsection.*  *Finally that a separate adjudicating body, independent from RTIA be established* | The Agency holds a view that such an assertion may prevail in respect to AARTO 02 & 03 but not in respect to AARTO 01 – the latter being based on the fact that the infringer was in receipt and indeed aware of the infringement he / she committed.  The comment is based on the dispute with the establishment of the Appeals Tribunal and thus has an effect of taking the whole AARTO programme back to CPA.  The comment is merely speculative in nature. The court will always decide in review applications whether such bias is attendant to adjudication matters. |
| 14. | Section 19B of the Act 46 of 1998 as amended by Section 11 of Act 72 of 2002. | *New Clause Page 9*  *The Author is of the view that the amended Section to read “ state that a failure to comply with the requirements of the courtesy letter within the time permitted, will result in a summons to appear in court being issued and served upon the alleged infringer and that upon conviction the infringer will become liable to pay the penalty, fees and court fees applicable to that infringement”*  *Author also draws attention to the fact that Section 19(3)(c ) makes specific reference to registered mail and suggests that the Section to read “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 Road Traffic Offences Register in respect of the infringement in question.* | The proposal seeks to take AARTO back to the CPA era and is thus not progressive with the spirit of the Amendment.  The electronic service is geared at achieving the functional outcomes of the registered mail. |
| 15. | Section 20 of the Principal Act | *New Clause Page 10*  *The Author asserts that the whole of Section 20 to be overhauled as it does not comply with the Constitutional precepts, in that the accused is denied the rights to a licence in circumstances where he might not have had an opportunity to present his or her case (base on the fact an average of 85% of fines were based on unattendant operations)*  *Further that ss 9 allows the Registrar to review his decision by revoking the enforcement order he issued in the first place.* | The comment is based on the lack of understanding of the Audi intentions of Section 17 of the Principal Act. |
| 16 | Section 22 of the Principal Act **(Comment however unrelated to the Amendment Bill)** | *Section 22 to be invoked even in instances where the infringer fails to comply with section 18 and thus nullify all the processes of Section 20.* | The comment seeks to take the AARTO process back to CPA. |
| 17 | Section 24 of the Principal Act **(Comment however unrelated to the Amendment Bill)** | *The Author is of the view that Section 24(3)(a) is unsustainable in its phrasing, as it does not take into account, instances where the offender could instantaneously commit an offence of driving under influence, along with reckless driving and fleeing from the scene of the crash where someone is injured or killed.*  *Suggests that the offender be charged and demerit points be imposed separately and thus incur the cumulative effect for all the offences.* | The section was enacted in order to avoid instances of double jeopardy. The applicability of the comment will be examined closely. |
| 18 | Section 25 of the Principal Act | ***(Page 58 - 60)*** *The Author is of the view that the section contemplates levying demerit points against proxies of juristic persons, in instances where such proxies would not have been involved in the driving of such vehicles.*  *Warns that such a system would be unfair and would cause mass resignations of Operators. Further suggests that a distinction should against proxies in small companies; who would also be involved in the driving of such a vehicle.*  *Suggests the following wording of Section 25 (2)(b) to be amended as follows:*  *“The Minister may prescribe different* ***[numbers under]****demerit points and disqualification periods in terms of paragraph(a) in respect of the holder of a licence to drive, professional driving permit and an operator* ***[of a motor vehicle]*** *card.*  *Author further suggests the deletion of Section 25 (3)(a) and (b) and be amended to read “ a person or holder of an operator card who is disqualified in terms of this section may not apply for a licence to drive, professional driving permit or operator card during the disqualification period.*  *Author further proposes that Section 25(4) to be segmented into three subsections in terms of the following:*   1. *an increase in the penalty under Section25 (4) from a period not exceeding one year to a period not exceeding three years and to both the fine and imprisonment, to a person who drives or operates a motor vehicle during his or her or the operator disqualification period.*      1. *Any operator who allows its motor vehicle to be operated during the disqualification period applicable to an operator card should be liable to a fine or imprisonment for a period not exceeding three years.* 2. *In addition to the penalties contemplated in (i) and (ii) above, a licence to drive, professional driving permit or operator card shall be suspended for a further period of one year, calculated from the date of release from imprisonment or payment of fine.* | The proposal is quite sound at core, it however fails to recognise the responsibility that the Operators carry in ensuring that the persons who use their vehicle are indeed qualified to drive and that in instances where the infringements are committed, they have a duty to nominate such infringers.  Thus failure to do the above would be tantamount to subversion on the part of the operators, juristic persons who are not operators as well as proxies and which would have to be punished by them being collateral infringers.  The comment fails to understand that Section 25(3) (a) & (b) seek to regulate two distinct and mutually exclusive conducts.  The suggestion in (i) and (ii) sound well but however the instance contemplated in (iii) would lead to instances of double jeopardy. |
| 19. | Chapter IV A – Appeals Tribunal | *The Author does not support the establishment of the Tribunal and raises concerns about the following conceptual issues:*   * *Whether the Tribunal will adopt the inquisitorial or adversarial function – he records the view that the Tribunal will only be effective if it adopts the style of a trial.*      * *The issue around the payment of a review/ appeal fee – which he is of the view that such requirement for the payment of the fee will constitute the denial of justice to poor infringers.* * *That it is not properly indicated the frequency of sittings of the Tribunal as well as its distribution to various locations around the country. Further that the current traffic infringement volumes as well as the attendant representations cannot be used as baseline to project the future utility of the Tribunal.* | The RTIA cannot utilise a less scientific instrument in doing a prognosis of the utility of the Tribunal, save to utile the current representation figure.  The Tribunal will initially be centrally located, unless practical evidence presents a different persuasion. It will be tantamount to reckless trading to go on scale with the distribution of the Tribunal structures without being sufficiently knowledgeable about the nature and patterns of demand for its services. |
| 20. | Section 26 of the Principal Act **(Comment however unrelated to the Amendment Bill)** | *The Author suggest that with the advent of the electronic service, Section 26(1) should be amended to read:*  *“a notice, as prescribed must forthwith be served in the prescribed manner upon a person who has incurred more than the number of demerit points referred to in section 29(b)* | The comment sounds rational. |
| 21 | Section 27 of the Principal Act **(Comment however unrelated to the Amendment Bill)** | *The Author proposes the following substitutions:*  *SS (1)* ***[hand in]****to be substituted with* ***“surrender”***  ***[Issuing]*** *to be substituted with* ***“licencing”***  ***[driving licence card]*** *to be substituted with “licence to drive”.*  *SS(2)* ***[driving licence card, professional driving permit]****to be substituted with “licence to drive”* | The comment sounds rational unless the proposal will create expensive structural changes i.e. MIS on eNaTIS. |
| 22. | Section 30 as substituted by section 3 of Act 22 of 199 | *New Clause Page 23*  *Author raises concerns about the feasibility of the 10 day presumption period and requires that SAPO and the Committee revises this to a period that is more practical.* |  |
| 23. | Section 32 of the Principal Act | *New Clause Page 24*  *The Author raises concerns on SS 3 of the AARTO Amendment Bill, 2015 and suggests the following:*  *“The penalty referred to in subsection (1), inclusive of any fees which may have been applied thereon* ***[may be withheld by the Authority]*** *must be refunded by the Authority to the person who paid it where there is evidence of non-compliance with this Act.* | The comment is based on sound principles.  It is however suggested that, instead of paying the money back to the infringer, the Authority / Agency would rather encourage the restart of the process in the manner contemplated in the proposed in the new ss of Section 18.  Such a restart will also assist us in avoiding the consequences similar to those contained in the Public Protector report. |
| 24. | Section 34 of the Principal Act | *New Clause Page 24 & 25*  *Author opposed to Regulations which will entrench the process of the re issuance of fines.* |  |
| **Comments:** OUTA *(willing to make oral presentations to the Committee)* | | | |
| 1. | Definitions “Infringements” | *New Clause Page 3*  *Wishes to broaden the definition to include contravention of any Road Traffic Legislation but not limited to National Road Traffic Act and National Land Transport Act.*  *However raises concerns that the corresponding penalties are imposed without hearing or trial.* | Comment misunderstands the Audi effect of elective options under Section 17 of the Act. |
| 2. | Section 2(h) of the Principal Act | *New Clause Page 5*  *The Author concerned about the conceptual basis of the rehabilitation programmes and how they will be implemented.* | The author should be engaged in a bigger workshop on rehabilitation programme, so that they have a better understanding of such.  We can alternatively post our various concept documents on our website, so that the public have a better understanding of the work that we do.  The Author further makes an error of isolating the application of rehabilitation programmes to habitual infringers on Page 3 of the Amendment Bill. |
| 3. | Chapter IV A – Appeals Tribunal | *New Clause Page 13*  *The author supports the advent of Appeals Tribunal, but is concerned about the manner in which the initial representations are conducted. That if they are conducted slavishly by the Representation Officers – The Tribunal will be inundated with Appeals because of the misapplication of the Representation Officers.*  *Author further concerned that the penalties under the Act may be implemented before the matters are heard by the Appeals Tribunal.* | The comment not aware of how the AARTO system operates viz that the system is kept as and when an infringer exercises an elective option, save for instances where the elect to pay (either full or payment in instalments). The system will not operate differently where an Appeal is noted by the infringer. |
| 4. | Comment unrelated to the Amendment Bill. | *The author concerned at the non-adherence of the Principal Act and the related Amendments to the Audi Alteram Partem rule, based on the fact that the infringer is presumed guilty until they prove their innocence.* | The comment disregards the design of the structure of Section 17, in that the infringer is given a benefit of the doubt and thus they are allowed to exercise all the options available before the matter is finalised. |
| **Comment:** Traffic Officer (JMPD) | | | |
| 1. | Comment unrelated to the Amendment Bill | Comment constitutes a broad brush attack on the AARTO. | The Author confuses the inefficiencies of the court system with the AARTO legislation. |
| **Comment:** Automobile Association of South Africa *(Proposes to make Oral presentations to the Committee)* | | | |
| 1. | Comment unrelated to the clauses of the Amendment Bill. | *Author concerned about the lack of clarity of the Bill.*  *Lack of the problem statement, which would highlight the delinquencies that the legislature seeks to address with this Amendment Bill.* | The comment would be satisfied with an explanatory memorandum. |
| **Comment:** Niel Louwrens | | | |
| 1. | Section 30 of the Principal Act | *The proxies to be compelled to give an email address and a cellphone number where the service of documents and notification are to take place* |  |
| 2. | Definitions “date of service” | *The author concerned that “received” will bring about unintended complexities to the environment and that it should be substituted with “send and / or posted” as that will be more in line with ECTA.*  *Alternatively suggests that all vehicle owners (natural and juristic) be compelled to supply eNaTIS with the email address and a cellphone number, so that RTIA can effectively be able to prove receipt of the infringement documents.* | Comments are quite sound and rational. They however have to take to the effects that Regulation 32 A will bring in providing reliable address information.  Further that the choice of electronic address information is a voluntary election of the vehicle owner and that they can choose any other address of service that they may deem convenient for their use. |
| **Comment:** CANCOM *(The comments are in some instances based on references not found in the Amendment Bill)* | | | |
| 1. | Definitions “date of service” | *New Clause Page 2*  *The Author concerned about how the date of service will be determined.* |  |
| 2. | Definitions “electronic service” | *New Clause Page 2*  *The Author concerned that this type of service has been introduced in the Bill but there is no corresponding provision of how it will be implemented further on this Bill.* |  |
| 3. | Definitions “habitual infringers” | *New Clause Page 3*  *The Author concerned that the habitual infringer status will attend to proxies, whereas they were not the drivers, and that this infringes on their constitutional rights in terms of section 34 and 35.* | The proxies have a duty to nominate the driver. In the event that they cannot, they then run the risk of having the points demerits being levied against them.  It has also been proven that the current NCR system is able to accommodate the overseas ID numbers for the purpose of nominations. |
| 4. | Section 4 (2)(h) | *New Clause Page 5*  *Author concerned that if the proxies are labelled habitual infringers – they will then be permanently on the rehabilitation programmes.* | The comment mistakenly links being labelled habitual infringers with, being compelled to attend rehabilitation programmes. This is not correct. The attendance of rehabilitation programmes is done on a voluntary basis. |
| 5. | Section 17 of the Principal Act | *New Clause Page 8*  *Author concerned that the repeal of the election to be tried in court will constitute the violation of section 35 of the Constitution.*  *That the infringers should be advised of their rights to appeal decisions.* | The election to be tried in court is not outlawed under the Act, but is being replaced with the Appeals Tribunal in order to avoid premature lodgement of premature and expensive review applications in court. |
| 6. | Section 18 of the Principal Act | *New Clause Page 8*  *Author concerned that the Agency and the Issuing Authorities are given multiple opportunities to re issue notices and further that how the proposed will fit with the AARTO rigid timelines.* | The proposal is based on Section 31(2) – non-prescription section. |
| 7. | Section 25 of the Principal Act | *New Clause Page 12*  *Concerns about the proxies being held liable for infringements and thus have their licences take away as well as the demerit points being levied against them.* | The proxies will have to nominate in order to escape culpa. |
| 8. | CHAPTER IV A | *New Clause Page 13*  *Raises broad concerns about the right of access to courts being taken away, in preference for the Tribunal.*  *Raises concerns about the requirements for infringers to pay for the services of the Appeals Tribunal.* | The reason is based on the perfection of administrative adjudication processes. The right of access to court review is thus not taken away.  The comment is quite sound and rational when considering the plight of the unemployed infringer, who wants to access the services of the Tribunal. |
| 9. | Comment on Section 17 : unrelated to the Amendment Bill. | *Raises concerns that neither the Act nor its regulations has made provisions for the administration of infringements incurred by International Drivers / Non S.A. Citizens. The attendant risks being that they will stay in the names of the Proxies.* | The NCR has fields that accommodate the nomination of foreign drivers. |
| **Comment:** Unsigned submission | | | |
| 1. | Comment unrelated to the Amendment Bill. | *The substance of the amendments as well as the proposed additional penalties, necessitate the engagement with a renewed social impact assessment of the Bill.* |  |
| 2. | Section 11 of the Principal Act | *New Clause Page 6*  *Author opposed to the deletion of the consultation with the Minister of Finance.* | Comment rational and acceptable. |
| 3. | Definitions “electronic service” | *New Clause Page 2*  *Author concerned about the wide application of electronic service to include WhatsApp, SMS and Facebook and suggests that it should be limited to email addresses.*  *Also concerned that electronic service in general would give rise to a lot of disputes around the date of service.* | The electronic service will be based on information supplied to eNaTIS through the method prescribed in Regulation 32A, and the presumption of service will be based on the details voluntary submission in terms of that Regulation. |
| 4. | Definitions “habitual infringers” | *New Clause Page 3*  *Author concerned about how the concept of habitual infringers will be applied to juristic persons. Author further suggests that the Committee should cancel this application to juristic persons if the Agency is not able to establish such a conceptual framework or model.* | The concept of juristic persons being brought into the net of habitual infringers arises as a result of a failure to nominate as prescribed in Section 17 and consequently under Section 25. As well as failure to establish the full names, residential, postal business and e-mail address of the driver.  The juristic person, which is an operator can escape this liability by nominating the actual driver. |
| 5. | Section 18 of the Principal Act | *The Author concerned that Section 18(5) (c ) does not accommodate instances where the infringer may not have funds to pay for the fine. The Author further asserts that the option of the payment in instalments may not suffice to a person who is unemployed.* | The question of flexibilities to be exercised outside of the payment in instalments will have to be engaged on an absolute means test. |
| 6. | CHAPTER IV A | *New Clause Page 13*  *The author is concerned that the Tribunal duplicates the court structure in regards to its review work. Further that there are no established provisions that deal with the method of summons, administration of the oath and procedure of the hearings.*  *The Tribunal does not exercise the concept of innocent until proven guilty and which is applied by the courts. The infringer therefore gets unnecessarily saddled with the onus burden even at this level and which would result in procedural unfairness and also against the Constitution.* | The Tribunal’s work is not intended to displace that of the courts and further that the concept of the Tribunal is based on the best practice in the other sectors in the country i.e. competition tribunal, company tribunal.  The above structures were established with the same relationship with the courts as the one contemplated in the AARTO Amendment Bill. |
| 7. | Section 17 of the Principal Act | *New Clause Page 6*  *Author concerned that the amendment of Section 17(5) is still unfair to the owner or operator, because the court would approach the matter differently. In that it would collapse that infringement in instances where the infringer cannot be located – because of the presumption of innocence.* | The new ss is based on rules of equity and responsible business practice.  If the AARTO Act were to allow the Operators or Owners to provide the excuse that they failed to ascertain the details of the drivers of the vehicles, then traffic law enforcement would collapse in this country. |
| **Comments:** SAVRALA | | | |
| 1. | Definitions “acceptable definition” | *New Clause Page 2*  *The Author is of the view that the requirements for any of the documents referred to in (a) – ( e) would be too onerous for their members and they would rather submit such documents when they are required during court proceedings.* | The Author wrongly misinterprets the circumstances under which such documents would be requirements would be required i.e. nomination processes.  Further that this clause is linked to instances contemplated in Section17 (1) (f) (v) as well as the fact that the failure to comply with such would attract the sanctions contemplated in Section 17(5). |
| 2. | Definitions “electronic service” | *New Clause Page 2*  *The Author is of the opinion that electronic service will not be applicable to the car rental environment.* | The choice of service is purely a voluntary conduct, where such a choice is exercisable in terms of Regulation 32A.  The Rental Industry is at liberty to choose other methods outside of the electronic serving method. |
| 3. | Definitions “habitual infringers” | *New Clause Page 2*  *The Author concerned that the failure of timeous redirection of notices will result in the proxies incurring the label of habitual infringers and thus disqualified in terms of section 25.* | The comment concentrates on the operational hurdles of the system instead of addressing itself to the actual Amendment. |
| 4. | Definitions “rehabilitation programmes” | *New Clause Page 5*  *The Author concerned about how the rehabilitation programmes will be operationalised and funded.* | Seeing that the comment does not deal with the substance of the actual Amendment, RTIA will commit to convene a workshop with all industry players to outline how this programme will be implemented.  It is further important for the author to understand that the rehabilitation programme is based on a voluntary election by the infringer, and as such infringers can join such programmes at any point during the incurrence of demerit points.  This service is therefore not necessarily targeted only at habitual infringers. |
| 5. | Section 12 of the Principal Act | *New Clause Page 6*  *Author concerned about the lack of consultation in this regard.* | The repeal is based on the corresponding repeal of Section 21.  There is no actual need of consultation with the stakeholders, because the two sections were found to ultra vires the administrative processes contemplated in the AARTO Act. |
| 6. | Section 17 of the Principal Act | *New Clause Page 6 & 7*  *Author concerned that the rental industry would not be in a position to verify the accuracy of the address information.* | The industry would have to design a mechanism of verifying such information through a fast moving technology which is linked to eNaTIS, in the same way that they are able to verify the validity of a drivers licence.  It is also important to note that the industry largely operates on pre booking system and which would then provide them with sufficient time to check the accuracy of the information before the renter arrives at the desk to pick up the car. |
| 7. | Section 18 of the Principal Act | *New Clause Page7*  *The Author concerned that the vicarious liability being imposed on the Operators and proxies borders on unfairness.* | The comment should take note that Section 25 will arise as a result of vehicle / operator infringement i.e. car fitness as well as the driver infringement.  The latter instances would arise as a result of the failure to nominate in terms of Section 17. |
| **Comments:** SABOA *(South African Bus Operators Association)* | | | |
| 1. | Section 25 of the Principal Act | *New Clause Page 11*  *Author concerned that the demerit points are going to be levied on a majority of infringements listed in schedule 3 and some which have no impact on road safety.* | The comment is quite sound and rational.  The Agency needs to initially prioritise the highly impactful infringements in this regard.  *The addition of more demeritable infringements will be based on the causes of road safety/ fatalities data from the RTMC year on year – my emphasis*. |
| 2. | Section 30 of the Principal Act | *Clause Page 23*   * *Author concerned that electronic and postal services are not reliable and therefore that the Agency must limit service to Registered mail.* * *Proposes that Registered mail should be defined in the Amendment Bill.* * *That the presumption of service to be increased from 10 days to 21 days in order to accommodate infringers who reside in rural areas.* | The comment would need to take note that the choice of service is based on voluntary choice made by the owner, based on the convenience that such a choice of service presents to them.  The Agency cannot define the Registered mail, as it is not the owner of such service. SAPO would have to define such a service in its Act.  The comment makes sense, but it has to take into consideration that the proposed exception might affect the timelines which are prescribed by the AARTO Act and its Regulations. |
| **Comments:** Road Freight Association | | | |
| 1. | Definitions “date of service” | *Clause 1 Page 2*  *The Author concerned that social / electronic serving is always fraught with issues around receipt of such by infringer and would give rise to unnecessary problems at implementation.* | The comment should take note that SAPO has devised an electronic serving method that is similar in character and functionality to the actual registered mail.  The method to be offered therein would be insulated from manipulation by infringers and also easily verifiable in terms of the actual service. |
| 2. | Definitions “Infringements” | *Clause 1 Page 3*  *Author concerned that AARTO does not have statutes of its own and thus cannot decriminalise such offences, with the view of creating a collection scheme.* | The comment does not have an understanding that AARTO is an administrative Act and is thus never intended to have statutes of its own.  It simply is and was rightfully intended to administer the contraventions / transgressions of NRTA and CPA. |
| 3. | Section 12 of the Principal Act | *New Clause Page 6*  *The Author concerned about the reason for the repeal of this section, as it is of the view that it was pivotal to the AARTO Act* | The comment needs to take note that the Section was repealed together with Section 21 because it was found to be ultra vires the administrative programme contemplated by the AARTO Act. |
| 4. | Section 4 of the Principal Act | *Clause 2 Page 5*   * *The Author concerned about infringers be compelled to attend the rehabilitation programmes and what would happen to infringer who refuse to attend such programmes.* * *Would like to know about the exit outcomes from the programme.* * *Wants to know about who will fund the programmes.* | The participation in the rehabilitation programmes is strictly on a voluntary basis and no one will therefore be compelled to attend such.  The exit outcomes from such programmes, is that the infringers will be able to redeem more demerit points as a result of having attended the programme.  This being voluntary programmes means that the infringer will be expected to fund the majority of the cost of this intervention. |
| 5. | Section 18 of the Principal Act | *New Clause Page 7 & 8*  *Author concerned about the latitude given to the Agency to reissue infringement notices which were initially issued unprocedurally. Cites similar cases which were awarded against the Minister of Safety and Security.* | The right to right to reissue the infringement notices is based on the latitude provided in terms of Section of 31 (2) of the AARTO Act. |
| 6. | Section 25 of the Principal Act | *New Clause Page 11*  *Author concerned about the interpretation of the applicability of the section.*  *Is of the view that there has been a material departure by the Agency in terms of the cancellation period pursuant to the infringer having exceeded 12 points i.e. Is of the understanding that the cancellation is supposed to be for a period of three months for every point exceeded above 12 points* | The interpretation of Section is that every point exceeded (above the maximum points permitted) will equal one month of disqualification, multiplied by three or any such number that the Minister of Transport may prescribe. |