

Valerie Carelse - AARTO Bill Publication - Inputs from EMPD

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Subject: AARTO Bill Publication - Inputs from EMPD
Cc: "Revo Spies (Kempton Park)" <Revo.Spies@ekurhuleni.gov.za>, "BatsebaKoop..."
Attachments: AARTO A List 10-02-2017.pdf; Act 46 of 1998.pdf; FC0437_PSA_English.pdf

Good day,

In terms of the AARTO amendment bill wherein comments must be submitted prior to 10 March 2017.

"Comment is invited on the proposed amendments that are available on Parliament's website www.parliament.gov.za. Enquiries, as well as written submissions, can be directed to Valerie Carelse and be addressed to the Portfolio Committee on Transport, 3rd floor, W/S 3/79, 90 Plein Street, Cape Town, 8001, or e-mailed to vcarelse@parliament.gov.za. In addition to the written comments, please indicate your interest in making a verbal presentation to the Committee. The closing date for submissions is 10 March 2017."

INTRODUCTION

The AARTO Act has been in operation and applied in the Gauteng regions and the implementation has been notorious for challenges and has led to various legal challenges and court decisions. I was tasked to review the comments and the rest of this report will focus on my observations of the proposed amendments as proposed by the Portfolio Committee.

Comments

The following observations are noted;

Documents perused:

AARTO Act 46 of 1998

Amendments as proposed by the Portfolio Committee on the AARTO Amendment Bill

AARTO report on progress

Methodology:

A Literature review of the above documents was conducted.

Page by page analysis:

Clause 1 no. 1:

The proposed definition must include a time stamp for the clear photocopy. It is proposed 3 months.

Clause 1 no. 7:

The deletion of the word in this paragraph and the subsequent deletion of section 12 must have the effect that all the words 'sheriff' be scrapped from the Act;

Clause 1 no. 8:

The words authority, appeals and review are not defined; it is thus proposed that there be definitions created for the word authority, as well as, appeals and reviews.

Clause 2 No. 1:

The proposal of inclusion of rehabilitation programmes requires an additional regulation that will speak to this. This should be included; otherwise it will render the section devoid of action.

The repeal of section 12 is going to create problems. Firstly, all aspects surrounding section 12 must then be scrapped from the Act, and secondly all actions relating to warrants and the execution of it must be defined and explained. This also mean that the 'authorized officer' will have to get another power in terms of the Criminal Procedure Act, as a process server for civil litigation processes and Regulation 8 must also be amended.

The proposed removal/scrapping of the option for the infringer to 'elect to be tried' are going to be problematic. This derogates the rights of the individual in terms of the Constitution, insofar it relates to access to courts, the right of fair / just administrative action. In terms of the Constitution every individual is innocent until proven guilty in a court of law. Therefore, Government cannot charge a person for a crime / infringement committed and then deny that individual access to the court.

The proposed 17(5) creates faultless liability. This is contrary to the adversarial system and the right to be regarded as innocent until proven guilty, which is enshrined in the Constitution.

Under the new Section 18 proposal:

Please note that authority is still not defined;

1(b) 'in the event that a representation is successful...' This entire proposed amendment is problematic. The fact that the infringer will be 're-issued' because of a mistake that the infringer highlighted with the process of the 'authority' does not make any sense. It would seem that the 'infringer' will then be accused twice. This is against the natural justice principle of legality, where it stipulates that when there is any doubt the accused should get the benefit. Any mistake made in the prosecution of an offender should be to the benefit of the offender and not the state. The state must comply with all legislation from the start.

Under (7) the 'right to review or appeal': It is not clearly mentioned in this proposal whether there is a process of 'automatic review' or whether it will be an application process. The appeal procedure is explained but NOT the review. It must further be borne in mind that when the RTIA has both adjudication and sentencing power, misuse and abuse can easily be perceived.

If the option of electing to go to court is completely off the table, it would seem that the Agency invokes all the roles and thus could be seen as unjust administrative action.

It must further be noted that when an offender is charge with an alleged offence, and still innocent until proven guilty, and elect to perform a representation the RTIA cannot impose a prescribed fee for dismissing the application. This is extremely unjust in terms of the PAJA Act in that the decision-making power to dismiss the representation application lies with the RTIA and the RTIA then levy a fee to dismiss the application.

Section 22 of the Act, must be deleted. This is a result of the first proposed amendment that sought to delete the option of taking the case to Court. The entire section's deletion/scrapping is as a result of the fact that the option that the infringer had with reference to 'electing to be tried' has been scrapped.

The proposed amendment of section 20 has the result/consequence that the objectives of the act must also be changed. It must be noted that AARTO did not reflect an enforcement of 'all road traffic and transport' legislation. It has stipulations that only the NRTA would be enforced, but the wording in the

proposed amendment has the effect of targeting all 'road traffic and transport' statutes including NLTA, Cross Border, NLTTA etc.

Section 19A of the principal Act, must now also be changed because the proposed amendments have proposed a change to section 17.

As stated supra, if the proposed amendment of section 18 is approved, then section 22 must also be scrapped.

Section 21 of the Principal Act must also change if the proposed amendments take effect w.r.t. Sheriffs and election to courts.

There must be a definition for the term: 'National Road Traffic Offences Register' as it is used in the proposed amendments, but it is not mentioned in the principal act.

There should then be a complete amendment to the entire Act to include this term.

Under the proposed amendment of section 25 2(b) regulations needs to be drafted to reflect this change in 'numbers'; under 3(a) the process of issuing a receipt for the confiscation of documents should be formatted, as is the case with the NRTA; Under subsection 4 the phrase starting with 'further one year for every subsequent driving or operation' is void of understanding.

What is actually being addressed by this, is it offences? Or Infringements? Or deliberate actions? This phrase needs clarification.

In terms of the proposals by the Committee, there was no mention of amendments to the regulations. All of these proposals will have impact on the regulations and in particular Reg 15 and 19, to mention but two.

Then there is a new section being proposed: 'Tribunals' Section 29A:

Overall comment on this section is that it is problematic. It seeks to address the election to court in the principal act. A further complication is the fact that there is NO indication on what will constitute a review and whether this review will be done mero moto or based on an application process.

The Tribunal section lacks definitions (like registrant, certified copy etc.). It also falls short in addressing the ways in which the tribunal can be accessed, in terms of Section 29B it states that 'any matter brought to it', this statement is too vague. Does this mean that an infringer can walk in and bring a piece of paper, what are the regulations relating to this?

Under 29E 'misconduct' is used. This term is too wide and it is not stated that a regulation will determine the type of misconduct. It must further be read with the Labour Act in that a member of the Tribunal will be considered an employee and proper mechanism to comply with the Labour act must be instituted prior to being removed for 'misconduct'.

Under 29G: It is not stated whether the sittings of the Tribunal will follow an inquisitorial or adversarial litigation process. There is also no indication which official will be required to write the 'ratio decidendi'.

Under 4(a) there is made mention of a summons, who will execute / serve it and in terms of which legislation? In terms of which court rules will this apply? It is stated that it will be equivalent to the Magistrate court, because an appeal can only be lodged to the high court, does this then also mean that the presiding chair must have the same status or qualifications as a magistrate? This aspect is not mentioned in the qualifications and this also means that the nature of evidence presentation should be

specifically mentioned. A further question arises, whether the tribunal members are Commissioners of Oaths, because who will be required to administer the oath as required in 29G 4(b)?

It also has the, surely unintended, consequences that a normal traffic infringement offender, who appeal or review is forced to go to a High court, based on the RTIA's / Tribunal perceived biased administrative actions, with the corresponding cost involved. This will again be unjust against the majority of individuals and directly contradictory to the Constitutional rights of an accused.

Under 29H: The 'casting vote' is contrary to the legal process in South Africa. This means that the chairperson may be acting in a manner that does not afford the accused the benefit of the doubt that is raised. This will be contrary to the principle of legality and it must also be stated that this court/tribunal will follow a civil procedure. As stated in 29I the issue regarding reviews are not addressed. No mention is made in this regard about the legal representation by the infringer at the tribunal; and this can be seen as an oversight, because legal representation of an accused is a fundamental right in South Africa.

It is our opinion that the amendments are vital to the streamlining of the AARTO act, but if the alignment of all the regulations and processes are not followed, it would create even bigger challenges.

Warm regards,

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