

The Parliamentary Portfolio Committee on Transport

Attention:

Valerie Carelse (vcarelse@parliment.gov.za)

3rd floor W/S 3/79,

90 Plein Street,

Cape Town.

8001

10 March 2017

To whom it may concern,

RE: Submission on AARTO Amendment Bill

The Southern Africa Vehicle Rental and Leasing Association (SAVRALA) appreciates the opportunity to comment on the proposed Amendments.

It is, however, our view that a greater effort could have been made to notify the various key stakeholders about the proposed amendments which are of a very complex nature and not easily accessible the general road user. As a consequence, we would view this particular process as one that does not meet the required standard for the term "consultation".

Over the years, SAVRALA has engaged both the various authorities and agencies with regard to the AARTO Act and has submitted, where practical and when made aware, comments to represent our member's particular AARTO administrative challenges. Regretfully this has not led to any successful outcome and, as a result, has led to a number of members instituting legal actions against the Department of Transport and its road traffic agencies.

Indeed further legal action is being contemplated, as our members continue to be unable to get hundreds of thousands of traffic fines successfully redirected. The consequence of such an administrative challenge can result in Enforcement Orders being issued incorrectly against our members, in particular our car rental members, rendering them, for example, unable to operate their fleet when seeking to either register a vehicle or purchase a vehicle license copy.

As a consequence, over the years significant financial loss has been suffered by our members. The current proposed Amendments only creates further administrative challenges aside from being founded on questionable legal prescripts.

Our industry is acutely aware of the need to collectively work together to address the current and continuing road carnage on our roads, which robs the country of future leaders and causes enormous hardship on those left behind, but we continue to hold the strong view that the various AARTO Amendments over the years have been designed to do little more than expedite the revenue generation capacity of the respective agencies and not encourage a change in behavior of our road users.

Our association respectfully wishes to make the following comments;

Page 2: Clause I (1);

"(f) a clear certified copy of the applicable certificate or document referred to in paragraphs (a) to (e);".

- This is neither a practical, feasible nor necessary requirement for car rental fleet owners. Our car rental members have always maintained that should a case be presented before the courts, all efforts will be made to ensure that the necessary infringer (ie: the renter) details will be presented to the Prosecutor for their docket. The industry processed almost 3 million rental transactions last year. For members to obtain, retain and commission such volumes, in the event that some of these renters incur traffic violations which may lead to court proceedings, only creates burdensome administration and creates the potential risk of data theft or impersonation without assisting the actual outcome of the process.

Page 2: Clause I (3);

"electronic service" means service by means of an electronic communication as defined in the Electronic Communications Act, 2005 (Act No. 36 of 2005);".

- While we welcome opportunities to use technology, in the context of AARTO and service, we are very concerned about how this will be applied with due regard to the nature of the infringement in a car rental environment. As mentioned above, our members have serious and material issues with regard to the redirection of traffic fines. Given the AARTO administrative challenges already experienced, aside from the precarious and general nature of how electronic service could be applied in our industry, we believe that justice is currently best served by either registered mail or personal service.

Page 3: Clause 4 (e);

"habitual infringer" means an infringer, operator or a juristic person who, in terms of section 25, incurs demerit points resulting in a disqualification more than two times;

- As illustrated previously, in the context of infringement notices not being redirected timeously, the application of the term 'habitual infringer' will result in

car rental proxies being identified as such, even though, the offender was the renter resulting in the proxy being disqualified as a legal driver.

- In addition, we suspect that this provision will not find support as it prejudices the proxy and others, in terms of section 34 and 35 of the Constitution.

Page 5: Clause 2 (2 f);

“(h) administering prescribed rehabilitation programmes for habitual infringers.”

- As identified earlier, all car rental proxies will be identified as habitual infringers. While the ambition is noted, this type of intervention needs much greater engagement and clarity about, for example, how the whole process will be managed, funded, oversight, design and quality of rehabilitation programmes etc.

Page 6: New Clause 1;

“Repeal of section 12 of Act 46 of 1998

- This is a surprising move and the absence of any motivation, rationale, or analysis raises various concerns. Similar to other sections, this proposal needs a broader level of interrogation with a broad base of transport stakeholders.

Page 7: New Clause 1 (c);

“(5) The owner or operator of a motor vehicle who permits any person to drive such vehicle or otherwise to exercise any control over such vehicle, without having ascertained the full names, [acceptable identification and] residential [and], postal and where applicable business and e-mail address of an infringer, such person is [guilty of an offence and] liable [upon conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment] for the prescribed penalty and fees.” ”

- The above places an impractical administrative burden on car rental operators who often do not have the ability to capture all customer details, particularly e-mail addresses, during the rental check out process as customers increasingly require speed of service methods.
- Our industry has often, but unsuccessfully, tried to engage with the authorities on the nature of rental data to be collected to serve the administration of traffic infringements. Even if it was collected there is no ability to validate that the personal data submitted by a renter is correct. We need to work constructively to resolve this matter which is even more problematic when we consider international visitors who rent our vehicles and commit an infringement.

Page 12: New Clause 9 (a, b, c d);

- Similar to earlier comments, given the nature of the car rental transaction, these provisions prejudice the proxy who will be penalized for offences not incurred but by virtue of the position is penalized.

Conclusion

These Amendments create many more challenges for fleet operators without any indication from the legislator how the changes will lead to better road behaviour and improved road safety. In fact, it is surprising that road safety is not mentioned once in the proposed Amendments.

We view the motivation for the establishment of an Appeals Tribunal as unchallenged and needs much more stakeholder engagement. It would appear that the consequence of such a development would be to remove an infringer's opportunity to seek legal recourse which we suspect will be challenged legally. Given that the current AARTO process is already administratively challenged, it is disappointing that a further layer would be viewed as being progressive.

The above comments by no means preclude many other concerns with the proposed Amendments, however, we believe they give a clear signal that a much broader, deeper and sincere engagement is required between the Department of Transport, its agencies and its stakeholders to ensure that the legislative focus is firmly placed on road safety and not on more efficient methods to generate volumes of infringement notices to raise revenues.

We thank you for the opportunity to comment and look forward to engaging with you in order to move South Africa's road safety priority forward.

Regards

Marc Corcoran

Vice- President