

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

COMMENTS FROM BUSINESS UNITY SOUTH AFRICA

| No. | COMMENTS | RELEVANT PROVISION | RESPONSE |
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| 1. | <p>Date of Service & Electronic Service</p> <p><i>The manner of service of notices under the AARTO must be made simple, effective and reliable.</i></p> <p><i>The personal or registered mail should remain the only two methods of service.</i></p> | Clause 1 | <p>The electronic service will be offered as another method of service which is equally simple, effective and reliable.</p> <p>The efficiencies of electronic service have already been tested under "Electronic Communications and Transactions Act, 2005"</p> |
| 2. | <p>Infringement</p> <p><i>AARTO does not have any statute in its own right.</i></p> <p><i>BUSA does not agree with the attempt to decriminalise offences for the sake of creating a better penalty collection scheme</i></p> | Unrelated to the Amendment Bill | <p>AARTO is an administrative statute for CPA and NRTA. AARTO is geared to deal with transgression expeditiously as well as reducing the burden on the courts. The intention of the Act is about changing driver behaviour and to promote road safety.</p> <p>CPA deals with serious transgressions classified as offences whereas AARTO deals with all other transgressions known as infringements.</p> |

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| | Sheriff | New Clause page 6 | This is linked to the repeal of section 21 of the Act which deals with issuance of warrants. | |
| 3. | <i>It is unclear why this part of the Act has been deleted. BUUSA looks forward to understanding the reason for this.</i> | 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 and it is not the intention of the AARTO to adopt the court processes into administrative process. | The Amendment bill does not refer to habitual offenders but the habitual infringers. Rehabilitation is geared at who want to accelerate the redemption of their points on voluntarily basis. | |
| 4. | Administering prescribed rehabilitation programmes for habitual offenders <i>The programmes need to be clearly defined. Moreover, habitual offenders cannot exist in the legislation, they would need to be habitual infringers.</i> <i>The consequences of refusal to attend the programmes must be clearly defined</i> | Clause 1 (4) | Repeal of Section 12 of the Act New Clause page 6 | Repeal as consequential to the repeal of sec. 21. |
| 5. | A very detailed discussion need to be held with all stakeholders and the public | | | |

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| | <i>as to why this step is being contemplated</i> | |
| 6. | Business and email address of infringer <i>The use of any electronic means is subject to the comments made earlier [in item 1].</i> | Clause 1 |
| 7. | Representation is successful as a result of prescribed procedures not being complied with <i>BUSA does not agree with the intent to re-issue an infringement notice within 40 days should a representation due to processes not being followed</i> | New Clause page 8 |
| 8. | Amendment of Section 20 <i>The RTIA must ensure that demerit points collated in any database are up to date, correct and accurate</i> | Clause 6 |
| 9. | Section 25 of the Principal Act <i>This seems to contradict the initial provision that either driver or vehicle licences would be cancelled for three months for every point above 12</i> | New Clause page 11 – 12 |
| | Conclusion | <i>The offences under NRTA were formally brought into AARTO through the</i> |

COMMENTS FROM DRIVING.CO.ZA

| COMMENTS FROM DRIVING.CO.ZA | | |
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| | Introduction to the Amendment Bill | <i>Lack of explanatory memorandum.</i> |
| 1. | Section 30 of the Principal Act | <i>New clause in Page 2</i> |
| 2. | Definitions “Infringements” | <i>New Clause Page 3</i> |
| 3. | Section 12 – removal of Sheriffs | <i>New Clause Page 6</i> |
| 4. | Chapter IV A – Appeals Tribunal | <i>New Clause Page 13</i> - <i>The Tribunal will not have</i> |

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| | <p><i>sufficient capacity of referrals, which are expected to run into millions per annum.</i></p> <ul style="list-style-type: none"> - <i>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)</i> |
| | <p><i>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.</i></p> <ul style="list-style-type: none"> - <i>The right of an infringer to be tried in court is thus severely hampered by the creation of the Tribunal.</i> |
| 5 | <p><i>The Tribunal is not conceptually designed to be physically located in the various provinces however the sitting of the Tribunal would be determined by the Chairperson from time to time.</i></p> <ul style="list-style-type: none"> - <i>It is also important to note that the Tribunal will function as an Administrative "High Court" – with an absolute referral function.</i> <p><i>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.</i></p> <ul style="list-style-type: none"> - <i>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</i> |

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| | <p>results of the Tribunal process.</p> <p>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.</p> <ul style="list-style-type: none"> - The qualification requirements of the members of the Tribunal will not be lower than those of the Adjudications officers. | <p>Wasteful expenditure is prohibited in terms of PFMA and the RTIA does not have any endeavours to breach the provisions of PFMA by introducing this amendment. Be that as it may, the point raised is well received and the Committee will be requested to exercise its discretion and make a decision in this regard.</p> | |
| 5. | <p>Section 11 of the Act – Agency Remuneration.</p> <p><i>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</i></p> | <p><i>New Clause Page 6</i></p> | <p>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.</p> |
| 6. | <p>Section 18 (1) of the Principal Act</p> <p><i>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.</i></p> | <p><i>New Clause Page 8</i></p> | |

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| 7 Section 18 (7) (a) | New Clause Page 8 | The interpretation of the wording will be examined and aligned if required. |
| <p><i>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.</i></p> | | |
| <p>COMMENTS FROM JUSTICE PROJECT SOUTH AFRICA</p> <p>Section 30 of the Principal Act</p> <p>1. <i>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</i></p> <p>Section 25 of the Principal Act</p> <p><i>The inconsistent application of the traffic law enforcement in the country</i></p> | <p>New Clause Page 2</p> <p>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 of NRTA. This type of service method will be simple, effective, reliable and cheaper than the conventional service method currently applied.</p> | <p>The demerit points system will be centrally managed by RTIA, so as to avoid situations of inconsistent application of the proposed</p> |

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| | <p><i>will result in infringers in some parts of the country being classified as habitual infringers than in other areas.</i></p> | | classification methods. |
| 3. | <p>Section 29 (a) of the Principal Act</p> <p><i>The distinction is made between the Infringement and offences and both distinctions be referenced to column 4 of schedule 3 of the Act.</i></p> | <p>New Clause Page 3</p> | <p>The infringements are currently categorised in terms of minor infringement, major infringements and offences which are dealt with in terms of court processes.</p> <p>The proposed definition seeks to remove this distinction and allow the offence to be exclusively dealt with under CPA.</p> |
| 4. | <p>Paragraph (xiv) of the definitions under the Principal Act.</p> <p><i>The definition to be limited to the following:</i> <i>"Issuing Authority means" any authority assigned an issuing authority code by the Minister in Schedule 4 of this Act.</i></p> | <p>New Clause Page 3</p> | <p>The proposal is accepted should the Committee agree with and subject to Legal Advisers views.</p> <p>The Act may not be required to make provision for graduate driving licence as that is not currently implemented.</p> |
| | | | <p><i>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.</i></p> <p><i>The definition to thus read "licence to</i></p> |

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| | <i>"drive"</i> means any licence authorising the driving of a motor vehicle as is contemplated in the National Road Traffic Act. | |
| 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 servers is catered for under the CPA and is expensive to fund. |
| 6. | Insertion of Road Traffic and Transport laws and municipal by – laws to Section 2(a). | Unrelated to the Amendment Bill |
| | <p>“Process server” means a person who is appointed in terms of Section 15(2) of the Magistrates Court Act, 1944.</p> <p>Insertion of Road Traffic and Transport laws and municipal by – laws to Section 2(a).</p> <p>Insertion of “and fees where applicable” to Section 2(b).</p> <p>Substitution of [adjudication] with “finalisation” of infringements in Section 2(c).</p> <p><i>Amendment of Section 2(d) seeing that the State Prosecutors already alleviate the burden on the courts of</i></p> | <p>We will leave these proposals to the discretion of the Committee.</p> <p>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.</p> <p>The proposal is quite sound and rational, because the sub section may be viewed to be misaligned to the</p> |

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| | model of AARTO. |
| 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 ” |

[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

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| 7. | Section 4 of the Principal Act <i>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).</i> | New Clause Page 4 |
| 8. | Establishment of Rehabilitation programmes. <i>The rehabilitation programmes to be included in the Regulations and also to be properly defined in terms of substance, operating and funding model.</i> | New Clause Page 5 |
| 9. | Section 11 of the Principal Act <i>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</i> | New Clause Page 6 |
| | | The proposal cannot be accommodated as it would be misaligned with the AARTO model and further seeks to take traffic law enforcement back to CPA. |
| | | The Agency will include these in the Regulations as soon as the Amendment Bill has been finalised. |
| | | Wasteful expenditure is prohibited in terms of PFMA and the RTIA does not have any endeavours to breach the provisions of PFMA by introducing this amendment. |

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| 10. | Section 12 of the Principal Act | New Clause Page 6 | The proposal would be misaligned as the Author already support the repeal of sec. 21 |
| | Section 17 of the Principal Act | New Clause Page 8 | 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 (iv) |
| 12. | Section 18 of the Principal Act | New Clause Page 8 | The idea of re-issuing of AARTO notice is informed by section 31(2) of the Principal Act which states that the laws of prescription do not apply to infringement penalties and that same maybe collected any time. The comment is based on the dispute with the establishment of the Appeals |

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| | <p><i>"the accused must be given a benefit of the doubt.</i></p> <p><i>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"</i></p> | <p>Tribunal and thus has an effect of taking the whole AARTO programme back to CPA.</p> <p>The comment is merely speculative in nature. The court will always decide in review applications whether such bias is attendant to adjudication matters.</p> |
| | <p><i>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</i></p> | <p><i>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.</i></p> <p><i>Finally that a separate adjudicating body, independent from RTIA be established</i></p> |

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| 14. | Section 19B of the Act 46 of 1998 as amended by Section 11 of Act 72 of 2002. | New Clause Page 9 |
| | <p>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"</p> <p>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.</p> | <p>The proposal seeks to take AARTO back to the CPA era and is thus not progressive with the spirit of the Amendment.</p> <p>The electronic service is geared at achieving the functional outcomes of the registered mail.</p> |
| 15. | Section 20 of the Principal Act | New Clause Page 10 |
| | <p>The Author asserts that the whole of</p> | <p>The comment is based on the lack of understanding of the Audi Altarem intentions of Section 17 of the</p> |

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| | | Principal Act. |
| 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 (based 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. | |
| 16 | Section 22 of the Principal Act Section 22 to be invoked even in instances where the infinger fails to comply with section 18 and thus nullify all the processes of Section 20. | Comment however unrelated to the Amendment Bill The comment seeks to take the AARTO process back to CPA. |
| 17 | Section 24 of the Principal Act 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. | Comment unrelated to the Amendment Bill The section was enacted in order to avoid instances of double jeopardy. The applicability of the comment will be examined closely. |

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| | <p>Suggests that the offender be charged and demerit points be imposed separately and thus incur the cumulative effect for all the offences.</p> | |
| 18 | <p>Section 25 of the Principal Act</p> <p><i>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.</i></p> <p><i>Warns that such a system would be unfair and would cause mass resignations of Operators. Further suggests that a distinction should be made between operators against proxies in small companies; who would also be involved in the driving of such a vehicle.</i></p> <p><i>Suggests the following wording of Section 25 (2)(b) to be amended as follows:</i></p> <p><i>"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</i></p> | <p>New clause 12</p> <p>The proposal 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.</p> <p>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.</p> <p>The comment fails to understand that Section 25(3) (a) & (b) seek to regulate two distinct and mutually exclusive conducts.</p> <p>The suggestion in (i), (ii) and (iii) sound harsh and may lead to operators receiving more stringent punishments than ordinary drivers.</p> |

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| <p>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.</p> <ul style="list-style-type: none"> • 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. | <p>Comment unrelated to the Amendment Bill</p> <p>The Author suggest that with the advent of the electronic service, Section 26(1) should be amended to read:</p> <p>“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)</p> <p>The proposal is appreciated and the Committee will be requested to consider it when making further amendments.</p> |

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| 21 | <p>Section 27 of the Principal Act <i>The Author proposes the following substitutions:</i></p> <p>SS (1) <i>[hand in]</i> to be substituted with “surrender” <i>[issuing]</i> to be substituted with “licensing” <i>[driving licence card]</i> to be substituted with “licence to drive”.</p> <p>SS(2) <i>[driving licence card, professional driving permit]</i> to be substituted with “licence to drive”</p> | Comment however unrelated to the Amendment Bill | The proposal will create expensive structural changes i.e. MIS on eNaTIS. |
| 22. | <p>Section 30 as substituted by section 3 of Act 22 of 1999</p> <p><i>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.</i></p> | New Clause Page 23 | The extension of 10 day presumption period is likely to delay finalisation of AARTO process. |
| 23. | <p>Section 32 of the Principal Act</p> <p><i>The Author raises concerns on s 3 of the AARTO Amendment Bill, 2015 and suggests the following:</i></p> <p>“The penalty referred to in subsection (1), inclusive of any fees which may</p> | New Clause Page 24 | <p>The comment is based on sound principles.</p> <p>It is however suggested that, instead of paying the money back to the infringer, the Authority / Agency would rather encourage the restart of the</p> |

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| <p>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.</p> | <p>process in the manner contemplated in the proposed in the new ss of Section 18.</p> <p>Such a restart will also assist us in avoiding the consequences similar to those contained in the Public Protector report.</p> |
| <p>24. Section 34 of the Principal Act Author opposed to Regulations which will entrench the process of the reissuance of fines.</p> | <p>New Clause Page 24 & 25</p> <p>The re-issuing of infringement notices would assist in holding infringers responsible for their actions.</p> |
| COMMENTS FROM OUTA | |
| <p>1. Definitions “Infringements”</p> <p><i>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</i></p> <p><i>However raises concerns that the corresponding penalties are imposed without hearing or trial</i></p> | <p>New Clause Page 3</p> <p>Comment misunderstands the Audi Altarem Partem rule entrenched in the elective options under Section 17 of the Act.</p> |
| <p>2. Section 2(h) of the Principal Act</p> <p><i>The Author concerned about the conceptual basis of the rehabilitation</i></p> | <p>New Clause Page 5</p> <p>The author should be engaged in a bigger workshop on rehabilitation programme, so that they have a better</p> |

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| | <i>programmes and how they will be implemented.</i> | understanding of such. |
| 3. | Chapter IV A – Appeals Tribunal <i>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.</i> | 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. |
| 4. | New Clause Page 13 <i>Author further concerned that the penalties under the Act may be implemented before the matters are heard by the Appeals Tribunal.</i> | The comment not aware of how the AARTO system operates. The Author seems not to understand that Appeals would be lodged after an elective option has been exercised. The system will not operate differently where an Appeal is noted by the infringer. |

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| <i>related Amendments to the Audi Alteram Partem rule, based on the fact that the infringer is presumed guilty until they prove their innocence.</i> | <i>infringer is given a benefit of the doubt and thus they are allowed to exercise all the options available before the matter is finalised.</i> |
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COMMENT FROM Madala Nkwinka:Traffic Officer (JMPD)

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| 1. | General operational inefficiencies of AARTO raised | Unrelated to the Amendment Bill | The Author confuses the inefficiencies of the court system with the AARTO legislation. |
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COMMENT FROM AUTOMOBILE ASSOCIATION OF SOUTH AFRICA

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| 1. | <i>Author concerned about the lack of clarity of the Bill.</i> <i>Lack of the problem statement, which would highlight the delinquencies that the legislature seeks to address with this Amendment Bill.</i> | Comment unrelated to the clauses of the Amendment Bill. | The comment would be satisfied with an explanatory memorandum. |
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COMMENT FROM MR NIEL LOUWRENS

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| 1. | Section 30 of the Principal Act <i>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</i> | Clause 1 <i>The author concerned that "received"</i> | Infringers will have a choice as to the method of service to be used for service of their notices. |
| 2. | Definitions "date of service" <i>The author concerned that "received"</i> | Clause 1- definitions | Proposal is acceptable subject to vetting by Legal Advisors. |

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| | | <p><i>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.</i></p> | 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. |
| 1. | <p>Definitions "date of service"</p> <p><i>The Author concerned about how the date of service will be determined.</i></p> | New Clause Page 2 | <p>The date of service in respect of the service by registered mail will be determined by the date on which the infringer signed for the notice at the time of its collection.</p> |
| 2. | <p>Definitions "electronic service"</p> <p><i>The Author concerned that this type of service has been introduced in the Bill but there is no corresponding provision</i></p> | New Clause Page 2 | <p>As for electronic service, the date of service will be the date on which the infringer opened and read the message enclosing the infringement notice.</p> <p>The manner in which this will be implemented will be as designed by the ECTA provisions.</p> |

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| | <i>of how it will be implemented further on this Bill.</i> | |
| 3. | Definitions “habitual infringers” <i>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.</i> | New Clause Page 3 |
| 4. | Section 4 (2)(h) <i>Author concerned that if the proxies are labelled habitual infringers – they will then be permanently on the rehabilitation programmes.</i> | New Clause Page 5 |
| 5. | Section 17 of the Principal Act <i>Author concerned that the repeal of the election to be tried in court will constitute the violation of section 35 of the Constitution.</i> <i>That the infringers should be advised of their rights to appeal decisions.</i> | New Clause Page 8 |
| 6. | Section 18 of the Principal Act <i>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</i> | New Clause Page 8 |
| | | <i>The proposal is based on Section 31(2) – non-prescription section.</i> |

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| | | timelines. |
| 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. |
| 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. |
| 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. |

COMMENT FROM BRADLEY SMITH

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| 1. | <i>The substance of the amendments as well as the proposed additional penalties, necessitate the engagement with a renewed social impact assessment of the Bill.</i> | Comment unrelated to the Amendment Bill. | The Committee will guide as to whether or not the re-assessment will be necessary |
| 2. | Section 11 of the Principal Act <i>Author opposed to the deletion of the consultation with the Minister of Finance.</i> | <i>New Clause Page 6</i> | Wasteful expenditure is prohibited in terms of PFMA and the RTIA does not have any endeavours to breach the provisions of PFMA by introducing this amendment. Be that as it may, the point raised is well received and the Committee will be requested to exercise its discretion and make a decision in this regard. |
| 3. | Definitions “electronic service” <i>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.</i> <i>Also concerned that electronic service in general would give rise to a lot of disputes around the date of service</i> | <i>New Clause Page 2</i> | In the case of <i>CMC Woodworking Machinery (Pty) Ltd v Pieter Odendaal Kitchens [2012] ZAKZDHC</i> the court accepted service of summonses by Facebook. This evidences the effectiveness of various electronic methods of service which may also be utilised in the AARTO environment. |
| 4. | Definitions “habitual infringers” <i>Author concerned about how the concept of habitual infringers will be applied to juristic persons. Author further suggests that the Committee</i> | <i>New Clause Page 3</i> | 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 |

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| | <p>should cancel this application to juristic persons if the Agency is not able to establish such a conceptual framework or model.</p> | full names, residential, postal business and e-mail address of the driver. |
| 5. | <p>Section 18 of the Principal Act</p> <p>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 installments may not suffice to a person who is unemployed.</p> | The juristic person, which is an operator can escape this liability by nominating the actual driver. |
| 6. | <p>CHAPTER IV A</p> <p>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.</p> <p>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</p> | <p>The question of flexibilities to be exercised outside of the payment in installments will have to be engaged on an absolute means test.</p> <p>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.</p> <p>The above structures were established with the same relationship with the courts as the one contemplated in the AARTO Amendment Bill.</p> |

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| | <i>would result in procedural unfairness and also against the Constitution.</i> | |
| 7. | Section 17 of the Principal Act | <i>New Clause Page 6</i> |
| <i>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.</i> | | |
| COMMENTS FROM SAVRALA | | |
| 1. | Definitions “acceptable definition” <i>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.</i> | <i>New Clause Page 2</i> |
| 2. | Definitions “electronic service” <i>The Author is of the opinion that electronic service will not be applicable</i> | <i>New Clause Page 2</i> |

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| | <i>to the car rental environment.</i> | The Rental Industry is at liberty to choose other methods outside of the electronic serving method. |
| 3. | Definitions "habitual infringers" <i>The Author concerned that the failure of timely redirection of notices will result in the proxies incurring the label of habitual infringers and thus disqualifed in terms of section 25.</i> | New Clause Page 2 The comment concentrates on the operational hurdles of the system instead of addressing itself to the actual Amendment. |
| 4. | Definitions "rehabilitation programmes" <i>The Author concerned about how the rehabilitation programmes will be operationalised and funded.</i> | New Clause Page 5 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. |
| 5. | Section 12 of the Principal Act <i>Author concerned about the lack of consultation in this regard.</i> | New Clause Page 6 This service is therefore not necessarily targeted only at habitual infringers. The repeal is based on the consequential repeal of section 21. There is no actual need of consultation |

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| | | | 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 <i>Author concerned that the rental industry would not be in a position to verify the accuracy of the address information.</i> | New Clause Page 6 & 7 | The industry needs to supply the address that was supplied by the infringer and there is no need to verify the address. |
| 7. | Section 18 of the Principal Act <i>The Author concerned that the vicarious liability being imposed on the Operators and proxies borders on unfairness.</i> | New Clause Page 7 | <p>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.</p> <p>The latter instances would arise as a result of the failure to nominate in terms of Section 17.</p> |
| COMMENTS FROM SABOA SOUTH AFRICAN BUS OPERATORS ASSOCIATION | | | |
| 1. | Section 25 of the Principal Act <i>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.</i> | New Clause Page 11 | The issue was considered and infringements such as parking wil not have demerit points. |
| 2. | Section 30 of the Principal Act <ul style="list-style-type: none">• <i>Author concerned that electronic and postal services</i> | Clause Page 23 | 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 |

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| | | <p><i>are not reliable and therefore that the Agency must limit service to Registered mail.</i></p> <ul style="list-style-type: none"> • Proposes that Registered mail should be defined in the Amendment Bill. | <p>choice of service presents to them.</p> <p>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.</p> |
| 1. | Definitions "date of service" | <p>Clause 1 Page 2</p> <p><i>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.</i></p> | <p>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.</p> |
| 2. | Definitions "Infringements" | <p>Clause 1 Page 3</p> <p><i>Contraventions / transgressions in the NRTA are being administered through the AARTO Act.</i></p> | |

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| | <i>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.</i> | |
| 3. | Section 12 of the Principal Act | <p><i>New Clause Page 6</i></p> <p><i>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</i></p> |
| 4. | <p>Section 4 of the Principal Act</p> <ul style="list-style-type: none"> • <i>The Author concerned about infringers be compelled to attend the rehabilitation programmes and what would happen to infringer who refuse to attend such programmes.</i> • <i>Would like to know about the exit outcomes from the programme.</i> • <i>Wants to know about who will fund the programmes.</i> | <p><i>Clause 2 Page 5</i></p> <p>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.</p> <p>The participation in the rehabilitation programmes is strictly on a voluntary basis and no one will therefore be compelled to attend such.</p> <p>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.</p> <p>This being voluntary programmes means that the infringer will be expected to pay on the cost sharing basis.</p> |

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| 5. | Section 18 of the Principal Act <i>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.</i> | New Clause Page 7 & 8 | The right to reissue the infringement notices is based on the provisions of Section of 31(2) of the AARTO Act (Non-Prescription of penalties) |
| 6. | Section 25 of the Principal Act <i>Author concerned about the interpretation of the applicability of the section.</i> | New Clause Page 11 | <p><i>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</i></p> <p>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.</p> |

COMMENTS FROM CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

| No | Comment | Relevant Provision | Response |
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| 1. | Deletion of definition of Agency | | The proposal is welcomed and the word "Agency" will be deleted wherever it appears in |

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| | such the word Agency should be deleted wherever it appears | | the Bill |
| 2. | <p>Proposal</p> <p>The Bill must be amplified to delete "nor the Agency" from section 16 of the Principal Act</p> | Unrelated to the Bill | The proposal is accepted as the common law principle of vicarious liability will take effect despite the provision |
| 3. | <p>Inclusion of electronic service</p> <p><i>It is anticipated that there will be challenges to prove the receipt of documents that have been served electronically</i></p> | Clause 1 | <p>Supports the inclusion of electronic service as an alternative method of service is accepted.</p> <p>The date of service in relation to electronic service will be the date on which the infringer opens and read the message enclosing the infringement notice.</p> |