

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

COMMENTS FROM BUSINESS UNITY SOUTH AFRICA

No.	COMMENTS	RELEVANT PROVISION	RESPONSE
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>

	<i>as to why this step is being contemplated</i>		
6.	<p>Business and email address of infringer</p> <p><i>The use of any electronic means is subject to the comments made earlier [in item 1]</i></p>	Clause 1	The comment is already covered in Item 1.
7.	<p>Representation is successful as a result of prescribed procedures not being complied with</p> <p><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></p>	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.
8.	<p>Amendment of Section 20</p> <p><i>The RTIA must ensure that demerit points collated in any database are up to date, correct and accurate</i></p>	Clause 6	The allocation of demerit points will be automated through the system which will be aligned to the prescripts of the Act. There will be no human intervention in respect of allocation of demerit points.
9.	<p>Section 25 of the Principal Act</p> <p><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></p>	New Clause page 11 – 12	The amendment does not change in relation to redemption cycle. The amendment is being introduced to distinguish different types of infringers and the related documents.
	Conclusion	The offences under NRTA were formally brought into AARTO through the	

	Gazetting processes of Schedule 3 of the AARTO Act.
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COMMENTS FROM DRIVING.CO.ZA

	We will leave this to the Parliamentary legal advisor to respond to.	<i>Lack of explanatory memorandum.</i>	Introduction to the Amendment Bill
1.	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.	<i>New clause in Page 2</i>	Section 30 of the Principal Act
2.	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.	<i>New Clause Page 3</i>	Definitions "Infringements"
3.	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.	<i>New Clause Page 6</i>	Section 12 – removal of Sheriffs
4.	It is not expected that the volumes would be very high should the issue of process in respect of service of documents be resolved.	<i>New Clause Page 13</i>	Chapter IV A – Appeals Tribunal
			- The Tribunal will not have

	<p><i>sufficient capacity of referalls, 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> - <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> - <i>The right of an infringer to be tried in court is thus severely hampered by the creation of the Tribunal.</i> - <i>The persons in charge of the Appeals Tribunal may not have the legal knowledge or capacity to adequately adjudicate on technical legal matters.</i> 		<p>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.</p> <ul style="list-style-type: none"> - 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
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<p>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 qualification requirements of the members of the Tribunal will not be lower than those of the Adjudications officers.</p>			
<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>	<p>New Clause Page 6</p>	<p>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</p>	<p>5.</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>	<p>New Clause Page 8</p>	<p>Section 18 (1) of the Principal Act 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.</p>	<p>6.</p>

7.	<p>Section 18 (7) (a)</p> <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>	New Clause Page 8	The interpretation of the wording will be examined and aligned if required.
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COMMENTS FROM JUSTICE PROJECT SOUTH AFRICA

1.	<p>Section 30 of the Principal Act</p> <p><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>	New Clause Page 2	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.
2.	<p>Section 25 of the Principal Act</p> <p><i>The inconsistent application of the traffic law enforcement in the country</i></p>	New Clause Page 3	The demerit points system will be centrally managed by RTIA, so as to avoid situations of inconsistent application of the proposed

<p>classification methods.</p>		<p>will result in infringers in some parts of the country being classified as habitual infringers than in other areas.</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. The proposed definition seeks to remove this distinction and allow the offence to be exclusively dealt with under CPA.</p>	<p>New Clause Page 3</p>	<p>Section 29 (a) of the Principal Act The distinction is made between the infringement and offences and both distinctions be referenced to column 4 of schedule 3 of the Act.</p>	<p>3.</p>
<p>The Act may not be required to make provision for graduate driving licence as that is not currently implemented. The proposed definition would not be in line with the provisions of the NRTA</p>	<p>New Clause Page 3</p>	<p>Paragraph (xiv) of the definitions under the Principal Act. 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</p>	<p>4.</p>

	<i>drive” means any licence authorising the driving of a motor vehicle as is contemplated in the National Road Traffic Act.</i>		
5.	<p>Section 12 of the Principal Act</p> <p>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.</p> <p>“Process server” means a person who is appointed in terms of Section 15(2) of the Magistrates Court Act, 1944.</p>	<i>New Clause Page 6</i>	Process servers is catered for under the CPA and is expensive to fund.
6.	<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>	<i>Unrelated to the Amendment Bill</i>	<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>

<p>model of AARTO.</p>		<p>trying offenders for infringements to a large extent by considering the written and/or verbal representations made by alleged infringers.</p> <p>The section to read "to alleviate the burden on the prosecutors in considering representations for infringements"</p> <p>Extension of the definition of Section 2(e) to contemplate the learner's licences as well as probationary driving licences / provisional driving licences.</p> <p>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"</p> <p>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</p>	
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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

<p>9.</p>	<p>Section 11 of the Principal Act</p> <p>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</p>	<p>New Clause Page 6</p>	<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.</p>
<p>8.</p>	<p>Establishment of Rehabilitation programmes.</p> <p>The rehabilitation programmes to be included in the Regulations and also to be properly defined in terms of substance, operating and funding model.</p>	<p>New Clause Page 5</p>	<p>The Agency will include these in the Regulations as soon as the Amendment Bill has been finalised.</p>
<p>7.</p>	<p>Section 4 of the Principal Act</p> <p>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).</p>	<p>New Clause Page 4</p>	<p>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.</p>

	<i>Treasury</i>		
10.	<p>Section 12 of the Principal Act</p> <p><i>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.</i></p>	<i>New Clause Page 6</i>	The proposal would be misaligned as the Author already support the repeal of sec. 21
11.	<p>Section 17 of the Principal Act</p> <p><i>Deletion of Section 17(1)(f)(iv) is unconstitutional as it offends Section of the Constitution.</i></p>	<i>New Clause Page 8</i>	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)
12.	<p>Section 18 of the Principal Act</p> <p><i>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,</i></p>	<i>New Clause Page 8</i>	<p>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.</p> <p>The comment is based on the dispute with the establishment of the Appeals</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>the accused must be given a benefit of the doubt.</p> <p>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"</p> <p>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</p> <p>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.</p> <p>Finally that a separate adjudicating body, independent from RTIA be established</p>	
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14.	<p>Section 19B of the Act 46 of 1998 as amended by Section 11 of Act 72 of 2002.</p> <p><i>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”</i></p> <p><i>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.</i></p>	<i>New Clause Page 9</i>	<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.	<p>Section 20 of the Principal Act</p> <p><i>The Author asserts that the whole of</i></p>	<i>New Clause Page 10</i>	The comment is based on the lack of understanding of the Audi Altarem intentions of Section 17 of the

<p>Principal Act.</p>		<p>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 unattended operations)</p> <p>Further that ss 9 allows the Registrar to review his decision by revoking the enforcement order he issued in the first place.</p>	
<p>The comment seeks to take the AARTO process back to CPA.</p>	<p>Comment however unrelated to the Amendment Bill</p>	<p>Section 22 of the Principal Act</p> <p>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.</p>	<p>16</p>
<p>The section was enacted in order to avoid instances of double jeopardy. The applicability of the comment will be examined closely.</p>	<p>Comment unrelated to the Amendment Bill</p>	<p>Section 24 of the Principal Act</p> <p>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.</p>	<p>17</p>

	<i>Suggests that the offender be charged and demerit points be imposed separately and thus incur the cumulative effect for all the offences.</i>		
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 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>	New clause 12	<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>

		<p><i>motor vehicle] card.</i></p> <p>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.</p> <p>Author further proposes that Section 25(4) to be segmented into three subsections in terms of the following:</p> <p>(i) an increase in the penalty under Section 25 (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.</p> <p>(ii) Any operator who allows its motor vehicle to be operated during the disqualification period applicable to an operator card should be</p>	
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	<p><i>liable to a fine or imprisonment for a period not exceeding three years.</i></p> <p>(iii) <i>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.</i></p>		
19.	<p>Chapter IV A – Appeals Tribunal</p> <p><i>The Author does not support the establishment of the Tribunal and raises concerns about the following conceptual issues:</i></p> <ul style="list-style-type: none"> • <i>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.</i> • <i>The issue around the payment</i> 	<i>New Clause page 14</i>	<p>The RTIA cannot utilise a less scientific instrument in doing a prognosis of the utility of the Tribunal, save to utilise the current representation applications figures.</p> <p>The Tribunal sitting will be determined by the Chairperson from time to time.</p>

	<p>The proposal is appreciated and the Committee will be requested to consider it when making further amendments.</p>
	<p>Comment unrelated to the Amendment Bill</p>
<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>Section 26 of the Principal Act</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>20.</p>	<p>Section 26 of the Principal Act</p>

21	<p>Section 27 of the Principal Act <i>The Author proposes the following substitutions:</i></p> <p><i>SS (1) [hand in] to be substituted with "surrender"</i> <i>[Issuing] to be substituted with "licencing"</i> <i>[driving licence card] to be substituted with "licence to drive".</i></p> <p><i>SS(2) [driving licence card, professional driving permit] to be substituted with "licence to drive"</i></p>	<p>Comment however unrelated to the Amendment Bill</p>	<p>The proposal will create expensive structural changes i.e. MIS on eNaTIS.</p>
22.	<p>Section 30 as substituted by section 3 of Act 22 of 1999 <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>	<p><i>New Clause Page 23</i></p>	<p>The extension of 10 day presumption period is likely to delay finalisation of AARTO process.</p>
23.	<p>Section 32 of the Principal Act <i>The Author raises concerns on s 3 of the AARTO Amendment Bill, 2015 and suggests the following:</i></p> <p><i>"The penalty referred to in subsection (1), inclusive of any fees which may</i></p>	<p><i>New Clause Page 24</i></p>	<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>

2.	<p>The Author concerned about the conceptual basis of the rehabilitation</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>
1.	<p>Definitions "Infringements" 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</p>	<p>New Clause Page 3</p>	<p>Comment misunderstands the Audi Altarem Patrem rule entrenched in the elective options under Section 17 of the Act.</p>

COMMENTS FROM OUTA

24.	<p>Section 34 of the Principal Act Author opposed to Regulations which will entrench the process of the re issuance 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>
	<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 news of Section 18. Such a restart will also assist us in avoiding the consequences similar to those contained in the Public Protector report.</p>

	<i>programmes and how they will be implemented.</i>		<p>understanding of such.</p> <p>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.</p> <p>The Author further makes an error of isolating the application of rehabilitation programmes to habitual infringers on Page 3 of the Amendment Bill.</p>
3.	<p>Chapter IV A – Appeals Tribunal</p> <p><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></p> <p><i>Author further concerned that the penalties under the Act may be implemented before the matters are heard by the Appeals Tribunal.</i></p>	<i>New Clause Page 13</i>	<p>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.</p>
4.	<i>The author concerned at the non-adherence of the Principal Act and the</i>	Comment unrelated to the Amendment Bill.	The comment disregards the design of the structure of section 17, in that the

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	Clause 1	Infringers will have a choice as to the method of service to be used for service of their notices.
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COMMENT FROM MR NIEL LOUWRENS

1.	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.	Comment unrelated to the clauses of the Amendment Bill.	The comment would be satisfied with an explanatory memorandum.
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COMMENT FROM AUTOMOBILE ASSOCIATION OF SOUTH AFRICA

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 Madala Nkwinka:Traffic Officer (JMPD)

	related Amendments to the Audi Afteram Partem rule, based on the fact that the infringer is presumed guilty until they prove their innocence.		infringer is given a benefit of the doubt and thus they are allowed to exercise all the options available before the matter is finalised.
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2.	<p>Definitions “date of service”</p> <p><i>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.</i></p> <p><i>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.</i></p>	Clause 1- definitions	<p>Proposal is acceptable subject to vetting by Legal Advisors.</p> <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.</p>
COMMENT: CANCOM			
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> <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>
2.	<p>Definitions “electronic service”</p>	New Clause Page 2	<p>The manner in which this will be implemented will be as designed by</p>

<p>the ECTA provisions.</p>		<p>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.</p>	
<p>The proxies have a duty to nominate the driver. In the event that they cannot, they then run the risk of having the point demerits being levied against them.</p>	<p>New Clause Page 3</p>	<p>Definitions "habitual infringers" 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.</p>	<p>3.</p>
<p>The attendance of rehabilitation programmes is done on a voluntary basis.</p>	<p>New Clause Page 5</p>	<p>Section 4 (2)(h) Author concerned that if the proxies are labelled habitual infringers – they will then be permanently on the rehabilitation programmes.</p>	<p>4.</p>
<p>The election to be tried in court is substituted with the Appeals Tribunal in order to avoid premature lodgement of premature and expensive review applications in court as well as to contain the process within the Administrative fold.</p>	<p>New Clause Page 8</p>	<p>Section 17 of the Principal Act 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.</p>	<p>5.</p>
<p>The proposal is based on Section 31(2) – non-prescription section.</p>	<p>New Clause Page 8</p>	<p>Section 18 of the Principal Act Author concerned that the Agency and the Issuing Authorities are given</p>	<p>6.</p>

	<i>multiple opportunities to re issue notices and further that how the proposed will fit with the AARTO rigid timelines.</i>		
7.	Section 25 of the Principal Act <i>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.</i>	<i>New Clause Page 12</i>	The proxies will have to nominate in order to escape culpa.
8.	CHAPTER IV A <i>Raises broad concerns about the right of access to courts being taken away, in preference for the Tribunal.</i> <i>Raises concerns about the requirements for infringers to pay for the services of the Appeals Tribunal.</i>	<i>New Clause Page 13</i>	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 <i>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.</i>	unrelated to the Amendment Bill.	The NCR has fields that accommodate the nomination of foreign drivers.

COMMENT FROM BRADLEY SMITH

<p>The Committee will guide as to whether or not the re-assessment will be necessary</p>	<p>Comment unrelated to the Amendment Bill.</p>	<p>The substance of the amendments as well as the proposed additional penalties, necessitate the engagement with a renewed social impact assessment of the Bill.</p>	<p>1.</p>
<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>	<p>New Clause Page 6</p>	<p>Section 11 of the Principal Act Author opposed to the deletion of the consultation with the Minister of Finance.</p>	<p>2.</p>
<p>In the case of CMC Woodworking Machinery (Pty) Ltd v Pieter Odendaal Kitchens [2012] ZAKZDHC 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.</p>	<p>New Clause Page 2</p>	<p>Definitions "electronic service" 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</p>	<p>3.</p>
<p>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</p>	<p>New Clause Page 3</p>	<p>Definitions "habitual infringers" Author concerned about how the concept of habitual infringers will be</p>	<p>4.</p>

	<i>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.</i>		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 <i>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.</i>		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 <i>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.</i> <i>The Tribunal does not exercise the concept of innocent until proven guilty and which is applied by the courts. The infringer therefore gets</i>	<i>New Clause Page 13</i>	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.

2.	Definitions "electronic service"	New Clause Page 2 The choice of service is purely a voluntary conduct, where such a choice is exercisable in terms of
1.	Definitions "acceptable definition"	New Clause Page 2 The Author wrongly misinterprets the circumstances under which such documents would be required i.e. nomination processes. Further that this clause is linked to instances contemplated in section 17(1)(f)(v) as well as the fact that the failure to comply with such would attract the sanctions contemplated in Section 17(5).

COMMENTS FROM SAVRALA

7.	Section 17 of the Principal Act	New Clause Page 6 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.
	unnecessarily saddled with the onus burden even at this level and which would result in procedural unfairness and also against the Constitution.	
	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>The Author is of the opinion that electronic service will not be applicable to the car rental environment.</i>		Regulation 32A. 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 timeous redirection of notices will result in the proxies incurring the label of habitual infringers and thus disqualified in terms of section 25.</i>	<i>New Clause Page 2</i>	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>	<i>New Clause Page 5</i>	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	<i>New Clause Page 6</i>	The repeal is based on the consequential repeal of section 21.

<p>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.</p>			
<p>The industry needs to supply the address that was supplied by the infringer and there is no need to verify the address.</p>	<p>New Clause Page 6 & 7</p>	<p>Section 17 of the Principal Act Author concerned that the rental industry would not be in a position to verify the accuracy of the address information.</p>	<p>6.</p>
<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. The latter instances would arise as a result of the failure to nominate in terms of Section 17.</p>	<p>New Clause Page 7</p>	<p>Section 18 of the Principal Act The Author concerned that the vicarious liability being imposed on the Operators and proxies borders on unfairness.</p>	<p>7.</p>
<p>COMMENTS FROM SABOA SOUTH AFRICAN BUS OPERATORS ASSOCIATION</p>			
<p>The issue was considered and infringements such as parking will not have demerit points.</p>	<p>New Clause Page 11</p>	<p>Section 25 of the Principal Act 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.</p>	<p>1.</p>

2.	<p>Section 30 of the Principal Act</p> <ul style="list-style-type: none"> • <i>Author concerned that electronic and postal services are not reliable and therefore that the Agency must limit service to Registered mail.</i> • <i>Proposes that Registered mail should be defined in the Amendment Bill.</i> • <i>That the presumption of service to be increased from 10 days to 21 days in order to accommodate infringers who reside in rural areas.</i> 	Clause Page 23	<p>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.</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> <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>
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COMMENTS FROM ROAD FREIGHT ASSOCIATION

1.	<p>Definitions "date of service"</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>	Clause 1 Page 2	<p>The method to be offered therein would be insulated from manipulation by infringers and also easily verifiable in terms of the actual service.</p>
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<p>Contraventions / transgressions in the NRTA are being administered through the AARTO Act.</p>	<p>Clause 1 Page 3</p>	<p>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.</p>	<p>2.</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>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</p>	<p>Section 12 of the Principal Act</p>	<p>3.</p>
<p>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.</p>	<p>Clause 2 Page 5</p>	<p>Section 4 of the Principal Act</p> <ul style="list-style-type: none"> • 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. 	<p>4.</p>

			This being voluntary programmes means that the infringer will be expected to pay on the cost sharing basis.
5.	<p>Section 18 of the Principal Act</p> <p><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></p>	<i>New Clause Page 7 & 8</i>	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.	<p>Section 25 of the Principal Act</p> <p><i>Author concerned about the interpretation of the applicability of the section.</i></p> <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>	<i>New Clause Page 11</i>	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.

COMMENTS FROM CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Response	Relevant Provision	Comment	No
<p>The proposal is welcomed and the word "Agency" will be deleted wherever it appears in the Bill</p>		<p>Deletion of definition of Agency The name of the Agency is replaced with Authority as such the word Agency should be deleted wherever it appears</p>	1.
<p>The proposal is accepted as the common law principle of vicarious liability will take effect despite the provision</p>	Unrelated to the Bill	<p>Proposal The Bill must be amplified to delete "nor the Agency" from section 16 of the Principal Act</p>	2.
<p>Supports the inclusion of electronic service as an alternative method of service is accepted. 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>	Clause 1	<p>Inclusion of electronic service It is anticipated that there will be challenges to prove the receipt of documents that have been served electronically</p>	3.
COMMENTS BY EKURHULENI METROPOLITAN POLICE DEPARTMENT			
Response	Relevant Provision	Comment	No
Our limited understanding of	Clause 1.	The proposed definition must include a time stamp for	1.

	<i>the clear photocopy. It is proposed 3 months.</i>		this comment is that the definition must include the fact that the date on the certified copy must not be more than three months in which case the comment is appreciated and acceptable
2.	<i>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.</i>	Clause 1 no. 7	The comment seems to understand the principles of legislative drafting in so far as consequential amendments are concerned and such fact is noted and appreciated
3.	<i>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.</i>	Clause 1 no. 8	Clause 1(8) does not relate to authority, appeals and reviews but the inclusion of the definition of Appeals Tribunal. Nonetheless, it is worthy to point out that the definition of Authority is included in the Amendment Bill as "the Road Traffic Infringement Agency". It is in the discretion of the Committee to decide if it is important to include the definition of review and appeal in the Amendment Bill. In which case we suggest that such definition read: "the appeal or review conducted by the Appeals Tribunal in accordance with Chapter IVA

<p>of this Act"</p>	<p>It is correct to point out that the Regulations in this regard are required in order to explain the processes relating to the Rehabilitation Programmes. The Minister will publish the related Regulations after approval of this Amendment Bill in accordance with the powers vested in her in terms of section 34 of the Principal Act</p>	<p>Repeal is consequential Reference to issues relating to sec. 12 has been removed. Process servers are used in CPA not in administrative process and the intention of the Amendment Bill is to deal with road traffic infringement administratively and not according to court processes which are regulated by CPA</p>	<p>CPA Court process is substituted by administrative body, Appeals Tribunal. The right to approach courts based on any basis is not denied and can be exercised on a condition that all existing administrative processes have</p>
	<p>Clause 2 No. 1</p>	<p>New clause page 6</p>	<p>New clause page 8</p>
	<p>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.</p>	<p>(i) The repeal of section 12 creates problems. All aspects surrounding section 12 to be scrapped all actions relating to warrants and execution of it to be defined and explained. Authorized officer to have another power in terms of the Criminal Procedure Act, as a process server for civil litigation processes and Regulation 8 must also be amended.</p>	<p>Removal/scrapping of the option for the infringer to 'elect to be tried' is unconstitutional. Access to court is denied.</p>
	<p>4.</p>	<p>5.</p>	<p>6.</p>

			been exhausted.
7.	<p><i>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.</i></p> <p><i>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.</i></p> <p><i>RTIA has both adjudication and sentencing power, misuse and abuse can easily be perceived.</i></p>	Section 18 proposal	<p>The re-issuance of infringement notice is informed by section 31(2) of the Principal Act which indicates that infringement penalties are not subjected to the laws of prescription which means that infringement penalties may be collected at any time.</p> <p>The review processes will be instituted at an instance of the infringers and as such, there will not be any automatic review process. The infringer will be required to apply to the Tribunal for the review.</p>
8.	<ul style="list-style-type: none"> - Section 20 has the result/consequence that the objectives of the act must also be changed. - The wording in the proposed amendment has the effect of targeting all 'road traffic and transport' statutes including NLTA, Cross Border, NLTTA etc. 	Sec. 20 proposal	Section 2 of the Principal Act entrust the RTIA with the responsibility to encourage compliance with road traffic legislation and to promote road safety. The legislative instruments mentioned in section 20 relate to road traffic and compliance therewith lead to road safety.
9.	<i>The definition of National Road Traffic Offences Register must be included in the Amendment Bill</i>	Clause 1(i) of Amendment Bill	The definition of National Offences Register is included in the Amendment Bill
10.	<i>Under the proposed amendment of section 25 2(b)</i>	New clause page 11	The Minister will publish the

No	1.	<p>Section 25 of the Principal Act</p> <p>Comment</p> <ul style="list-style-type: none"> • The Act is unclear as to whether the definition of a "person" or "operator" refers to the owner. If that is so, The Act creates strict liability upon the owner i.e. the Act vicariously imputes the transgressions of the driver to the owner. • The amendment of Section 25 constitutes an unlawful deprivation of property. • Why should an owner incur demerit points for the transgressions of the driver? The section will also result in the owner also losing his operating licence. 	<p>Relevant Provision</p> <p>New Clause page 11</p>	<p>Response</p> <p>NRTA provides for a definition of the operator as the person responsible for the use of a motor vehicle of any class contemplated in Chapter VI, and who has been registered as the operator of such vehicle. The operator referred to here holds same meaning as that provided for by the NRTA.</p> <p>Therefore the operator refers to the owner of the vehicle and the word 'person' holds similar meaning but such meaning may change depending on the context especially when</p>
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COMMENTS FROM NATIONAL TAXI ASSOCIATION

	<p>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</p>		<p>related Regulations after approval of this Amendment Bill in accordance with the powers vested in her in terms of section 34 of the Principal Act</p>
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			<p>referring to the driver who may be an infringer.</p> <p>The right to property is provided for by the Constitution but however such right may be limited in terms of section 36 of the Constitution taking into consideration, amongst others, the legitimate purpose for such limitation which in this case may include road safety and saving human lives.</p> <p>Under no circumstances in terms of the Principal Act nor the Amendment Bill will the owner of a vehicle incur demerit points for the transgressions of the driver. Schedule 3 of the Regulations of the Principal Act makes a distinction between driver and operator related infringements and the operator may not be held liable for driver related infringements in circumstances where such operator was not a driver.</p>
2.	<p>Section 17 of the Principal Act</p> <ul style="list-style-type: none"> <i>To what extent does the owner take responsibility</i> 	Unrelated to the Bill	Road users (drivers) in SA are obligated to submit and/or update, amongst others, their

<p>3.</p>	<p>Unreferenced to the Act</p> <p>The effect of the Act is to penalise the owner in circumstances where the driver does not pay the fine.</p>	<p>Unrelated to the Amendment Bill</p>	<p>Schedule 3 of the Regulations of the Principal Act makes a distinction between driver and operator related infringements and the operator may not be held liable for driver related infringements in circumstances where such operator was not a</p>
	<p>of the driver who does not reside in permanent residential abode, because of Settlement challenges that a majority of South Africans face?</p> <ul style="list-style-type: none"> • Does the owner still end up being liable, where the driver cannot consequently be served with a notice? • The driver do not usually have possession of lease agreements (which could be a mechanism to verify the validity and accuracy of their address information) 		<p>postal and physical address details to the registering authorities or driving licence testing centres and this provision does not exclude drivers in the taxi industry. These postal and physical addresses are utilised when serving infringement notices on the drivers who have transgressed road traffic rules and regulations. The AARTO Act allows operators to nominate their drivers in an instance where such drivers have committed infringements and to provide necessary details of those drivers. The operator who falls or refuses to provide such information is liable for an offence in terms of NRTA.</p>

			driver.
4.	<p>Section 21 of the Principal Act</p> <p>The Act will, by definition of the instances contemplated in the above row; result in the owner's property being unfairly attached in execution as well as his / her operating license under Section 25.</p>	Unrelated to the Bill	The provision relating to the issuance of warrants is repealed by the Amendment Bill. AARTO Act seeks to deal with road traffic infringement administratively and not through court processes

