 MINISTRY OF TRANSPORT AND PUBLIC WORKS



Mr Ml Rayi

Chairperson of the Select Committee on Economic and Business Development

For attention: Ms. Noziphiwo Dinizulu

E-mail: ndinizulu@parliament.qov.za

Dear Madam

Re: Administrative Adjudication of Road Traffic Offences Amendment Bill

[B 38B-20151 - Comments

Kindly find attached the comments of the Western Cape Government on this Bill. The comments are additional to those submitted on earlier versions.

Yours sincerely



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MINISTER OF TRANSPORT AND PUBLIC WORKS

Date 17 A./oo.UMLU 20 17

8 th Floor, 9 Dorp Street, Cape Town, 8001

Tel.' +27 21 483 2200 Fax: +27 21 483 2217

PO Box 2603, cape Town, 8000 www.westerncape.gov.za

Administrative Adjudication of Road Traffic Offences Amendment Bill Comments

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| The Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38B—2015] ("the Bill") was advertised for comment on 28/29 October 2017. The submission date for comments is 1 7 November 2017. The Western Cape Government has not repeated comments that were submitted previously on this Bill. However, comments that are applicable to the 2015 Bill that were previously submitted will be referenced herein with an indication whether the comment should be resubmitted. | | |
| Clause (Indicate clause/ regulation Number) | Comment (State why the clause/regulation or proposed amendment is not supported or what the problem is with the provision) | Suggestion (Suggested deletion/amendment/ addition) |
| Ad clause | With regard to the proposed amendments made to the definition of "issuing authority", the following:   * An "a" should be inserted at the beginning of paragraph (a) so as to read "a local authority... "; and * the "or" at the end of paragraph (b) needs to be deleted and a semicolon needs to be inserted at the end of paragraph (c) before the inserted "or". | Technical corrections need to be made. |
| Ad clause  3 | The deletion in section 11(2) of the Administrative Adjudication of  Road Traffic Offences Act, 1998 (Act 46 of 1998) ("the AARTO Act") is not supported as the requirement for the approval of the Minister acting in consultation with the Minister of Finance serves as a mechanism to prevent financial mismanagement. The Road Traffic Infringement Agency (to be amended to Authority) is a national public entity listed in Schedule 3 Part A of the Public Finances Management Act, 1999 (Act 1 of 1999). Stringent financial controls are necessary to prevent the payment of exorbitant salaries and to ensure financial responsibility and accountability. | It is submitted that concurrence with the Minister responsible for finance should be retained. |
| Ad clause 6 | With regard to the amendments to section 15, it should be noted that "registering authority" is not defined. "[l]ssuing authority", on the other hand, is defined. Furthermore, the term "driving licence testing centre" has also not been defined. | Definitions are required for these terms. |
| Ad clause 10(d) | With regard to the insertion of paragraph (bA) in subsection (5), the wording does not read easily — "Subject to subsection (6) no...any permit or licence issued in terms of any road traffic legislation or transport legislation;" | The word "any" should be removed. |

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| Ad clause  13(a) | The word "operator" used in clause 13(a) in the amendment to section 25(1) and elsewhere is not defined. Is the word intended to have the same meaning as defined in the National Road Traffic Act, 1996 (Act 93 of 1996) or does it have the meaning as defined in the National Land Transport Act, 2009 (Act 5 of 2009)? The uncertainty may also lend itself to the interpretation that the operator referred to in the Bill is the driver of the vehicle (i.e. the person operating the vehicle). Neither "operator" nor "juristic person who is not an operator" are defined. | It is submitted that definitions are required for both terms. |
| Ad clause 136) | The wording is confusing and makes no sense. The disqualification from driving or operating a motor vehicle "within 32 days, after such excess points have been incurred," does not provide clarity at which point a person is disqualified from driving. | The wording should be reviewed |
| Ad clause 13(c) | A practical consequence of this provision is that an owner of a fleet of taxis will have to hand in all his or her operating licences if he or she were to be disqualified from driving. This cannot be the intention of this section. | The wording should be reviewed. |
| Ad clause 13(d) | The clause is grammatically incorrect. There is a word missing after the word "driving" in .for every subsequent driving (sic) or operation and such person is guilty.. | The wording should be reviewed. |
| Ad clause 15 proposed section 29A | Proposed section 29A(5) refers to "appointment or designation" of a member. Proposed subsection (4) states that the President "appoints" the Chairperson, other members and persons to fill vacancies. | The reference to "designation" as a member should be deleted. |
| Ad clause 15 proposed section 29A | Proposed section 29A(5)(b)(ii) refers to "interests referred to in subsection (6)(b)". | It is submitted that this is an error and the reference should be to subsection (6)(a) which pertains to financial and business interests. Subsection (6)(b) refers to insolvency. |
| Ad clause 15 proposed section 29B | Proposed section 29B refers to the functions of the Tribunal which include adjudicating on matters, hearing appeals and making rulings. The heading of clause 15 refers to the Tribunal as an "Appeals Tribunal". Since the functions of the Tribunal extends beyond hearing appeals it is submitted that the Tribunal is inappropriately named. | The Tribunal must be renamed to reflect all its functions. |

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| Ad clause 15proposed sections 29E and  29F | There appears to be some confusion with the filling of vacancies on the Tribunal. Proposed section 29A(4)(b) states that the President must appoint a person to fill any vacancy. Proposed section 29E(3)(a) states that any vacancy in the office of the Tribunal must be filled by the President through the appointment of another member within 90 days of the vacancy occurring. Proposed section 29F(3) states that if a member becomes disqualified or is removed from office the Minister may appoint a suitable person to act as a member of the Tribunal until the vacancy is filled. | Clarity with regard to the filling of vacancies on the  Tribunal is required. |
| Ad clause 15 proposed section  29J | Proposed section 29J states that any infringer may appeal a decision by the Tribunal to the High Court and that such an appeal must be dealt with as if it is an appeal against a judgment in a Magistrate's Court. Section 22(1) of the AARTO Act enabled the infringer to elect to be tried in court. The proposal is now to repeal section 22 in terms of the Bill. Thus the infringer no longer has this option. In order for an infringer now to access a court he or she would have to appeal a decision by the Tribunal in the High Court. It is submitted that this approach is expensive and impractical. | Further consideration needs to be given to the practicality of this proposal. |
| Ad clause 15 general comment | It is submitted that the introduction of an Appeals Tribunal is unworkable. A single Appeals Tribunal will be established to deal with those who are dissatisfied with the outcome of representations made to representations officers. The City of Cape Town issued more than two million fines in 2016. If just a small proportion of penalties issued around the country are taken on appeal to the Appeals Tribunal, it would paralyse the system and lead to lawlessness on our roads. | The idea of introducing a single Appeals  Tribunal should be reconsidered |
| general comment | South Africa is a signatory of the UN's Sustainable Development Goals, and the Brasilia Declaration on road safety, committing support to reducing global road traffic fatalities by 50% by 2020.  The 2012 National Development Plan established a target of 50% reduction in injury deaths (all causes) by 50% by 2030.  Under Provincial Strategic Goal 3 of the Provincial Strategic Plan, the Western Cape Government commits to two road safety targets:   * Reduce the road traffic injury mortality rate from  to       by 2019. * Reduce the child road traffic injury mortality rate (ages 0 — 14) from 1 OO,OOO to  by 2019   Accordingly, any sensible initiatives aimed at achieving provincial and national oals are su orted. | A clause should be included which requires the concurrence of the relevant MEC before implementing the AARTO Act in that province. This will prevent future court challenges when there is disagreement about whether the AARTO |
|  | The Western Cape Government therefore supports the strategic intent behind the development of the AARTO Act, more particularly the desire to reduce road crashes and road fatalities.  However, the Western Cape Government has pointed out in previous comments its concern regarding the readiness of the Road Traffic Infringement Authority ("RTIA") to implement the AARTO Act. The lack of readiness was apparent when AARTO was piloted in Johannesburg and Tshwane. While this does not directly relate to the Bill, the department feels that it is opportune    to advise that the implementation of the AARTO Act in any area if the authorities in that area are not ready or the RTIA itself isn't ready will lead to a break down of law on our roads which in turn will result in road safet bein compromised. | Act should be implemented in a particular area or not. |

Yours sincerely



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Minister of Transport and Public Works

Date: 17  20/7