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"Injustice anywhere is a threat to justice everywhere." - Martin Luther King
"All that is required for the triumph of evil is for good men and women to do nothing" – Edmund Burke

The Parliamentary Portfolio Committee on Transport
Parliament of the Republic of South Africa
Cape Town

Attention: The Chairperson C/O Ms Valerie Carelse

By email to: trafficbill@parliament.gov.za

20 November 2020

Dear Sirs,

National Road Traffic Amendment Bill [B 7 – 2020]

We refer to the call for comments in respect of the abovementioned Bill, which was made by the Committee on 26 October 2020.

This submission is made on behalf of the members of our organisation; however, it should be obvious that much of its contents will be of wider interest to the remainder of the motoring public.

It is not our intention to deal with all the aspects of the abovementioned Bill, but rather to focus on a few key points which are of concern to us. Consequently, this submission will adopt a thematic approach.

Microdot technology (S5I to S5M)

While we do not take issue with the relevant sections mentioned above, we cannot understand why they would even be considered necessary if the discussion around microdots is the be regarded as public officials' understanding of the technology.

The Director-General of the Department of Transport, Mr Alec Moemi appears to be labouring under a false impression regarding what comprises microdot technology. He also appears to be under the impression that microdots do a lot more than this long-established technology is designed to do.

Reportedly, he said to the meeting convened by the Committee on 13 October 2020[1] that: *"Looking at the technology that exists in the highways of Gauteng and emerging in the Western Cape, microdot scanners would be able to read number plates; this also helps with monitoring traffic volumes and patterns"*.

As is apparent from the definition thereof which appears in Section 1(l) of the Amendment Bill, microdots measure less than 1.8 millimetres in diameter. It is because the information contained in them is **microscopic** that they are named as such.

To read the information contained in them, the object to which they have been applied must be examined under a microscope. In the case of number plates, this will require the removal of the said number plates for examination under a microscope.

For any of the equipment installed on any freeways to read microdots is scientifically impossible. This is unless the Department of Transport or any SOE it owns intend installing high powered space telescopes on such bridges and e-toll gantries. To our knowledge, no such space telescopes have yet been installed on any roads in South Africa.

It is therefore pointed out that the Committee has been misled and it is suggested that it should thoroughly educate itself regarding the capabilities of various technologies which could be used for the purposes the Director General incorrectly thinks microdots can be used for.

It is also worth mentioning that there is no mention of microdot technology being incorporated into number plates in *government gazette 37542* of 9 April 2014, which sought to address the issue of standardised number plates for the entire Republic.

Recommendation:

1. Electronic technologies which could be incorporated in number plates and licence discs are available and should be properly explored and evaluated if the intention is to start employing modern technology in same.

2. However, the Director General should, in the interim, explain why he has misled the Committee and should be urged to avoid doing so again. He is, after all, the functional head of the Department of Transport and should be properly informed regarding what is and what is not possible.

Regulation of driving schools (S28D to S28H)

While we do not have any fundamental objection to the Department of Transport regulating the affairs of driving schools, we again point out that there is no requirement

[1] See https://pmg.org.za/committee-meeting/31168/

in the National Road Traffic Act or its Amendment Bill for any learner driver to undergo **any** professional instruction, under the supervision of a suitably qualified driving instructor.

In practical application, the publicly perceived purpose of driving schools, where they are even used by **some** learner drivers, is to prepare them to satisfy examiners of their ability to check the boxes in the K53 practical test. This should change.

It is our view that every learner driver should be compelled to undergo at least some professional driving instruction and that it should be for properly qualified professional driving instructors to vouch that this has happened. There is nothing in any current or proposed road traffic legislation that even suggests that this will be so.

Using the worn-out excuse that many learner drivers cannot afford professional instruction is as big a cop out today as it has always been. One can only imagine what would happen if people who wish to practice medicine could acquire their abilities from family members and the like and avoid attending University to get a medical degree.

Furthermore, if such learners can afford to bribe officials, they can surely afford to undergo professional driving instruction and in so doing, get value for their money.

From a road safety perspective, the ability of drivers to safely operate and control a motor vehicle in a wide range of driving conditions is paramount. The K53 driving test can hardly be described as an examination that determines this and the introduction of the so-called "provisional driving licence" will not either.

While we are aware that certain revisions to the grossly outdated K53 driving standard are under discussion, the fact remains that no changes have been made yet. However, even if a completely revamped and modernised system is introduced, the fact remains that the National Road Traffic Act does not compel learner drivers to undergo any formal training.

Furthermore, the so-called "advanced driver training" programmes on offer by various businesses are not regulated and the neither the Bill nor any of the associated draft regulations make any effort to alter the status quo.

It is also worth noting that the Administrative Adjudication of Road Traffic Offences ("AARTO") Amendment Act and its draft regulations refers to a so-called "driver rehabilitation programme" which is to apply to errant drivers, but only once their driving licenses have been **cancelled**.

This demonstrates that the powers that be are clueless when it comes to proactive road safety measures. In sensible application, driver rehabilitation should occur as soon as it becomes apparent that a driver is a danger to him/herself and/or others. Seeking to "rehabilitate" errant drivers once their driving licenses have been suspended **twice** and subsequently **cancelled** is reactive and pointless.

What is more, in terms of the AARTO Amendment Act and its latest draft regulations, the RTIA is left to determine which private companies may be contracted to develop and provide the so-called "driver rehabilitation programme". No standard has been set before bestowing this authority on the RTIA and it is left to it to decide what is and is not acceptable. This is like allowing a dentist to perform neurosurgery.

I can say with confidence that no-one in the RTIA has any clue when it comes to road safety. In fact, there are few people in South Africa who have the first idea of what is involved in that specialised science.

For too long now, the Department of Transport has relied on the opinions of people who are part of the problem. Surely the time has come for this to change. It is disingenuous to pontificate about how much money road crashes cost the economy while one is a significant part of the problem and not the solution.

Recommendation:

1. If the Department of Transport is serious about improving driving standards, with road safety in mind, it should urgently solicit the services of a panel of properly qualified, real experts to formulate and introduce a proactive, preventative and safe driver training regime into our legislation.

2. The current approach to certifying driving instructors must change. Driving instructors must be professionally trained and must be able to demonstrate that they can **teach** learner drivers the skills they need to be safe drivers.

3. It should become a legal requirement that every learner driver undergoes a minimum number of formal training hours with a professionally qualified driving instructor. Leaving training to the discretion of parents, etc. who may themselves be incompetent or dangerous drivers will simply continue to produce poorly skilled drivers.

4. While such a programme will take decades to yield notable results, no results will be achieved if it is not done at all. The current efforts to regulate driving schools may be a good start, but things must not be left there.

The alcohol "limit" (S65)

We have previously made our position clear regarding the contentious issue of removing any tolerance in respect of the presence of trace amounts of alcohol in a blood and breath sample. For our troubles, we have been ridiculed by numerous government officials who like to nurse their dogmatic views and/or have ulterior motives.

The **sole advantage** to removing such tolerance is that doing so sends the message that driving after consuming any intoxicating liquor is regarded as being dangerous.

There are many drawbacks to this ill-conceived idea, not least of which is that it will have a limited, if any, effect in reducing the prevalence of driving under the influence of alcohol ("DUI") and will have no effect on improving conviction rates for this offence.

The problem with the prevalence of DUI is **not** the so-called "limit" that currently exists, nor is it the prescribed penalty. Countries with similar and even higher "limits" have achieved tremendous reductions in the prevalence of DUI. The Department of Transport puts countries like Australia, Sweden, and the UK on a pedestal when it comes to road safety.

All these countries have alcohol "limits" that are not zero. In Australia, the limit is 0,05g/100ml blood sampled. In Sweden, it is 0,02g/100ml and in the UK, it is 0,08g/100ml. Even in the UK, where the alcohol limit almost twice that which is currently applicable in South Africa, the prevalence of DUI is low, when measured against the size of driving population.

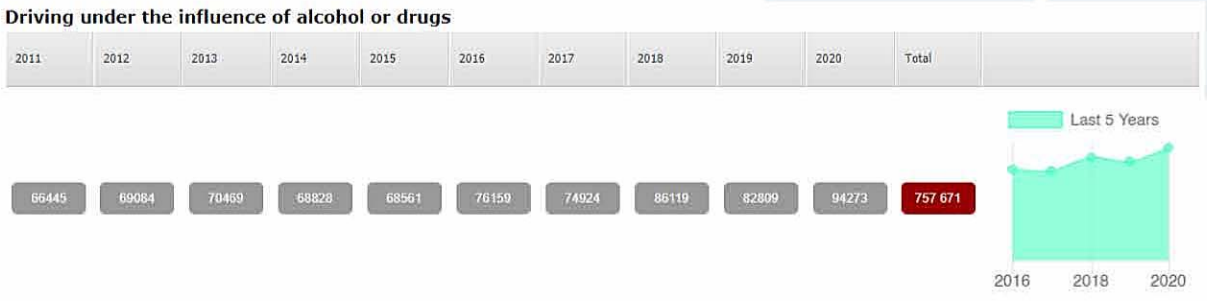
The table below reflects breath alcohol testing carried out in England and Wales, both proactively and after crashes have occurred, over a period of eighteen years[2]. It is important to note that as of 30 September 2014, approximately 45,5 million people held driving licenses in Great Britain.

Number (thousands) / *percentage*

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Roadside screening breath tests	624	570	534	578	607	602	600	712	815	737	686	686	676	606	520	463	326	335
Positive/refused breath tests	100	103	106	103	104	104	98	92	93	84	81	76	71	66	60	59	51	55
Percentage of tests: postive or refused[1]	*16*	*18*	*20*	*18*	*17*	*17*	*16*	*13*	*11*	*11*	*12*	*11*	*10*	*11*	*12*	*13*	*16*	*16*

Source: Home Office

No-one in South Africa maintains similar statistics. All that is provided is the number of **arrests** and charges laid for DUI, which is maintained by the SAPS. The arrests in South Africa for over a ten-year period were:



The arrests above must be viewed against the backdrop of South Africa's driving population, which as of 31 March 2017 was 12,283,777[3]. Because the RTMC has failed to maintain these crucial statistics, no-one is able to say how many licensed

[2] See https://www.gov.uk/government/statistical-data-sets/ras51-reported-drinking-and-driving

[3] See http://www.enatis.com/index.php/statistics/90-live-driver-licences-per-population

drivers South Africa has now. It is however plausible that this figure is well over 13 million, considering that the RTMC has consistently averred approximately 500,000 new drivers are licensed annually. However, even when this is taken into consideration, South Africa's driver population does not come close to being one third of Great Britain's driver population.

Maintaining records of the arrests for DUI is meaningless unless they are analysed against a backdrop of the number of tests conducted and more importantly, the number of convictions that arise out of such arrests. This is because such recordkeeping does not establish the **prevalence** of DUI, which is an important factor in developing interventions. It also does not establish whether *real* "drunk drivers" are being arrested or not.

There is another important factor to take into consideration. While law enforcement authorities in the UK (and some other countries) **always** test drivers who are involved in crashes for alcohol and/or drugs, South African law enforcement authorities rarely do.

Instead, the high volumes of arrests demonstrated above mostly arise out of the rare instances where roadblocks are conducted or where random stops by law enforcement officials result in arrests. The prevailing problem is that few arrests result in convictions, and would-be "drunk drivers" know this.

Even though there is no statistical information regarding the conviction rate for DUI in South Africa, casual observation in public hearings reveals that charges are typically provisionally withdrawn against persons who are alleged to be driving under the influence of alcohol.

This happens because forensic evidence proving the charge is not put before the court. Anecdotally, it has been suggested that the conviction rate for DUI is well below 10%.

Removing the alcohol limit is not going to cure improper policing and the absence of prosecutable evidence. There is no court in South Africa that will convict a person of **any** criminal offence in the absence of evidence and expecting the courts to lower their standards to satisfy the Department of Transport's wishes is woefully unrealistic.

When it comes to DUI, evidence must be provided in the form of proper **forensic evidence**. It must prove beyond a reasonable doubt that the accused person had a level of alcohol which is more than the permitted level in his or her system at the time of his or her arrest. If that level is 0,05g/100ml or 0,00g/100ml is not going to make any difference. No forensic evidence means no conviction. It really is as simple as that.

It is remarkable that since the reintroduction of evidential breath alcohol testing ("EBAT") in late 2018, there have been **no reports** of increased conviction rates for

DUI. One would think that if the conviction rate had improved from its previously shameful levels, this would have featured prominently in the media. It has not and if conviction rates have improved, then it must be asked why this has not been heavily publicised.

Repeated requests for answers regarding the influence that EBAT has had on the conviction rate for DUI have been ignored by the authorities to whom they have been made. This suggests that it has had no effect, either because it has not been used, or because of other factors.

Instead, all that has happened is that the CEO of the RTMC and other people in government have continued spewing mindless rhetoric regarding denying persons who stand accused of DUI police bail, and detaining them for "a minimum of seven days".

Notably, the Minister and Department of Justice has been silent on these preposterous and patently illegal proposals, and it is not hard to guess why this is so.

There are those who are of the view that adopting a so-called "zero tolerance" approach to alcohol will result in high volumes of innocent people being turned into criminals. For the reasons stated above, we do not share this view.

Instead, what is likely to happen is that the Minister of Transport will categorise lower levels of alcohol in one's system to be "infringements" which will be handled by the AARTO Act, where no evidence from state officials is required.

While this may sound like a sensible approach to lazy officials who are averse to proving their allegations, it merely goes further to prove that much like most that comes out of the Department of Transport and the AARTO Act, the intention of removing the limit is to provide new avenues for fine revenues, not to address road safety issues.

It is high time that the Department of Transport stopped looking for ways to make money and started taking its mandate to prevent injury and save lives seriously.

It is also worth mentioning that when the Western Cape authorities were publicly *shaming* convicted "drunk drivers" by publishing their names and photographs in newspapers, a steady and marked decline in the prevalence of DUI was observed in that province. Instead of duplicating this methodology elsewhere in South Africa, the RTMC shut it down.

While it may be so that there may be issues with publicly shaming convicted criminals, throwing the baby out with the bathwater can hardly be viewed as being the best approach. DUI has been turned into a social stigma elsewhere in the world. There is no reason its should not be in South Africa.

But in addition to transforming DUI into a social stigma, the deterrent effect of convicting most or all persons arrested for the offence by heavily publicising convictions and the sentences that go with them imposed by courts should not be ignored. It is a known fact that the deterrent value that arises from anti-DUI (and other) campaigns arises from the relative certainty of being caught and convicted, not from the harshness of sentences which are imposed.

Successful anti-DUI campaigns involve lots of work. They involve dedication and attention to detail. They involve consistency. Adopting a lazy approach, as the Department of Transport and its SOEs wish to do is shameful and should not be allowed.

Recommendations:

1. The Department should stop trying to loosen a proverbial wheel nut with a screwdriver and start using the right tools for the job.
2. The Committee should reject the proposed removal of the "limit", instruct the Department of Transport to leave the current blood and breath alcohol limits as they are, and for the Department of Transport and the RTMC to demand of law enforcement authorities that they are enforced rigidly.
3. Because the unacceptably long-outstanding National Road Traffic Law Enforcement Code has not been finalised and implemented by the RTMC, such demands may fall on deaf ears because currently, neither the Minister nor the RTMC have the authority to make any demands of local and provincial authorities. This can be cured by the RTMC doing what it is obliged by legislation to do, instead of sticking its nose where it does not belong.
4. However, if the Minister were to make regulations compelling law enforcement officials to screen every driver who is involved in a collision for the presence of alcohol, this may represent a good start. Regulations could also be formulated to compel the provision of a forensic sample from a driver who is suspected of DUI, to be provided by doctors and nurses at trauma units.
5. While it will require the cooperation of the Minister of Justice and of the legislature, changes should be made to the Criminal Procedure Act to authorise paramedics registered with the Health Professions Council of South Africa to draw forensic blood samples for alcohol and drug testing, to streamline the process.
6. A high volume of planed and random breath alcohol testing must become the norm. It is not good enough that such exercises are only conducted from time to time, particularly on Friday and Saturday nights.

7. Professionalising all traffic law enforcement officials and ensuring that prosecutors in the employ of the National Prosecuting Authority are provided with the forensic evidence to put before the courts is essential. More extensive use of EBAT must be made, to expedite the prosecution process, which is a cinch when using EBAT.

8. State officials must stop levelling idle threats at motorists. Disinformation and empty threats are almost always ineffective and merely serve to make a mockery of properly thought out and executed interventions.

9. It is only if **all** these recommendations are adopted that any reduction in DUI incidents will be seen. However, it is important to be aware that the efficacy of the measures adopted can only be assessed if proper statistical information is maintained over a sustained period. This statistical information must come from SAPS **and** the National Prosecuting Authority and should be made a function of the RTMC, which SOE should be compelled to take its functions seriously for a change.

Disposing of the Shareholders' committee (S75)

It is ominous that the Bill seeks to dispose of the involvement of the RTMC's Shareholders' Committee in road traffic legislation. We remind the Committee that the Shareholders' Committee contemplated in the RTMC Act is made up of provincial MECs and of SALGA, which represents local government.

Notwithstanding that the making of regulations is regarded as an administrative function, rather than a legislative one, it must not be forgotten that local and provincial government maintain the competency of traffic regulation in terms of the Constitution of the Republic of South Africa, 1996.

If the Minister is given *carte blanche* to make regulations on a whim, this will not serve cooperative governance well.

If there continue to be difficulties in achieving quorum at Shareholders' Committee meetings, those issues should be ironed out properly by bringing sanctions on delinquent members. Simply removing the Shareholders Committee, and in so doing, local and provincial government from the picture does not represent a sensible approach and may even violate the principle of legality.

Recommendation:

1. Leave Section 75 unaltered. There is nothing wrong with it.

Conclusion

We hope that the recommendations herein will be properly considered and acted on. It should go without saying that the function of the Committee should not be to