

**AMENDMENTS TO THE
Transport Laws and Related Matters Amendment Bill**

[B 30B-2012]

Submitted in terms of NA Rule 254

by

A. Alberts, MP

Acting in terms of the Rules of the National Assembly, including but not limited to Rule 254, I the undersigned member of the National Assembly hereby tables in the National Assembly the following amendments to the **Transport Laws and Related Matters Amendment Bill, bill no B 30B-2012**. All amendments set out herein are separate, distinct and self standing.

1. Ad Clause 3: add the following words at the end of the inserted clause (bA) found in clause 3(b):

“...and all of the interested persons referred to in subsection 4(a)(ii);”

Comment:

Section 27(4)(a)(ii) states:

The Minister will not give approval for the declaration of a toll road under **subsection (1) (a)**, unless—

the Agency, in the prescribed manner, has given notice, generally, of the proposed declaration, and in the notice—

has invited interested persons to comment and make representations on the proposed declaration and the position of the toll plaza, and has directed them to furnish their written comments and representations to the Agency not later than the date mentioned in the notice. However, a period of at least 30 days must be allowed for that purpose;

The rationale for this amendment is to ensure that the wider public (interested persons) is also informed of the outcome of the socio-economic and traffic impact assessment as information that affects them directly in exercising their right to *audi alterem partem* as guaranteed by section 27(4)(a)(ii). The public cannot be said to be properly afforded an opportunity to voice their views if those views are inadequately informed due to the withholding of vital information. Such withholding will also be against the spirit and rights of the Constitution (i.e. the right to information) and the connected Promotion of Access to Information Act (PAIA).

Further explicit provision must also be made to ensure that this information is to be disclosed to the public before they are afforded an opportunity to make written comments and presentations.

2. Ad Clause 3: inserting the following word in the substituted subsection 4(c)(ii):

“the extent to which any matters raised in those comments and representations contemplated in subsection 4(a)(ii) have been accommodated”

Comment:

The inserted words "contemplated in subsection 4(a)(ii)" will explicitly ensure that SANRAL provide a report to the Minister as to how the written comments and presentations of the interested persons have been accommodated.

3. Ad Clause 3: add the following words in the substituted clause 4(c)(iii):

"the steps proposed to mitigate against the impact or likely impact on the local and national economy and on alternative roads..."

Comment:

It is important that SANRAL also ensures that any challenges identified in the economic assessment be dealt with and mitigating steps be proposed at that stage, not only mitigating steps to traffic.

4. Ad Clause 4: deleting subsection (dC)(iii) and correcting the further numbering of (dC)(iv) to (dC)(iii) and (dC)(v) to (dC)(iv).

Comment:

This proposed clause allows the Minister to specify "the offences and penalties applicable to the owner or user or driver of a vehicle in the event of the non-payment of toll".

It is our view that road traffic related transgressions are being decriminalised by virtue of AARTO and that private debts have also been decriminalised as debtors cannot be jailed anymore. It is quite disconcerting, and we believe clearly unconstitutional, to criminalise conduct that is clearly debt-related and not road-traffic related. This clause will be found unconstitutional if it remains and in that regard we will ask the President not to sign the Bill due to this problem. The President has already shown its willingness to send Bills back to parliament with reference to the Intellectual Property Laws Amendment Bill where the same argument was advanced.

5. Ad Clause 5: deleting the inserted subsection 59A(1)(b).

Comment:

The deleted section should also include 59A(1)(a).

The presumption created herein is dubious on two grounds:

- Firstly, given the unconstitutionality of various presumptions in criminal legislation, on what basis would this presumption be found to be constitutional? In the matter *State v Bhulwana* (CCT12/95) it was found that the presumption created by section 21(1)(a)(i) of the Drugs and Drug Trafficking Act, 140 of 1992 was unconstitutional as it clashed with the provisions of section 25(3) of the Constitution. Section 25(3) provides that:

'Every accused person shall have the right to a fair trial, which shall include the right -

...

(c) to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during a trial;'

Furthermore, despite the Constitutional Court judgment in *S v Meaker* in 1998 that such a presumption in the Road Traffic Offences Act is valid as long as it is phrased as a mere evidential onus and not a presumption by inserting the proviso "in the absence of evidence to the contrary", legal scholars such as Burchell in his Principles of Criminal Law expect that no such presumption will survive a constitutional challenge.

- Secondly, from a practical point of view this presumption will lead to many false prosecutions. Those vehicles not registered via an e-tag, will have to be tracked via the eNatis system that is known to be compromised due to inaccurate data. The Johannesburg Municipal Police Department has indicated that only 30% of the information on eNatis is correct. How will billing thus occur? Many vehicle owners who have sold their vehicles have never been removed from the system. If they are billed, fined and prosecuted, what will be the cost and extent of their defence even though they are innocent? This reverse onus will thus open many citizens to false prosecution.

6. Ad Clause 6: deleting section 6 of the Bill.

Comment:

The National Credit Act is apex legislation of which the operation thereof cannot be excluded by another Act of parliament. Any amendment to the operational sphere of the NCA must be made by amendments to the NCA itself and that amendment can, accordingly, only be dealt with by the Parliamentary Portfolio Committee on Trade and Industry.

The reasons for this are as follows:

- **Section 2** on Interpretation states as follows:
 - (1) This Act must be interpreted in a manner that gives effect to the purposes set out in [section 3](#).
- **Section 3** states that the purposes of the NCA are to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers.

Given the purposes outlined in the NCA, it is clear that the protection afforded by the NCA is intended to be available to all South Africans, save for the exceptions listed in Section 4.

- **Section 4** provides a comprehensive list of exceptions where the NCA does not have applicability. No mention is made of an exception with regard to toll roads. Any reasonable reader of the NCA will expect any exclusion to be contained in the NCA and not in any number of random other Acts not known by him or her. A constitutional duty exists to make the law accessible to the average person and this amendment flouts that duty.
- **Section 12** creates the National Credit Regulator (NCR). Of significance is section 12(1)(a) that states the NCR has jurisdiction throughout the Republic, section 12(1)(c) that states that the NCR is independent and only subject to the Constitution, and section 12(1)(d) that states that the NCR must exercise its function in accordance with the NCA. From this it is clear that the NCR and its constituent legislation, the NCA, is accorded a status free and clear from any outside intervention, including that of other legislation like the SANRAL Act.
- **Section 12(2)** also directs that “[e]ach organ of state must assist the National Credit Regulator to maintain its independence and impartiality, and to perform its functions effectively”. Therefore, the prescription of the NCR’s jurisdiction by the department of Transport is *ultra vires* and in breach of the provisions of the NCA.
- **Section 172** deals with conflicting legislation in a comprehensive way in that it sets out in column form in Schedule 1 which legislation will have precedence. The SANRAL Act is not listed therein. This is indicative of the comprehensiveness and status of the NCA as an autonomous act that cannot be amended except by amending the original Act itself.

Therefore, in conclusion, the SANRAL Act cannot erase the application of the Credit Act by way of an amending Bill issued by the Department of Transport.

So tabled in the National Assembly by the undersigned member of the National Assembly on this 22nd day of November 2012 at 13h00 p. m. by means of verified hand delivery to the Speaker of the National Assembly or his designated agent and resubmitted with clarification by verified e-mail on November 22, 2012.

A. Alberts, MP

