

ORIGINAL

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG PROVINCIAL DIVISION, PRETORIA)

Case No: 32097/2020

In the matter between:

ORGANISATION UNDOING TAX ABUSE

Applicant

and

MINISTER OF TRANSPORT

Respondent

**MINISTER OF CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**

Second Respondent

ROAD TRAFFIC INFRINGEMENT AUTHORITY

Third Respondent

APPEALS TRIBUNAL

Fourth Respondent



NOTICE OF MOTION

KINDLY TAKE NOTICE THAT the Applicant intends to apply to the above Honourable Court on 7 Sept 2020 at 10h00 or so soon thereafter as counsel may be heard for an order in the following terms:

1. Declaring the AARTO Act and the Amendment Act unconstitutional and invalid;
2. *In the alternative to 1*, declaring section 17 of the Amendment Act unconstitutional and invalid;
3. Directing any respondents opposing this application to pay the applicant's costs, jointly and severally. Such costs are to include the costs of two counsel.

TAKE NOTICE FURTHER that the accompanying affidavit of **STEFANIE FICK** and relevant annexures will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed the address below as the address at which it will accept notice and service of all further process in these proceedings.

TAKE FURTHER NOTICE THAT:

- a) Notice of intention to oppose this application must be given within fifteen days after receipt hereof and must contain an address within 15 kilometres of the court to which this application is brought, where notice and service of documents will be accepted.
- b) Answering affidavits, if any, must be filed within fifteen days after service of the notice of intention to oppose this application.
- c) In default of your delivery of a notice of intention to oppose, the matter will, without further notice, be placed on the roll for hearing after the expiry of the period mentioned in paragraph (a).

Signed and dated at PRETORIA on this _____ day of JULY 2020.

ALET UYS ATTORNEYS
ATTORNEYS FOR THE APPLICANT
STRUBENKOP COMPLEX
397 CENTRAL PARK AVENUE
LYNNWOOD, PRETORIA, 0081
TEL: 060 729 9933
EMAIL: alet@aletuysattorneys.co.za
REF: OL0013

**TO: THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
GAUTENG DIVISION, PRETORIA**

**AND TO: MINISTER OF TRANSPORT
FIRST RESPONDENT
C/O OFFICE OF THE STATE ATTORNEY
SALU BUILDING
316 THABO SEHUME STREET
PRETORIA**

**AND TO: MINISTER OF CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS
SECOND RESPONDENT
C/O OFFICE OF THE STATE ATTORNEY
SALU BUILDING
316 THABO SEHUME STREET
PRETORIA**

**AND TO: ROAD TRAFFIC INFRINGEMENT AUTHORITY
THIRD RESPONDENT
WATERFALL EDGE B, HOWICK CLOSE
WATERFALL OFFICE PARK
BEKKER STREET
MIDRAND**

AND TO: APPEALS TRIBUNAL
FOURTH RESPONDENT
WATERFALL EDGE B, HOWICK CLOSE
WATERFALL OFFICE PARK
BEKKER STREET
MIDRAND

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FOUNDING AFFIDAVIT

I, the undersigned,

STEFANIE FICK

Hereby state under oath that:

1. I am the Executive Director of the Accountability Division of the Organisation Undoing Tax Abuse ("**OUTA**"). The offices of the Applicant are situated at 10th Floor, O'Keefe & Swartz Building, 318 Oak Avenue, Randburg. I am duly authorised to make this application and depose to this affidavit on behalf of the applicant.
2. The facts contained herein are to the best of my knowledge both true and correct and are, unless otherwise stated or indicated by the context, within my



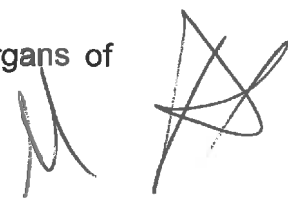
personal knowledge. Where I make legal submissions, I do so on the advice of my legal representatives.

INTRODUCTION

3. This is a constitutional challenge to the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 ("**AARTO Act**") and the Administrative Adjudication of Road Traffic Offences Amendment Act 4 of 2019 ("**Amendment Act**"). The following aspects of these Acts are constitutionally invalid:

3.1. The AARTO Act creates a single national system of road traffic regulation. The system is based on demerit points, which are incurred for traffic offences or infringements. By creating such a system, the AARTO Act unlawfully intrudes upon the exclusive legislative competence of the provinces as set out in Schedule 5, Parts A and B of the Constitution of the Republic of South Africa, 1996 ("the Constitution") to legislate in relation to provincial roads and traffic and in relation to roads, traffic and parking at local government level.

3.2. The Amendment Act shifts from a default system of judicial enforcement of traffic laws through the criminal law to a compulsory system of administrative enforcement of traffic laws through administrative tribunals, administrative fines and a demerit points system. Apart from the "offences" determined by the Minister, all contraventions of road traffic and transport laws will be treated as infringements which are subject exclusively to administrative enforcement under the Amendment Act by two national organs of

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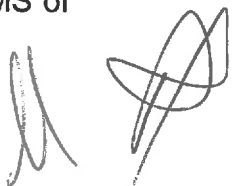
state, the Road Traffic Infringement Authority (the third respondent) established by section 3, and the Appeals Tribunal (the fourth respondent) established by section 29A of the Amendment Act. In terms of section 156(1)(a) of the Constitution, a municipality has exclusive executive authority in respect of the local government matters listed in Part B of Schedule 5. These matters include “traffic and parking”. Therefore, the enforcement of traffic and parking laws must take place at a local level and cannot be usurped by national organs of state in the manner that the Acts (AARTO and the Amendment Act) purport to do.

4. These constitutional inconsistencies of the AARTO Act and the Amendment Act lie at the very core of both Acts and are not capable of severance without negating the fundamental purpose of the two Acts. The applicant accordingly seeks an order declaring that both Acts are inconsistent with the Constitution and invalid.

5. In the alternative, in the event that this Court finds that the national regulation and enforcement systems created by these Acts are constitutionally permissible, the applicant challenges the Amendment Act’s inadequate service provisions:

5.1. Section 17 of the Amendment Act removes the requirement that service under the AARTO Act must be personal or by registered mail;

5.2. The Amendment Act relaxes the service provisions, permitting documents to be served upon infringers by means of email, SMS or

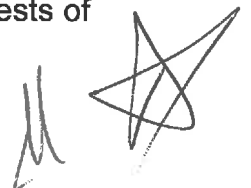


voice message. Given the serious consequences that may follow an infringement, such service is manifestly inadequate.

6. In the remainder of this affidavit, I address the following issues in turn:
 - 6.1. First, I list the parties to this application;
 - 6.2. Second, I briefly describe the national system created by the Amendment Act, to regulate and enforce road traffic laws;
 - 6.3. Third, I demonstrate that the AARTO system intrudes upon the exclusive legislative and executive authority of the provinces and municipalities, respectively;
 - 6.4. Fourth, I consider the relaxed service requirements introduced by the Amendment Act and the severe consequences that will flow from inadequate service; and
 - 6.5. Finally, I deal with the question of remedy.

THE PARTIES

7. OUTA is a civil action organisation and a Non-Profit Company ("NPC") incorporated in terms of the Companies Act, 2008. OUTA has been approved as a public benefit organisation ("PBO") under section 30 of the Income Tax Act, 1962. OUTA's NPC and PBO certificates are annexed hereto as, "**SF1**" and "**SF2**" respectively.
8. OUTA was established on 12 March 2012 under the name "The Opposition to Urban Tolling Alliance". Its original purpose was to represent the interests of



bodies and groups in taking lawful steps to intervene in, and oppose, Gauteng's e-toll scheme. In 2016, OUTA changed its name to "Organisation Undoing Tax Abuse" and expanded its objectives. Its core aim is now to ensure that tax revenue is expended in a frugal and lawful manner, unimpeded by the inappropriate use of state authority and power. Promoting public accountability and transparency is central to this aim.

9. OUTA has a substantial interest in the issues raised in this application, in that:

9.1. OUTA is mandated, by its Memorandum of Incorporation ("MOI"), to challenge any policies, laws or conduct that offend the Constitution. OUTA's MOI is annexed hereto and marked "SF3".

9.2. Since 2017, OUTA has engaged in a range of activities and interventions to promote public accountability. These include, but are not limited to:

9.2.1. monitoring deliberations in Parliament, its portfolio committees and select committees, and engaging with its members, to ensure that issues of accountability and oversight are considered and acted upon;

9.2.2. commenting on draft legislation that is relevant to OUTA's mandate of creating accountability, transparency, rational policy and good governance in the areas of transport, energy, water and sanitation, and environmental issues;

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9.2.3. making submissions to various Commissions of Inquiry, Ministries, regulators and the South African Human Rights Commission on the above issues; and

9.2.4. advocating for public participation in government processes and engaging with local communities to encourage active citizenry.

9.3. In addition, OUTA is a strong promoter of road safety and effective traffic legislation. It believes that to achieve this outcome, South Africa needs effective and fair processes for the adjudication of road traffic infringements. Such processes must be consistent with the Constitution. In this regard, OUTA has engaged in the following activities:

9.3.1. OUTA was actively involved in the public participation processes in relation to the AARTO Amendment Bill. In these processes, it raised a number of concerns about the Bill's constitutional validity;

9.3.2. OUTA made oral submissions on the AARTO Amendment Bill on 13 February 2018, to the same committee, a copy of which is attached and marked "SF4";

9.3.3. OUTA attended the following public hearings:

9.3.3.1. Free State on 9 March 2018;

9.3.3.2. Eastern Cape on 23 March 2018;

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9.3.3.3. Gauteng on 28 March 2018;

9.3.3.4. KwaZulu Natal on 24 April 2018;

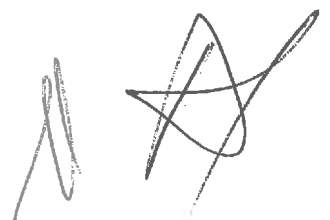
9.3.4. OUTA coordinated and presented a Workshop on the AARTO Amendment Bill, attended by key stakeholders in the transport industry on 20 June 2018;

9.3.5. OUTA wrote two consecutive letters to the Honourable President Ramaphosa regarding the constitutional invalidity of the Amendment Act on 25 March 2019 and 24 July 2019, marked “**SF5**” and “**SF6**” respectively; and

9.3.6. OUTA submitted its written comments, attached hereto and marked “**SF7**” on the AARTO Amendment Act’s Regulations Bill on 10 November 2019 to The Road Traffic Infringement Agency and the Department of Transport, and to Parliament’s Select Committee on Economic and Business Development.

10. OUTA brings this application in its own interest and in the public interest, in terms of sections 38(a) and 38(d) of the Constitution respectively.

11. The first respondent is the Minister of Transport (“the Minister”), who is served care of the State Attorney, Pretoria, with offices situated at 316 Thabo Sehume St, Pretoria CBD, Pretoria, 0001. The Minister is cited as the executive member who is responsible for the administration of both the AARTO Act and the Amendment Act.



12. The second respondent is the Minister of Co-operative Governance and Traditional Affairs, who is served care of the State Attorney, Pretoria, with offices situated at 316 Thabo Sehume St, Pretoria CBD, Pretoria, 0001. The second respondent is the Minister responsible for the implementation of the Intergovernmental Relations Framework Act 13 of 2005. This Act establishes a framework for the national government, provincial governments and local governments to promote and facilitate intergovernmental relations.
13. The third respondent is the Road Traffic Infringement Authority ("the Authority") situated at Waterfall Edge B, Howick Close, Waterfall Office Park, Bekker Street, Midrand. The Authority is a juristic person established by section 3 of the AARTO Act. The Authority is cited by virtue of its interest in the relief claimed by OUTA. No relief is sought by OUTA against the Authority and no order of costs is sought against it unless it opposes this application.
14. The fourth respondent is the Appeals Tribunal. The Appeals Tribunal is a juristic person established by section 29A of the Amendment Act. The Appeals Tribunal is cited by virtue of its interest in the relief claimed by OUTA. No relief is sought by OUTA against the Appeals Tribunal and no order of costs is sought against it unless it opposes this application. The Appeals Tribunal exists as a matter of law, but it appears not to have any factual existence yet and thus no address. In the circumstances, the applicant will serve the application on the Appeals Tribunal care of the Authority, at its address listed above.

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AARTO SYSTEM OF REGULATION AND ENFORCEMENT

15. The Acts (AARTO and the Amendment Act) create a single, national system of road traffic enforcement and regulation. There are two primary aspects of this system: the demerit points system and the national Appeals Tribunal.

i) Demerit points

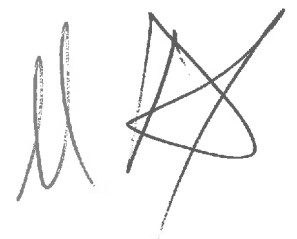
16. Both Acts impose a system of traffic regulation based on demerit points.
17. Section 1 of the AARTO Act defines "infringement" as "any act or omission in contravention of any road traffic legislation or transport legislation".
18. Section 35 of the AARTO Act provides that no notice may be issued to commence criminal proceedings in respect of any infringement after the commencement of the Amendment Act.
19. Section 24(1) of the AARTO Act stipulates that "Any person who has committed an offence or an infringement, incurs the number of demerit points prescribed under section 29 (c) in accordance with subsections (2) and (3)."
20. Section 29 provides that the Minister, acting with the concurrence of the Minister of Justice and the MEC of each province, may:
- 20.1. prescribe infringements and offences;
 - 20.2. prescribe the penalty, expressed as a single unit or multiple units accorded a monetary value, which must be imposed for each infringement;

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- 20.3. prescribe the demerit points which are incurred for each offence or infringement; and
- 20.4. prescribe the total number of demerit points which, if exceeded, disqualifies a person from driving or operating any motor vehicle.
- 21. The first level administration of this system of infringement enforcement and demerit points is, for the most part, assigned to the Authority. Thus,
 - 21.1. an alleged infringer makes his or her representations to the Authority, not to a municipal or provincial traffic official (s 18(1));
 - 21.2. it is the representations officer of the Authority, and not a municipal or provincial authority, who is vested with the power to conduct an independent investigation into the facts stated by the alleged traffic offender (s 18(5)(a)); and
 - 21.3. it is the representations officer of the Authority, and not a municipal or provincial authority, who takes the decision whether to uphold or to cancel the infringement notice (s 18(5)(c) and s 18(6)).

ii) National Appeals Tribunal

- 22. Section 16 of the Amendment Act introduces Chapter IVA into the Act. The new Chapter creates the Appeals Tribunal and describes its jurisdiction, composition and functions.
- 23. In terms of section 29A(2)(a) of the Amendment Act, the Appeals Tribunal has jurisdiction over the whole of South Africa.

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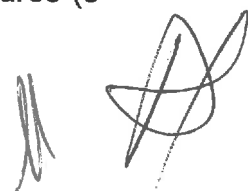
24. Its functions include the adjudication of matters brought to it by aggrieved infringers, as well as the hearing of appeals against, or reviews of, any decision of the representations officer that may be referred to the Tribunal (sections 29B and 29H).
25. The Appeals Tribunal is exclusively responsible for appeals against decisions of representations officers which are the second level administration of this system of infringement enforcement and demerit points. Municipal and provincial officials play no role in any appeals process.

INTRUSION UPON EXCLUSIVE MUNICIPAL AND PROVINCIAL COMPETENCE

26. The national system of road traffic regulation and enforcement created by the AARTO Act and the AARTO Amendment Act unlawfully intrude upon the exclusive executive and legislative competence of the local and provincial governments, respectively.

Violation of Exclusive Provincial Legislative Competence

27. As pointed out above, the Acts create a single national system of road traffic regulation that will govern the enforcement of all traffic and parking offences across the country.
28. However, in terms of section 44(1)(a)(ii) of the Constitution, Parliament has no legislative competence to enact laws on matters relating to provincial roads or traffic or in relation to traffic and parking at local government level. The relevant matters are Schedule 5 matters and legislative competence over them is reserved by the Constitution exclusively to provincial legislatures (s 104(1)(b) read with s 44(1)(a)(ii).

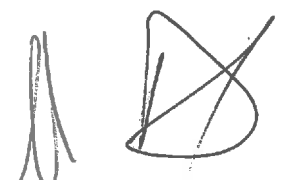
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29. So, by purporting to enact both the AARTO Act and the Amendment Act, Parliament has acted beyond the legislative powers conferred on it in the Constitution and both Acts are unconstitutional and invalid.

Violation of Exclusive Municipal Executive Competence

30. Section 156(1)(a) of the Constitution vests in municipalities' exclusive executive competence over all matters listed in Part B of Schedule 5.
31. Thus, if municipal traffic law enforcement is to move from a system of enforcement through the judiciary to a system of administrative enforcement through administratively imposed fines and demerit points, it is only municipal organs of state that can be vested with those administrative enforcement powers.
32. The AARTO Act purports to vest the administrative enforcement powers over municipal traffic laws in the Authority which is a national organ of state. The Amendment Act compounds the problem by vesting powers of appeal in the Appeals Tribunal which is another national organ of state, and by removing the right that an alleged offender had under section 17(1)(f)(iv) of the AARTO Act prior to its amendment, to bypass the unconstitutional national administrative enforcement system by electing to have his or her alleged traffic offence tried in the courts.
33. Therefore, both the AARTO Act and the Amendment Act are accordingly inconsistent with section 156(1)(a) of the Constitution and are invalid.

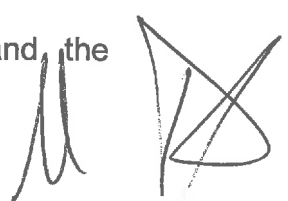
INADEQUATE SERVICE

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34. In the event that the above honourable court finds that the AARTO Act and Amendment Act withstand constitutional scrutiny on the grounds set out above, OUTA seeks an order declaring section 30 of the AARTO Act (and section 17 of the Amendment Act, to the extent necessary) unconstitutional. These provisions are unconstitutional due to their failure to provide for adequate service of infringers.

i) The AARTO Act's Adjudication Procedure

35. The AARTO Act sets out the adjudication procedure that follows an alleged infringement of road traffic laws.
36. The pre-amendment adjudication procedure was made up of a number of stages. At each stage, the infringer is given the opportunity to pay the prescribed penalty or to raise a defence (or a number of defences). The adjudication process begins with the service of an infringement notice, which is followed by a courtesy letter, which is followed by an enforcement order. In detail, the process involves the following:
- 36.1. If a person is alleged to have committed an infringement, an authorised officer must serve upon that person an **infringement notice** (as per section 17 of The AARTO Act). This notice must specify, amongst other things:
- 36.1.1. the particulars of the infringement;
- 36.1.2. the amount of the prescribed penalty payable for the infringement, the authority to which the payment must be made, where the payment may be made and the



prescribed discount that may be obtained with prompt payment;

36.1.3. that the infringer may ascertain his or her demerit points position from particular offices and testing centres;

36.1.4. that, not later than 32 days after the service of the infringement notice, the infringer may:

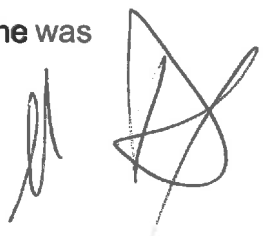
36.1.4.1. pay the penalty as reduced by the discount, or make representations to the Authority (which was called "the agency" prior to the Amendment Act), in the case of a minor infringement;

36.1.4.2. pay the discounted penalty, in the case of a major infringement;

36.1.4.3. make arrangements with the Authority to pay the penalty in instalments;

36.1.4.4. elect to be tried in court on a charge of having committed the alleged offence; or

36.1.4.5. provide information, to the satisfaction of the issuing Authority, that he or she was not the driver of the motor vehicle at the time of the alleged infringement, together with the name and details of the alleged driver. If the person satisfies the issuing Authority that he or she was

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not the driver of the vehicle, the infringement notice will be cancelled, and a fresh notice will be served on the true driver (sections 17(1)(f)(v) and 17(4) of the AARTO Act).

- 36.2. Notably, after receiving the infringement notice, the alleged infringer has a range of options to pay a discounted penalty, make appropriate arrangements or raise defences (either through representations to the RTIA or the issuing Authority or through the court process).
- 36.3. If a person complies with the infringement notice by paying the penalty (or arranging to pay it in instalments), the RTIA (second respondent) must record the demerit points incurred by the infringer in the national contraventions register (as per section 17(3) of the AARTO Act). It must then notify the infringer by registered mail that this has been done, and provide him or her with a printout of the demerits that they have incurred to date, together with an indication of how many points he or she has left before his or her driving licence, professional driving permit or operator card is suspended or cancelled.
- 36.4. If the person elects to make representations, he or she may explain that there are reasonable grounds why he or she should not be held liable for the prescribed penalty. The issuing Authority will then be given an opportunity to respond. A representations officer will then consider the representations and response and may conduct independent investigations to verify the facts. The representations officer may then allow or reject the representations. In the former



case, the infringement notice will be cancelled. In the latter case, the representations officer must serve the infringer with written notification containing his reasons for the decision and may advise the infringer to elect to be tried in a court (section 18(6) and (7)).

36.5. If a person fails to comply with the infringement notice within the prescribed period, the Authority will serve a **courtesy letter** on the infringer (in terms of section 19 of the AARTO Act). The courtesy letter must:

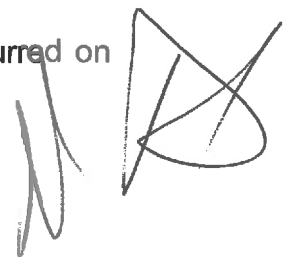
36.5.1. inform the infringer that he or she has failed to comply with the infringement notice;

36.5.2. inform the infringer that within 32 days of the date of service of the courtesy letter, he or she must make representations (in the case of a minor infringement); or pay the penalty and the fee of the courtesy letter; or notify the Authority that he or she elects to be tried in a court; and

36.5.3. state that a failure to comply with the courtesy letter will result in the registrar of the Authority issuing an enforcement order against the infringer.

36.6. Again, it is clear that, upon receiving a courtesy letter, the infringer is afforded an opportunity to pay the penalty or to raise defences, through representations or the court process.

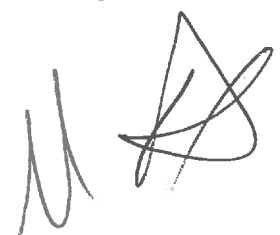
36.7. If the infringer pays the penalty after receipt of the courtesy letter, the Authority must record the demerit points that they have incurred on

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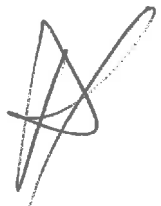

the national contravention register, notify the infringer by registered mail that it has done so, and provide the infringer with a printout of the demerit points he or she has incurred to date as well as an indication of the number of points remaining before his or her driving licence, professional driving permit or operator card is suspended or cancelled (as per section 19(3) of the AARTO Act).

36.8. If the infringer fails to comply with a courtesy letter, or the notification issued by the representations officer (informing the infringer that his or her representations have been rejected) or fails to apply for the matter to be tried in a Magistrates court, the registrar will issue and serve an **enforcement order** on the infringer (as per section 20 of the AARTO Act). In addition, the registrar will record the demerit points incurred by the infringer in the national contraventions register, notify the infringer by registered mail that it has done so, provide the infringer with a printout of the demerit points incurred by him or her to date and advise the infringer of the number of demerit points left before his or her driving licence, professional driving permit or operator card is suspended or cancelled. The enforcement order must:

36.8.1. state that the infringer may, not later than 32 days after the enforcement order is served, pay the penalty, representations fee and fee of the courtesy letter (if any) and the fee of the enforcement order to the Authority, and that the prescribed demerit points will be recorded in the national contraventions register; and

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- 36.8.2. state that a failure to comply with the requirements of the enforcement order within the 32-day period will result in a warrant being issued to recover the penalty and applicable fees.
- 36.9. No driving licence, professional driving permit or licence disc may be issued to an infringer, or in respect of a motor vehicle registered in the name of the infringer, until the enforcement order has been complied with or revoked (as per section 20(5) of the AARTO Act). These consequences are severe, both for individual drivers and professional drivers. I address this issue at length, below.
- 36.10. The burden of ensuring that the enforcement order is revoked will, in many instances, fall upon the infringer. Section 20(9) of the AARTO Act provides that an enforcement order will only be revoked if—
- 36.10.1. the infringer applies to the Authority and submits reasons why the enforcement order should be revoked, and such reasons are to the satisfaction of the registrar; or
- 36.10.2. the issuing Authority applies for the revocation of the enforcement order.
- 36.11. If an enforcement order is revoked, its consequences will be cancelled. If the consequences had included a disqualification to drive or use a motor vehicle, the infringer's driving licence, professional driving permit or operator's card must be returned (per section 20(10) of the AARTO Act).



36.12. If an infringer does not comply with an enforcement order (and/or does not succeed in having it revoked), the registrar may issue a warrant against the infringer (section 21 of the AARTO Act). The warrant may authorise the seizure of movable property to defray the costs of the penalty, the seizure of the infringer's driving licence or professional driving permit, the defacement of a licence disc of a motor vehicle, the seizure or defacement of an operator card for a vehicle of which the infringer is the registered operator, or the immobilisation of the motor vehicle of which the infringer is the owner or registered operator. If the infringer complies with the enforcement order and pays the warrant fee, the warrant will not be executed.

ii) Demerit points

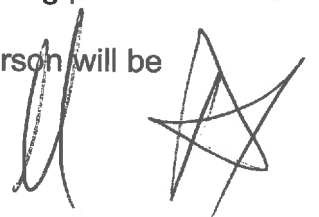
37. An infringer will incur demerit points during the following phases in the process as set out above:

37.1. On the date on which the penalty and any applicable fees are paid (or when an arrangement for payment is made);

37.2. On the date on which an enforcement order is issued; or

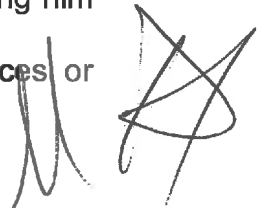
37.3. On the date on which an infringer is convicted of an offence. If the person appeals their conviction, no demerit points will be recorded until the appeal is rejected or abandoned (sections 24(2) and (4) of the AARTO Act).

38. The demerit points incurred by an infringer are added to their existing points. If the total demerit points exceed the prescribed threshold, the person will be

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disqualified from driving or operating a motor vehicle (as contemplated in section 25(1)). The disqualification will become effective 32 days after the excess points were incurred.

39. The disqualification period is measured in months and equals the number of points by which the prescribed limit is exceeded, multiplied by three (or by another number prescribed by the Minister in terms of section 25(2)(a)). For example, if the demerit points incurred by an infringer exceed the limit by three, the disqualification period will be nine months.
40. During the disqualification period, the infringer may not apply for a driving licence, professional driving permit or operator card (section 25(3) of the AARTO Act). It is an offence for the infringer to drive or operate a motor vehicle during the disqualification period. If he or she does so, he or she is liable on conviction to pay a fine or to imprisonment for up to one year, or both as per section 25(4) of the AARTO Act.
41. Section 27 of the AARTO Act prescribes that if a person incurs demerit points resulting in a disqualification for a third time, that person's driving licence or professional driving permit or operator's card will be cancelled and destroyed. A person who fails to hand in the licence or permit will be guilty of an offence and will be liable to pay a fine or to imprisonment for up to one year, or both. The person may reapply for a licence or permit after the disqualification period has expired.
42. When a person has exceeded the prescribed limit of demerit points, a notice will be sent by the Authority by registered mail to that person, informing him or her of the number of points he or she has incurred, the offences or

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infringements in relation to which the points have been incurred and that he or she may not drive or operate a vehicle during the disqualification period (section 26). The notice must set out the consequences of non-compliance (described above).

43. The demerit points incurred by an infringer will be reduced over time. In terms of section 28 of the AARTO Act, the Authority will reduce the number of points by one point every three months.

iii) Amended service provisions

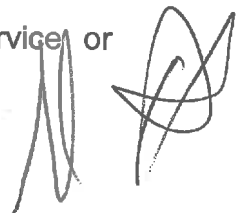
44. The Amendment Act amends section 30 of the AARTO Act, which governs the manner and form of service of documents under the Act.

45. Prior to the amendment, section 30(1) provided that:

45.1. Any document required to be served on an infringer under the Act must be served personally or sent by registered mail to the infringer's last known address;

45.2. The date upon which service is effected is the date on which the infringer signed for the document served (as per the definitions section of the AARTO Act). When a document is sent by registered mail, service is regarded as having been effected on the tenth day after the document was received by the post office in question (section 30(2) of the AARTO Act).

46. Section 17 of the Amendment Act amends section 30. Section 17 removes the requirement that service must be effected by personal service or

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registered mail. It replaces this with the requirement that all documents must be served on infringers by personal service or postage (i.e. non-registered mail) or electronic service. Section 17 provides that:

"Section 30 of the principal Act is hereby amended—

(a) By the substitution for subsection (1) of the following subsection:

'(1) Any document required to be served on an infringer in terms of this Act must be served on the infringer by—

(a) personal service;

(b) postage; or

(c) electronic service; and'

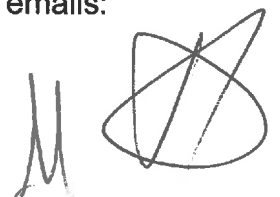
(b) By the substitution of subsection (2) for the following subsection—

'(2) A document which is sent in terms of subsection (1) is deemed to have been served on the infringer on the tenth day after posting the said document or of the electronic service and such electronic service reflected in the National Road Traffic Offences Register, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit.'

47. The Amendment Act defines 'electronic service' to mean service by electronic communication as defined in the Electronic Communications Act 2005 and as contemplated by the Electronic Communication and Transactions Act, 2002.

47.1. The Amendment Act defines 'electronic communications' as "communication by means of data messages". This includes SMS messages and emails;

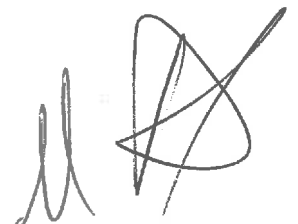
47.2. The AARTO Act defines "electronic communications" as the following, which includes SMS messages, voice mail messages, and emails:

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“the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct, but does not include content service”.

48. These forms of service are manifestly inadequate, for the following reasons:

- 48.1. It is likely that, in many cases, a notice in the form of an email, text message, voice note, or ordinary postage will be missed by infringers. Messages in this form could easily be treated as junk mail or spam or could simply go unopened. There is nothing in the form of such correspondence that emphasises the importance of the document to the recipient;
- 48.2. In addition, there is a reasonable risk that such notices will not be delivered or will be delivered to the wrong person. Ordinary post could go missing in the mail delivery system and a person’s email address or cell phone number may change;
- 48.3. Considering the inadequacies and commonly known glitches of the eNATIS system, the dispatch of a notice to an infringer’s most recent address (as updated by him or her), does not guarantee that the infringer would receive such notice. Administrative and technical glitches will remain prevalent, irrespective of whether an infringer has satisfied the obligation to update his or her details.

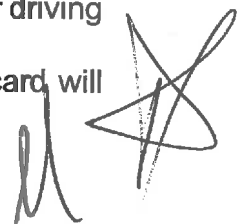
A handwritten signature in black ink, consisting of a stylized 'M' followed by a large, loopy flourish.

49. The risk of an infringer failing to receive, read or open a notice is unacceptable, given the serious consequences that might befall an infringer, if the infringer fails to respond to the notice in question. In this regard, the following is relevant:

49.1. In terms of the Amendment Act, the first step that will be taken is that an infringer will be served with an infringement notice. If the infringer does not receive and/or fails to respond to the infringement notice, they will be sent a courtesy letter. If the infringer does not receive or respond to the courtesy letter or has failed to apply for an appeal or review to the Tribunal, an enforcement order will be issued and served. Upon the issue of the enforcement order, the demerit points that the infringer has incurred will be recorded on the national offences register. Only once this has occurred will the infringer be informed by registered mail.

49.2. The consequences of an enforcement order being issued are severe. Such consequences include, *inter alia*, the following:

49.2.1. the demerit points incurred by the infringer will be recorded on the national offences register. If the infringer's total demerit points exceed the threshold prescribed by the Minister, the infringer will be disqualified from driving or operating a motor vehicle. This becomes effective 32 days after the excess points were incurred. If the disqualification is the third disqualification for that person, his or her driving licence or professional driving permit or operator card will

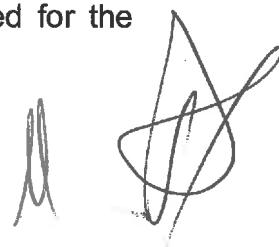


be cancelled and destroyed. He or she will only be entitled to re-apply for a new licence or permit after the disqualification period ends and the infringer has successfully completed a rehabilitation program; and

49.2.2. no driving licence, professional driving permit or licence disc may be issued in respect of a motor vehicle registered in the name of the infringer until the enforcement order has been complied with or has been revoked;

49.2.3. as is explained above, the infringer bears the burden of initiating the process for the revocation of the enforcement order. If the infringer wishes to have the enforcement order revoked, he or she must apply to the Authority in the prescribed manner and submit reasons to the satisfaction of the registrar. There are no prescribed time periods for the revocation of an enforcement order. As such, there is a risk that the process may be drawn out and lengthy;

49.2.4. in practice, this means that an infringer who has not received notice of his or her infringement (and who would otherwise have made representations to contest his or her liability or even pay the infringement) may be barred from obtaining a driving licence, professional driving permit or licence disc and/or from driving and operating a motor vehicle until her or she has successfully applied for the revocation of the enforcement order;

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49.2.5. this would have severe consequences for the infringer's ability to move freely and to practice his or her profession and/or to make a living (particularly in the case of taxi and truck or bus drivers and fleet operators). I move to consider this issue below.

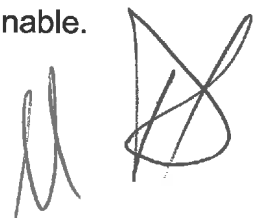
(iv) Rights violations

50. Inadequate service will implicate a number of the alleged infringers' constitutional rights. These include the following:

50.1. First (and foremost), the alleged infringer's right to just administrative action (section 33 of the Constitution) is infringed:

50.1.1. this right is limited by the lack of proper service provided for in the Act, which will result in a process that is not fair. In particular, the person will not be provided an adequate opportunity (or any opportunity at all) to make representations in the early stages of the process (i.e. after an infringement notice and courtesy letter have been issued). This undermines or wholly denies the person's right to *audi*. This renders the process procedurally unfair;

50.1.2. in addition, the imposition of severe consequences on alleged infringers, in the absence of a fair process that allows individuals to make representations and to put forward his or her defence, is irrational and unreasonable.

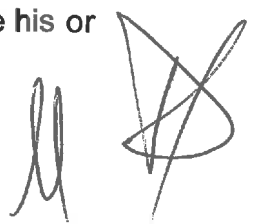
A handwritten signature in black ink, consisting of a stylized 'M' followed by a large, loopy flourish.

As such, the amendments violate the affected infringer's substantive right to just administrative action.

50.2. Second, the lack of service may also implicate the alleged infringer's right to freedom of trade, occupation and profession (section 22 of the Constitution) and freedom of movement (section 21 of the Constitution):

50.2.1. as is explained above, severe consequences may flow from an alleged infringer's failure to respond to (or to successfully challenge) their liability under an infringement notice. This includes that a person's driving licence, professional driving permit or operator's card may be suspended or even cancelled; that the person will not be permitted to drive or operate a motor vehicle; and that no new driving licence, professional driving permit or licence disc may be issued to that person;

50.2.2. if this occurs in relation to a private individual, that person will not be able to drive to and from work (and to work engagements) until the enforcement order is revoked, the disqualification period expires or his or her grievance, appeal or review is finally resolved. This may take a significant length of time. During this period, the person's ability to travel will be severely inhibited. This violates his or her right to freedom of movement and to practice his or her trade;

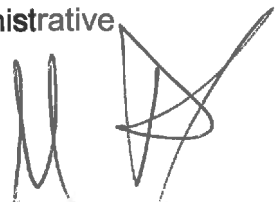
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50.2.3. Similarly, in the instances where a person is employed or operates in the transport industry (e.g. as a taxi driver or fleet owner), he or she will be prevented from practicing his or her trade and making a living until the enforcement order is revoked or the disqualification period expires.

51. Given these severe consequences, section 17 of the Amendment Act is unconstitutional and invalid. Personal service or service by registered mail is critical to ensuring that an infringer is given adequate opportunity to make representations or to otherwise respond to an infringement notice before penalties are visited upon him or her.

REMEDY

52. Section 172(1) of the Constitution provides that a court *must* declare that any law that is inconsistent with the Constitution is invalid to the extent of its inconsistency. The court may then make any order that is just and equitable in the circumstances. Section 38 of the Constitution provides that, when it is alleged that a right in the Bill of Rights is infringed or threatened, the order must constitute "appropriate relief".
53. The legislative and executive competence challenges set out above go to the core of the AARTO Act and the Amendment Act. The offensive provisions cannot sensibly be severed from the remainder of the Act and the Amendment Act. Once the provisions of the Act dealing with the administrative

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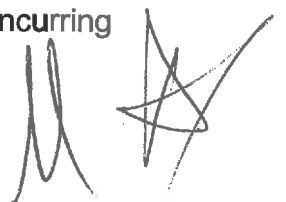
enforcement of laws relating to provincial and municipal roads and traffic and parking are removed, there is very little of the Act remaining.

54. In the circumstances of this case, I submit that an order in the following terms would be appropriate, just and equitable:

54.1. Declaring the AARTO Act and the Amendment Act unconstitutional and invalid;

54.2. In the alternative, declaring section 17 of the Amendment Act unconstitutional and invalid. Section 30 of the AARTO Act, prior to its amendment by section 17 of the Amendment Act provided that service under the AARTO Act may only be effected personally or by registered mail to the recipient's last known address. That is the appropriate standard of service to meet the constitutional requirements for service in cases which have consequences as serious as those provided for in the AARTO Act. The Court should accordingly strike down section 17 of the Amendment Act which seeks to dilute the service requirements to unconstitutional levels.

55. The order of invalidity should take immediate effect. A suspension of the order would not be just and equitable in the circumstances of this case. The AARTO system (including the demerit system) has not yet been rolled out. On 2 June 2020, the Road Traffic Infringement Agency issued a press release which stated that the roll-out of the AARTO Act has been delayed as a result of the coronavirus pandemic. This statement is attached hereto marked "SF8". If the order is granted with immediate effect, it will avoid the State incurring

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significant expense in rolling out the AARTO project, only to reverse it in the future.

CONCLUSION

56. I pray that the relief sought in the Notice of Motion be granted with costs, including the costs of two counsel.



DEPONENT

I certify that this affidavit was signed and sworn to before me at Rodepoort on this the 6 day of 21/11 2020 November 2019, the deponent having acknowledged that he knows and understands the content of this affidavit, the Regulations contained in Government Notice No 1258 of 21 July 1972 and R1648 of 19 August 1977, having been complied with.



COMMISSIONER OF OATHS

RASHAAD PANDOR
EX-OFFICIO COMMISSIONER OF OATHS
PRACTICING ATTORNEY
UNIT 35, WATERFORD OFFICE PARK,
WATERFORD DRIVE, FOURWAYS



Companies and Intellectual
Property Commission

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Registration Number: 2012 / 064213 / 08

Enterprise Name: ORGANISATION UNDOING TAX ABUSE

ENTERPRISE INFORMATION

Registration Number 2012 / 064213 / 08
Enterprise Name ORGANISATION UNDOING TAX ABUSE NPC
Registration Date 03/04/2012
Business Start Date 03/04/2012
Enterprise Type Non Profit Company
Enterprise Status In Business
Compliance Notice Status NONE
Financial Year End February
TAX Number 9053642220

Addresses

POSTAL ADDRESS

10TH FLOOR O KEEFE AND SWARTZ BUILD
318 OAK AVENUE
FERNDALE
GAUTENG
2194

ADDRESS OF REGISTERED OFFICE

10TH FLOOR O KEEFE AND SWARTZ BUILD
318 OAK AVENUE
FERNDALE
GAUTENG
2194

ACTIVE MEMBERS / DIRECTORS

Surname and First Names

DUVENAGE, WAYNE LLEWELLYN

Type

Director

**ID Number /
Date of Birth**

6001035211087

**Contrib.
(R)**

0.00

**Interest
(%)**

0.00

**Appoint.
Date**

03/04/2012

Address

Postal: 126 RANDPARK DRIVE,
RANDPARK RIDGE EXT 1,
JOHANNESBURG, GAUTENG,
Residential: 126 RANDPARK
DRIVE, RANDPARK RIDGE EXT 1,
JOHANNESBURG, GAUTENG,

FICK, STEFANIE

Director

7401190014087

0.00

0.00

02/04/2018

Postal: 972 CONFIDENCE
STREET, STRUBENSVALLEY,
STRUBENSVALLEY, GAUTENG,
Residential: 972 CONFIDENCE
STREET, STRUBENSVALLEY,
STRUBENSVALLEY, GAUTENG,

GULSTON, GODFREY ANDREW

Director

4905105003087

0.00

0.00

01/02/2019

Postal: P O BOX 27611,
BERTSHAM, BERTSHAM,
GAUTENG, 2013
Residential: 23 FIONA STREET,
RIDGEWAY EXT4, RIDGEWAY
EXT4, GAUTENG, 2099

VOLMINK, HEINRICH CYRIL

Director

7607275117088

0.00

0.00

01/05/2019

Postal: 62 GREENWAY,
GREENSIDE, GREENSIDE,
GAUTENG, 2196
Residential: 62 GREENWAY,
GREENSIDE, GREENSIDE,
GAUTENG, 2196



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Registration Number: **2012 / 064213 / 08**

Enterprise Name: **ORGANISATION UNDOING TAX ABUSE**

MAJOZI, PHUMLANI MICHAEL	Non Executive Director	8808295924086	0.00	0.00	01/03/2017	Postal: 2 BLYDE PLACE, BLOUBOSRAND, BLOUBOSRAND, GAUTENG, 2188 Residential: 2 BLYDE PLACE, BLOUBOSRAND, BLOUBOSRAND, GAUTENG, 2188
ADAM, FERRIAL ISMAIL	Non Executive Director	7202280398087	0.00	0.00	01/04/2017	Postal: 54 MALAGA, 118 DENNIS ROAD ATHOL GARDENS, JOHANNESBURG, GAUTENG, Residential: 54 MALAGA, 118 DENNIS ROAD ATHOL GARDENS, JOHANNESBURG, GAUTENG,
MODISAPODI, WYNA BEREETHA	Non Executive Director	7403140390088	0.00	0.00	02/04/2018	Postal: 4 CELTIS CRESCENT, FOURWAYS, FOURWAYS, GAUTENG, 2191 Residential: 4 CELTIS CRESCENT, FOURWAYS, FOURWAYS, GAUTENG, 2191
PILLAY - VAN GRAAN, THAVAGIE	Non Executive Director	7206070172081	0.00	0.00	02/04/2018	Postal: P O BOX 100687, MORELETA PLAZA, MORELETA PLAZA, GAUTENG, 0167 Residential: 202 WALNUT STREET, MORELETA PARK, MORELETA PARK, GAUTENG, 0167
PAUWEN, LEOPOLD JEAN JOSEPH	Non Executive Director	4810035152188	0.00	0.00	01/08/2018	Postal: P O BOX 858, HIGHLANDS NORTH, HIGHLANDS NORTH, GAUTENG, 2037 Residential: 17 MERVYN ROAD, GLENHAZEL, GLENHAZEL, GAUTENG, 2192

AUDITOR DETAILS

Auditor Name	Type	Status	Appointment Date	Resignation Date	Email Address
ALCHEMY AUDIT SERVICES INC	Auditor	Current		ACTIVE	info@afsi.co.za

Profession Number: 902336

CHANGE SUMMARY

03/04/2012	Registration of CC/CO on 03/04/2012.
30/05/2012	Member Change on 30/05/2012. Authorising Director DetailsDirector Full ForeNames=DENNIS JACOBUS Surname=BISHOP ID Number=5011075078081 Customer Details Director Full ForeNames=JANE Surname=HOPPER ID Number=6305150114087
30/05/2012	Member Change on 30/05/2012. Authorising Director DetailsDirector Full ForeNames=DENNIS JACOBUS Surname=BISHOP ID Number=5011075078081

Page 2 of 10

Physical Address
the dti Campus - Block F
77 Meintjies Street
Sunnyside 0001

Postal Address: Companies
P O Box 429
Pretoria
0001

Docex: 256
Web: www.cipc.co.za
Contact Centre: 086 100 2472 (CIPC)
Contact Centre (International): +27 12 394 9573



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Enterprise Name: **ORGANISATION UNDOING TAX ABUSE**

05/06/2012 Postal Address Change on 31/05/2012.
33 LANGERMANN DRIVE
KENSINGTON

2094

05/06/2012 Registered Address Change on 31/05/2012.
33 LANGERMANN DRIVE
KENSINGTON

2094

11/06/2012 Member Change on 11/06/2012.
Unlock PasswordUnlocked byLKZ39Password successfully sent to COMCON@TELKOMSA.NET

11/06/2012 Member Change on 11/06/2012.
Unlock PasswordUnlocked byLKZ39Password successfully sent to INFO@COMPANYCONNEXION.CO.ZA

11/06/2012 Member Change on 03/04/2012.
Full ForeNames=WAYNE LLEWELLYN
Surname=DUVENAGE
AppointmentDate=03/04/2012
Status=A

11/06/2012 Member Change on 03/04/2012.
Full ForeNames=DENNIS JACOBUS
Surname=BISHOP
AppointmentDate=03/04/2012
Status=C

11/06/2012 Member Change on 03/04/2012.
Full ForeNames=GLYNIS MERIL
Surname=BISHOP
AppointmentDate=03/04/2012
Status=C

11/06/2012 Member Change on 03/04/2012.
Full ForeNames=CUAN CHARLES
Surname=BISHOP
AppointmentDate=03/04/2012
Status=C

11/06/2012 Member Change on 03/04/2012.
Full ForeNames=LEOPOLD JEAN JOSEPH
Surname=PAUWEN
AppointmentDate=03/04/2012
Status=A

11/06/2012 Member Change on 03/04/2012.
Full ForeNames=MICHAEL JOHN
Surname=TATALIAS
AppointmentDate=03/04/2012
Status=A

30/07/2012 Principle Business Change on 30/07/2012.

30/07/2012 Name Change on 30/07/2012.
BASIC SPIRIT DEVELOPMENT

21/02/2013 Accounting Officer Change on 03/04/2012.
Add Record
Name : = ALCHEMY AUDIT SERVICES INC
Status : = Current

11/12/2013 SMS Notification that Annual Return is due was sent on 11/12/2013.
E-Mail send to LEOPOLD JEAN JOSEPH PAUWEN for NPC Reminder

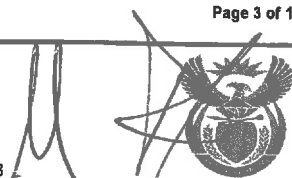
30/04/2014 Annual Return completed on 30/04/2014.
Company / Close Corporation AR Filing - Web Services : Ref No. : 54549160

Page 3 of 10

Physical Address
the dti Campus - Block F
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Sunnyside 0001

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P O Box 429
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0001

Docex: 256
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Enterprise Name: **ORGANISATION UNDOING TAX ABUSE**

29/04/2015 SMS Notification that Annual Return is due was sent on 29/04/2015.
E-Mail send to LEOPOLD JEAN JOSEPH PAUWEN for 2015

05/05/2015 Annual Return completed on 05/05/2015.
Company / Close Corporation AR Filing - Web Services : Ref No. : 526135936

28/07/2015 SMS Notification that Annual Return is due was sent on 28/07/2015.
E-Mail send to LEOPOLD JEAN JOSEPH PAUWEN for NPC Reminder

16/09/2015 Member Change on 16/09/2015.
Director JEFFREY BRIAN STEWART OSBORNE was added

16/09/2015 Member Change on 16/09/2015.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

16/09/2015 Member Change on 16/09/2015.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

16/09/2015 Member Change on 16/09/2015.
Director MICHAEL JOHN TATALIAS details was Changed

22/12/2015 Member Change on 22/12/2015.
Director IVAN HERSELMAN was added

22/12/2015 Member Change on 22/12/2015.
Director ROBERT NORMAN HUTCHINSON was added

22/12/2015 Member Change on 22/12/2015.
Director EDUARD CHRISTIAAN LE ROUX was added

22/12/2015 Member Change on 22/12/2015.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

22/12/2015 Member Change on 22/12/2015.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

22/12/2015 Member Change on 22/12/2015.
Director JEFFREY BRIAN STEWART OSBORNE details was Changed

11/01/2016 Principle Business Change on 11/01/2016.

11/01/2016 Name Change on 11/12/2015.
OPPOSITION TO URBAN TOLLING ALLIANCE

29/02/2016 Member Change on 29/02/2016.
Director OYA HAZEL GUMEDE was added

29/02/2016 Member Change on 29/02/2016.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

29/02/2016 Member Change on 29/02/2016.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

29/02/2016 Member Change on 29/02/2016.
Director IVAN HERSELMAN details was Changed

29/02/2016 Member Change on 29/02/2016.
Director ROBERT NORMAN HUTCHINSON details was Changed

29/02/2016 Member Change on 29/02/2016.
Director EDUARD CHRISTIAAN LE ROUX details was Changed

01/03/2016 Registered Address Change on 01/03/2016.
10TH FLOOR OKEEFE AND SWARTZ BUILDING 318 OAK AVENUE FERNDAL GAUTENG2194

06/04/2016 SMS Notification that Annual Return is due was sent on 06/04/2016.
E-Mail send to WAYNE LLEWELLYN DUVENAGE for 2016

Page 4 of 10

Physical Address
the dti Campus - Block F
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Sunnyside 0001

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Registration Number: **2012 / 064213 / 08**

Enterprise Name: **ORGANISATION UNDOING TAX ABUSE**

06/04/2016 SMS Notification that Annual Return is due was sent on 06/04/2016.
E-Mail send to LEOPOLD JEAN JOSEPH PAUWEN for 2016

06/04/2016 SMS Notification that Annual Return is due was sent on 06/04/2016.
E-Mail send to IVAN HERSELMAN for 2016

06/04/2016 SMS Notification that Annual Return is due was sent on 06/04/2016.
E-Mail send to ROBERT NORMAN HUTCHINSON for 2016

06/04/2016 SMS Notification that Annual Return is due was sent on 06/04/2016.
E-Mail send to EDUARD CHRISTIAAN LE ROUX for 2016

06/04/2016 SMS Notification that Annual Return is due was sent on 06/04/2016.
E-Mail send to OYA HAZEL GUMEDE for 2016

22/04/2016 Registered Address Change on 22/04/2016.
10TH FLOOR O KEEFE AND SWARTZ BUILDING 318 OAK AVENUE FERNDAL G2194

29/04/2016 Annual Return completed on 29/04/2016.
Company / Close Corporation AR Filing - Web Services : Ref No. : 534254031

05/01/2017 Member Change on 05/01/2017.
Director IVAN HERSELMAN details was Changed

05/01/2017 Member Change on 05/01/2017.
Director EDUARD CHRISTIAAN LE ROUX details was Changed

05/01/2017 Member Change on 05/01/2017.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

05/01/2017 Member Change on 05/01/2017.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

05/01/2017 Member Change on 05/01/2017.
Director ROBERT NORMAN HUTCHINSON details was Changed

05/01/2017 Member Change on 05/01/2017.
Director OYA HAZEL GUMEDE details was Changed

23/01/2017 Member Change on 23/01/2017.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

23/01/2017 Member Change on 23/01/2017.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

23/01/2017 Member Change on 23/01/2017.
Director ROBERT NORMAN HUTCHINSON details was Changed

23/01/2017 Member Change on 23/01/2017.
Director OYA HAZEL GUMEDE details was Changed

08/03/2017 Member Change on 08/03/2017.
Director PHUMLANI MICHAEL MAJOZI was added

08/03/2017 Member Change on 08/03/2017.
Director ROBERT VALENTINE HANDFIELD-JONES was added

08/03/2017 Member Change on 08/03/2017.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

08/03/2017 Member Change on 08/03/2017.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

08/03/2017 Member Change on 08/03/2017.
Director ROBERT NORMAN HUTCHINSON details was Changed

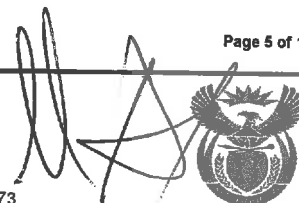
06/04/2017 Email Notification that Annual Return is due was sent on 06/04/2017.
E-Mail sent to WAYNE LLEWELLYN DUVENAGE for 2017

Page 5 of 10

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Registration Number: **2012 / 064213 / 08**

Enterprise Name: **ORGANISATION UNDOING TAX ABUSE**

06/04/2017 Email Notification that Annual Return is due was sent on 06/04/2017.
E-Mail sent to LEOPOLD JEAN JOSEPH PAUWEN for 2017

06/04/2017 Email Notification that Annual Return is due was sent on 06/04/2017.
E-Mail sent to ROBERT NORMAN HUTCHINSON for 2017

06/04/2017 Email Notification that Annual Return is due was sent on 06/04/2017.
E-Mail sent to PHUMLANI MICHAEL MAJOZI for 2017

06/04/2017 Email Notification that Annual Return is due was sent on 06/04/2017.
E-Mail sent to ROBERT VALENTINE HANDFIELD-JONES for 2017

10/04/2017 Member Change on 10/04/2017.
Director FERRIAL ISMAIL ADAM was added

10/04/2017 Member Change on 10/04/2017.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

10/04/2017 Member Change on 10/04/2017.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

10/04/2017 Member Change on 10/04/2017.
Director ROBERT NORMAN HUTCHINSON details was Changed

10/04/2017 Member Change on 10/04/2017.
Director PHUMLANI MICHAEL MAJOZI details was Changed

10/04/2017 Member Change on 10/04/2017.
Director ROBERT VALENTINE HANDFIELD-JONES details was Changed

12/04/2017 Registered Address Change on 12/04/2017.
10TH FLOOR O KEEFE AND SWARTZ BUILDING 316 OAK AVENUE FERNDAL G2194

26/04/2017 Annual Return completed on 26/04/2017.
Company / Close Corporation AR Filing - Web Services : Ref No. : 569790471

18/08/2017 Member Change on 18/08/2017.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

18/08/2017 Member Change on 18/08/2017.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

18/08/2017 Member Change on 18/08/2017.
Director ROBERT NORMAN HUTCHINSON details was Changed

18/08/2017 Member Change on 18/08/2017.
Director PHUMLANI MICHAEL MAJOZI details was Changed

18/08/2017 Member Change on 18/08/2017.
Director FERRIAL ISMAIL ADAM details was Changed

18/08/2017 Member Change on 18/08/2017.
Director ROBERT VALENTINE HANDFIELD-JONES details was Changed

14/11/2017 Member Change on 14/11/2017.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

14/11/2017 Member Change on 14/11/2017.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

14/11/2017 Member Change on 14/11/2017.
Director ROBERT NORMAN HUTCHINSON details was Changed

14/11/2017 Member Change on 14/11/2017.
Director PHUMLANI MICHAEL MAJOZI details was Changed

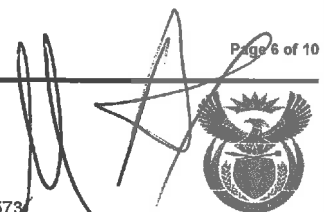
14/11/2017 Member Change on 14/11/2017.
Director FERRIAL ISMAIL ADAM details was Changed

Page 6 of 10

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Registration Number: 2012 / 064213 / 08

Enterprise Name: ORGANISATION UNDOING TAX ABUSE

Disclosure Certificate: Companies and Close Corporations

24/01/2018 Member Change on 24/01/2018.
Director BENJAMIN CECIL CLARKE THERON was added

24/01/2018 Member Change on 24/01/2018.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

24/01/2018 Member Change on 24/01/2018.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

24/01/2018 Member Change on 24/01/2018.
Director PHUMLANI MICHAEL MAJOZI details was Changed

24/01/2018 Member Change on 24/01/2018.
Director FERRIAL ISMAIL ADAM details was Changed

02/04/2018 Email Notification that Annual Return is due was sent on 02/04/2018.
E-Mail sent to WAYNE LLEWELLYN DUVENAGE for 2018

02/04/2018 Email Notification that Annual Return is due was sent on 02/04/2018.
E-Mail sent to LEOPOLD JEAN JOSEPH PAUWEN for 2018

02/04/2018 Email Notification that Annual Return is due was sent on 02/04/2018.
E-Mail sent to BENJAMIN CECIL CLARKE THERON for 2018

02/04/2018 Email Notification that Annual Return is due was sent on 02/04/2018.
E-Mail sent to PHUMLANI MICHAEL MAJOZI for 2018

02/04/2018 Email Notification that Annual Return is due was sent on 02/04/2018.
E-Mail sent to FERRIAL ISMAIL ADAM for 2018

30/04/2018 Member Change on 30/04/2018.
Director STEFANIE FICK was added

30/04/2018 Member Change on 30/04/2018.
Director WYNA BERETHA MODISAPUDI was added

30/04/2018 Member Change on 30/04/2018.
Director THAVAGIE PILLAY - VAN GRAAN was added

30/04/2018 Member Change on 30/04/2018.
Director WAYNE LLEWELLYN DUVENAGE - Change was made .

30/04/2018 Member Change on 30/04/2018.
Director LEOPOLD JEAN JOSEPH PAUWEN - Change was made .

30/04/2018 Member Change on 30/04/2018.
Director PHUMLANI MICHAEL MAJOZI - Change was made .

30/04/2018 Member Change on 30/04/2018.
Director FERRIAL ISMAIL ADAM - Change was made .

30/04/2018 Member Change on 30/04/2018.
Director BENJAMIN CECIL CLARKE THERON - Change was made .

02/05/2018 Annual Return completed on 02/05/2018.
Company / Close Corporation AR Filing - Web Services : Ref No. : 5115722075

12/06/2018 Member Change on 12/06/2018.
Director MAKHOSI BUSISIWE KHOZA was added

12/06/2018 Member Change on 12/06/2018.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

12/06/2018 Member Change on 12/06/2018.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

12/06/2018 Member Change on 12/06/2018.
Director PHUMLANI MICHAEL MAJOZI details was Changed

Page 7 of 10

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Registration Number: 2012 / 064213 / 08

Enterprise Name: ORGANISATION UNDOING TAX ABUSE

12/06/2018 Member Change on 12/06/2018.
Director FERRIAL ISMAIL ADAM details was Changed

12/06/2018 Member Change on 12/06/2018.
Director BENJAMIN CECIL CLARKE THERON details was Changed

12/06/2018 Member Change on 12/06/2018.
Director STEFANIE FICK details was Changed

12/06/2018 Member Change on 12/06/2018.
Director WYNA BERETHA MODISAPODI details was Changed

12/06/2018 Member Change on 12/06/2018.
Director THAVAGIE PILLAY - VAN GRAAN details was Changed

22/08/2018 Member Change on 22/08/2018.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

22/08/2018 Member Change on 22/08/2018.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

22/08/2018 Member Change on 22/08/2018.
Director PHUMLANI MICHAEL MAJOZI details was Changed

22/08/2018 Member Change on 22/08/2018.
Director FERRIAL ISMAIL ADAM details was Changed

22/08/2018 Member Change on 22/08/2018.
Director BENJAMIN CECIL CLARKE THERON details was Changed

22/08/2018 Member Change on 22/08/2018.
Director STEFANIE FICK details was Changed

22/08/2018 Member Change on 22/08/2018.
Director WYNA BERETHA MODISAPODI details was Changed

22/08/2018 Member Change on 22/08/2018.
Director THAVAGIE PILLAY - VAN GRAAN details was Changed

22/08/2018 Member Change on 22/08/2018.
Director MAKHOSI BUSISIWE KHOZA details was Changed

23/08/2018 Member Change on 23/08/2018.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

23/08/2018 Member Change on 23/08/2018.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

23/08/2018 Member Change on 23/08/2018.
Director PHUMLANI MICHAEL MAJOZI details was Changed

23/08/2018 Member Change on 23/08/2018.
Director FERRIAL ISMAIL ADAM details was Changed

23/08/2018 Member Change on 23/08/2018.
Director BENJAMIN CECIL CLARKE THERON details was Changed

23/08/2018 Member Change on 23/08/2018.
Director STEFANIE FICK details was Changed

23/08/2018 Member Change on 23/08/2018.
Director WYNA BERETHA MODISAPODI details was Changed

23/08/2018 Member Change on 23/08/2018.
Director THAVAGIE PILLAY - VAN GRAAN details was Changed

23/08/2018 Member Change on 23/08/2018.
Director MAKHOSI BUSISIWE KHOZA details was Changed

Page 8 of 10

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Disclosure Certificate: Companies and Close Corporations

Registration Number: **2012 / 064213 / 08**

Enterprise Name: **ORGANISATION UNDOING TAX ABUSE**

03/10/2018 Member Change on 03/10/2018.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

03/10/2018 Member Change on 03/10/2018.
Director PHUMLANI MICHAEL MAJOZI details was Changed

03/10/2018 Member Change on 03/10/2018.
Director FERRIAL ISMAIL ADAM details was Changed

03/10/2018 Member Change on 03/10/2018.
Director BENJAMIN CECIL CLARKE THERON details was Changed

03/10/2018 Member Change on 03/10/2018.
Director STEFANIE FICK details was Changed

03/10/2018 Member Change on 03/10/2018.
Director WYNA BERETHA MODISAPODI details was Changed

03/10/2018 Member Change on 03/10/2018.
Director THAVAGIE PILLAY - VAN GRAAN details was Changed

03/10/2018 Member Change on 03/10/2018.
Director MAKHOSI BUSISIWE KHOZA details was Changed

03/10/2018 Member Change on 03/10/2018.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

20/02/2019 Member Change on 20/02/2019.
Director GODFREY ANDREW GULSTON was added

20/02/2019 Member Change on 20/02/2019.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

20/02/2019 Member Change on 20/02/2019.
Director PHUMLANI MICHAEL MAJOZI details was Changed

20/02/2019 Member Change on 20/02/2019.
Director FERRIAL ISMAIL ADAM details was Changed

20/02/2019 Member Change on 20/02/2019.
Director STEFANIE FICK details was Changed

20/02/2019 Member Change on 20/02/2019.
Director WYNA BERETHA MODISAPODI details was Changed

20/02/2019 Member Change on 20/02/2019.
Director THAVAGIE PILLAY - VAN GRAAN details was Changed

20/02/2019 Member Change on 20/02/2019.
Director MAKHOSI BUSISIWE KHOZA details was Changed

20/02/2019 Member Change on 20/02/2019.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

15/04/2019 Member Change on 15/04/2019.
Director WAYNE LLEWELLYN DUVENAGE - Change was made.

15/04/2019 Member Change on 15/04/2019.
Director PHUMLANI MICHAEL MAJOZI - Change was made.

15/04/2019 Member Change on 15/04/2019.
Director FERRIAL ISMAIL ADAM - Change was made.

15/04/2019 Member Change on 15/04/2019.
Director STEFANIE FICK - Change was made.

15/04/2019 Member Change on 15/04/2019.
Director WYNA BERETHA MODISAPODI - Change was made.

Page 9 of 10

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Enterprise Name: **ORGANISATION UNDOING TAX ABUSE**

15/04/2019 Member Change on 15/04/2019.
Director THAVAGIE PILLAY - VAN GRAAN - Change was made.

15/04/2019 Member Change on 15/04/2019.
Director MAKHOSI BUSISIWE KHOZA - Change was made.
- Director / member status changed from Active to Resigned.

15/04/2019 Member Change on 15/04/2019.
Director LEOPOLD JEAN JOSEPH PAUWEN - Change was made.

15/04/2019 Member Change on 15/04/2019.
Director GODFREY ANDREW GULSTON - Change was made.

22/04/2019 Email Notification that Annual Return is due was sent on 22/04/2019.
E-Mail sent to WAYNE LLEWELLYN DUVENAGE for 2019

22/04/2019 Email Notification that Annual Return is due was sent on 22/04/2019.
E-Mail sent to STEFANIE FICK for 2019

22/04/2019 Email Notification that Annual Return is due was sent on 22/04/2019.
E-Mail sent to GODFREY ANDREW GULSTON for 2019

22/04/2019 Email Notification that Annual Return is due was sent on 22/04/2019.
E-Mail sent to PHUMLANI MICHAEL MAJOZI for 2019

22/04/2019 Email Notification that Annual Return is due was sent on 22/04/2019.
E-Mail sent to FERRIAL ISMAIL ADAM for 2019

22/04/2019 Email Notification that Annual Return is due was sent on 22/04/2019.
E-Mail sent to WYNA BERETHA MODISAPODI for 2019

22/04/2019 Email Notification that Annual Return is due was sent on 22/04/2019.
E-Mail sent to THAVAGIE PILLAY - VAN GRAAN for 2019

22/04/2019 Email Notification that Annual Return is due was sent on 22/04/2019.
E-Mail sent to LEOPOLD JEAN JOSEPH PAUWEN for 2019

24/04/2019 Annual Return completed on 24/04/2019.
Company / Close Corporation AR Filing - Web Services - Ref No. 0175469320

29/05/2019 Member Change on 29/05/2019.
Director HEINRICH CYRIL VOLMINK was added

29/05/2019 Member Change on 29/05/2019.
Director WAYNE LLEWELLYN DUVENAGE details was Changed

29/05/2019 Member Change on 29/05/2019.
Director PHUMLANI MICHAEL MAJOZI details was Changed

29/05/2019 Member Change on 29/05/2019.
Director FERRIAL ISMAIL ADAM details was Changed

29/05/2019 Member Change on 29/05/2019.
Director STEFANIE FICK details was Changed

29/05/2019 Member Change on 29/05/2019.
Director WYNA BERETHA MODISAPODI details was Changed

29/05/2019 Member Change on 29/05/2019.
Director THAVAGIE PILLAY - VAN GRAAN details was Changed

29/05/2019 Member Change on 29/05/2019.
Director LEOPOLD JEAN JOSEPH PAUWEN details was Changed

29/05/2019 Member Change on 29/05/2019.
Director GODFREY ANDREW GULSTON details was Changed

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Office
Head Office

Enquiries
Mrs R Julius

Telephone
(012) 483 1708

Facsimile
0102083301

PBO no
930042651

Income Tax Reference no
9053642220

Date
3 July 2018

The Public Representative
Organisation Undoing Tax Abuse NPC
P O Box 2627
North Riding
2162

271 Veale Street
Brooklyn, Pretoria
PO Box 11955, Hatfield, 0028
Tel: +27 (12) 483-1700
www.sars.gov.za
teu@sars.gov.za

Dear Sir / Madam

**APPLICATION FOR INCOME TAX EXEMPTION APPROVED: ORGANISATION UNDOING
TAX ABUSE NPC; PBO NO 930042651**

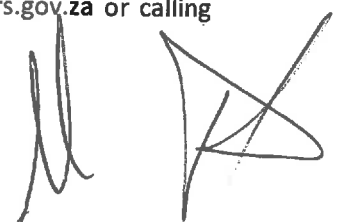
The South African Revenue Service (SARS) would like to confirm that your application for exemption from income tax has been approved as you meet the requirements of a Public Benefit Organisation (PBO) set out in section 30(3) of the Income Tax Act No 58 of 1962 (the Act). Your Income Tax Exemption has been granted in terms of section 10(1)(cN) of the Act with effect from 3 April 2012. Annual receipts and accruals will therefore be subject to the provisions of section 10(1)(cN) of the Act and accruals and receipts from trading or business activities which fall outside the parameters of section 10(1)(cN) will be subject to tax

The following exemptions also apply and are limited to:

1. Donations made to or by the PBO are exempt from Donations Tax in terms of section 56(1) (h) of the Income Tax Act.
2. Exemption from the payment of Estate Duty in terms of section 4(h) of the Estate Duty Act No.45 of 1955.

In order to maintain your exempt status, the following conditions must be complied with:

1. Submit an annual Income Tax Return (IT12EI) by the due date via SARS e-Filing or manually. Your IT12EI can be obtained by
 - Registering online at www.sarsefiling.co.za to access, request and submit the IT12EI electronically
 - Calling the SARS Contact Centre on 0800 00 SARS (7277)
 - Requesting an IT12EI by contacting the TEU on teu@sars.gov.za or calling (012) 483 1700
 - Requesting an IT12EI by visiting your local SARS branch.



2. The exemption approval as contained in this letter is subject to review on an annual basis by the TEU upon receipt of the annual income tax return.
3. SARS must be informed in writing within 21 days of any change in registered particulars (e.g. Representative, change of name, address, trustee details, office bearers, etc.).

Note that this letter is not an approval in terms of section 18A of the Income Tax Act and therefore no tax deductible receipts may be issued to the donors.

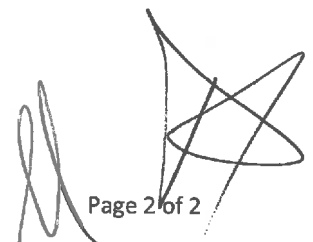
For further information or assistance, email the query to teu@sars.gov.za, visit the SARS website www.sars.gov.za, call the TEU on 012 483 1700 or visit the TEU offices.

Sincerely



R Julius
Tax Exemption Unit

ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE



Page 2 of 2

"SF3"

UNIQUE MEMORANDUM OF INCORPORATION

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008**

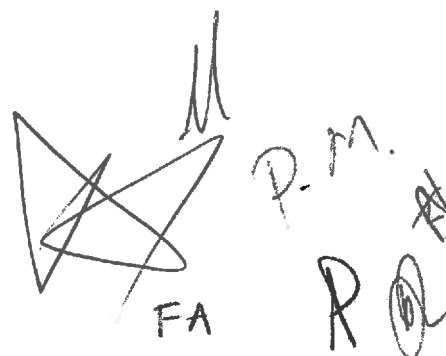
**ORGANISATION UNDOING TAX ABUSE NPC
REGISTRATION NUMBER: 2012/064213/08**

(hereinafter referred to in the rest of the Memorandum of Incorporation as "the Company")

NON-PROFIT COMPANY

**INCORPORATED FOR PUBLIC BENEFIT
WITHOUT VOTING MEMBERS**

OUTA
ORGANISATION UNDOING TAX ABUSE

Handwritten signature and initials. The signature is a stylized, cursive 'M' with a large 'F' and 'A' below it. To the right, there are initials 'P.M.' and 'R' with a circled 'Q' and a small 'A'.

MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY (NPC)
REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, ACT NO 71 OF 2008

ORGANISATION UNDOING TAX ABUSE NPC which is a Non-Profit Company, with Registration Number 2012/064213/08 and was originally established on 12 March 2012 under the name The Opposition to Urban Tolling Alliance, and which is hereinafter referred to as "the Company" in the rest of the Memorandum of Incorporation, has the prescribed minimum number of at least 3 Directors in terms of the Companies Act, 2008. As contemplated in Item 4(1) of Schedule 2 of the Companies Act, 2008, the Company has no voting Members.

The original purpose of the Company upon date of establishment was to represent the interests of its constituent Directorship and also the interests of bodies and groups in related industries as well as motorists and the public in general in objecting to and taking such lawful steps as may be required to suspend and/or interdict and/or otherwise prevent the implementation of the planned e-toll scheme to finance the Gauteng Freeway Improvement Plan ("GFIP") and or to take such further or alternative steps as the Organisation deems necessary to protect and advance the interests of its Directorship.

The public has requested that the Company expand its capacity to serve the advancement of the Constitution of the Republic of South Africa in matters relating to policy, laws or conduct that offend the rights, values and principles enshrined in the Constitution.

Adoption of Memorandum of Incorporation

The Memorandum of Incorporation was signed by the Directors of the Company in accordance with section 13(1) of the Companies Act, Act 71 of 2008, as amended, as evidenced by the following signatures of each Director or by proxy on their behalf in the Table of Signatories of Directors.

Default Memorandum of Incorporation not to apply

The standard form Memorandum of Incorporation for a Non-Profit Company referred to in Regulation 15(1)(a) shall not apply to the Company. The Memorandum of Incorporation is in a form unique to the Company as contemplated in section 13(1)(a)(ii).

1. MAIN OBJECTIVE

The Company is a public, non-profit Company established for the main objective of the advancement of Constitution of the Republic of South Africa and more specifically the interests of its donors, members and the public at large with regards to policy, laws or conduct that offend the rights, values and principles enshrined in the Constitution of the Republic of South Africa.

Donors and supporters are persons who contribute financially to the organisation.

2. LEGAL STATUS

The Company is, pursuant to section 19(1)(a) of the Act, a body corporate, which is separate from its individual Directors. The Company shall continue to exist notwithstanding a change in the composition of its Board of Directors. The Company may collect and distribute funds from its Directors; enter into contracts, and sue or be sued in its own name.

3. NON-PROFIT DISTRIBUTING CHARACTER

- 3.1 The income and property of the Company shall be used solely for the promotion of its Main Objective. The Board of Directors shall have no rights to the property or other assets of the Company solely by virtue of their directorship. No portion of the income or property of the Company shall be paid or distributed directly or indirectly to any person (otherwise than in the ordinary course of such undertakings as are embarked upon in order to realise the Main

[Handwritten signatures and initials, including "M. FA" and "R"]

Objective set out in paragraph 1 hereof), except as:

- 3.1.1 reasonable compensation for services actually rendered to the Company;
- 3.1.2 reimbursement of actual costs or expenses reasonably incurred on behalf of the Company.
- 3.2 Upon the dissolution of the Company and after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst Directors, but shall be donated to other non-profit Companies which the Board of Directors considers appropriate and which has similar objectives to the Company and should the Company be an approved public benefit organisation to a similar public benefit organisation which has been approved in terms of section 30 of the Income Tax Act of 1962, as amended; or an institution, board or body which is exempt from tax under section 10 (1) (CA) (f) of the Income Tax Act; or the government of the Republic in the national, provincial or local sphere.
- 3.3 The Company has been approved as a public benefit organisation under section 30 of the Income Tax Act and compliance with the relevant provisions of the Income Tax Act, the Company shall:
 - 3.3.1 Ensure that no single person directly or indirectly controls the decision-making powers relating to the Company;
 - 3.3.2 Be required to have at least three (3) persons, who are not connected persons in relation to each other, to be the Directors of the Company.
 - 3.3.3 Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
 - 3.3.4 Be prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking its Main Objective) and is required to utilise its funds solely for the Main Objective for which the Company has been established.
 - 3.3.5 Submit to the Commissioner for the South African Revenue Service (the Commissioner) a copy of any amendment to the Memorandum of Incorporation of the Company.
 - 3.3.6 Not pay any remuneration to any employee, Director, office bearer or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
 - 3.3.7 Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.
 - 3.3.8 Comply with such reporting requirements as may be determined by the Commissioner.

4. POWERS AND OPTIONAL PROVISIONS OF THE ACT

The Company, acting through its Board of Directors- shall have all the powers necessary to carry out its Main Objective. Such powers shall include, but not be limited to, the General Investment and Administrative Powers set out in the attached Schedule A.

The Company does not elect, in terms of section 34 (2) of the Act, to comply voluntarily with the provisions of Chapter 3 thereof.

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5. STRUCTURE OF THE COMPANY

5.1 The Board of Directors

5.1.1 Powers

5.1.1.1 The affairs of the Company shall be controlled and managed by the Directors subject to the terms of this Memorandum of Incorporation, the Directors may exercise all the powers as stipulated

5.1.2 Election

5.1.2.1 The initial members of the Board of Directors were elected by the Incorporators of the Company.

5.1.2.2 At the first Annual General Meeting and at every subsequent Annual General Meeting the directors shall determine the composition of the Board of Directors by agreement or, if resolved by the Board, by ballot.

5.2 Composition

5.2.1 The Board of Directors shall comprise of at least five (5) but not more than twelve (12) Directors each having an equal vote, of which at least one-third should be non-executive Directors. The Board of Directors shall comprise of the following:

5.2.1.1 the Chairperson;

5.2.1.2 the Vice-Chairperson;

5.2.1.3 a Secretary;

5.2.1.4 at least one [1] other person.

5.2.1.5 The Board of Directors may co-opt additional Directors as it may consider appropriate from time to time. The co-opted Directors shall serve for such period as the Board of Directors considers appropriate, which if not stipulated, will be deemed to be reviewed on an annual basis.

5.3 Board of Directors Director Vacating Office

5.3.1 The office of a Director shall be vacated if a Director:

5.3.1.1 resigns; or

5.3.1.2 the Director becomes mentally ill (as defined in the Mental Health Care Act, 17 of 2002 or its successor) and being incapable of executing his or her fiduciary duties or if a competent Court should, for whatever reason find that s/he is unable to conduct his/her own affairs; or

5.3.1.3 would be disqualified, in terms of the Companies Act, 2008 or equivalent legislation in force from time to time, from acting as a Director of a Company; or

5.3.1.4 is removed by the Board of Directors, by resolution adopted by at least 2/3 of its Directors in office from time to time. The Board of Directors shall not be obliged to furnish reasons for its decision/s regarding removal except to the Director removed.

5.3.2 Should a position on the Board of Directors fall vacant, the Directors, by resolution adopted by at least two-thirds (2/3) of its Directors, may co-opt any Director/s to fill the vacancy/ies.

5.4 Procedure at Directors Meetings

5.4.1 The Directors shall conduct its meetings and regulate its proceedings as it finds convenient, provided that:

5.4.1.1 The Chairman, or in his or her absence, the secretary, shall chair all meetings of the Directors which he or she attends. In the absence of the Chairperson and the secretary, the remaining Directors shall elect a chairperson from those attending.

5.4.1.2 The Directors shall endeavour to meet quarterly and/or any time by written request from any two (2) Directors.

5.4.1.3 The quorum necessary for the transaction of any business of the Board of Directors shall be two-thirds (2/3) of the Directors serving at the time.

5.4.1.4 Each Director shall have one (1) vote.

5.4.1.5 Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting vote.

5.4.1.6 Minutes shall be kept of Board meetings, and a record of attendance at each meeting. The minutes shall be signed by the Director chairing the meeting, and shall be available at all times for inspection by the Directors.

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- 5.4.1.7 A resolution signed by all Directors shall be valid as if passed at a duly convened meeting of the Directors
- 5.4.2 The Directors may delegate any of its powers to any of the Directors, or to a special purpose committee. The Director, committee, employee or agent to whom such delegation is made shall conform to any regulations and procedures that may be stipulated by the Directors from time to time.
- 5.4.3 The Directors may appoint a Chief Executive and other officers and employees as it may consider necessary from time to time upon such terms and conditions as it may consider appropriate.

5.5 Annual General Meetings

- 5.5.1 An Annual General Meeting of the Company shall be held within a period of fifteen (15) months of the adoption of this Memorandum of Incorporation. Subsequent Annual General Meetings shall be held within four (4) months of the end of each financial year.
- 5.5.2 Annual General Meetings shall be convened by the Chairperson on not less than twenty-one (21) days prior written notice to all Directors entitled to attend the meeting. This notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting.
- 5.5.3 The business of an Annual General Meeting shall include:
- 5.5.3.1 the presentation and adoption of the Annual Report of the Chairperson;
 - 5.5.3.2 the consideration of the Annual Financial Statements;
 - 5.5.3.3 the election of Non-Executive Directors to serve on the Board of Directors for the following year;
 - 5.5.3.4 the appointment of Auditors;
 - 5.5.3.5 other matters as may be considered appropriate.
- 5.5.4 Annual General Meetings of the Company shall be conducted and regulated in accordance with the procedures provided for in terms of paragraph 5.4 for Board meetings and the Board may invite the Company's supporters and stakeholders to attend the AGM, but not to participate in voting.

5.6 Notices

- 5.6.1 Notice of all meetings provided for in the Company, shall be delivered personally, or sent by e mail, to the last such address notified by each person concerned to the Company, or in any other manner as the Directors may decide from time to time.
- 5.6.2 The accidental omission to address notice/s to any person shall not invalidate the proceedings of any meeting.

6 FINANCIAL MATTERS

6.1 Bank Account

The Board of Directors shall –

- 6.1.1 open a bank account in the name of the Company with a Registered South African Bank. The Directors shall ensure that all monies received by the Company are deposited in the abovementioned bank account as soon as possible after receipt; and
- 6.1.2 appoint auditors and shall further be entitled hereunder to instruct such auditors to provide such additional services as may be required for the proper and effective administration of the Organisation's financial affairs.

6.2 Signatures

All payment, cheques and promissory notes requiring signature on behalf of the Company shall be signed by one or two Directors in terms of the limits of authority specified in the Financial Policy of the Company.

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All other documents requiring signature on behalf of the Company shall be signed by two Directors.

6.3 Financial Year End

The Companies financial year-end shall be the last day of February unless otherwise agreed

6.4 Financial Records

The Directors shall ensure that the Company keeps proper records and books of account, which fairly reflect the affairs of the Company.

6.5 Annual Narrative Report and Financial Statements

6.5.1 The Directors shall ensure that the Company prepares an annual narrative report describing the Company's activities and an Annual Financial Statement for each financial year. The Annual Financial Statements shall conform with generally accepted accounting principles and shall include a statement of income and expenditure and a balance sheet of assets and liabilities.

6.5.2 Within two (2) months after drawing up the Annual Financial Statements, Directors shall ensure that its books of accounts and financial statements are audited and certified in the customary manner by such alternative leading accounting firm as may be appointed by it.

6.5.3 A copy of the Annual Financial Statements and annual narrative report shall be made available to all Directors as soon as possible after the close of the financial year.

6.6 Financial Statements and Financial Reporting Standards

6.6.1 The Company's financial statements shall be compiled internally or independently subject to Regulations 27, 28 and 29.

6.6.2 The Company's financial statements, including any Annual Financial Statements must satisfy the applicable financial reporting standards as prescribed in sections 29(4) and (5) of the Act and Regulation 29.

6.7 Annual Financial Statements, Audit and Independent Review

6.7.1 The Company's Annual Financial Statements shall be prepared in accordance with the provisions of section 30 of the Act and is subject to either a statutory audit or non-statutory audit by Board resolution only, independent review or neither, if so required in terms of sections 30(2), 30(2A) and 30(7) and Regulations 26, 28 and 29.

6.7.2 In the event that the Company appoints an Auditor in terms of a Board resolution as contemplated in section 30(2)(b)(ii)(aa), the Auditor shall not be subject to section 90 (Appointment of Auditor), section 91 (Resignation of Auditors and vacancies), section 92 (Rotation of Auditors), and section 93 (Rights and restricted functions of Auditors) of the Act.

7 AMENDMENTS TO THE MEMORANDUM OF INCORPORATION AND DISSOLUTION

The terms of this Memorandum of Incorporation may be amended, the name of the Company may be changed and the Company may be dissolved by resolution of sixty-six per cent (66%) of the Directors present at a Board Meeting: provided that proper notice of the meeting is given not less than twenty-eight (28) days prior to the date of the Board Meeting and such notice states the nature of the resolution to be proposed.

8 INDEMNITY AND POWER TO INDEMNIFY

8.1 Subject to the provisions of any relevant statute, Directors of the Board of Directors and other office bearers shall be indemnified by the Company for all acts done by them in good faith on its behalf. It shall be the duty of the Company to pay all costs and expenses, which any such person incurs or becomes liable for as a result of any contract entered into, or act done by him or her, in his or her, said capacity, in the discharge, in good faith, of his or her duties on behalf of the Company.

8.2 Subject to the provisions of any relevant statute, no Director of the Board of Directors and or other office bearer of the

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Company shall be liable for the acts, receipts, neglects or defaults of any other Director or office bearer, or for any loss, damage or expense suffered by the Company, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

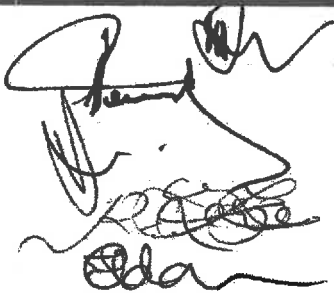
- 8.3 In the event that the Organisation should embark upon litigation as herein contemplated it shall be entitled to join with other parties in the launching of such proceedings and to indemnify co-applicants or additional plaintiffs from and against the legal costs of such legal proceedings.

9 DISPUTES

- 9.1 In the event of a disagreement between the Directors regarding the interpretation of this constitution then a minimum of one third of the directors of the Organisation shall be entitled to declare a dispute. Such declaration shall be in writing, state the issue in dispute, and be addressed to the Board of Directors
- 9.2 The Board of Directors shall consider such declaration within one (1) week of receiving it. Should the Board of Directors not be able to resolve the dispute to the satisfaction of the person(s) declaring it, the dispute shall be referred to informal mediation and in the absence of agreement regarding a mediator or should mediation not resolve the dispute, the dispute shall be referred to arbitration.
- 9.3 The arbitration shall be finally settled under the rules of Arbitration of the Arbitration Foundation of South Africa. The seat of Arbitration shall be Johannesburg, South Africa.

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ADOPTED BY THE BOARD OF DIRECTORS

NAME OF DIRECTORS	SIGNATURE
WAYNE LLEWELLYN DUVENAGE	
LEOPOLD JEAN JOSEPH PAUWEN	
ROBERT NORMAN HUTCHINSON	
PHUMLANI MICHAEL MAJOZI	
FERRIAL ISMAIL ADAM	

The former Memorandum of Incorporation adopted in terms of the repealed Companies Act, Act 61 of 1973, as amended, was repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation in accordance with the Companies Act, Act 71 of 2008, as amended, and adopted by Special Resolution of Directors of the Company on _____ in accordance with section 13(1) of the Companies Act, Act 71 of 2008, as evidenced by the following signature of each Director or by proxy of the Directors.



SCHEDULE A

POWERS OF THE BOARD OF DIRECTORS

The authority of the Board to make and publish rules for the Company, as contemplated in section 15 (3) to (5) of the Act is not limited or restricted and the Company may publish rules by having it delivered personally, or sent by prepaid post or addressed by e-mail transmission, to the last address notified by each Director or in any other manner as the Board may determine.

The Board of Directors shall conduct and manage all of the affairs of the Company and without limiting the rights of management, the Board of Directors shall have the following special powers:

- 1 to convene a meeting;
- 2 to hold and have the custody and control of the funds and other property of the Company
- 3 open and operate banking accounts either itself or by authorising the secretary to do same in the name of the Company for the purpose of transacting its business.
- 4 to take legal action, on behalf of the Company, in any court of competent jurisdiction. Litigation in the course of the normal work conducted by the company will be entered into as per the limits of authority bestowed on the operations management team.
- 5 to accept or refuse applications for Directorship;
- 6 Impose, collect and/or receive subscriptions, levies, donations, or other monies and invest or apply such monies to the advancement of the interests of the Company;
- 7 to cooperate or affiliate with anybody having similar interests or objects likely to further the interests of the Company and its Directors;
- 8 employ and remunerate staff or professional advisors and generally incur such liabilities and expenses as are necessary to conduct the affairs of the Company;
- 9 the Board of Directors may, at its discretion, reimburse any person as deemed necessary from time to time, reasonable travelling expenses and accommodation or other expenses necessarily incurred. Such expenses shall be approved and signed off by the Chief Executive Officer or Chairperson of the Board of the Directors in accordance with the Company's pre-approved expense limits of authority;
- 10 generally be responsible for the administration of the affairs of the Company within the framework of this Memorandum of Incorporation as may be required to be done in pursuance of the interests of good management of the Company and for the promotion of its objects.

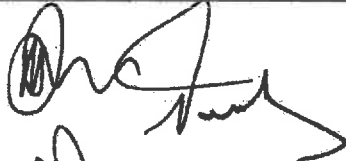
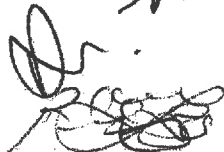
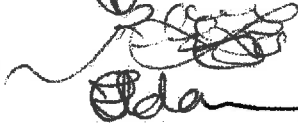
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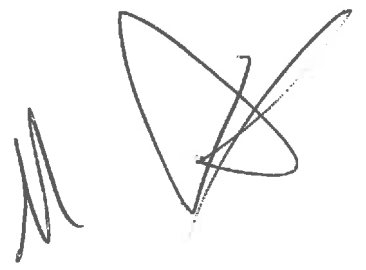
ORGANISATION UNDOING TAX ABUSE NPC
REGISTRATION NUMBER 2012/064213/08

Special Resolution of the Directors

Repeal of the current Memorandum of Incorporation and Adoption of a new Memorandum of Incorporation

The former Memorandum of Incorporation is repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation in accordance with the Companies Act, Act 71 of 2008, as amended, and adopted by Special Resolution of Director of the Company on 2 August 2017 in accordance with section 65 of the Companies Act, 71 of 2008 as evidenced by the following signature of each Director or by proxy of the Director:

NAME OF DIRECTORS	SIGNATURE
WAYNE LLEWELLYN DUVENAGE	
LEOPOLD JEAN JOSEPH PAUWEN	
ROBERT NORMAN HUTCHINSON	
PHUMLANI MICHAEL MAJOZI	
FERRIAL ISMAIL ADAM	



**Companies and Intellectual Property Commission
Republic of South Africa**

Form CoR 15.2

About this Notice

- This notice is issued in terms of Section 16 of the Companies Act, 2008, and Regulation 15 (2) and (3) of the Companies Regulations, 2011.
- A notice of amendment must be filed within 10 business days after the amendment has been effected.
- If the amendment has changed the name of the Company, the provisions of the Act and Regulations applicable to company names apply.
- If the amendment has submitted a new memorandum of incorporation in place of the previous one, a copy of the new memorandum must be appended to this Notice.
- The fee for filing this notice is R 250. See item 3 of Table CR2B. A transitional amendment of a pre-existing company, filed in terms of Schedule 5, item 4 (2) is exempt from the fee.

**Contacting the
Commission**

The Companies and Intellectual
Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

Notice of Amendment of Memorandum of Incorporation

Date: 02/08/2017

Customer Code: 196805

Concerning: ADOPTION OF MOI

(Name and Registration Number of Company)

Name: ORGANISATION UNDOING TAX ABUSE NPC

Registration number: 2012/064213/08

The Memorandum of Incorporation of the above named company has been amended in accordance with section 16 of the Companies Act, 2008. In terms of section 16 (9), this amendment is to take effect on -

☒

The date that this Notice is filed in the Companies Registry.

☐

The date of the amended registration certificate to be issued by the Commission.

☐

(Later Date as shown on Notice of Incorporation)

In support of this Notice, the company has attached a copy of the court order, board resolution or special resolution authorising the amendment and -

☐

A copy of the amendment to the Memorandum; or

☒

A copy of the Memorandum of Incorporation, as amended.

As a result of this amendment, the Memorandum of Incorporation:

☒

Has no provision of the type contemplated in section 15 (2) (b) or (c).

☐

Has provision of the type contemplated in section 15 (2) (b) or (c) as listed in Annexure A.

(Personal Liability Companies only)

As a result of this amendment, the company:

☐

Will remain a personal liability company;

☐


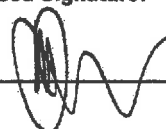
Will no longer be a personal liability company, and has complied with the requirements of section 16 (10) by giving advance notice of this filing

on _____

Name and Title of person signing on behalf of the Company:

WAYNE LLEWELLYN DUVENAGE (DIRECTOR)

Authorised Signature:



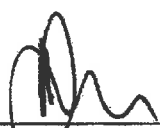
MANDATE

I, the undersigned, **Wayne Llewellyn Duvenage** do hereby nominate, constitute and appoint **Geordette Grundling, Company Secretarial Administrator of Alchemy Financial Services Inc. (AGENT CODE 196805)** with power of Substitution, to be my lawful Agent in my, place and stead, to lodge sign, amend, collect and uplift all documents in respect of the adoption of the Mol for the following company:

ORGANISATION UNDOING TAX ABUSE NPC
2012/064213/08



And generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite as fully and effectually, for all intents and purposes, as I might or could do if personally present and acting herein, hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my said Agent shall lawfully do, or cause to be done by virtue of the above.

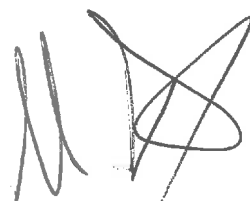
Signed at _____ on this _____ day of _____, in the presence of the undersigned witnesses.



Wayne Llewellyn Duvenage

Witnesses:

1.  _____
2.  _____



COMMENTS ON ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES
(AARTO) AMENDMENT BILL [B 38B - 2015]

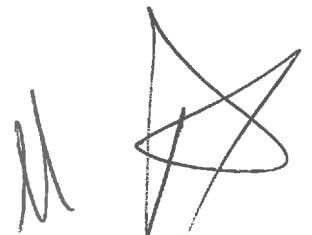
The Select Committee on Economic and Business Development invited interested individuals and interested groups wishing to comment on the Administration Adjudication of Road Traffic Offences to submit their submissions no later than Friday, 17 November 2017.

OUTA is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about holding government accountable and improving the prosperity of South Africa.

The Administration of Road Traffic Offences Act is a troublesome and complex issue for most motorists and motor vehicle owners in South Africa and therefore OUTA, with the support and requests from their supporters wish to submit submissions on the Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38B – 2015].

The Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38B – 2015] seeks:

- to amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definitions;
- to improve the manner of servicing documents to infringers;
- to add to the functions of the Road Traffic Infringement Authority;
- to repeal certain obsolete provision;
- to establish and administer rehabilitation programme;
- to provide for the appointment of penalties;



- to provide for the apportionment of penalties;
- to provide for the establishment of the Appeals Tribunal and matters related thereto;
- to effect textual corrections; and
- to provide for matters connected therewith.

The AARTO Act that was promulgated in 1998, with four (4) amendments published over the last decade, seeks to achieve the following:

- to promote road traffic quality;
- to discourage road traffic contraventions;
- to facilitate the adjudication of road traffic infringements;
- to support the prosecution of offences in terms of the national and provincial laws relating to road traffic and implement a point demerit system;
- to provide for the establishment of an agency to administer the scheme;
- to provide for the establishment of a board to represent the agency;

OUTA herewith submit its comments and recommendations as requested by the Select Committee on Economic and Business Development under the following headings to convey the comments and opinions of OUTA, their supporters and general inputs received from the public.

1. Road Safety;
2. Constitutionality of amendments and right to a fair trial;
3. Service of AARTO documentation and notices;
4. Corruption and Bribery;
5. Discounts and Fees for Notices - Income vs Road Safety;
6. Administration management;
7. Legal Comments.

1. ROAD SAFETY

1.1. In a media statement on 6 September 2017 the minister of transport said the tabling of this bill (Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38B – 2015]) is a direct result of the untenable and sustainable road safety challenge in South Africa. He said that this bill will guarantee South Africa's implementations of the National Road Strategy and the achievement of the targets as set out in the United Nations Decade of Action for Road Safety.

1.2. With resolution A/RES/64/255 of 10 May 2010 the United Nations Decade of Action for Road Safety 2011–2020 was officially proclaimed by the United Nations General Assembly in March 2010. Its goal is to stabilize and reduce the forecast level of road traffic deaths around the world. It is estimated that 5 million lives could be saved on the world's roads during the decade.

https://www.piarc.org/ressources/documents/11337.WHO-global_plan_final.pdf

1.3. Road safety is of the utmost importance in our country and any legislation and/or programmes promoting and enhancing the safety of motor vehicle drivers, passengers and pedestrians must be supported.

1.4. The AARTO Act was implemented as a pilot programme in the City of Tshwane on 1 July 2008 and in the City of Johannesburg Metropolitan Municipality on 1 November 2008 respectively. These two cities serve the largest areas of the Gauteng Province. Statistics compiled by the Road Traffic Management Corporation (RTMC) show that Gauteng have the highest percentage of fatal crashes in the country. In almost a decade after AARTO was implemented in Gauteng, it is evident that the AARTO legislation did not enhance road safety or bring down fatalities on the roads.

- 1.5. The following figures were obtained from the RTMC annual traffic reports. It shows clearly that the number of fatalities from the time when AARTO was implemented in Gauteng, there were no decrease in fatal accidents or fatalities on these roads.

Year	Fatal accidents	Fatalities
2016	2385	2700
2015	2171	2472
2014	2136	2469
2013	2028	2027
2012	2037	2404
2011	2321	2717
2010	1959	2181
2009	2196	2485
2008	2311	2607

- 1.6. In South Africa many people have a pathetic attitude to traffic violations. South Africa needs an efficient enforcement programme that would help bring down the death rate on our roads.

- 1.7. Studies have shown that visible policing is one of the most effective methods of crime prevention and the reducing of traffic violations. Such a study was completed by Conrad Bezuidenhout in 2010. The reducing of crime and traffic offenses is extensively covered by Bezuidenhout's study. The "broken window" approach and Safe Streets programme show that visible policing and a zero tolerance approach towards offenders, reduced crime and traffic violations drastically.

http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1021-20192011000100004#endb

- 1.8. As far back as in 2003 the Automobile Association of South Africa (AA) called for an increase in visible policing to end the slaughter on our country's roads.

The AA believed that the lack of traffic officers on the country's roads was probably the single most important factor behind the authorities' failure to reduce fatal accidents. It went further to state that to police through proxy – with devices such as camera speed traps – had been a failure. The fact is that a person who is trapped will only receive a notice in the post a couple of months later. The person doesn't even remember where he or she was on the day if the infringement and the notice and fine will just not have the right punitive effect.

<https://www.iol.co.za/news/south-africa/aa-calls-for-increase-in-visible-policing-116413>

- 1.9. In September 2015, Mr Petros Sithole, IFP MP called for higher visibility of traffic officials on our roads to ensure stringent enforcement of road traffic rules to end the continuous bloodshed and carnage on South Africa's roads.

<http://www.politicsweb.co.za/IService/visible-traffic-policing-needed-to-end-road-carnag>

- 1.10. President Zuma promised South Africans during the 2017 State of the Nation Address in Parliament that there will be more visible policing to protect the streets of the country. This also include more visible and effective, well trained traffic officials on our roads.

http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=46759:sa-to-see-more-visible-policing&catid=3:Civil%20Security&Itemid=113

- 1.11. In May 2017, the Minister of Transport, Mr Joe Maswanganyi said that cabinet had approved the national road safety strategy as parts of efforts to strengthen road safety. He added that the Department of Transport will advocate that law enforcement be declared an essential service to ensure availability of traffic officers on a 24/7 schedule on the country's roads. The acting Director-General,

Mathabatha Mokonyane stated that the issue of declaring traffic jobs an essential service has been on the table for years. Mr Makoshini Msibi, RTMC CEO, said that in 2014 he complained to the National Council of Provinces about a shortage of resources on our roads, with only 17 000 traffic officers employed in South Africa, half of whom were assigned to driver and licence-testing duties, a quarter were on leave at any given time, while the other quarter were assigned to the roads.

<https://www.iol.co.za/motoring/industry-news/plan-to-make-traffic-cops-visible-247-9313291>

- 1.12. It is interesting to note that in 2010 fatal accidents and fatalities were significantly lower compared to the average fatalities preceding and subsequent years. This could be attributed to the visible policing associated with the 2010 FIFA world cup and this despite the higher volumes of people moving about in the country and in Gauteng.
- 1.13. It seems that the answer to better road safety and less traffic offences, fatal accidents and loss of lives on South African roads have been around for years. The lack of commitment from Government to make funds available for the training and employment of more traffic officials have cost the loss of many lives and contributed to the high costs related to motor vehicle accidents.
- 1.14. The amendment of the current AARTO Act with higher penalties, tedious and expensive procedures to be followed by the public and the total lack of prescriptions on visible policing will have little or no effect to improve road safety in South Africa.

2. CONSTITUTIONALITY OF AMENDMENTS AND RIGHT TO A FAIR TRIAL

- 2.1 All legislation must be able to withstand public scrutiny before it is tabled and signed into law by the President. All legislation must also be in accordance with Constitutional guidelines and within the ambit of constitutionality.
- 2.2 The objective of AARTO is to ensure greater compliance with traffic laws and regulations by entrusting the adjudication of traffic offences to an autonomous body.
- 2.3 In terms of the act, if a person is alleged to have committed an infringement, an authorised officer must serve a notice on that person. This notice must inform the infringer that he/she may elect to be tried in court on a charge of having committed the alleged offence. The Amendment Bill is proposing to delete this section. The infringer may elect to be tried in court, which may only be done on the advice of the agency's representations officer.
- 2.4 OUTA agree with many other individuals and organisations like Mr Manny de Freitas, Howard Dembovski and SATAWU that the amendments to the AARTO Act are unconstitutional.

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (Act 108 of 1996)

Section 33

- (1) *Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.*
- (2) *Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.*
- (3) *National legislation must be enacted to give effect to these rights, and must*
- (a) *provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;*

- (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and*
- (c) promote an efficient administration.*

Section 34

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

Section 35(3)

Every accused person has a right to a fair trial, which includes the right :

- a) to be informed of the charge with sufficient detail to answer it;*
- b) to have adequate time and facilities to prepare a defence;*
- c) to a public trial before an ordinary court;*
- d) to have their trial begin and conclude without unreasonable delay;*
- e) to be present when being tried;*
- f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;*
- g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;*
- h) to be presumed innocent, to remain silent, and not to testify during the proceedings;*
- i) to adduce and challenge evidence;*
- j) not to be compelled to give self-incriminating evidence;*

- to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;*
- k) *not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;*
- l) *not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;*
- m) *to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing;*
- n) *and*
- o) *of appeal to, or review by, a higher court.*

2.5 Section 34 of the Constitution states that every person has a right to have any dispute resolved in a court of law or where appropriate, another independent and impartial tribunal or forum. The infringement notice served on an offender does not mention the infringer's right to approach a court. Only when a courtesy letter is received by the infringer it informs the infringer that he/she has the right to approach a court. A courtesy letter will however carry a cost for the infringer on top of the original fine.

2.6 A road user's right is to have an opportunity to make a representation to the Road Traffic Infringement Authority (RTIA). Theoretically, this would not be unconstitutional as the offender still have the ability to approach another independent and impartial tribunal.

2.7 However, it cannot be said that the RTIA would constitute such an independent and impartial entity. Representation officers would be employed by and under the direction of the authority, and would not be able to act independently and impartially.

- 2.8 In the event where the representations by the road infringer are unsuccessful, he or she would have the right to take the decision under review and appeal to the appeals authority.
- 2.9 This is also flawed. Such an authority is not readily accessible physically throughout the country, thus denying road users the services that magistrates courts provide in each jurisdiction countrywide. In addition, the appeals authority would also not be independent, impartial and unbiased and a conflict of interest will indisputably follow.
- 2.10 According to the bill, enforcement orders must be served on an accused when he or she fails to comply with a notification, a courtesy letter or if the infringer has failed to appear in court. The adversarial system that underlies SA's civil and criminal justice system provides that the person making the allegations must prove the allegations. It is not up to the accused to prove their innocence.
- 2.11 The judiciary is an independent body, fiercely guarded by the Constitution and legislation that guarantees its impartiality and independence by affording a number of checks and balances. Therefore, it remains the most appropriate body to review the veracity of alleged violations by road users. The Amendment bill does not satisfy the rights afforded to accused persons under the Constitution and would not be able to survive Constitutional scrutiny.
- 2.12 Section 35 also guarantees that each accused person has the right to a fair trial. An enforcement order confirms that the accused person is guilty of an infringement in the complete absence of a trial. The accused person is then forced to pay a fine and demerit points are issued against his or her driver's license. This provision is in conflict with section 35 of the Constitution, which provides that a person is presumed innocent until proven guilty.

3. SERVICE OF AARTO DOCUMENTATION AND NOTICES

- 3.1 In accordance with the Amendment Bill, 'electronic service' means service by electronic communication as defined in the Electronic Communications Act, 2005 (Act No. 36 of 2005), and as contemplated in section 19(4) of the Electronic Communication and Transactions Act, 2002 (Act No. 25 of 2002);"

Section 30 makes provision for the serving of documents by postage and electronic service.

A document served is deemed to be served on an infringer on the tenth day after posting of the document or after the electronic service.

The electronic service of the document must reflect in the National Road Traffic Offence Register (NOR).

3.2 Postage

According to the South African Post Office (SAPO) 2017 annual report, there was a 73,6% delivery standard of postal deliveries in South Africa for the 2016-2017 financial year.

<https://www.postoffice.co.za/About/annualreport/annualreport2017.pdf>

- 3.3 The consolidated financial statements of SAPO shows a decline of 6% in Post Box rentals. The majority of towns and townships in South Africa, there are no street deliveries taking place any more.

- 3.4 In the recent Audi Centre Johannesburg v RTIA Supreme Court judgement it was upheld that RTIA could not produce proof of documents that were dispatched by registered mail or that the documents were received by the addressee.

- 3.5 The amended Section 30 of the Act only speaks to the proof of service of electronically served documents to be reflected in the NOR. There are no prescribed methods regarding the recording of proof of dispatching documents by means of normal postage. The Amendment Bill fall short on prescribing the



method of secure storage of proof that a document was dispatched via the normal post delivery system.

3.6 With the above facts in mind it is OUTA's believe that service of any document by means normal post will have a high possibility of failure and the proof that a document was indeed dispatched is nullified if there is no confirmation by SAPO and this confirmation being stored in the NOR.

3.7 Electronic Service

"Electronic communication" is defined in the Electronic Communications Act, 2005 (Act 36 of 2005), and is contemplated in section 19(4) of the Electronic Communication and Transactions Act, 2002 (Act 25 of 2002) as:

"electronic communication"

means a communication by means of data messages; "electronic signature" means data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature; "e-mail" means electronic mail, a data message used or intended to be used as a mail message between the originator and addressee in an electronic communication;

According to the Electronic Communications and Transactions Act, 25 of 2002 "data message" is defined as:

*"data message" means data (electronic representations of information in any form) generated, sent, received or stored by electronic means and includes—
(a) voice, where the voice is used in an automated transaction; and
(b) a stored record;*

Section 19(4) of the Electronic Communication and Transactions Act, 2002 (Act 25 of 2002) states the following:

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Where any law requires or permits a person to send a document or information by registered or certified post or similar service, that requirement is met if an electronic copy of the document or information is sent to the South African Post Office Limited, is registered by the said Post Office and sent by that Post Office to the electronic address provided by the sender.

- 3.8 Electronic service of a document will only succeed when the receiver of the document has access to the internet. South Africans adopted mobile as their preferred method of communication and in 2016 South African internet users crossed the 21 million mark, according to the SAPO Annual Report. By the end of 2016, 40% of the South African population had access to the internet.
<https://www.postoffice.co.za/About/annualreport/annualreport2017.pdf>

- 3.9 Section 19(4) of the Electronic Communication and Transactions Act, 2002 (Act 25 of 2002) also prescribe that the Post Office is the only organ that can send a document when the legislation prescribe service of documents by registered mail or where proof of service is required.

3.10 E-Mail notification

Electronic service of notifications can only be successfully executed when the receiver has access to the internet. Internet access alone will not be enough. The individual will also have to register an e-mail address to receive notices.

- 3.11 With only 40% of the South African population having access to the internet and with no guarantee that all individuals who have access to the internet, will register an e-mail address, OUTA believe that this method of serving of notifications will result in many motorists not receiving service of notifications or documentation.



3.12 Mobile phone notification

Electronic service can also be executed when a notification is send to the registered owner of a mobile phone via the short message system (sms), multi media system (mms) or other data delivery systems like whatsapp and telegram.

3.13 For data delivery systems like whatsapp and telegram, the user of the mobile phone must download the application. Many mobile phone users who decided not to download these applications will thus not be contactable via these applications.

3.14 The Amendment Bill only speaks of text messaging as a method of electronic service to mobile phones. Text messages will only be able to notify the receiver that there is an outstanding infringement notice. Text messages will not have the ability to send the actual documentary proof to the user of the phone. Many mobile phones have in any case not the ability to receive documents. This function is only available to user of an android mobile device.


3.15 It is important to keep in mind that a large number of mobile phones are lost by the owners or get stolen. People also change their service providers or cancel their mobile contract without notifying anybody of their new contact numbers. If a mobile device is not under the control of the rightful owner or if the sender of a text or data message is without knowledge of changed contact details, it will be impossible to make positive contact with an infringer.

3.16 The Authority is in accordance with the act compelled to keep record of all electronic service notifications. The Amendment Bill falls short to prescribe the period of time that these records must be kept.

3.17 OUTA believe that electronic notification will only be partial effective and successful. All notifications served by the Authority is documents. Not all phones will be able to receive documents. In accordance with the Bill, the Authority is compelled to serve the document on a member of the public. Many

infringers will not receive the notification at all, or in time to pay the fine without the extra fees with regards to a courtesy letter or an enforcement order. Many individuals will suffer severe prejudice because of this.

- Electronic service of AARTO documentation on the public will result in thousands of non-served notices for the following reasons:
 - Only 40% of the South African population have access to internet
 - Not everybody who have access to internet have an e-mail address
 - The Amendment Act makes provision for notification to mobile phones by way of text message only
 - Documentary notifications cannot be transmitted to a mobile phone via sms
 - Not everybody in South Africa have a mobile phone
- All notices from the RTIA will be served as described in Section 30 of the Amendment Bill, and not only infringement notes. The same comments and arguments as stated above will be of great concern to the public. The most important concern is the notification that a person's driver licence can be revoked or cancelled and it will result in a more serious offence if a driver is driving without a valid drivers licence.
- The Amendment Act prescribe that proof of service of notices is to be stored electronically in the National Road Traffic Offences Register. Normal postage delivery of a notification is allowed by the Amendment Act. No provision is made for proof of postage delivery to be stored when a document is sent by normal postage delivery. A register should also be kept for this way of service with the confirmation of the actual postage and date of postage thereof.

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4. CORRUPTION AND BRIBERY

Section 3 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 state the following:

3 General offence of corruption

Any person who, directly or indirectly –

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,*

in order to act, personally or by influencing another person so to act, in a manner –

- (i) that amounts to the –*
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or*
 - (bb) misuse or selling of information or material acquired in the course of the,*

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

- (ii) that amounts to-*
 - (aa) the abuse of a position of authority;*
 - (bb) a breach of trust; or*
 - (cc) the violation of a legal duty or a set of rules,*

- (ii) designed to achieve an unjustified result; or*
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything.*

is guilty of the offence of corruption.

Section 4 of the Act goes further and describe the acts of a public official who makes him/her guilty of corruption.

4 Offences in respect of corrupt activities relating to public officers

(1) Any-

- (a) public officer who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*
- (b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person,*

in order to act, personally or by influencing another person so to act, in a manner-

(i) that amounts to the-

- (aa) illegal, dishonest, unauthorised, incomplete, or biased; or*
- (bb) misuse or selling of information or material acquired in the course of the,*

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;



- (ii) that amounts to-*
 - (aa) the abuse of a position of authority;*
 - (bb) a breach of trust; or*
 - (cc) the violation of a legal duty or a set of rules;*
- (iii) designed to achieve an unjustified result; or*
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,*

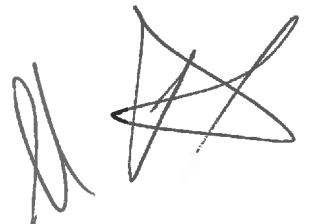
is guilty of the offence of corrupt activities relating to public officers.

- (2) Without derogating from the generality of section 2 (4), 'to act' in subsection (1), includes-*

- (a) voting at any meeting of a public body;*
 - (b) performing or not adequately performing any official functions;*
 - (c) expediting, delaying, hindering or preventing the performance of an official act;*
 - (d) aiding, assisting or favouring any particular person in the transaction of any business with a public body;*
 - (e) aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;*
 - (f) showing any favour or disfavour to any person in performing a function as a public officer;*
 - (g) diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person;*
- or*

(h) exerting any improper influence over the decision making of any person performing functions in a public body.

- 4.1 It is clear from this Act that anybody who accepts a gratification (bribe), hands over a gratification or requests a gratification to ensure that an offence is not reported, makes himself/herself guilty of corruption.
- 4.2 In the South African traffic environment there are daily reports of either a traffic officer demanding a gratification from an offender, or an offender offering a traffic officer a gratification. Both these actions constitute a crime of corruption in terms of the Prevention and Combating of Corrupt Activities 12 of 2004.
- 4.3 Section 29 of the Prevention and Combating of Corrupt Activities Act, 2 of 2004 instructs the Minister of Finance to establish a register to be known as the Register for Tender Defaulters, within the office of the National Treasury.
- 4.4 A similar Register should be established for guilty parties to corruption regarding Traffic Offences. Guilty parties should also receive a harsher punishment when they make themselves guilty to corruption in the traffic environment. It is most of the times the drivers paying bribes to come out of an offence who are habitual offenders and who have no respect for the traffic rules and who neglects road safety. Corrupt persons' details should be recorded in a register established for this specific purpose and should not be allowed to be issued with a drivers licence. This is one way cutting down on corruption and remove dangerous drivers from the roads.
- 4.5 Corruption and bribery on the roads is a common practice on South African roads. The Ethics Institute did research and compiled a report in October 2015, with regards to every day bribery in South Africa. According to this report bribes asked to avoid traffic offences came out on top of all bribes requested or paid in South Africa.

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4.6 Some of the key findings include:

- 26 percent of respondents knew of somebody who had been asked for a bribe in the past year.
- 75 percent of those who were asked for a bribe ended up paying it.
- **Most bribes were reportedly asked to avoid traffic offences (36 percent)**
- Bribes for jobs came in next (17 percent), with unskilled and semi-skilled workers being most vulnerable to bribe requests in order to obtain jobs.
- Bribes relating to tenders accounted for 7 percent of the responses.
- 4 percent of bribes related to getting reduced prices or free goods from businesses.
- The most common bribe amount was R100, with over half of all bribes (55 percent) falling under the R1 000 mark. Unsurprisingly, bribes amounts relating to tenders were the highest on average (R103 288), while the lowest average bribe amount was for traffic offences (R219).
- Of the four provinces covered in the survey, one is most likely to be approached for a bribe in Limpopo (48 percent). Bribes are least likely to be solicited in the Western Cape (19 percent), followed by Gauteng (25 percent) and KwaZulu-Natal (26 percent).

<https://www.tei.org.za/index.php/resources/press-releases/7045-bribery-not-everyone-does-it>

4.7 Corruption and bribery is an everyday practise and it is widely reported on in the media and contributions from the public on various platforms. This issue has been discussed in Parliament in different committees, but it seems that notwithstanding the public outcry, very little is done from the legislator to make a real impact with legislation.

4.8 Below is only a few links to media, public and parliamentary comments on corruption and bribery with regards to traffic infringements.

4.9 Corruption Watch 25 March 2015

<http://www.corruptionwatch.org.za/dont-pay-a-traffic-bribe/>



4.10 Wheels 24 6 Dec 2016 Shared stories

http://www.wheels24.co.za/News/Guides_and_Lists/traffic-cops-taking-bribes-in-sa-readers-share-their-stories-20161206

4.11 News 24 – Traffic officer arrested for taking a bribe

<https://www.news24.com/SouthAfrica/News/traffic-officer-charged-with-corruption-over-alleged-bribe-20170213>

4.12 ENCA – Bribe lands traffic officer in jail

<https://www.enca.com/south-africa/r40-bribe-lands-traffic-officer-in-jail>

4.13 Roodepoort Record – Licencing officials arrested (R14million in fraudulent transactions)

<https://roodepoortrecord.co.za/2017/01/11/corrupt-licensing-officials-arrested/>

4.14 PMG - Portfolio Committee on Transport heard on 17 October 2017 when ACSA & Cross-Border Transport Agency report on Annual Reports. Traffic officers taking bribes that result to millions lost in revenue for SA.

<https://pmg.org.za/committee-meeting/25249/>

5. **DISCOUNTS AND FEES FOR NOTICES - INCOME VS ROAD SAFETY:**

- 5.1 The Amendment Bill makes provision for a 50% discount when an infringer pays a traffic fine within 32 days. There are further provisions stating that prescribed



fees must be paid additionally to the fine amount for any notice that is received after the original infringement notice.

- 5.2 These provisions in the Amendment Bill downplay the primary objective of the AARTO Act, to promote road safety and elevate the opinion that through this Act the Road Traffic Infringement Authority (RTIA) is more interested in revenue rather than road safety.
- 5.3 The question should be asked – Why should any infringer be offered a discount on a penalty when the penalty is paid within a month from the infringement notice? The infringement is still a law-breaking event that had a negative impact on road safety. To offer the infringer a lower penalty will definitely not encourage infringers to obey traffic rules. It is just a method where infringers know that when traffic rules are not obeyed, they will only have to pay half the fine if they pay within a certain time.
- 5.4 The Amendment Bill makes provision for an administration fee to be paid for every notice that are dispatched to motorists. This fee is prescribed by the minister and not negotiable and is to be paid whenever the infringer receives a courtesy letter, wants to make a representation or receives an enforcement order.
- 5.5 The following comes to mind with the payment of fees for every notice and the procedure when an infringer elects to appeal a decision made on his/her representation at the Tribunal.

The Authority accuse a member of the public of an offence. The member of the public must first pay a fee to the Authority who accuse him of wrongdoing, before he can state his case to the same Authority.

- 5.6 In the 2017 Annual Report of the RTIA the agency reported that 79 122 cases were heard in court during 2016/2017. This resulted in only 314 guilty verdicts. 7000 cases were removed from the court roll. If these figures are to be used as a guideline it is evident that that when AARTO is rolled out Nationally, the amount of representation fees will run into millions of rand.

- 5.7 It was also reported in the 2017 Annual Report that the Registrars income increased by 93%, to an annual income of R3.49 million. The Board members' total remuneration grew from R1.66 million to R3 million. These increases came as the total income dropped by almost 42%. The minister also removed four crucial performance tasks (to serve 1.3 million courtesy letters within 40 days and 1.2 million enforcement orders, also within 40 days)

<http://www.rtia.co.za/ruploads/rtia%20annual%20report%202016-17-256.pdf>

- 5.8 It is clear, looking at these figures related to salaries and expenses, and the statistics on fatal motor vehicle accidents and fatalities as discussed in Point 1 above, that the conclusion reached is that income is more important than road safety. Top officials' salaries increased drastically, crucial performance tasks were removed, more revenue will be earned with the processes described in the Amendment Bill but fatalities on our roads show no decrease in numbers.

6. ADMINISTRATION MANAGEMENT:

- 6.1 In the event that a motorist doesn't receive any of the AARTO notices and fails to settle these payments or fines, an enforcement order will be issued together with an automatic instruction to block the issuing of any motor vehicle licence, driver's licence or permit.
- 6.2 As with e-tolls, AARTO will rely on the eNatis system to notify motorists of any infringements. The e-toll system was launched on 3 December 2013. OUTA have been involved with the e-toll system since 2012. It is OUTA's experience that the administration management of e-tolls failed. Compliance is currently below 20%. A big factor playing a huge role in this failure is that the fact that the administration management system can't handle the voluminous number of notices and invoices. Keep in mind that e-tolls are operative in Gauteng, with about 2,5 million motor vehicles using the GFIP roads.

- 6.3 AARTO is facing similar problems to the e-toll system in terms of high administrative costs and low compliance. With the pilot project of AARTO only in Pretoria and Johannesburg, it is not unreasonable to compare the AARTO system with e-tolls. The payment rate of traffic fines has had an extremely low compliance rate (lower than e-tolls), with reported compliance in the City of Johannesburg as low as 4.71% after the piloted AARTO system was implemented in 2008.

<https://www.businesslive.co.za/bd/national/2016-11-14-traffic-fines-system-problematic-say-sas-cities/>

- 6.4 There is no guarantee that this compliance will be improved on the back of a national rollout. In fact, considering that there are just under 12 Million registered vehicles country wide, compared to just Gauteng at 4.5 Million vehicles (2015 approx.), the low compliance will result in increased administration costs due to the manpower required to administer the high volume of notices as well as customer care and queries.

- 6.5 In addition, the introduction of the demerit system will require increased administrative support, as information on demerits will have to be shared between RTIA and e-Natis to ensure correct enforcement of the demerits. This may be a challenge due to the e-Natis system issues currently experienced, including breach of system, fraudulent registrations and bad data. Therefore, there is a concern regarding the ability to efficiently and reliably administer the demerit system.

7. LEGAL COMMENTS.

- 7.1 What were the challenges and inefficiencies identified in the memorandum accompanying the proposed bill and does the amendments really address same? Please note the memorandum states that the Act needs to address the challenges and is silent on addressing the inefficiencies identified.

- 7.2 Please note that clause 1 of the Bill, amending the definition of “infringement”, include additional Acts i.e SANRAL Act¹ and by implication E-Tolls. Thus, creates another avenue for the collection and prosecution of E-Tolls. In our opinion government is attempting to circumvent the inefficiencies of the SANRAL Act, which include a Constitutional challenge, by amending the current legislation. It is clearly an attempt to generate revenue. The SANRAL Act uses a more stringent process, i.e. a debt collecting/ court process to collect debt, whereas the AARTO Act is of administrative nature which is more stringent on the public/ users. Thus, the burden is shifted from government to the public/ user.
- 7.3 Please note that clause 2 and clause 12 of the Bill amends section 4 and 22 of the Act and effectively decriminalises the process and makes it a civil process. In doing so it takes away a person being accused of a traffic infringement’s Constitutional right (section 35 – rights of an accused person). Once caught in the civil administrative system an infringer does not have the same Constitutional rights as they would be afforded during the criminal process i.e. right to legal representation and a fair trial.
- 7.4 Please note that clause 3 of the Bill amending section 11 of the Act grants the sole power to approve remuneration packages, pensions and other benefits of Authority employees to the Board, after consultation with the Minister of Transport, and exclude the Minister of Finance, creates an oversight shortfall and opens a door for financial irregularities previously covered.
- 7.5 Please note that clause 4 of the Bill repealing section 12 of the Act is indicative of Authority’s intension not to utilise personal service by way of Sheriff. As explained below, personal service is a critical element of due and fair process.
- 7.6 Please take note clause 5 of the Bill creates financial gain for government at the expense of the public/ users. Please also note the Department of Transport on their own Memorandum explains that they expect an increased revenue and decreased expenses due to electronic service. The amendment further, creates

¹ South African National Roads Agency Limited and National Roads Act, 1998

A handwritten signature in black ink, consisting of a stylized 'M' followed by a large, loopy flourish.

a financial incentive and opens the door for infringement notices to be issued based on financial gain and not merits.

- 7.7 This amendment also makes the Authority judge, jury and executioner.
- 7.8 Please take note clause 6 of the Bill amending section 15 of the Act again creates an oversight short fall by taking the Director General out of the equation and consequently removing a good governance fail safe.
- 7.9 Clause 7 of the Bill amending section 17 of the Act creates uncertainty as to where a user may ascertain his/ her demerit point score and as well as to which institutions will be the holders of the demerit register. It renders the Infringement notice vague which again places a heavier burden on the public/ user when wanting to ascertain their demerit position.
- 7.10 Clause 7 further removes the public/ user's right to be elected to be tried in a court of law. As explained previously this takes away a person being accused of a traffic infringement's Constitutional right (section 35 – rights of an accused person).
- 7.11 Please take note that Clause 8(a) of the Bill amending section 18 of the Act makes provision for the re-issuing of faulty infringement notices which may be open to abuse should it not be properly regulated, especially in view of the fact that the issuing of infringement notices is now incentivised.
- 7.12 Clause 8(b) of the Bill amending section 4(b) of the Act causes uncertainty as it replaces a prescribed time with an undetermined time. Thus, the process/ adjudication of the representation may be delayed indeterminately which goes against the principle of efficient administration. The infringer will not have the right to rely on the right to a speedy trial as the process is administrative in nature and the right to a speedy trial is only afforded to accused persons. The

result of the latter is that there is a burden placed on the infringer, who has to rely on PAJA² which is unnecessarily cumbersome on the infringer.

7.13 Government as the “stronger” party has the duty to empower the public/ user and not to burden them with additional unnecessary bureaucracy.

7.14 The lack of amendment of section 19(2)(b)(i) and (iii) will render the amended process moot.

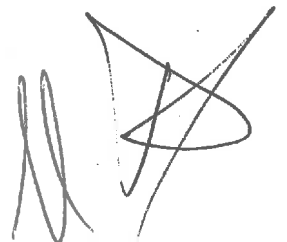
7.15 Kindly take note that clause 10(b) of the Bill amending section 20(1)(d) of the Act allows for suspension or cancellation for any licence issued in terms of transport legislation which includes aviation, shipping and railway licences. Thus, effectively this amendment read with the amendment proposed by clause 1 of the Bill will render an unpaid E-Toll account an infringement which may lead to the suspension or cancellation of an infringers pilot, captain’s licence or motor vehicle license. The latter will in turn render the motor vehicle unroadworthy.

7.16 The amendment proposed in clause 10(d) and (e) has a similar effect as mentioned above and should not be allowed.

7.17 The use of the word “operate”/ “operator” as proposed in clause 13(a) of the Bill is ambiguous and creates legal uncertainty as the Act in section 25 refers to the word “operate” in a different context. Thus, the amendment creates confusion between the word “operate” as using a machine and “operate” when carrying out an activity. The intention of the legislature is unclear and leaves the section open to various interpretations.

7.18 Please take note that clause 13(c) of the Bill amending section 25(3)(b) of the Act results in an infringer not being allowed to apply for any form of license or permit under any transport legislation resulting in possible non-compliance with other legal obligations. For example: a person disqualified may not apply for the

² Promotion of Administrative Justice Act, 2000

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renewal of a trailer licence disk (as required by law) during his/ her period of disqualification. This will then result in a double sanction as the infringer will be penalised for late payment of his renewal of the trailer licence disk.

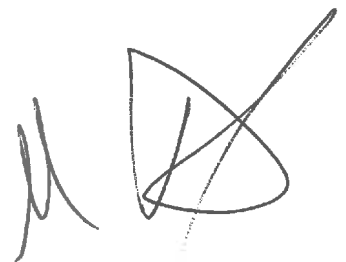
7.19 Please take note that clause 13(d) of the Bill amending section 25(4) of the Act does not allow for any process during which the infringer may raise a justification or representations and is deemed to be "guilty" by default.

7.20 Please take note that clause 16 of the Bill amending section 30 of the Act creates a "reverse onus" on the infringer to ensure that they receive an infringement notice and removes the duty of the Authority to ensure that a process initiated by them is duly received by the recipient. This in principle goes against the *audi altrem patrem* rule and the general rules of civil procedure. It is noteworthy to mention that parties to a civil matter need to follow due process by following the strict rules of personal service unless otherwise permitted by a court of law. These amendments stand to grant the Authority a way to circumvent these rules.

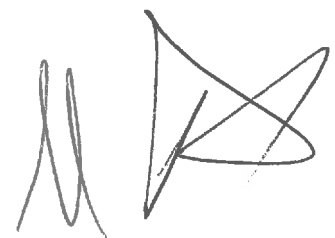
7.21 Please take note that clause 15 of the Bill inserting Chapter IVA into the Act creates an application concern as 9 people are appointed to adjudicate the whole country's appeals and reviews and no provision is made for delegation of the Tribunals duties and powers.

7.22 Further the proposed section 29A(8) only allows for the reporting to the Minister but negates any subsequent duty to report to the appointee, who is the President.

7.23 Please take note that clause 15 of the Bill inserting section 29B does not allow for condonation or discretion of any form, thereby limiting a lay person's access to the Tribunal. For example, the Tribunal may not waive the prescribed fees, forms or condone late filing of an appeal or review.

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- 7.24 Please take note that clause 15 of the Bill inserting section 29J providing for appeal to the High Court is unjust. This amendment creates a concern as the infringer's first and only encounter with the court system is at High Court level which is expensive and has stringent professional rules.
- 7.25 In addition the Bill attempts to increase sanctions without conforming to the normal rules of sentencing. The Bill imposes severe penalties for arguably minor offences without considering the common principles of sentencing (as used during criminal procedures), it does not allow for discretion in the case of lesser offences and make little provision for the audi alteram partem rule.
- 7.26 On the face of an infringement notice, the infringer is deemed to be "guilty" and must in fact prove that he is innocent (by lodging representations). Thus, there is a reverse onus on the infringer who is presumed "guilty" until proven innocent.
- 7.27 Further, the government has circumvented its duty to prove beyond a reasonable doubt that an infringer is guilty by attempting to keep the matters out of the criminal justice system.
- 7.28 In conclusion we submit that the Bill will not withstand Constitutional scrutiny and should be referred back to the legislator.

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25 March 2019

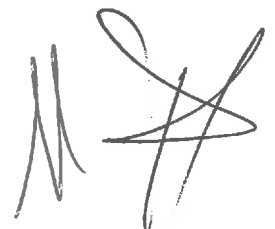
To: The President of the Republic of South Africa
Private Office of the President
President Cyril Ramaphosa
Email: presidentrsa@presidency.gov.za

CC: The President of the Republic of South Africa
Private Office of the President
Personal Assistant to the President
Malebo Sibiya
Email: malebo@presidency.gov.za

Dear Sir


**ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES
AMENDMENT BILL [B38D – 2015]**

1. OUTA is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about holding Government accountable in its quest to improve the prosperity of South Africa.
2. OUTA promotes road safety and effective traffic legislation. We believe that to achieve this outcome, South Africa needs effective processes enabled by fair adjudication that complies with the Constitution. In our view, it is critical that South Africa has strict and unchallengeable traffic legislation to ensure behavioural changes in road users which will lead to safer driving and less fatalities on our roads.
3. We are very concerned that our road fatalities continue to remain at very high levels and within the lower international quartile. We believe it is largely due to poor enforcement, a lack of administrative discipline when it comes to traffic infringement management and the variety of problems in the management of vehicle and driver licensing, however having said that, we believe the proposed AARTO amendments will fall far short of rectifying these matters.



INTRODUCTION

4. The Administrative Adjudication of Road Traffic Offences or “AARTO” Act was promulgated in 1998, with four (4) amendments published over the last decade and seeked to achieve the following:
 - 4.1. to promote road traffic quality;
 - 4.2. to discourage road traffic contraventions;
 - 4.3. to facilitate the adjudication of road traffic infringements;
 - 4.4. to support the prosecution of offences in terms of the national and provincial laws relating to road traffic and implement a point demerit system;
 - 4.5. to provide for the establishment of an agency to administer the scheme;
 - 4.6. to provide for the establishment of a board to represent the agency.
5. The latest AARTO Amendment Bill or “the Bill” was introduced to Parliament on 1 December 2015 and on 5 March 2019 the Bill was passed by both Houses and sent to the President for assent.
6. During the abovementioned period, OUTA was actively involved in the process. We attended several public hearings (the integrity of which is questionable) and provided written and oral submissions to the National Assembly, to the National Council of Provinces and to the Gauteng Legislature. Throughout our involvement, we highlighted our reservations and raised our concern with certain aspects of the Bill.
7. Furthermore, OUTA even went so far as to hold an AARTO workshop in June 2018, which was attended by several stakeholders in the transport industry including the taxi associations, car rental organisations, business organisations and representatives from the Tshwane and Johannesburg Metro Police Departments. The Road Traffic Infringement Agency or “RTIA” was invited to

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participate in this workshop and accepted the invitation but pulled out at the last minute. The aim of the workshop was to identify all the concerns and to understand the impact the amendment to AARTO will have on the administration of AARTO and the motoring public.

8. Honourable President, we decided to write you this letter to ask you to exercise your presidential oversight and to hold off on passing the AARTO Amendment Bill. We hope that you will take note of our concerns. We sincerely believe it is necessary to first address the concerns raised to avoid legal challenges and to prevent Government from suffering another failure to administer the process at the levels of efficiency required. It's one thing to introduce new laws and regulations, but it's another to ensure the effectiveness thereof; to ensure that the intended outcomes are achieved.
9. Our concerns are summarised below for your convenience but attached hereto for your perusal are copies of our full submission to Parliament marked "A", the document compiled after the workshop marked "B", the matter *Fines4U (Pty)Ltd and others v RTIA and others 2017 (2) SACR 35 GP or Fines4U case* marked "C" and RTMC's report on the State of Road Safety marked "D".

ROAD SAFETY

10. More than a decade, AARTO was implemented in the cities of Tshwane and Johannesburg. Statistics, obtained from the RTMC, show that there has been no decrease in fatalities in these two Metro's and the RTIA failed to show that they succeeded in bringing down fatalities on the roads of Tshwane and Johannesburg.
11. There is nothing substantial in the AARTO Act or the AARTO Amendment Bill that promotes road safety. It is our opinion that AARTO will not assist in the fight against the high death toll on our roads, and that the Act makes provision for the RTIA to sustain themselves financially rather than the promotion of road safety.

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ADMINISTRATION MANAGEMENT

12. In the Fines4U case, the judge described the process in the AARTO Act as follows: "Without being disrespectful to the legislature, I take the liberty to observe that AARTO contains the most elaborate scheme of steps to be taken to bring an offender (or "infringer" as described in the Act) who committed a minor traffic infringement or offence to book."
13. If a motorist doesn't receive an AARTO notice and fails to settle a payment or fine as result, an enforcement order can be issued, and the motorist will be automatically blocked from renewing any motor vehicle licence, driver's licence or permit. AARTO relies on the information in the eNatis system when notifying motorists of any infringements. This is currently a challenge as the e-Natis system experiences a variety of problems including breaches of the system, fraudulent registrations and bad data.
14. With the introduction of the demerit system that will require increased administrative support, the information needed for allocating demerit points will have to be shared between RTIA and e-Natis to ensure correct enforcement of the demerits. OUTA questions RTIA's ability to efficiently and reliably administer the AARTO and the demerit system nationwide.
15. AARTO is also facing similar problems than the e-toll system i.e. high administrative costs and low compliance. The e-toll system was launched on 3 December 2013. (OUTA has been involved with the e-toll system since 2012.) In OUTA's experience, the management of the administration of e-tolls failed and compliance is currently below 30%. A big factor playing a role in this failure is that the fact that the administration management system can't handle the voluminous number of notices and invoices even though e-tolls are only operative in Gauteng, with about 2,5 million motor vehicles using the GFIP roads.



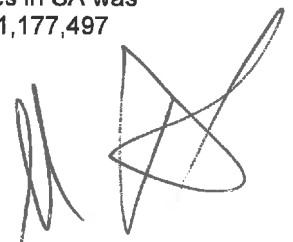
16. With the pilot project of AARTO only in Tshwane and Johannesburg, it is not unreasonable to compare the AARTO system with e-tolls. The payment rate of traffic fines has an extremely low compliance rate (lower than e-tolls), with reported compliance in the City of Johannesburg as low as 4.71% after the piloted AARTO system was implemented in 2008.¹
17. There is no guarantee that compliance will improve on the back of a national rollout. In fact, considering that there are just over 12,4 Million registered vehicles country wide compared to just over 4.7 Million vehicles in Gauteng, the low compliance rate will lead to increased administration costs because more manpower will be required to administer the high volume of notices, customer care and queries.²

SERVICE OF AARTO NOTIFICATIONS

18. In terms of the Amendment Bill, 'electronic service' means service by electronic communication as defined in the Electronic Communications Act, 2005 (Act No. 36 of 2005), and as contemplated in section 19(4) of the Electronic Communication and Transactions Act, 2002 (Act No. 25 of 2002).
19. Section 30 makes provision for the serving of documents by postage or electronic service or personal service. A document served is deemed to be served on an infringer on the tenth day after posting of the document or after the electronic service. The electronic service of the document must reflect in the National Road Traffic Offence Register (NOR).

¹ <https://www.businesslive.co.za/bd/national/2016-11-14-traffic-fines-system-problematic-say-sas-cities/>

² According to RTMC report dated 30 Sept 2018, the total number of registered vehicles in SA was 12,420,372 and in Gauteng 4,788,182. Un-roadworthy and un-licenced vehicles were 1,177,497

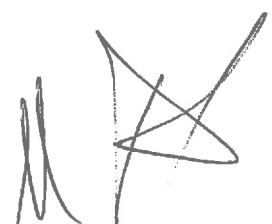


20. Not all South Africans have access to electronic devices or postal services to receive such notices. Although the Bill makes provision for personal service, there is no provision that gives the road user a choice of a preferred method of service on him/her.
21. If the Bill provides for a choice, the whole debate over when a notification is successfully served or not, will be over and it will lead to a higher success rate for services of notices.

REVENUE FOR RTIA vs REVENUE FOR ISSUING AUTHORITIES

22. When AARTO is implemented throughout the country, issuing authorities like Municipalities, Metro Councils, the RTMC and others will lose 50% of their income on all traffic fines not paid within 32 days. This will have a huge negative influence on the already cash strapped municipalities and metro councils across the country.
23. Statistics show that the compliance rate in the two metro's where AARTO was implemented 10 years ago, are below 5%. This is mainly because of the RTIA's inability to administer the scheme.
24. If the same compliance rate is achieved throughout the country, municipalities and metro councils will be left with huge shortage in their budgets.

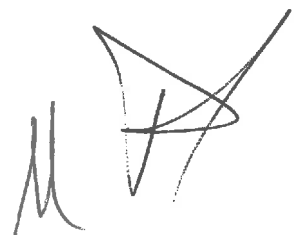
Metro/Municipality	Year of Financial Statements	Revenue -Traffic Fines
Laingsburg	2017	22 196 339
Msuduzi	2018	11 826 205
Emfuleni	2017	165 115 436
Johannesburg	2018	211 547 000
Mogale City	2018	20 252 600



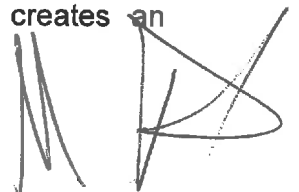
25. The RTIA's main objective will be to collect fines issued to road users which is basically the same role as that of ETC (in the e-toll scheme). After five years, ETC failed to collect e-tolls successfully as the compliance rate is less than 30%. In Tshwane and Johannesburg, the RTIA failed to fulfil their mandate. It will be disastrous for the country but especially for local authorities when RTIA is unable to deliver on their mandate countrywide.

CONSTITUTIONALITY OF THE AARTO AMENDMENT BILL AND ADDITIONAL LEGAL CHALLENGES

26. All legislation must be able to withstand public scrutiny before it is tabled and signed into law by the President. All legislation must also be in accordance with Constitutional guidelines and within the ambit of constitutionality.
27. The AARTO Amendment Bill faces the following legal challenges:
- 27.1. The proposed bill does not address the inefficiencies identified in the past ten years.
- 27.2. The Bill, amending the definition of "infringement", include additional Acts i.e SANRAL Act and by implication E-Tolls. Thus, creates another avenue for the collection and prosecution of E-Tolls. In our opinion government is attempting to circumvent the inefficiencies of the SANRAL Act, which include a Constitutional challenge, by amending the current legislation. It is clearly an attempt to generate revenue. The SANRAL Act uses a more stringent process, i.e. a debt collecting/ court process to collect debt, whereas the AARTO Act is of administrative nature which is more stringent on the public/ users. Thus, the burden is shifted from government to the public/ user.

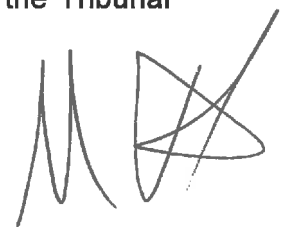


- 27.3. The Bill further amends section 4 and 22 of the Act and effectively decriminalises the process and makes it a civil process. It removes the public/ user's right to be elected to be tried in a court of law. In doing so it takes away a person being accused of a traffic infringement's Constitutional right (section 35 – rights of an accused person). Once caught in the civil administrative system, an infringer does not have the same Constitutional rights as they would be afforded during the criminal process i.e. right to legal representation and a fair trial. In addition, the Bill attempts to increase sanctions without conforming to the normal rules of sentencing. The Bill imposes severe penalties for arguably minor offences without considering the common principles of sentencing (as used during criminal procedures), it does not allow for discretion in the case of lesser offences and make little provision for the *audi alteram partem* rule.
- 27.4. On the face of an infringement notice, the infringer is deemed to be "guilty" and must in fact prove that he is innocent (by lodging representations). Thus, there is a reverse onus on the infringer who is presumed "guilty" until proven innocent. Further, the government has circumvented its duty to prove beyond a reasonable doubt that an infringer is guilty by attempting to keep the matters out of the criminal justice system. The infringer will not have the right to rely on the right to a speedy trial as the process is administrative in nature and the right to a speedy trial is only afforded to accused persons. The result of the latter is that there is a burden placed on the infringer, who has to rely on PAJA which is unnecessarily cumbersome on the infringer.
- 27.5. The Bill grants the sole power to approve remuneration packages, pensions and other benefits of Authority employees to the Board, after consultation with the Minister of Transport, and exclude the Minister of Finance, which creates an oversight shortfall and opens a door for financial irregularities previously covered. The Bill also creates an

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oversight short fall by taking the Director General out of the equation and consequently removing a good governance fail safe.

- 27.6. The Bill creates financial gain for government at the expense of the public/ users. The Department of Transport on their own Memorandum explains that they expect an increased revenue and decreased expenses due to electronic service. The amendment further, creates a financial incentive and opens the door for infringement notices to be issued based on financial gain and not merits.
- 27.7. This amendment makes the Authority the judge, jury and executioner of those implicated in traffic infringements.
- 27.8. The Bill, amending section 30 of the Act, creates a "reverse onus" on the infringer to ensure that they receive an infringement notice and removes the duty of the Authority to ensure that a process initiated by them is duly received by the recipient. This in principle goes against the *audi altrem patrem* rule and the general rules of civil procedure. The parties to a civil matter need to follow due process by following the strict rules of personal service unless otherwise permitted by a court of law. These amendments stand to grant the Authority a way to circumvent these rules.
- 27.9. The Bill creates an application concern as 9 people are appointed to adjudicate the whole country's appeals and reviews and no provision is made for delegation of the Tribunals duties and powers.
- 27.10. Further, the proposed section 29A(8) only allows for the reporting to the Minister but negates any subsequent duty to report to the appointee, who is the President.
- 27.11. The Bill does not allow for condonation or discretion of any form, thereby limiting a lay person's access to the Tribunal. For example, the Tribunal

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may not waive the prescribed fees, forms or condone late filing of an appeal or review.

28. In conclusion we submit that the Bill will not withstand Constitutional scrutiny and should be referred to the legislator.
29. Our country cannot afford lengthy court battles that will ensue if this Bill is signed and promulgated. Our country needs legislation that will really tackle road safety. Our country needs more visible policing to change motorists' unlawful behaviour. Sadly, AARTO is not the solution.
30. Mr President, to promulgate the AARTO Bill as it stands now, will be disastrous for South Africa. The AARTO Amendment Bill is not the answer to the high death toll on our roads and the already cash strapped local authorities. Taking that into account and all the issues regarding constitutionality, we urge you not to sign the AARTO Amendment Bill.
31. We await your response at Your Excellency's earliest convenience.

Yours Sincerely,



Wayne Duvenage
Chief Executive Officer
OUTA – Organisation Undoing Tax Abuse
E-mail: wayne.duvenage@outa.co.za



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PostNet Suite 36, Pvt Bag x1 Menlo Park, Pretoria, 0102
Phone: 082 734 2349 E-Mail: andrea@aletuysattorneys.co.za

24 July 2019

Our ref: AK/OUTA/AARTO

To: The President of the Republic of South Africa
Private Office of the President
President Cyril Ramaphosa

Email: presidentrsa@presidency.gov.za

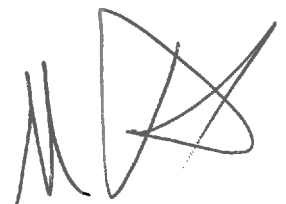
C/O: Personal Assistant to the President
Malebo Sibiyi

Email: malebo@presidency.gov.za

Dear Mr President

ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT
BILL [B38D – 2015]

1. We act on behalf of OUTA (the Organisation Undoing Tax Abuse), a South African non-profit civil action organisation.
2. OUTA has significant concerns about the constitutional validity of the Administrative Adjudication of Road Traffic Offences Amendment Bill ("the AARTO Amendment Bill"). This Bill was recently passed by Parliament and has been sent to you for signature.
3. We have been instructed to write to you and request that you exercise your discretion in terms of section 79(1) of the Constitution, by declining to sign the Bill and sending it back to Parliament for reconsideration.



4. Our client has a substantial interest in the Bill.

4.1. OUTA is a strong promoter of road safety and effective traffic legislation. It believes that to achieve this outcome, South Africa needs effective and fair processes for the adjudication of road traffic infringements. Such processes must be consistent with the Constitution. In addition, it is critical that South Africa's traffic legislation is properly enforced to bring about behavioural changes in road users and to ensure safer driving and fewer fatalities on our roads.

4.2. Our client remains concerned about the high level of road fatalities in South Africa. They believe that these fatalities are largely due to poor enforcement of traffic laws, a lack of traffic infringement management and a variety of problems in the management of vehicle and driver licensing.

THE AARTO AMENDMENT BILL

5. Our client was actively involved in the public participation processes in relation to the Bill. They wrote to you previously to highlight their reservations and concerns about various aspects of the AARTO Amendment Bill. This letter supplements those grounds of concern.

6. We wish to place on record that, as a matter of principle, our client does not oppose the introduction of new laws and regulations by Government, but rather wishes to ensure that these laws and regulations are capable of effective execution and are aligned with the basic principles envisaged in our Constitution.



7. OUTA has obtained legal advice regarding the constitutional validity of various provisions of the AARTO Amendment Bill. It has two main concerns with the Bill:

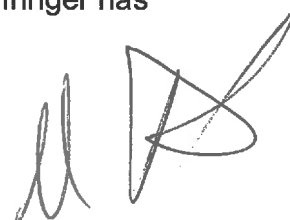
7.1. The first relates to the service provisions in the Bill. Given the serious nature of the consequences that may follow an infringement, the Bill does not provide for adequate service to infringers;

7.2. The second relates to the Appeals Tribunal that is established by section 29A of the Bill. The Bill only provides for one Tribunal staffed by a Chairperson and eight other members (appointed on a part-time basis) to service the whole of South Africa. This is vastly insufficient given the number of matters that it will be required to hear. This will result in a serious backlog in the system and will ultimately violate the constitutional rights of infringers (including their rights to just administrative action and a fair hearing).

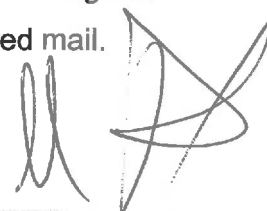
8. We address each of these concerns in more detail below.

i) Inadequate service provisions

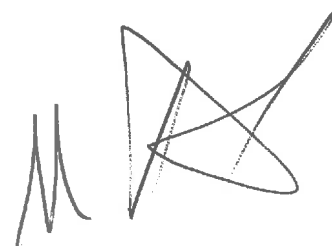
9. The Bill amends section 30 of the AARTO Act, which governs the manner and form of service of documents under the Act.
10. Section 30(1) provided that any document required to be served on an infringer under the Act must be served on the infringer personally or sent by registered mail to his or her last known address. The definitions section of the AARTO Act provided that the date upon which service is affected is the date on which the infringer has signed for the document served.



11. The Bill amends section 30. It removes the requirement that service must be affected by personal service or registered mail. It replaces this with the requirement that all documents must be served on infringers by personal service or postage (i.e. non-registered mail) or electronic mail. The Bill defines 'electronic mail' to mean service by electronic communication as defined in the Electronic Communications Act 2005. The latter would include service by voice message, by SMS or by email.
12. These forms of service are inadequate. It is likely that the notice will be missed by infringers in many cases. The email, SMS or voice message could easily be treated as junk mail or spam or could simply go unopened. There is nothing in the form of correspondence that emphasizes the importance of the document to the recipient.
13. This risk is unacceptable given the serious consequences that will result if the infringer fails to respond to the notice in question.
 - 13.1. In terms of the Act, the first step that will be taken is that an infringer will be served with an infringement notice. The infringement notice describes the particulars of the infringement and the amount of the penalty and informs the infringer that they are entitled to make representations that contest their liability. If the infringer does not receive and respond to the infringement notice, they will be sent a courtesy letter. The courtesy letter informs them that they may make representations contesting their liability or pay the prescribed fee. If the infringer does not receive or respond to the courtesy letter, an enforcement order will be issued. If the infringer has incurred demerit points, these points will be recorded against the national register and the infringer will (only) then be informed of such by registered mail.



- 13.2. Once an enforcement order has been issued, no driving license, professional driving permit or license disc may be issued in respect of a motor vehicle registered in the name of the infringer, until such enforcement order has been complied with or has been revoked. If the infringer wishes to have the enforcement order revoked, he or she must apply to the agency in the prescribed manner and submit reasons to the satisfaction of the registrar. In reality, this means that an infringer who has not received notice of their infringement (and who would otherwise have made representations) may be barred from obtaining a driver's license, professional driving permit or license disc until they have successfully applied for the revocation of the order.
- 13.3. If the infringer already has demerit points, the additional demerit points that are recorded may result in him being disqualified from operating his motor vehicle. In addition, he may not apply for a driving license, professional driving permit or operator card during the disqualification period.
- 13.4. This would have severe consequences for the driver's ability to move freely and to practice their profession or work (particularly in the case of taxi drivers and fleet operators).
14. Given these severe consequences, the requirement of personal service or service by registered mail should not be removed. It is critical to ensuring that an infringer is given an adequate opportunity to make representations or otherwise respond to an infringement notice before the penalties are visited upon him or her.
- ii) The Appeals Tribunal**
15. The AARTO Amendment Bill creates the Appeals Tribunal.



16. The functions of the Tribunal include the adjudication of matters brought to it by infringers aggrieved by a decision taken by the representation officer and the hearing of appeals against, or review of, any decision of the representation officer that may be referred to the Tribunal. This is a vast workload. In this regard, the following bears emphasis:

16.1. In the 2017/2018 period, the total number of representations made and adjudicated (after the infringer received an infringement notice) was 133,790. This was in respect of Johannesburg and Tshwane alone.¹

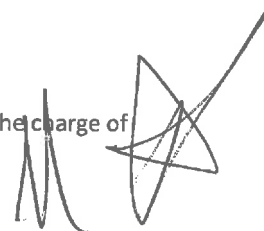
16.2. In 2017/2018, a total of 286,390 persons (in Johannesburg and Tshwane) elected to have their traffic infringement tried in court. In the same year, a total of 25 143 court hearings took place.² In the preceding year (2016/2017), a total of 79 122 court hearings took place.³

16.3. The AARTO Amendment Bill removes the distinction between major and minor infringements and no longer allows for infringers to elect to be tried directly in a court. Under the Bill, all infringers must first go to the Appeals Tribunal before they may challenge the infringement charge in court.

¹ RTIA annual report 2017/2018 – Reporting period 1 April 2017 to 31 March 2018.

² Ibid. In terms of sections 17(1)(f)(iv) or 18(7) of the AARTO Act, an infringer may elect to be tried in court on the charge of having committed the infringement(s) as stated on the Infringement Notice.

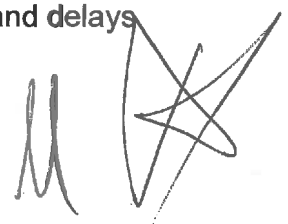
³ Ibid.



17. The AARTO Amendment Bill makes provision for only one Appeals Tribunal with jurisdiction over the entire country. The Tribunal consists of a Chairperson and only eight members, who are appointed on a part-time basis. It will not be possible for the Appeals Tribunal to deal with the case load described above. The eight part-time members will not have the capacity or time to deal with tens of thousands of challenges, appeals and reviews. Furthermore, it is not clear whether the Tribunal will be based in one location throughout the year (with infringers having to travel across the country to the Tribunal) or whether the Tribunal will go on circuit and hear matters at different locations (which means a significant amount of time will be lost to travel, further reducing the Tribunal's ability to deal with its caseload).
18. The result will be years of backlogs in hearing grievances with the decisions of representation officers, appeals and reviews. This, in turn, means that there will be no effective redress for persons who have been accused of a traffic infringement or offence, but who have a valid defence. Such persons are not permitted to circumvent the Appeals Tribunal and go directly to a court (which is an independent tribunal).

iii) Implications of flawed provision

19. The problems identified above implicate a number of the alleged infringers' rights. These include the following:
- 19.1. First (and foremost), the alleged infringer's right to just administrative action (section 33 of the Constitution). This right is limited by the lack of proper service provided for in the Bill as well as the delays in having the matter heard before the Appeals Tribunal. The lack of service and delays will result in a process that is not fair.





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- 19.2. Second, the lack of service and delays in having the matter heard may also implicate the alleged infringer's right to freedom of economic activity, freedom of movement and substantive just administrative action. As is explained above, there are severe consequences that may flow from an alleged infringer's failure to respond to or successfully challenge a charge in an infringement notice. This includes that person's licence being suspended or their being unable to obtain a vehicle licence. This prevents them generally from driving to and from work engagements. In the instances where a person is employed or operates in the transport industry (e.g. a taxi driver or fleet owner), they will be prevented from pursuing their livelihood.
- 19.3. Third, the delays in having the matter heard by the Appeals Tribunal may negatively affect the alleged infringer's right to a fair hearing before an independent tribunal. The Appeals Tribunal is an administrative body whose members are appointed by the President. It does not constitute an independent tribunal. The Court is an independent tribunal. In order to have a hearing before a court, the alleged infringer must first go through the Appeals Tribunal. This will result in lengthy delays. By the time that the alleged infringer is able to bring their matter before a court, it is likely that years will have passed. There is a great chance, with the passing of time, that evidence will be lost and memories will fade. This will make it harder for the alleged infringer to prove their case.
20. We therefore submit that the AARTO Amendment Bill does not withstand constitutional scrutiny. In the circumstances, Mr President, we respectfully urge you not to sign the AARTO Amendment Bill and to refer the Bill back to the Parliament for reconsideration.



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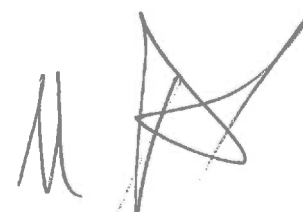
We kindly await your response at your earliest convenience.

Yours faithfully,



ALET UYS ATTORNEYS

A KORFF



**COMMENTS ON THE PROPOSED REGULATIONS TO THE ADMINISTRATIVE
ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL**

INTRODUCTION:

1. The Organisation Undoing Tax Abuse (OUTA) is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority, in particular the abuse of taxpayers' money.
2. OUTA is a strong promoter of road safety and effective traffic legislation. It believes that to achieve this outcome, South Africa needs effective and fair processes for the adjudication of road traffic infringements. Such processes must be consistent with the Constitution. In addition, it is critical that South Africa's traffic legislation is properly enforced to bring about behavioural changes in road users and to ensure safer driving and fewer fatalities on our roads.
3. OUTA remains concerned about the high level of road fatalities in South Africa. We believe that these fatalities are largely due to the poor enforcement of traffic laws, a lack of traffic infringement management and a variety of problems in the management of vehicle- and driver licensing.
4. As a matter of principle, we do not oppose the introduction of new laws and regulations by Government, but we rather wish to ensure that these laws and regulations are capable of being effectively executed, are rational and are aligned with the basic principles envisaged in our Constitution.

ORGANISATION UNDOING TAX ABUSE NPC

Reg No.: 2012/064213/08

Directors: W Duvenage (CEO), Adv. S Fick, G Gulston, Dr H Volmink

Non-Executive Directors: F Adam (Chair), P Majozi, W Modisapodi, LP Pauwen, T Pillay Van Graan

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5. The Administration of Road Traffic Offences Act is a troublesome and complex piece of legislation for most motorists and motor vehicle owners in South Africa. OUTA, with the support of our supporters, wishes to submit our comments on the proposed Regulations to Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38B – 2015] ("regulations"). We identified and commented on two main issues in the proposed regulations namely (A) the content of some of regulations, and (B) the cross-referencing issues in the regulations. It is followed by (C) - comments in general.

A. CONTENT ISSUES

Service provision:

6. Regulations 2(1)(b), 2(1)(c), 2(3), 2(4)(a), 2(5)(a), regulations 3(1), 3(2), regulations 4(1)(a), 4(3)(b)(ii), regulations 5(3)(b)(iii), 5(3)(b)(iv), regulation 7(1), regulation 10(2), 10(3), regulation 11(8), 11(9), regulation 12(2), regulation 13(2), 13(4), regulation 20(1), regulation 21(9), 21 (10), regulation 23(2), 23(4), regulation 24(3)(b)(ii), 24(5), regulation 25(1)(b)(iii), regulation 26(4) and regulation 33(1), 33(2), 33(5) make reference to regulation 34(4)(b), which states the following:

"(4) An infringement notice or AARTO notice required to be served or issued to the infringer must be issued or served by –

(b) electronic service through electronic communications network the details of which have been provided by the infringer in terms of regulation 32;"

7. We belief that the service provision stated above does not provide for adequate service especially given the serious nature of the consequences that may follow an infringement.



8. These forms of service are inadequate because it is likely that the notice will be missed by infringers in many cases. The email, SMS or voice message could easily be treated as junk mail or spam or could simply go unopened. There is nothing in this form of correspondence that emphasizes the importance of the document to the recipient.
9. The risks attached to these forms of service are unacceptable given the serious consequences resulting from an infringer's non adherence to the documents sent by electronic communication.
10. It is critical to ensure that an infringer is given an adequate opportunity to make representations or otherwise respond to an infringement notice (AARTO notice) before any penalties are visited upon him or her. Electronic communication does not give an adequate opportunity for the infringer to exercise this right accordingly.

Regulation 2

11. Regulation 2(6) stipulates that in addition to the required information as set out in section 17(1) of the AARTO Act, additional information (referred to in this regulation) **must** be contained in infringement notices.
12. Although we acknowledge that there is a necessity to obtain the correct information from an infringer, we submit that by introducing a regulation that imposes an obligation (the use of the word **must**) on the issuing officer to ensure that ALL the information is obtained, it increases the risk that in certain *bona fide* circumstances not all the information can be obtained and will ultimately affect the enforcement of the administrative process.
13. Furthermore, regulation 2(6)(g) stipulates that certain information of the officer who issued the notice must be provided. With specific reference to regulation

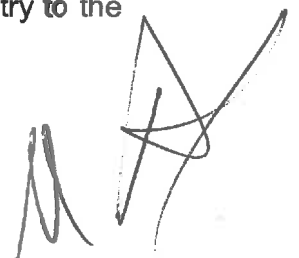
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2(6)(g)(i), an officer who issued the infringement notice must provide his or her surname and initials on the issued notice.

14. We fail to understand why an officer who issues an infringement notice is only required to provide his or her initials and surname whereas regulation 2(6)(a)(ii) stipulates that the infringer must provide his or her first names and if such infringer has more than one name, must provide at least the first two full names and the initials of any further names.
15. We therefore submit that we believe that the officer who issues the infringement notice should also provide his or her first names and if such officer has more than one name at least provide the first two full names and the initials of any further names.

Appeals Tribunal

16. According to **Chapter 3** of the regulations, the functions of the Appeals Tribunal include the adjudication of matters brought to it by infringers aggrieved by a decision taken by the representation officer. Therefore, the hearing of appeals against or review of any decision made by the representation officer may be referred to the Appeals Tribunal.
17. The Appeals Tribunal will have jurisdiction over the entire country. The Tribunal will consist of a Chairperson and eight members who will be appointed on a part-time basis. We are of the view that it will not be possible for the Appeals Tribunal to deal with all the cases efficiently and within the prescribed time frames. The eight part-time members will not have the capacity or time to deal with thousands of challenges, appeals and reviews.
18. Furthermore, it is not clear if the Appeals Tribunal will be based in one location throughout the year with infringers having to travel across the country to the

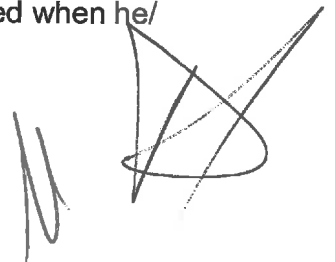
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Appeals Tribunal or if the Appeals Tribunal will go on circuit and hear matters at different locations. Traveling to different locations will mean that a significant amount of time will be lost to travel and will further reduce the Appeals Tribunal's ability to deal with its caseload.

19. According to **regulation 9** the Appeals Tribunal may develop its own rules governing the proceedings of the sittings, the conduct of its members as well as other related matters.
20. We submit that the creation of the Appeals Tribunal has already brought to life an administrative process that is cumbersome to say the least. In the event that the Appeals Tribunal can create their own rules, the process will become even more cumbersome.
21. The creators of this administrative process are of the opinion that this type of process will alleviate the congestion in the judicial system. We are however of the opinion that the Appeals Tribunal will be faced with more congestion than there ever was in the judicial system. Furthermore, the cost of establishing and sustaining this entity will be enormous and will ultimately be funded by normal taxpaying citizens of South Africa.
22. Regulation 11 sets out the Appeals Tribunal's procedure and we are of the opinion that the entire procedure is cumbersome, convoluted, highly technical, costly and not accessible to ordinary South Africans.
23. We believe that this procedure does not in the slightest promote road safety but is clearly a money-making procedure. Ordinary South Africans will most probable rather elect to pay (even if they are not guilty of an infringement) to avoid the administrative hassle than to participate in a process that is non sensical.



24. Regulation 11 also sets out specific timeframes applicable to the process. We firmly believe that the timeframes as identified, are not practical in the South African context and will be nearly impossible to adhere to. It therefore confirms our position that this administrative system will not be able to properly function as intended.
25. In terms of regulation 13(7), any administrative process in relation to the infringement notice, shall be suspended pending the decision of the Appeals Tribunal. According to the process laid out in the regulations, an infringer has the right to appeal to the Appeals Tribunal if a representation that was made to an Issuing Authority or the Authority, was rejected. The representations may be made when an infringer receives an infringement notice or a courtesy letter. The intention of the Minister is unclear when he refers to the administrative process relating to infringement notices. Does this administrative process only bear reference to infringement notices or is it also applicable to courtesy letters?
26. Furthermore, regulation 13(7) does not mention the suspension of demerit points, if any, pending the decision of the Appeals Tribunal. It is thus unclear whether this regulation is applicable or not to demerit points and whether demerit points will be suspended or not pending the decision of the Appeals Tribunal. Clarity is needed.
27. Regulation 15(6) states that an infringer who makes representation to the Authority within the prescribed period and who's representation gets rejected, will not be entitled to a discount if he/ she subsequently approaches the Appeals Tribunal. An infringer will be liable for the full penalty amount and applicable fees.
28. We are of the opinion that regulation 15(6) is unfair and unreasonable because an infringer who chooses to exercise his right to follow the prescribed procedure and approaches the Appeals Tribunal, will be prejudiced when he/

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she follows due process. We fail to understand why an infringer is deliberately prejudiced (by not qualifying for a discount) if he or she follows due process. The only reasonable explanation is that this administrative process does not in essence focus on road safety but on making money.

Regulation 20

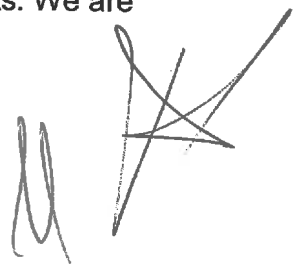
29. Regulation 20(1) read together with section 26 (1) of the AARTO Act regulates the disqualification and cancelation of documents and the way an infringer must be informed when he/ she incurred more than the number of demerit points stipulated in these regulations. Regulation 20(1) stipulates that an infringer, who incurred more than the number of demerit points stipulated in these regulations, can be informed by way of registered post (in terms of regulation 34(4)(a)) or by way of electronic service (in terms of regulation 34(4)(b)). Section 26(1) of the AARTO Act however, specifically states that an infringer should be informed by way of registered post. Regulation 20(1) is therefor in direct violation of the AARTO Act and *ab initio* void.

Regulation 21

30. Regulation 21(4) refers to rehabilitation programs and the different types thereof. Regulation 21(4)(c) specifically refers to "...any other appropriate rehabilitation measures as approved by the Authority." We are of the opinion that the regulation is vague because it does not provide the qualification criteria for possible service providers nor does it give clarity on what these "other appropriate rehabilitation measures" constitute.

Regulation 24

31. Regulation 24 regulates the manner and the process to be followed when an infringer wants to pay (if he or she so elects) a penalty and fee (if applicable) in instalments. Regulation 24(4) stipulates that where payments in instalments are made such payment may not exceed ten (10) monthly payments. We are



of the opinion that the number of instalments should not be limited and we suggest that the quantum of the instalments should rather be capped at a certain minimum amount. This will enable South Africans who are not financially sound to elect to pay in instalments.

32. Furthermore, the prescribed form AARTO 4 that is used in an application to pay in instalments, states that the maximum period allowed for the payment in instalments are six (6) months. We submit that the regulation and the form attached to the regulation are contradictory and warrant further amendment.

Refunds

33. Regulation 26 refers to the process in terms of which an infringer may apply for a refund of penalties and fees paid. Regulation 26(4) stipulates that the Authority must consider the application and either refund the excess amount or refuse the refund. The regulation does not clarify if an infringer who has applied for the refund that was subsequently refused, has the right to appeal or review the decision of the Authority to the Appeals Tribunal. It is not expressly stated and we believe it warrants clarity from the Minister.

Electronic equipment

34. In terms of regulation 38(3), AARTO 2 (Infringement Notices) must be obtained from the Authority and installed on electronic equipment for the electronic generation and printing of notices at the roadside. Creating regulations that places a duty on government (ultimately South African taxpaying citizens) to fund electronic equipment in order to enforce this system, is absolutely irrational. We reiterate our opinion that the whole AARTO administrative system is going to be costly and ultimately unmanageable because of the financial position South Africa is in (and historic financial challenges).

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35. Currently AARTO Notice Books are used. It is therefore inconceivable that additional money must be spent to buy electronic equipment that is most probably not even going to be used.

South African Police Services ("SAPS")

36. Section 1 of the AARTO Act does not include members of the SAPS as authorised officers. Schedule 4 aims to include and to regulate members of the SAPS as authorised officers. We are of the opinion that the Minister is trying to amend the AARTO Act with this regulation which makes Schedule 4 *ab initio* void.
37. Furthermore, we are of the opinion that Schedule 4 will not withstand constitutional scrutiny. Schedule 4 places a restriction and/ or limitation on the powers given to the SAPS in terms of the Constitution of South Africa and other legislation. Schedule 4 prescribes how the SAPS must perform certain functions. The constitution expressly states in section 207 that the National Police Commissioner **must** exercise control over and manage the police services in accordance with the national policing policy and the directions of the Cabinet member responsible for policing. If Schedule 4 is promulgated, it will directly interfere with the powers of the National Police Commissioner in terms of Section 207 of the Constitution.
38. We are also of the opinion that the enforcement of AARTO by an already under staffed police (and metro police) force will not be possible and, unless other alternative arrangements are made, AARTO will not be properly implemented.


B. CROSS - REFERENCING ISSUES

39. From the first page of the proposed regulations, it was apparent that the drafting of the regulations was done in a hastily manner. The reasons for our



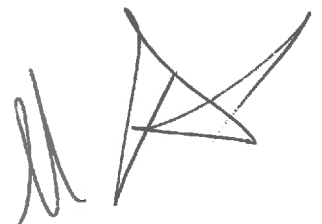
avermment will become clear and is highlighted hereunder.

40. Regulation 3(2), regulation 4(3)(a), 4(4), 4(5), regulation 5(3), regulation 6(4)(a), regulation 13(3), regulation 20(2)(a), regulation 21(7), regulation 24(3)(a), regulation 26(3)(a), regulation 27(1), regulation 29(1)(c) and regulation 33(2), make specific reference to regulation 34(6) but regulation 34(6) does not exist. Regulation 34 is only numbered up to regulation 34(5).
41. Regulation 14(1) makes specific reference to column 5 of Schedule 3 and the calculation of penalties. However, column 5 of Schedule 3 (which was not amended) refers to the "Classification of Offences". We belief that the correct reference should have been column 6 of Schedule 3.
42. Regulation 14(2) makes specific reference to column 7 of Schedule 3 and the rand value payable in respect of a penalty. However, column 7 of Schedule 3 (which was not amended) refers to "Demerit points". We belief that the correct reference should have been column 8 of Schedule 3.
43. Regulation 15(2) makes specific reference to column 8 of Schedule 3 and the discounted penalty amount. However, column 8 of Schedule 3 (which was not amended) refers to the rand value payable in respect of a penalty. We belief that the correct reference should have been to column 9 of Schedule 3.
44. Regulation 18(1) makes specific reference to section 24(3)(a) of the AARTO Act and the instances where demerit points will be incurred by an infringer. We submit that the reference to section 24(3)(a) is wrong because section 24(3)(a) speaks to an infringer committing two different infringements on the same set of facts and not to the circumstances when demerit points will be incurred by an infringer.
45. Regulation 18(2) makes specific reference to column 6 of Schedule 3 and the


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demerit points to be incurred by an infringer. However, column 6 of Schedule 3 (which was not amended) refers to penalties. We believe that the correct reference should have been column 7 of Schedule 3.

46. Regulation 18(3) makes specific reference to column 9 of Schedule 3 and the infringements or offences committed by an operator in terms of section 49 of the National Road Traffic Act. However, column 9 of Schedule 3 (which was not amended) refers to discounts in rand value. We believe that the correct reference should have been column 11 of Schedule 3.
47. Regulation 18(3)(a) refers to column 10 and column 6 of Schedule 3 and the charge code upon which an operator will be charged and the amount of demerit points that would be incurred for those charges, respectively. However, column 10 of Schedule 3 (which was not amended) refers to the penalty minus discount in rand value and column 6 of Schedule 3 refers to the penalty. We believe that the correct reference should have been column 11 and column 7 of Schedule 3 respectively.
48. Regulation 18(8) refers to regulation 15(2). We submit that the reference to regulation 15(2) is wrong because regulation 15(2) refers to the discounted penalty amount if payment is made within 32 days and does not refer (at all) to the holders of foreign driving licenses. We believe that the correct reference should have been regulation 15(3) that does refer to holders of foreign driving licenses.
49. Regulation 19(1)(a) makes specific reference to section 34(1) of the AARTO Act and the access to the demerit point information of a person. We submit that the reference to section 34(1) is wrong because section 34(1) speaks to the Minister's duty to make regulations. We believe that the correct reference should have been section 33(1) which stipulates that any person may ascertain his or her demerit points position in a prescribed manner.

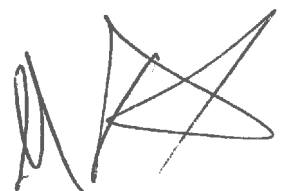
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50. Regulation 19(1)(b) makes specific reference to section 34(2) of the AARTO Act and the access to demerit point information requested from an employer with regards to an employee. We submit that the reference to section 34(2) is wrong because section 34(2) doesn't exist. We believe that the correct reference should have been section 33(2) which states that any person who employs a person for the purposes of driving a motor vehicle may in the prescribed manner ascertain the demerit points position of the employee.
51. Regulation 20(2)(c) makes specific reference to regulation 33(1)(a) but regulation 33(1)(a) doesn't exist.
52. Regulation 20(4) makes specific reference to AARTO 21a that will be used to inform an infringer that he/ she has been disqualified for the third time. However, AARTO 21a does not exist and only AARTO 21 was published for comment.
53. Regulation 20(5)(a) refers to regulation 33(2) and the capturing and processing of infringers' details on the National Traffic Information System. However, the reference to regulation 33(2) is wrong because regulation 33(2) does not refer to the capturing and processing of infringers' details on the National Traffic Information System but refers to the re-service of documents.
54. Regulation 21(2) makes specific reference to paragraph 9 in Schedule 2. However, the reference to paragraph 9 in Schedule 2 is wrong because paragraph 9 in Schedule 2 refers to interest earned on any credit balance in the AARTO Bank account and not to payment with regards to compulsory rehabilitation programs.
55. Regulation 21(3) also makes specific reference to paragraph 9 in Schedule 2. However, the reference to paragraph 9 in Schedule 2 is wrong because paragraph 9 in Schedule 2 refers to interest earned on any credit balance in

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the AARTO Bank account and not to payment with regards to voluntary rehabilitation programs.

56. Regulation 21(10)(b) refers to regulation 20(5). However, regulation 20(5) appears twice and the two regulations numbered 20(5) provide different information. It is therefore unclear which regulation 20(5) is specifically referred to in regulation 21(10)(b).
57. Regulation 27(1) makes specific reference to regulation 21(1). However, the reference to regulation 21(1) is wrong because regulation 21(1) refers to rehabilitation programs and not to the payments of penalties.
58. Regulation 28(2) and regulation 28(5) make specific reference to regulation 29(4) but regulation 29(4) does not exist. Regulation 29 is only numbered up to regulation 29(3).
59. Regulation 34(4)(a) refers to regulation 30. However, the reference to regulation 30 is wrong because regulation 30 deals with personal service and not with service by postage.
60. Regulation 34(4)(c) refers to regulation 29. However, the reference to regulation 29 is wrong because regulation 29 deals with the National Road Traffic Offences Register and not with personal service. We believe the reference should be regulation 30 which deals with personal service.
61. Regulation 37 makes specific reference to Schedule 5. However, Schedule 5 doesn't exist. We are of the opinion that it should probably refer to Schedule 4 that deals with the South African Police Service.
62. The errors mentioned in paragraphs 39 to 61 *supra* create legal uncertainty and make the interpretation of the published regulations difficult and the intention of the Minister unclear. These types of errors do not instil confidence



in the proposed new process.

63. It is abundantly clear that the regulations were drafted in haste and without due regard to the legal soundness thereof. The way these regulations were drafted makes it very difficult to read and to interpret the Minister's express intention.
64. We humbly submit that the Minister should correct the highlighted errors and only then publish the regulations for comment.

C. GENERAL COMMENTS:

65. We have noted that there is no mention of a regulation 22 anywhere in the regulation. It is not clear: is this a numbering issue or was regulation 22 not printed?
66. Schedule 3 was not amended and therefore not published for comment. However, most of the regulations currently published for comments rely heavily on Schedule 3 and no proper comment on the regulations can be made unless the regulations and Schedules are evaluated as a whole. We are of the opinion that the regulations should not be promulgated yet. Schedule 1,2,3 and 4 should be published together for comment because Schedule 3 has a direct impact on the other already published Schedules and regulations. If the regulations are promulgated and Schedule 3 is later amended and published for comment, the regulations and Schedule 2 will have to be amended and published for comment again because the regulations and Schedules are so intertwined that the one cannot be read without the other. Therefore, the process will start afresh and will make the process that we are now undergoing moot.

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67. The current AARTO pilot project has been in force and in affect in the Johannesburg and Tshwane metros for the past 10 years but has not yielded positive results if the AARTO system was indeed aimed at road safety as is claimed. After the Amendment of the AARTO Act and subsequent publicity of the regulations, it is abundantly clear that the intention of the legislation and the regulations is to make money and not to promote road safety.
68. What was created was a system that is complicated, expensive and cumbersome and in doing so citizens are being forced to pay the infringements (whether guilty or not) in order to avoid a cumbersome process.

CONCLUSION

69. In conclusion, we reiterate that OUTA does not oppose the introduction of new laws and regulations by Government but rather wishes to ensure that these laws and regulations are capable of effective execution and are rational and aligned with the basic principles envisaged in our Constitution.
70. We trust that you find the above in order and thank you in advance for considering our comments.
71. In the event that you have any further questions or queries, kindly contact our Chief Legal Officer, Stefanie Fick on stefanie.fick@outa.co.za.

Kind regards,



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To: All News Editors
Date: 02 June 2020
For immediate release

AARTO ROLLOUT DATE DELAYED DUE TO COVID-19

The Ministry of Transport wishes to notify road users that the national rollout date for the Administrative Adjudication of Road Traffic Offences (AARTO) Act has been delayed as a result of the outbreak of the Corona Virus.

In August 2019, the AARTO Bill was signed into law and although no date was officially promulgated, it was intended to take national effect by mid 2020.

However, the capacity of the Road Traffic Infringement Agency (RTIA), which is the entity responsible for the rollout of AARTO, has been severely compromised by the COVID-19 outbreak. The entity has suffered a significant loss of income.

For this reason, RTIA is in no position at this stage, to fully conduct the national rollout of AARTO. The situation will be reviewed in due course for further determination as to when the rollout date be promulgated.

-Ends -

Issued by:
The Ministry of Transport

For more information contact:
Ayanda Allie Paine