

infringements. The standardization brought by national legislation in both provincial and local will bring harmony in adjudication of the road traffic infringement through the country.

- 68.3 By virtue of the provisions of section 44 and Part A of Schedule 4 of the Constitution, the Parliament has power to legislate on matters concerning the road traffic regulation subject to the Constitution. This is what AARTO Act seeks to do. The applicant accepts the AARTO Act is a legislation that addresses the road traffic regulation. The road traffic regulation is unlimited as long as there is road traffic.
- 68.4 Section 156(3) of the Constitution provides that a bylaw that is in conflict with the national or provincial legislation is invalid except where the provincial or national legislation is inoperative in terms of the provision of section 149 of the Constitution.
- 68.5 It bears repeating that the AARTO Act brings about harmonisation and standardization at national, provincial and local government in the adjudication process of the traffic infringement.
- 68.6 Accordingly, I deny that the AARTO Act and the Amendment unlawfully intrudes upon the exclusive legislative competence of the provinces. I deny

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too that the national organ of state usurps enforcement of traffic and parking laws.

69. AD PARAGRAPH 4

I deny that the AARTO Act and the Amendment Act are constitutionally inconsistent or invalid.

70. AD PARAGRAPH 5

70.1 I deny that the Amendment Act provides inadequate provision for service. I deny too that the section 17 of the amendment removes the requirement that service must be personal. This is not borne out by these provisions.

70.2 I have explained above that the service by registered mail is not excluded. The Amendment Act simply extends the scope of the method of service. It incorporates the use of other services currently offered by or that may become available in future in the post office.

70.3 The service of documents by electronic means is not inadequate. It must be borne in mind that each driver will choose for herself or himself the means of service s/he prefers considering her or his convenience.

71. AD PARAGRAPHS 6 TO 14

I do not take issue with the contents of these paragraphs.

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72. AD PARAGRAPHS 15 TO 25

To the extent that the contents of these paragraphs are consistent with the legislative scheme of AARTO Act as well as the Amendment Act, they are admitted. Otherwise they are denied.

73. AD PARAGRAPHS 26 TO 33

I deny that AARTO Act and the Amendment Act intrude or unlawfully intrude upon the exclusive executive and legislative competence of the local and provincial governments and that they are unconstitutional. AARTO Act falls within the ambit of Part A of Schedule 4 of the Constitution. Subject only to the Constitution, the Parliament does have legislative competence in that area.

74. AD PARAGRAPH 34

74.1 I deny that the provisions of section 30 of AARTO Act (or 17 of Amendment Act) fail to provide for adequate service to infringers and that they are unconstitutional.

74.2 As it can be gleaned from the founding affidavit, the applicant's contention that the provisions of section 17 of the Amendment Act are unconstitutional for their inadequacy to provide for service is rooted on its undertraining that the service by way of registered mail has been done away with. The applicant's understanding in this regard is of course is not entirely correct.

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Page 26 of 32

75. AD PARAGRAPHS 35 TO 45

To the extent that the contents of these paragraphs are consistent with the legislative scheme of the AARTO Act as well as the Amendment Act, they are admitted. Otherwise they are denied.

76. AD PARAGRAPH 46

76.1 Section 17 of the Amendment Act does not remove the requirement of personal service.

76.2 The requirement that service must be effected by postage does not remove registered mail. Instead, registered mail is included in the postage service. In simple terms, the idea is to utilise all services offered by the post office and not to be limited to the registered mail.

77. AD PARAGRAPH 47

I admit only that the Amendment Act defines 'electronic service' to mean 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).

78. AD PARAGRAPH 48

78.1 I deny that the forms of service are inadequate either as alleged or at all. These forms are effective. There is no other possible form of service, yet

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service of infringement notices and related documents must be done. What is worse is that the applicant does not suggest any other mode of service.

78.2 In the days present, communications are done electronically by way of emails, text messages and even by voice note. These are effective ways of communication.

78.3 At the stage of registration of a vehicle, the owner will be presented with a choice wherein s/he will choose the form of service preferred. It is the individual concerned who best knows the form of service that will reach him or her.

78.4 The applicant engages in unhelpful speculations when alleging that the notice in the form of email, text message, voice note or ordinary postage will be missed by the infringers or that such messages or communications will be treated as junk mail or spam. First, the choice is made by each individual registering a vehicle. Second, there is no basis to suggest, for instance, that people do not read their emails in a world where communication is largely by way of email.

78.5 Where, for instance, the email address or cell phone number (or any form of contact details) changes, it is the responsibility of the motorist to ensure that the details are updated in the system.

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78.6 Of course, there are instances where the mail may be lost, even the registered mail for that matter. It is for that reason that the Amendment Act postulates that the document shall be deemed to have been served after ten days of posting unless evidence to the contrary is adduced which may be in the form of affidavit.

78.7 Further, the Amendment Act makes provision for many other options for service. If for instance the motorist would choose service by ordinary or registered mail, email or even SMS, it is unlikely that not even one of these options would reach him or her that all of them will go to wrong addressee.

79. AD PARAGRAPH 49

79.1 It is speculative of the applicant to suggest that the infringers will not receive or read or open the notices. It is speculative too that the process of adjudication may be drawn out and lengthy. There is no evidence in this regard. Accordingly, I deny these allegations.

79.2 In any event, there has to be a consideration that there must be a form of service. If the contentions by the applicant were to be accepted, then it would mean that there shall never be any form of service of notices upon the infringers. In that case, the regulation of road traffic will collapse, bad road behaviour will abound and road accidents and sadly the mortality rate will escalate astronomically.

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- 79.3 Most people in South Africa are involved in commercial transactions in one way or the other such as credit agreements including home loans and mortgage bonds. In such transactions, communication is central. I understand that they do select their preferred forms of service because there has to be some or other form of communication. It cannot be different when it comes to the infringement of road traffic regulation.
- 79.4 The Amendment Act also makes provision that the infringer may present evidence that the notice was not received. This s/he may do by way of affidavit. Once this is done the deemed receipt falls away unless it is proven otherwise. There is therefore no infringement of any right. If there is such infringement, which is not admitted, it is not permanent as the infringer still has an opportunity to present evidence to show that he did not receive the notice.
- 79.5 It is not the consequences of the enforcement order that are severe. Instead, it is the consequences of infringement. The AARTO Act seeks to regulate the adjudication of road traffic infringements so that the behaviour of the motorists is improved and lives are saved.
- 79.6 Save as aforesaid, to the extent that the remainder of the allegations contained in this paragraph are consistent with the provisions of the AARTO Act, they are admitted. Otherwise, they are denied.

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80. AD PARAGRAPH 50.1

I deny these allegations. The whole scheme of the AARTO Act is to ensure a fair administrative process with the alleged infringers given an opportunity to be heard throughout the process.

81. AD PARAGRAPH 50.2

I deny these allegations. I deny in particular that there is lack of service provided for in the AARTO Act and the Amendment Act.

82. AD PARAGRAPH 51

It bears repeating that the Amendment Act does not remove the requirement of personal service and that the usage of postage services includes registered mail. None of these are removed. Instead, section 17 of the Amendment Act seeks to widen the scope of service looking at the demanding and changing technological needs our country finds itself at.

83. AD PARAGRAPH 52

I note these allegations.

84. AD PARAGRAPH 53 TO 54

For the reasons already set out above, I deny these allegations.

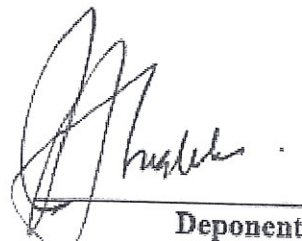
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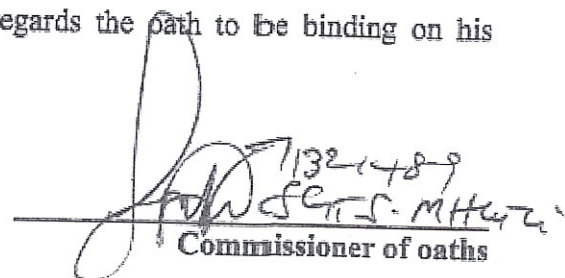
85. AD PARAGRAPH 55

In the event it is found that AARTO Act and the Amendment Act are unconstitutional, which is still denied, and that there is no interpretation that can survive the constitutional invalidity on any of the grounds advance by the applicant, I pray that the Honourable Court should suspend the declaration of invalidity for a period of twenty months to enable the parliament to rectify the invalidity.

86. Wherefore, I pray for the dismissal of the applicant's application with costs including costs of two counsel.

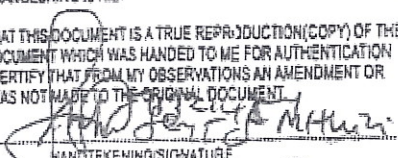

Deponent

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, that the contents thereof are true and correct, that he has no objection to taking this oath, and regards the oath to be binding on his conscience.


Commissioner of oaths

EK SERTIFISEER DAT HIERDIE DOKUMENT 'N WARE AFDRUK(AFSKRIF) IS VAN DIE OORSPRONKLIKE DOKUMENT WAT / AN MY VIR WAARNEMING VOORGELÊ IS. EK SERTIFISEER VERDER DAT VOLGENS MY WAARNEMINGS DAAR NIE 'N WYSGING OF VERANDERING OP DIE OORSPRONKLIKE DOKUMENT AANGEBRING IS NIE.

I CERTIFY THAT THIS DOCUMENT IS A TRUE REPRODUCTION(COPY) OF THE ORIGINAL DOCUMENT WHICH WAS HANDLED TO ME FOR AUTHENTICATION I FURTHER CERTIFY THAT FROM MY OBSERVATIONS AN AMENDMENT OR A CHANGE WAS NOT MADE TO THE ORIGINAL DOCUMENT


HANDTEKENING/SIGNATURE

MAGSNOMMER 7132489 RANG SGT
FORCE NUMBER NAAM IN DRUKSKRIF NAME IN PRINT



"AAMT1-1"



FREE STATE LEGISLATURE

Final Voting Mandate

TO: Chairperson of the National Council of Provinces

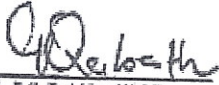
NAME OF BILL: Administrative Adjudication of Road Traffic Offences
Amendment Bill

NUMBER OF BILL: B38D-2015

DATE OF DELIBERATION: 23 October 2018

VOTE OF THE LEGISLATURE:

The Free State Legislature votes in favour of the Bill.


HON. M QABATHE
SPEAKER
FREE STATE LEGISLATURE

23 October 2018

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"AAMT1.2"



**PORTFOLIO COMMITTEE
ON TRANSPORT, SAFETY &
LIAISON and ROADS & PUBLIC
WORKS**

Private Bag X5066
Kimberley 8300
Nobengula Extension
Galeshewe
Kimberley 8300

Fax: Admin (053) 839 8094
Tel: (053) 839 8094

Honourable T Modise
Chairperson – NCOP

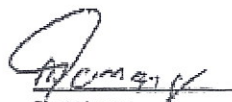
FINAL MANDATE

Name of the Bill: **Administrative Adjudication of Road Traffic Offences
Amendment Bill**

Number of the Bill: **[B38B-2015]**

Date of deliberation: **23 October 2018**

Vote of the Legislature: **Administrative Adjudication of Road Traffic Offences
Amendment Bill [B38B-2015]**


Signature:
Hon K Mmoemang
SPEAKER



Date: **2018-10-23**

Final Mandate

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**PORTFOLIO COMMITTEE ON TRANSPORT, SAFETY & LIAISON
and ROADS & PUBLIC WORKS**

**FINAL MANDATE ON THE ADMINISTRATIVE ADJUDICATION
OF ROAD TRAFFIC OFFENCES AMENDMENT BILL
BILL [B38B-2015]**

1. INTRODUCTION

The Chairperson of the Portfolio Committee on Transport, Safety, Liaison & Land Roads & Public Works Hon M Manopole tables the Committee's draft Report on the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B-2015], as adopted by the Portfolio Committee on 23 October 2018.

2. PROCESS FOLLOWED

- 2.1 The Speaker of the Northern Cape Provincial Legislature has on receipt of the Bill referred the Administrative Adjudication of Road Traffic Offences Amendment Bill, 2015 to the Portfolio Committee on Transport, Safety & Liaison and Roads & Public Works.
- 2.2 On the 29th May 2018, the Portfolio Committee received a briefing on the Bill by Mr. Makgatho, from the National Department of Transport accompanied by other officials from the RTIA, as well the provincial Permanent Delegate Hon Faber.
- 2.3 The Portfolio Committee resolved to engage in public hearings in all the five (5) regions of the Province on the 31 May -1 June 2018 and 06 June 2018.

3. INPUTS FROM THE STAKEHOLDERS/ PUBLIC

- The Department of Transport should advocate for traffic officers specifically for taxi drivers.
- There is concern on the 32 days' period of the enforcement order, that is just too little. The time period should be extended to avoid penalties and fees.
- More regulations be put in place to restrain drivers who deliberately drive with suspended licenses.

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- Moving the administration of traffic fines to the entity from the courts will increase corruption and make communities poorer.
- There is concern from the communities whether the SMSs will reach the intended recipients.
- The demerit system and the paying of fines disadvantages the road users.

4. WRITTEN INPUTS ON THE BILL

Written input from COSATU was received. They reject the bill in total because to them it impoverishes the people even more. Refer to attached.

5. COMMITTEE INPUTS ON THE BILL

The Committee inputs:

- The Department of Transport must extensively consult to avoid future litigations.
- A transitional budget should be availed to ensure a smooth transition to the new system.
- The Bill does not address the current challenges that road users are encountering.
- The Department of Transport should finalize research on the road user behaviour and fatalities, to ensure safety on the roads broadly.
- Departments should avoid the establishment of entities, especially where we currently have so many failing and non-functional entities.

After thorough deliberation, Portfolio Committee on Transport, Safety & Liaison and Roads & Public Works the Committee supports the Bill.

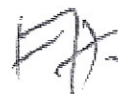
6. COMMITTEE ADOPTION OF THE BILL

The Committee adopted this Final Mandate duly signed by the Chairperson of the Committee, Hon M Manopole.

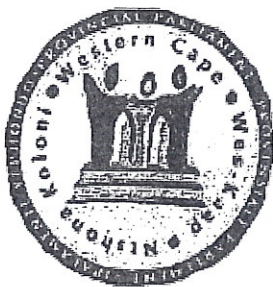
The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at the Final Mandate meeting and to vote in favour of the Bill.


 COMMITTEE CHAIRPERSON
 HON GM Manopole

2010-10-23



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Wes-Kaapse Provinsiale Parlement
Western Cape Provincial Parliament
IPalamente yePhondo leNtshona Koloni

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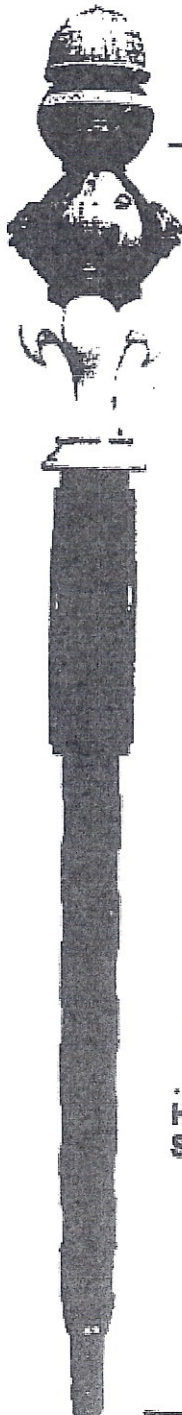
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Ipho
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nmooyambelo@wccpp.gov.za
Dibana
Date
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25 September 2018
Yomoya
Reference
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KOMITEES
COMMITTEES
LIKOMITI

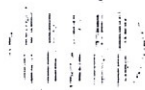
FINAL MANDATE

To:	Hon. T Modise Chairperson of the NCOP
Name of Bill:	Administrative of Road Traffic Offences Amendment Bill
Number of Bill:	[B38D – 2015]
Date of deliberation:	25 September 2018
Vote of the Legislature:	The Western Cape Provincial Parliament confers on the Western Cape's delegation in the National Council of Provinces the authority not to support the Bill.
Signature	 Date 25/09/2018
Hon. Sharna Fernandez Speaker: Western Cape	

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IPHALAMENDE LAKWAZULU-NATALI



KWAZULU-NATAL PROVINSIALE PARLEMENT

KWAZULU-NATAL PROVINCIAL PARLIAMENT

FINAL MANDATE

TO: THE CHAIRPERSON OF THE NCOP

NAME OF BILL: ADMINISTRATIVE ADJUDICATION OF ROAD
TRAFFIC OFFENCES AMENDMENT BILL

NUMBER OF BILL: B38D-2015

DATE OF DELIBERATION: THURSDAY, 18 OCTOBER 2018

VOTE OF THE LEGISLATURE:

The KwaZulu-Natal Legislature met today, Thursday, the 18th
October 2018, & agreed to mandate the KwaZulu-Natal delegation to
the National Council of Provinces to support the Administrative
Adjudication of Road Traffic Offences Amendment Bill [B38D -
2015].

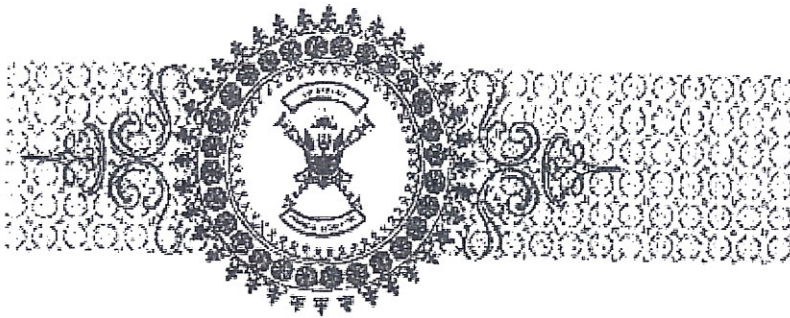

.....
Hon L Johnson, MPL
Speaker

18.10.2018
.....
Date



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"AAMT 1.5"



OFFICE OF THE SPEAKER

Eastern Cape Provincial Legislature

Independence Avenue / Private Bag X0051, Mthatha, 6001

Tel: 040 6080976/99

Fax: 040-6352142

E-mail: prakhethileleg.gov.za

FINAL MANDATE

To : The Chairperson:
National Council of Provinces

Name of Bill : Administrative Adjudication of Road Traffic
Offences Amendment Bill

Number of Bill : [B38D-2015]

Date of Deliberation : 10th October 2018

Vote of the Legislature

The Province votes in favour of the Bill with amendments and mandates the Eastern Cape Permanent Delegate to the NCOP to vote in favour of this Bill.

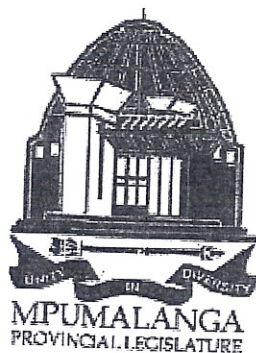
Regards

MS NOXOLO KIVIET (MPL)

SPEAKER: EASTERN CAPE PROVINCIAL LEGISLATURE

FA.

PS



Private Bag X 11289
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Fax + 27 13 766 1469
Building No 1, Mpumalanga
Government Complex
Riverside Park, Mbombela,
Mpumalanga Province
Republic of South Africa
www.mpumalanga.gov.za

OFFICE OF THE SPEAKER

Eng: Mr Thokozane Sindane
Tel: 013 766 1138

"AAMT 1.6"

FINAL MANDATE


To : The Chairperson of the
National Council of Provinces

Name of the Bill : Administrative Adjudication of Roads Traffic
Offences Bill

Number of the Bill : [B38D-2015]

Date of Deliberation: 25 October 2018

Vote of the Legislature: The Portfolio Committee on Public Works, Roads and Transport; Community Safety, Security and Liaison (the Committee), after considering the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38D-2015], confers on the permanent delegate representing Mpumalanga Province in the NCOP, a mandate to vote in favour of the Bill.


SPEAKER: MPUMALANGA
PROVINCIAL LEGISLATURE

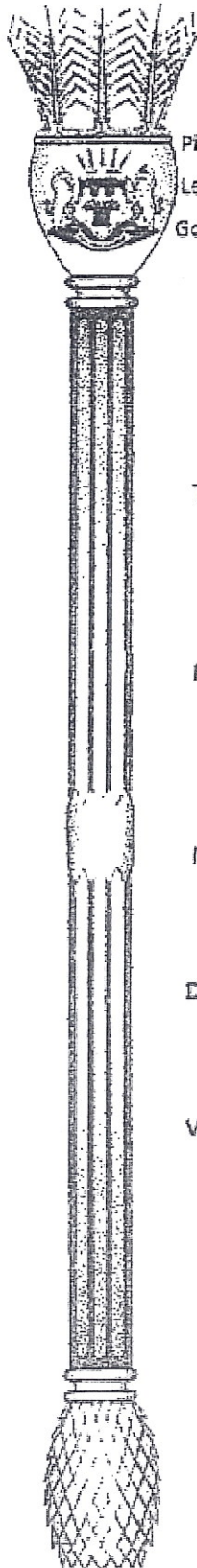
25/10/2018
DATE

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"AAMT 1-7"



LIMPOPO LEGISLATURE

Physical Address:
Lebowakgomo
Government Complex

Postal Address:
Private Bag X 9309
Polokwane
0700

NEGOTIATING MANDATE

To : The Chairperson: SC on Economic and Business
Development

Name of Bill : Administrative Adjudication of Road Traffic
Offences Amendment Bill

Number of the Bill : [B38B - 2015]

Date of Deliberation : 22 May 2018

Vote of the Legislature : Provincial NCOP Permanent Delegates to negotiate
in favour of the Bill with the proposed amendments.

PROPOSED AMENDMENTS

Clause 9 Page 6

(c) The Road Traffic Infringement Authority must prescribe how to deal with recouping of fines and penalties issued to infringers who travel through the country to neighbouring countries but are not South African citizens.

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Clause 29 C Page 9


(1) It is suggested that the composition of the Tribunal should specifically include representatives from the transport industry.

Clause 29H Page 11

(4) It is proposed that the Chairperson must allow any person appearing before the Tribunal to have legal representation if they elect to have such.

Clause 17 Page 12

(2) It is suggested that the laws of prescription should be applicable to penalties and fees payable in terms of this act (exception from prescription places a huge burden on drivers)



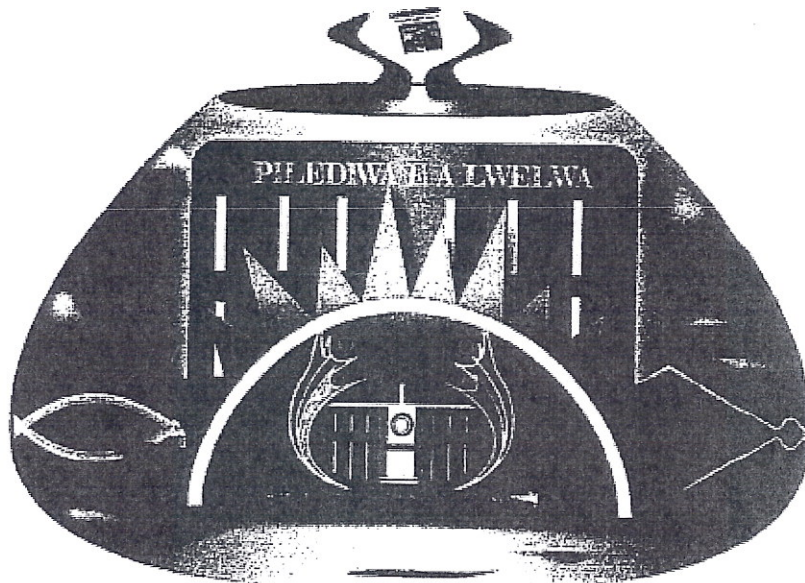
HON. MASEMOLA N.D
CHAIRPERSON
PORTFOLIO COMMITTEE ON TRANSPORT
SAFETY, SECURITY AND LIAISON
LIMPOPO LEGISLATURE

DATE



"AAMT 1.8"

**PORTFOLIO COMMITTEE ON PUBLIC WORKS, ROADS AND
TRANSPORT AND COMMUNITY SAFETY**



NORTH WEST PROVINCIAL LEGISLATURE

**REPORT ON THE ADMINISTRATIVE ADJUDICATION OF
ROAD TRAFFIC OFFENCES AMENDMENT BILL [B38B-2015]**

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NEGOTIATING MANDATE

TO: The Chairperson of the Select Committee on Economic and Business Development

Hon. M I Rayi

NAME OF BILL: Administrative Adjudication of Roads Traffic Offence Amendment Bill

NUMBER OF BILL: [B38B-2015]

DATE OF DELIBERATION: 11 May 2018

VOTE OF THE LEGISLATURE: The Gauteng Provincial Legislature votes in favour of the Bill, with proposed amendments and mandates the Permanent Delegate to the NCOP to negotiate in favour of the Bill.

The proposed amendments are as follows:

1. Clause 1(f): Definition of "Habitual Infringer" line 3

"Habitual infringer" means an infringer, [operator or a juristic person], who in terms of section 25, incurs demerit points resulting in a disqualification more than two times."

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NEGOTIATING MANDATE

TO : HON M I RAYI
CHAIRPERSON OF THE SELECT COMMITTEE ON
ECONOMIC AND BUSINESS DEVELOPMENT

NAME OF BILL : ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC
OFFENCES AMENDMENT BILL

NUMBER OF BILL : [B38B-2015]

DATE OF DELIBERATIONS : 1 JUNE 2018

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Public Works, Roads, Transport and Community Safety confers the delegation representing the North West Province with the authority to negotiate in favour of the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B-2015]; taking into account the objections as attached herewith.

HON. G O MOLAPISI
CHAIRPERSON: PUBLIC WORKS, ROADS AND TRANSPORT AND COMMUNITY
SAFETY

DATE: 1 June 2018

2. Clause 13 (a) amending section 25(4)

The proposed amendment to section 25(4) provides that driving while disqualified or with a suspended driving licence is an offence. It is necessary that Schedule 3 to the AARTO Regulations also reflect this offence.

3. Clause 16(a)(1) line 3

"(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 [personally or sent by registered mail to his or her last known address], by personal, [postage] registered mail and electronic services or communication as prescribed.":

Further, there needs to be a mechanism for confirmation of receipt of service via electronic communications.

4. Clause 16(b)

The number of days upon which a document is deemed to be served on an infringer under clause 16(b) must increased from the current ten days.

5. Clause 29A(3) lines 18-19

"The Tribunal consists of a Chairperson and [eight other] not less than [10] other persons appointed by the President, on a part time or full time basis, and on recommendation of the Minister, from among those persons nominated by the Minister in response to a public call for nominations as prescribed."

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6. Clause 29A (5) line 32

- "(5) To be eligible for appointment or designation as a member of the Tribunal, and to continue to hold that office a person must—
- (a) not be subject to any disqualification set out in subsection (6); and
 - (b) have submitted to the Minister a written declaration stating that the person—
 - (i) is not disqualified in terms of subsection (6); and
 - (ii) does not have any interests referred to in subsection 6 (a) and (b)."

7. Clause 29D(4) line 22

- "(3) The Chairperson, on one month's written notice addressed to the Minister, may—
- (a) resign from the Tribunal;
 - (b) resign as a chairperson, but remain as a member of the Tribunal.
- (4) A member of the Tribunal other than the Chairperson may resign by giving at least one month's written notice to the Minister."

8. Clause 29J – right of appeal

Giving the Tribunal the same powers and status as a Magistrates' Court be reconsidered in the light of the nature of these matters. Filing an appeal or review application in the High Court is a protracted and costly process, invariably requiring the assistance of a legal practitioner. Such a scheme of arrangements may prove to a bar to access to justice for the ordinary South African.

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9. General Comments: The Appeals Tribunal's Capacity

Not only must the Tribunal's membership be increased but there must be a tribunal in each province.

10. General Comments: Independence of the Tribunal

Chapter IVA of the Bill is silent on the Tribunal's independence. It is recommended that a clause be inserted therein explicitly enshrining the independence of the Tribunal, especially from the RTIA, and further spelling out where the funds to finance the administration of the Tribunal will come from. The Tribunal must not solely be financed by fees payable through the AARTO system.

11. General Comments: Legal Practitioners

Due to the nature of the work of the Tribunal, some of its Members must not only have a legal qualification as prescribed under clause 29(C); but, in addition, must also be legal practitioners.

12. Implementation date

Anything less than six months as a period for implementation will be insufficient, bearing in mind the budgetary requirements of the Public Finance Management Act and Local Government: Municipal Finance Management Act.

13. Foreign Drivers

This differentiation between those persons with a South African driver's license and those with a foreign licence may prove to fall foul of section 9 of the Constitution guaranteeing everyone the right to equality.

This Bill must include provisions specifically dealing foreign drivers and how they are going to be managed under the AARTO and criminal system.

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14. Road Traffic Offences Register

In order to combat corruption in the form of bribery relating to traffic offences, there needs to be a register to record all parties guilty of corruption regarding traffic offences. This register could be similar to the Register of Tender Defaulters established in terms of section 29 of the Prevention and Combating of Corrupt Activities Act, 2 of 2004.



HON. M MGCINA

Date:

14/05/17

Chairperson of Roads and Transport Portfolio Committee

GAUTENG PROVINCIAL LEGISLATURE

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ROADS AND TRANSPORT PORTFOLIO COMMITTEE

ADOPTED NEGOTIATING MANDATE

ON THE:

ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL [B38B-2015]

11th MAY 2018

1. INTRODUCTION

The Chairperson of the Roads and Transport Portfolio Committee, Hon. M. Mgcina, tabled the Committee's Negotiating Mandate on the Administrative Adjudication of the Road Traffic Offences Amendment Bill [B38B-2015].

2. PROCESS FOLLOWED

The Speaker, on 20th September 2017, formally referred the Administrative Adjudication of the Road Traffic Offences Amendment Bill [B38B-2015] Section 76, to the Portfolio Committee on Roads and Transport referred to as the Committee, for consideration in terms of Rule 245 (1) read with 246 (1), 247 and 248.

On the 01st March 2018, the Permanent Delegate from the National Council of Provinces (NCOP), Honourable E. Makue gave a briefing to the Committee on the Bill. This was followed by a presentation by the National Department of Transport on the detail of the Administrative Adjudication of the Road Traffic Offences Amendment Bill [B38B-2015].

In fulfilling its constitutional mandate to facilitate public participation in processing this Amendment Bill, the Committee published adverts in the following newspapers:

- City Press - Sunday, 04th March 2018;
- Star - Monday, 05th March 2018;

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- Beeld – Tuesday, 06th March 2018 and;
- isolezwe - Tuesday, 06th March 2018.

This was to enable the Committee to request members of the public and stakeholders to make comments on the Bill. Following that, the Committee convened four public hearings in the following areas:

- Monday, 13th March 2018- Springs Civic Centre, Ekurhuleni Metropolitan Municipality
- Thursday, 22nd March 2018 – Braamfontein Conference and Recreation Centre, City of Johannesburg Metropolitan Municipality
- Monday, 26th March 2018 - Vereeniging Community Hall, Sedibeng District Municipality
- Wednesday, 28th March 2018 – Stanza Bopape Community Hall, City Tshwane Metropolitan Municipality

Subsequent to that, the Committee convened the last round of stakeholder consultations wherein the Gauteng Department of Roads and Transport and the Department of Community Safety made presentations on the views of the Executive on matters related to the Administrative Adjudication of the Road Traffic Offences Amendment Bill [B38B-2015]. Further presentations on the Amendment Bill were received from the Road Freight Association, Justice Project South Africa and Organisation Undoing Tax Abuse. The National Department of Transport also presented on the challenges in the implementation of the AARTO Amendment Bill Pilot project in the City of Tshwane and Johannesburg Metropolitan Municipalities.

On the 11th May 2018, a legal opinion on the Bill inclusive of all submissions received from stakeholders and the public, was presented by the NCOP and Legal Unit from the Gauteng Provincial Legislature.

The Portfolio Committee deliberated and adopted the Negotiating Mandate of the Administrative Adjudication of the Road Traffic Offences Amendment Bill [B38B-2015] in a meeting that convened on Friday, 11th May 2018.

3. PRINCIPLES AND DETAILS OF THE BILL

The principle of the Bill is to amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definitions. The clause by clause summary of the amendment is as follows: -

Clause 1

The clause seeks to amend Section 1 of the Act, by adding, deleting and substituting certain definitions.

Clause 2

The objects and functions of this clause are as follows: -

- repeals warrant of execution in terms of section 4(2)(e), 4(4)(a) & (c)
- aligned to repeal of section 21

Clause 3

The clause seeks to amend Section 11 of the Act, which provides for the administrative staff and remuneration.

Clause 4

The clause seeks to repeal section 12 of the Act which provides for the appointment of sheriffs.

Clause 5

The clause seeks to amend Section 13 of the Act, which provides for the financing of the Authority. It also inserts a new paragraph in section 13 of the Act for financing the Authority.

Clause 6

The clause seeks to amend Section 15 of the Act, which provides for the banking account of the Authority. It also adds that the bank account(s) must be used to deposit monies received by the Authority and money received from issuing authorities, driving licence testing centres and registering authorities.

Clause 7

The clause seeks to amend Section 17 of the Act which provides for issuance of infringement notices and ascertainment of demerit points position, amongst other things. It also amends Section 17(1)(e) to indicate that the demerit points positions may be ascertained in the prescribed manner.

The clause also seeks to delete section 17(1)(f)(iv) which deals with election to be tried in court. The option to elect to be tried in court is substituted with Appeals Tribunal which is introduced by Clause 29A-29K. It also seeks to amend Section 17(5) provides for responsibilities of the vehicle owner.

Clause 8

The clause seeks to amend Section 18 of the Act which makes provision for the right of an infringer to make representation to a representations officer. The amendment provides that an infringer may make a representation in the prescribed manner, with respect to that notice and infringement to the Authority. If the representations are rejected the infringer may no longer elect to be tried in court but has a right to appeal or review such decision to the Appeal Tribunal ("the Tribunal").

Clause 9

The clause seeks to amend Section 19B of the Act, which provides for the payment of fines imposed for traffic infringements. It provides that insufficient payment will result in Enforcement Order being issued – not warrant of execution anymore. Failure to comply with instalment arrangement no longer leads to warrant but Enforcement Order.

Clause 10

The clause seeks to amend Section 20 of the Act by deleting subsection (3)(b) of section 20 that result in warrant of execution. It adds new section 20(5)(b)(A) which deals with the prohibition of issuing of a permit or licence issued in terms of any road traffic legislation or transport legislation if an enforcement order has been issued against the infringer.

Clause 11

The clause seeks to repeal section 21 of the Act which empowers Registrar/CEO to issue warrants of execution. The proposed repeal means that the consequences of the failure to comply with an enforcement order will be dealt with in terms of section 20(5) of the Act – that means one would not be issued with any licences applied for until enforcement order is complied with.

In respect of infringement notices, section 19(2)(c) of the Act provides that failure to comply with infringement notice, will result in courtesy letter being issued, then enforcement order in terms of section 20 of the Act.

Clause 12

The clause seeks to repeal Section 22 of the Act, which deals with court trials and this is in line with repeal of election to go to court.

Clause 13

The clause seeks to amend Section 25 of the Act, dealing with disqualification of infringers to drive or operate a motor vehicle after exceeding threshold demerit points. The amendment also introduces the concepts of "operator or a juristic person who is not an operator" and "learner drivers" in respect of categories of infringers who may incur demerit points in terms of the Act.

The clause also seeks to amend Section 25(3) to indicate that operator, or a juristic person who is not an operator must immediately hand in his/her motor vehicle licence disc, operator card or any other permit, card or licence issued in terms of road traffic legislation or transport legislation, where applicable during disqualification period.

Clause 14

The clause seeks to amend Section 29 of the Act which provides for the categorization of offences, infringements and demerit points. The amendment removes categorizing transgressions into "minor infringements, major infringements" and other offences.

Clause 15

The clause primarily introduces a new Chapter IVA in the Act providing for establishment of the Appeals Tribunal. Its main function is to hear appeals, review and adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of the Act. The Chairperson and other members of the Tribunal are appointed by the President.

The clause also seeks to provide for functions of the Tribunal, qualifications of members of the Tribunal, conditions of appointment of the Deputy Chairperson of the Tribunal, sittings of the Tribunal, decisions of the Tribunal, acting by the member of the Tribunal, appeals against the decisions of the Tribunal and the administrative work of the Tribunal.

Clause 16

The clause seeks to amend Section 30 of the Act, regarding service of documents. The proposed amendment provides for service of documents by means of postage and electronic service or communications as prescribed. The amendment also provides that a document is deemed to have been served on the infringer on the tenth day of postage or electronic service, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit.

Clause 17

The clause seeks to amend Section 31 of the Act which provides for penalties. It provides that laws of prescription are not applicable to traffic penalties and fines.

Clause 18

The clause seeks to substitute the whole of Section 32 of the Act, which provides for the apportionment of penalties between the Authority and other agents.

Clause 19

The clause 19 seeks to amend Section 34 of the Act which deals with the power of the Minister to make regulations. It also adds a new paragraph in section 34 and gives the Minister the power to make regulations on the manner in which an infringement notice, courtesy letter or enforcement order may be reissued.

Clause 20

The clause seeks to amend Section 35 of the Act which deals with transitional provisions. It provides that a notice issued in terms of section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), before the date of commencement of section 17, may be continued and finalized under the Criminal Procedure Act, however, the said notice may not be issued after that commencement date in respect of an infringement, thus removing the reference to an "offence".

Clause 21

The clause generally provides for the substitution of certain expressions. The name "Road Traffic Infringement Agency" is replaced with "Road Traffic Infringement Authority". The expressions "major infringement" and "minor infringement" are to be replaced with "infringement" throughout the Act. The expression "national contraventions register" is replaced with "National Road Traffic Offences Register".

Clause 22

The clause provides for the short title and commencement.

4. OBJECTIVES OF THE BILL

The Bill seeks to:-

- improve the manner of serving documents to infringers;
- add the functions of the Road Traffic Infringement Authority;
- repeal certain obsolete provisions;
- establish and administer rehabilitation programmes;

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

5. OVERVIEW OF THE PUBLIC HEARINGS

Public hearings were attended by stakeholders and members of the public who engaged on all matters related to the Bill. Various sentiments were echoed by all who attended and a summary of all inputs are highlighted below. In general, the Committee was dissatisfied with the low attendance of stakeholders and the public in all public hearings noting the critical nature and the impact the Amendment Bill will have on general motorists, transport operators, car hire businesses, etc.

6. SUMMARY OF STAKEHOLDERS SUBMISSIONS MADE DURING THE PUBLIC HEARINGS

As part of its functions and obligation in line with the Constitution, the Committee held public hearings where written and oral submissions were made for consideration. The Committee received oral and written submissions from various institutions including: Justice Project South Africa, Organisation Undoing Tax Abuse, Road Freight Association, Faraday Taxi Association Drivers, City of Johannesburg Municipality and SA Taxi. Furthermore, eight (8) written submissions were received from the public.

Herewith below is the summary of submissions from different Institutions and Communities:

- the need to have adequately qualified and trained personnel in all authorities charged with the implementation of the Act;
- the inclusion of an operator and a juristic person in the definition of an "habitual infringer" unfairly penalises business owners for the conduct of their employees;
- the inclusion of the words "*any permit or license issued in terms of any road traffic legislation or transport legislation*" in section 20(1)(d) by clause 10(b), it has been submitted, is problematic because it includes an operating license required by a mini bus taxi owner to operate his vehicle;
- the effect of the inclusion of the words "operator or juristic person who is not an operator" in clause 13 - section 25(1) is to penalise a business owner for the conduct of the person driving his/her/its vehicle;
- A period of less than six months will be insufficient for the implementation date of the AARTO legislation. This is because issuing authorities (municipalities in particular), in line with PFMA and MFMA, will require that a budget must be submitted and approved

for the next financial year by the issuing authorities for the training of traffic, metro police, and licensing officials on the amendments to the AARTO legislation, purchasing of AARTO notice books for officers, and payment of registered mail and printing costs for SAPO mailed notices:

- the unavailability of relevant regulations that are necessary for the implementation of certain provisions in the Act will result in a very short period being available within which the training of traffic officers, license officers etc must be finalised. Therefore, training material needs to be updated and available as soon as possible;
- regulations for fees for appeals and reviews as well as the prescription of rehabilitation and offender programmes are also not available as yet and these need to be considered in order to fully assess the impact of this proposed legislation on the public;
- a number of concerns were raised on the Tribunal's capacity to address reviews and appeals to representations, taking into account that the election to appear in a criminal court, will be removed. To address this, it has been proposed that there be a Tribunal for every province as opposed to having one Tribunal for the entire country;
- the exclusion of foreign drivers from the AARTO system and the unfairness thereof taking into consideration section 9 of the Constitution guaranteeing everyone the right to equality;
- The proposed amendment to section 25(4) provides that driving while disqualified or with a suspended driving licence is an offence. It has been submitted that it is necessary that Schedule 3 to the AARTO Regulations also reflect this;
- the removal of the election to be tried in court for having committed an infringement is a violation of section 34 of the Constitution;
- concerned about the independence of the Appeals Tribunal especially because it is likely to be funded by monies collected through the AARTO fines system,
- the introduction of electronic services has been largely welcomed by stakeholders, however it has been pointed out that main drawback of this method of service is that most South Africans do not have access to the internet,
- concerned about the amendment that provides that a document is deemed to have been served on the infringer on the tenth day of postage or of the electronic service, and such electronic service being reflected in the National Roads Traffic Offences Register, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit;
- to combat corruption in the form of bribery relating to traffic offences, it has been suggested that there be a register to record all parties guilty of corruption regarding traffic offences. This register could be similar to the Register of Tender Defaulters

established in terms of section 29 of the Prevention and Combating of Corrupt Activities Act, 2 of 2004.

7. POSITION BY THE GAUTENG PROVINCIAL DEPARTMENTS

In line with the GPL Rule 250 (3) (a) the Committee sought the views of the relevant Member(s) of the Executive on the Bill.

7.1 Gauteng Department of Community Safety supports the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B-2015] Section 76. The following was also raised by the Department in support of its position: -

- The Department through its representative participated in AARTO National Task Team Committee meetings that requested for the amendment of the law to enable country-wide smooth roll-out of AARTO Act.
- The introduction of electronic service will alleviate the costs implications of serving notices through registered mail.
- The Department will also be in the position to send operator infringement through electronic service.
- The turn-around time for servicing of infringement notices to infringers will greatly improve.
- The introduction of the Administrative Tribunal will remove the backlog of election to be tried in court from the courts but at the same time address the corrupt practices taking place currently at Issuing Authorities.
- The introduction of demerit points system will have retributive effect and in the process, change road user behavior radically and reduce fatalities.

7.2 Gauteng Department of Roads and Transport does not support the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B-2015] Section 76 in its current form. The following comments were also raised by the Department in support of its position: -

- Clause 7 - The National Department of Transport should make amendments to provide for multiple rerouting of infringement notices in instances the registered owner was not the driver.
- Clause 11 - The clause will have negative implications to a proxy of a Department that uses a government vehicle in a sense that the proxy could be a Transport Officer and not the actual driver.
- Clause 15 - The Department is concerned about the capacity of the Tribunal to speedily address representations to avoid punitive measures.

- Clause 16 - RTIA should clarify the legality of serving infringement notices through electronic means.
- The time period that has lapsed between the original amendments and the current consultations is long. Considerations should be taken regarding changes that might have taken place.
- Has all legislation that has been enacted/ amended in this period taken into account?
- Has legislation that is to be amended such as the National Land Transport Amendment Bill been taken into account?

8. SOCIO-ECONOMIC FINANCIAL IMPLICATIONS

The Committee observed that the Bill will have no direct economic, environmental and/or any other related implications, but only the financial implications and social implications.

a. Financial Implications

- The Bill will have negative financial implications to Municipalities especially those which are issuing authorities in remote areas where there is limited exposure to technology;
- The Bill proposes the Establishment of Tribunal in relation with the functions of Tribunal and the appointment of members and administrative employees which will require additional funding;
- The Bill proposes the Establishment of rehabilitation programmes for the infringers which will also require additional funding;
- The Bill also proposes that the Agency/Authority be financed from penalties issued and collected. Also proposes that the Agency/Authority may open and maintain one or more accounts with a bank, in which money received by the agency/authority must be deposited and money received from issuing authorities, driving license testing centres and registering authorities. This will have a negative impact on the financial sustainability of the Agency/Authority wherein issuing authorities do not abide by the Service Level Agreement / Memorandum of Understanding regarding the distribution of monies collected on behalf of the Agency/Authority.

b. Social Implications

- The Bill will have positive social implications on road safety measures and campaigns in the country. This is because the Bill proposes the apportionment of penalties meant to maintain order and safety in the land transportation sector.

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In conclusion, the Committee is of the view that the Bill should be more focused on improving road safety in our country rather than generating revenue for the Agency/Authority.

9. COMMITTEE'S RECOMMENDATIONS

The Portfolio Committee recommends that –

It is recommended that the Bill be passed subject to the following conditions/amendments:

- The funding of the Tribunal should not be derived solely from the payments received from infringers;
- Provinces are proposed to have independent Tribunals;
- Implementation date should be adjusted to the next financial year noting the budget and planning cycle of Municipalities and Provinces;
- The National Department of Transport, through the Agency/Authority should consider developing an electronic Application for acknowledgement / confirmation of receipt of electronic communication;
- The Legal expertise should be one of the main qualification criteria for person/s eligible for being Members of the Tribunal.

10. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE

The Portfolio Committee on Roads and Transport supports the principle and details of the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B-2015] Section 76 with the proposed amendments.

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