

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE CCT: 19/22

In the intervention application of:

ROAD TRAFFIC MANAGEMENT CORPORATION

Applicant

and

ORGANISATION OPPOSING TAX ABUSE

1st Respondent

MINISTER OF TRANSPORT

2nd Respondent

MINISTER OF CO-OPERATIVE GOVERNANCE AND

3rd Respondent

TRADITIONAL AFFAIRS

ROAD TRAFFIC INFRINGEMENT AUTHORITY

4th Respondent

APPEALS TRIBUNAL

5th Respondent

In re:

The matter between:

ORGANISATION OPPOSING TAX ABUSE

Applicant

and

MINISTER OF TRANSPORT

1st Respondent

MINISTER OF CO-OPERATIVE GOVERNANCE AND

2nd Respondent

TRADITIONAL AFFAIRS

ROAD TRAFFIC INFRINGEMENT AUTHORITY

3rd Respondent

APPEALS TRIBUNAL

4th Respondent

ANSWERING AFFIDAVIT IN INTERVENTION APPLICATION

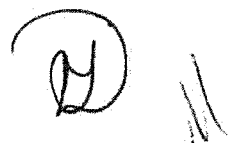

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I, the undersigned

STEFANIE FICK

state under oath as follows:

- 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 Unit 4, Boskruin Village Office Park, Corner Fouche and Hawken Road, Bromhof, Gauteng. I deposed to the founding affidavit on behalf of the applicant (OUTA) in the confirmation application.
- 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.
- 3 For ease of reference, in this affidavit, I refer to the parties as they are known in the application for confirmation that was filed with this court on 2 February 2022. I refer to the applicant in the intervention application, the Road Traffic Management Corporation, as the "**RTMC**".
- 4 I refer to the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 as "**AARTO**" and the Administrative Adjudication of Road Traffic Amendment Act 4 of 2019 as the "**Amendment Act**".



- 5 I point out that the RTMC affidavit contains a number of legal contentions, as well as legal argument. OUTA will address these legal contentions in written and oral argument.

INTRODUCTION

- 6 OUTA does not oppose the RTMC's application to intervene as a party. Nor does it oppose the request by the RTMC to make oral and written submissions. However, the RTMC should be confined to the evidence that was admitted before the High Court.

- 7 In what follows, I address the following issues:

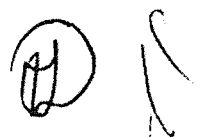
- 7.1 First, the legal principles relating to the admission of new evidence on appeal (as well as a new defence which flows from the evidence);
- 7.2 Second, the reasons why RTMC's application to adduce new evidence should be dismissed.

APPLICABLE LEGAL PRINCIPLES

- 8 The RTMC seeks to adduce new evidence with its application to intervene. Moreover, as a consequence of the new evidence, the intervening party is pleading a new defence to the constitutional challenge to AARTO and the Amendment Act on appeal. I am advised that this is highly irregular and will only be permitted in exceptional circumstances. I submit that the RTMC has failed to substantiate that its application to adduce new evidence is exceptional and its application should therefore be dismissed.

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- 9 There are two routes by which a litigant may seek to adduce new evidence in this court. New evidence may be admitted if it falls within the parameters of Rule 31 of the Rules of the Constitutional Court or in terms of Rule 30 of the Rules read with section 19(b) of the Superior Courts Act 10 of 2013 ("**Superior Courts Act**").
- 10 Factual material in the affidavits which falls within the parameters of Rule 31 of the Rules of the Constitutional Court, i.e. evidence that is common cause, incontrovertible or capable of easy verification, is admissible under Rule 31; but disputed facts that are not capable of easy verification are not. Once it is evident that there is a dispute of fact, Rule 31 cannot apply.
- 11 Evidence that is disputed may be admitted under Rule 30 in exceptional circumstances. Such evidence must be weighty, material and to be believed. In addition, there must be a reasonable explanation for the late filing of the evidence.
- 12 The general principle is that ordinarily, it is inappropriate for a party to try to introduce another cause of action at the appeal or referral stage based on new evidence. This is especially so when the evidence was available at the time of the hearing in the court *a quo*. I am advised that evidence that is untested, and will lead to submissions on an entirely new issue on appeal, will generally not be permitted. I am advised further that the Constitutional Court has stated in numerous matters that it will not, save in exceptional circumstances, permit disputes of fact to be raised for the first time on appeal or referral.

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- 13 Further relevant criteria that should be considered in respect of the application to adduce new evidence include the need for finality, the undesirability of permitting a litigant who has been remiss in bringing forth evidence to produce it late in the day, and the need to avoid prejudice. It is more likely that evidence will be admitted where the evidence sought to be led was either not available at the time of the trial or could not have been obtained by the exercise of proper diligence.
- 14 The Constitutional Court has greater flexibility than the Supreme Court of Appeal in allowing additional evidence on appeal. However, it is a power that should not be exercised unless there are compelling reasons to do so.

THE NEW EVIDENCE RTMC SEEKS TO ADDUCE

- 15 The RTMC seeks to adduce new evidence on the "history, context, purpose and goals of the AARTO Act", and the "scope and respective functions of the national, provincial and municipal spheres of government" in relation to AARTO's goals and each sphere's role in road traffic regulation (**RTMC AA, including paras 24.1, 26, 28, 44 – 49, 51 – 59, 60 - 70**). The RTMC makes new factual claims about the regulatory objectives of AARTO and raises new defences in light of those alleged regulatory objectives (see, for example, **RTMC AA paras 28.3.1 – 28.3.2**).
- 16 The RTMC also makes factual allegations regarding the alleged deficiencies in OUTA's factual and legal claims that it had standing to bring this constitutional challenge (see, for example, **RTMC AA paras 38 – 41**). The standing complaint



is self-evidently a frivolous complaint. To the extent necessary, it will be addressed in legal submissions at the hearing of the application for confirmation.

RTMC'S APPLICATION TO ADDUCE NEW EVIDENCE SHOULD BE DISMISSED

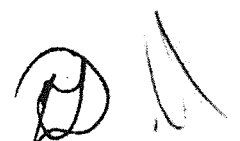
17 The RTMC's application to adduce new evidence should be dismissed. I say so for two reasons.

18 First, should the RTMC be permitted to adduce new evidence, it will be severely prejudicial to OUTA.

18.1 The RTMC is seeking to plead a new defence to the constitutional challenge.

18.2 The RTMC alleges that AARTO and the Amendment Act falls within the parameters of section 44(3) "on the basis that the national legislature's ability to establishes a uniform regulatory regime of adjudicating road traffic offences throughout the Republic is reasonably necessary for or incidental to its power of 'road traffic regulation' in Part A of Schedule 4" (**RTMC AA, paragraph 28.3.2.1**);

18.3 Alternatively, the RTMC alleges that AARTO and the Amendment Act are constitutionally compliant under section 44(2) of the Constitution because they are "necessary in order to maintain national standards and prevent unreasonable action by provinces in relation to road safety and road traffic, which may prejudice other provinces and the Republic as a whole" (**RTMC AA, paragraph 28.3.2.2**).



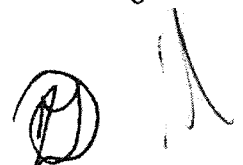
- 18.4 Neither of these defences was pleaded by the respondents before the court a quo nor were any facts led to substantiate the allegations. The RTMC now seeks, at this late stage, to lead evidence to substantiate these new defences.
- 18.5 OUTA is now in the invidious position of having to defend against a new case on appeal. OUTA denies that the RTMC has put up sufficient facts to substantiate its new defences, but is faced with new evidence nonetheless.
- 18.6 OUTA squarely disputes the facts alleged by the RTMC. A dispute of facts is unavoidable. The dispute of fact will inevitably delay the matter and place this court in the position of having to evaluate evidence as a court of first instance.
- 19 Second, the evidence the RTMC is seeking to adduce was available when this matter was before the High Court. The RTMC has failed to provide a reasonable explanation why it did not seek leave to intervene at the High Court stage of the matter and adduce the available evidence at that time.
- 20 An explanation is necessary given the context of this litigation. This matter was launched in the High Court in September 2020 and was heard on 18 October 2021 (over a year later). Between the institution of the application and the hearing, the litigation received extensive publicity in national and regional newspapers, on radio and in news broadcasts on television.

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- 21 The widespread nature of the media coverage of OUTA's challenge to AARTO and the Amendment is evident from the following:

Information published on the OUTA website

- 21.1 OUTA released numerous press statements regularly between the date on which it announced its intention to launch the constitutional challenge and the conclusion of the matter in the High Court. These press releases were first published on OUTA's website. While the RTMC may not follow the OUTA website closely, the press releases were generally picked up by the mainstream media and widely reported.
- 21.2 OUTA first published a press release on 16 August 2019 stating that it opposed AARTO and the Amendment Act from the outset. The press release by OUTA indicated explicitly that it intended to challenge the constitutionality of both Acts. This press release is attached hereto marked "CAA1".
- 21.3 On 14 September 2020, OUTA announced that it had launched the application challenging the constitutionality of AARTO and the Amendment Act. The press release by OUTA listed the first to fourth respondents and indicated that the first and the third respondents had filed notices to oppose the application. The press release details the grounds for the constitutional challenge, specifically, that AARTO and the Amendment Act unlawfully intrudes upon the exclusive executive and legislative competence of the local and provincial governments as envisaged in the Constitution. Critically, the press release published on the OUTA website included a link to the notice of motion and founding

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affidavit in the constitutional challenge. This press release is attached hereto marked "**CAA2**".

21.4 On 18 November 2020, OUTA published a comprehensive list of flaws it identified in the regulations to the AARTO Amendment Act. The article, published on the OUTA website, again refers to the constitutional challenge launched against the AARTO Act and the Amendment Act as part of its core activities. This article is attached hereto marked "**CAA3**".

21.5 On 1 July 2021, OUTA published comment on the Minister's decision to postpone the implementation of AARTO. The article again references OUTA's constitutional challenge and notes that the matter had been set down for hearing on 18 October 2021 in the Pretoria High Court. This article is attached hereto marked "**CAA4**".

National and regional media coverage

21.6 On 16 August 2019, TimesLive reported that OUTA intended to institute proceedings following OUTA's press release on the same date. This article is attached hereto marked "**CAA5**".

21.7 The OUTA press release of 14 September 2020, announcing that it had launched the constitutional challenge, was reported by several media outlets:

21.7.1 The Herald published an article on 14 September 2020 that OUTA had launched its application challenging the constitutionality of AARTO and the Amendment Act. The Herald published its article on the same day as the date on which the press statement was

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released by OUTA. The article quotes extensively from the press statement by OUTA and gives all the information relating to the grounds for the challenge and the respondents. This article is attached hereto marked "**CAA6**".

21.7.2 Freight News published an article on 14 September 2020 titled "OUTA files court application to have Aarto thrown out". The article references the court challenge by OUTA noting the support of the Road Freight Association for the court challenge. This article is attached hereto marked "**CAA7**".

21.7.3 The Independent media group's coverage of the launch of the constitutional challenge was published on 29 September 2020 on the website IOL.co.za and included information from OUTA's press release on 14 September 2020. This article is attached hereto marked "**CAA8**".

21.8 A TimesLive staff reporter published an opinion on 11 February 2021 detailing the constitutional challenge brought by OUTA and the problems plaguing AARTO. This opinion piece is attached hereto marked "**CAA9**".

21.9 Jacaranda FM reported on OUTA's press release of 16 August 2019 and had an interview with OUTA's representative during which he explained that OUTA would launch a challenge to AARTO and the Amendment Act. Jacaranda FM followed up on the story on 8 March 2021. Jacaranda FM reported that OUTA was challenging Aarto and had launched the application in the Pretoria High Court.

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- 21.10 The Sunday Independent published the details of the constitutional challenge and the grounds of the challenge on 14 March 2021. The Sunday Independent published a follow-up article on 14 June 2021 and recorded that the hearing of the constitutional challenge had been set down for 18 October 2021. The article is attached hereto marked "**CAA10**".
- 21.11 The South African Broadcasting Corporation filed an article on 27 March 2021, reporting that OUTA had already filed its constitutional challenge and was waiting for the hearing. This article is attached hereto marked "**CAA11**".
- 21.12 Freight News interviewed OUTA CEO, Wayne Duvenhage, which was published on 6 April 2021. Mr Duvenhage explains the grounds for the constitutional challenge and the article concludes by recording that OUTA has launched a constitutional challenge against AARTO and the Amendment Act. This article is attached hereto marked "**CAA12**".
- 21.13 Rekord, a local Tshwane based newspaper, published an article on 11 June 2021 stating that OUTA is challenging the constitutionality of AARTO and the Amendment Act. The article specifically states that the hearing would proceed in October 2021 in the Pretoria High Court. This article is attached hereto marked "**CAA13**".
- 21.14 DCS Attorneys published an article on their website detailing the implementation plan for AARTO. The article is undated but from the context, it is clear that it was published before 1 July 2021 as the article foreshadows the phasing in of AARTO regulations from 1 July 2021. The conclusion of the article refers to the legal proceedings instituted by OUTA

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against the Minister of Transport challenging the constitutionality of AARTO and the Amendment Act. This article is attached hereto marked **"CAA14"**.

21.15 AARTO was supposed to partially come into effect on 1 July 2021. The postponement of the implementation of AARTO garnered extensive media coverage, more than three months before the date of the hearing of the constitutional challenge, and almost all of the media coverage included references to OUTA's constitutional challenge to AARTO which would be heard in the Pretoria High Court on 18 October 2021:

21.15.1 In June 2021, EWN reported that OUTA had instituted a constitutional challenge that would be heard in October 2021. This article is attached hereto marked **"CAA15"**.

21.15.2 On 28 June 2021, the Daily Maverick published an opinion piece by the executive director and head of accountability at OUTA, Stefanie Fick. The op-ed describes the constitutional challenge and states that it will be heard in October 2021. This opinion piece is attached hereto marked **"CAA16"**.

21.15.3 On 29 June 2021, Business Day published a news clip containing an interview with Wayne Duvénage in which he addresses the constitutional challenge. The Business Day published a follow-up article on 1 July 2021 noting that the constitutional challenge would be heard on 18 and 19 October 2021 in the Pretoria High Court. The publication with the newsclip is attached hereto

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marked "CAA17" and the follow-up article is attached hereto marked "CAA18".

21.15.4 The Sowetan reported on 1 July 2021 that OUTA was challenging the constitutionality of AARTO and the Amendment Act and included that the hearing had been set down for 18 October 2021 in the Pretoria High Court. This article is attached hereto marked "CAA19".

21.15.5 The Business Insider reported on 1 July 2021 that AARTO was supposed to come into effect on the same day despite a pending legal challenge to the legislation by OUTA. The article included a link to all the court papers related to the constitutional challenge which was available on OUTA's website. This article is attached hereto marked "CAA20".

21.15.6 TimesLive, and all its associated media brands, reported on the constitutional challenge by OUTA on 1 July 2021.

21.15.7 Freight News reported news that the implementation of AARTO was being pushed back to 2 July 2021. The article references the constitutional challenges by OUTA and states that it would be heard on 18 October 2021 in the Pretoria High Court. This article is attached hereto marked "CAA21".

21.15.8 On 5 July 2021, News24 (The Witness) reported on the Minister's decision to postpone the implementation of AARTO until 1 July

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2022. The article referred to the constitutional challenge by OUTA. This article is attached hereto marked "**CAA22**".

21.16 The media also reported on the hearing of the constitutional challenge on 18 October 2021:

21.16.1 Freight news published an article on 20 October 2021: "Monday saw the start of proceedings in the Pretoria High Court to challenge the validity of the Administrative Adjudication of Road Traffic Offences (Aarto) Act and Aarto Amendment Act". This article is attached hereto marked "**CAA23**".

21.16.2 The Citizen published a detailed account of the court proceedings that occurred in the Pretoria High Court on 18 October 2021. The article was published on 19 October 2021. The article details the arguments raised by OUTA and the Minister of Transport. This article is attached hereto marked "**CAA24**".

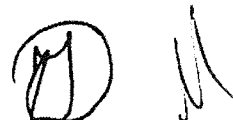
21.16.3 BusinessTech reported on the hearing on 18 October 2021. This article is attached hereto marked "**CAA25**".

22 Furthermore, the RTMC is a state-owned enterprise whose shareholders are the first respondent, the Minister, and the MECs for Transport of each province.

22.1 The Minister and MECs serve on a shareholders committee that directs and guides the proper functioning of the RTMC in the public interest (sections 6 and 7 of the RTMC Act).

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- 22.2 The shareholders committee meet four times a year and is intricately involved in the governance of the RTMC. The close relationship between the shareholders committee and the RTMC board is evident from the shareholders committee's powers under sections 8, 9 and 13 of the RTMC Act, including the appointment of the board of the RTMC and the power to issue directives to the board which directive must be given effect to by the Chief Executive Officer of the RTMC.
- 23 In light of the close relationship between the Minister, the shareholders committee and the RTMC, and the widespread media coverage of OUTA's constitutional challenge to AARTO and the Amendment Act, it is inconceivable that the RTMC was not aware of the litigation when it was first instituted or that it did not become aware of it before 18 October 2021, the date of the hearing in the High Court.
- 24 The RTMC ought reasonably to have been aware of the litigation and had a responsibility to take steps to intervene at the High Court stage of the litigation if it wanted to be party to the litigation and believed that it was in possession of facts and submissions essential to the determination of the case.
- 25 The RTMC maintains that it should have been joined by OUTA in the High Court proceedings. I am advised that this is incorrect in terms of the principles adopted by this Court in *Gory v Kolver NO and Others (Starke and Others Intervening)* 2007 (4) SA 97 (CC).

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- 25.1 The interest of the RTMC in the present case is no more than the interest of every single municipality and provincial government (each of which is, like the RTMC, an "issuing authority" under the AARTO Act),
- 25.2 Nor is the interest of the RTMC distinguishable from the interest of the hundreds of thousands of persons who have been accused of contravening traffic offences since the AARTO Act came into effect.
- 25.3 In the circumstances, there was no obligation on the Applicant to join the RTMC in these proceedings. If the RTMC sought to participate in the proceedings, it was incumbent on it to apply to intervene in the proceedings and to do so at the earliest possible opportunity.
- 26 The RTMC does not explain why it did not intervene at the High Court. It does not claim to have been unaware of the High Court proceedings, nor could it have made such a claim in view of the extraordinary publicity that was generated by the High Court proceedings from their launch, through the postponement of the commencement of the Amendment Act, the High Court hearing and the High Court judgment.
- 27 So this application of the RTMC must be treated for what it is – the application of a litigant who elected not to intervene in the proceedings before the High Court and is now, belatedly seeking to intervene at final appeal stage so that it can raise new defences tailored around the High Court judgment and based on evidence that was not before the High Court.

28 I respectfully submit that to grant the application of the RTMC to introduce additional evidence on appeal in these circumstances would be to establish a particularly unfortunate precedent that will undermine the proper process of constitutional litigation:

28.1 In almost every constitutional challenge to legislation, there will be organs of state other than the responsible Minister that have a direct and substantial interest in the legislation challenged;

28.2 If the RTMC application is granted, there will be a succession of similar applications brought in the future by organs of state who seek to intervene in appeals against successful challenges to legislation that they attempt to defend on the basis of new evidence that was not led before the High Court;

28.3 In the process,

28.3.1 this Court will not have to sit as Court of first and last instance on important issues,

28.3.2 this Court will find itself having to decide disputes of fact that ought to have been determined before any appeal reached it, and

28.3.3 principles of finality in litigation will be subverted.

CONDONATION

29 This affidavit is filed one day out of time. I respectfully submit that this Court should condone the delay for the following reasons:

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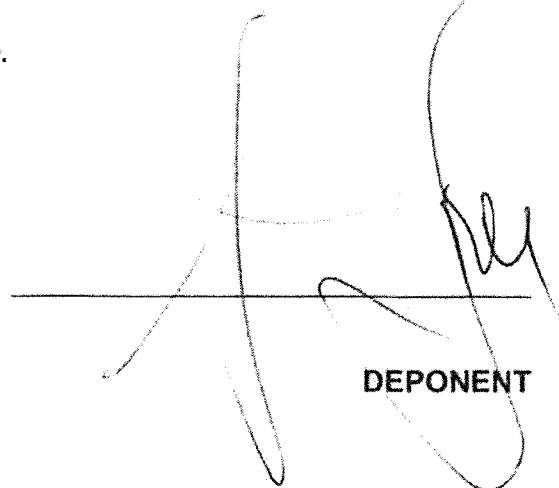
29.1 The delay is not the fault of the client but that of its legal representatives. There was a misunderstanding by the legal representatives as to the due date of this affidavit;

29.2 There can be no prejudice on account of the delay. The delay is less than a full day in circumstances where the matter has not yet been set down and directions have not yet been given regarding the filing of heads of argument. Indeed, the attorney of the RTMC orally communicated to OUTA's attorney on 6 April 2022 that it would not oppose OUTA's late filing of this affidavit on 7 April 2022.

CONCLUSION

30 In light of the above, I submit that the RTMC should not be permitted to adduce further evidence on appeal. The new evidence in question has been identified above.

31 In the event that this Court, contrary to the submissions of OUTA, allows the RTMC to file its additional evidence, this Court should give OUTA an adequate opportunity to reply to the new evidence.



DEPONENT



I certify that this affidavit was signed and sworn to before me at Johannesburg on this the 7th day of April 2022, 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

TANYA DEMPERS

Praktiserende Prokureur/Practising Attorney
Kommissaris Van Ede / Commissioner Of Oaths
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COBHAMWEG 1213 QUEENSWOOD
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21 Woodlands Drive
Woodmead Country
Club Estate, Building 2
Woodmead, Johannesburg



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OUTA plans to challenge the AARTO Amendment Act

16/08/201

5:16

President Cyril Ramaphosa has **assented to and signed** the Administrative Adjudication of Offences Amendment Bill, making it law. Implementation now awaits the law being gazette commencement date.

Traffic
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"The Organisation Undoing Tax Abuse (OUTA) has opposed this Bill from the start and is no constitutional challenge to it," says Rudie Heyneke, OUTA Portfolio Manager on Transport. workshop to consult the industry on the Bill, made submissions to Parliament based on the Bill was passed by Parliament earlier this year, wrote twice to the President asking him

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sign it.

OUTA called for the Bill to be amended, due to concerns that it would not improve road s logistically cumbersome to the point of being potentially unconstitutional, and paves the v corruption. The final version of the law does not take into consideration OUTA's concerns.

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Pilot projects in Tshwane and Johannesburg using this system over the past decade failed.

"The focus should be on road safety, not on an administratively complicated system aimed revenue," says Heyneke.

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The Act sets up a demerit system for drivers, who lose points for traffic offences, which m loss of a driving licence.

It in the

OUTA is also concerned that the new Act will be used to force Gauteng motorists to pay e- it an offence to ignore road signs which could include those listing e-toll charges.

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"We need solutions on road safety, but this isn't one of them. We want to see a workable li Heyneke.

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We will need public support to challenge this irrational policy that affects all motorists cou Now to help us fight this FIGHT.

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OUTA is a proudly South African civil action organisation purely crowd funded. Our work is supported by ordinary who are passionate about holding government accountable ensuring our taxes are used to the benefit of all South A

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OUTA goes to court to stop AARTO

The Organisation Undoing Tax Abuse (OUTA) has filed a high court application calling for the AARTO Act and the AARTO Amendment Act to be declared unconstitutional.

The application was issued in the Pretoria High Court.

The respondents are the Minister of Transport, the Minister of Cooperative Governance and Traditional Affairs, the Road Traffic Infringement Authority (RTIA), and the RTIA's Appeals Tribunal. The Minister of Transport and the RTIA have filed notices to oppose the application and they have until the end of September to file their opposing papers.

The Administrative Adjudication of Road Traffic Offences Act (AARTO Act) was passed in 1998 and creates a single national system of road traffic regulation and enforcement through the judiciary. The AARTO Amendment Act, passed in 2019 but not yet in operation, moves the enforcement of traffic laws to an administrative system. When the amendment comes into force, the AARTO system will be rolled out nationwide and the driver demerits points system will commence.

The AARTO Amendment Act was signed into law by the President and published in the Government Gazette in August 2019, but a date for it to come into effect must still be gazetted. In January, Minister of Transport Fikile Mbalula said the amendment would come into effect in June, but this was later delayed due to the effects of Covid-19.

While OUTA believes that measures to improve road safety and reduce fatalities are urgently needed, we believe that the AARTO Amendment Act will not achieve this. AARTO was rolled out in Gauteng 10 years ago and failed spectacularly. Statistics do not support the claim that it will lead to a reduction in fatalities on roads.

The application is supported by an affidavit by Advocate Stefanie Fick, OUTA's Director of the Accountability Division.

The application calls for the court to declare both the main act and the amendment unconstitutional. This is because this legislation unlawfully intrudes upon the exclusive executive and legislative competence of the local and provincial governments envisaged in the Constitution.

"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," says Fick in her affidavit.

If the court finds that the law is not inconsistent with the Constitution, then OUTA further opposes Section 17 of the Amendment Act. This removes the requirement that service of notices and related documents must be done personally or by registered mail, instead allowing the uses of email, SMS or voice message. "Given the serious consequences that may follow an infringement, such service is manifestly inadequate," says Fick.

The court papers

The OUTA notice of motion and founding affidavit outlining the case are [here](#).

Voice note by Stefanie Fick

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New AARTO regulations will not stand in court

The Organisation Undoing Tax Abuse (OUTA) says the latest regulations to the Administrative Adjudication of Road Traffic Offences (AARTO) Amendment Act will not withstand legal scrutiny. The administrative burden will also make enforcement virtually impossible, making the Act's purpose of road safety unattainable.

The organisation submitted its comments on the proposed regulations to the Department of Transport and the Road Traffic Infringement Agency, and said it is ready to challenge the matter in court if the Minister of Transport does not go back to the drawing board.

"Our legal team studied the proposed regulations, and it is clear that this Act will change very little when it comes to road safety. It is OUTA's informed view that the intention of the legislation and the regulations is to make money and not to protect road users. It may even open the door for more corruption in the form of bribes," says Andrea Korff, Senior Legal Project Manager at OUTA.

The current Administrative Adjudication of Road Traffic Offences (AARTO) pilot project has been partially in use in the Johannesburg and Tshwane metros for the past 10 years. Yet, instead of ensuring a drop in road accidents and fatalities or more compliance to the law, the only result seems to be a worrying increase in lawlessness as well as mortality rates due to road accidents.

"If increased road safety was the goal, why is the proposed administrative process and system of the Amendment Act aimed at generating money through a system that is complicated, cumbersome and definitely not user friendly? This administrative system will force citizens to rather pay the fines instead of following due process, whether guilty or not."

OUTA emphasised its concern over South Africa's high number of road fatalities. "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," says Adv Stefanie Fick, Executive Director of OUTA's Accountability Division.

Fick also said that it is highly unlikely that AARTO will be implemented successfully judged by the various problems irate motorists frequently experience at traffic departments countrywide. "Look at the current chaos with the renewal of drivers and vehicle licences in Gauteng. We doubt that the Road Traffic Infringement Agency (RTIA), who will administer AARTO, will do any better."

"Over the last three years, OUTA has actively participated in all the stages of public input into the drafting of the AARTO Amendment Act. We attended workshops, presented our own workshop and attended public hearings across the country. In addition to this, we made submissions to Parliament and even wrote to the President twice. We also launched a constitutional court challenge against the AARTO Act as well as the AARTO Amendment Act."

OUTA's legal team identified various problems with the proposed new AARTO regulations, including:

- **The electronic delivery of AARTO notices (via SMS or e-mail)** presents an unacceptable risk for motorists who may overlook them. Non-adherence can have serious consequences.

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- **There is too much uncertainty over the appeal process** regarding the application for refunds of penalties and fees.
- **Certain conflicting legalities:** While proposed regulations stipulates that drivers whose drivers' licenses will be suspended due to the accumulation of the maximum demerit points, may be informed by registered post or electronic means, the Act says only registered post may be used. This makes the regulation void, as it cannot amend legislation.
- **Prescriptions around rehabilitation** programmes to get drivers' licences back, are too vague and ambiguous.
- **The prescribed appeals process, where decisions can be reviewed or appealed, will more than likely result in administrative backlogs** as the single Appeals Tribunal, run by a chairperson and eight part-time members, will not be able to handle countrywide appeals and or reviews. OUTA believes this is unrealistic and will more than likely force ordinary citizens to rather pay a fine (whether guilty or not) to avoid the administrative hassle.
- **Constitutional uncertainty:** The enforcement of traffic and parking laws must take place at a local and provincial level and cannot be usurped by national organs of state by creating the Appeals Tribunal through the AARTO Amendment Act and the regulations. OUTA believes that the AARTO Act and the Amendment Act intrudes upon section 156(1)(a) of the Constitution. Furthermore, the AARTO Act does not include the SAPS among those authorised to issue AARTO fines (issuing authorities), but they are included in the regulations. The regulations thus appear to be amending the Act, which it cannot do, and it also unconstitutionally interferes with the powers of the National Police Commissioner over the role of the SAPS.
- **Exorbitant infringement penalty levy:** OUTA believes the suggested R100 infringement penalty levy payable on all AARTO notices is exorbitant, especially in the light of the fact that the Amendment Act proposes that AARTO notices may be sent via electronic communication. The implementation of the infringement penalty levy does not promote road safety but is aimed at revenue generation, seeing that the cost of administration (which according to the RTIA is the purpose of the infringement penalty levy) was always included in the fine amounts. OUTA strongly believes that the infringement penalty levy should be removed from the AARTO Amendment Act and its regulations.
- **Trying to enforce e-toll compliance after the scheme failed:** Schedule 3 of the regulations stipulate that people who do not pay e-toll will be issued with an AARTO fine for not adhering to a road traffic sign (e-toll road sign). OUTA does not believe that the AARTO Amendment Act and the regulations will be able to practically enforce e-tolls. It would require processing traffic fines and reminders for every unpaid gantry e-toll bill. Bear in mind that SANRAL processes over 2 million e-toll transactions per month, which - if not paid - will result in over 2 million Infringement Notices being issued in Gauteng alone. AARTO, which is reliant on the Electronic National Administration Traffic Information System (eNaTIS) system, will not be able to handle these large amounts of transactions, and will therefore make enforcing this impossible. OUTA strongly believes that legislation is only effective if it can be enforced - this is unenforceable and irrational.
- **Poorly drafted regulations:** OUTA listed 16 errors in cross-referencing the regulations, and it is abundantly clear that the regulations were drafted in haste and without due regard to the legal soundness or the interpretation of the Minister's express intent.

Voice note by Adv Stefanie Fick [here](#).
The submission is [here](#).

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"CAA4"

AARTO fails on the promised "start date"

By the time transport authorities are ready for the demerit system to have a start date gazetted, OUTA's legal challenge against the law will be in court

AARTO

01/07/2021 14:20:16

AARTO fails on the promised "start date"

Today the transport authorities confirmed what we have known for months: they are not ready to implement AARTO.

After various promises from Minister Fikile Mbalula that the AARTO (Administrative Adjudication of Road Traffic Offences Act) demerit system would start today, it has now been pushed back to July 2022, as the authorities must still set up the infrastructure to run it.

OUTA is not surprised.


We have repeatedly pointed out the problems with this system, which is administratively complicated and relies on chaotic municipal systems. Earlier this week, OUTA pointed out that the AARTO Amendment Act still did not have a start date so could not be implemented, and even if such a date was gazetted at the last minute the system would fail as the authorities are clearly not ready. See our statement [here](#).

It now seems likely that OUTA's legal challenge to the constitutionality of AARTO will be heard before the amended AARTO act comes into effect. Our challenge, filed in July 2020 in the Pretoria High Court, is set down for hearing on 18 October 2021.

What seems extraordinary is the transport authorities themselves were apparently not aware of how unprepared they are. In Minister Mbalula's budget speech on 25 May, he said: "We are on track with our target to proclaim 1 July 2021 as the effective date for the nationwide rollout of AARTO."

Today, he had to admit that the demerit system will start a year later, in July 2022.

Even more extraordinary was the failure by Minister Mbalula and his department to explain to the public – and all those municipalities which are supposed to be implementing AARTO – that the demerit system was never going to start today. Instead, we had to wait until the



much-promised “start date” today to hear instead about the administrative “rollout” plans for the next year. Did Minister Mbalula and his team only find out about this a few days ago?

This lack of planning seems particularly egregious given that in Budget 2021 the Department of Transport gives the Road Traffic Infringement Agency (RTIA) R224 million this year for the “AARTO Rollout Programme” (a big increase from last year’s R88 million). Didn’t the RTIA have to provide a plan to get this funding? Did the department not read it?

There was also an inability to assess their own performance: the Minister referred to the AARTO pilot projects in Johannesburg and Tshwane as “successfully operational... although with some teething problems that were dealt with”. This is astonishing: has anyone noticed a reduction in traffic accidents and deaths in those areas in the last decade? Anyone?

And let us not overlook the RTIA’s own lack of interest in either complying with traffic laws or enforcing them. In an astonishing display in the Minister’s media briefing today, the senior RTIA staffer who attempted to demonstrate how to set up an AARTO account ended up showing that he himself has a speeding fine from more than a year ago, which he hasn’t bothered to pay.

These are the people telling us they are going to fix the road traffic toll.

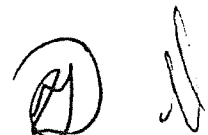
“OUTA is definitely in favour of holding to account any motorist who disobeys traffic laws, but AARTO is not the answer. Government is unable to administer the process affectively,” says Advocate Stefanie Fick, Head of OUTA’s Accountability Division.

Voicenote

A voicenote with comment from Stefanie Fick is [here](#).

More information

More information on OUTA’s criticism of AARTO is [here](#)

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"CAAS"

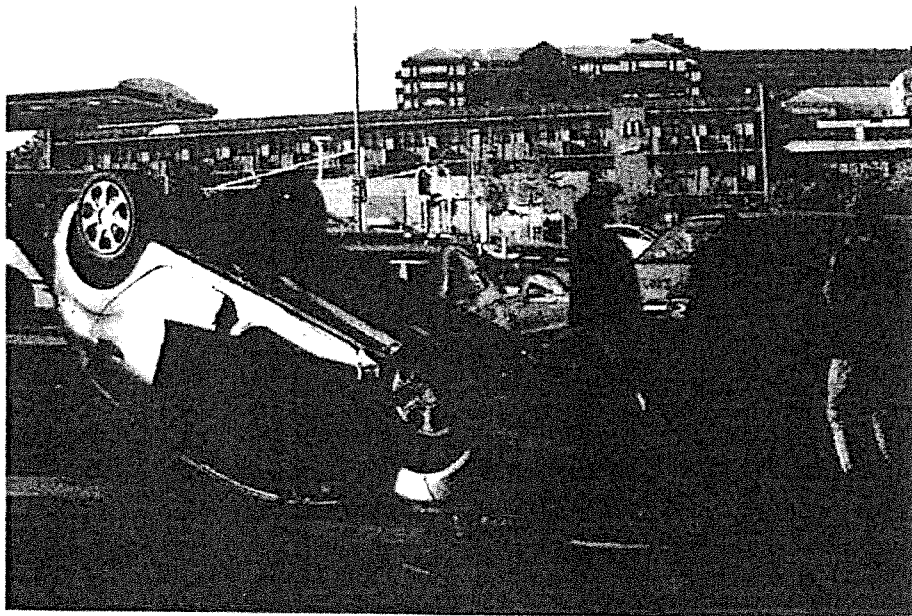
NEWS

Outa to challenge Aarto in court while AA slams focus on money over safety

President Ramaphosa this week signed the controversial legislation which includes demerit points for drivers

16 August 2019 - 15:41

BY MOTORING REPORTER



The Aarto system was tested in Johannesburg and Tshwane and failed to reduce road accidents, say its detractors, adding that it is complicated to administer and places revenue collection over safety.

Image: Freddy Mavunda

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The Organisation Undoing Tax Abuse (Outa) says it will launch a constitutional challenge to the new Administrative Adjudication of Road Traffic Offences (Aarto) Amendment Bill (Aarto).

President Cyril Ramaphosa signed the controversial bill, which includes a licence demerit system for drivers, into law on August 13 after the National Assembly passed it in March.

"Outa has opposed this bill from the start and is now planning a constitutional challenge to it," said Rudie Heyneke, Outa portfolio manager on transport.

He said the organisation held a workshop to consult the industry on the bill, made submissions to parliament based on this and, after the bill was passed earlier this year, wrote twice to the president asking him not to sign it.

Outa called for the bill to be amended due to concerns that it would not improve road safety, it is logistically cumbersome to the point of being potentially unconstitutional, and paves the way for corruption.

The final version of the law does not take into consideration Outa's concerns. Pilot projects in Tshwane and Johannesburg using this system over the past decade failed.



"The focus should be on road safety, not on an administratively complicated system aimed at collecting revenue," said Heyneke.

The act sets up a demerit system for drivers, who lose points for traffic offences which may result in the loss of a driving licence.

Outa says the new act will be used to force Gauteng motorists to pay e-tolls, by making it an offence to ignore road signs which could include those listing e-toll charges.

"We need solutions on road safety, but this isn't one of them. We want to see a workable law," says Heyneke.

The Automobile Association (AA) has also slammed the bill, saying its provisions around demerit points appear to be geared more towards revenue collection than road safety.

"In principle, the AA is in favour of a demerit system for drivers. It is something we have always backed and supported, even as far back as the 1960s," said the AA. "This punishes frequent road traffic offenders, while those who obey the rules of the road have nothing to fear."

However, the AA argues that many of the amendments to the act raise questions about the practicality of the system's implementation. It says road safety rather than revenue generation should be a central theme of such a system.

"The fact that similar fines and demerits are proposed for not wearing a seatbelt and for driving an unregistered vehicle point to road users' safety not being the government's primary concern.

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According to the AA, the piloted roll-out of Aarto in Tshwane and Johannesburg was not implemented properly as only fines and no demerit points were issued – meaning that amendments to the Aarto Bill are being made without proper testing of the system.

"The existing system as it was implemented has also proven to be largely unsuccessful, especially when measured against fatal road crashes in the province. In 2014 there were 2,136 fatal road crashes in Gauteng; in 2015 there were 2,171; 2,385 in 2016; and 2,398 in 2017. Instead of declining, these crashes have increased – all while the limited Aarto implementation was in force in the province," said the AA.

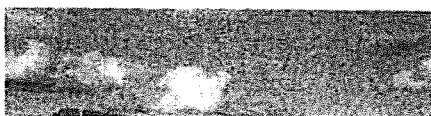
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"CAA6"

Outa goes to court to stop Aarto

By Motoring Reporter - 14 September 2020



The Aarto system was tested in Johannesburg and Tshwane and failed to reduce road accidents, says Outa.

Image: Freddy Mavunda

The Organisation Undoing Tax Abuse (Outa) has filed a high court application calling for the Aarto Act (Administrative Adjudication of Road Traffic Offences Act) to be declared unconstitutional.

This was after the national rollout of the bill, which includes the licence points demerit system, was postponed from its original June 2020 implementation date due to the outbreak of the coronavirus.

ADVERTISING

Outa's application was issued in the Pretoria high court.

The respondents are the minister of transport, the minister of co-operative governance & traditional affairs, the Road Traffic Infringement Authority (RTIA), and the RTIA's Appeals Tribunal.

The minister of transport and the RTIA have filed notices to oppose the application and they have until the end of September to file their opposing papers.

The Aarto act was passed in 1998 to create a single national system of road traffic regulation and enforcement through the judiciary.

23

21

The Aarto Amendment Act, passed in 2019 but not yet in operation, moves the enforcement of traffic laws to an administrative system.

When the amendment comes into force, the Aarto system will be rolled out nationwide and the driver demerits points system will commence.

The Aarto Amendment Act was signed into law by the president and published in the Government Gazette in August 2019, but a date for it to come into effect must still be gazetted.

In January, minister of transport Fikile Mbalula said the amendment would come into effect in June, but this was later delayed due to the effects of Covid-19.

"While Outa believes that measures to improve road safety and reduce fatalities are urgently needed, we believe that the Aarto Amendment Act will not achieve this," says an Outa spokesperson.

"Aarto was rolled out in Gauteng 10 years ago and failed spectacularly. Statistics do not support the claim that it will lead to a reduction in fatalities on roads."

The application is supported by an affidavit by advocate Stefanie Fick, Outa's director of the accountability division.

The application calls for the court to declare both the main act and the amendment unconstitutional. This, says Outa, is because this legislation unlawfully intrudes upon the exclusive executive and legislative competence of the local and provincial governments envisaged in the constitution.

#Covid19 | All you need to know about the coronavirus

"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," says Fick in her affidavit.

If the court finds that the law is not inconsistent with the constitution, then Outa further opposes Section 17 of the Amendment Act.

This removes the requirement that service of notices and related documents must be done personally or by registered mail, instead allowing the uses of e-mail, SMS or voice message.

"Given the serious consequences that may follow an infringement, such service is manifestly inadequate," says Fick.

SA records about 14,000 road deaths a year and Aarto was seen by the government as a way to promote responsible driving behaviour through the creation of a demerit system, which introduces meaningful consequences for reckless, negligent and inconsiderate conduct.

The demerit system would penalise offenders. Once the system is in place, drivers will start with 0 points and will be allowed to drive until they reach a maximum of 12 points.

Depending on the severity of the offence, one to six points are allocated for offences. If a driver collects more than 12 points, it will result in the suspension of the driving licence. Three suspensions will result in its cancellation, with the driver having to redo their driving test.

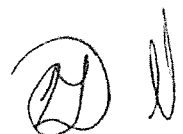
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Outa has been a staunch opponent of the bill, saying it would not improve road safety, is logistically cumbersome to the point of being potentially unconstitutional, and that it paves the way for corruption.

Outa also said the new act would be used to force Gauteng motorists to pay e-tolls, by making it an offence to ignore road signs which could include those listing e-toll charges.

"Outa believes that traffic 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. Aarto is not designed to address these problems," said the tax abuse organisation.

The Automobile Association (AA) has also slammed the bill, saying its provisions around demerit points appear to be geared more towards revenue collection than road safety.

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"CAA7"

Outa files court application to have Aarto thrown out

14 Sep 2020 - by Staff reporter



While Covid-19 has nudged several critical issues out of the spotlight – among them the Administrative Adjudication of Road Traffic Offences Act - the Organisation Undoing Tax Abuse (Outa) has kept its finger on the pulse.

The organisation today revealed that it had filed a high court application to have the Aarto Act and Aarto Amendment Act declared unconstitutional.

The Minister of Transport and the Road Traffic Infringement Authority (RTIA) have filed notices to oppose the application and they have until the end of September to file their opposing papers.

Passed in 1998, Aarto creates a single national system of road traffic regulation and enforcement through the judiciary. The Aarto Amendment Act, passed in 2019 but not yet in operation, moves the enforcement of traffic laws to an administrative system. When the amendment comes into force, the Aarto system will be rolled out nationwide and the driver demerits points system will commence.

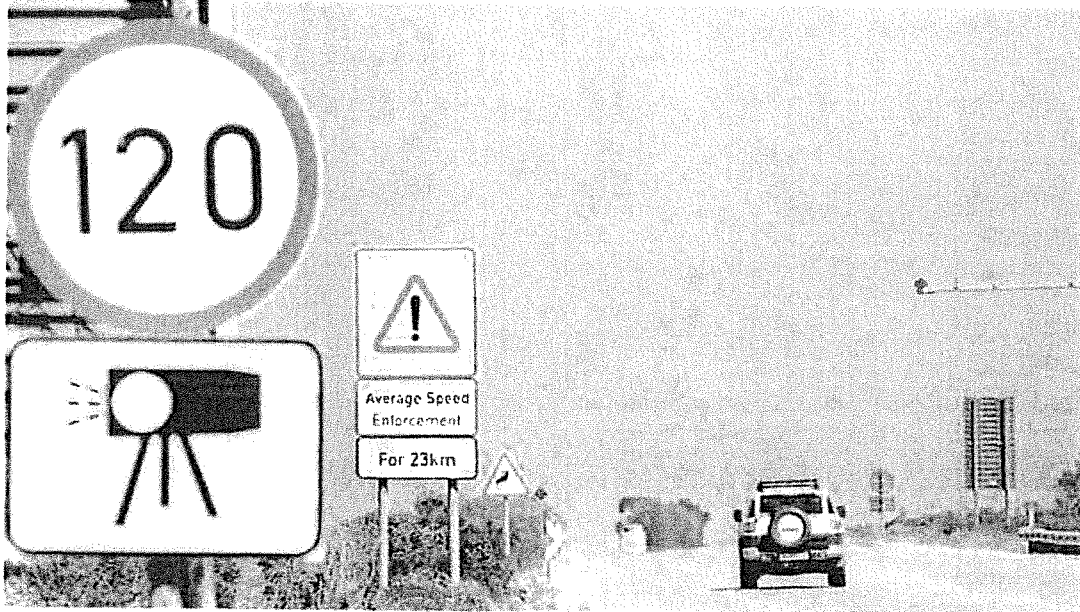
The Aarto Amendment Act was signed into law by the President and published in the Government Gazette in August 2019, but a date for implementation is still be gazetted. In January, Minister of Transport Fikile Mbalula said the amendment would come into effect in June, but this was later delayed due to the effects of Covid-19.

"While Outa believes that measures to improve road safety and reduce fatalities are urgently needed, we believe that the Act will not achieve this. Aarto was rolled out in Gauteng 10 years ago and failed spectacularly. Statistics do not support the claim that it will lead to a reduction in fatalities on roads," a spokesman for the organisation said.

The application calls for the court to declare both the main act and the amendment unconstitutional. This is because this legislation unlawfully intrudes upon the exclusive executive and legislative competence of the local and provincial governments envisaged in the Constitution, according to Outa.

"CAA 8"

High court to hear application to have Aarto Act declared unconstitutional



Outa has filed papers against the new proposed Aarto Act. Picture: David Ritchie/African News Agency (ANA)

Published Sep 29, 2020

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Pretoria - The Gauteng High Court, Pretoria, is set to hear an application calling for the Administrative Adjudication of Road Traffic Offences (Aarto) Act and Aarto Amendment Act to be declared unconstitutional.

The Organisation Undoing Tax Abuse (Outa) has filed papers, but no date has yet been set for the hearing. The respondents - Transport Minister (Fikile Mbalula), Co-operative Governance Minister (Dr Nkosazana Dlamini Zuma), the Road Traffic Infringement Authority and its appeals tribunal - must still file opposing papers.

Story continues below Advertisement

The Aarto Act was passed in 1998 and creates a single national system of road traffic regulation and enforcement through the judiciary. The Aarto Amendment Act, passed last year but not yet in operation, moves the enforcement of traffic laws to an administrative system.

When the amendment comes into force, the Aarto system will be rolled out nationwide, and the driver demerits points system will commence.

The Aarto Amendment Act was signed into law by President Cyril Ramaphosa and published in the Government Gazette in August last year, but a date for it to come into effect must still be gazetted.

More on this

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"CAA9"

OPINION | Maybe it's time to ditch Aarto

11 February 2021 - 09:15 By Denis Droppa



Aarto's critics say it won't help road safety and paves the way for corruption. Picture: REUTERS

The controversial Administrative Adjudication of Road Traffic Offences Act (Aarto), which includes the licence points demerit system, has been hit by its latest controversy after the CEO of the Road Traffic Infringement Agency (RTIA) was suspended last week on claims of maladministration.

Japh Chuwe, CEO of the RTIA which is responsible for administration of Aarto, was suspended on February 5 after the auditor-general made allegations of "serious maladministration" by Chuwe and other senior officials.

The long-delayed Aarto bill was scheduled to be implemented in July 2021 after the act was passed in 1998. The department of transport aims to penalise habitual offenders by imposing penalty points on their licences in addition to a fine, a system that has had success in other countries, but various road safety bodies and automotive organisations have criticised Aarto for being little more than a money-making scheme.

One of the most vocal critics of Aarto has been the AA, which argues that the demerit system looks to be geared more towards revenue collection than road safety.

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The fact that similar fines and demerits are proposed for not wearing a seatbelt and for driving an unregistered vehicle point to road users' safety not being the government's primary concern, argued the association. The AA's view was that not wearing a seatbelt should carry a much stiffer monetary punishment and accompanying high-value points demerit, if making our roads safer is the objective.

The Organisation Undoing Tax Abuse (Outa) has also opposed the bill from the start and is challenging it in court.

It called Aarto an unenforceable law that won't help to address the road accident problem, pointing out that Aarto pilot projects in Joburg and Tshwane didn't have any clear effect on road safety.

Outa maintains Aarto wouldn't improve road safety, that it is logistically cumbersome to the point of being potentially unconstitutional, and paves the way for corruption.

SA's Road Freight Association (RFA) has called on Aarto to be scrapped following Chuwe's suspension last week. The association has been concerned about Aarto's susceptibility to fraud, corruption, and money laundering, and says the RTIA's latest announcement is confirmation of its worst fears.

Once Aarto is implemented, the RTIA will be handling billions of rands, says the RFA, and questions how one can now trust the entity, especially when the dishonesty and corruption is allegedly at the highest level in the agency.

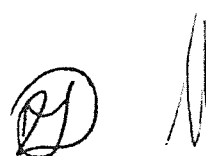
The association, which represents SA's trucking industry, says SA already faces huge corruption, extortion and intimidation at the hands of traffic police on a daily basis and this latest development has highlighted how rampant dishonesty is in the public service — especially in the traffic law enforcement and management structures.

Chuwe hasn't been found guilty and the law must take its course, but the latest controversy does little to instill confidence in Aarto, in a country with a desperate road safety crisis.

With around 14,000 annual road deaths, SA is one of the world's most dangerous countries to drive in and has about 26 road fatalities per 100,000 people, compared to just 9.3 per 100,000 in Europe.

There are already sufficient laws to stem road deaths, it's enforcing them effectively that has always been an issue.

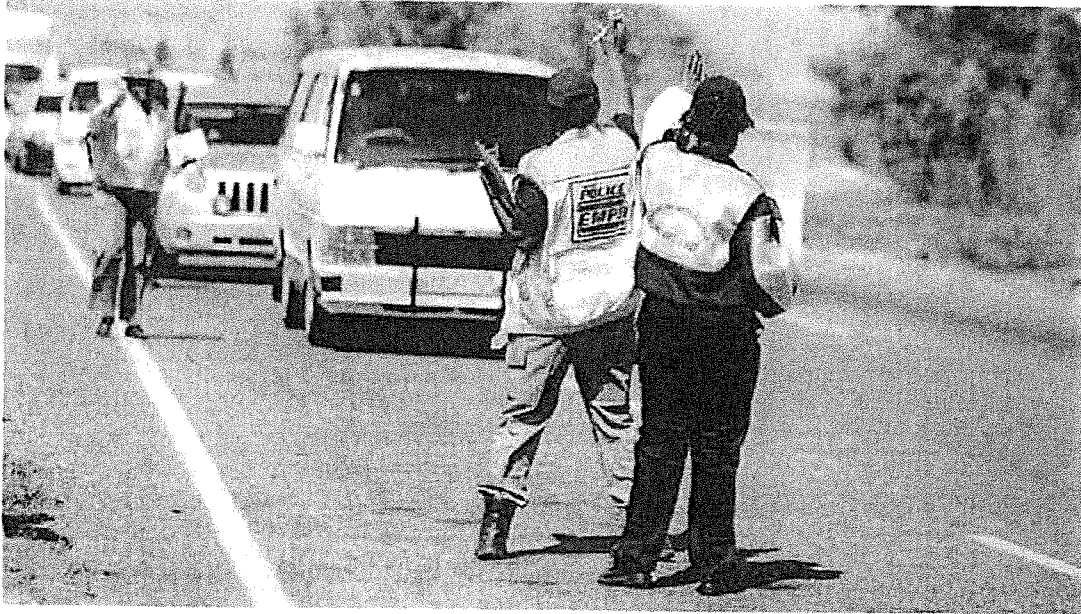
Aarto is unlikely to have much effect if the net doesn't spread to all aspects of unsafe driving, instead of focusing, as traffic law enforcement currently does, mainly on hidden speed traps which bring in a lot of money for traffic departments.

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"CAA 10"

- [Sundayindependent](#)
- [News](#)

OUTA to challenge proposed AARTO regulations



File picture: Bongiwe Mchunu.

Published Mar 14, 2021

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Johannesburg - The Organisation Undoing Tax Abuse (OUTA) is set to challenge the government's proposed regulations to the Administrative Adjudication of Road Traffic Offences (AARTO) Amendment Act that will prevent motorists with e-toll debts from renewing their car licences.

The organisation said it has submitted its comments on the proposed regulations, adding that it was ready to challenge the matter in court if the Minister of Transport Fikile Mbalula does not "go back to the drawing board".

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"Our legal team studied the proposed regulations, and it is clear that this Act will change very little when it comes to road safety. It is OUTA's informed view that the intention of the legislation and the regulations is to make money and not protect road users. It may even open the door for more corruption in the form of bribes," says Andrea Korff, Senior Legal Project Manager at OUTA.

She said the AARTO pilot project has been partially in use in the Joburg and Tshwane metros but hasn't helped in ensuring a decrease in road incidents and fatalities or more compliance to the law.

"The only result seems to be a worrying increase in lawlessness as well as mortality rates due to road accidents," Korff said.

‘CAA II’

More on this

SANRAL plans to fine motorists failing to pay e-tolls in Gauteng

27 March 2021, 11:36 AM |

Sashin Naidoo | [@SABCNews](#)

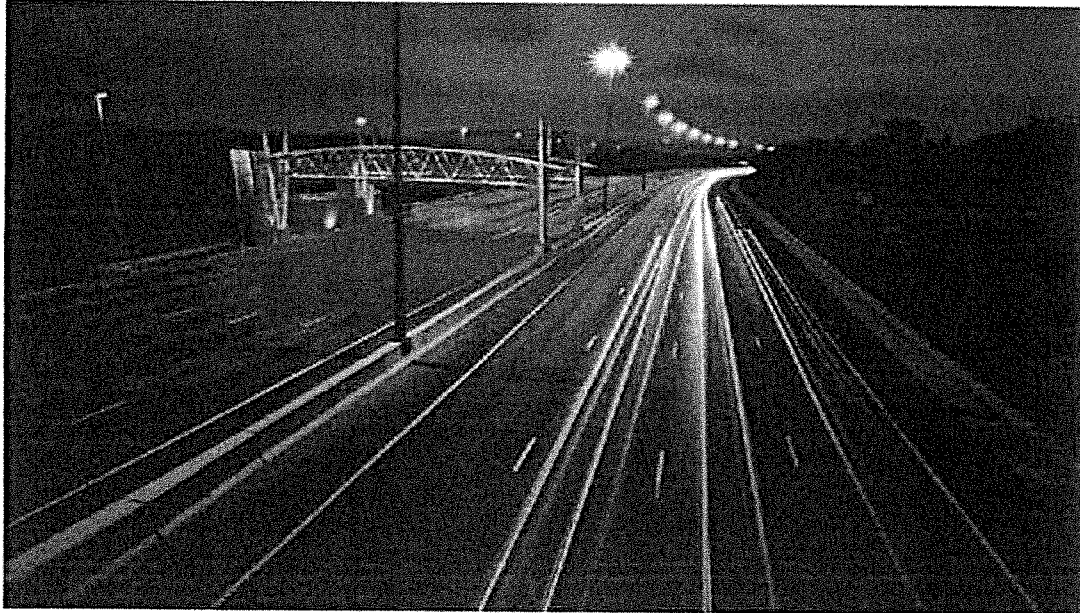


Image: SABC News

Under current regulations, outstanding e-toll bills are not an infringement and car licenses cannot be withheld

Motorists travelling on Gauteng freeways who fail to pay their e-toll bills may soon end up receiving hefty fines or having their vehicle license disk renewals blocked. This comes as the South African National Roads Agency Limited (SANRAL) says they are planning on the implementation of a new legal framework, to ensure motorists pay their e-toll bills.

However, civil organisations and legal experts say it's just a pipe-dream, as SANRAL's e-toll system has too many legal flaws for it to become a reality.

The Gauteng government says they are also strongly against the e-tolling system and they want it to be scrapped with immediate effect.

Motorists are in for a new set of penalties for the non-payment of e-tolls as well as other driving violations, that are expected to be implemented with the Administrative Adjudication of Road Traffic Offences Act (AARTO), which is supposedly going to take effect in July this year. Under AARTO, a new demerit and penalties system will be effected, which will see motorists start out with a set number of points, losing them if they commit various traffic offences.

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SANRAL says that drivers who fail to pay their e-toll bills will also not be able to renew their vehicle license disks. However, legal expert Sabeer Ahmed Jazbhay says motorists shouldn't worry just yet.

"I find it absurd that SANRAL is actually thinking about that. I'm sure they should have legal advisors to that effect. They cannot do anything without due process. What they are trying to do is threaten people unilaterally and unlawfully. Only a court or court order, judgment or ruling to that effect can carry forth what they intend to do and therefore it is totally unfair and incorrect and it will be very costly if SANRAL decides to proceed on that."

Under current regulations, outstanding e-toll bills are not an infringement and car licenses cannot be withheld. Civil organisation, OUTA says they have already approached the courts to stop the implementation of the new AARTO Act.

Spokesperson Wayne Duvenage says, "Well we have lodged our papers with the court and we are going through the motion of responding papers from the Department of Transport. But in short, the AARTO Act is unconstitutional and infringes on people's rights and much like the e-toll matter it relies on Enatis and Enatis is 50% correct and the management process thereof. If you are going to withhold someone's license especially if that person's job relies on that person being the driver and they lose their job because of an inefficient system. There are far too many problems from a practical point of view and the problems we are challenging AARTO."

The Gauteng provincial government is also strongly opposed to the e-tolling system. This saga has put Gauteng and the national government on a collision course.

Finance Minister Tito Mboweni told Parliament recently that there's a need to build a culture of payment in the country and that not paying e-tolls was not an option.

Gauteng Transport MEC Jacob Mamabolo says the provincial government is working to abolish the system once and for all.

Motorists have expressed outrage at the newly proposed AARTO Act.

"I'm appalled by this news now. How can they start this thing with the e-tolls again? I thought they were finished and now they want us to pay this money and not give us our license. I mean no, that's not right, we are suffering at the moment. And with COVID-19 and everything, everyone has taken a knock on their salaries and so this as an extra cost. Over and above what we are trying to do, no no no, I don't think this is right," says a motorist.

MEC for Public Transport and Roads Infrastructure Jacob Mamabolo has reiterated the position of the Gauteng Provincial Government (GPG) and its opposition to the implementation of the Gauteng Freeway Improvement Project (GFIP), otherwise known as the e-tolls system.

The MEC said that the provincial government has been working with national government to ensure that implementation of e-tolls in Gauteng is halted.

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"CAA 12"

Government should stop false promises on e-toll solution - Outa

06 Apr 2021 - by Staff reporter



Wayne Duvenage, CEO of the Organisation Undoing Tax Abuse (Outa). Source: Polity.org

"Government shouldn't be surprised if we don't believe them when next they promise an announcement on the e-toll debacle," says Wayne Duvenage, CEO of the Organisation Undoing Tax Abuse (Outa).

Duvenage, who has been leading the fight against e-tolls since the scheme was first announced, says this is the umpteenth time government has indicated definitive feedback on the e-toll debacle, and subsequently failed to do so. Since the scheme was launched over seven years ago in December 2013, a test case on the legality of e-tolls was launched by Outa to defend defaulters who were summonsed for non-payment. However, the Sanral board decided in March 2019 to place a temporary hold on pursuing criminal action against non-payers.

"It is ironic that government keeps setting new deadlines for themselves, yet they miss it every time while failing to come up with an alternative or solution to what is clearly a failed scheme," adds Duvenage.

This conduct merely widens the vast trust deficit between the state and citizens, in his view.

"Government really should stop making promises they can't keep. Cabinet mandated Transport Minister Fikile Mbalula, Finance Minister Tito Mboweni, and Gauteng Premier David Makhura on July 10, 2019 to come up with a solution to address the e-toll impasse. Almost two years and three commitments later we are still waiting."

Duvenage says he is not surprised by the fact that Mbalula, has reneged on yet another promise of a decision made in December 2020 - which he repeated earlier this year - that a decision on the scheme's future will be announced before the end of March 2021. "We expected this outcome as the minister and government have let society down on so many occasions before."

While government hesitates, Gauteng motorists had made the decision for them already, Duvenage warned. "The reality is that people are not paying e-tolls. The scheme failed and will

A handwritten signature, likely of Wayne Duvenage, consisting of stylized initials and a surname.

continue to fail. Government has no choice in finding an alternative to the e-toll scheme. Hopefully they will think twice in future before embarking on such costly and complex projects without consulting taxpayers. The practicalities of implementing schemes like this requires careful planning and public buy in."

Duvenage also added that Minister Mbalula and government should heed Outa's warnings on the Aarto Amendment Act's planned implementation in July. "Aarto will be the next e-tolls if government decides to push ahead with this in its current form. Government should listen to role-players such as Outa and do things right this time." Outa launched a legal challenge against the Aarto Amendment Act on – amongst others – the constitutionality of the law.

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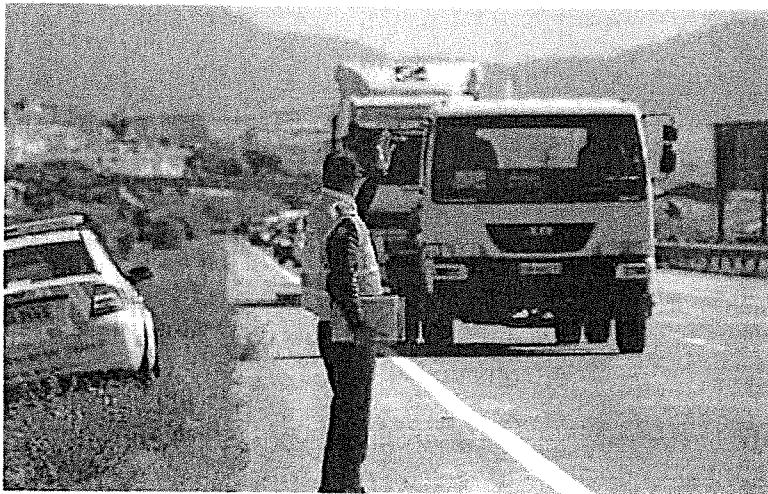
Legal challenge against AARTO on the court roll, says Outa

The mooted date for the implementation of the department of transport's new driving demerit system proposed for July 1 is nearing.

June 11, 2021

Sinesipho Schrieber 2 minutes read

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A traffic officer stops a truck during a pre-festive season drive. Photo: Arrive Alive.

Civil organisations are forging ahead with legal action as July 1, the suggested date for implementing the Department of Transport's new driving demerit system, draws nearer.

The government believes that the Administrative Adjudication of Road Traffic Offences (AARTO) amended act would curb road fatalities and clamp down on drivers who constantly disobey rules of the road.

Meanwhile, the date for the court case challenging the constitutionality of the system has been set for October.

This according to Organisation Undoing Tax Abuse (OUTA) head of accountability division Advocate Stefanie Fick.

The case against the Minister of Transport Fikile Mbalula, the Minister of Cooperative Governance and Traditional Affairs, the Road Traffic Infringement Agency (RTIA) and the RTIA's Appeals Tribunal will be heard at the Gauteng North High Court in Pretoria.

The possibility of OUTA challenging the implementation also stands, but Fick said this would be done once the date would be incorporated in the gazette documents.

"We believe that the AARTO Amendment Act is unconstitutional because undermines the separation of powers. As it stands, the nation is trying to observe the power of local municipalities to deal with their own local issues."

Fick said while the organisation believed that measures to improve road safety and reduce fatalities were urgently needed, they believed the Aarto Amendment Act would not achieve this.

"While trying to punish motorists for parking in the wrong spots might create obedient motorists, this does not address things such as drunk driving and speedsters that lead to fatalities.

"Why not get more visible policing and fix eNatis instead of wasting money on this system, why not invest in education?" she said.

While Mbalula was confident that the department was on track for national roll-out of the system in July, Outa was not so confident.

Last month, the department's vote speech allocated R545-million to the RTIA to fund the roll-out.

Outa lodged a request for information in terms of the Promotion of Access to Information Act (PAIA) against the RTIA to oversee the readiness agency in implementing the programme.

Fick said they believed the system was not ready to be rolled out nationally.

"What will happen to those municipalities where there are no service providers for the administrations of these?"

Although the legal challenge was in place, Fick clarified that currently there was nothing legally stopping the government from implementing the system.

Under the new system, drivers constantly disobeying the rules of the road stand a chance of losing their licence.

Drivers can be penalised for speeding, not paying e-tolls and ignoring road signs.

The demerit points for an offence ranges from one to six, depending on the nature of the offence.

According to Aarto, the threshold of demerit points which may be incurred without consequence is 15 points.

If the threshold is exceeded, one's driving licence card or operating permit will be suspended for three months for each demerit point by which the threshold is exceeded.

This means if one incurred 17 demerit points, the said document will be suspended for six months.

Driving or operating a vehicle during the prohibition period would be a criminal offence, subject to a fine or imprisonment and a further six demerit points on conviction.

Once a driving licence card has been suspended twice, exceeding the threshold will result in it being cancelled. This means the person will have to start from scratch, with a learner's licence if he or she wishes to drive again after the lapse of the prohibition period.

Demerit points are "forgiven" and diminished by one point every three months.

Read more on the system here:

<https://www.aarto.co.za/aarto-amendment-bill/amended-aarto-scheme/>
<https://online.aarto.gov.za/>

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"CAA 14"

Update: AARTO and the Point-Based Licence Demerit System

[DSC Attorneys](#) > [News](#) > Update: AARTO and the Point-Based Licence Demerit System

The amended Administrative Adjudication of Road Traffic Offences (AARTO) regulations are being phased in nationally from 1 July, 2021.

However, the point-based license demerit system isn't due to kick in until 1 July, 2022.

This is after delays due to the COVID-19 pandemic and subject to the outcome of an on-going court challenge.

What is AARTO?

The AARTO Act was passed in 1998. Key among its provisions is the introduction of a points-based licence demerit system for traffic offences. See below for a summary of how the point-based demerit system will work.

The Act also allows for electronic serving of infringement documents and the creation of "rehabilitation centres" for those who have had their licences cancelled.

What is the AARTO Amendment Act?

Currently, traffic violations in South Africa are handled as criminal offences. Fines are issued and progressed in accordance with the Criminal Procedure Act, and offences are prosecuted in court by the National Prosecuting Authority.

The AARTO Amendment Act, which was passed in 2019, decriminalises most traffic violations.

This means that most traffic violations will be dealt with via an administrative, rather than criminal, process.

The amended AARTO process



The amended AARTO process involves three main steps:

1) issuing an infringement notice

A driver may be served with an infringement notice on the spot (roadside) or this notice may be delivered after the fact to the registered vehicle owner.

The recipient then has 32 days to:

- pay a 50% discounted fine and incur applicable demerit points
- arrange to pay the full fine in instalments and incur applicable demerit points
- submit a written representation to the Road Traffic Infringement Agency (RTIA) contesting the alleged violation, or
- nominate the driver if this was someone else.

2) issuing a courtesy letter

If the recipient doesn't respond within 32 days, a courtesy letter will be issued.

The recipient then has a further 32 days to:

- pay the full fine plus R200 – consisting of a so-called infringement penalty levy (IPL) of R100 plus a courtesy letter fee of R100 – and incur the applicable demerit points, or
- submit a written representation to the RTIA contesting the fine.

3) issuing an enforcement order

If the recipient doesn't respond within a further 32 days, an enforcement order is issued.

The applicable demerit points are applied and the recipient is blocked from performing licensing transactions on eNaTIS. This means no driving licence, professional driving permit or vehicle licence disc may be issued.

To comply with the order, the recipient will need to pay the full fine plus R300 (R100 each for the IPL, courtesy letter and enforcement order).

The alleged infringer has a final 32 days after the enforcement order is served to apply to the RTIA for the order to be revoked.

How the AARTO point-based system will work

A driver (owner, operator or "juristic person") will start with zero points. For each offence, the driver will be allocated between one and six points – depending on the seriousness of the offence.

A person who collects more than 15 points will have his or her driver's licence suspended for up to three months.

For each demerit point over the threshold of 15, a three-month suspension will be incurred. A driver with 19 points, for example, will lose his or her licence for a year.

Three suspensions will result in a licence being cancelled. The driver will then have to retake the learner's licence and driving tests. Driving or operating a vehicle during suspension is a criminal offence subject to a fine or imprisonment (plus a further six demerit points on conviction).

If a driver who has incurred points has a clean record for three months, one point will be deducted from his or her record.

Updated: proposed four-phase introduction of AARTO

Initial plans to introduce the demerit system over three phases, starting in 2021, were scuppered.

According to Transport Minister, Fikile Mbalula, AARTO is now due to be implemented over four phases. The last of these, culminating on 1 July, 2022, will involve introducing the allocation of demerit points.

Phase I

The focus during the first phase, from 1 July to 30 September, 2021, is on setting up AARTO services and creating public awareness about the new system.

Phase II

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During the second phase, from 1 October to 31 December, certain key local and metropolitan municipalities are to be brought online with the AARTO process.

An adjudication process and appeals tribunal will also be implemented. This is to enable individuals to resolve traffic infringements without burdening the courts.

Additional AARTO service outlets will be set up, and education campaigns will continue.

Phase III

The third phase is set to run from 1 January to 30 June, 2022. During this period, the remaining 144 local municipal areas are due to adopt the AARTO system.

Phase IV

The fourth phase, from 1 July, 2022, will introduce the point-based demerit system and driver rehabilitation programmes.

AARTO and the OUTA court challenge

The Organisation Undoing Tax Abuse (OUTA) has filed a Pretoria High Court application for both the AARTO Act and the AARTO Amendment Act to be declared unconstitutional.

OUTA argues that the legislation will not improve road safety; is logistically cumbersome; and paves the way for corruption.

According to an OUTA spokesperson, "While OUTA believes that measures to improve road safety and reduce fatalities are urgently needed, we believe that the AARTO Amendment Act will not achieve this."

The spokesperson also noted that, "AARTO was rolled out in Gauteng 10 years ago and failed spectacularly. Statistics do not support the claim that it will lead to a reduction in fatalities on roads."

OUTA also claims that the new Act may be used as a mechanism to force Gauteng motorists to pay e-tolls.

The Automobile Association (AA) also opposes the new regulations. It says the Act appears to be geared towards revenue collection rather than road safety.

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"CAA16"

UNANSWERED QUESTIONS REMAIN AS AARTO COMES INTO EFFECT

The Act is meant to come into effect on Thursday, bringing with it a demerit system that will penalise drivers for breaking the law. But there's been no communication about what changes to or how exactly the law will be implemented.



Minister of Transport Fikile Mbalula released the 2020 festive season statistics on 22 January 2021. Picture: @MbalulaFikile/Twitter.

Fikile Mbalula (<https://ewn.co.za/topic/fikile-mbalula>) OUTA (<https://ewn.co.za/topic/outa>) Aarto Act (<https://ewn.co.za/topic/aarto-act>)
Lauren Isaacs (<https://ewn.co.za/contributors/lauren-isaacs>) 12 months ago (280 days ago)

CAPE TOWN - Western Cape Transport MEC Daylin Mitchell has written to Transport Minister Fikile Mbalula to raise concerns regarding the readiness of the Road Traffic Infringement Authority to implement the Administrative Adjudication of Road Traffic Offences (AARTO) Act.

The Act is meant to come into effect on Thursday, bringing with it a demerit system that will penalise drivers for breaking the law.

But there's been no communication about what changes to or how exactly the law will be implemented. Mitchell said his department was strongly supportive of a points demerit system to improve driver behaviour and remained keen to implement any effective measure that would reduce road traffic injuries.

"I am concerned that we have been severely hindered in our ability to plan meaningfully for the announced rollout of the Act, in particular with regards to training of our traffic officers," he said.

Mitchell said this was as a result of the fact that the applicable regulations had not been finalised.

"This effectively makes it impossible for the department to be in a systematic manner for the rollout. We cannot develop a real world start date for implementation without the regulations being finalised," Mitchell added.

Activist group, Organisation Undoing Tax Abuse (Outa) said the new traffic laws officially enacted on Thursday were likely to fail.

Outa said while measures to improve road safety and reduce fatalities were urgently needed, it believed the Act would not achieve this as it was rolled out in Gauteng 10 years ago and failed spectacularly.

Outa's Advocate Stephanie Fick said the legislation, which sets up the system, had not yet had an official start date gazetted, which meant if it's implemented on Thursday as previously confirmed by Mbalula, it would be a last-minute authorisation.

"Last minute is not the way to start such a complicated process, particularly as this relies heavily on failed systems," she said.

Fick said authorities weren't ready for this, and it was subject to a Constitutional Court challenge that's due to be heard in October this year.

For official information about COVID-19 from the Department of Health, please visit <https://sacoronavirus.co.za> (<https://sacoronavirus.co.za>)

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'CAA16'

DAILY MAVERICK

(/)

OPINIONISTA


Aarto is on the road to nowhere and will be another administrative nightmare for the state



(www.dailymaverick.co.za/author/stephanie-fick/) By Stephanie Fick

(<https://www.dailymaverick.co.za/author/stephanie-fick/>)


28 Jun 2021

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Advocate Stefanie Fick is an executive director of the Organisation Undoing Tax Abuse (Outa) and heads its accountability division. She spent nearly 20 years at the NPA as a prosecutor and has concentrated her career over the past few years into the area of civil activism litigation. She is leading Outa's legal challenge to Aarto, due in court in October.

The Administrative Adjudication of Road Traffic Offences Act is a law under which wishful thinking by Transport Minister Fikile Mbalula runs up hard against the reality of bureaucratic ineptitude and administrative cumbersomeness, particularly in collapsed municipalities. I for one am not holding my breath that the much-promised driver demerit system will start as promised on 1 July.

 Listen to this article

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There is a government dreamland in which motorists who speed or jump traffic lights eventually lose their licences, safely taking them off the road. While this is a worthy goal, the reality is very different.

Aarto is the Administrative Adjudication of Road Traffic Offences Act. It is, in a nutshell, a process for administering minor traffic offences such as illegal parking. Aarto, rolled out as a pilot project in Tshwane and Johannesburg in 2008, was considered a failure. Now an amended Aarto is going nationwide.

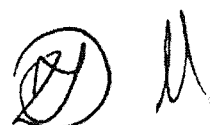
Transport Minister Fikile Mbalula announced in his budget speech on 21 May 2021 that Aarto will begin on 1 July 2021. The announcement caused panic among drivers, concerned about the implications of Aarto, and led civil society to ask the question: is it possible to roll out Aarto on 1 July?

The short answer is “no”.

Before the amended Aarto can legally be rolled out, the commencement date must be gazetted (a nice word for advertised) by the president. Guess what... although the president signed the law two years ago, there's still no commencement date. Minister Mbalula has yet again jumped the gun. Sadly, we are used to hollow promises from the minister, who remains silent about the e-toll debacle.

You might be wondering whether it is possible for the president to sneak in a gazette.

Anything is possible, but some things are just improbable. Without boring you with the nitty-gritty of Aarto, let me just say that even if the date

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is gazetted now, the Road Traffic Infringement Agency (RTIA) is *not* ready to launch Aarto nationwide.

Building a house without bricks

Aarto now includes a new Appeals Tribunal. Traffic fines used to be contested in court, but now motorists have to go through the Appeals Tribunal first. The Appeals Tribunal is a small team of nine people who will assess motorists' appeals. Aarto cannot function without this tribunal, but no information on their nominations or appointments has been forthcoming.

It is also still unclear where and how the tribunal's nine members will tackle the many appeals expected.

Aarto also relies on an accurate eNaTIS system, efficient postal service and administration system, none of which exist, supporting our view that Aarto will not be rolled out any time soon.

Local government gets the short end of the stick

Many municipalities are not in a position to deal with Aarto effectively, so the RTIA has a serious problem on its hands. RTIA administration fees will also cut into revenue from municipal traffic fines in every way.

Law cannot fix poor administration

As an activist, one is often accused of trying to make government fail. Although the government is doing an awesome job of that by itself, activism is about standing up for what is right and reasonable even if it means picking a fight with the government.

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When ☐ the government does not listen to its citizens but implements impractical legislation, it loses the trust of the people. It is an active citizen's duty to point out such problems. Aarto will not work for various reasons, but what stands out is that this administrative nightmare is not the cure we desperately need for South Africa's appalling road accident situation.

Outa believes that Aarto is unconstitutional — it interferes with municipalities' right to regulate themselves — and began legal action against the minister in July 2020; the case is scheduled to be heard in court in October 2021. There is no requirement for the national government to agree (and it doesn't), but wouldn't it make sense to hold off the roll-out until that's decided? We have waited two years since Aarto was signed for a start date, so we can manage without it a little longer... Dear Mr President, waiting for the court case to be resolved will save taxpayers' money.



What's the solution?

What do we want instead? We want safer roads, and a system focused on that objective.

The road accident toll is appalling and inadequately quantified. Road fatalities remain static at 14,000 and accident costs have risen from R143-billion in 2015 to R200-billion by 2020.

This is a national crisis. We should be working together to create safer roads rather than trying to save an unworkable law. Are we not better off employing competent (uncorrupted) traffic officers to catch drunk drivers and speeders?

Although Aarto will, unfortunately, be another administrative nightmare for the state, we believe that it can still be prevented. Civil activist groups

will **need** the support of the public to hold the government accountable and hopefully work towards a better solution. **DM**

Aarto (<https://www.dailymaverick.co.za/opinion-piece-tag/aarto/>)

eNatis (<https://www.dailymaverick.co.za/opinion-piece-tag/enatis/>)

Fikile Mbalula (<https://www.dailymaverick.co.za/opinion-piece-tag/fikile-mbalula/>)

OUTA (<https://www.dailymaverick.co.za/opinion-piece-tag/outa/>)

road accidents (<https://www.dailymaverick.co.za/opinion-piece-tag/road-accidents/>)

Road Traffic Infringement Agency
(<https://www.dailymaverick.co.za/opinion-piece-tag/road-traffic-infringement-agency/>)

traffic fines (<https://www.dailymaverick.co.za/opinion-piece-tag/traffic-fines/>)

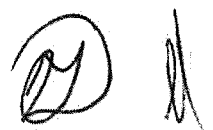
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'CAA 17'

News Leader

WATCH: Aarto on a collision course with Outa

Michael Avery and guests talk about how Aarto will affect businesses and fleets

29 June 2021 - 13:58 Business Day TV



FURORE: Metro police conduct a road block on Chris Hani Road in Soweto. Fines in Gauteng are much lower than in the Western Cape, where many fines have been doubled and trebled. Picture: SOWETAN

SA's road deaths, which average 14,000 every year and are among the highest in the world, have been described as a national crisis. Besides the staggering human death toll, the economic cost of fatal accidents is estimated at R200bn. This is why the Administrative Adjudication of Road Traffic Offences Act (Aarto) was written — to change the ways of bad drivers.

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It's been partially trialled in Johannesburg and Tshwane for over a decade. Critics say it's more about making money than road safety, but Aarto is meant to improve road safety and adjudicate infringements under an administrative system to alleviate pressure on an overburdened court system.

Still, the department is determined to go ahead with the implementation of Aarto July 1.

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What will happen come Thursday, and how will this affect businesses and fleets? Michael Avery spoke to Wayne Duvenage, CEO of the Organisation Undoing Tax Abuse (Outa); and Automobile Association (AA) spokesperson Layton Beard.

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Michael Avery and guests talk about how AARTO will affect businesses and fleets

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"CAA 18"

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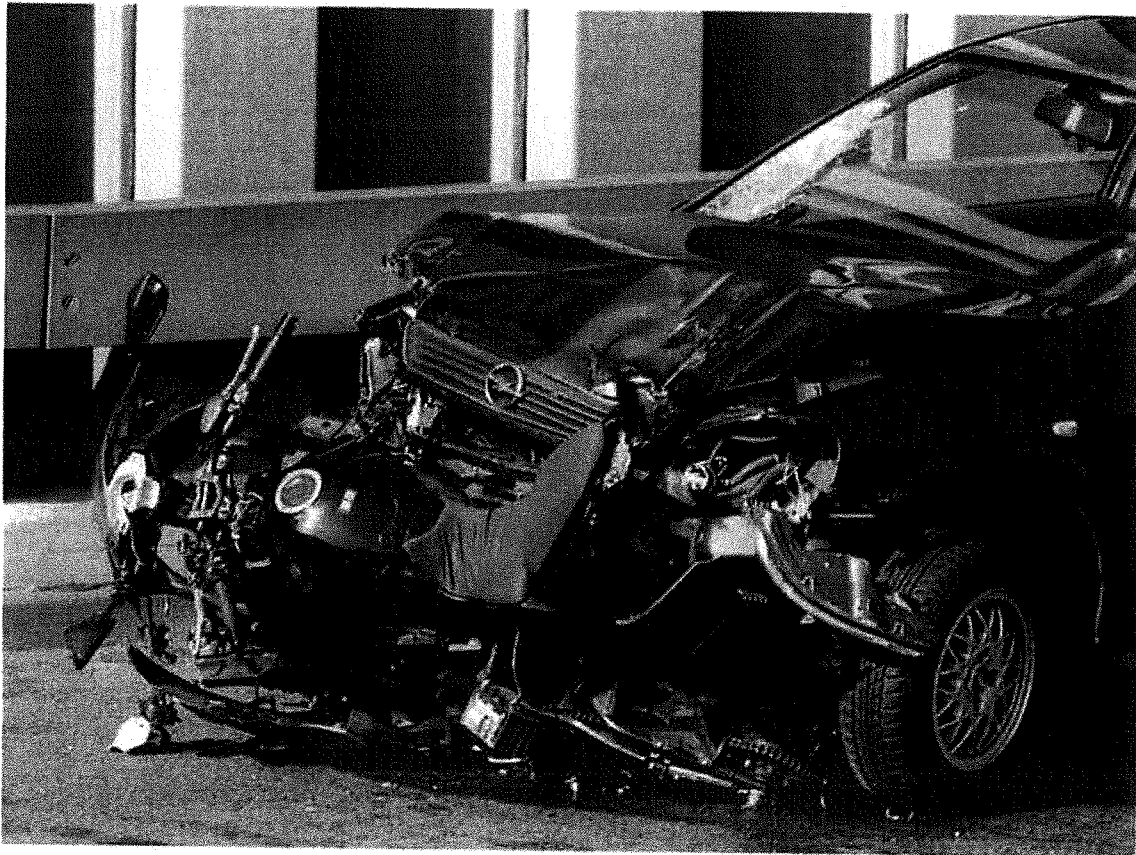
ROAD SAFETY

Aarto starts, but demerit points delayed by another year

New traffic laws will be implemented in a phased approach, says Fikile Mbalula

01 July 2021 - 16:20 Denis Droppa

UPDATED 01 July 2021 - 21:13



The Aarto roll out is intended to stem the carnage on SA's roads. Picture: SUPPLIED

The new legislation intended to decriminalise traffic offences started its rollout nationally in a phased approach from Thursday, but the licence demerit points system has been further delayed by a year.

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Transport minister Fikile Mbalula said on Thursday that the Administrative Adjudication of Road Traffic Offences Act (Aarto) will be introduced in four phases, culminating in the coming online of the points demerit system (PDS) on July 1 2022.

Traffic violations are currently handled as criminal offences, but the act, passed in 2019 decriminalises most traffic violations and seeks to deal with them via an administrative process.

DD

There will be no clean slates as old traffic fines incurred under the Criminal Procedures Act will still have to be paid.

The PDS aims to penalise repeat driving offenders through a demerit system from 0 to 15.

A driver who collects more than 15 points will have their driver's licence suspended for up to three months. Three suspensions will result in it being cancelled. The driver will then have to retake the learner's and driving tests.

An adjudication process and appeals tribunal will be set in motion to help the motorists resolve their traffic infringements without burdening the courts of law. If a motorist is not in agreement with the adjudication results, they can approach the independent appeals tribunal as a recourse.

"Considering the significant impact the PDS will have on the public, it is critical intensive public awareness and education campaigns are intensified to ensure every road user in the country understands the implications of the suspension and cancellation of licences due to non-compliant behaviour with road traffic laws," he said.

"We must be mindful that Aarto is being introduced to save lives, and if you are compliant with all road traffic laws you have nothing to worry about."

There has been opposition to Aarto from the Automobile Association (AA) and the Organisation Undoing Tax Abuse (Outa), with the latter filing a high court application against the Aarto Act, asking for it to be declared unconstitutional.

Outa said the government should not have proceeded with the nationwide rollout on July 1 until the constitutional challenge had been heard on October 18 and 19 2021.

"Aarto was rolled out in Gauteng 10 years ago and failed spectacularly. Statistics do not support the claim it will lead to a reduction in fatalities on roads," said Outa.

droppad@businesslive.co.za

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SOUTH AFRICA

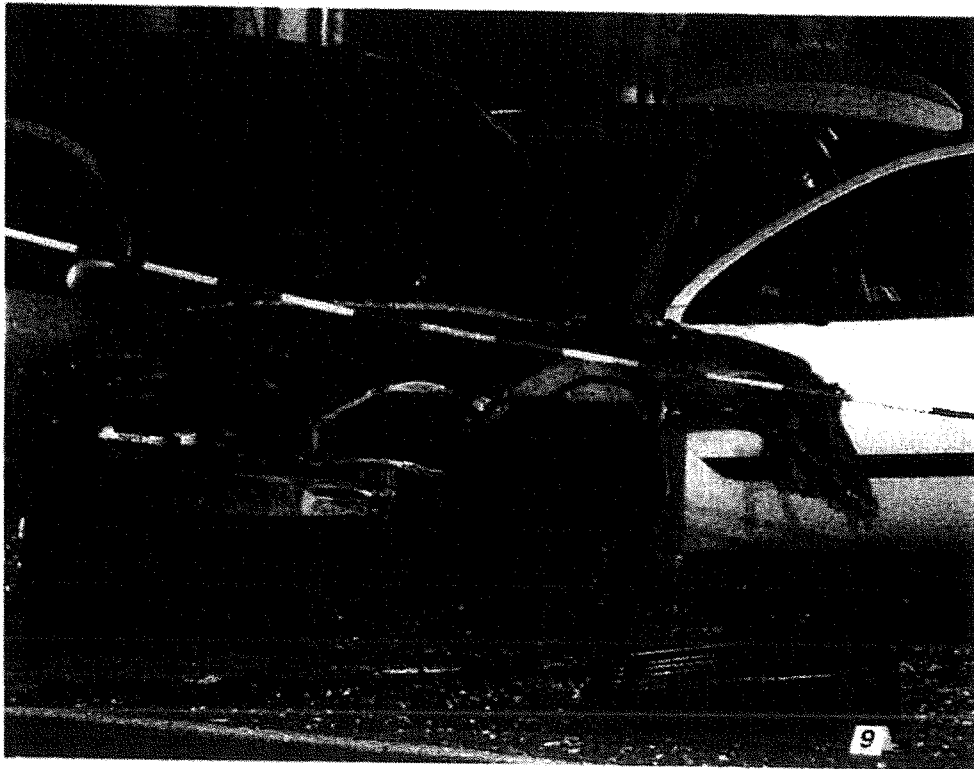
"CAA 19"

Aarto starts on Thursday, but demerit points delayed by another year

New traffic laws will be implemented in a phased approach, says Fikile Mbalula

Denis Droppa

GROUP MOTORING EDITOR



The Aarto phased rollout, intended to stem the carnage on SA's roads, will take place over 12 months starting on July 1 2021.

Image: Reuters

The much-awaited new Administrative Adjudication of Road Traffic Offences Act (Aarto) will be rolled out nationally in a phased approach from Thursday, but the licence demerit points system has been further

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Transport minister Fikile Mbalula said on Thursday that the act will be introduced in four phases, culminating in the coming online of the Points Demerit System (PDS) on July 1 2022.

Traffic violations are currently handled as criminal offences, but the Aarto Amendment Act passed in 2019 decriminalises most traffic violations and seeks to deal with them via an administrative rather than criminal process.

Old traffic fines incurred under the Criminal Procedures Act will have to be paid, and there is no "clean slate" for previous offenders with the introduction of Aarto.

In a country that sees around 14,000 road deaths a year, the PDS aims to penalise repeat driving offenders through a points demerit system. Drivers will start with 0 points and be allowed to drive until they reach a maximum 15 points.

A driver who collects more than 15 points will have their driver's licence suspended for up to three months. Three suspensions will result in a licence being cancelled. The driver will then have to retake the learner's licence and driving tests.

Mbalula said the first phase of the rollout from July 1 to September 30 2021 is intended to increase the footprint of the Road Traffic Infringement Agency (RTIA) nationally to be closer to the public, through seven Aarto service outlets and online services such as the Aarto website and the Aarto mobile application.

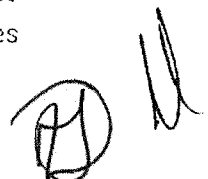
These service outlets will allow the public to exercise their Aarto elective options, especially those in rural communities. Issuing authorities in all provinces will be in a position to facilitate access to the elective options and give the public the ability to pay for their infringements anywhere in the country.

This phase will be accompanied by aggressive public awareness and education campaigns to ensure all road users are empowered with Aarto education in a language they understand.

The second phase from October 1 to December 31 2021 will see 77 local and metropolitan municipalities coming online with the Aarto process.

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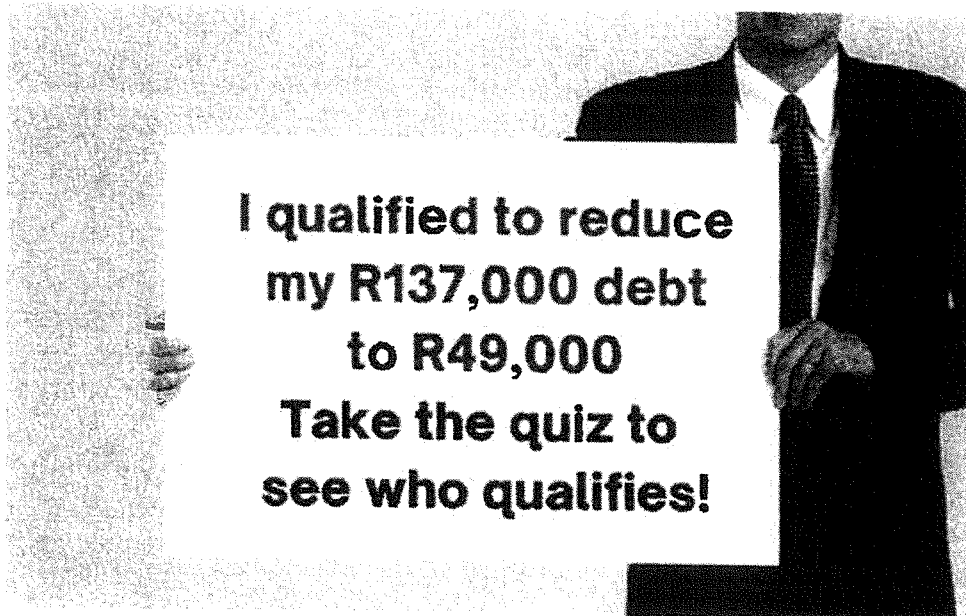
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with the adjudication results, they can approach the independent appeals tribunal as a recourse in the administrative justice process.

This will reduce the burden on the courts and decriminalise traffic infringements, save for offences that will be dealt with by the courts, said Mbalula.

This will be adopted to ensure a seamless transition, further enhanced with the coming online of another 18 Aarto service outlets with intensified public awareness and education campaigns.

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The third phase of the rollout will run from January 1 to June 30 2022 and will be characterised by the coming on board of the remaining 144 local municipal areas.

The fourth phase will wrap up the entire implementation of Aarto from July 1 2022 when the PDS and driver rehabilitation programmes will be introduced.

"By the time we reach this milestone, there will be no excuse among our road users that they do not understand the implications and consequences of the Aarto process," said Mbalula.

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campaigns are intensified to ensure every road user in the country understands the implications of the suspension and cancellation of licences due to non-compliant behaviour with road traffic laws," he said.

"We must be mindful that Aarto is being introduced to save lives, and if you are compliant with all road traffic laws you have nothing to worry about. SA has to remain true to the commitments made to the UN Decade of Action for Road Safety 2021–2030. We have made a commitment to arresting the carnage on our roads and committed to reimagine our approach to road safety and making sure our people arrive alive when using our roads."

Road users will be able to view and query their fines on the www.aarto.gov.za website or Aarto mobile app, where they can nominate the driver of the vehicle, apply for representation, apply for a revocation of an enforcement order, or arrange to pay their fines in instalments up to a period of six months.

There has been opposition to Aarto from the Automobile Association (AA) and the Organisation Undoing Tax Abuse (Outa), with the latter filing a high court application against the Aarto Act, asking for it to be declared unconstitutional.

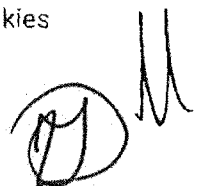
The organisation said government should not have proceeded the nationwide rollout on July 1 until the constitutional challenge has been heard on October 18 and 19 2021.

Like the AA, Outa has been an outspoken critic of the act and believes Aarto will not achieve its objectives of improving road safety and reducing fatalities.

"Aarto was rolled out in Gauteng 10 years ago and failed spectacularly. Statistics do not support the claim it will lead to a reduction in fatalities."

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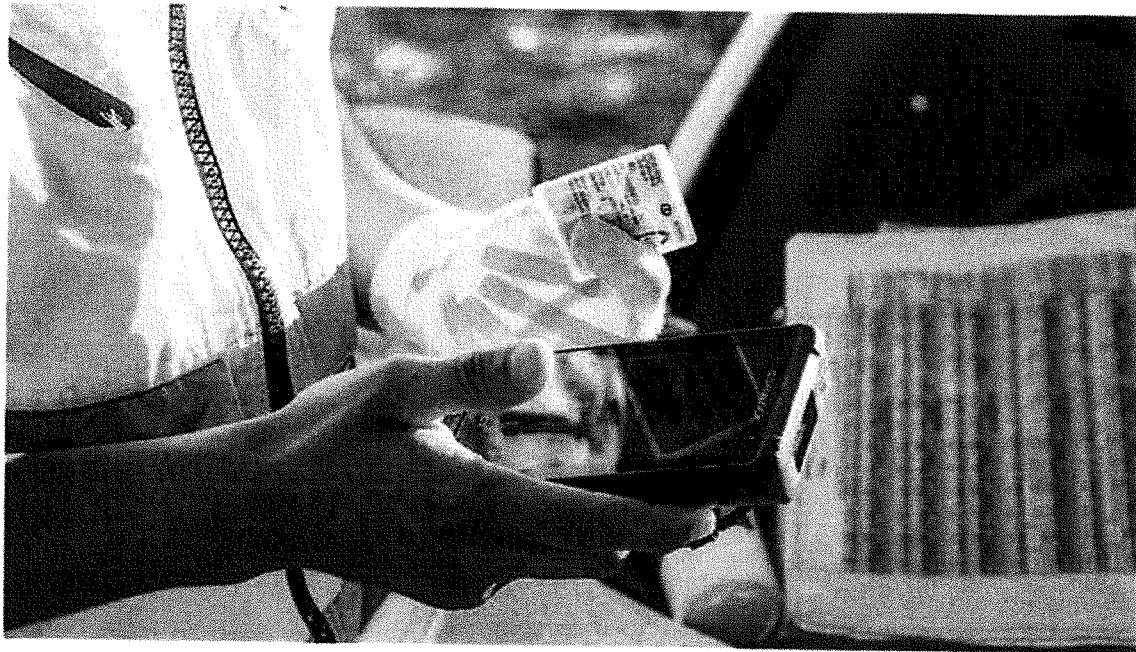
"CAA 20"

Trending

01 Jul 2021

Demerits and rehab for SA's bad drivers – but only in 2022

Business Insider SA



(Photo by Gallo Images/Jacques Stander)

- South Africa's new traffic infringement laws will come into effect in four distinct phases.
- Drivers will get demerit points for traffic offences and need to undergo a rehabilitation programme to earn back their suspended licenses.
- But this will only be introduced in July 2022.
- For more stories go to www.BusinessInsider.co.za.

South Africa's controversial Administrative Adjudication of Road Traffic Offences (AARTO) regulations will be introduced in a phased approach – with demerit points for road infringements and rehabilitation for drivers with suspended licenses coming into effect in 2022.

The AARTO Act, which was first introduced in 1998 with the intention of curbing the carnage on South Africa's roads, has been amended and extended to impose harsher penalties on the country's bad drivers.

Managed by the Road Traffic Infringement Agency (RTIA), AARTO enforcement has been trialled in Tshwane and Johannesburg since 2008 while the rest of South Africa's road infringements are still prosecuted through the Criminal Procedure Act.

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Civil society organisations and political parties have challenged efforts to apply the system nationally. Disputes lodged during the regulations' public comment phases have delayed the Act's implementation since 2019.

Despite a pending legal challenge, lodged by the Organisation Undoing Tax Abuse (OUTA) which seeks to have the Act ruled unconstitutional, AARTO was expected to come into effect on Thursday. A media briefing by the department of transport on the launch day revealed that, following advice from the state's legal advisory team, AARTO was still awaiting a presidential "proclamation notice" before the regulations could be properly implemented.

READ | 1,000 things can lead to your licence being suspended from next month – these are worst

Under the new Act drivers who accumulate more than 15 demerit points – which can be earned by violating more than 1,000 traffic laws – will have their licenses suspended. Challenging these penalties must be done through an Appeals Tribunal.

Drivers who lose their licenses due to repeated infringements – classified as "habitual infringers" – will be required to undergo a rehabilitation process to earn their licenses back.

But none of these regulations will come into effect this year, as was initially intended by the department of transport and RTIA. Instead, three foundational phases will first need to be rolled out. This is expected to take a year, with demerits and rehabilitation for bad drivers expected to come into effect between July 2022 and June 2023.

Phase 1 of the AARTO rollout, which officially began on Thursday, will establish seven national service outlets which inform drivers of the enforcement processes. It will also see the National Traffic Information System (NaTIS) being incorporated to collect AARTO payments. This phase is expected to be completed by October 2021.

The second phase will identify the first 67 municipalities which will switch over to the AARTO regulations and to deploy 18 service outlets. The Appeals Tribunal process will also be finalised during this phase which is expected to be completed at the end of the year.

Phase 3 will see AARTO rollout to the remaining 144 municipalities by July 2022. The fourth and final phase will introduce the points demerit system, driver rehabilitation centres and 20 self-service kiosks.

"By the time we reach this milestone, there will be no excuses among our road users that they do not understand the implications and consequences of the AARTO processes," explained transport minister Fikile Mbalula on Thursday.

(Compiled by Luke Daniel)

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"CAA 21"

Aarto fails on promised start date

02 Jul 2021 - by Staff reporter



Minister of Transport Fikile Mbalula.

Minister of Transport Fikile Mbalula yesterday announced that the July 1 implementation of Aarto (Administrative Adjudication of Road Traffic Offences Act) had now been pushed forward to July 2022, as the authorities must still set up the infrastructure to run it.

"We have repeatedly pointed out the problems with this system, which is administratively complicated and relies on chaotic municipal systems," the Organisation Undoing Tax Abuse (Outa) has said. "Earlier this week, Outa pointed out that the Aarto Amendment Act still did not have a start date so could not be implemented, and even if such a date was gazetted at the last minute, the system would fail as the authorities were clearly not ready."

"It now seems likely that Outa's legal challenge to the constitutionality of Aarto will be heard before the amended Aarto act comes into effect. Our challenge, filed in July 2020 in the Pretoria High Court, is set down for hearing on October 18, 2021," says Advocate Stefanie Fick, head of the organisation's accountability division.

"What seems extraordinary is that the transport authorities themselves were apparently not aware of how unprepared they are," says Outa. In Mbalula's budget speech on May 25, he said: "We are on track with our target to proclaim July 1, 2021 as the effective date for the nationwide rollout of Aarto."

"Even more extraordinary was the failure by Mbalula and his department to explain to the public – and all those municipalities which are supposed to be implementing Aarto – that the demerit system was never going to start on July 1. Instead, we had to wait until the much-promised "start date" to hear instead about the administrative "rollout" plans for the next year. Did he and his team only find out about this a few days ago?"

MD

"This lack of planning seems particularly egregious given that in Budget 2021 the Department of Transport gives the Road Traffic Infringement Agency (RTIA) R224 million this year for the "Aarto Rollout Programme" (a big increase from last year's R88 million). Didn't the RTIA have to provide a plan to get this funding? Did the department not read it?"

There was also an inability to assess their own performance, Outa points out. "The minister referred to the Aarto pilot projects in Johannesburg and Tshwane as "successfully operational... although with some teething problems that were dealt with". This is astonishing; has anyone noticed a reduction in traffic accidents and deaths in those areas in the last decade?

"Outa is definitely in favour of holding to account any motorist who disobeys traffic laws, but Aarto is not the answer. Government is unable to administer the process effectively," says Fick.

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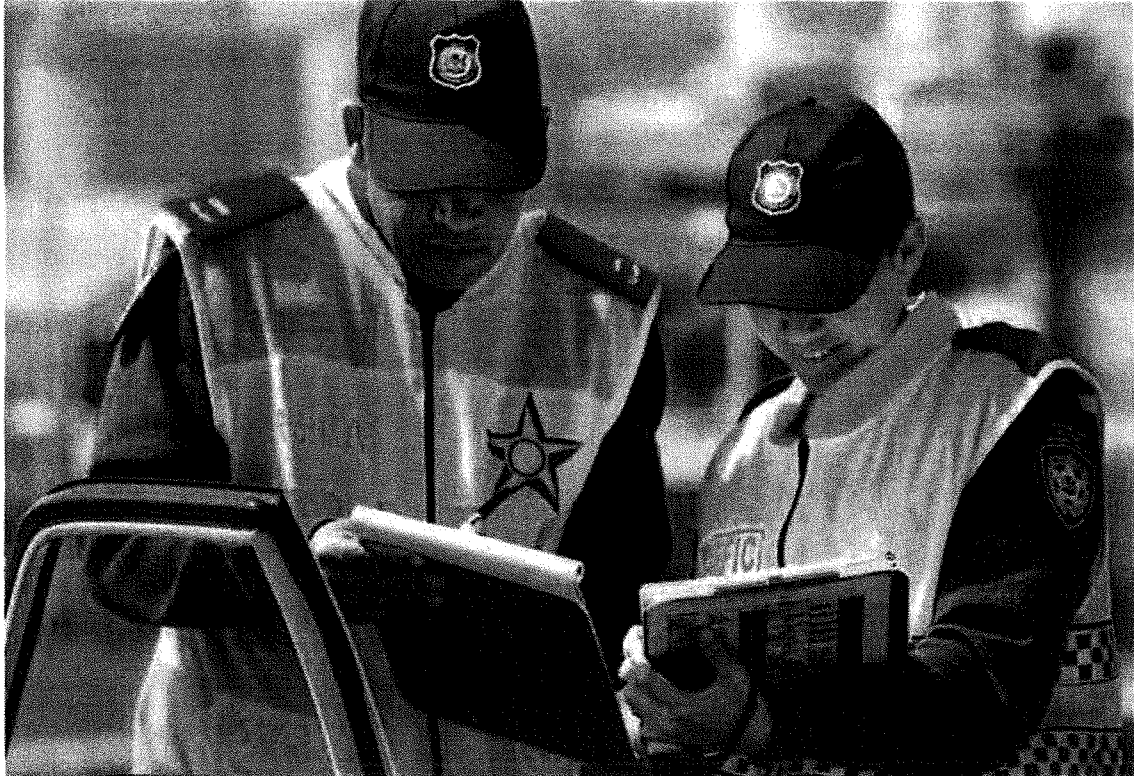
"CAA 22"

05 Jul 2021

Reprieve for motorists as controversial Aarto Act is delayed until next year

The Witness

Estelle Sinkins



Motorists, worried about how controversial new traffic regulations will affect them, have been given a reprieve.

Transport Minister Fikile Mbalula confirmed on Thursday that full implementation of the amended Administrative Adjudication of Road Traffic Offences (Aarto) Act, which was due to come into effect on July 1, has been delayed until July 2022.

From now until September, the Road Traffic Infringement Agency (RTIA) will be able to create seven service outlets and use the Aarto website and the mobile APP to raise public awareness.

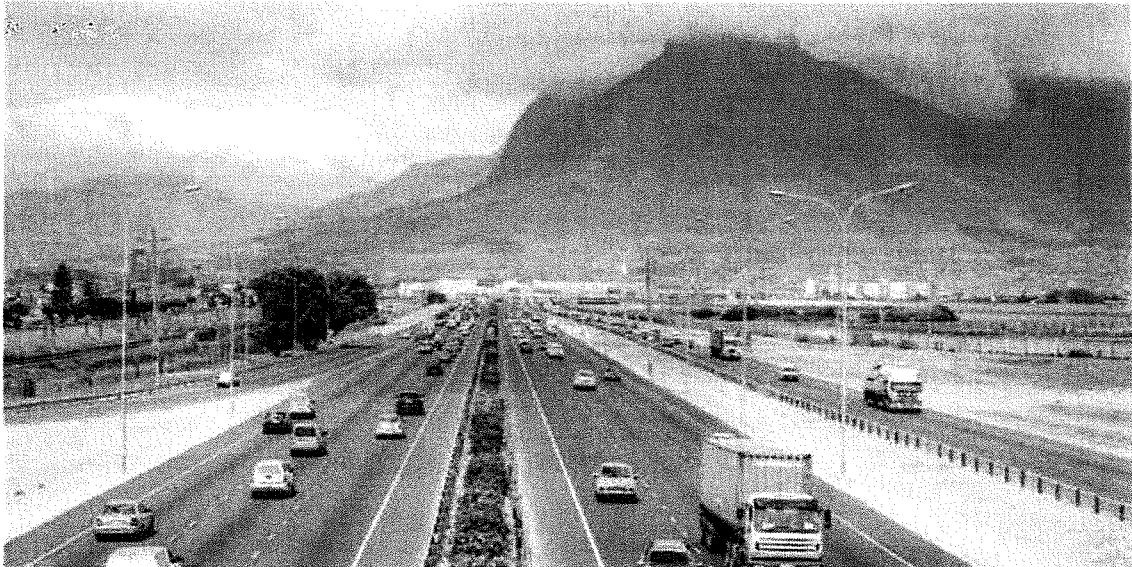
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"CAA23"

Challenge to Aarto's constitutionality gets its day in court

20 Oct 2021 - by Staff reporter



Monday saw the start of proceedings in the Pretoria High Court to challenge the validity of the Administrative Adjudication of Road Traffic Offences (Aarto) Act and Aarto Amendment Act.

The Organisation Undoing Tax Abuse (Outa) is calling on the court to declare both the main act and the amendment act unconstitutional.

The case is being heard by Judge Basson.

Outa's case is against the Minister of Transport, currently Fikile Mbalula, the Minister of Cooperative Governance and Traditional Affairs (CoGTA), currently Nkosazana Dlamini-Zuma, the Road Traffic Infringement Authority (RTIA), and the RTIA Appeals Tribunal. The Minister of Transport and the RTIA are opposing the application. The CoGTA minister did not oppose it and will abide by the court's decision.

The case was filed in July 2020 and has taken more than a year to get to the hearing.

Outa has been vocal for many years about its criticisms of Aarto. It believes that these pieces of traffic legislation are unconstitutional and will not help to reduce traffic fatalities.

Government repeatedly promised to roll out Aarto nationally in mid-2021, but ultimately acknowledged it was not ready and moved to a phased rollout instead.

"Outa is a strong supporter of road safety and effective traffic legislation. We believe that to achieve this outcome, South Africa needs effective processes enabled by fair adjudication that comply with the Constitution," says Advocate Stefanie Fick, Outa's executive director of the accountability and governance divisions.

"While we believe that measures to improve road safety and reduce fatalities are urgently needed, we don't believe that the Aarto Amendment Act will achieve this. Aarto was rolled out in

Gauteng 10 years ago and failed spectacularly. Statistics do not support the claim that it will lead to a reduction in fatalities on our roads," says Fick.

Outa believes that the legislation unlawfully intrudes upon the exclusive executive and legislative competence of the local and provincial governments envisaged in the Constitution. If the court finds that the law is not inconsistent with the Constitution, then Outa further opposes Section 17 of the Amendment Act, which removes the requirement that service of notices and related documents must be done personally or by registered mail, instead allowing the use of email, SMS or voice message.

The organisation believes that 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 fewer fatalities on our roads. "The true test of legislation is whether it will be able to withstand constitutional scrutiny as legislation is only effective if it can be enforced," Outa contends.

Outa's argument

Outa is arguing that the Aarto Act and the Amendment Act are unconstitutional for two reasons.

Firstly, because these acts usurp the exclusive legislative authority of the provincial legislatures as, in terms of the Constitution, provincial and municipal traffic regulation falls under the legislative competence of the provinces.

Secondly, because the Acts usurp the executive authority of local government, granted in terms of the Constitution, to enforce traffic and parking laws at municipal level. "These Acts create a system whereby traffic laws are, by default, enforced through a national system of administrative tribunals, administrative fines and demerit points," says Advocate Matthew Chaskalson, SC, in the heads of argument for Outa.


"The national government did not have the power to pass national legislation regulating all road traffic. By so doing it unconstitutionally invaded the exclusive legislative competence of the provinces and the exclusive executive competence of the municipalities," says Chaskalson.

Alternatively, Outa argues that the service provisions of section 17 of the Amendment Act are "manifestly inadequate and are unconstitutional" as they remove the requirement that service of documents under the Aarto Act must be personal or by registered mail. "It allows service by email, SMS or voice mail. Given the serious consequences that may flow from an infringement, such service is inadequate," says Chaskalson.

"Proper service, at all stages of the adjudication process, is critical to ensuring that an infringer's constitutional rights are protected."

An infringer who has not received notice of their infringement, and who would have contested it or even paid the penalty, may end up barred from obtaining a driver's licence or banned from driving until they have overturned the enforcement order.

The Minister of Transport has opposed the application and argues that, if the court does rule that Aarto is unconstitutional, it should suspend the declaration of invalidity for 24 months to allow Parliament to rectify this. Outa opposes this, arguing that Aarto has not yet been rolled out nationally so the acts should be set aside with immediate effect so the state does not incur significant rollout costs which end up wasted.



'CAA24'

By Reitumetse Makwea

Journalist

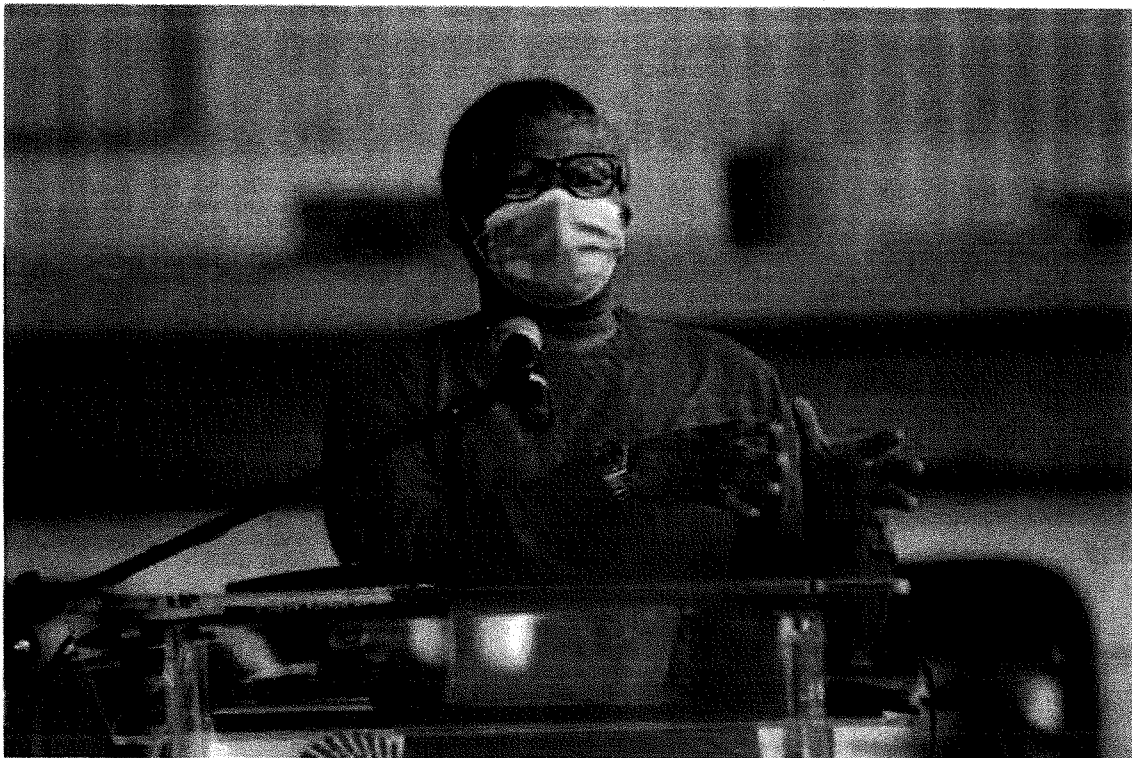
2 minute read

19 Oct 2021

7:00 am

Leave Aarto to parly, says government

Outa challenged the constitutional validity of Aarto and the Aarto Amendment Act and called on the court to declare both the main Act and the amendment Act unconstitutional.



Transport Minister Fikile Mbalula. Photo: Gallo Images/Phill Magakoe

Although the new traffic fine system proposed by the Road Traffic Infringement Agency (RTIA) and administered via the Administrative Adjudication of Road Traffic Offences (Aarto) Act may seem unconstitutional, parliament should be given a chance to remove the problematic parts of the Act, a court heard on Monday.

The Organisation Undoing Tax Abuse (Outa) on Monday argued its case against the Aarto Act and Aarto Amendment Act at the High Court in Pretoria.

The minister of transport and the RTIA opposed the application.

(Handwritten signature)

According to advocates Resenga Mokhari, for RTIA, and Makhosi Gwala, who was representing Minister of Transport Fikile Mbalula, instead of completely declaring the Act unconstitutional, the court should rather “allow parliament an opportunity to remedy the situation”.

Outa challenged the constitutional validity of Aarto and the Aarto Amendment Act and called on the court to declare both the main Act and the amendment Act unconstitutional.

ALSO READ: Dissecting the incoming Aarto demerit system for drivers

According to Outa, the case is against Mbalula, the Minister of Cooperative Governance and Traditional Affairs (CoGTA) Nkosazana Dlamini-Zuma, the RTIA and the RTIA Appeals Tribunal.

Outa argued that the Aarto Act and the Amendment Act were unconstitutional because the acts “usurp the exclusive legislative authority of the provincial legislatures as, in terms of the constitution, provincial and municipal traffic regulation falls under the legislative competence of the provinces”.

Advocate Matthew Chaskalson, in the heads of argument for Outa, said the Acts take the executive authority of local government, granted in terms of the constitution, to enforce traffic and parking laws at municipal level.

“These Acts create a system whereby traffic laws are, by default, enforced through a national system of administrative tribunals, administrative fines and demerit points,” he said.

“The national government did not have the power to pass national legislation regulating all road traffic.

ALSO READ: Aarto act: Four phases of rollout explained

“It unconstitutionally invaded the exclusive legislative competence of the provinces and the exclusive executive competence of the municipalities.”

Meanwhile, Gwala said parliament has legislative competency and power to pass the legislation, which was necessary to avoid unfair treatment and create a uniform standard for motorists across the country.

He also said the proposed legislation will regulate all traffic and reiterated that the court should allow parliament to take corrective measures.

Judgment was reserved.

Read more on these topics

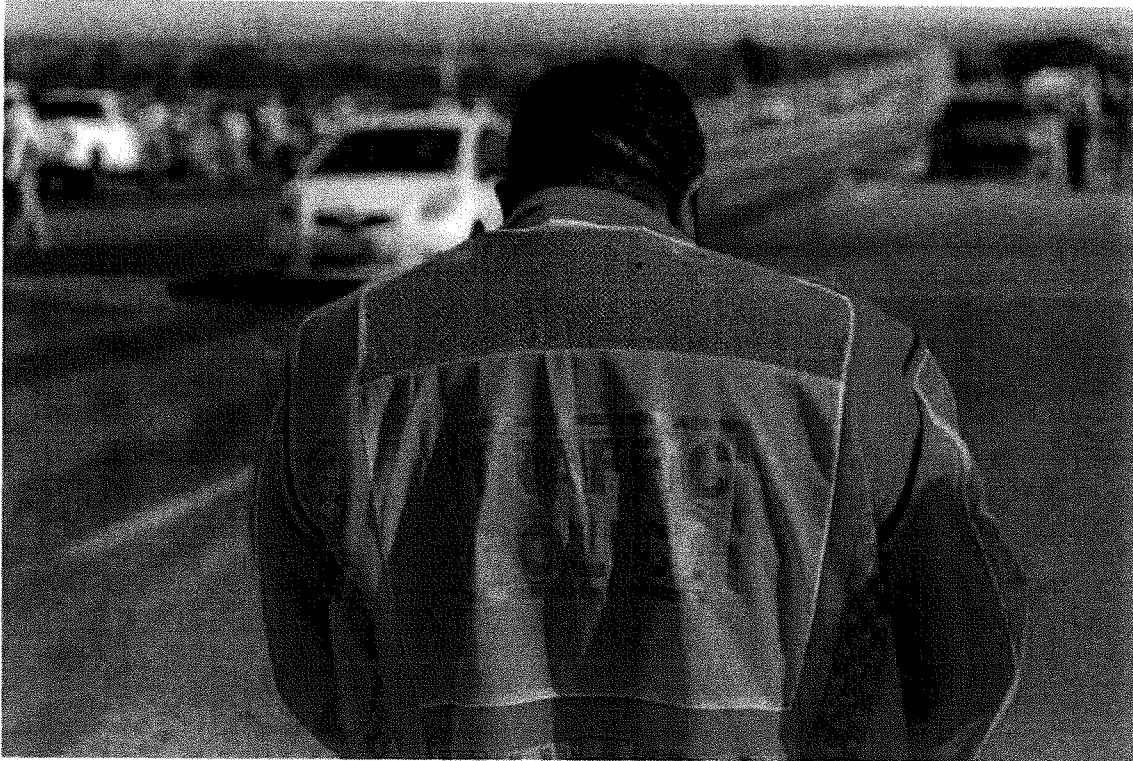
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"CAA25"

South Africa's new driving rules are being challenged – what you should know

Staff Writer

18 October 2021



Civil society group Outa is challenging the Administrative Adjudication of Road Traffic Offences (Aarto) Act and the Aarto Amendment Act, arguing that the regulations are unconstitutional.

The Aarto system will penalise drivers and fleet operators guilty of traffic offences or infringements by imposing demerit points that could lead to the suspension or cancellation of licences, professional driving permits or operator cards.

The legal case, which is set to be heard in Pretoria High Court from Monday (18 October), focuses specifically on the introduction of a new demerit system, how fines will be issued, and whether the Aarto amendments will improve road safety.

Outa argues that the legislation unlawfully intrudes upon the exclusive executive and legislative competence of the local and provincial governments envisaged in the Constitution.

Outa's argument

Outa is arguing that the Aarto Act and the Amendment Act are unconstitutional for two reasons.

- Firstly, because these Acts usurp the exclusive legislative authority of the provincial legislatures as, in terms of the Constitution, provincial and municipal traffic regulation falls under the legislative competence of the provinces.

- Secondly, the Acts usurp the executive authority of local government, granted in terms of the Constitution, to enforce traffic and parking laws at a municipal level.

"These Acts create a system whereby traffic laws are, by default, enforced through a national system of administrative tribunals, administrative fines and demerit points," said advocate Matthew Chaskalson, senior counsel, in the heads of argument for Outa.

"The national government did not have the power to pass national legislation regulating all road traffic. By so doing, it unconstitutionally invaded the exclusive legislative competence of the provinces and the exclusive executive competence of the municipalities.

"The participation or approval of the provinces cannot cure this fundamental defect."

Alternatively, Outa argues that the service provisions of section 17 of the Amendment Act are 'manifestly inadequate and are unconstitutional' as it removes the requirement that service of documents under the Aarto Act must be personal or by registered mail.

"It allows service by email, SMS or voice mail. Given the serious consequences that may flow from an infringement, such service is inadequate," said Chaskalson.

"Proper service, at all stages of the adjudication process, is critical to ensuring that an infringer's constitutional rights are protected."

An infringer who has not received notice of their infringement and who would have contested it or even paid the penalty may end up barred from obtaining a driver's licence or banned from driving until they have overturned the enforcement order.

No personal delivery of fines

The Road Traffic Infringement Agency (RTIA) is currently rolling out phase 2 of the Aarto ahead of its full implementation on 1 July 2022.

Phase 2 of the project, which will run between October and December 2021, will see the Aarto come online in 67 local and metropolitan municipal areas, the agency said.

The new phase will also see the official introduction of the electronic service of documents such as traffic infringements, promising a shake-up of the decades-old traffic fine system in South Africa.

Speaking to BusinessTech on 5 October, RTIA spokesperson Monde Mkalipi said that the new electronic service would effectively give motorists an option to receive their traffic fines in three different ways:

- Through the standard postal method;
- Via SMS or other mobile messaging services; and
- Online, including an option to receive traffic fines through email.

Mkalipi said that motorists would choose which option they prefer through the Aarto onboarding process.

He added that the Electronic Communications Act would be followed for fines sent electronically, with traffic authorities tracking whether a fine has been sent through email and SMS and not whether it has been opened and read by a motorist.

