

78

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT: 19/2022

In the matter between :-

ORGANISATION UNDOING TAX ABUSE

Applicant

and

MINISTER OF TRANSPORT

1st Respondent

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

2nd Respondent

ROAD TRAFFIC INFRINGEMENT AUTHORITY

3rd Respondent

APPEALS TRIBUNAL

4th Respondent

FILING SHEET

DOCUMENT:

1ST RESPONDENT'S ANSWERING AFFIDAVIT

ON ROLL :

FILED BY:

ATTORNEY FOR 1ST RESPONDENT

STATE ATTORNEY PRETORIA

SALU BUILDING

316 THABO SEHUME STREET

CNR THABO SEHUME (ANDRIES) AND FRANCIS

BAARD (SCHOEMAN) STREETS

PRIVATE BAG X91

PRETORIA, 0001

Ref: 2562/2020/Z22

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Enq: Ms N Qongqo

TO: THE REGISTRAR
CONSTITUTIONAL COURT

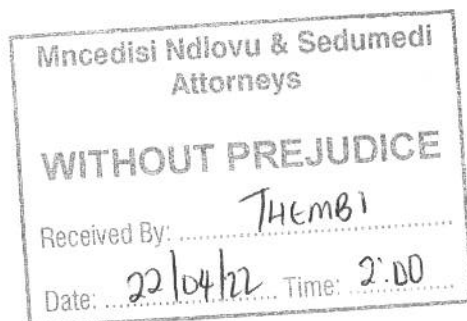
AND
TO:

APPLICANT'S ATTORNEYS
JENNINGS INCORPORATED
222 SMIT STREET
BRAAMFONTEIN
JOHANNESBURG
TEL: 012 110 4442/ 010 005 4572
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REF: A JENNINGS/OUT002/CC

Andri
06/05/2022
14:20

AND TO:

MNCEDISI NDLOVU & SEDUMEDI ATTORNEYS
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C/O MPONYA LEDWANA INC
194 BLACKWOOD STREET
ARCADIA
PRETORIA

RECEIVED COPY:

TIME:

DATE:

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT: 19/2022

In the application between:

ORGANISATION UNDOING TAX ABUSE

Applicant

and

MINISTER OF TRANSPORT

First Respondent

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

Second Respondent

ROAD TRAFFIC INFRINGEMENT AUTHORITY

Third Respondent

APPEALS TRIBUNAL

Fourth Respondent

MINISTER OF TRANSPORT'S ANSWERING AFFIDAVIT

I, the undersigned,

FIKILE APRIL MBALULA,

state under oath that:

- 1 I am the first respondent.
- 2 The facts in this affidavit are within my personal knowledge unless the context suggests otherwise. To the best of my knowledge and belief, the facts are true and correct.

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- 3 Any submissions of law that I make in this affidavit are made on the advice of my legal representatives, and I make no waiver regarding the privilege that attaches to that advice when I do so.

OVERVIEW

- 4 On 13 January 2022, the High Court declared that Administrative Adjudication of Road Traffic Offences Act 46 of 1998 ("AARTO Act") and the Administrative Adjudication of Road Traffic Offences Amendment Act 4 of 2019 ("Amendment Act") are unconstitutional and invalid on the grounds that they "unlawfully intrude upon the exclusive executive and legislative competence of the local and provincial governments".¹

- 5 This is an application for the confirmation of a judgment of the High Court's judgment and order. The applicant ("OUTA") lodged an application for confirmation on 2 February 2022.

- 6 On 7 February 2022, I delivered a notice of appeal under sections 167(5) and 172(2)(d) of the Constitution and rules 16(2) and (3) of the Constitutional Court Rules, read with section 15 of the Superior Courts Act 10 of 2013. The third respondent ("Agency") also delivered a notice of appeal on 7 February 2022. On 8 March 2022, the Road

¹ Judgment *a quo*, para 45.

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Traffic Management Corporation ("RTMC") applied to intervene in the confirmation application.

7 The notice of appeal I filed on 7 February 2022 sets out the grounds upon which the appeal is brought; I indicate which findings of fact or law are appealed against and what order I contend ought to have been made. In the application for confirmation, OUTA provided for me to deliver an answering affidavit to the application for confirmation. That is the reason for this answering affidavit. This affidavit should be read with the notice of appeal.

8 In outline, I submit:

8.1 The AARTO Act falls within the ambit for road traffic regulation as contemplated in Part A of Schedule 4 of the Constitution.

8.2 The subject matter of the AARTO Act is road traffic regulation, which is a matter of national and provincial concurrent legislative competence in terms of the Constitution. This means that both the national and the provincial legislatures may pass legislation that regulates matters falling within these functional areas.

9 I note that OUTA does not pursue the alternative challenge to the "*service requirements*" under section 30 the AARTO Act (as introduced by section 17 of the Amendment Act). I have assumed therefore that this Court will not determine the issue and will be confined to whether Parliament could pass the AARTO Act and the Amendment Act. The High Court found that it was unnecessary to consider and decide the arguments relating to the "*service requirements*". If this Court dismisses the

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confirmation application and orders that the High Court should have dismissed the constitutional challenge against Parliament promulgating the AARTO Act and the Amendment Act, this Court should determine whether the challenge concerning the “service requirements” should be referred back to the High Court for determination. I note that in a recent case where the High Court had wrongly refused to decide one of the issues which were before it, this Court remitted that question to the High Court.²

- 10 I will respond to the specific paragraphs in the founding affidavit and only answer those paragraphs that I consider still require a specific response. My failure to deal specifically with any particular paragraph should not be taken as an admission of any averment or that any legal contention in the founding affidavit are well-founded.

Ad paragraphs 5.1 and 5.2

- 11 I deny that Parliament usurped the executive authority of local government over municipal road under the AARTO Act and the Amendment Act.

The legal framework

- 12 The Constitution apportions responsibility for the making and implementation of road traffic-related legislation among the national, provincial and local governments.
- 13 The AARTO Act was tagged as a section 76 Bill. The Bill was promulgated in consultation with provinces. Only the Western Cape Province did not support the passing of the Bill. The Mpumalanga Province abstained from voting on the Bill. The

² Public Protector v President of RSA and Others [2021] ZACC 19.

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(NOR)

various provincial legislatures' mandates for representatives to vote on the AARTO Act and Amendment Act are attached as "FM1" to "FM9".

14 In terms of section 40 of the Constitution, there are three spheres of government: national, provincial and local government. Each sphere has autonomy to perform certain powers and functions within the parameters of a defined space. The respective spheres may not assume or intrude in the exercise of another sphere's functions and powers unless permitted under the Constitution.

15 Section 44(1)(a)(ii) provides for Parliament's powers in the following terms:

"(1) The national legislative authority as vested in Parliament—

(a) confers on the National Assembly the power—

...

(ii) to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within a functional area listed in Schedule 5;"

16 Section 44(2) of the Constitution provides as follows:

"Parliament may intervene, by passing legislation in accordance with section 76 (1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary—

(a) to maintain national security;

(b) to maintain economic unity;

(c) to maintain essential national standards;

(d) to establish minimum standards required for the rendering of services;
or

(e) to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole."

17 Read together, these sections:

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17.1.1 Empowers Parliament to pass legislation with regard to "any matter" including those falling within the functional areas listed in Schedule 4 of the Constitution; and

17.1.2 In general precludes Parliament from passing legislation with regard to matters falling within Schedule 5 of the Constitution, unless section 44(2) applies. When section 44(2) applies, Parliament is entitled to pass legislation which falls within Schedule 5. In order to decide whether Parliament may pass legislation which falls under Schedule 5, it must be shown that the legislation is "necessary" to achieve the objects listed in sub-paragraphs (a) to (e) under section 44(2).

18 This is consistent with the overall scheme of the Constitution which requires South Africa to be a unitary, rather than a federal state, subject to a careful division of powers among three spheres of government. Ultimately, the national Parliament is empowered to pass legislation on "any matter". In respect of Schedule 4, there are no restrictions, except those imposed by the Bill of Rights, procedural requirements and rationality constraints. In respect of Schedule 5 matters, there are additional restrictions imposed in section 44 itself.

19 With this scheme, it is necessary to consider the specific provisions in issue.

20 Section 156(1) of the Constitution assigns executive authority over, and administration of, the functional areas listed in Part B of Schedule 4 and Part B of Schedule 5 to municipalities. Section 156(1) should be read with section 151(4) of the Constitution, which provides that "[t]he national or a provincial government may not compromise

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or impede a municipality's ability or right to exercise its powers or perform its functions."

- 21 Part A of Schedule 4 of the Constitution lists public transport, road traffic regulation and vehicle licensing among the functional areas of concurrent national and provincial legislative competence. In relevant part, Part B of Schedule 4 of the Constitution lists municipal public transport and municipal planning.
- 22 Part A of Schedule 5 includes provincial roads and traffic, while Part B includes municipal roads and traffic and parking among the functional areas of exclusive provincial legislative competence.

The AARTO Act falls under Part A of Schedule 4 of the Constitution

- 23 The AARTO Act and the Amendment Act involve the functional area described as "road traffic regulation", which is listed in Part A of Schedule 4 of the Constitution. Accordingly, the restrictions in section 44(1) read with section 44(2) do not apply.
- 24 Since road traffic regulation falls under Part A of Schedule 4, the local governments or municipalities do not have executive authority over, and administration of legislation the purport of which is to provide for road traffic regulation. Further, the AARTO Act does not violate section 151(4) of the Constitution because it does not impede with any municipalities ability to perform their function. No evidence was adduced to demonstrate precisely in what manner there is any impediment of municipalities.

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Interpretation of "road traffic regulation"

- 25 I am advised and submit that courts are required to consider the language, context and purpose in statutory interpretation. Interpretation involves considering the context of the statute in question, and having regard to its purpose in order to clarify the scope and intended effect. A court must read the legislation in line with or in conformity with the Constitution – unless doing so would contradict the plain language of the provision .
- 26 Where a statute is capable of being interpreted in an unconstitutional manner, a constitutional meaning should be preferred.
- 27 The High Court reached conclusions regarding the constitutionality of the AARTO Act and the Amendment Act, without the correct engagement with, and proper consideration of, the context of the AARTO Act, its background, scheme, purpose and intended effect.
- 28 The Court did not consider the possibility of the AARTO Act being constitutionally compliant if the ambit of purport of the Act fell within the functional area of "*road traffic regulation*".
- 29 I am advised that this Court has pronounced on the constitutional scheme underpinning the three spheres of government in a number of judgments as follows:

FA (NDP)

- 29.1 Although the functional areas allocated to the different spheres of government are distinct from one another, they are not contained in "*hermetically sealed compartments*".³
- 29.2 A potential for overlap between the competences of the different spheres does not constitute an impermissible intrusion by one sphere into the area of another.⁴
- 29.3 The separation of functional areas in Schedules 4 and 5 can never be absolute, and a single law may touch upon subject matter that falls both within and outside legislative competence.
- 30 Accordingly, it is within the constitutional scheme, as interpreted by the Constitutional Court, for Parliament to adopt national legislation that:
- 30.1 Recognises and gives effect to the interrelationship and interdependence between related functions of each sphere of government; and
- 30.2 Includes provisions that regulate inter-provincial, or national road traffic related matters.
- 31 On a proper interpretation, the AARTO Act falls within this constitutional scheme.
- 32 The preamble to the AARTO Act gives an indication of its background and context. In terms of the preamble, the AARTO Act seeks to promote road traffic quality by


³ City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others 2010 (6) SA 182 (CC), para [55].

⁴ Maceand (Pty) Ltd v City of Cape Town 2012 (4) SA 181 (CC), para [43].

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providing for a scheme that discourages road traffic contraventions and facilitate the efficient adjudication of road traffic infringements.

- 32.1 The Act also seeks to introduce an alternative procedure whereby the majority of road traffic offences are settled outside of courts;
 - 32.2 Introduce a "*fast track*" procedure for those infringements (major infringements) which are more likely to end up in court (i.e. as a result of severity and quantum of the penalty)
 - 32.3 Introduce a representation procedure for "*minor infringements*" to grant infringers the opportunity to make representations by providing facts which would lead a court on reasonable grounds not to hold them liable for penalties
 - 32.4 Promote even-handedness in penalising infringers by providing that uniform penalties are imposed for infringements handled administratively
 - 32.5 Introduce demerit points in terms of which illegal behaviour is penalised by the imposition of points which may ultimately lead to suspension or cancellation of a driving licence, professional driving permit or operator card
 - 32.6 Prohibit the issuing of a driving licence, professional driving permit, an operator card or license disc to an infringer in respect of whom an enforcement order has been issued, until the penalty and fees are paid.
- 33 Schedule 4 does not distinguish between road traffic regulation at a national level, a provincial level and at a municipal level. The text is general and allows Parliament to pass legislation that generally provides for road traffic regulation. It would be contrary to the text and purpose of Part A of Schedule 4 to interpret it as distinguishing between

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road traffic regulation at a national level, a provincial level and at a municipal level. That approach ignores the pith of Schedule 4 which focusses on the subject matter, and not on a sphere of government. To focus on a sphere of government confuses the enquiry and turns it on its head. In order to decide on the division of responsibility one must consider the subject matter of the legislation, rather than the sphere of government.

- 34 Therefore, the functional area for road traffic regulation – the subject matter – falls under Part A, which means there is concurrent legislative competence. Parliament is not limited to legislating only for road traffic regulation at a national level or on national roads.
- 35 If this Court finds that the scope and purport of the AARTO Act and the Amendment Act falls within the functional areas listed in Schedule 5 and thus falls within the exclusive jurisdiction of provincial legislatures, I submit that Parliament was justified to intervene because it was necessary to establish a minimum standard and maintain essential national standard in the regulation and administration of traffic offences and violations as contemplated in section 44(2) of the Constitution.
- 36 The AARTO Act ensures harmony and standardisation of the adjudication of traffic violations nationally. The Act ensures that there is no differentiation between the prosecutions of traffic infringements because of the area in which the infringement is committed. Such differentiation would be arbitrary and unreasonable.
- 37 The AARTO Act is consistent with the National Road Traffic Act 1996 ("NRTA"), which addresses all road traffic matters that apply uniformly throughout South Africa.

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- It prescribes national ideologies, necessities, strategies, agendas and norms and standards that must be used in all provinces, as well as other issues described in section 146(2) of the Constitution.
- 38 The prosecution of traffic violations is a matter of national interest and should accordingly be regulated in terms of national legislation. The prosecution is currently undertaken through the criminal justice system. The prosecution under the current system has resulted in unnecessary strain on judicial resources. Due to high incident of crime in the country, our courts give priority to serious crimes as opposed to traffic violations with the result that less than 20% of the traffic cases are in fact finalised by our Courts.
- 39 The AARTO Act is designed to change behaviour of road users not only by levying penalties but also by introducing the point demerit system in terms of which serial transgressors may find their licenses eventually suspended or even revoked.
- 40 One of the innovations of AARTO Act and the Amendment Act is to introduce an administrative adjudication of traffic offences and an introduction of the Appeals Tribunal to ensure fairness and impartiality in the adjudication process.
- 41 The AARTO Act, read with the NRTA, does not impede on municipalities' ability to exercise their powers fully and effectively. The municipalities retain the authority to prescribe traffic and parking by-laws within the jurisdiction of a particular municipality. The AARTO Act has only changed the adjudication and processing of the traffic and parking laws and regulations. Instead of the enforcement being done

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through the courts under the Criminal Procedure Act 51 of 1977, the enforcement is done through the Tribunal.

- 42 Although traffic law enforcement in South Africa is the task of issuing authorities, the administration of traffic offences is shared between issuing authorities and the National Directorate of Public Prosecutions ("NDPP") in the courts.

42.1 Traffic fines issued in terms of section 341 of the Criminal Procedure Act 51 of 1977.

42.2 The alleged offender may pay the fine or submit a representation for mitigating circumstances to the issuing authority. Successful representations are forwarded by the issuing authority to the prosecutors for consideration, resulting in the fine being unadjusted, reduced or withdrawn.

42.3 In cases where there is no representation or the representation is unsuccessful, and the alleged offender fails to pay the fine within 90 days of the offence, a criminal summons with a court date will be issued by the private contractor on behalf of the issuing authority and served on the alleged offender no later than 14 days prior to the court date (section 54 of the Criminal Procedure Act). The alleged offender then settles the fine or approaches the prosecutor at the designated court with a representation.

- 43 Municipal court prosecutors, including traffic prosecutors, conduct their duties under the authority of the Department of Justice and Correctional Services. In terms of section 165 of the Constitution, the judicial authority in South Africa is vested in the courts, which are independent and subject only to the Constitution and the law. The

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Department of Justice and Correctional Services is responsible for the administration of the courts.

- 44 There already is concurrent jurisdiction in the whole administration of traffic violations in that the process begins with the payment of a fine or making of representations for mitigating circumstances to the issuing authority (municipality) and ultimately a prosecution by the NDPP.

Ad paragraph 6

- 45 I deny that the AARTO Act and the Amendment Act are unconstitutional and invalid. The High Court misdirected itself when it found that the Acts are unconstitutional and invalid.

Ad paragraph 19 and 20 (including the subparagraphs)

- 46 I filed a notice of appeal in this on 7 February 2022; there is no possibility of an appeal to the Supreme Court of Appeal.
- 47 I agree that this matter should be determined expeditiously.

Ad paragraph 21

- 48 I deny that the relief OUTA seeks in the notice of motion is well-founded. The Court should accordingly uphold my appeal on the grounds set out in the notice of appeal I filed on 7 February 2022.

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(NAC)

Ad paragraph 22

- 49 I agree that the parties should be permitted to file written submission and present oral argument.

THE APPROPRIATE ORDER

- 50 If OUTA's constitutional challenge fails, then no question of remedy arises.
- 51 I am advised that this Court has the power, in terms of section 172(1)(b), to suspend the order of invalidity to allow Parliament to correct its constitutional failings. Thus, in the unlikely event that this court upholds OUTA's constitutional challenge and confirms the order of the High Court, I submit that it would be appropriate for this court to suspend the order declaring the AARTO Act and the Amendment Act are constitutionally invalid for at least 24 months to allow the Parliament a reasonable time to remedy the invalidity.
- 52 The suspension would be appropriate because, if OUTA's interpretation is correct that the ambit and purport of the AARTO Act and the Amendment Act may be limited to national traffic regulations. This would mean that the application of the Act is limited to national roads. It is accordingly possible to cure the Acts of the constitutional shortcomings upon which the Court relied to declare the Acts constitutionally invalid.
- 53 There is no reason to expect that Parliament – given the necessary time – will not properly fulfil its constitutional mandate.

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- 54 The process for amending the AARTO Act and the Amendment Act to cure the defect would require an extensive consultation process with a number of stakeholders and the public, and 24 months is a reasonable time to complete the process.

CONDONATION

- 55 In the notice of motion, OUTA directed that I file an answering affidavit within 15 days after filing a notice indicating that I would oppose the confirmation of the High Court judgment and order. I filed the notice of intention to oppose on 24 February 2022. The 15 days expired on 17 March 2022. This affidavit is filed beyond the time within which OUTA directed me to file it.


- 56 I had already filed a notice of appeal as contemplated in sections 167(5) and 172(2)(d) of the Constitution and rules 16(2) and (3) of the Constitutional Court Rules, which provides:

"(2) A person or organ of state entitled to do so and desirous of appealing against such an order in terms of section 172(2)(d) of the Constitution shall, within 15 days of the making of such order, lodge a notice of appeal with the Registrar and a copy thereof with the Registrar of the court which made the order, whereupon the matter shall be disposed of in accordance with directions given by the Chief Justice.

(3) The appellant shall in such notice of appeal set forth clearly the grounds on which the appeal is brought, indicating which findings of fact and/or law are appealed against and what order it is contended ought to have been made."

- 57 So I had already indicated that I opposed the confirmation and appeal the High Court judgment and order.

- 58 The delay has not caused any prejudice to OUTA and the other respondents. It would be in the interests of justice for the condonation to be granted.

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FM 1

23 OCT 2018 (TUE) 04:57 DEPUTY SPEAKER

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PAGE 2

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FREE STATE LEGISLATURE

Final Voting Mandate

TO: Chairperson of the National Council of Provinces

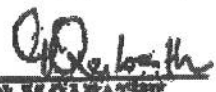
NAME OF BILL: Administrative Adjudication of Road Traffic Offences
Amendment Bill

NUMBER OF BILL: B3SD-2013

DATE OF DELIBERATION: 23 October 2018

VOTE OF THE LEGISLATURE:

The Free State Legislature votes in favour of the Bill.


HON. M. QANATHE
SPEAKER
FREE STATE LEGISLATURE

23 October 2018

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P-5

FM 2

"AAMT 1.2"



Northern Cape
Provincial Legislature

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

Private Bag X5066
Kimberley 8300
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**Honourable T Mofika
Chairperson - NCOP**

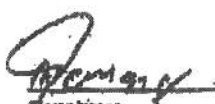
FINAL MANDATE

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

Number of the Bill: [8388-2015]

Date of deliberation: 28 October 2015

Vote of the Legislature: Administrative Adjudication of Road Traffic Offences
Amendment Bill [8388-2015]


Signature:
Hon K Mmodemang
SPEAKER

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Date: 28-10-23

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Final Mandate



P.S

"AAMT 1.2"



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

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

1. INTRODUCTION

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

2. PROCESS FOLLOWED

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

3. INPUTS FROM THE STAKEHOLDERS/ PUBLIC

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

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

4. WRITTEN INPUTS ON THE BILL

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

5. COMMITTEE INPUTS ON THE BILL

The Committee inputs:

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

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

6. COMMITTEE ADOPTION OF THE BILL


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

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


COMMITTEE CHAIRPERSON
HON GM Manopole

2018-10-23

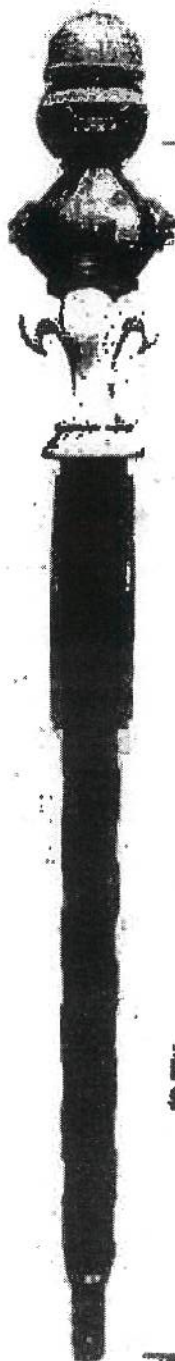


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IPHALAMENDE IAKWAZULU-NATALI



KWAZULU-NATAL PROVINSIALE PARLEMENT

KWAZULU-NATAL PROVINCIAL PARLIAMENT

FINAL MANDATE

TO: THE CHAIRPERSON OF THE NCOP

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

NUMBER OF BILL: B38D-2018

DATE OF DELIBERATION: THURSDAY, 18 OCTOBER 2018

VOTE OF THE LEGISLATURE:

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

Hon L. Johnson, MPL
Speaker

18.10.2018

Date

FJ.

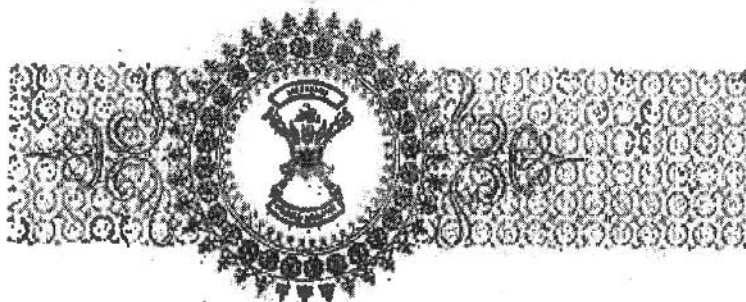
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FM 5

"AAMT 1.5"



OFFICE OF THE SPEAKER
Eastern Cape Provincial Legislature
Indipendence Avenue / Peka Bay XC051, Portofino, 605
Tel: 040-6980275/08
Fax: 040-6352148
E-mail: info@ecleg.gov.za

FINAL MANDATE

To : The Chairperson:
National Council of Provinces

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

Number of Bill : [B38D-2016]

Date of Deliberation : 10th October 2016

Vote of the Legislature

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

Regards

A handwritten signature in black ink, appearing to read "Noxolo Kiyiet", is written over a horizontal line.

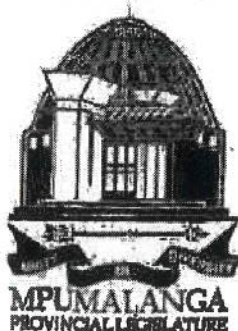
MS NOXOLO KIYIET (MPL)
SPEAKER: EASTERN CAPE PROVINCIAL LEGISLATURE

F.A.

P.S.

F.A.
ASC

FM 6



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Mpumalanga Province
Republic of South Africa
www.mpa.gov.za

OFFICE OF THE SPEAKER

Enq: Mr Thokozane Sindane
Tel: 013 768 1138

"AAMT 1.6"

FINAL MANDATE


To : The Chairperson of the
National Council of Provinces

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

Number of the Bill : [B38D-2015]

Date of Deliberation: 25 October 2018

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


SPEAKER: MPUMALANGA
PROVINCIAL LEGISLATURE

25/10/2018
DATE

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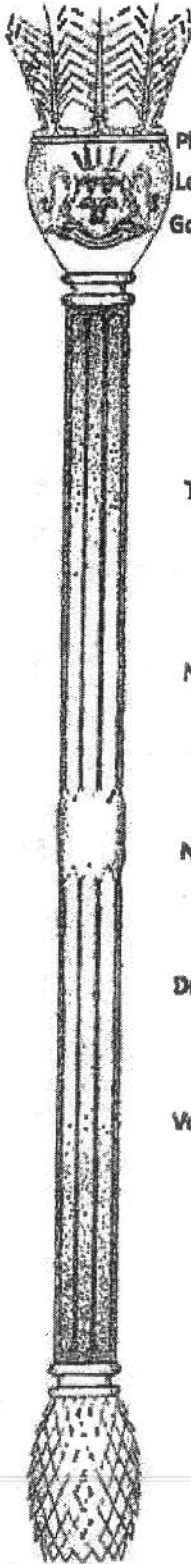
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LIMPOPO LEGISLATURE

Physical Address:
Lebowakgomo
Government Complex

Postal Address:
Private Bag X 9309
Polokwane
0700

NEGOTIATING MANDATE

To : The Chairperson: SC on Economic and Business
Development

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

Number of the Bill : [B38B - 2015]

Date of Deliberation : 22 May 2018

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

PROPOSED AMENDMENTS

Clause 9 Page 6

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

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Clause 29 C Page 9


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

Clause 29H Page 11

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

Clause 17 Page 12

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


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

DATE

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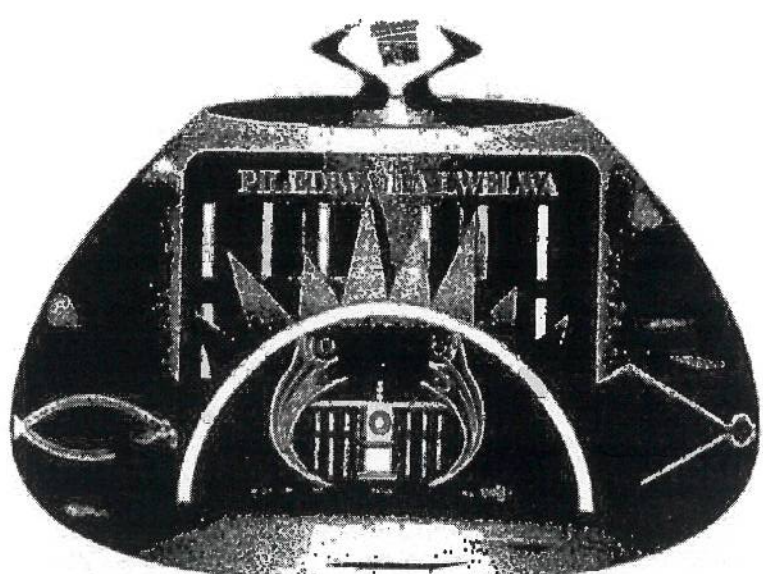
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**PORTFOLIO COMMITTEE ON PUBLIC WORKS, ROADS AND
TRANSPORT AND COMMUNITY SAFETY**



NORTH WEST PROVINCIAL LEGISLATURE

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

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NEGOTIATING MANDATE

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

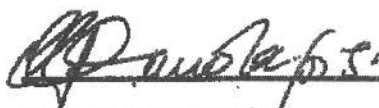
NAME OF BILL : ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC
OFFENCES AMENDMENT BILL

NUMBER OF BILL : [B388-2015]

DATE OF DELIBERATIONS : 1 JUNE 2018

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Public Works, Roads, Transport and Community Safety confers the delegation representing the North West Province with the authority to negotiate in favour of the Administrative Adjudication of Road Traffic Offences Amendment Bill [B388-2015]; taking into account the objections as attached herewith.



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

DATE: 1 June 2018

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NEGOTIATING MANDATE

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

Hon. M I Rayl

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

NUMBER OF BILL: [B38B-2016]

DATE OF DELIBERATION: 11 May 2016

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

The proposed amendments are as follows:

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

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

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

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

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

"(a) by the substitution for subsection (1) of the following subsection:

- (1) any document required to be served on an infringer in terms of this Act, must be served on the infringer [personally or sent by registered mail to his or her last known address], by personal, [postage] registered mail and electronic services or communication as prescribed."

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

4. Clause 16(b)

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

5. Clause 29A(3) lines 16-19

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

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6. Clause 29A (5) line 32

"(5) To be eligible for appointment or designation as a member of the Tribunal, and to continue to hold that office a person must—

- (a) not be subject to any disqualification set out in subsection (6); and
- (b) have submitted to the Minister a written declaration stating that the person—
 - (i) is not disqualified in terms of subsection (6); and
 - (ii) does not have any interests referred to in subsection 6 (a) and (b)."

7. Clause 29D(4) line 22

"(3) The Chairperson, on one month's written notice addressed to the Minister, may—

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

8. Clause 29J – right of appeal

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

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9. General Comments: The Appeals Tribunal's Capacity

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

10. General Comments: Independence of the Tribunal

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

11. General Comments: Legal Practitioners

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

12. Implementation date

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

13. Foreign Drivers

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

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

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14. Road Traffic Offences Register

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



HON. M MGCINA

Date: 14/05/12

Chairperson of Roads and Transport Portfolio Committee

GAUTENG PROVINCIAL LEGISLATURE

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ROADS AND TRANSPORT PORTFOLIO COMMITTEE

ADOPTED NEGOTIATING MANDATE

ON THE:

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

11th MAY 2018

1. INTRODUCTION

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


2. PROCESS FOLLOWED

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

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

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

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

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

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

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

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

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

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

3. PRINCIPLES AND DETAILS OF THE BILL

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

Clause 1

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

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Clause 2

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

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

Clause 3

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

Clause 4

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

Clause 5

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

Clause 6

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

Clause 7

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

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

Clause 8

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

Clause 9

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

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Clause 10

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

Clause 11

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

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

Clause 12

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

Clause 13

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

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

Clause 14

The clause seeks to amend Section 28 of the Act which provides for the categorization of offences, infringements and demerit points. The amendment removes categorizing transgressions into "minor infringements, major infringements" and other offences.

Clause 15

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

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

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Clause 16

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

Clause 17

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

Clause 18

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

Clause 19

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

Clause 20

The clause seeks to amend Section 35 of the Act which deals with transitional provisions. It provides that a notice issued in terms of section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 81 of 1977), before the date of commencement of section 17, may be continued and finalized under the Criminal Procedure Act, however, the said notice may not be issued after that commencement date in respect of an infringement, thus removing the reference to an "offence".

Clause 21

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

Clause 22

The clause provides for the short title and commencement.

4. OBJECTIVES OF THE BILL

The Bill seeks to:-

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

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

5. OVERVIEW OF THE PUBLIC HEARINGS

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


6. SUMMARY OF STAKEHOLDERS SUBMISSIONS MADE DURING THE PUBLIC HEARINGS

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

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

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

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

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

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

7. POSITION BY THE GAUTENG PROVINCIAL DEPARTMENTS

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

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

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

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

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

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

9. COMMITTEE'S RECOMMENDATIONS

The Portfolio Committee recommends that -

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

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

10. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE

The Portfolio Committee on Roads and Transport supports the principle and details of the Administrative Adjudication of Road Traffic Offences Amendment Bill (B38B-2015) Section 78 with the proposed amendments.

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