

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

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

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

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

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

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

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

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

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

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

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

1. ROAD SAFETY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. CONSTITUTIONALITY OF AMENDMENTS AND RIGHT TO A FAIR TRIAL

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

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

Section 33

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

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

Section 34

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

Section 35(3)

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

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

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

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

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

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

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

3. SERVICE OF AARTO DOCUMENTATION AND NOTICES

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

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

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

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

3.2 Postage

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

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

- 3.3 The consolidated financial statements of SAPO shows a decline of 6% in Post Box rentals. The majority of towns and townships in South Africa, there are no street deliveries taking place any more.
- 3.4 In the recent Audi Centre Johannesburg v RTIA Supreme Court judgement it was upheld that RTIA could not produce proof of documents that were dispatched by registered mail or that the documents were received by the addressee.
- 3.5 The amended Section 30 of the Act only speaks to the proof of service of electronically served documents to be reflected in the NOR. There are no prescribed methods regarding the recording of proof of dispatching documents by means of normal postage. The Amendment Bill fall short on prescribing the

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

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

3.7 Electronic Service

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

"electronic communication"

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

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

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

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

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

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

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

3.10 E-Mail notification

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

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

3.12 Mobile phone notification

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

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

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

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

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

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

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

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

4. CORRUPTION AND BRIBERY

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

3 General offence of corruption

Any person who, directly or indirectly –

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

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

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

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

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

(ii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of the offence of corruption.

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

4 Offences in respect of corrupt activities relating to public officers

(1) Any-

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

(b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person,

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

(i) that amounts to the-

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the,

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

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

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

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

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

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

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

4.6 Some of the key findings include:

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

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

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

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

4.9 Corruption Watch 25 March 2015

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

4.10 Wheels 24 6 Dec 2016 Shared stories

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

4.11 News 24 – Traffic officer arrested for taking a bribe

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

4.12 ENCA – Bribe lands traffic officer in jail

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. ADMINISTRATION MANAGEMENT;

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

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

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

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

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

7. LEGAL COMMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

² Promotion of Administrative Justice Act, 2000

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

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

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

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

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

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

7.24 Please take note that clause 15 of the Bill inserting section 29J providing for appeal to the High Court is unjust. This amendment creates a concern as the infringer's first and only encounter with the court system is at High Court level which is expensive and has stringent professional rules.

7.25 In addition the Bill attempts to increase sanctions without conforming to the normal rules of sentencing. The Bill imposes severe penalties for arguably minor offences without considering the common principles of sentencing (as used during criminal procedures), it does not allow for discretion in the case of lesser offences and make little provision for the audi alteram partem rule.

7.26 On the face of an infringement notice, the infringer is deemed to be "guilty" and must in fact prove that he is innocent (by lodging representations). Thus, there is a reverse onus on the infringer who is presumed "guilty" until proven innocent.

7.27 Further, the government has circumvented its duty to prove beyond a reasonable doubt that an infringer is guilty by attempting to keep the matters out of the criminal justice system.

7.28 In conclusion we submit that the Bill will not withstand Constitutional scrutiny and should be referred back to the legislator.