

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No.

In the matters between:

ORGANISATION UNDOING TAX ABUSE NPC

First Applicant

2 028 E-TOLL DEFENDANTS

Second to Two Thousand
and Twenty-Ninth Applicants

and

**SOUTH AFRICAN NATIONAL ROADS AGENCY
SOC LTD**

First Respondent

MINISTER OF TRANSPORT

Second Respondent

MINISTER OF ENVIRONMENTAL AFFAIRS

Third Respondent

**DIRECTOR GENERAL OF ENVIRONMENTAL
AFFAIRS**

Fourth Respondent

MINISTER OF FINANCE

Fifth Respondent

**COMMISSIONER, SOUTH AFRICAN REVENUE
SERVICE**

Sixth Respondent

FOUNDING AFFIDAVIT



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I, the undersigned,

STEFANIE FICK

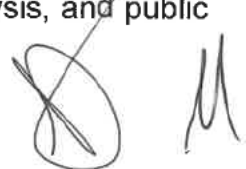
do hereby make oath and state:

1. I am an adult female executive director of the first applicant's Accountability Division with offices situated at Unit 4, Boskruin Village, Cnr President Fouché and Hawken Road, Bromhof, Johannesburg.
2. The facts contained in this affidavit are within my own knowledge or derive from documents in my control, and to the best of my belief both true and correct.
3. Submissions of a legal nature are made on the advice of the applicant's legal representatives, which advice I accept as correct.

THE PARTIES

The applicants

4. The first applicant is the ORGANISATION UNDOING TAX ABUSE NPC a duly registered non-profit company with registration number 2012/064213/08 and with principal place of business at Unit 4, Boskruin Village, Cnr President Fouché and Hawken Road, Bromhof, Johannesburg ("OUTA").
5. OUTA advocates for good governance, transparency, and accountability in the use of public funds. It engages in strategic litigation, policy analysis, and public



interest advocacy to challenge the misuse of public funds and to uphold constitutional values.

6. OUTA assisted the second to two thousand and twenty-eight applicants in opposing the first respondent's actions against them for the recovery of alleged e-toll debt.
7. To that end, each of these applicants signed a "Mandate and Power of Attorney" in terms of which they:
 - 7.1 gave OUTA full power of attorney to defend the action on their behalf;
 - 7.2 ceded to OUTA their rights to the cost order that may be granted in their favour.
8. A copy of the "Mandate and Power of Attorney" signed by one of these applicants is attached as "FA1". Because the terms are identical in each instance, the balance of the mandates and powers of attorney are not attached to this affidavit. Inspection is tendered.
9. The second to two thousand and twenty-eight applicants are the 2028 E-TOLL DEFENDANTS identified in the schedule attached as "FA2.1" and "FA2.2", whose service address in these proceedings is C/O Jennings Incorporated, 56 Jerome Road, Leopard Court, Ground Floor, Lynnwood Glen, Pretoria.

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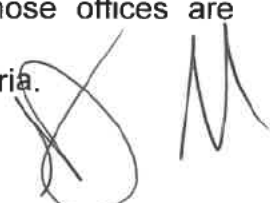
10. The second to two thousand and twenty-eight applicants were the defendants in the actions listed in the above schedules. They will be referred to in this affidavit as "*the Defendants*". The actions will be referred to as "*the actions*".

The Respondents

SANRAL

11. The first respondent is the SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED, a duly registered state-owned company established in terms of the South African National Roads Agency Limited and National Roads Act 7 of 1998 with principal place of business at 48 Tambotie Avenue, Val de Grace, Pretoria ("*SANRAL*").
12. SANRAL was the sole plaintiff in the actions instituted against the Defendants.
13. The relief sought in this application is directed at SANRAL only.

The Second to Sixth Respondents

14. The second respondent is the MINISTER OF TRANSPORT who is cited herein in his official capacity c/o the offices of State Attorney at SALU Building, 316 Thabo Sehume Street, Pretoria.
15. The third respondent is the MINISTER OF ENVIRONMENTAL AFFAIRS who is cited in his official capacity as the executive authority responsible for environmental affairs and, in particular, for administering the National Environmental Management Act 107 of 1998 ("*NEMA*") whose offices are situated at Environment House, 473 Steve Biko, Arcadia, Pretoria.
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16. The fourth respondent is the DIRECTOR GENERAL OF ENVIRONMENTAL AFFAIRS who is cited in his official capacity as the administrator responsible for environmental affairs and for NEMA whose offices are situated at Environment House, 473 Steve Biko, Arcadia, Pretoria.
17. The fifth respondent is the MINISTER OF FINANCE who is cited in his official capacity as the executive authority responsible for administering financial affairs whose offices are situated at 40 Church Square, Old Reserve Bank Building, Second Floor, Pretoria.
18. The sixth respondent is the COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE with its address at 271 Bronkhorst Street, Khanyisa Building, Ground Floor, Nieuw Muckleneuk, Pretoria.
19. The second to sixth respondents are cited only because they were parties in the abandoned test case referred to below. No relief is sought against the second to sixth respondents and no costs, unless they oppose the application.

PURPOSE OF THIS APPLICATION AND RELIEF SOUGHT

20. This application has a dual purpose.
21. Its first purpose is to obtain finality in the actions. Its second purpose is to recover the legal costs incurred in defending the actions.
22. The applicants apply for orders:



- 22.1 declaring that SANRAL has abandoned the actions;
- 22.2 directing the respondent to pay the costs in the test case (referred to below) on party and party scale C, and the costs of the balance of the actions on party and party scale A;
- 22.3 authorising the taxing master of this Honourable Court to tax the costs in the actions.

OUTLINE OF THE APPLICATION

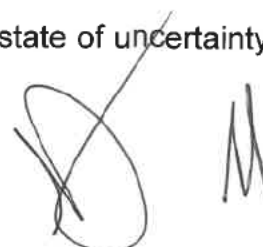
- 23. Between 11 April 2016 and 10 April 2019, SANRAL instituted 2 028 actions against the Defendants.
- 24. The defendants approached OUTA for assistance in defending the actions because they believed that e-tolling was unfair and unlawful.
- 25. OUTA instructed and paid attorneys and counsel who prepared and filed pleadings on behalf of many of the Defendants, until the proceedings were stayed by agreement pending the determination of a test case.
- 26. In late 2018, and acting through their legal representatives, SANRAL and the Defendants agreed:
 - 26.1 to conduct a test case in the Gauteng Division, Pretoria, in which there would be a representative spread of defendants from the High Court and the Magistrates Courts; and



- 26.2 to stay all the other actions in which the Defendants' then attorneys represented the Defendants, pending the determination of the test case.
27. On or about 26 March 2019, prior to the test case being ready for hearing, SANRAL's Board resolved, with immediate effect, to suspend the collection of e-toll debt.
28. On 27 March 2019, SANRAL issued a media statement confirming that:
- "SANRAL will, with immediate effect, suspend the process of pursuing e-toll debt. This includes historic debt and summonses applied for from 2015."*
29. For the next three years, SANRAL took no further step in pursuing the test case or any of the actions.
30. On 26 October 2022, the Minister of Finance announced that the debt incurred in respect of the GFIP would be funded by National Treasury (70%) and the Gauteng Provincial Government (30%).
31. SANRAL again took no further step in the test case or any of the actions for the next 18 months.
32. On 5 March 2024, the Gauteng MEC for Finance confirmed that the debt incurred by SANRAL in respect of the e-toll scheme would be settled by the National Government (70%) and the Gauteng Provincial Government (30%) and that e-tolling on the GFIP network would be terminated imminently.

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33. On 28 March 2024, Government Gazette Notice No. 50418 was published. The notice formally withdrew the toll declaration for the GFIP network, effectively de-declaring those roads as toll routes.
34. After the withdrawal of the e-toll declarations, SANRAL took no further step in pursuing the test case or any of the actions.
35. In the circumstances, for over six years, since SANRAL's public announcement on 27 March 2019 that its Board had decided to stop pursuing the collection of historic e-toll debt, including actions commenced since 2015, SANRAL has taken no further step in the test case or in the actions.
36. This is because SANRAL has abandoned the test case and the actions. SANRAL's e-toll debt is to be paid by the National and Provincial Government.
37. Both OUTA and the Defendants' attorneys have approached SANRAL and SANRAL's attorneys to obtain certainty about the abandoned status of the actions and recover the applicants' legal costs, but without success.
38. The applicants now approach the Court for relief.
39. The applicants submit that they are entitled to have legal certainty concerning the abandoned status of the actions. It is arbitrary, unfair, and unconstitutional, for an organ of state to institute legal proceedings to recover alleged statutory debts from citizens, and then to leave those citizens in a state of uncertainty by

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failing to withdraw those proceedings when it decides not to pursue them any further.

40. The applicants are also entitled to be compensated for the legal costs incurred in defending the actions. It is similarly arbitrary, unfair, and unconstitutional, for an organ of state to cause citizens to incur legal costs in defending legal proceedings instituted against them by an organ of state, and then to fail to tender to pay legal costs when it decides not to pursue them any further.
41. SANRAL instituted the actions against the Defendants for the recovery of alleged e-toll debt. SANRAL subsequently decided not to pursue the actions any further, but failed to withdraw the actions and to tender the costs.
42. The applicants consequently seek an order declaring that SANRAL has abandoned the actions and directing SANRAL to pay the legal costs.
43. The applicants also seek an order authorising the taxing master of this Honourable Court to tax the costs in all of the actions. This is intended to obviate the need for the applicants to prepare multiple bills of costs and to approach the taxing masters of every court in which the actions were instituted, in order to have each action individually taxed. Such a process would result in an unnecessary and inordinate waste of court resources and public funds.
44. The Court has jurisdiction to grant the above relief in circumstances where:
 - 44.1 the respondent, SANRAL, is situated within the Court's jurisdiction;

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- 44.2 the parties in all of the actions in respect of which the relief is sought, and OUTA, are before the Court; and
- 44.3 the vast majority of the matters are either before the Court or before lower courts within the Court's jurisdiction.

THE FACTS GIVING RISE TO THE APPLICATION

The start of e-tolling on the GFIP network

45. The Gauteng Freeway Improvement Project ("*GFIP*") was a project for the infra-structural upgrading of approximately 500km of Gauteng's highways and interchanges, including the N1, N3, N12, R21, N17 and M1.
46. On 28 March 2008, by way of publication in Government Gazette No 30912, SANRAL, acting in terms of section 27(1)(a)(i) of the SANRAL Act, declared the following six roads — which formed part of the GFIP — to be toll roads:
- 46.1 the N1 (sections 20 and 21);
- 46.2 the N3 (section 12);
- 46.3 the N4 (section 1); and
- 46.4 the N12 (sections 18 and 19).
47. On 28 July 2008, SANRAL, by way of publication in Government Gazette No 31273, again acting in terms of section 27(1)(a)(i) of the SANRAL Act, declared

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the R21 (sections 1 and 2) — which also formed part of the GFIP — to be a toll road.

48. On 25 October 2012, SANRAL, by way of publication in Government Gazette Notice 35756, acting in terms of section 27(1)(c) of the SANRAL Act, published the following notices, which established the framework for electronic tolling (“e-tolling”) on the GFIP as follows:

48.1 Notice 801: the applicable e-toll tariffs for various vehicle classes and user types (registered e-tag users, non-registered e-tag users, Video-Licence Number users, alternate users, day-pass users).

48.2 Notice 802: call for public comments on possible exemptions (example, for public transport and emergency vehicles).

48.3 Notice 803: terms, conditions and mechanisms for payment, including where and how tolls can be paid (e-tag, mobile stations, day-pass, alternate user arrangements).

49. On 9 October 2013, the Minister of Transport, acting in terms of sections 59(1)(dA) and 59(1)(dC) of the SANRAL Act, promulgated the E-Road Regulations by way of Government Notice R.739, published in Government Gazette No. 36911 (“*E-Road Regulations*”). The E-Road Regulations established the legal framework for the implementation of e-tolling on the GFIP, detailing, *inter alia*, the required infrastructure, user registration, invoicing procedures, and enforcement mechanisms.

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50. The above notices and regulations are referred as background and are therefore not attached. They will be produced for inspection upon request.
51. E-tolling on the GFIP officially commenced on 3 December 2013.

Legal challenges to e-tolling

52. Prior to its official commencement, OUTA's predecessor, the Opposition to Urban Tolling Alliance, and three other organisations, applied to interdict e-tolling pending an application to review and set aside the toll declarations.
53. This Court granted an interim interdict on 28 April 2012 in *Opposition to Urban Tolling Alliance and Others v South African National Roads Agency Ltd and Others* [2012] ZAGPPHC 63.
54. The interim interdict was set aside on 20 September 2012 in a successful appeal to the Constitutional Court. The judgment is reported at *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC).
55. This Court dismissed the review application on 13 December 2012 in *Opposition to Urban Tolling Alliance and Others v South African National Roads Agency Ltd and Others* [2012] ZAGPPHC 323, but subsequently granted leave to appeal to the Supreme Court of Appeal.
56. The SCA dismissed the appeal on 9 October 2013. The judgment of the SCA is reported as *Opposition to Urban Tolling Alliance and Others v The South African*

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National Roads Agency Ltd and Others [2013] 4 All SA 639 (SCA) (*"the SCA judgment"*).

57. The SCA decided the appeal on the basis of delay and without reaching the merits. It held that the delay rule contained in section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 prevented the court from entertaining a review application.¹
58. The SCA made clear, however, that its decision did not prevent members of the public who were sued for e-toll debt in due course from defending the claims against them by collaterally challenging the lawfulness of e-tolling.²

SANRAL institutes legal proceedings to recover alleged e-toll debt

59. Between 2015 and 2019, SANRAL instituted actions against more than ten-thousand persons in various jurisdictions of both the Magistrate's Courts and the High Court for the recovery of alleged e-toll debt.
60. I pause to state that the word "alleged" is used advisedly. As I have indicated above, the applicants opposed e-tolling and the actions instituted by SANRAL against them because they believed, and obtained legal advice to confirm, that the toll declarations were unlawful and invalid.

¹ See SCA judgment paragraph 40-43

² See SCA judgment paragraph 40

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61. The total number of actions instituted by SANRAL against members of the public is unknown to the applicants. It was during that period, and specifically between 11 April 2016 and 10 April 2019, that SANRAL instituted the actions against the Defendants.

OUTA is mandated to represent the Defendants

62. In October 2015, OUTA established the E-toll Defence Umbrella to assist persons against whom SANRAL was instituting actions for alleged e-toll debt.
63. The Defendants are persons who approached OUTA for assistance in opposing the actions that SANRAL had instituted against them.
64. Each of the Defendants signed a Mandate and Power of Attorney in order to enable OUTA to instruct attorneys and advocates to defend the actions on their behalf. In the same document, in view of the fact that OUTA would pay the legal costs of defending the actions on behalf of the defendants, the Defendants ceded their claims to any cost award made in their favour at the end of the action to OUTA.
65. OUTA first instructed Len Dekker Attorneys, Pretoria, to represent the Defendants sued in the High Court, and Alet Uys Attorneys, Pretoria, to represent the Defendants sued in the Magistrates Courts.
66. Ultimately, however, Alet Uys Attorneys ("AUA") and a team of counsel briefed by them, represented all Defendants. OUTA paid the Defendant's legal costs.

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67. SANRAL was represented in the High Court actions by Werksmans Attorneys, Johannesburg, and in the Magistrates Court actions by Morris Fuller Williams Inc.

Exchange of pleadings in the High Court

68. The number of High Court actions aggregated to 99 actions between 11 April 2016 and 13 March 2019.
69. In the High Court, SANRAL commenced the proceedings by serving simple summons. An example is attached as **"FA3"**.
70. After notice of intention to defend was delivered, SANRAL filed a declaration. An example of a declaration filed by SANRAL is attached as **"FA4"**.
71. In those cases in which SANRAL filed a declaration, the applicants' legal representatives prepared and delivered a plea. The plea contained special pleas in which prescription and a series of collateral (or defensive) challenges to the lawfulness and enforceability of the e-toll scheme was raised. The special pleas were identical in substance across all matters. An example of a plea filed on behalf of one of the Defendants in the High Court is attached as **"FA5"**.
72. If the pleadings progressed further, SANRAL would deliver a replication after which a rejoinder would be delivered on behalf of the Defendant. An example of a replication is attached as **"FA6"** and an example of a rejoinder is attached as **"FA7"**.

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73. As a result of the test case referred to below, only a handful of High Court matters progressed to the point at which a complete set of pleadings was filed.

Exchange of pleadings in the Magistrates Courts

74. The number of Magistrate Court actions aggregated to 1 928 actions between 10 May 2016 to 19 April 2019.
75. SANRAL also commenced these proceedings by serving simple summons. An example is attached as **"FA8"**.
76. After notice of intention to defend was delivered, SANRAL would either file a declaration or be barred from doing so. An example of a declaration filed by SANRAL is attached as **"FA9"**.
77. In those cases in which SANRAL filed a declaration, the applicants' legal representatives would deliver a plea, also incorporating special pleas of prescription and collateral challenges. An example of a plea filed on behalf of a Defendant in the Magistrates Court is attached as **"FA10"**.
78. If the pleadings progressed further, SANRAL delivered a replication. An example of a replication is attached as **"FA11"**.
79. In the Magistrates Court, there were no matters that progressed beyond the pleadings stage. Due to the sheer number of matters, and later as a result of the

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test case, in many matters, the exchange of pleadings ceased before declarations, or pleas, or replications, or rejoinders were filed.

The test case

80. During 2017 and 2018, the parties' attorneys engaged in discussions regarding the separation of the collateral challenges raised in selected matters, with a view to having those challenges adjudicated as a test case, while the remaining matters would be held in abeyance.
81. The parties ultimately agreed to cooperate in conducting a test case comprising a representative spread of High Court and Magistrates' Court defendants in the Gauteng Division, Pretoria.
82. At the parties' request, the Deputy Judge President ("DJP") appointed Tolmay J to case manage the test case.
83. Tolmay J convened a case management meeting on 16 August 2018, the minutes of which are attached as "FA12". The minute recorded that:

83.1 The following High Court matters would constitute the test case (paragraph 1):

83.1.1 SANRAL /

[REDACTED]

[REDACTED]

83.1.2 SANRAL /

[REDACTED]

[REDACTED]

83.1.3 SANRAL / [REDACTED]

83.1.4 SANRAL / [REDACTED]

83.2 In relation to the Magistrate's Court matters:

83.2.1 SANRAL's attorneys were of the view that a transfer of the matters to the High Court would be futile and were hesitant to facilitate such proceedings.

83.2.2 OUTA's attorneys would provide SANRAL's attorneys with what it considered to be the pertinent facts in relation to the six Magistrates' Court matters that had previously been identified as relevant for the test case (paragraph 2.2).

83.3 OUTA's attorneys would make application for the joinder of the Minister of Transport, the Minister of Finance and the Commissioner of the South African Revenue Service before 13 September 2018 (paragraph 4).

83.4 The relevant discovery notices would be served as soon as possible in the High Court matters prior to consolidation. Discovery would take place 20 court days after 4 October 2018 (paragraph 5.2).

84. The parties then discussed the transfer of Magistrate Court matters to the High Court and sought to prepare statements of fact with a view to expediting the hearing of the test case.

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85. Evidence of this is contained in the exchange of letters between AUA and SANRAL's attorneys on 5 September 2018 attached as "**FA13**", 12 November 2018 attached as "**FA14**", and 14 November 2018 attached as "**FA15**".
86. On 5 December 2018, the second case management meeting was held. The minutes of the meeting are attached as "**FA16**". They record that:
- 86.1 Following the exchange of statements of fact and responses thereto, as directed in the first case management meeting, AUA indicated that the informal joinder of the Magistrates' Court defendants was insufficient (paragraph 2.1).
- 86.2 AUA had proposed that they prepare an application on behalf of the Magistrates' Court defendants to intervene in the consolidated High Court test case (case number 22722/16) (paragraph 2.2).
- 86.3 SANRAL's attorneys did not agree that a formal intervention application was necessary, having regard to the exchange of statements of fact, and indicated that they would seek direction from Judge Tolmay in this regard (paragraph 2.3).
- 86.4 SANRAL's legal representatives expressed concern at the failure to timeously progress the test case on the agreed separated issues and the impact of such delay. They emphasised that a speedy resolution of the matter was in the public interest (paragraph 2.4).
- 86.5 After discussion, it was agreed that there would be ongoing engagement between the parties with a view to finalising a statement of agreed facts

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(and if necessary, identifying facts in dispute) and that, in any event, an order permitting intervention by agreement would be pursued. OUTA's counsel undertook to prepare a draft intervention by no later than 14 December 2018 (paragraphs 2.7 – 2.8).

- 86.6 SANRAL's counsel enquired of Tolmay J whether she would be willing to approach the DJP/Judge President ("JP") for a preferential trial date for the hearing of the separated issues. Tolmay J advised that, while she acknowledged the national interest in the matter and the importance of its resolution, she was not in a position to approach the DJP/JP until such time as the matter was trial-ready (paragraph 3.3).
87. Also on 5 December 2018, the four High Court matters were then consolidated under Case No. 22722/16 (*"the test case"*), and the second to sixth respondents were joined as the second to sixth defendants.
88. A copy of the order consolidating the matters and joining the second to sixth respondents is attached as **"FA17"**.
89. The parties ultimately agreed to the following six Magistrate Court matters being included in the test case:
- 89.1 SANRAL v [REDACTED] (Tshwane Central Magistrates' Court Case No 38834/2017);
- 89.2 SANRAL v [REDACTED] (Johannesburg Magistrates' Court Case No 7155/2018);



89.3 SANRAL v [REDACTED] (Palm Ridge Magistrates' Court Case No 8481/2017);

89.4 SANRAL v [REDACTED] Roodepoort Magistrates' Court Case No 11412/2017

89.5 SANRAL v [REDACTED] (Randburg Magistrates' Court Case No 4426/18);

89.6 SANRAL v [REDACTED] Roodepoort Magistrates' Court Case No 9955/2017).

90. On 28 January 2019, Tolmay J granted an order by agreement, in terms of which the Defendants in the above matters were granted leave to intervene in the test case. A copy of the order is attached as "FA18".

91. SANRAL and the Defendants involved in the test case then continued with discovery and discussions concerning the separate determination of the collateral challenges.

SANRAL decides to cease collection of e-toll debt

92. On or about 26 March 2019, prior to the test case being ready for hearing, SANRAL's Board resolved to suspend the collection of e-toll debt with immediate effect ("*the resolution*").

93. On 27 March 2019, SANRAL issued a media statement confirming the resolution ("*the media statement*"). A copy of the media statement is attached as "FA19".

94. The full text of the media statement is as follows:

“SANRAL’s board passes resolution on e-toll summonses

Pretoria, 27 March 2019. The Board of Directors of the South African National Roads Agency SOC Ltd (SANRAL) passed an urgent resolution during a board meeting held yesterday [subs: 26 March].

It resolved that given the initiative led by President Cyril Ramaphosa to address the e-tolls payment impasse, SANRAL will, with immediate effect, suspend the process of pursuing e-toll debt. This includes historic debt and summonses applied for from 2015. No new summonses will be applied for.

This decision will be constantly monitored by the board and reviewed according to prevailing circumstances.

SANRAL is an agency of Government and remains committed to delivering on its mission of a safe, efficient, reliable and resilient national road transport system for the benefit of all the people of South Africa.”

95. Despite a subsequent request by OUTA for a copy of the Board resolution, SANRAL failed to provide it.

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The Defendants' attorneys follow up in order to obtain certainty

96. On 3 April 2019, AUA addressed a letter to SANRAL's attorneys requesting written confirmation by 4 April 2019 that SANRAL had suspended the actions and would withdraw them. AUA also requested copies of the minutes of the Board meeting, the tape recording of the meeting and the resolution. A copy of the letter is attached as "**FA20**". The request was not responded to.
97. On 21 May 2019, AUA addressed a follow-up letter to SANRAL's attorneys. AUA requested confirmation of SANRAL's instructions to its attorneys regarding the continued pursuit of alleged e-toll debt. A copy of the letter is attached as "**FA21**". AUA also recorded that:

"Having been saturated in uncertainty for a prolonged period, the pending litigation between our respective clients has yielded no prospects of finality, which we consider prejudicial to all parties involved – inclusive of your client. Furthermore, it is common cause that any timelines previously agreed upon between our offices have become fictional, non-adherence of which is of no legal consequence. Subject to receipt of clarity on the matter, our office remains amenable to the establishment of reasonable timelines in any future engagements."

98. No response to this letter was received.
99. AUA addressed another follow-up letter to SANRAL's attorneys on 18 June 2019, a copy of which is attaches as "**FA22**". In the letter, AUA again stated the following:
- 99.1 The prevailing uncertainty surrounding the pending litigation was prejudicial to both SANRAL and the defendants;

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99.2 SANRAL's attorneys were requested to obtain instructions from their client as a matter of urgency, failing which AUA would be left with no choice but to approach Tolmay J for appropriate guidance; and

99.3 AUA confirmed that it remained amenable to the establishment of reasonable timelines in any future engagements.

100. SANRAL's attorneys failed to respond to the letter from AUA.

SANRAL takes no further step for 3 years and 6 months

101. By June 2019, SANRAL had taken no further steps in the test case or the remaining actions for three months since the resolution.

102. SANRAL continued to do nothing to progress the actions for a further 3 years and 3 months until 26 October 2022.

Government announces that SANRAL's e-toll debt will be settled by government

103. On 26 October 2022, during the delivery of the Medium-Term Budget Policy Statement in Parliament, the Minister of Finance announced that the debt incurred in respect of the GFIP would be funded by National Treasury (70%) and the Gauteng Provincial Government (30%).

104. The announcement was confirmed in a media statement issued by National Treasury on 3 November 2022, a copy of which is attached as "FA23".

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105. On 4 January 2023, Mr Panyaza Lesufi, the Premier of Gauteng, was interviewed on Radio 702 regarding the issue of e-tolls. During the interview, he made the following statements:

105.1 The debt incurred by SANRAL in relation to the e-toll scheme would be settled by the National Government (70%) and the Gauteng Provincial Government (30%);

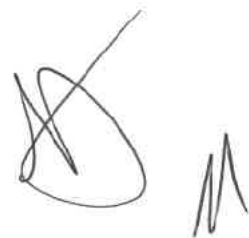
105.2 The Gauteng Provincial Government would engage with motorists in the province regarding how it intended to fund its 30% contribution to SANRAL's e-toll debt; and

105.3 Gauteng motorists would be refunded the amount of R6.9 billion that they had paid in e-tolls since 2013.

OUTA's correspondence with the Gauteng Premier in 2023

106. On 12 January 2023, a letter (dated 5 January 2023) was addressed to Mr Lesufi, in which OUTA requested clarification on various aspects of his interview with Radio 702.

107. In particular, OUTA sought clarity on the basis for the Gauteng Provincial Government's stated commitment to fund 30% of SANRAL's e-toll debt, as well as the manner in which the proposed refund of e-toll payments to motorists would be implemented. OUTA also requested an opportunity to engage with Mr Lesufi on these issues. A copy of the letter is attached as "**FA24**".

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108. The letter was resent to Mr Lesufi on 8 March 2023, 5 April 2023 and 18 April 2023 by email. Copies of these emails are collectively attached as "**FA25**". The confirmatory affidavit of Andrea van Heerden (née Korff) will be filed evenly herewith.
109. On 20 April 2023, following repeated follow-ups from OUTA, Mr Lesufi provided a response. He declined to furnish the requested clarifications. But he did not distance himself from the contents of his January 2023 interview with Radio 702. A copy of Mr Lesufi's response is attached as "**FA26**".
110. On 20 April 2023, Wayne Duvenage, in his capacity as Chief Executive Officer of OUTA, addressed an email to Mr Lesufi in response. In that email, Mr Duvenage once again queried the basis for the Gauteng Provincial Government's commitment to fund 30% of SANRAL's debt, as well as the precise amount of SANRAL's debt. Mr Duvenage also reiterated OUTA's request for an opportunity to engage with Mr Lesufi in relation to these issues. A copy of the email as attached as "**FA27**".
111. Mr Lesufi failed to respond to this email.
112. The confirmatory affidavit of Mr Duvenage will be filed evenly herewith.

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SANRAL and its attorneys avoid the applicants for the rest of 2023

113. On 24 May 2023, Jennings Incorporated, who had replaced AUA as the applicants' attorney of record, addressed a letter to SANRAL's attorneys, a copy of which is attached as "**FA28**". In the letter, Jennings Inc:

113.1 stated that the Defendants wanted the litigation to be brought to finality;

113.2 proposed a without prejudice meeting between the parties' legal representatives, with a view to exploring an amicable resolution of the litigation; and

113.3 invited SANRAL to indicate whether it was, in principle, amenable to bringing the litigation to an end on an amicable basis, and to meeting on a without prejudice basis for that purpose.

114. SANRAL failed to respond.

115. Between May and June 2023, the applicants' attorney followed up with SANRAL's attorneys regarding the contents of her letter. In response, SANRAL's attorneys advised that they had not yet obtained instructions from their client.

116. Copies of the emails in which SANRAL's attorney responded on each occasion to say that no instructions had been received, are attached as "**FA29**".

117. The confirmatory affidavit of the applicant's attorney, Andri Jennings, will be filed evenly herewith.



118. On 2 August 2023, Mr Duvenage addressed a letter to the CEO of SANRAL, Mr Reginald Demana, in which he proposed a meeting to discuss various matters, including "*the e-toll litigation and the way forward*". A copy of the letter is attached as "**FA30**".

119. Mr Demana did not respond to this letter.

Governments' decision to terminate e-tolling and settle SANRAL's e-toll debt is implemented

120. On 5 March 2024, the Gauteng Member of the Executive Council (MEC) for Finance, Mr Jacob Mamabola, delivered the 2024/25 Budget Speech to the Gauteng Provincial Legislature. In relation to addressing the e-toll debt, he stated the following (at pages 18 - 19):

120.1 The debt incurred by SANRAL in respect of the e-toll scheme would be settled by the National Government (70%) and the Gauteng Provincial Government (30%);

120.2 Provision for honouring this commitment formed part of the fiscal framework that the Gauteng Provincial Government was presenting in the 2024/25 Budget Speech;

120.3 The Gauteng Provincial Government had approached financial institutions to raise the funds required to honour its contractual obligations, given that the target date for ending the tolling of GFIP 1 was 31 March 2024;

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- 120.4 The Gauteng Provincial Government's position was that all other matters relating to road maintenance should be addressed through a separate process;
- 120.5 As part of the winding-down process, the relevant statutory authorities at national level—namely, National Treasury, the National Department of Transport, and SANRAL—would take all necessary steps to terminate the collection of e-tolls and to give effect thereto by publication in the Government Gazette; and
- 120.6 With regard to the cancellation of e-tolls, fourteen days after the publication of the deregulation notice in the Government Gazette, Gauteng road users would no longer be charged for the use of Gauteng highways. Various processes would be implemented in the lead-up to that date, including the deactivation of tag beeps and the cessation of invoice generation and dispatch of invoices to road users. Although the gantry lights and cameras would remain operational, they would, going forward, be used solely for other law enforcement purposes and not for e-toll collection.
121. The relevant extract of the budget speech is attached as "**FA31**".
122. It should be noted that "*GFIP 1*" (as referred to in the MEC's Budget Speech) refers to Phase 1 of the Gauteng Freeway Improvement Project (GFIP). This phase involved the upgrading and widening of approximately 185 kilometres of the most congested highway sections, including improvements to 34 major

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interchanges, and was completed prior to the commencement of tolling in April 2011.

123. Subsequent phases—including Phase 2, which would have entailed upgrades to an additional 158 kilometres—were planned but never implemented. Owing to public opposition and financial constraints, these later phases were placed on hold.

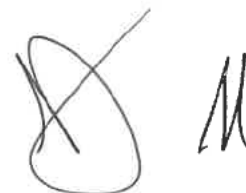
124. Accordingly, when the decision was taken to terminate e-tolls, only GFIP 1 had been implemented. The planned expansions under GFIP 2 and beyond were never executed under the toll-funded model.

The withdrawal of the toll declarations and the end of e-tolls on the GFIP network

125. On 28 March 2024, Government Gazette Notice No. 50418 was published. A copy of the notice is attached as “FA32”.

126. The notice formally withdrew the toll declaration for the GFIP network, effectively de-declaring those roads as toll routes. The effective date and time of the withdrawal of the toll declaration was 11 April 2024 at 23:59:59. Therefore, from midnight on 12 April 2024, e-tolls ceased to be charged on the GFIP network.

127. The toll declarations were clearly withdrawn as a consequence of the decision by government that SANRAL’s e-toll debt would be funded directly from the national and provincial fiscus.

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Further attempts by the Defendants' attorneys and by OUTA to obtain finality

128. On 10 April 2024, the applicants' attorney addressed a letter to SANRAL's attorneys in which she recorded the procedural history of the actions and the test case, and stated, *inter alia*, the following:

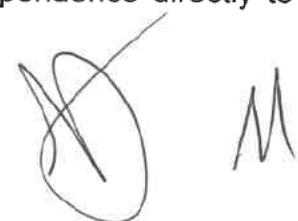
128.1 She was again requesting an engagement with SANRAL to attempt to resolve the pending SANRAL litigation as a matter of urgency. The preliminary points for discussion were whether SANRAL intended to withdraw the actions, alternatively, what its intentions were in relation thereto, and the cost implications arising from the pending matters;

128.2 OUTA had been attempting to engage with SANRAL since 24 May 2023;

128.3 She had been instructed to demand that SANRAL furnish three suitable dates and times for a meeting—such meeting to take place on or before 19 April 2024—to discuss the resolution of the pending SANRAL litigation;

128.4 OUTA required clarity on SANRAL's intended course of action in respect of the pending SANRAL litigation, including whether SANRAL intended to withdraw the actions. In the event that no agreement could be reached, OUTA reserved its rights to initiate formal legal proceedings to resolve the status of the pending SANRAL litigation, with SANRAL to be held liable for the costs on an attorney and client scale;

128.5 OUTA further reserved its right to address correspondence directly to SANRAL's Chief Executive Officer.

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129. A copy of the letter is attached as **"FA33"**.
130. On 11 April 2024, Mrs Andrea van Heerden of OUTA sent the applicants' attorney's letter of 10 April 2024 (*"the letter of 10 April 2024"*) directly to Mr Demana, via his personal assistant. A copy of the email is attached as **"FA34"**. Mr Demana did not respond to the letter.
131. By 22 April 2024, the applicants' attorneys had not received a substantive response from SANRAL's attorneys, nor had OUTA received a response from Mr Demana (respectively).
132. Mr Duvenage consequently sent a WhatsApp message to Mr Demana, asking him whether he had received the copy of the letter of 10 April 2024.
133. Mr Demana confirmed that he had received it and that he would follow up with SANRAL's attorneys, whom he had asked to respond. In reply, Mr Duvenage indicated that OUTA would await feedback from SANRAL's attorneys.
134. A copy of this exchange is attached as **"FA35"**.
135. On 23 April 2024, the applicants' attorneys addressed a follow-up email to SANRAL's attorneys granting them an extension until 6 May 2024 to respond to her letter of 10 April 2024. A copy of the email is attached as **"FA36"**.
136. SANRAL's attorneys responded and stated that they had brought the applicants' attorneys' email to SANRAL's attention but had not yet obtained instructions from

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SANRAL and that they would revert as soon as they had done so. A copy of the email from SANRAL's attorneys is attached as "FA37".

137. On 8 May 2024, Mr Duvenage sent a WhatsApp message to Mr Demana, in which he stated the following:

137.1 His office had acknowledged receipt of the letter of 10 April 2024;

137.2 It was necessary to resolve the matters, as the actions were still before court and could not be left in limbo;

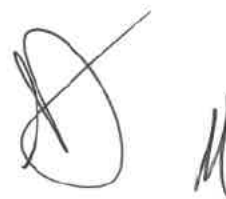
137.3 OUTA had not received a response to date, and SANRAL's attorneys had stated that they had not received instructions from SANRAL; and

137.4 The lack of response from SANRAL meant that OUTA had no option but to consider approaching the various courts to remove the matters from the roll, which would escalate legal costs.

138. A copy of the WhatsApp exchange is attached as "FA38".

139. On or around 20 May 2024, Mr Demana informed Mr Duvenage that SANRAL would communicate its position to OUTA in writing. Mr Duvenage consented to grant Mr Demana further time for that purpose.

140. But no further correspondence was received from either SANRAL or its attorneys.

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141. By the time Mr Duvenage sent the WhatsApp to Mr Demana on 8 May 2024, SANRAL had not taken any further step in the test case or the actions for a further 1 year and 7 months (since the public announcement of Government's decision to settle SANRAL's e-toll debt).

142. The position remains the same today.

SANRAL's abandonment of the actions

143. According to the resolution of the SANRAL Board on 26 March 2019, SANRAL ceased collection of e-toll debt through the legal proceedings launched from 2015 onwards, which included the actions.

144. Although the media statement indicated that this decision may be reviewed, SANRAL subsequently persisted in not taking any further step in the test case or the actions.

145. SANRAL's own decision to cease collection of e-toll debt through the legal proceedings launched from 2015 onwards, was both overtaken and confirmed by the decision by Government, announced by the Minister of Finance in October 2022, that SANRAL's GFIP e-toll debt would be funded by government.

146. It is clear that SANRAL will not proceed with the test case and the actions. It will not proceed with them because the GFIP e-toll debt has been (or will be) settled by the public by another means.

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147. The test case and the actions have been abandoned.

148. The applicants have sought to engage with SANRAL on numerous occasions to obtain finality by confirming the abandonment of the test case and the actions, and to recover legal costs, but SANRAL has avoided such engagement because of the obvious financial consequences.

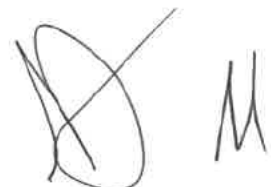
149. SANRAL's failure to withdraw the actions and tender the costs is unfair and prejudicial to OUTA and the Defendants who are entitled to have certainty and obtain finality in the actions and are entitled to payment of the legal costs incurred in defending the actions.

The Defendants' entitlement to costs and the appropriate scale

150. I am advised and I submit that where a plaintiff withdraws or abandons an action, the defendant is entitled to the costs of the action.

151. As set out above, SANRAL sued the Defendants for alleged e-toll debt. The actions were defended by the Defendants. The Defendants were entitled to defend the actions against them, and to do so *inter alia* by collaterally challenging the lawfulness of e-tolling. SANRAL subsequently abandoned the actions. SANRAL is therefore liable to pay the Defendants' legal costs.

152. Substantial legal costs were incurred in defending the actions and the test case.

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153. The pleadings in the test case were complex and difficult. They were prepared by teams of three and four counsel on behalf of SANRAL and the Defendants respectively.

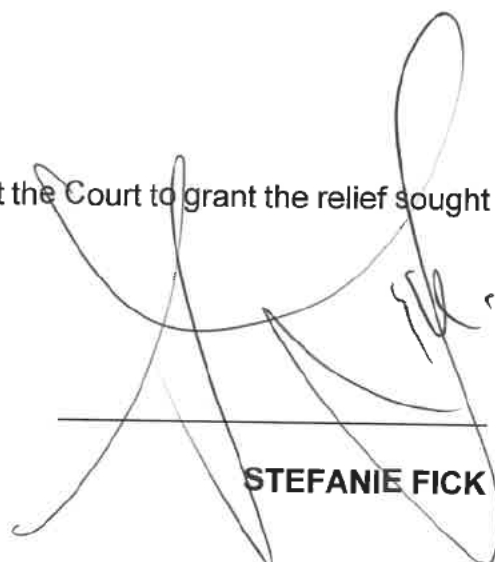
154. The pleadings in the test case were then adapted and applied in the actions.

155. The complexity and difficulty of the issues in the test case, as well as the magnitude and importance of those issues, warrant an order for costs on party and party scale C, and an order that the costs of three counsel be paid, where so employed.

156. Although they may be entitled to a higher scale of costs for the same reasons, the applicants seek orders for costs only on party and party scale A in the balance of the actions.

CONCLUSION

157. For the above reasons, the applicants request the Court to grant the relief sought in the Notice of Motion.



STEFANIE FICK

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on this the 14 day of August 2025, the regulations contained in Government Notice No. R1258 of 21 July 1972, as



amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

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