IN THE HIGH COURT SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2026-166564

In the matter between: -

ORGANISATION UNDOING TAX ABUSE	Applicant
And	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF TRANSPORT	Second Respondent
THE DIRECTOR-GENERAL: DEPARTMENT OF TRANSPORT	Third Respondent
THE ROAD TRAFFIC INFRINGEMENT AUTHORITY	Fourth Respondent
THE ROAD TRAFFIC MANAGEMENT CORPORATION	Fifth Respondent
THE MINISTOR OF FINANCE	Sixth Respondent
THE DIRECTOR-GENERAL: NATIONAL TREASURY	Seventh Respondent
THE SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION	Eighth Respondent

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FILING SHEET: FOURTH RESPONDENT'S ANSWERING AFFIDAVIT

PRESENTED FOR FILING BY THE FOURTH RESPONDENT

DATED AT RIVONIA ON 28 JULY 2026

SM VAKALISA ATTORNEYS INC.
Fourth Respondent's Attorneys
13 Summer Street
Summer Place

RIVONIA, SANDTON
Tel: 010 054 6971
Email: smvakalisa@smvakalisa-inc.co.za &
keabetswe@smvakalisa-inc.co.za
siphatekile@smvakalisa-inc.co.za
thato@smvakalisa-inc.co.za
Ref: K NKUNZANA/ S MAPHOSA
C/O SL ATTORNEYS
Masada Building
Suite 203
Second Floor
96 Paul Kruger Street
(Corner Paul Kruger and Johannes Ramokhoase)
Pretoria Central
0002
Email: lutendo@spurislaw.co.za

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

TO: **JENNINGS INCORPORATED**
Applicant's Attorneys.
51 Jerome Road
Leopard Court
Ground Floor
Lynnwood Glen
Pretoria
Tel: 012 110 4442
Email: andri@jinc.co.za; delia@jinc.co.za; kayla@jinc.co.za
office@jinc.co.za
Ref: A Jennings/OUTA048

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FOURTH RESPONDENT'S ANSWERING AFFIDAVIT

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MLB

I, the undersigned,

MATSEMELA MOLOI

do hereby declare and make oath,

1.

A. DEPONENT

1.1. I am a major male person and the Registrar of the Road Traffic Infringement Authority (*"Authority"*), appointed as such in terms of section 8 of the Administrative Adjudication of Road Traffic Offenses Act, 1998 (*"AARTO"*) with its place of business at 10 Matuka Close, Carswald, Midrand, Gauteng Province.

1.2. I am the Accounting Officer for the Authority and as such I am duly authorised to depose to this affidavit and to oppose this application on behalf of the Authority.

1.3. The contents of this affidavit are within my personal knowledge unless context indicates otherwise.

1.4. Where I make legal submissions, I do so at the legal advice for the legal representative for the Authority.

MCB

1.5. The nature of the application and documents referred to are such that some may require confirmation and due to the long period relating to the facts of the matter that are the subject of this application, where necessary, I will refer to hearsay evidence and I will, if necessary, ask that such evidence be admitted in terms of the Law of Evidence Amendment Act, 45 of 1988.

1.6. I depose to this affidavit in response to the urgent interdict application brought by the Organisation Undoing Tax Abuse NPC ("*OUTA*").

1.7. In this application I will refer to the parties as follows:

1.7.1. The Applicant as "*OUTA*";

1.7.2. The President of the Republic of South Africa as "*the President*";

1.7.3. The Minister of Transport as "*the Minister of Transport*";

1.7.4. The Department of Transport as "*the Department of Transport*";

1.7.5. The Director-General: Transport "*the DG: Transport*";

1.7.6. The Road Traffic Infringement Authority as "*the Authority*";

1.7.7. The Road Traffic Management Corporation as "*the RTMC*";

1.7.8. The Minister of Finance as "*the Minister of Finance*";

1.7.9. The Director-General: National Treasury as "*the DG: National Treasury*"; and

1.7.10. The South African Local Government Association as "*SALGA*".

2.

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B. INTRODUCTION

2.1. OUTA has brought a far-reaching application, on an urgent basis, in which it seeks to interdict the President, the Minister, the DG: Transport, the Authority and the RTMC from *"implementing, operationalising, and enforcing or giving effect to"* the commencement and implementation of Phase 2 and any other phases of the AARTO Act including its Regulations in the affected municipalities.

2.2. The application is ill fated because OUTA has predicated on an incorrect factual basis. In launching the application, OUTA was under an incorrect impression that the President has issued a Proclamation bringing certain Phases for the AARTO Act into operation without establishing the Tribunal. I shall show shortly that the Tribunal was already established and operationalised by the President during September 2025. This is a material fact that could have been easily ascertained by OUTA before launching this application by requesting this information through the Promotion of Access to Information Act, 2 of 2000 ("*PAIA*").

2.3. OUTA predicated this application on a misconception that the President has failed to appoint a Tribunal for appeal and review of decisions made in terms of the AARTO Act as required in terms of section 29D thereto. What is refreshing is that OUTA itself accepts at paragraph 22.2 of the founding affidavit that if the Tribunal has been established and operationalized, this would mean that the Proclamation by the President and by implication the publication of the Administrative Adjudication of Road Traffic Offences Regulations, 2026 ("*the 2026 Regulations*") are constitutionally valid.

2.4. This application is stillborn and must fail because <u>first</u>, the President appointed the members of the Tribunal in September 2025 and designated one of them as Chairperson. The Tribunal is independent and has rules and standard operating procedures, making it effective and accessible.

MLB

2.5. The second basis for the attack by OUTA is that the Regulations promulgated by the Minister of Transport did not follow public participation. Again, this is an intentional misconception of the facts.

2.6. The process to make the 2026 Regulations commenced with the publication of Draft Regulations on 2 October 2020 with a call for comment, objection or input to the proposed regulations. The public was given 60 days to comment. In total, 9300 comments were received from the public at large, including OUTA itself. In fact, OUTA submitted extensive comments twice.

2.7. The comments came from all sections of the public including Government, Business, labour and individuals. These comments were considered and where necessary, the draft regulations amended. Some of OUTA's comments were in fact accepted and incorporated into the Regulations.

2.10 But, before the process could be finalised but after the 9300 comments had been collated, considered and Draft Regulations amended in line with therewith, OUTA brought a constitutional challenge against the Minister of Transport and the Authority, among others. It contended that the AARTO Act fell within the functional area of the exclusive legislative competence of the provincial sphere of government and that, it encroached on the exclusive executive competence of the local sphere of government and that this rendered the AARTO Act inconsistent with the Constitution because Parliament had no competence to pass a law that usurped the executive functions of municipalities. The High Court per Basson J agreed with OUTA and invalidated the AARTO Act. This invalidation meant that work on the proposed Regulations could not proceed.

CG UUB

2.8. OUTA then approached the Constitutional Court for a confirmation order. The Constitutional Court handed down judgment in July 2023 and refused to confirm the invalidity of the AARTO Act. It was only after the judgment of the Constitutional Court that work on the Regulations resumed, with emphasis on the capacitation of municipalities, procurement of equipment and other resources, staffing approvals and appointments and training of representation and issuing officers. This work led to the publication of the 2025 Regulations, which are in essence, the same 2020 Draft Regulations which had simply been amended to take into account the comments already received on those Draft Regulations. These very same 2025 Regulations were withdrawn during 2025 because of the withdrawal of the Proclamation by the President. The same 2025 Regulations were then simply re-published during June 2026 after the re-publishing of the Proclamation by the President.

2.9. The Authority will argue that under these circumstances, OUTA has no right that warrants the protection by the interdict of an executive and/or legislative power and, where there is no right that warrants protection, there can be no harm that is irreparable. If OUTA persists, it can continue to bring the review application threatened in this application. It does not need the sanction of this Court to do so.

2.10. Third, OUTA is asking the Court to interdict the implementation of an already enacted and commenced legislation that it has already failed to impugn in the Constitutional Court and is unable to again impugn directly. The consequence of the interdict sought by OUTA will lead to legislative harm because section 35 of the AARTO Act says that once its commencement is proclaimed by the President, the old regime which required that notices of infringement be issued in terms of the Criminal Procedure Act, 1977 ("*CPA*") is no longer applicable in the AARTO Act affected municipalities.

2.11. An interdict as sought by OUTA means that in those municipalities, there will be no traffic enforcement and, the object of the AARTO Act [to promote road traffic quality, facilitate road traffic infringements, support prosecution of offences], cannot be realised.

2.12. In those municipalities, there will be no revenue collection because section 13(1)(b) of the AARTO Act recognises the collection of revenue through deductions from penalties collected by the Authority as prescribed by section 32 thereof. This is the revenue that must assist the Authority to meet its objects which amongst others includes safety.

2.13. There are further factors that militate against the granting of an interdict against the implementation of Phase 2 and other phases of the AARTO Act and the 2026 Regulations.

2.13.1. Budget allocation. There is a budget that has been allocated for the implementation of the AARTO Act. That budget was, due to being unspent, returned to National Treasury. After negotiation, a portion of it has been ringfenced. This is a budget for staff, the Tribunal, equipment and so on. An interdict of this nature means the budget cannot be spent.

2.13.2. Staff support. The AARTO Act brings in a new regime as OUTA accepts. This regime requires that there is a staff compliment with the requisite training to implement the new regime. The capacitation of the staff compliment requires training both within the Authority [the representation officers, the Tribunal ...] and outside the Authority [the issuing officers, officials in municipalities and other Government institutions]. This training is completed and refresher training is underway some areas. As it is, funds had to be spent for refresher training for officials since the initial implementation was supposed to be in 2021.

2.13.3. Procurement of equipment and stationery support. The new regime requires new equipment. The new regime also requires new stationery [i.e., new notices in terms of the AARTO Act and not the CPA.] All these have been factored into the budget.

MUB

2.13.4. Institutional collapse. The institutional collapse that I deal with above is a factor that counts in support of the balance of convenience requirement.

2.14. Fourth, all the above point to another simple fact. The application can never be urgent.

2.14.1. This is because the promulgated Regulations are the same ones that were promulgated in 2025. No allegation of unlawfulness was raised then. Those allegations were withdrawn to allow municipalities to be more capacitated, which they now are.

2.14.2. But further, OUTA knows and accepts that SALGA brought an application heard by this Court on 30 June 2026. SALGA also sought to interdict the implementation of Phase 2 of the AARTO Act. That application was struck from the roll for lack of urgency. If SALGA's application was not urgent a month ago, what magic has been sprinkled on this current application to elevate the issue of urgency? None.

2.14.3. A further issue that exacerbates the lack of urgency is the non-joinder of the municipalities who are the major stakeholder and interested party with direct and substantial interest. They are designated issuing authorities. They are thus at the grass roots of enforcement. No relief is sought against them and the AARTO Act is not directly impugned as such, the municipalities would be forced to operationalise, implement and enforce the AARTO Act. They cannot do that when the Authority is interdicted as the Authority provides all the support including equipment, training and so on.

CG MLB

2.14.4. Last, interdicts seek to protect against future conduct and not conduct that has already occurred. OUTA accepts at paragraph 15.7 of the founding affidavit that the implementation and operationalisation of the AARTO Act has already occurred. Thus, an interdict is not appropriate.

2.14.5. But even further, because the commencement date for the AARTO Act has passed, this Court cannot suspend its operationalisation. Only Parliament can.

2.15. Fifth, the application is vexatious. It was brought recklessly by a party that was warned years ago by the Constitutional Court that an interdict of this nature may only be granted in exceptional circumstances. OUTA brought the application on incorrect bases when it would have been prudent to follow PAIA to get the correct information or dispatch a simple letter of demand. OUTA should therefore not be shielded by *Biowatch*. It must in fact be mulcted with a punitive cost order

3.

C. POINTS *IN LIMINIE*

(i) The application is not urgent

3.1. OUTA brings the application to be heard on 4 August 2026. In terms of the basis for urgency at paragraph 24 of the Founding Affidavit it contends that:

3.1.1. The implementation of Phase 2 commences on 1 July 2026 in the affected municipalities and thus the Court must intervene urgently;

3.1.2. OUTA brought the application as soon as possible after it became clear that the President proceeded to implement Phase 2 despite the non-establishment of a Tribunal;

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3.1.3. OUTA will not receive substantial redress in due course as by then, "*the unlawful scheme may have been operationalised in practice and affected persons may have already suffered prejudice*";

3.1.4. The matter raises an immediate rule of law of concern and that in those circumstances the Courts should intervene promptly where executive conduct brings a statutory scheme into force in a manner inconsistent with mandatory statutory requirements.

3.2. First, the basis for urgency is the alleged non-establishment of the Tribunal. As I say, the Tribunal Members have been appointed. The issue of urgency then falls away.

3.3. Second, the Proclamations by the President and the promulgation of the regulations are dated 30 July 2026. In terms of the resolution attached to the Founding Affidavit, at annexure FA1, OUTA resolved to bring this application on 3 July 2026 but, the Notice of Motion itself is dated 13 July 2026, that is ten days after OUTA resolved to bring the application. No explanation is given for the passage of time. OUTA itself treated the application as if it was not urgent.

3.4. Third, a similar application brought by SALGA seeking to interdict the operationalisation of the implementation of the second phase was brought under Case Number: 143399/2026. In that application SALGA sought an order that:

> "2. *Pending the finalisation of the intergovernmental dispute – resolution process contemplated in section 41 of the Constitution of the Republic of South Africa, 1996 and the Interrelations Framework Act, 13 of 2005 ("**IGRFA**"), the* [The Minister of Transport], *the* [Road Traffic Infringement Authority], *and the* [Road Traffic Management Corporation] *are interdicted and restrained from implementing, operationalisation, enforcing or giving effect to Phase 2 and all staggered phases of the administrative adjudication of Road Traffic Offense Act 46 of 1998, as amended, on municipalities on 1 July 2026.*"

3.5. The Notice of Motion is attached herein as annexure "**AA1**".

3.6. The Court struck the application brought by SALGA from the roll on 30 June 2026. The order of the Court is attached herein as annexure "**AA2**". The basis for urgency by SALGA was the contention that the municipalities were not ready for the implementation of Phase 2. But the relief sought was similar to the relief sought in the current application before Court. If the application was not urgent on 30 June 2026 it begs the question, why the application would be urgent more than a month later.

3.7. In fact, as I say, the 2026 Regulations are the same Regulations as withdrawn in 2025.

3.8. It will be argued that the application is not urgent and should be struck from the roll with costs, including the costs of two counsel on scale C.

4.

(i) <u>The horse has already bolted</u>

4.1. The effect of the relief sought and if one has regard to paragraph 15.7 of the Founding Affidavit, has already occurred. I am informed that interdicts are to protect future conduct and not conduct that has already occurred.

4.2. At paragraph 15.7 in the Founding Affidavit, OUTA states:

> *"15.7 The practical effect of Proclamation 322 is that, from the same date, the substantive procedural mechanisms in sections 17 to 20 of the AARTO Act and related provisions become active and enforceable in the 60 listed areas. Taken together, the proclamations seek to bring the amended AARTO process into operation in the affected municipalities from <u>1 July 2026</u>."*[1]
>
> [Own emphasis]

4.3. OUTA accepts that the promulgation of the proclamations and the regulations operationalised the AARTO Act. In this application, AARTO does

[1] FA Caselines, p.006-30, para 15.7

MJB

not have qualms with the AARTO Act. It says that it only seeks to interdict the implementation and operationalised and enforcement of the AARTO Act. But, in law, on 1 July 2026 the operationalisation and enforcement of the AARTO Act came into being. Therefore, that conduct cannot be interdicted in these proceedings because it has already occurred.

5.

(ii) Non-Joinder

5.1. The relief sought by OUTA is to interdict the operationalisation, implementation and enforcement of the AARTO Act and its regulations in the applicable 62 municipalities. OUTA has failed to cite the said municipalities in this application.

5.2. The municipalities are a necessary party to the application in that they are they are designated issuing authorities. They are thus at the grass roots of enforcement. No relief is sought against them and the AARTO Act is not directly impugned and as such, the municipalities would be forced to operationalise, implement and enforce the AARTO Act. They cannot do that when the Authority is interdicted as the Authority provides all the support including equipment, training and so on.

5.3. The non-joinder point must be upheld.

6.

D. THE 2026 REGULATIONS WERE PRECEDED BY EXTENSIVE PUBLIC PARTICIPATION

6.1. OUTA's argument is that the previous promulgation of Regulations were proceeded by a call for comment from the Minister of Transport that the 2026 Regulations were not preceded by such call for comment and public participation in circumstances where the Minister of Transport had created a legitimate expectation that the public, specifically road users and interested parties would be invited to make such comment and as such, due to that, the 2026 Regulations, should be interdicted pending finalisation of the review application to be brought to by OUTA for want of public participation.

6.2. OUTA labours from the misconception that the 2026 Regulations were new regulations that required a separate public participation. It is wrong. The process that culminated in the 2026 Regulations commenced with the initial call for comment to the 2020 Draft Regulations. Extensive and comprehensive comments were received on those Draft Regulations from the broader public, government stakeholders, including the labour movement through NEDLAC.

6.3. On 1 July 2007, the AARTO Act was enacted among others to provide for a scheme to discourage road traffic contraventions, facilitate the adjudication of road traffic infringements, to support the prosecution of offences in terms of National and Provincial laws related thereto, implement a points demerits system and to provide for the establishment of an authority to administer the scheme.

6.4. The object of AARTO is to be found in section 2 therein which include:

6.4.1. to encourage compliance with the National and Provincial laws and municipal by-laws relating to traffic and to promote road traffic safety;

6.4.2. to encourage the payment of penalties imposed for infringements and to allow alleged minor infringers to make representations;

6.4.3. to establish a procedure for the effective and expeditious adjudication of infringements;

MB

6.4.4. to alleviate the burden on the Courts of trying offenders for infringements;

6.4.5. to penalise drivers and operators who are guilty of infringement or offences through the imposition of demerits points leading to the suspension and cancellation of driving licences, professional driving permits and operator cards;

6.4.6. to reward law abiding behaviour by reducing demerits where they have been incurred if infringements or offences are not committed over specified periods;

6.4.7. to establish an authority to support the law enforcement and judicial authorities to undertake the administrative adjudication process and;

6.4.8. to strengthen co-operation between the prosecuting and law enforcement authorities by establishing a board to govern the authority.

6.5. Section 3 of AARTO Act establishes the Authority as a juristic person responsible to the Minister of Transport. The functions of the Authority are to:

6.5.1. administer a procedure to discourage the contravention or road traffic legislation or transport legislation and to support adjudication of infringements;

6.5.2. to enforce penalties imposed against persons contravening the traffic laws;

6.5.3. to administer and manage a point demerit system for infringements and offences; and

MLB

6.5.4. to undertake community education and community awareness programmes in order to ensure that individuals understand their rights and options as set out in the AARTO Act.

6.6. The application before Court deals specifically with the suspension of the powers of the Authority when OUTA seeks to interdict the implementation, operationalisation enforcement or giving effect to the commencement and implementation of Phase 2 of the AARTO Act and the regulations.

6.7. In terms of section 4(4)(b) and (d) of the AARTO Act, the Authority performs its functions by providing traffic law enforcement equipment and support services to issuing authorities and providing training where possible and to authorise officers of staff of the prosecuting authority.

6.8. "*Issuing Authority*" is defined to include the local authority, the provincial administration, the RTMC or any other State institution declared by the Minister of Transport by regulation to be an issuing authority insofar as such authority, administration or State institution is responsible for road traffic and road traffic matters. Section 4(4) is important in this application as it deals with the weighing up of the balance of convenience which applications for an interdict frequently turn on. I will show that the balance of convenience favours the dismissal of the interdict application.

6.9. A further provision of AARTO which has influence in this application is section 13 which deals with the financing of the Authority. It states that the Authority is financed through among others, fees paid to it, deductions from penalties collected by it and money appropriated by Parliament for that purpose.

6.10. I will show to the Court that since the enactment of the AARTO Act, parliament has appropriated a budget for the implementation of AARTO. In terms of the public finance legislation, where the said budget is not utilised by an organ of State, it has to be returned to National Treasury. This has an effect on future budget allocations for the Authority.

MLB

6.11. In this case, I will show that due to the delay in the implementation of the AARTO Act, the budget was affected in that the Authority was unable to spend the appropriated money from Parliament and thus it had to be returned to National Treasury. A portion of that money was ring-fenced to ensure the implementation of the AARTO Act.

6.12. Section 29A establishes the Appeals Tribunal. I will deal with this aspect later in the affidavit.

6.13. On 1 July 2008 the then Minister of Transport published the Regulations in terms of section 34 of the AARTO Act. On 13 August 2019, the AARTO Act was amended and in October 2019, the Minister of Transport published draft Regulations under government gazette 42765 (2019) for public comment and subsequently revoked the 2008 Regulations with the exception of schedule 3. However, the 2008 Regulations were still applicable in Tshwane and Johannesburg.

6.14. On 2 October 2020, the Minister of Transport issued a call for comment in Government Gazette 43758 attached to the Founding Affidavit as **FA17** in which he sought to revoke the 2008 regulations. Interested parties were given sixty days to object or to provide inputs or comment to the proposed amendment.

6.15. During that call for comment, 9300 comments and/or inputs were received by the public and considered. The comments and/or input received were collated, considered and where applicable, the Draft Regulations were amended.

6.16. For purposes of the current application, OUTA itself made extensive comments. The documents relating to the comments from the public is six hundred and fifty pages long, and as such, in order not to burden the papers, I attach only pages 47 to 56, which is a summary of the comment by OUTA, marked as annexure **"AA3"**. As can be noted, some of the comments by OUTA were considered for inclusion in the regulations.

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6.17. The Authority also conducted engagements with stakeholders including municipalities, provincial government. The National Economic and Labour Council (NEDLAC) was also consulted, and it set up a task-team to consider the regulations. The report from NEDLAC is attached as annexure **"AA4"**.

6.18. Once the comments were considered, an opinion of the Office of the Chief State Law Advisor was sought. The opinion is attached herein as **"AA5"**.

6.19. While the comment process was going ahead and in 2020, OUTA brought an application against among others, the Minister of Transport and the Authority in terms of which it sought an order that the AARTO Act and its amendment were unlawful insofar as the enactment by parliament infringed upon the powers of the Provincial and Local Government. The Court agreed with OUTA in its judgment of 13 January 2022.[2] The effect of the order of invalidity was that no work could be done in relation to the implementation of the AARTO Act pending the outcome of the Constitutional Court judgment.

6.20. OUTA applied to the Constitutional Court for confirmation of the order of invalidity. The Constitutional Court handed down its judgment on 12 July 2023.[3] The Constitutional Court refused to confirm the order of invalidity.

7.

E. THE FINANCIAL MODEL

7.1. The financial model may be considered one of the most important components of the entire AARTO process. One of the most important parts of the financial model is the **online and real-time capturing** of payments. All payments must be verified, controlled and captured directly on the National Contravention Register ("*NCR*") of the National Traffic Information System (NatTIS).

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2 *Organization Undoing Tax Abuse v Minister of Transport and Others* (32097/2020) ZAGPPHC 1; 2022 (2) SA 566 (GP) (13 January 2022)

3 *Organization Undoing Tax Abuse v Minister of Transport and Others* 2023 ([2023] ZACC 24)

CG MLB

7.2. All daily, weekly, and monthly payments of notices and financial reconciliations, disbursements, remunerations, and apportionments must take place on the NCR. The same set of data, system and reports must be used by all issuing authorities, collecting authorities, pay points and the Agency. This will prevent discrepancies in reconciliation, disbursement, remuneration and apportionment process and procedures.

7.3. There are currently in the order of 216 national, provincial and municipal issuing authorities and about 612 motor vehicle registration licensing officers and driving licence testing centres. Together these 828 authorities can receive payments for any of the 216 issuing authorities. Although all the data on payments will be on the NCR, the reconciliation and transfer of monies on a regular basis to various issuing authorities will still be a mammoth, if not an impossible task for individual authorities. The potential for errors is very likely, and the reconciliation and transfer process will require additional resources and great delays in the transfer of monies may be expected. The control, oversight and auditing at a national level of the process will require additional skilled staff.

7.4. The same difficulties are also applicable to the South African Post Office, financial institutions and other pay points, each with a numerous number of branches around the country.

7.5. The only reasonable, easy to control and acceptable manner to do such reconciliations and transfers will be if it is done on a national basis. In such case the national AARTO bank account to which payments received by all the collecting authorities and pay points are transferred and from which transfers to the relevant issuing authorities can be made, is essential.

7.6. From the consolidated records regarding all payments received for notices issued by each individual Issuing Authority, the NCR reports the monies due to each institution involve in the AARTO process and the apportionment formula as provided in Schedule 2 of the AARTO Regulations.

MLB

7.7. The effect of the interdict will be that the municipalities will implement AARTO since they are not joined and no relief is sought against them. But the Authority cannot receive apportionment because the parts of the AARTO Act that give the Authority power will, in essence, be suspended.

8.

F. THE TRIBUNAL HAS BEEN APPOINTED AND OPERATIONALISED

8.1. OUTA contends that the President acted unlawfully and irrationally when he implemented the amended AARTO Act in the relevant Municipalities from 1 July 2026, despite the Tribunal in terms of section 29A having not been duly constituted in accordance with the legislative requirements. It contends that the appointment of the Chairperson and eight other persons had to be done no later than the commencement date of Phase 2 which was 1 July 2026 [paragraph 17.5, FA]. Further that the President and the Minister have failed to comply with the AARTO Act which was a mandatory provision [paragraph 17.9, FA].

(i) <u>Access to Court</u>

8.2. OUTA argues that the old regime allowed users to elect to move out of an administrative process into a Court in terms of the Criminal Procedure Act which is omitted in the current regime without the establishment of the Appeal Tribunal which is contrary to section 34 of the Constitution.

(ii) <u>Rationality and equality attacks</u>

8.3. OUTA argues that:

8.3.1. The President's conduct is unlawful because section 29A (4)(a) required him to appoint a chairperson and other members of the Tribunal before the commencement date, 1 July 2026, which language is peremptory and compliance was not optional.

MLB

8.3.2. The failure to establish the Tribunal is irrational insofar as it lacks a rational relationship to the purpose of the amended scheme which removed the old Court election route and replaced it with a Tribunal based review and appeal mechanism.

8.3.3. The Proclamations by the President are irrational in that it provides a territorial mismatch between Proclamation 322 and 323 in that one Proclamation applies the principal Act while the other applies the amendment Act which OUTA argues is a lack of coherence in commencement design.

8.3.4. The equality challenge arises because road users in the Phase 2 Municipalities are subject to a materially different and inferior remedial position from those in areas where the old route remained available or where the amended scheme had not yet displaced prior processes. In the affected Phase 2 areas the old Court election rule falls away immediately. It argues that this differentiation is arbitrary and has no reasonable or legal basis and violates both section 9 and 34 of the Constitution.

8.4. OUTA accepts at paragraph 22.2 of the Founding Affidavit that:

> *"22.2 As already explained, the Amendment Act repealed section 22 and removed the court-election features from sections 18 and 19. It substituted it with a review or an appeal to the Tribunal. That substitution could only be constitutionally and practically acceptable if the Tribunal existed as an effective, independent and accessible forum."*

8.5. Section 29A of the AARTO Act provides for the "***establishment and constitution of the Tribunal***". It states that:

> ***"29A. Establishment and constitution of Tribunal***
> *(1) The Appeals Tribunal is hereby established.*
> *(2) The Tribunal–*
> *(a) has jurisdiction throughout the Republic;*
> *(b) is a juristic person;*
> *(c) is a tribunal of record; and*
> *(d) must exercise its functions in accordance with this Act or any other applicable legislation.*

MMB

> (3) *The Tribunal consists of a Chairperson and eight other persons appointed by the President, on a part-time basis, and on the recommendation of the Minister, from among those persons nominated by the Minister in response to a public call for nominations as prescribed.*
>
> (4) *The President must –*
>
> (a) *appoint the Chairperson and other members of the Tribunal no later than the date on which this Act comes into operation; and*
>
> (b) *appoint a person to fill any vacancy which may occur on the Tribunal."*

8.6. On 28 March 2024, the Department of Transport issued an invite for nominations of persons to serve on the Tribunal. This invitation is attached to the Founding Affidavit as annexure **FA11**.

8.7. Following that call for nominations, the following members were appointed by the President as members of the Tribunal:

8.7.1. Dr Steve BoyBoy Mohlala: Chairperson;

8.7.2. Dr Maria (du Toit) Peenze: Tribunal Member;

8.7.3. Mr Sakoane Ramonate Lerato : Tribunal Member;

8.7.4. Advocate Lufuno Tokyo Nevondwe: Tribunal Member;

8.7.5. Ms Mfundo Sibusisiwe Molefe: Tribunal Member;

8.7.6. Mr Rajendran Pillay: Tribunal Member; 1

8.7.7. Advocate Nonkululeko Lillian Moetanalo: Tribunal Member;

8.7.8. Mr Steven Musimane: Tribunal Member.

8.8. The letters of appointment together with the Presidential Minutes are attached herein as annexure "**AA6**" and "**AA7**".

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8.9. The Tribunal rules and procedures have also been approved and they are attached hereto as annexure "**AA8**". The adjudication standard operating procedure were also approved, and is attached hereto as annexure "**AA9**".

8.10. An induction program was also conducted with the Tribunal Members in terms of the presentation attached herein as annexure "**AA10**".

8.11. The rules for the conduct of matters enrolled before the Appeals Tribunal in terms of Section 29A of the AARTO Act are also attached herein as annexure "**AA8**".

8.12. The contention that no Tribunal exists is the predicate upon which this application is based. I have shown that the Tribunal exists and has been capacitated through the appointment of the Chairperson and Tribunal members. This application therefore collapses and ought to be dismissed with costs.

G. OUTA HAS FAILED TO MEET THE REQUIREMENTS FOR AN INTERDICT

(i) *Prima Facie* Right

9.

9.1. OUTA relies on the following as a basis for a *prima facie* right:

9.1.1. That its right rises from the principle of legality in that exercise of public power is subject to the Constitution and the rule of law, the right to equal protection and the benefit of the law, the right of lawfully and constitutional compliant remedial process;

9.1.2. It has the right to insist that executive power be exercised rationally and in accordance with peremptory statutory requirements as per its review grounds;

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9.1.3. It relies on the prima facie right of road users not to be subjected to an enforcement system that removes prior judicial route while failing to provide the operational substitute Tribunal required by statute; and

9.1.4. OUTA argues that road users were not afforded an opportunity to engage on the 2026 Regulations and as such the balance of convenience favours the participation in regulation making.

9.2. OUTA needs to show a right which if not protected by an interdict, irreparable harm will ensue. There is no right that seeks protection by an interdict because a right of review is available to everyone.

9.3. But further, there is no unlawful implementation of Phase 2 of the AARTO Act as contended by OUTA as the Tribunal has been set up and that public participation has been followed and representations made by amongst others, OUTA.

10.

(ii) <u>Separation of powers harm / Irreparable Harm</u>

10.1. OUTA contends that road users will suffer irreparable harm due to the implementation and enforcement of the AARTO Act in that:

10.1.1. they will receive notices under a defective scheme and then submit representations in vain and then be channelled to a non-functional Tribunal as enforcement pressures accumulate. It contends further that:

> "*a short-term delay to permit lawful regulation-making is preferable to rolling out an unlawful system, which includes the lack of public participation.*"

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10.1.2. The harm to be suffered by road users is not easily reversible as it will provide confusion. That the relief sought preserves the status *quo* pending judicial determination.

10.1.3. The implementation of AARTO has been delayed several times and the State suffers little prejudice from delay in awaiting lawful compliance with section 29A or the public participation process.

10.2. In terms of section 35 of the AARTO Act, notices in terms of the CPA may not be issued after the date of commencement of the AARTO Act. From that date [1 July 2026] Chapter 4 of the AARTO became applicable.

10.3. The practical effect of the transitional provisions of section 25 as things currently stand is that municipalities affected by the AARTO Act cannot issue notices in terms of the CPA and must follow the AARTO Act.

10.4. OUTA seeks that the Court interdict the implementation and enforcement of the AARTO Act and its Regulations and contends that the status *quo* can remain. There is no status *quo* after 1 July 2026 because the notices in terms of the CPA can no longer be issued. This means that OUTA is asking the Court to sanction a collapse of Road Traffic Management in those municipalities where the AARTO Act is applicable.

10.5. Not only that but, it is an issue that cannot be disputed that the penalties collected by the Authority form part of its revenue collection in terms of AARTO. An interdict to the operationalisation implementation and enforcement of the AARTO Act is a sanction or bar of revenue collection by the Authority at the request of AART.

10.6. As I say, the initial withdrawal of the proclamations by the President and the 2025 Regulations is that then, the AARTO Act was still to commence. Put differently, the commencement date had not yet arrived. Currently, the operation of the AARTO Act commenced on 1 July 2026 and OUTA

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recognises at paragraph 15.7 of the Founding Affidavit that the provisions of the AARTO Act are enforceable. The difference then is that only parliament can then intervene in relation to the removal of the implementation of the AARTO Act.

10.7. The above factors are also applicable under the balance of convenience portion of the requirement which I deal with next.

11.

(iii) The Balance of convenience favours the implementation of the AARTO Act

a. Budget allocation

11.1. While the allocated R215 million budget was earmarked for the implementation of the AARTO Act, only R150 million was received which was not spent in its entirety resulting in only R56 million spent. Following extensive consultation with National Treasury regarding the retention of unspent AARTO funds, it was concluded that R147 million should be returned to the National Revenue Fund through the Department of Transport. A further business case for the ring-fenced budget of R166 million for the 2022/2023 Medium Term Strategic Framework ("*MTSF*") has been advanced in order to secure the AARTO funds needed to fund the preparatory work required for the anticipated rollout.

11.2. Amongst the biggest projects planned to be deployed with National Government is the procurement of equipment, funds planned for psychological interventions to complement rehabilitation interventions, staffing costs and Appeal Tribunal costs. As such, in line with the budget review for the 2026/2027 financial year, all critical budget items that command significant funding have been prioritized.

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b. Staffing Considerations

12.1. Section 10 and 11 of the AARTO Act envisages the appointment of representation officers and remuneration thereof. These representation officers are necessary for the implementation of the AARTO Act.

12.2. The implementation of AARTO also requires training of law enforcement officers which process is currently underway. That officer training was also completed in 2021 and 2024, but refresher training has been ongoing for the 2026 implementation of AARTO.

12.3. Municipalities have also been readying themselves for the implementation of the AARTO Act.

13.

(iv) An alternative remedy is available to OUTA.

13.1. OUTA submits that a review without interim relief would be in effective because the implementation would proceed unabated before the review is heard. It further contends that the interdict will not infringe on the separation of POWERS.

13.2. I have already shown that an order as sought by OUTA infringes the separation of powers. I have further shown that there is no unlawful implementation as contended by OUTA as the Tribunal has been fully set up and is operational.

13.3. OUTA can still bring the review application and ask that it be case managed for speedy hearing. It has failed to show that an interdict is warranted.

14.

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H. CONDONATION

14.1. The application was issued on 13 July 2026 and served on the authority on 14 July 2026. In terms of the Notice of Motion, the Respondents had to file opposition by 17 July 2026 and file Answering Affidavits by 27 July 2026.

14.2. The internal process relating to a decision whether or not to oppose an application is that the authority had to follow procurement processes for the appointment of the attorney. The initial process did not yield any attorneys firm that could be appointed. The second process which was finalised on 20 July 2026 led to the appointment of the current attorney of record.

14.3. After following that process, the current attorneys were appointed on 22 July 2026 around 19h00. Counsel was briefed the next day on the afternoon of Thursday, 23 July 2026 in the afternoon.

14.4. Upon receipt of the application, preparation for the drafting of the Answering Affidavit ensued with Counsel requesting certain documents and/or information which were provided over the weekend together with the drafting of the application. A consultation was scheduled for Sunday 26 July 2026 at 12h00 with the drafting of the Answering Affidavit into the afternoon of Sunday and Monday 27 July 2026.

14.5. Based on what I say above, it was only possible to file an Answering Affidavit on Tuesday 28 July 2026.

15.

(I) *AD* FOUNDING AFFIDAVIT

Ad paragraphs 1 – 7 thereof

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I note the identity of the deponent but deny the rest of the contents of these paragraphs.

16.

Ad paragraph 8 [including paragraph 8.1 and 8.2] thereof

I note the identity of the Applicant and deny the rest of the contents of these paragraphs

17.

Ad paragraphs 8.3 to 8.10 thereof

The identity of the Respondents is admitted.

18.

Ad paragraph 9 [including paragraph 9.1 to 9.9] thereof

The contents herein are denied. I refer to what I said elsewhere in the affidavit relating to the public participation and establishment of the Tribunal.

19.

Ad paragraph 10 [including paragraph 10.1 to 10.7] thereof

The contents herein are denied and the Applicant specifically put to the proof thereof.

20.

Ad paragraph 11 [including paragraph 11.1 to 11.11] thereof

The contents herein are noted.

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21.

Ad paragraph 12 [including paragraph 12.1 to 12.10] thereof

I admit the summary of the old regime but specifically deny that there is a non-existent internal mechanism as contended at paragraph 12.10 of the Founding Affidaivt.

22.

Ad paragraph 13 [including paragraph 13.1 to 13.5] thereof

22.1. The contents herein are admitted insofar as they deal with the phased in approach as provided for by the AARTO Act. It is denied that there has been a phased implementation of the AARTO Act that dependent on the Appeal Tribunals which has not been established. It is further denied that there is a contravention of section 34 of the Constitution in that road users do not have access to a Court to challenge any infringement.

22.2. Quiet clearly, a Tribunal has already been established in September 2019.

22.3. The AARTO Act recognises that decisions of representation officers may be appealed or reviewed by the Appeal Tribunal. Any dissatisfaction with outcome of the Appeal Tribunal maybe reviewed in terms of PAJA in the Magistrate's Court. It will be argued that this satisfies the access to Court which OUTA says has not been provided.

22.4. In any event, OUTA does not seek to challenge or impugn the validity of the AARTO Act.

23.

Ad paragraph 14 [including paragraph 13.1 to 13.8] thereof

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The contents herein are admitted insofar as they are consistent with what I say in this affidavit relating to the chronology of events that occurred.

24.

Ad paragraphs 14.9 to 14.12 thereof

24.1. I admit that the Regulations were withdrawn as the Proclamation by the President had also been withdrawn and to allow Municipalities to be capacitated in relation to the implementation of Phase 2. But, I deny that there is no operational and financial readiness in municipalities in relation to the Phase 2 implementation. This was the same allegation that was made by SALGA in the application brought in this Court which was struck from the roll on 30 June 2026. In that application, the Authority made clear that the municipalities were ready for implementation. At that stage, the municipalities were **80%** ready in the said implementation.

24.2. The difference between the halting of the implementation in 2025 and currently, is that then, the date of commencement had not come and gone. In this case, the AARTO Act has been proclaimed and is in implementation.

25.

Ad paragraph 15 [including paragraph 15.1 to 15.8] thereof

The contents herein are admitted insofar as they are in line with what I say in this affidavit.

26.

Ad paragraphs 15.9 to 15.13 thereof

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I admit that the AARTO Act requires a call for nomination for appointment of members of the Tribunal. The members of the Tribunal have been appointed, and a chairperson has been designated.

27.

Ad paragraph 16 [including paragraph 16.1 to 16.8] thereof

The contents of the AARTO Act and the importance of the Tribunal are admitted.

28.

Ad paragraph 17 [including paragraph 17.1 to 17.9] thereof

The contents herein are denied for reasons explained elsewhere in this affidavit. I have explained that the Tribunal exists and that a chairperson has been designated. I have provided the rules of the Tribunal together with the standing and operating procedures. I have also shown that an induction has been conducted with the members of the Tribunal. Insofar as OUTA complains that the rules have not been made available on the Authority's website, same will be made available but I deny that this is necessary to found any relief as sought by OUTA as the existence of the rules could have been ascertained by a simple PAIA application.

29.

Ad paragraph 18 [including paragraph 18.1 to 18.11] thereof

The process in terms of the new regime is admitted. I deny that the access to court is no longer available due to the unavailability of the Tribunal as the Tribunal has been constituted. I further deny that a "*substitute path is missing in practice*" which is a violation of section 34 of the Constitution. Due to the existence of the Tribunal, road users dissatisfied with the decisions of the representation officials have access to Court in the form of PAJA reviews to the Magistrate's Court.

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30.

Ad paragraph 19 [including paragraph 19.1 to 19.10] thereof

The contents herein are denied for reasons explained elsewhere in this affidavit relating to the existence of the Tribunal.

31.

Ad paragraph 20 [including paragraph 20.1 to 20.8] thereof

The contents herein are denied for reasons explained elsewhere in the affidavit.

32.

Ad paragraph 21 [including paragraph 21.1 to 21.18] thereof

The contents herein are denied. I refer to what I said elsewhere in this affidavit regarding the history of public participation.

33.

Ad paragraph 22 [including paragraph 22.1 to 22.8] thereof

The contents herein are denied. I refer to what I said elsewhere in this affidavit regarding the existence and operation of the Tribunal. OUTA accepts that its existence means that the process is constitutionally and practically acceptable and thus its case must be dismissed on that basis alone.

34.

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Ad paragraph 23 [including paragraph 23.1 to 23.12] thereof

The contents herein are denied. I refer to what I said elsewhere in this affidavit regarding the requirements of an interim interdict.

35.

Ad paragraph 24 [including paragraph 24.1 to 24.4] thereof

The contents herein are denied. I refer to what I said elsewhere in this affidavit regarding the lack of urgency of this application.

36.

Ad paragraph 25 [including paragraph 25.1 to 25.6] thereof

The contents herein are denied. I refer to what I said elsewhere in this affidavit.

37.

Ad paragraph 26 thereof

It is contended that this application must be struck from the roll with costs, which costs should include the cost of two Counsel. It is further contended that OUTA should not be shielded by the *Biowatch* principle due to the nature of the reckless application which could have been cured by a simple PAIA application to verify the veracity of the allegations. That is what a responsible public organisation that seeks the protection of the rights of the public would have done instead of launching an application which necessitated the expending of funds for no reasons.

MATSEMELA MOLOI

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THUS SWORN TO AND SIGNED BEFORE ME AT Midrand ON THIS, THE 28th DAY **JULY 2026**, THE DEPONENT HAVING ACKNOWLEDGED THAT HE/SHE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, AND THAT THE CONTENTS THEREOF ARE TRUE, THAT HE/SHE HAS NO OBJECTION TO THE TAKING OF THE OATH AND THAT HE/SHE CONSIDERS THIS OATH TO BE BINDING ON HIS/HER CONSCIENCE.

____
COMMISSIONER OF OATHS

FULL NAME:

CAPACITY:

ADDRESS:

COMMISSIONER OF OATHS (RSA)
Osiphesona Uche Gibson
Practicing Attorney
Member No.: 126048
Suite 7, 1st Floor, Waterfall View Bldg,
Waterfall Office Park, Vorna Valley, Midrand,
011 028 1258 / 078 170 4395

keabetswe@smvakalisa-inc.co.za

From:	Adv. Mncedisi Bilikwana <Adv.Mncedisi.Bilikwana@rtia.co.za>
Sent:	Tuesday, 28 July 2026 12:16
To:	keabetswe@smvakalisa-inc.co.za
Subject:	FW: Appointment Letter: LT Nevondwe
Attachments:	appointment nevondwe_15072026153905.pdf

RTIA
Road Traffic Infringement Agency
Justice in Adjudication

Adv. Mncedisi Bilikwana
Executive Manager: Legal, Governance and Compliance

Tel: +27 87 285 0493 | Cell: 083 784 0052
Mncedisi.Bilikwana@rtia.co.za | www.rtia.co.za
New Road Office Park, 10 Matuka Close, Midrand, 1685
@rtia_aarto Rtia-Aarto rtia_homeofaarto

From: Hentie Joubert <Hentie.Joubert@rtia.co.za>
Sent: Friday, July 24, 2026 3:11 PM
To: Adv. Mncedisi Bilikwana <Adv.Mncedisi.Bilikwana@rtia.co.za>
Cc: Ayanda Ntamane <Ayanda.Ntamane@rtia.co.za>
Subject: Appointment Letter: LT Nevondwe

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AA1

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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2026-143399**

In the matter between:

SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION	Plaintiff / Applicant / Appellant
and	
MINISTER OF TRANSPORT,ROAD TRAFFIC INFRINGEMENT AUTHORITY,ROAD TRAFFIC MANAGEMENT CORPORATION,MINISTER OF FINANCE	Defendant / Respondent

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Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 22/6/2026 at 2:37:48 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

ELECTRONICALLY SIGNED BY:

Registrar of Pretoria , Gauteng Division,Pretoria

MLB

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: _______________

In the matter between:

SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION	Applicant
And	
THE MINISTER OF TRANSPORT	First Respondent
ROAD TRAFFIC INFRINGEMENT AUTHORITY	Second Respondent
ROAD TRAFFIC MANAGEMENT CORPORATION	Third Respondent
THE MINISTER OF FINANCE	Fourth Respondent

NOTICE OF MOTION

TAKE NOTICE the Applicant, intends making an application to this Honourable Court on 30 June 2026 at 10h00 or soon thereafter as the matter may be heard, for an order in the following terms:

1. The ordinary forms and services provided for in the Rules of the High Court are dispensed with and this application is heard on urgent basis in terms of the provisions of Rule 6(12)(a) of Uniform Rules of Court.

2. Pending the finalisation of the intergovernmental dispute-resolution process contemplated in section 41 of the Constitution of the Republic of South Africa, 1996 and the Intergovernmental Relations Framework Act 13 of 2005 ("IGRFA"), the First Respondent, Second and Third Respondents are

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interdicted and restrained from implementing, operationalising, enforcing or giving effect to Phase 2 and all staggered phases of the Administrative Adjudication of Road Traffic Offences Act 46 of 1998, as amended, on municipalities on 1 July 2026.

3. Further, and in the event that the intergovernmental dispute resolution process does not resolve the dispute between the parties, the interdict in paragraph 2 shall remain operative pending the final determination of a review application to be instituted by the Applicant within 30 days of the finalisation, exhaustion or termination of that process.

TAKE NOTICE FURTHER THAT in support of this application, the Applicant will rely on the affidavit of **MBANGA SITHOLE** as well as annexures thereto.

KINDLY TAKE NOTICE THAT if any respondent intends opposing this application, such respondent is required to:

(a) notify the Applicant's attorneys in writing of its intention to oppose by no later than 24 June 2026;

(b) file its answering affidavit, if any, by no later than the 24 June 2026;

(c) the Applicant shall file its replying affidavit, if any, by no later than 25 June 2026.

TAKE NOTICE FURTHER THAT the Applicant have appointed the office of the Everts Heyneke & Klynsmith Attorneys at the address mentioned hereunder, as the address

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at which they will accept service of all notice and process relating to these proceedings in terms of Rule 6(5)(b) at which they will accept service of all notices and process in these proceedings. The relevant email addresses by which notices and process can be served electronically on the Applicant, to which the Applicant consents, are as follows:

info@ehklaw.co.za ; and
sunette@ehklaw.co.za; and
isabella@ehklaw.co.za; and
antonie@ehklaw.co.za; and

SIGNED AT DATED IN PRETORIA ON THIS THE 19th DAY OF JUNE 2026

S. Everts

APPLICANT'S ATTORNEY

EVERTS HEYNEKE & KLYNSMITH ATTORNEYS
SUPERIOR CHOICES OFFICE PARK
885 JUSTICE MAHOMED STREET
BROOKLYN, PRETORIA
TEL: 087 093 0973
E-MAIL: sunette@ehklaw.co.za; info@ehklaw.co.za
REF: CSALGA\M00110

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TO: **THE REGISTRAR OF THE ABOVE HIGH COURT**

AND TO: **FIRST RESPONDENT**

THE MINISTER OF TRANSPORT

FORUM BUILDING

159 STRUBEN STREET

PRETORIA

TEL: 012 309 3000

E-MAIL: TransportMinistry@dot.gov.za **(BY SHERIFF)**

c/o THE STATE ATTORNEY

SALU BUILDING

316 THABO SEHUME STREET

PRETORIA

TEL: 012 309 1578

E-MAIL: StateAttorneyPretoria@justice.gov.za **(BY SHERIFF)**

AND TO: **SECOND RESPONDENT**

ROAD TRAFFIC INFRINGEMENT AUTHORITY

NEW ROAD OFFICE PARK

10 MATUKA CLOSE

CARLSWALD, MIDRAND

TEL: 087 285 0500

E-MAIL: info@rtia.co.za **(BY SHERIFF & EMAIL)**

AA2

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

PRETORIA **30 JUNE 2026** CASE NO: 143399/2026

BEFORE THE **HONOURABLE JUSTICE MBOWENI, AJ**

In the matter between:

SOUTH AFRICAN **LOCAL GOVERNMENT** ASSOCIATION — APPLICANT

AND

THE MINISTER OF TRANSPORT	1ST	RESPONDENT
ROAD TRAFFIC INFRINGEMENT AUTHORITY	2ND	RESPONDENT
ROAD TRAFFICE MANAGEMENT CORPORATION	3RD	RESPONDENT
THE MINISTER OF FINANCE	4TH	RESPONDENT

HAVING HEARD counsel(s) for the party(ies) and having read the documents filed of record

IT IS ORDERED THAT

1. The application by the South African Post Office SOC LTD to intervene is granted.
2. The South African Post Office SOC LTD is joined as an intervening party in these proceedings.
3. The main application is struck from the roll for lack of urgency.
4. The applicant is to pay the costs of the application, including the costs occasioned by the intervention application, Scale B.

HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA
2026 -07- 02
GD-PRET-010

BY THE COURT

REGISTRAR

HG
ATT: EVERTS HEYNEKE & KLYNSMITH

COMMISSIONER OF OATHS (RSA)
Osiphesona Uche Gibson
Practicing Attorney
Member No.: 126048
Suite 7, 1st Floor, Waterfall View Bldg,
Waterfall Office Park, Vorna Valley, Midrand,
011 028 1256 / 078 170 4395

I CERTIFY THAT THIS DOCUMENT
IS A TRUE COPY OF THE ORIGINAL

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Submission Number	Entity/Organisation	Comments	Response by the Agency	Considered for Regulations
		• 50% of the penalty amount, regardless of when the payment is made, goes to the authority figure that issued the fine. The Road Traffic Infringement Authority (RTIA) will get involved and add on heavier levies to the original amount if the amount is not paid for whatever reason. RTIA is the acting arbiter in collecting the debts for the Government and funded by traffic fines. All parties involved gain to benefit financially and will ensure you pay whether you were at fault or not.	Noted	
14.	Organisation Undoing Tax Abuse (OUTA)	**Regulations 2(1), 2(3), 2(4), 2(5)(a), 2(5)(b), 3, 4(1)(a), 5(3)(b)(ii), 5(3)(b)(iii), 5(3)(b)(iv), 7(1), 10(2), 10(3), 11(8), 11(9), 12(2), 12(4), regulation 13(2), 13(4), 13(6), 15(3)(b), 20(2)(c), 21(5), 21(9), 21(10), 22(2), 22(4), 23(3)(b)(ii), 23(5), 24(1)(b)(iii), 25(3)(b), 25(4) and 32(1), 32(2), 32(5), refer to regulation**		
		33(4):		
		• We believe that the service provision, as stated above does not provide for adequate service to infringers, given the serious nature of the consequences that may follow an infringement.	Noted	No
		• These forms of service are inadequate because it is likely that the notice will be missed by infringers in many cases. The email, SMS or voice message could easily be treated as junk mail or spam or could simply go unopened. There is nothing in this form of correspondence that emphasizes the importance of the document to the recipient.	Various serving methods are provided for and each method is traceable	No
		• Therefore, it is critical to ensuring that an infringer is given an adequate opportunity to make representations or otherwise respond to an infringement notice (AARTO notice) before any penalties are visited upon him or her, which in the case of electronic communication does not give an adequate opportunity for the infringer to exercise this right accordingly.	An infringer will get an opportunity to exercise elective options irrespective of the method of service used	No
		Regulation 2(6)(f) & Regulation 2(6)(f)(i)		
		• We fail to understand as to why an officer, who issues the notice is only required to provide his or her initials and surname, whereas regulation 2(6)(a)(ii) stipulates that the infringer must provide his or	Traffic Officers are easily identifiable through their infrastructure numbers which must be specified in each infringement notice issued	No

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Submission Number	Entity/Organisation	Comments	Response by the Agency	Considered for Regulations
		her first names, and if such infringer has more than one name, at least the first two full names and the initials, including initials of any further names.		
		• We therefore submit that we believe that the officer who issues the infringement should also provide his or her first names, and if such officer has more than one name, at least the first two full names and the initials, including initials of any further names.		
		Chapter 3: Appeals Tribunal		
		• This Appeals Tribunal will have jurisdiction over the entire country. The Tribunal consists of a Chairperson and only eight members, who are appointed on a part-time basis. It will not be possible for the Appeals Tribunal to deal with all the cases efficiently and within the prescribed time frames. The eight part-time members will respectfully not have the capacity or time to deal with tens of thousands of challenges, appeals and reviews.	The Tribunal will only deal with applications arising of unsuccessful representations and will mainly make its decisions based on paper and may only preside over hearings under extreme circumstances.	No
		• Further to regulation 11, the regulation sets out specific timeframes applicable in the auctioning of the process. We herewith submit that in the South African context, we do not believe that the timeframes, as identified, will be adhered to and therefore, further confirms our position that this administrative system will not be able to properly function, as it intends to do.		
		Regulation 20 together with section 26 (1) of the Act:		
		• In contradiction to regulation 20, section 26(1) if the Act, specifically states that an infringer should only be informed by way of registered post. The regulations are thus contradictory to the act and the regulations cannot override the legislation. Regulations are always subordinate to legislation and cannot be used to amend legislation.	Proposal acceptable	Yes
		Regulation 21(4) with specific reference to regulation 21(4)(c):		
		• We are of the opinion that this regulation 21(4) is vague, due to the fact that it does not provide clarity regarding the process of adjudication of service providers. It further does not provide qualification criteria for possible service providers nor does it give	The Authority will exercise discretion on what other suitable rehabilitation programmes may be undertaken by the infringer	No

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Submission Number	Entity/Organisation	Comments	Response by the Agency	Considered for Regulations
		clarity on what these "other appropriate rehabilitation measures" constitute.		
		Regulation 25 & 25(4):		
		• This regulation does not clarify whether an infringer who has applied for the refund and the Authority has subsequently refused the refund, has the right to appeal or review the decision by the Authority to the Appeals Tribunal. It is not expressly stated, and we believe this warrants clarity from the Minister.	The Tribunal is only established to deal with applications for appeal or review emanating from unsuccessful representations	No
		Regulation 37(3)		
		• We again reiterate our stand with regards to the whole AARTO administrative system and wish to again state that we believe that this system is extremely costly and unmanageable. By creating regulations that places a duty on government (ultimately South African taxpaying citizens) to fund electronic equipment in order to enforce this system, is absolutely irrational. • Especially considering that the issuing officials are currently and according to other regulations, will in the future make use of the AARTO Notice Books. It is therefore inconceivable that additional money must be spent to buy electronic equipment that is most probably not even going to be used.	Noted	No
		Schedule 2 of the draft regulations		
		• We respectfully submit that the amount of R100.00 to be charged as infringement penalty levy is completely excessive especially in the light of the fact that the Amendment Act proposes that AARTO Notices may be sent via electronic communication. It is unreasonable to charge an alleged infringer an amount of R100.00 for each electronic notice, even when the notice is sent erroneously. • Therefore, we strongly believe that the infringement penalty levy should be removed from the AARTO Amendment Act and its Regulations.	Infringement levy is to be scrapped	Yes
		Newly published Schedule 3 of the regulation		

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Submission Number	Entity/Organisation	Comments	Response by the Agency	Considered for Regulations
		• According to column 4 of Schedule 3, it describes the classification of offences and infringements. We respectfully submit that the description is made in error, seeing that according to the AARTO Amendment Act, the classification of infringements into major and minor infringements have been deliberately excluded. Therefore, we believe that it will cause legal uncertainty if the description, as it currently stands, is implemented, and not amended to reflect the changes in classification according to the Amendment Act. **Page 371 of the newly published draft regulation & Schedule 3** • These charge codes, which aim to enforce e-toll compliance, were never brought into effect and we again reiterate our stands that we do not believe that the AARTO Amendment Act and its subsequent regulations will be able to practically enforce these charge codes. It would require processing traffic fines and reminders for every unpaid gantry e-toll bill. **Schedule 4 of the draft regulations** • We are of the opinion that Schedule 4 will not be able to withstand constitutional scrutiny. The reason being is that Schedule 4 aims at regulating and including members of the South African Police Service, as authorised officers, contemplated in section 1 of the act. Section 1 of the Act does not currently include members of the South African Police Services as authorised officers. • The constitution expressly states in section 207 thereof, that the National Police Commissioner must exercise control over and manage the police services in accordance with the national policing policy and the directions of the Cabinet member responsible for policing. • In the event that Schedule 4 is promulgated, this schedule will directly interfere with the powers of the National Police Commissioner, because this Schedule will prescribe certain functions that must be executed by the South African Police Services in terms of the enforcement of the AARTO Amendment Act.	SAPS officers defined as authorised officers in terms of section 1 of the Act	No

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Submission Number	Entity/Organisation	Comments	Response by the Agency	Considered for Regulations
		Cross - Referencing Issues: • **Regulation 7(2)** makes specific reference to **sub-regulation (1)(c)**. We herewith respectfully submit that no sub-regulation (1)(c) exists as it was excluded from the newly published regulations and therefore creates legal uncertainty with regards to the interpretation of the above-mentioned regulations, as the intention of the Minister cannot be determined.	Proposed changed acceptable	Yes
		• **Regulations 12(1)** makes specific reference to **Section 29B (2)** of the Act. We herewith respectfully submit that no Section 29B (2) of the Act does not exists and therefore creates legal uncertainty with regards to the interpretation of the above-mentioned regulations, as the intention of the Minister cannot be determined.	Reference is made to the new provision in the Amendment Act	No
		• **Regulation 14(1)** make specific mentioned to a monetary value as set out in paragraph (a) of Schedule 2. However, **paragraph (a) of Schedule 2** does not exist and we believe that the correct reference should be to **paragraph (1) of Schedule 2**, the regulation creates legal uncertainty with regards to the interpretation of the above-mentioned regulations.	Proposed changed acceptable	Yes
		• **Regulation 14(2) make** specific mentioned to **column 7 of Schedule 3** relating to the rand value payable in respect of a penalty. However, according to column 7 of Schedule 3 (as amended) it refers to Demerit points. We belief the correct reference should be to column 8 of Schedule 3 and therefore creates legal uncertainty with regards to the interpretation of the above-mentioned regulations.		
		• **Regulation 15(2)** make specific mentioned to **column 8 of Schedule 3** relating to the discounted penalty amount. However, according to column 8 of Schedule 3 (as amended) it refers to the rand value payable in respect of a penalty. We belief that the correct reference should be to column 9 of Schedule 3 and therefore creates legal uncertainty with regards to the interpretation of the above-mentioned regulations.		
		• **Regulation 18(1)** makes specific mentioned to **section 24(3)(a)** of the Act, relating to the instances as to when demerit points are		

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Submission Number	Entity/Organisation	Comments	Response by the Agency	Considered for Regulations
		incurred by an infringer. We herewith submit that reference was wrongly made to section 24(3)(a) due to the fact that this section speaks to an infringer commiting two different infringements on the same set of facts and not to the circumstances as to when demerit points are incurred by an infringer. The correct reference should be to **section 24(2)**.	Reference to section 23(3)(a) is correct. Section 24(2) is subject to the provisions of section 23(3)(a)	**No**
		• **Regulation 18(2)** only makes mention of **column 6 of Schedule 3** relating to the demerit points to be incurred by an infringer. We belief that the correct reference should be to both **columns 6 and 7 of Schedule 3** to avoid any legal uncertainty with regards to the interpretation of the above-mentioned regulations. • **Regulation 18(3)** make specific mentioned to **column 9 of Schedule 3** referring to infringements or offences committed by an operator in terms of section 49 of the National Road Traffic Act. However, according to column 9 of Schedule 3 (as amended) it refers to the penalty minus the discount in rand value. We belief that the correct reference should be to **column 10 of Schedule 3** and therefore creates legal uncertainty with regards to the interpretation of the abovementioned regulation. • **Regulation 18(3)(a)** refers to **column 10 of Schedule 3** setting out the charge code upon which an operator will be charged and also refers to column 6 of Schedule 3, relating to the amount of demerit points that would be incurred for those charges. We herewith submit that column 10 of Schedule 3 (as amended) refers to the Operator charge i.e. section 49 of the National Road Traffic Act, 1996 and 6 of Schedule 3 (as amended) refers to demerit points: Persons who are not operators or juristic persons. We belief that the correct reference should be to column 11 of Schedule 3 and column 7 of Schedule 3.		
		• **Regulation 18(8)**, this regulation refers to **regulation 15(2)**. We submit that reference was wrongly made to regulation 15(2), seeing that regulation 15(2) refers to the discounted penalty amount, if payment is made within 32 days and does not refer (at all) to holders of foreign driving licenses, we belief that the correct	Proposed changes acceptable	**Yes**

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Submission Number	Entity/Organisation	Comments	Response by the Agency	Considered for Regulations
		reference should be to **regulation 15(6) that** does indeed refer to holders of foreign driving licenses.		
		• **Regulation 21(5)(e)**, reference is made to **regulation 18(6)(b)**. We submit that this regulation causes legal confusion regarding the intention of the Minister. The reason being is that regulation 21(5)(e) incorrectly refers to regulation 18(6)(b), seeing that the latter does not exist and that regulation 18(6) refers to the total number of demerit point which can be incurred by an infringer. We believe that the correct reference should be to **regulation 18(7)**.	Proposed changed acceptable	**Yes**
		• **Regulation 21(9)(a)**, reference is made **to regulation 18(8)**. We submit that this regulation causes **legal** confusion regarding the intention of the Minister. The reason being is that regulation 21(9)(a) incorrectly refers to regulation 18(8), seeing that the latter refers to the holder of a foreign driver's license, which shall not incur demerit points. We believe that the correct reference should be to **regulation 18(7)**.	Regulation 18(8) refers to the reduction of demerit points upon completion of the rehabilitation programme	**No**
		• **Regulation 33(4)(b)**, reference is made to **regulation 32**. We submit that erroneous reference was made to regulation 32, seeing that regulation 32 deals with the re-service of documents and not with electronic service through electronic communications networks. The correct reference should be to **regulation 31**.	Proposed change acceptable	**Yes**
		• **Paragraph 1 of Schedule 2**, paragraph 1 refers to **column 6 of Schedule 3**. We submit that erroneous reference was made to column 6 of Schedule 3, seeing that column 6 refers to Demerit points: Persons who are not operators or juristic persons. The correct reference should be to **column 5 of Schedule 3**.	Accepted, a correction on the correct column reference will be made	**Yes**
		• **Paragraph 2 of Schedule 2**, paragraph 2 refers to **column 6 of Schedule 3**. We submit that erroneous reference was made to column 6 of Schedule 3, seeing that column 6 refers to Demerit points: Persons who are not operators or juristic persons. The correct **reference** should be to **column 5 of Schedule 3**.	Accepted, a correction on the correct column reference will be made	**Yes**
		• **Paragraph 3 of Schedule 2**, paragraph 2 refers to **regulation 36**. We submit that erroneous reference was made to regulation 36, seeing that regulation 36 refers to the South African Police Service		

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Submission Number	Entity/Organisation	Comments	Response by the Agency	Considered for Regulations
		and not the penalty levy payable. The correct reference should be to **regulation 35.**	Not accepted, Regulation 36 do refer to the Penalty Levey	**No**
15.	**Risk Administration Consultants (RAC)**	**Regulation number: 4 (2)** • It presumes that the RTIA has some means to ascertain the date on which a motorist has received an enforcement order. In reality, the removal of registered post as a delivery method for AARTO notices means this is impossible and there is thus no way for the RTIA to know on which day the 32- day countdown commences. • It means that a motorist can in no way apply for revocation of an enforcement order more than 32 days after it was received, even if they pay all outstanding fees related to that enforcement order. • the AARTO Act provides no other way of such an enforcement order being revoked or cancelled.	Registered mail is not removed from section 30 of the Act. It will still be applicable after implementation of the Amendment Act	**No**
		• In RAC Driving Solutions view though, this Regulation is rendered unworkable by the impossibility of the RTIA determining when the 32-day countdown commences. • **Proposal**: The wording related to the 32-day limitation should be deleted.	Proposed change acceptable	**Yes**
		Regulation number: 9 • The Appeals Tribunal is being allowed to develop its own rules, which we presume will have the status of Regulation. But both the rules, and AARTO's Regulations, could be changed at the pleasure, respectively, of Tribunal members and the Minister of Transport, so there is no strict or ongoing standard of justice. • members of the Appeals Tribunal are governed by the same Regulations which govern the RTIA and its Representations Officers. There is thus no assurance of impartiality by virtue of separation from the RTIA, nor any methods by which impartiality could be attained.	The rules of the Tribunal will be published in the Government Gazette for public scrutiny	**No**

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Submission Number	Entity/Organisation	Comments	Response by the Agency	Considered for Regulations
		• It is unclear how the Appeals Tribunal members would be paid, but their emoluments would almost certainly derive from traffic fine revenue. There is thus the potential for a conflict of interest and an incentive to find in favour of the RTIA rather than allowing the outcome to follow the facts of each case.	The Minister will determine the remuneration of members of the Tribunal through a Government Gazette	No
		• RAC Driving Solutions view is that the Appeals Tribunal adds no value to the adjudication process and, as the Regulations governing it are currently written, has the potential to seriously undermine the administration of justice.	The Tribunal will act as the review structure of the unsuccessful application adjudicated by the representations officer	No
		• As we have previously stated, we also believe that a Tribunal of nine part-time members will be insufficient to handle the workload arising from tens of millions of traffic fines issued countrywide after AARTO comes into operation. There seems no way by which it could provide the solution contended for it.		
		• **Our proposal:** It is not too late for Parliament to reconsider the Appeals Tribunal and return to the previous system where motorists can opt to have their violations diverted into the criminal justice system at any stage. Indeed, RAC Driving Solutions believes this outcome would support the administration of justice and provide independent assurance against rogue Representations Officers.	The AARTO Amendment Act has already been assented to and await proclamation by the President	No
		Regulation number: 18 (6) read with Regulation 20	Proposed change acceptable	Yes
		• For clarification, juristic persons and operators do not 'drive' vehicles, they operate them, so the imprecision of this Regulation could create a loophole allowing juristic persons and operators to continue to use vehicles even after the 15-point limit has been exceeded.		
		• **Our proposal:** Re-word Regulation 18 (6) so that it is explicit about the effect of the 15-point limit being breached and prevents driving any vehicle (natural persons), or using the relevant vehicle on public roads (juristic persons and operators).		
		Regulation number: 19		

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Submission Number	Entity/Organisation	Comments	Response by the Agency	Considered for Regulations
		• The fees for accessing this information are, in the RAC Driving Solutions view, unreasonable. Indeed, we see no reason for this information to be charged for at all. A statement of account for income tax from SARS is free, as is a check of marital status from Home Affairs. Banks and the RTIA provide free services showing motorists whether they have outstanding traffic fines.	This is an additional service offering which should be charged Noted	No
		• **Our proposal:** Every motorist, juristic person, and operator should have cost-free access to their demerit points status.	Agree for now. Points to be made available on the AARTO website	Yes
		Regulation number: 35 • RAC Driving Solutions initial difficulty is that the Memorandum's bold statement is not backed up by law. The meaning of Regulation 35 (1) is far from clear, and we lack confidence in the Memorandum's assertion. • The Infringement Penalty Levy certainly falls under 13(1) (dA), but nowhere in the Amendment Act's explanatory memorandum was the purpose of this addition explained. RAC Driving Solutions, and doubtless many others, took it to be an administrative change to ensure AARTO fines could be collected legally. • There is no circumstance under which RAC Driving Solutions could justify the infringement Penalty Levy, and we are strongly opposed to both the levy itself and the under-handed manner in which it has been brought onto the statute books. Acts of bad faith such as this corrode the trust that ought to exist between government and motorists. • **Our proposal:** The Infringement Penalty Levy should be deleted and all references to it removed from the Regulations. In addition, the RTIA should come under the supervision of external cost control consultants so that wasteful or reckless expenditure is minimised and the taxpayer receives acceptable value.	Infringement levy is to be scrapped	Yes
16.	MasterDrive	**Regulation numbers: 2 (1), 2 (2), 2 (4), 2 (5)(b), 5 (3)(b)(iv)** • The Road Traffic Infringement Agency (RTIA) is now allowed 60 days to serve the notice instead of 40 days as under the	Responses similar to the ones provided above as the comments are also similar	

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NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

NEDLAC REPORT ON THE

ON THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES REGULATIONS, 2020

1. BACKGROUND

1.1. In September 2019, following the promulgation of the Amendment Act No. 46 of 1998, the National Department of Transport (NDoT), commenced with the process of developing the regulations to give effect to the Act. After the closing date during the 2019 period, the Department was faced with mounting extensions requests from key stakeholders who had missed the submission deadline and could not be ignored.

1.2. It was against this background that the National Department of Transport (NDoT) took a decision to re- publish the Administrative Adjudication of Road Traffic Offences (AARTO) Regulations, 2008. Due to unforeseen circumstances, the 2019 publication did not include Schedule 3 of the Regulations which addresses issues of demerit points and penalty units etc. As a result of this omission, the comments received from the public contained conflicting statements and incorrect information.

1.3. In addressing the above challenges and in order to have a meaningful consultation, in October 2020, Government re-published the AARTO Regulations for the second round of public comments and afforded public members sixty (60) days to submit comments.

1.4. On 26 November 2020, NDoT made presentation on the AARTO Regulations as gazetted for engagement at the Development Chamber. Social partners agreed to the establishment of a six-a-side task team to engage on the content of the Regulations and to develop a Nedlac Report, with areas of agreement, areas of disagreement, and recommendations arising from the engagement.

1.5. It was subsequently agreed, that the task team's work will commence after Government had incorporated the public comments and formally tabled the revised AARTO Regulations for engagement at Nedlac.

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2. OBJECTS OF THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES REGULATIONS

2.1. The AARTO Regulations aims to:

2.1.1. Give effect to the Administrative of Road Traffic Offences Act, No. 46 of 1998; Outline a detailed process of payment of penalties imposed for infringements; provide for a detailed procedure for the effective and expeditious adjudication of infringements with the purpose to encourage compliance with the national and provincial laws and to alleviate the burden on the courts of trying offenders for infringements; and

2.1.2. Give details on the process of penalizing drivers and operators who are guilty of infringements or offences through the imposition of demerit points leading to the suspension and cancellation of driving licences, professional driving permits or operator cards.

3. PROCESS AT NEDLAC

3.1. The Task Team's process of engagement commenced on 10 March 2021, as Government received over 9 000 public comments by the closing date (02 December 2020). It was at this meeting where Government formally tabled the AARTO Regulations incorporating public comments for engagements at Nedlac.

3.2. It was also noted that Government had planned the implementation of the regulations to commence by 01 July 2021. The Task Team agreed to engage on the regulations on expedited basis in order for Government to realize its set target.

3.3. On inception of the engagements, the task team noted that the development of the AARTO Regulations falls within the domain of the Minister of Transport as outlined in section 34 of the AARTO Act. An agreement was reached that Nedlac will be provided with an opportunity to engage on the content of the AARTO Regulations, and to develop a Nedlac Report with recommendations for consideration by Government, prior to the full implementation of the AARTO system.

3.4. The Task Team agreed on possible deadlock resolution mechanisms to be utilised should a deadlock arise during the engagements. These included the escalation mechanism to Chamber Convenors and convening of bilateral meetings to ensure that the task team concluded its work.

3.5. Furthermore, the task team agreed to establish a one-a-side committee to consider constituency inputs and ensure that positions of all Constituencies have been adequately captured prior to submitting the Nedlac Report to the task team for approval.

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3.6. The task team encountered a deadlock, whereby there were significant issues of concern raised by social partners, which could not be agreed by the task team prior to 01 July 2021, which was set to be the implementation date of the regulations by the Minister of Transport. Various escalation mechanisms were initiated by the task team mid-June. Furthermore, an urgent meeting was convened on 14 July 2021 with the view of resolving the deadlock and address Nedlac's concerns that the implementation of AARTO system had commenced while the Nedlac process of engagement was still underway. The meeting consisted of the Nedlac Executive Director, Head of Programme Operations, lead members from each Constituencies and the Nedlac Secretariat. At this meeting, it was noted that the implementation of the AARTO Regulations was planned to be rolled-out in a phased approach. In this regard, Nedlac would be given an opportunity to finalise its work and submit a final report to Government for further consideration in implementing the remaining phases of the system. It was therefore agreed that:

3.6.1. Nedlac social partners would convene bilateral meetings with Government in order to address the identified issues of disagreement.

3.6.2. The work of the task team should be resuscitated with a view to conclude the process of engagement.

3.6.3. Consequential issues emanating from the principal Act may not be easily resolved through the regulations. These are subordinate legislation providing detailed process to give effect to the provisions of the Act;

3.6.4. Socio-Economic Impact Assessment System (SEIAs) report was outdated and, Government would have to undertake a new study during the review process of the AARTO Act; and

3.6.5. Government should consider its infrastructure to ensure that the AARTO system could be effectively institutionalised and implemented successfully.

3.7. The Nedlac Report provides a summary of the key principle agreements and detailed areas of agreement, areas of disagreement, and recommendations.

3.8. The AARTO Regulations task team met on the following dates:

3.8.1. 10 March 2021;
3.8.2. 07 April 2021;
3.8.3. 12 May 2021;
3.8.4. 26 May 2021
3.8.5. 09 June 2021;
3.8.6. 30 June 2021;
3.8.7. 14 July 2021 (crisis meeting to unblock the impasse in the task team)
3.8.8. 17 September 2021

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3.9. The following documents were submitted:

Consolidated Matrix reflecting outcomes of discussions	Annexure 2
Presentation from Government on the AARTO Regulations	Annexure 3
Revised AARTO Regulations incorporating public input as submitted to the task team at the meeting of 10 March 2021	Annexure 4

4. PURPOSE FOR CONVENING THE TASK TEAM ON ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES REGULATIONS

4.1. To consider the AARTO Regulations that incorporates public submissions tabled by Government, consider inputs from social partners, engage on the proposed provisions and make recommendations.

4.2. To develop a Nedlac Report with areas of agreements and disagreements for submission to the Minister of Transport, Minister of Employment and Labour and the Chairperson on the Portfolio Committee on Transport in terms of the Nedlac Act.

5. AREAS OF AGREEMENT

5.1. Social partners agreed in principle on the following areas:

5.1.1. Successful nomination of the driver

5.1.1.1. To address successful nomination of a driver, government, through the Road Traffic Infringement Agency (RTIA), will provide the Electronic Interface System that authorizes users to validate driver's information. The two different types of requirements are outlined in detail under regulation 5 "Nominating Driver or Person in control" of this report. Additionally, it was agreed that foreign drivers must have Traffic Register Certificate Numbers which are linked to the electronic National Traffic Information System (eNaTIS).

5.1.2. Electronic Interface System

5.1.2.1. Government will introduce the services of electronic interface system. In addition, RTIA must be fully capacitated inter alia to validate the eligibility and statuses of Drivers Licences, fine notification, nominations, representations and demerit point.

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5.1.3. **Access to Integrated Real Time System via electronic interface**

5.1.3.1. Services and access to integrated real time system would be enabled through the automated electronic interface. The understanding is that government will introduce and provide support to fully implement the electronic interface that will generate real time information for the users.

5.1.4. **Demerit points**

5.1.4.1. Government and RTIA will undertake further AARTO legislative amendments to ensure seamless implementation of the Demerit Points for locals and foreigners.

5.1.4.2. The Department of Transport will approach National Treasury for additional funding to effectively recapacitate the operations of the RTIA as its operation. The revenue performance for RTIA was adversely impacted by the level 5 lockdown since the entire social and economic activities came to a standstill.

5.1.4.3. The application of the demerit points was not supported. Government must be fully capacitated, must have adequate infrastructure to support the provision. The task team further agreed to resuscitate the engagements relating to demerit points during the proposed review process of the legislative framework.

5.2. Subsequent to the line by line engagement. The Nedlac social partners further agreed on the following:

5.3. **CHAPTER 1: Regulation 1 - Definitions**

5.3.1. AARTO does not make the owner responsible for the driver behaviour. Instead, it makes the owner responsible to control the use of the vehicle by obtaining driver information. In terms of AARTO, the owner is also held responsible for the roadworthiness of vehicles owned by such owner.

5.4. The following definitions were agreed with no amendment:

5.4.1. **"AARTO bank account"**
5.4.2. **"AARTO notifications"**
5.4.3. **"Act"** that the Regulations apply to anybody using the public road with **drivers'** licences. Infringements were in terms of the AARTO Act and that offences were in terms of the Criminal Procedure Act (CPA).
5.4.4. **"Appeal"** Government to make available the electronic interface
5.4.5. **"Appellant"**
5.4.6. **"Applicant"**
5.4.7. **"Bank"**
5.4.8. **"Designated official"**

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5.4.9. **"Infrastructure number"**
5.4.10. **"National Road Traffic Act"**
5.4.11. **"National Road Traffic Regulations"**
5.4.12. **"Personal Service"**
5.4.13. **"Power of attorney"**
5.4.14. **"Postage"**
5.4.15. **"Receiving entity"**
5.4.16. **"Review"**
5.4.17. **"SAPS force number"**

5.5. The definitions were rephrased to read as follows:

5.5.1. **"Prescribed/designated Documents"** means driving licence card, professional driving permit, motor vehicle licence disc, operator card or any other permit, card or licence issue in terms of road traffic legislation and transport legislation.

5.5.2. **"Form"** was agreed with the understanding that Government will provide for various methods with the view to accommodate all users and those with no access to electronic means. Where necessary, Government will provide for electronic interface.

5.6. **CHAPTER 2: Regulation 2 – Infringement notice**

5.6.1. Where applicable through the regulations, it was agreed that Government will provide for electronic interface.
5.6.2. 2(1) regulation was agreed with the understanding that the 60-day period is a maximum period within which notices may be served and, in another instances, service may occur within shorter period.
5.6.3. 2(3) was agreed, the automated/electronic interface will assist in addressing the offences committed in terms of the Criminal Procedure Act (CPA).
5.6.4. 2(4) was agreed, real time system will be made available.
5.6.5. 2(5) was agreed, issues automated/electronic interface will also apply.
5.6.6. 2(6) was agreed, that the juristic person will not be held responsible for infringements committed by the driver when nominations are done within the prescribed time frames. The provision must be read together with section 17(5) of the Principal Act.
5.6.7. 2(6)(a) was agreed and was rephrased to read "infringement, such juristic person <u>may</u> **[must]** be issued and served with an infringement notice on AARTO 03a form as shown in Schedule 1 in accordance with regulation 33 (4); and"
5.6.8. 2(6)(b) was agreed with no amendment as outlined in the Government position.
5.6.9. 2(7) was agreed and that Government must ensure to provide for mandatory ("must") provision and optional ("may") provision.
5.6.10. 2(7)(a)(i)(ii)(iii)(iv)(v),(b)(i)(ii)(iii),(c)(i)(ii)(iii)(iv)(v)(vi),(d)(i)(ii)(iii)(iv),(e)(i)(ii),(f)(iii) was agreed with no amendment.

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5.7. Regulation 3 – Courtesy Letter

5.7.1. Regulation was agreed with the understanding that Government would consider setting maximum timeframe as the principal Act provided no more than 45 days for compliance and for Government to issue courtesy letter for non-compliance. The automated electronic interface system was key in dealing with compliance matters.

5.7.2. Government stated that the circumstances under which a courtesy letter may be issued, as well as the applicable time frame are already prescribed in the Act. However, it acceded to the above-mentioned point raised by social partners.

5.8. Regulation 4 – Enforcement Order

5.8.1. 4(1) was agreed that during the next round of engagements on the review process, Government would address issues relating to application of juristic persons where the owner has no control of the vehicle and the enforcement orders must also apply to foreign drivers as users of the public road.

5.8.2. Government explained:

5.8.2.1. Enforcement orders were issued to deter bad driver behaviour and not to cause detriment to specific businesses. The Act is applicable to all road users.

5.8.2.2. Licence discs would be blocked if a motor vehicle is unlicensed or if there is a warrant. In instances where an infringement occurred while the car was under the nominated driver, the driver's licence of that relevant driver would be blocked.

5.8.2.3. However, if a nomination was successful, the driver's licence would be blocked and the fleet owner would be cleared.

5.8.3. It was stated that Government must also consider that the Act is not applicable to all road users, it is only applicable to vehicles registered in South Africa. Apart from excluding other road users who are contributors to or victims of road danger (cyclists, pedestrians, runners) it critically does not attempt to include visiting vehicles (foreign plated). This is a massive incentive for road users to adopt illegal practice of owning and driving grey imports (used cars imported ostensibly for export to neighbouring countries) in South Africa.

5.8.4. 4(1)(a) – was agreed that the interface connectivity will be made available prior/ on implementation of the regulations, and that it must be made available countrywide.

5.8.5. 4(1)(b) was agreed subject to issues of real time system connectivity to be made available given the inefficiencies of the SAPO. A review was necessary

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noting the provision of the principal act that section 26 of the Act requires that the infringer be notified of the points incurred through the registered mail.

5.8.6. 4(2) was agreed and that issues of real time system also apply on the section as well.

5.8.7. 4(2(b)((i)(ii) was agreed and that issues of real time system also apply on the section as well.

5.8.8. 4(2)(b)(iv), 4(2)(c), and 4(3) was agreed as outlined in the Government position with no amendment.

5.8.9. 4(4)(a)(b)(i)(ii),4(5)(6) was agreed as outlined in the Government position with no amendment and that issues of real time system connectivity were also applicable on these sections.

5.9. **Regulation 5 - Nominating Driver or Person in control**

5.9.1. The entire regulation was agreed with the following emphasis:

5.9.1.1. The entire regulation with its sub regulations were agreed without amendment.

5.9.1.2. Social partners noted that all the related application forms including the consent forms as provided in regulation 7 were being amended.

5.9.1.3. It was further agreed that Government will provide support to relevant users in terms of accessing the interface system, as such, the issues of security risk in the system will also be considered.

5.9.1.4. Task team agreed to the following two types of requirements for successful nomination:

i) In terms of South African citizens drivers, nomination that will be done through electronic interface, the system will require only the ID number. It was further noted that the electronic interface will authorize users to validate information received in real time such as the driver's details, licence and the address etc.

ii) In terms of foreign national drivers, nomination that will be done through electronic interface, the system will require a copy of the ID or a copy of the passport, and a copy of the foreign driving licence of the person being nominated. Additionally, the system will the foreign driver being nominated must have Traffic Register Certificate Number.

iii) Nomination done by completing a form, this must be done by completing the form in terms of Regulation 7. Completion of the forms should also be done through the system. The

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system should also allow for a copy of the passport and copy of the foreign driving licence of the person being nominated to be uploaded electronically.

5.9.1.5. It was further agreed that Government will provide support to ensure that all users have access to the interface system. As agreed above, all sections dealing with electronic interface are recorded as areas of agreement throughout the regulations.

5.9.1.6. It was also agreed that RTIA will provide written clarification on what constitute successful nomination, specifically relating to South African and foreign drivers.

5.10. **Regulation 6 – Representations**

5.10.1. 6(1) was agreed as outlined in the Government position with no amendment.

5.10.2. 6(2) was agreed that representation not done in accordance with the Regulations will not be processed. Government explained the process as follows:

5.10.2.1. Representation must be done by completing an AARTO 8 form and must be commissioned by the Commissioner of Oaths. The representation must be made in accordance with the Regulations. Such will be allowed for example when a wrong registration numbers were processed or where it can be proven that at the time of the infringement the vehicle was not in use. Government stated that it was still in a process to providing a much simpler process to redirect the infringement.

5.10.2.2. Government also stated that if users received the infringement notice, they would be considered to be infringers and are entitled to make the representation. The real time system may be a challenge as representation must be commissioned by the Commissioner of Oaths and sworn affidavit statement would be required. Alternatively, if agreed, an application can made where a sworn statement was submitted indicating that the vehicle on the system was the wrong vehicle. In this regard, the real time system can assist whereby the fleet owner will be able to remove wrong notices however, relevant the representation process would still apply.

5.10.2.3. 6(3)(4(a)(b) was agreed with no amendment.

5.11. **Regulation 7 - Notification of result of representations**

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5.11.1. 7(1) was agreed and that electronic service is available to simplify service of notices. AARTO website to be used by businesses to view the outcome of the representation. If the infringer had an e-mail address, the outcome would be served by e-mail. It was noted that all the sub-regulations under this regulation had consequential amendments and were therefore agreed.

5.12. **CHAPTER 3: Regulation 8 – Appointment of Members**

5.12.1. 8(1) was agreed with no amendment.
5.12.2. 8(2) arising from the discussion of demerit points, task team recommended that Government should undertake a review on the AARTO Act. It also agreed to resuscitate the engagements relating to issues of demerit points during that round of engagements.
5.12.3. 8(3) the decisions made by the Tribunal members will be on basis of appeal documents submitted to them in writing. Therefore, hearings may only be called under extreme circumstances as outlined in the principal Act. The appeals will be dealt with by the tribunal in the stipulated timeframes.

5.13. **Regulation 9 - Rules of the Tribunal**

5.13.1. Regulation 9 was agreed, and that the rules will indeed be published in Government Gazette for public scrutiny.

5.14. **Regulation 10 – Lodging of appeal and reviews**

5.14.1. 10(1) was agreed and that regulation 13(7) clarifies that no courtesy letter and enforcement order may be issued, pending the decision of the Tribunal and that no demerit points may be allocated.
5.14.2. 10(2) was agreed with the view that an automated/electronic interface and connectivity was necessary to ensure that the appeal process was functioning efficiently for companies in the vehicle-based economy.
5.14.3. It was further noted that the provision emanates from section 4 of the Interpretation Act which provides that weekends and holidays may be included when calculating number of days prescribed.

5.15. **Regulation 11 - Procedure**

5.15.1. 11(1) was agreed and that application made to the tribunal may be submitted electronically and that the process to appeal should be outlined and be made transparent.
5.15.2. 11(2) was agreed that the appellant or applicant will be notified of the decision of the Tribunal.
5.15.3. 11(3) – (6) was agreed with no amendment.
5.15.4. 11(7) was agreed as the factors are already outlined under Regulation 11(7) (a)-(d) to be considered when deciding as to whether or not there exists grounds to call for a hearing.
5.15.5. 11(7)(a)-(d) was agreed with no amendment.

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5.15.6. 11(8) was agreed, the infringers will be given notice of the hearing through electronic service.

5.15.7. 11(8)(a)(b)(c)(d) was agreed with no amendment.

5.15.8. 11(9) was agreed, the Chairperson is allowed discretion to consider feasibility of calling for hearings and will not invite a hearing where circumstances are not permissive.

5.15.9. 11(10) was agreed with no amendment.

5.15.10. 11(11) was agreed that the Tribunal will deal with the disbursements costs for witness. These would be covered in the Rules which will be published for scrutiny.

5.16. **Regulation 12 – Condonation**

5.1.16. The entire section was agreed with no amendment with the understanding that regulation 12(1), infringers will be notified of the result for condonation through electronic service as one of the serving methods. In addition, issues dealing with electronic interface will be taken as an area of agreement throughout the regulations.

5.17. **Regulation 13 - Record of Proceedings and Decisions of Tribunal**

5.17.1. 13(1)(2)(4)(5)(7)(6) (10) was agreed with no amendment.

5.17.2. 13(3) was agreed as it was linked with regulation 33 which deals with method of communications from infringers as well as the authority to other authorities.

5.17.3. 13(8) was agreed as it was linked to 13(10) which provides, that "pending the decision of the Magistrate's Court, no courtesy letter or enforcement order may be issued to the infringer and no demerit points may be allocated to the infringer".

5.17.4. 13(9) was agreed, applications will be directed to the Magistrates' Courts to be dealt with in accordance with Promotion of Administrative Justice Act (PAJA) which bestows review jurisdiction to courts, including Magistrates Courts.

5.17.5. 13(11) was agreed, appeals to higher courts may be made if the decision by the Magistrate is viewed to be unsatisfactory.

5.18. ***CHAPTER 4:* Regulation 14 - Penalties payable in terms of Infringements**

5.18.1. 14(1)(2) was agreed with no amendment.

5.19. **Regulation 15 – Discount**

5.19.1. 15(1)(3)(a)(4) was agreed with no amendment.

5.19.2. 15(2) was agreed with the understanding that the infringer will be able to exercise elective options while the discount is still effective within the first 32 days of having been served with an infringement notice.

5.19.3. 15(3)(b) was agreed, and that discount will be available on the following conditions:

(a) Within 32 days after service of infringement notice

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(b) Within 32 days of receipt of a result for representation only if that representation was made within 32 days after service of an infringement notice.

5.19.4. 15(4) was agreed and that the provision of 15(2) will also apply in this sub regulation.

5.20. **Regulation 17 - Penalties payable by Issuing Authorities and the Authority**

5.20.1. Regulation was agreed with no amendment.

5.21. **Regulation 21- Rehabilitation Programme**

5.21.1. 21(1) Was agreed, the infringers are permitted to apply for the programme before cancellation of license in terms of Regulation 21(1).

5.21.2. 21(2) was agreed with no amendment.

5.21.3. 21(3) was agreed, rehabilitation programme becomes voluntarily for purpose of reduction of points and remains compulsory for habitual infringers.

5.21.4. 21(4)(a)- (c) agreed as these were consequential amendment.

5.21.5. 21(5) was agreed and that the electronic service is allowed in terms of the new section 30 of these regulations.

5.21.6. 21(5)(b) was agreed, venues for attendance will be allocated closer to residential areas of designated infringers.

5.21.7. 21(5)(c) to (e) was agreed with no amendment.

5.21.8. 21(6) was agreed with no amendment.

5.21.9. 21 (7) was agreed and other additional means of service are retained in the Act.

5.21.10. 21(8)(9)(a) was agreed with no amendment.

5.21.11. 21(9)(b) was agreed and that rehabilitations programmes may only be attended for purpose of reducing demerit points or reapplying for cancelled documents

5.21.12. 21(10)(a)(b) was agreed without amendment.

5.22. **CHAPTER 6: Regulation 22 – Payment of penalty and fees**

5.22.1. 22(1) was agreed with the proviso that an electronic interface will be introduced by Government. Government to ensure that electronic payment platforms are available for purposes of settling outstanding infringements.

5.22.2. 22(1)(i) to (iv) was agreed without amendment.

5.22.3. 22(2) was agreed with no amendment.

5.22.4. 22 (3) was agreed, notice number is provided for all notices issued and should be used as reference for payment.

5.22.5. 22 (4) (5) was agreed as a consequential amendment. Agreement applied in the introductory regulation 33 (4) also applies to these sub regulations.

5.22.6. 22(6) was agreed, authorities will be liable for penalties in terms of Regulation 17.

5.22.7. 22(7) was agreed without amendment.

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5.23. **Regulation 23 - Payment in instalments**

5.23.1. 23(1)(2)(a) (3)(a)(b)(i)(ii)(iii), (5)(b)(c)(d) was agreed with no amendment.

5.23.2. 23 (4) was agreed and that the payment arrangements will be made per infringement, at a rate that is affordable to the infringer, for a period not exceeding 6 months.

5.23.3. 23(5) was agreed without amendment.

5.23.4. 23(5)(a) was agreed, regulation 23(5) outlines options to be explored by the infringer who failed to pay penalties in accordance with the arrangement made. This includes making further arrangements for payment.

5.23.5. 23(5)(b) to (d) was agreed without amendment.

5.24. **Regulation 24 - Late payment of a penalty, fee or instalment**

5.24.1. 24(1)(a)(b)(i)(ii)(iii)(aa) was agreed with no amendments.

5.24.2. 24(1)(b)(bb) and (cc) was agreed, infringers are allowed to make further arrangement should they default on their payments.

5.25. **Regulation 25 – Refunds**

5.25.1. 25(1) was agreed, applications may be submitted electronically and outcomes may also be provided electronically.

5.25.2. 25(2)(a)(b)(3)(a)(b) was agreed with no amendments.

5.25.3. 25(4) was agreed, the infringer may approach the court on review to challenge the decision of the Authority.

5.26. **Regulation 26 – Dishonoured payments**

5.26.1. 26(1)(2) was agreed with no amendments.

5.27. **Regulation 27 – Information to be recorded**

5.27.1. 27(1) was agreed, the officers required to file proof that notices were issued to the infringers. No obligation is bestowed on infringers in respect of this.

5.27.2. 27(2) was agreed and that a common system would be utilised for safe keeping of these records.

5.27.3. 27 (3)(4)(a)(b)(c)(d) was agreed with no amendments.

5.27.4. 27(5) was agreed, the Agency will also comply with the precepts of the Protection of Personal Information Act (POPI) Act in respect to dealing with personal information.

5.28. **Regulation 28 - National Road Traffic Offences Register**

5.28.1. 28(1) was agreed, with the proviso that an electronic interface will be introduced by Government. This provision of electronic interface is applicable throughout the regulations where it is mentioned.

5.28.2. 28(1)(a)(b)(c)(2)(3)(a)(b) was agreed with no amendments.

5.29. **CHAPTER 8: Regulation 29 – Personal Service**

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5.29.1. 29(1) was agreed, a return of service will be used as evidence of service in person.

5.29.2. 29(1)(a) was agreed without amendment

5.29.3. 29)(1)(b) was agreed, address information provided by the infringer will be relied upon to serve notices.

5.29.4. 29(1) (c) was agreed without amendment.

5.29.5. 29 (1)(d) was agreed, POPI does not protect information if it is required for law enforcement.

5.29.6. 29 (2)(a) (b) (3)(4)(a)(b)(c)(5) was agreed with no amendments.

5.30. **Regulation 30 Service by postage**

5.30.1. 30(1) was agreed and noted that postage is not the only method of service recognised in the Act. Electronic and personal service may still be utilised.

5.30.2. 30(1)(a) was agreed and noted that postal addresses will also be used for service

5.30.3. 30(1)(c) and (d) was agreed with no amendment.

5.30.4. 30(2) was agreed and that electronic service will also be utilised.

5.31. **Regulations 31 – Electronic Service**

5.31.1. 31(1) was agreed and that infringers will be allowed to select the best convenient method of service.

5.31.2. 31(1)(a) was agreed and the infringer is allowed to change personal details for purposes of service through notice of change of address form and Regulations 32A.

5.31.3. 31(1)(i)(ii)(iii)(v) was agreed with no amendments.

5.32. **Regulation 32 - Re-service of documents**

5.32.1. 32(1) was agreed and that any of the three methods of service will be utilised for re-service.

5.32.2. 32 (2)(3)(4)(6) was agreed with no amendment.

5.32.3. 32(5) was agreed, the infringer will be afforded an opportunity to exercise elective options even when notices have been re-served.

5.33. **CHAPTER 9: Regulation 33 - Manner of application, notification, submission, or enquiry**

5.33.1. 33(1) was agreed and that only one method of service may be used at a time and cannot use all of the methods simultaneously.

5.33.2. 33(1)(a)(b)(c)(2)(a)(b)(c)(3) was agreed with no amendment.

5.33.3. 33(4) was agreed and that infringers may update their address information in terms of Regulation 3A of National Road Traffic Agency (NRTA).

5.33.4. 33(4)(a) was agreed, any of the serving methods prescribed in the Act may be utilised for service of notices.

5.33.5. 33(5)(a)(b)(c) was agreed with no amendment.

5.34. **Regulation 34 Suspect and unverified Infringement Notices**

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5.34.1. 34(1) was agreed, only infringement notices may be marked "suspect" and that will only occur when the information on the infringement notices is not similar to the information recorded on the system.

5.34.2. 34(1)(a)(i)(ii)(iii)(iv)(v)(vi)(vii)(viii) was agreed without amendment.

5.35. **Regulation 35 - South African Police Service**

5.35.1. Section was agreed without amendment.

5.36. **Regulation 36 – Obtaining of AARTO Forms**

5.36.1. 36(1) was agreed and that AARTO infringement notices have unique numbers and must be printed to ensure there is no duplication of the notice number.

5.36.2. 36(1)(a)(b)(c) was agreed without amendments.

5.36.3. 36 (2) was agreed and that some of the forms required a Commissioner of Oaths and may not be completed online.

5.36.4. 36(2) (a)-(i) was agreed without amendments.

5.37. **Regulations 37 Repeal of regulations**

5.37.1. 37(1)(2)(3) was agreed without amendments.

5.38. **Regulation 38 – Transitional provision**

5.38.1. 38 was agreed without amendment with the understanding that the Act is the law of general application and meant to be applicable in all industries.

5.39. **Regulation 39 – Short title and commencement**

5.39.1. 39(1)(2) was agreed without amendments.

5.40. **List of Schedules below was agreed as demonstrated by Government.**

Schedule 1 – AARTO Forms

Schedule 2 – Monetary value of Penalty Unit, Penalty Amount, Discount, Fees, Disbursements and Penalties

Schedule 3 - Charge Book

Schedule 4 – Provision for South African Police Service (SAPS)

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6. AREAS OF DISAGREEMENTS

6.1. The Nedlac Social Partners disagreed on the following sections:

6.2. **Regulation 16 – Fees and Costs**

6.2.1. The entire regulation 16 and its sub- regulations 16(1)(2) was not supported for the following reasons:

6.2.1.1. Business stated that charging both infringement penalty and administrative fees was unfair and expensive to users. Therefore, additional fee should not be imposed to pay for the administrative costs. Government through its agency RTIA, must create a system to allow for the verification of points in a free and accessible manner and remove the possibility of additional fees from the framework.

6.2.1.2. Labour stated that the cost to the ordinary employee will be too expensive. Government should consider sending SMSs with a link and charge standard SMSs rates. Instead of charging the prescribed fee. Contact details can be obtained from users through a registration process, as well as when users' details are updated on the system.

6.2.1.3. Community stated that the one size fits all approach might deny others the justice they deserve.

6.2.2. Government clarified that fees are payable if an infringer has been issued with a courtesy letter including an enforcement order. Additional fees may be charged for rehabilitation programmes such as driver interventions, attendance of therapy and counselling, and any other appropriate rehabilitation measures.

6.2.3. 16(2)(a)(b) and (4) consequential amendment therefore was not supported by the task team.

6.3. **CHAPTER 5: Regulation 18, 19, and 20**

6.3.1. Business, Labour and Community stated that at this stage the provision of the entire Chapter 5, regulations 18, 19, and 20 including any provision relating to demerit points was not supported as well as the application of the demerit point system.

6.3.2. The task team recommended that Government should undertake a review on the AARTO Act and that the demerit points used be reviewed as part of the proposed process.

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6.3.3. It was further noted that the successful implementation of demerit point systems required Government to be fully capacitated and to setup the necessary infrastructure. This would ensure that users are able to comply with the law without encountering unnecessary administrative and technological challenges.

7. RECOMMENDATIONS

7.1. The task team agreed on the following recommendations for Government's consideration:

7.1.1. Review of the AARTO Act

7.1.1.1. Government to undertake the review of the AARTO Act as this will allow the stakeholders an opportunity to address a number of areas which could not be addressed through the regulations as the subordinate legislation.

7.1.1.2. Government should commission a Socio-Economic Impact Assessment System (SEIAS) study when reviewing the Act.

7.1.2. Undertake study tours

7.1.2.1. Social partners should conduct study tours in Tshwane and Johannesburg once the AARTO Nedlac Report has been signed-off by Nedlac structures. The knowledge gained during the study tours will be used during the review of the AARTO Act.

8. CONCLUSION

8.1. This report therefore concludes considerations at Nedlac report on the AARTO Regulations. The Report is submitted to the Minister of the Department of Transport and the Minister of Employment and Labour in terms of Section 8 of the NEDLAC Act No 35 of 1994.

8.2. It is acknowledged that the Nedlac parties may continue to advocate their views in the public consultation and other structured processes with due regard to the Report.

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ANNEXURE 1

AARTO REGULATIONS TASK TEAM MEMBERS 2021

Business	Community	Labour	Government
Gavin Kelly Tyson Sibanda Sandile Ntseoane Siganeko Magafela Kevin Van Der Merwe Gary McCraw Dannie Snyman Kulani Siwela Sharon Modiba Garry Scott	Lucas Qakaza Lawrence Bale Mbusi Nzimande Tumelo Zwane	Matthew Parks Sipho Ndhlovu Mdumiseni Mabaso	John Motsatsing Johannes Makgatho Gert Van Eerden Adv. Mncedisi Bilikwana Qacha Moletsane Alta Swanepoel Mncedisi Lawrence Theo Hentie Joubert

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Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE CHIEF STATE LAW ADVISER
Private Bag X81, PRETORIA, 0001, Tel (012) 315 1130, Fax (012) 315 1743, Momentum Centre East Tower 12th Floor, Pretorius Street.

Ref: 8/7/Motor Vehicle/2020/21/378A&B
Enq: Adv. M Naidoo
Tel: (012) 315 1106
E-mail: mnaidoo@justice.gov.za
Website: http://www.justice.gov.za

Date: 11 May 2021

Mr. Alec Moemi
Director-General
Department of Transport
Private Bag X193
PRETORIA
0001

Attention: **Mr Sello Mokubyane (Senior Legal Administration Officer: Legislation)**
Email: **Mokubyas@dot.gov.za**

Dear Mr Moemi

REQUEST FOR SCRUTINY AND CERTIFICATION OF THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES REGULATIONS PROMULGATED IN TERMS OF SECTION 34 OF THE ADMINISTRATIVE ADJUCIATION OF ROAD TRAFFIC OFFENCES ACT, 1998: YOUR UNNUMBERED MINUTE DAED 1 MARCH 2021

INTRODUCTION AND LEGAL QUESTION

1.1 The Department of Transport, ("the Department"), has submitted the draft Administrative Adjudication of Road Traffic Offences Regulations intended to be published under the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998), (hereinafter referred to as "the draft Regulations", and "the Act", respectively), for our scrutiny.

1.2 According to the Department, the first draft of the Regulations was published in October 2019 for public comment. At that stage, the Department was still in the process of completing Schedule 3 of the said published regulations, which Schedule was to detail every

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individual offence, related penalty, demerit points, financial value and discounted portion. The Department envisaged that the said Schedule would be published in August 2020 for a period of at least two months. The submission received from the Department does not provide any updated information, and appears to still envisage matters to be completed in 2020. Schedule 3 is an extremely important Schedule that will have direct implications on the public and with which the public would be most concerned. It is not clear if this Schedule has in fact been published for comment.

1.3 The Department has requested us to scrutinise and certify the draft Regulations. We wish to inform the Department that we do not certify subordinate legislation. However, we scrutinise subordinate legislation in order to ensure that subordinate legislation are *intra vires* the enabling legislation, and that they are understandable and consistent with the drafting style and form of subordinate legislation.

1.4 We have scrutinised the draft Regulations for drafting form, style and legality, and have indicated suggested amendments and have made certain comments on the electronic copy of the draft Regulations, a copy of which is attached hereto for your further attention. We also have the following comments:

DISCUSSION

General

2.1 A public authority (creation of legislation) has no power other than those which have been conferred upon it by legislation and "possess only such power as is lawfully authorised, and every administrative act must be justified by reference to some lawful authority."[1] Under our constitutional order, the exercise of all public power is subject to the provisions of the Constitution of the Republic of South Africa, 1999 ("Constitution"), which is the supreme law of the Republic.[2] The Constitution regulates the exercise of public power in different ways, which includes the application of the Bill of Rights and other specific provisions of the Constitution, which regulate and control the exercise of particular powers. Another source of constraint on the exercise of public power is the rule of law, which is one of the foundational

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1 Lawrence Baxter, *Administrative Law*, 1984 at page 384 and Cora Hoexter, *The New Constitutional and Administrative Law, Volume II, Administrative Law*, 2002 at page 16.

2 Section 1*(c)* of the Constitution reads as follows:

"The Republic of South Africa is one, sovereign, democratic state founded on the following values:

(a) .....

(b) .....

(c) Supremacy of the constitution and the rule of law."

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values of our constitutional democracy.[3] The role of the rule of law as a form of constitutional control on the exercise of public power was sketched out in the *Affordable Medicines Trust*-case[4], where the following is stated in paragraphs [48] to [49]:

> "Our constitutional democracy is founded on, among other values, the '(s)upremacy of the Constitution and the rule of law'. The very next provision of the Constitution declares that the 'Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid'. And to give effect to the supremacy of the Constitution, courts 'must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency'. This commitment to the supremacy of the Constitution and the rule of law means that the exercise of all public power is now subject to constitutional control.
>
> The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power." (Footnotes omitted.)

2.2 This fundamental principle has been affirmed in many judgments.[5] It is clear that public bodies have no power of their own and every incident of public power must be expressly provided for or necessarily inferred from a lawful empowering provision, for example, legislation. The logical concomitant of this is that an action performed without lawful authority is illegal.[6] It is against this background that we proceed to scrutinise the draft Regulations.

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3 *Masetlha v President of the Republic of South Africa and Another* 2008 (1) SA 566 (CC) at paragraph [172].

4 *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC). See also *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) at paragraph [148].

5 *Minister of Health and Another No v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amici Curiae)* 2006 (2) SA 311 (CC); *Pharmaceutical Society of South Africa and Others v Tshabalala-Msimang and Another NNO; New Clicks South Africa (Pty) Ltd v Minister of Health and Another* 2005 (3) SA 238 (SCA).

6 Cora Hoexter *et alii*, *The New Constitutional and Administrative Law, Volume Two Administrative Law*, 2002 at 127.

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Empowering provision

3.1 It is crucial to first establish the empowering provision of the Act in terms of which the Minister exercises the authority to make the draft Regulations. As explained above, the Minister may only prescribe those matters for which he has been granted authority in the Act. Any regulation that falls outside the ambit of such authority will be unauthorised and therefore unlawful. It is also important to note that the draft Regulations appear to be promulgated in terms of the Act as it would appear once amended by the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019 (Act No. 4 of 2019) ("the Amendment Act"). The Amendment Act has not as yet been brought into operation. We assume that the draft Regulations are necessary in order for some of the proposed amendments, as contained in the Amendment Act, to be implemented. It would therefore be crucial for the draft Regulations to be brought into operation on the same date upon which the Amendment Act is brought into operation. We have scrutinised the draft Regulations on this basis, and when we, from hereon, refer to "the Act", we refer to it as it would appear once the Amendment Act comes into operation. For the purpose of clarity, when we quote sections of the Act, we have included the proposed amendments thereto by the Amendment Act.

3.2 The Act was promulgated in order to promote road traffic quality by providing for a scheme 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 Authority to administer the scheme; to provide for the establishment of a Board to represent the Authority; and to provide for matters connected therewith.[7]

3.3 The draft Regulations site section 34 of the Act as the authorising provision therefor. Section 34 of the Act reads as follows:

> "**34.** The Minister may make regulations, which are not inconsistent with this Act, relating to any matter that may or must be prescribed in terms of this Act, including[8]—

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7 Refer to the long title of the Act.

8 Usually the introductory paragraph to a regulation section reads along the following lines: "The Minister may make regulations regarding any matter that may or must be prescribed, and (a) ...". This ensures

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(a) the manner in which any application, notification or submission is to be made, and the record to be kept of such application, notification or submission;

(b) the manner in which any information regarding any offence or infringement is to be recorded in the national contraventions register, and the nature of such information;

> (b) the manner in which any information regarding any offence or infringement is to be recorded in the National Road Traffic Offences Register, and the nature of such information;
>
> (Date of commencement to be proclaimed)

(c) the period for which any information or record is to be maintained in the said register;

(d) the fees which may be charged for any document, order or action required to be issued, made or performed, and the manner in which record is to be kept of any receipt or payment of money;

(e) the manner in which any payment is required to be made;

(f) the manner in which any proof is required to be submitted; and

> (f) the manner in which any proof is required to be submitted;
>
> (Pending amendment: **Para. (f) to be amended by s. 20 of Act No. 4 of 2019** with effect from a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(g) any other matter that the Minister considers necessary or expedient to prescribe or govern by regulation in order to achieve the objects of this Act.

> (g) any other matter that the Minister considers necessary or expedient to prescribe or govern by regulation in order to achieve the objects of this Act; and
>
> (Pending amendment: **Para. (g) to be amended by s. 20 of Act No. 4 of 2019** with effect from a date fixed by the President by proclamation in the *Gazette* – date not determined.)
> (Date of commencement to be proclaimed)

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that the Minister is empowered to make the regulations regarding the matters that are thereafter listed. The use of the word "include" in the introductory paragraph of section 34 of the Act creates ambiguity, and may lead to an interpretation whereby the matters listed in paragraphs *(a)* to *(g)* of section 34 of the Act are limited only to those matters that may or must be prescribed in the Act. This interpretation will result in the matters specified in paragraphs *(a)* to *(g)* being superfluous. This could not have been the intention of the legislature. We have therefore, as a matter of necessity, interpreted the word "include" to mean "and".

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> (h) the manner in which an infringement notice, courtesy letter or enforcement order may be reissued.
>
> (Pending amendment: **Para. (h)** to be added by **s. 20** of **Act No. 4** of 2019 with effect from a date fixed by the President by proclamation in the *Gazette* – date not determined.)
>
> (Date of commencement to be proclaimed)

The Minister clearly has the power to make regulations on any matter that may or must be prescribed in terms of the Act. Section 34 of the Act also lists further aspects on which the Minister may make regulations. Section 34*(g)* of the Act gives the Minister wide powers to make regulations that the Minister considers necessary or expedient to prescribe or govern by regulation in order to achieve the objects of this Act. Care must be exercised when utilising this provision so as to ensure that the regulations made thereunder do not expand the scope and application of the Act.

Ad regulation 1: Definitions

4.1 Regulation 1 of the draft Regulations provides for definitions. A definition clause is used to define words and expressions that are used in the draft Regulations, but are not defined in the Act and that do not convey their ordinary meaning. Words and expressions that are not used in the draft Regulations or that impart their ordinary meaning may therefore not be defined therein, and must be deleted. The introductory paragraph to the definitions of the draft Regulations reads as follows:

> "In these regulations, any word or expression which has been defined in the Act has that meaning and any word or expression defined in the National Road Traffic Act, 1996 or the National Road Traffic Regulations, 2000 has that meaning, and unless the context indicates otherwise – ".

This provision is extremely ambiguous. What happens if a word or expression is used and defined in all three pieces of legislations (the Act, National Road Traffic Act, 1996 or the National Road Traffic Regulations, 2000), differently? The draft Regulations are promulgated in terms of the Act, and as such words and expressions used in the draft Regulations ought to be compatible with and used as used in the Act. Where a word or expression is used in the context of the draft Regulations to impart a meaning as defined in

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any other legislation, this ought to be addressed at the site where the word is used and where it imparts such other meaning, hence the expression "unless the context indicates otherwise" in the introductory paragraph. We have therefore suggested the necessary amendments to this provision.

4.2 The word "applicant" is defined in regulation 1 as follows:

> "'**applicant**' means a person who applies for a review against the decision of the representations officer to the Tribunal in terms of section 29B(2) of the Act;".

This word is used in regulations 20(4)*(c)* and 25(4)*(b)* of the draft Regulations but does not have the meaning as defined in regulation 1. Applicant is used in the common sense of the word and may not require a definition in the draft Regulations. If the Department wishes to retain this definition, the word as used in regulations 20(4)*(a)* and 25(4)*(b)* must be replaced with an appropriate relevant word.

4.3 The word "Documents" is defined in regulation 1 as follows:

> "'**Documents**' means driving licence card, professional driving permit, motor vehicle licence disc, operator card or any other permit, card or licence issue in terms of road traffic legislation and transport legislation;".

The word "Documents" is used numerous times (approximately 47 times), in the draft Regulations, and it is not always used to impart the meaning as defined in regulation 1. This definition may therefore lead to ambiguity and will create confusion and uncertainty. We suggest that this definition be deleted, and where a regulation refers to any of the documents specified in this definition, the said document must be specifically mentioned in that regulation. Should the Department wish to retain this definition, we urge the Department to review all the regulations wherein this word appears in order to ensure that this definition is fully applicable in the regulation where it appears.

Ad regulation 2: Infringement notice

5.1 Regulation 2 of the draft Regulations deals with infringement notice. Section 17 of the Act provides for infringement notice and reads as follows:

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"**17.**(1) If a person is alleged to have committed an infringement, an authorised officer or a person duly authorised by an issuing authority, must instead of a notice contemplated in section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and subject to section 23, serve or cause to be served on that person an infringement notice, which must—

(*a*) specify the name and residential and postal address of the infringer, if known, at the time when the infringement was committed;

(*b*) state the **prescribed particulars** of the infringement;

(*c*) specify the amount of the **prescribed penalty payable** in respect of that infringement, the issuing authority to which the penalty is payable and the place where the penalty may be paid;

(*d*) specify the **prescribed discount** which may be obtained if the penalty is paid not later than 32 days after the date of service of the infringement notice;

(*e*) inform the infringer that the demerit points position may be ascertained from the national contraventions register at the office of any issuing authority, registering authority or driving licence testing centre;

> (*e*) inform the infringer that the demerit points position may be ascertained in the **prescribed** manner.
>
> (Date of commencement to be proclaimed)

(*f*) inform the infringer that, not later than 32 days after the date of service of the infringement notice, the infringer may—

(i) pay the penalty, as reduced by the discount contemplated in paragraph (d), or make representations to the agency, in the case of a minor infringement;

> (i) pay the penalty, as reduced by the discount contemplated in **paragraph** *(d)*, or make representations to the Authority, in the case of a infringement;
>
> **EDITOR'S NOTE**
>
> **In terms of s. 22 of Act No. 4 of 2019, this Act is hereby amended—**
>
> (*a*) **by the substitution for the expressions "Agency" and "agency", wherever they occur, of the expression "Authority";**

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(b) by the substitution for the expressions "major infringement" and "minor infringement", wherever they occur, of the expression "infringement";

(Date of commencement to be proclaimed)

(ii) pay the penalty, as so reduced, in the case of a major infringement;

(ii) pay the penalty, as so reduced, in the case of a infringement;

(Date of commencement to be proclaimed)

(iii) make arrangements with the agency to pay the penalty in instalments in the prescribed manner;

(iii) make arrangements with the Authority to pay the penalty in instalments in the prescribed manner;

(Date of commencement to be proclaimed)

(iv) elect in the prescribed manner to be tried in court on a charge of having committed the alleged offence; or

(iv) ......

(Pending amendment: Sub-para. (iv) to be deleted by s. 7(b) of Act No. 4 of 2019 with effect from a date fixed by the President by proclamation in the *Gazette* – date not determined.)
(Date of commencement to be proclaimed)

(v) provide information, in the **prescribed** manner, to the satisfaction of the issuing authority that he or she was not the driver of the motor vehicle at the time of the alleged infringement, coupled with the name, acceptable identification and residential and postal address of the alleged driver or person in control of the vehicle,

failing which the matter will be referred to the agency and a courtesy letter will be issued in terms of section 19, whereafter the infringer becomes liable to pay both the penalty and the prescribed fee of the courtesy letter.

failing which the matter will be referred to the Authority and a courtesy letter will be issued in terms of **section 19**, whereafter the infringer becomes liable to pay both the penalty and the **prescribed fee** of the courtesy letter.

(Date of commencement to be proclaimed)

(2) If an infringer fails to comply with an infringement notice within the period contemplated in subsection (1)*(f)*, the issuing authority must give notice of the

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failure, in the prescribed manner, to the agency for further action in terms of section 19.

> (2) If an infringer fails to comply with an infringement notice within the period contemplated in **subsection** (1)*(f)*, the issuing authority must give notice of the failure, in the prescribed manner, to the Authority for further action in terms of **section 19**.
>
> (Date of commencement to be proclaimed)

(3) If an infringer complies with an infringement notice by arranging to pay the penalty in instalments or by paying the penalty, as reduced by the discount contemplated in subsection (1)*(d)*, the agency must—

> (3) If an infringer complies with an infringement notice by arranging to pay the penalty in instalments or by paying the penalty, as reduced by the discount contemplated in **subsection** (1)*(d)*, the Authority must—
>
> (Date of commencement to be proclaimed)

(a) update the national contraventions register in the prescribed manner;

> *(a)* update the National Road Traffic Offences Register in the **prescribed manner**;
>
> (Date of commencement to be proclaimed)

(b) record the demerit points incurred by the infringer in terms of section 24 in the national contraventions register;

> *(b)* record the demerit points incurred by the infringer in terms of **section 24** in the National Road Traffic Offences Register;
>
> (Date of commencement to be proclaimed)

(c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and

> *(c)* notify the infringer by registered mail in the **prescribed manner** that the demerit points have been recorded against his or her name in the National Road Traffic Offences Register in respect of the infringement in question; and
>
> (Date of commencement to be proclaimed)

(d) provide the infringer with a print-out of the demerit points incurred

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by him or her to date, together with an indication of the amount of points left before his or her driving licence, professional driving permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27.

(4) If the infringer satisfies the issuing authority that he or she was not the driver of the motor vehicle, the issuing authority must cancel the infringement notice, and may serve or cause to be served on the person identified as the driver an infringement notice in relation to the alleged infringement.

(5) The owner or operator of a motor vehicle who permits any person to drive such vehicle or otherwise to exercise any control over such vehicle, without having ascertained the full names, acceptable identification and residential and postal address of such person is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

> (5) The owner or operator of a motor vehicle who permits any person to drive such vehicle or otherwise to exercise any control over such vehicle, without having ascertained the full names, identity document or residential, postal and, where applicable, business and e-mail address of an infringer, such person is liable for the **prescribed penalty and fees**.". (Our emphasis.)
>
> (Date of commencement to be proclaimed)

There are evidently many aspects specified in section 17 of the Act that must be prescribed in relation to an infringement notice.

5.2 Regulation 2(1) of the draft Regulations reads as follows:

"Where an infringer has committed an infringement, categorised as such in terms of section 29 (a) of the Act, an infringement notice contemplated in section 17 (1) of the Act on either AARTO 01, AARTO 02, AARTO 03, AARTO 03a or AARTO 03b as shown in Schedule 1 must be served or caused to be served on the infringer in terms of regulation 33 (4) within 60 days of the commission of the infringement or immediately upon commission of an infringement in relation to AARTO 01 and AARTO 02.".

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We have the following concerns with regard to this provision:

(a) This provision appears to provide for many substantive issues and various cross references in a single sentence. This makes the interpretation, understanding and implementation thereof extremely difficult. Interpretation is made easier when one substantive issue is provided for in one regulation, subregulation or paragraph.

(b) Section 1 of the Act provides for definitions, and the following definitions appear therein:

> "'infringement' means any act or omission in contravention of this Act and any road traffic legislation or transport legislation[9];
>
> "infringement notice" means an infringement notice contemplated in section 17;".

The definition of the word "infringement" in the Act is wide and includes any act or omission in contravention of any road traffic legislation or transport legislation. It is not limited to acts or omissions in contravention of the Act. The first part of subregulation (1) limits the application of the draft Regulations to infringements categorised as such in terms of section 29*(a)* of the Act, which section reads as follows:

> "**29. Categorisation of offences, infringements and demerit points.**—The Minister, acting with the concurrence of the Minister of Justice and the MEC of each province, **may for the purpose of this Act**—
>
> *(a)* prescribe offences, and categorise them into minor infringements, major infringements and other offences;
>
> *(a)* prescribe infringements and offences;"
>
> (Our emphasis.)
>
> (Date of commencement to be proclaimed)

The Minister, acting with the concurrence of the Minister of Justice and the MEC of each province, may prescribe infringements and offences for the purpose of the Act. These infringements and offences prescribed in terms of section 29 of the Act may not include all

9 As amended by Act No. 4 of 2019.

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acts or omissions in contravention of any other road traffic legislation or transport legislation, which are also infringements. Is it the intention of the Department to limit the application of this regulation to offences and infringement prescribed as such in terms of section 29*(a)* of the Act only? We have suggested amendments to this regulation in order to remove this limitation, and to make the regulation applicable to all infringements as defined and envisaged in the Act.

5.3 Subregulation (5) grants the issuing authority the power to serve the necessary summons in accordance with the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). The power of the issuing authority to serve summons, as provided for in section 22 of the Act, will be removed once the Amendment Act comes into operation. The draft Regulations, may not grant powers to the issuing authority, which powers may already exist in terms of other legislation. Section 17 of the Act specifically provides a process that must be followed instead of certain processes as provided for in sections 56 and 341 of the Criminal Procedure Act. All other processes provided for in the Criminal Procedure Act that may find applicable despite the Act, will still need to be followed, by virtue of and in terms of that Act and not in terms of the draft Regulations. The Act does not provide for the issuing of any summons in the manner provided for in this regulation. The only section of the Act that provides for any summons is section 29G(4) of the Act which section reads as follows:

> "(4) The Chairperson may for the purposes of hearing an appeal or reviewing a decision—
>
> (a) summon any person who may give material information concerning the subject matter of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the Chairperson may retain for examination any document so produced;"

We are therefore of the view that no other summons may be issued in terms of the Act or the draft Regulations. We accept that the AARTO 33 and 33a forms appear to be the notice of a summons to be issued and not the actual summons.

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5.4 Subregulation (6), specifically paragraph *(a)*, refers to an infringement committed in terms of section 49 of the National road Traffic Act, which section provides for the duties of operator. Section 89(2) of the National Road Traffic Act, read with, *inter alia*, section 49 of the said Act, creates offences and penalties, not infringements as contemplated in this subregulation. The Department is requested to reconsider this provision and clearly express the intention to create legal certainty. Also refer to comment 17.2 with regard to Schedule 3.

5.5 Subregulation (9) provides for the information that may be contained in an infringement notice, in addition to the information required in section 17(1) of the Act. If the forms contained in Schedule 1 of the draft Regulations are intended to be the infringement notification forms, should these forms not already request all the information contemplated in this subregulation?

5.6 In Schedule 1 of the draft Regulations there are three (in parts) AARTO 01 forms, all of which are issued in terms of section 17(1) of the Act. This is extremely confusing, as they all appear to request and provide similar information. What is the correct position with regard to the AARTO 01 form? Are all applicable under different circumstances?

5.7 The AARTO 02 Infringement notice form provides for an "infringement penalty levy" for every charge code. It is unclear what this levy is for. Prescribing levies is a substantive power for which specific authority must be given in the enabling legislation[10]. We could find no authority in the Act empowering the Minister to prescribe any penalty levy. The power of the Minster to prescribe fees as contemplated in section 34*(d)* of the Act does not include the power to prescribe a levy. Even if the word "levy" is replaced by the word "fee", we are still of the view that the Act does not contemplate any such infringement penalty fee. If this was the intention, the Act would have simply have stated so as it does with the courtesy letter fee and the representations fee (also refer to paragraph 19.1 below for further discussion with regard to fees). We are therefore of the view that such an "infringement penalty levy", as indicated in the AARTO 02 form is unlawful and *ultra vires* the provisions of the Act. The Department must ensure that this levy is removed from the form.

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[10] GC Thornton, Legislative Drafting, Buterworths, London Dublin, Edinburgh, 1996, fourth edition, at pages 293 to 294

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Ad regulation 3: Courtesy letter

6.1 Regulation 3 provides for the courtesy letter and states as follows:

> "3. If an infringer has failed to comply with the provisions of section 17 (1) (f) of the Act within 32 days after the date of service of the infringement notice, the discount shall be forfeited and the authority must, in terms of section 19 (1) of the Act, issue a courtesy letter on AARTO 12 form as shown in Schedule 1 and serve it on an infringer in accordance with regulation 33 (4).".

This provision repeats substantive issues that are already provided for in the Act. The draft Regulations may not simply repeat provisions of the Act. It must be emphasised that what appears in the draft Regulations is what the Minister may or must prescribe. The Minister may not instruct nor grant the Authority the power to issue the courtesy letter, as done in this regulation. This power to issue the courtesy letter is derived directly from the Act. Further, the Minister has not and may not determine, in the draft Regulations, the 32 day period or the forfeiture of the discount, for example. The Act specifies when the discounted amount may be paid, that is within the 32 day period. It is implied that the discounted amount may not be paid after this 32-day period. These are matters that are provided for in the Act. By repeating these provisions in the draft Regulations, it implies that the Minster has made these provisions and has the authority to exercise these powers, which is not the case.

6.2 The Minister appears to have prescribed a form (the AARTO 12 form) which must be issued and served by the Authority in the event that the infringer fails to comply with the infringement notice. The Minister is not required to prescribe the courtesy letter. It is the Authority that must issue the letter. The Act specifically states what must be contained in the courtesy letter. The only matters that the Minister is required to prescribe in relation to the courtesy letter are the following:

(a) the fee for the courtesy letter;
(b) the manner in which the Authority must update the National Road Traffic Offences Register if the infringer has paid the penalty and courtesy fee; and
(c) the manner in which the Authority notifies the infringer by registered mail that the demerit points have been recorded against his or her name in the National Road Traffic Offences Register in respect of the infringement in question.

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Although the Minister may not have the specific authority to prescribe the courtesy letter, he has the authority to prescribe the manner in which any application, notification or submission is to be made, and any other matter that may be necessary or expedient to do so in order to achieve the objects of this Act. It is in terms of these provisions that we have retained this provision of the draft Regulations.

6.3 The courtesy letter as provided for in the AARTO 12 form in Schedule 1 provides for an "infringement penalty levy", in addition to the penalty for the infringement and the fee for the courtesy letter. Prescribing levies is a substantive power for which specific authority must be given in the enabling legislation. We could find no authority in the Act empowering the Minister to prescribe such a levy. We are therefore of the view that such an "infringement penalty levy", as required in the AARTO 12 form is unlawful and *ultra vires* the provisions of the Act. The Department must ensure that this levy is removed from the AARTO 12 form. Also refer to paragraph 5.7 above in this regard.

<u>*Ad* regulation 4: Enforcement order</u>

7.1 Regulation 4 of the draft Regulations provides for enforcement order, and provides for the matter that may or must be prescribed in terms of section 20 of the Act. Section 20 of the Act provides for enforcement orders and reads as follows:

> **"Enforcement order**
>
> **20.**(1) If an infringer fails to comply with the requirements of a notification contemplated in section 18(7) or a courtesy letter contemplated in section 19(2)*(b)* or has failed to appear in court as contemplated in section 22(3)*(a)*, as the case may be, the registrar must, subject to subsection (2)—
>
> > (1) If an infringer fails to comply with the requirements of a notification contemplated in **section** 18(7) or a courtesy letter contemplated in **section** 19(2)*(b)* or has failed to apply for review or appeal to the Tribunal, as the case may be, the registrar must, subject to **subsection** (2)—
> >
> > (Date of commencement to be proclaimed)
>
> *(a)* issue an enforcement order, serve it on the infringer and update the national contraventions register accordingly;

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(a) issue an enforcement order, serve it on the infringer and update the National Road Traffic Offences Register accordingly.

(Date of commencement to be proclaimed)

(b) record the demerit points incurred by the infringer in the national contraventions register;

(b) record the demerit points incurred by the infringer in the National Road Traffic Offences Register.

(Date of commencement to be proclaimed)

(c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and

(c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the National Road Traffic Offences Register in respect of the infringement in question; and

(Date of commencement to be proclaimed)

(d) provide the infringer with a print-out of the demerit points incurred by him or her to date, together with an indication of the number of points left before his or her driving licence, professional driving permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27.

(d) provide the infringer with a print-out of the demerit points incurred by him or her to date, together with an indication of the number of points left before his or her driving licence, professional driving permit, any permit or licence issued in terms of any road traffic legislation or transport legislation or operator card is suspended in terms of **section 25** or cancelled in terms of **section 27**.

(Date of commencement to be proclaimed)

(2) No enforcement order is issued, unless the registrar is satisfied that—

(a) a notification contemplated in section 18(7) or courtesy letter, as the case may be, has been served on the infringer in question;

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(b) a period of at least 32 days has passed since the date of service of the said notification or courtesy letter, as the case may be;

(c) the applicable penalty and fees have not been paid;

(d) there are no pending representations in the case of a minor infringement;

> (d) there are no pending representations in the case of a infringement.
>
> (Date of commencement to be proclaimed)

(e) the infringer has not elected to be tried in court, or has elected to be tried in court and has failed to appear; and

(f) the infringer was at the time of the alleged infringement either the owner or operator of the motor vehicle or the driver of it.

(3) An enforcement order must—

(a) state that the infringer on whom it is served may, not later than 32 days after the date of service of the order, pay the penalty, representations fee and the fees of the courtesy letter, if any, and the prescribed fee of the enforcement order to the agency at the specified place and in the specified manner, and that the prescribed demerit points will be recorded in the national contraventions register; and

(b) state that a failure to comply with the requirements of the enforcement order within the period contemplated in paragraph *(a)* will result in a warrant being issued to recover the applicable penalty and fees.

> (3) An enforcement order must state that the infringer on whom it is served may, not later than 32 days after the date of service of the order, pay the penalty, representations fee and the fees of the courtesy letter, if any, and the prescribed fee of the enforcement order to the Authority at the specified place and in the specified manner, and that the prescribed demerit points will be recorded in the National Road Traffic Offences Register.
>
> (Date of commencement to be proclaimed)

(4) If an infringer pays the penalty and fees as contemplated in subsection (3)*(a)*, the agency must record compliance with the enforcement order and update the national contraventions register in the prescribed manner.

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(4) If an infringer pays the penalty and fees as contemplated in **subsection** (3)*(a)*, the Authority must record compliance with the enforcement order and update the National Road Traffic Offences Register in the prescribed manner.

(Date of commencement to be proclaimed)

(5) Subject to subsection (6), no—

(a) driving licence;

(b) professional driving permit; or

(bA) any permit or licence issued in terms of any road traffic legislation or transport legislation;

(Date of commencement to be proclaimed)

(c) licence disc,

may be issued to an infringer or in respect of a motor vehicle registered in the name of an infringer, if an enforcement order has been issued in respect of such infringer, until such enforcement order has been complied with or has been revoked.

(6) The provisions of subsection (5) do not apply in respect of an infringer who provides proof in the **prescribed manner** that he or she has in the meantime paid the penalty and fees specified in the enforcement order.

(7) An infringer on whom an enforcement order has been served may comply with it by paying the applicable penalty and fees to the local registering authority or driving licence testing centre.

(8) A local registering authority or driving licence testing centre must update the national contraventions register and notify the agency in the prescribed manner if it has received any payment contemplated in subsection (7) and must pay over such payment to the agency after deduction of the prescribed collection fee, within the prescribed period after which the agency may charge interest at the prescribed rate.

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(8) A local registering authority or driving licence testing centre must update the National Road Traffic Offences Register and notify the Authority in the prescribed manner if it has received any payment contemplated in **subsection** (7) and must pay over such payment to the Authority after deduction of the prescribed collection fee, within the prescribed period after which the Authority may charge interest at the prescribed rate.

(Date of commencement to be proclaimed)

(9) An enforcement order must be revoked by the registrar if—

(a) the infringer applies to the agency in the prescribed manner and submits reasons to the satisfaction of the registrar why an enforcement order must be revoked; or

(a) the infringer applies to the Authority in the prescribed manner and submits reasons to the satisfaction of the registrar why an enforcement order must be revoked; or

(Date of commencement to be proclaimed)

(b) the issuing authority applies in the **prescribed manner** for a revocation of the enforcement order,

and the infringer or the issuing authority, as the case may be, who applied for the revocation of an enforcement order, must be informed in the **prescribed manner** of the result of such an application.

(10) If an enforcement order is revoked, its consequences must be cancelled and if it involves the cancellation of a disqualification to drive or use a motor vehicle—

(a) the national contraventions register must be updated; and

(a) the National Road Traffic Offences Register must be updated; and

(Date of commencement to be proclaimed)

(b) the infringer must be informed about it in the prescribed manner and his or her driving licence, professional driving permit or operator's card must be returned or the endorsement of a driving licence that is contained in an identity document must be

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cancelled, unless he or she has been disqualified otherwise.

> (b) the infringer must be informed about it in the prescribed manner and his or her driving licence, professional driving permit, operator's card or permit or licence issued in terms of any road traffic legislation or transport legislation, must be returned unless he or she has been disqualified otherwise."
>
> (Our emphasis.)
>
> (Date of commencement to be proclaimed)

Evidently there are numerous matters that may or must be prescribed in terms of section 20 of the Act.

7.2 Subregulation (1) prescribes the form on which the registrar must issue an enforcement order contemplated in section 20 of the Act. As evident from section 20 of the Act, the Minister is not required to prescribe the enforcement order form. However, as argued in paragraph 6.2 above, it may be necessary and expedient for the Minister to prescribe the necessary form. The AARTO 13 form is the prescribed form.

7.3 Subregulations (3) to (8) pertain to the revoking of an enforcement order. An infringer may apply to the Authority or an issuing authority may apply for the revocation of an enforcement order. It is not clear from the Act to whom the issuing authority applies for the revocation of an enforcement order. It would seem, from the regulations that the infringer may also apply through the issuing authority for the revocation. It must be pointed out that it is the registrar that has the authority to revoke an enforcement order and not the Authority.

7.4 Subregulation (5) reads as follows:

> "(5) An application for revocation of the enforcement order which is not completed and submitted in accordance with sub-regulation (3) will not be processed and the enforcement order will remain effective.".

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Paragraph (d) of the AARTO 14 form reads as follows:

> "(d) A form that has not been properly completed will not be processed and the infringer can be liable for any further administrative action.".

An incomplete or in accurately completed form may be as a result of a simple administrative mistake or oversight on the part of the person. This mistake or oversight will have adverse consequences on the person concerned. Will the person concerned be informed of the reason why the application will not be processed? In keeping with the rules of natural justice, the applicant ought to be informed of what information is lacking or what is not correct and be given an opportunity to provide the information or make the correction. However such an application may not be disregarded as provided for in this subregulation, unless the applicant is given the opportunity to make the necessary corrections. Failure to make the necessary corrections or corrections not made within the relevant time period, may then not be processed. We have therefor made the necessary amendments to this provision.

<u>*Ad* regulation 5: Nominating driver or person in control</u>

8.1 Regulation 5 of the draft Regulations provide for nominating driver or person in control and subregulation (1) thereof reads as follows:

> "**5.**(1) The manner in which an infringer may nominate the driver of the motor vehicle at the time the infringement was committed as contemplated in section 17 (1) (f) (v) of the Act, is by properly completing a an AARTO 07 form as shown in Schedule 1 and submitting it in accordance with regulation 33 (1).".

In terms of section 17(1)*(f)*(v) of the Act, an infringer may provide information, in the prescribed manner, to the satisfaction of the issuing authority that he or she was not the driver of the motor vehicle at the time of the alleged infringement. The manner prescribed is the completion of the AARTO 07 form.

8.2 In terms of section 17(1)*(f)*(v) of the Act, the infringer must provide the issuing authority with the name, **acceptable identification** and residential and postal address of the alleged driver or person in control of the vehicle. The expression "acceptable identification" is defined in section 1 of the Act as follows:

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'"**acceptable identification**" means—

(a) a temporary identity certificate or an identity document issued in terms of the Identification Act, 1986 (Act No. 72 of 1986);

(b) a passport issued in terms of the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994);

(c) in the case of a person not permanently resident in the Republic, an identity document issued by a foreign country or a traffic register number certificate;

(d) in the case of—

(i) a company, a certificate of incorporation or name change issued in terms of the Companies Act, 1973 (Act No. 61 of 1973); or

(i) a company, a certificate of incorporation or name change issued in terms of the Companies Act, 2008 (Act No. 71 of 2008);

(ii) a close corporation, a founding statement or a certificate of name change issued in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984);

(dA) a driving licence card issued in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

(e) a traffic register number certificate issued in terms of any national or provincial Road Traffic Act, in the case of—

(i) a person carrying on a business which, for the purpose of this definition, includes farming activities; or

(ii) a body of persons not referred to in paragraph *(c)*; or

(f) a photocopy of the applicable certificate or document referred to in paragraphs *(a)* to *(e)*;".

It is therefore clear that the Act does not require a valid driving licence to be provided for the purpose of section 17(1)*(f)*(v) of the Act, but requires an acceptable identification. The definition of "acceptable identification" includes a driver licence card issued in terms of the National road Traffic Act, and it is therefore not necessary to repeat it. Sub-regulation (2)*(a)* therefor narrows the application of section 17(1)*(f)*(v) of the Act by requiring a copy of a valid driving licence of the nominated person to be submitted and not any acceptable identification. An identification document is an acceptable identification of a person. What

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happens if the licence is not valid or recognised for whatever reason? We have therefore suggested that this aspect be deleted from this paragraph.

8.3 Subregulation (4) reads as follows.

> "(4) A maximum of three nominations will be allowed of which the last nomination must be a natural person. The last person nominated is liable for that infringement shall incur the demerit points applicable to that infringement.".

This provision is extremely ambiguous and confusing, and as a result thereof we are unable to suggest any amendments thereto. This provisions seems to place a limitation and condition with regard to the nomination of a person for the purpose of section 17(1)*(f)*(v) of the Act. As the Act does not place any limitations in this regard, we suggest that this provision be deleted.

8.4 Subregulation (5) reads as follows:

> "(5) An application for nomination that is not completed and submitted in accordance with sub-regulations (1) and (2) will not be processed and the consequent administrative processes in terms of the Act will be applicable.".

Paragraph (f) of the AARTO 07 form reads as follows:

> "(f) A form that has not been completed properly will be rejected and a courtesy letter shall be issued."

The circumstances under which a courtesy letter may be issued are set out in the Act, and the non-completion of forms is not a circumstance under which a courtesy letter may be issued. These are substantive provisions that will have an adverse effect on the person concerned. We could not find any authority in the Act for such a provision. In keeping with the rules of natural justice, the person submitting this form ought to be informed of what information is lacking or what is not correct and be given an opportunity to provide the information or make the correction. Failing this, these provisions (subregulation (5) and paragraph (f) of AARTO 07 form) may be *ultra vires* the Act and therefore unlawful. We have therefore suggested the necessary amendments to this subregulation.

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Ad regulation 6: Representations

9.1 Regulation 6 of the draft Regulations provides for representations. Section 18 of the Act provides comprehensively for representations, including representations contemplated in sections 17(1)*(f)*(i) and 19(2)*(b)* of the Act. The manner in which the representations are to be made must be prescribed by the Minister and this is done in regulation 6(1) of the draft Regulations.

9.2 Subregulation (3) reads as follows:

> "(3) A representation which is not completed and submitted in accordance with sub-regulations (1) and (2) will not be processed and the consequent administrative processes in terms of the Act will be applicable.".

The fact that representation that does not comply fully with the manner prescribed does not give the Authority or representations officer the power to not consider the representations and to re-instate the consequent administrative process. This is a substantive power. A representation may only be considered invalid in terms section 18(3) of the Act. The infringer should be informed of the short comings of the representation and the opportunity to provide the missing information, and at the same time be informed that the representation may not be considered until the missing information is provided or any other action required to correct the representation is taken. We have therefore made the necessary amendments to this subregulation.

9.3 In terms of section 18(4)*(a)* of the Act, the representations officer must, in the prescribed manner, inform the issuing authority concerned if representations indicating the existence of reasonable grounds why the infringer should not be held liable for the penalty have been received. This does not seem to be provided for in the draft Regulations.

Ad regulations 7: Notification of result of representations

10.1 This regulation ought to be contained in regulation 6 as it deals further with representations.

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10.2 Subregulation (1) provides for the forms in terms of which the Authority informs the infringer of the decision of the representations officer. Section 18(5) of the Act reads as follows:

> "(5) A representations officer—
>
> *(a)* must duly consider the representations and any reply thereto;
>
> *(b)* may conduct independent investigations to verify the facts; and
>
> *(c)* may—
>
> (i) allow the representations if there are reasonable grounds indicating that the infringer should not be held liable for the penalty payable in terms of the infringement notice; or
>
> (ii) reject the representations if there are no such reasonable grounds.".

It is clearly the obligation of the representations officer to consider the representations and any reply thereto. However, who the representations office replies to is unclear. It would seem that in terms of section 18(7) of the Act, the infringer is informed of the decision of the representations officer by providing the reasons for the rejection of the representations. It would appear that the AARTO 09a, 09b and 09c forms are intended to be the manner in which the decisions of the representations offer is conveyed to the infringer. Section 18(6) of the Act, does not relate to the decision of the representations office but rather to the decision of the Authority to cancel the infringement notice

10.3 Section 18(7) of the Act, once the Amendment Act comes into operation, reads as follows:

> "(7) If the representations are rejected, the representations officer may advise the infringer of his or her right of review or appeal to the Tribunal and must serve or cause to be served on the infringer a prescribed written notification informing him or her—
>
> *(a)* of the reasons for the decision, and provide the issuing authority concerned with a copy thereof;
>
> *(b)* if the infringer does not exercise the right to review or appeal—
>
> (i) that the penalty, the prescribed representations fee and the prescribed fee of the courtesy letter, if any, are payable to the Authority or that the arrangements are made with the

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Authority in the prescribed manner to pay in instalments, not later than 32 days after the date of service of the notification and

(ii) that failure to pay the penalty and fees or to make arrangements to pay in instalments will result in an enforcement order being served on the infringer and that the infringer will become liable to pay the penalty and fees and the prescribed fee of the enforcement order; and

(c) if the infringer elects to exercise the right to review or appeal that the provisions of Chapter IVA apply.". (Our emphasis.)

Where a representation has been rejected, the representations officer may advise the infringer of his or her right of review or appeal to the Tribunal but is obliged to serve or cause to be served on the infringer a prescribed written notification informing him or her of the matters specified in paragraphs *(a)* to *(c)* of section 18(7). The Minister is required to prescribe the written notification contemplated in this subsection. It is unclear if the forms specified in regulation 7(1), is intended to be this written notification, although this would seem to be implied from regulation 7(2). The written notification contemplated in section 18(7) of the Act is issued by the registrar to the infringer and not by the Authority. If AARTO 09b and AARTO 09c is intended to be the said written notification, it must set out and provide for all the information contemplated in section 18(7)*(a)* to *(c)* of the Act. The said forms appear to provide for this information. It must be noted that this written notice is issued in the case where the representation is rejected. The AARTO 9c form pertains to representation that is successful on the main charge. All three forms, AARTO 9a, AARTO 9b and AARTO 9c are titled exactly the same, and may cause confusion.

10.4 The AARTO 9b and 9c forms appear to provide for an "infringement penalty levy". We could find no authority in the Act empowering the Minister to prescribe such a levy. We are therefore of the view that such an "infringement penalty levy", as provided for in these forms are unlawful and *ultra vires* the provisions of the Act. The Department must ensure that this levy be removed from the said forms.

<u>*Ad* regulation 8: Appointment of members</u>

11.1 Chapter 3 of the draft Regulations provides for the Appeals Tribunal and regulation 8 thereof provides for the appointment of members, and reads as follows:

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"8.(1) Members of the Tribunal including the Chairperson shall be appointed by the President through a notice calling for public nominations issued by the Minister in the Government Gazette.

(2) Members of the Tribunal are appointed on a part-time basis and shall serve a term as contemplated in section 29D (2) of the Act.".

Section 29A of the Act provides for establishment and constitution of Tribunal, and subsection (3) thereof reads as follows:

"(3) The Tribunal consists of a Chairperson and eight other persons appointed by the President, on a part-time basis, and on the recommendation of the Minister, from among those persons nominated by the Minister in response to a public call for nominations as prescribed.".

Evidently section 29A of the Act grants the President the power to appoint the members of the Tribunal. The Minister does not have the authority to grants this power to the President by way of subordinate legislation as done in regulation 8 of the draft Regulations. This matter is already provided for in the Act. We are therefore of the view that this regulation is *ultra vires* the Act, and must be deleted.

11.2 The expression "public call for nominations as prescribed" in section 29A(3) of the Act is ambiguous. It is not clear exactly what is required to be prescribed. It would seem that the requirements for and the manner in which nominations must be made by the public, once the Minister calls on the public to make nominations, must be prescribe. This matter does not appear to be provided for in the draft Regulations.

Ad regulation 9: Rules of Tribunal

12. Regulation 9 of the draft Regulations provide for rules of Tribunal, and in terms thereof the Tribunal may develop its own rules governing the proceedings of the sittings, the conduct of its members and other related matters.

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Ad regulation 10: Lodging of appeals and reviews

13.1 Section 29B of the Act provides for the functions of the Tribunal and subsection (2) thereof reads as follows:

> "(2) The appeal or review referred to in subsection (1)(*h*) must be lodged with the Tribunal within 30 days of receipt of the reasons for the decision, and lodged in the manner and on payment of fees, as prescribed by the Minister.".

The Minister is clearly authorised and is required to prescribe the manner in which a person may loge an appeal or review against any decision of the representation officer, and the fee payable in respect of that appeal or review. Regulation 10(1) provides the manner in which the appeal or review may be lodged, and that is by completing the AARTO 10A or AARTO 10B form. The AARTO 10 form (not 10A) is titled "APPLICATION FOR A REVIEW OR APPEAL", while the AARTO 10b (not 10B) is titled "Notification of Compliance". An application for an appeal or review would therefore be made on a form similar to AARTO 10 and not AARTO 10A and 10b.

13.2 There are numerous references in this regulation and elsewhere in the draft Regulations to forms AARTO 10A, 10B, 10Aa, 10Ab, 10Ac, 10Ad and 10a. Schedule 1 of the draft Regulations contains the following forms:

(a) AARTO 10: APPLICATION FOR A REVIEW OR APPEAL

(b) AARTO 10a – Notification of Compliance;

(c) AARTO 10b - REJECTION OF REVIEW OR APPEAL

(d) AARTO 10c – NOTIFICATION OF SITTING OF REVIEW OR APPEAL HEARING;

(e) AARTO 10d - RESULT OF REVIEW OR APPEAL

We have attempted to correct the references to these forms where possible. We urge the Department to ensure that all forms are correctly and accurately referred to in the draft Regulations.

13.3 Subregulation (2)(b) refers to the proof of the payment of the fee as shown in Schedule 2. In terms of section 29B(2) of the Act, the Minster has the power to prescribe fees with regard to an appeal or review. Paragraph 17 below set out in detail our concern

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with regard to Schedule 2 of the draft Regulations. Schedule 2 does not provide for a fee for appeals and review.

13.4 Regulation 10(3), grants a designated employee (administrative functions) substantive powers to reject an application for review or appeal made in terms of the Act. We are of the view that the right to appeal or review a decision of the representation office as granted by the Act may not simply be infringed upon by the designated employee due to the failure to comply with certain administrative requirements even where the applicant has been informed as contemplated in regulation 10(2) of the draft Regulations. We are of the view that the Minister may not have the authority to grant such a substantive power to the designated employee. We have therefore suggested that this provision be deleted.

Ad regulation 11: Procedure

14.1 Regulation 11 of the draft Regulations provides for procedure, and appears to deal with the procedure applicable once an application for an appeal or review has been received, and subregulation (4) thereof reads as follows:

> "(4) The Tribunal shall make a decision on an appeal or review based on the documents submitted in accordance with regulation 10(1).".

This provision limits the Tribunal to make a decision with regard to an appeal or review application based only on information or documents submitted with the application. In this regard, we refer the Department to section 29G(4) of the Act, which reads as follows:

> "(4) The Chairperson may for the purposes of hearing an appeal or reviewing a decision—
>
> (*a*) summon any person who may give material information concerning the subject matter of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the Chairperson may retain for examination any document so produced;
>
> (*b*) administer an oath or affirmation from any person called as a witness at the hearing; and

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(c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control, which has a bearing on the subject matter of the hearing.".

The Act authorises the Chairperson to summon any person to produce any document in that person's control or possession, which document has a bearing on the subject matter of the hearing. Regulation 11(4) therefore unlawfully limits the powers of the Tribunal with regard to the documents which it may consider for the purpose of a hearing. We therefore suggest that this provision be deleted.

14.2 Regulation 11(5) and (6) of the draft Regulations reads as follows:

"(5) With regards to an appeal, the appellant may only submit documents and rely only on grounds which were initially considered by the representations officer in terms of section 18 (5) of the Act.

(6) An applicant may only submit additional documents contemplated in regulation 10 (1) and rely on additional grounds in relation to a review.".

These are, in our view, not procedural matters that determine the manner in which an appeal may be lodged. These are substantive provisions for which we could find no authority in the Act. An application for appeal or review to the Tribunal is still within the ambit of the administrative process provided for by the Act to deal with infringements in terms of the Act. The representations office is given wide discretionary powers in the Act when considering representations made, and may even conduct independent investigations. Information obtained from such independent investigations may be used by the representations officer in deciding to allow or reject an application. In addition to our comments in paragraph 14.1 above with regard to the Tribunal, the representations office is, in making a decision, not limited to the information submitted by the applicant. Why should the applicant then, in appealing the decision of the representations officer, be limited to the information in the application? As evident from section 29G(4) of the Act, the Tribunal has wide powers to request other documents that may have a bearing on the subject matter before it, and should therefore have the discretion with regard to whether or not the applicant may submit further

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information or documents. This would ensure a fair process. The Minister is not authorised to regulate the workings of the Tribunal, the manner in which the Tribunal does its job or how it take decisions. We are therefore of the view that these subregulations may be *ultra vires* the Act and should therefore be deleted.

14.3 Regulation 11(7) to (11) of the draft Regulations provides for substantive matters for which we could find no authority in the Act. The Minister does not have the authority to grant the Tribunal such additional powers. The Act grants the Tribunal the powers necessary and expedient to enable the Tribunal to carry out its obligations in terms of the Act. The power to summon persons is not a power the Minister may simply grant to a statutory body by way of subordinate legislation. These provisions, in our view, extend far beyond what the Minister may be empowered to prescribe in terms of section 34*(g)* of the Act.

Ad regulation 12: Condonation

15.1 Regulation 12 of the draft Regulations provide for condonation. In this regard, section 29B(3) of the Act reads as follows:

> "(3) The Tribunal may, on good cause shown, condone the late filing of an appeal or review.".

The Minister is not required to prescribe any matter with regard to condonations. We have suggested amendments to this regulation in order to provide for the procedure with regard to the application form and the reissuing of the enforcement order which the Minister is authorised to prescribe.

15.2 In terms of subregulation (2), the Tribunal must inform the applicant of the outcome of the application for condonation on a form substantially similar to the AARTO 35a form, which is titled: AARTO 33a – NOTICE OF SUMMONS TO BE ISSUED TO OPERATOR OR JURISTIC PERSON". This does not appear to be the correct or intended form.

Ad regulation 13: Record of proceedings and decisions of Tribunal

16.1 Regulation 13 of the draft Regulations provide for records of proceedings and decisions of the Tribunal. There are many provisions in this regulation that appear to provide for issues that, in our opinion, ought to have been provided for in the Act. The issue of what happens once the Tribunal has confirmed, varied or set aside, as the case may be,

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any decision against which an appeal or review has been lodged is not dealt with sufficiently in the Act. The regulations attempt to fill in this gap by providing for the process. In terms of subregulation (5), if an application for an appeal or review is successful, the infringement notice must be cancelled or re-issued. An appeal or review will be successful if the decision against which it is made is set aside or perhaps varied. On what grounds will an infringement notice be reissued? The Tribunal ought to make an order and give direction with regard to a matter before it and its decision in regard thereto.

16.2 The Tribunal is established in terms of section 29A of the Act and must, *inter alia*, exercise its functions in accordance with this Act or any other applicable legislation.[11] The Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ("Promotion of Administrative Justice Act"), was passed to give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution. The word "tribunal" is defined in section 1 of Promotion of Administrative Justice Act as follows:

> "**tribunal**' means any independent and impartial tribunal established by national legislation for the purpose of judicially reviewing an administrative action in terms of this Act.".

The Promotion of Administrative Justice Act is clearly applicable to the Tribunal in so far as the Tribunal reviews administrative action taken in terms of the Act. Section 8 of the Promotion of Administrative Justice Act provides for remedies, and reads as follows:

> "**8.**(1) The court or tribunal, in proceedings for judicial review in terms of section 6(1), may grant any order that is just and equitable, including orders—
> *(a)* directing the administrator—
> (i) to give reasons; or
> (ii) to act in the manner the court or tribunal requires;
> *(b)* prohibiting the administrator from acting in a particular manner;
> *(c)* setting aside the administrative action and—
> (i) remitting the matter for reconsideration by the administrator, with or without directions; or
> (ii) in exceptional cases—

11 Refer to section 29A(2)*(d)* of the Act.

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(aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or

(bb) directing the administrator or any other party to the proceedings to pay compensation;

(d) declaring the rights of the parties in respect of any matter to which the administrative action relates;

(e) granting a temporary interdict or other temporary relief; or

(f) as to costs.

(2) The court or tribunal, in proceedings for judicial review in terms of section 6(3), may grant any order that is just and equitable, including orders—

(a) directing the taking of the decision;

(b) declaring the rights of the parties in relation to the taking of the decision;

(c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties; or

(d) as to costs."

The Tribunal may therefore make orders as provided for in section 8 of Promotion of Administrative Justice Act. Such orders ought to provide clear directions and remedies. This is however only applicable with regard to reviews before the Tribunal.

16.3 The original subregulations (9) to (10) appear to provide for procedural issues that are intended to keep the Authority informed of proceedings in the Magistrate's Court with regard decisions that are taken on appeal to the Magistrate's Court in terms of section 29I of the Act, which section reads as follows:

"29I. **Appeals and Reviews.**—(1) Any person affected by a decision of the Tribunal may—

(a) apply to a Magistrate's Court designated by the Minister in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), to review that decision; or

(b) appeal to a Magistrate's Court against the decision of the Tribunal.

(2) An appeal or review against the decision of the Tribunal must be lodged with the relevant Magistrate's Court within 30 days of the decision of the Tribunal.".

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While the review of a decision of the Tribunal by a Magistrate's Court is specifically brought within the ambit of the Promotion of Administrative Justice Act, the powers of the Magistrate's Court to hear an appeal is not qualified at all. This, in our view, is a serious gap in the Act as a Magistrate's Court is not ordinarily a court of appeal. How would the said court proceed, deal with and decide on such an appeal is neither dealt with in the Act nor in any other legislation. How will section 29I(1)*(b)* of the Act be implemented? We have retained the original subregulations (9) to (10) as it provides for procedural matters, however, we draw the Department to section 24(4A) of the Act which reads as follows:

> "(4A) For the purpose of recording the demerit points as contemplated in subsections (3) and (4), the clerk of the court must notify the agency of the result of each prosecution and appeal.
>
> (4A) For the purpose of recording the demerit points as contemplated in **subsections** (3) and (4), the clerk of the court must notify the Authority of the result of each prosecution and appeal.
> (Date of commencement to be proclaimed)

Ad regulations 14: Penalties payable in terms infringements

17.1 Regulation 14 of the draft Regulations provides for penalties payable in terms of infringements, as contemplated in section 29*(b)* of the Act. Subregulation (1) refers to Schedules 2 and 3 which set out, *inter alia*, the monetary value of penalty unit, penalty amounts, discounts, fees, payments and penalties, charge codes, demerit points. Section 1 of the Act provides the following definition for the word "penalty":

> "'**penalty**' means the administrative penalty payable for an infringement as contemplated in section 31;".

Section 31 of the Act that provides for penalties reads as follows:

> "**31**.(1) The penalty prescribed under section 29*(b)* for each infringement must, despite any other law, be imposed administratively in terms of Chapter III, subject to the discount contemplated in section 17(1)*(d)*.

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(2) The laws on prescription are not applicable to penalties and fees payable in terms of this Act, and may be collected at any time.".

Section 29 of the Act provides for categorisation of offences, infringements and demerit points, and reads as follows:

> "29. **The Minister, acting with the concurrence of the Minister of Justice and the MEC of each province**, may for the purpose of this Act—
>
> *(a)* **prescribe offences**, and categorise them into minor infringements, major infringements and other offences;
>
> > *(a)* prescribe infringements and offences;
> > (Date of commencement to be proclaimed)
>
> *(b)* **prescribe the penalty**, expressed as a single unit or multiple units accorded a monetary value, which must be imposed for each infringement, as contemplated in section 31;
>
> *(c)* **prescribe the demerit points** which are incurred for each offence or infringement, as contemplated in section 24; and
>
> *(d)* **prescribe the total number of demerit points** which, if exceeded, disqualifies a person from driving or operating any motor vehicle as contemplated in section 25.". (Our emphasis.)

It is clear that the infringements, the offences, the penalty imposed for each infringement, the demerit points applicable for each infringement or offence, and the total number of demerit points which disqualifies a person from driving or operating any motor vehicle, are all prescribed as contemplated in section 29 of the Act. The matters required to be prescribed in terms of section 29 of the Act are made by the Minister, acting with the concurrence of the Minister of Justice and the MEC of each province, and not by the Minister alone. The regulations made in terms of section 34 of the Act are made by the Minister alone, without the concurrence of any other authority. In this regards, Thornton[12] states the following:

> "Where the legislation is made after consultation, or with the approval of some people or authority, of after the performance of some other statutory condition, it is usual to recite the performance of the condition in the enacting provision. Such a practice may help to avoid inadvertent failure to observe statutory requirements.".

[12] GC Thornton, Legislative Drafting, Butterworths, 1996, at page 433.

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The Minister may not make the regulations envisaged in section 29 of the Act unless the Minister of Justice and the MEC of each province are in agreement therewith. This condition upon which regulations contemplated in section 29 of the Act are made must be cited in the enacting provision in order to avoid inadvertent failure to comply with this condition. The power to make regulations as provided for in section 34 of the Act does not include such a condition. The Minister makes the regulations contemplated in section 34 of the Act without any such concurrence. As a result of the manner in which section 29 of the Act is worded, the regulations contemplated in that section may not be simply combined with and included in regulations made in terms of section 34 of the Act. We are therefore of the opinion that regulation 14 of the draft Regulations, and items 1 and 2 of Schedule 2 and the entire Schedule 3 ought not to form part of the draft Regulations, as these are matters that are contemplated in section 29 of the Act. These provisions must be provided for in separate regulations that are made by the Minister acting with the concurrence of the Minister of Justice and the MEC of each province.

17.2 Of concern to us is the definition of the word "prescribe" in section 1 of the Act which reads as follows:

> "'**prescribed**' means prescribed by regulation by the Minister under section 34;".

Although there is an explicit link between the various provisions providing for matters to be 'prescribed' and the general regulation making provision in section 34 of the Act, section 34 of the Act refers to the matters that the Minister is empowered to prescribe, and does not take into account those matters in which the Minister is obliged to act with the concurrence of other authorities. Bednar states the following:

> "Legislation may include more than one empowering provision to make delegated legislation, and when making delegated legislation it is vital to specify the correct empowering provision in the enacting provision of the delegated legislation. Some legislation refers to matters being 'prescribed' by a minister in various provisions, and then there is a more general 'regulation-making' provision that refers to a list of various matters in respect of which regulations may be made. A procedure for making regulations may be specified in the general regulation-making provision. An explicit link must be made between the various provisions providing for matters to be 'prescribed' and the general regulation making provision, to clarify that there is a

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general regulation-making power and a consistent procedure applicable to all instances where regulations are made in terms of the legislation. If the linkage is not properly made, an interpretive question may arise whether a procedure that is set out in the general provision applies to the various instances of matters being prescribed in terms of other provisions in the original legislation, or whether the different provisions grant separate regulation making powers.[13]

There is no procedure set out in section 34 in terms of which the regulations must be made, except that the Minister may make the regulations specified therein. However, section 29 may be interpreted as providing for a procedure (not just a condition) by requiring the Minister to prescribe the matters contained therein "acting with the concurrence of the Minister of Justice and the MEC of each province". The procedure envisaged therein distinguishes regulations made in term thereof from those regulations made in terms of section 34 of the Act. This further supports the argument that the regulations contemplated in section 29 of the Act may not be combined with the regulations made in terms of section 34 of the Act. It must be necessarily implied that the power to make regulations, as provided for in section 34 of the Act, is also the express link for the power of the Minister to make the regulations contemplated in section 29 of the Act. Despite the Act providing for these two different procedures, it does not provide for the necessary consequential matters with regard thereto that ought to be addressed. This matter is further complicated by the fact that throughout the Act the Minister may prescribe certain fees, that is different and distinct from the fees contemplated in section 29 of the Act. This may result in practical, accessibility and comprehensible difficulties in making and implementing the regulations contemplated in the Act. The practical difficulties in prescribing regulations made under sections 34 and 29 of the Act are obvious and unfortunate.

<u>*Ad* regulation 15: Discount</u>

18.1 Regulation 15 of the draft Regulations provides for the discount contemplated in section 17(1)*(d)* of the Act. The actual percentage discount is set out in paragraph 4 of Schedule 2.

18.2 Subregulations (2) and (3) appear to extend this discount to an infringer when the infringer makes representation or after a review or appeal is made: Provided that the penalty is paid within 32 days of being informed of the outcome of the representation, review

[13] J Bednar, Drafting of Delegated Legislation, Chapter 5 page 230, 15 May 2019, wiredspace.wits.ac.za.

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or appeal, as the case may be. Although these subregulations work in the favour of the infringer, it may not be what was envisaged in sections 18(7)*(b)*. The Act is not clear as to what penalties or fees are due and how these must be paid in the event that the Tribunal has made a decision that may not be in favour of the infringer.

Ad regulation 16: Fees

19.1 Regulation 16 of the draft Regulations provides for fees. It must be noted that penalties payable and fees payable in terms of the Act are two separate issues. The issue of penalties have been discussed in paragraph 17 above. There are fees that are required to be prescribed in a number of sections of the Act, for example sections 17 and 18 of the Act. In terms of section 34*(d)* of the Act, the Minister may make regulations, which are not inconsistent with this Act, relating to any matter that may or must be prescribed in terms of this Act, including the fees which may be charged for any document, order or action required to be issued, made or performed, and the manner in which record is to be kept of any receipt or payment of money. As the payment of a fee, like a penalty, is a substantive matter that may have an adverse impact on the public, specific authority to request the payment of fees must be granted in the Act. Section 34*(d)* of the Act appears to be a general provision that goes beyond fees that may or must be prescribed in terms of the Act[14]. This provision authorises the Minister to prescribe a fee which may be charged for any document, order or action required to be issued, made or performed. The word "required" in this section is not clarified any further and may create ambiguity. Is the document, order or action required by the Act or a person? It is imperative that this provision is not interpreted so widely or in such a manner that documents, orders or actions are then required to be issued, made or performed in order to generate an income or to promote a purpose not intended by the Act. This would be an extremely dangerous and unfair interpretation and application of this section. Caution must be exercised when fees are to be charged in terms of this provision. The word "fee" is not defined in the Act and it therefore stands to reason that the ordinary dictionary meaning of the word would apply in the context of the legislation[15]. We could not find any provision in the Act that indicates that the legislature intended that the word "fee" should not be understood in its ordinary sense. Accordingly, the following meaning is ascribed to the word "fee" in an authoritative dictionary that is in our view helpful:

14 Refer to our comment in footnote 8 above in this regard.

15 See LOURENS M DU PLESSIS The Interpretation of Statutes, 1986, at page 103; E A KELLAWAY, Principles of legal interpretation of statutes, contracts and wills, 1995, at page 297 et seq; and STEYN *Die Uitleg van Wette* 5[th] ed at page 5.

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The Collins English Dictionary[16] provides the following definition:

> "**fee** *n.* 1. a payment asked by professional people or public servant for their services: ...".

The service, in the context of the Act, will be any service that may be required by the public or any other person, and not a service that is required to be performed by the Act. In the latter case, the Act specifically provides for the fee concerned to be prescribed, for example the fee for the courtesy letter and representation. A fee contemplated in section 34*(d)* of the Act is therefore a fee payable for a service rendered or provided when required by the public. It is within this context that fees may be prescribed in terms of section 34*(d)* of the Act.

19.2 In terms of subregulation (1), the fees are set out in paragraph 5 of Schedule 2. In the light of our comments in paragraph 17 above with regard to Schedule 2, we suggest that the fees contemplated in this regulation be provided for separately in a new Schedule to the draft Regulations, which may be titled "Fees payable to the Authority". Alternatively, the penalties that are prescribed in terms of section 29 of the Act must be removed from Schedule 2.

19.3 Paragraphs 5.3 and 5.4 of Schedule 2 provides for the fees payable in terms of section 33 of the Act in respect of a person requesting his or her demerit points position from the National Road Traffic Offences Register. It is difficult to interpret and establish why different fees are payable in respect of different time periods. Section 33 of the Act does not grant the Minister the authority to set such different fees payable in respect of a request made in terms of that section. We urge the Department to ensure that these paragraphs are clear and unambiguous.

19.4 Paragraph 5.5 of Schedule 2 provides for "Requests for the following National Traffic Offence Register report: R943 - Outstanding Infringements Report in Delimited Format". This is not a report that is provided for in the Act, however, should a person make a request for this report, the necessary fee therefor is prescribed in terms of section 34*(d)* of the Act.

16 *Collins English Dictionary*, Fourth Edition, 1998.

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19.5 Regulation 16(4) provides for "Collection fees payable by or to receiving entities or the Authority for receiving and recording of payments, are set out in paragraph 5 of Schedule 2." Paragraph 5.6 of Schedule 2 provides for "Receiving Fee for receiving entities". We could find no authority in the Act providing for a general receiving fee. It would appear from subregulation (4) that this fee is the collection fee that may be prescribed in term of section 20(8) of the Act, which subsection reads as follows:

> "(8) A local registering authority or driving licence testing centre must update the national contraventions register and notify the agency in the prescribed manner if it has received any payment contemplated in subsection (7) and must pay over such payment to the agency after deduction of the prescribed collection fee, within the prescribed period after which the agency may charge interest at the prescribed rate.
>
> (8) A local registering authority or driving licence testing centre must update the National Road Traffic Offences Register and notify the Authority in the prescribed manner if it has received any payment contemplated in **subsection (7)** and must pay over such payment to the Authority after deduction of the prescribed collection fee, within the prescribed period after which the Authority may charge interest at the prescribed rate.
>
> (Date of commencement to be proclaimed)

As evident from section 20(8) of the Act, the prescribed collection fee is a collection fee which a local registering authority or driving licence testing centre may hold back when paying over, to the Authority, penalties and fees collected in terms of the Act. Such a fee is deducted by a local authority or a driving licence centre, and not by any other issuing authority or the Authority. A collection fee is therefore not a general fee contemplated in section 34*(d)* of the Act but a specific fee which the Minister is required to prescribe in terms of section 20(8) of the Act. In terms of regulation 16(4), the collection fee is payable to "receiving entities". The expression 'receiving entities' is defined in regulation 1 as follows:

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"'**receiving entity**' means any issuing authority, driving licence testing centre, or Registering Authority receiving payments in terms of the Act or payment agent appointed by the Authority to receive payments;".

The expression "issuing authority" is defined in section 1 of the Act as follows:

""**issuing authority**" means—

(a) a local authority contemplated in Chapter 7 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other applicable law;

(b) a provincial administration; or

(c) the Road Traffic Management Corporation, established under section 4 of the Road Traffic Management Corporation Act, 1999,

in so far as such authority, administration or Corporation is responsible for traffic matters;

""**issuing authority**" means—

(a) local authority contemplated in **Chapter 7** of **the Constitution** of the Republic of South Africa, 1996, the Local Government Transition Act, 1993 (**Act No. 209 of 1993**), or any other applicable law;

(b) a provincial administration;

(c) the Road Traffic Management Corporation, established under **section 4** of the Road Traffic Management Corporation Act, 1999; or

(d) any other state institution declared by the Minister by regulation to be an issuing authority,

in so far as such authority, administration or state institution is responsible for road traffic and road transport matters;"

(Date of commencement to be proclaimed)

It is evident that regulation 16(4) of the draft Regulations expands the application of section 20(8) of the Act by allowing payment agents and issuing authorities other than a local authority to collect this collection fee. In this context the said regulation may be *ultra vires* the Act. We have therefore suggested the necessary changes to this regulation. Paragraph 5.8 of Schedule 2 must be amended to read "Collection fee".

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19.6 Paragraph 5.9 of Schedule 2 provides for "Fee for compulsory and voluntary attendance of a rehabilitation programme". We could find no provision in the Act that requires a fee to be prescribed for rehabilitation programmes. If voluntary attendance of a rehabilitation programme is a service provided by the Authority, the Authority may then charge the fee prescribed in terms of section 34*(d)* of the Act for the voluntary rehabilitation programme. Refer to paragraph 24.5 below for a further discussion on these programmes.

19.7 Paragraphs 6 to 9 of Schedule 2 appear to be the collection fee and time period contemplated in section 20(8) of the Act. In this regard, we reiterate our comments made in paragraph 19.5 above. The references to paragraph 4.10 in these paragraphs of Schedule 2 are incorrect, as there is no such paragraph. This should be a reference to paragraph 5.8. The word "agency" where it may appear in Schedule, needs to be replaced with the word "Authority".

19.8 If it is the intention to set fees contemplated in section 34*(d)* of the Act for receiving entities for services provided for or on behalf of the Authority, or for fees contemplated in section 32 of the Act, these fees will not be collection fees contemplated in section 20(8) of the Act, and as such it should not be a prescribed collectively as may have been done in Schedule 2. Collection fees referred to in section 20(8) of the Act and the other fees required to be prescribed, ought not to be confused or combined with fee contemplated in section 34*(d)* of the Act. This seems to be the problem with fees referred to in this regulation and regulation 17 of the draft Regulations.

<u>*Ad* regulation 17: Penalties payable</u>

20. Regulation 17 provides for penalties payable by issuing authorities and the Authority. We have discussed penalties in paragraph 17 above. We could find no provision in the Act that grants the Minister the authority to prescribe such penalties. However, it would seem that regulation 17 may be intended to provide for the prescribed interest rate contemplated in section 20(8) of the Act. In the event that we are correct in this assumption, we reiterate our comments made in paragraph 19.5 above with regard to section 20(8) of the Act, and the authorities contemplated therein. The expression "interest rate" where it appears in paragraph 7 of Schedule 2 must be substituted for the word "penalty". The numbering of the items under paragraph 7 of Schedule 2 must also be corrected. We have suggested

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amendments to this regulation based on our assumption. The Department will need to review this regulation, as well as regulation 16 in light of our comments.

Ad regulation 18: Demerit Points

21.1 Regulation 18 of the draft Regulations provides for demerit points. Section 24 of the Act provides for the points demerit system and subsection (1) thereof reads as follows:

> "**24.**(1) Any person who has committed an offence or an infringement, incurs the number of demerit points **prescribed under section 29*(c)*** in accordance with subsections (2) and (3)." (Our emphasis.)

The demerit points are prescribed under section 29*(c)* of the Act which section is quoted in paragraph 17 above, and our discussion set out therein is equally applicable to demerit points contemplated in section 24 of the Act. The number of demerit points must be prescribed by the Minister acting with the concurrence of the Minister of Justice and the MEC of each province, and may not form part of the draft Regulations that are made by the Minister in terms of section 34 of the Act. We therefore suggest that all the regulations relating to the number of demerit points incurred per infringement or offence be removed from the draft Regulations and be provided for in separate regulations that are made by the Minister acting with the concurrence of the Minister of Justice and the MEC of each province.

21.2 The only matter which the Minster may prescribe under section 24 of the Act is contained in subsection (4) thereof, which reads as follows:

> "(4) If a person appeals against a conviction by the court for an offence no demerit points are recorded unless the appeal is rejected or abandoned in which case demerit points are incurred in the prescribed manner.".

The manner in which demerit points are incurred, in the case where an appeal against a conviction by a court is rejected or abandoned, is what is required to be prescribed by the Minister. What is meant by this is unclear. The practical difficulties in prescribing regulations made under sections 34 and 29 of the Act are obvious and unfortunate.

21.3 The Minister is not required to prescribe when demerit points are incurred. Section 24(2) and (3) of the Act state clearly when demerit points are incurred.

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21.4 Section 28 of the Act provides for reduced demerit points and reads as follows:

> "28. **Reduction of demerit points.**—If demerit points have been incurred by any person, the agency must reduce the total number of points recorded in the national contraventions register against that person with one point for every three months, or such other number of points or period as may be prescribed, except for the time that the court has found that the process has been deliberately delayed by that person to obtain a reduction in points.
>
> If demerit points have been incurred by any person, the Authority must reduce the total number of points recorded in the National Road Traffic Offences against that person with one point for every three months, or such other number of points or period as may be prescribed, except for the time that the court has found that the process has been deliberately delayed by that person to obtain a reduction in points.
>
> (Date of commencement to be proclaimed)

The Authority is obliged to reduce the total number of points (we assume that this is demerit points) recorded against a person by one point every three months. This section is ambiguous in that, although the reduction is not expressly based on any condition, such as a requirement that the person must not obtain any further demerit points during that period of three months, the latter part of this section that provides for the exception may imply that no further demerit must be obtained in that period. The Minister may prescribe such other number of points or period by which the Authority must reduce the total number of points recorded. The original subregulation (7)(b) provides that the Authority may reduce the total points by "four points after a successful completion of a rehabilitation programme contemplated in regulation 21". This paragraph does to provide for a period, which is required to be prescribed, but rather a condition upon which the said number of points are reduced. The period contemplated in section 28, contemplates a specific time period such as 3 months or 6 months. We have suggested amendments thereto in order to ensure that a period has been prescribed, however, this still does not provide for a specific time period.

21.5 The original subregulation (8) reads as follows:

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"(8) The holder of a foreign driving licence shall not incur any demerit points.",

The above subregulation is a substantive provision which appears to discriminate between persons holding a South African driving licence and those holding a foreign driving licence. It is unfortunate that there is no section in the Act that provides for its application. The exclusion of certain persons or category of persons from the application of the Act or from the application of certain sections of the Act is a significant matter that ought to have been specifically provided for in the Act. We could find no provision in the Act that authorises the Minister to make such exclusions by way of subordinate legislation. We are therefore of the view that this provision is *ultra vires* the Act and unlawful.

21.6 The original subregulation (9) provides for the clerk of the court inform the Authority of the decision of the court in relation to any convictions where the offence was committed within 10 days from the date when the offender was convicted in accordance with regulation 33(5) for purposes of allocating demerit points to such an offender. Section 24(4A) of the Act provides for this aspect. However, this section does not authorise the Minister to prescribe any period within which this notification must happen. Furthermore, regulation 33(5) of the draft Regulations provides for notification or applications from and to the issuing authority. The clerk of a court is not an issuing authority or any other authority specified in regulation 33(5). As the main purpose of subregulation (9) is to provide for the time period which may be procedural in nature, we have retained this provision and suggested amendments thereto.

21.7 Subregulation (10) is dependent on and refers to subregulations (3), (4) and (5), all of which have been deleted. Furthermore, this subregulation is confusing. Demerit points are incurred against a person, be that person the owner, driver, operator or juristic person who is not an operator. The demerit points will, in terms of the Act, be registered against such a person irrespective of what happens to the vehicle in respect to which the demerit point was incurred. This subregulation appears to explain the manner in which the Act will operate, and goes beyond the Act, as in the case of paragraphs (i) to (iii) thereof. This is not the purpose of subordinate legislation. We therefore suggest that this subregulation be deleted.

Ad regulation 19: Access to demerit point information

22.1 Regulation 19 of the draft Regulations provide for the access to demerit point information and refers to the matters that must be prescribed in terms of section 33 of the Act, which section reads as follows:

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"**Access to information.**

33.(1) Any person may, in the prescribed manner and upon payment of the prescribed fee, ascertain his or her demerit points position from the national contraventions register at the office of any local registering authority or driving licence testing centre.

> 33. Access to information.—(1) Any person may, in the prescribed manner and upon payment of the prescribed fee, ascertain his or her demerit points position from the National Road Traffic Offences Register at the office of any local registering authority or driving licence testing centre.
>
> (Date of commencement to be proclaimed)

(2) Any person who employs a person for the purposes of driving a motor vehicle may, with the written permission of such employee granted in the **prescribed manner**, ascertain the demerit points position of such employee in the manner contemplated in subsection (1).". (Our emphasis.)

The following are the issues that may be prescribed under section 33 of the Act:

(a) the manner in which a person may ascertain his or her demerit points position;

(b) the fee that a person must pay in order to obtain such information,

(c) the manner in which a person may ascertain the demerit point position of an employee who is employed for the purpose of driving a motor vehicle; and

(d) the manner in which an employee may grant his employer permission to ascertain such employee's demerit points position.

22.2 Subregulation (1) provides for a demerit point status and a demerit point history. We are not sure if the demerit point position includes the demerit point history. This appears to be a technical issue which is not sufficiently dealt with in the Act. Clarity on this aspect is extremely important as it could have a serious impact on a person, especially where the demerit point history is used against a person unlawfully and unfairly (for example where it is used to dismiss a person from employment or the person becomes unemployable due to this history). A person may be disqualified from driving for a certain period (section 25 and 29(1)*(d)* of the Act) or may lose his or her licences due to exceeding the total number of demerit points for the third time (section 27 of the Act). Where such a person is allowed to drive upon the expiry of the disqualification period or successfully reapplies for his or her

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licence in terms of section 27(3) of the Act, the history of such demerit points may not, in our view, be used against such a person. The Act fails to deal with this aspect, or the consequences of previous disqualifications and cancellations, sufficiently. This matter may open this process to abuse and unfair discrimination against certain persons. If the demerit point history is intended to be that which is contemplated in this paragraph and that for which the person concerned has "paid the price", we are of the view that such demerit point history may not have been envisaged and is not provided for in the Act.

22.3 Subject to paragraph 22.2 above, we are of the view that the demerit point position, as envisaged in section 33 of the Act, should entail the current complete picture of all the demerit points incurred by the person concerned which points can and will have repercussions on or a bearing if future demerit points are incurred. The demerit point position contemplated in section 33 of the Act does not include historic demerit points that no longer have a bearing on the person concerned. A single previous disqualification or two previous disqualifications is a matter that should appear in the demerit point position of a person as it will have repercussions if further demerit points are incurred by that person. This will illustrate the current full demerit point position of that person.

22.4 It is against the background of our comments in paragraphs 22.1 to 22.3 that we scrutinise regulation 19 of the draft Regulations and make our suggested amendments. It would seem that the same form is used for persons contemplated in subsection (1) and (2) of section 33 of the Act. It is also not clear where the fee for such an application is set. The Department must ensure that the relevant information is inserted in the regulation.

22.5 The forms contemplated in this regulation will need to be reviewed in the light of our comments above and the suggested redraft of this regulation.

<u>*Ad* regulation 20: Disqualification and Cancellation of documents</u>

23.1 Regulation 20 of the draft Regulations provides for disqualification and cancellation documents, and refers to the notice contemplated in section 26(1) of the Act, which section reads as follows:

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"**Notification.**

26.(1) A notice, as **prescribed**, must forthwith be sent by registered mail to a person who has incurred more than the number of demerit points referred to in section 29*(d)*, which notice must—

(a) inform that person of the number of demerit points incurred by him or her and of the offences or infringements for which those points have been incurred;

(b) inform that person that he or she may not drive or operate any motor vehicle during the disqualification period, and specify the length and expiry date of that period; and

(c) inform that person of the contents of section 25(3) and (4) or 27, as the case may be.

(2) A notice referred to in subsection (1) must be sent by the agency, who must notify the issuing authority within whose area of jurisdiction the person in question is resident.

> (2) A notice referred to in **subsection (1)** must be sent by the Authority, who must notify the issuing authority within whose area of jurisdiction the person in question is resident
>
> (Date of commencement to be proclaimed)

The notice contemplated in section 26(1) of the Act must be prescribed in the draft Regulations, and the notice must contain all the information specified in section 26(1) of the Act. It is not for the regulations to repeat provisions of the Act and state what must be contained in the notice. The notice prescribed must state all that is required by section 26(1) of the Act.

23.2 The Authority is required to issue a notice contemplated in section 26(1) of the Act within 10 days of exceeding the number of points. The Minister is not required to prescribe this time period. This may also be in conflict with section 26(1) of the Act which states that the notice "must forthwith be sent by registered mail to a person". The Act is ambiguous in this regard as it does not provide a specific time frame and the word "forthwith" is not defined in the Act. The ordinary meaning of the word forthwith is "at once, immediately"[17] or instantly. A 10-day period may not, in our view, be regarded as "at once or immediately or instantly".

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17 *Collins English Dictionary*, Fourth Edition, 1998.

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23.3 Subregulation (3) is drafted in a very cumbersome manner with many substantive issues contained therein. This style of drafting makes interpretation difficult. We have therefore suggested amendments thereto in order to clearly and unambiguously provide for the matters required to be prescribed.

23.4 Subregulation (4) provides for cancellation, as contemplated in section 27 of the Act, and makes such cancellation applicable to a holder of a learners licence. The provisions of section 27 of the Act are applicable to a driving licence card, professional driving permit or operator card, and any driving licence contained in a person's identity document. It is not applicable to a learner driving licence unless such a leaner driving licence is contained in the identity document, which is not the case at this stage. While demerit point may accumulate against a learner driver, driving licence card is not issued to a leaner driver, nor is there any "driving leaner licence" contained in the identity document. Section 27 of the Act specifies the documents that must be cancelled, and does not refer generally to documents contemplated in section 25 of the Act. Any reference to documents contemplated in section 25 of the Act in the context of the cancellation thereof in terms of section 27 of the Act, would amount to an unlawful expansion of the Act to such documents. We are therefore of the view that section 27 of the Act may not be applicable to learner driving licences.

23.5 Subregulation (7) reads as follows:

> "(7) Despite the provisions of National Road Traffic Act, a person who reapplies for a cancelled document in terms of sub-regulation (5) may not be issued with a new document unless such person has successfully completed a compulsory rehabilitation programme as contemplated in regulation 21.".

This is a substantive provision that prevents a person from reapplying for his or her cancelled document as entitled in terms of section 27(3) of the Act. Section 27(3) of the Act reads as follows:

> "(3) Upon expiry of his or her disqualification period, a person contemplated in subsection (1) may reapply for and be issued with a driving licence, professional driving permit or operator card in terms of the applicable road traffic laws.".

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This section is not subject to any other law or conditions except the relevant road traffic laws. Unless, the relevant road traffic laws require such a person to complete a compulsory rehabilitation programme, the right to reapply contemplated in section 27(3) of the Act and as provided for in the National Road Traffic Act may not be infringed upon in the manner contemplated in subregulation (7). Subordinate legislation may not conflict with national legislation. Although the Act provides, in terms of section 4(2)*(h)*, that the Authority performs its functions by administering prescribed rehabilitation programmes, there is no other provision in the Act that deals with or provides for such programmes. The Minister is merely required to prescribe these rehabilitation programmes. No further powers, functions, guidance or requirements with regard to these rehabilitation programmes are provided for in the Act. We are of the view that the power to subject a person to such a compulsory rehabilitation programme and matters related thereto, ought to have been specifically provided for in the Act. The Minister may not make provisions in the Act (section 27(3)) subject to subordinate legislation without the authority to do so. The Act does not deal with the issues surrounding the rehabilitation programmes sufficiently or effectively.

Ad regulation 21: Rehabilitation Programme

24.1 Regulation 21 of the draft Regulations provide for the rehabilitation programme, and in this regard, we reiterate our comments made in paragraph 23.5 above with regard to rehabilitation programmes. In the light thereof, we have suggested substantive amendments to this regulation in order to remove those provisions that are, in our view, *ultra vires* the Act.

24.2 We are of the view that while the Minister does not have power to enforce compulsory rehabilitation upon any person at a fee, the Minister may be able to provide for voluntary rehabilitation. Subregulation (1) provides for the application form that must be completed for voluntary admission into a rehabilitation programme. The Department must ensure that the form is accurately referred to. Schedule 1 contains form 11a and not 11A. Furthermore, this form is titled "NOTIFICATION OF SUCCESSFUL COMPLETION OF COMPULSORY OR A VOLUNTARY REHABILITATION PROGRAMME", and appears to be a form given upon the successful completion of the programme and not an application to attend a programme as implied in this subregulation. As a result of our comment in paragraph 24.1 above, the word "COMPULSORY" must be removed from the form.

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24.3 Subregulation (3) provides for the rehabilitation programme and what is may entail, and gives the Authority the power to approve attendance of therapy and counselling session and other appropriate rehabilitation measures. It must be remembers that the Minister has the power to prescribe the rehabilitation programme. This means that it is the Minister who needs to set out in the regulation what the programme must entail.

24.4 In terms of subregulation (4), the Authority must inform the infringer of the result of the application in accordance with regulation 33(4) on a form substantially similar to the AARTO 5Aa form. The AARTO 05a form in Schedule 1 of the draft Regulations is titled "NOTIFICATION OF RESULTS OF AN APPLICATION FOR COMPULSORY OR VOLUNTARY ATTENDANCE OF A REHABILITATION PROGRAMME". The Department must ensure that all forms in Schedule 1 are accurately referred to in the draft Regulations. Furthermore, as compulsory attendance has been deleted, the form must be amended accordingly.

24.5 Subregulation (8) refers to the AARTO 11Aa form. There is no such form in Schedule 1 of the draft Regulations, but there is an AARTO 11a form. Also see our comments in paragraph 24.2 above in this regard. We have attempted to correct references made to these forms but the Department must ensure that all forms in Schedule 1 are accurately referred to in the draft Regulations.

<u>Ad regulation 22: Payment of penalty and fees</u>

25.1 Regulation 22 provides for the manner in which penalties and fees may be paid. Subregulation (5) provides for the notice contemplated in section 19B(1) of the Act, and requires the notice to inform the infringer of the matters referred to in that section. The information that the infringer must be informed of must be stated in the notice itself. The AARTO 16 form does provide for this information.

25.2 In terms of section 19B(1)*(a)* of the Act, the infringer is also liable for the prescribed fee for the notice. The Minister is required to prescribe this fee in the draft Regulations. This fee may be stated on the form or in this regulation. The notice fee, contemplated in this section of the Act, may not be left blank on the form without the Minister setting the fee in terms of this regulation. There is also an "infringement penalty levy" provided for on the

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form, for which we could find no authority in the Act. We therefore suggest that this levy, which appears twice on the form, be deleted.

Ad regulation 23: Payment in instalments

26. Regulation 23 of the draft Regulations provides for payment in instalments as required in section 19B(2) of the Act. Section 19B(2)*(a)* of the Act reads as follows:

> "(2) If an infringer who has made arrangements to pay a fine or monies, if any, in instalments, fails to pay the instalments or makes an insufficient payment on an instalment or the cheque used for payment of that instalment is dishonoured, a **notice as prescribed** must be served on the infringer, informing him or her—
>
> *(a)* that the outstanding balance of the instalment, including the **fee for the notice,** must be paid within seven days of service of the notice or that arrangements must be made within that time for the payment thereof; and".

While section 19B(1) of the Act provides for a prescribed notice and a prescribed fee for such notice, section 19(B)(2)*(a)* does not provide for the notice fee to be prescribed. This must be read, by necessarily implication that this fee must also be prescribed by the Minister. In this regard, we reiterate our comment in paragraph 25.2 above.

Ad regulation 24: Late payment of a penalty, fee or instalment

27. Regulation 24 of the draft Regulations provide for the late payment of penalty, fee or instalment. The Department must ensure that all the forms referred to therein are correct and accurately referred to.

Ad regulation 25: Refunds

28. Regulation 25 of the draft Regulations provide for refunds. We have suggested amendments to this regulation in order to ensure that the provisions are clear and unambiguous.

Ad regulation 26: Dishonoured payments

29. Regulation 26 of the draft Regulations provide for dishonoured payments. Regulations 22(5) and 23(5) also deal with insufficient or dishonoured payment. It is advisable that matters pertaining to the same issue be dealt with comprehensively under one

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regulation, in order to avoid confusion and ambiguity. We urge the Department to review these provisions in light of this comment.

Ad <u>regulation 27: Information to be recorded</u>

30. Regulation 27 of the draft Regulations provide for information to be recorded. Subregulation (1) provides for many issues and makes the interpretation thereof difficult. We have suggested a redraft of this provision in order to provide clearly and unambiguously for the matters contained therein.

Ad <u>regulation 28: National Road Traffic Offences Register</u>

31. Regulation 28 of the draft Regulations provides for the information that must be recorded in the National Road Traffic Register.

Ad <u>regulation 29: Personal service</u>

32. Regulation 29 of the draft Regulations provides for personal service of documents, and subregulation (1) thereof states the various way in which personal service is achieved. The original subregulation (1)(d) state that personal service is achieved be serving at the "residential or business address obtainable from any other credible and lawful source.". This provision is extremely vague and wide, and can be open to abuse. It also leaves the determination of the "credible and lawful source" to the discretion of the issuing authority with no further guidance or authority in the Act. We have therefore suggested that this paragraph be deleted.

Ad <u>regulation 30: Service by postage</u>

33. Regulation 30 of the draft Regulations provide for service by postage, and contains a table that indicates how specified forms or notices may be posted, i.e. ordinary mail or registered mail. In this regard, we draw the Department's attention to the fact that the notices referred to in sections 17(3)(c), 18(3)*(c)*, 19(3)*(c)*, 20(1)*(c)* and 26(1) of the Act are required to be serviced by registered post. These documents may not be served via electronic means or services. The Department must ensure that this table does not conflict with these sections of the Act.

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Ad regulation 31: Electronic service

34. Regulation 31 of the draft Regulations provides for electronic service. We have suggested amendments in light of our comments in paragraph 33 above.

Ad regulation 32: Re-service of infringement notice or courtesy letter

35.1 Regulation 32 of the draft Regulations provides for the re-service of infringement notices, courtesy letters or enforcement orders as contemplated in section 18(1)*(b)* of the Act. Section 18(1) of the Act reads as follows:

> "**18.**(1)*(a)* An infringer who has been served with an infringement notice alleging that he or she has committed an infringement, may make a representation in the **prescribed manner**, with respect to that notice and infringement to the Authority.
>
> *(b)* In the event that a representation is successful as a result of prescribed procedures not being complied with, that infringement notice, courtesy letter or enforcement order may be served again on that infringer in the **prescribed manner** within 40 days from the date that the representation was finalised, provided that the infringement notice, courtesy letter or enforcement order must not be served later than 180 days from the date the infringement was committed." (Our emphasis.)

Section 18(1)*(b)* provides specifically for an infringement notice, courtesy letter or enforcement order to be served again if representation in respect of that notice or infringement is successful. We have suggested an amendment to the title of this regulation as it does not relate to the re-service of any documents in general but specifically to infringement notices, courtesy letters and enforcement orders. These may not, in our view, be regarded as "documents" that are general in nature, or as contemplated in the definition of the word "document" in regulation 1 of the draft Regulations. Further, of concern to us is that section 18(1)*(b)* of the Act provides for an enforcement order to be served again. This provision may be in conflict with the provisions of section 20(2)*(d)* of the Act in terms of which no enforcement order is issued, unless the registrar is satisfied that there are no pending representations in the case of an infringement. An enforcement order may therefore never be served before all representations are finalised. Section 18(1)*(b)* of the Act may therefore not to applicable to an enforcement order as stated therein.

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35.2 In terms of section 34*(h)* of the Act, the Minister may make regulations including the manner in which an infringement notice, courtesy letter or enforcement order may be reissued. However, there is no provision in the Act that requires an infringement notice, courtesy letter or enforcement order to be "reissued"[18]. It may be that when an infringement notice, courtesy letter or enforcement order is served again in terms of section 18(1)*(b)* of the Act, that infringement notice, courtesy letter or enforcement order is re-issued. This, in addition to our comments in paragraph 3.3 above and footnote 8, is the only interpretation that will give effect to section 34*(h)* of the Act. We therefore accept, subject to our comment in paragraph 35.1 above, that infringement notices, courtesy letters or enforcement orders as contemplated in section 18(1)*(b)* of the Act may be reissued.

35.3 Subregulation (3) refers to "a period of 60 days as contemplated in section 18(1)(b) of the Act.". There is no such time period in the said section. The applicable time period for each infringement notice, courtesy letter or enforcement of order that is re-served as contemplated in section 18(1)*(b)* of the Act, will have to be calculated taking into account the date of the infringement concerned.

35.4 The original subregulation (4) makes the provisions of section 17(1)*(f)* of the Act equally applicable to infringement notices reissued and serviced again under section 18(1)*(b)* of the Act. This subregulation attempts to provide for a matter that ought to have been clearly provided for in the Act. Although this matter is not provided for in the Act, it may be implied that once an infringement notice, courtesy letter or enforcement order has been reissued or served again, the provisions of the Act applicable to the originally issued infringement notice, courtesy letter or enforcement order will apply equally, with the necessary changes, to the reissued and served again infringement notice, courtesy letter or enforcement order. Subordinate legislation may not fill in the gaps of or clarify the primary legislation. We have therefore suggested that this subregulation be deleted.

35.5 The current subregulation (4) refers to representations made on the basis that a courtesy letter was not served as contemplated in section 18(1)*(b)* of the Act. In terms of sections 18(1)*(a)*, 19(2)*(b)*(i) and 20(2)*(d)* of the Act, representations are made with regard to an infringement or an infringement notice, and not with regard to courtesy letters or any other process. While section 18(1)*(b)* of the Act does not specify which prescribed procedures

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18 The concern regarding our interpretation of section 34 of the Act as noted in footnote 8 above is realised

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were not complied with, it necessarily follows on from paragraph *(a)* thereof which clearly provides for representations made with respect to **that notice [infringement notice] and infringement**. Representations envisaged in the Act are therefore limited to issues pertaining to an infringement notice and the infringement. Section 18(1)*(b)* of the Act, is specific to the procedure requirements pertaining to infringement notices and infringements. The question of what happens when the issuing of a courtesy letter is in dispute is therefore not addressed in the Act, which, in our view, is a material omission in the Act and which may not be addressed in the draft Regulations.

35.6 We have suggested a new subregulation (5) which clarifies that all the regulations prescribed for infringement notices, courtesy letters and enforcement orders will be applicable to reissued infringement notices and courtesy letters. While this may also be implied, we have specifically stated it in the draft Regulations as the Minister has the specific authority to make regulations with regard to infringement notice, courtesy letter and enforcement order.

Ad regulation 33: Manner of application, notification, submission or enquiry

36.1 Regulation 33 of the draft Regulations provide for the manner of application, notification, submission or enquiry, and subregulation (1) thereof provides for applications by an infringer. Paragraph (c) of subregulation (1) does not flow logically from the introductory paragraph of this subregulation. As we find it difficult to interpret or to ascertain the intention of this paragraph, we are unable to suggest any amendments thereto.

36.2 We have suggested substantive amendments to subregulation (2) in order to provide clearly for the matters provided for therein.

Ad regulation 34: Suspect and unverified Infringement Notices

37. Regulation 34 of the draft Regulations provide for suspect and unverified infringement notices. This regulation provides for procedural matters that may be necessary when dealing with infringement notices that are captured or uploaded on the National Road Traffic Offences Register and certain particulars of the data that are in conflict with similar data already contained on the National Road Traffic Offences Register.

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Ad regulation 35: South African Police Services

38. Regulation 35 of the draft Regulations provide for the South African Police Service ("SAPS"). This regulation appears to provide for processes applicable to authorised officers who are members of the service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995). This regulation, as stated in Schedule 4, aims to establish co-operation between the Authority, the SAPS and provincial and municipal issuing authorities to ensure that the prescribed and administrative functions relating to an Issuing authority in respect of infringement notices issued by members of the SAPS are processed as prescribed by the provisions of the Act. Training of members of the SAPS on the regulations, process and procedures are not what the Minister is required to prescribe. Schedule 4 also provides for financial matters and bestows functions upon the SAPA, all of which are substantive issues for which specific authority must be granted in the Act. The Minister is not empowered to enforce such cooperation by issuing authorities or authorised officers via subordinate legislation. This regulation appears to relate to issues that may be best dealt with by all the parties involved coming to an agreement on how the provisions of the Act, which they are collectively responsible to implement, will be implemented in the most efficient manner. We have therefor suggested that this regulation, together with Schedule 4, be deleted from the draft Regulations.

Ad regulation 36: AARTO forms

39. Regulation 36 of the draft Regulations provide for the AARTO forms and details how the forms can be obtained. This regulation also provide for the placing of such forms in order to be accessible to infringers.

Ad regulation 37: Repeal

40. Regulation 37 of the draft Regulations provide for the repeal of the previous Administrative Adjudication of Road Traffic Offences Regulations, 2008. It also specifically repeals all the regulations that amended the Administrative Adjudication of Road Traffic Offences Regulations, 2008. This is not necessary, as the Administrative Adjudication of Road Traffic Offences Regulations, 2008 includes all amendments made thereto. Amendment regulations cannot and do not operate independently. We have therefore suggested the necessary amendments to this regulation.

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Ad regulation 38: Short title and commencement

41. Regulation 38 of the draft Regulations provides for the short title and commencement date for the draft Regulations. As the Minister may not give himself powers in the draft Regulations, we have suggested the necessary amendments to this regulation.

Ad Schedule 1: AARTO forms

42.1 Schedule 1 of the draft Regulations provides for all the AARTO forms referred to in the draft Regulations and which are to be used in the implementation thereof. We have discussed most of the forms under the relevant regulations wherein they have been referred to. As the format of the AARTO form submitted to us, prevents us from amending such forms, we have indicated our concerns herein.

42.2 The AARTO 01 form is the Infringement Form which is issued in terms of section 17(1) of the Act. There are 3 AARTO 01 forms in Schedule 1. We have only looked at the first form dated 2020/07/29. The Department must ensure that only one AARTO 01 form is contained in this Schedule.

42.3 The AARTO 01 form makes provision for a maximum of 3 main charge codes and 3 alternative charge codes with each charge code carrying an "Infringement Penalty Levy". It would appear that this levy is paid in addition to the infringement penalty for each charge. Paragraph 3 of Schedule 2 provides for the corresponding infringement penalty levy fee and states that such a penalty levy fee is payable on every infringement committed and followed up by all the processes prescribed in the Act. This is a substantive provision for which we could find no authority in the Act. The Act does not grant the Minister the power to impose such a levy. It is also extremely concerning that each charge code carries an infringement penalty levy which collectively can materially and unreasonably prejudice to the infringer. This levy appears to be an addition burden or financial punishment being placed on the infringer for actually committing the infringement. The consequence of the infringement, in terms of the Act, is the penalty for the infringement referred to in section 17(1)*(c)* of the Act, and all the processes that follow thereafter. It is illogical and unreasonable to impose a further infringement penalty levy on the infringer. This is clearly not what the Act envisages. We are of the view that this infringement penalty levy is *ultra vires* the Act and unlawful, and must therefore be deleted and removed from the AARTO 01 form **and every AARTO form**

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where it may appear. Also refer to our comments in paragraphs 5.3, 6.3, 10.4 and 25.2 in this regard.

42.4 The back of the AARTO 01 form refers to provisions of the Regulations without providing the full citation of the regulations. We suggest that the complete citation of the regulations be inserted or a link is provided in the form wherein access to the said regulations may be granted. This comment is applicable to any AARTO form wherein references to the regulations are made.

42.5 How would an infringer know if the various amounts specified in any AARTO form (infringement penalty and discount, courtesy letter fee etc) is the correct amount prescribed therefor? For the purpose of transparency and in order to keep the infringer properly informed, we suggest that a link to the regulations made in terms of section 29 of the Act, be included in the relevant forms, if possible.

42.6 The AARTO 13a – NOTICE OF RECORDING OF DEMERIT POINTS form is contained in Schedule 1 but is not referred to in the draft Regulations. Further, this form refers to the AARTO Regulations, 2020, which is incorrect. The short title of the regulations must be corrected on all the forms, where applicable.

42.7 There are three AARTO 31 forms and AARTO 32 forms in Schedule 1. The Department must ensure that only one form of each is contained in the Schedule.

42.8 The Department must ensure that all cross references in the AARTO forms to regulations in the draft Regulations are correct and accurate.

Ad Schedule 2:

43.1 We have made comments on certain provisions of Schedule 2 where such provisions were specifically referred to in particular regulations. We reiterate those comments.

43.2 With regard to paragraphs 1 and 2 of Schedule 2, we reiterate our comments made in paragraphs 13.3, 17.1 and 17.2 above.

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43.3 With regard to paragraph 3 of Schedule 2, we reiterate the comments made in paragraph 42.3 above.

43.4 Paragraph 4 of Schedule 2 provides for the "discount contemplated in section 17(1)*(d)* of the Act to be applied to the penalty amount given in column 8 of Schedule 3, the result of which is given in column 9 of the said Schedule.". We have stated that Schedule 3 may not form part of the draft Regulations, and should be deleted. The cross reference to Schedule 3 in this paragraph will therefore have to be deleted. While we appreciate the problems and difficulty this may cause, not just with regard to this paragraph but with regard to the entire draft Regulations, the problems rests in the Act and the different regulation making procedure provided for in section 29 of the Act. This is a problem which the draft Regulations cannot correct. In order to address this concern, we suggest that the draft Regulations, where necessary, provide for a reference to the regulations contemplated in section 29 of the Act.

43.5 Paragraph 9 of Schedule 2 provides for interest earned and reads as follows:

> "Interest earned on any credit balances in the AARTO bank account will be retained by the Authority and utilised as part of the payment for services rendered by financial institutions, including but not limited to: bank charges and fees; reimbursement of payment agents; payments for AARTO financial audits; as well as any other payments relating to the financial management of the AARTO account and procedures."

This is a substantive provision that ought to have been provided for in the Act. Section 13 of the Act provides comprehensively for the finances of the Authority, and provides specifically for the manner and how the money of the Authority must be utilised. Interest received from such money is included and considered money of the Authority as contemplated in the Act. We are of the view that paragraph 9 of Schedule 2 of the draft Regulations are *therefore ultra vires* the Act and must therefore be deleted.

Schedule 3 and Schedule 4

44.1 With regard to Schedule 3, we reiterate our comments made in paragraph 17.1 above. This Schedule, in our view, should not form part of the draft Regulations.

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44.2 Schedule 3 is an extremely important Schedule that will have direct financial and other implications on the public and with which the public would be most concerned. It is not clear if this Schedule has in fact been published for comment.

44.3 We have suggested, in paragraph 38 above, that Schedule 4 of the draft Regulations be deleted therefrom.

CONCLUSIONS

45.1 We are of the opinion that as the regulations prescribed under section 29 of the Act, must be made by the Minister acting with the concurrence of the Minister of Justice and the MEC of each province, such regulations may not form part of the draft Regulations.

45.2 The implementation of our suggestion in paragraph 45.1 will have a major impact on the draft Regulations, particularly with regard to cross referencing of offences, infringements and other matters contemplated in section 29 of the Act.

45.3 Once the Department has incorporated our suggestions, it must ensure that the draft Regulations read correctly with regard to grammar, paragraphing, numbering and cross-referencing.

45.4 We emphasise that, in terms of section 6(3) of the Constitution of the Republic of South Africa, 1996, the final Regulations should be published in at least two official languages. Failure to comply with this requirement will, in our view, result in the Code being invalid (section 2 of the Constitution).

RECOMMENDATION

46. The implementation of our suggestion in paragraph 45.1 will have a major impact on the draft Regulations, particularly with regard to cross referencing of offences, infringements and other matters contemplated in section 29 of the Act. We therefore recommend that the regulations contemplated in section 29 of the Act and the draft Regulations be promulgated simultaneously. Where necessary, the draft Regulations must refer to the regulations

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published in terms of section 29 of the Act.[19] The AARTO website should provide a link to both sets of regulations.

Yours sincerely

FOR THE OFFICE OF THE CHIEF STATE LAW ADVISER
M NAIDOO/S WILLIAMS/A JOHAAR

19 To enable the Department to cross reference the two sets of regulations accurately, the Department must liaise with the Government Printers prior to the publication of the regulations in order to acquire the Government Gazette and regulation numbers.

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REPUBLIC OF SOUTH AFRICA

Forum Building, c/o Bosman & Struben Streets, Private Bag X193, Pretoria 0001, Tel: 012 309 3176
13th Floor, 120 Plein Street, Parliament, Cape Town, Private Bag X9129, Cape Town, 8000. Tel 021 469 6000
www.transport.gov.za

Enquiries: Mr Prasanth Moton
Email: Motonp@dot.gov.za
Telephone: 012 309 3927

Dr Steve Boyboy Mohlala
PO Box 896
LEBOWAKGOMO
0737

Email: Mohlalasteve1@gmail.com

Dear Dr Mohlala

APPOINTMENT AS THE MEMBER AND CHAIRPERSON OF THE AARTO APPEALS TRIBUNAL FOR A PERIOD OF FIVE YEARS

1. The letter dated 18 February 2025 is hereby withdrawn and replaced with this letter.

2. In terms of section 29A (3) and (4) of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019 (Act No. 14 of 2019), I have the honour of informing you that the President, his Excellency Matamela Cyril Ramaphosa, the President of the Republic of South Africa, has in terms "President's Minute No.: 133/2025 appointed you as a member and chairperson of the AARTO Appeals Tribunal (Tribunal) for a period of five (5) years.

3. The Tribunal will adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019. It will also hear appeals against, or review, any decision of the representation officer that may in terms of this Act be referred to it and make any ruling or order necessary or incidental to the performance of its functions in terms of the Act.

4. Your appointment as a member of the Tribunal is on condition that you do not personally or through a spouse, partner or associate have or acquire a direct or indirect financial interest in a transport-related company or entity or have or acquire an interest in a business or enterprise, which may conflict or interfere with proper performance of your duties as a member of the

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Tribunal, further that you are not an unrehabilitated insolvent or you become insolvent which insolvency results in the sequestration of your estate.

5. It is further on the understanding that you have never been or are removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money, you are not subject to an order of a competent court holding you to be mentally unfit or mentally disordered. It is further a condition of your appointment that you have not within the previous 10 years been, or are convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty or have been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.

6. Please take note that whilst being appointed as a member of the AARTO Appeals Tribunal, you must not engage in any activity that may undermine the integrity of the Tribunal, attend, participate in or influence the proceedings of the Tribunal, if, in relation to the matter before the Tribunal, in which you have an interest such as that contemplated in subsection (6)(a) or that precludes you from performing the functions of a member of the Tribunal in a fair, unbiased and proper manner.

6. Furthermore, you shall not make private use of, or profit from, any confidential information obtained as a result of performing your functions as a member of the Tribunal or divulge any such confidential information obtained during the perfomance of your functions as a Tribunal member to any third party.

7. I welcome the contribution that you will bring and would like to express my appreciation for your willingness to serve as a member and deputy chairperson of the AARTO Appeals Tribunal.

8. Should you require any further information regarding your appointment and onboarding, you may contact Dr Peter Baloyi from RTIA at 082 294 7332 and email: peter.baloyi@rtia.co.za.

Kind Regards,

MS. B.D CREECY, MP
MINISTER OF TRANSPORT
DATE: 9/07/25

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13th Floor, 120 Plein Street, Parliament, Cape Town, Private Bag X9129, Cape Town, 8000, Tel: 021 469 6000
www.transport.gov.za

Enquiries: Mr Prasadh Mohan
Email: MohanP@dot.gov.za
Telephone: 012 309 3027

Dr Maria Peenze
265 Julius Jeppe Street
Waterkloof
PRETORIA
0001

Email: MCPeenze@gmail.com

Dear Dr Peenze

APPOINTMENT AS THE MEMBER OF THE AARTO APPEALS TRIBUNAL FOR A PERIOD OF FIVE YEARS

1. The letter dated 18 February 2025 is hereby withdrawn and replaced with this letter.

2. In terms of section 29A (3) and (4) of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019 (Act No. 14 of 2019), I have the honour of informing you that the President, his Excellency Matamela Cyril Ramaphosa, the President of the Republic of South Africa, has in terms "President's Minute No.: 133/2025 appointed you as a member of the AARTO Appeals Tribunal (Tribunal) for a period of five (5) years.

3. The Tribunal will adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019. It will also hear appeals against, or review, any decision of the representation officer that may in terms of this Act be referred to it and make any ruling or order necessary or incidental to the performance of its functions in terms of the Act.

4. Your appointment as a member of the Tribunal is on condition that you do not personally or through a spouse, partner or associate have or acquire a direct or indirect financial interest in a transport-related company or entity or have or acquire an interest in a business or enterprise, which may conflict or interfere with proper performance of your duties as a member of the

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Tribunal, further that you are not an unrehabilitated insolvent or you become insolvent which insolvency results in the sequestration of your estate.

5. It is further on the understanding that you have never been or are removed from an office of trust on account of guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money, you are not subject to an order of a competent court holding you to be mentally unfit or mentally disordered. It is further a condition of your appointment that you have not within the previous 10 years been, or are convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty or have been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.

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7. I welcome the contribution that you will bring and would like to express my appreciation for your willingness to serve as a member of the AARTO Appeals Tribunal.

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Kind regards,

MS. B.D CREECY, MP
MINISTER OF TRANSPORT
DATE: 9/10/25

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13th Floor, 120 Plein Street, Parliament, Cape Town, Private Bag X9129, Cape Town, 8000, Tel: 021 469 6000
www.transport.gov.za

Enquiries: Mr Prasanth Mohan
Email: MohanP@dot.gov.za
Telephone: 012 309 3927

Mr Sakoane Ramonate Lerato
68 Cresttone Hills
Wild Olive Street
Shellyvale
BLOEMFONTEIN
9301

Email: ramonate.sakoane@gmail.com

Dear Mr Sakoane Ramonate Lerato

APPOINTMENT AS THE MEMBER OF THE AARTO APPEALS TRIBUNAL FOR A PERIOD OF FIVE YEARS

1. The letter dated 18 February 2025 is hereby withdrawn and replaced with this letter.

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Tribunal, further that you are not an unrehabilitated insolvent or you become insolvent which insolvency results in the sequestration of your estate.

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MS. B.D CREECY, MP
MINISTER OF TRANSPORT
DATE: 9/10/2025

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1st Floor, 120 Plein Street, Parliament, Cape Town, Private Bag X9129, Cape Town, 8000. Tel. 021 469 6000
www.transport.gov.za

Enquiries: Mr Prasanth Mohar
Email: [illegible]
Telephone: 012 309 [illegible]

Adv Lufuno Tokyo Nevondwe
House Number 6257
Woodhill Estate
5 Solomon Road, Bendor
POLOKWANE
0699

Email: Tokyo.nevondwe@gmail.com

Dear Adv Nevondwe

APPOINTMENT AS THE MEMBER OF THE AARTO APPEALS TRIBUNAL FOR A PERIOD OF FIVE YEARS

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Kind regards,

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DATE: 9/10/25

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www.transport.gov.za

Enquiries: Mr Prasanth Mohan
Email: MohanP@dot.gov.za
Telephone: 012 309 3927

Ms Nomfundo Sibusisiwe Molefe
02 Rylands Road
Howick
PIETERMARITZBURG
3201

Email: nomfundomo@yahoo.com

Dear Ms Molefe

APPOINTMENT AS THE MEMBER AND DEPUTY CHAIRPERSON OF THE AARTO APPEALS TRIBUNAL FOR A PERIOD OF FIVE YEARS

1. The letter dated 18 February 2025 is hereby withdrawn and replaced with this letter.

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Tribunal, further that you are not an unrehabilitated insolvent or you become insolvent which insolvency results in the sequestration of your estate.

5. It is further on the understanding that you have never been or are removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money, you are not subject to an order of a competent court holding you to be mentally unfit or mentally disordered. It is further a condition of your appointment that you have not within the previous 10 years been, or are convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty or have been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.

6. Please take note that whilst being appointed as a member of the AARTO Appeals Tribunal, you must not engage in any activity that may undermine the integrity of the Tribunal, attend, participate in or influence the proceedings of the Tribunal, if, in relation to the matter before the Tribunal, in which you have an interest such as that contemplated in subsection (6)(a) or that precludes you from performing the functions of a member of the Tribunal in a fair, unbiased and proper manner.

6. Furthermore, you shall not make private use of, or profit from, any confidential information obtained as a result of performing your functions as a member of the Tribunal or divulge any such confidential information obtained during the performance of your functions as a Tribunal member to any third party.

7. I welcome the contribution that you will bring and would like to express my appreciation for your willingness to serve as a member and deputy chairperson of the AARTO Appeals Tribunal.

8. Should you require any further information regarding your appointment and onboarding, you may contact Dr Peter Baloyi from RTIA at 082 294 7332 and email: peter.baloyi@rtia.co.za.

Kind regards,

MS. BD CREECY, MP
MINISTER OF TRANSPORT
DATE: 9/10/25

MLB

MINISTRY
TRANSPORT
REPUBLIC OF SOUTH AFRICA

Forum Building, c/o Bosman & Struben Streets, Private Bag X193, Pretoria 0001, Tel: 012 309 3175
13th Floor, 120 Plein Street, Parliament, Cape Town, Private Bag X9129, Cape Town, 8000, Tel: 021 469 6000
www.transport.gov.za

Enquiries: Mr Prasath Mohan
Email: MohanP@dot.gov.za
Telephone: 012 309 3927

Mr Rajendran Pillay
Midrand
GAUTENG
2000

Email: rajendranpillay6@gmail.com

Dear Mr Rajendran Pillay

APPOINTMENT AS THE MEMBER OF THE AARTO APPEALS TRIBUNAL FOR A PERIOD OF FIVE YEARS

1. The letter dated 18 February 2025 is hereby withdrawn and replaced with this letter.

2. In terms of section 29A (3) and (4) of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019 (Act No. 14 of 2019), I have the honour of informing you that the President, his Excellency Matamela Cyril Ramaphosa, the President of the Republic of South Africa, has in terms "President's Minute No.: 133/2025 appointed you as a member of the AARTO Appeals Tribunal (Tribunal) for a period of five (5) years.

3. The Tribunal will adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019. It will also hear appeals against, or review, any decision of the representation officer that may in terms of this Act be referred to it and make any ruling or order necessary or incidental to the performance of its functions in terms of the Act.

4. Your appointment as a member of the Tribunal is on condition that you do not personally or through a spouse, partner or associate have or acquire a direct or indirect financial interest in a transport-related company or entity or have or acquire an interest in a business or enterprise, which may conflict or interfere with proper performance of your duties as a member of the

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Tribunal, further that you are not an unrehabilitated insolvent or you become insolvent which insolvency results in the sequestration of your estate.

5. It is further on the understanding that you have never been or are removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money, you are not subject to an order of a competent court holding you to be mentally unfit or mentally disordered. It is further a condition of your appointment that you have not within the previous 10 years been, or are convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty or have been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.

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6. Furthermore, you shall not make private use of, or profit from, any confidential information obtained as a result of performing your functions as a member of the Tribunal or divulge any such confidential information obtained during the performance of your functions as a Tribunal member to any third party.

7. I welcome the contribution that you will bring and would like to express my appreciation for your willingness to serve as a member and deputy chairperson of the AARTO Appeals Tribunal.

8. Should you require any further information regarding your appointment and onboarding, you may contact Dr Peter Baloyi from RTIA at 082 294 7332 and email: peter.baloyi@rtia.co.za.

Kind regards,

MS. B.D CREECY, MP
MINISTER OF TRANSPORT
DATE: 9/07/25

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www.transport.gov.za

Enquiries: Mr Prasanth Mohan
Email: MohanP@dot.gov.za
Telephone: 012 309 3927

Ms Nonkuleko Lilian Moetanalo
12 Soltice Road
UMHLANGA RIDGE
4319

Email: Moetanalon@gmail.com

Dear Ms Moetanalo

APPOINTMENT AS THE MEMBER OF THE AARTO APPEALS TRIBUNAL FOR A PERIOD OF FIVE YEARS

1. The letter dated 18 February 2025 is hereby withdrawn and replaced with this letter.

2. In terms of section 29A (3) and (4) of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019 (Act No. 14 of 2019), I have the honour of informing you that the President, his Excellency Matamela Cyril Ramaphosa, the President of the Republic of South Africa, has in terms "President's Minute No.: 133/2025 appointed you as a member of the AARTO Appeals Tribunal (Tribunal) for a period of five (5) years.

3. The Tribunal will adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019. It will also hear appeals against, or review, any decision of the representation officer that may in terms of this Act be referred to it and make any ruling or order necessary or incidental to the performance of its functions in terms of the Act.

4. Your appointment as a member of the Tribunal is on condition that you do not personally or through a spouse, partner or associate have or acquire a direct or indirect financial interest in a transport-related company or entity or have or acquire an interest in a business or enterprise, which may conflict or interfere with proper performance of your duties as a member of the

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Tribunal, further that you are not an unrehabilitated insolvent or you become insolvent which insolvency results in the sequestration of your estate.

5. It is further on the understanding that you have never been or are removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money, you are not subject to an order of a competent court holding you to be mentally unfit or mentally disordered. It is further a condition of your appointment that you have not within the previous 10 years been, or are convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty or have been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.

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Kind regards,

MS. B.D CREECY, MP
MINISTER OF TRANSPORT
DATE: 9/10/25

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www.transport.gov.za

Enquiries: Mr Prasenth Mohan
Email: MohanP@dot.gov.za
Telephone: 012 309 3927

Mr Stephen Mosimane
10 Dynamo Street
Power Park
1838

Email: stephenmosimane@gmail.com

Dear Mr Stephen Mosimane

APPOINTMENT AS THE MEMBER OF THE AARTO APPEALS TRIBUNAL FOR A PERIOD OF FIVE YEARS

1. The letter dated 18 February 2025 is hereby withdrawn and replaced with this letter.

2. In terms of section 29A (3) and (4) of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019 (Act No. 14 of 2019), I have the honour of informing you that the President, his Excellency Matamela Cyril Ramaphosa, the President of the Republic of South Africa, has in terms "President's Minute No.: 133/2025 appointed you as a member of the AARTO Appeals Tribunal (Tribunal) for a period of five (5) years.

3. The Tribunal will adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019. It will also hear appeals against, or review, any decision of the representation officer that may in terms of this Act be referred to it and make any ruling or order necessary or incidental to the performance of its functions in terms of the Act.

4. Your appointment as a member of the Tribunal is on condition that you do not personally or through a spouse, partner or associate have or acquire a direct or indirect financial interest in a transport-related company or entity or have or acquire an interest in a business or enterprise, which may conflict or interfere with proper performance of your duties as a member of the

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5. It is further on the understanding that you have never been or are removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money, you are not subject to an order of a competent court holding you to be mentally unfit or mentally disordered. It is further a condition of your appointment that you have not within the previous 10 years been, or are convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty or have been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.

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8. Should you require any further information regarding your appointment and onboarding, you may contact Dr Peter Baloyi from RTIA at 082 294 7332 and email: peter.baloyi@rtia.co.za.

Kind regards,

MS. B.D CREECY, MP
MINISTER OF TRANSPORT
DATE: 9/10/25

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THE PRESIDENT
REPUBLIC OF SOUTH AFRICA

PRESIDENT'S MINUTE NO. 133 / 2025

In terms of section 16 of the Administrative Adjudication of Road Traffic Offences Amendment Act, 2019 (Act No. 4 of 2019), I hereby appoint the following persons as members of Administrative Adjudication of the Road Traffic Offences Appeals Tribunal for a period of five (5) years with effect from 1 December 2025.

1. Dr Steve Boyboy Mohlala – Chairperson
2. Ms Nomfundo Sibusisiwe Molefe – Deputy Chairperson
3. Dr Maria (Du Toit) Peenze – Tribunal member
3. Mr Ramonate Sakoane – Tribunal member
4. Adv Lufuno Tokyo Nevondwe – Tribunal member
5. Ms Mmammita Clancinah Baloyi – Tribunal member
6. Mr Rajendran Pillay –Tribunal member
8. Adv Nonkululeko Lillian Moetanalo –Tribunal member
9. Mr Stephen Mosimane – Tribunal member

I further hereby designate Dr Steve Boyboy Mohlala as a Chairperson of the Administrative Adjudication of the Road Traffic Offences Appeals Tribunal

Given under my Hand at ....Pretoria.............. on this ....15.... day of ....September........, Two thousand and Twenty-Five

PRESIDENT

MINISTER OF THE CABINET

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Road Traffic Infringement Agency

Justice in Adjudication

RULES FOR THE CONDUCT OF MATTERS ENROLLED BEFORE THE APPEALS TRIBUNAL IN TERMS OF SECTION 29 OF THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES ACT, 2019

(Act. No. 4 of 2019)

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SCHEDULE

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Part A: Interpretation and Definitions

Part B: Access to and functions of the Tribunal

Part C: Applications

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Part D: Hearings

Part E: General Rules

PART A

INTERPRETATIONS AND DEFINITIONS (Rule 1)

1. Definitions

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In these rules, any word or expression to which a meaning has been assigned in the Act bears the same meaning, unless the context indicates otherwise –

"AARTO Act" means the Administrative Adjudication of Road Traffic Offences Act, 2019 (Act No. 4 of 2019).

"AARTO 10A" means the prescribed application form to be utilized by the applicant to lodge an appeal or review application with the Appeals Tribunal.

"Applicant" means the person initiating the proceedings before the Appeals Tribunal.

"Appeals Tribunal" means an Appeals Tribunal established by the Department of Transport in terms of Section 29A of the Administrative Adjudication of Road Traffic Offences Act, 2019 (Act No 4 of 2019).

"Appeal" means an appeal brought by the applicant against a decision taken by a Representation Officers in terms of the Administrative Adjudication of Road Traffic Offences Act, 2019 (Act No 4 of 2019).

"The Authority" means the Road Traffic Infringement Authority established in terms of Section 3 (1) of the Administrative Adjudication of Road Traffic Offences Act, 2019 (Act No 4 of 2019).

"Chairperson" means a person appointed by the President of the Republic in terms of Section 29A (F) of the Administrative Adjudication of Road Traffic Offences Act, 2019 (Act No 4 of 2019) as the Chairperson of the Appeals Tribunal.

"Commissioner of Oath" means the Chairperson, and Deputy Chairperson who is designated as a Commissioner of Oath in terms in terms of section 6 of the Justice of the Peace and Commissioners of Oath Act 16 of 1963, and who administers an oath or affirmation for any person called as a witness at a hearing.

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"DOT" means the National Department of Transport.

"Hearing" means a date set down by the Chairperson of the Tribunal for purposes of hearing evidence on material information concerning the subject matter for consideration and ruling.

"NRTOR" means the National Road Transport Offences Register administered and maintained by the Road Traffic Infringement Authority and for purposes of the Appeals Tribunal, provide for a module to administer Appeals or Reviews submitted in terms of the Administrative Adjudication of Road Traffic Offences Act, 2019 (Act No 4 of 2019).

"RTIA" means the Road Traffic Infringement Authority established in terms of Section 3 (1) of the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No 46 of 1998)(As Amended).

"Sitting" means a date set down by a Chairperson of the Tribunal calling upon the members of the Tribunal to be available to consider applications submitted to the Tribunal for consideration and ruling.

PART B
ACCESS TO AND FUNCTIONS OF THE TRIBUNAL
(Rules 2-5)

2. Office hours and Address of the Tribunal

(1) The Road Traffic Infringement Authority has been mandated through Section 29J of the Administrative Adjudication of Road Traffic Offences Act, 2019 (Act No 4 of 2019) to perform administrative functions on behalf of the Tribunal. Services related to the submissions of the applications to be enrolled before the Appeals Tribunal are open

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to the public for submissions and queries on Mondays to Fridays, excluding public holidays, and the days between 24 December and 2 January, from 08h00 to 16h00.

(2) The contact details of the Tribunal are -

(a) Physical address: -
The Road Traffic Infringement Authority
10 Matuka Close
New Road Office Park
Midrand
1685

(b) Postal address: -
P O Box 6341
Halfway House
1685

(c) Telephone (087) 285 0500

(d) E-mail to appealstribunal@rtia.co.za

3. Establishment & Jurisdiction of the Appeals Tribunal

(1) The Tribunal is established in terms of Section 29 A of the AARTO Act, and:

(a) has jurisdiction throughout the Republic of South Africa;

(b) is a Juristic person;

(c) is a tribunal of record; and

(d) must exercise its functions in accordance with the AARTO Act, 2019 (Act No 4 of 2019) or any other applicable legislation.

(2) The Tribunal consists of a Chairperson and eight other persons appointed by the President, on a part-time basis, and on the recommendation of the Minister, from among those persons nominated by the Minister in response to a public call for nominations as prescribed.

(3) The President must—

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(a) appoint the Chairperson and other members of the Tribunal no later than the date on which the AARTO Act, 2019 (Act No 4 of 2019) comes into operation; and must;

(b) appoint a person to fill any vacancy, which may occur on the Tribunal.

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

(a) not be subject to any disqualification set out in subsection (5); and must;

(b) have submitted to the Minister a written declaration stating that the person-

(i) does not have any interests referred to in subsection (5)(a).

(5) A person may not be a member of the Tribunal if that person—

(a) personally or through a spouse, partner or associate—

(i) has or acquires a direct or indirect financial interest in a transport-related company or entity; or

(ii) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of his or her duties as a member of the Tribunal;

(b) is a rehabilitated insolvent or he or she becomes insolvent and the insolvency results in the sequestration of that person's estate;

(c) has been, or is, removed from an office of trust because of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money;

(d) is subject to an order of a competent court holding that person to be mentally unfit or mentally disordered;

(e) within the previous 10 years has been, or is convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, or an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No.12 of 2004), or an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; or

(f) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.

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(6) For the purpose of subsection (5)(a), a financial interest does not include an indirect interest held in any fund or investment if the person contemplated in that subsection has no control over the investment decisions of that fund or investment.

(7) A member of the Tribunal must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become an interest contemplated in subsection (5) (a).

(8) A member of the Tribunal must not—

(a) engage in any activity that may undermine the integrity of the Tribunal;

(b) attend, participate in or influence the proceedings of the Tribunal, if, in relation to the matter before the Tribunal, that member has an interest—

(i) contemplated in subsection (5)(a); or

(ii) that precludes that member from performing the functions of a member of the Tribunal in a fair, unbiased and proper manner;

(c) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Tribunal; or

(d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions as a member of the Tribunal.

(9) If, at any time, it appears to a member of the Tribunal that a matter being considered by the Tribunal during proceedings concerns an interest of that member referred to in subsection (9)(b), that member must—

(a) immediately and fully disclose the nature of that interest to the members present; and

(b) withdraw from the proceedings to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.

(10) The disclosure by a member of the Tribunal in terms of subsection (9) (a), and the decision by the Tribunal in terms of subsection (9) (b), must be expressly recorded in the records of the proceedings in question.

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(11) The proceedings of the Tribunal, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are binding despite—

(a) a member of the Tribunal failing to disclose an interest as required by subsection (10); or

(b) a member of the Tribunal, having an interest, attending or participating in those proceedings.

4. Qualifications of members of the Tribunal

(1) The members of the Tribunal, viewed collectively: —

(a) must represent a broad cross-section of the population of the Republic; and

(b) must comprise sufficient persons with legal qualifications and knowledge or experience in road traffic and road transport related matters.

(2) Each member of the Tribunal must—

(a) be a citizen of South Africa, who is ordinarily resident in the Republic;

(b) have suitable qualifications and experience in a field related to road traffic and transport legislation or any special skills, qualifications, expertise or experience in matters concerning legal, financial and economic matters; and

(c) Understand the purpose of the AARTO Act.

5. Powers of the Tribunal

(1) The Appeals Tribunal must perform its functions in terms of Section 29B of the AARTO Act, which functions entail:

(a) the adjudication of any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of the AARTO Act;

(b) hearing appeals against, or review, any decision of the representation officer that may in terms of the AARTO Act be referred to it; and

(c) making any ruling or order necessary or incidental to the performance of its functions in terms of this Act.

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(d) Adjudication in a form of a sitting by the members of the Appeals Tribunal is contemplated to be undertaken on paper i.e.: Consideration is given to the application made by the Infringer as well as the reasons for the decision made by the Representation Office. Both the application and the reasons of the Representation Office are considered on paper, unless the Appeals Members deem it fit for the Infringer and Representation Officer to be present at the hearing during the sitting.

(e) Where the presence of the Infringer and Representation Officer is required at the sitting, such requirement will be communicated to the Infringer and Representation Officer timeously by the administrator to ensure their attendance on the day of the sitting.

(2) The Tribunal may therefore, in terms of Section 29H of the AARTO Act:

(a) confirm, vary or set aside any decision against which an appeal or review has been lodged in terms of section 29B of the AARTO Act.

(b) The decision of a majority of the members present at a sitting of the Tribunal constitutes a decision of the Tribunal, and in the event of an equality of votes on any matter, the person presiding at the sitting must have a casting vote in addition to that person's deliberative vote

PART C
APPLICATIONS (Rules 5A -16A)

5A. Appeal or Review Applications

Only an Infringer in terms of the AARTO Act or his/her duly appointed representative (legally authorized, by way of a Power of Attorney) , may approach the Appeals Tribunal through an application submitted in terms of Section 29 of the AARTO Act, and who basis their *locus standi* on the issuance of an infringement notice on the applicant / infringer in terms of Section 17 of the AARTO Act , and such appeal or review application should have

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been preceded by a Representation application to the RTIA and such application should have resulted in an:

(1) Unsuccessful representation outcome in terms of Section 18 of the AARTO Act; and the infringer believes the Representation Officer erred in making the representation unsuccessful;

6. Fees

(1) If a fee is payable in respect of an application for either an Appeal or Review Application and is levied in terms of Schedule 2 of the Administrative Adjudication of Road Traffic Offences Act, 2019 (Act No 4 of 2019):-

(a) it must be deposited in cash or transferred by way of electronic funds transfer into the Authority's designated bank account before the application is submitted; and

(b) a copy of the deposit slip, a print-out of the transfer record or any other means of proving payment must be included in the application documents as proof of payment.

(2) The designated bank account details of the Authority may be requested from the revenue office of the Authority by sending an email request to - revenue@rtia.co.za

7. **Notification and service of application documents**

(a) The Applicant must notify the Tribunal through the Authority of his/her intention to apply to the Appeals Tribunal for relief and by completing the prescribed AARTO 10A application form and forwarding such duly completed application form to the Authority in a manner prescribed under rule 6 & 8 .

(b) The application documents filed with the Authority must include proof of payment of the prescribed application fee and proof of payment must be submitted for each application submitted.

8. **Filing of application documents**

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(1) The prescribed application form and any attachments must be forwarded to the Administrator of the Appeals Tribunal in terms of Regulation 35 (1) of the AARTO Regulations, 2025 and must be:

(a) submitted in person, together with a copy of the original form, at any issuing authority or any sub-office of the Authority; or

(b) completed electronically and sent to the Appeals Tribunal e-mail address: appealstribunal@rtia.co.za or any such similar website which may be determined by the Appeals Tribunal; or

(2) The application and accompanying attachments received from an infringer in terms of (1)(a) above must be processed as follows:

(a) the original application and all the accompanying attachments, and the copies thereof must be signed and stamped by the receiving authority clearly showing the name of the issuing authority or sub-office of the Authority, as the case may be, and the date it was received;

(b) the issuing authority or sub-office of the Authority, as the case may be, must record, scan and upload the application and all the accompanying attachments on the National Road Traffic Offences Register;

(c) the issuing authority or the sub-office of the Authority, as the case may be, must provide the infringer with the signed and stamped copy as proof of receipt thereof; and

(d) an acknowledgement of receipt may be issued to the infringer.

(3) An enquiry to the Authority may be made through any of the platforms provided on the AARTO website at www.aarto.gov.za and, subject to these Rules, any specific enquiries may be submitted as indicated on the specific forms on the AARTO website.

9. Incomplete applications

(1) If an application does not satisfy the requirements of the rules-

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(a) The Registrar of the Authority will notify the applicant that the application form AARTO 10A was not completed and/or signed, and that the applicant must resubmit comprehensively completed and signed form AARTO 10A to the Authority within 14 days, and

(b) Where the Infringer does not resubmit the application within the 14 days, he/she may request for condonation for failure to abide by the prescribed time-period.

(c) If the applicant fails to comply with the directions contemplated with the notification contemplated in rule 9 (1)(a), the Registrar of the Authority will inform the applicant of his or her failure to comply and that such appeal or review is regarded as unsuccessful.

10. Procedure after the Authority receives an Appeal or Review application

(1) The Authority or the issuing authority must, upon receiving an application submitted, process such an application in accordance with regulation 351) of the AARTO Regulations, 2026.

(2) The designated employee of the Authority, after receipt of documents relating to an appeal or review-

(a) process such documents in accordance with regulation 35(1) of the AARTO Regulations, 2026(b) prepare such documents for the Tribunal; and

(c) submit all the documents to the Chairperson of the Tribunal.

(3) After receipt of the documents in relation to the appeal or review, the Chairperson must schedule a sitting or hearing of the Tribunal.

(4) The designated employee of the Authority must notify the applicant that a hearing has been scheduled on the prescribed form.

11. Applications for Condonation

(1) A person wishing to bring before the Tribunal a matter which is not listed in rule 7 or 8, may apply for Condonation to the Appeals Tribunal by:

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(a) Submitting to the Authority an application for condonation contemplated in section 29B (3) of the AARTO Act on the prescribed application form and submitted in terms of rule 7.

(b) The Tribunal must inform the applicant of the outcome of the condonation application made in accordance with the prescribed outcome notification.

(c) If an application for condonation is successful, the infringer may make an application for an appeal or review in accordance with rule 7 within a period of 14 days from the date of the outcome of the condonation application, provided that the notice in accordance with rule 8 (b), is deemed to have been made by the infringer.

(d) If an application for condonation is unsuccessful, the infringer must be issued with an enforcement order in accordance with regulation 5 of the AARTO Regulations, 2026.

12. Sittings of the Appeals Tribunal

(1) The Tribunal may sit virtually or in person on such days and during such hours and at such a place as the Chairperson may determine.

(2) The Tribunal must convene upon a receipt of a threshold of 10 applications, except where there are less than 10 lodged applications that have exceeded a period of 14 days.

(3) The Tribunal may not hear more than 50 applications per sitting. (Input during the induction was that the discretion as to how many applications the members want to hear per sitting must be left to their discretion, as putting down a number may constrain them.

(4) The presence of at least 50 per cent plus one (6 members) shall be necessary to constitute a sitting of the Tribunal.

(5) The Chairperson may due to the non-availability of some members decide to allocate members to a particular sitting, but such sitting must be represented by at least 5 members

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(5) If both the Chairperson and the Deputy Chairperson are absent from a particular sitting of the Tribunal, the members present must from among their number elect a person to preside at the sitting.

(6) Each Tribunal member must cast his/her vote after the completion of the deliberations and must provide reasons for the vote cast.

(7) The Tribunal may confirm, vary or set aside any decision against which an appeal or review has been lodged.

(8) The decision of a majority of the members present at a sitting of the Tribunal constitutes a decision of the Tribunal, and in the event of an equality of votes on any matter, the person presiding at the sitting must have a casting vote in addition to that person's deliberative vote.

13. Record of the proceedings of the Appeals Tribunal

(1) An employee designated by the Registrar of the Authority must ensure to record in writing (electronic minute generation) , or through an electronic voice recording facility, only the decisions taken of hearings of the Tribunal.

(2) The Tribunal must notify the infringer, in accordance with regulation 35(4) of the AARTO Regulations, 2025, of the decision made in relation to the appeal or review as per the prescribed notification form.

(3) The Tribunal must inform the Authority electronically, of its decision made in terms of rule 12 (2).

(4) Upon receipt of the decision of the Tribunal, the Authority must capture and process the details of the infringer on the NRTOR in accordance with regulation 33 (4) of the AARTO Regulations, 2026.

(5) If an application for an appeal or review is successful in that the infringement is set aside, the infringement notice must be cancelled.

(6) If an application for an appeal or review is unsuccessful and the infringer fails to pay the applicable infringement penalty and fees, if any, within 32 days after the date the infringer is deemed to have been notified, the Registrar of the Authority must issue, as contemplated in regulation 5 of the AARTO Regulations, 2026 an enforcement Order.

MLB

(7) Pending the decision of the Tribunal no courtesy letter or enforcement order may be issued to the infringer, and no demerit points may be allocated to the infringer.

14. Appeal or Reviews to a Designated Magistrates Court

(1) An applicant affected by the decision of the Tribunal may —

(a) make an application to a Magistrate's Court designated by the Minister in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), to **review that** decision; or

(b) **appeal** to a Magistrate's Court against the decision of the Tribunal.

(2) An appeal or review against the decision of the Tribunal must be lodged with the relevant Magistrate's Court within 30 days of the decision of the Tribunal.

(3) The clerk of the court must inform the Authority, in the manner provided for in regulation 35(1) of the AARTO Regulations, 2026, of an appeal or review against the decision of the Tribunal lodged with a Magistrate's Court in terms of section 29I of the AARTO Act within 10 days after such lodgement.

(4) Pending the decision of the Magistrate's Court, no courtesy letter or enforcement order may be issued to the infringer, and no demerit points may be allocated to the infringer.

(5) The clerk of the court must inform the Authority in the manner provided for in rule 14 (3), of the decision of the Magistrate's Court in relation to the review or an appeal of the decision of the Tribunal within seven days after such a decision has been made.

(6) If an application for an appeal or review to the Magistrate's Court is successful in that the infringement is set aside, the infringement notice must be cancelled as per the order of the court.

15. Amendment of documents

(1) An Applicant may only forward to the Authority additional or amended documents filed in connection with the application prior to the date of the review hearing.

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(2) The Applicant may be permitted to submit additional or amended documents once the review hearing proceedings have already commenced, subject to leave granted by the Tribunal.

16. Joinder or substitution of parties

(1) The Tribunal may allow a combination of any number of persons, either, jointly, jointly and severally, separately, or in the alternative, as parties in the same proceedings, even if their rights to relief depend on the determination of substantially the same questions of law or fact.

(2) A party to proceedings, on giving notice to the other parties, may apply to the Chairperson of the Tribunal for an order to substitute a person for a current party.

(3) The non-joinder or non-substitution in terms of these rules will not affect the validity of any proceedings in the matter.

16A. Consolidation of Matters

(1) Where separate applications have been instituted by the same applicant, the Tribunal will not, even if it appears convenient to do so, consolidate such applications, and upon the application of any party thereto and having served on all interested parties, make an order not to consolidate such applications, whereupon: -

(a) the said applications shall not be processed as one.

PART D

HEARINGS (rules 17-24)

17. Hearings & Summoning

(1) The Chairperson of the Appeals Tribunal may for the purposes of hearing an appeal or reviewing a decision and in terms of Section 29 (G)of the AARTO Act :—

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(a) summon or invite any person who may give material information concerning the subject matter of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the Chairperson may retain for examination any document so produced;

(b) the Chairperson or any other member of the Tribunal designated as a Commissioner of Oaths in terms of section 6 of the Justice of the Peace & Commissioners of Oath Act16 of 1963 may administer an oath or affirmation or take a solemn or attested declaration from any person called as a witness at the hearing; and;

(c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control, which has a bearing on the subject matter of the hearing;

(d) The Authority will be responsible for all administrative matters concerning rule 17.

18. Expert Witnesses

(1) Subject to any agreement reached between the parties or direction given or ruling made by the Tribunal pursuant to, or at the hearing, where any party in a matter intends to rely at the hearing on the evidence of an expert witness, such party must notify the other parties and the Tribunal not less than 10 (ten) days before the hearing date.

(2) The details of such expert witness(s) must be provided to the Authority in writing in order for such documentation to be scanned and uploaded onto the NRTOR prior to the start of the proceedings.

(3) The cost associated with the expert testimony, either in writing or in person, will in total be for the account of the party wising to place such expert witness before the Appeals Tribunal.

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19. Set downs and Postponements of Sittings of Tribunal Members

(1) The Chairperson of the Appeals Tribunal must issue a Notice of Set Down to the members of the Tribunal of matters that are set down for sitting.

(2) Subsequent to issuing a notice of set down to the members of the Tribunal, the Chairperson of the Appeals Tribunal will file a Notice of Set Down (e-mail notification) on the case file, confirming that the set down was issued in accordance with rule 19 (1).

(3) Any member of the Tribunal may apply for a postponement and, if permitted by the Chairperson, the Chairperson of the Appeals Tribunal will notify the members of such postponement in writing (via e-mail).

20. Set downs and Postponements of Hearings

(1) The Chairperson of the Appeals Tribunal must issue a notice of set-down to the parties in a matter that is set down for a hearing for purposes of summoning any person that may have material information that has a bearing on the subject matter.

(2) Subsequent to issuing a notice of set down to the parties, the Chairperson of the Appeals Tribunal will file a Notice of Set Down (e-mail notification) on the case file, confirming that the set down was issued in accordance with rule 20 (1).

(3) Any party to the proceedings may apply for a postponement and, if permitted by the Chairperson, the Chairperson will notify the parties of such postponement in writing (via e-mail.)

21. Withdrawal of Matters

(1) An Applicant, before an application has been decided, may withdraw all or part of the application by-

(a) serving a notice of withdrawal in writing to the Authority by hand delivery or email;

(2) A notice of withdrawal may include consent to pay costs (if any);

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(3) Where an applicant withdraws a matter, and/or where a matter is finalized, the applicant **will not be entitled to a refund** of the application fee paid.

22. Hearing Procedures

(1) A hearing must follow the below procedures:

a) Confirmation that a Notice of Set down for the hearing was issued to the members/parties.

b) During the hearing, all parties will be provided a fair opportunity to present evidence, cross-examine any witness and/or submit documentary evidence.

c) The Tribunal will be the arbiter of the admissibility of any evidence adduced and of its probative value.

d) The Applicant will have a right to legal representation or alternatively choose to represent himself/herself.

e) Any documentation held by the Authority that has a bearing on the matter and that may assist the Tribunal in making an informed decision must be made available to the Applicant at the hearing.

(2) Tribunal hearings are generally not open to the public. However, the Chairperson may, at his/ her discretion, invite members of the public to attend specific hearings.

(3) A witness must take an oath or affirmation administered by the Chairperson.

(4) The Chairperson of the Appeals Tribunal may order that a witness called by the Tribunal itself -

(a) be paid in accordance with the tariff of allowances published by the Minister responsible for Justice by notice in the Gazette in terms of section 42 of the Supreme Court Act, 1959 (Act No. 59 of 1959);

(b) be paid a portion of the amount permitted under paragraph(a); or

(c) not be paid.

(5) A party requiring the services of an interpreter must notify the Authority at least 10 business days prior to the date for which the matter has been set down.

(6) An interpreter-

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(a) will be procured at the expense of the party requesting such interpreter service;

(b) must be a person admitted as a sworn translator of the High Court; or

(c) must take an oath or affirm the undertaking, with a signed copy to form part of the record of the proceedings.

(7) The Chairperson of the Appeals Tribunal may at any stage during the proceedings condone any non-compliance with these Rules or any irregularities in the conduct of the proceedings.

23. Non-Appearance

(1) If a party to a matter fails to attend or be represented at a hearing without any reasonable cause or notification, the members of the Appeals Tribunal may-

(i) continue with the proceedings in the absence of that party; or

(ii) adjourn the hearing to a later date

(2) The Chairperson of the Appeals Tribunal must be satisfied that the party has been properly notified of the date, time and venue of the proceedings, before making any decision.

(3) The Authority must send a email copy of the ruling to the parties.

24. Decisions of the Appeals Tribunal

(1) The Tribunal may confirm, vary or set aside any decision against which an appeal or review has been lodged in terms of section 29B of the AARTO Act.

(2) The decision of a majority of the members present at a sitting of the Tribunal constitutes a decision of the Tribunal, and in the event of an equality of votes on any matter, the person presiding at the sitting must have a casting vote in addition to that person's deliberative vote.

PART E

GENERAL RULES (rule 25-33)

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25. Service and proof of service of documents

(1) A document may be served on a party by-

(a) delivering it to the party; or

(b) sending it by registered mail, ordinary mail, or electronic mailor via SMS (Short Message Service)) to the party's last known electronic address / address as contained on Natis.

(1A) Any document, application or affidavit served or delivered by a party must contain at the front thereof a filing notice in accordance with regulation 35(1) of AARTO Regulations, 2026 (AARTO Form 10A) and must be filed at the Tribunal.

26. Confidential information

(1) Any information held by the Agency or submitted by the Applicant to the Tribunal will be treated as confidential and may not be shared without prior consent of the parties concerned.

27. Representations of parties during hearings

(1) A party to a matter may act in person or appoint a representative.

(2) A person appointed as representative must notify the AT Chairperson and the other parties to the matter by providing them with the following particulars:-

(a) personal particulars of a representative;

(b) postal address and address for service of documents;

(c) telephone and fax numbers;

(d) e-mail address;

(e) Infringement Notice Number of the matter; and

(f) Personal particulars of the person represented.

(3) A party who terminates a representative's authority to act in a matter must notify the AT Chairperson - and

(a) the applicant will act in person or, and

(b) if another representative has been appointed, provide details as listed in rule 27(2).

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(4) A legal representative for the applicant is not a requirement at the Tribunal hearing, but is allowed.

28. Condonation for late filing and non-compliance with rules

(1) A party may apply to the Tribunal in AARTO Form 34 for an order to condone late filing of a document or application;

(2) The Tribunal may grant the order on good cause shown.

29. Application Fee payable

(1) The payment of a specified fee specified in Schedule 2 of the AARTO Regulations is payable on each application made.

(2) Payments are identified with a payment reference related to the 16-digit infringement notice number for the matter to be heard.

(3) Payments can be done in person at the authority, Issuing Authorities or on-line at www.aarto.gov.za

30. Access to Tribunal records

(1) A party requesting access to the records held by the Tribunal must make a request by filling in a PAIA request through the process outlined in the RTIA's PAIA manual obtainable from www.rtia.co.za.

31. Powers of the Chairperson to deviate from the rules of the Tribunal

(1) The Chairperson may on good cause shown, and in keeping with the requirements of justice, expediency and the objects of the AARTO Act deviate from the rules, and record the reasons for such deviation on the minutes of the proceedings

32. Forms

(1) Forms prescribed for purposes of these rules are contained in the schedule 1 at the end of the Rules.

33. Short title

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These Rules are the Rules of the Tribunal made in terms of Regulation 11 of AARTO Regulations, 2026 and govern the proceedings of sittings and hearings of the Tribunal.

Approved by the Chairperson of the Appeals Tribunal

Signature:

Name:

Date:

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SCHEDULE 1: FORMS

AARTO 10A - APPLICATION FOR AN APPEAL OR REVIEW
Application for a review or appeal of a decision of a representations officer in terms of Section 29B(2) of the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No 46 of 1998)
INSTRUCTIONS FOR COMPLETION OF THE FORM
PART A

(a) A declaration in support of this application is given under **Part D** below.

(b) Individuals need not complete the first two lines of Part C. Organisations must provide the details of the registration number of the organisation (e.g. CC, company or trust registration number) and the details of a duly appointed representative (Surname, first names, ID number, cell, email, etc.) on the reverse hereof who must sign the form on its behalf.

(c) The duly completed form and attachments, if any, may submitted in terms of Regulation 35(1) or on the AARTO website, www.aarto.gov.za.

(d) Fees in terms of Section 29B(2) as prescribed in Schedule 2 are payable.

In the event that this form is not properly completed and signed, the Authority will inform the applicant or the appellant on notice AARTO 10Aa to comply as directed in the said notice.

PART B – PARTICULARS OF INFRINGEMENT NOTICE

Infringement Notice number:	- - -		
Date of infringement:	/ /	Name of Issuing Authority:	

PART C – INFRINGER AND MOTOR VEHICLE PARTICULARS

Name of organisation:				Company number:	
Type of organisation:	Company	CC	Partnership	Other:	
Surname:				Gender:	Female / Male
First names:				Tel (home): ( )	
Initials:	Date of birth: / /			Tel (work): ( )	
ID type:	RSA ID	Passport ID	Driving licence ID / Foreign ID	Fax: ( )	
ID number:				Cell:	
Country of issue:				Email:	
Postal address & code:					
					( )
Residential address & code					

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PART C – MOTIVATION
(Kindly please provide your motivation on a separate sheet that must be signed by yourself)

PART D – DECLARATION
The result of an unsuccessful representation was issued to me regarding a disputed Infringement Notice, the particulars of which are provided under Part B above. I, the particulars of whom are provided under Part C above, hereby, in terms of Section 29B (2), apply for the review of the decision of the representations officer. I, hereby declare that the information provided herein by me, falls within my own personal knowledge and is to the best of my belief both true and correct.

Signature of Infringer:		**Place:**		**Date:**	/ /

NOTIFICATIONS

AARTO 10Aa – Notification of non-compliance

Issued in terms of regulation 12 (3) of the AARTO Regulations, 2025

INFRINGER AND MOTOR VEHICLE PARTICULARS	
«Surname»/«Name of organisation»	«Gender»/«Type of organisation»
«First_names»/«Representative name and surname»	
«Initials»	«Date_of_birth»
«ID_type»	Tel (home): «Home_phone»
«ID_number»	Tel (work): «Business_phone»
Country of issue: «Country_of_issue»	Fax: «Fax_number»
Licence code: «Driving_lic_codes»	Cell: «Cellular»
PrDP code: «PrDP_codes»	«E_mail»
Operator card number: «Operator_card_numbers»	**MOTOR VEHICLE PARTICULARS**
«Street_address_line_1» «Street_address_line_2» «Street_address_line_3» «Street_address_line_4» «Street_address_line_5» «Street_address_code»	«Vehicle_lic_number» Licence disc no: «veh_lic_disc_no» «Vehicle_desc»
«Post_address_line_1»	«Vehicle_GVM»kg

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«Post_address_line_2» «Post_address_line_3» «Post_address_line_4» «Post_address_line_5» «Post_address_code» Vehicle owner:«Owner_name» «Owner_address_line_1» «Owner_address_line_2» «Owner_address_line_3» «Owner_address_line_4» «Owner_address_line_5» «Owner_address_code»	«Make» «Series» «Colour»

INFRINGEMENT PARTICULARS

Infringement Notice number: «Inf_notice_nr»

Date of infringement: «Date»   Issuing Authority: « Issuing Authority »

Charge code: «Main_charge_code» «Main_descrip»

Charge type: «Class_1»   Penalty: R «Penalty_1»   Demerit Points: «Demerit»(Demerit points merely informative until enforced)

NOTIFICATION OF NON-COMPLIANCE TO THE LODGING OF AN APPEAL OR REVIEW

Date of receipt of a Review or Appeal: «Res_date»

Non-compliance Notice	Your original application could not be processed because the form has not been properly completed or signed. You are advised to resubmit your application for a review or an appeal on from AARTO 10A within 10 days of the date of service of this notice. **NOTE: If you fail to comply with this notification, an Enforcement Order will be issued where after you will become liable to pay the penalty and the fees for the Courtesy Letter (if applicable), and Enforcement Order (if applicable) to the Agency.**

OUTSTANDING PENALTY, AND OR FEES

Penalty: R«Penalty_1» Fee for Courtesy Letter: R«courtesy_fee» Total amount payable: R«Total_due»	**Online platforms:** (i) FNB; or (ii) Standard Bank; or (iii) ABSA; or (IV) Nedbank; or www.payaarto.co.za
Payments may be made: **Cash payments:** (i) ABSA; or (ii) Post office; or (iii) Motor vehicle registration and licensing office; or (iv) Driving license testing centre; or (v) Relevant Issuing Authorities; or (vi) Checkers, Shoprite, SPAR and USave	**The Infringement Notice Number applicable to each of the individual Main Charges must be used as reference with all payments.**

«User Group»

Certificate number: «Cert_no»   Creation date: «Cr_Date»

POSTAGE LOGO

AARTO 10Ab - REJECTION OF REVIEW OR APPEAL

Issued in terms of regulation 12 (4) of the AARTO Regulations, 2025

INFRINGER AND MOTOR VEHICLE PARTICULARS

«Surname»/«Name of organisation»	«Gender»/«Type of organisation»
«First_names»/«Representative name and surname»	
«Initials»	«Date_of_birth»

2023/08/30

MCB

«ID_type»

«ID_number»

Country of issue: «Country_of_issue»

Licence code: «Driving_lic_codes»

PrDP code: «PrDP_codes»

Operator card number: «Operator_card_number»

«Street_address_line_1»
«Street_address_line_2»
«Street_address_line_3»
«Street_address_line_4»
«Street_address_line_5» «Street_address_code»

«Post_address_line_1»
«Post_address_line_2»
«Post_address_line_3»
«Post_address_line_4»
«Post_address_line_5» «Post_address_code»

Vehicle owner:«Owner_name»

«Owner_address_line_1» «Owner_address_line_2»
«Owner_address_line_3» «Owner_address_line_4»
«Owner_address_line_5» «Owner_address_code»

Tel (home): «Home_phone»

Tel (work): «Business_phone»

Fax: «Fax_number»

Cell: «Cellular»

«E_mail»

MOTOR VEHICLE PARTICULARS

«Vehicle_lic_number»

Licence disc no: «veh_lic_disc_no»

«Vehicle_desc»

«Vehicle_GVM»kg

«Make»

«Series»

«Colour»

INFRINGEMENT PARTICULARS

Infringement Notice number: «Inf_notice_nr»

Date of infringement: «Date» Issuing Authority: « Issuing Authority »

Charge code: «Main_charge_code» «Main_descrip»

Charge type: «Class_1» Penalty: R «Penalty_1» Demerit Points: «Demerit»

REJECTION OF REVIEW OR APPEAL APPLICATION

Date of result: «Res_date»

Rejected	Your review or appeal application has been rejected based on the reasons outlined below :

Grounds of rejection:

Your AARTO10A or 10B appeal or review application has either not been properly completed or signed, and you have failed to comply with the AARTO 10a notice issued in terms of Regulation 10.

OUTSTANDING PENALTY, AND OR FEES

Penalty: R«Penalty_1» Fee for Courtesy Letter: R«courtesy_fee» Total amount payable: R«Total_due»	**Online platforms** (v) FNB, or (vi) Standard Bank; or (vii) ABSA; or (viii) Nedbank; or www.payciy.co.za

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Payments may be made:

Cash payments:

(vii) ABSA; or
(viii) Post office; or
(ix) Motor vehicle registration and licensing office; or
(x) Driving licence testing centre; or
(xi) Relevant Issuing Authorities; or
(xii) Checkers, Shoprite, SPAR and USave

The Infringement Notice Number applicable to each of the individual Main Charges must be used as reference with all payments.

Certificate number: «Cert_no» Creation date: «Cr_Date» «User Group»

POSTAGE LOGO

REPUBLIC OF SOUTH AFRICA

TO: The Honourable/Prof/Dr/Rev/Mr/Mrs/Ms/Miss

bar code

«Initials» + «Surname»

«Company_ name»

«Post_address_line_1»

«Post_address_line_2»

«Post_address_line_3»

«Post_address_line_4»

«Post_address_line_5»

«Post_address_code»

IF UNDELIVERED WITHIN 14 DAYS PLEASE RETURN TO SENDER:

Operations Manager

SAFEMAIL

Germiston

1699

Date of posting :

AARTO 10Ac– NOTIFICATION OF HEARING OF REVIEW OR APPEAL HEARING

MLB

Issued in terms of regulation 13 (4) of the AARTO Regulations, 2025

INFRINGER AND MOTOR VEHICLE PARTICULARS

«Surname»/«Name of organisation»

«First_names»/«Representative name and surname»

«Initials»

«ID_type»

«ID_number»

Country of issue: «Country_of_issue»

Licence code: «Driving_lic_codes»

PrDP code: «PrDP_codes»

Operator card number: «Operator_card_number»

«Street_address_line_1»
«Street_address_line_2»
«Street_address_line_3»
«Street_address_line_4»
«Street_address_line_5» «Street_address_code»

«Post_address_line_1»
«Post_address_line_2»
«Post_address_line_3»
«Post_address_line_4»
«Post_address_line_5» «Post_address_code»

Vehicle owner:«Owner_name»

«Owner_address_line_1» «Owner_address_line_2»
«Owner_address_line_3» «Owner_address_line_4»
«Owner_address_line_5» «Owner_address_code»

«Gender»/«Type of organisation»

«Date_of_birth»

Tel (home): «Home_phone»

Tel (work): «Business_phone»

Fax: «Fax_number»

Cell: «Cellular»

«E_mail»

MOTOR VEHICLE PARTICULARS

«Vehicle_lic_number»

Licence disc no: «veh_lic_disc_no»

«Vehicle_desc»

«Vehicle_GVM»kg

«Make»

«Series»

«Colour»

INFRINGEMENT PARTICULARS

Infringement Notice number: «Inf_notice_nr»

Date of infringement: «Date» Issuing Authority: « Issuing Authority »

Charge code: «Main_charge_code» «Main_descrip»

Charge type: «Class_1» Penalty: R «Penalty_1» Demerit Points: «Demerit»

INFORMATION RELATED TO NOTICE OF REVIEW OR APPEAL HEARING

Date of receipt of review or appeal: «Res_date»

You are informed that the Chairperson of the Appeals Tribunal hereby gives notice of an appeal hearing or a hearing in relation to a review in terms of sub-regulation 11 (7) and section 29G:

(i) The review or appeal hearing date and time is set as: ……… ….

(ii) Physical address for the review or appeal hearing, if applicable :……………………………………………………………………

(iii) Subject of the review :……………………………………………………………………………………………

☐ The hearing will be conducted virtually.

(iv) **In the event that the review or appeal hearing will be conducted virtually, you will be informed accordingly of the virtual sitting web-address access details.**

Your presence is required on the set date. Should you not be able to attend on the date and time set out above, your timeous written confirmation of non-attendance is required and must be received five (5) days prior to the date stipulated above and must be sent by email to: appeals@rtia.co.za . Please quote the 16-digit infringement notice number in all correspondence.

OUTSTANDING PENALTY AND, OR FEES

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Penalty: R«Penalty_1»
Fee for Courtesy Letter: R«courtesy_fee»
Total amount payable: R«Total_due»

Payments may be made:
Cash payments:
(xiii) ABSA; or
(xiv) Post office; or
(xv) Motor vehicle registration and licensing office; or
(xvi) Driving licence testing centre; or
(xvii) Relevant Issuing Authorities; or
(xviii) Checkers, Shoprite, SPAR and USave

Online platforms:
(ix) FNB; or
(x) Standard Bank; or
(xi) ABSA; or
(xii) Nedbank; or www.paycity.co

The Infringement Notice Number applicable to each of the individual Main Charges must be used as reference with all payments.

Certificate number: «Cert_no» Creation date: «Cr_Date» «User Group»

POSTAGE LOGO

REPUBLIC OF SOUTH AFRICA

TO: The Honourable/Prof/Dr/Rev/Mr/Mrs/Ms/Miss

bar code

«Initials» + «Surname»
«Company_ name»
«Post_address_line_1»
«Post_address_line_2»
«Post_address_line_3»
«Post_address_line_4»
«Post_address_line_5»
«Post_address_code»

IF UNDELIVERED WITHIN 14 DAYS PLEASE RETURN TO SENDER:

Operations Manager

SAFEMAIL

Germiston

1699

Date of posting :

MCB

2023/08/30

AARTO 10Ad - RESULT OF REVIEW OR APPEAL

Issued in terms of regulation 15 (2) of the AARTO Regulations, 2025

INFRINGER AND MOTOR VEHICLE PARTICULARS

«Surname»/«Name of organisation»

«Gender»/«Type of organisation»

«First_names»/«Representative name and surname»

«Initials»

«Date_of_birth»

«ID_type»

Tel (home): «Home_phone»

«ID_number»

Tel (work): «Business_phone»

Country of issue: «Country_of_issue»

Fax: «Fax_number»

Licence code: «Driving_lic_codes»

Cell: «Cellular»

PrDP code: «PrDP_codes»

«E_mail»

Operator card number: «Operator_card_number»

«Street_address_line_1»
«Street_address_line_2»
«Street_address_line_3»
«Street_address_line_4»
«Street_address_line_5» «Street_address_code»

«Post_address_line_1»
«Post_address_line_2»
«Post_address_line_3»
«Post_address_line_4»
«Post_address_line_5» «Post_address_code»

Vehicle owner:«Owner_name»

«Owner_address_line_1» «Owner_address_line_2»
«Owner_address_line_3» «Owner_address_line_4»
«Owner_address_line_5» «Owner_address_code»

MOTOR VEHICLE PARTICULARS

«Vehicle_lic_number»

Licence disc no: «veh_lic_disc_no»

«Vehicle_desc»

«Vehicle_GVM»kg

«Make»

«Series»

«Colour»

INFRINGEMENT PARTICULARS

Infringement Notice number: «Inf_notice_nr»

Date of infringement: «Date» Issuing Authority: « Issuing Authority »

Charge code: «Main_charge_code» «Main_descrip»

Charge type: «Class_1» Penalty: R «Penalty_1» Demerit Points: «Demerit»(Demerit points merely informative until enforced)

REVIEW OR APPEAL APPLICATION RESULT

Date of result: «Res_date»

Successful	☐	Your review or appeal application has been successful, and you are therefore not liable for the payment of any penalty and, or fees applicable to the infringement notice issued.
Unsuccessful	☐	Your review or appeal application has been unsuccessful, and you remain liable for the payment of all outstanding penalties and or fees associated with this particular infringement notice as mentioned below. You are furthermore advised that you may submit an additional review or appeal application to the relevant Magistrate's Court in terms of section 29I of the AARTO Act if you are not satisfied with the outcome of your review or appeal application made to the Appeals Tribunal. The appeal or review must be lodged with the relevant Magistrate's Court within 30 (thirty) days of the decision of the Tribunal.

Grounds of rejection (if applicable): «Grounds_rej»

OUTSTANDING PENLTY, AND OR FEES

Penalty:	R«Penalty_1»
Fee for Courtesy Letter:	R«Courtesy_fee»
Total amount payable:	R«Total_due»

Online platforms:
(xiii) FNB; or
(xiv) Standard Bank; or
(xv) ABSA; or
(xvi) Nedbank; or www.payity.co

Payments may be made:
Cash payments
(xix) ABSA; or
(xx) Post office; or
(xxi) Motor vehicle registration and licensing office; or
(xxii) Driving licence testing centre; or
(xxiii) Relevant Issuing Authorities; or
(xxiv) Checkers, Shoprite, SPAR and USave

The Infringement Notice Number applicable to each of the individual Main Charges must be used as reference with all payments.

Certificate number: «Cert_no» Creation date: «Cr_Date» «User Group»

POSTAGE LOGO

REPUBLIC OF SOUTH AFRICA

TO: The Honourable/Prof/Dr/Rev/Mr/Mrs/Ms/Miss

bar code

«Initials» + «Surname»

«Company_ name»

«Post_address_line_1»

«Post_address_line_2»

«Post_address_line_3»

«Post_address_line_4»

«Post_address_line_5»

«Post_address_code»

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IF UNDELIVERED WITHIN 14 DAYS PLEASE RETURN TO SENDER:
Operations Manager SAFEMAIL Germiston 1699
Date of posting :

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Justice in Adjudication

Adjudication - SOP

Unit - Adjudications

VERSION: 0.2

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DOCUMENT CONTROL

Document Information

Property	Description
Document Title	Adjudication SOP
Document Owner	Manager: Infringements and Demerits
Document Author	Supervisor: Adjudications
Document Custodian	Adjudications Unit
Effective Date	01 September 2023
Review Date	

Change Record

Date	Effective Date	Author	Ver.	Change Description
2019 / 10 / 20		Supervisor: Adjudications	0.1	Developed the SOP
2023 / 02 / 10	**2023 / 09 / 01**	Supervisor: Adjudications	**0.2**	**Review of SOP**

Prepared by:

Role / Position	Name	Signature	Date
Manager: Infringements and Demerits	**Mr Kwazi Ngcobo**		**2023 / 08 / 03**

Recommended by:

Role / Position	Name	Signature	Date
Chairperson of Compliance Committee	**Adv. Mncedisi Bilikwana**		**2023 / 08 / 03**

Approval

Role / Position	Name	Signature	Date
Registrar/CEO	**Mr Matsemela Moloi**		**2023 / 08 / 03**

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Table of Contents

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1 Introduction

This Adjudication standard operating procedures manual sets out the Adjudication procedures to be followed when adjudicating Representations received in accordance with the provisions of Chapter 3 of the AARTO Act whether internally, via Back Office and/or externally, via the website and Issuing Authorities. This SOP Manual applies to the Adjudication of all Representations that are conducted by the RTIA. This SOP Manual provides step-by-step instructions on how to adjudicate Representations within the RTIA. It outlines what needs to be done by whom, when and how it should be done with a view to promote consistency; improving the quality of services and ideally, shortening the turnaround time. This SOP Manual also serves as a guideline for existing employees and a training tool to acquaint newly appointed employees with Adjudications processes and procedures.

Process name	Representation Process
Process objective	To ensure that the representations are processed and adjudicated in accordance with the Adjudications Framework.
Process owner	Manager: Infringements and Demerits
Approval	Registrar/CEO

Table 1: Brief information about the process

2 Purpose

The purpose of this document is to establish guidelines and provide a detailed explanation of how the Adjudication of Representations process is to be conducted at RTIA and to identify the duties, roles and responsibilities of officers within the Adjudication Unit.

3 Scope

The scope and application of this SOP Manual include the internal processing of Representations until the Representation is adjudicated to its finality. The notification of results of Representations to alleged Infringers is to be processed subject to Regulation 2. The RTIA must inform an alleged Infringer of the decision of the Representation Officer within 21 days from the date of receipt of his or her Representations contemplated in Regulation 4(1), by providing the alleged Infringer with a properly completed form substantially in the form of AARTO 09, shown in schedule 1 in accordance with Regulation 23(3) of the AARTO Act.

4 Intended audience

This document is intended for the Adjudication Unit within the RTIA.

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5 Definitions

Define all the abbreviations and concept applicable on the process:

TERM	DESCRIPTION
AARTO	Administrative Adjudications of Road Traffic Offences, 46 of 1998
AARTO Regulations	Administrative Adjudication of Road Traffic Offences, Regulations, 2008
NCR	National Contravention Register
Infringement Notice	Infringement notice as contemplated in Section 17 of the AARTO Act
Infringer	A person who has allegedly committed an infringement
Adjudication	Adjudication is the legal process by which a Representation Officer reviews evidence and arguments made by an alleged Infringer to come to a decision.
NaTIS	National Traffic Information System
Pending	Representations to be adjudicated
SAPO	South African Post Office
RD324	Transaction Detailed Report
RD323	Transaction Summary Report
Administrator	Admin Assistant: Adjudication
Representation	Is one of five election options available to an alleged Infringer should he/she want to dispute an infringement notice
Representation Officer / RO	A person duly appointed by the Registrar in terms of Section 10 of the AARTO Act

Table 2: Definitions of terms

6 Regulatory Framework

The regulatory basis and best practice for this SOP:

6.1 The Constitutional of the Republic of South Africa;

6.2 Administrative Adjudication of Road Traffic Offences Act;

6.3 National Road Traffic Act, Act 93 of 1996;

6.4 Promotion of Administrative Justice Act, 2000 (PAJA);

6.5 Criminal Procedure Act, Act 51 of 1977;

6.6 Promotion of Access to Information Act, Act 2 of 2000 (PAIA);

6.7 National Land Transport Transition Act (NLTTA);

6.8 Technical Committee on Standards and Procedures (TCSP);

6.9 SABS 047 VFS;

6.10 Adjudication Framework; and

6.11 Protection of Personal Information Act (PoPIA).

7 Roles and Responsibilities

The Supervisor: is responsible for the implementation of this SOP Manual and ensuring that processes are followed accurately. The roles and responsibilities involved in the process are outlined in table 3 below.

Roles	Responsibility
Manager: Adjudications	• Oversees the management of the Adjudication Unit process.
Supervisor: Adjudications	• Draw RD323 and RD324 reports daily. • Distribute the list of Representations to be adjudicated daily, by eMail. • Receipt of the distribution list must be acknowledged by the Representations Officer by E-mail. • Draw RD323 Report to verify transaction 9122 for the unit. • Conduct random selection for quality assurance. • Prepares a report based on findings of quality assurance (9124). • Reverse decisions after quality reviews are done (9123).

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Roles	Responsibility
Representations Officer/ Senior Representations Officer	• Receives Representations and acknowledges receipt of the distribution list by E-mail; • Checks the correctness of documentation; • Checks merits of representation application; • If necessary, check the legal framework and or perform one of the five queries on NATIS, refer to section 13 of the document; • Perform transaction 9122 to adjudicate the Representation; • If necessary, conduct an investigation and inspection *in loco* to verify the alleged infringement; • Process the outcome: Either Successful or Unsuccessful; • Also cancels Representations if it does not comply with the Procedure; and • Draw RD323 daily after completion of work and forward it to the Supervisor.

Table 3: Roles and Responsibilities

8 Description of Procedures and Processes

Upon drawing the report RD324 the Supervisor: Representations allocates Representations to Representation Officers. The process commences as soon as there are Representations pending on the NCR to be adjudicated.

The process is as follows:

Step 1: Draw RD323 & RD324 reports

- **The Supervisor Adjudication**:
  - Draws the RD 323 and RD 342 reports.

Step 2: Compile List

- **The Supervisor Adjudication:**
  - Compiles a list of pending Representations for distribution to each Representation Officer; and
  - Each Representations Officer sends an acknowledgement of receipt by Email before 10 AM every day upon receipt of the Pending list of Representations.

Step 3: Transaction 9162

- The RO enters the Infringement Notice number;
- The RO proceeds to the relevant page;
- The RO selects the AARTO 08 and other supporting documents uploaded then press F6 to download and view the same and analyse;
- The RO applies his/her mind based on the facts provided in the Representation application and compares the facts to applicable prescripts and then makes a decision;
- If necessary, the RO conducts an investigation or recommends inspection *in loco; and*
- The RO makes a decision based on the findings of the investigations conducted that will be captured on 9122.

Step 4: Transaction 9122

- The RO performs transaction 9122 to record the outcome, select reasons for the outcome and provide the rationale for the reasons for the outcome.

Step 5: Transaction RD323

- Upon completion of work distributed, the Representations Officer must draw RD323 and forward it to his or her Supervisor and/or Administrator within the Adjudications Unit for validation as prescribed in step 6.

Step 6: Submission of the finalised Representation List

- The RO will draw the RD323 report and submit it to the Supervisor as well as to the Administrator;
- The Supervisor: Will verify that the RD323 report received from the Representation Officer and confirm whether the RD323 report submitted correlates with the work distributed on the compiled list;

- If the distributed list correlates with the RD323 report, the Administrator will send the report on behalf of the supervisor to the Adjudication Unit Manager;
- If the list does not correlate, the Supervisor: Representations refers the list to the RO for correction; and
- Supervisor also draws an RD323 report for the Adjudication Unit in order to verify that the total distributed on the compiled list corresponds with the total adjudicated for the day.

Step 7: Acknowledgements

- The Administrator will, save all the acknowledgement Emails of the distribution list from the Representations Officers in a folder for the Adjudications Unit.

Step 8: Quality Assurance

- The Supervisor: Adjudications selects a sample of Representation already adjudicated for quality assurance purposes;
- The Supervisor: Adjudication Unit performs transaction 9162 for each selected Adjudicated representation;
- The system will allow viewing from pages 5 to 13, regarding all information pertaining to the Infringement Notice;
- The Supervisor: Adjudications selects the AARTO 08 and other supporting documents uploaded then press F6 to download and view the same and analyse; and
- The Supervisor: Adjudications weighs the outcome and the merits on AARTO 08.

Successful Outcome:

- If there are no disparities between the outcome and the merits of AARTO 08, the case is closed;
- If there are disparities between the outcome and merits of AARTO 08, and the outcome was successful the Supervisor Adjudications prints the relevant documents;
- The Supervisor Adjudications will request reasons for disparities from the RO;
- The Supervisor: Adjudications must record the reasons provided and file them; and
- In the event that the RO clearly erred in decision making, the Supervisor: Adjudications will apply the appropriate corrective measures.

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Unsuccessful outcome:

- If there are disparities between the outcome and merits of AARTO 08, and the outcome was unsuccessful the Supervisor: Adjudications prints the relevant documents;
- The Supervisor Adjudications will request the RO's reasons for disparities and possibly have a discussion with the RO; and
- The Supervisor Adjudications must record the reasons provided, reverse the results and file electronically on the Representations folder.

9 Business Rules

BR 1: All AARTO 08 forms must be correctly and fully completed.

BR 2: All Representation applications must be completed by the alleged infringer.

BR 3: All Representation applications must be processed within 21-days from the date of receipt by the RTIA.

10 Exception to Normal Process Workflow

Special requests authorised by the Registrar and/or Manager/Supervisor: Adjudications and court of law can be processed without strictly following the prescribed process.

11 Interface with Other Processes

The process interface with the back-office process, the Post Office and Issuing Authorities.

12 Process Flow / Chart

The process should follow a Business Process Mapping Notation (BPMN model).

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Justice in Adjudication

ADJUDICATIONS FRAMEWORK & REPRESENTATIONS SOP

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Contents

- Adjudications Framework
- Adjudications SOP

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Adjudications Framework

- This document outlines the rules and procedures to be followed by representation officers for the adjudication of representations received by the Agency in terms of **Section 18** of the AARTO Act read together with Regulation 4 & 5 of the AARTO Regulations, 2008.

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Adjudications Framework

- These rules and procedures shall apply to all adjudication of representations brought before the representation officers and their implementation of the AARTO Act and the AARTO Regulations, 2008.
- These rules and procedures shall be construed in order to achieve the objectives of the AARTO Act read together with the AARTO Regulations, 2008 and to assist the Agency in obtaining a just and speedy disposition of representations received by the Agency.

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Adjudications Framework

- Documents required in support of representations submitted
- Options open to Infringers upon the issue of an Infringement Notice
- Adjudication of representations
- Eligibility criteria of suitability of infringement notices for a successful adjudication - AARTO 01- Handwritten Notices

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Adjudications Framework

- Eligibility criteria for suitability of cancellation of infringement notices (Successful Adjudication- Only when in dispute) - AARTO 03- Camera Offences / Parking Offences / Operator Offences
- Eligibility criteria for suitability of infringement notices for un- successful adjudication (AARTO 01, 02, 31 and 03 notices)
- RTIA- Own staff Adjudications
- Representations: Foreign drivers

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Adjudications Framework

- Legislation and BATHO PELE PRINCIPLES to consider and take note of during the adjudication process
- Publications or Policy documents to take note of during adjudication process- if applicable
- Minimum transaction access on eNaTIS and the National Contravention register for Representation Officers

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Adjudications Framework

- Table: Successful All Charges: Reasons
- Table: Unsuccessful: Reasons
- Table: Successful Main Charge: Reasons
- Table: Application Cancelled: Reasons
- Monthly Performance and Quality Reports
- Documents to be served on Infringers who submit a Representation – Automated Process on National Contravention Register

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Adjudications SOP

- This Adjudication standard operating procedures manual sets out the Adjudication procedures to be followed when adjudicating Representations received in accordance with the provisions of Chapter 3 of the AARTO Act
- Applies to the adjudication of all Representations that are submitted to the RTIA.

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Adjudications SOP

- Ensure that the representations are processed and adjudicated in accordance with the Adjudications Framework
- The purpose of this document is to establish guidelines and provide a detailed explanation of how the Adjudication of Representations process is to be conducted at RTIA and to identify the duties, roles and responsibilities of officers within the Adjudication Unit.

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Adjudications SOP – Steps

- Step 1: Draw RD323 & RD324 reports.
- Step 2: Compile a list
- Step 3: Transact 9162
- Step 4: Transact 9122
- Step 5: Transaction RD323
- Step 6: Submission of the finalised Representations list
- Step: 7 acknowledgements
- Step: 8 Quality Assurance

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Adjudications SOP – Business Rules

- **BR 1**: All AARTO 08 forms must be correctly and fully completed.
- **BR 2**: All Representations Applications must be completed by the alleged infringer.
- **BR 3**: All Representations Applications must be processed within 21 days from the date of receipt by the RTIA.

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THE END

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