

Southern African Vehicle Rental and Leasing Association

“Steering Industry Standards”

PO Box 2627
North Riding, 2162



11 April 2012

The Minister of Transport
Department of Transport,
Private Bag X193,
Pretoria, 0002

For the kind attention of Mr Trevor Mphahlele

Dear Sir,

Public comment regarding proposed amendments to the SANRAL Act, Act 7 of 1998, (Notice 252 of Government Gazette 35182 of 2012)

Please find below our response to the call for comments on the publication of both the SANRAL and National Roads Act proposed draft regulations, on March 27, 2012.

We wish to record that this call for comment, which has taken place during the current Easter holiday break, was not widely published by the Department to enable broad public participation, and only allows 20 days for comment as opposed to the more regular 30 day comment period.

This notwithstanding, we wish to submit the following important remark;

SAVRALA is the umbrella body of both the vehicle rental and leasing industries and as such is the voice of over 450,000 vehicles. During the course of a normal day, several thousand of our member's vehicles are travelling the roads of Gauteng. **Given the high proportion of foreign and local tourists renting vehicles, one must fear that, if implemented in their original form, the proposed regulations could lead to the potential wrongful harassing or arrests of several of our member's clients. It is a major concern and it could impact negatively on the tourism industry as a whole.**

Please find below our clause by clause comments:

1. Definitions: 'authorised employee'

Comment: after creating a National Intervention Unit, in addition to both the SAPS and respective Metro police units, we are concerned that you effectively wish to create yet another police force for the sole purpose of toll enforcement but with the full range of powers as conferred on a peace officer. It is also not clear if these employees will have the power to operate on a concession toll road or if the toll concession companies will be obliged to develop a similar resource to enforce toll payment should such concessions operate on a similar open road toll basis?

President: Wayne Duvenage
Chairman Rental: Jonathan Odes - Vice chairman Rental: George Corbett
Chairman Leasing: Vernien Pillay- Vice chairman Leasing: Mike Sherwood
General Manager: Paul Pauwen

1.Definitions: 'owner'

Comment: the current definition of owner as per the National Road Traffic Act is at conflict with the owner's liability for tolls. As highlighted further, the owner, for example, cannot be liable for tolls if the vehicle is stolen.

2 (5) 'having a material interest in the matter concerned'

Comment: an authorised employee should always be able to produce his or her certificate of appointment. The term 'material interest' requires greater clarity.

2 (5) 'when wearing a full or partial uniform'

Comment: an authorised employee should always be in full and proper uniform. A 'partial uniform' is not defined and, given the real risk of impersonation, may lead to confusion and uncertainty amongst members of the public.

3 (a) 'to produce any other document or tag which he or she is required to have in respect of any motor vehicle'

Comment: 'any other document' needs to be defined better. It is not compulsory to carry any other document in a vehicle besides the driver's licence and the vehicle licence disc. The sentence is also ambiguous as to whether a tag is required to be in the vehicle or not. If a tag is not mandatory, then this should be clearly stated given the extent of confusion reported by many parties since these regulations were published for comment.

3 (a) 'or the regulations on the exemption from payment of toll'

Comment: we are unable to comment on this as the Department of Transport has yet to publish the details of any toll exemption criteria and the related administrative processes. We expect the Department of Transport to publish the exemption details as a matter of urgency as this information will have an impact on our responses to these proposed regulations.

3(a) 'or any like document issued by a competent authority outside the Republic'

Comment: 'any like document' should also be described better as it may lead to conflict and confusion between the authorized employee and both local road users and international visitors travelling on our roads. Similarly a 'competent authority' should be better described so that members of the public wishing to comment would understand the scope of this term.

3 (a) 'and question any person'

Comment: we do not understand why the authorized employee would need to question 'any person'? The employee, subject to reasonable grounds etc, should only need to question the vehicles driver and passengers. Greater clarity required.

3 (b) 'impound or confiscate any document or tag referred to in paragraph (a) which appears to be or which the employee suspects to be invalid or which has been or appears to have been unlawfully altered or defaced or which is being put to unlawful use, and where any document or tag is so impounded the employee must issue a receipt in respect thereof to the person concerned;'

Comment: the clear premise of the sentence is based on the assumed guilt of an individual as opposed to the constitutional right to be presumed innocent until proven guilty. We have previously highlighted the risks that the current e-toll system presents when challenged by, for example, cloned/fraudulent vehicle registration plates and outstanding payments due to a toll payment dispute. We have grave concerns about the potential abuse of power that this clause may create and that an individual may be assumed to be guilty of various offences

and have their property impounded without an opportunity to defend themselves adequately at the roadside.

3 (c) 'which in his or her opinion may afford evidence of a contravention or evasion of any provision of the Act'

Comment: similar to our comments under 3(b), the authorised employee is contemplated to exercise an unnecessary wide breathe of various powers based on 'his or her opinion'.

3 (d) 'whether or not such person is in any vehicle, to furnish his or her name and to provide any other particularsas well as such information'..

Comment: we do not understand why it is necessary for an authorized employee to question the general public on various matters if they are not in a vehicle that is being questioned.

3 (f) '..or other incident regulate and control traffic upon any public road'

Comment: it is not clear why an authorised employee would be required to operate on any public road and not just e-roads. Similar, to the distinct dissatisfaction expressed by the authorities in the Western Cape about scope and mandate of the operation of the National Intervention Unit in the Province, there is very likely to be similar conflict between various enforcement authorities on the basis of jurisdiction and the planning of operations.

3 (g) 'at any time enter any motor vehicle and inspect such vehicle and any electronic device installed therein for the purpose of toll collection'

Comment: we strongly oppose the contemplation that an authorized employee has such extensive powers to be able to stop and search a vehicle for the purposes of toll collection. This is an unacceptable compromise of a road users privacy and presumption of innocence which is likely to lead to significant intimidation.

3 (f) 'question the driver of a vehicle as to whether required tolls have been paid'

Comment: it is the responsibility of the authorized employee to identify, from their own system queries, if a vehicle has outstanding tolls. Given the earlier contemplated powers, a temporary driver of a vehicle (eg: tourist driving a rental vehicle) may be incorrectly subjected to a round of unnecessary intimidating questions. It must also be remembered that any outstanding amounts may also be subject to an existing dispute with SANRAL due to fraudulent or otherwise transactions.

3 (I) '..if any tag, document or equipment has been impounded'

Comment: ref to 3 (b). In addition to the intimidation, this may well be abused by the authorized employee to solicit bribes or extort monies from a fearful road user.

3 (2) '...employee reasonably suspects..outstanding tolls'

Comment: the necessary systems must be in place to identify potential outstanding tolls and not a reasonable suspicion. This must be defined a lot better as employees could, when read with other sections, arbitrarily harass a road user should they suspect outstanding tolls.

3 (2) (b) ' must not continue to use the toll road if he or she does not make arrangements to pay those tolls and other amounts'

Comment: this section does not make any provision for errors in the system, incorrect charges under query or indeed charges not yet identified by the road user but generated by false number plates. The implication of this section is that a road user, even with outstanding tolls, must make a payment at the side of a road. What if the individual does not have cash on them?

What if they do not have a credit/debit card on their person? What if the driver is a temporary driver without any forms of payment available to them?

Further, how do the authorities expect a road user stopped on a toll road to discontinue travelling on the road as to either continue or turnaround is still continuing to use the toll road? This is an impractical piece of legislation and automatically implies that a vehicle will be impounded.

5 (1) '.....authorised employee may arrange and contract with any other person to provide the necessary transport to such persons:'

Comment: as mentioned previously, the Department of Transport has yet to publish the final e-Toll tariffs which should also highlight the various costs that may be incurred under the situations contemplated above. It is unacceptable for an authorized employee to have complete free discretion to procure services from 'any other person' without the necessary schedules, policies and oversight in place.

5 (2) 'the owner of a vehicle..shall be liable for all expenses incurred in the removal and storage of such vehicle and the arrangement and contracting of another vehicle or person to transport stranded persons.'

Comment: similar to 5 (1), however, in addition the road user being liable for 'all expenses incurred' is it also expect that such costs become due even in the event that their vehicle was stolen? Section 5, is a particularly over aggressive piece of legislation in the desperate pursuit of outstanding toll monies due, irrespective of the outstanding amount, and commits the road user to an unconstrained schedule of costs.

6 (1) '..it shall be presumed, in the absence of evidence to the contrary, that such vehicle was driven or used by the owner thereof'

Comment: Similar to earlier points above, this section makes no provision for neither stolen vehicles nor the fraudulent use of another vehicles registration plates.

7 (1).....must ascertain the - a) Full names b) Acceptable identification; and c) Residential and postal address,

Comment: As has been our experience to date when engaging on AARTO, the above three categories of information are insufficiently defined, namely;

- a) While it is important that the definition of 'full name' be clarified it must be remembered that the current drivers licence only provides the drivers initials and surname. The regulations must also clarify how many characters the applicable system is capable of storing. An individual's true full names may exceed the system specifications resulting in the full name not being recorded.
- b) 'Acceptable identification' must be clearly defined.
- c) If a road user is out of town/country, should the residential address be the hotel or the foreign residence? What if a road user does not have a separate postal address or indeed does not have a postal address at all?

7 (1) 'if the owner of a vehicle fails to comply with the provisions of sub regulation (1) he or she shall be liable for all tolls and fees in relations to the use of such vehicle'

Comment: This again does not make any accommodation for toll fees and costs incurred by a vehicle owner if it is stolen or subject to fraud as a result of fraudulent use of the same vehicle registration plates on a different vehicle.

In addition, no provision is made for redirecting/nominating of toll charges incurred by a vehicle but by a driver other than the owner. This happens daily in the car rental business when tourists rent a vehicle for short periods and thereby become liable for the toll fees.

Similarly, when a vehicle is sold but incurs toll fees during the re-registration process (+/- 21 days), it will be necessary to advise the authorities of the correct driver of the vehicle at the time. The Act and its current proposed regulations make no accommodation for this.

In summary, we are very concerned by the aggressive and often unnecessary sections of the proposed regulations.

It is our view that the proposed regulations are likely to be found unconstitutional if challenged in the appropriate Court of Law;

- They make an assumption of guilt before any due process has been completed.
- They do not make any distinction between the value of the outstanding toll amounts due and the consequential costs of non-payment irrespective of the non-payment being as a result of fraud or a payment dispute with SANRAL

We sincerely hope that you will take our comments into account and would be pleased to engage with you further in this regard.

Please confirm receipt of this submission and we would appreciate it if you could clearly outline the next steps in the process. In any event, please contact us directly should there be any additional notices and regulations issued concerning this Act.

Your faithfully

A handwritten signature in black ink, appearing to read 'Pauwen', with a stylized flourish extending to the right.

Paul Pauwen
General Manager

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