



March 21 2013

Attention: Johannes G.Makgatho

The Director-General: Transport

Department of Transport

Pretoria

By email to Makgathj@dot.gov.za

RE: COMMENTS ON ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES (AARTO) AMENDMENT BILL, 2013

Dear Sir,

Please find below our member's comments regarding the proposed AARTO Amendment Bill, however, I would first wish to take the opportunity to place our submissions in context.

SAVRALA supports any intervention which will lead to a reduction in the unacceptable level of death and carnage on our roads. It is our intention to try and actively participate in any initiative driven by the Department of Transport to achieve our Decade of Action goals and we looking forward to a constructive engagement and partnership in this regard.

We also believe that more focus and attention needs to be placed on pro-active road traffic policing and visibility by all authorities. It is far more preferable to put the necessary resources and focus in place to change driver behaviour before an infringement takes place than to have an efficient administrative system after the infringement has been recorded.

We have, for several years now, participated in various meetings and workshops to try and ensure that AARTO is more focussed on;

1. changing driver behaviour and not just revenue generation by the various authorities
2. an administrative process which takes advantage of the available technology without compromising a road users rights and access to the justice system
3. applying demerit points directly and proportionality to those factors that account for the greatest cause of road deaths and injuries
4. simplifying the Act so that it can understood by all road users and easily communicated

President: **Marc Corcoran** - Vice President: **Vacant**

Chairman Rental: **Vacant** - Vice Chairman Rental: **Grenville Salmon**

Chairman Leasing: **Vernen Pillay** - Vice Chairman Leasing: **Warren Peters**



5. ensuring that accurate and timeous road traffic infringement, including road user death and injuries, data is collected and made available to both inform policy and focus action campaigns

Finally SAVRALA, through the Tourism Business Council of South Africa (TBCSA) as a Business Unity South Africa (BUSA) member, was fortunate to attend the various NEDLAC AARTO discussions over the past years. It is regrettable that after much effort by all and having reached some key principle agreements by all partners, the process has effectively halted yet again without any notice or communication. We hope that the Department of Transport, as the Government representative, will reconvene the NEDLAC AARTO team to ensure that any planned implementation has been discussed with NEDLAC's key Business, Labour and Community partners.

We respectfully submit the following comments with regard to the Government Gazette No 36173, dated 20 February 2013;

1. Section 1 of Act 46 of 1998, as amended by section 1 of Act 22 of 199 and section 1 of Act 72 of 2002:

Section 1 (b) (f) – substitution of acceptable identification for “certified” photocopy

Comment: *This presents a far greater risk for car rental companies who generally insist on the production of an original driver's licence which in combination with a valid credit card, or other approved method of payment, assist mitigate the risk of a fraudulent transaction. While other stakeholders may be comfortable accepting certified documents, SAVRALA would like to ensure that their members would be entitled to disregard a certified identification document, if produced, when handing over a valuable asset. Further, it remains impractical to expect members to retain copies (certified or otherwise) of any acceptable identification for AARTO purposes.*

Section 1 (c) - by the addition in the definition of “authorised officer” of the following paragraph: “(e) any other suitable person declared by the Minister by regulation to be an authorised officer.”

Comment: *The wording “any other suitable person” must be defined better. Given the existing legislation and police (incl traffic police) structures in place, it is concerning that there is a view to include a very general direction. A ‘suitable person’ should be defined as per the National Road Traffic Act (NRTA) or other appropriate legislation. This amended definition is not necessary.*



Section 1 (e)- by the substitution for the definition of “date of service” of the following : “date of service” means the date on which [an infringer has signed for the relevant document served on him or her] a document was served on the infringer in terms of section 30;”

Comment: *There is an opportunity to reduce the administrative burden placed on the authorities by using some form of electronic service where large volumes exist (such as car rental and leasing operators), however, this must be discussed with our industry. The driver of the vehicle, who committed the infringement, must always be the focus for service and timelines are critical. A more personal process of service may still be required for individual infringers in order to assist with changing driver behaviour.*

Section 1 (h)- by the addition in the definition of "issuing authority" of the following paragraph: "(d) any other institution declared by the Minister by regulation to be an issuing authority;";

Comment: *It is again unclear why there should be a need to create new structures. Any new structures anticipated should be reviewed in advance to ensure that their behaviour is aligned to road safety etc and not profit or revenue generation.*

Section 1 (i)- by the substitution in the definition of "issuing authority" for the words following paragraph (e) of the following words: "in so far as such authority, administration [or], Corporation or institution is responsible for traffic matters;";

Comment: *As per above, the need is unclear and deemed not to be necessary noted above.*

2. Amendment of section 2 of Act 46 of 1998, as amended by section 2 of Act 72 of 2002.

Section 2 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs:

Comment: *This appears to be a desire to potentially extend the ambit of AARTO to infringements which are not directly related to road safety and changing driver behaviour. The inclusion of municipal by-laws must be better defined. This is a potentially new extension which has not been discussed with stakeholders.*

3. Amendment of section 4 of Act 46 of 1998.

Section 3 (b)- by the deletion of subsection (1)(c);

Comment: *The Department needs to explain why the move to delete this section? If deleted, it could be argued that a core reason for AARTO's existence, in the first place, has also been removed.*



Section 3 (d)- by the addition in subsection (2) of the following paragraph:
“(h) administering rehabilitation programmes for habitual infringers including but not limited to-
(i) driver re-testing to determine driver fitness; and
(ii) compulsory community service at a state mortuary and at a road accident trauma ward in a public hospital.”;

Comment: While the intention is noble and has merit, we are extremely concerned at the ability of the various authorities to manage such a program when we remain challenged to even manage the issuing of valid driver’s licences. It is also unclear how a juristic entity would be treated with multiple infringements. This could have a significant impact on SAVRALA’s members. We also fear that further volumes placed on a severely stretched structure will quite likely create a fertile ground for further corruption. Much greater discussion with broad industry and civil society stakeholder groups need to take place to consider the many unintended consequences of such a program and to understand better the detail of how such a program would operate.

Section 3 (e)- by deletion of subsection (4)

Comment: *Similar to 3 (b) above, it is surprising that there is a desire to delete this section. The Department needs to explain the motivation for such a deletion and, in many ways, the need for the RTIA.*

4. **Amendment of section 6 of Act 46 of 1998, as amended by section 4 of Act 72 of 2002.**

Section 6 of the principal Act is hereby amended-
(a) by the addition in subsection (1) of the following paragraphs:
a representative from the Department of Transport, delegated by the Minister;

Comment: *A reconfigured Board cannot only be made up of Government representatives. For legitimacy and accountability, it must also include representation from various stakeholders from Business, Labour and Community.*

5. **Amendment of section 7 of Act 46 of 1998**

Section 7 of the principal Act is hereby amended by the deletion of subsection (1)(e).

Comment: *It is again unclear why this subsection needs to be deleted. The Department must explain their rationale. Disagree with deletion.*



6. Amendment of section 11 of Act 46 of 1998.

Section 11 of the principal Act is hereby amended by substitution for subsection (2) of the following subsection:

(2) The agency may pay to the persons in its employ such remuneration and allowances, and may provide them with such pensions and other benefits, as the board may determine [with approval of the Minister acting in consultation with the Minister of Finance]”

Comment: *Any monies paid to officials should be accounted for properly within a transparent process to ensure that public funds are used correctly.*

7. Amendment of section 17 of Act 46 of 1998, as amended by section 8 of Act 72 of 2002.

Section 17 of the principal Act is hereby amended -

(a) by the substitution in subsection (1) for the words preceding paragraph of the following words:

"If a person is alleged to have committed an infringement, an authorised officer [or a person duly authorised 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 – “

Comment: *The details of serving the notice must be clearly set out. The whole administrative process is dependent on timeframes which cannot be disputed.*

Section 17 (b)- by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) specify the name and residential and postal address of the infringer [if know] at the time when the infringement was committed”;

Comment: *SAVRALA has always expressed concern that the ‘name’ is generally described as the full name, however, our car rental members in particular place great reliance on the drivers licence which currently only holds the initial and surname. As a consequence, issuing authorities, using their discretion, can reject a redirection on the basis of the full name not being supplied. This becomes a greater problem when dealing with international drivers and their details. This needs greater clarity.*

Section 17 (f)- by the substitution in subsection (3) for paragraph (c) of the following paragraph:

"(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”

Comment: *While SAVRALA has long been a proponent of greater efficiency of administration by use of technology and, in particular, the use of email, we are concerned*



that deleting 'by registered mail' may create the opportunity for various authorities to implement processes without first testing the system/process with stakeholders. While email, as an example, offers much greater efficiency it also requires very clear procedures. This needs to be discussed with stakeholders.

Section 17 (g)- by the substitution in subsection (4) of the following paragraph:
"(4) if the [infringer] owner 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," and

Comment: *The use of the word 'satisfies' creates an unnecessary subjective condition rather than the use of objective criteria (ie: completion of a form). We have already experienced difficulties when issuing authorities are left to their own interpretation.*

Section 17 (h) - by the insertion after subsection (4) of the following subsections:
"(4A) Where the infringer is a juristic person, an infringement notice may be served electronically on that infringer, who must identify the driver or person responsible for the vehicle at the time the infringement was committed
(4B) Upon receipt of the electronic nomination, the issuing authority shall serve the infringement notice on the identified driver or person responsible for the vehicle at the time the infringement was committed

Comment: *As discussed earlier, we support an ability to be more administratively efficient but this process must be discussed with stakeholders. There are many areas of concern which need to be reviewed, not least of all that issuing authorities, merely overwhelm a member with email notices. International drivers again present a problem here.*

8. Amendment of section 18 of Act 46 of 1998, as amended by section 9 of Act 72 of 2002.

Section 18(b)- by the deletion of subsection (4);

Comment: *We remain concerned about this deletion. The agency must fulfil its obligations.*



9. Amendment of section 19 of Act 46 of 1998, as amended by section 10 of Act 72 of 2002.

Section 19 (b)- by the substitution in subsection (3) for paragraph of the following paragraph:

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”

Comment: *There are many unintended consequences associated with electronic delivery which, in the context of demerit points, needs to be understood. The use of, in particular, email as an administrative tool should have been reviewed, in advance, with stakeholders like SAVRALA to ensure that the proposed amendments were suitable.*

20. Amendment of section 30 of Act 46 of 1998, as amended by section 3 of Act 22 of 1999

Section 30 of the principal Act is hereby amended –

Section 30(a)- by the substitution for subsection (1) of the following subsection:

"(1) Any document required to be served on an infringer in terms of this Act, must be served on the infringer [personally or sent by registered mail to his or her last known address] as prescribed, including electronic service"; and

(b) by the deletion of subsection (2).

Comment: *Notwithstanding the opportunities with email etc, the lack of discussion on its introduction with SAVRALA is a cause of great concern. The section should not be deleted.*

We thank you for the opportunity to submit our comments on the proposed amendments and look forward to further engagements with the Department of Transport to discuss the concerns highlighted above.

Kind regards

Marc Corcoran

President