

21 December 2015

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**SUBMISSION OF COMMENTS ON THE ADMINISTRATIVE
ADJUDICATION OF TRAFFIC OFFENCES ACT, AMENDMENT
REGULATIONS AS PUBLISHED IN GOVERNMENT GAZETTE
No. 39482 ON THE 7TH OF DECEMBER 2015.**

1. OUTA is a non-profit organisation with its primary purpose being the protection and advancement of the constitution of the republic of South Africa.
2. The purpose of this document is to serve as a submission of comments relating to the Administrative Adjudication of Road Traffic Offences Act Amendment Regulations, 2008.
3. The request for submissions was published on the 7th of December 2015 and a 30 day period allowed for the lodging of submissions.

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4. We are hopeful that our submission will be helpful in preventing undesirable or unlawful subordinate legislation from coming into force and being struck down at a later stage, or becoming the subject of an administrative nightmare. This could very well have the impact of rendering the law illegitimate and inoperable, which in turn will have significant consequences of reduced revenues for the provinces, as well as the fostering of “justified” lawlessness through civil disobedience against vehicle license renewals and abiding by traffic infringement notices.
5. It appears on the face of it, that part of the reason for the amendments to AARTO Act and regulations, is to accommodate the e-toll scheme, which has failed to be effectively introduced, even under the Criminal Procedures Act (CPA), whereby the threat of a criminal record has failed to elicit more than 10% of road users paying their e-toll bills, two years after the schemes existence. This fact in itself needs to be carefully weighed up prior to passing these proposed regulation amendments, as by doing so, the authorities may taint and make very difficult for the entire AARTO scheme to become effective in its main purpose, which is to promote the efficacy of road safety traffic infringement management, despite the fact that the e-toll element hereof attracts “zero” demerit points.
6. It is trite in South African administrative law that where an administrator intends taking an administrative action that negatively affects a person, that person must first receive adequate notice of the intended action to be taken, including the basis for the action to be taken, and afforded an opportunity to make representations before

any punitive measures are taken against the person.

7. Where a notice of the intended administrative action thus falls short of providing sufficient detail to the affected person of the action to be taken as well as the basis for the action to be taken, no administrative action may be taken that negatively affecting any rights of the person.
8. The AARTO 03e form is the product of an attempt to consolidate multiple camera or electronically captured alleged infringements (including e-toll gantry passes), in one notice as to relieve the administrative burden of having to send a notice for each infringement.
9. In principle the above makes sense, but additional to the information contained in the form, it is our submission that the following information will also be required to be included:
 - 9.1 A reference number for each individual alleged infringement. In the absence of a reference number for each infringement, the challenging of a specific infringement will be difficult to identify on the infringement register as it will not be individually identifiable, but only identifiable as part of a range of infringements contained in AARTO 03e;
 - 9.2 Photo proof of each individual infringement. This is necessitated by the fact that, amongst other considerations, an estimated 15% to 20% of license plates in Gauteng are alleged to be cloned / incorrect and it is thus essential for an alleged infringer to be able to identify whether it is in fact his/her vehicle being connected to an alleged infringement;

9.3 The details of the Issuing Authority, the Officers Name and the Magisterial District of each and every offence, as it is imperative that these details will be required by the vehicle owner in order to ascertain their desired research and decision on how to manage (pay or defend) each and every one of these implied offences.

10. In the absence of the above information being included in AARTO 03e, we believe that the administration of multiple camera and electronically captured offences will face many difficulties and be open to legal challenges.
11. It must also be noted that SANRAL's e-toll system suffers from various flaws, not least of all the time and date stamp of gantry passes (verified in court in December 2014), as well as in its payment reconciliation process, in that payments made are allocated to the oldest outstanding payment first, regardless of the fact that queries may exist against those movements. These administrative shortcomings of the e-toll scheme will in turn render the entire AARTO infringement notice mechanism as completely unmanageable and therefore useless, notwithstanding that payment of these infringements are forced at time of license renewals or not.
12. This in turn, we believe, will give rise to dire consequences for the entire vehicle licensing scheme, in that a significant volume of vehicle owners will refuse to pay for their vehicle license renewals, as a result of the scheme's link to the irrational, questionable and failed e-toll scheme, the outcome of which could very well render the entire vehicle licensing scheme unworkable, costing the provincial

authorities a loss in revenue and give rise to significant ‘forced’ unlawful conduct by road users through a justified civil disobedience campaign.

13. It is also common knowledge that the lawfulness of the e-toll system’s introduction has yet to be heard in a collateral challenge in court and until such time as this has happened, the public have every right to treat the e-toll scheme as having been introduced unlawfully. In which case, the new AARTO 03e form’s reconfiguration will be compromised, in that its current road safety law enforcement efficacy will be negatively impacted by its attempt to accommodate an unlawful, or irrational and unenforceable e-toll scheme.
14. We hope our submission was of value and that the regulations will be amended so as to be cognizant of the concerns raised in this submission.

Yours sincerely

No Signature provided or required if received by addressee in PDF format, and directly from the e-Mail address of the person hereunder.

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