

OUTA SUMMARY OF MULTIPLE POINT SUBMISSION TO GAZETTE 39130

PUBLIC URGED TO MAKE SUBMISSIONS TO E-TOLL GAZETTE 39130 by 25 September 2015

1. OVERVIEW

The Government have requested submissions for comment on proposed amendments to the “PUBLICATION OF THE NATIONAL ROAD TRAFFIC REGULATIONS” in Gazette # 39130, issued on 24th August 2015. Comments should be provided by no later than 25th September 2015, to Phillip Magagane and John Motsatsing at their e-mail addresses of magaganp@dot.gov.za; motsatsj@dot.gov.za, respectively.

The more the public participate by submitting their comments, the more the public are able to challenge Government for the grounds on which they have processed their regulatory changes. This document highlights a summary of OUTA’s pertinent opinions and points raised in its response to the Gazette, and we encourage the public to read this document, plus our detailed submission (as indicated above), in order to gain insight into what we perceive the problems to be for the e-toll scheme. See OUTA’s web site at www.outa.co.za, where the main banner provides assistance to the public to make their submissions.

OUTA has read these regulations and submitted their detailed response to the proposed changes to the regulations in Gazette 39130. A copy of which can be found on the web site.

Should you wish to read the full Gazette, this is also housed on the OUTA Web Site at this link: http://www.gov.za/sites/www.gov.za/files/39130_gon760.pdf

2. THE UNLAWFULNESS OF THE E-TOLL DECISION

OUTA has noted that if the Government intends to request its road users to act within the laws they propose, then Government itself must act within the laws of the country. Insofar as the following clauses relating to the basic values and principles governing public administration, Section 195 of Chapter 10 of the constitution are clear, it is claimed by OUTA and many road users, that SANRAL as an organ of the state, and its Principles in Government, have not acted within these constitutional boundaries and principles, when declaring the Gauteng freeways as tolled roads. As such, the Gauteng Freeway users have every right

to bring a collateral challenge to this situation, as and when a summons is issued for non-payment of e-tolls, as they deem the declaration of the e-road regulations to be unlawful on the following grounds:-

- I. The clauses in Section 195, which OUTA believes have been transgressed in this regard are:-
 - (b) Efficient, economic and effective use of resources must be promoted.
Public administration must be development-oriented.
 - (c) Public administration must be development-oriented.
 - (d) Services must be provided impartially, fairly, equitably and without bias
 - (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
 - (f) Public administration must be accountable.
 - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
- II. Furthermore, OUTA has pointed out in its court papers of 2012, that:-
 - a. the Minister of Transport (at the time of the declaration in 2007 & 8), did not sufficiently give credence or consideration to alternative and existing funding mechanisms for such an infrastructural upgrade, such as making use of the Fuel Levy.
 - b. That at the same time, the Minister of Transport never had insight or considered the true cost of the e-toll collection process and therefore, could not have considered the irrationality of the high costs thereof, in relation to the capital project costs.
 - c. That the schemes cumbersome nature, along with its regulatory environment, makes it largely unmanageable and unworkable.

3. OTHER PERTINENT MATTERS COMMENTED ON IN THE GAZETTE

The regulations treat the exemption of certain vehicles or ownership situations differently to others.

- i. In the case of small fleet owners with six or less vehicles, who potentially qualify for exemption (such as public transport, taxis, emergency, disabled and school transport organisations), they must provide certified copies of vehicle license certificates, while larger organisations (more than six vehicles) do not have to do so. We believe it remains unjust to subject people and organisations, to differing rules and conditions in this manner.
- ii. Many medical emergency people (Doctors, medical emergency staff) do not qualify for exemption of e-tolls.
- iii. People with disabilities who drive standard vehicles, as opposed to those who drive adapted vehicles, may not qualify for exemption. What is the purpose of having a standard vehicle driven by a disabled person, undergo inspection? Or an adapted vehicle for that matter.

- iv. People and vehicles that are not exempted, are subjected to an extremely onerous “application for credit on e-tolls” process, in the event they wish to claim for assistance provided to people with physical disabilities.
- v. People with disabilities must also lodge and application to claim that the public transport vehicles in their area do not cater for their transport needs.
- vi. Public Transport vehicles – and here we note that Taxis are classified in the e-toll regulations as “public transport” – are not required to fit an e-tag, to qualify for exemption. This is grossly out of line with the rest of those entities who qualify for exemption, and yet must follow the onerous conditions of fitting an e-tag. OUTA maintains that the reason for this stance followed by SANRAL, is that the taxi industry will not fit e-tags (this has been demonstrated over the past two years) and thus, the scheme in this regard is unworkable. The danger of having a sizable portion of exempt vehicles, exempted only on the basis of their license plate, is that of increased number plate cloning / false number plate usage.
- vii. Then there is the attempt by the Agency / Sanral / to introduce new rules and administrative processes that compel motorists to notify them, in the event that exempt vehicles are stolen or scrapped / not fit for road use. There is already a process in place for these incidents, through the SAPS and the e-NaTIS system. Sanral should not be subjecting society to additional regulations, when in fact they already have access to this information and stringent processes already in place.

5. IMPRACTICAL AND ONEROUS CONDITIONS

- i. Regulation 6(9) of the Gazette, has simply exonerated SANRAL or their agents, providing motorists with VAT invoice. This is not only contrary to the consumer protection act, but it is also necessary for the user to receive an invoice, which confirms the details of the transaction and secondly, that they can make use of these VAT invoices for tax claim purposes.
- ii. These regulations now require the non-tagged users, who enjoy the same tariff for road use as Tagged users, to be subjected to onerous conditions in that they must firstly have access to and / or make use of the internet, or secondly, travel to an e-Toll customer service center, in order to ascertain their e-toll movement accounts, amounts to be paid, or to verify their gantries traversed.
 - a. This assumes that the freeway user is: firstly, linked to the internet and secondly, that they live close to or have the time to get to an e-toll customer service center.

- b. These regulations assume that users reside in areas deemed to be close to the e-toll centers. What are the assumptions in this regard? Is it reasonable to expect that a user without internet access, must now travel from Volksrust, or Dundee, or Magaliesburg to visit a customer service center to establish what their e-toll account is? What about those staying on the outskirts of Gauteng? How far is too far, before these conditions be regarded as an infringement on the public's time and rights?
- c. Additionally, what happens when one is limited with access to the internet, be it through a sheer lack of communication capacity, or funds to or remain be linked to the internet, or if a citizen is not linked to the internet (through a lack of desire, knowledge or ability due to no hardware, software or connectivity).

6. TARIFFS AND DISCOUNTS

The slow and unreliable services that emanate from the South Africa Post Office, places the “post paid” (non-tagged) freeway user at a disadvantage in their ability to qualify for the time of day discounts, which lapses after 7 days of use. Non-tagged users are therefore placed in an inconvenient and unfair position.

7. CHANGES TO THE REGULATIONS HAS SET A PRECEDENT

The fact that so many conditions and regulations are now being altered - including the removal of the punitive and complicated tariff structures - indicates that the prior conditions and regulations were a problem in the first place. These were the same conditions that were complained about, on which the basis was claimed that the scheme was unfair, inefficient, too costly and unjust. These prior onerous conditions in turn caused the public to stand their ground and defy participation therein. Government's recent plans to amend the regulations, tariffs, structures etc – is a reaction to the public's stance and effectively, this justifies the public's position taken in the first place.

Accordingly, it could strongly be argued that Government should reverse in full, the entire e-toll bills applied to the motorists up until the amended regulations come into play, as Government's current suggested changes and actions are in effect, an admission that they were wrong to have these in place in the first place.

8. CLOSURE

Notwithstanding OUTA's notifications above which point to recommended changes to the proposed regulations, OUTA maintains that the citizens of South

Africa and in particular, the commuters within Gauteng believe (as we have pointed out above), that the e-Toll scheme is grossly inefficient and largely unworkable. This is particularly true when comparing the environment of administration, enforcement and regulatory challenges, of South Africa, to that of other regions where such schemes work very well.

As pointed out in point (2) above, the scheme is *de facto* unlawful and the public have every reason to be vehemently opposed to a scheme which has been introduced in a manner that has run roughshod over their constitutional rights.

On these grounds, we believe the e-Tolls scheme should be scrapped in its entirety and that the Government and its Agency should re-engage with society properly, to resolve this impasse.

The public and other organisations are urged to make their own submissions to in response to the Gazette 39130, prior to the closure date for such submissions on 27 September 2015.

Yours sincerely

Wayne Duvenage
Chairperson – OUTA.