

14th September 2015

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*Your Ref: PUBLICATION OF THE NATIONAL ROAD TRAFFIC REGULATIONS
FOR COMMENTS*
Our Ref: OUTA Submission Gazette 39130 - 14 September 2015

Dear Sirs,

**PUBLICATION OF THE SOUTH AFRICAN NATIONAL ROADS AGENCY
LIMITED AND NATIONAL ROADS ACT, 1998 (ACT NO. 7 OF 1998) DRAFT
REGULATIONS AND NOTICES FOR COMMENTS; RE GAZETTE# 39130**

We refer to the proposed amendments to the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 Of 1998) and regulations tabled in Notice No. 760 of 2015 in *government gazette* No. 39130 of Thursday 27 August, 2015.

The Opposition to Urban Tolling Alliance (OUTA) / QuadPara Association of South Africa (QASA) hereby submits the following comments and inputs on the proposed amendments contained in the aforementioned notice for your consideration.

Since this is a multipart gazette, our comments will be split into different section headings with the appropriate paragraph numbering applicable to that part and following the same ordering structure contained in the gazette. Where necessary, we shall refer to the page numbers imprinted atop various pages in this gazette.

We respectfully request that the Department of Transport and/or the South African National Roads Agency (SOC) Limited acknowledged receipt hereof by return email.

A. REGULATIONS ON EXEMPTIONS FROM AND REBATES ON THE PAYMENT OF TOLLS (PAGES 5 THROUGH 25).

1. Definitions

1.1. The preamble to the definitions says *“In these Regulations, any word or expression to which a meaning has been assigned in the Act, the National Land Transport Act or the e-Road Regulations shall have the same meaning and, unless the context indicates otherwise”*.

1.1.1. It is submitted that this preamble is deficient insofar as it does not include definitions contained in the National Road Traffic Act, No 93 of 1996 and the National Road Traffic Regulations, 2000, both of which have relevance to words and expressions used in these regulations.

1.2. It is noted that the term "exempt emergency vehicle" has been replaced with "exempt emergency **medical response** vehicle", which now means: *“an emergency medical response vehicle used only for medical response purposes that is registered as such in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996) and that has been exempted by the Agency, in terms of section 27(1)(c) of the Act from the liability to pay e-toll on an e-road or any portion of an e-road;”*

1.2.1. This definition, by its very specific reference to emergency **medical response** vehicles, specifically **excludes**:

1.2.1.1. Vehicles operated by traffic authorities and the South African Police Service;

1.2.1.2. Fire-fighting vehicles; and

1.2.1.3. Any vehicle driven by a person responding to a disaster as contemplated in the Disaster Management Act, 2002.

1.2.2. The existence of the further definition *“exempt rescue vehicle”* means a rescue vehicle used only for **medical response purposes** that is registered as such in terms of the National Road Traffic Act,

1996 (Act No. 93 of 1996) and that has been exempted by the Agency, in terms of section 27(1)(c) of the Act from the liability to pay e-toll on an e-road or any portion of an e-road; further exacerbates the situation since it too only refers to vehicles used for **medical response** purposes only.

1.2.2.1. It therefore follows that if a fire-fighting vehicle is responding to a fire at a business or residential premises, a grass fire, etc. will be liable to pay e-tolls in order to do so.

1.3. These matters are raised since the schedule of exemption from the payment of toll on pages 57 through 60 of Notice No. 760 of 2015 in *government gazette* No. 39130 refers to vehicles other than medical response vehicles which qualify for exemption under certain circumstances but do not include vehicles operated by the South African Police Service.

1.4. The terms “NGO” and “NPO” are undefined, despite the fact that vehicles owned and operated by such organisations are to be exempted from payment of e-tolls and a definition does exist referring to an “exempt NGO vehicle”.

1.4.1. While regulation 5 further defines the requirements for such entities to be recognised as qualifying for exemption, a proper definition should spell out the exact nature of the entities, so as to avoid confusion and vagueness.

2. Information required and procedures applicable in respect of exempting public transport vehicles.

2.1. It is noted that a certified copy of the current vehicle licence certificate for each motor vehicle up to six motor vehicles is required, but when more than six motor vehicles are to be registered, this requirement falls away and all that is required is a schedule (spreadsheet) detailing the said vehicles’ vehicle identification numbers and date of issue of the certificates.

2.1.1. The question must therefore be asked why it is that certified copies of the current vehicle licence certificate would not be required if the operator is registering more than six vehicles with the Agency and/or why it would be required for six or less vehicles since it does not appear to be an absolute requirement.

3. Information required and procedures applicable in respect of exempted rescue vehicles and exempted emergency medical response vehicles.

- 3.1. The problems associated with regulation 3 have already been contemplated *supra* and are further contemplated in our comments under the notice referring to exemptions.
- 3.2. It is specifically noticed that medical doctors, many of whom are employed by State or private hospitals in a capacity of trauma surgeons, etc. and who do not register their vehicles as emergency response vehicles due to special provisions contained in the National Road Traffic Regulations applicable to medical doctors are not contemplated for exemption from e-tolls.
- 3.3. Subregulation (3) is vague and ambiguous, given the fact that no purposes for which the exemption is granted are defined anywhere in these regulations. This leaves the interpretation of whether the vehicle concerned is/was operated “*for purposes or in circumstances other than for which the exemption was granted*” to persons unknown, in the employ of or contracting to SANRAL.

4. Information required and procedures applicable in respect of exempting adapted vehicles.

- 4.1. Subregulation (1)(a) holds that the owner of an adapted vehicle must provide the agency with “*proof that the vehicle will be used by a person or persons who qualify as persons with disabilities, being persons who have long term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder*

their full and effective participation in society on an equal basis with others.”

- 4.1.1. Firstly, in what manner or fashion must proof be provided that an adapted vehicle will be used by a person with disabilities? Will a letter from themselves to say that they intend to use the vehicle suffice?
- 4.1.2. Secondly, what about vehicles that are not necessarily adapted, but are merely standard vehicles being used by the person with disabilities?
- 4.2. Subregulation (1)(b) refers to *“a certificate from a medical practitioner registered with the Health Professions Council of South Africa, including an impairment questionnaire, certifying that the person qualifies under paragraph (a)”* however, nowhere in these regulations or its annexures are such documents prescribed.
 - 4.2.1. If the NaTIS form “MC – MC(7)(2005/11)” is intended to be used for this purpose, then the regulations should state as much although we submit that this document is not fit for the purpose of these regulations.
- 4.3. The provision contained in regulation 4(2) which states that *“A person who registers a vehicle under sub-regulation (1) must submit the adapted vehicle to the Agency or its agent for inspection at a time and place to be determined by the Agency and communicated to that person”* is vague and ambiguous. Furthermore, what about those persons living in rural areas and in other provinces and who do not frequently visit Gauteng, yet will exceed the free movement limit of 30 gantries per annum and who do not wish to obtain a day-pass?
 - 4.3.1. No prescribed vehicle certification document for adapted motor vehicles, or standard vehicles used by people with disabilities, exists anywhere in these regulations or any other legislation.

- 4.3.2. Furthermore, there is no reference in this regulation as to whether a fee will or will not be levied against the owner of such vehicle for such inspection to take place.
- 4.3.3. It is also our submission that there is no clarity of where these inspections processes will take place in each town and city throughout the nation.
- 4.4. Subregulation (3)(a) states that *“a person who registers a vehicle as an exempt adapted vehicle must also provide the Agency with the information contemplated in the attached Annexure A in addition to the documents contemplated in sub-regulation (2) in respect of each vehicle, by completing such Annexure and submitting the completed Annexure to the Agency, together with the vehicle identification number and the date of issue of the current licence certificate for each vehicle”*.
- 4.4.1. No specific documentation whatsoever is contemplated in **subregulation (2)** nor is it contemplated anywhere else in these regulations or its annexures. It will therefore be **impossible** for the owner of an adapted or standard vehicle being used by a disabled person, to provide any such undefined “documents” (plural) as are vaguely alluded to in subregulation (3)(a).

5. Information required and procedures applicable in respect of exempt NGO vehicles.

- 5.1. It is submitted that the title of regulation 5 is deficient insofar as it refers only to “NGO vehicles” whilst the contents of this regulation refer to “NGO **and NPO** vehicles”.
- 5.2. Additionally, Part B of the form contemplated in “Schedule A” only makes reference to NGOs and makes no reference to NPOs. It therefore stands to reason that a NPO **has no way** to make application for exemption from liability to pay e-tolls unless it is to be

assumed that a NGO and a NPO are classified similarly in these regulations, for which clarity is required.

- 5.3. Subregulation (2)(a) states that *“A person who registers a vehicle as an exempt NGO vehicle must also provide the Agency with the information contemplated in the attached Annexure A in addition to the documents contemplated in sub-regulation (2) in respect of each vehicle, by completing such Annexure and submitting this to the Agency, together with the vehicle identification number and the date of issue of the current licence certificate for each vehicle”*. Subregulation 2 (this regulation) does not contemplate any documentation other than the form in “Schedule A” and that form does not make any reference to any other documentation.

6. Information required and procedures applicable in respect of rebate for persons conveying persons with disabilities.

- 6.1. Subregulation (1) states that *“The owner of the vehicle must submit a monthly claim form for the rebate in the format shown in Annexure B, and if approved the rebate will appear as a discount on the user's next monthly statement.”*

6.1.1. This effectively means that such a person is expected to spend a significant amount of time, money and effort simply trying to comply with this and the further requirements specified in subregulation (2).

6.1.2. Additionally, on what basis might the claim be refuted and how is one to provide proof that a person with disabilities was even transported?

6.1.3. It stands to reason that this is a grossly onerous procedure, which will result in the loss of relief for the claimant, which in turn will prejudice the disabled persons from being offered the goodwill transport services.

- 6.2. Subregulation (2) proceeds to set out the various requirements applicable to claiming such rebates and requires the following:

6.2.1. *“(a) a statement confirming particulars of trips where the disabled person or persons were conveyed;”*

6.2.1.1. By direct implication, this means that such a person will be required to maintain a separate log book detailing each and every trip they make in the conveyance of a person with a disability. This places an onerous administrative burden on such a person and makes it not worthy of the claim. This procedure in effect, acts as a deterrent and the disabled person will not enjoy the proceeds of the regulations for which it is intended.

6.2.1.2. Furthermore, on what grounds will this claim be rejected in that how does the agency disprove the use of the vehicle for use in conveying a disabled person.

6.2.2. *“(b) a statement that the vehicle was used to convey persons who qualify as persons with disabilities, being persons who have long term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others, or a medical condition such as autism, mental health, epilepsy loss of hearing, **and which disability is permanent** and impairs functional mobility;”*

6.2.2.1. Also by direct implication, this means that should a person who suffers an injury or contracts a condition which specifically excludes them from driving or using public transport and which injury or condition does not constitute a permanent disability will be discriminated against and expected to pay e-tolls despite the fact that they are temporarily disabled for whatever length of time at the time.

6.2.3. *“(c) a statement that public transport appropriate for use by the person or persons with the disability is not available;”*

6.2.3.1. How on earth is the disabled applicant supposed to go about this process? This paragraph implies that the disabled person

must first attempt to make use of public transport that is unsuitable for their disability first and then provide proof to the agency of this fact, before exemption is granted. It is common knowledge that only a small proportion of so called “public transport” vehicles cater for persons with disabilities.

6.2.3.2. Even if one completely removes minibus taxis, none of which cater for persons with disabilities from the equation, few other forms of public transport cater for persons with disabilities in the Gauteng area.

6.2.3.3. None of them, except metered taxis cater for the conveyance of persons with disabilities directly from their homes, to the exact destination they need to get to and back again.

6.2.3.4. It is therefore unacceptable that anyone should be required to conform to such a statement.

6.2.4. The term “statement” utilised in all three of the foregoing subregulations is vague insofar as it does not make reference to whether such a document would need to be attested before a commissioner of oaths.

6.2.4.1. We do however note that the form contemplated in “Annexure B” makes provision for all of the “statements” referred to on the form itself and it would therefore appear that these “statements” are not intended to be separate documents.

6.2.5. *“(d) particulars of the vehicle or vehicles as indicated on the form.”*

6.2.5.1. Obviously, we have no objections to this requirement if a rebate system is to be employed.

6.3. Subregulation (3) then goes on to state that *“The form mentioned in sub -regulation (1) must be accompanied by a certificate from a medical practitioner registered with the Health Professions Council of*

South Africa, including an impairment questionnaire, certifying that the person or persons qualify under paragraph (b) of sub-regulation (2)."

6.3.1. This regulation is vague since it makes no prescribed "certificate", nor any "impairment questionnaire" is prescribed anywhere in these regulations.

6.3.2. If the NaTIS form "MC – MC(7)(2005/11)" is intended to be used for this purpose, then the regulations should state as much although we submit that this document is not fit for the purpose of these regulations.

7. Procedures applicable to all exemptions.

7.1. This regulation number is a duplicate regulation number of the forgoing regulation in this *gazette* (*government gazette* No. 39130). It is numbered as "6" whereas it should be numbered as regulation "7".

7.2. Subregulation (1)(b) states that "*a document identifying the person who registered with the Agency will be issued by the Agency, if so decided by the Agency, **which document is neither renewable nor transferable** and which must be kept in the vehicle or on the person of the user when using an e-road for which exemption or rebate has been granted.*"

7.2.1. Subregulation (4) then goes on to place a duty upon this person to "*apply to the Agency for renewal of the registration not less than 30 days prior to the registration having lapsed*".

7.2.2. Subregulation (1) therefore acts as a **direct contradiction** of subregulation (4) and vice versa, insofar as subregulation (1)(b) states that this "**document is neither renewable nor transferable**" while subregulation (4) requires the person to apply to renew it not less than 30 days prior to it lapsing.

7.3. Subregulation (2)(b) states that "*the e-tag issued by the Agency for each such vehicle must, in order for the vehicle to be exempt from the payment of toll, be affixed to the relevant vehicle or vehicles of the*

user, as applicable, when using an e-road. This requirement shall however not apply to exempt public transport vehicles, prior to such vehicles having been registered with the Agency.”

- 7.3.1. We have to question why the specific exclusion of public transport vehicles has been made in this subregulation and further ask if this means that vehicles purporting to be public transport vehicles will be regarded as exempt, regardless of whether they are registered or not as this appears to imply?
- 7.3.2. If this is not the case, then what would the purpose be of including the sentence “*This requirement shall however not apply to exempt public transport vehicles, prior to such vehicles having been registered with the Agency*”?
- 7.3.3. Are we to assume in this regulation that Minibus taxis fall into the category of public transport? And if so, on what grounds?
- 7.3.4. We propose that it is extremely irregular and negligent for the Agency to allow some vehicles to be provided with exemption, without the use of e-tags, whilst other categories of users who qualify for exemptions must be linked to the use of an e-tag. On what basis should this discriminatory process apply?
- 7.3.5. Furthermore, we maintain that significant abuse through multiple vehicle use of the same exempt vehicle license plate (known as number plate cloning) will take place, as a result of thousands of vehicles being provided exemption, purely on the basis of their vehicle license plates.
- 7.3.6. On the basis of the above two reasons, we maintain that the regulations need to be consistently applied in that all vehicles that are provided with exempt status, must be linked via the use of a valid and registered e-tag for exemption.

7.4. Subregulation (3)(b) states that *“The person who registers the vehicle with the Agency and for which exemption has been granted by the Agency must notify the Agency within 24 hours after he, she or it becomes aware of the theft of the motor vehicle”*.

7.4.1. Why would such a person have to make such a notification to the Agency, given the fact that the Agency is a State Owned Corporation which has unfettered access to the NaTIS registry and should have built in vehicle flagging capabilities to its systems to assist the South African Police Service which places an administrative mark on the NaTIS system identifying such a vehicle as stolen.

7.4.2. Is it to be assumed that all exempt registered vehicles throughout the country undergo such treatment?

7.4.3. On what form or documentation is this notification to be applied?

7.5. Subregulation (3)(c) states that *“The person who registers the vehicle with the Agency and for which exemption has been granted by the Agency must furnish information regarding the motor vehicle which is or may have been at any time in his, her or its possession to any traffic officer or national transport inspector, if requested to do so”*.

7.5.1. We have to ask what the purpose of this subregulation is given the fact that any person who is operating any vehicle on any public road is already compelled by the National Road Traffic Act, No 93 of 1996 to furnish such information to a traffic officer.

7.5.2. We also have to ask what a *“national transport inspector”* is, since no such status exists in these regulations or elsewhere in any other legislation in South Africa.

7.5.3. And how does one go about this request, if the person or vehicle is located in another remote part of the country, where such services or inspection cannot be rendered.

7.6. Subregulation 3(d) then goes on to say *“The person who registers the vehicle with the Agency and for which exemption has been granted by the Agency must notify the Agency of any declaration that the motor vehicle has been declared unfit for use within 24 hours after the motor vehicle has been declared unfit”*.

7.6.1. Once again, we have to ask why would such a person have to make such a notification to the Agency, given the fact that the Agency is a State Owned Corporation which has unfettered access to the NaTIS registry and should have inbuilt vehicle flagging capabilities in its systems to identify any motor vehicle which has been declared unfit for use since this is entered on the NaTIS registry by any authority which declares any such vehicle as unfit for use.

7.6.2. By introducing regulations of this nature, merely increases the burden of administration in a nation which is overburdened with such rules and regulations. There should be one registry for the notification of stolen or unfit vehicles by the authorities and all state entities that wish to make use of such information, should do so by extracting this information from the central state database, which in this case is the NaTIS system.

7.6.3. Furthermore, by requesting such actions to be taken, does one assume that SANRAL will manage and monitor a parallel vehicle condition, stolen status register to that of NaTIS? Which system will be deemed to be correct, if they differ? It will also be assumed that all vehicles around the country and in remote areas, who are granted exemption status, must register this condition or stolen status with the Agency, even if their use of the e-roads is minimal or non-existent over time.

7.7. Subregulation (9)(b) states that *“Exemption from the payment of toll will lapse where the vehicle which is exempt from the payment of toll enters an e-road without the e-tag properly affixed to the vehicle: Provided that this requirement shall not apply to exempt public*

transport vehicles prior to such vehicles having been registered with the Agency”.

- 7.7.1. As in 7,3 above, we require clarity on what constitutes and classifies a vehicle to be that of “public transport”
- 7.7.2. Why are the authorities not insisting that an e-tag be utilised and linked to to the system for all approved exempted vehicles, including public transport vehicles?
- 7.8. Subregulation (10) states that *“Where a person is required by any provision contained in these regulations to give notice to the Agency of any occurrence or for purposes of complying with any provision of these regulations, then such notice must be given by one of the methods contemplated in regulation 6(10) of the e-Road Regulations”.*
- 7.8.1. Regulation 6(10) of the proposed e-Road Regulations as detailed in this *government gazette* refers to how *“The Agency must notify the user of an outstanding toll amount as contemplated in sub-regulations (3) and (5)”* thereof.
- 7.8.2. Clearly, this clause makes no sense.
- 7.9. Whilst we are aware of the fact that the National Road Traffic Act, No 93 of 1996 makes no provision for a specific registration category for a vehicle which has been adapted for the use of persons with disabilities, such vehicles are rarely, if ever reverted to their original state by such a person unless the vehicle is disposed of by that disabled person to an able bodied person, as opposed to another physically disabled person.
- 7.9.1. The fact that an exemption will only be valid for a period of three years from the date of issue, suggests that a person who drives an adapted vehicle will have to go through the entire onerous conditions of re-registering their vehicle for exemption every three years.

7.9.2. We submit that a person who drives a vehicle which has been adapted for the use of persons with disabilities should be issued with an exemption for an indefinite period and only if that vehicle is sold to another person should the new owner be subjected to the re-registration process.

8. Requirements for owner of vehicle for which a rebate is claimed.

8.1. Due to the error with the previous regulation, this regulation is similarly incorrectly numbered. It is numbered as “7” whereas it should be regulation “8”.

8.2. The form contained in “Annexure B”, which is the form to be used by people claiming a rebate for transporting persons who have a disability has under section 3 therein a peculiar provision asking for “details of adaption”.

8.2.1. If this form is to be used by a person other than a disabled person driving an adapted motor vehicle, what is the purpose of this question since an able bodied person will almost definitely not be driving an adapted vehicle?

8.2.2. The form then goes on, under section 5 thereof to provide a mere 3 lines for the person who completes it to provide details of trips conveying disabled persons, and makes no provision for more than a handful of trips. It does not indicate “attach a schedule of such trips if there is insufficient space”.

9. General comments with respect to exemptions and rebates.

9.1. At the outset, we submit that these regulations and their associated exemptions and rebates fall dismally short of properly addressing the specific needs of persons with disabilities, which persons make up a significant proportion of the total population.

9.1.1. We further submit that the entire rebate system contemplated in regulation 6 places an onerous administrative burden upon any person

who wishes to render mobility assistance to a person with any disability and further fails to address the needs of disabled persons.

9.1.2. While motor vehicles which have been specifically adapted for the use of disabled persons most certainly do exist, such adaptations are far from cheap and only a small proportion of disabled persons are privileged enough to be able to afford them. It therefore stands to reason that only a very small proportion of disabled persons will be able to take advantage of this exemption.

9.1.3. Notice must also be made of the fact that many permanently physically disabled persons are able to drive a vehicle which has minor and often zero adaptations thereto. Are standard vehicles owned by disabled persons also exempt?

9.2. A far better and simpler way for all concerned to address this issue would be for the Agency to cater for all disabled persons to acquire their own e-tag, to be used in their personal capacities when travelling with an able bodied person and for that e-tag to identify the transactions incurred as being exempt from e-toll charges.

9.2.1. This would obviate the necessity to place an administrative burden on both, the person who conveys a disabled person and the Agency itself since neither would be required to submit and process claims for rebates. It would furthermore be administratively efficient and reduce, or indeed eradicate the possibility of fraud being committed.

9.2.2. The system could easily be programmed to cater for e-tagged disabled people, in that in the event that two e-tags are in the same vehicle, the registered tag belonging to the physically disabled person would override the cars normal (non-exempt) tag and that transaction would be charged at "Zero" rate for that movement.

9.2.3. It is further noted that in order to qualify for this rebate, the owner of the vehicle in question **must** have an e-tag **and** be operating a prepaid account with the Agency. This appears to be yet another attempt to

force the registration of e-tag accounts by attrition since a person who does not have a registered prepaid e-tag user account with SANRAL will be specifically excluded from claiming such rebates.

- 9.2.4. In effect, this regulation places persons who transport disabled people at a disadvantage and subjected to unfair and unnecessary conditions.
- 9.2.5. In order to operate a prepaid e-tag *account* with SANRAL, the user thereof is compelled to accept and sign the August 2012 terms and conditions (Doc number- 382-QAS-04-TEM-900422 Revision-02.00) which have been acknowledged as not being compliant with the Consumer Protection Act. No amendments to these terms and conditions have been proposed or published since their inception.
- 9.3. It is noted that despite the vociferous claims of government and SANRAL acting in the interests of “the poor” by implementing e-tolls, no provision whatsoever has been made for pensioners, unemployed persons and other low income individuals insofar as exemption and/or rebates are concerned.
- 9.3.1. There still exists no objective means test for the affordability of e-tolls to persons of low or no income and the SANRAL Act’s specific exclusion from the provisions of the National Credit Act, No 34 of 2005 further exacerbates this situation for persons in financial distress.

B. E-ROAD REGULATIONS (PAGES 26 THROUGH 40).

1. Definitions

- 1.1. It is specifically noted that ***“user”*** means a person driving or using a motor vehicle on a toll road and ***“used”*** or ***“driven”*** or any like word has a corresponding meaning as this has specific relevance to other points raised in this document.

- 1.1.1. Due to this new definition existing, it stands to reason that a natural person should be able to register with the Agency and be assigned an e-tag for their exclusive use in any motor vehicle they operate or, in the case of disabled persons, travel in.
- 1.1.2. This has particular relevance to the forgoing inputs we have made on the proposed rebate system which we contend is administratively burdensome on all concerned.
- 1.1.3. The scheme is in effect an “Owner-Pays” one, in that the owner must register the vehicle and ensure payment is up to date in the system and not the “User”. However, the Owner is in many instances not the User and become prejudiced with the onerous conditions linked to the scheme and unfairly remains liable for debt not necessarily incurrent by him / her. On these grounds, the scheme obtains another mark against it for being administrative burdensome and added with other elements thereof, it becomes impractical and unworkable.

2. System of registration

- 2.1. Regulation 1 states that *“Any person who wishes to be registered for purposes of their use of an e-road, as*
- (a) a day -pass user; or*
- (b) a user with an e-toll account,*
- may do so in terms of these regulations.”*

- 2.1.1. Can one read this as indicating that a natural person (being the user) may register themselves as a user without specifically being associated with or owning a particular motor vehicle.

3. Registration of a day-pass user

- 3.1. Regulation 4(5) states that *“A day-pass must be used on an e-road, for which the vehicle was registered for the day-pass within 30 days from the date of purchase, failing which the day pass shall expire”.*

3.1.1. It has to be asked why it is that a day-pass would have to be used within 30 days of purchase, given the fact that purchasing one constitutes an up-front payment and the tariffs and associated day-pass prices should be fixed for a period much longer than one month.

4. Use of an e-road

4.1. Regulation 5(8)(c) states that “All users must ensure that his, her or its current address is on record with the appropriate registering authority as required by the National Road Traffic Regulations, 2000 made under the National Road Traffic Act and notify the Agency of any change of such address within 14 days from the date that the change took place.”

4.1.1. Whilst the first part of this regulation is reasonable, the second part which reads “*and notify the Agency of any change of such address within 14 days from the date that the change took place*” is unreasonable and unlikely to be complied with.

4.1.1.1. Regulation 32A of the National Road Traffic Regulations, 2000 prescribes that a person whose address particulars change at any time must update them using the form NCP within **21 days** of the change of their particulars. There should not be inconsistency between the National Road Traffic Regulations, 2000 and the e-road regulations.

4.1.1.2. The Agency has, by virtue of the fact that it is a State Owned Enterprise, full and unfettered access to the NaTIS registry and if it is using its own database to determine the address particulars of a user, it should be comparing this to records contained in the NaTIS registry.

5. Terms and conditions for payment of toll

5.1. Regulation 6(5) states that *“If a user who does not have an e-toll account and is not a day-pass user does not pay the toll contemplated in terms of sub-regulation (4) within the time and at the place and subject to the conditions that the Agency may make known and determine, the Agency must after a period of seven days but not later than 60 days after such user has used an e-road and unless the user has subsequently registered with the Agency, notify the user, in the manner contemplated in sub-regulation (10), of the amount of the toll payable and such toll must be paid by the said user on or before the date for payment of which the user is notified in the notification by the Agency”*.

5.1.1. It is important to point out that the user cannot register a vehicle for an e-toll account and that this responsibility lies with the owner of the vehicle, i.e being the person to whom the Agency turns to for unpaid accounts. This in turn makes this regulation which refers to the user as invalid, as the Agency is unable to inform the user, of the incursion of toll at any time prior to the “grace period” expiring so that such user may take advantage of the “time-of-day discount”, etc. This regulation assumes the user is the owner.

5.1.2. Regulation 6(5) then goes further to make allowance for this notification to be sent at any time between seven and sixty days, meaning that the effective term for payment is extended to ninety days from the date and time where the gantry was passed under, i.e. being 30 days after notification, which may be within 60 days of the occurrence.

5.1.3. Whilst persons who are notified towards the latter part of this period would have no cause to complain about being given a longer term to settle their bill, a person who is notified on the

eighth day would effectively have 52 less days to pay than a person who is notified at the 60 day threshold.

5.1.4. This effectively means that people will be extended unequal terms to pay, based on little more than the efficiency of the postal service in their area.

5.1.5. In order for the constitutional requirement of equality and equal benefit before the law as is enshrined in Section 9(1) of the Constitution of the Republic of South Africa, 1996 to be met, each and every notification for unregistered users must be made on the first day after the expiry of the seven day “grace period” – i.e. on the eighth day. If this does not happen, then different users will be treated differently by the Agency.

5.2. Regulation 6(6) states that *“The Agency may follow criminal and civil process to collect all outstanding tolls if, despite notification, the user continues to fail to pay such outstanding tolls within the period specified in the notification by the Agency”*.

5.2.1. It is interesting to note that, despite claims having been made by the Minister of Transport to the effect that the AARTO Act, No 46 of 1998 will be used to prosecute e-toll offenders, the Department of Transport and/or SANRAL remains fixated in their attempt to apply criminal sanction to the users of the freeways in South Africa.

5.2.2. It is again submitted that this is a direct contravention of the AARTO Act and all that it is intended to achieve.

5.2.3. It is further noted that if the Government intends to request its road users to act within the law, then it too must act within the laws of the country. Insofar as the following clauses relating to the Basic values and principles governing public administration, in Section 195 of Chapter 10 of the constitution, it is claimed by many road users, not least of all

OUTA and its members, that SANRAL as an organ of the state has not acted within these 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;

5.2.3.1.1. 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.

5.3. Regulation 6(9) states that *“Any user of an e-road who, through such use, becomes liable to pay toll may request an invoice from the Agency at any e-toll customer centre alternatively may obtain an invoice on the website, failing which the Agency shall not be obliged to provide invoices to any user, save as provided for elsewhere in these regulations”*.

5.3.1. It is noted that this provision, coupled with the forgoing provisions requiring the Agency to notify the person concerned seeks to remove the previous obligation for SANRAL to issue and post invoices to users.

5.3.2. Furthermore, since a user has 30 days **from the date of invoice** to pay the 50% discounted tariff, in the absence of an invoice, no start or end date will ever be possible.

- 5.3.3. The requirement that such user need obtain an invoice by visiting an e-toll customer centre or utilising the e-toll website further fails to address the needs of persons who do not reside within a close proximity of these customer centres and / or who may not have access to the internet, temporarily or permanently.
- 5.3.4. 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 Hammanskraal, or Magaliesburg, to visit a customer service centre 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 become regarded as an infringement on the public's rights?
- 5.3.5. 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).
- 5.3.6. It must also be noted that, in its attempt to secure its website from hackers, SANRAL has implemented measures which deny access to all but what it regards as local South African IP addresses. This measure has also had the effect of denying access to its website from IP addresses which are in fact local IP address ranges but are not contained in its access lists. An example of this is the Telkom Mobile IP address range 159.xxx.xxx.xxx.

C. GAUTENG FREEWAY IMPROVEMENT PROJECT, TOLL ROADS: PUBLICATION OF TOLLS (PAGES 41 TO 50)

1. Tariffs for users

- 1.1. Regulation 3.2.1 states that *“a pre-paid user pays the user tariff for the particular class of motor vehicle; and”*
- 1.2. Regulation 3.2.2 states that *“a post-paid user, subject to the discount which may be applicable in terms of paragraph 5.10 below, pays double the user tariff for the particular class of motor vehicle”*.
 - 1.2.1. In light of the inputs provided in paragraphs 1 *supra*, we submit that these provisions are confusing and should be amended.
- 1.3. Regulation 3.3 states that *“The user tariff includes value -added tax (VAT) as provided for in the Value- Added Tax Act, 1991 (Act No. 89 of 1991)”*.
 - 1.3.1. If SANRAL is not required to generate invoices, how exactly are their VAT inputs calculated?

2. Discounts applying to tariffs

- 2.1. Regulation 5.6 states that *“The time-of-day discount will not apply to a user who pays for an e-toll transaction after the expiry of the applicable grace period”*.
 - 2.1.1. Effectively, this means the time of day discount will apply to registered users for a period of 31 days, whilst unregistered users will be treated unfairly and not be entitled to these discount after a period of 7 days has elapsed, when it is in effect difficult for them to pay within 7-days, as they will not have received their invoices to know how much to pay within those seven days.

2.1.2. Regulation 5.6 should therefore be deleted since it serves no other purpose than to financially prejudice unregistered users.

2.2. Regulation 5.9.3 states that *“The following provisions are applicable to the frequent user discount in respect of a user of a specific motor vehicle where payment of e-toll transactions, incurred in a calendar month, is made to the Agency within 30 days of the date of an invoice issued by the Agency, the following is applicable...”*

2.2.1. It is here too where not obliging SANRAL to issue an invoice falls to pieces, given the fact that the “caps” contemplated in regulations 5.9.3.1 through 5.9.4.2 become impossible to apply in the absence of an invoice.

2.3. Regulation 5.10 then goes on to say that *“A post-paid user who pays toll, after an e-toll transaction but within 30 days of the date of the invoice issued by the Agency, will be granted a discount, at the time of payment, such that after such discount is applied the user will, in respect of each e-toll transaction where payment is made, pay the user tariff”*.

2.3.1. From what we can determine, this means that an unregistered user, will be charged the tariff reflected in table 1 if they pay within 30 days of the date of invoice, or double that tariff if they pay later than 30 days from the date of that invoice.

2.3.2. Once again, in the absence of an obligatory invoice such a post-paid user will never qualify to pay the tariff which has not been doubled.

2.3.3. Furthermore, if SARAL is entitled to provide invoices up to 60 days of the movement being registered (Regulation 6 of the Gazette), then the user should be give 30 days from receipt of invoice to qualify for these tariffs.

3. **Once-off discount for payments made in respect of toll incurred under prior toll tariff notice Regulation**

- 3.1. We take note of regulations 5.12 through 5.14 and that they will have a pre-defined validity period to be made known by the Minister at some stage.
- 3.2. What is not clear is whether the provisions of these regulations will be applicable from the date of promulgation of the e-road regulations.
- 3.3. It is further noted that these regulations do not make any reference to extended payment terms for persons who have built up huge *liabilities* under the “previous dispensation”, the absence of which will most certainly render a high proportion of people completely incapable of paying them.
- 3.4. The fact that so many conditions are now being altered, including the removal of the punitive and complicated tariff structures, now indicates that the prior conditions and regulations were a problem in the first place. These were the same conditions that were complained about, on the basis that the scheme was unfair, inefficient, too costly and unjust, which in turn caused the public to stand their ground and deny participation therein. Government’s recent amendment of the regulations, tariffs, structures etc - in reaction to the public’s stance - effectively justifies the public’s position taken in the first place. This 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.

4. **Infrequent user dispensation**

- 4.1. Regulation 5.16 states that “*The infrequent user dispensation applies separately to each motor vehicle used on the GFIP toll roads,*

irrespective of the user or ownership of the motor vehicle, but does not apply to day pass users.”

4.1.1. This is confusing, given that a day pass user purchases a day pass entitling them to pass under as many gantries as they wish during a 24 hour period.

4.1.2. Whilst a day pass is in use, will the count-up to 30 transactions be suspended and resume after the period of validity of the day pass expires? This is not contemplated under the “infrequent user dispensation”.

4.2. Regulation 5.17 states that *“All users, other than day pass users, of the GFIP toll roads will, in respect of each e-toll transaction in a year up to and including, the thirtieth e-toll transaction, be obliged to pay the toll levied by the Agency in respect of such e-toll transactions by no later than the expiry of the grace period applicable to the user following the thirty first e-toll transaction in that year. In such circumstances the user will pay the toll applicable in respect of the thirty first e-toll transaction together with the toll payable in respect of the previous 30 e-toll transactions”*.

4.2.1. This regulation is confusing and makes no sense whatsoever in the context of the “infrequent user dispensation”.

4.3. Similarly, regulation 5.18 which reads *“All discounts applicable in respect of the first 30 e-toll transactions shall continue to apply upon payment contemplated in 5.17, and apply to a particular motor vehicle and not an e-toll account”* makes no sense.

4.4. Regulations 5.17 and 5.18 therefore have no relevance and should be deleted.

4.5. Regulation 5.19 which reads *“If a user of a particular motor vehicle only incurs 30 or fewer e-toll transactions on the GFIP toll roads in a year, such user's obligation to pay toll in that year shall be nil”* does

make sense and fits in with what was announced by Deputy President Ramaphosa.

- 4.6. This regulation should possibly be followed by a regulation which states:

“Should an infrequent user exceed 30 transactions in any financial year, they will be liable to pay for all transactions incurred including the first 30 transactions, provided that the date of liability therefor shall be calculated from the 31st transaction onwards”.

D. DRAFT NOTICE PROVIDING REBATE GAUTENG FREEWAY IMPROVEMENT PROJECT, TOLL ROADS: REBATE ON THE PAYMENT OF TOLL (PAGES 51 THROUGH 54)

1. We have no comments to make on this notice which have not been dealt with in our comments on the exemptions and rebates regulations.

E. GAUTENG FREEWAY IMPROVEMENT PROJECT, TOLL ROADS: EXEMPTION FROM THE PAYMENT OF TOLL (PAGES 56 THROUGH 60)

1. The definition of persons with disabilities contained in regulation 3 is inappropriate insofar as the operation of adapted motor vehicles goes.
- 1.1. The definition in this gazette reads as follows *“Persons with disabilities means persons who have long term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others”.*
- 1.2. We again submit that adapted motor vehicles are so adapted for the use of persons with **physical disabilities** and cannot ever be adapted to cater for persons with mental, intellectual or sensory impairments.
- 1.3. Furthermore, people with disabilities also drive unadapted (normal) vehicles and these need to be catered for, not only adapted vehicles.

F. CONDITIONS FOR TOLL: GAUTENG FREEWAY IMPROVEMENT PROJECT USING ELECTRONIC TOLL COLLECTION (PAGES 61 THROUGH 67)

1. We note that the definition of a “pre-paid user” is defined as follows:
“pre-paid user means a user of the GFIP toll roads who, at the time of an e-toll transaction, has
 - (a) sufficient funds in his or her e-toll account to pay the toll that applies to the e-toll transaction;*
 - (b) linked his or her e-toll account to a payment method acceptable to the Agency; or*
 - (c) an agreement with the Agency to pay for e-toll transactions on a different basis from that contemplated in paragraphs (a) or (b); and”*
 - 1.1. The trailing “and” at the end of the definition appears to be out of place.
 - 1.2. This definition appears to have replaced the definition of the various registered users previously defined and now classifies all registered users as “pre-paid” users, regardless of whether they operate a true prepaid account or not.
 - 1.3. The term “prepaid”, in ordinary use, means “paid for in advance” and the contents of this definition directly contradicts this principle.
 - 1.4. It is therefore our submission that the term “*pre-paid user*” is incorrect and should be changed to “**registered user**” and the term “*post-paid user*” is similarly incorrect and should be changed to “**unregistered user**”.
2. Regulation 5 states that “*A user with an e -toll account must pay for e -toll transactions according to the Terms and Conditions, which Terms and Conditions are agreed to by the user. The Terms and Conditions for such users are available via the call centre, on the website, via e-mail and at e -toll customer service centres.*”

2.1. We again point out that the “*Terms and Conditions*” referred to herein and available at the SANRAL website and Customer Service Centres are currently dated 29 August 2012 (Doc number- 382-QAS-04-TEM-900422 Revision-02.00) and have been acknowledged by the National Consumer Commission as being noncompliant with the Consumer Protection Act, No 68 of 2008.

2.2. SANRAL and the National Consumer Commission have had more than three years to consult with one another to bring these terms and conditions in line with the Consumer Protection Act and yet SANRAL appears to have made no progress in this regard and the National Consumer Commission appears to be continuing to turn a blind eye to its noncompliance.

3. Regulation 7 states that “*A post-paid user with an e-toll account must pay for an e-toll transaction in accordance with the requirements of the terms and conditions under which that person is registered.*”

3.1. This appears to be a contradiction of the definition of a post-paid user since the definitions make it appear that a pre-paid user is a registered user and a post-paid user is an unregistered user.

We trust that the comments and inputs in this submission will be taken seriously.

Yours sincerely



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