

FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION

(Incorporating Fish Hoek, Clovelly and Sun Valley)

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SUBJECT: ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES
AMENDMENT BILL (B38B-2015)

DUE: 30 MARCH 2018

1. DISCUSSION

As a ratepayers association, we support the original objects in Section 2 encouraging compliance of the Administrative Adjudication of Road Traffic Offences (AARTO) Act #46 of 1998 and as amended. However, we have some concerns and feel that portions of this Bill are unconstitutional and merely rent seeking.

One of the main purposes of this Bill seems to be to take a previously criminal process into a civil administrative system with its own enforcement agency. By deleting Section 2 (e) and 3 (c) instead of warrants, it becomes an enforcement order; court / trial becomes Tribunal hearing; national contraventions registry becomes National Road Traffic Offences Register. However, contemplating this action invokes the unconstitutionality of this Bill. It is the United Nation's Article 11 *ei incumbit probatio qui dicit, non qui negat* Universal Declaration of Human Rights that everyone charged is **presumed to be innocent until proven guilty**. South Africa's Constitution Section 33 (1) "Everyone has the right to administrative action that is lawful, reasonable and procedurally fair." Section 34 "**Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court** or, where appropriate, another independent and impartial tribunal or forum. Section 35(3) "**Every accused person has a right to a fair trial**". This Bill in proposing to set fines without recourse takes away the above rights. In effect, it establishes the judge, jury and executioner. Note that we do not feel the Road Traffic Infringement Authority (RTIA) will be an impartial tribunal and it is certainly not independent.

Whereas motorists are currently permitted to elect to exercise their constitutional right to a fair trial if they believe that they are innocent. This Bill removes this "option" and replaces it with a Tribunal which may only be approached if one makes an unsuccessful written representation. Upon such an approach, which must be made within 30 days of the adverse outcome of a representation, the fee prescribed by the Minister of Transport must be paid to the Tribunal, for it to review the decision of a representations officer. SARS tried this, "Pay now, argue later" until there was such an outcry from the public that a tax ombudsman was established. If the courts are broken, rather fix them than continue with this Bill.

We object to the Bill's Section 3 amending the Act's Section 11 by-passing the Finance Minister in approving of remunerative packages, pensions of the Board and Appeals

Tribunal. This provides an open chequebook of jobs for pals without proper checks and balances and ensuring adherence to budgets. We are tired of reading about financial abuses.

We object to the elimination of the Sheriff in the Act's Section 12 that removes the surety of personal serving of warrants, which is a due and fair process.

We object strongly to the inclusion of the Amendment Bill's "motor vehicle licence disc" in the Bill's Section 13 (c) referring to the Act's Section 25 (3) (a) and (b). This renders the vehicle effectively un-roadworthy without vehicle inspection. In most households there is more than one driver of the same vehicle. It is highly presumptuous of the bill's writers to assume affluence affording one vehicle / one driver. Actually, the Act should be changed to allow more than one driver per motor vehicle licence disc for when there is a speeding offence committed, eNatis by default sends the fine to the listed owner. Then the listed owner has to inform the eNatis agency who the actual perpetrator was. How will car rental agencies handle this problem? Camera photos must clearly show the driver's face. Otherwise, drivers with high demerit points will be able to evade driver licence revoking by simply driving vehicles registered to juristic entities.

The Bill's 13 (e) referring to the Act's 25 (5) "in the prescribed manner" is too vague and ambiguous. One would prefer to know how to get one's licence returned or at least know the web-link if such a process was so dynamic as to not be able to be written down.

The insertion of an Appeals Tribunal Section 29A (5) (e) should be a lifetime ban instead of just 10 years in terms of these offenses (theft, fraud, forgery, perjury, Corrupt Act, FICA or dishonesty). Trust has been broken irredeemably.

As proposed in the Bill's Section 16 and Act's Section 30 (1) and (2) the Board must show proof that electronic transmissions successfully took place with acknowledged receipt. See Audi Centre Johannesburg vs Road Traffic Infringement Authority Supreme Court judgement. At present only 40% of South Africans have access to the Internet with fewer registering for email or messaging apps. New emails often end up in unattended junk mail.

Section 33 (1) of the Act should strike the words "and upon payment of the prescribed fee". This should be a free Internet / app service after proper identification of said person. Often an agency will issue a fine. A person so charged could then verify the fine is legitimately lodged by independently verifying on this website. There are too many cases of fraud and phishing to not provide a third-party verification method at no cost.

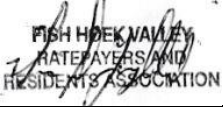
Traffic officers demanding bribes in lieu of issuing a traffic offence, should be registered on the Finance Minister's appropriate registry and the traffic officer charged in terms of Prevention and Combating of Corrupt Activities Act #2 of 2004.

2. RECOMMENDATIONS

It is recommended that, for the reasons set out in this report:

- The Appeal Tribunal be struck in its entirety;
- The remunerative packages should be approved by the Finance Minister;
- The Sheriff should continue serving warrants;

- The inclusion of “motor vehicle licence disk” should be removed from inclusion when removing a driving or operating motor vehicle licence;
- The phrase “in the prescribed manner” for requesting the return of one’s licence needs to be explicitly defined;
- The Appeals Tribunal’s members must not be nor found to have been corrupt;
- The Board’s electronic transmissions to alleged offenders must be able to prove being received;
- The requirement of payment for verifying traffic offense charges should be removed; and
- The corrupt traffic officers demanding and / or accepting bribes should be recorded by the Finance Minister and charged in a court of law.

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SIGNATURE	
DATE	15 February 2018

Sources:

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