

DISPUTES

# The long road to driving road legislation continues!

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## Compliance with road legislation

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One of the salient purposes of the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 ("**AARTO Act**") is to encourage compliance with road legislation and promote road traffic safety by creating a single national system of road traffic regulation. To add to this, President Cyril Ramaphosa himself once said "*The Act promotes responsible behaviour on our roads through the creation of a demerit system, which introduces meaningful consequence for reckless, negligent and inconsiderate conduct.*"<sup>[1]</sup>

However, a recent decision of the Pretoria High Court ("**High Court**") declared the AARTO Act and Administrative of Road Traffic Offences Amendment Act 4 of 2019, on which the planned demerit system for traffic offences is based, unconstitutional and invalid in its entirety.

The High Court found that the AARTO legislation unlawfully intrudes upon the exclusive executive and legislative competence of the local and provincial governments as recognised in the Constitution,<sup>[2]</sup> thereby preventing local and provincial governments from regulating their own affairs.<sup>[3]</sup>

In essence, the AARTO Act seeks to provide expeditious administrative adjudication for road offences by *inter alia* using the concept of demerit points for offenders. The demerit points kick-in and accumulate for certain road traffic related offences. The meaning and scope of the AARTO Act is important to understand as further [discussed](#).

The declaration of constitutional invalidity means that the implementation of the AARTO Act later this year cannot go ahead.<sup>[4]</sup> This differs from the viewpoint of the Road Traffic Infringement Agency ("**RTIA**"), the Agency established pursuant to the AARTO Act, which holds that the provisions of the AARTO Act are still enforceable until the Constitutional Court pronounces on the matter. To this end, the RTIA has joined the Department of Transport in the appeal of the decision of the High Court.<sup>[5]</sup> In the wake of the judgment of the High Court, Minister Fikile Mbalula said that –

*"AARTO is the final piece of the puzzle in implementing a new road traffic management system by the democratic state. The importance of AARTO...cannot be overemphasised. It is for these reasons that we have decided to appeal the ruling of the Pretoria High Court"*<sup>[6]</sup>

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[1] See D Adams and A Burger-Smidt "*The long road to driving legislation*" August 2020, Without Prejudice, available at <https://www.withoutprejudice.co.za/free/article/7049/view>, accessed on 23 January 2022.

[2] The Constitution of the Republic of South Africa, 1996 ("**Constitution**").

[3] See paragraph 45 of the judgment.

[4] See generally K Reader “AARTO ruling prevented ‘unlawful intrusion’ on executive and legislative competence” available at <https://www.news24.com/wheels/licences/aarto-ruling-prevented-unlawful-intrusion-on-executive-and-legislative-competence-20220118>, accessed on 23 January 2022.

[5] See “Transport Dept to Appeal Court Ruling that AARTO Act is Unconstitutional”, available at <https://ewn.co.za/2022/01/18/transport-department-to-appeal-court-ruling-that-aarto-act-is-unconstitutional>, accessed on 23 January 2022. Also see T Madiba “Aarto still enforced until court judgment – Roads Agency” available at <https://www.engineeringnews.co.za/article/aarto-still-enforced-until-court-judgment-road-agency-2022-01-19>, accessed on 23 January 2022.

[6] See “Govt to appeal high court ruling that AARTO Act is unconstitutional – Mbalula”, accessed on 24 January 2022, available at <https://www.polity.org.za/article/govt-to-appeal-high-court-ruling-that-aarto-act-is-unconstitutional-mbalula-2022-01-18>.



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