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ROAD TRAFFIC AND TRANSPORT LEGISLATION UPDATE

October 2019

LATEST AMENDMENTS AND POLICIES

- The NLTA Amendment Bill was accepted by the National Assembly in April 2018 and is before the National Assembly Portfolio Committee on Transport - *National Land Transport A/B [B7D-16 (s76)] – Transport*
- The AARTO Amendment Bill was accepted by Parliament in February 2019 – on President's desk for signature
- The National Transport Policy was published for comment in February 2018 – have not been published again
- The Economic Regulation of Transport Bill was republished for comment in October 2018 – no further published document – latest version of Bill in Parliamentary list - May 2019

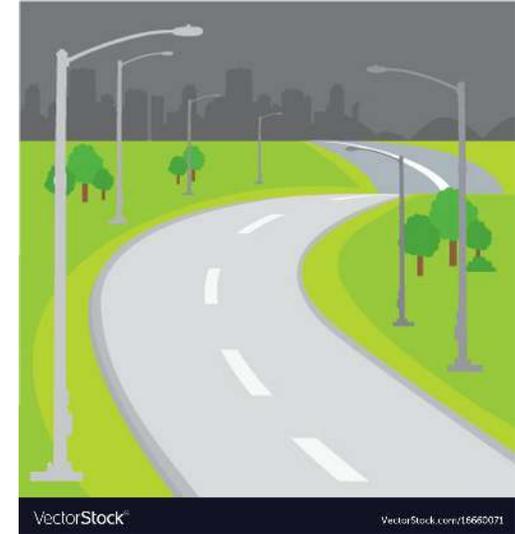
LATEST AMENDMENTS AND POLICIES

- The Draft Road Infrastructure Policy was published for comment in March 2018 – In Cabinet Approval process
- The 25th draft NRT Regulation Amendment was published for comment on 20 April 2018 - In comment process
- Notice No. 661 was published on 15 May 2019 for comment– It proposes a raise in the Abnormal Load Fees - Gazette 42459 – comments until 12 June 2019
- The Exemption Notice for the Container height was published in December 2018 – to be discussed today by DOT and Industry
- The Cross-border Road Transport Agency has published a notice on 25 March 2019. The notice amends the cross-border fees for permits.

COURT CASES ON NATIONAL ROAD TRAFFIC ACT IN 2019

- **Definition of *public road***
- *Mount Edgecombe case*

- **Passing a cyclist**
 - *Charelwa case*



COURT CASES: PUBLIC ROAD PROVISIONS

■ Definition of *public road*

“**public road**” means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes—

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

■ Section 69 Presumption

Where in any prosecution in terms of this Act it is alleged that an offence was committed on a public road, the road concerned shall, in the absence of evidence to the contrary, be presumed to be a public road.

■ Section 57

(3)(b) A local authority may in writing authorise any other person or body to display or cause to be displayed within its area of jurisdiction and in the prescribed manner any road traffic sign approved by it prior to the display of such sign.

MOUNT EDGECOMBE COUNTRY CLUB V SINGH AND OTHERS

- **THE SUPREME COURT OF APPEAL OF SOUTH AFRICA MOUNT EDGECOMBE COUNTRY CLUB ESTATE MANAGEMENT ASSOCIATION II (RF) NPC – CASE No.323/2018**
- **Summary: Whether roads within a private housing estate public roads as defined in the National Road Traffic Act 93 of 1996 - whether conduct rules ordaining a speed limit of 40 km/h within the estate unlawful.**
- **Description of area:**
 - **estate, which is situated in and around a golf course,**
 - **comprises some 890 freehold and sectional title residential units.**
 - **consists of extensive common property, including open areas, dams, ponds and rivulets, as also facilities for various sporting activities, such as squash, bowling, tennis and fishing.**
 - **serviced by a network of roads and pathways for the use of motorised vehicles, pedestrians and golf carts.**
 - **common facilities on the estate include a club house and a venue for conferences, corporate events and weddings.**
 - **home to several species of small animals, which are protected within the confines of the estate.**

MOUNT EDGECOMBE COUNTRY CLUB V SINGH AND OTHERS

- At inception of the estate, the roads within the estate were private roads.
- Is enclosed by a two metre high palisade fence, which is topped with electrified security wiring.
- All ingress and egress to the estate is strictly controlled. Gated access points are controlled by security guards.
- Visitors are required to provide the guards with an access code to gain entry to the estate - In respect of owners, biometric scanning is employed
- Only places which are commonly used by the public (or a section thereof) or to which the public (or a section thereof) have a right of access which fall within the definition. As far as "use" by the public is concerned, it is clearly used for driving a vehicle thereon, or thereover, that is intended.
- Furthermore in this context the word "commonly" (Afrikaans text: 'gewoonweg') should be construed to mean "as a usual circumstance; as a general thing; in ordinary cases; usually, ordinarily, generally"
- The general public does not have access to the roads within the estate. In this context the word 'public' does not include persons who are there with the permission of the owners of property within the estate.
- The public, so it has been held, must be the general public, not the special class of the public who have occasion for business or social purposes to go to the estate. The use of the roads by the public must be more than mere casual or isolated use.

MOUNT EDGECOMBE COUNTRY CLUB V SINGH AND OTHERS

- Applying the definition of 'public road', thus interpreted, to the present case, it seems to me that the roads within the estate are not public roads. The estate is a private township. In terms of the township approval: 'the owner shall construct all the roads in the township to the satisfaction of the local authority'
- When the respondents chose to purchase property within the estate and become members of the Association, they agreed to be bound by its rules.
- The relationship between the Association and the respondents is thus contractual in nature.
- The conduct rules, and the restrictions imposed by them, are private ones, entered into voluntarily when an owner elects to buy property within the estate. By agreement, the owners of property within the estate acknowledge that they and their invitees are only entitled to use the roads laid out within the estate subject to the conduct rules.
- Any third party invitee only gains access to the estate with the prior consent of the owner concerned. Upon gaining access to the estate, responsibility for any breach of the conduct rules by the invitee is that of the owner.

MOUNT EDGECOMBE COUNTRY CLUB V SINGH AND OTHERS

- Any breach of the conduct rules is therefore a matter strictly between the owner concerned and the Association. No sanction is imposed on the third party. The third party's adherence to the rules is thus a matter for the owner who invited him or her onto the estate.
- It is the owner who has to ensure that the third-party complies with the conduct rules or bear the consequence of any sanction imposed in consequence of such non-compliance. There is nothing in the rules which provides for any consequence for a third party who fails to comply therewith.
- The control of the speed limit within the estate therefore falls squarely within the provisions of the contract concluded between the Association and the owners of the properties within the estate.
- The rules are obviously enforceable only as between the contracting parties, and not against the public at large.
- It follows that the Association is not endeavouring to impose the provisions of the Act upon third parties. Neither do the rules purport to exonerate the parties from, or exclude the operation of, the Act
- Those principles apply equally in respect of the regulation of the roads within the estate.
- Contractually binding regulations are enforceable by the parties to the contract, and against them only
- Ruling: Estate roads are not public roads

MOUNT EDGECOMBE CASE – EFFECT OF RULING

- All offences where ***operate on a public road*** is an element of the offence is not an offence if committed on estate roads
- Estates will have to have own rules for conduct on private roads – only apply to owners
- Must have own enforcement procedures – Traffic officers do not do law enforcement on private roads
- Examples of offences that can only be committed on a public road – driving under the influence of alcohol, reckless driving, requiring a driving licence – (almost all offences in NRTA)
- Motor vehicles must be registered and licensed – **Reg 5** exemptions
 - Golf carts
 - Motorised scooters on which person stand – exempted from registration – may be used on private roads

COURT CASES – PASSING A CYCLIST

▪ *Regulation 298*

- THE GAUTENG LOCAL DIVISION, JOHANNESBURG, CASE NO 2016 17635
- Jacob Charewa v RAF – 11 July 2018
- Driver should be aware of possible wind rush or tail-end vortex that may affect cyclist
- Driver should not pass within 1.5 m
- Speed at which truck passes cyclist must be considered
- If wind rush of motor vehicle causes injury to cyclist the driver of the motor vehicle is negligent
- RAF had to pay for cyclist injuries

SUMMARY - COURT CASES ON NATIONAL ROAD TRAFFIC ACT IN 2018/2019

■ **Definition of *public road***

- *Mount Edgecombe case*
- *Significantly impacts on the application of the NRTA, as it limits its applicability and some estates and other bodies who own roads within the scope this case creates for private roads may not be aware that they need extensive rules and contractual enforcement measures to ensure safety on those roads*

■ **Passing of cyclist**

- *If wind rush from vehicle causes cyclist to fall the motorist is negligent, even if motorist did not actually make contact with driver*
- *Court indicated 1.5 m clearance is prudent and even more if cyclist is a child*

25TH DRAFT NRT AMENDMENT: RULES OF THE ROAD

298AA. Passing of pedal cycle

- The driver of a motor vehicle intending to pass a person riding on a pedal cycle proceeding in the same direction on a public road shall pass to the right thereof at a distance of one comma two metres from such person riding such pedal cycle and shall not again drive on the left side of the roadway until safely clear of the pedal cycle so passed:
- Provided that, in the circumstances as aforesaid, passing on the left of such pedal cycle shall be permissible if the person driving the passing vehicle can do so with safety to himself or herself, the person riding on the pedal cycle, other traffic or property which is or may be on such road and person is turning right or sufficient lanes

Already law in Western Cape – 2013 Cycle Regulations – allows crossing the no-overtaking line while passing – Not in National NRTA

CONCLUSION

- **Various amendments were due for publication during 2018 that did not materialise –Perhaps end of 2019**
- **Provisions in the draft policies have a long process ahead and final White Papers, draft legislation and final legislation need to be in place before these provisions will become law**
- **All amendments will be communicated via our UPDATE service – please inform our office if you do not wish to receive them**

THANK YOU



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