



INCLUSIVE SOCIETY INSTITUTE

MEDIA RELEASE

SCRAPPING OF GAUTENG E-TOLLS WELCOMED, BUT DEFAULTERS STILL HAVE TO PAY Non-enforcement in effect a write-off, then unconstitutional in terms of the equality clause

The Inclusive Society Institute (ISI) welcomes the scrapping of the e-toll regime brought about through the Gauteng Freeway Improvement Project. The tolls should not have been imposed in the first place, given the flawed processes leading to its introduction. A right royal mess has now been created.

A legal opinion obtained by the Institute found that the “South African constitutional law dictates that the South African National Roads Agency Limited (SANRAL) does not have the power to retrospectively excuse nonpayment of e-toll fees once incurred”. This means that whilst SANRAL has the power to scrap the e-tolls, they do not have the power to write-off debt incurred up until midnight on 11 April 2024, the date on which the system was shut down.

It gives the Institute no pleasure to point this out, but it does so in the public interest, in that continued calls not to pay could only exacerbate the financial dilemma of individual defaulters. Inertia, that is a decision not to enforce and to allow for the debt to prescribe could be a way out, but if made deliberately, would in itself be illegal, since it would amount to a gross dereliction of duty under the law. The Institute’s legal opinion points out that whilst an active decision to excuse toll fees would be unlawful, the same may not be true for a passive excuse of fees. It may be possible for SANRAL (or another public entity) to “excuse” toll fees by simply not enforcing the liability and it is notable that the SANRAL Act authorises SANRAL to enforce payment of toll, but does not oblige SANRAL to do so.

The position would be different were SANRAL to take an explicit decision not to enforce payment. Such a scenario would, however, not amount to an omission on the part of SANRAL, but rather a deliberate positive action and as such, illegal, in that a active decision not to enforce equates, in effect, to a write-off.

This is surely to be monitored by those not in favour of the scrapping of the tolls, and those that feel it inherently unfair to grant relief to the law-breakers that have not paid, whilst providing no relief to the law-abiders that have diligently paid their tolls. They could very well through litigation force down a decision compelling SANRAL to collect the outstanding fess.

Whatever the machinations around the enforcement or non-enforcement, the Inclusive Society Institute will be monitoring the situation on behalf of those that have being paying their e-tolls with a view of ensuring that the constitutional principles of equality and administrative justice is adhered to. The Institute, whilst, in light of the legal opinion, is doubtful, hopes that a solution can be found to write off the debt, **BUT** should that debt be written off, it will, in line with the aforementioned principles, insist on the refunding of tolls paid.

The Institute has engaged SANRAL on its position in this regard. SANRAL has expressed their scepticism with regard to the feasibility of refunding the tolls due to the complicated nature thereof. They are of

the view that it will be difficult to unscramble a scrambled egg. How does one, for example, refund the tolls paid by a foreign tourist who made use of a rented car?

Whilst the Institute acknowledges the complexities, it is of the view that administrative complexities cannot be allowed to trump the principles of equality and administrative justice. Put plainly, what is fair, is fair. A mechanism can be found. The Institute has some ideas in this regard and will, should developments so unfold, be more than willing to contribute to a discussion aimed at finding a resolution.

The chaotic state of affairs is a direct result of government not adhering to the constitutional prerequisite for procedurally sound participatory democracy. One would have thought that the Gauteng e-toll mess would have spurred adherence to that principle. Sadly, it has not.

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