A MATTER OF INTERPRETATION

A report on an investigation into alleged maladministration by the Johannesburg Metropolitan Police Department (JMPD) relating to the interpretation and application of certain provisions of the Administrative Adjudication of Road Traffic Offences Act, 1998 (AARTO Act)

Report No: 15 of 2014/2015
Executive Summary

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Executive Summary
"Matter of interpretation" is my report as the Public Protector issued in terms of section 182 (1) (b) of the Constitution of the Republic of South Africa, 1996, and section 8 (1) of the Public Protector Act, 1994 following an investigation into alleged maladministration by the Johannesburg Metropolitan Police (JMPD) in the implementation of the Administrative Adjudication of Road Traffic Offences Act No.46 of 1998 (AARTO Act).

The report communicates my findings and the remedial action I am taking in terms of section 182(1) of the Constitution having concluded an investigation into complaints lodged on 02 July 2010 and 15 June 2011 by Ms Slabbert A and Mr. Dembovsky HD, chairperson of the Justice Project South Africa on its behalf (the Complainants), respectively.

In the main Mr Dembovsky alleged that the infringement notices that were issued by the JMPD during the period June 2010 to December 2012 were unlawful and unenforceable since they were dispensed in contravention of section 30 of the AARTO Act, which provides for infringement notices to be served by registered post and not ordinary post.

Both Mr Dembovsky and Ms Slabbert alleged that the JMPD had misinterpreted the provisions of section 30 of the AARTO Act (the Act) and further that its application and /or implementation of Section 24 of the Act would result in drivers being disqualified to operate a motor vehicle within a year of introduction. Mr Dembovsky further alleged that expecting that persons who had become aware of the unlawful nature of the infringement notices be allowed to benefit from that knowledge while those who had not been prejudiced by it is in itself unconstitutional.

Mr Dembovsky further alleged that a commitment made by the JMPD and the Road Traffic Management Cooperation (RTMC) to refund all affected
parties who were issued with unlawful infringement notices was not
honoured.

(vi) The AARTO Act was passed and assented to by the President of the
Republic of South Africa in 1998. Its objective is to promote road traffic
quality by providing for a scheme that discourages road traffic
contravention, to facilitate the adjudication of road traffic infringements, to
support the prosecution of offences in terms of the national and provincial
laws relating to road traffic, and implement a point demerit system, among
others.

(vii) The Deputy President of the Republic of South African Hon: KP Motlanthe
issued Proclamation No 14 of 2010, on 01 April 2010, which puts sections
19A and 19B of the AARTO Act into operation in the areas of the City of
Tshwane and Johannesburg Metropolitan Municipalities.

(viii) The AARTO Act defines an infringement as either a minor or major traffic
infringement or violation. On the other hand, an infringement notice refers to
the communication or document that is issued by an authorized officer or
person duly authorized by an authority against an alleged infringer which
must contain all elements of the infringement concerned.

(ix) The investigation included interviews of current and former officials of the
JMPD, the RTMC and the RTIA, written correspondence as well as the
perusal and analysis of documents received. Applicable prescripts were
also considered and applied. On conclusion of the investigation, I issued a
Provisional Report on 28 November 2013. The Provisional Report was
distributed to the Registrar of the RTIA, the Acting Chief Executive Officer of
the RTMC, Chief of Police of the JMPD, the Director- General (DG) of the
Department of Transport and the Complainants for their comments.
Following the release of the provisional report, I received comments from
the RTIA, the City of Johannesburg (CoJ) on behalf of the JMPD as well as one of the Complainants, Mr. HD Dembovsky.

(x) On analysis of the complaint, the following five (5) issues were considered and investigated:

(a) Whether the implementation of AARTO by the JMPD failed to comply with the provisions of the AARTO Act; and if such constitutes improper conduct and maladministration.

(b) Whether the manner of serving infringement notices through ordinary post by the JMPD constitutes a contravention or violation of section 30 of the AARTO Act, 1998 and if the conduct was improper and amounts to maladministration.

(c) Whether the RTIA, organ of state, is assigned the legislative mandate to serve infringement notices and what method is provided for by the relevant legislative prescript.

(d) Whether the point demerit system was applied during and after the pilot project; and is it likely to unfairly result in the disqualification of drivers' license by the issuing authority if applied in the future.

(e) Whether the JMPD undertook to refund all infringers whose infringement notices were served in violation of section 30 of the Act.

(xi) The JMPD conceded that the infringement notices were served in violation of section 30 of the AARTO Act, but pointed out that the contraventions were corrected during December 2012, by issuing infringement notices through registered post. However, JMPD disputed that the legislative mandate to serve infringement notices vests with it and argued that such legislative
mandate vests with RTIA. The JMPD further disputed that it undertook to refund all infringers whose infringement notices were in violation of section 30 of the AARTO Act. It is common cause that the point demerit system was implemented during and after the pilot project.

(xii) The standard used to determine whether the JMPD had issued road traffic infringement notices improperly as alleged is provided for in section 30 of the AARTO Act. The Promotion of Administrative Justice Act, 2000 (PAJA) was used to determine whether the administrative action taken by the JMPD in the adjudication of road traffic offences complied with the principles of administrative justice as enshrined in section 33 of the Constitution.

(xiii) I make the following findings:

(a) Regarding whether the implementation of Administrative Adjudication of Road Traffic Offences (AARTO) by the JMPD failed to comply with the provisions of the AARTO Act; and if such constitutes improper conduct and maladministration, the AARTO ACT, I find that:

(aa) The allegation that the JMPD failed to comply with the provisions of AARTO is substantiated.

(bb) The infringement notices that were served by JMPD to alleged infringers for the period August 2010 until 21 December 2012 did not comply with the requirement as contained in section 30 of the Act. The acts of the JMPD accordingly constitute improper conduct and maladministration.

(cc) However, no remedial action could be made in this regard since the JMPD has since complied with the provisions of section 30 of the Act as at 22 December 2012 by issuing infringement notices by registered post as provided for in the aforementioned section.
(dd) The allegation that the JMPD had not implemented AARTO in accordance with the AARTO Act, during the period August 2010 until 21 December 2012, is accordingly justified. This constitutes improper conduct and maladministration.

(b) Regarding whether the manner of serving of infringement notices through ordinary post by the JMPD constitutes a contravention or violation of section 30 of the AARTO Act, 1998, I find that:

(aa) The JMPD issued infringement notices through ordinary post during the period August 2010 and 21 December 2012 following the withdrawal of the service by RTIA. The issuing of such infringement notices by ordinary post was in violation or contravention of section 30 of the AARTO Act, 1998, which provides for same to be served through registered post.

(bb) The Infringement notices that were served by the JMPD through ordinary post during the period referred to above in paragraph (aa) above were in violation of section 30 of the AARTO Act which provides for serving of infringement notices by registered post.

(cc) The violation by the JMPD of section 30 of the AARTO by serving infringement notices through ordinary post as a substitute for registered post was irregular and constitutes maladministration.

(c) Regarding whether the RTIA, an organ of state, is assigned the legislative mandate to serve infringement notices and what method is provided for by the relevant legislative prescript, I find that:

(aa) In terms of section 17 of the AARTO Act, the obligation to serve notices to infringers rests with the issuing authority which in terms of section 1 of the Act is a local authority or municipality, in this case the JMPD.
(bb) The argument by the JMPD that section 4 (4) (a) of the Act makes provisions for the RTIA to carry the legislative mandate of serving infringement notices was a misinterpretation of the law, and therefore has no merit.

(d) Regarding whether the point demerit system was applied during and after the pilot project, and whether it is likely to unfairly result in the disqualification of drivers' license by issuing authorities if applied in the future, I find that:

(aa) Although the AARTO Act makes provision for the demerit of point in case an infringer violates road traffic laws, evidence that was obtained from the pilot project that was implemented by the JMPD shows that points were neither allocated nor deducted during the implementation of the pilot phase.

(bb) Even though the allegation that the implementation of the point demerit system in the future would result in having the drivers's license of infringers being revoked, its implementation would be the best interest of the country as it seeks to eradicate the culture of road traffic infringement by replacing it with the culture of road traffic obedience.

(e) Regarding whether the JMPD undertook to refund all infringers whose infringement notices were served in violation of section 30 of the AARTO Act, I find that:

(aa) No evidence was found that supports the allegation that the JMPD undertook to refund infringers who had paid their respective infringement notices that were issued in violation of section 3 AARTO Act, during the period covering August 2010 to 21 December 2012.
(bb) Notwithstanding the above discussion or finding, the acceptance by JMPD and/or RTIA of payments that emanated from an unlawful process was improper, and therefore constituted maladministration by the JMPD and RTIA.

(cc) Evidence obtained from the Johannesburg Metropolitan Police Department show that the undertaking it had made through the joint statement was in respect of a different event that occurred in 2009.

(xiv) Appropriate remedial action I have taken in pursuit of section 182 (1) (c) of the Constitution, is the following:

The Chief of Police of the JMPD is to:

(aa) Ensure, in consultation with the City Manager, the issuing of a formal apology to be presented to all newspapers in circulation within the City of Johannesburg explaining the reasons for the issuing of infringement notices in contravention of section 30 of the AARTO Act during the period August 2010 until 21 December 2012.

The Chief Executive Officer of the RTMC and the Registrar of the RTIA are to:

(aa) The RTMC should facilitate the insertion of a phrase in the Act which makes it an offence and carries a penalty against issuing authorities in case of violation of the Act.

(bb) The remedial action discussed above in paragraph (aa) above aims at ensuring that in their execution of the AARTO issuing authorities conform with the provisions of the Act.
(cc) To ensure that RTIA intensifies its already existing educational drive to ensure that individuals understand their rights and options, as provided for in section 4 (1) (d) of the Act.

(xv) MONITORING

(a) The Chief of Police of the JMPD, the Chief Executive Officer of the RTMC and the Registrar of the RTIA to:

(aa) Each submits to me an implementation plan in respect of the remedial action taken in paragraph 11 below, within 30 days from the date of this report.

(bb) Submit a report on the progress made with the implementation of the remedial action taken in paragraph 11 below, within 60 days from the date of this report.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER IMPLEMENTATION OF THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES BY THE JOHANNESBURG METROPOLITAN POLICE DEPARTMENT

1. INTRODUCTION

1.1 Overview

1.1.1 "A matter of interpretation" is my report as Public Protector issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 23 of 1994 (the Public Protector Act).

1.1.2 The report is submitted in terms of section 8 (1) of the Public Protector Act, to:

1.1.2.1 The Chief of Police of the JMPD, Mr. Zwelibanzi Nyanda;

1.1.2.2 The Acting Chief Executive Officer of the RTMC, Mr. Gilberto Martins; and

1.1.2.3 The Registrar of the RTIA, Mr. JR Chuwe.

1.1.3 Copies of the report are also distributed to:

1.1.4 The DG of the Department of Transport, Dr. Maria Du Toit;

1.1.5 Ms A Slabbert (The first Complainant); and

1.1.6 Mr. HD Dembovsky (The second Complainant).
1.2 Background pertaining to the introduction of the AARTO Act, 2008 and promulgation of pilot jurisdictional areas.

1.2.1 It was established from the meeting conducted with the RTIA, on 07 March 2013, that the increasing death and casualty rate that are caused by infringements of traffic laws in South Africa prompted the introduction of a new system which would ensure compliance by motor vehicle drivers. The Registrar of the RTIA, Mr. Chuwe, stated that the South African criminal historical background was taken into cognizance when the decision to adopt the AARTO, 1998 was considered.

1.2.2 Archives show that the AARTO Act was passed and assented to by the President in 1998. Its objective is to promote road traffic quality by providing for a scheme that discourages road traffic contravention, to facilitate the adjudication of road traffic infringements, to support the prosecution of offences in terms of the national and provincial laws relating to road traffic, and implement a point demerit system, amongst others.

1.2.3 The AARTO Act makes provision for the establishment of the RTIA\(^1\) as a juristic person responsible to the Minister of Transport.

1.2.4 It was established from a letter addressed to Mr. Chris Ngcobo dated 08 June 2010 by the former Acting Chief Executive Officer of the RTMC, Mr. Collins Phutjane Letsoalo, that the JMPD and the Tshwane Metro Police Department (TMPD) were identified as pilot jurisdictional areas for the implementation of AARTO during July 2008 and February 2009, respectively.

\(^1\) Notwithstanding the fact the AARTO amendment Bill provides for the substitution of the name Road Traffic Infringement Agency for Road Traffic Infringement Authority, the former will still be utilised for the purpose of this report since the Bill has not been assented into law by the relevant authority.
1.2.5 In an e-mail correspondence addressed to my office dated 08 October 2013, Mr. PM De Klerk point out that the aforementioned pilot project was scheduled for implementation with effect from July 2008 until April 2010 when the application of AARTO would be rolled out nationally to all issuing authorities.

1.2.6 Prior to the introduction of the AARTO Act, issuing authorities served infringement notices to infringers through ordinary post in terms of section 341 of the Criminal Procedure Act, 1977.

1.2.7 During the investigation it was brought to my attention that an entity called Fines 4 U CC and Vaal Car Hire (Pty) Ltd brought an application before the South Gauteng High Court, in November 2012, to compel that JMPD and CoJ to:

1.2.7.1 Comply with the legal obligations in terms of the AARTO with regard to 5 infringement notices and in respect of a broad category of future notices;

1.2.7.2 Register the infringement notices on the national contravention register;

1.2.7.3 For the JMPD to deliver the 2nd applicant’s representations to the RTIA;

1.2.7.4 The JMPD and RTIA be compelled to act in terms of section 18 of AARTO with regard to the 2nd applicant’s representation;

1.2.7.5 JMPD and any other party opposing be ordered to pay the costs; and

1.2.7.6 Further/alternative relief.

1.2.8 The court case referred to in paragraph 1.2.7 above is still ongoing. The investigation took note of this and only focused on maladministration aspects.
2. THE COMPLAINTS

2.1 The first complaint was lodged by Ms S Slabbert, a journalist of SAKE24, (the first Complainant) around 7 July 2010, alleging maladministration by the various authorities including the JMPD, involving improper implementation and administration of Traffic Offences Act, 1998, which was allegedly going to result in people unfairly losing their drivers licenses through the demerit system.

2.2 I received a similar complaint from the National Chairperson of the Justice Project South Africa, Mr. HD Dembovsky. (The second Complainant). In his submission to my office, the second Complainant alleged that the serving by the Johannesburg Metropolitan Police Department of traffic infringement notices through normal post was in violation of section 30 of the AARTO Act and therefore irregular.

2.3 Mr. Dembovsky stated explicitly in this regard that:

"The persistence of the JMPD in acting unlawfully has rendered the infringement notices starting with the prefix 02-4024 which they have issued for over 12 months unenforceable and they have thereby defeated the ends of justice and the entire purpose of issuing traffic infringement notices in the first place.

The Acting Register, his agency and the RTMC have done nothing to compel the JMPD to comply with the provisions of the AARTO Act. It they had, then it is reasonable to assume that surely this practice would have come to an end a long time ago. The National Department of Transport has simply turned a blind eye to all these matters.

On 1 June 2010, a decision taken by Director Gerrie Germeke of the JMPD to cease utilizing registered (or secure) mail to serve infringement notices
on alleged infringers as is required by the Act was implemented and since then, all AARTO 03 infringement notices have been posted by the JMPD using standard permit mail in direct contravention of section 30 (1) of the AARTO Amendment Act, 22 of 1999".

2.4 Further allegations by the second Complainant in this regard were to the effect that the JMPD and the RTMC, through Mr. David Temba and Mr. Ranthoko, declared infringement notices that were served through normal post as being unlawful and unenforceable; and further committed to refund all affected parties to the tune of approximately R35 million.

3. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent institution, established under section 181(2) of the Constitution to support and strengthen constitutional democracy by investigating any conduct in state affairs or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; reporting on that conduct; and taking appropriate remedial action as mandated by section 182 of the Constitution and relevant legislation.

3.2 Section 182(2) of the Constitution states that the Public Protector has additional powers and functions prescribed by national legislation.

3.3 The Public Protector is mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve the disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.4 The Public Protector Act elaborates on the investigation powers of the Public Protector and section 6(4) thereof specifically provides that the Public Protector
shall be competent to investigate, on his or her own initiative or on receipt of a complaint, *inter alia*, any alleged:

3.4.1 Maladministration in connection with the affairs of government at any level;

3.4.2 Abuse or unjustifiable exercise of power or other improper conduct by a person performing a public function;

3.4.3 Improper or unlawful enrichment or receipt of any improper advantage by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; and

3.4.4 Section 8(1) of the Public Protector Act states that the Public Protector may make known to any person any finding, point of view or recommendation in respect of a matter investigated by him or her.

3.5 In compliance with section 7(9) of the Public Protector Act, all parties affected by the intended adverse findings were informed and provided with the provisional report and they submitted responses in that regard.

3.6 The jurisdiction of the Public Protector was not disputed by any of the parties.

4. **ISSUES TO BE CONSIDERED AND INVESTIGATED**

4.1 After analysis of the Complainants' submission and preliminary information, the following five (5) issues were identified and investigated.

4.1.1 Whether the implementation of AARTO by the JMPD failed to comply with the provisions of the AARTO Act; and if such constitutes improper conduct and maladministration
4.1.2 Whether the manner of serving infringement notices through ordinary post by the JMPD constitutes a contravention or violation of section 30 of the AARTO Act, 1998 and whether the conduct was improper and amounts to maladministration.

4.1.3 Whether the RTIA, an organ of state, is assigned with the legislative mandate to serve infringement notices and what method is provided for by the relevant legislative prescript.

4.1.4 Whether the point demerit system was applied during and or after the pilot project; and is it likely to unfairly result in the disqualification of driver’s license by the issuing authority if applied in the future.

4.1.5 Whether the JMPD undertook to refund all infringers whose infringement notices in violation of section 30 of the AARTO Act.

5. THE INVESTIGATION

The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1 Key Sources of information

5.1.1 The scope of the investigation was restricted from February 2009, the date on which the JMPD was promulgated as an AARTO pilot site, to 2013, the date on which the AARTO Amendment Act was published for public comments.
5.2 The key sources of information

5.2.1 Correspondence

5.2.1.1 The letters of complaint dated 02 July 2010 and 17 June 2011, respectively;
5.2.1.2 Telephonic and written correspondence with the Complainants dated 20 December 2011 and 10 August 2010;
5.2.1.3 Various correspondence and enquiries with the JMPD, RTMC and RTIA:

(a) Correspondence from the Public Protector to the Johannesburg City Manager, Mr. T Fowler dated 17 January 2012;
(b) Correspondence from Acting Director: Legal and Compliance, Mr. Mbulelo A Ruda to the Public Protector dated 24 January 2012, 15 February 2012 and 17 October 2013;
(c) E-mail correspondence from the RTIA, Mrs. Prudence Mokale to the Public Protector dated 29 February 2012;
(d) Correspondence from the JMPD Department's Deputy Director: Legal and Contracts, Mr.PM De Klerk to the Public Protector dated 23 February 2012, 20 February 2013 and 08 October 2013;
(e) Correspondence from the RTIA's Chief Operations Officer, Mr. Thabo Tsholetsane to the Public Protector dated 14 October 2013.

5.3 The methodology employed in the investigation:

5.3.1 Interviews conducted

5.3.1.1 Meetings were conducted with the first Complainant and the following personnel from the JMPD and RTMC personnel on 07 August 2012:

(a) Mr. GP Gerneke, the former Acting Chief of Police of the JMPD;
(b) Mr. Collins Letsoalo, the former Acting Chief Executive Officer of the RTMC; and
(c) Extracts of television and radio interviews that were conducted with the Registrar of the RTIA, Mr. JR Chuwe.

5.3.2 Analysis of documents and/or information

The following documents were analyzed and perused:

5.3.2.1 Correspondence between the RTIA and JMPD dated 11 January 2011;
5.3.2.2 Correspondence between RTIA and Mr. Dembovsky dated 01 September 2010;
5.3.2.3 Copies of traffic infringement notices;
5.3.2.4 Minutes of a meeting of the National AARTO task Team held on 12 May 2010;
5.3.2.5 Representation application result for infringement;
5.3.2.6 Correspondence from the RTMC to JMPD dated 06 June 2010;
5.3.2.7 An undated document addressed to the Department of Transport entitled “Financial implications in the CoJ with the implementation of AARTO”;

5.3.3 Legislation and other prescripts

The relevant provisions of the following legislation and other prescripts were considered and applied, where appropriate:

5.3.3.1 The Administrative Adjudication of Road Traffic Offences Act No. 46 of 1998;
5.3.3.2 The Administrative Adjudication of Road Traffic Offences Amendment Bill, 2013;
5.3.3.3 The National Road Traffic Act No. 93 of 1996;
5.3.3.4 The Criminal Procedure Act No. 51 of 1977; and
5.3.3.5 The Promotion of Administrative Justice Act No. 3 of 2000.

6 EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

6.1 Regarding the implementation of Administrative Adjudication of Road Traffic Offences (AARTO) by the JMPD failed to comply with the provisions of the AARTO Act; and if such constitutes improper conduct and maladministration:

6.1.1 The legal requirement for the service of infringement notices in terms of the AARTO Act will be discussed later under the Legal and Regulatory Framework. At this stage the focus is on the factual evidence uncovered during the investigation relating to the service of infringement notices.

6.1.2 In a response to my investigation team, dated 15 February 2012, Mr. Mbulelo Ruda: Acting Director Legal Compliance stated that JMPD was serving infringement notices through services of the South African Post Office by registered, ordinary and personal services on the affected parties.

6.1.3 He went further to explain that its decision to deviate from the legislative imperative emanated from the conflicting provisions of sections 1 and 30 of the AARTO Act which relates to the services of notices; as well as the unexpected withdrawal by RTMC of the payment of distribution of notices through registered mail.

6.1.4 Mr. Ruda submitted that the services of notices by means of ordinary mails were in compliance with the Promotion of Administrative Justice Act (PAJA) since it afforded alleged infringers an opportunity to make representations to have the notices withdrawn. He further argued that the serving of infringement notices through ordinary mail is not necessarily or expressly prohibited by the Act.
6.1.5 Subsequently during a meeting held between my investigation team and JMPD on 20 February 2012, Mr. Gerrie Gerneke, the former Acting Chief of Police of the JMPD conceded that infringement notices bearing the prefix 02-4024 that were served to infringers, during the period of withdrawal of financial support by RTMC and RTIA, were served through ordinary post.

6.1.6 In an e-mail correspondence that was addressed to the investigation team, dated 08 October 2013, JMPD explained through its Legal and Contracts Department that the reason for serving infringement notices in contravention of the AARTO Act was also based on its lack of financial resources since it is costly to serve a registered infringement notice.

6.1.7 An illustration by JMPD of the different cost involved in this regard was that it only cost R2, 70 to serve an infringement notice through an ordinary post in terms of the Criminal Procedure Act, 1977, while serving infringement notice by registered mail under the AARTO Act is R20.

6.1.8 JMPD further indicated that even though it maintains that it is RTIA’s legal obligation to serve infringement notices as provided for in terms of section 4 (4) (a) of the AARTO Act, it could not afford to abandon the program as this could have resulted in a breakdown of law enforcement in the CoJ. It resumed serving infringements notices through registered post with effect from 22 December 2012 to date.

6.1.9 In response to my intended finding at paragraph 10.2 of the Provisional Report that the issuing of notices through ordinary post by the JMPD constitutes maladministration, Mr. Nyanda contended on behalf of the CoJ that my use of the phrase “maladministration” in my provisional findings was inappropriate. He referred me in this regard to section 6 (4) of the Public Protector Act of 1994, which will be discussed under the Legal and Regulatory Framework.
6.1.10 Mr Nyanda further contended that not every failure to comply with a statute constitutes maladministration and therefore a finding by my office of maladministration requires something more than merely imperfect administration.

6.1.11 He further argued that maladministration is not defined in the Public Protector Act and supplemented his argument in that regard by referring me to Section 106 of the Local Government: Municipal Systems Act 32 of 2000 as well citing relevant court decisions which will be discussed in the Legal and Regulatory Framework.

6.2 Whether the manner of serving infringement notices through ordinary post by the JMPD constitutes a contravention of section 30 of the ARRTO Act, 1998 and whether the conduct was improper and amounts to maladministration and whether RTIA, an organ of state, is assigned with the legislative mandate to serve infringement notices and what method is provided for by the relevant legislative prescript.

6.2.1 It has been established that after noting the violation of section 30 by the JMPD, Mr. JR Chuwe (the then Acting Registrar of RTIA) addressed a letter to JMPD dated 11 January 2011 and stated that:

"The Agency is aware that the JMPD continues to issue infringement notices by ordinary mail and reminds you that this practice is contrary to the prescripts of the Act and are hereby requested to cease such practice forthwith. Whereas there may be merit in the decision to serve the infringement notices by ordinary mail, due to financial and other consideration, the Agency cannot support the continuation of this practise (SIC) as it flouts the current provisions of the applicable legislation". [Emphasis added]
6.2.2 According to an undated internal memorandum obtained during the investigation, the JMPD raised concerns about its financial capability to serve infringement notices by registered post and further complained to RTMC and RTIA that it had not been advised during the pilot project that issuing authorities would have to carry the cost for serving infringement notices subsequent to the conclusion of the pilot project.

6.2.3 Asked whether the JMPD was initially informed that issuing authorities would carry responsibility for the payment for distribution of infringement notices, RTIA responded through its Chief Operations Officer Mr. T Tsholetsane in an email correspondence, dated 14 October 2013, that JPMD was informed of the decision "In the main based on the letter of the legislation that provided that the issuing authorities must issue and serve notices to the alleged infringer".

6.2.4 The records perused further indicated that during the pilot phase, the RTMC/RTIA carried all costs in respect of serving of relevant infringement notices and subsequent documentation until it reneged on the payment in June 2010.

6.2.5 In a letter addressed to Mr. Chris Ngcobo: JMPD Chief of Police dated 06 June 2010, the then Acting Chief Executive Officer of RTMC Mr. C Letsosalo informed the JMPD that "... To that effect, all municipalities have been informed that the Corporation\(^2\) would no longer be paying for the services of Infringement Notices through SAPO, as was the case during the pilot".

6.2.6 According to the letter referred to above, issuing authorities would be responsible for payment of infringement notices that they had generated and forwarded to the South African Post Office since 01 April 2010.

\(^2\) The Corporation that is referred to is the Road Traffic Management Corporation.
6.2.7 In as far as courtesy letter and subsequent processes and other notifications were concerned; the RTMC undertook to carry the responsibility for the cost as provided for by the Act and Regulations.

6.2.8 It was established from a letter, dated 02 March 2011, that was addressed to RTMC from JMPD that the latter could not honour invoices which were issued by SAPO for payment. In its response to RMTC, JMPD further stated categorically through Mr. Gerneke that it was not liable for payment of the costs reflected in the aforesaid invoices since the legal obligation to carry costs for the distribution of infringement notices vests with the RTIA as indicated in section 4 of the Act.

6.2.9 According to an unsigned internal memorandum obtained during the investigation that was addressed to Mr. Tswala: Deputy Director of the National Department of Transport, JMPD raised issues relating to its state of readiness for the implementation of AARTO. Mr. Gerneke stated the following in that regards:

"AARTO legislation was implemented in JMPD on 1 November 2008. Even though JMPD indicated that it was not ready to do so and various undertakings were given by parties in power, that the implementation on the said date would not continue, the JMPD was forced to implement (SIC) on AARTO on 12 February 2009, as the promulgation of the implementations was never reversed".

6.2.10 The aforesaid internal memorandum was also copied to the former JMPD Chief of Police, Mr. Chris Ngcobo.

6.2.11 In its interaction, through meetings and correspondence, with my office in connection with the application of section 4 (4) (a) of the Act, the JMPD
maintained that the RTIA is responsible for serving infringement notices and thus to carry the costs thereof.

6.2.12 In a response addressed to the investigation team, Mr. PE De Klerk, Johannesburg Metropolitan Police Department’s Deputy Director: Legal and Contracts stated that the AARTO legislation and in particular section 4 describes the objectives and functions of the RTIA. In this regard, Mr. De Klerk cited section 4 (4) (a) which states that the RTIA performs its function by, *inter alia*, assisting the prosecuting authority to get persons who committed the offences before courts through serving of documents and keeping of records on its data base.

6.2.13 Mr. de Klerk, further contended that:

“We respectfully submit that it is clear from this section, that it is the duty of the RTIA to get offenders before court through serving of documents, including paying for the cost of such services, i.e. the cost of registered or secured mail”

6.2.14 This stance by JMPD that the legal obligation to serve infringement notices to infringers as well as the carrying of costs thereof is the obligation of the RTIA was later reiterated by Mr. Ruda and De Klerk through an e mail correspondence dated 08 October and 17 October 2013, respectively.

6.2.15 Mr. De Klerk indicated in a letter addressed to my office, dated 08 October 2013, that the City of Johannesburg maintains that it is the legal obligation of the RTIA in terms of section 4 (4) (a) of the AARTO Act to pay the costs of service of infringement notices by registered mail. He further explained that the reason the CoJ is carrying the aforesaid cost is for the sake of law enforcement in the City as well as the fact that RTIA is currently facing a financial challenge.
6.2.16 As far as the interpretation of section 4 (4) (a) is concerned, Mr. Ruda contended that it is abundantly clear that it is the RTIA’s function to bring persons before the courts through serving of documents as well as keeping of records on its data base.

6.3 Whether the point demerit system was applied during and or after the pilot project; and is it likely to unfairly result in the disqualification of driver’s license by the issuing authority if applied in the future:

6.3.1 It was established during meetings, interviews and correspondence that were conducted and exchanged between my investigation team and the JMPD, RTIA and RTMC, that although the AARTO Act makes provision for point demerit system against infringers, same had not been implemented since the system was still in its infancy and was also riddled with challenges that needed to be addressed prior to its full application or implementation.

6.3.2 During a meeting held on 20 February 2012, the JMPD Acting Chief of Police stated that infringers would indeed lose their drivers licences or permits should the AARTO be applied strictly without any leniency.

6.4 Whether the JMPD undertook to refund all infringers whose infringement notices were served in violation of section 30 of the ACT.

6.4.1 In his submission to my office, the second Complainant alleged that RTMC and the JMPD declared infringement notices that were served by ordinary post as being unlawful and unenforceable; and further committed to refund all affected parties to the tune of approximately R35 million.

6.4.2 In support of his allegation, Mr. Dembovsky submitted a copy of a joint press statement by the former Acting Chief Executive Officer of the RTMC and the former Chief of Police of the JMPD, dated 07 July 2009 to the investigation
team. In terms of the statement a total of R 32 million was identified as the value of penalties to be repaid.

6.4.3 In his response dated 06 January 2014 to my Provisional Report, the Registrar of the RTIA, Mr. Chuwe, confirmed the truthfulness of the allegations of the second Complainant in this regard and referred me to a press statement made jointly by the erstwhile Chief Executive Officer of the RTMC, Mr. Ranthoko Rakgoale and the then Acting Chief of Police of the JMPD, Mr. David Tembe, on 7 July 2009, at the media briefing held at the Head Office of the JMPD. The press statement corroborated the allegation of a refund made by the second Complainant stating that:

"Refund of penalties paid by motorists. During the press briefing of 18 February 2009, the process for the refund of penalties paid by motorists was explained for motorists to follow. A total of R32 million was identified as the value of the penalties to be repaid"

6.4.4 However, Mr. Chuwe raised concerns with my pronouncement on the remedial action envisaged at paragraph 11.1.1 of the Provisional Report, which orders the Chief of Police to “facilitate, in consultation with the City Manager, the refund of Infringers who were served and paid for infringement notices that were issued and served in contravention of section 30 of the Administrative Adjudication of Road Traffic Offences Act during the period August 2010 until 21 December 2014”.

6.4.5 In this regard, he respectfully submitted that such an order would unfortunately be impractical and counter-productive to the goals of increasing road safety as intended by the Act. He further submitted that it needed to be recognised that the AARTO Act in its current form has significant deficiencies and unintended contradictory provisions, which make implementation extremely difficult. To
illustrate his point in this regard, he cited certain sections of the Act which would be discussed under the Legal and Regulatory Framework.

6.4.6 In conclusion, he contended that the integrity of AARTO and its intended goals would be severely hampered and that many people would lose confidence in the AARTO which would result in negative effect on road safety, should I pronounce that the JMPD must refund the infringers. For that reason, RTIA requested me to withdraw the intended remedial action since the mere payment by the infringers implied as an admission of guilt. He was adamant that the defect in the action sought has in fact been cured by the infringer’s payment action.

6.4.7 In response to a question posed during the investigation as to whether JMPD intended to refund infringers as alleged, Mr. Ruda on behalf of the City of Johannesburg submitted that “It has not occurred to the City that a refund is due to persons who have committed a road traffic violation, who received a lawful infringement notice in regard thereto and who have paid the prescribed fine of AARTO Act. The City has therefore no intention to refund any person and neither has it given any undertakings in this regard thereto”.

6.4.8 In its response dated 2 February 2014 to my Provisional Report, the City of Johannesburg through its Chief of Police, Mr. Zwelinzima Nyanda, advised that it had sought and obtained a legal opinion from Messer’s Steven Budlender and Nick Ferreira in connection with findings and remedial action contained in the Provisional Report.

6.4.9 In response to the remedial action envisaged at paragraph 11.1.1 of the Provisional Report, Mr. Z Nyanda argued that my intended remedial action regarding the refunding of infringers would be disruptive and hugely expensive to implement since the collected revenue through issuing of infringement notices between August 2010 to December 2012 has escalated to R963 871 250.00.
6.4.10 He further contended that the revenue collected from traffic fines is a source of general income for the CoJ and that a lesser revenue received would result in charging rate taxpayers more in order to source its budget. For that reason, he submitted that the financial burden of refunding infringers would be borne by the ratepayers since the CoJ did not budget for a refund of that magnitude. In addition, he estimated that the administering of the refunds would cost approximately R25 million.

6.4.11 The legal opinion that was sought by the CoJ supported the notion that it was not legally bound to refund the infringers. In that regard, Messer’s Steven Budlender and Nick Ferreira contended that the view that a conduct that has not complied with a statute is null and void and of no force or effect is inconsistent with the recent approach of the courts.

6.4.12 In amplification of the argument against the refunding of the infringers, the legal opinion given by Messer’s Steven Budlender and Nick Ferreira made reference to several court cases which will be dealt with under the Legal and Regulatory Framework.

6.4.13 In its response to the Provisional Report, the CoJ also criticised RTIA submission in its response to the Provisional Report that there is evidence that the JMPD undertook to refund infringers who had paid. The CoJ contended that the press statement to which RTIA referred to in its response was irrelevant to the matter under investigation being the period August 2010 to 21 December 2012 since it predates the matter by more than a year, and further that the refund exercise referred to in that press statement started in February 2009. It further contended that the cause of the 2009 refund exercise was different in that it arose out of the City issuing notices under the Criminal Procedure Act when it was not ready to implement the Act. It further contended such exercise had nothing to do with service of infringement notice under the AARTO Act.
6.4.14 In the circumstances, the CoJ maintained its initial stance to my office in respect of which it contended during the investigation that there was no evidence that supports the allegation that JMPD undertook for refund infringers who had paid their respective infringement notice during the period covering August 2010 to 21 December 2012.

7. EVALUATION OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

7.1 Whether the manner of serving infringement notices through ordinary post by the JMPD constitutes a contravention or violation of section 30 of the AARTO Act, 1998 and whether the conduct was irregular and amounts to maladministration:

7.1.1 It is common course that the JMPD issued and served numerous infringement notices subsequent to its promulgation as a pilot jurisdictional area, together with the TMPD, for the implementation of the AARTO, which were paid for by the RTIA and RTMC until June 2010.

7.1.2 It is also common cause that the infringement notices that the JMPD served during the period referred to in paragraph 7.1.1 above were served through ordinary post and not personally or by registered post as required by section 30 of the Act.

7.1.3 Mr Gerrie Gernecke conceded that the JMPD issued and served infringement notices bearing the prefix 02-4024 through ordinary post during the period August 2010 until 21 December 2012.

7.1.4 Mr Nyanda disputed on behalf of the City of Johannesburg that the issuing of infringement notices through ordinary post constituted maladministration. The dispute in this regard will be resolved later through the discussion of the relevant Legal and Regulatory Framework.
7.1.5 Mr. de Klerk’s contention that JMPD could not afford to carry for the cost of serving infringement notices through registered post since there is a huge financial difference between notices served under AARTO and those served in terms of the Criminal Procedure Act, 1977, does not detract from the fact that the infringements notices were served through ordinary post.

7.1.6 However, it is noted that JMPD resumed issuing and serving infringement notices through registered post from 22 December 2012.

7.2 Whether the implementation of AARTO by the Johannesburg Metro Police Department was conducted in violation of the provisions of the AARTO Act; and whether such conduct was improper and amounts to maladministration:

7.2.1 It is common cause that the JMPD’s interpretation of the provisions of section 4 (4) (a) of the AARTO Act is understood to be assigning the legislative mandate on the RTIA to carry costs for serving of infringement notices as well as document to persons that are due to appear before court. However, this is an issue of law which will be dealt with in the Legal and Regulatory Framework.

7.2.2 It is also common cause that during the pilot phase, the RTMC and RTIA carried all costs in respect of serving the infringement notices until June 2010.

7.2.3 It is in dispute whether the responsibility to carry the costs of serving the infringement notices through registered mail should be borne by JMPD or RTIA. This is also an issue of law which will be dealt with in the Legal and Regulatory Framework.

7.2.4 It is also in dispute whether JMPD was advised that the issuing authorities would have to carry the cost of serving the infringement notices subsequent to
the conclusion of the pilot project. However, the evidence of a letter addressed
to Mr Chris Ngcobo the then JMPD Chief of Police by the Acting Chief
Executive Officer of the RTMC, Mr C Letsoalo dated 6 June 2010 indicated that
all municipalities including the CoJ were informed that RTMC would no longer
be paying for the services of infringement notices through SAPO (South African
Post Office) as was the case during the pilot project.

7.2.4 It is not disputed that Mr JR Chuwe addressed a letter to JMPD dated 11
January 2011 advising it that the issuing of infringement notices by ordinary mail
is contrary to the prescripts of the AARTO Act.

7.3 Whether the point demerit system was applied during and after the pilot
project; and is it likely to unfairly result in the disqualification of driver's
license by the issuing authority if applied in future.

7.3.1 It is common cause that the point demerit system has not been implemented
during and after the pilot project in the jurisdictional areas of JMPD and the
TMPD.

7.3.2 The JMPD Acting Chief of Police conceded that drivers would be disqualified
and eventually lose their driver's licenses or permits in cases where they are
found guilty of infringement should AARTO be applied strictly without leniency.

7.3.3 However, no evidence was submitted by the Complainants to prove that if
AARTO is applied properly the point demerit system would unfairly result in the
disqualification drivers' licenses. The conclusion is therefore that the point
demerit system would unfairly result in the disqualification of drivers' licenses
only if AARTO is not applied properly.
7.4 Whether the JMPD undertook to refund all infringement notices that were served in violation of section 30 of the Act.

7.4.1 The second Complainant’s allegation that there was a joint press statement by the RTMC and JMPD of 07 July 2009 in which reference was made to the refund of approximately R32 million as a value of penalties due to be repaid to infringers, was corroborated by Mr Chuwe of the RTIA. The aforesaid refund relates to an occasion that occurred in 2009, and although not fully refunded to eligible infringers due to failure to collect cheques at the post office, it was implemented by the JMPD.

7.4.2 The CoJ however, disputed that the press statement referred to above applies to the period from August 2010 to 21 December 2012 which it contended to be the period under investigation. The contention by the CoJ that the refund exercise was different in that it arose out of the City issuing notices under the Criminal Procedure Act when it was not ready to implement AARTO is disingenuous in that the AARTO pilot project had already commenced from July 2008 and was to be concluded in April 2010. Therefore the CoJ could not have relied on the Criminal Procedure Act to issue infringement notices in 2009 when the AARTO Act was already been piloted.

8. LEGAL AND REGULATORY FRAMEWORK

8.1 Whether the manner of serving infringement notices through ordinary post by the JMPD constitutes a contravention or violation of section 30 of the AARTO, 1998 and whether the conduct was irregular and amounts to maladministration:

8.1.1 The Administrative Adjudication of Road Traffic Offences Act, 1998
8.1.1.1 The issuing of infringement notices in terms of the AARTO Act is principally regulated by section 30 of the AARTO Act which states that documents that are required to be served on an infringer in terms of the Act will be regarded to have been served on the date the infringer has signed for the receipt of the document provided it is served personally or by registered mail.

8.1.1.2 It is therefore mandatory in terms of section 30 of the AARTO Act that infringement notices be served personally or by registered mail.

8.1.1.3 It is noted that the manner in which infringement notices are served is in the process of being amended by the Amendment Bill which would repeal section 30 of the principal Act. The aforesaid amendment states that any document required to be served on an infringer in terms of this Act, must be served on the infringer personally or sent by registered postage to his or her last known address including postage and electronic services.

8.2 Whether the implementation of AARTO by the JMPD was conducted in violation of the provisions of the AARTO Act; and whether such conduct was improper and amounts to maladministration:

8.2.1 The Administrative Adjudication of Road Traffic Offences Act, 1998

8.2.1.1 The issue whether the implementation of AARTO by the JMPD was proper is regulated by the various provisions of the AARTO Act discussed hereunder.

8.2.1.2 Chapter 1 of the Act defines an issuing authority as a local authority contemplated in Chapter 7 of the Constitution of the Republic of South African, 1996, or any other applicable law or a provincial administration in so far as such authority or administration is responsible for traffic matters in its area of jurisdiction.
8.2.1.3 Section 4 (1) (b) of the Act makes provisions for the RTIA to enforce penalties imposed against persons contravening the road traffic laws. Subsection 2 of the aforesaid section makes it a requirement, inter alia, for the RTIA to receive notices from any issuing authority if an infringer has failed to comply with an infringement notice issued in terms of section 17 of the Act.

8.2.1.4 In terms of section 4 (4) (a) of the Act, the obligation to assist the prosecuting authorities to get persons who committed offences before the courts through serving of documents and keeping of records on its database as well as providing traffic law enforcement equipment and support services to issuing authorities is bestowed on the RTIA.

8.2.1.5 A relevant section regarding the financing of the Agency is section 13, which provides that the RTIA is financed from deductions from penalties collected by the agency as contemplated in section 32.

8.2.1.6 In addition, section 32 of the Act provides that a penalty received under this Act must be paid over monthly, after deduction of an amount equal to the discount contemplated in section 17 (1) (d), to the issuing authority under whose authority the infringement notice was issued, and if it was not issued under the authority of such authority, to the issuing authority within whose area of jurisdiction the infringement was committed.

8.2.1.7 Section 17 of the Act regulates the issue pertaining to the state organ that is mandated to serve infringement notices. It provides that an authorized officer or a person duly authorized by an issuing authority, in cases where a person is found to have committed an infringement, must instead of a notice contemplated in section 56 or 341 of the Criminal Procedure Act, 1977, serve or cause to be served on that person an infringement notice.
8.2.1.8 Section 17 of the Act provides that an authorized officer or a person duly authorized by an issuing authority must serve or course to be served on a person who is alleged to have committed an infringement notice.

8.2.1.9 According to section 17(2) an issuing authority is required to notify the RTIA in case an infringer fails to comply with an infringement notice, in which case the RTIA would be required, in terms of section 19, to issue a courtesy letter and serve it on the infringer.

8.2.1.10 In terms of the above provisions the responsibility to issue and serve infringement notices rests with the issuing authority which is defined as local authority in terms of section 1 of the AARTO Act. In this case the relevant local authority is the CoJ.

8.2.1.11 The responsibility bestowed on RTIA is that of assisting the prosecuting authorities to get persons who committed offences before the courts through serving of documents and keeping of records on its database as well as providing traffic law enforcement equipment and support services to issuing authorities.

8.3 Whether the point demerit system was applied during and after the pilot project; and is it likely to unfairly result in the disqualification of driver’s license by the issuing authority if applied in future.

8.3.1 The Administrative Adjudication of Road Traffic Offences Act, 1998

8.3.1.1 The issue of point demerit system and the disqualification of drivers are regulated by section 24 (1) of the Act which provides for the demerit of points in case a driver commits an offence or an infringement. Section 24 (2) provides for the demerit points in respect of offences or infringements by
9. ANALYSIS AND CONCLUSION

9.1 Whether the manner of serving infringement notices through ordinary post by the JMPD constitutes a contravention or violation of section 30 of the AARTO Act, 1998 and whether the conduct was irregular and amounts to maladministration:

9.1.1 It is not a disputed fact that JMPD issued and served infringement notices to infringers through ordinary post during the period August 2010 until 20 December 2012, subsequent to RTMC's withdrawal of financial assistance for distribution of infringement notices. However, JMPD's compliance with the provisions of section 30 of the AARTO Act from 22 November 2012 to date is an indication of its intention to comply with its legislative obligation.

9.1.2 Section 30 was explicit in terms of the method to be used for service of infringement notices before a proposal was made for it to be amended by the AARTO Amendment Bill, it made provision for serving of infringement notices through registered and personal service and did not make provisions for any other form or method of service.

9.1.3 Therefore, the argument that was advanced by JMPD that the legislative prescript, in particular section 30 referred to above, was silent on the use of ordinary post and therefore did not categorize it illegal to serve infringement notices through ordinary post has no merit.

9.1.4 Although the infringement notices that JMPD issued through ordinary postal made provisions for a representation to have it cancelled and therefore complying with the provisions of section 4 (3) of PAJA, 2000, as argued by
Mr. Ruda, this conduct does not in itself not imply that the provision of representation to infringers complies with of section 30 of the AARTO Act.

9.1.5 For that reason, the assertion by Mr. Ruda that seeks to legitimize the serving of infringement notices by JMPD through ordinary post on the basis that infringers were afforded an opportunity to make presentations in compliance with the PAJA, has no merit.

9.1.6 In conclusion, evidence outlined above shows that the decision by the JMPD to serve infringement notices by normal post is at odds with section 30 of the AARTO Act, which provides otherwise.

9.1 Whether the RTIA, an organ of state, is assigned with the legislative mandate to serve infringement notices and what method is provided for by the relevant legislative prescript.

9.2.1 There appears to be a misinterpretation in respect of the application of sections 4 (4) (a) and 17 of the Act. This misrepresentation contributed towards the violation or infringement of section 30 of the AARTO Act, by the JMPD.

9.2.2 While section 4 (4) (a) states that the legal obligation to assist the prosecuting authority to serve documents to persons who committed offences vests with the Agency, being the RTIA, section 17 tasks issuing authorities to serve infringement notices to alleged infringers.

9.2.3 According to section 1 of the Act, an issuing authority is defined as being a local municipality as contemplated in Chapter 7 of the Constitution of the Republic of South Africa, 1996, in this case being the CoJ.
operators and drivers be recorded separately even if they arise out of the same circumstances.

8.3.1.2 According to sections 25 (1) of the Act, a driver whose demerit points have exceeded the total prescribed by the Minister or Member of the Executive Council will be disqualified from driving or operating a motor vehicle.

8.3.1.3 In addition, section 27(1) of the AARTO Act states that a person who incurs demerit points resulting in the disqualification in terms of section 25 to drive or operate a motor vehicle for a third time, must immediately hand in his or driver's license, professional driving permit or operator card issued in respect of that vehicle to the issuing authority. Subsection 2 empowers the issuing authority to destroy such permit or driver's licence or card. In terms of section 3 an infringer whose driver's papers were destroyed due to the demerit system may reapply for and be issued with a driving licence, professional driving permit or operator card in terms of applicable road traffic laws.

8.4 Whether the JMPD undertook to refund all infringement notices that were served in violation of section 30 of the Act.

8.4.1 The Constitution, 1996

8.4.1 The issue relating to the contention that the infringement notices that were issued in contravention of section 30 of the AARTO Act as well as the alleged undertaking by the JMPD and RTIA to refund all affected parties are regulated by section 195(1)(f) of the Constitution, which provides that public administration must be accountable.
9.2.4 The use of the wording **serving of documents** that is contained in section 4 (4) (a) of the Act describes in details the RTIA’s functions in terms of provision of document to be utilized during court proceedings and not the issuing of infringement notices. The aforesaid wording, which the JMPD argues was intended to express a legal obligation of the RTIA to serve infringement notice, is not encapsulated in section 17 which makes provisions for the adjudication procedures.

9.2.5 Section 17, which explains in detail the adjudication procedures, states that the entity vested with the legal obligation to issue infringement notices is an issuing authority. During the issuing of infringement notices as provided for in section 17 above, the RTIA is not involved in the administration until a point where an infringer fails to comply with an infringement notice in which case the RTIA would be required, in terms of section 19 and 20, to issue and serve a courtesy letter and an enforcement order to the infringer concerned.

9.2.6 The execution of the aforesaid documents, in terms of section 4, 19 and 20, is conducted by the RTIA and its costs are also carried by the Agency as relate to the serving of pertinent documents that would be utilized during trial.

9.2.7 Therefore the serving of the aforesaid document by the Agency seeks to give effect to the provisions of section 4 (4) (a) which provides for the RTIA to assist the prosecuting authorities to get persons who committed offences before the courts through serving of documents and keeping of records on its database [my emphasis].

9.2.8 From the evidence as outlined above, the intention of the legislator in section 4(4) (a) above of the wording “**serving of document**” was to bestow a legislative obligation on the RTIA to ensure that people who
committed offences appear before court through serving the necessary
documents and not the serving of infringement notices, as alleged by JMPD
in its argument.

9.2.9 Therefore, the intention of the legislator in inserting section 17, which
specially provides for the adjudication procedure, was aimed at placing a
legal obligation of serving infringement notices to infringers with the issuing
authorities and not the RTIA.

9.2.10 Consequently, the argument by JMPD that the serving of infringement
notices to alleged infringers as well as the carrying of expenses for the
process, is the legislative obligation of the RTIA as provided for in terms of
section 4 (4) (a) of the Act, constitutes a misinterpretation of the law and
therefore has no merit.

9.3 Whether the point demerit system applied during and after the pilot
project; and is likely to unfairly result in the disqualification of driver’s
license by the issuing authority.

9.3.1 Although the Act makes provision for the point demerit system, the system
was not applied during the pilot phase and has not been implemented
subsequently. Consequently, no driver was adversely affected by the
section that made provision for the point demerit system since it had not
been applied during and after the pilot phase.

9.3.2 According to a research that was conducted and published in September
2012 by the SWOV, which is an Institute for Road and Safety Research in
Nederland, the introduction of the point demerit system in most of European
countries is decreasing the number of road fatalities following the
introduction of the point demerit system. In a sub heading titled “What is
known about the general preventive effect of a demerit points system?", the authors states that:

"Although more and more countries implement a demerit point system-21 of the 27 EU member states had demerit point system in 2012- rather little is known about their effects. The decrease in the number of crashes in the first year after the introduction is often taken as evidence of the effectiveness of the point demerit system. The decrease generally is considerable in the first months after the introduction. For example, a meta-analysis of 24 effect measurements in various European and non-European countries shows a decrease between 15 and 20% in the number of crashes, fatalities and injuries. However, on average, the effect has disappeared after less than eighteen months. Their effects were largest and most lasting in countries in which the original safety level was relatively low".

9.3.4 Therefore, the implementation of the point demerit system would ensure deterrence to traffic violations since would be violators or infringers would be cognizant of the fact that a violation would subsequently result in the disqualification and subsequent withdrawal of their driver's license. This would ensure that drivers observe road traffic laws.

9.3.5 In conclusion, the insertion and the eventual implementation of the point demerit system would assist the law enforcement agencies in minimizing road carnage in South African roads; and thus contribute in ensuring that the roads of our country are a safe place to drive and travel on.

9.4 Whether the JMPD undertook to refund all the infringers whose infringement notices were served in violation of section 30 of the Act.

9.4.1 The issues relating to an undertaking by the JMPD and RTIA to refund all affected parties in this regard are not regulated by legislation.
9.4.2 As outlined in paragraph 7.4 above, the allegation that JMPD declared infringement notices that were served by normal post as being unlawful and unenforceable; and further committed to refund all affected parties to the tune of approximately R32 million was supported by evidence.

9.4.3 An infringement notice in this case that was issued in violation of an applicable legislation is unlawful and not enforceable as a result of the violation of the law. The payments that ensured thereafter were accordingly improper since they emanated from an irregular process.

9.4.4 The joint media statement by RTIA and JMPD that was issued on 07 July 2009 was in respect of a different process and not the refund infringement notices issued during the period August 2010 to 21 December 2012.

9.4.5 In conclusion, the payments that were effected by infringers to the issuing authority and the RTIA during the period August 2010 until 21 December 2010, that emanated from infringement noted which were issued against the AARTO Act, was unlawful.

9.4.6 Notwithstanding the above, the refund of the affected parties by the CoJ would be impractical and would negatively affect its budget since the revenue collected from the infringers has since escalated to nearly a billion rands.
10 FINDINGS

I make the following findings:

10.1 Regarding whether implementation of AARTO by the JMPD constitutes a contravention or violation of section 39 of the AARTO Act, 1998 and whether the conduct was improper and amounts to maladministration. I find that:

10.1.1 The infringement notices that were served by JMPD to alleged infringers for the period August 2010 until 21 December 2012 did not comply with the requirement as contained in section 30 of the Act. This conduct is irregular and therefore amounts to maladministration by the JMPD.

10.1.2 However, no remedial action could be made in this regard since JMPD has since complied with the provisions of section 30 of the Act as at 22 December 2013 by issuing infringement notices by registered post as provided for in the aforementioned section.

10.1.3 The allegation that the JMPD had not implemented AARTO in accordance with the AARTO Act, during the period August 2010 until 21 December 2012, is accordingly justified. This constitutes improper conduct and maladministration.

10.2 Regarding whether manner of serving infringement notices through ordinary post by the JMPD constitutes a contravention or violation of section 30 of the AARTO, 1998 and whether the conduct was irregular and amounts to maladministration, I find that:

10.2.1 The JPMD issued infringement notices through ordinary post during the period August 2010 and 21 December 2012 following the withdrawal of the
service by RTMC. The issuing of such infringement notices by ordinary post constituted a violation or contravention of section 30 of the AARTO Act, 1998, which provides for same to be served through registered post.

10.2.2 The infringement notices that were served by the JMPD through ordinary post during the period referred to above in paragraph 10.2.1 were in violation of section 30 of the AARTO Act which provides for serving of infringement notices by registered post.

10.2.3 The violation by the JMPD of section 30 of the AARTO by serving infringement notices through ordinary post as a substitute for registered post was irregular and constitutes maladministration.

10.3 Regarding whether the RTIA, an organ of state, is assigned with the legislative mandate to serve infringement notices and what method is provided for by the relevant legislative prescript:

10.3.1 In terms of section 17 of the AARTO Act, the obligation to serve notices to infringers rests with the issuing authority which in terms of section 1 of the Act is a local authority or municipality, in this case the JMPD.

10.3.2 The argument by the JMPD that section 4 (4) (a) of the Act makes provisions for the Road Traffic Management Agency to carry the legislative mandate of serving infringement notices was a misinterpretation of the law, and therefore has no merit.

10.4 Regarding whether the point demerit system was applied during and after the pilot project, and whether is it likely to unfairly result in the disqualification of driver’s license by issuing authorities if applied in the future, I find that:
10.4.1 Although the AARTO Act makes provision for the demerit of point in case an infringer violates road traffic laws, evidence that was obtained from the pilot project that was implemented by the JMPD shows that points were neither allocated nor deducted during the implementation of the pilot phase.

10.4.2 Even though the allegation that the implementation of the point demerit system in the future would result in having the drivers' licenses of infringers being revoked, its implementation is in the best interest of the country as it seeks to eradicate the culture of road traffic infringement by replacing it with the culture of road traffic obedience.

10.5 Regarding whether the JMPD undertook to refund all infringers whose infringement notices were served in violation of section 30 of the AARTO Act, I find that:

10.5.1 No evidence was found during the investigation that supports the allegation that JMPD undertook to refund infringers who had paid their respective infringement notices that were issued in violation of section 30 of the AARTO Act, during the period covering August 2010 to 21 December 2012.

10.5.2 Notwithstanding the above discussion or finding, the acceptance by JMPD and/ or RTIA of payments that emanated from an unlawful process was irregular, and therefore constituted maladministration by the JMPD and RTIA.

10.5.3 Evidence obtained from the JMPD show that the undertaking it had made through the joint statement was in respect of a different event that occurred in 2009.

11 REMEDIAL ACTION
Appropriate remedial action I am taking in pursuit of section 182 (1) (c) of the Constitution, is to call upon::

11.1 The Chief of Police of the JMPD is to:

11.1.1 Facilitate, in consultation with the City Manager, the issuing of a formal apology to be presented to all newspapers in circulation within the CoJ explaining the reasons for the issuing of infringement notices in contravention of section 30 of the AARTO Offences Act during the period August 2010 until 21 December 2012.

11.2 The Chief Executive Officer of the RTMC and the Registrar of the RTIA:

11.2.1 The RTMC should facilitate the insertion of a section in the Act which makes it an offence and carries a penalty against issuing authorities in case of violation of the AARTO Act.

11.2.2 The remedial action discussed in paragraph 11.2.1 above is aimed at ensuring that in its execution of the AARTO issuing authorities comply with the provision of the AARTO Act.

11.2.3 To ensure that RTIA intensifies its already existing educational drive to ensure that individuals understand their rights and options, as provided for in section 4 (1) (d) of the AARTO Act.
12 MONITORING

In order to monitor and ensure the implementation of my findings indicated above, the following steps must be taken:

12.1 The Chief of Police of the JMPD, the Chief Executive Officer of the RTMA and the Registrar of the RTIA to:

12.2.1 Each submits to me an implementation plan in respect of the remedial action taken in paragraph 11 above, within 30 days from the date of this report.

12.2.2 Submit a report on the progress made with the implementation of the remedial action taken in paragraph 11 above, within 60 days from the date of this report.

ADV THULI-N MADONSELA

PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA
DATE: 18/12/2014

ASSISTED BY THE GOOD GOVERNANCE AND INTEGRITY BRANCH