

REPUBLIC OF SOUTH AFRICA

**ADMINISTRATIVE ADJUDICATION
OF ROAD TRAFFIC OFFENCES
AMENDMENT BILL**

*(As amended by the Portfolio Committee on Transport (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 38B—2015]

ISBN 978-1-4850-0000-0

No. of copies printed 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definitions; to improve the manner of serving documents to infringers; to add to the functions of the Road Traffic Infringement Authority; to repeal certain obsolete provisions; to establish and administer rehabilitation programmes; to provide for the apportionment of penalties; to provide for the establishment of the Appeals Tribunal and matters related thereto; to effect textual corrections; and to provide for matters connected therewith.

PARLIAMENT OF THE Republic of South Africa enacts as follows:—

Amendment of section 1 of Act 46 of 1998, as amended by section 1 of Act 22 of 1999 and section 1 of Act 72 of 2002

1. Section 1 of the Administrative Adjudication of Road Traffic Offences Act, 1998 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution in the definition of “acceptable identification” for subparagraph (i) of paragraph (d) of the following subparagraph:

“(i) a company, a certificate of incorporation or name change issued in terms of the [**Companies Act, 1973 (Act No. 61 of 1973)**] 10
Companies Act, 2008 (Act No. 71 of 2008);”;

(b) by the deletion of the definition of “agency”;

(c) by the insertion after the definition of “authorised officer” of the following definition:

“**‘Authority’** means the Road Traffic Infringement Authority, established in terms of section 3;” 15

(d) by the substitution for the definition of “date of service” of the following definition:

“**‘date of service’** means the date on which an infringer has [**signed for**] 20
received the relevant document served on him or her under section 30;”

(e) by the insertion after the definition of “disqualification period” of the following definition:

“**‘electronic service’** means service by electronic communication as defined in the Electronic Communications Act, 2005 (Act No. 36 of 2005), and as contemplated in section 19(4) of the Electronic Commu- 25
nication and Transactions Act, 2002 (Act No. 25 of 2002);”;

- (f) by the insertion after the definition of “enforcement order” of the following definition:
 “**‘habitual infringer’** means an infringer, operator or a juristic person who, in terms of section 25, incurs demerit points resulting in a disqualification more than two times;”;
- (g) by the substitution for the definition of “infringement” of the following definition:
 “**‘infringement’** means any act or omission in contravention of this Act and any road traffic legislation or transport legislation;”;
- (h) by the substitution for the definition of “issuing authority” of the following definition:
 “**‘issuing authority’** means—
 (a) local authority contemplated in Chapter 7 of the Constitution of the Republic of South Africa, 1996, [(Act 108 of 1996)] the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other applicable law;
 (b) a provincial administration;
 (c) the Road Traffic Management Corporation, established under section 4 of the Road Traffic Management Corporation Act, 1999[,] or
 (d) any other state institution declared by the Minister by regulation to be an issuing authority,
 in so far as such authority, administration or state institution is responsible for road traffic and road transport matters;”;
- (i) by the deletion of the definition of “major infringement”;
- (j) by the deletion of the definition of “minor infringement”;
- (k) by the deletion of the definition of “national contraventions register”;
- (l) by the insertion after the definition of “Minister” of the following definition:
 “**‘National Road Traffic Offences Register’** means the National Road Traffic Offences Register administered by the Authority in which the details of infringements and offences of every infringer are recorded;”;
- (m) by the substitution for the definition of “representations officer” of the following definition:
 “**‘representations officer’** means a person appointed in terms of section 10 to adjudicate on representations contemplated in section 18;”;
- (n) by the deletion of the definition of “sheriff”; and
- (o) by the deletion of the word “and” after the definition of “sheriff”, the insertion of the word “and” after the definition of “this Act”, the deletion of the full-stop after the definition of “this Act” and the addition after the definition of “this Act” of the following definition:
 “**‘Tribunal’** means the Appeals Tribunal established by section 29A;”.

Amendment of section 4 of Act 46 of 1998

2. Section 4 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) to administer a procedure to discourage the contravention of road traffic [laws] legislation or transport legislation and to support adjudication of infringements as set out in subsection (2);”;
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 “(c) [to provide specialised prosecution support services as set out in subsection (4)] to administer and manage a point demerit system for infringements and offences; and”;
- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(b) considering representations from an infringer in terms of section 18 with regard to an infringement notice or the non-compliance with the prescribed processes by an issuing authority relating to [a minor] an infringement;”;
- (d) by the deletion in subsection (2) of paragraph (e);
- (e) by the deletion in subsection (2) of the word “and” at the end of paragraph (f);

- (f) by the deletion in subsection (2) of the full-stop at the end of paragraph (g) and the insertion in that subsection of the word “and” at the end of that paragraph;
- (g) by the addition in subsection (2) of the following paragraph:
 - “(h) administering prescribed rehabilitation programmes for habitual infringers.”; 5
- (h) by the insertion in subsection (3) of the word “and” at the end of paragraph (a);
- (i) by the deletion in subsection (3) of the word “and” at the end of paragraph (b) and the insertion in that subsection of a full-stop at the end of that paragraph;
- (j) by the deletion in subsection (3) of paragraph (c); and 10
- (k) by the deletion in subsection (4) of paragraphs (a) and (c).”.

Amendment of section 11 of Act 46 of 1998

3. Section 11 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The [agency] Authority may pay to the persons in its employ such remuneration and allowances, and may provide them with pensions and other benefits, as the [board] Board may determine [with the approval of the Minister acting in consultation with the Minister of Finance] after consultation with the Minister.”.
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Repeal of section 12 of Act 46 of 1998

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4. Section 12 of the principal Act is hereby repealed.

Amendment of section 13 of Act 46 of 1998, as amended by section 7 of Act 72 of 2002

5. Section 13 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (d); 25
and
- (b) by the insertion in subsection (1) after paragraph (d) of the following paragraph:
 - “(dA) penalties issued and collected by, or on behalf of, an issuing authority; and”.
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Substitution of section 15 of Act 46 of 1998

6. The following section is hereby substituted for section 15 of the principal Act:

“Banking account

15. The [agency] Authority may, with the approval of the [Director-General] Board, open and maintain one or more accounts with a bank registered [finally] as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), in which must be deposited [the] money received by the [agency] Authority and money received from issuing authorities, driving licence testing centres and registering authorities, and from which payments by [it] the Authority or on its behalf may be made.”.

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Amendment of section 17 of Act 46 of 1998, as amended by section 8 of Act 72 of 2002

7. Section 17 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (e) of the following paragraph: 45
 - “(e) inform the infringer that the demerit points position may be ascertained [from the national contraventions register at the office of any issuing authority, registering authority or driving licence testing centre] in the prescribed manner;”;
- (b) by the deletion in subsection (1)(f) of subparagraph (iv); and 50

- (c) by the substitution for subsection (5) of the following subsection:

“(5) The owner or operator of a motor vehicle who permits any person to drive such vehicle or otherwise to exercise any control over such vehicle, without having ascertained the full names, **[acceptable identification and]** identity document or residential [and], postal and, where applicable, business and e-mail address of an infringer, such person is **[guilty of an offence and]** liable **[upon conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment]** for the prescribed penalty and fees.”

Amendment of section 18 of Act 46 of 1998, as amended by Act 72 of 2002

8. Section 18 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) (a) An infringer who has been served with an infringement notice alleging that he or she has committed **[a minor]** an infringement, may make **[representations]** a representation in the prescribed manner, with respect to that notice and infringement to the [Agency] Authority.

(b) In the event that a representation is successful as a result of prescribed procedures not being complied with, that infringement notice, courtesy letter or enforcement order may be served again on that infringer in the prescribed manner within 40 days from the date that the representation was finalised, provided that the infringement notice, courtesy letter or enforcement order must not be served later than 180 days from the date the infringement was committed.”;

- (b) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) Any representations contemplated in paragraph (a) must be submitted to the Authority, as prescribed [issuing authority concerned, who must reply thereto within the prescribed time].”; and

- (c) by the substitution for subsection (7) of the following subsection:

“(7) If the representations are rejected, the representations officer may advise the infringer **[to elect in the prescribed manner to be tried in court,]** of his or her right of review or appeal to the Tribunal and must serve or cause to be served on the infringer a prescribed written notification informing him or her—

(a) of the reasons for the decision, and provide the issuing authority concerned with a copy thereof;

(b) if the infringer does not **[elect to be tried in court]** exercise the right to review or appeal—

(i) that the penalty, the prescribed representations fee and the prescribed fee of the courtesy letter, if any, are payable to the **[agency] Authority** or that the arrangements are made with the **[agency] Authority** in the prescribed manner to pay in instalments, not later than 32 days after the date of service of the notification; and

(ii) that failure to pay the penalty and fees or to make arrangements to pay in instalments will result in an enforcement order being served on the infringer and that the infringer will become liable to pay the penalty and fees and the prescribed fee of the enforcement order; and

(c) if the infringer elects to **[be tried in court, which may only be done on the advice of the representations officer,]** exercise the right to review or appeal that the provisions of [section 22] Chapter IVA apply.”.

Amendment of section 19B of Act 46 of 1998, as inserted by section 11 of Act 72 of 2002

9. Section 19B of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“If an infringer makes [an] insufficient payment to the [agency] Authority in terms of this Act in respect of a [fine] penalty or the cheque used for payment is dishonoured, a notice as prescribed must be served on an infringer, informing him or her—”;

- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 5

“(b) that failure to comply with the notice contemplated in paragraph (a) will lead to [a warrant] an enforcement order being issued against him or her in terms of section [21] 20.”; and

- (c) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 10

“(c) that failure to comply with the notice will lead to [a warrant] an enforcement order in respect of the full amount owed being issued against him or her in terms of section [21] 20.”.

Amendment of section 20 of Act 46 of 1998, as amended by section 12 of Act 72 of 2002 15

10. Section 20 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“If an infringer fails to comply with the requirements of a notification contemplated in section 18(7) or a courtesy letter contemplated in section 19(2)(b) or has failed to [appear in court as contemplated in section 22(3)(a)] apply for review or appeal to the Tribunal, as the case may be, the registrar must, subject to subsection (2)—”;

- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 25

“(d) provide the infringer with a print-out of the demerit points incurred by him or her to date, together with an indication of the number of points left before his or her driving licence, professional driving permit, any permit or licence issued in terms of any road traffic legislation or transport legislation or operator card is suspended in terms of section 25 or cancelled in terms of section 27.”;

- (c) by the substitution for subsection (3) of the following subsection:

“(3) An enforcement order must [—

(a)] state that the infringer on whom it is served may, not later than 32 days after the date of service of the order, pay the penalty, representations fee and the fees of the courtesy letter, if any, and the prescribed fee of the enforcement order to the [agency] Authority at the specified place and in the specified manner, and that the prescribed demerit points will be recorded in the [national contraventions register] National Road Traffic Offences Register [; and

(b) state that a failure to comply with the requirements of the enforcement order within the period contemplated in paragraph (a) will result in a warrant being issued to recover the applicable penalty and fees].”;

- (d) by the insertion in subsection (5) after paragraph (b) of the following paragraph: 45

“(bA) any permit or licence issued in terms of any road traffic legislation or transport legislation;”;

- (e) by the substitution in subsection (10) for paragraph (b) of the following paragraph: 50

“(b) the infringer must be informed about it in the prescribed manner and his or her driving licence, professional driving permit [or], operator’s card or permit or licence issued in terms of any road traffic legislation or transport legislation, must be returned [or the endorsement of a driving licence that is contained in an identity document must be cancelled,] unless he or she has been disqualified otherwise.”.

Repeal of section 21 of Act 46 of 1998

11. Section 21 of the principal Act is hereby repealed.

Repeal of section 22 of Act 46 of 1998, as substituted by section 14 of Act 72 of 2002

12. Section 22 of the principal Act is hereby repealed.

Amendment of section 25 of Act 46 of 1998, as amended by Act 72 of 2002 5

13. Section 25 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) If a person, operator or a juristic person who is not an operator, incurs demerit points which, when added to the points previously recorded against that person, operator or a juristic person who is not an operator in the [national contraventions register] National Road Traffic Offences Register and reduced as contemplated in section 28, exceed the total contemplated in section 29(d), that person, operator or a juristic person who is not an operator is disqualified **[with effect from]** within 32 days, after such excess points have been incurred, from driving or operating a motor vehicle on a public road.”;

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) The Minister may prescribe different numbers under paragraph (a) in respect of a driver, a learner driver, **[and]** an operator of a motor vehicle and a juristic person who is not an operator.”;

(c) by the substitution for subsection (3) of the following subsection:

“(3) A person, **[who is disqualified in terms of this section]** operator, or a juristic person who is not an operator—

(a) must [immediately] within a period of 32 days hand in any driving licence card [or], professional driving permit, motor vehicle licence disc, operator card or any other permit, card or licence issued in terms of road traffic legislation or transport legislation, where applicable, in the prescribed manner to the relevant issuing authority contemplated in section 26(2) for retention by such issuing authority during the disqualification period, produce any driving licence [contained in an identity document] to such issuing authority for endorsement as suspended or must remove the prescribed operator card and deal therewith in the prescribed manner; and

(b) may not apply for a driving licence, professional driving permit or operator card, motor vehicle licence disc, operator card or any other permit, card or licence disc issued in terms of road traffic legislation or transport legislation during the disqualification period.”;

(d) by the substitution for subsection (4) of the following subsection: 40

“(4) **[Any]** In the event that a person, operator or a juristic person who is not an operator, [who] fails to comply with the provisions of subsection (3)(a) or [who] drives or operates a motor vehicle during his or her disqualification period, his or her licence, permit, card or licence issued in terms of any road traffic legislation or transport legislation is suspended for a further period of one year for every subsequent driving or operation and such person is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year or both a fine and such imprisonment.”;

(e) by the substitution for subsection (5) of the following subsection: 50

“(5) Upon expiry of **[his or her]** the disqualification period, a person referred to in subsection (3) may apply in the prescribed manner to the relevant issuing authority [to] for the return of [his or her driving licence card or professional driving permit or to reissue an operator card] the document referred to in subsection (3)(a).”.

Amendment of section 29 of Act 46 of 1998

14. Section 29 is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) prescribe infringements and offences [, and categorise them into minor infringements, major infringements and other offences];”.

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Insertion of CHAPTER IVA in Act 46 of 1998

15. The following Chapter is hereby inserted in the principal Act after Chapter IV:

**“CHAPTER IVA
APPEALS TRIBUNAL**

Establishment and constitution of Tribunal

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29A. (1) The Appeals Tribunal is hereby established.

(2) The Tribunal—

- (a) has jurisdiction throughout the Republic;
- (b) is a juristic person;
- (c) is a tribunal of record; and
- (d) must exercise its functions in accordance with this Act or any other applicable legislation.

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(3) The Tribunal consists of a Chairperson and eight other persons appointed by the President, on a part-time basis, and on the recommendation of the Minister, from among those persons nominated by the Minister in response to a public call for nominations as prescribed.

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(4) The President must—

- (a) appoint the Chairperson and other members of the Tribunal no later than the date on which this Act comes into operation; and
- (b) appoint a person to fill any vacancy which may occur on the Tribunal.

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(5) To be eligible for appointment or designation as a member of the Tribunal, and to continue to hold that office, a person must—

- (a) not be subject to any disqualification set out in subsection (6); and
- (b) have submitted to the Minister a written declaration stating that the person—

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- (i) is not disqualified in terms of subsection (6); and
- (ii) does not have any interests referred to in subsection (6)(b).

(6) A person may not be a member of the Tribunal if that person—

- (a) personally or through a spouse, partner or associate—
 - (i) has or acquires a direct or indirect financial interest in a transport-related company or entity; or
 - (ii) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of his or her duties as a member of the Tribunal;

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(b) is an unrehabilitated insolvent or he or she becomes insolvent and the insolvency results in the sequestration of that person’s estate;

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(c) has ever been, or is, removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money;

(d) is subject to an order of a competent court holding that person to be mentally unfit or mentally disordered;

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(e) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; or

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(f) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.

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(7) For the purpose of subsection (6)(a), a financial interest does not include an indirect interest held in any fund or investment if the person

contemplated in that subsection has no control over the investment decisions of that fund or investment.

(8) A member of the Tribunal must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in subsection (6)(a).

(9) A member of the Tribunal must not—

- (a) engage in any activity that may undermine the integrity of the Tribunal;
- (b) attend, participate in or influence the proceedings of the Tribunal, if, in relation to the matter before the Tribunal, that member has an interest—
 - (i) contemplated in subsection (6)(a); or
 - (ii) that precludes that member from performing the functions of a member of the Tribunal in a fair, unbiased and proper manner;
- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Tribunal; or
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions as a member of the Tribunal.

(10) If, at any time, it appears to a member of the Tribunal that a matter being considered by the Tribunal during proceedings concerns an interest of that member referred to in subsection (9)(b), that member must—

- (a) immediately and fully disclose the nature of that interest to the members present; and
- (b) withdraw from the proceedings to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.

(11) The disclosure by a member of the Tribunal in terms of subsection (10)(a), and the decision by the Tribunal in terms of subsection (10)(b), must be expressly recorded in the records of the proceedings in question.

(12) The proceedings of the Tribunal, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are binding despite—

- (a) a member of the Tribunal failing to disclose an interest as required by subsection (10); or
- (b) a member of the Tribunal, having an interest, attending or participating in those proceedings.

Functions of Tribunal

29B. (1) The Tribunal may—

- (a) adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of this Act;
- (b) hear appeals against, or review, any decision of the representation officer that may in terms of this Act be referred to it; and
- (c) make any ruling or order necessary or incidental to the performance of its functions in terms of this Act.

(2) The appeal or review referred to in subsection (1)(b) must be lodged with the Tribunal within 30 days of receipt of the reasons for the decision, and lodged in the manner and on payment of fees, as prescribed by the Minister.

Qualifications of members of Tribunal

29C. (1) The members of the Tribunal, viewed collectively—

- (a) must represent a broad cross-section of the population of the Republic; and
- (b) must comprise sufficient persons with legal qualifications and knowledge or experience in road traffic and road transport related matters.

- (2) Each member of the Tribunal must—
- (a) be a citizen of South Africa, who is ordinarily resident in the Republic;
 - (b) have suitable qualifications and experience in a field related to road traffic and transport legislation or any special skills, qualifications, expertise or experience in matters concerning legal, financial and economic matters; and
 - (c) be committed to the purposes of this Act.

Conditions of appointment and terms of office of members

29D. (1) The Chairperson and any other member of the Tribunal must, for each day or part of a day in any month on which the duties attached to the office concerned were performed, be remunerated and paid a travelling and subsistence allowance, at such daily rate as the Minister in consultation with the Minister of Finance may determine from time to time.

(2) A member of the Tribunal holds office for a period of five years and is, on the expiration of such member's term of office, eligible for reappointment by the President for one additional term only.

(3) The Chairperson, on one month's written notice addressed to the Minister, may—

- (a) resign from the Tribunal;
- (b) resign as a Chairperson, but remain as the member of the Tribunal.

(4) A member of the Tribunal other than the Chairperson may resign by giving at least one month's notice to the Minister.

(5)(a) The other conditions of appointment will be as prescribed by the Minister.

(b) Different categories of appointment may be prescribed in respect of different categories of members.

Vacancies in Tribunal

29E. (1) A member of the Tribunal vacates office—

- (a) if the member becomes subject to any disqualification referred to in section 29A(6); and
- (b) in the case where the member has resigned by giving one month's notice in writing to the Minister, when the member's resignation takes effect.

(2) The President, on the recommendation of the Minister, may remove any member of the Tribunal from office—

- (a) for misconduct;
- (b) for failing to perform the duties of a member or to perform such duties diligently and efficiently; or
- (c) if the member, because of any physical or mental illness or disability, has become incapable of performing a member's duties or performing the duties diligently and efficiently.

(3)(a) Any vacancy in the office of the Tribunal must be filled by the President through the appointment of another member in terms of section 29A within 90 days of the vacancy occurring.

(b) A member so appointed holds office for the unexpired portion of the predecessor's term of office.

Acting member of Tribunal

29F. (1) If, on expiry of the term of office of a member of the Tribunal, that member is still considering a matter before the Tribunal, that member may continue to act as a member in respect of that matter only.

(2) If the matter the acting member was dealing with has been finalised but his or her position is still vacant, the Minister may appoint that member to act as a member of the Tribunal until his or her vacancy is filled by the President.

(3) If a member becomes disqualified in terms of section 29A(6), or is removed from office in terms of section 29E(2), the Minister may appoint a suitable person to act as a member of the Tribunal until the vacancy is filled.

Deputy Chairperson of Tribunal

29G. (1) The President must designate a member of the Tribunal as Deputy Chairperson of the Tribunal.

(2) The Deputy Chairperson performs the functions of Chairperson whenever—

- (a) the office of Chairperson is vacant; or
- (b) the Chairperson is for any other reason temporarily unable to perform those functions.

Sittings of Tribunal

29H. (1) The Tribunal must sit on such days and during such hours and at such a place as the Chairperson may determine.

(2) The presence of at least 50 per cent plus one of the members shall be necessary to constitute a sitting of the Tribunal.

(3) If both the Chairperson and the Deputy Chairperson are absent from a sitting of the Tribunal, the members present must from among their number elect a person to preside at the sitting.

(4) The Chairperson may for the purposes of hearing an appeal or reviewing a decision—

- (a) summon any person who may give material information concerning the subject matter of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the Chairperson may retain for examination any document so produced;
- (b) administer an oath or affirmation from any person called as a witness at the hearing; and
- (c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control, which has a bearing on the subject matter of the hearing.

Decisions of Tribunal

29I. (1) The Tribunal may confirm, vary or set aside any decision against which an appeal or review has been lodged in terms of section 29B.

(2) The decision of a majority of the members present at a sitting of the Tribunal constitutes a decision of the Tribunal, and in the event of an equality of votes on any matter, the person presiding at the sitting must have a casting vote in addition to that person's deliberative vote.

Appeals against decision of Tribunal

29J. (1) Any infringer affected by a decision of the Tribunal may appeal to any High Court having jurisdiction on the matter.

(2) An appeal contemplated in subsection (1) must be dealt with as if it were an appeal against a judgment of a Magistrate's Court in a civil case and all rules applicable to such an appeal apply to an appeal in terms of subsection (1).

Administrative work of Tribunal

29K. The administrative work of the Tribunal must be performed by employees designated for that purpose by the Registrar.

Amendment of section 30 of Act 46 of 1998, as substituted by section 3 of Act 22 of 1999

16. Section 30 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) 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 mail to his or her last known address]** by personal, postage and electronic services or communication as prescribed.”; and

(b) by the substitution for subsection (2) of the following subsection: 5

“(2) A document which is sent **[by registered mail]** in terms of subsection (1), is **[regarded]** deemed to have been served on the infringer on the tenth day **[after the date which is stamped upon the receipt issued by the post office which accepted the document for registration]** after posting the said document or of the electronic service, and such electronic service reflected in the National Road Traffic Offences Register, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit.”. 10

Amendment of section 31 of Act 46 of 1998

17. Section 31 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 15

“(2) **[The]** Subject to section 18(1)(b), the laws on prescription are not applicable to penalties and fees payable in terms of this Act, and may be collected at any time.”.

Substitution of section 32 of Act 46 of 1998, as amended by section 21 of Act 72 of 2002

18. The following section is hereby substituted for section 32 of the principal Act:

“Apportionment of penalties and fees

32. (1) Any penalty received by the Authority in terms of this Act must, as prescribed, be paid over to the issuing authority that issued the infringement notice, after deduction of an amount equal to the discount contemplated in section 17(1)(d). 25

(2) Any prescribed fees contemplated in section 13(1)(dA) collected by an issuing authority in terms of this Act must, as prescribed, be paid to the Authority. 30

(3) Despite any other law, any penalties and fees received in respect of any conviction under the applicable road traffic and transport legislation must be disbursed as prescribed.”. 35

Amendment of section 34 of Act 46 of 1998

19. Section 34 of the principal Act is hereby amended by the deletion of the word “and” at the end of paragraph (f), the insertion of the word “and” at the end of paragraph (g), the deletion of the full-stop at the end of paragraph (g), and the addition of the following paragraph: 35

“(h) the manner in which an infringement notice, courtesy letter or enforcement order may be reissued.” 40

Amendment of section 35 of Act 46 of 1998

20. Section 35 of the principal Act is hereby amended by substitution for subsection (1) of the following subsection:

“(1) Any notice issued in terms of section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), before the date of commencement of section 17, may be continued and finalised under that Act, but no such notice may be issued after that date in respect of an **[offence or]** infringement.”. 45

Substitution of certain words and expressions

21. The principal Act is hereby amended—

(a) by the substitution for the expressions “Agency” and “agency”, wherever they occur, of the expression “Authority”;

- (b) by the substitution for the expressions “major infringement” and “minor infringement”, wherever they occur, of the expression “infringement”;
- (c) by the substitution for the expression “AGENCY”, wherever it occurs, of the expression “AUTHORITY”;
- (d) by the substitution for the expression “national contraventions register”, wherever it occurs, of the expression “National Road Traffic Offences Register; and 5
- (e) by the substitution for the expression “board”, wherever it occurs, of the expression “Board”.

Short title and commencement

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22. This Act is called the Administrative Adjudication of Road Traffic Offences Amendment Act, 2015, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE ADMINISTRATIVE
ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT
BILL, 2015**

1. BACKGROUND AND PURPOSE

- 1.1 The Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998) (“Act”), seeks to promote road traffic quality by providing for a scheme that discourages road traffic contraventions and facilitate the efficient adjudication of road traffic infringements.
- 1.2 The Act has been in operation on a pilot phase in the jurisdictional areas of Tshwane and Johannesburg Metropolitan Municipalities, where some challenges and inefficiencies have been identified. The said challenges need to be addressed before the national roll-out.
- 1.3 The Administrative Adjudication of Road Traffic Offences Amendment Bill (“Bill”), seeks to amend the Act in order to achieve efficiency and financial sustainability of issuing authorities as well as the Road Traffic Infringement Agency which the Bill seeks to rename to the Road Traffic Infringement Authority (“Authority”).
- 1.4 The amendments identified in the Bill will assist the Authority as well as issuing authorities to be financially stable in order to proceed with proper implementation.

2. CLAUSE-BY-CLAUSE ANALYSIS

2.1 Clause 1

Clause 1 of the Bill amends section 1 of the Act by adding, deleting and substituting certain definitions.

2.2 Clause 2

Clause 2 of the Bill amends section 4 of the Act, which provides for the objects and functions of the Authority. Clause 2 mainly deletes section 4(2)(e) of the Act, which deals with the issuing by the registrar of a warrant against an infringer who has failed to comply with an enforcement order made in terms of the Act. The deletion of this subsection is aligned with the proposed repeal (in clause 11) of section 21 of the Act, which deals with the issuing of warrants by the registrar. The clause also deletes section 4(4)(a) and (c) which deal with the prosecution of offences in criminal trials.

2.3 Clause 3

Clause 3 of the Bill amends section 11 of the Act which provides for the administrative staff and remuneration. The clause removes the requirement of the Minister acting in consultation with the Minister of Finance in respect of the approval of pensions and benefits determined by the Board.

2.4 Clause 4

Clause 4 repeals sections 12 of the Act which provides for the appointment of sheriffs.

2.5 Clause 5

Clause 5 of the Bill amends section 13 of the Act, which provides for the financing of the Authority. Clause 5 inserts a new paragraph in section 13 of the Act to provide that the finances of the Authority are also derived from penalties issued and collected by or on behalf of an issuing authority. The Act defines an “issuing authority” as a local authority, a provincial administration

or the Road Traffic Management Corporation established under section 4 of the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999), and the Bill adds “any other state institution declared by the Minister by regulation to be an issuing authority”, to the list.

2.6 Clause 6

Clause 6 of the Bill amends section 15 of the Act, which provides for the banking account of the Authority. Clause 6 provides that the Authority may open and maintain one or more bank accounts with the approval of the Board of the Authority. Currently section 15 requires the approval of the Director-General. The account(s) must be used to deposit monies received by the Authority and money received from issuing authorities, driving licence testing centres and registering authorities.

2.7 Clause 7

Clause 7 of the Bill amends section 17 of the Act which provides for infringement notices and provides that the owner or operator of a motor vehicle who permits any person to drive such vehicle or otherwise to exercise any control over such vehicle, without having ascertained the full names, identity document, residential, postal and, where applicable, business and e-mail address of an infringer, such person is liable for the prescribed penalty and fees.

2.8 Clause 8

Clause 8 of the Bill amends section 18 of the Act which makes provision for the right of an infringer to make representations to a representations officer. The amendment provides that an infringer who has been served with an infringement notice alleging that he or she has committed an infringement, may make a representation in the prescribed manner, with respect to that notice and infringement to the Authority. If the representations are rejected the infringer may no longer elect to be tried in court but has a right to appeal or review such decision to the Appeal Tribunal (“the Tribunal”).

2.9 Clause 9

Clause 9 of the Bill amends section 19B of the Act, which provides for the payment of fines imposed for traffic infringements. If an infringer makes insufficient payment to the Authority in terms of this Act in respect of a fine or the cheque used for payment is dishonoured, a notice as prescribed must be served on an infringer, informing him or her that failure to comply with the notice will lead to an enforcement order, instead of a warrant being issued against him or her. If an infringer fails to comply with an arrangement in terms of a notice, to pay by instalment for instance, this will lead to an enforcement order for the full amount.

2.10 Clause 10

2.10.1 Clause 10 amends section 20 by deleting subsection (3)(b) of section 20. Section 20 of the Act provides for enforcement orders issued by the registrar in respect of failure to pay fines imposed for traffic infringements.

2.10.2 Section 20(3)(b) stipulates that an enforcement order must state that a failure to comply with the requirements of the enforcement order not later than 32 days after the date of service of the order will result in a warrant being issued to recover the applicable penalty and fees. The deletion of this paragraph is in line with the repeal (in clause 7) of section 21 of the Act, which deals with the issuing of warrants by the registrar.

2.10.3 The clause adds a new section 20(5)(bA) in the prohibition of issuing of a permit or licence issued in terms of any road transport laws if an enforcement order has been issued against an infringer.

2.10.4 The clause adds a permit or licence issued in terms of any road transport laws in the requirement that an infringer must be informed about the revocation of an enforcement order in the prescribed manner and his or her driving licence, professional driving permit, any or operators card must be returned unless he or she has been disqualified otherwise.

2.11 Clause 11

2.11.1 Clause 11 of the Bill repeals section 21 of the Act. Section 21 of the Act empowers the registrar to issue a warrant against a traffic infringer who fails to comply with an infringement notice or an enforcement order which requires him or her to pay a traffic penalty.

2.11.2 The proposed repeal means that the consequences of the failure to comply with an enforcement order will be dealt with in terms of section 20(5) of the Act, which provides that an infringer who does not comply with an enforcement order may not be issued with a driving licence, professional driving permit or licence disc in respect of a motor vehicle registered in the name of an infringer, until such enforcement order has been complied with or has been revoked. In respect of infringement notices, section 19(2)(c) of the Act provides that if an infringer fails to comply with an infringement notice, the Authority must issue a courtesy letter and serve it on the infringer, stating that a failure to comply with the requirements of the courtesy letter within the time permitted will result in the registrar issuing an enforcement order in terms of section 20 of the Act.

2.12 Clause 12

Clause 12 of the Bill repeals section 22 of the Act, which provides for the procedure in respect of a trial of an infringer who does not pay a fine but elects to be tried in court. This proposal is in line with the repeal of the provisions dealing with the election to go to court.

2.13 Clause 13

Clause 13 amends section 25 of the Act which provides for the prohibition on driving or operating a motor vehicle. The amendment introduces the concept of an “operator or a juristic person who is not an operator” and in this respect provides that if a person, operator or a juristic person who is not an operator, incurs demerit points which, when added to the points previously recorded against that person, operator or a juristic person who is not an operator in the national road traffic offences register and reduced as contemplated in section 28, exceed the total contemplated in section 29(d), that person, operator or a juristic person who is not an operator is disqualified within 32 days, after such excess points have been incurred, from driving or operating a motor vehicle on a public road.

2.14 Clause 14

Clause 14 of the Bill amends section 29 of the Act which provides for the categorization of offences, infringements and demerit points. The new amendment clarifies that the Minister, acting with the concurrence of the Minister of Justice and the MEC of each province, may for the purpose of this Act prescribe infringements and offences. The amendment removes the requirement of categorising transgressions into “minor infringements, major infringements and other offences.

2.15 Clauses 15

Clause 15 primarily introduces a new Chapter IVA in the Act. Clause 15 provides for the establishment of the Tribunal, whose main function is to hear appeals and reviews and adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of the Act. The Chairperson and other members of the Tribunal are appointed by the President. Clause 15 also provides for functions of the Tribunal, qualifications of members of the Tribunal, conditions of appointment and terms of office of members, vacancies in the Tribunal, appointment of the Deputy Chairperson of the Tribunal, sittings of the Tribunal, decisions of the Tribunal, acting by the member of the Tribunal, appeals against decisions of the Tribunal and the administrative work of the Tribunal.

2.16 Clause 16

Clause 16 of the Bill amends section 30 of the Act, which provides for service of documents on an infringer, personally or by registered mail. The proposed amendment provides for service of documents by means of postage or electronic services, as prescribed. The amendment also provides that a document is deemed to have been served on the infringer on the tenth day of postage or of the electronic service, and such electronic service being reflected in the National Road Traffic Offences Register, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit.

2.17 Clause 17

Clause 17 of the Bill amends section 31 of the Act which provides for penalties. Clause 17 in effect provides that the laws of prescription are not applicable to traffic penalties and fines except in the case where representations are successful because of a technicality on the part of the authorities, in which case the infringement notice must be served again on the infringer.

2.18 Clause 18

Clause 18 of the Bill substitutes the whole of section 32 of the Act, which provides for the apportionment of penalties. The new substitution provides that any penalty received by the Authority in terms of the Act must, as prescribed, be paid over to the issuing authority that issued the infringement notice, after deduction of an amount equal to the discount. Any prescribed fees or monies collected by or on behalf of the issuing authority in terms of the Act must, as prescribed, be paid to the Authority.

2.19 Clause 19

Clause 19 of the Bill amends section 34 of the Act which deals with the power of the Minister to make regulations. Clause 19 adds a new paragraph in section 34 and give the Minister the power to make regulations on the manner in which an infringement notice, courtesy letter or infringement order may be reissued.

2.20 Clause 20

2.20.1 Clause 20 of the Bill amends section 35 of the Act which deals with transitional provisions. Clause 20 provides that a notice issued in terms of section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), before the date of commencement of section 17, may be continued and finalised under the Criminal Procedure Act, but the said notice may not be issued after that commencement date in respect of an infringement, thus removing the reference to an “offence”. Section 17 of the Act provides for the issuing of an infringement notice by an authorised officer or a person duly authorised by an issuing authority.

2.20.2 It must be noted that currently the only dates for commencement of section 17 are 1 July 2008 in respect of the City of Tshwane Metropolitan Municipality, and 1 November 2008 in respect of the City of Johannesburg Metropolitan Municipality. This is in line with section 36(2) of the Act, which provides that different dates may be determined in respect of different provisions of the Act and different areas of the Republic.

2.21 Clause 21

2.21.1 Clause 21 of the Bill generally provides for the substitution of certain expressions. In effect, the name “Road Traffic Infringement Agency” is replaced with “Road Traffic Infringement Authority”. The expressions “major infringement” and “minor infringement” are to be replaced with “infringement” throughout the Act.

2.21.2 The expression “national contraventions register” is replaced with “National Road Traffic Offences Register”.

2.21.3 The expression of “board”, is being replaced with “Board”.

2.22 Clause 22

Clause 22 of the Bill provides for the short title and commencement.

3. DEPARTMENT/BODIES CONSULTED

3.1 The Bill was presented to the National Economic Development and Labour Council Task Team, and after numerous meetings it was approved.

3.2 The Bill was published for public comment in Government Gazette No 36613 of 28 June 2013.

3.3 The comments, where necessary, were incorporated in the final draft Bill.

3.4 A wide range of stakeholders were consulted in preparation for the draft Bill, including—

- The Road Traffic Management Corporation;
- the Road Traffic Infringement Agency;
- the Johannesburg Metropolitan Police Department;
- the Tshwane Metropolitan Police Department;
- the Ekurhuleni Metropolitan Police Department;
- the Provincial Departments of Transport;
- the Justice Project South Africa;
- the South African Vehicle Rental and Leasing Association; and
- the South African Local Government Association.

3.5 The Bill was presented to the Justice, Crime Prevention and Security Cluster (JCPS Cluster) and was approved subject to the Department, NPA and SAPS convening meetings to resolve and research further on, implementation challenges that might arise and reporting progress to the JCPS Cluster committee.

4. FINANCIAL IMPLICATIONS

The Bill is expected to have the following financial implications:

- (a) The revenue of the issuing authorities and the Authority will be increased due to the provision of electronic methods of service, which will drastically reduce the cost of registered mail as is currently the case. This will further increase the support of the administrative adjudication of road traffic offences by issuing authorities who have been concerned with the high costs of the legal requirement of serving notices with registered mail.
- (b) The proposed change in financial revenue stream to all municipalities might have financial implications.

5. PARLIAMENTARY PROCEDURE

- 5.1 The Constitution prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.
- 5.2 The State Law Advisers have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.
- 5.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.
- 5.4 Therefore the issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure fall within a functional area listed in Schedule 4 to the Constitution.
- 5.5 The Bill seeks to promote road traffic quality by providing for a scheme that discourages road traffic contraventions and facilitate the efficient adjudication of road traffic infringements. The Bill seeks to amend the Act in order to achieve efficiency and financial sustainability of issuing authorities as well as the Authority.
- 5.6 The Bill provides for the National Road Traffic Offences Register that is to be administered by the Authority. The National Road Traffic Offences Register records and contains all the electronic details of infringements and offences of every infringer throughout the country.
- 5.7 The Bill provides for the financing of the Authority by penalties issued and collected by issuing authorities, which have the power, among other things, to issue infringement notices and enforcement orders. The issuing authorities are local authorities, provincial administrations and the Road Traffic Management Corporation, which is a national public entity listed as such under the Public Finance Management Act, 1999 (Act No. 1 of 1999), whose objective is to enhance the overall quality of road traffic service provision and, in particular, to ensure safety, security, order, discipline and mobility on the roads, nationally.

- 5.8 The Bill provides for service of documents by means of postage and electronic service. The service of documents is conducted by issuing authorities. The electronic service must be reflected in the National Road Traffic Offences Register, indicated above.
- 5.9 In terms of the Bill, the Authority has the power to receive and distribute penalties it receives to the relevant issuing authorities, after deduction of the prescribed discounts in terms of the Act.
- 5.10 The Bill provides for the establishment of the Tribunal, whose main function is to hear appeals and reviews and adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of this Act.
- 5.11 The proposed amendments, as reflected, have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.
- 5.12 It appears that the provisions of the Bill and its subject matter, in substantial measure, fall within the functional area, namely “road traffic regulation”, contained in Schedule 4 to the Constitution. The provisions of the Bill affect the provinces because they require the involvement of the provinces in their implementation and they affect the interests, concerns and capacities of the provinces, therefore the provinces should have more say on the contents of the Bill that relate to road traffic.
- 5.13 The State Law Advisers and the Department of Transport are therefore of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, which is “road traffic regulation”.
- 5.14 The State Law Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.”.