**REPUBLIC OF SOUTH AFRICA**

**PORTFOLIO COMMITTEE AMENDMENTS**

**TO**

# ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES

# AMENDMENT BILL

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**[B38 — 2015]**

(As agreed to by the Portfolio Committee on Transport (National Assembly))

AMENDMENTS AGREE TO

# ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES

# AMENDMENT BILL

[B 38—2015]

**LONG TITLE**

1. On page 2, in line two, after “definitions” to insert the following:

“to establish and administer rehabilitation programmes; to provide for the establishment of an Appeal Tribunal;”

CLAUSE 1

1. On page 2, after line 6, to omit paragraph (a) and to substitute:
2. by the substitution in the definition of “acceptable identification” for paragraphs (d) and (f) of the following paragraphs: respectively.

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

"(*f*) a clear, legible and certified copy of the applicable certificate or document referred to in paragraphs *(a)* to *(e)*;";

1. On page 2, after line 15, to insert the following paragraph:

(c) 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 received the relevant document served on him or her under section 30.

1. On page 2, in line 16, to substitute the definition of “electronic service”:

“electronic service” means electronic services as prescribed.

1. On page 2, in line 28, to substitute the definition of “infringement” with the following definition:
2. :

“infringement” means any act or omission in contravention of this Act or road transport and road traffic legislation

**CLAUSE 2**

1 Clause rejected

NEW CLAUSE

1. That the following be a new Clause to follow Clause 1.

# 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, **[and to support adjudication of infringements]** to adjudicate on infringements as set out in subsection (2) and to hear appeals by infringers as may be prescribed.";

*(b)* by the deletion in subsection (2) of paragraph *(e)*;

*(c)* by the deletion in subsection (2) of the word "and" at the end of paragraph *(f)*;

*(d)* by the substitution in subsection (2) for the full-stop at the end of paragraph *(g)* of the expression "; and";

*(e)* by the addition in subsection (2) of the following paragraph:

"*(h)* administering prescribed rehabilitation programmes for habitual infringers including but not limited to—

(i) driver re-testing to determine driver fitness.

*(f)* by the insertion in subsection (3) of the word "and" at the end of paragraph *(a);*

*(g)* by the substitution in subsection (3) for the expression "; and" at the end of paragraph *(b)* of a full-stop; and

*(h)* by the deletion in subsection (3) of paragraph *(c).*

# NEW CLAUSE

1. That the following be new clause

# Amendment of section 11 of Act 46 of 1998

**3.** Section 11 of the principal Act is hereby amended by 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 such pensions and other benefits, as the Board may determine with the approval of the Minister **[acting in consultation with the Minister of Finance]**.".

NEW CLAUSE

On page 3 on line 39 to insert new clause:

**Amendment to section 17 of the Act 46 of 1998 as amended by section 8 of Act 72 of 2002**

**Section 17 of the principal Act is hereby amended by the deletion of subsection (1)(f)(iv).**

**CLAUSE 5**

Clause rejected

NEW CLAUSE

1. That the following be a new Clause to follow Clause 4.

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

**6.** 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:

“(1) If an infringer makes an insufficient payment to the **[agency]** Authority in terms of this Act in respect of a fine or the cheque used for payment in 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:

"*(b)* that failure to comply with the notice contemplated inparagraph *(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:

"*(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;".

# NEW CLAUSE

1. That the following be new clause to follow Clause 8.

**Insertion of Chapter IIIA**

**9.**  The following Chapter is hereby inserted in the principal Act after Chapter III:

"**CHAPTER IIIA**

**APPEALS TRIBUNAL**

**Establishment of Appeals Tribunal**

**23A.** There is hereby established an Appeals Tribunal.

**Administrative justice and Internal Appeals**

**23B.** Any infringer aggrieved by any decision taken by the representation officer in terms of this Act may lodge an appeal with the Appeals 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.

**Composition of Appeals Tribunal**

**23C.** (1) The Appeals Tribunal consists of no more than five members who must be appointed by the Minister

(2) In appointing the members of the Appeals Tribunal, the Minister must—

*(a)* have regard to the person's technical knowledge, 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

*(b)* through media and notice in the Government *Gazette* invite members of the public to nominate persons who comply with the criteria contemplated in paragraph*(a)* for the appointment as members of the Appeals Tribunal.

(3) The members of the Appeals Tribunal are appointed on a part-time basis.

**Chairperson and deputy chairperson of Appeal Tribunal**

**23D.** (1) The Minister must appoint one of the members of the Tribunal as the chairperson of the Appeals Tribunal and the Appeals Tribunal must at its first sitting appoint another member as the deputy chairperson of the Appeals Tribunal.

(2) If the chairperson is absent or for any reason unable to act as chairperson, the deputy chairperson must act as the chairperson of the Appeals Tribunal.

**Persons not qualified to be members of Appeals Tribunal**

**23E.** A person may not be appointed as a member of the Tribunal if the person—

*(a)* is an unrehabilitated insolvent;

*(b)* if the person has been removed from public office;

*(c)* if the person is in the employ of the State; or

*(d)* if the person has been convicted of an offence for which the person has been sentenced to imprisonment without the option of a fine, unless the Minister, having due regard to the nature of the offence and the circumstances of the case, is satisfied on reasonable grounds that the person is a fit and proper person to be so appointed.

**Conditions of appointment and terms of office of members**

**23F.** (1) The chairperson, the deputy 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 Appeals Tribunal holds office for a period of three years and is, on the expiration of such member's terms of office, eligible for reappointment.

(3) *(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**

**23G.** (1) A member of the Appeals Tribunal vacates office—

*(a)* if the member becomes subject to any disqualification referred to in section 18E; 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 Minister may, subject to due process, remove any member of the Appeals 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 a member of the Appeals Tribunal must be filled by the Minister through the appointment of another member in terms of section 18C.

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

**Sittings of Tribunal**

**23H.** (1) The Appeals Tribunal must sit at office of the Authority on such days and during such hours as the chairperson of the Tribunal may determine.

(2) The presence of at least fifty per cent of the members will be necessary to constitute a sitting of the Appeals Tribunal.

(3) If both the chairperson and the deputy chairperson are absent from a sitting of the Appeals 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—

*(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 to accept an 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 the Appeals Tribunal**

**23I.** (1) An Appeals Tribunal may confirm, vary or set aside any decision against which an appeal has been lodged in terms of section 18B

(2) The decision of a majority of the members present at a sitting of the Appeals 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.

(3) No decision taken by the Appeals Tribunal is invalid merely by reason of a vacancy in the Appeals Tribunal or of the fact that any person not entitled to sit as a member of the Appeals Tribunal, sat as such a member at the time when the decision was taken, if the decision was taken by the majority of the members of the Appeals Tribunal present at the time and who were entitled to sit as members of the Appeals Tribunal.

**Appeals against decision of Appeals Tribunal**

**23J.** (1) Any infringer affected by a decision of an Appeals Tribunal may appeal to any provincial or local division of the High Court having jurisdiction.

(2) An appeal contemplated in subsection(1) must be noted and prosecuted 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 Appeals Tribunal**

**23K.** The administrative work of Appeals Tribunal must be performed by employees of the Authority designated for that purpose by the Registrar.".

**CLAUSE 9**

1. On page 4, after line 42, to omit “as prescribed including postage or electronic services” and to substitute “ by postage and electronic services as prescribed”

**CLAUSE 10**

1 Clause rejected

NEW CLAUSE

1. That the following be a new Clause to follow Clause 9.

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

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

**"Apportionment of penalties**

**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*).

(2) Any prescribed fees or monies contemplated in section 13(1)*(d*A*),* collected by or on behalf of the issuing authority in terms of this Act must, as prescribed, be paid to the Authority.

(3) Despite any other law, any monies received in respect of any conviction under the applicable road traffic legislation must be disbursed as prescribed.".

NEW CLAUSE

On page 5 on line 18 to insert new clause:

Amendment to section 34 of the Act 46 of 1998

Section 34 of the principal Act is hereby amended by the addition of paragraph (f):

(h) the manner in which an infringement notice, courtesy letter or infringement order may be reissued