REPUBLIC OF SOUTH AFRICA

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

*(As introduced in the National Assembly (proposed section 76); explanatory summary of the Bill published in Government Gazette No. 39395 of 12 November 2015)*

*(The English text is the offıcial text of the Bill)*

(MINISTER OF TRANSPORT)

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# 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 simplify the manner of service of documents; to provide for financing of the Authority; to provide for the apportionment of penalties; to effect textual corrections; and to provide for matters connected therewith.

**To amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definition; to improve the manner of serving documents to infringers; to add to the functions of the Authority; to repeal certain obsolete provisions; to establish and administer rehabilitation programs; 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**.

**P**ARLIAMENT 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 5 (hereinafter referred to as the principal Act), is hereby amended—
	1. 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, 1973)]** Companies Act, 2008 (Act No. 71 of 2008);”;

(a) by the substitution in the definition of ‘‘acceptable identification’’ for paragraph *(f)* of the following paragraph:

‘‘*(f)* a clear, legible and certified copy of the applicable certificate or document referred to in paragraphs *(a)* to *(e)*;’’; 10

* 1. by the deletion of the definition of ‘‘agency’’;
	2. by the insertion after the definition of ‘‘authorised officer’’ of the following definition:

‘‘ **‘Authority’** means the Road Traffic Infringement Authority, estab- lished in terms of section 3;’’

*(d)* by 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]** received the relevant document served on him or her under section 30”;

 15

*(e)* by the insertion after the definition of ‘‘disqualification period’’ of the following definition:

‘‘ **‘electronic service’** means—

* + 1. [**communication by means of data messages, including data attached to, incorporated in or logically associated with, other data that may be 20**

**electronically retrieved;**

* + 1. **e-mail messages between the Authority and an addressee in an electronic communication format; or**
		2. **text messaging by the Authority to the recipient’s cellular telephone;’’;]**

service by means of an electronic communication as defined in the Electronic Communications Act, 2005 (Act No. 36 of 2005;

*(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;

1. by the substitution for the definition of ‘‘infringement’’ of the following 25

definition:

‘‘ **‘infringement’** means any act or omission in contravention of this Act [or] and any road traffic legislation;’’

*(h)* by substitution in the definition of “issuing authority” for paragraph (a) of the following paragraph :

 “(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;”;

*(i)* by the addition in the definition of the “issuing authority” of the following paragraph:

“*(d)* any other state institution declared by the Minister by regulation to be an issuing authority;”;

*(j)* by the deletion of the definition of ‘‘major infringement’’;

1. by the deletion of the definition of ‘‘minor infringement’’;
2. by the deletion of the definition of ‘‘national contraventions register’’;
3. by insertion after the definition of ‘‘Minister’’ of the following definition:

‘‘ **‘National Road Traffic Offences Register’** means the National Road 5 Traffic Offences Register administered by the Authority in which the details of infringements and offences of every infringer are recorded;’’;

and

1. by the substitution for the definition of ‘‘representations officer’’ of the following definition: 10

‘‘ **‘representations officer’** means a person appointed in terms of section 10 to adjudicate on representations contemplated in section 18;’’;

*(k)* by deletion of the definition of “sheriff”;

*(l)* by the deletion of the word “and” at the end of the definition of “sheriff”;

*(m*) by the substitution at the end in the definition of “this Act” for a semi-colon of the full-stop; and

*(q)* by the addition of the following definition:

 “Tribunal” means the Appeals Tribunal established by section 29A”.

# Amendment of section 4 of Act 46 of 1998

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

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

 “(a) to administer a procedure to discourage the contravention of road traffic and

 transport laws and to support adjudication of infringement as set out in

 subsection (2)

*(b)* by 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”;

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

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

“(h) administering prescribed rehabilitation programmes for habitual infringers;”;

*(e)* by the **[insertion]** deletion in subsection (3) of the word ‘‘and’’ at the end of paragraph

*(a)*;

1. by the **[substitution]** deletion in subsection (3) **[for the expression]** of the word ‘‘and’’ at the end of paragraph *(b)* and the insertion in that subsectionof a full-stop at the end of that paragraph;
2. by the deletion in subsection (3) of paragraph *(c)*; 20

*(h)* by the insertion in subsection (4) of the word “and” at the end of paragraph (b); and

*(i)* by the deletion in subsection (4) of paragraphs (a) and (c), respectively.”.

**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 with pensions

 and other benefits, as the **[board]** Board may determinewith the approval of the Minister **[with the**

 **approval of the Minister acting in consultation with the Minister**

 **of Finance]”.**

 **Repeal of section 12 of Act 46 of 1998**

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)*;

and 25

1. by the insertion in subsection (1) after paragraph *(d)* of the following paragraph:

‘‘*(d*A*)* penalties issued and collected by or on behalf of an issuing authority; and’’.

# Substitution of section 15 of Act 46 of 1998 30

1. 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 35

of 1990), in which must be deposited **[the]** money received by or on behalf of 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.’’.

# Amendment of section 17 of Act 46 of 1998, as amended by section 8 of Act 72 of 2000

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

*(a)*by the substitution in subsection (1) for paragraph *(e)* of the following paragraph:

“(*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

*(c)* by the 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]** 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 2000**

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

*(a)* by the substitution for subsections (1) and (2) of the following subsections:

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

(2) Representations under subsection (1) are made by submitting a sworn statement or affirmation to the **[agency]** Authority in the prescribed manner, indicating the existence of reasonable grounds why the infringer should not be held liable for the penalty payable in terms of the infringement notice.”;

 *(b)* by the substitution for subsection (4) of the following subsection:

 “ (4) **[(*a*)]** The representations officer must, in the prescribed manner, inform the issuing authority concerned if representations indicating the existence of reasonable grounds why the infringer should not be held liable for the penalty have been received.

 (*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.]”;**

 *(c)* by substitution for subsection (6) of the following subsection:

“(6)   **(a)** If the representations are allowed based on the

Infringement facts the **[agency]** Authority must forthwith cancel the infringement notice, and inform the infringer in the prescribed manner of the decision.

*(b)*In the event that the [a] representation is allowed **[successful]** as a result of prescribed procedures not being complied with, that infringement notice may be reinstated affording the infringer all other elective options available in terms of section 17(1) (a-f) if applicable **[served again on that infringer in the prescribed manner within 40 days from the date that the representation was finalised, provided that such notice must not be served later than 180 days from the date the infringement was committed].”;”**

*(d)* by the substitution in subsection (7) for the word preceding paragraph *(a)* of the following words:

“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 to review or appeal and must serve or cause to be served on the infringer a prescribed written notification informing him or her—“;

*(e)* by the substitution in subsection (7)*(b)* for the words preceding subparagraph (i) of the following words:

“if the infringer does not **[elect to be tried in court]** exercise the right of review and appeal— ”;

*(f)* by the substitution in subsection (7)*(b)* for subparagraph (i) of the following subparagraph:

“(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”;

 *(g)* by the substitution in subsection (7) for paragraph *(c)* of the following paragraph:

 “(*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 of review and appeal that the provisions of section **[22]** 29A apply;”; and

 *(h)* by the substitution in subsection (8) for the words preceding paragraph *(a)* of the following words:

“If an infringer pays the penalty and fee as contemplated in subsection (7)(*b*)(i), or make arrangements to pay in instalments, the **[agency]** Authority must⎯”.

# Amendment of section 19B of Act 46 of 1998, as inserted by section 11 of Act 72 of 40

**2002**

1. Section 19B of the principal Act is hereby amended—
2. by the substitution for subsection (1) of the following subsection:

‘‘(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 45

payment is dishonoured, a notice as prescribed must be served on the infringer, informing him or her **[—**

***(a)*]** that the full amount owed, including the prescribed fee for the notice, must be paid within 32 days of service of the notice **[; and**

# *(b)* that failure to comply with the notice contemplated in 50

**paragraph *(a)* will lead to [a warrant]** an enforcement order **being issued against him or her in terms of section [21]]** 20. ’’; and

*(b)* by 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/her in terms of section **[21]** 20”; and

**[*(c)* by the substitution in subsection (2) for the expression ‘‘; and’’ at the end of paragraph *(b)* of a comma; and**

1. **by the deletion of paragraph *(c)*.]**

# Amendment of section 20 of Act 46 of 1998, as amended by section 12 of Act 72 of 2002 5

**10.** Section 20 of the principal Act is hereby amended-

 *(a)* by substitution in subsection (1) for paragraph (d) of the following paragraph:

“(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 transport legislation or operator card is suspended in terms of section 25 or cancelled in terms of section 27.”;

*(b)* by 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 10

the courtesy letter, if any, and the prescribed fee of the enforcement order to the agency 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 15

**order within the period contemplated in paragraph *(a)* will result in a warrant being issued to recover the applicable penalty and fees]**.’’.

*(c)* by the substitution for subsection (4) of the following subsection:

 “(4)  If an infringer pays the penalty and fees as contemplated in subsection (3) (*a*), the **[agency]** Authority must record compliance with the enforcement order and update the national contraventions register in the prescribed manner.”’

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

 (bA) any permit or licence issued in terms of any road transport legislation

*(e)* by the substation of subsection (8) of the following paragraph

“(8) A local registering authority or driving licence testing centre must update the national contraventions register and notify the **[agency]** Authority in the prescribed manner if it has received any payment contemplated in subsection (7) and must pay over such payment to the **[agency]** Authority after deduction of the prescribed collection fee, within the prescribed period after which the **[agency]** Authority may charge interest at the prescribed rate”;

  *(f)* by the substitution of subsection (9) of the following paragraph:

“(*a*) the infringer applies to the **[agency]** Authority in the prescribed manner and submits reasons to the satisfaction of the registrar why an enforcement order must be revoked; or”

*(g)* by the substitution in subsection 10 for paragraph *(b)* of the following paragraph:

*“(b)* the infringer must be informed about it in the prescribed manner and his or her driving licence, professional driving permit, any permit or licence issued in terms of any road transport legislation or operators card 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**

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

# [Amendment of section 22 of Act 46 of 1998, as substituted by section 14 of Act 72 of 2002

1. **Section 22 of the principal Act is hereby amended by the substitution for subsection**
2. **of the following subsection: ‘‘(1) If[—**

***(a)]* an infringer elects to be tried in court— 25**

**[(i)]*(a)* under section 17(1)*(f)*(iv), the issuing authority must cancel the infringement notice; or**

**[(ii)]*(b)* under section 18(7)*(c)* or 19(2)*(b)*(iii), the [agency] Authority must inform the issuing authority who must cancel the infringement notice[; or 30**

# *(b)* the execution of a warrant in terms of section 21 (1) produces no movable property to seize and sell or the infringer otherwise fails to comply with the enforcement order after execution of the warrant, the agency must inform the issuing authority who must cancel the infringement notice],

**and the issuing authority must prepare a summons in terms of the Criminal 35**

**Procedure Act, 1977 (Act No. 51 of 1977).’’]**

**Repeal of section 22 of Act 46 of 1998**

**13. Section 22 of the principal Act is hereby repealed.**

 **Amendment of section 24 of Act 46 of 1998 as amended by section 25 of Act 72 of 2002**

**14. Section 24 of the principal Act is hereby amended by the substitution for subsections (4A) and (5) of the following subsections, respectively:**

“(4A) For the purpose of recording the demerit points as contemplated in subsection (3) and (4), the clerk of the court must notify the **[agency]** Authority of the result of each prosecution and appeal.

1. A printout from the national road traffic offences [contraventions] register which is verified by the **[agency]** Authority is on the face of it evidence of the demerit points incurred by a person, but nothing prevents a person from approaching the court on appeal or review in connection with the demerit points recorded against that person in the said register.”.

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

 **15.** 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]** for 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—

1. 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, where applicable, in the prescribed manner to the relevantissuing 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 transport legislation during the disqualification period.”;

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

“(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 is suspended for a further one year for every subsequent driving or operation and such personis 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.”; and

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

“(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 thereturn 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 of 29 Act 46 of 1998**

**16.** 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]**;”.

**Insertion of a heading after section 29 of Act 46 of** **1998**

**17.** The following heading is hereby inserted after section 29 of the principal Act

**“Chapter IVA**

**APPEALS TRIBUNAL”.**

**Insertion of Chapter IVA in Act 46 of 1998**

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

"**CHAPTER IVA**

**APPEALS TRIBUNAL**

**Establishment and constitution of Tribunal**

**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.

(3)  The Tribunal consists of a Chairperson and 8 other women or men appointed by the President, on a part time basis, and on the recommendation of the Minister, from among persons nominated by the Minister in response to a public call for nominations as prescribed.

(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.

(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)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gfd); and

(*b*) have submitted to the Minister a written declaration stating that the person—

(i) is not disqualified in terms of [subsection (6)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gfd); and

(ii) does not have any interests referred to in [subsection (6)(*b*)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gff).

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

(*a*) is an office-bearer of any party, movement, organisation or body of a partisan political nature;

(*b*) personally or through a spouse, partner or associate—

(i) has or acquires a direct or indirect financial interest in a registrant; or

(ii) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of the duties of a member of the Tribunal;

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

(*d*) 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;

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

(*f*) 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

(*g*) 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.

(7)  For the purpose of [subsection (6)(*b*)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gff), 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)(*b*)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gff).

 (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)(*b*)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gff); 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*)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gfu) 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*)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gfr), 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*)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gfx), and the decision by the Tribunal in terms of [subsection (10)(*b*)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gfy), must be expressly recorded in the records of the proceedings in question.

(12)  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)](https://www.mylexisnexis.co.za/Library/IframeContent.aspx?dpath=zb/jilc/kilc/ebsg/oh5na/ph5na/fi5na&ismultiview=False&caAu=#gfw); or

(*b*) a member of the Tribunal, having an interest, attending or participating in those proceedings.

**Functions of Tribunal**

**29B.** (1) The Tribunal may—

1. adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of this Act;
2. hear appeals or review any decision of the representation officer that may in terms of this Actbe referred to it; and
3. make any ruling or order necessary or incidental to the performance of its functions in terms of thisAct.

(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 training and experience in road infringements 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 terms of office, eligible for reappointment by the President for one additional term only.

(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**

**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.

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

**Deputy Chairperson of Tribunal**

**29F.** (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**

**29G.** (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 fifty per cent of the members will 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**

**29H.** (1) The Tribunal may confirm, vary or set aside any decision against which an appeal 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.

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

**Appeals against decision of Tribunal**

**29I.** (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**

**29J.** The administrative work of Tribunal must be performed by employees of the Authority 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

1. Section 30 of the principal Act is hereby amended—
2. by the substitution for subsection (1) of the following subsection: 40

‘‘(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] [as prescribed, including by postage or electronic service]** by postage or electronic services, as prescribed.’’; and

1. by the substitution for subsection (2) of the following subsection: 45

‘‘(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, 50

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.’’.

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

**20.** 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, 5 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).*

1. 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, 10 as prescribed, be paid to the Authority.
2. The penalty referred to in subsection (1) may be withheld by the Authority where there is evidence of non-compliance with this Act, until such time that the Act is complied with to the satisfaction of the Authority.
3. Despite any other law, any monies received in respect of any 15 conviction under the applicable road traffic legislation must be disbursed as prescribed.

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)(dA), 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.".

**Amendment to section 34 of the Act 46 of 1998**

**21.** Section 34 of the principal Act is hereby amended—

*(a)*by the deletion of the word “and” at the end of paragraph *(f)*;

*(b)* by thesubstitution in paragraph *(g)* for a semi-colon at the end of paragraph *(g)* of the full stop; and

*(c)* by the addition of the following paragraph:

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

# Amendment of section 35 of Act 46 of 1998

1. Section 35 of the principal Act is hereby amended by substitution for subsection

(1) of the following subsection: 20

‘‘(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.’’.

# Substitution of certain words and expressions 25

1. The principal Act is hereby amended—
	1. by the substitution for the expressions ‘‘Agency’’ and ‘‘agency’’, wherever they occur, of the expression ‘‘Authority’’;
	2. by the substitution for the expressions ‘‘major infringement’’ and ‘‘minor infringement’’, wherever they occur, of the expression ‘‘infringement’’; 30
	3. by the substitution for the expression ‘‘AGENCY’’, wherever it occurs, of the expression ‘‘AUTHORITY’’;
	4. by the substitution for the expression ‘’national contraventions register’’, wherever it occurs, of the expression ‘‘National Road Traffic Offences Register’’. and 35

# *(e)* by the substitution for the expression of “board”, wherever it occurs, of the expression of “Board”.

# Short title and commencement

1. 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**

# BACKGROUND AND PURPOSE

* 1. The Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998) (the 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.
	2. The Act has been in operation on a pilot phase in the jurisdictional areas of Tshwane and Johannesburg Metropolitan Municipalities, where some chal- lenges and inefficiencies have been identified. The said challenges need to be addressed before the national roll-out. We also note that there has been an attempt to roll out the implementation of the Act to the jurisdictional area of the City of Cape Town, and that this was successfully challenged by the City of Cape Town in *City of Cape Town v South African National Roads Agency Ltd and Others (6165/2012) [2015] ZAWCHC 135.*
	3. The Administrative Adjudication of Road Traffic Offences Amendment Bill (the 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 (the Authority).
	4. The amendments identified in the Bill will assist the Authority as well as the issuing authorities to be financially stable in order to proceed with proper implementation.

# CLAUSE-BY-CLAUSE ANALYSIS

* 1. **Clause 1**

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

# 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(3)*(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 7) of section 21 of the Act, which deals with the issuing of warrants by the registrar.

# Clause 3

Clause 3 of the Bill amends section 13 of the Act, which provides for the financing of the Authority. Clause 3 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).

# Clause 4

Clause 4 of the Bill amends section 15 of the Act, which provides for the banking account of the Authority. Clause 4 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.

# Clause 5

* + 1. Clause 5 of the Bill amends section 19B of the Act, which provides for the payment of fines imposed for traffic infringements. Clause 5 of the Bill seeks to delete subsections (1)*(b)* and (2)*(c)* of section 19B of the Act.
		2. Section 19B(1)*(b)* provides that if an infringer makes an insufficient payment to the Authority in respect of a fine or if the cheque used for a payment is dishonoured, a notice must be served on the infringer, informing the infringer that failure to comply with the notice will result in a warrant being issued against him or her in terms of section 21 of the Act.
		3. Section 19B(2)*(c)* provides that if an infringer who has made arrangements to pay a fine or monies, if any, in instalments, fails to pay the instalments or makes an insufficient payment on an instalment or if the cheque used for payment of that instalment is dishonoured, a notice must be served on the infringer, informing him or her that failure to comply with the notice will result in a warrant in respect of the full amount owed being issued against him or her in terms of section 21 of the Act. The deletion of these subsections is aligned with the proposed repeal (in clause 7) of section 21 of the Act, which deals with the issuing of warrants by the registrar.

# Clause 6

* + 1. Clause 6 of the Bill amends section 20 of the Act 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. 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.

# Clause 7

* + 1. Clause 7 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. 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.

# Clause 8

Clause 8 of the Bill amends 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. Clause 8 of the Bill seeks to delete subsection (1)*(b)* of section 22 of the Act, which provides that if the execution of a warrant in terms of section 21(1) produces no movable property to seize and sell or the infringer otherwise fails to comply with the enforcement order after execution of the warrant, the Authority must inform the issuing authority, who must cancel the infringement notice. This deletion corresponds with the proposed repeal (in clause 7) of section 21 of the Act, which deals with the issuing of warrants by the registrar.

# Clause 9

Clause 9 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 and electronic service. 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.

# Clause 10

Clause 10 of the Bill substitutes the whole of section 32 of the Act, which provides for the apportionment of penalties. The new substitution provides for the apportionment and distribution of penalties received by the Authority to the relevant the issuing authorities, after deduction of an amount equal to the prescribed discount. Penalties collected by or on behalf of an issuing authority in terms of the Act must be paid to the Authority. In addition, the Authority may withhold a penalty due to the issuing authority if there is evidence of non-compliance with the Act by that issuing authority, until such time that the issuing authority complies with the Act.

# Clause 11

* + 1. Clause 11 of the Bill amends section 35 of the Act which deals with transitional provisions. Clause 11 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 authorized officer or a person duly authorised by an issuing authority.
		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.

# Clause 12

* + 1. Clause 12 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 expres- sions ‘‘major infringement’’ and ‘‘minor infringement’’ are to be replaced with ‘‘infringement’’ throughout the Act.
		2. The expression ‘’national contraventions register’’ is replaced with ‘‘National Road Traffic Offences Register’’.

# Clause 13

Clause 13 of the Bill provides for the short title and commencement.

# DEPARTMENT/BODIES CONSULTED

* 1. The Bill was presented to the National Economic Development and Labour Council Task Team, and after numerous meetings it was approved.
	2. The Bill was published for public comment in Government Gazette No 36613 of 28 June 2013.
	3. The comments where necessary were incorporated in the final draft Bill.
	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.

3.6 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.

# FINANCIAL IMPLICATIONS

The Bill is expected to have the following financial implications:

1. The revenue of the issuing authorities and the agency 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.
2. Large fleet operators will benefit from the efficient service as the drastically reduced costs of submitting nominations will be electronic, thereby introduc- ing efficiencies in their business operations.

# PARLIAMENTARY PROCEDURE

* 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.
	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.
	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.
	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. 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.
	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.
	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.
	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.
	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.
	10. The proposed amendments 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.
	11. 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.
	12. 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’’.
	13. 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.