

Office of the Chairperson

Portfolio Committee on Public Works, Roads and Transport; Community Safety, Security and Liaison

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NEGOTIATING MANDATE

To : The Chairperson: Select Committee on Economic and Business Development

Name of the Bill : Administrative Adjudication of Road Traffic Offences Amendment Bill

Number of the Bill : [B38B-2015]

Date of Deliberation : 18 April 2018

Vote of the Legislature :

The Portfolio Committee on Public Works, Roads and Transport; Community Safety, Security and Liaison (the Committee), after considering the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B-2015], confers on the permanent delegate representing the Mpumalanga Provincial Legislature in the NCOP, the mandate to abstain from voting on the Bill.


HON FV MLOMBO

ACTING CHAIRPERSON: PORTFOLIO COMMITTEE
ON PUBLIC WORKS, ROADS AND TRANSPORT;
COMMUNITY SAFETY, SECURITY AND LIAISON

18. 04. 2018
DATE

REPORT OF THE PORTFOLIO COMMITTEE ON PUBLIC WORKS ROADS AND TRANSPORT; COMMUNITY SAFETY, SECURITY AND LIAISON ON ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL [B38B-2015]

1. INTRODUCTION

The Speaker referred the Administrative Adjudication of Road Traffic Offences Amendment Bill, [B38B-2015] (the Bill) to the Portfolio Committee on Public Works, Roads and Transport, Community Safety, Security and Liaison (the Committee) for consideration and report back to the House, in accordance with the legal prescripts and the Rules and Orders of the Mpumalanga Provincial Legislature.

In terms of section 118(1) of the Constitution, the Legislature has a mandate to facilitate public involvement in the law making, oversight and other processes of the Legislature. It is against this background that the Committee conducted public hearings to solicit inputs and views from members of the public and organized stakeholders on the above-mentioned Bill.

2. OBJECTIVES OF THE BILL

The purpose of the Bill is to;

- 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 for the Appeals Tribunal and matters related thereto; to effect textual corrections; and to provide for matters connected therewith.

3. METHOD OF WORK

- a) The Committee was briefed on the Bill by the National Council of Provinces (NCOP) permanent delegate, Hon SG Mthimunye, on 28 November 2017.
- b) The Committee conducted public hearings in order to solicit inputs/comments from members of the public. Interested people and stakeholders were also invited to submit written comments on the Bill in order to assist the Committee during deliberations that will give effect to the negotiating mandate.
- c) Invitations to public hearings and the submission of written comments on the Bill were placed in the Khanyisa Weekly News; Mpumalanga Press and the Lowvelder which are the major newspapers circulating in the province.
- d) The Public hearings were conducted on Friday, 09 February 2018, from 09h00 – 13h00 in the following Districts:

DISTRICT	VENUE	No. of Attendees
Ehlanzeni	Kanyamazane Community Hall - Mbombela Local Municipality	178
Nkangala	Eric Jiyane Community Hall - Steve Tshwete Local Municipality	158
Gert Sibande	Wesselton Community Hall – Msukaligwa Local Municipality	153

- e) The Committee thereafter met on 18 April 2018 to consider the draft report and the Negotiating Mandate on the Bill and such mandate was duly submitted to the NCOP as [B38B-2015].

4. INTERACTION BY THE COMMITTEE WITH THE PERMANENT DELEGATE AND THE NATIONAL DEPARTMENT OF TRANSPORT

4.1. Presentation by the NCOP Permanent Delegate

Honourable SG Mthimunye, indicated to the Committee that as the Member of the National Council of Provinces, representing the Mpumalanga Province, he is mandated to present the Bill to the Committee. He indicated that the Bill that is under discussion has adhered to legal prescripts and is in order. He further assured the Committee that he will take all the inputs from the Honorable Members to the NCOP. Honorable Mthimunye requested that the department, as the custodian of the Bill, present the amendment bill to the Committee.

4.2. Presentation by the Department of Transport

The delegation from National Department of Transport, namely, Mr J Motsitsing, Director: briefed the committee on the proposed Bill.

In the presentation made to the Committee the following were highlighted:

The Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998), commonly referred to as AARTO, which is 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. 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 and that the said challenges need to be addressed before the national roll-out. The Act was piloted in restricted jurisdictions in order to:

- test the applicable systems, processes & procedures
- assess the impact on operations
- determine the relevance of the legislative framework & identify deficiencies
- identify weakness & implement applicable interventions prior to rollout

- Lessons have been learned during the implementation in Tshwane & Johannesburg
- The attendant weaknesses that affected operations and systems interfaces have been corrected
- The Amendment Bill provisions are informed by empirical evidence stemming from implementation
- The amendments to the Act are also based on world-best practice and benchmarked with leading international countries, such as Australia, Canada, USA and Sweden

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 amends to the Road Traffic Infringement Authority (Authority). The amendments identified in the Bill will assist the agency as well as the issuing authorities to be financially stable in order to proceed with proper implementation of AARTO.

The objectives of the Bill are:

- To improve the manner of serving documents to infringers;
- To add to the functions of the Road Traffic Infringements Authority;
- Repeal certain obsolete provisions;
- Establish and administer rehabilitation programmes;
- Provide for the Apportionment of penalties;
- To provide for the establishment of Appeals Tribunal

Twenty-two (22) Clauses were presented in terms of the Bill, as well as the presentation (attached as Annexures A and B).

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

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published for public comment in the Government Gazette No 36613 of 28 June 2013. Furthermore, 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.

The comments where necessary were incorporated in the final draft Bill and were scrutinized and certified by the State Law Advisors. A wide range of stakeholders made submissions during public hearings by the Portfolio committee on the Bill, including -

- Ekurhuleni Metro Police Department(EMPD);
- City of Johannesburg;
- Justice Project South Africa(JPSA);
- Auto Mobile Association of South Africa(AA);
- CANCOM Pty Ltd;
- South African Local Government Association (SALGA).
- South African Vehicle Rental & Leasing Association (Savralla)
- Individual Persons.

The Bill was endorsed by the National Portfolio Committee on Transport and the National Assembly passed it on 5 September 2017.

4.3. Inputs by the Department of Community Safety, Security and Liaison

The department indicated that they have been in consultation with the National Department on the processing of the Bill as well as that the department agrees with all the amendments that have been presented.

4.4. Inputs by the Committee

The Committee raised the following matters:

- That the confirmation of the amendment bill by the National department of transport as they have shared the changes and the amendments, and the robust interaction that is said to have taken place as well the amendment of the Act is welcomed.
- Clause 5 amending section 13 of the Act, which provides for the financing of the Authority, where a new paragraph inserted 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; was appreciated and welcomed in that the revenue that will be paid back to the provincial road.
- With regard to Clause 17, which amends section 31 of the Act and provides for penalties. Clause 17 in effect provides that laws of prescription are not applicable to traffic penalties and fines. In terms of clause 8 of the Bill, if a representation is successful as a result of prescribed procedures not being complied with, the infringement notice, courtesy letter or enforcement order may be reserved. A concern of the Committee is whether the amendment will

call for any amendment within the law perspective. **Prescript of the law should be classified**

- The time frame for the adoption of the amendments needs to be considered as the prescribed six (6) will not be sufficient for this type an amendment Bill, given its nature and technicality.
- The concern is also with regards to the countries that were used to benchmark the applicability of the bill and the department was advised to consider South Africa as a democratic country with individual rights.
- The practicality of Clause 7 of the Bill, which amends section 17 of the Act which provides for issuance of infringement notices and ascertainment of demerit points position, amongst other things. A particular emphasis was with regard to the clause amends section 17(5) to penalize a person for permitting another to take charge of a vehicle without ascertaining the required particulars of that person. The Committee was of concern that this may open gaps regarding the driver's particular information.
- On the lessons that have been learned during the implementation of the act (as a pilot) in Tshwane and Johannesburg Metros, the Committee regards the two municipalities as not qualifying for the lessons learned.
- The Committee felt that the presentation was all about the law enforcement, and that the Clauses (the Bill itself) do not consider the impact it will have on the governing party and that the movements are going to revolt across the county. Moreover, the timing for the introduction of the bill as the mobilization will take place was not considered by the department.

4.5. Presentation by the Legislature Legal Section.

Legal Services provided the Committee with assurance that the Bill was correctly classified as a Section 76 Bill and that the Bill has complied with rule 159 of the Joint Rules of Parliament. The Bill was published for public comments and also relevant stakeholders were consulted especially organised local government in line with

Section 163 of the Constitution. The Bill has been certified by the State Law Advisors and therefore it has been found constitutionally compliant.

Legal Services went further to advise that the Bill must be dealt with in accordance with Rule 201 of the Mpumalanga Provincial Legislature's Rules & Orders.

5. PUBLIC HEARING

The Committee resolved at its meeting held on 28 November 2017 that, in order to adhere to Section 118(1) of the Constitution that mandates the Legislature to facilitate public involvement in the legislative and other processes of the Legislature and its Committees; to conduct public hearings on Friday, 09 February 2018.

5.1. Public Involvement

Invitations to the public hearing were extended to a broad segment of stakeholders. Invitations were extended to, among others, business sector, political parties, SALGA, transport Sector, Mpumalanga House of Traditional Leaders and provincial departments.

The committee made a call for attendance at the public hearing and to submit written submissions, using the following newspapers; namely the Khanyisa Weekly News; Mpumalanga Press and the Lowvelder. No written comments were received emanating from the advertisements in newspapers.

The Public Participation and Petitions Unit of the Legislature mobilized communities in all three districts of the province to attend the public hearing. The following areas were mobilized to attend the public hearing:

- Kanyamazane Community Hall - Mbombela Local Municipality [Ehlanzeni District]

- Eric Jiyane Community Hall - Steve Tshwete Local Municipality [Nkangala District]
- Wesselton Community Hall – Msukaligwa Local Municipality [Gert Sibande District]

The Honourable Members conducting the public hearings explained that the Legislature seeks input and opinion on the legislation at hand from specific stakeholders and communities in the province. It was emphasised that the inputs by stakeholders and communities are very important to the Legislature and that it will be conveyed to the NCOP and National Government through the relevant channels.

The public was provided with a thorough overview on the Bill; and the delegations from National Department of Transport assisted the Committee at each public hearing.

5.1.1. Eric Jiyane Community Hall - Steve Tshwete Local Municipality

The community raised the following in relation to the Bill:

- a) On the issue of the demerit point system, the community raised a concern that the owners of vehicle will suffer as some do not have any other means of living they depend on the transport business.
- b) Community members raised a serious concern on the suspension of licenses as well, what will happen to those who depends on driving for supporting their families since there are less job opportunities in the country.
- c) Community members requested more engagement on the bill i.e. taxi associations, youth engagement

5.1.2. Wesselton Community Hall - Msukaligwa Local Municipality

- a) The community raised the concern that the bill was incorrectly piloted in Gauteng where the roads are often in a good condition.
- b) The local municipalities must be well capacitated to be able to render services to road users.
- c) The bill does not address the issue of corruption by Traffic officers.

5.1.3. Kanyamazane Community Hall - Mbombela Local Municipality

- a) The community stated that provision should be made for citizens who cannot read nor understand English; the bill should be translated into Zulu prior the involvement of the public for their input.
- b) The Community indicated that they are not in agreement with the point system and it will disadvantage license holders and road users. They further stated that it is not fair that you cannot renew your license or disc if you have incurred offenses.

6. OBSERVATIONS AND FINDINGS BY THE COMMITTEE

- 6.1. It became clear to the Committee that members of the public are not familiar with the Administrative Adjudication of Road Traffic Offences Act, hence they were raising issues on the sections of the Bill which are not subject to amendments.
- 6.2. The public strongly stressed the fact that they welcome all the regulatory legislation that the government is enacting however the proposed Bill may have a negative impact on the government's priority of poverty alleviation and job creation in that the demit system may result in a number of people being unemployed, especially those who are in the transport industry.

- 6.3. Generally, the members of the public focused a lot on the sections of the Act (Administrative Adjudication of Traffic Offences Act) which are not subjected to amendment like the demerit point system which led to them not supporting the Bill.
- 6.4. From the three districts where public hearings were held, two districts, namely, Gert Sibande and Nkangala Districts voted against the Bill, whilst Ehlanzeni District voted in favour of the Bill.

7. RECOMMENDATIONS

The delegation representing the Province of Mpumalanga in the NCOP should focus on the following:

- 7.1. The department must roll out awareness programmes to the general public throughout the country and give people assurance that the AARTO Act is one of the measures that the government has put in place to decrease traffic rules transgression which will lead to a reduction of road accidents.

The delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) is conferred with authority and mandated to abstain from voting on the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B-2015] with the proposed amendments, taking into account the input and observations noted in this report.

8. CONCLUSION

The Chairperson wishes to thank all members of the public and stakeholders for their worthwhile participation in the public hearings and for the inputs or comments they have made.

The Chairperson further extends a word of gratitude to the Members of the Committee, the NCOP Permanent Delegate, and Hon SG Mthimunya for the efforts in ensuring that the Committee meets its obligation and the support staff who contributed to the success of the whole process.



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**ACTING CHAIRPERSON: PORTFOLIO COMMITTEE
ON PUBLIC WORKS, ROADS AND TRANSPORT;
COMMUNITY SAFETY, SECURITY AND LIAISON**

18-04-2018

DATE

ANNEXTURE A

Clause by clause

Clause 1

Amends section 1 of the Act, by adding, deleting and substituting certain definitions.

Clause 2

- Amends section 4 of the Act which provides for the objects and functions of the Authority.
- Clause 2 mainly deletes subsection (2)(e) of section 4 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 rest of the amendments are consequential amendments as a result of deletion of Section 4(2)(e).

The deletion of this subsection is aligned with the proposed repeal in clause 11 of the Bill, 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 deals with the prosecution of offences in criminal trials.



Clause by clause

Clause 3

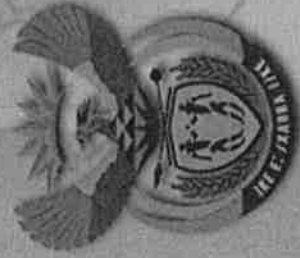
- Amends section 11 of the Act, which provides for the administrative staff and remuneration.
- The clause removes the requirement of the Minister acting in consultation with the Minister of Finance in respect of the approval of pensions and benefits determined by the Board.



Clause by clause

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.
- Clause 6 also adds that the bank 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 by clause

Clause 8

- Clause 8 of the Bill amends section 18 of the Act which makes provision for the right of an infringer to make representation to a representations officer.
- The amendment provides that an infringer who has been served with an infringement notice 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").
- The clause also provides for the re-service of a notice where a success representation alleges that procedures of service (Infringement Notice, Courtesy Letter & Enforcement Order) were not followed



Clause by clause

Clause 10

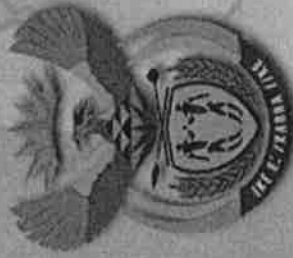
- Clause 10 of the Bill amends section 20 of the Act by deleting subsection (3)(b) of section 20. Section 20 of the Act provides for enforcement orders issued by the registrar in respect of failure to pay fines imposed for traffic infringements.
- Section 20(3)(b) stipulates that an enforcement order must state that failure to comply with the requirements of the enforcement 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 11) of section 21 of the Act, which deals with the issuing of warrants by the Registrar. The clause adds new section 20(5)(bA) which deals with the prohibition of issuing of a permit or licence issued in terms of any road traffic legislation or transport legislation if an enforcement order has been issued against the infringer.



Clause by clause

Clause 11 (Continues...)

- 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 by clause

Clause 13 (continues...)

- Clause 13 also amends section 25(3) to indicate that operator, or a juristic person who is not an operator must immediately hand in his/her 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 during disqualification period.



Clause by clause

Clause 15

- Clause 15 primarily introduces a new Chapter IVA in the Act. Clause 15 provides for the establishment of the Appeals Tribunal, whose main function is to hear appeals and review 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 of the Deputy Chairperson of the Tribunal, sittings of the Tribunal, decisions of the Tribunal, acting by the member of the Tribunal, appeals against the decisions of the Tribunal and the administrative work of the Tribunal.



Clause by clause

Clause 17

- Clause 17 of the Bill amends section 31 of the Act which provides for penalties. Clause 17 in effect provides that laws of prescription are not applicable to traffic penalties and fines. In terms of clause 8 of the Bill, if a representation is successful as a result of prescribed procedures not being complied with, the infringement notice, courtesy letter or enforcement order may be reserved.

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, after deduction of an amount equal to the discount, be paid over to the Issuing Authority. Any prescribed fees or monies collected by or on behalf of the issuing authority in terms of the Act must, as prescribed, also be paid to the Authority.



Clause by clause

Clause 20

- 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 finalized 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 authorized by an issuing authority.



ANNEXTURE B

**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.