

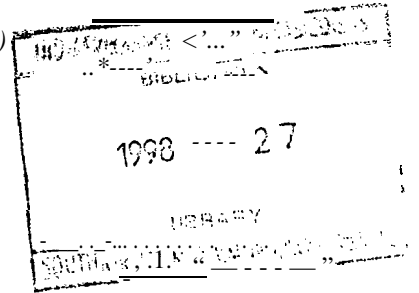
REPUBLIC OF SOUTH AFRICA

**ADMINISTRATIVE ADJUDICATION
OF ROAD TRAFFIC OFFENCES
BILL**

(As introduced in the National Council of Provinces)

(SELECT COMMITTEE ON PUBLIC SERVICES)

[B 74-98]



REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
ADMINISTRATIEWE BEREGTING
VAN PADVERKEERSMISDRYWE**

(Soos ingedien in die Nasionale Raad van Provinsies)

(GEKOSE KOMITEE OOR OPENBARE DIENSTE)

[W 74-98]

ISBN 0621264066

No. of copies printed 2003

BILL

To promote road traffic quality by providing for a scheme to discourage road traffic contraventions, to facilitate the adjudication of road traffic infringements, to support the prosecution of offences in terms of the national and provincial laws relating to road traffic, and implement a points demerit system; to provide for the establishment of an agency to administer the scheme; to provide for the establishment of a board to represent the agency; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER I

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Interpretation of Act

Definitions

1. In this Act, unless the context otherwise indicates—

- (i) “acceptable identification” means—
 (a) a temporary identity certificate or an identity document issued in terms of 25 the Identification Act, 1986 (Act No. 72 of 1986);
 (b) a passport issued in terms of the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994);
 (c) in the case of a person not permanently resident in the Republic, an identity document issued by a foreign country or a traffic register number 30 certificate;
 (d) in the case of—
 (i) a company, a certificate of incorporation or name change issued in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
 (ii) a close corporation, a founding statement or a certificate of name 35 change issued in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984);
 (e) a traffic register number certificate issued in terms of any national or provincial Road Traffic Act, in the case of—
 (i) a person carrying on a business which, for the purpose of this 40 definition, includes farming activities; or
 (ii) a body of persons not referred to in paragraph (c); or
 (f) a photocopy of the applicable certificate or document referred to in paragraphs (a) to (e);
 (ii) “agency” means the Road Traffic Infringement Agency, established by 45 section 3;
 (iii) “authorised officer” means—
 (a) a traffic officer or a traffic warden appointed in terms of the laws of any province;
 (b) a member of the service as defined in section 1 of the South African 50 Police Service Act, 1995 (Act No. 68 of 1995);
 (c) a national road transport inspector appointed in terms of section 37(1) of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998), or any duly appointed provincial road transport inspector; or
 (d) a municipal police officer appointed under any law; 55

- (iv) "board" means the Road Traffic Infringement Agency Board, established by section 6;
- (v) "courtesy letter" means a courtesy letter contemplated in section 19;
- (vi) "date of service" means the date on which an infringer has signed for the relevant document served on him or her under section 30; 5
- (vii) "demerit points" means demerit points contemplated in section 24;
- (viii) "Director-General" means the Director-General of the Department of Transport;
- (ix) "disqualification period" means the period contemplated in section 25 during which a person is disqualified from driving or operating a motor vehicle or applying for a learner's licence, driving licence, professional driving permit or operator card; 10
- (x) "enforcement order" means an enforcement order contemplated in section 20; 15
- (xi) "infringement" means a major or a minor infringement;
- (xii) "infringement notice" means an infringement notice contemplated in section 17;
- (xiii) "infringer" means a person who has allegedly committed an infringement;
- (xiv) "issuing authority" means—
 - (a) a local authority contemplated in Chapter 7 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other applicable law; or
 - (b) a provincial administration, in so far as such authority or administration is responsible for traffic matters in its area of jurisdiction; 25
- (xv) "major infringement" means an offence categorised as a major infringement under section 29(a);
- (xvi) "MEC" means a member of an Executive Council of a province appointed in terms of section 132 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and who is responsible for road traffic matters; 30
- (xvii) "Minister" means the Minister of Transport;
- (xviii) "minor infringement" means an offence categorised as a minor infringement under section 29(a);
- (xix) "national contravention register" means the National Traffic Information System on which the offence details of every individual are recorded in terms of this Act; 35
- (xx) "offence" means an offence prescribed under section 29(a);
- (xxi) "penalty" means the administrative penalty payable for an infringement as contemplated in section 31; 40
- (xxii) "prescribed" means prescribed by regulation by the Minister under section 34;
- (xxiii) "sheriff" means a sheriff appointed under section 12; and
- (xxiv) "this Act" includes any regulation made in terms of section 34. 45

Objects of Act

2. The objects of this Act are, despite the Criminal Procedure Act, 1977 (Act No. 51 of 1977)—
- (a) to encourage compliance with the national and provincial laws relating to road traffic and to promote road traffic safety;
 - (b) to encourage the payment of penalties imposed for infringements and to allow alleged minor infringers to make representations; 50
 - (c) to establish a procedure for the effective and expeditious adjudication of infringements;
 - (d) to alleviate the burden on the courts of trying offenders for infringements;
 - (e) to penalise drivers and operators who are guilty of infringements or offences through the imposition of demerit points leading to the suspension and cancellation of driving licences, professional driving permits or operator cards; 55
 - (f) to reward law-abiding behaviour by reducing demerit points imposed if infringements or offences are not committed over specified periods; 60

- (g) to establish an agency to support the law enforcement and judicial authorities and to undertake the administrative adjudication process; and
- (h) to strengthen co-operation between the prosecuting and law enforcement authorities by establishing a board to govern the agency.

CHAPTER II

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R o a d T r a f f i c I n f r i n g e m e n t A g e n c y -

Establishment of agency

3.(1) The Road Traffic Infringement Agency” is hereby established as a juristic person responsible to the Minister.

(2) (a) The agency may do anything that is necessary to perform its functions in terms of any law, or assigned to it by the Minister. 10

(b) The Minister may, on request of an issuing authority, assign any function vested in such issuing authority in terms of this Act, to the agency.

(3) The agency must establish one national office, and may establish suboffices at provincial or municipal level. 15

Objects and functions of agency

4. (1) The objects of the agency are, despite the Criminal Procedure Act, 1977 (Act No. 51 of 1977)—

- (a) to administer a procedure to discourage the contravention of road traffic laws and to support the adjudication of infringements as set out in subsection (2); 20
- (b) to enforce penalties imposed against persons contravening road traffic laws as set out in subsection (3);
- (c) to provide specialised prosecution support services as set out in subsection (4); and
- (d) to undertake community education and community awareness programmed in order to ensure that individuals understand their rights and options as set out in subsection (5). 25

(2) The agency performs its functions in terms of subsection (1)(a) by—

- (a) receiving notices from any issuing authority if an infringer has failed to comply with an infringement notice issued in terms of section 17; 30
- (b) considering representations from an infringer in terms of section 18 with regard to an infringement notice relating to a minor infringement;
- (c) issuing a courtesy letter in terms of section 19 to an infringer who has failed to comply with an infringement notice;
- (d) issuing an enforcement order in terms of section 20 against an infringer who has failed to comply with the requirements of a notification contemplated in section 18(7) or a courtesy letter contemplated in section 19(2)(b), or who has failed to appear in court under the circumstances contemplated in section 22(3); 35
- (e) issuing a warrant in terms of section 21 against an infringer who has failed to comply with an enforcement order; 40
- (f) revoking an enforcement order in terms of section 20(9); and
- (g) updating the national contraventions register in the Prescribed manner.

(3) The agency performs its functions in terms of subsection (1)(b) by—

- (a) serving a courtesy letter in terms of section 19 on an infringer who has failed to comply with an infringement notice; 45
- (b) serving an enforcement order in terms of section 20 on an infringer who has failed to comply with the requirements of a notification contemplated in section 18(7) or a courtesy letter contemplated in section 19(2)(b), or failed to appear in court under the circumstances contemplated in section 22(3); and 50
- (c) executing a warrant in terms of section 21 against an infringer who has failed to comply with an enforcement order.

(4) The agency performs its functions in terms of subsection (1)(c) by—

- (a) assisting the prosecuting authorities to get persons who committed offences before the courts through serving of documents and keeping of records on its database; 55
- (b) providing traffic law enforcement equipment and support services to issuing

- authorities;
- (c) providing, at the request of the Office of a Director of Public Prosecutions, a person to testify as an expert witness in a trial on a charge relating to an offence; and
- (d) providing training, where possible, to authorised officers or staff of the prosecuting authority.
- (5) The agency performs its functions in terms of subsection (1)(d) by—
- (a) disseminating information regarding the role and functions of the agency, and the rights enjoyed by individuals, in terms of this Act;
- (b) applying efficient and equitable procedures to encourage compliance with this Act and fostering law abiding behaviour by road users; and
- (c) supporting road safety awareness programmes.
- (6) The agency must, in order to properly perform its functions, establish the prescribed information management system and database which is connected with the national contravention register, and utilise such database to create, process and maintain records with regard to any action performed by it in terms of this Act.

Subcontracting

5. (1) The agency may, subject to the business plan approved by the board, appoint agents, or contract with any person, to perform any function vested in it in terms of this Act or any other law. 20
- (2) The prescribed procedures must be followed in respect of any contract contemplated in subsection (1).

Road Traffic Infringement Agency Board

- 6.(1) A Road Traffic Infringement Agency Board, to represent and control the agency, is hereby established, comprising— 25
- (a) three persons, who are not employed by the State, appointed by the Minister on account of their commercial and technical expertise;
- (b) a Director of Public Prosecutions, nominated by the National Director of Public Prosecutions, in consultation with the Directors of Public Prosecutions; and 30
- (c) the registrar of the agency.
- (2) The members of the board contemplated in subsection (1)(a) hold office for a period not exceeding five years, whereafter they may be reappointed.
- (3) A member of the board contemplated in subsection (1)(a), must vacate his or her office— 35
- (a) upon expiry of his or her term of appointment;
- (b) if he or she is incapacitated by physical or mental illness;
- (c) if his or her estate is sequestrated; or
- (d) if he or she is nominated as a candidate for election as a member of Parliament, a provincial legislature or the council of a local authority. 40
- (4) The Minister may remove a member of the board contemplated in subsection (1)(a) from office if such member—
- (a) fails to perform his or her duties diligently or efficiently;
- (b) is unable to perform his or her duties because of mental illness or disability; or 45
- (c) has been absent without the permission of the chairperson from two consecutive meetings of the board, without good reason.
- (5) The members of the board contemplated in subsection (1)(a) may resign on one month's written notice to the Minister.
- (6) The Minister appoints a member of the board contemplated in subsection (1)(a) or (b) as the chairperson. 50
- (7) The board meets at least twice per year or as often as may be required.
- (8) The board determines its own procedures for meetings and decisions and may, in the absence of a chairperson, elect a member contemplated in subsection (1)(a) or (b) as acting chairperson-
- (9) Members of the board who are not in the full-time employment of the State may be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance. 55

Functions of board

7. (1) The functions of the board are—
- (a) to approve the business plan prepared by the registrar in terms of section 8(2), and monitor the efficient and effective operation of the agency; 5
 - (b) to monitor the success achieved by the agency in promoting compliance with road traffic laws; ,
 - (c) to receive annual reports contemplated in section 8(4) from the registrar on the activities and operations of the agency, and to advise the registrar on measures to be taken to improve the agency’s effectiveness;
 - (d) to advise the Minister regarding amendments to this Act or any other road traffic legislation in order to improve the effectiveness of the agency; 10
 - (e) to identify and recommend institutional, technical and logistical support which the agency may provide to assist the prosecution of road traffic offenders and the adjudication of offences by the courts; and
 - (f) to consider any other matter which the board deems advisable in order to achieve the objects of this Act. 15
- (2) The board may assign any of its functions to any employee of the agency, or a member of the board, whom the board deems fit to perform the function.
- (3) The board must annually submit a report on the activities of the agency to the Minister for tabling in Parliament. 20

Appointment of registrar

8. (1) The members of the board referred to in section 6(1)(a) and (b) must appoint a person with proven expertise in corporate and financial management as the registrar of the agency.
- (2) The registrar oversees the functions of the agency in accordance with a business plan prepared by the registrar and approved by the board, and in particular—
- (a) the efficiency of penalty collection and supporting administrative procedures; 25
 - (b) the operational and organisational functioning of the agency; and
 - (c) the introduction of managerial and operational improvements to facilitate the implementation of this Act. 30
- (3) The registrar may, in writing, assign a function contemplated in subsection (2) to a deputy registrar or deputy registrars.
- (4) The registrar must annually submit a report concerning the activities and operations of the agency to the board.

Appointment of deputy registrars

9. (1) The board may appoint not more than twenty five persons as deputy registrars.
- (2) No person maybe appointed as a deputy registrar unless that person—
- (a) has occupied a post of magistrate under the Magistrates Act, 1993 (Act No. 90 of 1993), or a post of senior prosecutor, for an uninterrupted period of at least five years; or 40
 - (b) has a tertiary qualification in financial or information management and at least three years appropriate experience.

Appointment of representations officers

10. (1) The registrar may, subject to the business plan approved by the board, appoint such persons as representations officers as may be necessary. 45
- (2) No person maybe appointed as a representations officer unless that person—
- (a) holds a legal qualification and has proven expertise in the field of road traffic law; or
 - (b) holds a qualification in road traffic management and control approved by the board. 50

Administrative staff and remuneration

11. (1) The registrar must, subject to the business plan approved by the board, establish the administration of the agency and may appoint such administrative staff members as may be necessary.

(2) The agency may pay to the persons in its employ such remuneration and allowances, and may provide them with such pensions and other benefits, as the board may determine with the approval of the Minister acting in consultation with the Minister of Finance.

Appointment of sheriffs

12. The registrar may recommend to the Minister of Justice that such sheriffs or deputy sheriffs, as may be necessary to ensure the proper performance of the agency's functions, be appointed in terms of the Sheriffs Act, 1986 (Act No. 90 of 1986).

Financing of agency

13. (1) The agency is financed from—

(a) fees paid to the agency in terms of this Act;

(b) deductions from penalties collected by the agency as contemplated in section 32;

(c) money appropriated by Parliament for that purpose;

(d) donations received, which must be declared in the annual report contemplated in section 7(3); and

(e) money received from any other source.

(2) The agency must utilise any money contemplated in subsection(1) in accordance with the statement of estimated expenditure referred to in subsection (3).

(3) The registrar—

(a) must, subject to the business plan approved by the board, in each financial year, at a time determined by the board, submit a statement of estimated income and expenditure for the following financial year to the board for approval by the Minister acting in consultation with the Minister of Finance; and

(b) may in any financial year submit adjusted statements of estimated income and expenditure to the board for approval by the Minister acting in consultation with the Minister of Finance.

(4) The financial year of the agency is determined by the Minister.

(5) At the end of each financial year, the registrar must invest such amounts of any surplus funds of the agency, as may be determined by the Minister in consultation with the Minister of Finance, in a separate account, from which payments may be made to any authority or body for the purpose of road safety or road traffic law enforcement.

(6) Subject to subsection (5), any surplus funds of the agency not invested for the purpose contemplated in that subsection, must be invested in the National Revenue Account.

Bookkeeping, auditing and reporting

14. (1) The agency must, in accordance with generally accepted accounting practice, keep such accounting and related records as are necessary to represent fairly the state of affairs and business of the agency and to explain its transactions and financial position.

(2) The registrar is the accounting officer of the agency and is charged with the responsibility of accounting for all monies received and payments made by the agency,

(3) The accounting and related records of the agency must be audited annually by an auditor registered in terms of section 15(1) of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

(4) The Minister must notify the Minister of Finance of the establishment of the agency in terms of this Act for the purposes of section 3 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992).

Banking account

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

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Limitation of liability

16. No employee of the agency nor the agency is liable by reason of any act done in good faith by such employee in terms of this Act.

CHAPTER III

Adjudication procedure

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Infringement notice

17. (1) If a person is alleged to have committed an infringement, an authorised officer or a person duly authorised by an issuing authority, must instead of a notice contemplated in section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and subject to section 23, serve or cause to be served on that person an infringement notice, which must—

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- (a) specify the name and residential and postal address of the infringer, if known, at the time when the infringement was committed;
- (b) state the prescribed particulars of the infringement;
- (c) specify the amount of the prescribed penalty payable in respect of that infringement, the issuing authority to which the penalty is payable and the place where the penalty may be paid;
- (d) specify the prescribed discount which may be obtained if the penalty is paid not later than 28 days after the date of service of the infringement notice;
- (e) inform the infringer that the demerit points position may be ascertained from the national contravention register at the office of any issuing authority, registering authority or driving licence testing centre;
- (f) inform the infringer that, not later than 28 days after the date of service of the infringement notice, the infringer may—
 - (i) pay the penalty, as reduced by the discount contemplated in paragraph (d), or make representations to the agency, in the case of a minor infringement;
 - (ii) pay the penalty, as so reduced, in the case of a major infringement;
 - (iii) make arrangements with the agency to pay the penalty in installments in the prescribed manner;
 - (iv) elect in the prescribed manner to be tried in court on a charge of having committed the alleged offence; or
 - (v) provide information, in the prescribed manner, to the satisfaction of the issuing authority that he or she was not the driver of the motor vehicle at the time of the alleged infringement, coupled with the name, acceptable identification and residential and postal address of the alleged driver or person in control of the vehicle,

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failing which the matter will be referred to the agency and a courtesy letter will be issued in terms of section 19, whereafter the infringer becomes liable to pay both the penalty and the prescribed fee of the courtesy letter.

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(2) If an infringer fails to comply with an infringement notice within the period contemplated in subsection (1), the issuing authority must give notice of the failure, in the prescribed manner, to the agency for further action in terms of section 19.

- (3) If an infringer complies with an infringement notice by paying the penalty, as reduced by the discount contemplated in subsection (1)(d), the issuing authority **must—**
- (a) update the national contravention register in the prescribed **manner**;
 - (b) record the demerit points incurred by the infringer in terms of section 24 in the national contravention register, 5
 - (c) notify the infringer by registered mail that the demerit points have been recorded against his or her name in the national contravention register in respect of the infringement in question; and
 - (d) provide the infringer with a printout of the demerit points incurred by him or her to date, together with an indication of the amount of points left before his 10 or her driving licence, professional driving permit or operator card is suspended in terms of section 25 or **cancelled** in terms of section 27.
- (4) If the infringer satisfies the issuing authority that he or she was not the driver of the motor vehicle, the issuing authority must cancel the infringement notice, and may serve or cause to be served on the person identified as the driver an infringement notice in 15 relation to the alleged infringement.
- (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 address of such person is guilty of an offence and liable upon conviction to a fine or imprisonment 20 for a period not exceeding one year or to both a fine and such imprisonment.

Representations

18. (1) An infringer who has been seined with an infringement notice alleging that he or she has committed a minor infringement, may make representations with respect to 25 that notice to the agency.
- (2) Representations under subsection (1) are made by submitting a sworn statement or affirmation to the agency 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.
- (3) No representations are valid unless the sworn statement or **affirmation** referred to 30 in subsection (2) is submitted not later than the period specified in section 17(1)(f).
- (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 35 issuing authority concerned, who must reply thereto within the prescribed time.
- (5) A representations officer—
- (a) must duly consider the representations and any reply thereto;
 - (b) may conduct independent investigations to verify the facts; and
 - (c) **may—** 40
 - (i) allow the representations if there are reasonable grounds indicating that the infringer should not be held liable for the penalty payable in terms of the infringement notice; or
 - (ii) reject the representations if there are no such reasonable grounds.
- (6) If the representations are allowed the agency must forthwith cancel the 45 infringement notice, and inform the infringer in the prescribed manner of the decision.
- (7) If the representations are rejected, the representations officer may advise the infringer to elect **in** the prescribed manner to be tried in court, and must serve or cause to be served on the infringer a prescribed written notification informing him or **her—**
- (a) of the reasons for the decision, and provide the issuing authority concerned 50 with a copy **thereof**;
 - (b) if the infringer does not elect to be tried in **court—**
 - (i) **that the** penalty, the prescribed representations fee and the prescribed fee

- of the courtesy letter, if any, are payable to the agency not later than 28 days after the date of service of the notification; and ,
- (ii) that a failure to pay the penalty and fees will result in an enforcement order being served on the infringer and that the infringer will become liable to pay the penalty and fees and the prescribed fee of the 5 enforcement order; and
 - (c) if the infringer elects to be tried in court, that the provisions of section 22 apply.
- (8) If an infringer pays the penalty and fee as contemplated in subsection (7)(b)(i), the agency must— 10
- (a) update the national contravention register in the prescribed manner;
 - (b) record the demerit points incurred by the infringer in the national contraventions register;
 - (c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the national 15 contravention register in respect of the infringement in question; and
 - (d) provide the infringer with a printout of the demerit points incurred to date, together with an indication of the number of points left before his or her driving licence, professional driving permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27. 20

Courtesy letter

19. (1) If an infringer has failed to comply with an infringement notice as contemplated in section 17(1)(f) and the agency has been notified of the failure in terms of section 17(2), the agency must issue a courtesy letter and serve it on the infringer. 25
- (2) A courtesy letter must—
- (a) inform the infringer that he or she has failed to comply with the infringement notice;
 - (b) give notice that the infringer must, not later than 28 days after the date of service of the courtesy letter—
 - (i) make representations in respect of a minor infringement; 30
 - (ii) pay the penalty and the prescribed fee of the courtesy letter to the agency; or
 - (iii) notify the agency in the prescribed manner that he or she elects to be tried in court; and
 - (c) state that a failure to comply with the requirements of the courtesy letter 35 within the time permitted, will result in the registrar issuing an enforcement order in terms of section 20.
- (3) If an infringer pays the penalty and fee as contemplated in subsection (2)(b), the agency must—
- (a) update the national contravention register in the prescribed manner; 40
 - (b) record the demerit points incurred by the infringer in the national contraventions register;
 - (c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the national 45 contravention register in respect of the infringement in question; and
 - (d) provide the infringer with a printout 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 or operator card is suspended in terms of section 25 or cancelled in terms of section 27.

Enforcement order 50

20. (1) If an infringer fails to comply with the requirements of a notification contemplated in section 18(7) or a courtesy letter contemplated in section 19(2)(b) or has failed to appear in court as contemplated in section 22(3), as the case may be, the registrar must, subject to subsection (2)—
- (a) issue an enforcement order, serve it on the infringer and update the national 55 contravention register accordingly;

- (b) record the demerit points incurred by the infringer in the national **contraventions register**;
- (c) notify the infringer by registered mail in the prescribed manner that the demerit-points have been recorded against his **or her** name in the national contravention register in respect of the **infringement in** question; and 5
- (d) provide the infringer with a printout 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 **or** operator card is suspended in terms of section 25 or **cancelled** in terms of section 27.
- (2) No enforcement order is **issued**, unless the registrar is satisfied **that—** 10
- (a) an infringement notice, a notification **contemplated** in section 18(7) or courtesy letter, as the case may be, has been served on the infringer in question;
- (b) a period of at least 28 days has passed since the date of service of the said notification or courtesy letter, as the case may be; 15
- (c) the applicable penalty and fees have not been paid;
- (d) there are no pending representations in the case of a minor infringement;
- (e) the infringer has not elected to be tried in **court**, or has elected to be tried in court and has failed to appear; and
- (f) the infringer was at the time of the alleged infringement either the owner or operator of the motor vehicle or the driver of it. 20
- (3) An enforcement order **must—**
- (a) state that the infringer on whom it is served may, not later than 28 days after the date of service of the order, pay the penalty, representations fee and the fees of the courtesy letter, if any, and the prescribed fee of the enforcement order to the agency at the specified place and in the specified manner, and that the prescribed demerit points will be recorded in the national contravention register; and 25
- (b) state that a failure to comply with the requirements of the enforcement order within the period contemplated in paragraph (a) will result in a warrant being issued to recover the applicable penalty and fees. 30
- (4) If an infringer pays the penalty and fees as contemplated in subsection (3)(a), *the* agency must record compliance with the enforcement order and update the national contravention register in the prescribed manner.
- (5) Subject to subsection (6), **no—** 35
- (a) driving **licence**;
- (b) professional driving permit; or
- (c) **licence** disc,
- may be issued to an infringer or in respect of a motor vehicle registered in the name of an infringer, if an enforcement order has been issued in respect of such infringer, **until** 40 such enforcement order has been complied with or has been revoked.
- (6) The provisions of subsection (5) do not apply in respect of an infringer who provides proof in the prescribed manner that he or she has in the meantime paid the penalty and fees specified in the enforcement order.
- (7) An infringer on whom an enforcement order has been served may comply with it 45 by paying the applicable penalty and fees to-
- (a) a registering authority; or
- (b) a driving **licence** testing **centre**.
- (8) A registering authority or driving **licence** testing **centre** must notify the agency in the prescribed manner if it has received any payment contemplated in subsection (7) and must pay over such payment to the agency after deduction of the prescribed collection fee. 50
- (9) An enforcement order must be revoked by the registrar **if—**
- (a) the infringer applies to the agency in the prescribed manner and submits reasons to the satisfaction of the registrar why an enforcement order must be 55 revoked; or
- (b) the issuing authority applies in the prescribed manner for a revocation of the enforcement order.

Warrant

21. (1) If an infringer on whom an enforcement order is served does not comply with 60

the provisions of the order contemplated in section 20(3)(a), the registrar may, on the prescribed conditions, issue a warrant against the **infringer**—

- (a) to seize and sell property to defray the penalty and fees due;
- (b) to seize the driving licence or professional driving permit of the infringer;
- (c) to deface the licence disc of a motor vehicle of which the infringer is the owner by removing the licence disc;
- (d) to seize or deface the operator card of a motor vehicle of which the infringer is the registered operator; or
- (e) to immobilise the motor vehicle of which the infringer is the owner or registered operator,

and the registrar must update the national contravention register accordingly.

(2) The registrar may, upon issuance of a warrant in terms of subsection (1), report the infringer to a credit bureau.

(3) Sections 66,67 and 68 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), apply with the necessary changes to a warrant issued in terms of this section, and the infringer is deemed to be the judgment debtor.

(4) A warrant must be executed by a sheriff in the manner prescribed in rules 41 and 42 of the rules of Court promulgated in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(5) If a warrant has been executed, the registrar must record the payment of the penalty and fees from the proceeds of the execution in the national contravention register.

(6) An infringer may, at any time prior to the execution of a warrant, comply with an enforcement order through the payment of the penalty and fees, including the prescribed cost of the warrant, and in the case of such compliance the warrant may not be executed.

Trial

22. (1) If—

- (a) an infringer elects to be tried in court—
 - (i) under section 10, the issuing authority must cancel the infringement notice; or
 - (ii) under section 18(7)(c), the agency must inform the issuing authority who must cancel the infringement notice; or
- (b) the execution of a warrant in terms of section 21(1) produces no 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 issue a summons in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) Once a summons has been issued in terms of this section, the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies, **and**—

- (a) the prosecutor must notify the agency and the issuing authority in writing in the prescribed manner if he or she declines to prosecute;
- (b) the clerk of the court must notify the issuing authority or the agency of the outcome of the case, so that the national contravention register may be updated; and
- (c) no admission of guilt fine maybe accepted.

(3) If an infringer has been summoned to appear at criminal proceedings and has failed to appear under circumstances indicating that such failure is due to the fault of such infringer as determined by the court, the court may not, despite the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), issue a warrant, but the clerk of the court must notify the agency of the court's finding and the registrar must proceed to issue an enforcement order against the infringer in terms of section 20 (1).

(4) Despite any other law, an infringer who has been dealt with administratively in terms of this Chapter may not be prosecuted again on the same facts.

Simultaneous commission of offence and infringement

23. If a person is alleged to have committed an **offence** and an **infringement** arising out of the same set of facts, such person must, despite the provisions of this Act, be dealt with in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

CHAPTER IV

Points demerit system

Points demerit system

24. (1) Any person who has committed an **offence** or an infringement, incurs the number of demerit points prescribed under section 29(c) in accordance with subsections (2) and (3). 10

(2) Subject to subsection (4), demerit points are incurred on the date on which the penalty and fee, if any, imposed for the infringement are paid, an enforcement order is issued or the infringer is convicted of the **offence**, as the case may be.

(3) (a) If a person has committed two or more infringements or is convicted by a court of two or more **offences** arising out of the same circumstances, demerit points are 15 recorded, subject to paragraph (b), only in relation to one such infringement or **offence**, being, in any case where the same number of demerit points does not apply to all those infringements or **offences**, the infringement or **offence** to which the greatest number of demerit points applies.

(b) The demerit points in respect of **offences** or infringements by operators and 20 drivers are recorded separately even if they arise out of the same circumstances.

(4) If a person appeals against a conviction by the court for an **offence** no demerit points are recorded unless the appeal is rejected or abandoned in which case demerit points are incurred in the prescribed manner.

(5) A printout from the national contravention register which is verified by the 25 agency 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.

Prohibition on driving or operating motor vehicle

25. (1) If a person incurs demerit points which, when added to the points previously 30 recorded against that person in the national contravention register, exceeds the total contemplated in section 29(d), that person is disqualified in the prescribed manner from driving or operating a motor vehicle.

(2) (a) The disqualification period equals in months the number of points by which the total referred to in section 29(d) is exceeded, multiplied by three or such number as may 35 be prescribed by the Minister.

(b) The Minister may prescribe different numbers under paragraph (a) in respect of a driver and an operator of a motor vehicle.

(3) A person who is disqualified in terms of this section—

(a) must immediately hand in any driving **licence** or professional driving permit 40 to the issuing authority contemplated in section 26(2) for retention by such authority during the disqualification period 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 45 card during the disqualification period.

(4) Any person who drives or operates a motor vehicle during his or her disqualification period is guilty of an **offence** and liable on conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

(5) Upon expiry of his or her disqualification period, a person referred to in 50 subsection (3) may apply in the prescribed manner to the issuing authority to return his or her driving **licence** or professional driving permit or to reissue an operator card.

Notification

26. (1) A notice, as **prescribed**, must forthwith be sent by **registered mail to a person** who has incurred more than the number of demerit points referred to in **section 29(d)**, which notice **must—**

- (a) *inform* that person of the number of demerit points incurred by him or **her and 5** of the **offences** or infringements for which those points have been incurred;
- (b) inform that person that he **or she may** not drive or operate any motor vehicle during the disqualification period, and specify the length and **expiry date of** that period; and
- (c) inform that person of the contents of section 25(3) and (4) or 27, as the case 10 may be.

(2) A notice referred to in subsection (1) must be sent by the issuing **authority** within whose area of jurisdiction the person in question is resident.

Cancellation of driving licence, professional driving permit and operator card

27. (1) A person who incurs demerit points resulting in a disqualification in terms of 15 section 25 to drive or operate a motor vehicle for a third time, must immediately hand in his or her driving licence, professional driving permit or operator card issued in respect of that vehicle to the issuing authority contemplated in section 26(2).

(2) An issuing authority must, upon receipt of a driving **licence**, professional driving permit or operator card, as the case may be, take the necessary steps to destroy such 20 **licence**, permit or card.

(3) Upon **expiry** of his or her disqualification period, a person contemplated in subsection (1) may reapply for and be issued with a driving **licence**, professional **driving** permit or **operator card** in terms of the applicable road **traffic** laws.

Reduction of demerit points

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28. If demerit points have been incurred by any person, the issuing authority contemplated in section 26(2) must reduce the total number of points recorded in the national contravention register against that person with one point for every three months, or such other number of points or period as may be prescribed, during which no demerit points were incurred by that person, except for the time the court found that the 30 court process had been deliberately delayed by that person to obtain a reduction in points.

Categorisation of offences, infringements and demerit points

29. The Minister, acting with the concurrence of the Minister of Justice and the MEC 35 of each province, may for the purpose of this Act—

- (a) prescribe **offences**, and categorise them into minor **infringements**, **major** 40 **infringements** and other **offences**;
- (b) prescribe the penalty, expressed as a single unit or multiple units accorded a monetary value, which must be imposed for each infringement, as contem- 40 plated in section 31;
- (c) prescribe the demerit points which are incurred for each **offence** or **infringe-** 40 **ment**, as contemplated in section 24; and
- (d) prescribe the total number of demerit points which, if exceeded, disqualifies a 45 person from driving or operating any motor vehicle as contemplated in section 25.

CHAPTER V

General matters

Service of documents

30. Any document required to be served on an infringer in terms of this Act 'must be

served personally or by registered mail, and it is regarded to have been served on the date the infringer has signed for the receipt of the document.

Penalties

31. (1) The penalty prescribed under section 29(b) for each infringement must, despite any other law, be imposed administratively in terms of Chapter III, subject to the 5 discount contemplated in section 17(1)(d).

(2) The laws on prescription are not applicable to penalties, and they may be collected at any time.

Apportionment of penalties

32. Despite section 6 of the Finance and Financial Adjustments Acts Consolidation 10 Act, 1977 (Act No. 11 of 1977), any penalty received by the agency in terms of this Act must be paid over monthly, after deduction of an amount equal to the discount contemplated in section 17(1)(d), to the issuing authority under whose authority the infringement notice was issued, and if it was not issued under the authority of such authority, to the issuing authority within whose area of jurisdiction the infringement was 15 committed.

Access to information

33. (1) Any person may, upon payment of the prescribed fee, ascertain his or her demerit points position from the national contravention register at the office of any issuing authority, registering authority or driving licence testing centre. 20

(2) Any person who employs a person for the purposes of driving a motor vehicle may, with the written permission of such employee granted in the prescribed manner, ascertain the demerit points position of such employee in the manner contemplated in subsection (1).

Regulations

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34. The Minister may make regulations, which are not inconsistent with this Act, relating to any matter that may or must be prescribed in terms of this Act, including—

- (a) the manner in which any application, notification or submission is to be made, and the record to be kept of such application, notification or submission;
- (b) the manner in which any information regarding any offence or infringement is 30 to be recorded in the national contravention register, and the nature of such information;
- (c) the period for which any information or record is to be maintained in the said register;
- (d) the fees which may be charged for any document, order or action required to 35 be issued, made or performed, and the manner in which record is to be kept of any receipt or payment of money;
- (e) the manner in which any payment is required to be made;
- (f) the manner in which any proof is required to be submitted; and
- (g) any other matter that the Minister considers necessary or expedient to 40 prescribe or govern by regulation in order to achieve the objects of this Act.

Transitional provisions

35. (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 45 in respect of an offence or infringement.

(2) Chapter IV only applies in respect of offences or infringements committed on or after the date of commencement of that Chapter.

Short title and commencement

36. (1) This Act is called the **Administrative Adjudication of Road Traffic Offences Act, 1998**, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act **and** different areas of the Republic.

MEMORANDUM ON THE OBJECTS OF THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES BILL, 1998

1. INTRODUCTION

The Criminal Procedure Act, 1977 (Act No. 51 of 1977), has proved to be increasingly ineffective to enforce road traffic laws. Statistics have shown, *inter alia*, that “extensive resources within local authorities and magistrate’s offices are currently tied up in the administration of futile processes which the majority of offenders are ignoring with impunity.”

2. OBJECTS

The objects of the Bill in terms of clause 2 are therefore to establish a procedure for the effective and expeditious adjudication of infringements through an administrative procedure which relieves the courts of the burden of trying the vast majority of road traffic offences. In addition, the Bill penalises drivers and operators who are guilty of infringements or offences through the imposition of demerit points leading to the suspension and cancellation of driving licences, professional driving permits or operator cards. For the purposes of administering the administrative adjudication scheme, the Bill establishes an agency to support the law enforcement and judicial authorities.

3. DETAILED PROVISIONS

Chapter II of the Bill deals with the Road Traffic Infringement Agency, which is established by clause 3 as a juristic person responsible to the Minister of Transport. The functions of the agency are set out in clause 4.

Clause 5 empowers the agency to sub-contract any of its functions in terms of prescribed procedures.

The agency is represented and controlled by the board, which is established by clause 6, consisting of—

- (a) *three* persons not employed by the State and appointed by the Minister on account of their commercial and technical expertise;
- (b) a Director of Public Prosecutions nominated by the National Director of Public Prosecutions in consultation with the Directors of Public Prosecutions; and
- (c) the registrar of the agency.

The functions of the board are set out in clause 7 and are mainly to monitor the success of the agency in promoting compliance with road traffic laws and to advise the Minister on legislative amendments to improve the effectiveness of the agency.

In terms of clause 8 the board must appoint a person with proven expertise in corporate and financial management as the registrar of the agency who will perform the functions of chief executive officer. The board may also appoint deputy registrars under clause 9.

The registrar may, subject to the business plan approved by the board, appoint—

- (a) representations officers under clause 10; and
- (b) administrative staff under clause 11.

Under clause 12 the registrar may recommend to the Minister of Justice that additional sheriffs be appointed to assist with the performance of the functions of the agency.

Clause 13 deals with the manner in which the agency is financed. This clause must be read with clause 32 which specifies how the agency deals with monies collected by it through payment of penalties.

The registrar is the accounting officer of the agency in terms of clause 14.

Under clause 15 the agency may open a banking account.

In terms of clause 16 the agency or an employee of the agency is not liable for anything done in good faith in terms of the **Bill**.

The proposed adjudication procedure is set out in Chapter III of the Bill. It starts with an infringement notice that must be issued by an authorised officer in terms of clause 17. It must contain full particulars of the alleged infringement, the amount of the prescribed penalty, when and where it must be paid and the discount that may be obtained if it is

paid within 28 days. It must ~~inform the~~ infringer where ~~the~~ demerit points position in the national contravention register may, ~~be ascertained. It must also~~ inform the infringer that he or she may, not later than 28 days after the date of service of the notice—

- (a) in the case of a minor infringement 'pay the penalty as reduced by a prescribed discount or make representations to the agency;
- (b) in the case of a major infringement, pay the penalty as reduced; “ . . . ”
- (c) elect to be tried in court; or,
- (d) if he or she was not the driver of the motor vehicle at the time of the infringement, identify the driver to the issuing authority.

The infringer must also be informed that if he or she fails to comply with one of these options, the matter will be referred to the agency, who will issue a courtesy letter, for which the prescribed fee will be added to the penalty payable.

If the infringer pays the penalty, the issuing authority must update the” national contravention register, record the demerit points in the said register, notify the infringer accordingly and provide the infringer with a printout of the demerit points position. If the infringer satisfies the issuing authority that another person was the driver of the motor vehicle at the time in question, the infringement notice must be cancelled and another one may be served on such driver.

In terms of clause 18 representations are made by submitting a sworn statement or affirmation to the agency, indicating reasonable grounds why the infringer should not be held liable for the penalty. The issuing authority concerned must be given the opportunity to reply to the representations if reasonable grounds are disclosed. The representations officer must then consider the representations, any reply thereto and any other relevant facts, before such officer may allow or reject the representations. If the representations are allowed the agency must cancel the infringement notice and inform the infringer accordingly. If the representations are rejected the infringer must be served with a notification informing him or her of the reasons for the rejection and requiring compliance with the infringement notice.

Clause 19 enjoins the agency to issue a courtesy letter and serve it on an infringer who failed to comply with an infringement notice. A courtesy letter must give notice to the infringer that he or she must not later than 28 days after the date of service of the letter—

- (a) make representations in respect of a minor infringement, in which case clause 19 applies with the necessary changes;
- (b) pay the prescribed penalty and fee to the agency; or
- (c) elect to be tried in court.

failing which an enforcement order will be issued. If the infringer pays the prescribed penalty and fee, the agency must update the national contravention register, record the demerit points in the said register, notify the infringer accordingly and provide him or her with a printout of the demerit points position.

In terms of clause 20 the registrar must issue an enforcement order and serve it on an infringer who has failed to comply with a notification contemplated in clause 18(7) or a courtesy letter contemplated in clause 19. The registrar must also update the national contravention register, notify the infringer accordingly and provide him or her with a printout of the demerit points position. The enforcement order must—

- (a) state that the infringer may, not later than 28 days, pay the prescribed penalty and fees for representations, the courtesy letter and the enforcement order to the agency in the prescribed manner; and
- (b) inform the infringer that a failure to comply with the order will result in a warrant being issued to recover the penalty and fees, including a fee for the warrant.

Under clause 21 the registrar may issue a warrant against an infringer who has failed to comply with an enforcement order, or take steps to seize a driving licence, professional driving permit or operator card, to deface a licence disc or to immobilize a vehicle owned or operated by an infringer. The registrar must then update the national contravention register, and may report the infringer to a credit bureau. An infringer may nevertheless, at any time prior to the warrant being executed, comply with the

enforcement order by paying the penalty and outstanding fees, including the cost of the warrant. If an infringer complies in this manner, ~~the~~ warrant may not ~~be executed~~.

Clause 22 provides that if an infringer elects to be tried in court during the specified stages in the process, the infringement notice is **cancelled** and the issuing authority must summons the infringer in terms of the Criminal Procedure Act, 1977. Clause 22 provides further that the prosecutor must notify the agency and the issuing authority if he or she declines to prosecute, that the clerk of the court must notify the agency or the issuing authority of the outcome of the case and that no admission of guilt fine may be accepted.

Clause 23 provides that if the same set of facts reveal the commission of both an **offence** and an infringement, the offender is prosecuted in terms of the Criminal Procedure Act, 1977.

Chapter IV of the Bill deals with the points demerit system. In terms of clause 24 any person who has committed an **offence** or an infringement incurs the number of demerit points prescribed for it under clause 29(c). If more than one **offence** or infringement arise from the same circumstances, demerit points are recorded only in relation to the one in respect of which the greatest number of points applies, except that operators and drivers are penalised separately.

In terms of clause 25 a person is disqualified to drive or operate a motor vehicle if he or she has incurred more demerit points than the total prescribed under clause 29(d). The disqualification period equals in months the number of points by which the total prescribed under clause 29(d) is exceeded, multiplied by three or such number as may be prescribed. A person who is so disqualified must hand in any driving **licence**, professional driving permit or operator card to the issuing authority concerned, or may not apply for such licence, permit or card, during the disqualification period. It is an **offence** to drive or operate a motor vehicle during a disqualification period.

In terms of clause 26 the issuing authority in whose area a person is resident must send a notice with full particulars to that person if he or she has incurred more than the demerit points prescribed under clause 29(d).

If a person is disqualified for a third time in terms of clause 25, his or her licence, permit or card is **cancelled** in terms of clause 27.

In terms of clause 28 the demerit points recorded against a person must be reduced with one point for every three months during which no demerit points are incurred by that person, except if a court finds that he or she has delayed the court process.

Clause 29 provides for the Minister to prescribe matters relating to the categorisation of **offences** and infringements, penalties, demerit points and the threshold level which disqualifies a person in terms of clause 25.

In Chapter V a few general matters are regulated.

Clause 30 provides that documents must be served personally or by registered mail, so that it may be clear when the infringer has signed for the receipt of it.

In terms of clause 31 the penalty prescribed for each infringement must be imposed administratively, subject only to the discount contemplated in clause 17(1)(d). Penalties are not subject to prescription and may be collected at any time.

In terms of clause 32 any penalty received by the agency must be paid over monthly, after deduction of an amount equal to the discount contemplated in clause 17(1)(d), to the issuing authority that authorised the issue of the infringement notice or within whose area the infringement was committed.

Clause 33 provides that a person may have access to his or her points demerit position upon payment of the prescribed fee. A person employing a person to drive a motor vehicle may also have such access in respect of an employee with the latter's permission.

Clause 34 empowers the Minister to make regulations relating to any matter that may or must be prescribed in terms of the Bill, **including** certain specified matters.

The transitional provisions in clause 35 provide ~~that—~~

- (a) no notice in terms of section 56 or 341 of the Criminal Procedure Act, 1977, may be issued after the commencement of clause 17 in respect of an **offence** or an infringement; and

(b) the demerit points system contemplated in Chapter IV only applies in respect of offences or infringements committed after the commencement of that Chapter.

4. CONSULTATION

The Department of Transport consulted the following instances on this Bill:

Department of Justice

Department of Finance

Department of Provincial Affairs

Provincial departments of transport

Attorneys-General

Magistrates' Commission

Big local governments

SA Road Freight Association

SA Bus Operators Association

Automobile Association

Institute for Traffic Officers

Institute for Licence Officers

5. PARLIAMENTARY PROCEDURE

Since the Bill also deals with "Road Traffic regulation" as contemplated in Schedule 4 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the Department and the State Law Advisers are of the opinion that section 76 of the said Act applies to the Bill.