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## GENERAL NOTICE

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### NOTICE 142 OF 2013

#### DEPARTMENT OF TRANSPORT

#### **PUBLICATION FOR COMMENTS: ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL, 2013**

The Minister of Transport hereby publishes the above draft Bill for public comments. Interested persons are requested to submit their written comments and inputs on the abovementioned draft Bill thirty (30) days from the date of publication of this Government Gazette.

Comments should be directed to the Director General, Department of Transport for attention of Johannes G. Makgatho or Ngwako Thoka at:

The Department of Transport

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**REPUBLIC OF SOUTH AFRICA**

**ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC**

**OFFENCES AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 76), explanatory  
summary of Bill published in Government Gazette No.     of     ) (The English text  
is the official text of the Bill)*  
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**(MINISTER OF TRANSPORT)**

**[B - 2013]**

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**GENERAL EXPLANATORY NOTE:**

- [            ]        Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_        Words underlined with a solid line indicate insertions in existing enactments.
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**BILL**

**To amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definitions; to effect textual corrections; to provide for measures to ensure effective and efficient adjudication of road traffic infringements; and to provide for matters connected therewith.**

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

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

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

(a)        by the insertion in the definition of "**acceptable identification**" after paragraph (dA) of the following paragraphs:

"(dB) a temporary driving licence issued in terms of the National Road Traffic Act;

(dC) a provisional licence (learner's licence) issued in terms of the National Road Traffic Act;";

(b) by the substitution in the definition of "**acceptable identification**" for paragraph (f) of the following paragraph:

"(f) a certified photocopy of the applicable certificate or document referred to in paragraph (a) to (e);";

(c) by the addition in the definition of "**authorised officer**" of the following paragraph:

"(e) any other suitable person declared by the Minister by regulation to be an authorised officer;";

(d) by the insertion after the definition of "**board**" of the following definition:

" 'cancellation period' means the period contemplated in section 27;";

(e) by the substitution for the definition of "**date of service**" of the following definition:

" '**date of service**' means the date on which **[an infringer has signed for the relevant document served on him or her]** a document was served on the infringer in terms of section 30;";

(f) by the substitution for the definition of "**infringement**" of the following definition:

" 'infringement' means an offence categorised as an infringement in terms of section 29(a);";

(g) by the substitution for the definition of "**infringer**" of the following definition:

" '**infringer**' means a natural or juristic person who has allegedly committed an infringement;";

- (h) by the addition in the definition of "**issuing authority**" of the following paragraph:
- "(d) any other institution declared by the Minister by regulation to be an issuing authority;"
- (i) by the substitution in the definition of "**issuing authority**" for the words following paragraph (c) of the following words:
- "in so far as such authority, administration [or], Corporation or institution is responsible for traffic matters;"
- (j) by the deletion of the definitions of "**major infringement**" and "minor infringement";
- (k) by the insertion after the definition of "**national contraventions register**" of the following definition:
- " '**National Road Traffic Act**' means the National Road Traffic Act, 1996 (Act No. 93 of 1996), and includes the regulations made thereunder;"; and
- (l) by the insertion after the definition of "**offence**" of the following definitions:
- " '**operator**' means an operator as defined in section 1 of the National Road Traffic Act;
- 'owner', in relation to a vehicle, means—
- (a) a person who has the right to the use and enjoyment of a vehicle in terms of the common law or a contractual agreement with the title holder of such vehicle;
- (b) any person referred to in paragraph (a), for any period during which such person has failed to return that vehicle to the title

holder in accordance with the verbal or written agreement referred to in paragraph (a);

(c) registered owner of the vehicle; or

(d) a motor dealer who is in possession of a vehicle for the purpose of sale, and who is registered as such;".

### **Amendment of section 2 of Act 46 of 1998, as amended by section 2 of Act 72 of 2002**

2. Section 2 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs:

- "(a) to **[encourage]** enforce compliance with the national and provincial laws and municipal by-laws relating to road traffic and to promote road traffic safety;
- (b) to **[encourage]** enforce the payment of penalties imposed for infringements and to allow for alleged **[minor]** infringers to make representations;".

### **Amendment of section 4 of Act 46 of 1998**

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

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

- "(a) to administer a procedure to discourage the contravention of road traffic laws, **[and to support the adjudication of**

**infringements] to adjudicate infringements** as set out in subsection (2) **and to review appeals by infringers as prescribed;**";

(b) by the deletion of subsection (1)(c);

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

"(b) considering representations from an infringer in terms of section 18 with regard to an infringement notice relating to **[a minor] an** infringement;"

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

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

(i) driver re-testing to determine driver fitness; and

(ii) compulsory community service at a state mortuary and at a road accident trauma ward in a public hospital."; and

(e) by deletion of subsection (4).

#### **Amendment of section 6 of Act 46 of 1998, as amended by section 4 of Act 72 of 2002**

**4.** Section 6 of the principal Act is hereby amended—

(a) by the addition in subsection (1) of the following paragraphs:

"(d) a representative from the Department of Transport, delegated by the Minister; and

(e) a representative from the National Treasury nominated by the Minister of Finance in consultation with the Minister.";

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

"Prior to the appointment of a person referred to in subsection (1)(a) to the board, the Minister must—"; and

(c) by the substitution for subsection (8) of the following subsection:

"(8) The board meets at least **[twice]** four times per year or as often as may be required."

#### **Amendment of section 7 of Act 46 of 1998**

5. Section 7 of the principal Act is hereby amended by the deletion of subsection (1)(e).

#### **Amendment of section 11 of Act 46 of 1998**

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

"(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]**."



**Amendment of section 17 of Act 46 of 1998, as amended by section 8 of Act 72 of 2008**

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

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

"If 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—";

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

"(a) specify the name and residential and postal address of the infringer **[, if known,]** at the time when the infringement was committed;"

(c) by the substitution in subsection (1)(f) for the words preceding subparagraph (i) of the following words:

"inform the infringer that, not later than 32 days after the date of service of the infringement notice, the infringer **[may] must**—";

(d) by the substitution in subsection (1)(f) for subparagraph (i) of the following subparagraph:

"(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]**;"

(e) by the deletion in subsection (1) of paragraph (f)(ii);

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

"(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 contraventions register in respect of the infringement in question;"

(g) by the substitution for subsection (4) of the following subsection:

"(4) If the **[infringer]** owner 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 relation to the alleged infringement."; and

(h) by the insertion after subsection (4) of the following subsections:

"(4A) Where the infringer is a juristic person, an infringement notice may be served electronically on that infringer, who must identify the driver or person responsible for the vehicle at the time the infringement was committed.

(4B) Upon receipt of the electronic nomination, the issuing authority shall serve the infringement notice on the identified driver or person responsible for the vehicle at the time the infringement was committed."

**Amendment of section 18 of Act 46 of 1998, as amended by section 9 of Act 72 of 2002**

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

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

"(1) An infringer who has been served with an infringement notice alleging that he or she has committed **[a minor] an** infringement, may make representations with respect to that **[notice] infringement** to the agency.";

(b) by the deletion of subsection (4); and

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

"(c) that if the infringer elects to be tried in court, **[which may only be done on the advice of the representation officer that]** the provisions of section 22 apply.".

**Amendment of section 19 of Act 46 of 1998, as amended by section 10 of Act 72 of 2002**

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

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

"(i) make representations in respect of **[a minor] an** infringement;" and

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

"(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 contraventions register in respect of the infringement in question; and".

**Amendment of section 19A of Act 46 of 1998, as amended by section 11 of Act 72 of 2002**

10. Section 19A of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs:

- "(a) include the option to pay **[fines]** penalties and **[monies]** fees, if any, or to make arrangements to pay in instalments, the matter must be concluded without considering the other options; and
- (b) in any other case, **[including]** excluding the option to be heard in court, **[this option must be ignored in order to conclude]** the matter must be concluded out of court, corresponding to the administrative process envisaged in this Act."

**Amendment of section 19B of Act 46 of 1998, as amended by section 11 of Act 72 of 2005**

11. Section 19B of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"If an infringer makes an insufficient payment to the agency in terms of this Act in respect of a **[fine or the cheque used**

**for payment is dishonoured]** penalty or fee, a notice as prescribed must be served on the infringer, informing him or her—"; and

- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"If an infringer who has made arrangements to pay a **[fine]** penalty or **[monies]** fees, if any, in instalments, fails to pay the instalments or makes an insufficient payment on an instalment **[or the cheque used for payment of that instalment is dishonoured]**, a notice as prescribed must be served on the infringer, informing him or her—".

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

**12.** Section 20 of the principal Act is hereby amended—

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

"(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 contraventions register in respect of the infringement in question; and"; and

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

"(d) there are no pending representations in the case of **[a minor]** an infringement."

**Amendment of section 21 of Act 46 of 1998, as amended by section 2 of Act 22 of 1999 and section 13 of Act 72 of 2002**

13. Section 21 of the principal Act is hereby amended —

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

"(1) If an infringer on whom a notice contemplated in section 19B(1) or (2) or on whom an enforcement order contemplated in section 20(3)(a) has been served, fails to comply with the requirements of the said notice or enforcement order, the registrar may file a warrant against the infringer with the clerk of the Magistrate's court within whose area of jurisdiction the infringement was committed.

(2) The warrant referred to in subsection (1)—

(a) shall be certified by the registrar as correct and shall set forth the amount of the penalty together with any fees due and payable by the infringer; and

(b) shall upon being issued by the clerk of the court, have all the effects of, and any proceedings may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the agency, for a liquid debt of the amount specified in the warrant;"

and

(b) by the insertion after subsection (5) of the following subsection:

"(5A) If there is not found sufficient movable property to satisfy the warrant, the registrar shall accept the proceeds of the

execution sale as settlement, record the difference as a bad debt and update the national contraventions register."

**Amendment of section 22 of Act 46 of 1998, as amended by section 14 of Act 72 of 2002**

- 14.** Section 22 of the principal Act is hereby amended—
- (a) by the deletion in subsection (2) of paragraph (c);
  - (b) by the deletion of subsection (3); and
  - (c) by the deletion of subsection (4).

**Insertion of section 22A**

**15.** The following section is hereby inserted in the principal Act after section 22:

**"Previous convictions and prosecution**

**22A.** Despite any other law, an infringer who has been dealt with by means of administrative procedures in terms of this Chapter does not incur previous convictions and may not be prosecuted again on the same facts."

**Amendment of section 24 of Act 46 of 1998, as amended by section 15 of Act 72 of 2002**

**16.** Section 24 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) Subject to subsection (4), demerit points are incurred on the date on which—

(a) the penalty and fees, if any, imposed for the infringement are paid[, **including when**];

(b) partial [**or dishonoured**] payments[, ] or arrangements to pay in instalments, are made[, ];

(c) an enforcement order is issued; or

(d) the infringer is convicted of the offence[, **as the case may be**].";

and

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

"(5) A printout from the national contraventions register which is verified by the 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**]."



**Amendment of section 26 of Act 46 of 1998, as amended by section 17 of Act 72 of 2002**

17. Section 26 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"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—".

**Amendment of section 27 of Act 46 of 1998, as amended by section 18 of Act 72 of 2002**

18. Section 27 of the principal Act is hereby amended—

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

"(1) A person who fails to comply with any instruction by the agency relating to section 4(2)(h), or who incurs demerit points resulting in a disqualification in terms of section 25 to drive or operate a motor vehicle for a third time, must immediately hand in his or her driving licence card, professional driving permit or operator card in the prescribed manner to the issuing authority or must submit any driving licence contained in his or her identification document to such issuing authority."

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

"(2) An issuing authority must, upon receipt of a driving licence card, professional driving permit or operator card, as the case may be, take the necessary steps to destroy such licence, permit or card, and must submit any driving licence contained in an identity document to be endorsed as cancelled, and forthwith update the national contraventions register.";

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

"(3) The cancellation period of any driving licence, professional permit, professional driving permit or operator card contemplated in subsection (1)(a) and subsection (2) is one year and the holder of such driving licence, professional permit, professional driving permit or operator card is prohibited from applying for a learner's licence, driving licence, professional permit, professional driving permit or operator card in terms of subsection (4) during this period."; and

(d) by the addition of the following subsection:

"(4) Upon expiry of the cancellation period, the person referred to in subsection (3) may apply for a learner's licence, driving licence test, professional driving permit or operator card, in order to be issued with a new driving licence, professional driving permit or operator card, as the case may be."

**Amendment of section 29 of Act 46 of 1998**

19. Section 29 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:  
"Categorisation of offences [**, infringements**] and demerit points";
- (b) by the substitution for paragraph (a) of the following paragraph:  
"(a) prescribe offences, and categorise them into [**minor infringements, major**] infringements and other offences."; and
- (c) by the substitution for paragraph (c) of the following paragraph:  
"(c) prescribe demerit points which are incurred for [**each offence**] identified offences or infringements, as contemplated in section 24; and".

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

20. Section 30 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:  
"(1) Any document required to be served on an infringer in terms of this Act, must be served on the infringer [**personally or sent by registered mail to his or her last known address**] as prescribed, including electronic service."; and
- (b) by the deletion of subsection (2).

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

21. Section 32 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) 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 amount 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 committed: Provided that such amount may be withheld by the agency where there is evidence of non-compliance with any provision of this Act until such time that this Act is complied with."

**Amendment of section 33 of Act 46 of 1998, as amended by section 22 of Act 72 of 2002**

22. Section 33 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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

**Amendment of section 35 of Act 46 of 1998**

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

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

**Short title**

**24.** This Act is called the Administrative Adjudication of Road Traffic Offences Amendment Act, 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL, 2013**

### **1. BACKGROUND AND PURPOSE**

1.1 The Bill seeks to amend the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998) (the Act). The Act has been in operation on a pilot phase in the jurisdictional areas of Tshwane and Johannesburg Metropolitan Municipalities. This is in accordance with section 36(2) of the Act which provides that different dates may be determined in respect of different provisions of this Act and different areas of the Republic. In the process of implementing the Act, certain critical amendments became necessary in order to achieve efficient and effective eventual national rollout.

1.2 The Act promotes road traffic quality by providing for a scheme that discourages road traffic contraventions and facilitates the efficient adjudication of road traffic infringements. The Bill therefore seeks to introduce efficiencies and other supporting mechanisms to achieve the objects of the Act. In this respect the Bill aims to introduce mechanisms to ensure the effective and efficient adjudication of traffic infringements in terms of the Act.

### **2. CLAUSE-BY-CLAUSE ANALYSIS**

#### **2.1 Clause 1**

Clause 1 amends and substitutes certain definitions, and also add new definitions.

## **2.2 Clause 2**

Clause 2 amends section 2 of the Act by replacing the words "encourage" with "enforce", in order to empower the Road Traffic Infringement Agency (agency), established in terms section 3 of the Act, with more authority in the achievement of its mandate. It is considered limiting on the agency to encourage compliance as opposed to a more authoritative empowerment of enforcing the law on non-compliant users.

## **2.3 Clause 3**

2.3.1 Clause 3 amends section 4 of the Act to emphasise the agency's responsibility of adjudicating infringements and reviewing appeals by infringers as prescribed.

2.3.2 The requirement to provide specialised prosecution support services by the agency is removed. Similarly section 4(4) of the Act is deleted, since it is impractical to require the agency to provide law enforcement equipment to issuing authorities and other duties which are the responsibility of traffic authorities. This is in line with the agency's mandate of adjudicating infringements, whereas offences are dealt with by the criminal courts. The prosecutorial support function, such as the provision of experts, is the responsibility of the issuing authorities, which have a duty to bring offenders to court.

2.3.3 The limitation of the agency to consider representations relating only to "minor infringements" is removed, so that all infringements can be expeditiously adjudicated by the agency.

2.3.4 The section is amended by the inclusion of the agency's requirement to administer rehabilitation programmes for habitual infringers, including but not limited to driver retesting, compulsory community service at road accident trauma wards in public hospitals or state mortuaries for victims of road accidents.

## **2.4 Clause 4**

Clause 4 amends section 6 of the Act by increasing the agency's board membership to include one representative each from the departments of transport and national treasury for effective governance as well as the increase in the number of board meetings from two to at least four per annum.

## **2.5 Clause 5**

Clause 5 amends section 7 of the Act, by the deletion of sub-section 1(e) which requires the agency to identify and recommend institutional, technical and logistical support for the courts. This is a function of the courts and the agency must be responsible for administrative adjudication and not to encroach on the courts processes.

## **2.6 Clause 6**

Clause 6 amends section 11 of the Act by the deletion of the requirement of the board to acquire the approval of the Ministers of Transport and Finance in the



determination of the agency's staff remuneration and allowances. It is seen as the responsibility of the board to appoint staff and provide them with the necessary remuneration framework as it determines. This is seen as a more practical and administratively efficient arrangement.

## **2.7 Clause 7**

2.7.1 Clause 7 amends section 17 of the Act by restricting the issuing of an infringement notice to an authorised officer and deleting the words "cause to be served", in order to remove any confusion about the validity of served or intended documents to be served. This will ensure that all actions undertaken by the authorities result in the actual document being served.

2.7.2 Section 17 is further amended by the deletion of the term "if known" for the address used as it is either provided by the infringer at the roadside or extracted from the vehicle and driver registers on the national contraventions register. It further emphasises the duty that the infringer must take action to address the outstanding infringement and eliminates the restriction for action related to "minor infringements" only.

2.7.3 The payment of a penalty only in respect of a "major infringement" is deleted as there is no more distinction between "minor" and "major" infringements.

2.7.4 The requirement to notify the infringer of the number of demerit points incurred by registered mail is deleted. This is to enable the agency to use other efficient and cost-effective methods of service to reach the infringer speedily.

2.7.5 The "infringer" is substituted for "owner" in subsection 4, in order to facilitate the nomination process of the driver responsible at the time of the infringement, and the deletion of the phrase "cause to be served".

2.7.6 A new subsection (4A) is inserted to facilitate the electronic service of documents where the infringer is a juristic person who nominates the driver responsible at the time of the infringement.

## **2.8 Clause 8**

2.8.1 Clause 8 amends section 18 of the Act by deleting the restriction to submit representation only in respect of "minor infringements".

2.8.2 The requirement in subsection (4) for the representation officer to notify the issuing authority whenever a representation is received challenging that notice is deleted as it makes the process cumbersome and impractical to achieve the objectives of the Act.

2.8.3 The restriction for an infringer to elect to go to court only on the advice of the representation officer is deleted as everyone has a right to go to court if they so elect.

## **2.9 Clause 9**

Clause 9 amends section 19 of the Act by deleting reference to a "minor infringement" and the restriction to notify the infringer by registered mail. This is to facilitate other more efficient methods to be used, including electronic means.

## **2.10 Clause 10**

2.10.1 Clause 10 amends section 19A provides clarification that the process entails the payment of "penalties" and "fees" as opposed to "fines" and "monies", consistent with the administrative process.

2.10.2 Further clarification is provided that all matters must be concluded out of court, corresponding to the administrative process, except where the infringer has elected to be tried in court.

## **2.11 Clause 11**

Clause 11 amends section 19B with clarification of the financial procedures where insufficient payment or dishonoured cheques have been received. Where such circumstances occur, the agency must serve the prescribed notice to the infringer to settle the outstanding matter.

## **2.12 Clause 12**

Clause 12 amends section 20 of the Act by the deletion of the restriction to serve the notification by registered mail in subsection 1(c) and "minor infringement" in subsection 2(d).

### **2.13 Clause 13**

2.13.1 Clause 13 amends section 21 by the substitution of paragraphs (1) and (2) of the Act to clarify the process followed by the registrar in pursuit of non-compliant infringers with the service of a warrant of execution filed with the magistrate's court in the jurisdictional area where the infringement was committed, and that such warrant shall be treated as though it were a civil judgement lawfully given in that court.

2.13.2 Furthermore, a new insertion is made on the treatment of insufficient proceeds from the sale of execution and its recording as bad debt and updating the national contraventions register.

### **2.14 Clause 14**

Clause 14 amends section 22 of the Act to ensure that there is no encroachment on the court processes and that any matter referred to court shall be dealt with by the criminal courts in their own procedures and not superseded by the Act. Thus to ensure fair process, subsections 92)(c), (3) and (4) are deleted, so that matters dealt with by the courts, remain in their processes.

### **2.15 Clause 15**

Clause 15 inserts a new clause 22A to provide that and infringer who has been dealt with by means of administrative procedures in terms of the Act does not incur previous convictions and may not be prosecuted again on the same facts.

## **2.16 Clause 16**

Clause 16 amends section 24 of the Act by clearly spelling out the time when demerit points are incurred in subsection (2) and emphasis in subsection (5) that the status of demerit points verified by the agency is evidence of the demerit points incurred.

## **2.17 Clause 17**

Clause 17 amends section 26 of the Act by deleting the requirement to send the notice by registered mail, which will provide for other efficient methods to be used, including electronic means.

## **2.18 Clause 18**

2.18.1 Clause 18 amends section 27 of the Act. Clause 18(a) of the Bill provides that a person who on the instruction of the agency, fails to comply with driver re-testing or to attend compulsory community service, or becomes disqualified based on demerit points, must hand in his or her driving licence card, professional driving permit or operator card.

2.18.2 It furthermore provides for the updating of the national contraventions register forthwith upon the occurrence of such cancellation.

2.18.3 Subsection(3) is amended to provide for the cancellation period of a driving licence, whereupon an infringer is barred from applying for a driving licence for a period of one year, as opposed to any period that may be determined by judgement meted out in a court of law.

2.18.4 Furthermore, a new subsection (4) is inserted to clarify that an infringer who had a driving licence cancelled does not automatically get a new one upon the cancellation period lapsing but does not have any driving licence for all intents and purposes and must go through the process of acquiring and passing a learner's licence and driving test to qualify.

## **2.19 Clause 19**

2.19.1 Clause 19 amends section 29 of the Act to clarify the categorisation of offences into infringements and other offences and the elimination of the distinction between major and minor infringements.

2.19.2 Paragraph (c) further provides clarification that not all offences or infringements attract demerit points but only certain identified ones. This will provide a more practical and targeted approach of allocating demerit points to infringements and offences that have a direct negative impact on road safety, such as the loss of lives and serious injuries, whereas only providing for financial penalties for other infringements not negatively impacting on road safety such as parking infringements.

## **2.20 Clause 20**

2.20.1 Clause 20 amends section 30 of the Act to remove the restriction of service being only personal or registered mail and include other electronic methods or service. This will introduce efficient methods of electronic service and result in efficient cost-saving mechanisms to benefit issuing authorities and the agency

tremendously, as well as ensuring expeditious service of documents to infringers, thereby enabling them to address their outstanding infringements speedily.

2.20.2 Paragraph (b) seeks to delete subsection (2) as it related to only registered mail and thus not necessary in relation to the new methods of service.

### **2.21 Clause 21**

Clause 21 amends section 32 of the Act with the addition of an empowering clause for the agency to withhold the revenue share due to the issuing authority in circumstances where there is non-compliance with the Act by that issuing authority, until such time that compliance is obtained.

### **2.22 Clause 22**

Clause 22 amends section 33 of the Act with the deletion of the requirement of an employer-employee relation for providing access to the demerit points record by a third party. This is seen as practical that any person may grant permission to another to access their demerit points, thereby enabling third parties such as businesses, banks and insurance companies access to demerits points as permitted by affected persons.

### **2.23 Clause 23**

Clause 23 amends section 35 of the Act to clarify that after the commencement of section 17, no section 56 or 341 of the Criminal Procedure Act, 1997 notice may be issued in respect of an infringement. This clarification means that categorised offences will continue to be dealt with under the Criminal Procedure Act.

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