

BILL

To provide for the establishment of the Transportation Commission of Namibia; for the control of traffic on public roads, the licensing of drivers, the registration and licensing of vehicles, the control and regulation of road transport across Namibia's borders; and for matters incidental thereto.

(Introduced by the Minister of Works, Transport and Communication)

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows: -

PRELIMINARY

Definitions

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

"authorised officer" means a person appointed by virtue of the provisions of section 11 in any of the categories of appointment contemplated in that section;

"builder" means any person who manufactures or assembles motor vehicles in whole or in part from used components for the purpose of sale or disposal otherwise commercially;

"Commission" means the Transportation Commission of Namibia established by section 2;

"dangerous goods" means any article or substance defined or described as such in the regulations;

"driver", in relation to a vehicle, means any person who drives or attempts to drive any vehicle or who rides or attempts to ride any pedal cycle, and in relation to an animal-drawn vehicle means the person or persons driving or guiding the animals, and "drive" or "driving" shall have a corresponding meaning;

"driving examiner" means a person charged with the function of testing applicants for a learner's licence or a driving licence and who is appointed as such under section 11;

"driving instructor" means any person registered as such under section 48;

"driving licence" means a driving licence referred to in Chapter 4;

"driving testing centre" means an establishment at which persons are examined and tested for the purpose of the issue of a driving licence or learner's licence and which is registered in terms of section 27;

"edge of the roadway" means the boundary between the roadway and the shoulder, which is indicated by an appropriate road traffic sign, or in the absence of such sign-

- (a) in the case of a road with a bituminous or concrete surface, the edge of such surface; or
- (b) in the case of any other road, the edge of the improved part of the road intended for vehicular use;

"emergency service vehicle", means -

- (a) an ambulance, being a motor vehicle constructed or adapted for use primarily for conveying sick or injured persons to a place for medical treatment and which is registered as an ambulance;
- (b) a fire-fighting vehicle, being a motor vehicle constructed or adapted for use primarily for fighting fires and which is registered as a fire-fighting vehicle;

- (c) a rescue vehicle, being a motor vehicle constructed or adapted for use primarily for rescue work owned or controlled by the State, a local authority council, a regional council or any organization approved by the Minister and which is registered as a rescue vehicle;
- (d) a civil defence vehicle, being a motor vehicle used by a person while engaged in civil defence as contemplated in the Civil Defence Ordinance, 1979 (Ordinance No. 3 of 1979);
- (e) a security service vehicle, being a motor vehicle used in the course of the business of a security enterprise as defined in section (1) of the Security Enterprises and Security Officers Act, 1998 (Act No. 3 of 1979);
- (f) any other vehicle determined by the Minister by notice in the *Gazette*;

and bearing such marks and fitted with such sounding devices and identification lamps as are prescribed;

"freeway" means a public road or a section of a public road which is designated as a freeway by an appropriate road traffic sign;

"gross vehicle mass", in relation to a motor vehicle, means the mass of the vehicle together with the maximum mass of the load that the manufacturer of such vehicle has specified that such vehicle is built to carry or, in the absence of such specification, the mass as determined by a vehicle testing station;

"importer" means any person who imports new or used motor vehicles into Namibia for the purpose of sale or disposal otherwise commercially;

"international driving permit" means an international driving permit issued in terms of or recognised under -

- (a) the International Convention relative to Motor Traffic (Paris, 1926);
- (b) the United Nations Convention on Road Traffic (Geneva, 1949);
- (c) the United Nations Convention on Road Traffic (Vienna, 1968); or
- (d) any subsequent related convention ratified by the Government of Namibia;

"kerb line" means the boundary between the shoulder and the verge or, in the absence of a shoulder, the part between the edge of the roadway and the verge;

"learner's licence" means a learner's licence referred to in Chapter 4;

"licence inspector" means a licence inspector appointed under section 11;

"local authority area" means a local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

"local authority council" means a local authority council as defined in section 1 of the Local Authorities Act, 1992;

"manufacturer" means a person who manufactures or assembles new motor vehicles for the purpose of sale or disposal otherwise commercially;

"medical practitioner" means a person registered as a medical practitioner under the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993);

"Minister" means the Minister of Works, Transport and Communication;

"Ministry" means the Ministry of Works, Transport and Communication;

"motor vehicle" means any self-propelled vehicle and includes -

- (a) a trailer;
- (b) a vehicle the tare of which exceeds 30 kilograms and having pedals and an engine or an electric motor as an integral part thereof or attached thereto and that can be propelled by means of such pedals, engine or motor or both such pedals and engine or motor, but does not include -
 - (i) a pedestrian controlled vehicle propelled by electrical power derived from storage batteries;
 - (ii) a vehicle the tare of which is less than 230 kilograms and which is specially designed and constructed, and not merely adapted, for the use of a person suffering from a physical defect or disability and is used solely by such person;

"number plate manufacturer" means a person who manufactures number plates for display on motor vehicles in accordance with the requirements of this Act;

"operate on a public road", in relation to a vehicle, means to use or drive a vehicle or to permit a vehicle to be used or driven on a public road, or to have or to permit a vehicle to be on a public road;

"operator" means the person responsible for the use of a motor vehicle of any class contemplated in Chapter 6, and who is registered as the operator of such vehicle;

"owner", in relation to a vehicle, means -

- (a) the person having the right to the use and enjoyment of the vehicle in terms of the common law;
- (b) the person having the right to the use and enjoyment of the vehicle under a contract with the title holder thereof, including for any period during which such person fails to return the vehicle to the title holder when required to do so in terms of any condition of such contract; or
- (c) a motor vehicle dealer who is in possession of a vehicle for the purpose of sale,

and who is indicated as the owner of the vehicle in any document of registration issued in accordance with the regulations under section 20;

"park", in relation to a vehicle, means to keep a vehicle, whether occupied or not, stationary for a period of time greater than is reasonably necessary for the actual loading or unloading of persons or goods, except if such vehicle is stationary for a reason beyond the control of the person in charge of the vehicle, and "parking" shall have a corresponding meaning;

"peace officer" means a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

"Permanent Secretary" means the Permanent Secretary: Works, Transport and Communication;

"prescribe" means prescribe by regulation;

"public road" means any road, street or thoroughfare or any other place which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access and includes -

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, culvert, causeway, ferry, ford or drift traversed by any such road, street or thoroughfare;
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

"region" means a region as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

"regional council" means a regional council as defined in section 1 of the Regional Councils Act, 1992;

"registered", in relation to a motor vehicle, means registered in accordance with the regulations under section 20;

"registered nurse" means a person registered as a nurse under the Nursing Professions Act, 1993 (Act No. 30 of 1993);

"registering authority" means a registering authority appointed in terms of section 10;

"regulation" means a regulation made by the Minister under section 91;

"repealed Ordinance" means the Road Traffic Ordinance, 1967 (Ordinance No. 30 of 1967) repealed by section 112 of this Act;

"road traffic sign" means a road traffic sign referred to in section 73;

"road transport inspector" means a road transport inspector appointed under section 11;

"roadway" means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic which is between the edges of the roadway;

"roadworthy", in relation to a vehicle, means a vehicle which complies with the relevant provisions of this Act and is otherwise in a fit condition to be operated on a public road;

"roadworthy certificate" in relation to a motor vehicle, means a certificate issued in terms of section 59;

"settlement area" means an area declared to be a settlement area under section 31 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

"shoulder" means that portion of a road, street or thoroughfare, between the edge of the roadway and the kerb line;

"sidewalk" means that portion of a verge intended for the exclusive use of pedestrians;

"staff member" means a person in the employment of the Public Service;

"tare", in relation to a motor vehicle, means the mass of the vehicle, including the mass of -

- (a) any spare wheel and all other accessories and equipment supplied by the manufacturer as standard for the particular model of motor vehicle;
- (b) anything which is a permanent part of the structure of the vehicle;
- (c) anything affixed to the vehicle so as to form a structural alteration of a permanent nature; and
- (d) the accumulators of a vehicle propelled by electrical power,

but does not include the mass of fuel or anything affixed to the vehicle not being of a nature contemplated in paragraphs (b) and (c);

"this Act" includes any regulation made by the Minister under section 72 or 91 or in force under this Act by virtue of the provisions of section 113(2);

"title holder", in relation to a vehicle, means the person who –

- (a) is vested with the right to alienate such vehicle in terms of the common law; or
- (b) is required to give permission for its alienation in terms of any contract with a person who is the owner of the vehicle as contemplated in paragraph (b) of the definition of "owner";

"traffic officer" means a traffic officer appointed under section 11, and includes a member of the Namibian Police Force as defined in section 1 of the Police Act, 1990 (Act No. 19 of 1990);

"traffic warden" means a traffic warden appointed under section 11;

"trailer" means a vehicle which is not self-propelled and which is designed or adapted to be drawn by a motor vehicle, but does not include a side-car attached to a motor cycle;

"urban area" means that portion of a local authority area or a settlement area comprising or surrounded by surveyed erven, and includes the public roads abutting thereon;

"vehicle", except in the provisions of Part II of Chapter 6, means a device designed or adapted principally to travel on wheels or crawler tracks and includes such a device which is connected with a draw-bar to a breakdown vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a motor vehicle which is being salvaged, but does not include a device designed to move exclusively on rails;

"vehicle examiner" means a person charged with the function of examining vehicles for roadworthiness and who is appointed as such under section 11;

"vehicle testing station" means an establishment at which vehicles are examined and tested for roadworthiness and which is registered in terms of section 54;

"verge" means that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway or the shoulder.

"weighing device" means a weighbridge or any other apparatus, whether installed in a fixed position or mobile, which is intended for use for determining the mass of vehicles, laden or unladen.

CHAPTER 1 TRANSPORTATION COMMISSION OF NAMIBIA

Establishment of Transportation Commission of Namibia

2. (1) There is hereby established a commission to be known as the Transportation Commission of Namibia.

(2) Any reference in any law or any document to the Transportation Commission of Namibia established by section 2A of the Road Transportation Act, 1977 (Act No. 74 of 1977), shall be construed as a reference to the Commission established by subsection (1) of this section.

Constitution of Commission

3. (1) Subject to subsection (2), the Commission shall consist of -

- (a) a chairperson and a vice-chairperson appointed by the President from amongst persons who are enrolled as legal practitioners under the Legal Practitioners Act, 1995 (Act No. 15 of 1995) and who have practised as such for a period of at least five years; and
- (b) such number of other persons as may be determined and appointed by the President from amongst persons who have experience of and shown ability in connection with, transportation, industrial, commercial or financial matters or in the conduct of public affairs.

(2) No person shall be eligible for appointment as a member of the Commission if he or she -

- (a) is a member of the National Assembly or the National Council;
- (b) is an unrehabilitated insolvent; or
- (c) has been convicted of an offence and sentenced to imprisonment without the option of a fine during the immediate preceding period of 10 years.

(3) The Commission may, with the approval of the Minister and on such conditions and for such period as may be determined by the Minister, co-opt one or more persons to assist the Commission or any committee thereof in the performance of its functions, but no such person shall be entitled to vote on any matter before the Commission or such committee.

(4) Notwithstanding subsection (1), the Commission shall, until such time as its members are appointed by the President, consist of those persons who held office as members of the previous commission referred to in section 2(2) immediately before the commencement of this Act.

(5) The Minister shall, by notice in the *Gazette*, announce the names, positions and nationalities of the members appointed in terms of subsection (1).

Term of office and remuneration

4. (1) Subject to section 5, a member of the Commission shall hold office for such period, not exceeding five years, as the President may determine at the time of his or her appointment, but may be reappointed at the expiration of that period.

(2) A member of the Commission who is not in the full-time employment of the Public Service shall be paid out of moneys appropriated by law, such remuneration and allowances, including subsistence and travelling allowances for journeys undertaken for purposes of the business of the Commission, as the Minister may determine with the concurrence of the Minister of Finance.

(3) The remuneration and allowances determined under subsection (2) may differ according to the different offices held by members on the Commission or the functions performed by them.

Vacation of office

5. (1) A member of the Commission shall vacate his or her office if he or she -

- (a) becomes subject to a disqualification mentioned in section 3(2);
- (b) resigns as such a member by giving written notice to the Minister;
- (c) is absent from two consecutive meetings of the Commission without the leave of the chairperson; or
- (d) is removed from office under subsection (2).

(2) The President may by notice in writing remove any member from office, if the President is satisfied that the member -

- (a) is incapacitated by physical or mental illness;
- (b) is guilty of misbehaviour which renders him or her unsuitable to be a member of the Commission; or
- (c) is otherwise unable or unfit to discharge the functions of his or her office.

(3) Any casual vacancy in the membership of the Commission shall be filled by the appointment of a new member for the unexpired portion of the period of office of the person who ceased to be a member.

Meetings of Commission

6. (1) Subject to subsection (2), a meeting of the Commission shall be held at such time and place as may be determined by the chairperson of the Commission.

(2) The chairperson of the Commission shall convene a special meeting of the Commission, if so requested by the Minister, or upon a motivated request in writing submitted by at least one-third of the members of the Commission.

(3) The majority of the members of the Commission shall form a quorum for a meeting of the Commission.

(4) The chairperson of the Commission shall preside at all meetings of the Commission and in his or her absence, the vice- chairperson shall preside, and, if both the chairperson and vice-chairperson are absent, the members of the Commission present shall elect one of their number to act as chairperson at that meeting.

(5) A decision of the majority of the members present at a meeting of the Commission shall be a decision of the Commission and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(6) No decision taken by the Commission or act performed under the authority of the Commission shall be invalid by reason only of a vacancy on the Commission, or of the fact that any person who is not entitled to sit as a member of the Commission sat as such when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Commission who were present at the time and entitled to vote.

(7) The Commission shall cause a record to be kept of the proceedings of the meetings of the Commission.

(8) The Commission may make rules in relation to the holding of, and procedure at, meetings of the Commission.

(9) If a member of the Commission or his or her spouse, including a spouse in a customary union, or his or her child or any other member of his or her household, or his or

her partner, agent or business associate, has a material interest in any matter to be considered at any meeting of the Commission, he or she shall -

- (a) forthwith disclose the nature and extent of such interest at a meeting of the Commission; and
- (b) withdraw from the meeting during the discussion of and voting on the matter.

(10) Where a member of the Commission withdraws from a meeting in terms of subsection (9), the President may appoint any other person to act in the place of that member during the transaction of the particular matter, and such appointment, in the case of a person who is not in the full-time employment of the Public Service, shall be made on such conditions as to remuneration and otherwise, as the Minister may determine.

(11) The particulars of any disclosure of interest by a member of the Commission in accordance with subsection (9) shall be recorded in the minutes of the particular meeting.

Functions of Commission

7. (1) Subject to the provisions of this Act, the functions of the Commission shall be -

- (a) subject to subsection (2), to inquire into and advise the Minister on matters relating to transportation in Namibia;
- (b) to make recommendations to the Minister regarding the application of this Act, amendments thereto and the making of regulations;
- (c) to advise the Minister, on his or her request, on the exercise or performance of any power, duty or function conferred or imposed on the Minister by or under this Act;
- (d) to exercise such other powers and perform such other duties and functions as may be provided for in this Act or any other law.

(2) The Commission shall not commence any inquiry in terms of subsection (1)(a) without the prior consent of the Minister.

Committees of Commission

8. (1) The Commission may -

- (a) from amongst its members, appoint any committee to advise the Commission on any matter relating to the functions of the Commission;
- (b) with the approval of the Minister and subject to such conditions as the Minister may determine, assign to any such committee such functions of the Commission, and give such directives in connection therewith, as the Commission may deem expedient.

(2) Any function performed by a committee of the Commission by virtue of the provisions of subsection (1)(b) shall be deemed to have been performed by the Commission.

Administrative functions

9. (1) The administrative and clerical work pertaining to the performance of the functions of the Commission shall be performed by staff members in the Ministry made available by the Permanent Secretary for that purpose.

(2) The Permanent Secretary may designate a staff member referred to in subsection (1) to act as secretary to the Commission.

(3) Notwithstanding subsection (1), the function which must be performed by staff members referred to in that subsection may be performed by the staff of any person to whom the Minister has entrusted that function by virtue of an agreement entered into under section 111.

CHAPTER 2

REGISTERING AUTHORITIES AND OFFICERS

Appointment of registering authorities

10. (1) The Minister shall for every region or a specified area within a region, as the Minister may determine, appoint, by mutual agreement, any person, or any government ministry or the regional council of such region or a local authority council to be the registering authority of such region or area for the purposes of this Act, on such conditions as the Minister may determine.

(2) The appointment of a registering authority under subsection (1) and the region or area for which it has been appointed shall be notified by the Minister by notice in the *Gazette*.

(3) The Minister may, by notice in the *Gazette* -

- (a) combine the areas of two or more registering authorities, or any parts thereof into an area for one registering authority, but in such a manner that each region shall have at least one registering authority; or
- (b) divide the area of a registering authority into areas for two or more registering authorities.

(4) The functions conferred or imposed on a registering authority by or under this Act shall be exercised or performed on behalf of a registering authority by such persons as may be authorised thereto by the registering authority.

(5) A registering authority shall be responsible for the registration and licensing of motor vehicles in accordance with the provisions of this Act and shall perform such other functions as may be assigned to registering authorities by the Minister by notice in the *Gazette*.

Appointment of officers

11. (1) For the purposes of this Act, the Minister may, subject to the Public Service Act, 1995 (Act No. 13 of 1995), and on such conditions as the Minister may determine, appoint such persons as the Minister may consider necessary to be -

- (a) licence inspectors;
- (b) vehicle examiners;
- (c) driving examiners;
- (d) traffic officers;
- (e) road transport inspectors;
- (f) traffic wardens;
- (g) reserve traffic officers.

(2) Subject to the approval of the Minister, a local authority council may appoint for its area, subject to such conditions and requirements as may be prescribed by the Minister, such persons as it may consider necessary to be -

- (a) licence inspectors;
- (b) vehicle examiners;
- (c) driving examiners.

(3) Subject to the approval of the Minister, a local authority council may, for its area, or two or more local authority councils may, for their areas jointly, appoint, subject to such conditions and requirements as may be prescribed by the Minister, such persons as may be required to be traffic officers or reserve traffic officers, and any person so appointed shall perform his or her functions -

- (a) within the area or areas for which he or she is appointed; and
- (b) with the prior approval of, and subject to such conditions as may be determined by, the Minister, outside such area or areas,

except to the extent that the Minister may by notice in the *Gazette* exclude any specified public road or portion of a public road from the functions of such an officer.

(4) In addition to the authorised officers mentioned in subsections (2) and (3), a local authority council may appoint such persons as it may consider necessary to be traffic wardens or reserve traffic wardens to perform within its area such functions of a traffic officer as the Minister may determine by notice in the *Gazette*, and the Minister may -

- (a) determine different functions in respect of different categories of traffic wardens or reserve traffic wardens;

- (b) either generally or specifically, impose conditions with regard to the performance of such functions.

(5) The Minister may, by notice in the *Gazette*, authorise regional councils generally or a particular regional council to appoint such category or categories of authorised officers as may be specified in the notice, to perform such functions and subject to such conditions as may be so specified.

(6) The Minister may, by notice in the *Gazette*, and subject to such conditions and requirements as may be specified in such notice, authorise any party with whom the Minister has entered an agreement in terms of section 10(1), 27(1), 54(1) or 111(1) to appoint persons employed by such party in such category or categories of authorised officers as may be specified in the notice, to perform such powers, duties and functions as may be so specified.

(7) The Minister may by regulation provide for -

- (a) the appointment of any category of authorised officers other than those referred to in the preceding subsections of this section;
- (b) the persons or authorities by whom, and the conditions on which, the authorised officers contemplated in paragraph (a) may be appointed; and
- (c) the powers, duties and functions of such authorised officers.

(8) Upon the appointment of an authorised officer by virtue of any of the provisions of this section, the person or authority making such appointment shall issue to such authorised officer a certificate of appointment in a form approved by the Minister.

(9) When performing any function under this Act, and if requested by any person in relation to whom such function is sought to be performed, an authorised officer shall produce to that person his or her certificate of appointment.

Registration and grading of authorised officers

12. (1) The Minister may by regulation provide for the registration and grading of authorised officers or any specified category of authorised officers for the purposes of this Act.

(2) The Minister may in regulations contemplated in subsection (1) provide for -

- (a) the designation of a person or authority to be charged with the function of effecting the registration and grading of authorised officers;
- (b) the powers and duties of a person or authority so designated;
- (c) the procedure to be followed by applicants to obtain such registration or grading;
- (d) the minimum requirements to be complied with by applicants to obtain such registration or grading and the circumstances in which a person shall be disqualified from being so registered and graded;

- (e) the exemption of persons or any category of persons from the requirement to be so registered and graded;
- (f) the suspension or revocation of the registration or grading of any authorised officer;
- (g) the noting of appeals against decisions in relation to applications for registration or grading or any suspension or revocation of such registration or grading; and
- (h) any other matter which the Minister may consider necessary or expedient in connection with the registration or grading of authorised officers.

Powers, duties and functions of licence inspectors

13. (1) In addition to any other powers, duties and functions as may be conferred or imposed on a licence inspector by or under this Act, a licence inspector may, subject to the provisions of this Act -

- (a) by notice in writing, direct the owner, operator, driver or person in charge of any vehicle which in his or her opinion does not comply with the requirements prescribed for a roadworthy certificate by or under this Act or any other law, to present such vehicle for examination at a vehicle testing station for the particular class of vehicle at a time and place specified in the notice;
- (b) demand from the owner, operator or driver of any motor vehicle to produce any document which he or she is required to hold in respect of that motor vehicle in terms of this Act or any like document issued by a competent authority outside Namibia;
- (c) require from any person acting as a driving instructor to produce his or her driving instructor's certificate -
 - (i) forthwith, if he or she is at the time of the request engaged in teaching another person in the driving of a motor vehicle; or
 - (ii) in any other case, within seven days to such person and at such place as may be indicated by the licence inspector;
- (d) examine any motor vehicle in order to verify whether it is in fact the motor vehicle in respect of which any document referred to in paragraph (b) was issued;
- (e) subject to subsection (2), impound any document referred to in paragraph (b) which he or she suspects of being invalid or to have been unlawfully altered or defaced or of being used unlawfully;
- (f) require of the owner, operator, driver or person in charge of any vehicle forthwith to furnish his or her name and address, and give any other particulars required as to his or her identification;

- (g) demand from any person driving or who has been driving a motor vehicle immediately to produce a licence authorising him or her to drive such motor vehicle or, where applicable, a temporary authorisation referred to in section 31(b);
- (h) subject to subsection (2), impound any licence or document produced to him or her in terms of paragraph (g) which in his or her opinion may afford evidence of a contravention of or failure to comply with any provision of this Act;
- (i) require of any person to furnish particulars of his or her identification and address where such person is believed to be able to furnish information in relation to the identification of the owner, operator or driver of a particular vehicle at a particular time or during any period;
- (j) at any reasonable time, having regard to the circumstances of the case, without prior notice, and in the exercise of any power or the performance of any duty under this Act, enter any premises on which he or she has reason to believe that any vehicle is kept.

(2) A licence inspector who, in the exercise of the power conferred by paragraph (e) or (h) of subsection (1), impounds any document or licence, shall issue a receipt therefor to the person from whom it is impounded at the time and place of the impoundment.

Powers, duties and functions of traffic officers

14. (1) In addition to any other powers, duties and functions as may be conferred or imposed on a traffic officer by or under this Act, a traffic officer may, subject to the provisions of this Act -

- (a) exercise or perform any of the functions assigned to a licence inspector by section 13;
- (b) when in uniform, require the driver of any vehicle to stop such vehicle;
- (c) inspect or test, or cause to be inspected or tested by a person whom he or she considers competent to do so, any part and the functioning of any vehicle, and the equipment thereof, with a view to ascertaining whether such vehicle or the functioning thereof and the equipment comply with the provisions of this Act, but an officer or person carrying out such an inspection or test on a vehicle -
 - (i) shall not dismantle the mechanism or any working part of the vehicle, unless he or she is a qualified motor mechanic or holds an appointment also as a vehicle examiner; and
 - (ii) shall, if he or she has dismantled a vehicle, reassemble the dismantled mechanism or part unless the person in charge of the vehicle requests otherwise;

- (d) ascertain the dimensions of, the load on, or the mass, axle mass load or axle unit mass load of, any vehicle, or the mass of any combination of two or more vehicles coupled together, laden or unladen, and require such vehicle or combination of vehicles to be taken to a designated place for the purposes of ascertaining such mass by means of a weighing device, and if the mass so ascertained exceeds the mass allowed in terms of this Act, prohibit the operation of such vehicle or combination of vehicles on a public road until such mass has been reduced or adjusted to comply with the provisions of this Act, but where the load on a vehicle includes any dangerous goods, the reduction and handling of the mass shall be undertaken in accordance with the requirements of any law relating to such goods;
- (e) drive any vehicle which is being examined by him or her or for the purpose of performing any other duty in relation to such vehicle under this Act, provided he or she is licensed to drive a motor vehicle of the particular class;
- (f) if it appears to such officer that the driver or a person apparently in charge of a vehicle is incapable for the time being of driving or being in charge of such vehicle by reason of his or her physical or mental condition, temporarily forbid such person to continue to drive or be in charge of such vehicle and make such arrangements for the safe disposal or placement of the vehicle as in his or her opinion may be necessary or desirable in the circumstances;
- (g) regulate and control traffic on any public road, and give such directions as, in his or her opinion, may be necessary for the safe and efficient regulation of such traffic and, where he or she is of the opinion that the driver of a motor vehicle is impeding the normal flow of traffic on a public road, direct the driver to remove the vehicle from such road or to follow a different route with the vehicle;
- (h) require of any person whom such officer reasonably suspects of having committed an offence under this Act or of being able to give evidence in regard to the commission or suspected commission of such an offence, to furnish his or her name and address and give any other particulars which are required for his or her identification or any process;
- (i) in respect of any motor vehicle, demand from the owner, operator or driver thereof to produce any document prescribed in terms of this Act;
- (j) subject to subsection (2), impound any document produced to him or her in terms of paragraph (i) which in his or her opinion may afford evidence of a contravention of or failure to comply with any provision of this Act;
- (k) inspect any motor vehicle or part thereof and impound any document issued in connection with the registration and licensing of such motor vehicle where it is found that the engine number or chassis number of such motor vehicle differs from the engine number or chassis number as specified on the document, and may direct that such motor vehicle

be taken forthwith to the nearest police station specified by such traffic officer for police clearance, and may notify the owner of the motor vehicle that such vehicle must be re-registered;

- (l) require of the driver of any vehicle or any person occupying the driver's seat of a motor vehicle of which the engine is running -
 - (i) to provide, at any place which the traffic officer may specify, a specimen of breath in accordance with the directions of such officer;
 - (ii) to submit to the taking of a specimen of his or her blood by a medical practitioner or a registered nurse and, for that purpose, to proceed, by such means and with such person as may be indicated by the officer, to a place designated by the officer;
 - (m) require of the driver or person in charge of a motor vehicle which bears a licence mark or any other identification mark indicating that it is a motor vehicle which belongs to or is under the control of the Government of the Republic of Namibia or which is reasonably believed to be a motor vehicle belonging to or under the control of the Government, forthwith -
 - (i) to produce a document issued by a competent authority in the Public Service which authorises such driver or person to use the motor vehicle at that point of time; and
 - (ii) to furnish such information as may reasonably be required to ascertain whether the vehicle is being used for the purpose for which such authorization was given and whether any passengers on such vehicle are authorised to be conveyed by such vehicle.
- (2) A traffic officer who, in the exercise of the power conferred -
- (a) by section 13(1)(e) or (h), by virtue of the provisions of paragraph (a) of subsection (1) of this section, impounds any document or licence from any person, shall issue a receipt therefor to that person;
 - (b) by paragraph (k) of subsection (1), shall where a police clearance as contemplated in that paragraph is obtained, return the impounded document to the person who is entitled thereto.

Powers, duties and functions of road transport inspectors

15. (1) In addition to any other powers, duties and functions as may be conferred or imposed on a road transport inspector by or under this Act, a road transport inspector may, subject to the provisions of this Act, exercise or perform any power, duty or function conferred or imposed on -

- (a) a licence inspector by paragraphs (b), (d), (f), (h), (i) and (j) of section 13(1);

- (b) a traffic officer by paragraphs (b), (d), (g), (h), (k) and (m) of subsection 14(1).

(2) A road transport inspector shall comply with the provisions of section 14(2) in the circumstances contemplated in that section.

Powers, duties and functions of vehicle examiners

16. (1) A vehicle examiner may examine any vehicle in order to ascertain whether it is roadworthy and for that purpose may dismantle the vehicle or any part thereof or its equipment or accessories, and which shall be reassembled by him or her, unless the person in charge of the vehicle requests otherwise.

(2) A vehicle examiner may drive any vehicle which is being examined by him or her or for the purpose of performing any other duty in relation to such vehicle under this Act, provided he or she is licensed to drive a motor vehicle of the particular class.

Powers, duties and functions of driving examiners

17. (1) A driving examiner shall test any applicant for a learner's licence or driving licence, in the manner and in regard to the matters as prescribed, in order to determine whether such applicant is fit and competent to obtain a learner's licence or driving licence for the class of vehicle for which he or she applies.

(2) A driving examiner shall not test an applicant for a driving licence in terms of section 37, unless such examiner is licensed to drive a vehicle of the class for which the applicant applies or of the class as prescribed.

Failure to comply with instruction or direction of authorised officer or peace officer

18. (1) No person shall -

- (a) fail to comply with an instruction or direction given to him or her by a licence inspector, traffic officer, road transport inspector or vehicle examiner, or obstruct, hinder or interfere with such an authorised officer in the performance of any function under this Act;
- (b) fail to comply with an instruction or direction given to him or her by a peace officer, or obstruct, hinder or interfere with any peace officer in the exercise of any power relating to a provision of this Act assigned to him or her under section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (c) in order to compel any authorised officer or peace officer to perform or to abstain from performing any act pertaining to his or her functions under this Act, or on account of such person having performed or abstained from performing such an act, threaten or suggest the use of violence against or restraint upon such person or any other person or suggest any injury to the property of such person or any other person.

(2) Whenever the production of any document, not being a document which in terms of this Act is required to be affixed to a vehicle or to be kept by a person in a vehicle,

is demanded from any person under any provision of this Act, the production thereof at any police station or the office of an authorised officer mentioned in subsection (1) or a peace officer, within a period of seven days after such demand shall be deemed to be sufficient compliance with that demand.

(3) Where a document is produced in terms of subsection (2) at a police station or office referred to in that subsection, the officer in charge of such police station or office shall forthwith notify the officer by whom the demand was made of the compliance of that demand and shall issue a written acknowledgement of production of such document to the person producing it.

Impersonating an authorised officer or peace officer or inducing such officer to neglect performing any duty

19. (1) A person who is not an authorised officer or a peace officer shall not by word, conduct or demeanour pretend that he or she is an authorised officer or a peace officer.

(2) No person shall connive with or induce or attempt to induce any authorised officer or peace officer to omit to carry out his or her duty or to perform an act in conflict with his or her duty.

CHAPTER 3

REGISTRATION AND LICENSING OF MOTOR VEHICLES, REGISTRATION OF MANUFACTURERS, BUILDERS AND IMPORTERS OF MOTOR VEHICLES AND NUMBER PLATE MANUFACTURERS

Registration and licensing of motor vehicles

20. (1) The system for the registration and licensing of motor vehicles shall be as prescribed by the Minister.

(2) No person shall operate on a public road any motor vehicle which is not registered and licensed in accordance with the regulations under subsection (1).

(3) Regulations under subsection (1) may make provision for the exemption of any person or category of persons or any vehicle or class of vehicles from the requirement of registration or licensing.

Registration as manufacturer, builder, or importer or number plate manufacturer

21. (1) Every manufacturer, builder or importer and every number plate manufacturer, shall, with effect from such date and within such period as may be determined and specified by the Minister by notice in the *Gazette* in respect of the specific category, apply to the Minister, in the prescribed manner, for registration as a manufacturer, builder, importer or number plate manufacturer, as the case may be.

(2) If the Minister is satisfied that an applicant in terms of subsection (1) complies with the qualifications for competency as prescribed for the specific category in respect of which application is made, the Minister shall register the applicant on the conditions and in the manner as prescribed.

(3) The Minister may, in the prescribed manner, alter any conditions imposed under subsection (2).

Suspension or cancellation of registration of manufacturer, builder or importer or number plate manufacturer

22. The Minister may, in accordance with such procedure and on such grounds as may be prescribed, cancel the registration of any person as a manufacturer, builder or importer or number plate manufacturer, or suspend his or her registration for such period and on such conditions as the Minister may determine.

Registration of motor vehicle by manufacturer, builder or importer

23. Every manufacturer, builder or importer shall register in the prescribed manner every motor vehicle manufactured, built or imported by him or her before he or she distributes or sells such motor vehicle.

Right of appeal to Commission

24. (1) Any person aggrieved by a decision of the Minister in relation to an application for registration as a manufacturer, builder or importer or number plate manufacturer, or the suspension or cancellation of such registration, or the conditions attached to such registration, may, within 21 days of the date of the decision of the Minister, appeal to the Commission, by -

- (a) lodging with the Commission a written notice of appeal, stating the grounds of appeal; and
- (b) serving upon the Minister a copy of the notice of appeal.

(2) Upon receipt of a copy of a notice of appeal in terms of subsection (1), the Minister shall forthwith furnish the Commission with the reasons for his or her decision which is the subject of the appeal.

(3) The Commission may give such decision as it may consider appropriate in an appeal in terms of subsection (1).

Inspectorate of manufacturers, builders, importers and number plate manufacturers

25. (1) The Minister shall designate any person, authority or organisation as an inspectorate of manufacturers, builders and importers of motor vehicles and number plate manufacturers.

(2) The powers, duties and functions of an inspectorate referred to in subsection (1) in relation to the registration and inspection of manufacturers, builders, importers or number plate manufacturers shall be as prescribed.

(3) The fees that may be charged by an inspectorate referred to in subsection (1) in respect of inspections carried out by it in terms of this Act shall be as prescribed by the Minister.

CHAPTER 4

FITNESS OF DRIVERS

PART I: AUTHORITY RESPONSIBLE FOR TESTING FOR DRIVING LICENCES

Testing for driving licences by Namibian Police

26.(1) Subject to subsection (2), the function of testing persons for the issue of driving licences and learners' licences in terms of this Act shall be performed by members of the Namibian Police Force designated for that purpose by the Inspector-General of that Force.

(2) The Minister may at any time, and in respect of such place or area and with effect from such date as the Minister may determine, withdraw the function referred to in subsection (1) from the Namibian Police Force.

(3) The particulars of any withdrawal made by the Minister under subsection (2) must be notified by notice in the *Gazette*,

(4) Subject to subsection (2), any reference in this Act to a driving testing centre shall be construed as including a reference to an establishment maintained by the Namibian Police Force for the purpose of performing the function assigned by subsection (1).

Registration and grading of driving testing centres

27.(1) Where the Minister is satisfied that any person or authority complies with the requirements prescribed for the registration of a driving testing centre, the Minister may, by agreement with such person or authority, appoint that person or authority to operate a driving testing centre.

(2) Where an agreement is entered into in terms of subsection (1), the Minister shall -

(a) on such conditions as the Minister may determine, register and grade the establishment of the person or authority concerned as a driving testing centre in the prescribed manner; and

(b) cause particulars of such registration and grading to be notified in the *Gazette*.

Suspension or cancellation of registration of driving testing centre

28.(1) If, in the opinion of the Minister, the prescribed requirements referred to in section 27 are no longer complied with in relation to a driving testing centre, the Minister may, in accordance with the prescribed procedure, cancel the registration of such driving testing centre or suspend its registration for such period and on such conditions as the Minister may determine.

(2) The Minister shall cause particulars of every cancellation or suspension of the registration of a driving testing centre under subsection (1) to be notified in the *Gazette*.

Right of appeal to Commission

29.(1) Any person aggrieved by a decision of the Minister in relation to the registration or grading of a driving testing centre or the suspension or cancellation of the registration of such a centre, may, within 21 days of the date of the decision of the Minister, appeal to the Commission, by -

(a) lodging with the Commission a written notice of appeal, stating the grounds of appeal; and

(b) serving upon the Minister a copy of the notice of appeal.

(2) Upon receipt of the copy of a notice of appeal in terms of subsection (1), the Minister shall forthwith furnish the Commission with his or her reasons for the decision which is the subject of the appeal.

(3) The Commission may give such decision as it may consider appropriate in an appeal in terms of subsection (1).

Inspectorate of driving testing centres

30.(1) The Minister shall designate any person, authority or organisation as an inspectorate of driving testing centres.

(2) The powers, duties and functions of the inspectorate referred to in subsection (1) in relation to the inspection and the control of standards, grading and functioning of driving testing centres shall be as prescribed.

(3) The fees that may be charged by an inspectorate referred to in subsection (1) in respect of inspections carried out by it in terms of this Act shall be as prescribed by the Minister..

PART II: FITNESS OF DRIVERS AND REGISTRATION OF DRIVING INSTRUCTORS

Driver of motor vehicle to be licensed

31.(1) No person shall drive a motor vehicle on a public road -

(a) except under the authority, and in accordance with the conditions, of a licence issued under this Chapter or of any document deemed to be a licence for the purposes of this Chapter; and

(b) unless he or she carries such licence or document, or a temporary authorisation referred to in subsection (2), with him or her in the vehicle while driving the vehicle.

(2) For the purposes of subsection (1)(b), a person whose licence or document referred to in that subsection is lost or destroyed may, in the place thereof, use and carry on the vehicle such temporary authorisation as may be prescribed, and which shall be obtained in the manner and on the conditions as prescribed.

Issue of licence authorising driving of motor vehicle

32. A licence authorising the driving of a motor vehicle shall be issued by a driving testing centre in accordance with the provisions of this Chapter and shall be either -

(a) a provisional licence, to be known as a learner's licence; or

(b) a licence, to be known as a driving licence,

and, except as otherwise provided in this Chapter, no person shall be examined or tested for a driving licence unless he or she is the holder of a learner's licence in respect of the class of motor vehicle for which the driving licence is applied for.

Classification of learners' licences and driving licences

33. Subject to the provisions of this Chapter -

- (a) the category of a learner's licence or driving licence;
- (b) the class of motor vehicle to which each category of such licence relates;
- (c) the authority granted by such licence and the endorsements which particular categories of licences shall bear to indicate any special authority granted by such licences;
- (d) the period of validity of such licence;
- (e) the limitations to which the authority conveyed by such licence shall be subject;
- (f) the form and content of such licence,

shall be as prescribed.

Disqualification from obtaining or holding learner's or driving licence

34.(1) A person shall be disqualified from obtaining or holding a learner's licence or a driving licence -

- (a) unless he or she has attained the age that is prescribed in respect of the class of motor vehicle for which such licence is required by him or her;
- (b) during any period that he or she has been declared by a court or other competent authority to be disqualified from obtaining or holding a licence to drive a motor vehicle;
- (c) if a licence to drive a motor vehicle held by him or her has been suspended by a court or other competent authority, while such suspension remains in force;
- (d) if a licence to drive a motor vehicle held by him or her has been cancelled by a court or other competent authority;
- (e) if the licence required by him or her relates to a class of motor vehicle which he or she is authorised to drive under another licence held by him or her;

(f) if he or she is suffering from any of the following diseases or disabilities, namely -

(i) uncontrolled epilepsy;

(ii) sudden attacks of disabling giddiness or fainting due to hypertension or any other cause;

(iii) any form of mental illness for which he or she is detained, supervised, controlled and treated as a patient in terms of the Mental Health Act, 1973 (Act No. 18 of 1973);

(iv) any condition causing muscular incoordination;

(v) uncontrolled *diabetes mellitus*;

(vi) defective vision ascertained in accordance with a prescribed standard;

(vii) any other disease or physical or mental disability which is likely to render him or her incapable of effectively driving and controlling a motor vehicle of the class to which such licence relates without endangering the safety of the public, but deafness alone shall not be considered to be such a disability;

(g) if he or she is addicted to the use of any drug having a narcotic effect or the excessive use of intoxicating liquor;

(h) in such other circumstances as may be prescribed, either generally or in respect of a particular category of learner's licence or driving licence.

(2) The Minister may, upon application of any person who is subject to a disqualification referred to in paragraph (b), (c) or (d), and if the Minister considers it expedient, declare such person to be released from that disqualification, subject to such conditions as the Minister may impose.

Duty to disclose disqualification

35.(1) When applying for a learner's licence or a driving licence, no person shall willfully fail to disclose any disqualification contemplated in section 34 to which he or she is subject.

(2) A person who is the holder of a licence authorising the driving of a motor vehicle in terms of this Chapter shall within 21 days of the date on which he or she becomes aware of the fact that he or she is disqualified under this Act from holding such licence, submit such licence to the Minister for cancellation in terms of subsection (3) or endorsement in accordance with subsection (4).

(3) Except in a case contemplated in subsection (4), the Minister shall, upon receipt of a licence submitted in terms of subsection (2) -

(a) cancel the licence; and

(b) notify the authority where record of such licence is kept of the cancellation of the licence.

(4) Where the Minister is satisfied that the holder of a licence submitted in terms of subsection (2) suffers from defective vision or a physical disability of a nature which renders such holder competent to drive a motor vehicle of the particular class with the aid of glasses or contact lenses or an artificial limb or any other physical aid, the Minister shall -

(a) endorse the licence accordingly, and such endorsement shall be a condition subject to which the licence is held;

(b) return the licence to the holder thereof; and

(c) notify the authority where record of such licence is kept of the particulars of such endorsement.

Application for and issue of learner's licence

36.(1) An application for a learner's licence shall be made to a driving testing centre in the prescribed manner and shall be accompanied by the prescribed fee.

(2) If a driving testing centre is satisfied from the information furnished in an application in terms of subsection (1), or as it may reasonably request, that the applicant is not disqualified from obtaining a learner's licence, it shall refer the applicant to a driving examiner in order to be examined and tested in the manner and on the matters as prescribed.

(3) Upon being satisfied that the applicant has sufficient knowledge of the matters as prescribed in respect of the class of vehicle concerned and that he or she is not disqualified under section 34 from obtaining a learner's licence, the driving examiner shall, on payment of the prescribed fee, issue or authorise the issue of a learner's licence to the applicant in respect of the particular class of motor vehicle, and the examiner or the person authorised thereto by him or her shall -

(a) where the applicant is found to be competent to drive with the aid of spectacles or contact lenses, an artificial limb or other physical aid endorse the licence accordingly; or

(b) where the applicant is a physically disabled person who has to drive a vehicle adapted for physically disabled persons, or a vehicle adapted specifically for that disabled applicant, endorse the licence accordingly.

(4) No person shall wilfully or negligently issue or authorise the issue of a learner's licence contrary to the provisions of this Chapter.

Application for and issue of driving licence

37.(1) The holder of a learner's licence who wishes to obtain a driving licence shall apply to a driving testing centre for a licence to drive a motor vehicle of a class the driving of which is authorised by his or her learner's licence.

(2) An application in terms of subsection (1) shall be made in the prescribed manner and be accompanied by the prescribed fee.

(3) If a driving testing centre is satisfied from the information furnished in an application in terms of subsection (1), or as it may reasonably request, that the applicant is not disqualified in terms of section 34 from obtaining a driving licence of the category for which application is made, it shall refer the applicant to a driving examiner in order to be examined and tested for such licence.

(4) A driving examiner shall test an applicant for a driving licence in the manner and on the matters as prescribed, and for such purpose the applicant shall provide a motor vehicle of the class to which his or her application relates.

(5) Upon being satisfied on such test that the applicant is competent to drive a motor vehicle of the class concerned, the examiner shall, on payment of the prescribed fee, issue or authorise the issue of a driving licence in the prescribed manner to the applicant in

respect of that class of motor vehicle, which shall, where applicable, be endorsed in accordance with the provisions of subsection (6).

(6) Upon the issue of a driving licence, the driving examiner or any other person authorised thereto by such examiner shall -

(a) if the motor vehicle provided by the applicant in terms of subsection (4) is equipped with an automatic transmission or is propelled by electrical power, endorse the driving licence to the effect that authorization is granted only for the driving of a motor vehicle which is so equipped or so propelled, as the case may be;

(b) if the applicant is found to be competent to drive a motor vehicle with the aid of glasses or contact lenses or an artificial limb or other physical aid, endorse the licence accordingly;

(c) if the applicant is a physically disabled person who in terms of subsection (4) provided a motor vehicle which has been specially constructed or adapted or equipped for the use of a person who is so disabled, endorse the licence accordingly.

(7) The holder of a driving licence may apply to a driving testing centre for the renewal of such licence prior to the expiry of the period of validity thereof.

(8) An application in terms of subsection (7) shall be made in the prescribed manner and be accompanied by the prescribed fee.

(9) If, upon receipt of an application for renewal of a driving licence in terms of subsection (7), the driving testing centre is satisfied -

(a) that the existing licence is a valid licence;

(b) that the applicant is the holder thereof; and

(c) that the applicant is not subject to a disqualification mentioned in section 34,

it shall renew such licence in the prescribed manner.

(10) No person shall wilfully or negligently -

- (a) issue or authorise the issue of a driving licence contrary to the provisions of this section; or
- (b) where such licence is required to be endorsed in accordance with the provisions of subsection (6), endorse it contrary to those provisions or fail to endorse it in accordance with those provisions.

Minister may designate driving testing centre or driving examiner

38. Notwithstanding anything to the contrary contained in this Act, the Minister, whenever he or she deems it expedient, may designate -

- (a) the driving examiner by whom an applicant for a learner's licence or driving licence is to be examined and tested;
- (b) the driving testing centre at which an application for a driving licence or renewal of such a licence is to be made by any person.

Right of appeal to Minister

39.(1) Any person aggrieved by the refusal of a driving examiner to issue or authorise the issue of a learner's licence or driving licence to him or her, may, within 21 days of the date of such refusal, appeal to the Minister, by -

- (a) lodging with the Minister a written notice of appeal, stating the grounds of appeal; and
- (b) serving upon the examiner concerned a copy of the notice of appeal.

(2) Upon receipt of the copy of a notice of appeal in terms of subsection (1), the driving examiner concerned shall forthwith furnish the Minister with his or her reasons for the decision which is the subject of the appeal.

(3) For the purpose of deciding an appeal in terms of subsection (1), the Minister may appoint any person to examine and test the appellant as to his or her competency to drive the class of motor vehicle concerned and may require any party to the appeal to furnish such information and evidence as the Minister may deem expedient.

(4) The Minister may give such decision as he or she may consider appropriate in an appeal in terms of subsection (1).

Validity and replacement of driving licences issued under repealed laws

40. (1) Subject to subsection (5), a licence authorising the driving of a motor vehicle which was issued under the repealed Ordinance and which was valid immediately before the commencement of this section, shall be deemed to be a licence issued under this Chapter.

(2) With effect from a date to be fixed by the Minister by notice in the *Gazette*, but not later than the date contemplated in subsection (5), any holder of a driving licence referred to in subsection (1) may apply to a driving testing centre for the replacement of such licence by a driving licence issued under this Act.

(3) An application in terms of subsection (2) shall be made in the prescribed manner and be accompanied by the prescribed fee.

(4) Upon being satisfied that an applicant applying for the replacement of a licence in terms of subsection (2) is the holder of such licence, a driving examiner, or any other person authorised thereto by such examiner shall, subject to section 34, and on payment of the prescribed fee, issue or authorise the issue of a driving licence under this Act to the applicant in the prescribed manner.

(5) Notwithstanding subsection (1), a driving licence referred to in that subsection which is not replaced in accordance with subsection (2), shall cease to be a valid licence for the purposes of this Act with effect from such date as the Minister may determine by notice in the *Gazette*, and the Minister may so determine different dates for different categories of licences.

(6) Where a person who is the holder of a licence referred to in subsection (1), holds, in addition to such licence, a public driving permit issued in terms of the provisions of section 78(1) of the repealed Ordinance, or issued in terms of that section after the commencement of this Act by virtue of the provisions of section 113(1)(a) of this Act, such licence and permit shall jointly, for the period of validity of such permit, but subject to subsections (2) and (5), be deemed to be a licence issued under this Chapter which bears an endorsement contemplated in section 33(c) and granting the corresponding authority conveyed by such public driving permit.

(7) Upon application of any person who is the holder of a driving licence which was issued under any law before the date on which the repealed Ordinance came into

force, and who had failed to surrender such licence in accordance with section 59 of that Ordinance for replacement by a licence issued under that Ordinance, the Minister, if in his or her opinion good reason for such failure is shown by the applicant, may direct that such licence be deemed, for the purposes of this section, to be a licence which was issued under the repealed Ordinance.

Foreign driving licences and international driving permits

41. (1) Subject to subsection (2) and to such conditions as may be prescribed -

- (a) a licence authorising the driving of a motor vehicle issued in a country other than Namibia; and
- (b) an international driving permit issued in a country other than Namibia while the holder thereof was not permanently or ordinarily resident in Namibia,

shall, in respect of the class of motor vehicle to which such licence or permit relates and subject to the conditions thereof, be deemed to be a licence for the purposes of this Chapter, but any such licence which is a provisional licence, or an international driving permit, shall not authorise the driving of a motor vehicle carrying passengers for which an operator is required to be registered under this Act.

(2) The period for which a licence or a permit referred to in subsection (1) shall be deemed to be a licence for the purposes of this Chapter, shall be as prescribed, and different periods may be so prescribed in respect of licences or permits issued in different countries.

(3) The holder of a licence or an international driving permit referred to in subsection (1) may, subject to the prescribed conditions, apply for the replacement of such licence or permit by a driving licence issued under this Chapter.

(4) An application in terms of subsection (3) shall be made to a driving testing centre in the prescribed manner and be accompanied by the prescribed fee.

(5) Upon being satisfied as to the validity of the licence or international driving permit required to be replaced, a driving examiner, or a person authorised thereto by such examiner, shall, subject to section 34, and on payment of the prescribed fee, issue to the applicant a driving licence under this Act.

Power of Minister to suspend or cancel licence

42.(1) If the Minister is of the opinion that the holder of a learner's licence or driving licence issued under this Act or the repealed Ordinance -

(a) is disqualified in terms of section 34 from holding such licence, the Minister shall cancel such licence; or

(b) would constitute a source of danger to the public by driving a motor vehicle on a public road, the Minister may cancel or suspend such licence.

(2) For the purposes of subsection (1), the Minister may request the holder of the licence concerned to submit himself or herself, within such period as the Minister may determine -

(a) to an examination and a test by one or more driving examiners nominated by the Minister to determine his or her competency to drive a motor vehicle of the class to which his or her licence relates;

(b) to an examination by a medical practitioner nominated by the Minister to determine his or her physical and mental fitness to drive a motor vehicle.

(3) The holder of a driving licence who submits himself or herself for an examination and test pursuant to paragraph (a) of subsection (2), may request that, instead of such examination and test being conducted in respect of a class of motor vehicle referred to in that paragraph, his or her competency to drive a motor vehicle be examined and tested in relation to -

(a) any other class of motor vehicle the driving of which is authorised by his or her driving licence; or

(b) a specific prescribed class of motor vehicle.

(4) For the purpose of any examination and test in terms of subsection (2)(a) or (3), the holder of the licence shall provide a motor vehicle of the class concerned.

(5) If, upon an examination and test in terms of subsection (2)(a) or (3), the holder of the licence is found to be competent to drive a motor vehicle of the class provided by him or her and is not disqualified in terms of section 34, the Minister may direct -

(a) that every licence authorising the driving of a motor vehicle and of which he or she is the holder shall be cancelled; and

(b) that a driving licence in respect of a motor vehicle of the class provided by him or her be issued to him or her free of charge by a driving examiner, subject to the endorsement of such licence in accordance with section 37(6), where applicable.

(6) The cost of any examination by a medical practitioner referred to in subsection (2)(b), shall be at the expense of the State.

(7) If a person fails to comply with a request of the Minister in terms of subsection (2), the Minister may forthwith suspend or cancel, as the case may be, the licence concerned, unless such person is able to satisfy the Minister within a period determined by the Minister that such failure was due to a reason beyond his or her control and that such licence should not be suspended or cancelled.

(8) The suspension or cancellation of a licence of any person in terms of this section shall apply to any other learner's licence or driving licence held by that person, as the Minister may determine.

(9) When a licence is cancelled or suspended in terms of any provision of this section, the holder thereof shall forthwith submit the licence to the Minister or a licence inspector authorised thereto by the Minister and where the licence has been suspended, the Minister or licence inspector, as the case may be, shall retain the licence until the period of suspension expires.

(10) The Minister may, where he or she deems it expedient, and on such conditions as he or she may determine -

(a) reinstate a licence suspended in terms of this section in the prescribed manner; or

(b) authorise a person whose licence has been cancelled in terms of this section to apply for a learner's licence and a driving licence.

(11) If, in the opinion of the Minister, the holder of a licence or an international driving permit referred to in section 41(1) -

(a) is subject to any disqualification referred to in section 34; or

(b) would constitute a source of danger to the public by driving a motor vehicle on a public road,

the Minister may in writing inform such person that such licence is of no force within Namibia, and as from the date on which such person is so informed the licence or permit concerned shall cease to be of force within Namibia.

Lapsing of endorsement on licence

43.(1) An endorsement in terms of an order of court effected on a licence authorising the driving of a motor vehicle under this Chapter, shall lapse after the expiry of a period of three years from the date on which it was effected, if during such period no further endorsement has been made on that licence: Provided that no other period of suspension of such licence shall be included in the calculation of the period of three years.

(2) If all endorsements made on a licence have lapsed in accordance with subsection (1), a driving testing centre may, upon application by the holder thereof in the prescribed manner, and on payment of the prescribed fee, issue to such holder a driving licence free from any endorsement.

Cancellation or amendment of endorsement on licence

44. (1) Where the holder of a licence -

(a) authorising the driving of a motor vehicle in Namibia; and

(b) on which an endorsement in terms of section 37(6) or a similar endorsement by an authority in another country has been effected,

is of the opinion that there are circumstances justifying the cancellation or amendment of such endorsement, he or she may apply to the Minister for the cancellation or amendment of such endorsement.

(2) An application in terms of subsection (1) shall be accompanied by -

(a) the licence concerned;

(b) a statement by the applicant setting forth the reasons for the application; and

(c) the prescribed fee.

(3) The Minister may on receipt of an application in terms of subsection (1) require the applicant to submit such further statement or document or take such other steps as the Minister considers expedient.

(4) If an application in terms of subsection (1) -

(a) is refused by the Minister, he or she shall notify the applicant accordingly and return the licence to the applicant; or

(b) is granted by the Minister, he or she shall -

(i) cancel the licence and authorise the issue of a new licence to the applicant in the prescribed manner, either without endorsement or reflecting the amended endorsement, as the case may be; and

(ii) if the cancelled licence was issued under this Act or the repealed Ordinance, notify the authority where the record of such licence is kept accordingly.

Voidness of licence unlawfully issued

45.(1) A learner's licence or driving licence issued contrary to the provisions of this Chapter shall be void, and the holder of such licence shall, upon the request of the Minister or the authority which issued the licence or any traffic officer, forthwith submit such licence to the Minister or such authority or officer, as the case may be, for cancellation.

(2) A traffic officer may cancel a licence in terms of subsection (1) only with the prior approval of the Minister.

(3) Where a licence is cancelled by an authority referred to in subsection (1), such authority shall notify the Minister of the cancellation.

Unlawful use of licence

46. The holder of a learner's licence or driving licence shall not allow such licence to be used by any other person.

Permitting unlicensed person to drive motor vehicle

47. The owner or operator of a motor vehicle or a person in charge or control thereof shall not employ or permit any person to drive such vehicle on a public road unless that person is licensed under this Chapter to drive such vehicle.

Driving instructor to be registered

48.(1) No person shall for reward, whether to himself or herself or any other person, instruct or supervise any other person in the driving of a motor vehicle on a public road unless he or she is the holder of a driving instructor's certificate issued in the prescribed manner.

(2) No person shall employ or make use of the services of any other person as an assistant for the purpose of instructing or supervising persons in the driving of a motor vehicle, unless such assistant is the holder of a driving instructor's certificate issued in the prescribed manner.

(3) The Minister may by regulation make provision for -

(a) the procedure for an application for, and the issue of, a driving instructor's certificate;

(b) the fees payable for such an application and for the issue of a driving instructor's certificate;

(c) the requirements to be complied with by an applicant in order to obtain such a certificate;

(d) the period of validity of such a certificate;

(e) the conditions which shall attach to such a certificate, including conditions prescribing standards or requirements in relation to any motor vehicle to be used for the purpose of giving driving instructions and the duties of driving instructors;

(f) the circumstances in which such a certificate may be suspended or cancelled and the procedure to be followed for such suspension or cancellation;

(g) the noting of an appeal against the decision of any competent authority in relation to an application for the issue of a driving instructor's certificate or the suspension or cancellation of such a certificate.

(4) A person who is required to hold a driving instructor's certificate by virtue of the provisions of subsection (1) or (2), shall keep such certificate available for inspection at all times while he or she is engaged in teaching any person in the driving of a motor vehicle.

PART III

SUSPENSION, CANCELLATION AND ENDORSEMENT OF LICENCES

Production of licence to court

49.(1) A person who is charged with an offence under this Act relating to the driving of a motor vehicle or a failure to stop after an accident or to report an accident shall at the time of the hearing produce to the court every learner's licence or driving licence of which he or she is the holder or, if he or she is not in possession of the original licence, a duplicate thereof issued in terms of this Act.

(2) Any person who pays an admission of guilt fine relating to any contravention of this Act, or any regulation of a local authority council or regional council made under section 92 or adopted in accordance with section 93, shall, upon payment of such fine, produce to the person to whom the fine is paid his or her learner's licence or driving licence, or, if he or she is not in possession of the original licence, a duplicate thereof issued in terms of this Act.

(3) No person shall without reasonable cause fail to comply with the provisions of subsection (1) or (2).

Court may issue order for endorsement, suspension or cancellation of licence or disqualify person from obtaining licence

50.(1) Subject to section 51, a court convicting a person of an offence in terms of this Act or at common law, relating to the driving of a motor vehicle or a failure to stop after an accident or to report an accident, may, in addition to imposing a sentence, issue an order -

(a) where the person convicted is the holder of a licence -

(i) that such licence be cancelled or that it be suspended for a period which the court considers appropriate; or

- (ii) that such licence be cancelled and that the person convicted be disqualified from obtaining a licence for any class of motor vehicle for such period as the court may consider appropriate;
- (b) where the person convicted is not the holder of a licence, that such person be disqualified from obtaining a licence, either indefinitely or for such period as the court may consider appropriate.

(2) An order issued by a court under paragraph (a)(i) or (ii) of subsection (1) shall apply with respect to every licence held by the convicted person and the particulars of the conviction and sentence and of the order issued shall be endorsed by the registrar or clerk of the court on every such licence.

(3) The endorsement of a licence in terms of subsection (2) may be postponed by the court issuing the order until any appeal against the conviction or sentence, or both, has been disposed of.

Suspension of licence upon conviction of certain offences

51.(1) Where a person who is the holder of a driving licence is convicted by a court of an offence -

- (a) under section 78(1)(a), (b) or (c) in the case of an accident which resulted in the death or injury of a person;
- (b) under section 80(1) of driving a vehicle recklessly; or
- (c) under section 82(1), (2), (5) or (9),

the court shall, apart from imposing a sentence, and except if the Court under section 50(1)(a) issues an order for the cancellation of the licence, issue an order whereby every driving licence held by such person is suspended in accordance with the provisions of subsection (2).

(2) An order of suspension pursuant to subsection (1), shall be made for such period as the court may determine, but which shall not be less than -

- (a) three months, in the case of a first conviction;
- (b) one year, in the case of a second conviction; and
- (c) five years, in the case of a third or subsequent conviction.

(3) If a person convicted of an offence mentioned in subsection (1) is not the holder of a driving licence, the court, apart from imposing a sentence, shall declare such person to be disqualified from obtaining a learner's licence or driving licence for such period as the court may determine, but not being less than the minimum period contemplated in paragraph (a), (b) or (c) of subsection (2), as may be applicable.

Procedure subsequent to endorsement, suspension or cancellation of licence

52.(1) Where a court has issued an order that a licence be suspended or cancelled, the registrar or clerk of the court shall notify the authority where record of such licence is kept of the particulars of the conviction and sentence of the person concerned and of the order issued.

(2) Upon the endorsement of the court's order on a licence in accordance with section 50(2), the registrar or clerk of the court shall -

(a) in the case of an order of suspension of a licence, retain every licence so endorsed for the period of suspension, and upon expiry of that period return such licence to the person concerned;

(b) in the case of an order of cancellation of a licence, transmit every licence so endorsed to the authority where record of such licence is kept for purposes of the cancellation thereof.

(3) Upon receipt of a licence under subsection (2)(b), the authority concerned shall cancel the licence and notify the Minister in writing of such cancellation.

CHAPTER 5

FITNESS OF VEHICLES

Examination of roadworthiness of vehicles by Namibian Police

53.(1) Subject to subsection (2), the function of examining the roadworthiness of vehicles for the purposes of this Act shall be performed by members of the Namibian Police Force designated for that purpose by the Inspector-General of that Force.

(2) The Minister may at any time, and in respect of such place or area and with effect from such date as the Minister may determine, withdraw the function referred to in subsection (1) from the Namibian Police Force.

(3) The particulars of any withdrawal made by the Minister under subsection (2) must be notified by notice in the *Gazette*.

(4) Subject to subsection (2), any reference in this Act to a vehicle testing station shall be construed as including a reference to an establishment maintained by the Namibian Police Force for the purpose of performing the function assigned by subsection (1).

Registration and grading of vehicle testing stations

54.(1) Where the Minister is satisfied that any person or authority complies with the requirements prescribed for the registration of a vehicle testing station, the Minister may, by agreement with such person or authority, appoint that person or authority to operate a vehicle testing station.

(2) Where an agreement is entered into in terms of subsection (1), the Minister shall -

(a) on such conditions as the Minister may determine, register and grade the establishment of the person or authority concerned as a vehicle testing station in the prescribed manner; and

(b) cause particulars of such registration and grading to be notified in the *Gazette*.

Suspension or cancellation of registration of vehicle testing station

55.(1) If, in the opinion of the Minister, the prescribed requirements referred to in section 54 are no longer complied with in relation to a vehicle testing station, the Minister may, in accordance with the prescribed procedure, cancel the registration of such testing station or suspend its registration for such period and on such conditions as the Minister may determine.

(2) The Minister shall cause particulars of every cancellation or suspension of the registration of a vehicle testing station under subsection (1) to be notified in the *Gazette*.

Right of appeal to Commission

56.(1) Any person aggrieved by a decision of the Minister in relation to the registration or grading of a vehicle testing station or the suspension or cancellation of the registration of such a station, may, within 21 days of the date of the decision of the Minister, appeal to the Commission, by -

- (a) lodging with the Commission a written notice of appeal, stating the grounds of appeal; and
- (b) serving upon the Minister a copy of the notice of appeal.

(2) Upon receipt of the copy of a notice of appeal in terms of subsection (1), the Minister shall forthwith furnish the Commission with his or her reasons for the decision which is the subject of the appeal.

(3) The Commission may give such decision as it may consider appropriate in an appeal in terms of subsection (1).

Inspectorate of vehicle testing stations

57.(1) The Minister shall designate any person, authority or organisation as an inspectorate of vehicle testing stations.

(2) The powers, duties and functions of the inspectorate referred to in subsection (1) in relation to the inspection and the control of standards, grading and functioning of vehicle testing stations shall be as prescribed.

(3) The fees that may be charged by an inspectorate referred to in subsection (1) in respect of inspections carried out by it in terms of this Act, shall be as prescribed by the Minister.

Roadworthy certificate required in respect of motor vehicle

58.(1) No person shall operate a motor vehicle on a public road if such motor vehicle is not in a roadworthy condition.

(2) No person shall operate a motor vehicle of a prescribed class on a public road unless there is in force in respect of such vehicle a roadworthy certificate attesting to its fitness, and except in accordance with the conditions of such certificate.

(3) Subject to the provisions of this Chapter -

- (a) the classes in which motor vehicles are classified for the purposes of prescribing the requirements regarding roadworthiness and the requirements for roadworthiness certification applicable to each class of motor vehicle;
- (b) the categories of roadworthy certificates;
- (c) the period of validity of roadworthy certificates;
- (d) the examination of motor vehicles;
- (e) the requirements for the issue or renewal of roadworthy certificates;
- (f) the manner of issue or renewal of roadworthy certificates;
- (g) the suspension or cancellation of roadworthy certificates;
- (h) any other matter regarding roadworthy certificates which the Minister may consider necessary or expedient,

shall be as prescribed.

(4) For the purposes of subsection (2) -

- (a) an unexpired certificate of fitness issued under section 77 of the repealed Ordinance;
- (b) a document issued by a competent authority in a foreign country serving a similar purpose to that of a roadworthy certificate,

shall, in accordance with the conditions thereof, but subject to this Act, be deemed to be a roadworthy certificate.

Application for roadworthy certificate

59. An application for a roadworthy certificate in respect of a motor vehicle shall be made to a vehicle testing station in the prescribed manner and be accompanied by the prescribed fee.

CHAPTER 6

OPERATOR FITNESS AND CROSS-BORDER ROAD TRANSPORT

PART I: OPERATOR

Registration of operator

60.(1) No person shall operate on a public road any motor vehicle of a class prescribed for the purposes of this Part unless a person is registered as the operator of such motor vehicle in accordance with the provisions of this section.

(2) Except in a case contemplated in subsection (3)(a), the owner of a motor vehicle of a class prescribed under subsection (1) shall be regarded as the operator thereof and, subject to subsection (4), be required to be registered as such in terms of subsection (6).

(3) Where a person, other than a manager, employee or agent of the owner of a motor vehicle of a class referred to in subsection (1), enters into a written agreement with the owner of such motor vehicle by virtue of which such person is granted the right to operate such motor vehicle for -

(a) a period in excess of three months, such person shall be regarded as the operator of such motor vehicle and, subject to subsection (4), be required to be registered as such in terms of subsection (6);

(b) a period of three months or less, such person shall for that period be regarded as the operator of such motor vehicle for the purposes of section 64(a),(b), (c),(d),(e) and (f).

(4) Notwithstanding subsections (2) and (3)(a), no person shall be registered as operator of a motor vehicle unless -

(a) such person -

(i) is a Namibian citizen or has been lawfully admitted to Namibia for permanent residence therein, and is resident in Namibia;

(ii) in the case of a company, is registered in Namibia in terms of the Companies Act, 1973 (Act No. 61 of 1973) as a company or a foreign company; or

(iii) being a close corporation, is registered in Namibia in terms of the Close Corporations Act, 1988 (Act No. 23 of 1988);

(b) the motor vehicle concerned is registered and licensed in Namibia; and

(c) such other requirements as may be prescribed in relation to such registration are complied with.

(5) The owner of a motor vehicle of a class prescribed under subsection (1), shall

(a) upon the licensing of such motor vehicle in terms of the regulations under section 20; or

(b) within 21 days after -

(i) the conclusion or amendment of an agreement referred to in subsection (3); or

(ii) such motor vehicle became a vehicle of a class so prescribed,

notify the registering authority in the prescribed manner of the person who is to be registered as the operator of such motor vehicle.

(6) If the registering authority is satisfied that the person designated in terms of subsection (5) qualifies to be registered as operator, the registering authority shall register that person in the prescribed manner as the operator of the motor vehicle concerned.

(7) The Minister may by regulation exempt any operator or category of operator from any provision of this Act.

Issue of an operator card

61. Upon the registration of a person as operator in terms of section 60(6), and on payment of the prescribed fee, the registering authority shall issue an operator card to such person in the prescribed manner for each motor vehicle in respect of which he or she is registered as operator.

Operator card to be displayed on motor vehicle

62. No person shall operate on a public road any motor vehicle of a class prescribed under section 60(1) unless a valid operator card issued in relation to the motor vehicle is displayed on the motor vehicle in the prescribed manner.

Proof of certain facts

63.(1) If in any prosecution the question arises as to the identity of the operator of a motor vehicle a document certified by a peace officer as a true imprint or copy of or an extract from an operator card, shall upon production thereof, be *prima facie* proof that the person whose name appears as operator on such card, was the operator of such vehicle at the time when the offence was committed.

(2) No person shall for the purposes of subsection (1) certify a document to be a true imprint, copy or extract of an operator card, knowing that it is not a true imprint, copy or extract thereof.

Duties of an operator

64. The operator of a motor vehicle shall -

- (a) exercise proper control over the driver of such motor vehicle to ensure the compliance by such driver with the relevant provisions of this Act, in particular the provisions relating to the loading of vehicles;
- (b) ensure that such motor vehicle complies with such requirements regarding equipment as may be prescribed and with the fitness requirements contemplated in Chapter 5;
- (c) conduct his or her operations with due care to the safety of the public;
- (d) cause to be maintained in respect of such motor vehicle a logbook in the manner determined by the Minister;
- (e) take all reasonable measures to ensure that such motor vehicle is used on a public road in compliance with the requirements relating to the loading and transportation of goods as prescribed;

(f) ensure that the conveyance of dangerous goods is undertaken in accordance with such requirements as are prescribed by or under this Act or any other law pertaining to such goods;

(g) within seven days after the occurrence of any change in the circumstances pertaining to his or her registration as operator in respect of such motor vehicle, give notice thereof -

(i) to the owner of such motor vehicle, if applicable; and

(ii) to the registering authority concerned,

and return the operator card in respect of the vehicle to the registering authority;

(h) keep safe and protect from theft an operator card issued to him or her, and if such card is lost, stolen, defaced or destroyed he or she shall notify the nearest police station within 24 hours and the registering authority within seven days after having become aware of such loss, theft, defacement or destruction or after it could reasonably be expected that he or she should have been aware of such loss, theft, defacement or destruction.

Power of Minister in respect of motor vehicles, drivers and activities of operators

65.(1) The Minister may, on account of any evidence regarding the state of fitness of a motor vehicle in respect of which an operator is registered, produced to the Minister in terms of subsection (4), by written notice -

(a) notify such operator that such motor vehicle is suspected of not being roadworthy and that the operator should forthwith take adequate steps to ensure its continued roadworthiness in accordance with Chapter 5;

(b) require such operator to indicate in writing what precautions he or she has taken to ensure the continued roadworthiness of such motor vehicle in accordance with Chapter 5;

(c) direct such operator to produce such motor vehicle for examination at a time and place specified in the notice;

(d) suspend the operator card issued in respect of the motor vehicle, if, upon an examination in terms of paragraph (c), the motor vehicle is found not

to be roadworthy in accordance with Chapter 5, for such period as such motor vehicle is not roadworthy.

(2) The Minister may, on account of the record of a driver of a motor vehicle in respect of which an operator is registered, by written notice -

(a) inform such operator that it is suspected that he or she does not exercise proper control over the drivers under his or her authority as required by section 64;

(b) require such operator to indicate in writing what precautions he or she has taken in order to ensure that proper control is exercised over drivers under his or her authority;

(c) require such operator to produce for examination the records relating to drivers which an operator is required to keep in terms of this Act;

(d) direct that the driver concerned be retested in terms of section 42.

(3) The Minister may, if the record of an operator indicates that such operator does not comply with the provisions of this Act, by written notice -

(a) direct such operator to fulfil in a proper manner the duties imposed by section 64;

(b) appoint a person whom the Minister considers suitable, to investigate the activities or specific activities of such operator and to make a written recommendation to him or her regarding what measures should be taken in respect of such operator;

(c) direct such operator to appear before the Minister, or any person appointed by the Minister, in order to furnish reasons for his or her failure to fulfil the duties imposed by section 64;

(d) notify such operator -

(i) that an operator card shall only be issued to him or her upon such conditions as the Minister may consider appropriate;

(ii) that no further operator card shall be issued to him or her for such period as the Minister may specify in the notice; or

(iii) that the operator card or cards pertaining to such vehicle or motor vehicles as the Minister may determine in respect of which he or she is registered as the operator, is or are suspended until the Minister is satisfied that the grounds for such suspension have lapsed:

Provided that -

(aa) the period of any suspension under subparagraph (iii) shall not exceed 12 months;

(bb) any decision by the Minister in terms of this paragraph shall only be taken on the basis of a recommendation by a person appointed under paragraph (b); and

(cc) the Minister shall, within 21 days of the date of the notice, in writing furnish such operator with the reasons for his or her decision.

(4) The Minister may, for the purpose of exercising any power under this section -

(a) require from any operator, subject to any legal objection, to make discovery of documents by way of affidavit or by answering interrogatories on oath or affirmation and to produce such documents for inspection;

(b) require from any operator to allow the inspection of any records and documents required to be kept by an operator in terms of this Act;

(c) appoint a commission to take the evidence of any person, either in Namibia or elsewhere, and to forward such evidence to him or her in the same manner as if the commission were a commissioner appointed by a court;

(d) at any time require that an inquiry be instituted into the operational activities of an operator by a person appointed by the Minister for that purpose and, if such operator is a company, also into the operational activities of any other company in a group of companies to which the operator belongs or of which the operator is the controlling company.

(5) If the Minister on reasonable grounds suspects that any person registered as the operator of a motor vehicle is not the *bona fide* operator of such vehicle, the Minister may require from the owner of the vehicle to produce proof that the person so registered is in fact the operator of the vehicle, and if it is not proved to the satisfaction of the Minister

that the person so registered is in fact the operator of the vehicle concerned, the owner of the vehicle shall be considered to be the operator of such motor vehicle.

Right of appeal to Commission

66.(1) Any person aggrieved by the refusal of a registering authority to register him or her as an operator or by a decision of the Minister in terms of section 65(3)(d), may, within 21 days of the date of such refusal or decision, appeal to the Commission, by -

(a) lodging with the Commission a written notice of appeal stating the grounds of appeal; and

(b) serving on the registering authority or the Minister, as the case may be, a copy of the notice of appeal.

(2) Upon receipt of a copy of the notice of appeal in terms of subsection (1), the registering authority or the Minister, as the case may be, shall forthwith furnish the Commission with the reasons for the decision which is the subject of the appeal.

(3) The Commission may give such decision as it may consider appropriate in an appeal in terms of subsection (1).

Act or omission of a manager, agent or employee of the operator

67.(1) Where any manager, agent or employee of an operator performs or omits to perform an act that would have constituted an offence under this Act had it been an act or omission on the part of an operator, then such operator shall be liable under this Act in the same manner and to the same extent as if such operator had personally performed or omitted to perform that act, if it is proved -

(a) that the operator connived at or knowingly permitted the act or omission; or

(a) that the act or omission was attributable to negligence on the part of the operator.

(2) Where any manager, agent or employee of an operator performs an act or omits to perform an act which would constitute an offence under this Act had it been an act or omission on the part of such operator, such manager, agent or employee shall be liable to be convicted and sentenced in respect thereof as if he or she were such operator.

PART II: CROSS-BORDER ROAD TRANSPORT

Definitions for this Part

68. In this Part -

"cabotage" means transport undertaken on a public road by a foreign carrier with a vehicle which involves -

- (a) the loading of freight or passengers at a point in Namibia for offloading at any other point in Namibia; or
- (b) the loading of freight or passengers at a point in Namibia for conveyance to a third state which is not the state of registration of the vehicle used for such transport and where such state is not traversed

"contracting country" means a country other than Namibia which is a party to a cross-border road transport agreement;

"cross-border permit" means a permit authorising any of the following categories of road transport, namely -

- (a) road transport contemplated in section 70(1);
- (b) being cabotage contemplated in section 70(3); or
- (c) road transport contemplated in section 71;

"cross-border road transport agreement" means an agreement entered into between Namibia and any other country or countries whereby arrangements are made for the control and regulation of road transport between Namibia and such country or countries;

"foreign carrier" means a carrier who undertakes road transport with a vehicle which is registered in a contracting country other than Namibia;

"Namibian carrier" means an operator who undertakes road transport with a vehicle which is registered in Namibia;

"road transport" means the transport of passengers or freight by road for reward or in the course of the industry, trade or business of a carrier or by means of a hired vehicle;

"vehicle" means -

(a) in relation to cross-border freight road transport, any mechanically-propelled road vehicle -

(i) which is constructed, adapted or used for the carriage of freight, excluding a semi-trailer and trailer in the case of an articulated vehicle; and

(ii) which either by itself or as part of an articulated vehicle exceeds a maximum gross vehicle mass of 3 500 kilograms;

(b) in relation to cross-border passenger road transport, any mechanically-propelled road vehicle which is constructed or adapted for the conveyance of more than twelve passengers or any other vehicle which is used to convey more than twelve passengers; and

(c) in relation to cabotage, any mechanically-propelled vehicle and, in the case of an articulated vehicle, also a trailer and semi-trailer.

Publication of cross-border road transport agreements

69. Where a cross-border road transport agreement is entered into the President shall by proclamation in the *Gazette* publish that agreement.

Cross-border road transport between Namibia and contracting countries

70.(1) No person shall undertake road transport on a public road with a vehicle -

(a) from a point in Namibia crossing or intending to cross its border into the territory of a contracting country to a destination in that country;

(b) from a point in a contracting country crossing Namibia's border to a destination in Namibia;

(c) from a point in Namibia crossing or intending to cross its border into the territory of a contracting country and in transit across that country to a third country, whether a contracting country or any other country;

(d) from a point in a contracting country crossing Namibia's border and in transit across Namibia to a third country, whether a contracting country or any other country,

unless such person is the holder of a cross-border permit issued by a competent authority referred to in subsection (2).

(2) For the purposes of subsection (1) "competent authority" means -

(a) in relation to a Namibian carrier, the person or authority in Namibia designated as such by a regulation made under section 72(2)(a);

(b) in relation to a foreign carrier, the person or authority of the relevant contracting country who is charged with the function of issuing permits in that country in accordance with a cross-border transport agreement;

(3) No foreign carrier shall on a public road undertake cabotage with a vehicle, unless such carrier has been granted a cross-border permit by the competent authority in Namibia referred to in subsection (2)(a).

(4) The holder of a cross-border permit referred to in subsection (1) or (3), shall undertake the road transport authorised by such permit in accordance with such conditions as may be set forth in the permit, the provisions of any cross-border transport agreement which is applicable and the provisions of any regulations made under section 72.

(5) A person who is the owner of a vehicle shall not allow such vehicle to be used for purposes of road transport referred to in subsection (1) or (3) without the required transport permit.

Cross-border road transport between Namibia and non-contracting countries

71.(1) No person shall undertake road transport on a public road with a vehicle, where such transport is undertaken -

(a) to Namibia from a country which is not a contracting country; or

(b) from Namibia crossing or intending to cross its border into the territory of another country which is not a contracting country,

unless such person is the holder of a cross-border permit issued by the Permanent Secretary authorising that part of the road transport undertaken in the territory of Namibia.

(2) The holder of a cross-border permit referred to in subsection (1), shall undertake the road transport authorised by such permit in accordance with such conditions as may be stipulated by the Permanent Secretary in such permit.

(3) A person who is the owner of a vehicle shall not allow such vehicle to be used for purposes of road transport referred to in subsection (1) without being the holder of the required transport permit.

Minister may make regulations for giving effect to cross-border road transport agreements and regulating cross-border road transport

72.(1) The Minister may for the purposes of this Part make such regulations as the Minister may consider necessary or expedient -

(a) for carrying out and for giving effect to the provisions of any cross-border road transport agreement or any amendment of such an agreement; and

(b) for carrying any provision of this Part into effect.

(2) Without prejudice to the generality of the powers conferred by subsection (1), regulations made thereunder may in particular provide for -

(a) the designation of any person or authority to be charged with the function of receiving, considering and determining applications for, and issuing, cross-border permits referred to in section 70(1) and (3) in accordance with a cross-border transport agreement and the powers, duties and functions of that person or authority;

(b) the form and procedure for, and fees payable in respect of, an application for a cross-border permit;

(c) the procedure to be followed and the matters to be taken into account in the consideration of applications for cross-border permits;

(e) the form and manner in which a cross-border permit shall be issued and the fees payable for the issue thereof;

(f) applications for temporary cross-border permits and the circumstances in which such permits may be issued;

(g) the duties of, and obligations to be complied with by, the holders of cross-border permits and by their agents or employees, including obligations in relation to -

(i) vehicles used for road transport under any such permit;

(ii) the preparation, keeping and disposal of consignment notes and passenger lists;

(iii) the records to be kept and returns to be made;

(iv) the prevention of the fraudulent or unauthorised use of cross-border permits or any document purporting to be such a permit;

(h) the period of validity and the renewal of cross-border permits;

(i) the temporary replacement of a vehicle in respect of which a cross-border permit has been issued and which has broken down *en route*;

(j) the imposition of conditions to apply to a cross-border permit and the variation of the conditions attaching to such a permit, including the revocation of any such conditions or the imposition of new conditions;

(k) the suspension or cancellation of a cross-border permit;

(l) the circumstances in which, and the authority with whom, an appeal may be lodged against a decision of any authority taken in connection with an application for a cross-border permit or any other matter relating to such a permit and the manner in which such an appeal must be prosecuted;

(m) penalties for any contravention of or failure to comply with any regulation, but not exceeding a fine of N\$8 000 or imprisonment for two years, or to both such fine and such imprisonment.

(3) The power to make regulations for any purpose contemplated in subsections (1) and (2), shall include the power -

(a) to restrict or prohibit any act, conduct or thing;

(b) to grant or provide for the granting of exemptions from any of the provisions thereof, either absolutely or subject to conditions; and

(c) to differentiate between the different categories of cross-border permits.

CHAPTER 7

ROAD TRAFFIC SIGNS AND SPEED LIMITS

Minister may prescribe road traffic signs

73.(1) Subject to the provisions of this Act, the Minister may, for the purpose of -

- (a) prohibiting, limiting, regulating or controlling traffic in general or any particular class of traffic on a public road or a section of such a road; or
- (b) designating any public road or section thereof as a public road of a particular class,

prescribe such signs, signals, markings or other devices (to be known as road traffic signs), as the Minister may deem expedient, as well as their significance and the conditions and circumstances under which they may be displayed on a public road.

(2) The Minister may, subject to such conditions as he or she may determine, authorise any person or body to display on a public road any sign, signal, marking or other device for the purpose of ascertaining the suitability of such sign, signal, marking or device as a road traffic sign.

Authority to display a road traffic sign

74.(1) The Minister, or any person authorised thereto by the Minister, may in respect of any public road cause or permit to be displayed in the prescribed manner any such road traffic signs as the Minister may consider expedient.

(2) A local authority council, or any person authorised thereto by it in writing, either generally or specifically, may in respect of any public road within its local authority area, display or cause to be displayed in the prescribed manner any such road traffic signs as such council or person may consider expedient.

(3) With the approval of the Minister, a regional council, or any person authorised thereto by it in writing, either generally or specifically, may in respect of any public road within a settlement area in its region, display or cause to be displayed in the prescribed manner any such road traffic signs as such council or person may consider expedient.

(4) In such circumstances and subject to such conditions as the Minister may determine, scholars or students may be organised into patrols (to be known as scholars' patrols) for the purpose of displaying, in the prescribed manner, an appropriate road traffic sign so as to ensure the safety of scholars or students crossing a public road.

(5) The Minister may, subject to such conditions as the Minister may determine, authorise any association or club to display any such road traffic signs as the Minister may consider expedient on any public road referred to in subsection (2) or (3), and any such association or club may thereupon display in the prescribed manner a badge or other token of the association or club in conjunction with any such road traffic sign.

(6) Any road traffic sign displayed at the commencement of this Act in terms of the repealed Ordinance, shall be deemed to be displayed in terms of this Chapter.

(7) No person shall display any road traffic sign on a public road unless he or she is authorised thereto in terms of this section.

(8) The Minister or, within a local authority area, the local authority council concerned, or within a settlement area, the regional council concerned, may by notice in writing direct the owner or occupier of any land on which any road traffic sign or other object resembling a road traffic sign is displayed, or on which any object is displayed which obscures or interferes with the effectiveness of any road traffic sign, to remove such sign or object within the period specified in the notice, and if the owner or occupier concerned fails to comply with such notice, the Minister or local authority council or regional council, as the case may be, may cause such sign or other object to be removed.

(9) No person shall wilfully or negligently damage any road traffic sign, or any other sign, signal, marking or other device displayed in terms of this Chapter, or without proper authority remove it or alter the position thereof or the inscription, lettering, colour or design thereof or thereon.

Failure to obey road traffic sign

75.(1) Subject to subsection (3), and unless otherwise directed by a traffic officer or road transport inspector, no person shall fail to comply with any direction conveyed by a road traffic sign displayed in the prescribed manner.

(2) In any prosecution for an offence under subsection (1), it shall be presumed, in the absence of evidence to the contrary, that the road traffic sign concerned was displayed by the proper authority and in accordance with the provisions of this Act.

(3) The driver of an emergency service vehicle who drives such vehicle while engaged in the performance of his or her duties, or a traffic officer or road transport inspector who drives a vehicle in the performance of his or her duties, may disregard the directions of a road traffic sign, but in such event such vehicle shall be driven -

(a) with due regard to the safety of other traffic; and

(b) with its sounding device and identification lamp as prescribed being activated.

Speed limit

76.(1) The general speed limit -

(a) in respect of every public road or section thereof, other than a freeway, situated within an urban area;

(b) in respect of every public road or section thereof, other than a freeway, situated outside an urban area; and

(c) in respect of every freeway,

shall be as prescribed.

(2) An appropriate road traffic sign may be displayed in accordance with section 74, indicating a speed limit other than the general speed limit which applies in respect of that road in terms of subsection (1), but such other speed limit shall not be higher than the speed limit prescribed in terms of paragraph (c) of that subsection.

(3) The Minister may prescribe in respect of any particular class of vehicle a speed limit which is lower or higher than the general speed limit prescribed in terms of subsection (1)(b) or (c), but the speed limit so prescribed shall not supersede a lower speed limit indicated in terms of subsection (2) by an appropriate road traffic sign.

(4) No person shall drive a vehicle on a public road at a speed in excess of -

- (a) the general speed limit which applies in respect of that road in terms of subsection (1);
- (b) the speed limit indicated by an appropriate road traffic sign in respect of that road in terms of subsection (2); or
- (c) the speed limit prescribed by the Minister in terms of subsection (3) in respect of the class of vehicle concerned.

Certain drivers exempted from general speed limit

77. Notwithstanding section 76, the driver of an emergency service vehicle who drives such vehicle in the performance of his or her duties, or a traffic officer or road transport inspector who drives a vehicle in the performance of his or her duties, may exceed the applicable general speed limit, but in such event such vehicle shall be driven -

- (a) with due regard to the safety of other traffic; and
- (b) with its sounding device and identification lamp as prescribed being activated.

CHAPTER 8 ACCIDENTS AND ACCIDENT REPORTS

Duty of driver in event of accident

78.(1) The driver of a vehicle on a public road which is involved in or contributes to an accident in which any person is killed or injured or suffers damage in respect of any property or animal shall -

- (a) immediately stop the vehicle;
- (b) ascertain the nature and extent of any injury sustained by any person;
- (c) render such assistance to any injured person as he or she may be capable of rendering;
- (d) ascertain the nature and extent of any damage sustained;

(e) if required to do so by any person having reasonable grounds for so requiring, give his or her name and address, the name and address of the owner of the vehicle driven by him or her and, in the case of a motor vehicle, the licence mark and number or similar mark and number thereof;

(f) unless where such information is furnished to a traffic officer at the scene of the accident, and unless he or she is incapable of doing so by reason of injuries sustained by him or her in the accident, report the accident within 24 hours after the occurrence thereof at any police station or at the office of a traffic officer, and there produce his or her driving licence and furnish his or her identity number and the information referred to in paragraph (e).

(2) Except on the instructions of, or when administered by, a medical practitioner, the driver of a vehicle referred to in subsection (1) shall not take any intoxicating liquor or drug having a narcotic effect -

(a) before he or she complies with paragraph (f) of subsection (1); and

(b) before he or she complies with any request of a traffic officer in terms of paragraph (l) of section 14(1) to provide a specimen of breath or to submit to the taking of a specimen of his or her blood.

(3) A vehicle which is involved in an accident in which any person is killed or injured shall not be removed by any person from the position in which it came to rest, except if such removal is authorised by a traffic officer, but, if the accident causes a complete obstruction of the roadway, such vehicle may without such authorization be moved sufficiently to allow the passage of traffic, providing the person moving the vehicle ensures that the stationary position thereof is first clearly marked on the surface of the roadway before it is moved.

(4) Subject to subsection (3) and regulations relating to the removal and disposal of abandoned vehicles, no person shall remove a vehicle which has been involved in an accident from the scene of the accident without the permission of the owner, driver or operator thereof or a person who may lawfully claim possession of such vehicle.

(5) In any prosecution for an offence under subsection (1) or (2) it shall be presumed, in the absence of evidence to the contrary, that the accused was aware of the fact that the accident had occurred, and that he or she did not report the accident or furnish the information as required by subsection (1)(f).

Garage to keep record of motor vehicle involved in accident

79.(1) Any person in charge of a garage or any other business or place where the repair of vehicles is undertaken, shall keep or cause to be kept a register in which shall be recorded in relation to every motor vehicle brought to such business for the repair of any damage caused or suspected of having been caused in an accident -

- (a) a description of the make and model of the motor vehicle, its colour, its engine number and chassis number or its identification number as prescribed and its licence number or other similar mark;
- (b) the nature of the damage; and
- (c) if known, the name and address of its owner.

(2) A record referred to in subsection (1) shall be retained for a period of at least three years and shall on the request of a traffic officer be produced to such officer.

CHAPTER 9

OFFENCES RELATING TO THE DRIVING OF A MOTOR VEHICLE AND THE TAKING OF INTOXICATING LIQUOR OR DRUGS

Reckless or negligent driving

80.(1) No person shall drive a vehicle on a public road recklessly or negligently.

(2) Without restricting the ordinary meaning of the word "recklessly", any person who drives a vehicle in wilful or wanton disregard for the safety of persons or property shall be deemed to drive that vehicle recklessly.

(3) In considering whether an offence has been committed under subsection (1), the court shall have regard to all the circumstances of the case including, but without prejudice to the generality of the foregoing provisions of this section, the nature, condition and use of the public road on which the offence is alleged to have been committed, the amount of traffic which at the time actually was, or could reasonably have been expected to be, upon that road and the speed at and manner in which the vehicle was driven.

Inconsiderate driving

81. No person shall drive a vehicle on a public road without reasonable consideration for any other person using the road.

Driving while under the influence of intoxicating liquor or a drug having a narcotic effect, or with excessive amount of alcohol in blood or breath

82.(1) No person shall on a public road -

- (a) drive a vehicle; or
- (b) occupy the driver's seat of a motor vehicle of which the engine is running,

while under the influence of intoxicating liquor or a drug having a narcotic effect.

(2) No person shall on a public road -

- (a) drive a vehicle; or
- (b) occupy the driver's seat of a motor vehicle of which the engine is running,

while the concentration of alcohol in any specimen of blood taken from any part of his or her body exceeds 0,079 grams per 100 millilitres.

(3) Where in any prosecution for an offence under subsection (2), it is proved that the concentration of alcohol in any specimen of blood taken from any part of the body of the person concerned exceeded 0,079 grams per 100 millilitres at any time within two hours after the alleged offence, it shall be presumed, in the absence of evidence to the contrary, that such concentration exceeded 0,079 grams per 100 millilitres at the time of the alleged offence.

(4) Where in any prosecution under this Act evidence is tendered of the analysis of a specimen of the blood of any person, it shall be presumed, in the absence of evidence to the contrary, that any syringe used for taking the specimen of blood and the receptacle in which such specimen was placed for despatch to an analyst, were free of any substance or contamination which could have affected the result of such analysis.

(5) No person shall on a public road -

- (a) drive a vehicle; or

(b) occupy the driver's seat of a motor vehicle of which the engine is running,

while the concentration of alcohol in any specimen of breath exhaled by such person exceeds 0,37 milligrams per 1 000 millilitres.

(6) If, in any prosecution for a contravention of subsection (5), it is proved that the concentration of alcohol in any specimen of breath of the person concerned exceeded 0,37 milligrams per 1 000 millilitres of breath taken at any time within two hours after the alleged offence, it shall be presumed, in the absence of evidence to the contrary, that such concentration exceeded 0,37 milligrams per 1 000 millilitres at the time of the alleged offence.

(7) For the purposes of subsection (5), the concentration of alcohol in any breath specimen shall be ascertained by means of a type of device which is approved by the Minister by notice in the *Gazette* or which conforms to such requirements, including the requirements of any standard publication contemplated in section 94(4), as may be specified in such notice.

(8) Any person detained for a contravention of any provision of this section shall not during his or her detention consume any substance containing alcohol, except on the instruction of, or when administered by, a medical practitioner.

(9) No person shall without reasonable excuse for health reasons fail to comply with a request made under this Act by a traffic officer to provide a specimen of breath or to submit to the taking of a specimen of his or her blood.

Unauthorised acts in relation to vehicle

83.(1) No person shall without the consent of the owner or operator of a vehicle or any other person lawfully in charge thereof, or without reasonable cause -

- (a) set the machinery thereof in motion;
- (b) place such vehicle in gear;
- (c) in any way tamper with the machinery, accessories or any part of such vehicle; or
- (d) enter or get on to such vehicle.

(2) No person shall ride in or drive a vehicle without the consent of the owner, operator or person lawfully in charge thereof.

(3) No person shall -

(a) without lawful excuse tamper with any vehicle or any of its equipment or accessories;

(b) wilfully damage any vehicle or any of its equipment or accessories; or

(c) throw any object at any vehicle.

(4) No person shall without the written consent of a registering authority alter, obliterate or mutilate the engine number or chassis number or identification number of a motor vehicle or allow it to be altered, obliterated or mutilated.

Furnishing false information

84. Without derogating from any other provision of this Act, no person shall -

(a) in or in connection with any application under this Act;

(b) when furnishing any information which to his or her knowledge is required to be used for any purpose under this Act,

make a declaration or furnish information which he or she knows is false or in any material respect misleading.

Unlawful acts in relation to licence number, licence mark or certain documents

85.(1) No person shall -

(a) falsify or counterfeit or, with intent to deceive, substitute, alter, deface or mutilate or add anything to a licence number or licence mark or a similar number or mark issued by a competent authority in Namibia or elsewhere; or

(b) be in possession of such number or mark which has been falsified or counterfeited or so substituted, altered, defaced or mutilated or to which anything has been so added.

- (2) No person shall -
- (a) falsify or counterfeit or, with intent to deceive, substitute, alter, deface or mutilate or add anything to a certificate, licence or other document issued or recognised in terms of this Act; or
 - (b) be in possession of such certificate, licence or other document which has been falsified or counterfeited or so substituted, altered, defaced or mutilated or to which anything has been so added.
- (3) No person shall -
- (a) use a certificate, licence or other document issued or recognised in terms of this Act of which he or she is not the holder; or
 - (b) permit such a certificate, licence or other document of which he or she is the holder to be used by any other person.
- (4) No person shall -
- (a) with intent to deceive, falsify, replace, alter, deface, mutilate, add anything to or remove anything from, or in any other way tamper with the engine number, chassis number or identification number of a motor vehicle; or
 - (b) without lawful cause be in possession of a motor vehicle of which the engine number, chassis number or identification number has been falsified, replaced, altered, defaced, mutilated or to which anything has been added, or from which anything has been removed, or has been tampered with in any other way.

CHAPTER 10

PRESUMPTIONS AND LEGAL PROCEDURE

Presumption in regard to public roads

86. Where in any prosecution under this Act it is alleged that an offence was committed -

- (a) on a public road;

- (b) on a freeway; or
- (c) on a public road in an urban area,

the road concerned shall, in the absence of evidence to the contrary, be presumed to be a road of the description as alleged.

Presumption in regard to mass ascertained by means of a weighing device

87. Where in any prosecution for an alleged contravention of this Act, evidence to prove such contravention is given of any mass as ascertained by means of a weighing device, such mass shall be deemed to be correct in the absence of any evidence to the contrary.

Proof of gross vehicle mass of motor vehicle

88. In any prosecution in terms of this Act for an offence in relation to the gross vehicle mass of a motor vehicle -

- (a) any document purporting to have been issued by the manufacturer of such motor vehicle and stating the gross vehicle mass of the particular model of motor vehicle; or
- (b) in the absence of evidence as contemplated in paragraph (a), a certificate purporting to have been issued by a vehicle testing station and specifying the gross vehicle mass of the particular model of motor vehicle,

shall be *prima facie* evidence of the gross vehicle mass of the model of motor vehicle concerned.

Presumption that owner drove or parked vehicle

89.(1) Where in any criminal proceedings in terms of the common law relating to the driving of a vehicle on a public road, or in terms of this Act, it is necessary to prove the identity of the driver of such vehicle, it shall be presumed, in the absence of evidence to the contrary, but subject to subsection (4), that such vehicle was driven by the owner thereof.

(2) Whenever a vehicle is parked in contravention of any provision of this Act, it shall be presumed, in the absence of evidence to the contrary, but subject to subsection (4), that such vehicle was parked by the owner thereof.

(3) Where, in a case contemplated in subsection (1) or (2), the owner of the motor vehicle concerned is a corporate body, it shall be presumed, in the absence of evidence to the contrary, but subject to subsection (4), that such vehicle was driven or parked by a director or servant of the corporate body in the performance of his or her functions or in furthering or endeavouring to further the interest of the corporate body.

(4) For the purposes of subsections (1), (2) and (3), it shall be considered to be sufficient rebuttal of the presumption created by the relevant provision, if, on account of evidence adduced by the accused, reasonable doubt exists whether the vehicle was driven or parked, as the case may be, by the accused.

Presumption in regard to officers

90. In any prosecution under any of the provisions of this Act, except section 19, the fact that any person purports to act or has purported to act as a traffic officer, road transport inspector, licence inspector, vehicle examiner or driving examiner, shall be *prima facie* evidence of his or her appointment.

CHAPTER 11 REGULATIONS

Power of Minister to make regulations

91.(1) The Minister may make regulations in relation to any matter contemplated, required or permitted to be prescribed in terms of this Act and generally regarding the operation of any vehicle on a public road, the construction and equipment of such vehicle and the conditions on which it may be operated, and any other matter necessary or expedient for the better carrying out of the objects and purposes of this Act.

(2) In particular, and without derogating from the generality of the power conferred by subsection (1), regulations may be made in relation to -

- (i) the safety of traffic on a public road, including the restriction of the use of any such road or part thereof by traffic and the duties of the users of any such road;
- (ii) the identification of vehicles and, in relation to a motor vehicle, the size, shape, colour and character of the licence mark or number to be displayed

thereon and the means to be applied to render such mark or number easily distinguishable;

(iii) the width, height and length of any vehicle and the diameter of the wheels and the width, nature and condition of the tyres thereof;

(iv) the maximum mass, laden or unladen, of any vehicle, the height and width of any load which may be carried by any vehicle, the manner of loading of any vehicle, the extent to which any load may project in any direction and the maximum mass that may be transmitted to a public road or any specified area thereof by a vehicle or any part thereof when such vehicle is operated on a public road;

(v) nuisances caused through the emission or discharge of exhaust gas, smoke, fuel, oil, fumes, sparks or other matter from motor vehicles, or excessive noise caused by the functioning of a motor vehicle or due to the loading thereof or the use of any accessories or appliances fitted thereto, the maximum allowable noise level and the method of determining the level of noise caused by a vehicle;

(vi) the particulars to be marked on vehicles and the manner in which they are to be displayed or affixed;

(vii) the transportation of dangerous goods defined or described in the regulations, their classification, the conditions and requirements to be complied with in the transportation of such goods, the prohibition of the transportation of specified dangerous goods and the powers and duties of traffic officers and road transport inspectors in respect of the transportation of dangerous goods;

(viii) the towing, pushing or drawing of any vehicle by another vehicle;

(ix) the conditions under which motor vehicles fitted with steering apparatus on the left side may be operated on a public road;

(x) the number, nature and kind of lamps and retro-reflectors to be carried on vehicles, the position in which they shall be affixed, the manner, conditions and times of their use and the use of any lamp or lighting device which may endanger public safety;

- (xi) the number and type of brakes of vehicles and measures for ensuring that brakes, silencers and the steering apparatus and other parts of a vehicle are efficient and maintained in proper working condition;
- (xii) the operation and control of vehicles on public roads, their construction, equipment, width of tracks, dimensions, mass and use in respect of either chassis and body or chassis, body and load and the conditions on which they may be used;
- (xiii) the methods to be used and devices to be fitted for signalling the approach of a vehicle, for enabling the driver of a vehicle to become aware of the approach of another vehicle from the rear, and for indicating the intended movement of a vehicle and measures for ensuring that they shall be efficient and kept in proper working condition;
- (xiv) the protection of any public road, the mass, tyres and load of any vehicle in relation to any specified bridge or ferry, the time when and speed at which any vehicle of a specified mass may be allowed to cross any bridge or ferry, and furnishing of security by any person against damage to any public road by reason of heavy traffic, and making good the cost of repairing such damage;
- (xv) the parking of vehicles on public roads, the levy of any charges therefor, the leaving of vehicles at rest in dangerous positions, the abandoning of vehicles, their removal from a public road, the disposal of such vehicles and the recovery of expenses in connection with such removal or disposal;
- (xvi) the rules of the road to be observed by drivers of vehicles and pedestrians using public roads and other persons using such roads or any area adjacent thereto for any activity which could cause interference with the free usage of such road by vehicular traffic or pedestrians;
- (xvii) the holding of motor races or other sports events on public roads;
- (xviii) trading on or alongside public roads;
- (xix) the furnishing of accident reports and statistics of any nature;
- (xx) the number of passengers that may be transported by specified classes of motor vehicles, measures for the general safety, comfort and con-

venience of passengers carried on or by such motor vehicles and the conduct of the driver, conductor and passengers on such vehicles;

- (xxi) the specifications for the examination of any vehicle;
- (xxii) any light which may interfere with the proper view of any road traffic sign or may be confused with any such sign;
- (xxiii) the method of determining any fact which is required for the purposes of this Act;
- (xxiv) any form, process or token which the Minister may deem expedient for the purposes of this Act and the information to be furnished for the purpose of any such form, process or token;
- (xxv) the issue of a duplicate of any licence, certificate, token or other document issued under this Act;
- (xxvi) the fees payable for any application, licence, certificate, token or other document under this Act or any duplicate thereof, for the lodging of any appeal provided for in this Act, or for any other purpose under this Act;
- (xxvii) the dress, including insignia, of authorised officers;
- (xxviii) the carriage of persons on vehicles constructed or designed primarily for the carriage of goods;
- (xxix) the requirements with which pedal cycles shall conform, their use on any public road and the carrying of passengers and loads thereon;
- (xxx) the requirements with which animal-drawn vehicles shall conform, their use on any public road and requirements with respect to the driver or person in charge of such a vehicle;
- (xxxi) additional duties for operators of specified classes of motor vehicles or operators engaged in activities which require additional safety measures for the protection of the public;
- (xxxii) the establishment and maintenance of a record system for the purpose of recording particulars of persons who have been convicted of an offence in

terms of this Act or an offence in terms of the common law relating to the driving of a motor vehicle;

- (xxxiii) the procedure to be followed and the measures that may be applied, including the suspension or cancellation of any licence, if, in accordance with stipulated criteria, the record of any person indicates that such person does not comply with the provisions of this Act or any regulation of a local authority council or a regional council made under section 92;
 - (xxxiv) the manner and circumstances in which application shall be made for the issue of a clearance certificate by the Namibian Police in respect of any motor vehicle, including -
 - (a) the particulars and information to be furnished in the application;
 - (b) the documents to be submitted in connection with the application; and
 - (c) the production of the motor vehicle for identification purposes;
 - (xxxv) the removal and disposal of abandoned vehicles and the circumstances in which a vehicle may be considered to be an abandoned vehicle;
 - (xxxvi) the powers and duties of traffic officers when, in the exercise of the powers conferred by section 14(1)(m), any Government motor vehicle is found to be used without the required authorization of a competent authority in the Public Service or contrary to any such authorization given in connection with the motor vehicle concerned;
- (3) Regulations regarding -
- (a) specific categories -
 - (i) of road transport undertakings;
 - (ii) of industries or trades or occupations concerned with road transport;
 - (iii) of persons by whom any undertaking or occupation referred to in subparagraphs (i) and (ii) is carried on or exercised;

(iv) of operators of vehicles concerned with, or new entrants to, any such undertaking or occupation; or

(b) specific circumstances or specific areas in which any undertaking or occupation referred to in paragraph (a)(iii) is carried on or exercised,

shall be made by the Minister with due regard to the specific requirements of the category, circumstances or area concerned.

(4) The power to make regulations for any purpose contemplated in subsections (1) and (2), shall include the power -

(a) to restrict or prohibit any act, conduct or thing; and

(b) to grant or provide for the granting of exemptions from any of the provisions thereof,

either absolutely or subject to conditions.

(5) Any regulation may be declared -

(a) to be applicable within a specified area only or to any specified class of vehicle or category of persons; or

(b) not to be applicable within a specified area or to any specified class of vehicle or category of persons.

(6) A regulation may provide for penalties for a contravention thereof and for different penalties in the case of a successive or continuous contravention, but not exceeding -

(a) in the case of a contravention of a regulation made under subsection (2)(iv), (xii), (xiv) or (xx), a fine of N\$20 000 or imprisonment for two years or both such fine and imprisonment; or

(b) in the case of a contravention of any other regulation, a fine of N\$4 000 or imprisonment for one year or both such fine and imprisonment.

Power of local authority councils and regional councils to make regulations

92.(1) The power conferred on a local authority council by the provisions of section 94(1)(d) of the Local Authorities Act, 1992 (Act No. 23 of 1992), to make regulations in

respect of the regulation and control of traffic and the use of vehicles on public roads, shall be construed to include the power to make regulations, with the approval of the Minister, in relation to -

- (a) the safety of persons and traffic on any public road and the duties of persons using such a road;
- (b) the use of any public road by vehicles or vehicles of a specified class, either generally or at specified times;
- (c) the stopping and parking of vehicles and the installation, establishment, supervision, maintenance and control of parking meters and parking places, including the exemption of medical practitioners, physically disabled persons, persons conveying or assisting disabled persons or any other specified category of persons, from the provisions of any regulations made under this paragraph;
- (d) the appointment and licensing of parking attendants and the withdrawal of any such licence;
- (e) the drivers, conductors and other persons employed in connection with vehicles plying for hire or accepting passengers for hire;
- (f) the relative position on a public road of traffic of differing speeds and classes;
- (g) the place where and time when a vehicle may not turn so as to face in the opposite direction to that in which it was proceeding or where it may only so turn under specified conditions;
- (h) the loading and off-loading of vehicles on public roads;
- (i) the rules as to priority of entry of certain motor vehicles into a main thoroughfare;
- (j) the use of hooters, bells, or other warning devices within specified areas either at all times or at specified times;
- (k) the requirements with which pedal cycles shall conform, their use on any public road and the carrying of passengers and loads thereon;

(l) any form, process or token considered necessary or expedient for any purpose mentioned in this section and the information to be furnished in connection therewith;

(m) the requirements with which animal-drawn vehicles shall conform, their use on any public road and requirements with respect to the driver or person in charge of such a vehicle;

(n) the parking on public roads of vehicles owned, used or controlled by dealers in connection with their business;

(o) the use of a motor vehicle of a class prescribed under section 60(1) in respect of which an operator is required to be registered, in particular for the conveyance of persons for reward;

(p) the fees or charges payable for any purpose contemplated in this section;

(q) the performance of any act by or on behalf of the local authority council for the purpose of removing or repairing anything or for rectifying any condition which is necessary due to the failure of any person to perform such act and the recovery of the costs thereof from such person;

(r) any other matter in regard to which a local authority council may make regulations under this Act.

(2) The power to make regulations for any purpose contemplated in subsection (1), shall include the power -

(a) to restrict or prohibit any act, conduct or thing; and

(b) to grant or provide for the granting of exemptions from any of the provisions thereof,

either absolutely or subject to conditions.

(3) Any regulation may be declared -

(a) to be applicable within a specified area within the local authority area only or to any specified class of vehicle or category of persons; or

(b) not to be applicable within a specified area within the local authority area or to any specified class of vehicle or category of persons.

(4) A regulation may provide for penalties for a contravention thereof, but not exceeding a fine of N\$ 2 000 or imprisonment for a period of six months or both such fine and imprisonment.

(5) Subject to the prior approval of the Minister, a regional council may, for the purposes of any settlement area in its region, make regulations in relation to any matter with respect to which a local authority council is authorised to make regulations under subsection (1), and the provisions of subsections (2), (3) and (4) shall apply *mutatis mutandis* to the power conferred by this subsection to regional councils.

Power of Minister to make standard regulations

93.(1) The Minister may make standard regulations in regard to any matter in respect of which a local authority council or a regional council may make regulations under section 92 and cause them to be published in the *Gazette*.

(2) Standard regulations published under subsection (1) may be adopted by a local authority council for its local authority area or by a regional council for any settlement area in its region, either -

(a) without any alteration; or

(b) with such amendments as may be approved by the Minister.

(3) A notice published in the *Gazette* by the local authority council or regional council concerned notifying that any standard regulations have been adopted under subsection (2) and in which the number and date of the notice whereby the standard regulations in question were published are mentioned, shall be deemed to be sufficient promulgation of the standard regulations so adopted as regulations of the local authority area or settlement area concerned, and, if the standard regulations are adopted with amendments in accordance with subsection (2)(b), the amendments shall be set out in such notice.

Incorporation of standard publications by reference

94.(1) The power conferred by section 91 or section 92 or section 93 to make regulations shall include the power to incorporate in any regulation so made any standard publication contemplated in subsection (4), or any part thereof, without stating the text

thereof, by mere reference to the number, title and year of issue of that standard publication or any other particulars by which it is sufficiently identified.

(2) Any provision of a standard publication incorporated in regulations under subsection (1) shall, for the purposes of this Act, in so far as it is not inconsistent with such regulations, be deemed to be a regulation.

(3) Regulations incorporating any standard publication under subsection (1) shall state the place at and times during which a copy of such standard publication shall be available for free inspection, including copies of any supplementary standard publication or specification or document incorporated by reference in the main standard publication.

(4) For the purposes of subsection (1) "standard publication" means any code of practice, specification, standard or standard method published or issued by any bureau, body, organization or authority established with the object of promoting standardization, whether in Namibia or elsewhere and which Namibia is authorised to apply by virtue of any agreement with that bureau, body, organization or authority.

CHAPTER 12

REGISTERS AND RECORDS

Registers or records to be kept

95. (1) The Minister may determine the registers or records, which shall be kept, for the purposes of this Act, by -

- (a) a driving testing centre;
- (b) a vehicle testing station;
- (c) manufacturers, builders, importers and number plate manufacturers;
- (d) a registering authority;
- (e) a local authority council or regional council;
- (f) any government ministry;
- (g) any person determined by the Minister by notice in the *Gazette*.

(2) Any authority or person referred to in subsection (1) shall in the manner and at such intervals as the Minister may determine, furnish the Minister or any person or body designated by the Minister, with information recorded in a register or record of such authority or person, and the Minister may, from the information so furnished, compile or cause to be compiled any register which the Minister may deem fit.

Copy of entry in register to be evidence

96.(1) A document purporting to be an extract from, or copy of, any register or record kept in terms of this Act and purporting to be certified as a true extract or copy by a person stating that he or she has the custody or control of such register or record, shall in any court be admissible as evidence and be *prima facie* evidence of the facts stated therein without the production of the original register or record or any certificate, licence, other document, microfiche, microfilm or computerised record from or of which such extract or copy was made.

(2) The information contained in a register or record kept for the purposes of this Act shall be furnished -

- (a) to any traffic officer or road transport inspector or licence inspector who requires it for the performance of his or her duties;
- (b) to any person who has been authorised by the Minister to have access to such information;
- (c) to any government ministry;
- (d) subject to the prior consent of the Minister or any person authorised thereto by the Minister, to a competent authority of another country;
- (e) to any local authority council or regional council.

(3) Any authority or person keeping a register or record in terms of section 95 shall, on payment of the prescribed fee, furnish information contained in such register or record to any person who requires such information on reasonable grounds.

Cognisance may be taken of information contained in register or record

97. The Minister or any other competent authority may, in exercising a discretion or taking a decision in terms of this Act, take cognizance of any information contained in a register or record contemplated in section 95.

CHAPTER 13 GENERAL

Doubt concerning use or classification of motor vehicle

98. If, for the purposes of this Act, any doubt arises as to the use to which any vehicle is put or the classification of any vehicle, such matter shall be submitted to the Minister for decision.

Authorisation in respect of certain vehicles or loads required

99.(1) The Minister may, subject to such conditions and on payment of such fees or charges as the Minister may determine, authorise in writing, either generally or specifically -

- (a) the use on a public road of a vehicle which does not comply with the provisions of this Act; or
- (b) the conveyance on a public road of passengers or any load otherwise than in accordance with the provisions of this Act.

(2) No person shall use on a public road a vehicle -

- (a) of a kind contemplated in paragraph (a) of subsection (1); or
- (b) for the conveyance of passengers or any load as contemplated in paragraph (b) of that subsection,

except under, and otherwise than in accordance with the conditions of, an authorisation granted under that subsection.

Minister may authorise certain refunds

100.(1) The Minister may, if he or she is satisfied that any person has paid an amount in excess of the amount properly chargeable under this Act, authorise a refund of such amount or of any part thereof to such person.

(2) A refund shall not be authorised under subsection (1) unless the claim therefor is received by the registering authority concerned within three years after the date of the payment concerned.

Inspection by Auditor-General

101. The Auditor-General may at any time cause an inspection to be made of the records and books of account of, and the revenues collected under this Act by, a registering authority or a driving testing centre or vehicle testing station or any other person, authority or organization charged with the performance of any function under this Act.

Inspections for ensuring compliance with provisions of Act

102.(1) The Minister may by written instrument authorise any person to carry out any inspection which the Minister considers necessary in order to ensure that the provisions of this Act or the conditions of any agreement entered into, or any registration, permit or other form of authorization granted, thereunder are being complied with.

(2) A person authorised under subsection (1) shall, at the request of any person in relation to whom the inspection is to be carried out or any person in charge of any premises where such inspection is carried out produce the written authorization referred to in that subsection.

(3) No person shall obstruct or hinder any person in carrying out any inspection referred to in subsection (1).

Signature on documents

103. Any person who is unable to sign his or her name shall, whenever his or her signature is required upon any document in terms of this Act, impress in place thereof his or her left thumb print in the space provided for such signature, and if it is not possible to obtain the left thumb print of such person, the imprint of any other finger may be required, in which case the finger thus used shall be identified in writing under each imprint of such finger by the officer in whose presence the imprint is made.

Service of notices

104.(1) Where in terms of this Act any notice is authorised or required to be served upon or issued to any person, such notice shall either be served personally upon the person to whom it is addressed or be sent to him or her by registered post to his or her last known address, and the address furnished by the holder of a driving licence or recorded

against his or her name in a register of driving licences, or the address recorded against the registration of a vehicle in a register of motor vehicles as the address of the owner of such vehicle, shall serve as his or her domicile of summons and execution for all purposes arising from or for the purposes of this Act, for the service of notices, post or processes on such person.

(2) Service by registered post in terms of subsection (1) shall be deemed to have been effected on the tenth day after the date stamped upon the receipt for registration issued by the post office which accepted the notice.

(3) A certificate by the officer who issued the notice referred to in subsection (1), or by a person authorised by such officer, stating the time, place and manner of issuing of such notice, shall be *prima facie* evidence that such notice was duly issued.

State bound

105. This Act shall bind the State and any person in the service of the State, but the Minister may, by notice in the *Gazette*, exempt the State or any government ministry or any such person from any provision of this Act, subject to such conditions as the Minister may determine.

Offences and penalties

106.(1) Any person who contravenes or fails to comply with any provision of this Act or with any direction, condition, demand, determination, requirement, or request given or made thereunder, shall be guilty of an offence.

(2) Any person convicted of an offence by virtue of the provisions of section 99(2)(a) or (b) shall be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment.

(3) Any person convicted of an offence by virtue of the provisions of section 62, 70(1), (3), (4) or (5), 71(1), (2) or (3) or 82(1), (2), (5) or (9), shall be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Any person convicted of an offence by virtue of the provisions of section 18(1), 36(4), 37(10), 58(1), 76(4), 78(2), 83(2), (3) or (4) or 85, shall be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(5) Any person convicted of an offence by virtue of the provisions of section 78(1) shall be liable -

(a) in the case of the death of or injury to a person where it is proved that the person convicted has failed to comply with paragraph (a),(b),(c) or (f) of that section, to a fine not exceeding N\$12 000 or to imprisonment for a period not exceeding three years or to both such fine and imprisonment;

(b) in the case of damage in respect of any property or animal of another person where it is proved that the person convicted has failed to comply with paragraph (a),(d) or (f) of that section, to a fine not exceeding N\$4 000 or imprisonment for a period not exceeding one year or to both such fine and such imprisonment;

(c) where it is proved that he or she has failed to comply with paragraph (e) or (g) of that section, to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) Any person convicted of an offence by virtue of the provisions of section 80(1) shall be liable -

(a) in the case where the court finds that the offence was committed by driving recklessly, to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;

(b) in the case where the court finds that the offence was committed by driving negligently, to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(7) Any person convicted of an offence by virtue of any other provision of this Act shall be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(8) Notwithstanding the provisions of any other law, a magistrate's court shall be competent to impose any penalty or to make any order provided for in this Act.

Seizure of vehicles

107.(1) Subject to subsection (2), a traffic officer may seize a vehicle or a vehicle with its load which is or has been used, or is on reasonable grounds believed to be

used or to have been used, in the commission or suspected commission of an offence by virtue of the provisions of -

- (a) section 60;
- (b) section 70(1), (3), (4) or (5);
- (c) section 71(1), (2) or (3);
- (d) section 78(1)(a), (b) or (c), in the case of an accident which resulted in the death or injury of a person;
- (e) section 80(1);
- (f) section 82(1), (2), (5) or (9);
- (g) section 99(2); or
- (h) any regulation made under section 91(2)(iv), (xii), (xiv) or (xx),

(2) A road transport inspector may seize a vehicle, or a vehicle with its load, which is used in or is on reasonable grounds believed to be used in the commission of an offence by virtue of the provisions of section 60, 70(1), (3), (4) or (5), 71(1), (2) or (3) or 99(2) or any regulation made under section 91(2)(iv), (xii), (xiv) or (xx).

(3) The manner and conditions in respect of seizure, safekeeping and disposal of a vehicle or a vehicle with its load referred to in subsection (1) or (2) shall be as prescribed.

Forfeiture

108.(1) The court convicting a person of an offence by virtue of any provision of this Act or the regulations referred to in section 107(2) may, without notice to any person, declare a vehicle or its load or both which was or were used in the commission of the offence and which was or were seized under that section, or the convicted person's rights in such vehicle or load or both, to be forfeited to the State: Provided that such declaration shall not affect any right which any person other than the convicted person may have to the vehicle or load or both, if that other person did not know that the vehicle or its load or both was or were being used or would be used in the commission of the offence concerned or could not prevent such use.

(2) Section 35 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall *mutatis mutandis* apply with reference to any forfeiture under subsection (1), and in such

application the expression "weapon, instrument, vehicle, container or other article" in that section shall be construed as "vehicle or its load or both".

Apportionment of fines

109.(1) All fines imposed or moneys estreated as bail in respect of any offence in terms of this Act, except in terms of a regulation made by a local authority council or a regional council under section 92 or adopted by it in terms of section 93, shall be paid into the State Revenue Fund.

(2) Any fine imposed and moneys estreated as bail in respect of any offence in terms of any regulation made by a local authority council or a regional council under section 92 or adopted by it in terms of section 93, shall be paid to that local authority council or that regional council, as the case may be.

Delegation of powers and duties

110.(1) The Minister may delegate or assign to any person any power or duty conferred or imposed on the Minister by this Act, except the power under section 91 to make regulations or the duty under section 39 to hear appeals.

(2) The Permanent Secretary may delegate or assign to any person any power or duty conferred or imposed on the Permanent Secretary by this Act.

(3) A delegation or assignment by the Minister under subsection (1) or by the Permanent Secretary under subsection (2) -

(a) may be effected subject to such conditions as the Minister or Permanent Secretary may determine;

(b) may be withdrawn or varied by the Minister or Permanent Secretary;
and

(c) shall not preclude the Minister or Permanent Secretary from exercising or performing any power or duty so delegated or assigned by him or her.

Power of Minister to enter into agreements for performance of functions

111.(1) In addition to the agreements contemplated in sections 10(1), 27(1) and 54(1), the Minister may enter into an agreement with any person, including any local authority council or regional council, whereby arrangements are made for the exercise or performance by such person of any power, duty or function conferred or imposed on any functionary by or under this Act, or for the rendering of any service or the provision of any facility as may be considered necessary or expedient for the purpose of the exercise or performance of any such power, duty or function.

(2) The entrustment of any power, duty or function to any person under an agreement under subsection (1) shall be subject to such conditions as the Minister may determine.

(3) Conditions referred to in subsection (2), as well as those referred to in sections 10(1), 27(2)(a) and 54(2)(a), may include conditions in relation to the apportionment between the State and the contracting party of any fees payable in terms of this Act in respect of the exercise or performance of any power, duty or function entrusted to the contracting party.

(4) The Minister shall cause particulars of any agreement entered into under subsection (1) to be published in the *Gazette*.

Repeal and amendment of laws

112. Subject to section 113, the laws specified in Schedule 1 to this Act are repealed to the extent set out in the third column thereof.

Savings

113.(1) Notwithstanding the repeal of the Road Traffic Ordinance, 1967 (Ordinance No. 30 of 1967) by section 112 -

(a) the provisions of that Ordinance which are specified in Schedule 2 to this Act, in so far as they relate to a public driving permit, shall continue to be of effect until the date fixed by the Minister under section 40(2) or such later date as may be determined by the Minister by notice in the *Gazette*;

(b) the Minister may, under the power conferred by section 91 to make regulations, incorporate in any regulation so made any of the repealed provisions of that Ordinance which relate to the registration and licensing of motor vehicles, by mere reference to the provisions concerned, subject to

such amendments or modifications as may be provided for in such regulation, and the provisions so incorporated shall, for the purposes of this Act, be deemed to be regulations made thereunder by virtue of the provisions of section 20.

(2) Subject to the provisions of this Act, any proclamation, regulation, notice, order, prohibition, authority, appointment, permission, information or document made, issued, imposed, granted or given and any other action taken under any provision of a law repealed by section 112 shall, in so far as it is not inconsistent with any provision of this Act, be deemed to have been made, issued, imposed, granted, given, or taken under the corresponding or related provision, if any, of this Act.

(3) Any person who, under subsection (2), is deemed to have been appointed in any capacity or post under this Act and who does not comply with any requirement or possess any qualification prescribed in terms of this Act for appointment in that capacity or that post, shall be required to comply with such requirement or obtain such qualification within such period as the Minister may from time to time determine by notice in the *Gazette*, failing which such person shall cease to be entitled to perform any function which, under this Act, is conferred or imposed on a person holding the capacity or the post concerned.

Short title and commencement

114.(1) This Act shall be called the Road Traffic and Transport Act, 1998, and shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

(2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act, and dates so fixed may differ in respect of different -

(a) persons or goods or categories of persons or goods transported by means of a motor vehicle;

(b) kinds or classes of motor vehicles used in the transport of persons or goods;

(c) persons or categories of persons.

(3) More than one of the elements referred to in paragraphs (a), (b) and (c) of subsection (2) may be combined for the purposes of that subsection.

**SCHEDULE 1
LAWS REPEALED**

(Section 112)

Column 1	Column 2	Column 3
No. and year of law	Title	Extent of repeal
Act No. 51 of 1949	Air Services Act, 1949	The amendment of section 1 by the substitution of the following definition for the definition of "commission": "'commission' means the Transportation Commission of Namibia established by section 2 of the Road Traffic and Transport Act, 1998;"
Ordinance No. 30 of 1967	Road Traffic Ordinance, 1967	The whole
Ordinance No. 19 of 1968	Road Traffic Amendment Ordinance, 1968	The whole
Ordinance No. 25 of 1969	Road Traffic Amendment Ordinance, 1969	The whole
Ordinance No. 18 of 1970	Road Traffic Amendment Ordinance, 1970	The whole
Ordinance No.18 of 1971	Road Traffic Amendment Ordinance, 1971	The whole
Ordinance No. 16 of 1972	Road Traffic Amendment Ordinance, 1972	The whole
Ordinance No. 4 of 1973	Road Traffic Amendment Ordinance, 1973	The whole
Ordinance No. 19 of 1973	Second Road Traffic Amendment Ordinance, 1973	The whole
Ordinance No. 3 of 1974	Road Traffic Amendment Ordinance, 1974	The whole
Ordinance No. 11 of 1974	Second Road Traffic Amendment Ordinance, 1974	The whole
Ordinance No. 19 of 1975	Road Traffic Amendment Ordinance, 1975	The whole
Ordinance No. 10 of 1976	Road Traffic Amendment Ordinance, 1976	The whole
Ordinance No. 13 of 1976	Second Road Traffic Amendment Ordinance, 1976	The whole
Act No. 74 of 1977	Road Transportation Act, 1977	The whole
Ordinance No. 2 of 1978	Road Traffic Amendment Ordinance, 1978	The whole
Proclamation No. AG. 31 of 1978	Road Transportation Proclamation, 1978	The whole
Ordinance No. 4 of 1979	Road Traffic Amendment Ordinance, 1979	The whole
Ordinance No. 17 of 1980	Road Traffic Amendment	The whole

Act No. 29 of 1980	Ordinance, 1980 Road Transportation Amendment Act, 1980	The whole
Act No. 8 of 1981	Application of Road Traffic Legislation in Ovambo, Kavango, Damaraland and Eastern Caprivi Act, 1981	The whole
Act No. 18 of 1981	Road Transportation Amendment Act, 1981	The whole
Act No. 16 of 1982	Road Transportation Amendment Act, 1982	The whole
Proclamation No. AG. 22 of 1983	Road Traffic Amendment Proclamation, 1983	The whole
Act No. 17 of 1985	Road Traffic Amendment Act, 1985	The whole
Act No. 30 of 1985	Second Road Traffic Amendment Act, 1985	The whole
Proclamation No. AG. 33 of 1985	Road Transportation Amendment Proclamation, 1985	The whole
Act No. 28 of 1986	Road Traffic Amendment Act, 1986	The whole
Act No. 21 of 1987	National Transport Corporation Act, 1987	Section 59, in so far as it relates to Act 74 of 1977 in the Second Schedule
Act No. 22 of 1987	Road Traffic Amendment Act, 1987	The whole
Act No. 2 of 1988	Road Traffic Amendment Act, 1988	The whole
Act No. 8 of 1988	Road Transportation Amendment Act, 1988	The whole
Act No. 19 of 1988	Second Road Traffic Amendment Act, 1988	The whole
Act No. 20 of 1988	Second Road Transportation Amendment Act, 1988	The whole
Proclamation No. AG. 61 of 1989	Road Transportation Amendment Proclamation, 1989	The whole
Act No. 6 of 1991	Air Services Amendment Act, 1991	Sections 16 and 17
Act No. 1 of 1994	Walvis Bay and Off-Shore Islands Act, 1994	Clause 2 of Part IV of the Schedule
Act No. 25 of 1995	Road Traffic Amendment Act, 1995	The whole
Act No. 18 of 1996	Cross-border Road Transportation Act, 1996	The whole
Act No. 20 of 1996	Road Traffic Amendment Act, 1996	The whole
Act No. 27 of 1996	Road Traffic Second Amendment Act, 1996	The whole
Act No. 18 of 1997	Road Traffic Amendment Act, 1997	The whole
Act No. 19 of 1997	Road Traffic Second Amendment Act, 1997	The whole

SCHEDULE 2

PROVISIONS OF REPEALED ORDINANCE RELATING TO PUBLIC PERMITS WHICH CONTINUE TO BE OF EFFECT

(Section 113(1)(a))

1. The following provisions of Chapter IV of the repealed Ordinance shall continue to be of effect in accordance with section 112(2)(b) of this Act, namely, sections 78, 88, 89, 90, 91, 92, 93, 95, 96, 97(1) and 98, subject to the provisions of paragraphs 2 and 3 of this Schedule.
2. The provisions referred to in paragraph 1 shall apply subject to the following amendments:
 - (a) Section 78(2) is amended by the substitution for paragraph (a) of the following paragraph:
 - "(a) in respect of a public motor vehicle owned by any government Ministry, Transnamib Limited, a regional council or a local authority council;"
 - (b) section 88 is amended by the substitution for the expression "Chapter III" of the expression "Chapter 4 of the Act";
 - (c) section 89(2) is amended -
 - (i) by the substitution for paragraph (a) of the following paragraph:
 - "(a) be accompanied by the fee prescribed for a public driving permit by regulation made under section 91 of the Act;" and
 - (ii) by the substitution in paragraph (d) for the expression "section 61(f) or (g)" of the expression "section 34(1)(f) or (g) of the Act";
 - (d) section 92(5) is amended by the deletion of the words "through the Secretary of South West Africa"; and
 - (e) the said provisions are amended -
 - (i) by the substitution for the expressions "Executive Committee" and "Secretary for South West Africa", wherever they occur, of the expression "Minister"
 - (ii) by the substitution for the words "South African Police", wherever they occur, of the words "Namibian Police";
 - (iii) by the substitution for the words "the Territory", wherever they occur, of the word "Namibia"; and

(iv) by the substitution for the words "this Ordinance", wherever they occur, of the words "the Act".

3. In the application of the provisions referred to in paragraph 1, as amended by paragraph 2, -

"Minister" means the Minister of Works, Transport and Communication.

"registering authority" means a registering authority appointed or deemed to be appointed in terms of section 10 of the Act,

"the Act" means the Road Traffic and Transport Act, 1998;

and any other word or expression to which a meaning has been assigned in the repealed Ordinance shall have that meaning.