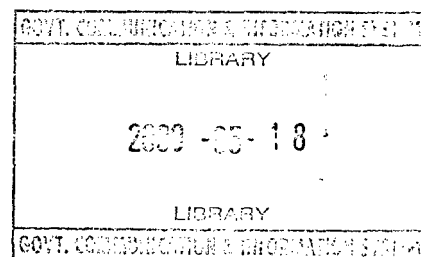


REPUBLIC OF SOUTH AFRICA

NATIONAL LAND TRANSPORT TRANSITION BILL

*(As amended by the Select Committee on Public Services (National Council of Provinces))
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON PUBLIC SERVICES)



[B 5B—2000]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To provide for the transformation and restructuring of the national land transport system of the Republic; and to provide for incidental matters.

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

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CHAPTER 1 INTRODUCTORY PROVISIONS

Part 1 *Introductory Provisions*

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Definitions

1. (1) In this Act, unless inconsistent with the context—
 - (i) “association” means any group of persons formed primarily in relation to the operation of minibuses taxi-type services, and— 25
 - (a) which has been formed not for gain;
 - (b) whose object is to promote the interests of its members; and
 - (c) whose funds are to be applied in promoting those interests;
 - (ii) “authorised officer” means— 30
 - (a) an inspector contemplated in section 123;
 - (b) a member of the South African Police Service, including a member of a municipal police service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);
 - (c) a person in the service of a provincial department or a municipality whose duty is to inspect motor vehicles or licences for motor vehicles or to control traffic; 35
 - (d) a road transport inspector contemplated in section 39 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);
 - (iii) “board” means the public transport licensing board established for a province in compliance with section 30 to perform the functions mentioned in that section; 40
 - (iv) “bus” means a motor vehicle designed, or lawfully adapted, by a registered manufacturer in compliance with the Road Traffic Act, 1989 (Act No. 29 of 1989), to carry more than 35 persons, excluding the driver, subject to section 31; 45
 - (v) “capacity building” means investment made with the purpose of enhancing the ability of individuals and institutions to achieve their development goals;
 - (vi) “charter service” means a public transport service operated by road involving the hire of a vehicle and a driver for a journey at a charge arranged beforehand with the operator, where— 50
 - (a) neither the operator nor the driver charges the passengers individual fares;
 - (b) the person hiring the service has the right to decide the route, date and time of travel; and
 - (c) the passengers are conveyed to a common destination; 55
 - (vii) “Code of Conduct” means the code of conduct prescribed for a province by the MEC under section 116;

- (viii) “commercial service contract” means an agreement concluded between a contracting authority and a public transport operator, in terms of which the—
 - (a) operator is to operate a public transport service, provided for in a public transport plan;
 - (b) operator’s consideration consists of fares payable by the passengers that are carried and, where passengers pay concessionary fares, also of the reimbursement made by the contracting authority to that operator; and
 - (c) operator does not receive any subsidy or other financial support from any organ in any sphere of government and for the purposes of this paragraph, reimbursements made to the operator in respect of concessionary fares is not regarded as a subsidy or other form of financial support;
- (ix) “commuting” means traveling daily between home and work by means of a public transport service, and “commuter” has a corresponding meaning;
- (x) “concession agreement” or “concession” means any agreement between a public transport operator and a contracting authority for the operation of a public transport service on a railway line or rail network—
 - (a) in accordance with a public transport plan; and
 - (b) at a price and on a service level provided for in that agreement, whether or not the public transport operator, in terms of the agreement, is also required to construct, maintain or rehabilitate the infrastructure and other assets used in connection with that service;
- (xi) “concessionary fare” means the fare paid by a passenger falling within a special category;
- (xii) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (xiii) “contracting authority” means the Department, any provincial department, transport authority, designated municipality and any core city, bound to a contract or concession agreement concluded with a public transport operator;
- (xiv) “co-operative” means a co-operative as defined in section 1 of the Co-operatives Act, 1981 (Act No. 91 of 1981);
- (xv) “core city” means a municipality designated under section 4 of the Urban Transport Act, 1977 (Act No. 78 of 1977), as the core city of an MTA, and includes any municipality which, after the commencement of this Act, is so designated;
- (xvi) “courtesy service” means a transport service for customers or clients provided by an organisation which is not a public transport operator where the organisation provides its own vehicle or a vehicle provided by an operator in terms of a contract with that organisation;
- (xvii) “cross-border road transport” means cross-border road transport as defined in section 1 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);
- (xviii) “current public transport record” means a transport plan contemplated in section 23;
- (xix) “current tendered contract” means a contract concluded before the commencement date of this Act for the operation of a public transport service between the Department or a province, on the one hand and, a public transport operator, on the other hand, to whom the tender for the provision of a service was awarded by the State Tender Board or the competent provincial tender board or authority in accordance with law, and which is still binding between them, the term of which expires only after the date of commencement of this Act, and includes a contract which is binding between the—
 - (a) public transport operator and a province due to the Department assigning its rights and obligations to the province irrespective of whether the assignment occurred before or after the date of commencement of this Act; or
 - (b) public transport operator and a transport authority or a designated municipality or a core city to which the province, after the date of commencement of this Act—
 - (i) may have assigned its rights and obligations; or
 - (ii) as the case may be, may have further assigned the rights and obligations assigned to it by the Department in terms of paragraph (a);
- (xx) “Department” means the Department of Transport in the national sphere of government;

- (xxi) “Director-General” means the Director-General of the Department;
- (xxii) “framework” means an outline for the structure within and the form according to which a plan, policy or strategy is determined and developed;
- (xxiii) “grievance procedure” means the procedure laid down in the constitution of an association to resolve an internal grievance raised by a member or a group of 5 members;
- (xxiv) “infrastructure”, in relation to land transport, means fixed capital equipment and facilities in the land transport system;
- (xxv) “inspector” means an inspector designated under section 123;
- (xxvi) “integrated development plan” means the integrated development plan 10 which, in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), is to be prepared by a municipality;
- (xxvii) “integrated transport plan” means an integrated transport plan contemplated in section 27;
- (xxviii) “interim contract” means a contract, not being a current tendered contract, for 15 the operation of a subsidised scheduled service, the term of which expires after the date of the commencement of this Act, and which—
 - (a) was concluded before that date between the province and the Department on the one hand, and the public transport operator who is to operate that service, on the other hand, and is still binding between them or only 20 binding between the province and that operator; or
 - (b) is binding between that public transport operator and any transport authority or a core city or a municipality, due to the assignment to it, after the date of commencement of this Act, of the rights and obligations of the province under the contract contemplated in paragraph (a); 25
- (xxix) “interprovincial transport” means a public transport service operating between two or more provinces;
- (xxx) “intraprovincial transport” means a public transport service operating within the boundaries of a province;
- (xxxi) “key performance indicator” means a yardstick or standard established to 30 measure levels of performance and achievement;
- (xxxii) “land transport” means the movement of persons and goods on or across land by means of any conveyance and through the use of any infrastructure and facilities in connection therewith;
- (xxxiii) “long-distance service” means a scheduled or unscheduled public transport 35 service operated by road, other than a service for commuting, that is provided beyond the boundary of the area covered by a transport plan, where passengers are charged fares individually;
- (xxxiv) “MEC” means the member of the Executive Council of a province who is responsible for public transport in the province in question; 40
- (xxXv) “member” means a member of an association;
- (xxxvi) “metered taxi service” means a public transport service operated by means of a motor vehicle which is designed, or lawfully adapted, in compliance with the Road Traffic Act, 1989 (Act No. 29 of 1989), to carry fewer than nine seated persons, including the driver, where that vehicle— 45
 - (a) is available for hire by hailing, by telephone or otherwise;
 - (b) may stand for hire at a rank; and
 - (c) is equipped with a sealed meter, in good working order, for the purpose of determining the fare payable;
- (xxxvii) “midibus” means a motor vehicle designed, or lawfully adapted by a 50 registered manufacturer in compliance with the Road Traffic Act, 1989 (Act No. 29 of 1989), to carry from 19 to 35 seated persons, excluding the driver;
- (xxxviii) “minibus” means a motor vehicle designed, or lawfully adapted by a registered manufacturer in compliance with the Road Traffic Act, 1989 (Act No. 29 of 1989), to carry from nine to 18 seated persons, excluding the driver; 55
- (xxxix) “minibus taxi-type service” means an unscheduled public transport service operated on a specific route or routes, or where applicable, within a particular area, by means of a motor-car, minibus or midibus, subject to section 31;
- (xL) “Minister” means the Minister of Transport in the national sphere of government; 60
- (xLi) “motor car” means a motor vehicle, other than a motor cycle, motor tricycle or motor quadrucycle as those vehicles are defined in the Road Traffic Act,

- 1989, (Act No. 29 of 1989), designed or lawfully adapted by a registered manufacturer to carry not more than eight persons, excluding the driver;
- (xLii) “motor vehicle” and “vehicle” means a motor vehicle as defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989);
- (xLiii) “MTA” means a metropolitan transport area declared and existing under section 3 of the Urban Transport Act, 1977 (Act No. 78 of 1977); 5
- (xLiv) “municipality” includes all municipalities contemplated in section 155(6) of the Constitution, and in the case of a category C municipality contemplated in section 155(1)(c) thereof, also includes the **Category B** municipalities contemplated in section 155(1)(b) in its area; 10
- (xLv) “municipal transport operator” means a municipality which operates a public transport service or an organisation which operates such a service and in which the majority of the shares or the controlling interest is held by a municipality, or which is otherwise controlled or is owned by a municipality;
- (xLvi) “non-contracted service” means a public transport service other than one operated in terms of a commercial service contract, subsidised service contract, current tendered contract, interim contract or concession agreement; 15
- (xLvii) “non-member” means any person, whether a natural person or a juristic person, who is not a member of an association;
- (xLviii) “operating licence” means a public transport operating licence required by section 33 and granted and issued in accordance with Part 16; 20
- (xLix) “operating licence strategy” means a transport plan consisting of an operating licence strategy contemplated in section 24;
- (L) “organ of state” means an organ of state as defined in section 239 of the Constitution; 25
- (Li) “parastatal transport operator” means an organisation which operates a public transport service and in which the majority of the shares or the controlling interest is held by a province, or which is otherwise controlled or is owned by a province;
- (Lii) “participating municipality” means any municipality that is party to a founding agreement for the establishment of a transport authority; 30
- (Liii) “permit” means a public road carrier permit or similar authority issued under a previous law, and which is in force at the commencement of this Act in terms of section 79;
- (Liv) “persons with disabilities” means all persons whose mobility is restricted by temporary or permanent physical or mental disability, and includes the very young, the blind or partially-sighted, the deaf or hard of hearing; 35
- (Lv) “planning authority” means any body which, in terms of section 20, has to prepare transport plans for its area;
- (Lvi) “prescribed” means prescribed by regulation in terms of this Act, by the Minister or an MEC, as the case may be; 40
- (Lvii) “previous law” means any law the operation and application of which is excluded by or in terms of section 3, and which is superseded by this Act in accordance with that section;
- (Lviii) “provincial department” means the department within the administration of a province that is charged with public transport matters within the province; 45
- (Lix) “provincial land transport framework” means a provincial land transport framework contemplated in section 22;
- (Lx) “provincial law” includes the provisions of Chapter 3 and any other applicable provincial legislation; 50
- (Lxi) “public transport operator” means a person carrying on the business of operating a public transport service;
- (Lxii) “public transport plan” means a public transport plan contemplated in section 26;
- (Lxiii) “public transport service” means a service for the carriage of passengers by road or rail, whether the service is subject to a contract or not, and where the service is provided for a fare or other consideration or reward, including any service that is— 55
- (a) a scheduled service;
- (b) an unscheduled service, which includes a minibus taxi-type service; 60
- (c) a charter service;
- (d) a long distance service;
- (e) a metered taxi service;

- (f) a rail service;
(g) a tourist service;
(h) a staff service,
except if clearly inappropriate, the term “public transport” must be
interpreted accordingly; 5
- (Lxiv) “rail service” means a public transport service operated on a rail track or
electro-magnetic guideway;
- (Lxv) “rationalisation plan” means a plan contemplated in section 25;
- (Lxvi) “registered”, in relation to any association, the members of any association
and any non-members, means their registration in the provincial transport
register in accordance with this Act and relevant provincial laws; 10
- (Lxvii) “registered constitution” means an association’s constitution. filed in the
Registrar’s records, pursuant to the association’s successful application for
provisional or full registration;
- (Lxviii) “registered manufacturer” means a manufacturer of motor vehicles registered
under section 5 of the National Road Traffic Act, 1996 (Act No. 93 of 1996); 15
- (Lxix) “Registrar” means the person appointed as the provincial transport Registrar
for a province by its MEC in compliance with relevant provincial laws and
section 53;
- (Lxx) “replacing provincial law” means a law or a provision of a law of a provincial
legislature with regard to matters to which Chapter 3 of this Act applies and
which, for all or any of the arrangements made in Chapter 3, substitutes its
own arrangements within the framework of the national land transport policy
and the scope and ambit of the provisions of this Act; 20
- (Lxxi) “roadworthy certificate” means a certificate certifying the roadworthiness of
a motor vehicle in accordance with the requirements of the Road Traffic Act,
1989 (Act No. 29 of 1989); 25
- (Lxxii) “scheduled service” means a public transport service operated by road by a
motor car, minibus, midibus or bus on a particular route or routes in
accordance with a timetable; 30
- (Lxxiii) “special categories of passengers” means learners, persons with disabilities,
tourists, transferring long-distance passengers, the aged, pregnant women and
those who are limited in their movements by children with or without
pushchairs or prams;
- (Lxxiv) “special event” means a cultural, religious, sporting or recreational event, or
any entertainment, conference, exhibition or show, which is to occur or be
held on a specific day or a number of specific consecutive days at a
predetermined venue; 35
- (Lxxv) “staff service” means a public transport service by road provided by means of
a vehicle owned by an employer or a vehicle provided by a public transport
operator in terms of a contract with the employer, when used exclusively for
the conveyance of the employer’s employees; 40
- (Lxxvi) “subsidised service contract” means an agreement, other than an interim
contract or a current tendered contract, concluded between a contracting
authority and a public transport operator to operate a scheduled service
provided for in a public transport plan and in terms of which the public
transport operator, in addition to the passenger fares paid, receives financial
support in terms of a tendered contract; 45
- (Lxxvii) “this Act” includes any regulation made and in force in terms of section 7 or
64; 50
- (Lxxviii) “timetable” means a published document informing passengers of headways,
that is intervals between departures or the passing of vehicles, or times when
and places where public transport services are available, indicating at least
origin and destination points and significant intermediate locations along the
route; 55
- (Lxxix) “tourist service” means a public transport service by road for the carriage of
tourists to or from tourist attractions, where the tourists are accompanied by a
tour guide registered under section 21 of the Tourism Act, 1993 (Act No. 72
of 1993);
- (Lxxx) “transfer”, in relation to an operating licence, means a transfer from the
holder of the operating licence to another person; 60
- (Lxxxi) “transport area” means the area of a transport authority, contemplated in
section 1 1; 65

- (Lxxxii) “transport authority” means an authority contemplated in section 10(l) for a transport area;
- (Lxxxiii) “transport plan” means any plan provided for in section 19;
- (Lxxxiv) “travel demand management” means a system of actions to maximise the capacity of the transport system for the movement of people and goods rather than vehicles, among others, through increasing vehicle occupancy, developing priority measures for public transport, encouraging travel during off-peak periods, shifting demand between modes, restricting the space available for parking, adjusting the price of parking, and other appropriate measures;
- (Lxxxv) “unscheduled service” means a public transport service operated by road on a particular route or routes, or, where applicable, within a particular area, without a timetable, where passengers are charged fares individually.
- (2) Any reference in this Chapter, Chapter 2 or Chapter 4, to Chapter 3 or any part, section or provision of Chapter 3, however expressed, must in the case where there is a replacing provincial law, be regarded as a reference to the corresponding chapter, part, section or provision of that replacing law.

Purpose and scope of Act

2. (1) This Act provides the measures necessary to—
- (a) transform and to restructure the Republic’s land transport system;
 - (b) give effect to the national policy concerning the first phases of the process; and
 - (c) achieve a smooth transition to the new system applicable nationally.
- (2) Chapter 2 of this Act prescribes those policies, principles, requirements, guidelines, frameworks, norms and standards that necessarily must be the same for all the provinces of the Republic, and other matters contemplated in section 146(2) of the Constitution, in order to achieve and deal effectively with the transformation and restructuring of the land transport system of the Republic nationally, in the process introducing and establishing the new land transport system contemplated in subsection (1), for the Republic as a whole.

Application of Act in provinces

3. (a) This Chapter, Chapter 2 and Chapter 4 are regarded as provisions contemplated in section 146(2) of the Constitution and apply to the exclusion of any other law that is in force in any province or in the Republic as a whole and which is inconsistent with that Chapter.
- (b) Chapter 3—
- (i) does not apply in a province in so far as it relates to a matter with regard to which there is a replacing provincial law in force in the province concerned, to the extent that such a replacing law deals with the matter;
 - (ii) applies to the exclusion of any other law of any province with regard to a matter dealt with in Chapter 3 in so far as the province’s law is inconsistent with Chapter 2.

CHAPTER 2 MATTERS OF NATIONAL CONCERN

Part 2 National Land Transport Principles and Policy

Principles for national land transport policy

4. (1) The following principles apply with regard to the determination, formulation, development and application of land transport policy in the Republic:
- (a) Public transport services—
- (i) are aimed at providing affordable transport to the public;
 - (ii) are so designed as to achieve—
 - (aa) integration of modes;
 - (bb) cost-efficiency and service quality;
 - (cc) the optimal allocation and utilisation of available resources;
 - (dd) market development;
 - (iii) are so designed as to have—
 - (aa) value to the customer; and

- (bb) the least harmful impact on the environment;
- (iv) are so designed that appropriate modes should be selected and planned for on the basis of where they have the highest impact on reducing the total systems cost of travel, and this decision should be informed by an appropriate assessment of the impact on the customer and anticipated 5 customer reaction to such change;
- (v) are planned so that customer needs must be met by facilitating customer reaction to system changes in the planning process and by maximizing the integration of such services;
- (vi) are planned where possible so that subsidies are aimed to assist currently 10 marginalised users and those who have poor access to social and economic activity.
- (b) All role-players must strive to achieve an effective land transport system through integrated planning, provision and regulation of infrastructure and services and diligent and effective law enforcement. 15
- (c) Public transport services, facilities and infrastructure must be so provided and developed as to integrate the different modes of land transport.
- (d) Safety and effective law enforcement must be promoted as vital factors in land transport management and regulatory systems, and the efforts in this regard of all competent authorities and functionaries must be co-ordinated to prevent 20 duplication.
- (e) For the purposes of land transport planning and the provision of land transport infrastructure and facilities, public transport must be given higher priority than private transport.
- (f) Scarce resources available for the provision of land transport must be used 25 optimally.
- (g) Investment in infrastructure and operations must promote economic, financial, technical and environmental sustainability.
- (h) Effectiveness and efficiency must be promoted in the provision and operation of land transport services and administering land transport matters. 30
- (i) Co-ordination of institutional functions in land transport must be promoted.
- (j) Land transport functions must be integrated with related functions such as land use and economic planning and development through, among others, development of corridors, and densification and infilling, and transport planning must guide land use and development planning. 35
- (k) The needs of special categories of passengers must be considered in planning and providing public transport infrastructure, facilities and services, and these needs should be met as far as may be possible by the system provided for mainstream public transport.
- (l) The participation of all interested and affected parties, including vulnerable 40 and disadvantaged persons, in transport planning must be promoted, taking into account that people must have the opportunity to develop the understanding, skills and capacity necessary to act in an equitable and effective participation.
- (m) The computerised land transport information systems of the national 45 government, provinces, municipalities and transport authorities must be compatible with one another and must be so designed as to allow mutual access as well as access by the systems of the provinces' boards and the systems of planning authorities, subject to section 6.
- (n) All spheres of government must promote public transport and the flow of 50 interprovincial transport and cross-border road transport.
- (o) The principle of user charging or cost recovery from direct users must be applied wherever appropriate and possible, in that such users should pay for all or most of the costs related to the service or activity in question.
- (2) The following persons must be impartial, have no direct financial or business 55 interest in any sector of the public transport industry, and may not decide or adjudicate on a matter in which they have such an interest:
 - (a) Members of boards;
 - (b) staff of such boards who are directly involved in issuing operating licences;
 - (c) members of provincial transport appeal bodies contemplated in section 128; 60
 - (d) members of the Transport Appeal Tribunal established by section 3 of the Transport Appeal Tribunal Act, 1998 (Act No 39 of 1998);

- (e) officials of planning authorities directly responsible for the development of operating licences strategies;
- (f) officials directly involved in the management and execution of public transport related law enforcement.

PART 3 *Powers and Duties of Minister*

5

Functions of Minister

5. (1) The Minister must, after consultation with all the MECs, publish the national land transport policy by notice in the **Government Gazette**.
- (2) The notice may also include—
 - (a) the government's goals concerning land transport in the Republic;
 - (b) the policy objectives to be pursued to achieve those goals; and
 - (c) the key performance indicators, and the targets to be met, to monitor the implementation of national land transport policy and national norms and standards and to compare them with international norms and standards.
- (3) Whenever any proposals relevant to determining or amending the national transport policy are to be considered, the Minister must by notice in the **Government Gazette** publish those proposals and in that notice invite interested parties and the public to comment on the proposals and make representations with regard thereto.
- (4) The Minister must monitor all provincial land transport policies and frameworks and all transport planning required or envisaged by this Act to see that it is developed, prepared and formulated within the ambit of the national transport policy.
- (5) The Minister must—
 - (a) monitor the implementation of the national land transport policy and, where necessary, any investigations conducted into matters arising from the implementation, and cause any necessary adjustments to be made to that policy;
 - (b) facilitate the increased utilisation of public transport;
 - (c) strive to ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner;
 - (d) assist provincial departments that lack the necessary staff or resources, in meeting their responsibilities and performing their functions and duties with regard to land transport;
 - (e) co-ordinate between the three spheres of government with a view to avoid duplication of effort and resources;
 - (f) cause to be prepared a national land transport research programme aimed at achieving the objectives of national policy and have it carried out and financed systematically, and assign research projects to persons or institutions considered best equipped to carry out the research;
 - (s) give guidance concerning education, training, and capacity building in connection with land transport matters, and prescribe requirements in this regard, but the Minister—
 - (i) may do so only in consultation with the Minister of Education and the Minister of Labour with a view to ensuring that education and training in subjects or training courses relating to land transport, are directed towards complying with the National Qualifications Framework defined in section 1 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
 - (ii) must thereby promote uniform standards for the relevant subjects and courses in all the provinces;
 - (iii) may take measures to promote, facilitate and co-ordinate the provision of training by public and private institutions;
 - (h) in taking any measures relating to public transport—
 - (i) accommodate therein relevant national and international benchmarks and best practice;
 - (ii) promote, within overall land transport objectives, the safety of passengers;
 - (iii) encourage efficiency and entrepreneurial behaviour on the part of transport operators in the operation of public transport services, and encourage them to tender competitively for contracts and concessions;

- (iv) promote a strategic and integrated approach to the provision of public transport;
- (v) promote the efficient use of energy resources, and limit adverse environmental impact in relation to land transport;
- (i) so promote public transport that— 5
 - (i) it is effective in satisfying user needs;
 - (ii) it operates efficiently as regards the use of resources;
 - (iii) the services operated are of an acceptable standard and readily accessible and are operated in conjunction with effective infrastructure provided at reasonable cost; 10
 - (iv) in the operation of public transport services, high priority is given to safety;
- (j) strive to ensure that in the promotion of integrated public transport modes, due consideration is given to the needs of transport users;
- (k) promote effective integrated transport planning; 15
- (l) where this Act requires public consultation and participation before taking any decision or performing any official act, prescribe the procedures to be followed in this regard;
- (m) publish a report annually on the key performance indicators mentioned in subsection (1)(c). 20
- (6) The Minister may—
 - (a) after consultation with the relevant MECS and the relevant public transport operator and, where applicable, after consulting the relevant transport authority, set maximum or minimum fares for subsidised public transport by rail until the Minister has assigned the rail function to another sphere of government; 25
 - (b) after consultation with all of the MECs, by notice in the *Government Gazette*, set norms and standards of a general nature in respect of fares for subsidised public transport services by road or rail with a view to— 30
 - (i) effective targeting of subsidy in terms of national policy;
 - (ii) providing integrated fare and ticketing systems in public transport networks; and
 - (iii) achieving cost recovery by operators;
 - (c) prescribe requirements for integrated fare systems, comprising fare structures, levels and technology, to ensure compatibility between such systems; 35
 - (d) after consultation with all of the MECs, prescribe norms and standards relating to the qualifications and conduct of inspectors;
 - (e) in consultation with the MECS, prescribe criteria and a methodology for the rationalisation of public transport services as contemplated in sections 24, 25 and 51 (1)(a); and 40
 - (f) prescribe a process to be followed for offering iterative services in the place of existing services to holders of operating licences or permits under section 51.

National integrated land transport information system

- 6. (1) The Minister must develop, establish and maintain a national information system with regard to land transport, based on sound business processes, and in collaboration with the provinces integrate that system with the information systems kept by provinces. 45
- (2) (a) Every MEC, every transport authority, every core city and every municipality must provide the Minister, in the manner and at the times as prescribed by the Minister, with the information so prescribed about their actions or position with regard to matters so prescribed that are relevant to— 50
 - (i) the objects and purposes of this Act;
 - (ii) the national land transport policy;
 - (iii) the utilisation of moneys made available to them by the Department, whether directly or indirectly, for the performance of their functions with regard to land transport in terms of this Act. 55
- (b) The provincial department may, in accordance with an agreement between the MEC and a municipality, act on behalf of the municipality for purposes of paragraph (a).
- (3) Despite subsection (2), the Minister may at any time by notice in writing require a particular transport authority, core city or municipality to provide the Minister with 60

any information about its actions or position with regard to any non-prescribed matter of the nature mentioned in subparagraph (i), (ii) or (iii) of subsection (2)(a).

(4) The information provided in compliance with subsections (2) and (3) must be used as the basis for monitoring the implementation of national transport policy, as well as planning, and serves to assist all spheres of government in making decisions on 5 investing in public transport.

(5) The information required for purposes of paragraph (a) of subsection (2) maybe prescribed **only after consultation** with the MECs, all transport authorities and core cities, and organised local government.

(6) The Minister must have all the information that was provided in terms of 10 subsections (2) and (3), included in the national information system kept in relation to land transport, and may make that information available to interested parties on payment of the prescribed fee, if any, or, where appropriate, by means of any radio or television broadcast or publication in the press or other printed media, subject to subsection (7).

(7) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), 15 the Minister may not make information available under subsection (6) which, potentially, is commercially sensitive and may harm the business or commercial interests or viability of any particular person, organisation or entity, or is of a personal nature that may lead to the invasion of the privacy of any person, may not be so included in that system, nor be specified in such a manner that it will lead, directly or indirectly, 20 to the identification of that person, organisation or entity, or to their being so harmed or to their privacy being invaded.

(8) Where a province, transport authority, core city or municipality fails to provide any information in compliance with subsections (2) or (3), the Minister may withhold any payment to that province, transport authority, core city or municipality, until it has 25 provided the information.

Regulations by Minister

7. (1) The Minister may, after consultation with the MECs, make regulations relating to any matter which may or must be prescribed by way of a regulation under this Act.

(2) The regulations made under this section may provide that any person who 30 contravenes a provision thereof or fails to comply therewith is guilty of an offence, and liable on conviction to a fine or to imprisonment not exceeding three months.

(3) A regulation made in terms of any previous law and in force immediately before the commencement of this Act with regard to matters in relation to which the Minister, in terms of subsection (1), is competent to make regulations, is regarded for the purposes 35 of this Act, as a regulation made under that subsection until superseded by a new regulation under this section.

Delegations by Minister

8. (1) The Minister may delegate to any officer in the Department any power or duty 40 of the Minister in terms of this Act, except power to make regulations.

(2) Any delegation of a power or duty under this section—

(a) does not prevent the Minister from exercising that power or performing that duty;

(b) must be done in writing; and

(c) may at any time be amended or withdrawn. 45

PART 4 *Functions of MECs*

Functions of MECs

9. (1) Every MEC must—

(a) monitor the implementation of the provincial land transport policy and, where 50 necessary, any investigations conducted into matters arising from implementation, and cause the necessary adjustments, if any, to be made to that policy;

(b) strive to ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner;

(c) assist planning authorities that lack the necessary staff or resources, in 55 meeting their responsibilities and performing their functions and duties with regard to land transport.

(2) Every MEC must, by notice in the *Provincial Gazette*, from time to time and after consultation with transport authorities and core cities in the province and the relevant provincial organisation contemplated in section 2(1)(b) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), publish a provincial land transport policy, including, but not limited to-

- (a) the province's goals concerning land transport;
- (b) the policy objectives to be pursued to achieve those goals; and
- (c) the key performance indicators, and the targets to be met, to monitor the implementation of such policy and provincial norms and standards and comparing them with national norms and standards.

(3) Whenever any proposals relevant to determining or amending the provincial transport policy is to be considered, the MEC must by notice in the *Provincial Gazette* make known those proposals and in that notice invite interested parties and the public to comment on the proposals and make representations with regard thereto.

(4) Every MEC must prepare a provincial transport framework for the relevant province in accordance with section 22.

PART 5

Transport Authorities: Matters of National Concern

Principles for establishment of transport authorities for transport areas

10. (1) Transport authorities may be established for transport areas by a written founding agreement between—

- (a) the MEC and a single municipality; or
- (b) the MEC and municipalities whose areas of jurisdiction fall wholly or partly within the transport area.

(2) The Minister must be a party to the founding agreement contemplated in subsection (1) if the Minister provides funding for the transport authority, but only in relation to those issues for which such funding is provided.

(3) Transport authorities may be established if their effect is to improve transport service delivery in the local sphere of government by grouping transport functions into a single, well-managed and focussed institutional structure.

(4) Subsection (1)(a) and (b) also apply to municipalities whose areas of jurisdiction or parts thereof are situated in an MTA, in which case the MEC must withdraw the notice under which the area or areas of the municipality or municipalities concerned were included in the MTA under the Urban Transport Act, 1977 (Act No. 78 of 1977).

(5) The MEC may not unreasonably withhold consent for the establishment of a transport authority.

(6) The founding agreement must be in writing and reflect the agreement reached between the parties and provide at least for the following:

- (a) The parties to the agreement;
- (b) the basis for the establishment of a governing body for the transport authority and the structure thereof;
- (c) operational, financial and procedural arrangements, including voting procedures;
- (d) a point-to-point description of the boundaries of the transport area or, where such boundaries coincide with municipal boundaries, a reference to such municipal boundaries or a reference to such municipal boundaries as they may change from time to time.

(7) The MEC must publish founding agreements, after their conclusion, in the relevant *Provincial Gazette* and declare the relevant area as a transport area by such publication.

(8) A transport authority so established is a juristic person separate from the participating municipality or municipalities.

(9) Despite the provisions of any other law, a transport authority may not be placed in liquidation.

(10) A transport authority is governed and controlled by the governing body appointed for it in accordance with its founding agreement which must consist solely of councillors of the constituent municipality or municipalities, the number of which is determined in the founding agreement.

(11) The technical, professional, administrative, clerical and other work of a transport authority may be performed by—

- (a) the municipal administration of one of the participating municipalities specified in that agreement;
 - (b) any one or more specified departments in the municipal administration of one or more participating municipalities so specified; or
 - (c) a transport executive as a separate body under the auspices and subject to the control of the transport authority. 5
- (12) A province may provide staff or other assistance to a transport authority to enable it to perform its professional, technical, administrative and other work.
- (13) Subject to legislation applicable to local government, a transport authority must perform the following functions, as well as those assigned to it by provincial laws: 10
- (a) Subject to section 20(4) and (5), in its capacity as planning authority, prepare transport plans for the transport area, and be responsible for the implementation thereof, and monitor its performance in achieving its goals and objectives;
 - (b) develop land transport policy within its area based on national and provincial guidelines, which includes its vision for the area, and incorporate spatial development policies on matters such as densification and infilling as well as development corridors; 15
 - (c) perform financial planning with regard to land transport within or affecting the transport area, with particular reference to transport planning, infrastructure, operations, services, maintenance, monitoring and administration; 20
 - (d) manage the movement of persons and goods on land by co-ordinating such movement;
 - (e) encourage, promote and facilitate public consultation, participation or involvement through hearings, seminars and workshops and any other means that are appropriate to ensure effective communication with customers, communities, organised labour and transport operators, and the Minister may prescribe requirements and procedures in this regard; 25
 - (f) subject to section 20(4) and (5), call for tenders for public transport services to be operated in terms of commercial service contracts and subsidised service contracts, prepare tender specifications and documents for that purpose, evaluate the tenders received and the award of the tenders, but this function may be undertaken after the date of declaration of the transport authority under subsection (7), but not later than a date to be determined by the Minister in agreement with the transport authority and the relevant MEC. 30 35
- (14) A transport authority may be dissolved only if all of the parties to the transport authority have entered into an agreement in terms of which proper arrangements are made for dissolution of the authority and for—
- (a) succession to the assets, liabilities and commitments of the transport authority upon dissolution; 40
 - (b) the continuation and finalisation of any projects and work commenced by the transport authority before dissolution;
 - (c) the responsibilities, obligations and duties of the municipality or each of the municipalities party to the transport authority with regard to the execution or implementation of any other commitment made or decision taken by the transport authority in the exercise or performance of its functions; and 45
 - (d) the date on which the dissolution is to take effect.
- (15) ‘The Minister may by notice in the *Government Gazette* publish a **pro forma** founding agreement which sets out minimum terms to be included in all founding agreements. 50

Factors relevant to determining boundaries of transport areas

11. (1) The MEC and the municipality or municipalities that propose to enter into a founding agreement, must when considering the formation of a transport area, have due regard at least to—

- (a) dominant passenger movements; 55
- (b) economic interdependency between inhabitants;
- (c) integrated land use and transport development potential;
- (d) the extent to which public transport services are provided and operated effectively and efficiently within the area; 60
- (f) whether there is a capacity within the area to perform and carry out any

technical or specialised functions or work necessary for or arising from the governance of a transport area in terms of this Act;

(g) other criteria, if any, that may be prescribed by a law of the province and are not inconsistent with this Act.

(2) The Minister or the MEC may prescribe matters to be considered with a view to determining the boundaries of transport areas in addition to those mentioned in subsection (1), and procedures for such determination. 5

(3) The MEC must consult with the members of the executive council responsible for local government affairs and for finance of the province concerned before a decision is taken as to the formation of a transport area. 10

Transport areas and transport authorities extending across provincial boundaries

12. (1) Subject to subsection (2) and to the conclusion of a founding agreement that complies with provincial legislation, the MECS of two or more provinces may enter into an agreement which gives authorisation for—

(a) the formation of a single transport area **extending** across one or more of the common provincial boundaries and comprised of the jurisdictional areas, or part thereof, of municipalities falling within the respective provinces; and 15

(b) the establishment of a single transport authority for such a transport area.

(2) Such an authorizing agreement may be concluded only if—

(a) the affected area falling in one province is contiguous to the affected area falling in the other province or, as the case may be, one or more of the other provinces concerned; and 20

(b) the municipalities concerned have agreed in principle on the establishment of a transport authority for a transport area **consisting** of their jurisdictional areas jointly; and 25

(c) those MECS are satisfied that those jurisdictional areas, taken together, meet the requirements for a functional transport area, due regard being had to section 11.

(3) The agreement must further provide that, in relation to the transport area and the transport authority that may be established for it, one of those MECs, who must be identified in the agreement, is the nominated MEC as regards any powers and duties which, in terms of this Act, may be exercised or must be performed by the MEC with regard to a transport area or its transport authority. 30

(4) The MEC may enter into such an agreement only after consultation with the members of the executive council responsible for local government affairs, and for planning, of the provinces concerned. 35

Finances of transport authorities

13. (1) Every transport authority must—

(a) conduct its affairs in an effective, economic and efficient manner so as to optimise the use of its resources in **addressing** the land transport needs of the community in its area and those traveling to and from that area; 40

(b) conduct its financial affairs in an **accountable** and transparent manner and have proper accounting records kept in accordance with generally accepted accounting practice;

(c) prepare a financial plan as an integral part of its transport plans; 45

(d) structure and manage its planning, administration and budgeting processes in a manner that gives priority to the basic **transport** needs of the community in its area and those having to be moved to and from that area, and that supports the implementation of national and **provincial** transport policy;

(e) manage its financial resources in a manner that enables it to meet its objectives and make them sustainable; and 50

(f) regularly monitor and assess its progress in **achieving** the objectives set out in its transport plans.

(2) Subject to the approval of the governing body, **the** chief executive officer of the transport authority must open an account in the name of the authority with a registered banking institution in which **all** moneys received by the authority are to be deposited and from which its expenses are to be paid. 55

(3) Every transport authority must establish and maintain an internal audit and control system with a view to ensuring proper financial control

(4) A transport authority, in awarding contracts for goods and services, must apply a 60

system which is fair, equitable, transparent, competitive and cost-effective, and which is in accordance with the Preferential Procurement Policy Framework Act, 2000 (Act No. 4 of 2000), and relevant provisions of the Local Government Transition Act, 1993 (Act No. 209 of 1993), which will apply with the changes required by the context.

(5) The Minister may, after consulting the Minister of Finance in the national sphere of government and the MECs, prescribe responsibilities and duties of transport authorities concerning financial and fiscal matters.

(6) The financial and fiscal matters may, among others, relate to—

- (a) the financial records and accounts to be kept and the financial statements to be prepared; 10
- (b) the auditing of those records, accounts and financial statements which may only be audited by a person registered and practicing for own account as a public accountant and auditor;
- (c) the time allowed for the submission of its audited financial statements to the governing body, the participating municipalities and the MEC; 15
- (d) consequences and procedures where persons cause the transport authority financial loss or damage, or where unauthorised expenditure has been incurred;
- (e) procedures to be followed and measures to be taken to remedy the situation where the financial position of a transport authority has unduly deteriorated; 20
- (f) procedures applicable to the preparation and compilation of the budgets of transport authorities;
- (g) procedures and requirements for the procurement of goods and services, subject to subsection (4);
- (h) the investment of the moneys of transport authorities; and 25
- (i) the charging of fees for or the generating of revenue from services rendered by transport authorities.

(7) The financial year of transport authorities must coincide with the municipal financial year.

Use of funds received by transport authorities

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14. A transport authority must use moneys—

- (a) received from the Minister under section 15(1)(b);
- (b) received by the relevant province under section 16(1)(b);
- (c) received from its participating municipalities under section 17,

for the performance of that authority's functions in terms of this Act or a replacing provincial law, to meet the expenditure incurred by it in the performance of work arising from or otherwise connected with those functions or the performance thereof and to give effect to the national and provincial land transport policy.

PART 6

Interim Funding Arrangements for Land Transport

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Minister may provide funds for land transport

15. (1) (a) For the performance of the Minister's functions in terms of this Act and to meet the expenditure incurred by the Department in the performance of work arising from or otherwise connected with those functions, the Minister must use moneys appropriated by Parliament for that purpose.

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(b) The Minister may, from funds contemplated in paragraph (a), make moneys available to provinces, municipalities or transport authorities to assist them in performing their functions in terms of this Act or replacing provincial laws.

(2) The moneys made available under subsection (1) are to be applied so as to give effect to the national and provincial land transport policy and achieve the objects and purposes of this Act and replacing provincial laws and the Minister may for that purpose impose conditions that are considered fit and are not inconsistent with this Act, including conditions relating to specific purposes for which the moneys are to be utilised.

(3) Moneys made available under subsection (1)(b)—

- (a) for use for a particular or specified purpose. may not be used for any other purpose; or

MEC may provide funds for land transport

16. (1) (a) For the performance of the MEC'S functions in terms of this Act or a replacing provincial law and to meet the expenditure incurred by the provincial department in the performance of work arising from or otherwise connected with those functions the MEC **must use moneys** received from the Minister or appropriated by the relevant provincial legislature for that purpose. 5

(b) The MEC may, from funds received or appropriated under paragraph (a), make moneys available to municipalities or transport authorities to assist them in performing their functions in terms of this Act or replacing provincial laws.

(2) The moneys made available under subsection (1) are to be applied so as to give effect to the national and provincial land transport policy and achieve the objects and purposes of this Act and replacing provincial laws and the MEC may for that purpose impose conditions that are considered fit and are not inconsistent with this Act and replacing provincial laws. 10

(3) Moneys made available under this section— 15

(a) for use for a particular or specified purpose may not be used for any other purpose; or

(b) **subject to specified conditions, may not be dealt with contrary to those conditions.**

(4) **Where a transport authority is established and becomes responsible for the** function mentioned in section 10(13)(f), the MEC must transfer to that transport authority a share, to be determined after consultation with the Minister and the transport authority, of the amount appropriated by Parliament or the relevant province in the Division of Revenue Act for that function for that specific financial year. 20

Municipalities may provide funds for land transport

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17. A municipality may appropriate money to make contributions to the transport authority of which it is a part, for use as contemplated in section 14.

PART 7

Transport Planning

General principles for transport planning, and its relationship with land development

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18. (1) Land transport planning must be integrated with the land development process, and the transport plans required for that purpose by this Act are designed to give structure to the function of "municipal planning" mentioned in Part B of Schedule 4 of the Constitution, and must be accommodated in and form an essential part of integrated development plans, with due regard to section 84(1)(c), 84(2) and 84(3) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and for this purpose— 35

(a) where the relevant planning authority is a municipality contemplated in section 20(1)(c), the plans mentioned in paragraphs (c) to (g) of subsection (1) of section 19 must form the transport component of the integrated development plan of the municipality; 40

(b) where the jurisdictional area of a municipality falls wholly or partly in a transport area or MTA, the plans mentioned in paragraphs (c) to (g) of that subsection constitute the transport component of the integrated development plans of such municipality in respect of that part of its jurisdictional areas that falls within the transport area or MTA. 45

(2) Subject to this section, land transport planning must be so carried out so as to cover both public and private transport and all the modes of land transport relevant in the area concerned, and must focus on the most effective and economic way of moving from one point to another in the system. 50

(3) Transport plans must be developed so as to—

(a) enhance the effective functioning of cities, towns and rural areas through integrated planning of transport infrastructure and facilities, transport operations including freight movement, bus services and public transport services within the context of those integrated development plans and the land development objectives set in terms of section 27 of the Development 55

- Facilitation Act, 1995 (Act No. 67 of 1995), or, where applicable, land development objectives of that nature set in terms of relevant provincial laws;
- (b) direct employment opportunities and activities, mixed land uses and high density residential development into high utilisation public transport corridors interconnected through development nodes within the corridors, and discourage urban sprawl where public transport services are inadequate;
 - (c) give priority to infilling and densification along public transport corridors;
 - (d) give higher priority to public transport than private transport by ensuring the provision of adequate public transport services and applying travel demand management measures to discourage private transport;
 - (e) enhance accessibility to public transport services and facilities, and transport functionality in the case of persons with disabilities; and
 - (f) minimise adverse impacts on the environment.
- (4) Transport planning must be viewed as a continuous process by which planning authorities professionally develop and implement integrated public transport services for their areas.
- (5) A planning authority must, unless clearly inappropriate or not reasonably practical in the circumstances, in preparing any transport plan, ensure co-ordination and integration within and between land transport modes so as to optimise the accessibility and utilisation of public transport services, facilities and infrastructure.
- (6) The MEC must ensure the co-ordination of the planning processes of all planning authorities under the jurisdiction of the province and, in so doing, must ensure that all plans address—
- (a) public transport services operating across the boundaries of the areas of planning authorities;
 - (b) road and rail networks;
 - (c) freight movements;
 - (d) the needs of special categories of passengers;
 - (e) rivalry between neighboring planning authorities that may result in the duplication or over-supply of transport facilities and infrastructure in the region;
 - (f) the integration of transport and land use planning within the context of the Development Facilitation Act, 1995 (Act No. 67 of 1995), or any other similar provincial law.

Types of plans required by Act

- 19. (1)** The following plans are required for the purposes of this Act:
- (u) A national land transport strategic framework provided for in section 21;
 - (b) provincial land transport frameworks provided for in section 22;
 - (c) current public transport records provided for in section 23;
 - (d) operating licences strategies provided for in section 24;
 - (e) rationalisation plans provided for in section 25;
 - (f) public transport plans provided for in section 26;
 - (g) integrated transport plans provided for in section 27.
- (2) The relationship and sequence of transport plans which are illustrated in Figures 1 and 2, are as follows:
- (a) The Department must prepare a national land transport strategic framework to guide land transport planning countrywide;
 - (b) every province must prepare its initial provincial land transport framework as an overall guide to transport planning within the province;
 - (c) every transport authority and core city, and every municipality required to do so by the MEC, must prepare a public transport plan of which a current public transport record and an operating licences strategy, and, if it has subsidised public transport services, a rationalisation plan, form components;
 - (d) transport authorities and core cities, and other municipalities requested by the MEC, must prepare an integrated transport plan of which the public transport plan forms a component;
 - (e) every province must prepare subsequent provincial land transport frameworks which, in addition to the provision of subparagraph (ii), must summarise the local plans in the province.

be linked where applicable with other public transport services, and may provide for charter services, staff services and tourist services, and in the case of interprovincial transport, this must be done in consultation with the MEC of the other province or provinces concerned.

(4) (a) The Minister must, as soon as possible after the commencement of this Act, in consultation with the MECS and by notice in the *Government Gazette*, determine a date by which each province must have prepared its provincial land transport framework.

(b) The date for each of the plans mentioned in subsection (1)(c) to (g) must be linked to the provincial land transport framework and be as agreed upon by the MECs.

(5) The planning authority must before or on the date determined in terms of subsection (4) publish a notice in English and at least one other official language in a newspaper circulating in the area of the planning authority making known that the plan in question has been completed and is available for public inspection at a place stated in the notice and the MEC may prescribe procedures to be followed in promoting public participation in the transport planning process.

(6) The Minister and any MEC may provide financial or other assistance for planning to enable authorities to fulfil their obligations under this Part from money appropriated by Parliament or by the relevant provincial legislature, as the case may be.

(7) The content of plans mentioned in subsection (1)(b) to (g) must be as required by this Act, but the Minister may, in consultation with the relevant MEC or MECS, modify the requirements for those plans, in the prescribed manner, in relation to rural areas in particular provinces.

Planning authorities

20. (1) Plans contemplated in section 19(1)(c) and (d) and, where appropriate, section 19(1)(e), (f) and (g), must be prepared by the following authorities, to be known as planning authorities, subject to subsections (4) and (5), and these plans may be different in respect of rural planning authorities except for those that have subsidised public transport services:

(a) Transport authorities, in respect of their transport areas;

(b) core cities, in respect of their MTAs;

(c) other municipalities, where their jurisdictional areas have not been included wholly or partly in transport areas or MTAs, in respect of their jurisdictional areas and, where such areas are partly included in a transport area or MTA, in respect of that part of such area that is not so included.

(2) (a) A planning authority may enter into an agreement with any other planning authority or the provincial department to assist it in performing its functions in terms of this Part.

(b) Such an agreement does not detract from the planning authority's ultimate responsibility for the functions entrusted to it by this Part.

(3) Every planning authority must supply relevant transport plans to the board and make recommendations to that board about the conversion of permits to operating licences, and about applications for new operating licences, as required by Part 9.

(4) Where there are substantial public transport services between adjacent transport areas, the MEC is responsible for the effective planning of such services, and must ensure that such services are planned jointly with the respective transport authorities and integrated with their transport plans.

(5) A transport authority may apply to the MEC for the transport authority to take over the planning of the services contemplated in subsection 4), and in deciding whether to do so, the MEC must consider primarily—

(a) the extent to which the services are being operated within the transport area concerned; and

(b) the ability of the transport authority to carry out the responsibilities relating to this function.

(6) In the case of a district municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), such a municipality and its relevant local municipalities must agree as to which of them must prepare the plans contemplated in section 19(1)(c) to (g).

National land transport strategic framework

21. (1) The Minister must annually, by a date to be determined by the Minister after

consultation with the MECS and published by notice in the *Government Gazette*, prepare a national land transport strategic framework for the country for a five-year period corresponding with the Department's financial years, with due regard to subsection (3).

(2) The national land transport strategic framework must serve to guide land transport planning countrywide and must not derogate from the constitutional planning functions of provinces and municipalities.

(3) The national land transport strategic framework must—

- (a) set out national policy with respect to land transport;
- (b) promote the integration of national, provincial and local land transport planning; 10
- (c) describe mechanisms to resolve possible conflicts between land use and transport planning and possible conflicts between provinces and municipalities in the land transport context;
- (d) set out a general strategy for freight transport nationwide;
- (e) set out a general strategy for rail transport nationwide, including long-distance 15 passenger rail and a commuter rail concessioning strategy;
- (f) set out a general strategy for national roads;
- (g) set out a general strategy for cross-border land transport;
- (h) set out the national key performance indicators;
- (i) set out a general strategy to support tourism; 20
- (j) set out a general strategy for land transport and the environment;
- (k) set out a general strategy for land use restructuring;
- (l) set out a general strategy for interprovincial land transport; and
- (m) set out a general strategy for transporting persons with disabilities.

Provincial land transport frameworks

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22. (1) Every MEC must annually prepare a provincial land transport framework for a five-year period in accordance with the requirements prescribed by the Minister after consultation with all the MECs.

(2) The initial provincial land transport framework must serve to guide land transport in the province, including intraprovincial, interprovincial and cross-border transport and 30 any subsequent provincial land transport frameworks must also include summaries of the local plans within the province.

(3) The provincial land transport framework must—

- (a) be consistent with the province's vision, policy and objectives;
- (b) specify the changes to the province's land transport policies and strategies 35 since the previous year's five-year plan;
- (c) from the second year, include a list reflecting a summary of the transport projects and project segments in order of precedence, that are to be carried out in that five-year period, and the cost of each project and this summary must—
 - (i) also deal with those projects identified in transport plans in the province, 40 and
 - (ii) further be prepared with due regard to the relevant integrated development plans prepared in terms of any relevant local government law and the relevant land development objectives set in terms of section 27 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), or, where 45 applicable, land development objectives of that nature as set in terms of a law of the province;
- (d) describe the measures to be taken by the province with a view to ensuring proper co-ordination between the transport plans of the planning authorities in respect of which the province has jurisdiction; 50
- (e) describe progress with respect to the establishment and functioning of transport authorities in the province;
- (f) include the province's detailed budget with regard to land transport for the relevant financial year, including funding sources, in the format prescribed by the Minister; 55
- (g) describe mechanisms that have been instituted to resolve possible conflicts between provincial transport and land use planning;
- (h) set out a general strategy for the needs of learners and persons with disabilities;
- (i) include the approved spatial plan of the province; 60
- (j) include a road plan for the province;

- (k) include a public transport strategy for the province;
- (l) set out a general strategy or plan for the movement of hazardous substances contemplated in section 2(1) of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), by road along designated routes, in consultation with the provincial department responsible for environment affairs; 5
- (m) set out the key performance indicators specified by the Minister, as well as any others specified by the MEC, to be used to measure the performance by the province and planning authorities of their functions and responsibilities in terms of this Act;
- (n) include details of intraprovincial and interprovincial long-distance services; 10
- (o) set out a general strategy for tourism; and
- (p) include details of liaison mechanisms and structures proposed for interprovincial long-distance services.

(4) The provincial land transport framework submitted to the Minister in terms of this section must be accompanied by copies of all agreements regarding interprovincial transport concluded between the province concerned and other provinces. 15

Current public transport records

23. (1) Every planning authority must as soon as reasonably possible after the commencement of this Act, but by a date to be determined by the MECs in consultation with the Minister, prepare for its area a current public transport record, which must become part of its public transport plan and constitutes the basis for the development of operating licences strategies, rationalisation plans, public transport plans and integrated transport plans. 20

(2) The current public transport record must be prepared in accordance with the document titled "Requirements and Format for the Preparation of Current Public Transport Records by Core Cities" as published in the *Government Gazette* on 22 May 1998 under General Notice No. 847 of 1998, or any subsequent amendments thereof published in the *Government Gazette* and agreed to by the MECs. 25

(3) That public transport record must take into account the changes necessary in the context, except where that document is in conflict with this Act, and showing— 30

- (a) all of the scheduled and unscheduled services that are operated in the area of the planning authority, and taking into account such services to and from the areas of neighboring planning authorities;
- (b) all the facilities and infrastructure in place and utilised in the area concerned for the purposes of or in connection with the public transport services mentioned in paragraph (a), as well as the facilities and infrastructure being developed for those purposes or in that connection within the area concerned. 35

(4) The MEC may prescribe the content of current public transport records in addition to the content prescribed in the document referred to in subsection (2).

(5) The current public transport records must be submitted to the MEC by the planning authorities not later than the date determined for that purpose by the MECs in consultation with the Minister and made known by the MEC by notice in the *Provincial Gazette*. 40

(6) The current public transport record must be updated annually, and in updating it, planning authorities must record changes in the supply of public transport services with regard to their respective areas, including the granting and issuing of operating licences and the amendment, transfer, suspension, lapsing, withdrawal and cancellation of operating licences or permits by the board. 45

Operating licences strategies

24. (1) For the purpose of ensuring that planning authorities' recommendations to the board will enable that board, in disposing of applications regarding operating licences, to achieve a balance between public transport supply and utilisation that is both effective and efficient, every planning authority must prepare a plan known as an operating licences strategy, which must eventually form part of its public transport plan. 50

(2) An operating licences strategy must contain and set out the planning authority's policy and strategies in relation to at least— 55

- (a) the role of each public transport mode and identification of the preferred road-based mode or modes with regard to its area, including transport into or from the areas of other planning authorities, and interprovincial transport;

- (b) the circumstances in which operating licences or permits authorizing the operation of public transport within any part of its area, should be allowed;
- (c) the use of public transport facilities within its area;
- (d) the avoidance of wasteful competition between transport operators;
- (e) the conclusion of commercial service contracts for unsubsidised public transport services; and
- (f) the conditions which should be imposed by the board in respect of operating licences.

(3) Operating licences strategies must be in accordance with the requirements, and in the manner and form as generally prescribed by the Minister in consultation with the MECs, but the MEC may prescribe the content of operating licences strategies in addition to such requirements.

(4) (a) The operating licences strategy must, subject to paragraph (b), be submitted to the MEC for approval.

(b) Such approval must relate only to procedures, financial issues that affect the province, provincial policy and principles, transport across the boundaries of the areas of planning authorities, interprovincial transport and other matters provided for in provincial laws.

(5) In the absence of a public transport plan, a planning authority must ensure that its operating licences strategy is updated on a continuous basis and consolidated at least once a year within two months of completing its current public transport record, or by a date determined by the MEC and made known in the *Provincial Gazette*.

Rationalisation plans

25. (1) Where it is proposed that a public transport service being operated in terms of a subsidy be continued after expiry of the basis in terms of which it is currently operated, in terms of a subsidised service contract or concession, every planning authority in whose area the service is operated must prepare a rationalisation plan which must eventually become part of its public transport plan, before the service to be operated in terms of the subsidised service contract is put out to public tendering, with a view to—

- (a) rationalizing subsidised services within and between modes;
- (b) determining where and to what extent subsidies should be paid;
- (c) rationalizing subsidised services across the borders of planning authorities and in relation to interprovincial transport;
- (d) minimizing the level of subsidy;
- (e) minimizing competition between subsidised services;
- (f) structuring subsidised service contracts or concessions in such a way as to attract sufficient competitive bidding by qualifying tenderers;
- (g) ensuring that routes and route networks are utilised optimally so as to meet passenger needs effectively and efficiently; and
- (h) facilitating the future development of an integrated public transport system.

(2) The rationalisation plan must contain at least the following:

- (a) The proposed changes to the existing routes or networks, or both;
- (b) the proposed changes to the passenger-carrying capacity of the services operated on the routes or networks, or both;
- (c) the policy proposed for the structuring of contracts or concessions for competitive tendering;
- (d) a statement setting out the potential impact of the rationalisation on the various transport modes;
- (e) an indication of the improvements to be effected for the benefit of passengers;
- (f) an indication of the obstacles foreseen with regard to the implementation of the plan, and the strategies proposed to overcome them.

(3) Rationalisation plans must be in accordance with the requirements, and in the manner and form, as generally prescribed by the Minister in consultation with the MECs, and the MEC may prescribe the content of rationalisation plans in addition to such requirements.

(4) The rationalisation plan must be submitted to the MEC for approval, which approval must relate only to the matters mentioned in section 24(4)(b).

(5) In the absence of a public transport plan, a planning authority that has subsidised public transport services must ensure that its rationalisation plan is prepared or updated and submitted to the MEC at least once a year and within four months of completing its current public transport record, or by a date determined by the MEC and made known in the *Provincial Gazette*.

Public transport plans

26. (1) Every transport authority and core city, and every municipality required to do so by the MEC, must, by the date determined by the MEC, prepare a public transport plan with a view to determining and specifying the public transport services that it wishes to have provided in terms of the matters mentioned in section 23(3)(a) and (b). 5

(2) The public transport plan must be prepared with a view to developing and implementing the integration of public transport services and must contain at least the following:

(a) The planning authority's vision, goals and objectives for public transport in its area; 10

(b) the planning authority's strategies for—

(i) the needs of learners and persons with disabilities;

(ii) modal integration and fare systems for public transport, the latter comprising fare structure, level and technology;

(c) an operational component, including— 15

(i) the provisions of the rationalisation plan for contracted services and concessions; and

(ii) the operating licences strategy for all public transport services not covered under subparagraph (i).

(3) Public transport plans must be in accordance with the requirements, and in the manner and form, as generally prescribed by the Minister, in consultation with the MECs, but the MEC may prescribe the content of public transport plans in addition to such requirements. 20

(4) The public transport plan must be submitted to the MEC for approval, which approval must relate only to the matters mentioned in section 24(4)(b). 25

(5) Every planning authority must ensure that its public transport plan is updated at least once a year by a date determined by the MEC by notice in the *Provincial Gazette*.

Integrated transport plans

27. (1) Transport authorities, core cities and other municipalities required by the MEC to do so, must prepare and submit to the MEC annually by the date determined by the MEC, integrated transport plans which comply with subsection (2) for their respective areas for the five-year period commencing on the first day of that financial year. 30

(2) The integrated transport plan must formulate the planning authority's official vision, policy and objectives, consistent with national and provincial policies, due regard being had to any relevant integrated development planning or land development objectives, and must at least— 35

(a) specify the changes to the planning authority's land transport policies and strategies since the previous year's five-year plan;

(b) include a list that must—

(i) show, in order of precedence, the projects and project segments to be carried out in that five-year period, and the cost of each project; and 40

(ii) be prepared with due regard to relevant integrated development plans, and land development objectives set in terms of section 27 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), or, where applicable, in terms of a law of the province; 45

(c) include all modes and infrastructure, including new or amended roads and commercial developments having an impact on the land transport system, and land transport aspects of airports and harbours;

(d) include the planning authority's detailed budget, including funding sources, with regard to land transport for the relevant financial year in the format prescribed by the MEC; 50

(e) include the planning authority's public transport plan;

(f) set out a general strategy for travel demand management; and

(g) set out a road and transport infrastructure provision, improvement and maintenance strategy; 55

(h) set out a general strategy or plan for the movement of hazardous substances contemplated in section 2(1) of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), by road along designated routes, in accordance with the strategy or plan in the provincial transport framework contemplated in section 22(3)(1); 60

(3) An integrated transport plan must be in accordance with requirements and in the manner and form as the Minister may prescribe in consultation with the MECs, but the MEC may prescribe the content of integrated transport plans in addition to such requirements.

(4) The plan must by the date so determined be submitted to the MEC for approval, which approval must relate only to the matters mentioned in section 24(4)(b). 5

(5) A person may not transport hazardous substances contemplated in section 2(1) of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), in the area of a planning authority, except on a route determined under paragraph (h) of subsection (2), where such a route has been determined and published under section 29(1), and any person who does so is guilty of an offence. 10

Approval of commuter rail components of transport plans

28. Until the function of commuter rail is devolved from the national to another sphere of government, the transport plans contemplated in section 19(1)(b) to (g) must be submitted to the Minister for approval of the commuter rail component of such plans, within the prescribed manner and time. 15

Publication of transport plans and substantial changes in land use and public transport infrastructure and services

29. (1) On approval of the national land transport strategic framework, a provincial transport framework, a public transport plan or an integrated transport plan, the Minister or planning authority, as the case may be, must publish, in the *Provincial Gazette*, or, in the case of the national land transport strategic framework, in the *Government Gazette*, the prescribed particulars of such plans, which must include particulars of routes determined under section 27(2)(h). 20

(2) All persons, including the State and parastatal institutions, agencies and utilities are bound by the provisions of plans published under subsection (1), and— 25

(a) no substantial change or intensification of land use on any property may be undertaken without the written consent of the relevant planning authority;

(b) developments on property within a transport area are subject to traffic impact assessments and public transport assessments as prescribed by the MEC; 30

(c) where new or upgraded transport infrastructure or services are suggested in such a traffic impact assessment or public transport assessment, the costs thereof must be paid as decided by the relevant planning authority;

(d) no action may be taken that would have the result of substantially decreasing the quantity or availability of land transport infrastructure or services, unless the owner of the land on which the infrastructure is situated, or the holder of the relevant operating licence, as the case may be, has notified the relevant planning authority in writing not less than 30 days before the action is taken. 35

(3) Despite any law to the contrary, any authority with responsibility for approving substantial changes or intensification in land use or development proposals which receives an application for such change or intensification, must— 40

(a) within 14 days of receipt of such application and prior to considering or riding on such application, submit such application to the relevant planning authority for its assessment and determination of the impact of the application on transport plans and public transport services; and 45

(b) ensure that such application is accompanied by the required traffic impact assessment and public transport assessment, and has sufficient information for such authority to assess and determine the impact of the application on transport plans and services.

(4) The planning authority must, within 28 days— 50

(a) approve or refuse an application for a change or intensification in land use or development proposal submitted in terms of subsection (3); and

(b) submit its written decision and any objections with respect to such application, including directions or conditions for compliance with the transport plans, to such authority vested under law with responsibility for considering the application. 55

(5) The authority vested with responsibility for consideration of applications for change or intensification in land use or its development may not approve such application—

- (a) prior to the expiry of the 28-day period referred to in subsection (4); or
- (b) which is in conflict with the directions of or conditions required by the planning authority as contemplated in subsection (4)(b), except to the extent that the planning authority's directions or conditions are altered by the development tribunal in terms of subsection (6).

(6) Where any person is aggrieved by any decision of a planning authority in terms of this section, such person may appeal against the decision to the development tribunal established for the relevant province under section 15 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), or replacing provincial legislation, in the manner and within the time prescribed.

(7) Despite any provision to the contrary in the Deeds Registries Act, 1937 (Act No. 47 of 1937), or any other law, conditions imposed in terms of subsection (4)(b) must be registered or endorsed against the relevant title deed.

(8) Despite any provision to the contrary in the Deeds Registries Act, 1937 (Act No. 47 of 1937), or any other law, the registrar of deeds may, with the written approval of the planning authority, cancel any condition which has in terms of subsection (5) been inserted in a deed of transfer or endorsed upon a title deed.

(9) Any person who undertakes a development involving a change or intensification in land use or development proposal without the approval of the planning authority under this section, or contrary to a condition imposed by such an authority, is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding six months.

(10) Where a building or structure has been erected without the approval of a planning authority in circumstances where such approval should have been obtained under this section, or in conflict with a condition imposed under this section, the relevant planning authority may apply to the High Court having jurisdiction for an order compelling the owner of the property to demolish or remove the building or structure at the owner's cost, or authorizing the authority to do so and claim the costs involved from the owner, or making such other order as the Court may consider to be just.

PART 8

*Provincial Operating **Licensing** Boards: Matters of National Concern*

Establishment and functions of provincial boards

30. (1) Subject to subsection (2), every MEC must establish a board for the province and appoint fit and proper persons as members who are characterised by their independence, impartiality and fairness and who further are suitable for membership by reason of their understanding of and expertise in or knowledge of the public transport industry.

(2) A province may provide in provincial laws for the functions of the board to be transferred to similar bodies to be established by transport authorities, in respect of applications relating to transport within their transport areas, but only if the MEC is satisfied that the particular transport authority is competent to do so and is performing the functions contemplated in section 10(13) satisfactorily.

(3) The functions of a board are to receive, consider and decide on or otherwise dispose of, in accordance with this Act and relevant provincial laws—

- (a) applications for the granting of operating licences for intraprovincial transport;
- (b) applications for the granting of operating licences for interprovincial transport involving the province for which the board has been established, subject to the approval of the relevant board of the other province, or of every other province, in which passengers are picked up or set down, as the case may be, subject to subsection (5);
- (c) applications for the renewal, amendment or transfer of operating licences for intraprovincial transport and provincial legislation may, subject to section 36(a), however, limit or prohibit such transfer; and
- (d) applications for the renewal, amendment or transfer of operating licences that had been so granted by it for interprovincial transport, subject to the approval of the relevant board of the other province, or of every other province, in which passengers are picked up or set down, as the case may be, but subject to subsection (3).

(4) In addition, a board, on application made to it by the holder of any permit at any time before the day on which the permit lapses in terms of section 32, may convert the permit to an operating licence in terms of this Act and relevant provincial laws, if, in terms of subsection (3), it would have had jurisdiction if the applicant had applied for an operating licence involving the same kind of transport. 5

(5) (a) If, in the case of any application mentioned in paragraph (b) or (d) of subsection (3), the board considering the application, has not succeeded in obtaining the required approval of another board by the expiry of the period prescribed by the MEC for that purpose, the first-mentioned board may refer the matter for decision to the Transport Appeal Tribunal established by section 3 of the Transport Appeal Tribunal 10 Act, 1998 (Act No. 39 of 1998).

(b) A board approached for its approval in terms of paragraph (b) or (d) of subsection (3), that fails to communicate its decision before expiry of that prescribed period to the board that requested the approval, must be regarded for the purposes of paragraph (a) of this subsection as having refused its approval. 15

PART 9

Operating Licences: Matters of National Concern

Types of vehicles which maybe used for public transport services

31. (1) Despite this Act or any other law, from a date to be determined by the Minister by notice in the *Government Gazette*, which may not be earlier than 1 October 2004, 20 operating licences may only be issued for vehicles designed or lawfully adapted by a registered manufacturer in compliance with the Road Traffic Act, 1989 (Act No. 29 of 1989), according to acceptable safety standards, to carry—

(a) fewer than nine persons, excluding the driver; or

(b) 18 persons, excluding the driver; or

(c) 35 persons, excluding the driver; or

(d) 46 or more persons, excluding the driver, 25

unless the Minister, in consultation with the MECs, provides otherwise for special categories of vehicles by notice in the *Government Gazette*, to cater for exceptional cases in rural areas, or exceptional cases in relation to tourist or courtesy services. 30

(2) Despite this Act or any other law, from a date to be determined by the Minister by notice in the *Government Gazette*, which may not be earlier than 1 October 2006, no vehicle may be used for the operation of a public transport service, except by a foreign carrier as defined in section 1 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998), unless it is a vehicle contemplated in subsection (1) and unless the Minister, in 35 consultation with the MECs, provides otherwise for special categories of vehicles by notice in the *Government Gazette*, to cater for exceptional cases in rural areas, or exceptional cases in relation to tourist or courtesy services.

(3) A midibus may be used for the operation of an unscheduled service only where—

(a) there are no existing scheduled services on the same route or on another route 40 in the same corridor; and

(b) relevant transport plans allow for its use.

(4) Where a vehicle has been specially adapted to carry wheelchairs, the provisions of this Act regarding vehicle capacity apply, unless the Minister prescribes otherwise.

(5) No standing passengers maybe carried in a motor car, minibus or midibus. 45

Continuation and conversion of existing permits

32. (1) All permits must be converted to operating licences by the date mentioned in subsection (2), failing which they lapse.

(2) (a) The Minister in consultation with the MECs must by notice in the *Government Gazette* determine a date by which all permits must have been converted for the 50 purposes of this section, with due regard among other things to the consideration that operators may not be deprived of their permits through not being able to apply timeously for conversions due to circumstances beyond their control.

(b) The Minister, in consultation with the MECs, may defer the date so determined by notice in the *Government Gazette* in respect of a particular province or provinces. 55

(3) Subject to subsections (5) and (6), a permit authorizing services by means of a minibus may be converted to an operating licence for a minibus, even if the number of authorised passengers increases, but a conversion under this section may not have the

result that the total number of passengers that may be conveyed in terms of the operating licence is more than fifteen per cent greater than the total number of passengers that could be conveyed under the permit or permits from which the operating licence was converted, unless this Act or relevant transport plans allow for this.

(4) Subject to this Act, an operating licence that has been converted from a permit 5 confers the same authority and has the same status as the permit from which it was converted.

(5) (a) Subject to section 3 1(3), permits for unscheduled services operated by means of minibuses may be converted to operating licences for unscheduled or scheduled services operated by means of midibuses, depending on relevant transport plans, on the 10 basis of one operating licence for the surrender of two permits.

(b) Such an operating licence must be issued for an indefinite period if both such permits were issued for an indefinite period, otherwise for a fixed period not exceeding five years.

(c) Such an operating licence must, in addition to the matters mentioned in provincial 15 laws, specify the number of seated passengers that may be carried.

(6) Permits for unscheduled services operated by vehicles with a seating capacity of fewer than nine persons, including the driver, may be converted to operating licences—

(a) for unscheduled services operated by means minibuses on the basis of one operating licence for the surrender of two permits and the operating licence 20 must be issued for an indefinite period if both such permits were issued for an indefinite period, otherwise for a fixed period not exceeding five years; or

(b) for unscheduled or scheduled services operated by means of midibuses, subject to section 3 1(3), on the basis of one operating licence for the surrender 25 of four permits, which operating licence must—

(i) be issued for an indefinite period if all four such permits were issued for an indefinite period, otherwise for a fixed period not exceeding five years; and

(ii) in addition to the matters mentioned in provincial laws, specify the 30 number of seated passengers that may be carried.

Operating licence or permit prerequisite for operation of public transport services

33. (1) Subject to subsection (2), no person may operate a road-based public transport service without holding the necessary permit or operating licence or, in the case of a special event, a temporary permit issued in terms of section 20 of the Road Transportation Act, 1977 (Act No. 74 of 1977), or an authorisation obtained or 35 completed in terms of a replacing provincial law, for such special event.

(2) Subsection (1) does not apply to any person operating a public transport service in the circumstances contemplated in section 1(2) of the Road Transportation Act, 1977 (Act No. 74 of 1977), or a replacing provincial law, subject to section 44, or in the course 40 of conducting—

(a) cross-border road transport on the authority of a permit granted and issued to the person in accordance with Part 6 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998); or

(b) cabotage on the authority of a permit mentioned in section 31 of that Act.

Operating licence is not a right 45

34. (1) Except on the conversion of a permit to an operating licence, no person has a right to be issued with an operating licence.

(2) An operating licence in respect of a minibus taxi-type service may be granted only to a person who is a member of a provisionally or fully registered association, or to a registered non-member, or to a person who has applied for registration as a non-member 50 and has been granted a certificate contemplated in section 113(2).

Maximum validity period of operating licences

35. No operating licence may be issued for longer than five years, except where the operating licence is issued pursuant to the conversion of a permit or permits and this is 55 allowed for in section 32 or 79 or relevant provincial laws.

Board to which application must be made**36. Any application for—**

- (a) the granting, renewal, amendment or transfer of a operating licence for intraprovincial transport, must be made to the board of the province concerned; 5
- (b) the granting of an operating licence for interprovincial transport must be made to the board of the province where the journey originates;
- (c) the renewal, amendment or transfer of an operating licence for interprovincial transport that had been granted by the board of a particular province, must be made to the board of that province. 10

Notice of applications regarding operating licences

37. (1) A board must by notice in the *Government Gazette*, in the manner and within the time prescribed by the MEC, give notice of receipt of an application for—

- (a) the granting, renewal, amendment or transfer of an operating licence; and 15
- (b) the conversion of permits to operating licences where the permit is converted from a radius-based or area-based permit to a route-based operating licence, or where there is a conversion to an operating licence for a vehicle which is more than 15 per cent larger,

and in that notice state the essential particulars of the applications prescribed by the MEC, subject to subsection (2), and invite interested persons and bodies to comment and make representations with regard thereto by a specified date. 20

(2) In the case of applications contemplated in paragraph (b) of subsection (1), and subsection (2) of section 41, where the applicant has already applied for a permit as contemplated in subsection (2)(c) of that section, the board may, instead of stating such particulars in the notice in the *Government Gazette*, state that such particulars are available for inspection at the board's offices, if it posts the particulars on a notice board at its offices in a prominent position for the relevant period. 25

(3) All comments and representations received in response to and in compliance with that notice and which are relevant to the disposal of that application, must be duly considered by that board in dealing with the application. 30

Disqualifications with regard to holding of operating licences

38. A person directly involved in the following functions or directly involved in the management thereof, may not hold an operating licence authorizing the operation of a public transport service or be engaged in the operation of such a service:

- (a) Evaluating application; relating to, or issuing, operating licences; 35
- (b) preparing operating licences strategies;
- (c) undertaking law enforcement relating to public transport;
- (d) processing applications for registration or provisional registration of associations, members thereof or non-members, or issuing registration certificates or distinguishing marks pursuant thereto; 40
- (e) acting as an assessor contemplated in section 102.

Operating licences for public transport services provided for in transport plans**39. (1)** Before considering any application for—

- (a) the granting, renewal, amendment or transfer of an operating licence authorising the operation of any public transport service other than a charter service; or 45
- (b) the conversion of a permit to an operating licence that involves a conversion from a radius-or area-based permit to a route-based operating licence, or to an operating licence for a larger vehicle,

in the area of a planning authority, the board must by written notice inform the planning authority of the application with the request to make recommendations with regard to the application, together with any representations, to the board within the period stated in the notice. 50

(2) The planning authority must—

- (a) make its recommendations and any representations it considers fit, having due regard to the transport plans prepared for its area, or, if there are no such plans, according to due inquiries and investigations carried out by it; and 55

- (b) submit them to the board within the period allowed therefor by the notice issued in terms of subsection (1).
- (3) The board may condone the late submission of recommendations and representations under subsection (2).
- (4) Subject to section 83, the board, in disposing of an application, must act according to, and may not grant an operating licence contrary to— 5
- (a) those transport plans; and
 - (b) the recommendations and representations submitted in terms of subsection (2).
- (5) Where the planning authority has failed to submit recommendations and representations to the board in response to the latter's request, that board may dispose of and decide the application without any input from the planning authority, by considering the matters mentioned in paragraphs (a) to (f) of section 83(1). 10

Operating licences for contracted services

- 40. (1)** (a) Where any commercial service contract or subsidised service contract has been awarded by a competent tender board or authority after completion of a process of public tendering in accordance with law, but subject to section 47(3), the relevant boards may not refuse the application of the relevant public transport operator for the granting or renewal of a operating licence required for the purposes of that service, subject to section 30(3)(b) and 30(5). 15 20
- (b) Such an application must be made in the manner and form prescribed by the MEC and be accompanied by the fee so prescribed, and that operator must specify in the application every vehicle by means of which the public transport service in terms of such a contract is to be operated.
- (2) Upon having applied successfully with regard to such an operating licence, that operator is entitled to be issued with an operating licence for every vehicle by means of which the public transport service in terms of such a contract is to be operated. 25
- (3) Operating licences for the operation of public transport services to be provided in terms of commercial service contracts or subsidised service contracts must be granted only for the duration and subject to the terms and conditions of the contract in question, and may be amended to extend the duration thereof where the duration of the relevant contract is extended. 30

Special procedures for legalisation

- 41. (1)** Despite other provisions of this Act, the MEC, in consultation with the Minister, may prescribe regulations providing that the board must grant operating licences to public transport operators for minibuss taxi-type services whose associations applied for their registration on or before 30 June 1997, subject to subsection (2), where such operators have not been able to apply for or obtain permits in the past due to reasons beyond their control such as inability of the government to process applications, unfair discrimination or lack of information and understanding of the relevant processes. 35 40
- (2) Regulations under subsection (1) may provide—
- (a) that the board must grant the operating licence if the applicant complies with criteria set by the MEC in the regulations, in consultation with the Minister, but subject to the following:
 - (i) The board must consider the matters set out in section 83(1); 45
 - (ii) the vehicle to which the application relates, must be registered in the name of the applicant;
 - (iii) the applicant must be a member of a registered or provisionally registered association, which applied for registration on or before 30 June 1997; 50
 - (iv) the routes in respect of which the applicant's association was registered, must have been verified in the manner prescribed by the MEC;
 - (v) the board must submit the application to the relevant planning authority for recommendations on the matters set out in section 83(1)(b), and must consider those recommendations, subject to section 39(5); 55
 - (vi) the applicant must have applied for the operating licence on or before a date set by the MEC in the regulations, in consultation with the Minister;
 - (b) for special procedures and forms in respect of applications contemplated in this subsection;

- (c) that applicants who have already applied for permits before the date of commencement of this Act, need not re-apply if they meet the requirements set in the regulations; and
- (d) that no new operating licences may be granted for minibuss taxi-type services in the province, apart from those contemplated in subsection (1): until a date set by the MEC in the regulations, in consultation with the Minister, but that the MEC may grant exemptions from this requirement in respect of specific routes on advice from the relevant planning authority. 5

Withdrawal of operating licences upon termination of contracts

42. Where a commercial service contract, subsidised service contract, current tendered contract or interim contract has been terminated for any reason, the board must, upon proof of termination furnished by the relevant contracting authority, withdraw the operating licence or permit or, as the case may be, every operating licence or permit, relating to the operation of the public transport service provided in terms of such a contract. 10 15

Duties of holder of operating licence or permit

43. The holder of an operating licence or permit must—
- (a) on demand by an authorised officer, produce the operating licence or permit or any authorisation or registration certificate issued in terms of this Act or replacing provincial laws, subject to section 93(1)(b); 20
 - (b) display and keep affixed in the manner and form prescribed by the MEC, a distinguishing mark on the vehicle to which the operating licence or permit relates.

Conveyance of learners, students, teachers and lecturers

44. The conveyance of learners, students, teachers or lecturers to and from a school or other educational institution on a daily basis, is regarded as a public transport service. 25

Minimum information to be contained in operating licences

45. The Minister, in consultation with the MECs, may prescribe minimum information to be contained in operating licences issued by a provincial board.

Interaction between public transport and cross-border road transport 30

46. (1) Where on trips involving cross-border road transport, a domestic public transport operator picks up or sets down passengers within the Republic after leaving the point of origin and before crossing the relevant international border, such operator must be in possession of the necessary operating licence or permit as required by this Act.
- (2) No one may set down passengers at or near to an international border, where it is clear that such passengers intend to cross the border into another state, unless that person is the holder of the necessary permit required by the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998). 35

PART 10

Regulated Competition 40

Subsidised service contracts

47. (1) After the expiry of any interim contract or current tendered contract, if the public transport service that had been operated in terms thereof will continue to be subsidised, that service must be operated in terms of a subsidised service contract.
- (2) Only a provincial department, a transport authority and a core city may enter into a subsidised service contract with a public transport operator, and, subject to subsection (3), only if— 45
- (a) the service to be operated in terms thereof, has been put out to public tendering in accordance with a procedure prescribed by or in terms of a law of the province; 50

- (b) the tender has been awarded by the tender authority in accordance with that procedure; and
- (c) the contract is entered into with the successful tenderer.
- (3) The Minister may in terms of procedures prescribed, in consultation with the MEC and the relevant transport authority, if any, grant exemption from the requirements of subsection (2) and allow that a contract be negotiated with an operator, once only, in respect of a service or part of a service if—
 - (a) the negotiation of such a contract, in the opinion of the Minister, is necessary—
 - (i) to promote the economic empowerment of small business, or of persons disadvantaged by unfair discrimination; or
 - (ii) to facilitate the restructuring of a parastatal or municipal transport operator to enable it to—
 - (aa) comply with section 48 or to discourage monopolies; and
 - (bb) promote the economic empowerment of small business, or of persons disadvantaged by unfair discrimination; and
 - (b) the negotiation of such contract will not lead to—
 - (i) a substantial increase in the services being provided by the relevant parastatal or municipal transport operator;
 - (ii) more than the prescribed percentage of the total value of subsidised service contracts in the transport area or province in question being subjected to negotiated contracts under this subsection; and
 - (iii) the cost of the negotiated contract, calculated in the prescribed manner, being substantially higher than what would have been the case were the service subjected to competitive tendering under similar terms and conditions;
 - (c) the service for which the negotiated contract is contemplated is not at the relevant time, and has not previously been, the subject of a current tendered contract or a contract negotiated under this subsection;
 - (d) the contract to be negotiated complies with all requirements prescribed under subsection (4)(a), is substantially in the form of the model contract documents contemplated in subsection (4)(b) and has a maximum validity period of five years;
 - (e) the provincial department, transport authority or core city, as the case may be, prepares a business plan that—
 - (i) sets out how the negotiated contract will be implemented; and
 - (ii) states how the requirements of this section have been complied with; and
 - (f) the public transport operator concerned may not for a period of such negotiated contract calculated as 80 per cent of that period, beginning on the date of commencement thereof, be party to any other current tendered contract or subsidised service contract, or another contract negotiated under this subsection; and
 - (g) the contract provides that the operator must, by a date stated in the contract, which may not be later than two years after the date of commencement thereof, be majority-owned by persons disadvantaged by unfair discrimination.
- (4) The Minister must, in consultation with the MECs—
 - (a) prescribe requirements for tender and contract documents to be used for subsidised service contracts which will be binding on contracting authorities unless the Minister agrees that an authority may deviate from the requirements in a specific case;
 - (b) provide model tender and contract documents, and publish them in the *Government Gazette*, for subsidised service contracts as a requirement for contracting authorities, who may not deviate therefrom unless this is agreed to by the Minister.
- (5) In performing their functions under subsidised service contracts, public transport operators must comply with all applicable labour legislation and industry agreements, road traffic legislation and other relevant laws, and the model tender and contract documents mentioned in subsection (4) must provide for sanctions to enforce such compliance,
- (6) Where the Minister wishes to act under subsection (3), the Minister must give notice in the *Government Gazette* of the intention to do so, with particulars relating to

the proposed action, and allow interested persons to make comments or representations relating thereto within a time specified in the notice.

(7) The Minister must consider any comments and representations received before deciding to proceed with the proposed action.

Requirements to qualify as tenderer for commercial service contractor subsidised 5 service contract

48. (1) To qualify as a tenderer for a commercial service contract or a subsidised service contract, an operator and, where appropriate, any person or entity exercising ownership control over an operator, or performing services on behalf of, or in the capacity as agent of, an operator— 10

- (a) in the case of an unscheduled service must be registered with the Registrar of the province in which the relevant contract is to be performed, where this Act or a replacing provincial law requires such registration; and
- (b) must conduct public transport operations according to business principles with financial ring fencing; and 15
- (c) must be liable to pay income tax, subject to subsection (2), and furnish proof to the satisfaction of the competent tender board or authority that the operator is registered as a taxpayer under the Income Tax Act, 1962 (Act No. 58 of 1962). 20

(2) A municipal or parastatal transport operator who does not comply with subsection (1)(c) may qualify to be awarded a subsidised service contract, once only in respect of a particular service, where—

- (a) the service was operated by such operator on 1 October 1996; and
- (b) the service was not previously subject to an interim contract or a current tendered contract. 25

(3) The Minister may prescribe additional requirements or qualifications for public transport operators to qualify as tenderers for subsidised service contracts or commercial service contracts.

(4) For the purposes of subsection (1)(b), an operator is financially ringfenced if—

- (a) the business of the operator's undertaking is conducted separately from that of another entity or undertaking or any other organisation; 30
- (b) the operator keeps separate accounting records, in accordance with generally accepted accounting practice and procedures, of its assets, liabilities, income, expenditure, profits and losses;
- (c) the operator's undertaking is financially sustainable in terms of its financial statements; and 35
- (d) the operator has no unfair advantage as regards access to financial or other support or resources from any organ of state, unless such advantage is part of a scheme which applies generally, approved by the Minister, to protect or advance public transport operators disadvantaged by unfair discrimination. 40

(5) For the duration of a commercial service contractor subsidised service contract, an operator and, where appropriate, any person or entity exercising ownership control over an operator, or performing services on behalf of or in the capacity as agent of an operator, must—

- (a) keep separate record, in accordance with generally accepted accounting practices and procedures, of his or her or its financial position, performance, flow of funds and change in financial position; 45
- (b) undergo an annual audit by a person registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), as an accountant and auditor, and engaged in public practice as such; 50
- (c) comply with the requirements of subsection (1);
- (d) not enjoy an unfair advantage emanating from an organ of state, but that any advantage emanating from a subsidised service contract is not deemed to be an unfair advantage for the purposes of this section. 55

(6) For the purpose of this section—

- (a) "ownership control" means the ability to exercise or to influence substantially the exercise, of any of the financial and operating policies of an operator so as to obtain a benefit from its activities; and
- (b) "unfair advantage" means, but is not limited to- 60
 - (i) the receipt by an operator of any direct or indirect benefit, including funds, resources, donations, grants, consideration or other advantage,

- whether financial or otherwise, which is not available on the same terms and conditions to all other potential operators;
- (ii) the direct or indirect guarantee or **honouring** of any of the obligations of the operator, including the arrangement or facilitation of the granting of any such loan; 5
- (iii) the direct or indirect provision of a loan bearing no interest, or interest at a substantially lower rate than would be available commercially to a similar operator under similar conditions, or a loan in respect of which interest payments are deferred for a period of more than six months, including the arrangement or facilitation of the granting of any such loan; 10
- (iv) allowing an operator to make use, or failing to prevent an operator from making use, of any public resources, including infrastructure, property, facilities, assets, human resources, systems, expertise or intellectual property, or facilitating such action, which would not be available to another similar operator on the same terms and conditions. 15

Involvement of municipalities and transport authorities in public transport services

49. (1) A transport authority may not operate any public transport service, but may own movable or immovable assets relating to such a service which are leased or otherwise made available to public transport operators, if such assets are made available to operators with due regard to the transport plans of such authority and to sections 9 and 217(1) and (2) of the Constitution. 20

(2) Unless it complies with section 48—

- (a) a municipality that is a party to a transport authority may not conclude a subsidised service contract with that transport authority; 25
- (b) no municipality may conclude a subsidised service contract with any other transport authority, a province or any other municipality; and
- (c) no body established by a municipality to conduct public transport operations may tender for any commercial service contract or subsidised service contract.

(3) Subject to section 47(3), no moneys made available for the purposes of this Act may be used in connection with the operation of a public transport service by a municipal transport operator or parastatal transport operator otherwise than in accordance with a commercial service contract or a subsidised service contract. 30

(4) Subsections (2) and (3) do not preclude any municipality from operating a municipal public transport service at its own cost. 35

Commercial service contracts

50. A planning authority may, by notice in the *Provincial Gazette* and in a newspaper generally circulating in the area where a public transport service is to be operated, invite tenders from public transport operators for the operation of that service in terms of a commercial service contract. 40

Withdrawal of operating licence or permit in rationalisation of public transport services

51. (1) (a) When a planning authority proposes to rationalise the operation of the public transport services in its area or where a transport plan reveals that there is a surplus of public transport services on a particular route, as a result of which an existing non-contracted public transport service is no longer required, the planning authority must use its best endeavors to offer the holder of the operating licence or permit in question any viable alternative service or services in the place of the existing service. 45

(b) Such an offer may not be refused unreasonably by that holder.

(c) Where the offer of any viable alternative service or services has been accepted— 50

- (i) the holder of the existing operating licence or permit must apply forthwith to the board in accordance with this Act and applicable provincial laws for the granting of the necessary operating licence or operating licences with regard to the alternative service or services;

- (ii) the planning authority must forthwith furnish its recommendations to the board: 55

- (iii) that holder must surrender the operating licence or permit for the existing service to the board when it has decided the application.
- (2) (a) If the planning authority is unable to offer any viable alternative service or services to the holder of the existing operating licence, or such holder has refused to accept such alternative service, that authority may apply to the board to withdraw the operating licence. 5
- (b) The board, upon receipt of such an application, in writing, must notify the holder of the existing operating licence accordingly, and request the holder to furnish reasons, within the time mentioned in the notification, why the existing operating licence should not be withdrawn. 10
- (c) If, after having considered the application and the reasons and representations, if any, furnished by the holder of the existing operating licence, the board is satisfied that the operation of the public transport service to which the existing operating licence or permit relates, is inconsistent with the proposed new public transport plan, the board may withdraw the existing operating licence or permit. 15
- (d) The effective date of such withdrawal is when the relevant plan becomes operative or a date six months as from the date of the board's decision, whichever occurs last, and the board must by written notice inform the holder of the existing operating licence or permit accordingly.
- (3) Where an operating licence or permit is withdrawn in terms of subsection (2), the planning authority is liable to pay fair compensation to the person who was the holder of that operating licence at the time of its withdrawal, for loss suffered as a result of the withdrawal, unless— 20
 - (a) that holder unreasonably refused the offer of an alternative service;
 - (b) there are other grounds which, in terms of this Act, justify the withdrawal of that operating licence; 25
 - (c) the public transport service to which that operating licence relates on the route or routes in question, is supported financially or operated by a municipal transport operator that is not yet financially ringfenced or is funded wholly or partly by the State; or 30
 - (d) that holder has failed to register as a taxpayer in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), where such holder is required by that Act so to register.
- (4) That compensation must be calculated in accordance with guidelines determined by the Minister in consultation with the MECS, and published by notice in the *Government Gazette*, and must be best suited to the circumstances and conditions prevailing in the province, and the Minister in consultation with the MECS must prescribe a minimum amount of such compensation. 35
- (5) A notice in terms of subsection (2)(c) must be sent to the holder of the withdrawn operating licence or permit within the period and in the manner as prescribed by the MEC so as to give that holder sufficient opportunity to submit a claim for compensation and which must, in the manner so prescribed, set out in detail the manner in which the claimed amount is calculated and substantiate the amount claimed. 40
- (6) (a) The planning authority and such a holder must use their best endeavors to reach agreement on the amount of the compensation within the guidelines determined by the Minister in terms of subsection (4). 45
- (b) Should the parties fail to reach agreement as to such an amount, they may approach any competent court having jurisdiction to decide the matter.

PART 11 *Registrations*

50

National Transport Register

- 52. (1) The Minister must designate an officer in the Department to keep and maintain a National Transport Register.
- (2) In such Register must be recorded the information about associations, public transport services and operators, the vehicles used for operating those services and any other relevant information derived from the provincial registers, that may be prescribed by the Minister from time to time. 55
- (3) The purpose of the National Transport Register is to serve as a data base to monitor the implementation of formalisation of the public transport industry and to serve as input to the government's programme of economic assistance to that industry. 60

(4) (a) Subject to subsection (7) of section 6, which applies with the changes required by the context, the information recorded in the National Transport Register is open to inspection by the public during the Department's normal office hours.

(b) At the request of any interested person and on payment of the fee, if any, that has been prescribed by the Minister, that official must furnish the person with a certified 5 copy of or extract from any record contained in the Register.

Appointment of Registrars

53. (1) Every MEC must appoint a fit and proper person as the Registrar for the province on terms and conditions agreed to between the MEC and the member of the executive council responsible for finance, by a date determined by the Minister in 10 consultation with the MECs.

(2) The Registrar so appointed is responsible for receiving, considering and deciding upon applications for the registration of associations and their members, and of non-members, and related matters, at least in respect of the minibuss taxi industry as provided for in this Part and Part 17. 15

(3) Subject to subsection (4), a Registrar must perform the functions of that office independently, fairly and impartially.

(4) Despite the provisions of this Act, any person appointed as a Registrar before the commencement of this Act may continue in office until expiry of the period for which such Registrar was appointed, or for three years after such date of commencement, 20 whichever is the shorter.

PART 12

Registrations and Other Matters relating to Minibus Taxi Industry

Functions of Registrar

54. A Registrar— 25

- (a) receives and, in accordance with this Act and applicable provincial laws, considers and decides on applications for the registration or provisional registration of associations based in the province and their members, and of any non-members so based;
- (b) in the circumstances determined in this Act, decides on and effects the 30 suspension or cancellation of such a registration of any association or any of its members or any non-member in accordance with such laws;
- (c) keeps records of all other information required to maintain the National Transport Register. 35

Registration of association or non-member in one province only 35

55. (1) (a) An association and any of its members or any non-member that undertakes interprovincial services may not at any time be registered or provisionally registered in more than one province in respect of a particular route.

(b) For the purposes of paragraph (a) and section 57(b)(i), associations and non-members must select the province where they are based and once a selection has 40 been made, it may in the case of an association, be changed only in accordance with a resolution adopted by the members of the association at an annual general meeting of its members in accordance with the association's constitution.

(2) A registration or provisional registration of an association and any of its members and of any non-member, who undertake interprovincial transport in a province while 45 registered in another province, is without any legal force.

(3) After having registered or provisionally registered any association whose members undertake interprovincial transport, in accordance with this section, the Registrar concerned must forward a copy of that association's registration certificate or certificate of provisional registration to the Registrar of each other province to or from 50 which public transport services are operated by that association's members.

Provisional registration and full registration of associations and non-members registered under provincial laws

56. (1) Any association and any non-member which, immediately before the commencement of this Act, was registered in terms of any provincial law, is regarded as an association or non-member registered provisionally for a period ending on a date to be determined by the MEC by notice in the *Provincial Gazette* after consulting the Minister and the other MECs.

(2) The provisional registration of an association or non-member in terms of subsection (1), lapses on whichever one of the following events takes place first:

- (a) When the period mentioned in subsection (1) expires; 10
- (b) when the provisional registration is converted to full registration in terms of provincial laws.

(3) The provisional registration of a non-member may not be converted to full registration unless the non-member—

- (a) has had each permit held by that non-member converted to an operating licence; and
- (b) holds an operating licence for each vehicle by means of which the non-member operates a public transport service; and
- (c) has subscribed to the Code of Conduct applicable in the province.

Direct full registration of associations

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57. Associations qualify for full registration only if—

- (a) every member of the association—
 - (i) holds an appropriate operating licence for each vehicle by means of which the member operates a public transport service; and
 - (ii) operates the public transport service to which such an operating licence relates, in compliance with the terms of, and conditions attached to, the authorisation conferred by the operating licence; 25
 - (iii) has had all permits held by that member converted to operating licences;
 - (iv) has subscribed to a constitution that complies with this Act;
- (b) the association's application for registration has been made— 30
 - (i) to the Registrar of the province where it is based; and
 - (ii) by the association's authorised representatives in the manner provided for in this Act and applicable provincial laws;
- (c) the association complies with relevant provincial laws in all other respects.

Registration of members

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58. Where an association has been provisionally or fully registered, the Registrar must register every member thereof in respect of which the required information has been provided in the relevant application form, as a provisional or full member of that association, as the case may be.

Issuing of certificates and distinguishing marks upon registration or provisional registration

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59. (1) The Registrars must liaise with one another so as to ensure that the registration numbers allocated by each of them to associations, their members, and non-members are unique.

(2)(a) Where a member or non-member that is registered, is engaged in interprovincial transport, the Registrar must in addition issue, in the manner and form prescribed by the Minister, a distinguishing mark for each vehicle of the registered member or non-member that is used under the authority of an appropriate operating licence to operate the interprovincial transport. 45

(b) Where a member or non-member that is provisionally registered is engaged in interprovincial transport, the Registrar must in addition issue, in the manner and form prescribed by the Minister, a distinguishing mark for each vehicle of the provisionally registered member or non-member— 50

- (i) that is so used under the authority of an appropriate operating licence or permit; or 55
- (ii) in respect of which the provisionally registered member or non-member has made application for an appropriate operating licence in accordance with this Act and relevant provincial laws.

(3) The Minister may, in consultation with the MECS, prescribe the minimum particulars to be contained in any registration certificate or certificate of provisional registration to be issued for interprovincial transport.

Requirements for constitutions of associations

60. The constitution of an association must for the purposes of full registration 5 comply with the minimum requirements, if any, prescribed by the Minister in consultation with the MECs.

Minister to determine minimum requirements for codes of conduct

61. Every MEC must prescribe a Code of Conduct for operators of minibus taxi-type services in the province, and the Minister may, in consultation with the MECS, prescribe 10 the matters which, as a minimum, must be included in such a code of conduct.

Benefits of registration

62. (1) Only registered or provisionally registered associations, members and non-members may receive financial assistance from any organ of state in any sphere of government or from any transport authority or core city, for the purposes of establishing 15 or operating a co-operative for minibus taxi operators.

(2) Only registered members and registered non-members are eligible to be awarded a commercial service contract or a subsidised service contract.

(3) An organ of state, a transport authority and a core city may not render financial assistance for any purpose relating to public transport to any operators of minibus 20 taxi-type services who are not registered or provisionally registered members or non-members, or to any associations that are not so registered, except assistance relating to training or instruction.

CHAPTER 3 MATTERS OF PROVINCIAL CONCERN

25

PART 13 *Functions of MEC*

Functions of MEC

63. (1) The MEC must, in addition to the functions contemplated in section 9—
- (a) facilitate the increased utilisation of public transport for the province; 30
 - (b) take the necessary steps to promote co-ordination between transport authorities and other planning authorities in the province, or between such authorities and the province, with a view to avoiding duplication of effort;
 - (c) in taking any measures to promote public transport—
 - (i) further, within overall land transport objectives, the reasonable safety of 35 passengers;
 - (ii) encourage efficient and commercial conduct on the part of transport operators in their provision of public transport services, and encourage competitive tendering for contracts and concessions;
 - (iii) further a strategic and integrated approach to the provision of public 40 transport;
 - (iv) further or encourage the efficient use of energy resources, and limit or reduce adverse environmental impacts to the minimum;
 - (d) promote public transport so that—
 - (i) it is effective in meeting user needs; 45
 - (ii) it operates efficiently as regards the use of resources;
 - (iii) the services provided, are of an acceptable quality and are readily accessible and are operated in conjunction with effective infrastructure provided at reasonable cost;
 - (iv) in the operation of public transport services, high priority is given to 50 safety;
 - (e) strive to ensure that in the promotion of integrated transport due consideration is given to the needs of transport users;

- (f) promote the performance of integrated transport planning in the province and cause to be prepared a provincial transport framework in accordance with section 22;
 - (g) where this Act requires public consultation and participation before taking any decision or performing any official act, prescribe the procedures to be followed in this regard.
- (2) Where at the commencement of this Act, the province has been undertaking planning of public transport, other than of services contemplated in section 20(4), which in terms of the Constitution should be undertaken by municipalities, the MEC and the planning authorities concerned must make arrangements for the transfer of the planning functions to the planning authorities concerned.

Regulations by MEC

64. (1) The MEC may make regulations with regard to any matter which, in terms of this Act, may or must be prescribed by an MEC under this Act.
- (2) The regulations may, in appropriate cases, provide that any person who contravenes a provision thereof or fails to comply therewith, is guilty of an offence and on conviction is liable to imprisonment not exceeding three months or a fine.
- (3) Any regulation made in terms of any previous law and in force immediately before the commencement of this Act with regard to matters in relation to which the MEC, in terms of subsection (1), is competent to make regulations, is regarded for the purposes of this Act, as regulations made in terms of that subsection until such time as the MEC makes a superseding regulation under this section.
- (4) The MEC may—
- (a) set maximum or minimum fares for subsidised public transport by rail, if the Minister has assigned the rail function to the province concerned;
 - (b) by notice in the *Provincial Gazette*, set norms and standards in respect of matters relating to the operation of subsidised public transport services by road that are subsidised from the provincial budget, and related infrastructure, to the extent that this function has been assigned to the province.

PART 14

Transport Authorities: Matters of Provincial Concern

Agreements for formation of transport areas and transport authorities

65. (1) Transport authorities may be established for transport areas, only as provided for in this Part and Part 5 and only if the functions of such authority in relation to the functions of the municipalities involved complies with the Constitution and with sections 84 and 85 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).
- (2) The parties to a founding agreement may agree to amend the boundaries of the transport area concerned, provided that should such amendment involve the area of an additional municipality, the transport authority, if already established, must be dissolved in terms of section 71 and reconstituted.

Declaration of transport areas, and concomitant establishment of transport authorities

66. (1) Not later than 14 days after the conclusion of an agreement mentioned in section 65, the MEC must, by notice in the *Provincial Gazette*—
- (a) publish the founding agreement, which must comply with the requirements of section 67;
 - (b) declare the area concerned to be a transport area, and assign to it the name provided for in that agreement;
 - (c) where applicable, withdraw, in the manner provided for in section 3(1)(c) of the Urban Transport Act, 1977 (Act No. 74 of 1977), the notice by which the area or areas of the municipality or municipalities concerned had been included in the relevant MTA under paragraph (a) or (b) of section 3(1) of that Act; and

(d) in accordance with and subject to the founding agreement, establish for that transport area a transport authority with effect from the date specified for that purpose in the founding agreement.

(2) A founding agreement, upon having been so published, has the force of law, and no amendment thereof has any legal force or effect until the amendment is published by 5 notice in the *Provincial Gazette* by the MEC.

Requirements for founding agreements

67. The founding agreement must be in writing and provide at least for the following:
- (a) A **declaration** by the contracting **parties affirming** their agreement on the establishment of a transport authority for the transport area concerned; 10
 - (b) the name to be assigned to the transport area;
 - (c) the date with effect from which that transport authority is to be established;
 - (d) the establishment and structure of a governing body for that transport authority, the number of its members and the manner in which they are to be designated and appointed, but, only a person who serves as a **councillor** of a municipality party to the founding agreement (hereafter called a participating municipality), may be designated and appointed a member of the governing body; 15
 - (e) the designation and appointment of a chairperson and deputy chairperson for the governing body; 20
 - (f) voting procedures and members' voting rights at meetings of the governing body and any committee thereof, where applicable, and mechanisms and procedures for breaking deadlocks in decision-making;
 - (g) the appointment or designation of a chief executive officer for that transport authority, and the responsibilities, functions and powers attached to that office; 25
 - (h) the powers of the governing body that maybe delegated to any of its members or to the chief executive officer of that transport authority;
 - (i) the venue for the head office of that transport authority and for meetings of its governing body; 30
 - (j) the physical address for delivering, sending or serving all correspondence, documents, notices and court process directed to the transport authority;
 - (k) in the case where the transport area consists of the jurisdictional areas, or parts of the jurisdictional areas, of two or more participating **municipalities**—
 - (i) the contribution of each participating municipality to the funding of that transport authority; 35
 - (ii) the performance of the professional, technical, administrative, clerical, secretarial and other work arising from, necessary for, or relevant or incidental to, the exercise and performance by that transport authority of its powers and functions in terms of this Act; 40
 - (iii) subject to this Act, the requirements to be observed and procedures to be followed by any participating municipality that wants to withdraw from that transport authority, and its responsibilities, duties and obligations with regard to the then current or outstanding commitments and liabilities of that authority; and 45
 - (iv) the procedures to be followed for and pursuant to the voluntary dissolution of that transport authority, subject to section 10(13);
 - (l) the arrangements made for the performance of the professional, technical, administrative, clerical and other work of the transport authority in terms of section 75, if not already covered under paragraph (k)(ii). 50

Functions and competencies of transport authorities

68. (1) Subject to legislation applicable to local government, a transport authority must perform the functions assigned to it by this Act and may, with the agreement of the MEC or, where applicable, MECs—

- (a) promote security in public transport; 55
- (b) encourage and promote the optimal use of the available travel modes so as to enhance the effectiveness of the transport system and reduce traveling time and costs;
- (c) develop, operate and maintain a land transport information system;

- (d) market and promote and assume responsibility for publicity associated with the public transport system;
 - (e) provide information to users or potential users of public transport;
 - (f) in the case of subsidised services, determine fare structures and fare levels, and **concessionary** fares for special categories of passengers, and periodically adjust fares in consultation with stakeholders, if the MEC has entrusted the subsidy function to the transport authority; 5
 - (g) in the case of unsubsidised public transport services, set minimum fares;
 - (h) make payments to public transport operators operating public transport services in terms of subsidised service contracts **and concessionary** fare agreements to which it is a party, if the MEC has entrusted this function to the authority; 10
 - (i) institute” and conduct investigations into the financial circumstances and operating practices of—
 - (i) persons who, at the time, are existing or potential operators of public transport services in relation to or in the transport area; or 15
 - (ii) the holders of operating licences who, at the time, are operating public transport services in relation to or in that area, and, if the holder is a company belonging to a group of companies, also into those circumstances and practices of any other company in that group of companies; 20
 - (j) introduce or establish, or assist in or encourage, promote and facilitate the introduction or establishment of integrated ticketing systems and determine or prescribe measures for the regulation and control of revenue-sharing among the operators involved in that system;
 - (k) exercise control over service delivery through— 25
 - (i) the setting of operational and technical standards, and monitoring compliance therewith; and
 - (ii) the monitoring of contracts and concessions;
 - (l) develop, implement and monitor a strategy to prevent, minimise or reduce any adverse impacts of the land transport system on the environment; 30
 - (m) in agreement with relevant participating municipalities—
 - (i) take over functions relating to municipal roads;
 - (ii) apply measures to limit damage to the road system in that part of the transport area. 35
 - (2) The MEC and a transport authority may agree— 35
 - (a) that different functions be undertaken in rural areas as opposed to urban areas in the transport area concerned; or
 - (b) in the case of a district municipality being a participating municipality that is a Category C municipality contemplated in section 155(1)(c) of the Constitution, that different functions may be undertaken within the areas of jurisdiction of the Category B municipalities in the area concerned, as opposed to areas outside of such areas. 40
 - (3) The transport authority must, with a view to ensuring co-ordinated transport law enforcement within its area. liaise on a continuous basis with the South African Police Service, the relevant provincial and municipal law enforcement authorities or agencies, and the inspectors appointed and serving under the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998). 45
 - (4) A transport authority may, with the agreement of a participating municipality, assume co-responsibility for or assist the participating municipality in the application of traffic management techniques aimed at improving road traffic movement in that part of the transport area that coincides with the jurisdictional area of that participating municipality. 50
 - (5) (a) Whenever a transport authority—
 - (i) fails to perform its functions in terms of subsection (1);
 - (ii) having undertaken a voluntary function contemplated in subsection (2), fails to perform it; or 55
 - (iii) fails to perform such a function properly and effectively in accordance with this Act and applicable provincial laws,
- the MEC, by notice in writing addressed to the transport authority through the latter’s governing body or chief executive officer, may order that authority to remedy its default and perform the function concerned, or, as the case may be, to perform it properly and effectively, not later than the date stated in the notice. 60

(b) Thereupon the governing body and the chief executive officer are responsible to ensure that authority's speedy compliance with that direction.

(c) If the transport authority fails to remedy its default within the period allowed therefor in the notice, the MEC may—

- (i) intervene by taking steps to have the function performed by the provincial department or any other body or person that has the capacity to do so, subject to section 139 of the Constitution; and
- (ii) use moneys from the provincial revenue fund that are earmarked for allocation to the transport authority, to pay the costs arising from taking those steps, or recover those costs from the transport authority.

Ancillary powers of transport authorities

69. (1) A transport authority may enter into an agreement with a municipality that is not a participating municipality in terms of which the transport authority is to exercise or perform on behalf of that municipality, any power or function entrusted to the municipality by or in terms of this Act applicable provincial laws.

(2) The transport authority may only enter into such an agreement if it is competent in terms of this Act and applicable transport legislation to exercise or perform the same or a similar power or function with regard to its transport area.

(3) An agreement in terms of subsection (1) may involve the utilisation of funds of a transport authority outside of its transport area, if the MEC and the member of the executive council responsible for finance both agree.

(4) In addition to the powers conferred on it by or in terms of this Act and by or in terms of any provincial laws, a transport authority may perform any legal act or do anything which a juristic person is competent in law to perform or do, except in so far as may be inconsistent with this Act.

Governance of transport authorities

70. (1) A transport authority is governed and controlled by the governing body established for it in accordance with the founding agreement in force in respect of that authority, which must consist of councillors of the constituent municipalities.

(2) The governing body represents the transport authority, and all acts performed by the governing body or anyone duly authorised by that body to act in its place, are the acts of that authority.

Dissolution of transport authorities

71. (1) (a) Subject to paragraph (b) of this subsection, a transport authority may be dissolved only as provided for in this section.

(b) Paragraph (a) does not affect the capacity of any MEC for local government, when acting in terms of section 14 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), to make any arrangements having the opposite effect, nor does it detract from the legal force and effect of any arrangements so made,

(2) A transport authority must be dissolved in terms of subsection (1) if the following requirements have been met:

- (a) Where there is only one municipality party to the transport authority, it has decided to terminate its participation in the transport authority and has notified the MEC in writing of the decision;
- (b) where there are two or more municipalities party to the transport authority—
 - (i) the municipalities concerned have agreed in principle that the transport authority be dissolved, and have so notified the MEC of that fact;
 - (ii) one or some, as the case may be, of those municipalities has or have decided to terminate its or their participation in that transport authority as the case may be, and every municipality that has so decided, has so notified the MEC and the other municipality, or, each of the other municipalities as the case may be, of the decision;
- (c) the MEC, within 30 days after having been so notified, has—
 - (i) by notice published in the *Provincial Gazette* and a newspaper generally read in the transport area affected by that notification, made known the proposed dissolution of the transport authority concerned;

- (ii) invited interested parties to comment and make representations with regard thereto; and
- (iii) requested them to furnish those comments and representations, in writing, to the MEC by the date specified in that notice, but a period of at least 30 days must be allowed for that purpose; 5
- (d) if all the parties to the transport authority have entered into an agreement in terms of which arrangements are made, with due regard to the comments and representations, if any, furnished in response to the MEC'S notice in terms of paragraph (c), with regard to the matters listed in section 10(13) but the date of dissolution must be so determined as to allow opportunity for sufficient notice being given in accordance with subsection (4). 10
- (3) If the MEC and the municipality or the municipalities, as the case may be, party to that authority fail to reach agreement on any of the matters mentioned in subsection (2)—
- (a) the matter or matters concerned must be determined by arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), and the arbitrator's determination is final and binding; 15
- (b) the arbitrator's determination is regarded for the purposes of subsection (2) as being part of the agreement contemplated in paragraph (d) of that subsection or, where applicable, as constituting that agreement. 20
- (4) The MEC must, within 30 days of the date of an agreement contemplated in subsection (2) or (3), by notice in the *Provincial Gazette* and a newspaper generally read in the transport area concerned, make known the dissolution of the transport authority and publish the terms of that agreement, but the date of dissolution must be so determined as to allow opportunity for sufficient notice being given. 25

Finances of transport authorities

- 72. (1) (a) The chief executive officer of a transport authority must have proper accounting records kept in accordance with generally accepted accounting practice and procedures so as to fully reflect the income and expenditure of that authority and the state of its financial affairs. 30
- (b) The accounting records must include a revenue account which must be credited with all moneys which accrue to and are received by the transport authority, and must be debited with the expenses incurred by that authority.
- (2) (a) Each transport authority must, not later than three months before the end of each financial year, prepare a statement of estimated income and expenditure for the next financial year, which must be submitted to the participating municipality or municipalities for approval by the date to be determined by the MEC, but that authority may at any time during the course of the current financial year submit a supplementary budget for that financial year to the municipality or municipalities for approval. 35
- (b) The transport authority may not incur any expenditure in excess of the total amount, including a supplementary amount of the budget as approved by the municipality or municipalities in terms of paragraph (a). 40
- (c) A transport authority may establish a reserve fund for any purpose connected with its functions in terms of this Act, which has been approved by the MEC, and allocate to the reserve fund the moneys made available for that purpose in the budget, including any supplementary budget approved under paragraph (a). 45

Delegations by governing body

- 73. (1) The governing body of a transport authority may delegate any of its powers or functions in terms of this Act, except the power of governance contemplated in section 70 and the power conferred by this subsection, to any member of that governing body. 50
- (2) Any delegation of a power or function in terms of this section does not prevent the governing body from exercising that power or performing that function.

Provisions applicable to delegations

- 74. (1) A delegation by the governing body under section 73—
- (a) may be made on and subject to any conditions determined by the governing body; 55

- (b) may be given together with the power to subdelegate, on and subject to any conditions so determined, if any;
- (c) must be in writing and must contain full particulars of the matters being delegated and of any conditions attached to the delegation, and, where the power of subdelegation is conferred, must state that fact as well as any 5 conditions attached.
- (2) The governing body may at any time—
 - (a) amend or revoke a delegation made under section 73;
 - (b) withdraw any decision made by the **delegatee** with regard to a delegated matter, and decide the matter itself but a decision made by a **delegatee** may not 10 be withdrawn where it confers a right or entitlement on any third party.
- (3) If the MEC is satisfied that the interests of land transport in the province or the transport area so require, the MEC may by notice in the *Provincial Gazette*—
 - (a) prohibit the delegation of **any particular** power or function, whether generally 15 or in the circumstances specified in the notice;
 - (b) limit the circumstances in which any particular power or function may be delegated;
 - (c) prescribe conditions for the delegation of any particular power or function;
 - (d) in relation to any power or function specified in the notice, prohibit sub-delegation in the event of the governing body delegating that power or 20 function.

Transport executives

- 75. (1) The parties to a founding agreement may provide **therein**—
 - (a) that the professional, technical, administrative, clerical and other work arising from, necessary for, associated with or incidental to the functioning of the 25 transport authority in terms of this Act or the exercise or carrying out of its powers and functions thereunder, is to be performed for the transport authority by the municipal administration of one of the participating municipalities specified in that agreement or any one or more specified departments in the 30 municipal administration of one or more participating municipalities so specified, and in the latter case the relevant provisions of the Local Government Transition Act, 1993 (Act No. 209 of 1993), apply; or
 - (b) for the establishment by the transport authority of a body under its auspices and subject to its control (hereafter called a transport executive), to perform all work of that nature or any specified type or category of that work for the 35 transport authority.
- (2) Where the founding agreement provides for the establishment of a transport executive—
 - (a) provision may also be made in that agreement that the transport authority, if requested thereto by another transport authority, may make its transport 40 executive available to perform work of that nature for that other **authority**—
 - (i) in terms of a written agreement entered into between the transport authorities concerned;
 - (ii) for a fee or against payment of an amount specified in that agreement; 45 and
 - (iii) in accordance with and subject to—
 - (aa) the standard terms and conditions, if any, stipulated in the founding agreement; and
 - (bb) the terms and conditions specially stipulated in that agreement; and
 - (b) provision must be made at least for the following: 50
 - (i) Where not all the professional, technical, administrative, clerical and associated work of the transport authority is to be performed by the transport executive, specification of the type or category of work for the performance of which the transport executive is to be responsible;
 - (ii) the place where the offices of the transport executive will be situated; 55
 - (iii) the manner in or procedure according to which the staff establishment of the transport executive is to be determined; and
 - (iv) the repository of ~~the~~ power to appoint and dismiss its staff.

Joint transport executives

76. (1) The MEC and any two or more transport authorities authorised thereto by their respective participating municipalities may enter into an agreement providing for the formation of a transport executive under the auspices of those transport authorities jointly, to perform, for each of them, the professional, technical, administrative, clerical 5 and other work arising from, necessary for, associated with or incidental to its functioning as a transport authority in terms of this Act and exercising or carrying out its powers and functions thereunder (hereafter called a joint transport executive).

(2) In such an agreement provision must further be made for at least—

- (a) the matters mentioned in section 75(2)(b), which, with the changes required 10 by the context, apply in relation to a joint transport executive;
- (b) the powers of the participating transport authorities with regard to the exercise of supervision and control over their joint transport executive;
- (c) the contribution of each participating transport authority to the funding of their joint transport executive. 15

PART 15***Provincial Operating Licencing Board: Matters of Provincial Concern*****Appointment of members of board**

77. (1) The board consists of the number of members determined by the MEC by notice in the *Provincial Gazette*. 20

(2) Section 5 of the Road Transportation Act, 1977 (Act No. 74 of 1977), or replacing provincial laws, applies to members of the board.

(3) (a) Any interested person may make a written request to the board that a board member recuse himself or herself where the person has reason to believe that the member has or could reasonably be expected to have such a financial or other conflict of 25 interest, and such a request must specify detailed reasons.

(b) The member concerned must give due regard to such a written request and decide whether or not to recuse himself or herself in the relevant circumstances.

Duties of board

78. (1) The board must exercise or perform its powers and functions independently, 30 free from governmental, political or other outside influence, and impartially, without fear, favour or prejudice.

(2) The board must meet as often as may be necessary to conduct its business expeditiously and efficiently.

(3) The board must keep minutes of its proceedings and keep records of all 35 applications that have been made to it.

(4) Every board must—

- (a) keep at its place of business a duplicate original of every operating licence issued by it, which includes, for the purpose of this paragraph, the duplicate original of such an operating licence as renewed, amended or transferred from 40 time to time; and
- (b) have the prescribed particulars of each operating licence, which includes, for the purposes of this paragraph, an operating licence as renewed, amended or transferred from time to time, and of its holder and the vehicle to which it relates, entered on the Land Transport Permit System as prescribed by the 45 Minister.

PART 16***Operating Licences: Matters of Provincial Concern*****Continuation and conversion of existing permits**

79. (1) Subject to this Part, any permit issued for an indefinite period and any permit 50 issued for a definite period which, on the commencement of this Act, has not yet expired, remains in force temporarily as provided for in this section.

(2) The holder of such a permit may have it converted to an operating licence in accordance with this Part by applying for the conversion, in the manner prescribed by the MEC— 55

- (a) in the case of a permit for an indefinite period, before the expiry of the period determined by the Minister under section 32(2);

- (b) in the case of a permit for a definite period, before the expiry of the definite period or the period contemplated in paragraph (a), whichever occurs first,
- (3) A permit mentioned in subsection (1) lapses—
 - (a) where such an application for conversion has not been made—
 - (i) in the case of a permit for an indefinite period, on the expiry of the period mentioned in paragraph (a) of subsection (2);
 - (ii) in the case of a permit for a definite period, on the expiry of the definite period or the period mentioned in that paragraph, whichever occurs first;
 - or
 - (b) where such an application has been made, upon the conversion of the permit to an appropriate operating licence in accordance with this Act.
- (4) The authority conferred by a permit may not be renewed, amended or transferred unless the permit has first been converted to a operating licence in accordance with this Part.

Conversion of permits not allowed in certain circumstances

80. (1) A permit may not be converted to an operating licence unless the transport service that it authorises, has been provided on a regular basis for a period of at least 180 days before the date on which application is made for conversion, except where the permit was issued less than 180 days before the date of such application.

(2) The applicant must furnish proof to the satisfaction of the board that the requirement set by subsection (1) has been met, by supplying written confirmation from the relevant planning authority, or by such other method as the board deems sufficient.

Manner of converting permits to operating licences

81. (1) Subject to this Act, an operating licence issued in place of a permit pursuant to the conversion contemplated in section 79, must confer the same authority as that which had been conferred by the permit, except that route descriptions that are considered by the board to be vague or inadequate, may be improved,

(2) In the case of the conversion of a permit for a scheduled service—

(a) that authorises the operation of that service within a defined area, the operating licence to which that permit is converted, must authorise the operation of that service according to one or more routes that are specified in detail, based on the holder's actual operations for the period of 180 days prior to the date of application, and must set out the timetable for that route or each of them, as the case may be;

(b) where that service is provided in terms of an interim contract or current tendered contract, the operating licence to which that permit is converted, must be made specific to that contract.

(3) In the case of the conversion of a permit for an unscheduled service—

(a) which is not a metered taxi service, that authorises the operation of that service within a defined area, the operating licence to which that permit is converted, must—

(i) authorise the operation of that service according to one or more routes, based on the holder's actual operations for the period of 180 days prior to the date of application; and

(ii) specify the route or routes in detail, except in circumstances where the board on reasonable grounds finds the non-detailed specification of the route or routes justified;

(b) that authorises operation within a particular radius, the operating licence to which that permit is converted—

(i) must authorise the operation of that service according to one or more routes that must be specified in detail, based on the holder's actual operations for the period of 180 days prior to the date of application, subject to subparagraph (ii);

(ii) may, where the board finds on reasonable grounds that circumstances exist to justify such action, authorise operation of the transport service in a particular area that is described in detail.

(4) In the case of the conversion of a permit for a metered taxi service, the operating licence to which that permit is converted, must describe the particular area within which passengers may be picked up in the operation of that service.

(5) Except where the permit to be converted already authorises public transport services on a particular route or routes, the board must request each planning authority in whose area the services are operated to make any representations and recommendations it considers fit with regard to the route or routes, or, where applicable, the area, to be specified in the operating licence to which that permit is to be converted. 5

(6) Permits issued in terms of the Venda Road Transportation Act, 1979 (Act No. 13 of 1979), and the Ciskei Road Transportation Control Act, 1982 (Act No. 4 of 1982), that are renewable annually, but are otherwise not limited to a period of validity, are regarded for the purposes of conversion to operating licences as permits issued for an indefinite period. 10

(7) A permit converted to an operating licence in terms of this section may not be issued to a person as the nominee of another person.

(8) No compensation is payable to the holder of a radius- or area-based permit by virtue of its conversion to a route-based operating licence in terms of this section.

Conversion of permits to operating licences for larger vehicles 15

82. Application for the conversion of a permit to an operating licence for a larger vehicle under section 32(5) or (6) must be made in the manner and form prescribed by the MEC.

Disposing of applications with regard to operating licences for non-contracted services 20

83. (1) Where any application is made for the granting, renewal, amendment or transfer of an operating licence in respect of a non-contracted service, the board may grant or refuse the application only after having considered, subject to subsection (2) and section 30(3)(b) and (5)—

- (a) whether the vehicle by means of which the service is to be operated is suitable 25 for that purpose;
- (b) the availability of ranks or terminals or other facilities or spaces for boarding or alighting from and for holding or parking vehicles engaged in the operation of that service, and the recommendations with regard thereto of the relevant planning authority or municipality and of any other planning authority and 30 municipality with an interest in the matter;
- (c) the existence of any by-law, regulation, prohibition, limitation or restriction by a municipality that has relevance to the transport service that the applicant proposes to operate under the authority of the operating licence to which the application relates; 35
- (d) whether the applicant has any previous conviction for an offence of the type and seriousness prescribed by the MEC, committed within the period so prescribed before the date of the application;
- (e) the ability of the applicant to operate the service for which the operating licence is sought, in a manner satisfactory to the public; 40
- (f) recommendations or representations duly submitted in connection with the application by the planning authority or any other interested party.

(2) An application for an operating licence relating to the operation of a non-contracted service on any particular route or routes in the area of a planning authority, may not be granted if the public transport requirements for the particular route or routes are adequately served by a then existing public transport service of a similar nature, standard or quality provided in terms of a commercial service contract or subsidised service contract or in terms of operating licences as shown by relevant transport plans. 45

(3) Such an application must be made in the manner prescribed by the MEC and be 50 accompanied by the prescribed application fee.

(4) (a) The board may grant an application for the granting, renewal, amendment or transfer of an operating licence subject to any conditions, determined by it, that are not inconsistent with this Act or with relevant provincial laws or transport plans.

(b) A condition may be so imposed only after consideration of the matters which, in 55 terms of subsection (1) and, where applicable, subsection (2) and relevant provincial laws, are to be taken into consideration for the purpose of deciding the application.

Cancellation of operating licences not brought into use

84. (1) Where it comes to the notice of the board that an operating licence converted from a permit has not been brought into use within 180 days, the board must, by notice in writing, call on the holder to advance good reasons, to the satisfaction of that board and within the period stated in the notice, for not having commenced operating the public transport service to which that operating licence relates, and, accordingly, why that board should not cancel that operating licence. 5

(2) Where the board is satisfied with the reasons advanced, the holder of that operating licence must be allowed a further period specified by that board, but not more than 180 days, to commence the operation of that service, and the holder must be informed in writing accordingly. 10

(3) If not so satisfied, or where the holder has failed to advance reasons within the time allowed therefor in the notice, the board must cancel the operating licence and in writing inform the holder accordingly and direct the holder to surrender that operating licence, together with the distinguishing marks with regard thereto, to the board within seven days after the date of the notice. 15

Issue of operating licences, and contents thereof

85. (1) An operating licence may not be issued unless—

(a) the person requiring it has applied therefor in accordance with this Act and applicable provincial laws; 20

(b) the successful applicant has furnished proof to the satisfaction of the board that the applicant is registered as a taxpayer under the Income Tax Act, 1962 (Act No. 58 of 1962), or, in terms of that Act, is not required so to register.

(2) Any operating licence granted, renewed, amended or transferred in accordance with this Act or applicable provincial laws, must be issued, in the manner and form prescribed by the MEC, by an official of the board designated by the latter for that purpose. 25

(3) An operating licence may not be issued in terms of this section unless the successful applicant for—

(a) the granting, renewal, amendment or transfer of the operating licence has submitted to that official a current roadworthy certificate which was issued for the vehicle to which the operating licence relates not earlier than a point in time to be prescribed by the MEC, or a duly certified copy of such a certificate; and 30

(b) the renewal, amendment or transfer of an operating licence has returned to the board the relevant operating licence that was issued previously for the same public transport service. 35

(4) An operating licence must state the following:

(a) The name and address of the public transport operator and, where applicable, particulars of the operator's registration as a member of an association or a non-member as the case may be; 40

(b) the registration number, make, vehicle identification number, year of manufacture, type and seating or passenger capacity of the vehicle for which the operating licence was granted;

(c) the types of service for which the operating licence has been granted; 45

(d) whether the operating licence has been granted for an indefinite or a fixed period, and, if the latter, the period for which it has been granted;

(e) in the case of an operating licence for a public transport service to be operated in terms of a commercial service contract or a subsidised service contract— 50

(i) the type of contract;

(ii) the contract reference number;

(iii) the names and addresses of the parties to the contract; and

(iv) where part of such a service in terms of such a contract is to be operated by a subcontractor on behalf of the holder of an operating licence, the name and address of the subcontractor who is the owner of the vehicle by means of which that part of the service is to be operated; 55

(f) a detailed description of the route or routes on which, or, where applicable, the particular area in which, the vehicle is to be used for the operation of the service to which the operating licence relates, through specification of the relevant street names, road numbers, beacons or land marks for each city, suburb, town, village or settlement; 60

- (g) the authorised ranks or terminals and other points for picking up and setting down passengers, where applicable;
 - (h) in the case of scheduled services, the relevant timetables;
 - (i) the conditions imposed by the board, if any; and
 - (j) all other particulars that may be prescribed, 5
- (5) Operating licences for long-distance services must specify the route or routes, the ranks or terminals for the picking up and setting down of passengers and any other points along the route or routes where passengers may be picked up or set down.

Authority conveyed by operating licence

86. An operating licence granted and issued under this Act— 10
- (a) does not authorise the holder of the operating licence to undertake transport on or over a public road in the jurisdictional area of any municipality or in a transport area if it is unlawful to do so in terms of any national or provincial law in force with regard to the municipality, or in terms of any by-law of the municipality; 15
 - (b) does not exempt the holder from the obligation to comply with any requirement or condition imposed by or in terms of any law, licence or permit issued by any other competent authority.

Persons who may hold operating licences

87. An operating licence may only be issued to and held by the person registered, in 20 terms of the Road Traffic Act, 1989 (Act No. 29 of 1989), as the owner or operator of the vehicle, as defined in that Act, and specified in the operating licence, except where the operating licence relates to the operation of a public transport service in terms of a commercial service contract or a subsidised service contract, and the public transport operator party to the contract has subcontracted another operator to operate part of that 25 service on behalf of the first-mentioned operator, and in such a case—
- (a) the subcontracted operator must be the so registered owner or operator of the vehicle used by the latter for operating that service on behalf of the operator party to the commercial service contract or subsidised service contract; and
 - (b) that vehicle must be specified in the operating licence as the vehicle to be so 30 used for operating that service.

Rules applicable with regard to various operating licences

88. (1) In determining the period of operating licences for non-contracted public transport services, due regard must be had to—
- (a) current and envisaged trends in utilisation on the route or routes, or, where 35 applicable, in the particular area, concerned;
 - (b) the efficiency of the proposed services in meeting user needs;
 - (c) where applicable, the likelihood that, in future, the public transport service with regard to which application concerning an operating licence is made, may no longer be required in terms of the public transport plan; 40
 - (d) the likelihood that the public transport service with regard to which application concerning an operating licence is made, may become the subject of a commercial service contract or a subsidised service contract.
- (2) In the case of operating licences for long-distance services, the board—
- (a) must determine the routes, ranks, terminals and picking up and setting down 45 points, and may specify the days of the week or month and time of day for departure from the authorised starting point of the route; and
 - (b) when determining the picking up and setting down points for a long-distance service in the case of a minibus taxi-type service, must impose the condition that passengers may not be picked up or set down on route unless the operator 50 has reached agreement in this regard with the relevant transport authorities and municipalities and with the taxi associations operating locally in the area concerned.
- (3) In the case of operating licences for staff services to be provided on a regular basis, the board must specify the route or routes authorised. 55
- (4) Operating licences for charter services, long-distance services, staff and tourist services must be granted for a fixed period determined by the board, subject to section 35.

(5) In the case of an application for the granting, renewal or amendment of an operating licence relating to a long-distance service, due regard must be had to the provisions of any transport plans prepared by the relevant planning authority and of any applicable provincial laws and, subject to this—

- (a) the extent to which the service to be provided by the applicant is necessary or desirable in the public interest; 5
- (b) the requirements of the public for the service along the route or routes on which or the particular area in which the applicant proposes to operate;
- (c) the existing transport facilities available to the public on that route or those routes or in that area; 10
- (d) the need to ensure co-ordination of all forms of transport, including transport by rail, to achieve an economically sound balance between the transport modes with due regard to the public interest;
- (e) in the case of a minibus taxi-type service, the recommendations of any taxi associations that have an interest in the matter. 15

Use of same vehicle for long-distance and other public transport services

89. (1) (a) The planning authority may authorise a particular vehicle specified in an operating licence to be operated for a long-distance service, despite the fact that such a vehicle is specified in the operating licence to be used for a public transport service provided for in a transport plan. 20

(b) The planning authority may not grant such an authorisation where the operation of the long-distance service will or is likely to be detrimental to the operation, by means of that vehicle, of the public transport services provided for in that transport plan.

(2) A vehicle specified in an operating licence to provide a long-distance service may not also be specified in the operating licence as being the vehicle by means of which a public transport service provided for in a transport plan is to be operated, except if the planning authority has agreed thereto. 25

Amendment of operating licence: Replacement of specified vehicle

90. (1) Where the holder of an operating licence for the operation of any public transport service wishes to replace the vehicle that is specified in that operating licence for the operation of that public transport service with another vehicle with the same passenger capacity, the holder must apply for the replacement, in the manner prescribed by the MEC, to a member or official of the board whom the board has authorised in writing to dispose of the matter, provided the nature of the replacing vehicle and the quality and standard of the service are not affected by the replacement. 30 35

(2) The authorised member or official of the board must allow the replacement and issue an amended operating licence to the holder, if satisfied that—

- (a) the replacing vehicle has the same passenger capacity, or less, and is of the same nature as the vehicle which it replaces and that the quality and standard of the service which is authorised by the operating licence will not be affected by the replacement; 40
- (b) the replacing vehicle is otherwise suitable for the operation of the public transport service authorised by that operating licence, has been certified as roadworthy in compliance with road traffic laws and is properly licensed; and
- (c) the applicant for replacement has provided the information necessary to establish the requirements of this section. 45

(3) Where a subcontractor operates any part of the public transport service to which an operating licence relates, on behalf of the holder of the operating licence, the subcontractor may rely on the provisions of this section to replace any vehicle of which the latter is the registered owner and which is specified in that operating licence, in all respects as if the subcontractor were the holder of that operating licence. 50

Special conditions relating to metered taxi and staff services

91. (1) In the case of a metered taxi service, the vehicle specified in the operating licence authorizing the operation of that service may—

- (a) leave the area described in the operating licence or permit if, on the return journey, it is to carry the same passengers as those it carries on the outward journey or the vehicle is to return to that area empty; 55

- (b) operate any particular journey at a fare not determined by operating the meter fitted to that vehicle if the fare for the particular journey has been agreed upon between the driver and the passenger or passengers concerned before the journey begins.

(2) The MEC may, in addition to the provisions of this Act, prescribe the 5 circumstances in which a operating licence may be granted for staff services.

Courtesy services

92. No operating licence is required for the operation of a courtesy service.

Duties of holder, of operating licence or permit

93. (1) The holder of an operating licence must— 10
- (a) in operating the public transport service to which the operating licence relates, comply with the terms of the authorisation conferred by the operating licence and the conditions to which it is subject, and, where that service is one provided for in a public transport plan, operate that service in accordance with that plan; 15
 - (b) keep the original operating licence or a duplicate original in the vehicle specified in the operating licence, and, where the vehicle so specified is temporarily replaced under provincial laws, keep the operating licence and the temporary authorisation issued for the replacing vehicle in that vehicle for the duration of the temporary replacement, but the board may direct in writing 20 that the annexures to an operating licence do not have to be kept in such vehicle where they are too bulky to allow for this;
 - (c) if a member of an association registered in terms of this Act, or a non-member so registered, keep in such a vehicle the registration certificate issued to the holder in terms of section 114; 25
 - (d) on demand by an authorised officer, produce that operating licence, authorisation or registration certificate;
 - (e) keep the operating licence and any duplicate original thereof in such a condition that the letters and figures thereon are clearly legible and, if the operating licence is damaged or ceases to be clearly legible, apply for a 30 duplicate original in the manner prescribed by the MEC;
 - (f) cause the name, address and nature of the business of the holder to be displayed on the vehicle to which the operating licence relates, in a conspicuous place in the manner prescribed by the MEC;
 - (g) display on or in that vehicle the other particulars as prescribed in any 35 condition determined by the board;
 - (h) display and keep affixed in the manner prescribed by the MEC, a distinguishing mark on the vehicle to which the operating licence relates;
 - (i) except in the case of an operating licence granted for an indefinite period, apply timeously for renewal of the operating licence; 40
 - (j) at all times keep the vehicle to which the operating licence relates in a safe and roadworthy condition and—
 - (i) have that vehicle examined for roadworthiness by not later than the time allowed therefor in the Road Traffic Act, 1989 (Act No. 29 of 1989); and
 - (ii) submit the new roadworthy certificate issued after every such examina- 45 tion to the board within 30 days after it has been issued;
 - (k) return an operating licence that has lapsed or has been withdrawn or cancelled to the board within seven days;
 - (l) comply with this Act and with any other requirements imposed by a relevant law of any province to whose jurisdiction the holder, in or through the operation of the service to which the operating licence relates, may be subject at any given time.
- (2) (a) The authority conferred by an operating licence may not—
- (i) be ceded or otherwise alienated by the holder of the operating licence, and no person may be a party to such a cession or alienation, except where the 50 operating licence is transferred in accordance with this Act;
 - (ii) be hired out by the holder of the operating licence or be hired by any other person.

(b) A transaction concluded in contravention of paragraph (a) has no legal force.

(3) From a date determined by the MEC by notice in the *Provincial Gazette*, the holder of an operating licence for the operation of any public transport service in the province, must—

(a) by not later than 21 days after the last day of each calendar month, submit to 5 the board returns in the form prescribed by the MEC on the recommendation of the board, in which must be shown the number of passengers conveyed during the previous calendar month by means of the vehicle to which the operating licence relates and the distance, in kilometres, which was covered on the route or routes or, where applicable, in the area, specified in the 10 operating licence, during that previous calendar month;

(b) where no passengers were carried during a calendar month, notify the board thereof and state the reasons therefor not later than 10 days after the end of such a month; and

(c) in the vehicle to which the operating licence relates, keep for each trip made 15 by means of that vehicle an accurate record showing the number of passengers carried during the trip.

(4) The information necessary for the purposes of subsection (3), must be recorded by the driver of the vehicle, or by the conductor if one is on duty, at the end of each forward and return journey. 20

(5) Where any subcontractor operates any part of the public transport service to which an operating licence relates, on behalf of the holder of the operating licence, this section, except subsection (1)(i) and (k), applies to the subcontractor, with the changes required by the context, in all respects as if the subcontractor were the holder of that operating licence. 25

(6) For the purposes of this section, “operating licence” includes “permit”.

Temporary replacement of specified vehicle

94. (1) (a) The board or a member of that board duly authorised by it may, on application by the holder of the operating licence or permit, grant written authorisation, where the vehicle specified in that operating licence or permit has become defective 30 temporarily, for the holder to use another vehicle in place of the defective one, subject to subsections (2), (3) and (6).

(b) Where a vehicle contemplated in paragraph (a) belongs to a subcontractor mentioned in section 87, such an authorisation may also be granted to such a subcontractor. 35

(2) The written authorisation must be in the form as prescribed by the MEC, and must specify at least the following:

(a) With regard to the holder, the personal particulars mentioned in paragraph (a) of section 85(4) if the vehicle belongs to such a subcontractor, that authorisation must in addition contain, with regard to that subcontractor, the 40 particular mentioned in section 85(4)(e) (iv).

(b) With regard to the replacing vehicle, the particulars mentioned in paragraph (b) of section 85(4).

(c) The period for which the replacing vehicle may be used for the operation of the public transport service to which the holder’s operating licence relates, but 45 the period so specified may not be longer than 21 days calculated with effect from the date on which the authorisation is issued.

(3) (a) The passenger capacity of the replacing vehicle preferably must be equal to that of the vehicle specified in the relevant operating licence, but may—

(i) be smaller; or 50

(ii) exceed that capacity by not more than 20 per cent.

(b) The replacing vehicle must be suitable for the operation of that public transport service and, except in so far as this section provides otherwise, must comply in all other respects with the requirements and conditions that apply and are in force in terms of this Act with regard to the vehicle so specified in the operating licence. 55

(4) The written authorisation must be kept in the replacing vehicle to which it relates, together with the operating licence applicable to the replaced vehicle for the duration of the period of replacement provided for in that authorisation.

(5) The replacing vehicle must, during the authorised period of replacement, be regarded in all respects as the vehicle operated under the operating licence specifying 60 the replaced vehicle.

(6) The board or such member may refuse a second or subsequent application under subsection (1) in respect of the same vehicle, if it appears that the applicant is abusing such written authorisations.

PART 17

Registrations and Other Matters relating to Minibus Taxi Industry

5

Appointment of Registrar

95. (1) Subject to section 53, the MEC must appoint a Registrar for the province to exercise the powers and perform the functions and duties conferred and imposed on the holder of that office by this Part and Part 12.

(2) (a) The Registrar receives the salary and allowances and is entitled to the benefits determined by the MEC with the agreement of the member of the executive council responsible for finance in the province.

(b) The salary, allowances and benefits so determined must be specified in the Registrar's letter of appointment.

(3) The head of the provincial department must, subject to the laws governing the public service, provide the staff necessary to assist the Registrar in the performance of the functions and duties of that office.

(4) When the office of Registrar is vacant or the Registrar is unable to act due to any temporary physical or mental disability, the MEC may appoint any fit and proper person who is not subject to any disqualification mentioned in section 96, to act as Registrar and exercise or perform the powers, functions and duties of that office until the vacancy is filled or the incumbent of that office has resumed duty, as the case may be.

Disqualifications for holding Registrar's office

96. (1) A person may not be appointed or remain in office as Registrar—

- (a) if subject to any legal disability; 25
- (b) upon having been elected or appointed as a member of Parliament or a provincial legislature or a municipal council;
- (c) if at any time removed from a public office on account of misconduct;
- (d) upon being declared insolvent or the person's estate being or having been handed over to creditors, or where the person has been declared insolvent and is not yet rehabilitated; 30
- (e) if convicted of any offence—
 - (i) of which dishonesty is an element;
 - (ii) for which a sentence of imprisonment without the option of a fine has been imposed; 35
 - (iii) in terms of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998), or this Act; or
 - (iv) in terms of section 127 or convicted before the commencement of this Act of any offence in terms of a previous law, if that offence is similar to any offence mentioned in section 127; 40
- (f) who, subject to section 53(4), has any direct financial or business interest in any sector of the public transport industry.

(2) When the appointment of any person as Registrar is considered, the person may be required to disclose to the MEC, in writing, any interests which the person may have in the minibus taxi industry or any other part of the public transport industry. 45

Resignation of Registrar, and removal from office

97. (1) The Registrar may resign by giving one month's written notice to the MEC.

(2) The MEC may at any time remove the Registrar from office—

- (a) for failing—
 - (i) to perform the duties of the Registrar fairly and impartially; or 50
 - (ii) to perform those duties diligently and efficiently.
- (b) for misconduct; or
- (c) if, because of any physical or mental illness or disability, the Registrar has become incapable of performing the Registrar's duties or performing them efficiently. 55

Vacation of office

98. (1) The Registrar must vacate office—
- (a) if the Registrar becomes subject to disqualification mentioned in section 96;
 - (b) in the case where the Registrar has resigned, when the resignation takes effect in terms of section 97; or
 - (c) upon removal from office under section 97(2).
- (2) When the office of Registrar has become vacant, the MEC must take immediate steps to fill the vacancy by the appointment, in accordance with section 95, of a fit and proper person who is not subject to a disqualification mentioned in section 96, which applies, with the changes required in the context, to such an appointment.

Functions of Registrar

99. (1) The Registrar must—
- (a) receive and consider and decide upon, applications for the registration of associations and their members, and of non-members, as provided for in Part 12 and this Part;
 - (b) advise the MEC on matters falling within the scope of Part 12 and this Part, and provide the MEC with information on matters of public importance acquired in the course of performing the functions of that office in terms of those Parts;
 - (c) take all reasonable steps to monitor and acquire information with regard to the compliance or non-compliance—
 - (i) by registered associations, with their respective constitutions;
 - (ii) by registered members and by registered non-members, with the Code of Conduct;
 - (iii) of the registered associations' constitutions, with section 11 7;
 - (d) assist in the promotion of professional practices by registered associations and their members and by non-members;
 - (e) take any steps that are reasonably necessary with a view to encouraging associations to register in accordance with Part 12 and this Part, and provide advice and assistance to enable them to apply successfully for registration;
 - (f) consider and decide on the suspension or cancellation of the registration of an association or any member thereof or of any non-member;
 - (g) evaluate proposed amendments to the constitutions of registered associations in order to ensure that the amendments are consistent with the requirements of section 117, and liaise with associations with a view to preventing the adoption of amendments that are not so consistent, or inform them of the inconsistency of amendments adopted by them, and call on them to abandon such amendments.
 - (h) keep a provincial transport register in which is recorded, in the manner prescribed, the name of every association, member of an association or non-member whose application for such a registration has been granted, together with the prescribed information about the taxi service or services rendered by the association, member of the association or non-member so registered, and the vehicles used for operating those services; and
 - (i) keep records of all other information required to maintain the National Transport Register.
- (2) (a) The information recorded in the provincial register is open to inspection by the public during the provincial department's normal office hours.
- (b) At the request of any interested person and on payment of the fee, if any, that has been prescribed by the MEC, the Registrar must furnish the person with a certified copy of or extract from any record contained in the provincial transport register, subject to subsection (7) of section 6.
- (3) In dealing with any matter contemplated in subsection (1)(a) or (f), the Registrar may—
- (a) allow a person affected by or interested in the matter, or the duly authorised representative of such a person, to appear before the Registrar and—
 - (i) give evidence or make oral representations relevant to the matter;
 - (ii) call witnesses and lead evidence on any question concerning a matter relevant to the proceedings before the Registrar;
 - (iii) question a person who testifies as a witness in those proceedings;

- (b) issue a subpoena in the form prescribed by the MEC requiring a person to appear before the Registrar to give evidence or to produce any book, plan, document or other record, or any article, item or object, in the possession or under the control of the person, and have it served in the manner so prescribed;
- (c) order any person present in or at the place where the proceedings are conducted, to appear before the Registrar to give evidence or to produce any book, plan, document or other record, or any article, item or object, which is in the physical possession of the person in or at that place; 5
- (d) question any person appearing as a witness;
- (e) require that any oral evidence be given under oath or affirmation and, for that purpose, administer an oath to or take down an affirmation from any witness;
- (f) refuse to hear any oral evidence or representations from any person unless the person has been sworn in or has made an affirmation as a witness,
- (4) Any party affected by any decision made or given by the Registrar may require the Registrar to furnish reasons for that decision in writing, whereupon the Registrar must 15 do so without delay.
- (5) For the purposes of this section, “registration” and “registered” includes a reference to “provisional registration” and “provisionally registered”, respectively.

Registrar required to disclose commercial and pecuniary interests

- 100. (1)** The Registrar may not attend to and dispose of any matter in which the Registrar has a direct commercial or pecuniary interest which is greater than that which a member of the general public has in that matter. 20
- (2) If at any stage it appears that the Registrar has or may have an interest which in terms of subsection (1) may preclude the Registrar from disposing of the matter, the Registrar must forthwith— 25
- (a) disclose the interest to the MEC with a view to the latter deciding the issue; and
 - (b) suspend attendance to and disposal of the matter pending the MEC’s decision.
- (3) (a) The MEC must without delay, in writing, notify the Registrar of the decision taken on the issue. 30
- (b) Where the MEC finds—
 - (i) such an interest not to exist, the MEC in that notification must inform the Registrar accordingly and direct the Registrar to proceed with the matter that was so suspended; or
 - (ii) such an interest to exist, the MEC must appoint another suitable person in 35 accordance with section 95 to dispose of the matter that was so suspended.
- (4) Any act performed by the Registrar in disposing of a matter contrary to subsection (1) has no legal force.

Registrar to report annually

- 101. (1)** The Registrar must annually, as soon as possible after the end of the province’s financial year, submit to the MEC a report on— 40
- (a) the functioning of the Registrar’s office;
 - (b) the functioning of the panel of assessors, and its role and contributions in assisting the Registrar in the performance of the functions of that office in terms of Part 12 and this Part; 45
 - (c) matters concerning the registration of associations, the members thereof, and non-members; and
 - (d) other topical matters in connection with or arising from the application of this Part and Part 12.
- (2) The MEC must table the Registrar’s report in the provincial legislature within 21 50 days of receipt, if the legislature is then sitting, or if it is not then sitting, within 21 days of the beginning of its next session.

Establishment and functions of panel of assessors

- 102. (1)** The MEC, after consultation with the Registrar, may by notice in the *Provincial Gazette* establish a panel of assessors consisting of the number of assessors 55 specified in the notice, but not fewer than five and not more than seven, of whom—
- (a) one must have special knowledge of the minibuss taxi industry in the province;

- (b) at least one must have special knowledge of the needs and interests of those inhabitants of the province who rely on the services operated in the minibuss taxi industry for their transport;
 - (c) at least one must have a formal qualification in law;
 - (d) at least one must have special knowledge of the functioning and operations of transport authorities and municipalities in the province or under its jurisdiction.
- (2) The functions of the panel of assessors are—
- (a) to advise the Registrar with regard to any matter which may be referred to it by the Registrar and which relates to the exercise or performance of the Registrar's powers and duties under Part 12 and this Part;
 - (b) to make recommendations to the Registrar in connection with any matter falling within the scope of those powers and duties; and
 - (c) at the request of and subject to the directions of the Registrar, to undertake any investigation and report its findings and recommendations to the Registrar.

Appointment, remuneration and conditions of service of assessors

103. (1) Subject to subsection (2), the MEC must appoint the number of assessors specified in terms of section 102(1).

- (2) Before appointing persons as assessors, the MEC must—
 - (a) make known his or her intentions to appoint them by notice in the *Provincial Gazette* and invite comments or objections relating to the appointment within a time stated in the notice;
 - (b) consider any comments or objections received pursuant to such a notice.
- (3) In so doing, the MEC must appoint fit and proper persons who are characterised by their impartiality, but may not appoint any person as an assessor if the person is disqualified from being appointed Registrar.
- (4) An assessor is appointed—
 - (a) for a period specified in the assessor's letter of appointment but not exceeding two years, on the expiry of which the person concerned is eligible for reappointment for not more than one term; and
 - (b) on general terms and conditions specified in the assessors' letter of appointment.
- (5) Each of the assessors is entitled to—
 - (a) remuneration for each day or part of day in any month on which the assessor performed the work of the panel of assessors in terms of this Part, at a daily rate determined by the MEC with the concurrence of the MEC responsible for finance; and
 - (b) be reimbursed, in accordance with a tariff so determined, for all reasonable traveling and subsistence expenses necessarily incurred while the assessor performed work of that panel.

Meetings of panel of assessors

- 104. (1)** (a) The panel of assessors meets as often as maybe necessary to conduct its business expeditiously and efficiently.
- (b) For that purpose, any meeting of the panel of assessors is held at the place and time determined by its chairperson or as decided by that panel at a previous meeting but its first meeting will be held at the place and time determined by the Registrar and at that meeting, which must be attended by all the assessors, they must elect one of their number as the chairperson.
- (c) All the assessors must be given notice in writing of any meeting of the panel.
- (2) A majority of the total number of assessors forms a quorum at any meeting of that panel.
- (3) (a) A decision of a majority of the assessors present at a meeting constitutes a decision of the panel of assessors, subject to subsection (2).
- (b) In the event of an equality of votes on any matter, the chairperson has a casting vote in addition to a deliberative ordinary vote.
- (4) No decision taken or given and no other act performed by the panel of assessors is invalid merely by reason—

(a) of a vacancy in that panel: or

(b) of the fact that any person not entitled to sit as an assessor sat as an assessor or participated in the proceedings of that panel when the decision was taken. if that decision was taken or that act was authorised by the required majority of the assessors who were entitled to sit and participate as members of that panel.

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(5) (a) The panel of assessors must keep minutes of the proceedings at its meetings.

(b) The minutes of any meeting of the panel of assessors, when confirmed at a next meeting and signed by the person who presides over the latter meeting, are, in the absence of proof of error, regarded as a true and correct record of the proceedings and matters at the meeting which they purport to minute, and are sufficient evidence of those proceedings and matters at any proceedings before a court of law or any tribunal or commission of inquiry.

Panel of assessors may co-opt in certain circumstances

105. (1) The panel of assessors may, with the approval of the Registrar, co-opt to that panel one or two persons who are not disqualified in terms of section 103(3), for the purpose of assisting that panel with any matter before it which falls within such a person's particular field of expertise or specialisation.

(2) Such a co-opted person may address the panel of assessors and participate in the panel's discussion of the matter, but may not take part in any voting thereon.

(3) Section 104(4) applies, with the changes required by the context, also where any person has been co-opted in terms of this section.

Resignation and removal from and vacation of office by assessors

106. Sections 97 and 98 relating to the Registrar's resignation and removal from and vacation of office and to the filling of a vacancy in that office, apply, with the changes required by the context, to the resignation and removal from office and vacation of office of an assessor and the filling of a vacancy in the panel of assessors.

Disclosure of assessors' commercial and pecuniary interests

107. (1) An assessor may not attend or participate in any meeting of the panel where the proceedings at the meeting entail the discussion of or voting on any matter in which the assessor has a direct commercial or pecuniary interest which is greater than that which a member of the general public has in that matter.

(2) If, at any stage during any proceedings of the panel of assessors it appears that an assessor has or may have an interest which in terms of subsection (1) may preclude the assessor from participating in the proceedings—

(a) the assessor must forthwith and fully disclose the nature of the interest and leave the venue of the meeting so as to enable the remaining members of that panel to discuss the matter and to determine whether the assessor concerned is so precluded; and

(b) that assessor's disclosure and the remaining assessors' determination in terms of paragraph (a) must be recorded in the minutes of the meeting concerned.

(3) If an assessor fails to disclose any interest in compliance with subsection (2) when that panel considers and deals with any matter to which the interest relates, or if such an assessor otherwise contravenes or fails to comply with subsections (1) or (2), the proceedings affected by the non-disclosure, contravention or non-compliance are without any legal force and effect, and the assessor concerned is guilty of misconduct.

Provisional and full registration of associations and non-members previously registered

108. (1) (a) For the purposes of section 56, the Registrar, if satisfied that an association or non-member qualifies for provisional registration in terms of that section, must register the association or non-member provisionally, subject to section 55(1)(a), by entering the latter's name and the required particulars as prescribed by the MEC in the provincial transport register.

(b) The onus rests on the association or non-member to ensure that provisional registration occurs in terms of paragraph (a).

- (2) The provisional registration of an association or non-member in terms of subsection (1) lapses on whichever one of the following events take place first:
- (a) When the period mentioned in section 56(1) expires; or
 - (b) when the provisional registration is converted to full registration in terms of subsection (3).
- (3) The Registrar must register an association which, before the expiry of the period of its provisional registration, has applied to the Registrar to convert its provisional registration to full registration and has satisfied the Registrar—
- (a) that its members no longer hold any current permits under the authority of which they would be entitled, in terms of section 79, to operate their respective public transport services, due to either the one or the other or both of the following:
 - (i) The conversion of those permits to operating licences as provided for in this Act and applicable provincial laws;
 - (ii) the termination of the membership of any member who is the holder of such a permit and has failed to have that permit so converted to a operating licence;
 - (b) that it has terminated the membership of every member who, as at the date of the application, does not hold an appropriate operating licence for each vehicle by means of which a public transport service is operated by the member; and
 - (c) that it meets the requirements of section 110, which applies with the changes required by the context.
- (4) The Registrar must register any non-member who, before the expiry of the period of provisional registration, has applied to the Registrar to convert the non-member's provisional registration to full registration and has satisfied the Registrar that the non-member complies with section 113.
- (5) This section does not preclude an association whose provisional registration has lapsed in terms of subsection (2)(a) from applying for registration in terms of section 110.

Provisional registration of associations not qualifying directly for full registration

- 109. (1)** An association maybe provisionally registered if—
- (a) the association has been in existence for a period not less than the period determined by the MEC by notice in the *Provincial Gazette*.
 - (b) the number of its membership as at the date of application is not less than the minimum number as determined by the MEC by notice in the *Provincial Gazette*;
 - (c) all its members have subscribed at least to those provisions of the code of conduct that are specified by the MEC by notice in the *Provincial Gazette*;
 - (d) the association has a constitution—
 - (i) which has been subscribed to by all its members, and in terms of which any breach of those specified provisions of the code of conduct by any member may result in the imposition of an appropriate penalty or sanction by a standing disciplinary committee after due inquiry; and
 - (ii) which complies with those provisions of section 117 as determined by the MEC by notice in the *Provincial Gazette*.
- (2) An association may not be provisionally registered if its joining fees and membership fees exceed the maximum amounts prescribed by the MEC by notice in the *Provincial Gazette*.
- (3) The Registrar, if satisfied that an applicant association meets the requirements for provisional registration imposed by subsection (1), must register it provisionally, by entering its name and the particulars prescribed by the MEC in the provincial transport register, subject to this section, and must issue to the association an appropriate registration certificate in the form so prescribed.

Direct full registration of associations

- 110.** An association qualifies for registration and, upon having applied therefor, must be registered, if—
- (a) the association complies with the requirements of section 57;
 - (b) the association has been in existence for a period not less than the period determined by the MEC by notice in the *Provincial Gazette*;

- (c) the number of its membership as at the date of the application is not less than the minimum number as so determined by the MEC;
- (d) the application fee prescribed by the MEC, if any, has been paid;
- (e) the amounts of the joining fee and membership fee of the association do not exceed the maximum amounts as so determined; and 5
- (f) the association is not disqualified in terms of an order issued under section 118(5) from being registered.

Application and registration procedure

111. (1) An association applies for registration or provisional registration or for conversion of provisional registration to full registration, by submitting to the Registrar— 10

- (a) an application in the form prescribed by the MEC for that purpose, that has been duly completed and is signed by the association's authorised representatives;
- (b) a copy of the association's constitution as signed by all its paid-up members; 15
- (c) a copy of its membership record reflecting the names of its members and, in relation to each of those members, the particulars which the MEC has prescribed for the purposes of this paragraph;
- (d) such other proof of the applicant's compliance with the requirements of this Act as may be prescribed by the MEC; and 20
- (e) any other information that may assist the Registrar in determining whether the requirements for registration imposed by this Act, or, the requirements for conversion to full registration, as the case may be, have been met.

(2) The Registrar, if satisfied that the applicant association meets those requirements, must register the association concerned or convert the association's provisional registration to such a full registration, or provisionally register the association by entering its name and the required particulars as prescribed by the MEC, in the provincial taxi register. 25

(3) Upon having registered, converted the registration or provisionally registered any association in accordance with subsection (2), all persons found by the Registrar to be members of that association and to meet the requirements of this Act, must be registered or provisionally registered as members by entering in the provincial taxi register their names and the required particulars as prescribed by the MEC for the purposes of this subsection. 30

(4) A non-member applies for registration by submitting to the Registrar— 35

- (a) an application in the form prescribed by the MEC for that purpose that has been duly completed and signed by the applicant or, in the case of a non-member that is a juristic person, by the latter's duly authorised representative;
- (b) a statement under oath or affirmation whereby the applicant subscribes to the code of conduct; and 40
- (c) such other proof of the applicant's compliance with the requirements of this Act as maybe prescribed by the MEC.

(5) The Registrar may require further information in support of any application made in accordance with this section. 45

Registration or provisional registration of members

112. (1) Where an association has been registered, every member of the association who has subscribed to its constitution and to the code of conduct applicable in the province where that association is registered, and who complies with the other requirements of this Act and provincial laws, must be registered as a member 50

(2) (a) (i) Where any association has been provisionally registered, every person who is a member of the association and holds an appropriate operating licence or permit for each vehicle by means of which the member operates a public transport service or has applied for the appropriate operating licence or permit, must be registered as a member provisionally for a period ending when that association's provisional registration lapses. 55

(ii) The onus rests on any member of an association which has been provisionally registered, who seeks provisional registration in terms of paragraph (a), to take the steps necessary with a view to ensuring that the member's provisional registration takes place in terms of subparagraph (i).

(b) Where the provisional registration of an association has been converted to full registration, every member of the association who has subscribed to the association's constitution and to the code of conduct applicable in the province where that association is registered, must be registered as a member.

(3) (a) Within one month after the admission of a new member to any association mentioned in subsection (1) or (2)(b), its executive committee or body, or any member thereof or office-bearer of the association authorised thereto by that committee or body, must apply to the Registrar, in the manner prescribed by the MEC, for the new member's registration as a member.

(b) A new member on behalf of whom such an application has been made, must be registered or provisionally registered, as the case may be, as a member if the Registrar is satisfied that—

- (i) the new member—
 - (aa) holds an appropriate operating licence for each vehicle by means of which the member operates a public transport service; and
 - (bb) operates the public transport service to which such an operating licence relates, in compliance with the terms of, and conditions attached to, the operating licence;
- (ii) the new member has subscribed to the constitution of the association concerned and to the code of conduct applicable in the province where that association is registered.

Registration of non-members

113. (1) A non-member qualifies for registration and, upon having applied therefor, must be registered, where—

- (a) the non-member has paid the application fee prescribed by the MEC;
- (b) the non-member, if a juristic person—
 - (i) has been in existence for a period not less than the period determined by the MEC by notice in the *Provincial Gazette*; and
 - (ii) has members which, in the case of a company or close corporation incorporated or registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), or the Close Corporations Act, 1984 (Act No. 69 of 1984), respectively, do not include two or more persons who, at the time of formation of the company or close corporation, or at any time thereafter, were the operators of public transport services which are substantially the same as those operated by that company or close corporation;
- (c) the non-member has subscribed to the code of conduct applicable in the province where registration is sought;
- (d) the non-member—
 - (i) holds an appropriate operating licence or permit for each vehicle by means of which the non-member operates a public transport service; and
 - (ii) operates the public transport service to which such an operating licence relates, in compliance with the terms of, and conditions attached to, the operating licence;
- (e) The applicant's registration as a non-member is ascribable to the following causes:
 - (i) There is no registered association with regard to the route or routes or, if applicable, in the area where the applicant's public transport service is operated; or
 - (ii) where there is such a registered association, if—
 - (aa) the applicant has been refused membership of the association; or
 - (bb) the association's requirements for admission to membership are unfair; or
 - (cc) in view of the prevailing circumstances, the applicant reasonably cannot be expected to become a member of the association; or
 - (old) the applicant, if admitted to membership of the association, will be subjected to unfair discrimination.

(2) An operating licence may not be granted to a non-member unless the non-member submits to the board a certificate from the Registrar certifying that he or she complies with the requirements of subsection (1)(b), (c) and (e), and the Registrar must issue such a certificate to a non-member who qualifies on payment of the prescribed fee.

Certificates of registration and distinguishing marks

114. (1) The Registrar must upon having registered or provisionally registered any association, any member or any non-member, allocate a unique registration number to the association, member or non-member concerned and issue to the association, member or non-member a registration certificate or a certificate of provisional registration in the manner and form and containing the particulars as prescribed by the MEC, subject to section 59.

(2) Subject to section 59, where the member or non-member is registered or provisionally registered, the Registrar must, with effect from a date determined by the MEC, by notice in the *Provincial Gazette*, issue, in the manner and form prescribed by the MEC—

- (a) a distinguishing mark for every vehicle of the registered member or non-member that is used, under the authority of an appropriate operating licence or permit;
- (b) a distinguishing mark for every vehicle of the provisionally registered member or non-member—
 - (i) that is so used under the authority of an appropriate operating licence or permit; or
 - (ii) in respect of which the provisionally registered member or non-member has made application for an appropriate operating licence in accordance with this Act.

(3) Subject to section 59, the Registrar must also issue such a distinguishing mark for each vehicle used by any registered or provisionally registered member, and any registered or provisionally registered non-member, whose registration took place before the date of that notice, upon mere submission to the Registrar of—

- (a) the registration certificate of the registered member or non-member concerned, and a current operating licence or permit for each vehicle so used by that registered member or non-member;
- (b) the relevant certificate of provisional registration of the provisionally registered member or non-member, and—
 - (i) a current operating licence or permit for each vehicle used by the provisionally registered member or non-member; or
 - (ii) proof, to the satisfaction of the Registrar, that the provisionally registered member or non-member has made application for such an operating licence.

Duties of registered and provisionally registered associations and non-members

115. (1) A registered association must—

- (a) take all steps that are reasonably necessary to prevent any breaches of the code of conduct and any other misconduct on the part of its members and their drivers, and to take disciplinary steps against members whenever necessary;
- (b) inform the Registrar expeditiously and timeously of the outcome of all disciplinary proceedings against members and grievance procedures by members;
- (c) inform the MEC of any impending or current conflict with any other association or associations;
- (d) inform the Registrar expeditiously and timeously of any changes—
 - (i) in its membership; and
 - (ii) with regard to the information furnished by it to the Registrar in compliance with this Part and Part 12;
- (e) inform the Registrar of the termination or temporary suspension of the membership of any registered member, within seven days after the termination or suspension;
- (f) timeously give the Registrar notice of all general meetings of members, and allow the Registrar or the Registrar's representative to attend such a meeting as an observer;
- (g) inform the Registrar timeously of any amendment proposed to its constitution and the nature and effect thereof;
- (h) if requested thereto by any organ of state, transport authority or core city which has rendered financial assistance to the association or its members for a particular purpose, supply the requested information as to the application of the funds received from that source.

- (2) Every registered or provisionally registered non-member must—
- (a) inform the Registrar expeditiously and timeously of any changes with regard to the information furnished by the non-member to the Registrar in compliance with this Part and Part 12;
 - (b) if requested thereto by any organ of state, transport authority or core city 5 which has rendered financial assistance to the non-member for a particular purpose, supply the requested information as to the application of the funds received from that source.
- (3) Subsection (1) applies, with the changes required by the context, to any provisionally registered association. 10

Standard minimum constitution and code of conduct

- 116. (1)** The MEC must, as soon as possible after the commencement of this Act, by notice in the *Provincial Gazette* prescribe—
- (a) a model constitution for associations, to be known as the standard minimum constitution, which complies with the requirements of section 117; and 15
 - (b) a code of ethics, to be known as the code of conduct, providing for at least the matters provided for in section 117.
- (2) The standard minimum constitution sets a yardstick for the preparation of a constitution for an association with a view to enabling the registration of associations in accordance with this Part and Part 12, provided the other requirements for registration 20 are met.
- (3) The code of conduct constitutes the set of ethical norms in accordance with which any minibus taxi-type service is to be operated.

Requirements for constitutions of associations

- 117. (1)** The constitution of an association must, for the purposes of full registration, 25 comply with the minimum requirements, if any, prescribed by the Minister in terms of section 60, and—
- (a) state the association's full name and postal and physical addresses, and declare that it is an association not for gain;
 - (b) set out its aims and objects, and state where it is based; 30
 - (c) prescribe qualifications for, and admission to, membership of the association, and the rights, benefits and duties associated therewith, and require the names of all members to be entered on a membership list;
 - (d) establish the circumstances in which a member is no longer entitled to the benefits of membership, and provide for the termination of membership and 35 the circumstances in which membership may be terminated;
 - (e) stipulate conduct that constitutes misconduct and give rise to disciplinary proceedings against offending members, prescribe the disciplinary steps to be taken against the members and the procedures to be followed in that regard, and establish a standing disciplinary committee for that purpose; 40
 - (f) provide for appeals against the findings of the disciplinary committee, and any penalty or sanction imposed by it, or against loss of the benefits of membership or the termination of membership, prescribe a procedure for those appeals and determine the body to which those appeals may be made;
 - (g) provide for membership fees and the method for determining membership 45 fees and other payments by members;
 - (h) prescribe rules for the convening and conducting of an annual general meeting of members and special meetings of members, including the quorum required for, and the keeping of minutes of, any such meeting;
 - (i) describe the manner in which decisions are made at any meeting; 50
 - (j) establish a governing body to represent and manage the affairs of the association and its members and act on its behalf, and define the powers and duties of the governing body in that regard;
 - (k) describe the manner in which decisions are to be made by the governing body;
 - (l) establish the office of secretary and define the functions attached thereto; 55
 - (m) provide for other office-bearers on that body and define their respective functions;
 - (n) prescribe a procedure for nominating and electing the members of that body;

- (o) establish the circumstances and manner in which members of that body may be removed from office;
- (p) provide for appeals against their removal from office, and prescribe a procedure for those appeals and determine the body to which those appeals may be made; 5
- (q) establish the circumstances and manner in which a ballot must be conducted;
- (r) provide for a grievance procedure, and the establishment of a standing grievances committee;
- (s) stipulate the requirements for amalgamation with any other association;
- (t) require proper accounting records to be kept and financial statements prepared in accordance with generally accepted accounting practice and procedures. and establish a standing financial committee; 10
- (u) determine a date for the end of its financial year;
- (v) provide for the appointment of an accounting officer, for financial control and responsibility, and for the annual audit of the association's accounts and statements by a person registered and practicing for own account as a public accountant and auditor; 15
- (w) provide for the opening of a banking account for the association, and the banking of its money;
- (x) establish the purposes for which the association's money may be used. 20
- (y) prescribe a procedure for changing its constitution; and
- (z) prescribe a procedure by which it may be decided to dissolve the association.
- (2) The constitution also, in making provision in terms of subsection (1) for—
- (a) special meetings of members, must provide for members to call a special general meeting if a stipulated number or percentage of the members indicate that they so require such a meeting; 25
- (b) the election of members of the executive committee or body, must not allow members to be elected thereto for a single term longer than two years.
- (c) the annual general meeting, must require that the election of the members of the governing body and of the association's office-bearers be held, and its audited financial statements and budget for the following financial year be considered and disposed of, at that general meeting; 30
- (d) the matters mentioned in paragraph (q) of subsection (1), must provide that the election of the members of the executive committee or body and of the three standing committees must be conducted by secret ballot; 35
- (e) the matters mentioned in paragraph (t) of subsection (1), must require interim financial statements to be prepared quarterly for scrutiny by members;
- (f) joining fees and membership fees, must allow those fees to be determined and to be re-determined or adjusted only at the annual general meeting of members; 40
- (g) the matters mentioned in paragraphs (s), (y) and (z) of subsection (1), must require that a decision to amalgamate with another association, to amend the constitution or to dissolve the association be carried only with the support of at least two thirds of the members present at the meeting, provided there is a quorum; 45
- (h) the qualifications for membership, must provide that an application for admission to membership will be refused unless the applicant has subscribed to the code of conduct;
- (i) the circumstances in which membership may be terminated, must provide for the termination of the membership of any member operating a public transport service without the necessary operating licence, or, where applicable, the necessary permit, for each vehicle by means of which the service is operated; 50
- (j) matters that constitute misconduct, must declare the following to be misconduct:
 - (i) the breach of the code of conduct by any member; 55
 - (ii) a member's employment of a driver who has not subscribed to the code of conduct;
 - (iii) the continued employment by the member of any driver who repeatedly has breached the code of conduct;
 - (iv) failure on the part of the association's governing body or any member thereof or office-bearer of the association authorised by that body to comply with the requirements of section 112(3)(a). 60

Non-compliance with registered constitution, and breach of code of conduct

118. (1) (a) Where the Registrar on reasonable grounds suspects that a registered association has failed to comply with any provision of its registered constitution that is material for the application of Part 12 or this Part, or that a registered non-member has breached the code of conduct, the Registrar must conduct an investigation into the matter. 5

(b) In conducting such an investigation, the Registrar must give the association or non-member an opportunity to make representations or give evidence with regard to the alleged non-compliance or breach.

(c) In deciding the matter, the representations and evidence made, given or furnished by the association or non-member must be taken into consideration. 10

(2) Where in terms of this Act, the specific act of non-compliance or breach constitutes an offence and the association or non-member has been charged with such an offence, the Registrar may postpone the investigation until the criminal proceedings against the accused have been finalised or withdrawn. 15

(3) (a) If the Registrar finds such an association or non-member guilty of such a non-compliance or breach, the Registrar must, by notice in writing, direct the association or non-member to remedy the non-compliance or breach within the period stated in the notice, and set out the steps to be taken for that purpose,

(b) An association or non-member to whom such a notice has been given, may approach the Registrar's office for assistance in taking the steps specified in the notice. 20

(4) Upon failure to comply with such a notice, the Registrar may impose a fine not exceeding an amount as prescribed by the MEC for the specific non-compliance or breach, or cancel the registration of the association or non-member or suspend the registration temporarily, as dictated by the gravity of the non-compliance or breach and the circumstances relevant thereto. 25

(5) (a) Where a registered association's non-compliance with such a material provision of its registered constitution or the breach of the code of conduct by a registered non-member cannot be remedied, the Registrar must impose one of the penalties provided for in subsection (4), and may, in severe cases where the penalty so imposed involves the cancellation of the registration of the association or non-member, issue an order in terms of which the association or non-member is disqualified from being registered at any time during a specified period which may not be longer than one year. 30

(b) Where the registration of an association has been terminated or suspended temporarily in terms of paragraph (a), the registrations of all its members will be cancelled or suspended, as the case may be, for the same period. 35

(6) Upon being notified by a registered association that it has terminated or temporarily suspended the membership of a registered member for non-compliance with its registered constitution or breach of the code of conduct, the Registrar must cancel that member's registration or suspend it for the same period, respectively. 40

(7) The Registrar must, within one week after having acted in terms of subsection (4), (5) or (6) against any registered association, member or non-member, by written notice, notify the MEC, the Registrar of every other province and every planning authority in the province or under its jurisdiction, of the action so taken. 45

(8) (a) The Registrar by written notice must inform any association, member or non-member of cancellation or temporary suspension of registration, and direct the association, member or non-member, as the case may be, to return the latter's registration certificate to the Registrar within seven days of the date of the notice.

(b) Where an association's registration has been cancelled or suspended temporarily, the Registrar must further direct the association to ensure that all its members' registration certificates are returned to the Registrar within the period specified in that notice. 50

(9) The preceding provisions of this section apply, with the changes required by the context, to any provisionally registered association or non-member, subject to the relevant provisions of this Act. 55

Cancellation or temporary suspension of registration or provisional registration of associations, members and non-members

119. (1) The Registrar must cancel the registration or provisional registration of—

(a) an association—

- (i) which has ceased to exist or is no longer based in the province; or
 - (ii) if it has secured registration or provisional registration through fraudulent conduct;
 - (b) a member in respect of a particular association where—
 - (i) the registration or provisional registration of that association is cancelled; 5
 - (ii) membership of that association has been duly terminated in accordance with its constitution;
 - (c) a non-member—
 - (i) who is no longer based in the province; 10
 - (ii) who, if a juristic person, has ceased to exist; or
 - (iii) who does not hold an appropriate operating licence or permit for each vehicle used by the non-member to operate a public transport service;
 - (d) a member of an association provisionally registered who does not hold an appropriate operating licence or permit for each vehicle used by such a member to operate a public transport service, or has not applied for such an operating licence. 15
- (2) An association, member or non-member whose registration or provisional registration has been cancelled or temporarily suspended as provided for in this section or a provincial law, must return the registration certificate or certificate of provisional registration and the distinguishing marks, if any, issued with regard to the registration or provisional registration so cancelled or suspended to the Registrar within the time prescribed by the MEC. 20
- (3) The Registrar may, where an association has terminated membership due to a member's breach of the code of conduct, if justified in the circumstances, cancel that member's registration or provisional registration in respect of any other association of which the former is a member, after having given the member sufficient opportunity to make representations and advance reasons why that should not be done. 25
- (4) The Registrar may cancel, or suspend temporarily for a period not exceeding one year, the registration or provisional registration of— 30
- (a) any association for failure to comply with any provision of its registered constitution that is material for the application of this Part and Part 12;
 - (b) any member—
 - (i) whose membership of an association has been suspended temporarily; or
 - (ii) of an association whose registration or provisional registration has been suspended temporarily; 35
 - (c) any non-member for having breached the code of conduct;
 - (d) any member or non-member who has been convicted of an offence mentioned in section 127.

Effect of lapsing or cancellation of registration on holding of permit or operating licence 40

- 120. (1) Where** the full registration of an association lapses or is cancelled, all permits and operating licences held by the members of that association which relate to the route or routes in question, lapse on a date calculated as 90 days after such lapsing or cancellation, unless— 45
- (a) the association has been re-registered provisionally or fully, and the member is still a member thereof;
 - (b) the member has obtained membership of another registered or provisionally registered association operating on the route or routes in question; or
 - (c) the member has obtained registration as a non-member in respect of the route or routes in question. 50
- (2) Where the registration of a non-member lapses or is cancelled, all permits and operating licences held by the non-member which relate to the route or routes in question lapse on a date calculated as 180 days after such lapsing or cancellation, unless— 55
- (a) the non-member has obtained membership of a registered or provisionally registered association operating on the route or routes in question; or
 - (b) the non-member has obtained re-registration as a non-member in respect of the route or routes in question.

Registration or provisional registration no bar to prosecution for unauthorised operation of public transport

121. The registration or provisional registration of any member or any non-member, is no bar to the prosecution of such a member or non-member for an offence mentioned in section 127(1)(a). 5

PART 18
Law Enforcement

Land transport law enforcement

122. (1) In addition to the measures provided for in this Act with regard to law enforcement, the MECS, transport authorities and municipalities, including municipalities in their capacity as core cities of their MTAs, must take active steps to develop systems to improve land transport law enforcement in their respective jurisdictions. 10

(2) Despite the provisions of any other law—

- (a) an MEC;
- (b) a transport authority; 15
- (c) a municipality,

called in this section an enforcement authority, may enter into an agreement in terms of which—

- (i) land transport law enforcement functions are undertaken by one enforcement authority in the area of jurisdiction of another; 20
- (ii) authorised officers of one such authority maybe seconded to another authority temporarily;
- (iii) land transport law enforcement functions are undertaken jointly, or by a public or private sector agency on behalf of the authority, on terms and conditions set out in the agreement, including conditions as to which authority must bear the costs involved. 25

Appointment of inspectors

123. (1) (a) The MEC may designate employees in the provincial department, or of transport authorities, who are fit and proper persons, as inspectors for the purposes of matters which, in terms of this Act, fall under the jurisdiction of the province or the transport authority, as the case may be. 30

(b) The head of the provincial department must issue to every inspector so appointed a certificate of appointment and official proof of identity in the prescribed form.

(2) The functions of inspectors so appointed are to monitor compliance with this Act in the province or transport area concerned and to assist with the investigation and prevention of offences contemplated in section 127 which have been committed within the province, subject to provincial laws and the directions of the MEC and the head of the provincial department. 35

(3) In performing those functions, an inspector will have all the powers conferred on an authorised officer by or in terms of this Act. 40

(4) When performing any function or duty or exercising any power in terms of this Act, an inspector must on demand by any person in relation to whom the power, function or duty is exercised or performed, produce the certificate of appointment.

Impoundment of vehicles

124. (1) An authorised officer who is satisfied on reasonable grounds that a motor vehicle is being used by any person for the operation of public transport without the necessary operating licence or permit or contrary to the conditions imposed with regard thereto, may impound the vehicle pending the investigation and prosecution of that person for an offence mentioned in section 127(1)(a) or (b). 45

(2) A vehicle impounded under subsection (1) must be delivered to the head of the depot contemplated in subsection (4), who must retain the vehicle in the depot and release it to the person concerned only— 50

- (a) when the criminal charges against the person have been withdrawn or the person has been acquitted of the offence charged; or
- (b) in the case where the person is convicted of the offence charged, and unless 55

the court has ordered otherwise, on payment to the head of the depot of the amount determined by the MEC.

(3) Upon the second or subsequent impoundment of a vehicle which had been previously impounded, subsection (2) applies, with the changes required by the context, except that the impoundment fee will be increased in accordance with the scale so 5 determined.

(4) (a) The MEC or a municipality, by notice in the *Provincial Gazette*, may designate any place defined in the notice to be a depot for the purposes of this section, and may in the same manner amend or withdraw such a notice at any time.

(b) The MEC or, where applicable, the relevant municipality, must appoint an 10 inspector or an authorised officer in the service of the municipality as the person in charge of the depot.

Presumptions and proof of certain facts

125. (1) A document which purports to be an operating licence issued under this Act, or a permit issued under a previous law or a copy of such an operating licence or permit 15 certified to be a true copy, is on mere production in any prosecution for an offence mentioned in section 127(1), where the possession or contents of such an operating licence or permit may be relevant, admissible in evidence as proof that it is such an operating licence or permit which had been lawfully issued, or that it is a true copy thereof, as the case may be, and of the truth and accuracy of the particulars thereof. 20

(2) A document which states that the motor vehicle described therein is registered, under the relevant law, in the name of a person specified therein as the owner, and which **purports** to have been issued under such a law by an employee of the registering authority for motor vehicles of the place where the vehicle was so registered, is on mere production in a prosecution under this Act, admissible as sufficient proof of that person's 25 registered ownership of the vehicle and of the truth and accuracy of the particulars contained therein.

Powers of authorised officers

126. (1) In addition to the functions and duties imposed on an authorised officer by or in terms of this Act, an authorised officer may— 30

- (a) cause a motor vehicle to be stopped in the manner prescribed by the MEC, and enter such a vehicle in order to establish if it is used for public transport or monitor compliance with any provision of this Act, or with the terms of any operating licence or permit, and may for those purposes examine or inspect the vehicle and any documentation that may be relevant; 35
- (b) require from the driver to furnish the latter's full name and residential address, and documentary proof thereof, as well as the name and address of the owner of the vehicle, and particulars of the business in connection with which the vehicle is being used;
- (c) require that the driver or other person in charge of the vehicle forthwith 40 produce for inspection any documents or other records that are in or on the vehicle in the possession of the driver or that person that relate to the persons being conveyed on such vehicle;
- (d) require that any person on a motor vehicle suspected on reasonable grounds to be used for public transport, or a person suspected on reasonable grounds to 45 have been on such a vehicle recently, furnish the latter's full name and address and documentary proof thereof and state if the latter has paid or has to pay any consideration for conveyance on the vehicle, and furnish the name and address of the person to whom the payment has been made or will have to be made; 50
- (e) to require that the records to be kept in or on the vehicle in terms of this Act, be produced by the driver of the vehicle or by the conductor, if any, for inspection;
- (f) enter or enter upon any business premises at any reasonable time to monitor compliance with this Act, and— 55
 - (i) question any person who, in the opinion of the authorised officer, may be able to furnish any information required for that purpose:

- (ii) may require such a person to produce, for examination or inspection, any books and documents, and any other records, that may be relevant for monitoring purposes;
 - (iii) make extracts therefrom or copies thereof; and
 - (iv) demand an explanation of any entries in such a book, document, or other 5 record;
 - (g) require that the driver or other person in charge of a motor vehicle used for public transport, produce any documents whatsoever, that were issued by a competent authority, in terms of this Act, or a previous law, with regard to the vehicle or the public transport for which it may be used terms of this Act, or 10 the previous law, as the case may be, and which, in terms of this Act that law have to be kept on that vehicle;
 - (h) upon the order of a board, attach an operating licence or permit that has expired or lapsed or has been withdrawn temporarily in terms of this Act, and hand it over to that board. 15
- (2) A person questioned or required to furnish an explanation under paragraph (f) of subsection (1), is entitled to all the privileges to which any person testifying before a court of law is entitled.
- (3) (a) Where an authorised officer finds a vehicle used for public transport under the authority of an operating licence or permit to be so defective as to be a danger to persons 20 or property, the authorised officer may order the driver or other person in charge of the motor vehicle to surrender that operating licence or permit, as well as all distinguishing marks relating to the vehicle, and prohibit that driver or person forthwith to use the vehicle for public transport,
- (b) The operating licence or permit so surrendered, must be retained by the officer 25 until the holder of the operating licence or permit has satisfied the officer that the defects have been remedied and that the vehicle is in a roadworthy condition, the onus of proving which rests on the holder of the operating licence or permit.

Offences and penalties

- 127. (1) A person is guilty of an offence—** 30
- (a) if the person operates a public transport service in contravention of section 33;
 - (b) if the person operates or undertakes a public transport service contrary to the terms and conditions of an operating licence, or, where applicable, a permit;
 - (c) if the person contravenes any other provision of this Act;
 - (d) if, being the holder of an operating licence or permit or the agent or employee 35 of such a holder, the person allows someone else to use that operating licence or permit for a vehicle other than the vehicle specified in the operating licence or permit;
 - (e) if the person applies for or obtains an operating licence knowing that a current operating licence has already been issued with regard to the same vehicle; 40
 - (f) if the person, with the intent to deceive, forges, alters, defaces, damages or adds to any operating licence or other official document issued under this Act, or any permit;
 - (g) if, knowing that a document is not an operating licence or permit, or such other official document or that it has been altered, defaced, damaged or added 45 to, utters or uses the document;
 - (h) if the person furnishes or gives false information in or with regard to any application made to a board or a Registrar, or in the course of appearing in any proceedings, investigation or inquiry before such a board or any Registrar;
 - (i) if the person impersonates an authorised officer; 50
 - (j) if the person wilfully obstructs or hinders an authorised officer who is discharging the duties attached to the office concerned;
 - (k) if the person refuses or fails to comply with any lawful order, direction or demand made by an authorised officer in the discharge or performance of any function or duty entrusted to the officer by or in terms of this Act; 55
 - (l) if the person fails to return a registration certificate or certificate of provisional registration, or a distinguishing mark to the Registrar if required to do so by this Act;
 - (m) if the person, without good reason—
 - (i) refuses or fails to appear before a board or Registrar in compliance with 60 an order or subpoena issued under this Act;

- (ii) refuses or fails to answer, or to answer to the best of the person's knowledge and ability, any question lawfully put to the person by any member of the board or by the Registrar, as the case may be; or
- (iii) refuses or fails to produce any book, document or plan or any other record of any nature or kind whatsoever, or any article, in compliance with such an order or subpoena;
- (n) if, where the person is conveyed as a passenger on a vehicle in the course of the operation of a public transport service, the person—
 - (i) fails to pay the fare due for the journey when payment is requested by the driver or conductor of the vehicle concerned;
 - (ii) smokes or drinks liquor on that vehicle in contravention of a notice on the vehicle which forbids smoking or drinking;
 - (iii) wilfully acts in a manner that inconveniences a fellow passenger;
 - (iv) disobeys a reasonable instruction issued by the driver or conductor of that vehicle for the purpose of maintaining order or ending a disturbance or controlling any emergency arising or existing on that vehicle; or
 - (v) wilfully performs any act in or on that vehicle that could cause injury to or endanger the life of any person or cause damage to any property;
- (o) if the person, being the holder of a operating licence or permit or the driver of a vehicle to which that operating licence or permit relates, fails to comply with any duty or obligation imposed on such a holder or driver by or in terms of this Act;
- (p) if the person sets down passengers at or near an international border in contravention of section 46(2);
- (q) if the person uses a vehicle for a public transport service in contravention of section 31.
- (2) Where a person is convicted of any one of the offences mentioned in—
 - (a) paragraphs (a), (b), (d), (e) or (p) of subsection (1), a term of imprisonment not exceeding two years, or a fine not exceeding R 100 000, may be imposed;
 - (b) any other paragraph of that subsection, a term of imprisonment not exceeding three months or a fine not exceeding R5 000 may be imposed.
- (3) Whenever a manager, agent or employee of the holder of a operating licence or permit performs or omits to perform any act which, if the holder of a operating licence or permit had performed or omitted to perform that act personally, would have constituted an offence in terms of subsection (1), that holder is guilty of that offence if—
 - (a) the holder—
 - (i) connived at or knowingly permitted the actor omission concerned; or
 - (ii) did not take all reasonable measures to prevent that actor omission; and
 - (b) an actor omission of the nature of the actor omission charged, whether legal or illegal, fell within the scope of the authority or the course of the employment of the manager, agent or employee.

CHAPTER 4 GENERAL MATTERS

PART 19 *General Matters*

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Appeals in general

128. (1) Any province may establish a provincial transport appeal body to hear appeals relating to applications in connection with intraprovincial transport and where such a body is not established, such appeals must be noted with the Transport Appeal Tribunal established by section 3 of the Transport Appeal Tribunal Act, 1998 (Act No. 50 of 1998), in terms of this section.

(2) Such a provincial transport appeal body must exercise or perform its powers, functions and duties independently, fairly and impartially.

(3) A person who has any direct financial or business interest in any sector of the public transport industry may not be appointed or remain as a member of such an appeal body.

(4) A member of such an appeal body must recuse himself or herself in any matter or proceeding where he or she has or could reasonably be expected to have a financial or other conflict of interest in the outcome of any decision by the appeal body.

(5) (a) Any interested person may make a written request that a member of such an appeal body recuse himself or herself where the person has reason to believe that the member has or could reasonably be expected to have such a financial or other conflict of interest and such a request must specify detailed reasons.

(b) The member must give due regard to such a written request and decide whether or not to recuse himself or herself in the relevant circumstances. 5

(6) Appeals concerning interprovincial transport must be noted with the Transport Appeal Tribunal in terms of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998).

(7) Bodies considering appeals in terms of this section are bound by applicable transport plans. 10

Appeals to Transport Appeal Tribunal

129. (1) Subject to section 128, and unless otherwise provided in this Act, the following persons may appeal to the Tribunal against an act, direction or decision of a board, in the manner and within the time prescribed, if they are affected thereby: 15

(a) A person who has applied to that board for the grant, renewal, amendment or transfer of a operating licence;

(b) the holder of a operating licence issued by that board;

(c) a person who has submitted representations to that board objecting to or supporting an application published by that board under section 37. 20

(2) In considering an appeal in terms of subsection (1), the Tribunal is bound by applicable transport plans.

Amendment of Act 78 of 1977

130. Section 104 of the Urban Transport Act, 1977, is hereby amended by the addition after paragraph (f) of the following paragraph: 25

“(g) Make a grant or loan to a transport authority, as defined in section 1 of the National Land Transport Transition Act, 2000, to enable it to perform its functions under that Act.”.

Amendment of Act 29 of 1989

131. Section 1 of the Road Traffic Act, 1989, is hereby amended by the substitution for the definition of “bus” of the following definition: 30

“bus” means a motor vehicle designed or adapted for the conveyance of more than [16] 35 persons **[including]** excluding the driver (if any);”.

Amendment of Act 93 of 1996

132. Section 1 of the Road Traffic Act, 1996, is hereby amended by the substitution for the definition of “bus” of the following definition: 35

“bus” means a motor vehicle designed or adapted by a manufacturer registered in compliance with section 5, for the conveyance of more than [16] 35 persons **[including]** excluding the driver (if any);”.

Amendment of Act 45 of 1998

133. Sections **3,4,5** and 6 of the National Land Transport Interim Arrangements Act, 1998, are hereby repealed. 40

Transitional provisions

134. Where, at any time before the commencement of this Act—

(6) a person was convicted, in terms of any previous law, of an offence which is an offence in terms of this Act. the person is, where relevant for the purposes of this Act, regarded as a person who had committed a corresponding offence provided for in this Act; and 45

(b) any distinguishing mark issued in terms of any previous law for a vehicle in relation to which a permit had been issued thereunder, is regarded for purposes of this Act, until such time as that permit lapses, is converted to a 50

operating licence, or is withdrawn or cancelled in terms of this Act, as a distinguishing mark issued under this Act.

Act binds State

135. This Act binds the State.

Short title and commencement

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136. (1) This Act is called the National Land Transport Transition Act, 2000, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act, and dates so fixed may differ in respect of different provinces.

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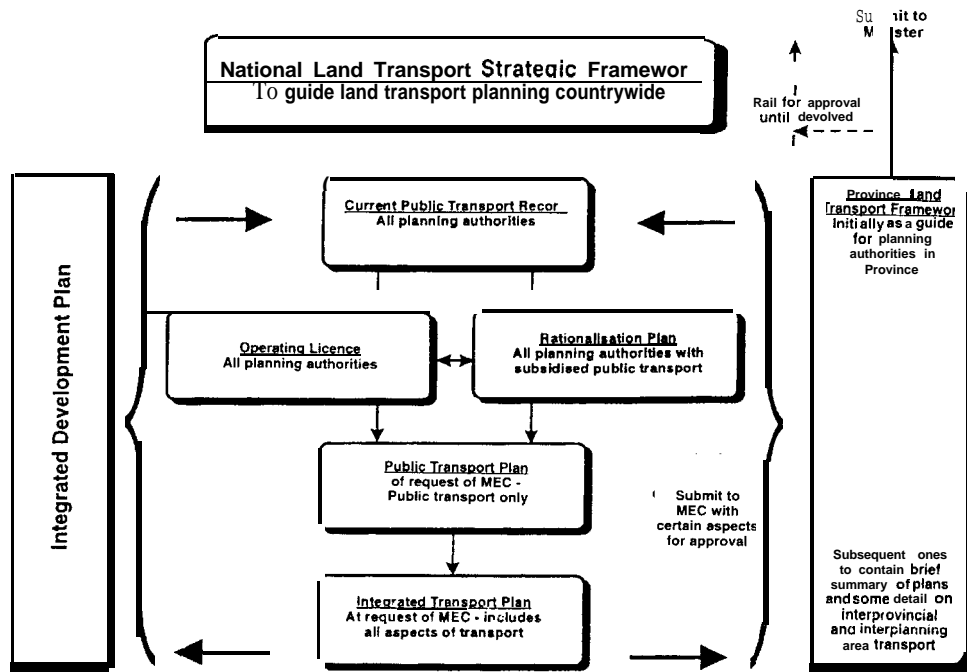
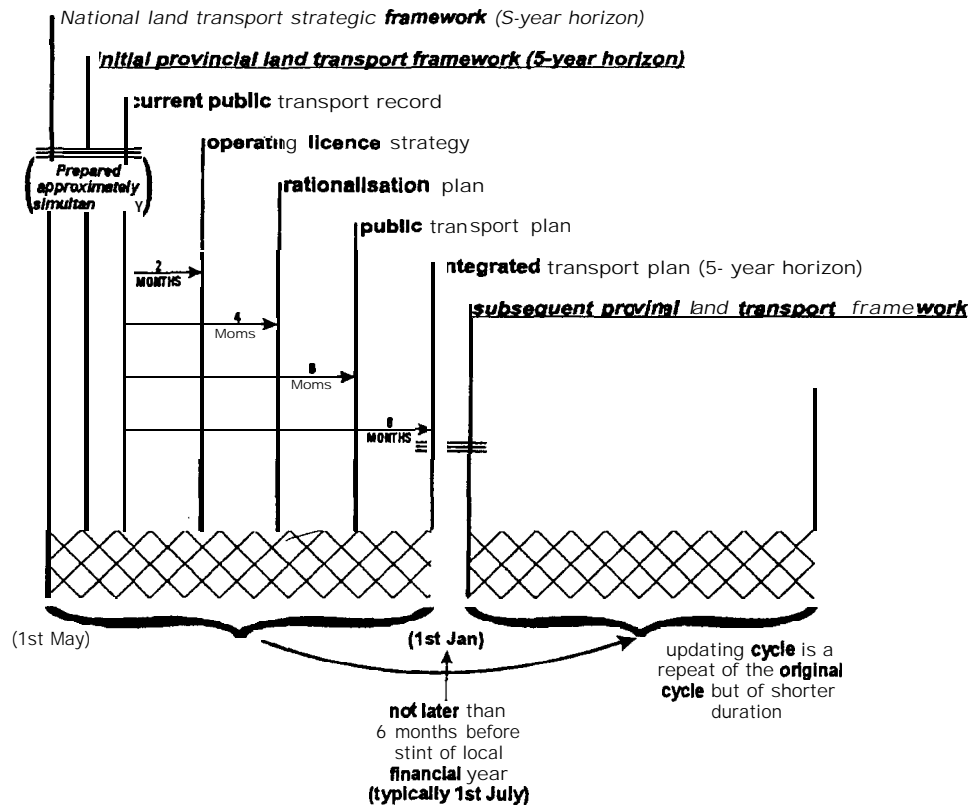


FIGURE 2: SEQUENCE & TYPICAL TIMING OF TRANSPORT PLANS



MEMORANDUM ON THE OBJECTS OF THE NATIONAL LAND TRANSPORT TRANSITION BILL, 2000

Background

The Bill has been prepared pursuant to the *White Paper on National Transport Policy* that was approved by the Cabinet and published in 1996, the recommendations of the *National Taxi Task Team (NTTT)* in 1995 and 1996 which were approved by the Cabinet and the recommendations of the *Moving South Africa* project recently undertaken by the National Department of Transport. The Bill is also the product of various consultative endeavors undertaken, since 1995, with the provinces, local government, other relevant departments in the national sphere of government, the bus, rail and minibus taxi industries and organised labour. The Bill has also been prepared taking into account the provisions of the Local Government: Municipal Demarcation Act, 1998, the Local Government: Municipal Structures Act, 1998 and the latest available version of the draft Local Government: Municipal Systems Bill. As regards vehicle standards, driver and vehicle fitness and related issues, the Bill refers to the Road Traffic Act, 1989 or replacing road traffic legislation, and is intended to function within the ambit of this legislation. The approach followed and principles contained in the Bill have been agreed to by the provinces and metropolitan authorities through the MINCOM structure.

The Bill is designed to bring about a fundamental restructuring of the laws regulating land transport in the country, with the emphasis on public (*passenger*,) transport. It was decided that the full policy of the National Department of Transport, as formulated in consultation with the provinces, cannot be implemented immediately due to the need to dovetail it with the new and proposed local government legislation. For this reason the Bill is transitional in nature, and is scheduled to be replaced by final legislation within the next three years. The Bill therefore also sets the scene for the long term restructuring of the land transport system as envisaged by the Moving South Africa Action Agenda.

By providing for formalisation and regulation of the minibus taxi industry, the Bill will act as an invaluable tool for the government to achieve order and harmony in the industry and is essential for the implementation of the envisaged minibus taxi recapitalisation project.

A working document of the full version of the Bill, catering for the short, medium and long term, was published for comment on 20 December 1996 and a draft bill was approved by the Cabinet during May 1997.

Redrafting of the Bill

The Bill as published was rejected by MINCOM in February 1999. It was referred to a drafting committee consisting of representatives of the three spheres of government. A new version of the Bill was drafted by the drafting committee and approved by COLTO on 27 July 1999 and by MINCOM on 3 September 1999. The Bill was published again for comment on 10 September 1999, some revisions were made, and the final version of the Bill was approved by COLTO on 19 October 1999 and by MINCOM on 8 December 1999. The Bill focuses on the short term, as it is planned to draft a final bill at a later stage. This Bill sets the stage for medium-term and long-term policy implementation.

Structure of the Bill

The Bill is divided into the following four chapters:

- Chapter 1: Introductory Matters
- Chapter 2: Matters of National Concern
- Chapter 3: Matters of Provincial Concern
- Chapter 4: General Matters.

Chapter 1 deals with introductory matters. Chapter 2 is designed to deal with matters of national concern contemplated in section 146(2) of the Constitution, and to take precedence over all provincial laws dealing with similar matters (see clause 3 in that regard). Chapter 2 will therefore apply in the provinces, as setting national norms and standards and applying national land transport policy. Chapter 3 deals with matters of provincial concern, and will apply in each province unless a particular province promulgates or has promulgated its own legislation to replace the provisions of Chapter 3 (see clause 2(2) of the Bill and the definition of “replacing provincial law”). Chapter 4 deals with general matters and, like Chapter 1, will apply throughout the country.

Contents of the Bill

Part 1 of the **Bill, which also constitutes Chapter 1, deals with introductory matters, i.e. definitions and the constitutional application of the Bill. The definitions of “minibus” (9 to 18 persons excluding the driver) and “midibus” (19 to 35 persons excluding the driver) have been formulated to provide for the proposed project to recapitalise vehicles used for minibus taxi-type services.**

Part 2 deals with national land transport principles and policy. Clause 4 lays down principles that will apply to land transport policy in the country. Clause 5 provides that the Minister of Transport in the National sphere of government, called “the Minister”, will also be able to make known national land transport policy by publishing it in the *Government Gazette*. Part 3 also empowers the Minister to undertake various functions related to land transport and provides for the establishment of a national, integrated land transport information system. This system will provide the National Department with the information and statistics that it needs to fulfil its functions of co-ordinating land transport and improving the situation with regard to the provision of adequate and affordable transport for the public.

Part 4 provides for functions of the Members of the Executive Councils of the Provinces responsible for transport (MECs), similar to those of the Minister, but at provincial level.

Part 5 provides for the establishment of transport authorities for transport areas. The MEC responsible for transport and one or more municipalities may by agreement establish a transport authority (TA) for the area, which will be known as a transport area. Where the national government will provide funding for the transport authority, the national Minister of Transport must also be party to the agreement, only in relation to issues connected with such funding. Where an area has been declared a metropolitan transport area (called an MTA) under the Urban Transport Act, 1977, the municipalities within the MTA will likewise be able to establish a TA. The core cities of metropolitan transport areas will, however, not be obliged to change their status to that of a TA. Transport areas will be able to extend across provincial boundaries.

The Bill lays down requirements for agreements establishing TAs, called “founding agreements”, which must be published after they have been concluded. The Bill also lists factors to be considered when determining the boundaries of transport areas. It provides for functions and competencies of TAs and provides for their dissolution.

The functions of TAs will be to formulate transport policies for their areas and to co-ordinate modes of public transport by preparing various types of transport plans as a planning authority. These plans will be implemented to integrate modes (bus, rail and taxi) by making recommendations for the issuing of operating licences (authorisations to operate public transport services). They will be responsible for entering into contracts with public transport operators for the provision of services, once the MEC has assigned this function to them. They will have to see that the community in their area, and those traveling to, from or through it, are adequately served by public transport.

A founding agreement may provide that the professional, technical, administrative and other work of a TA may be performed by one or more departments of the municipalities concerned, or by a separate body established for this purpose and called a “transport executive”. The MEC and two or more TAs will be able to form joint transport executives.

Part 6 provides for the Minister to make money available to provinces for land transport from money appropriated by Parliament for this purpose, subject to conditions that the Minister may impose. The Minister may also make money available directly to TAs in this manner. Likewise, the provinces will be empowered to make this money received available to TAs and municipalities in their areas for land transport. Municipalities will be empowered to make appropriations to TAs of which they are a part. The Bill provides for annual budgets to be prepared by TAs, and will regulate their financial affairs.

Part 7 provides for land transport planning. The Bill lays down general principles that will have to be considered by all those involved in planning transport services. Each MEC will be empowered to prescribe such principles and land transport policy for the relevant province by notice in the *Provincial Gazette*. The national Department will be required to draw up an annual national land transport strategic framework for the country for a five-year period corresponding with the Department’s financial year. Provinces will also be required to draw up provincial transport frameworks on an annual basis, by a uniform date to be determined between the MECs and made known in the

Government *Gazette*. The Bill provides that the following authorities will be “planning authorities”:

- TAs for their transport areas;
- core cities designated under the Urban Transport Act, 1977, for their MTAs;
- other municipalities if those do not fall within transport areas or MTAs (these will not be required to produce all of the undermentioned transport plans).

Planning authorities will be required to prepare some or all of the following plans:

- Current public transport records, which will be prepared by all planning authorities, are detailed records of all existing public transport services and facilities and will form the basis for preparing rationalisation plans, operating licences strategies and public transport plans.
- Operating licences strategies, which are to be prepared by all planning authorities and must eventually form part of their public transport plans, and upon which the planning authority will base its recommendations to the board in its disposal of applications for operating licences.
- Rationalisation plans, which are tactical plans prepared by planning authorities for the rationalisation of existing services prior to their conversion to subsidised service contracts through public tendering. Rationalisation plans are to be prepared by TAs, core cities and planning authorities where there are subsidised public transport services that are to be continued or where scheduled public transport services are to be operated in their areas that are subsidised by any sphere of government.
- Public transport plans, which will be prepared by all planning authorities by a date to be determined by the MEC, and will contain the planning authority’s strategies for public transport, the operational plan for contracted services and the operating licences strategy for non-contracted services in the area.
- Integrated transport plans to be prepared by transport authorities, core cities and other planning authorities required to do so by the MEC, to cover a five-year period commencing from the then current financial year. The financial year of TAs will co-incide with that of municipalities. This will be a strategic plan including a detailed budget for the financial year and a priority list of projects for the next five years. It will integrate transport planning with development plans and land development objectives.

Where transport planning conflicts with land development objectives or planning and the matter cannot be resolved between the (*transport*) planning authority and the municipality concerned, the matter will have to be referred to the MEC for resolution in consultation with the MEC responsible for land affairs. Transport planning will have to be undertaken in consultation with relevant interest groups in the manner prescribed by the MECS.

Part 8 and the corresponding provincial part provide that each MEC must establish a single board for the province, with members who are impartial and have no financial interest in the public transport industry. Such boards will be responsible for dealing with applications for the granting, renewal, amendment or transfer of operating licences (i.e. authorisations to undertake public transport). These Parts also provide for related matters such as powers and functions of the boards and qualifications for membership. A province will be able to make laws providing for the functions of the board to be transferred to similar bodies to be established by transport authorities, in respect of applications related to transport within their transport areas, but only if the MEC is satisfied that the particular transport authority is competent to do so and is performing its functions satisfactorily. The boards will be able to establish satellite offices in regions of the province for the convenience of the public. The satellite offices will assist the public in making applications for operating licences, will receive applications and will issue permits and distinguishing marks to be placed on vehicles.

Part 9 and the corresponding provincial part deal with operating licences to undertake public transport services. To implement the envisaged taxi recapitalisation project, the Bill provides that only vehicle types approved through this project will be allowed to be used for public transport after a date to be determined by the Minister, which may not be earlier than 1 October 2006. Furthermore, by a date to be determined by the Minister, which may not be earlier than 1 October 2004, no new operating licences may be granted for vehicles other than the new, approved ones (whether as new operating licences, or by way of renewal, amendment or transfer of an existing operating licence or permit). The approved vehicles will be those carrying—

- fewer than nine persons, excluding the driver; or

- 18 persons, excluding the driver; or
- 35 persons, excluding the driver; or
- 46 or more persons, excluding the driver.

Any permit authorizing public transport services validly issued before the date of commencement of the Bill, when adopted by Parliament and becoming law, will remain valid only for a limited period, within which the holder will have to apply to the relevant board to convert it to a operating licence. The MEC, by notice in the *Provincial Gazette*, will determine a date by which all permits must have been converted for the purposes of this section. The MEC will be able to defer that date in consultation with the Minister. Any permit not so converted within that time will lapse. Permits issued for an indefinite period will be converted to operating licences that are also valid for an indefinite period. Permits issued for a definite period will be converted to operating licences valid for the same period. Permits issued on a radius basis will have to be converted to operating licences that specify particular routes or, in limited circumstances specified in the Bill, to specified, particular areas. Holders of permits will not be able to convert them to operating licences unless the permit is active in the sense that the services authorised by the permit have been provided uninterruptedly for a period of at least 180 days before application is made for conversion.

Regarding new operating licences, no one will be entitled to a operating licence as of right. Application will have to be made to the relevant board for a operating licence, which will be granted or refused in terms of relevant transport plans if the applicant has the ability to provide the service and is not disqualified by previous convictions for offences. Only one operating licence may be issued per vehicle, if the vehicle is acceptable for the service, and only to the owner of the vehicle, as defined in the Road Traffic Act, 1989. Persons directly involved in evaluating applications related to operating licences, preparing operating licences strategies, processing applications for registration or undertaking law enforcement related to public transport will not be allowed to hold operating licences.

Where a operating licence will authorise services other than charter services in the area of a planning authority, the board will have to inform that authority of the application for the operating licence and allow it time to make recommendations. The board will be obliged to take into account such recommendations and the provisions of relevant transport plans. Operating licences boards will invite applications for operating licences for services not subject to a subsidised service contract or a commercial service contract at the request of a planning authority, where the services are provided for in transport plans. Where such a contract has been awarded, the board must issue a operating licence to the operator for the duration, and subject to the conditions, of the contract. In the case of a non-contracted service, the board will have to consider the matters set out in the Bill.

Holders of operating licences will not be allowed to hire them out to other persons. However, in the case of contracted services, subcontracting will be allowed in specified circumstances. Vehicles specified in operating licences providing services in terms of public transport plans will not be able to be specified also in operating licences for long-distance services, unless the planning authority specifically approves this.

Exemptions from the definition of “public transport” services have not been dealt with as the exemptions contained in section 2(2) of the Road Transportation Act, 1977, or replacing provincial legislation, will apply. A significant change from the status quo is that operators conveying learners and students will require operating licences, except for sport or educational tours or holiday or sightseeing tours where the educational institution owns the vehicle or it has been set aside for the use of that institution.

Temporary operating licences will be required for special events in terms of section 20 of the Road Transportation Act, 1977, or replacing provincial legislation. Each province will be able to make different arrangements in this regard if it so wishes.

Part 10 deals with “regulated competition”, and is based in the White Paper’s recommendation that competition should be “for routes but not on routes”. Where contracts have been concluded for subsidised services before the date of commencement of the Bill, these will have to be converted to subsidised service contracts. All new subsidised services will have to be put out to tender. To qualify as a tenderer for such a contract or a commercial service contract, an operator will have to—

- be registered in the case of a minibus taxi-type service;
- conduct its operations according to business principles and be “financially ringfenced” as provided for in the Bill, and
- be liable to pay income tax.

A municipal or parastatal operator who is not liable to pay income tax may qualify, once only in respect of a particular service, where the service was operated on 10 October 1996 and the service was not previously subject to an interim contract or a current tendered contract.

Municipalities as such will not be allowed to tender for subsidised or commercial service contracts, but a body established by a municipality to operate public transport services will be able to do so if financially **ringfenced**. The concept of “financial ringfencing” means that the entity is a separate business unit and receives no unfair financial support from any sphere of government, either directly or indirectly. The concept is explained in the Bill.

Where in the course of rationalizing public transport services in its area, a planning authority determines that services authorised by operating licences are no longer required, it will have to try to offer the holder of the operating licence alternative services, failing which it may apply to the board to withdraw the operating licence. The board will be empowered to withdraw the operating licence after allowing the holder to make representations, and having considered those representations, in specified circumstances, provided that the holder is compensated. Where compensation has not been agreed upon between the planning authority and the holder, the parties may approach a competent Court having jurisdiction to resolve the matter.

Part 12 and the corresponding provincial part deal with the registration of minibus taxi associations, their members, and persons who do not belong to such associations (called “non-members”). A National Taxi Register must be kept to contain information related to such registration, and a provincial taxi register for each province. Each MEC will have to appoint a provincial taxi registrar. These registrars have already been appointed in terms of provincial laws or administrative processes.

To qualify for full registration, taxi associations will have to comply with the following:

- They will have to have been in existence for the minimum period prescribed by the MEC.
- Each member of the association will have to hold a valid permit or operating licence and operate public transport within the authority of the permit or operating licence.
- Members of the association will have to have converted their permits to operating licences.
- The number of members will have to be above the minimum prescribed by the MEC.
- The association will have to have a constitution that complies with the standard minimum constitution prescribed by the MEC.
- The association will have to subscribe to a prescribed code of conduct.
- The association will have to be based in the province.

Associations whose members do not all hold permits or operating licences will be able to apply for provisional registration if a specified minimum percentage of their members hold permits or operating licences or have applied for them. They will also have to comply with requirements regarding minimum time of existence and minimum membership. Provisionally registered associations will have to have constitutions that comply with the prescribed requirements and their members will have to subscribe to the prescribed code of conduct, but provision will be made that they may be exempted from certain of these requirements.

All taxi associations registered or provisionally registered before the date of commencement of the Act in terms of provincial laws, will be deemed to be provisionally registered. This will not prevent them from applying directly for full registration if they comply with the requirements.

According to Chapter 3 (the “provincial Chapter”) persons will be allowed to register as non-members if they—

- have subscribed to the code of conduct;
- hold a valid permit or operating licence for the service in question;
- are operating in accordance with the permit or operating licence; and
- are based in the province.

In addition, a person will be able to register as a non-member either where there is no registered association on the route or routes where the applicant’s transport services are being operated; or, where there is such an association, only if—

- the applicant has been refused membership of the association;
- the applicant does not meet the association’s requirements for membership;

- the association's requirements for membership are unfair;
- the applicant cannot reasonably be expected to become a member of the association in the circumstances; or
- the applicant would be subjected to unfair discrimination if admitted to membership.

Non-members which are companies, close corporations or other juristic persons, will only qualify for registration if they do not have two or more shareholders or members who operate or operated services which are substantially the same as the public transport services operated by the company. This provision is designed to prevent splintering of associations and other groupings of operators.

Registered associations, members of registered associations and non-members will receive registration numbers. The MECS will be required to liaise with one another to ensure that numbers issued are not duplicated. They will also receive registration certificates or provisional registration certificates, as the case may be. A distinguishing mark will be issued for each vehicle operated by a member of a registered association or by a registered non-member. Only associations and operators registered under the Act will be entitled to certain financial and other benefits provided by the government, by TAs, by core cities and by other organs of government.

The Registrar will be able to cancel or suspend the registration of associations and non-members for various reasons, such as non-compliance with its constitution *or* the code of conduct, as the case may be.

Part 18 deals with law enforcement. MECS will be empowered to designate employees in Provincial Departments as road transport inspectors to monitor compliance with the Act and assist with the investigation and prevention of offences. This Part also provides for increased powers to impound vehicles operating without proper operating licences or permits. It is envisaged that the Administrative Adjudication of Road Traffic Offences Act, 1998, and the Road Traffic Management Corporation Act, 1999, will eventually be made applicable to offences created by this Bill.

Chapter 4 deals with general matters. It provides, among other things, that provinces may establish appeal bodies to hear appeals relating to applications concerning operating licences for intraprovincial services. Where no such body is established, appeals will be lodged with the Transport Appeal Tribunal established by Act 39 of 1998. Appeals concerning interprovincial and cross-border (*international*) services must be lodged with the Transport Appeal Tribunal.

Funding the implementation of the legislation

The Minister may provide, from moneys appropriated by Parliament, funding for land transport to the three spheres of Government. As the functions are concurrent, funds may also be provided by the other two spheres of Government.

Most of the functions in this Bill are currently being undertaken and funded. However, considerable rationalisation and efficiency gains are envisaged from the restructuring, transformation and planning provided for in this Bill. Any savings realised will be used to fund functions that are currently under-funded.

Consultation

A more comprehensive version of the Bill was published for comment as a working document in December 1996. Copies of the Bill were also sent to various stakeholders. At that stage it was couched in the form of a national bill and a model provincial bill, but the issues covered were substantially the same. A large number of comments were received, considered and incorporated where appropriate. Various meetings were held with the provinces, metropolitan municipalities and other stake holders to discuss the provisions of the Bill in detail.

The Bill was referred to a drafting committee consisting of representatives of the three spheres of government in February 1999. A new version of the Bill was drafted by the drafting committee and approved by COLTO on 27 July 1999 and by MINCOM on 3 September 1999. The Bill was published again for comment on 10 September 1999. Meetings were held with stakeholders, such as Transnet, the South African Rail Commuter Corporation Limited, representative structures of the bus and taxi industries, representatives of organised labour and commuter organisations. Provincial workshops were also held during September and October 1999 in all of the provinces, to which all role players were invited. The necessary revisions were made to the Bill, and the final

version thereof was approved by **COLTO** on 19 October 1999 and by **MINCOM** on 8 December 1999.

Procedure

The view is held by the State Law Advisers that the Bill should be dealt with in accordance with the procedure provided for in section 76 of the Constitution, inasmuch as the Bill fails within a functional area listed in Schedule 4 to the Constitution, namely “public transport”.