

REPUBLIC OF SOUTH AFRICA

TRANSPORT APPEAL TRIBUNAL BILL

(As amended by the Portfolio Committee on Transport (National Assembly))

(SELECT COMMITTEE ON PUBLIC SERVICES)

[B 29D—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE VERVOERAPPÈLTRIBUNAAL

(Soos gewysig deur die Portefeuljekomitee oor Vervoer (Nasionale Vergadering))

(GEKOSE KOMITEE OOR OPENBARE DIENSTE)

[W 29D—98]

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BILL

To provide for the establishment of the Transport Appeal Tribunal to consider and to decide appeals noted under the National Land Transport Act, 1998, and under the Cross-Border Road Transport Act, 1998; and for matters connected therewith.

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

CHAPTER 1

APPLICATION OF ACT

Definitions 5

1. In this Act, unless the context indicates otherwise—
 - (i) “Board” means any provincial permissions board contemplated in the National Land Transport Act, 1998; (v)
 - (ii) “Director-General” means the Director-General: Transport; (i)
 - (iii) “intraprovincial transport” means intraprovincial transport as defined in section 1 of the National Land Transport Act, 1998; (iii) 10
 - (iv) “Minister” means the Minister of Transport; (iv)
 - (v) “prescribed” means prescribed by regulation; (ix)
 - (vi) “regulation” means any regulation made under section 17(1); (vii)
 - (vii) “Regulatory Committee” means the Regulatory Committee referred to in section 13 of the Cross-Border Road Transport Act, 1998; (vi) 15
 - (viii) “this Act” includes any regulation; (ii)
 - (ix) “Tribunal” means the Transport Appeal Tribunal established by section 3(1). (viii)

Application of Act 20

2. The provisions of this Act will not apply in respect of any appeal—
 - (a) which relates to intraprovincial transport; and
 - (b) in respect of which an appeal body has been established by or under any law of the provincial legislature concerned.

CHAPTER 2 25

THE TRANSPORT APPEAL TRIBUNAL

Establishment of Transport Appeal Tribunal

3. (1) There is hereby established a tribunal to be known as the Transport Appeal Tribunal.
- (2) The Tribunal must be impartial and must perform its functions without fear, favour or prejudice. 30

Constitution of Tribunal

4. (1) The Tribunal consists of not more than nine, but not less than five, members appointed by the Minister after consultation with every member of the Executive Council in every province responsible for road transport matters. 35

- (2) The Minister must—
- (a) appoint fit and proper persons as members of the Tribunal on the grounds of their knowledge of, or experience in, financial, economic, commercial, legal or other matters relating to the functions of the Tribunal; and
 - (b) invite nominations for persons who comply with the criteria contemplated in paragraph (a) to be appointed as members of the Tribunal—
 - (i) by notice in at least two newspapers circulating throughout the Republic; and
 - (ii) by taking such further steps as the Minister considers appropriate to bring the contents of the notice to the attention of interested persons.
- (3) When considering the appointment of any particular person, the Minister must—
- (a) by notice in the *Gazette*, make known that fact and invite all interested persons to lodge in writing, within the period and at the place specified in the notice, any representations that they wish to make in connection with the appointment;
 - (b) take such further steps as the Minister considers appropriate to bring the contents of the notice to the attention of interested persons; and
 - (c) take into account any representations lodged.

Chairperson and deputy chairperson of Tribunal

5. (1) The Minister shall appoint one of the members of the Tribunal as the chairperson of the Tribunal and the Tribunal shall at its first sitting appoint another as the deputy chairperson of the Tribunal.
- (2) If the chairperson is absent or for any reason unable to act as chairperson, the deputy chairperson must act as the chairperson of the Tribunal.

Persons not qualified to be members

6. A person may not be appointed as a member of the Tribunal—
- (a) if the person is an unrehabilitated insolvent;
 - (b) if the person has been removed from public office;
 - (c) if the person has been convicted of an offence for which the person has been sentenced to imprisonment without the option of a fine, unless the Minister, having due regard to the nature of the offence and the circumstances of the case, is satisfied on reasonable grounds that the person is a fit and proper person to be so appointed.

Conditions of appointment and terms of office of members

7. (1) The chairperson, the deputy chairperson and any other member of the Tribunal will, for each day or part of a day in any month on which the duties attached to the office concerned were performed, be remunerated, and be paid a travelling and subsistence allowance, at such daily rate as the Minister in consultation with the Minister of Finance may determine from time to time.
- (2) (a) The conditions of appointment will be as prescribed.
- (b) Different conditions of appointment may be prescribed in respect of different categories of members.
- (3) A member of the Tribunal will hold office for such period, but not exceeding three years, as the Minister may determine at the time of the member's appointment, and will at the termination of the period of office be eligible for reappointment, but not for more than three consecutive terms of office.

Vacancies in Tribunal

8. (1) A member of the Tribunal vacates office—
- (a) if the member becomes subject to any disqualification mentioned in section 6;
 - (b) in the case where the member has resigned by giving one month's notice in writing to the Minister, when the member's resignation takes effect.
- (2) The Minister may remove any member of the Tribunal from office—
- (a) for misconduct;
 - (b) for failing to perform the duties of a member or to perform them diligently and efficiently;

(c) if the member, because of any physical or mental illness or disability, has become incapable of performing a member's duties or performing them efficiently.

(3) (a) Any vacancy in the office of a member of the Tribunal must be filled by the Minister through the appointment of another member in terms of section 4. 5

(b) A member so appointed holds office for the unexpired portion of the predecessor's term of office.

Sittings of Tribunal

9. (1) The Tribunal will sit on such days and during such hours and at such place as the chairperson of the Tribunal may determine. 10

(2) The presence of at least fifty per cent of the members will be necessary to constitute a sitting of the Tribunal.

(3) If both the chairperson and the deputy chairperson are absent from a sitting of the Tribunal, the members present must from among their number elect a person to preside at the sitting. 15

Decisions of Tribunal

10. (1) The decision of a majority of the members present at a sitting of the Tribunal will constitute a decision of the Tribunal, and in the event of an equality of votes on any matter, the person presiding at the sitting will have a casting vote in addition to that person's deliberative vote. 20

(2) No decision taken by the Tribunal will be invalid merely by reason of a vacancy in the Tribunal or of the fact that any person not entitled to sit as a member of the Tribunal, sat as such a member at the time when the decision was taken, if the decision was taken by the majority of the members of the Tribunal present at the time and who were entitled to sit as members of the Tribunal. 25

CHAPTER 3

APPEALS

Fees in respect of Appeals

11. The Tribunal may not deal with any appeal noted under the National Land Transport Act, 1998, or under the Cross-Border Road Transport Act, 1998, unless any such appeal is accompanied by the fees referred to in section 17(1)(a). 30

Decisions on Appeals

12. (1) Subject to the provisions of this Act, the Tribunal must consider an appeal noted with the Tribunal in accordance with the provisions of the National Land Transport Act, 1998, or the Cross-Border Road Transport Act, 1998, whereupon the Tribunal may— 35

(a) reject the appeal and confirm the act, direction or decision appealed against; or
(b) uphold the appeal, set aside the act, direction or decision appealed against, and—

(i) substitute therefor any other act, direction or decision which the Board or the Regulatory Committee, as the case may be, could have performed or given; or 40

(ii) refer the matter which gave rise to the appeal to the Board or the Regulatory Committee, as the case may be, for reconsideration; or

(c) uphold the appeal partially and vary the act, direction or decision appealed against. 45

(2) No decision taken by the Tribunal under this section may be inconsistent with the National Land Transport Act, 1998, or the Cross-Border Road Transport Act, 1998, as the case may be.

(3) Any act, direction or decision of the Tribunal under subsection (1)(b)(i) or (c) will, except for the purposes of subsection (1), be deemed to be an act, direction or decision 50

of the Board or Regulatory Committee against whose act, direction or decision the appeal was brought.

(4) The Tribunal must—

- (a) within the prescribed period cause the parties involved in the appeal to be notified in writing of the decision of the Tribunal; 5
- (b) at the written request of any person whose rights have been adversely affected by the said decision, in writing furnish any such person with reasons for the decision within the prescribed period.

Applications for condonation and suspension

13. The chairperson of the Tribunal may, without giving prior notice to any interested party or hearing any such party— 10

- (a) grant an application for condonation of the late filing of an appeal against the act, direction or decision of the Board or the Regulatory Committee, as the case may be, provided the appeal is noted in the prescribed manner and within the prescribed period, or refuse such an application; or 15
- (b) grant or refuse an application to suspend the operation of any act, direction or decision appealed against.

Procedure at Appeals

14. (1) In order to consider an appeal before the Tribunal in terms of this Act, the Tribunal may— 20

- (a) allow any person affected by the appeal or interested therein, or the duly authorised representative of any such person, to appear before the Tribunal and—
 - (i) to give evidence or make oral representations relevant to the appeal;
 - (ii) to call witnesses and lead evidence on any question relevant to the appeal; or 25
 - (iii) to question any person who testified at the appeal;
- (b) summons any person who may reasonably be able to give information of material importance concerning the subject matter of the appeal or who has in any such person's possession or custody or under any such person's control any book, document or object which may reasonably have a bearing on the subject matter of the appeal, to appear before the Tribunal; 30
- (c) call upon and administer any oath to, or accept an affirmation from, any person present at the appeal who has or might have been summonsed in terms of paragraph (b); 35
- (d) question any person who has been called upon in terms of paragraph (c) or require any such person to produce any book, document or object in any such person's possession or custody or under any such person's control which may reasonably have a bearing on the subject matter of the appeal.

(2) A summons for a person to appear before the Tribunal must be— 40

- (a) in the prescribed form;
- (b) signed by the chairperson of the Tribunal or any other member designated by the chairperson; and
- (c) served in the prescribed manner.

(3) Subject to the provisions of subsection (4), the law relating to privilege, as applicable to a witness summonsed to give evidence or to produce any book, document or object before a court of law, will apply in respect of the questioning of any person by, or the production of any book, document or object before, the Tribunal in terms of this section. 45

(4) (a) Where, in terms of the National Land Transport Act, 1998, or the Cross-Border Road Transport Act, 1998, it would have been permissible for the Board or the Regulatory Committee, as the case may be, to take any person's road transport law enforcement profile or previous traffic or transport-related contraventions into consideration, the Tribunal may compel any such person to give self-incriminating evidence, but the person presiding at the appeal must direct that such evidence will be given *in camera* and that it will not be made public in any manner whatsoever, except by order of a competent court or for the purposes of review or appeal. 55

(b) No self-incriminating evidence so given will be admissible as evidence at any proceedings in respect of an offence, except in the case of perjury or any offence under section 15(c)(i), (d) or (e).

Offences

15. Any person who— 5
- (a) has been duly summonsed under section 14 and who fails, without sufficient cause—
 - (i) to attend at the time and place specified in the summons; or
 - (ii) to remain in attendance until excused by the Tribunal from further attendance; 10
 - (b) has been called upon in terms of section 14(1)(c) and who refuses to be sworn or to make an affirmation as a witness;
 - (c) fails, without sufficient cause—
 - (i) to answer fully and satisfactorily any question lawfully put to any such person in terms of section 14 (1)(d); or 15
 - (ii) to produce any book, document or object in any such person's possession or custody or under any such person's control which any such person was required to produce in terms of section 14(1)(d);
 - (d) with intent to deceive the Tribunal, produces before the Tribunal any false, untrue, fabricated or falsified book or document; or 20
 - (e) wilfully furnishes the Tribunal with information, or makes a statement before the Tribunal, which is false or misleading,
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

CHAPTER 4 25

GENERAL

Administration of Tribunal

16. (1) The Director-General must, after consultation with the Tribunal, designate such officers in the Department of Transport as may be necessary to perform the administrative and secretarial work of the Tribunal. 30
- (2) The expenditure incurred in respect of the performance of the Tribunal's functions will be defrayed from moneys appropriated by Parliament for that purpose.
- (3) All moneys received by the Tribunal under this Act must be paid into the National Revenue Fund, and the Director-General is the accounting officer of such expended moneys. 35

Regulations

17. (1) The Minister may, after consultation with the Tribunal, make regulations—
- (a) requiring the payment of fees in connection with any appeal to the Tribunal, and prescribing the amount of any such fees, the circumstances in which any amount paid by way of any such fees will be forfeited or refunded in whole or in part, the amount of any such partial refund and the circumstances in which any amount so paid may in the discretion of the Tribunal be forfeited in whole or be refunded in whole or in part; 40
 - (b) as to the information to be provided by the Board or the Regulatory Committee to the Tribunal or an applicant in connection with any appeal, and the manner in which and the time within which such information must be provided; 45
 - (c) as to the procedure to be followed by the Tribunal in dealing with any appeal, and the manner in which the Tribunal must give notice of its sittings;
 - (d) prescribing fees or allowances payable to any person summonsed under section 14(1)(b) to appear before the Tribunal to give evidence or to produce any book, document or object; 50

- (e) (i) as to the record to be kept of the proceedings at any appeal;
- (ii) prescribing the circumstances in which persons affected by any such appeal will have access thereto or will be permitted to make any copies thereof, requiring the payment of fees in connection with the provision of any such copies, and prescribing the amount of any such fees; 5
- (f) as to the disclosure of any direct or indirect financial or personal interest which a member of the Tribunal has in any matter to be dealt with by the Tribunal which may affect the impartiality of the member concerned;
- (g) as to any matter required or permitted to be prescribed under this Act by regulation. 10

(2) The Minister may not under subsection (1)(a), (d) or (e)(ii) prescribe any fees or allowances, or any circumstance in which any fees are required or permitted to be refunded or the amount of any refund, except with the concurrence of the Minister of Finance.

Repeal of certain provisions of Act 74 of 1977, and savings 15

18. (1) Subject to the provisions of subsection (3), the provisions of the Road Transportation Act, 1977, relating to the consideration and determination of appeals by the National Transport Commission are hereby repealed in so far as those provisions relate to—

- (a) any matter corresponding to that in respect of which the Board is authorised by law to perform or give any act, direction or decision; 20
- (b) any matter corresponding to that in respect of which the Regulatory Committee is authorised by law to perform or give any act, direction or decision.

(2) Notwithstanding the repeal of section 8 of the said Act, any appeal noted or commenced thereunder will be continued and concluded as if the repeal had not been effected. 25

(3) The provisions of—

- (a) subsection (1)(a) will come into operation on the date on which the National Land Transport Act, 1998, comes into operation; and 30
- (b) subsection (1)(b) will come into operation on the date on which the Cross-Border Road Transport Act, 1998, comes into operation.

Short title

19. This Act is called the Transport Appeal Tribunal Act, 1998.

**MEMORANDUM ON THE OBJECTS OF THE TRANSPORT
APPEAL TRIBUNAL BILL, 1998**

The Bill deals with the Transport Appeal Tribunal, whose sole function is the consideration and determination of appeals against the acts, directions or decisions of provincial permissions boards (intended to be established by the National Land Transport Bill) and the Regulatory Committee (intended to be established by the Cross-Border Road Transport Bill). Provincial permissions boards will consider applications for permission to conduct domestic passenger transport, whilst the Regulatory Committee will consider applications for permits authorising cross-border passenger and freight road transport.

It is being proposed in the Bill that the members of the said Tribunal be appointed by the Minister of Transport, after consultation with the relevant Members of the Executive Councils, on the grounds of their knowledge of, or experience in, matters relating to the functions of the Tribunal.

The provisions of the Bill were first published for general comment as part of the National Land Transport Bill in the *Gazette* during December 1996.

Since public transport is included in Schedule 4 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the Department and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 76.