

**PROVINCE OF THE NORTHERN CAPE**

**PROFENSI YA KAPA-BOKONE**



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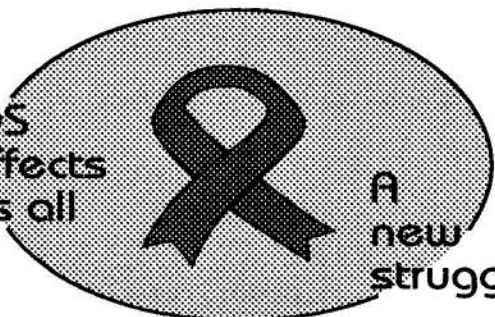
**Vol. 8**

**KIMBERLEY, 18 MAY  
MEI 2001**

**No. 616**

**We all have the power to prevent AIDS**

AIDS  
affects  
us all



A  
new  
struggle

**Prevention is the cure**

**AIDS  
HELPLINE**

**0800 012 322**

DEPARTMENT OF HEALTH

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**CONTENTS • INHOUD***No.**Page  
No.      Gazette  
No.***GENERAL NOTICE**

32	Proposed Northern Cape Land Transport Bill, 2001: For comments .....	3	616
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## GENERAL NOTICE

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NOTICE 32 OF 2001

### DEPARTMENT OF TRANSPORT, ROADS AND PUBLIC WORKS

#### PROPOSED NORTHERN CAPE LAND TRANSPORT BILL, 2001

The MEC for Transport, Roads and Public Works in the Northern Cape Province intends to enact the Northern Cape Land Transport Bill set out in the Schedule. The Bill and the Explanatory Memorandum is hereby published for general information and public comment.

All interested parties are invited to submit written comments on the Bill.

Comments on the Northern Cape Land Transport Bill must be submitted by no later than 31 May 2001 to:

The Chief Director: Department of Transport, Roads and Public Works  
Attention: Mrs. G. Botha  
P.O. Box 3132  
KIMBERLEY  
8300

Fax No. (053) 8313973  
E-Mail: [gbotha@wil.ncape.gov.za](mailto:gbotha@wil.ncape.gov.za)

**NORTHERN CAPE LAND TRANSPORT BILL****BILL**

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

**BE IT ENACTED** by the Legislature of the province of Northern Cape as follows—

**CONTENTS****CHAPTER 1: INTRODUCTORY MATTERS**

1. Definitions
2. Powers and duties of the MEC
3. Regulations

**CHAPTER 2: TRANSPORT AUTHORITIES**

4. Agreements for the formation of transport areas and transport authorities
5. Declaration of transport areas and establishment of transport authorities
6. Requirements for founding agreements
7. Functions and competencies of transport authorities
8. Ancillary powers of transport authorities
9. Governance of transport authorities
10. Dissolution of transport authorities
11. Finances of transport authorities
12. Delegations by governing body
13. Provisions applicable to delegations
14. Transport executives
15. Joint transport executives

**CHAPTER 3: PROVINCIAL OPERATING LICENCE BOARD**

16. Provincial Operating Licence Board
17. Duties of Board
18. Seat and offices of Board
19. Disqualification from membership of Board
20. Resignation and removal from office of Board members
21. Vacation of office by Board members
22. Meetings of the Board
23. Quorum and decisions of Board
24. Decisions of Board not invalidated by casual vacancies
25. Disclosure of commercial and other interests
26. Evidentiary value of minutes



- 27. Procedure
- 28. Staff of Board

#### CHAPTER 4: OPERATING LICENCES

- 29. Exemptions
- 30. Continuation and conversion of existing permits
- 31. Conversion of permit not allowed in certain circumstances
- 32. Manner of converting permits to operating licences
- 33. Conversion of permits to operating licences for larger vehicles
- 34. Disposing of applications with regard to operating licences for non-contracted services
- 35. Cancellation of operating licences and permits not in use
- 36. Issue of operating licences, and contents thereof
- 37. Authority conveyed by an operating licence
- 38. Persons who may hold operating licences
- 39. Rules applicable with regard to various operating licences
- 40. Use of same vehicle for long distance and other public transport services
- 41. Amendment of operating licence: Replacement of specified vehicle
- 42. Special conditions relating to metered taxi and staff services
- 43. Duties of holder of operating licence or permit
- 44. Temporary replacement of specified vehicle
- 45. Special events
- 46. Withdrawal, suspension or amendment of an operating licence
- 47. Forfeiture of vehicles used for unauthorised public transport services

#### CHAPTER 5: PROVINCIAL TRANSPORT APPEAL BOARD

- 48. Provincial Transport Appeal Board
- 49. Remuneration of members of Appeal Board
- 50. Meetings of Appeal Board
- 51. Appeal to Appeal Board against act, direction or decision of Board
- 52. Staff of Appeal Board
- 53. Publication of reasons
- 54. Transitional provisions

#### CHAPTER 6: REGISTRATION AND RELATED MATTERS

- 55. Appointment of Provincial Transport Registrar
- 56. Disqualifications for holding Registrar's office
- 57. Resignation of Registrar, and removal from office
- 58. Vacation of office
- 59. Functions of the Registrar
- 60. Registrar required to disclose commercial and financial interests
- 61. Registrar to report annually
- 62. Establishment and functions of panel of assessors
- 63. Meetings of panel of assessors
- 64. Disclosure of assessors' commercial and financial interests
- 65. Provisional and full registration of associations and non-members previously registered

66. Provisional registration of associations not qualifying directly for full registration
67. Full registration of associations, directly
68. Application and registration procedure
69. Registration or provisional registration of members
70. Registration of non-members
71. Certificates of registration and distinguishing marks
72. Duties of registered and provisionally registered associations and non-members
73. Standard Minimum Constitution and Code of Conduct
74. Requirements for constitutions of associations
75. Non-compliance with registered Constitution, and breach of Code of Conduct
76. Cancellation or temporary suspension of registration or provisional registration of associations, members and non-members
77. Effect of lapsing or cancellation of registration on operating licence or permit
78. Registration or provisional registration no bar to prosecution

#### CHAPTER 7: LAW ENFORCEMENT

79. Land transport law enforcement
80. MEC may appoint inspectors
81. Impoundment of vehicles
82. Emergency measures in certain areas
83. Presumptions and proof of certain facts
84. Powers of authorised officers
85. Offences and penalties

#### CHAPTER 8: GENERAL MATTERS

86. Transitional provisions
87. Exclusion of Act 74 of 1977 from operation in Province
88. Act binds the State
89. Short title and commencement

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#### CHAPTER 1: INTRODUCTORY MATTERS

##### Definitions

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

"Appeal Board" means the Provincial Transport Appeal Board established under section 48;

"Board" means the Provincial Operating Licence Board established by section 16;

**"Code of Conduct"** means the Code of Conduct prescribed by the MEC under section 73

**"commercial service contract"** means an agreement between a contracting authority and an operator in terms of which the—

- (a) operator is to operate a service provided for in a 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 of state as defined in section 239 of the Constitution and for the purposes of this paragraph, reimbursements made to the operator in respect of concessionary fares will not be regarded as a subsidy or financial support;

**"concession agreement" or "concession"** means an agreement between an operator and a contracting authority for the operation of a service on a railway line or rail network—

- (a) in accordance with a transport plan; and
- (b) at a price and on a service level provided for in that agreement;

**"Constitution"** means the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996);

**"contract"** means an interim contract, a current tendered contract, a commercial service contract or a subsidised service contract;

**"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 a metropolitan transport area, and includes any municipality which, after the commencement of this Act, is so designated;

**"current tendered contract"** means a contract concluded before the commencement of this Act for the operation of a public passenger road transport service between the National Department of Transport and the Province on the one hand and an operator on the other hand to whom the tender for the provision of a service was awarded by the State Tender Board or the Provincial Tender Board in accordance with law, and which is still binding between them, the term of which expires only after the commencement of this Act, and includes a contract which is binding between the—

- (a) operator and the Province due to such National Department assigning its rights and obligations to the Province irrespective of whether the assignment occurred before or after the commencement of this Act; or
- (b) operator and a transport authority, core city or municipality to which the Province, after the 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 National Department in terms of paragraph (a);

"Department" means the department of the Provincial Government of the Northern Cape responsible for transport affairs;

"Gazette" means the *Provincial Gazette* of the Northern Cape;

"holder" in relation to an operating licence or permit means the person in whose favour it was issued;

"integrated development plan" means an integrated development plan as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"integrated transport plan" means an integrated transport plan contemplated in section 27 of the National Act;

"interim contract" means a contract other than a current tendered contract for the operation of a subsidised scheduled service the term of which expires after the commencement of this Act, and which—

- (a) was concluded before that date between the Province and the National Department of Transport on the one hand and the operator who is to operate that service on the other hand, and is still binding between them or only binding between the Province and that operator; or
- (b) is binding between that operator and any transport authority or a core city or a municipality, due to the assignment to it, after the commencement of this Act, of the rights and obligations of the Province under the contract contemplated in paragraph (a);

"inter-provincial transport" means a public transport service operating between the Province and one or more other provinces;

"MEC" means the Member of the Executive Council of the Province responsible for transport affairs;

"Minister" means the Minister of Transport in the national sphere of government;

"motor vehicle" means a motor vehicle as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"municipality" means a municipality referred to in section 155(6) of the Constitution, and includes all categories of municipalities contemplated in section 155(1) thereof;

"National Act" means the National Land Transport Transition Act, 2000 (Act No. 22 of 2000);

"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;

"operating licence" means an authorisation to undertake public transport as required by section 33 of the National Act;

"operator" means a person carrying on the business of operating a public transport service;

"permit" means an authorisation to undertake public transport issued in terms of the Road Transportation Act, 1977 (Act No. 74 of 1977) which is in force at the commencement of this Act;

"planning authority" means a body which must prepare transport plans in terms of Part 7 of the National Act;

"prescribed" means prescribed by the MEC by notice in the *Gazette*;

"Province" means the province of Northern Cape;

"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—

- (a) a scheduled service;
- (b) an unscheduled service which includes a minibus taxi-type service
- (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,

and except if clearly inappropriate, the term "public transport" must be interpreted accordingly;

"Registrar" means the Provincial Transport Registrar appointed under section 55;

"service" means a public transport service;

"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 push-chairs or prams;

"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;



"subsidised service contract" means an agreement other than an interim contract or a current tendered contract concluded between a contracting authority and an operator to operate a scheduled service provided for in a transport plan and in terms of which the operator, in addition to the passenger fares paid, receives financial support in terms of a tendered contract;

"this Act" includes any regulations made thereunder;

"transport area" means a transport area declared under section 5;

"transport authority" means a transport authority established in terms of section 5;

"transport plan" means a transport plan contemplated in section 19 of the National Act and includes the provincial transport framework and a current public transport record, operating licence strategy, rationalisation plan, public transport plan and an integrated transport plan.

### **Powers and duties of the MEC**

2. (1) The MEC must—
- (a) facilitate the increased utilisation of public transport in the Province;
  - (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 passengers;
    - (ii) encourage efficient and commercial conduct on the part of 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 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 demand;
    - (ii) it operates efficiently as regards the use of resources;
    - (iii) the service provided, are of outstanding quality and 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 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 of the National Act;

(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 between the areas of planning authorities, 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.

(3) Notwithstanding other laws, the MEC may, in agreement with the Member of the Executive Council for finance and the relevant transport authorities and municipalities, impose user charges, which may differ from case to case, on—

- (a) specified types of motor vehicles entering specified areas at specified times;
- (b) land, buildings or other developments that generate traffic, including land or buildings of which the State is the owner;
- (c) the parking of motor vehicles in a building or on land in specified areas;
- (d) parking places for, or the use of ranks, stops and terminals by, motor vehicles in specified areas.

(4) The MEC may, in agreement with the Member of the Executive Council responsible for Finance, impose charges on or require contributions from developers of property where, in the opinion of the MEC, the development will increase road traffic or the need for public passenger road transport.

### **Regulations**

3. (1) The MEC may make regulations with regard to any matter which, in terms of this Act or the National Act, may or must be prescribed by the MEC, or any matter that will promote the objects of this Act or facilitate its implementation.

(2) The MEC may make regulations—

- (a) providing for annual fees that are payable to the Board by the holder of an operating licence, which may differ with regard to different types of operating licences;
- (b) providing for the manner in which a new member of an association contemplated in section 69(6) must apply for registration under that section and, in the case of such a new member who is not the holder of an appropriate operating licence or permit, how that new member must apply for an operating licence.

(3) 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 not exceeding R10000.

(4) Any regulation made in terms of the Road Transportation Act, 1977 (Act No. 74 of 1977) 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 and treated 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.

(5) 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;
- (b) by notice in the *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.

## **PART 2: TRANSPORT AUTHORITIES**

### **Agreements for formation of transport areas and transport authorities**

4. (1) Transport authorities may be established for transport areas only as provided for in this Chapter 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) Any single municipality or any two or more municipalities, may, subject to section 11 of the National Act, enter into an agreement with the MEC that complies with the provisions of section 6 (hereafter called a founding agreement), in terms of which—

- (a) the jurisdictional area or part of the jurisdictional area of the municipality, or jurisdictional areas or part thereof as the case may be of those two or more qualifying municipalities jointly, is or are to become a transport area; and
- (b) a transport authority is to be established for such a transport area.

(3) 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 10 and reconstituted.

### **Declaration of transport areas and establishment of transport authorities**

5. (1) The MEC must, not later than 14 days after the conclusion of an agreement mentioned in section 4, by notice in the *Gazette*—

- (a) give notice of and publish the founding agreement, which must comply with the requirements of section 6;
- (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 metropolitan transport area 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 has been made known by the MEC by notice in the *Gazette*.

#### **Requirements for founding agreements**

6. 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.
- (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.
- (e) The designation and appointment of a chairperson and deputy chairperson for the governing body.
- (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.
- (h) The powers of the governing body that may be 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.
- (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;
  - (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;

- (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
- (iv) the procedures to be followed for and pursuant to the voluntary dissolution of that transport authority;
- (l) The arrangements made for the performance of the professional, technical, administrative, clerical and other work of the transport authority in terms of section 14, if not already covered under paragraph (k)(ii).

### **Functions and competencies of transport authorities**

7. (1) A transport authority must perform the compulsory functions assigned to it by section 10(13) of the National Act and may, subject to the powers and duties allocated to the participating municipalities by the legislation applicable to local government, with the agreement of the MEC or, where applicable, MECs—

- (a) promote security in public transport;
- (b) encourage and promote the optimal use of the available travel modes so as to enhance the effectiveness of the transport system and reduce travelling 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 which includes elderly or disabled persons, learners or students, and periodically adjust fares in consultation with stakeholders, if the transport authority is exercising the subsidy function in terms of section 10(13)(f) of the National Act;
- (g) in the case of unsubsidised public transport services, set minimum fares;
- (h) make payments to operators in terms of subsidised service contracts and concessionary fare agreements to which it is a party, if the transport authority is exercising the subsidy function in terms of section 10(13)(f) of the National Act;
- (i) institute and conduct investigations into the financial circumstances and operating practices of—
  - (i) persons who, at the time, are existing or potential operators in relation to or in the transport area; or
  - (ii) the holders of operating licences or permits 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;

- (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—
    - (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;
  - (m) in agreement with relevant participating municipalities—
    - (i) take over functions related to municipal roads;
    - (ii) apply measures to limit damage to the road system in that part of the transport area;
  - (n) control and manage ranks and terminals used for public transport services.
- (2) The MEC and a transport authority may agree—
- (a) that different functions will 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.

(3) With a view to ensuring co-ordinated transport law enforcement within its area, the transport authority must 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).

(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.

- (5) (a) Whenever a transport authority—
- (i) fails to perform a compulsory function contemplated in section 10(13) of the National Act; or
  - (ii) having undertaken a voluntary function contemplated in subsection (1), fails to perform it; or
  - (iii) fails to perform such a function properly and effectively in accordance with this Act, the National Act and other applicable 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, to perform it properly and effectively as the case may be, not later than the date stated in the notice.

(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 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**

8. (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 or applicable provincial laws.

(2) The transport authority may only enter into such an agreement if it itself is competent in terms of this Act and other 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 the National Act, 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 or the National Act.

#### **Governance of transport authorities**

9. (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**

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

(b) The provisions of paragraph (a) do not affect the capacity of the Member of the Executive Council 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 do those provisions 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) If—

- (i) 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;
- (ii) where there are two or more municipalities party to the transport authority—
  - (aa) the municipalities concerned have agreed in principle that the transport authority be dissolved, and have so notified the MEC of that fact;
  - (bb) 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.

(b) The MEC, within 30 days after having been so notified, has—

- (i) by notice published in the *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 not later than the date specified in that notice, but a period of at least 30 days must be allowed for that purpose.

(c) 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 (b), with regard to the matters listed in section 10(14) of the National Act but the date of dissolution must be so determined as to allow opportunity for sufficient notice being given in accordance with subsection (4).

(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)(c)—

- (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 will be final and binding;
- (b) the arbitrator's determination is regarded and treated for the purposes of subsection (2) as being part of the agreement contemplated in paragraph (c) of that subsection or, where applicable, as constituting that agreement.

(4) The MEC must, within 30 days of the date of an agreement contemplated in subsection (2) or (3), by notice in the *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.

**Finances of transport authorities**

11. (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.

(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 not later than 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.

(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).

(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).

**Delegations by governing body**

12. (1) The governing body of a transport authority may delegate any of its power or function in terms of this Act, except the power of governance contemplated in section 9, the power conferred by this subsection, to any member of that governing body.

(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**

13. (1) A delegation by the governing body under section 12—

- (a) may be made on and subject to any conditions determined by the governing body;
- (b) may be given together with the power to sub-delegate, 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 sub-delegation is conferred, must state that fact as well as any conditions attached.

(2) The governing body may at any time—

- (a) amend or revoke a delegation made under section 12;



- (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 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, may by notice in the *Gazette*—
  - (a) prohibit the delegation of any particular power or function, whether generally 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 function.

### **Transport executives**

- 14. (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 transport authority or the exercise or carrying out of its powers and functions, 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 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) will 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 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 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; 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:
    - (i) Where not all the abovementioned 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.
- (iii) The manner in or procedure according to which the staff establishment of the transport executive is to be determined.
- (iv) The repository of the power to appoint and dismiss its staff.

#### **Joint transport executives**

15. (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 and other work arising from, necessary for, associated with or incidental to its functioning as a transport authority and exercising or carrying out its powers and functions (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 14(2)(b), which, with the changes required by the context, applies 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.

### **CHAPTER 3: PROVINCIAL OPERATING LICENCE BOARD**

#### **Provincial Operating Licence Board**

16. (1) The Board established in terms of section 30 of the National Act, shall continue to exist, subject to subsection (2), and be known as the Northern Cape Operating Licence Board.

(2) The MEC must restructure the Board, if necessary, to consist of a chairperson and a panel of between six and ten other members who shall be persons who possess wide experience of, and have shown ability in, public transport, industrial, commercial, financial or legal matters or in the conduct of public affairs.

(3) Of the Board members other than the chairperson, at least three must be stationed in Kimberley and three in Upington.

(4) The MEC may assign all or some of the functions of the Board to a transport authority in respect of its transport area by notice in the *Gazette* if the MEC deems the transport authority capable of performing these functions and if the MEC is satisfied that the transport authority is performing its other functions satisfactorily: provided that the Board shall remain responsible for inter-provincial transport and all services not specified in transport plans.

(5) A member of the Board who is in the full time employment of the State shall hold office for the period that the MEC determines, but not exceeding five years and other members shall be appointed for such period not exceeding two years, and shall, subject to the provisions of this Act, hold office upon the conditions as to remuneration and otherwise, as the MEC may, with the concurrence of the Member of the Executive Council responsible for finance, determine when appointing the member.

(6) Whenever a member of the Board vacates his or her office or is removed therefrom or is temporarily unable to perform his or her functions, the MEC may appoint a person whom the MEC considers suitable, to act in place of the member for the period, not exceeding two years, as the MEC may deem necessary, and such appointment shall, in the case of a person who is not in the full time employment of the State, be subject to conditions as to remuneration and otherwise, as the MEC determines with the concurrence of the Member of the Executive Council responsible for finance.

(7) A person whose period of office as a member of the Board has expired, shall be eligible for re-appointment.

#### **Duties of Board**

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

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

(3) The 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 a licence as renewed, amended or transferred; and
- (b) have the prescribed particulars of each operating licence, including those renewed, amended or transferred, and of its holder and the vehicle to which it relates, entered on the Land Transport Permit System as prescribed.

(4) Apart from the other powers conferred by this Act, the Board may—

- (a) investigate a matter falling within the scope of this Act, and submit recommendations thereon to the MEC;
- (b) consider and give a decision on, or otherwise deal with, in accordance with this Act, an application made to it thereunder—
  - (i) for the granting of an operating licence authorising public transport within the Province;
  - (ii) subject to the National Act, for the granting of an operating licence authorising such transport which commences in the Province and also takes place in another province in agreement with the Board of the other province;
  - (iii) for the renewal, amendment or transfer of an operating licence granted by it;

- (c) issue, in accordance with this Act, an operating licence granted, renewed, amended or transferred by it.

### **Seat and offices of Board**

18. The Board will have administrative offices at both Kimberley and Upington, and alternate its meetings between those two centres.

### **Disqualifications for membership of Board**

19. (1) A person may not be appointed or remain a member of the Board—

- (a) if a minor or subject to any other legal disability;
- (b) upon having been nominated—
  - (i) as a candidate in any election of members of the National Assembly or a provincial legislature in terms of the Electoral Act, 1998 (Act No. 73 of 1998), or as a candidate in any election or by-election of a municipality in terms of any law; or
  - (ii) to fill a vacant seat in Parliament or a provincial legislature;
- (c) if at any time removed from a public office due to misconduct;
- (d) upon being declared insolvent or the person's estate having been handed over to creditors, or where the person has been declared insolvent and is not yet rehabilitated;
- (e) if convicted of any offence—
  - (i) of which dishonesty is an element; or
  - (ii) for which a sentence of imprisonment without the option of a fine has been imposed; or
  - (iii) created by the Cross-border Road Transport Act, 1998 (Act No. 4 of 1998); or
  - (iv) mentioned in section 85 of this Act, or convicted before the commencement of this Act of an offence in terms of the Road Transportation Act, 1977 (Act No. 74 of 1977), if that offence is similar to any offence mentioned in section 85 of this Act;
- (f) if the person or the person's spouse, child, parent or other immediate relative, or partner or business associate has a direct or indirect business or financial interest in the public transport industry or is engaged, directly or indirectly, in any activity connected with public transport which is calculated to preclude the person from discharging the functions and duties attached to the office of a member impartially or to interfere with the impartial discharging of those functions and duties.

(2) When the appointment of a person as a member of the Board is considered, he or she must disclose to the MEC in writing any interests which he or she has in the public transport industry.

### **Resignation and removal from office of Board members**



**20. (1)** A member of the Board may resign on one month's written notice to the MEC.

**(2)** The MEC may at any time remove a member of the Board from office—

**(a)** for having failed—

- (i)** to discharge the duties attached to that office fairly and impartially; or
- (ii)** otherwise, repeatedly, to perform those duties efficiently, or for neglecting those duties;

**(b)** for misconduct or conduct unbecoming a member of the Board;

**(c)** for being absent from three consecutive meetings of the Board without the prior permission of the chairperson, unless the Board has condoned the absence on good reasons advanced; or

**(d)** if for any reason the member has become incapable of performing the duties attached to that office or performing them efficiently.

#### **Vacation of office by Board members**

**21. (1)** A member of the Board vacates his or her office—

- (a)** upon becoming subject to a disqualification mentioned in section 19(1);
- (b)** upon removal from office under section 20(2); or
- (c)** when the member's resignation in terms of section 20(1) takes effect.

**(2) (a)** The MEC may fill a vacancy on the Board by appointing another person as member in accordance with section 16(1).

**(b)** The member so appointed shall hold office for the unexpired portion of the predecessor's term of office, subject to subsection (1).

#### **Meetings of the Board**

**22. (1)** Meetings of the Board will be held at the times determined by it, subject to section 18 and subsection (2).

**(2)** Meetings of the Board must be arranged so that any application to it in terms of this Act is disposed of within 90 days after receipt by the Board.

**(3)** When the office of chairperson is vacant or the chairperson is absent or for any other reason unable to preside at any meeting of the Board and perform the functions attached to that office, or fails or refuses to perform the functions of chairperson, the remaining members of the Board must elect one such remaining member to act as chairperson and perform the functions of that office. The member so elected will perform the functions of chairperson until the relevant vacancy is filled or (as the case may be) the impediment affecting either the chairperson or deputy chairperson no longer exists.

#### **Quorum and decisions of Board**

**23. (1)** At every Board meeting, the chairperson, and two other members, designated by the chairperson and stationed in the centre in question,

must be present, or failing the chairperson, three such members designated by the MEC.

(2) A decision agreed to by two of the three members will be the decision of the Board.

#### **Decisions of the Board not invalidated by casual vacancies**

**24.** No decision taken by the Board will be invalid merely because—

- (a) there existed a vacancy in the Board at the time; or
  - (b) a person disqualified from membership in terms of section 19(1), sat as a member or participated in the proceedings of the Board at the time,
- if that decision or that act was authorised by the required majority of the Board's members who were entitled to sit and participate as members.

#### **Disclosure of commercial and certain other interests**

**25.** (1) A member of the Board may not attend or participate in any meeting of the Board where the proceedings entail the discussion of or voting on the following:

- (a) Any matter in which the member or the member's spouse, child, parent or other immediate relative, or partner or associate has a direct or indirect commercial or financial interest which is greater than that which a member of the general public has in that matter;
- (b) any intended or pending legal, arbitration or like proceedings to which the Board is or may become a party and in which the member or the member's spouse, child, parent or other immediate relative, or partner or associate has a direct or indirect interest, whether as a party, witness or legal representative, or otherwise.

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

- (a) the member must forthwith and fully disclose the nature of the interest and leave the venue of the meeting so as to enable the remaining members to discuss the matter and to determine whether the member concerned is so precluded; and
- (b) that member's disclosure and the remaining members' determination in terms of paragraph (a), must be recorded in the minutes of the meeting concerned.

(3) If a member of the Board fails to disclose any interest in compliance with subsection (2) when the Board considers and deals with any matter to which the interest relates, or if such a member otherwise contravenes or fails to comply with subsections (1) or (2), the proceedings affected by the non-disclosure, contravention or non-compliance will be invalid and without any legal force and effect whatsoever, and the member concerned will be guilty of misconduct.

#### **Evidentiary value of minutes**

**26.** The minutes of a meeting of the Board, when confirmed at a next meeting and signed by the person who chairs the latter meeting, will, in the absence

of proof of error, be regarded and treated as a true and correct record of the proceedings and matters at the meeting which they purport to minute, and will be sufficient evidence of those proceedings and matters at any proceedings before a court of law or any tribunal or commission of inquiry.

### **Procedure**

27. (1) In dealing with any matter before it the Board 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 Board and—
    - (i) give evidence or make oral representations relevant to the matter;
    - (ii) call witnesses and present evidence on any question concerning a matter relevant to the proceedings before the board;
    - (iii) question a person who testifies as a witness in those proceedings;
  - (b) issue a subpoena in the prescribed form requiring a person to appear before the Board 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 the subpoena served in the manner so prescribed;
  - (c) order any person present at the place where the proceedings are conducted, to appear before the Board 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 at that place;
  - (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 made an affirmation as a witness.

(2) Any person affected by a decision of the Board may require the Board to furnish its reasons for that decision in writing, whereupon the Board must do so within seven days of receiving the request, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

### **Staff of Board**

28. The head of the Department must provide, subject to the laws governing the public service, the staff that may be necessary to assist the Board in the performance of the work arising from or connected with the performance of its functions.

## **CHAPTER 4: OPERATING LICENCES**

### **Exemptions**

29. For the purposes of this Act, "public transport service" does not include the conveyance of persons in the following circumstances:



- (a) The conveyance by a farmer, by means of a motor vehicle of which the farmer is the sole owner, of the farmer's workers—
  - (i) from the place where they have been recruited, to the place where their services are required for farming operations, if they have agreed to be so conveyed to that place;
  - (ii) from a place where they are or have been employed in the farmer's farming operations, to another place where they may be required to be so employed or where another farmer may require them in connection with the latter's farming operations, or to the place where they have been recruited;
  - (iii) between the place where they have been or are to be so employed and the place most convenient for their conveyance to another place to which they are to be conveyed by means of public transport, or to the place where they are to be so employed;
  - (iv) between the place where they are so employed and another place within the Republic, to do shopping or attend a church service or funeral, or for the purposes of a sports or recreational meeting or event;
  - (v) between the place where they have been recruited and the place most convenient for their conveyance to another place to which they are to be conveyed by public transport.
- (b) The conveyance by a municipality by means of a vehicle of which it is the owner, of its own employees from a place where they perform work in the course of its business, to another place where they are so to perform work.
- (c) The conveyance, by means of an ambulance as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), of a patient, and a person attending to that patient, to a place where the patient is to receive medical treatment from a person authorised to administer the treatment in terms of the laws applicable to the medical profession, or from a place where the patient has received treatment.
- (d) The conveyance of persons who were being conveyed by a motor vehicle that has become defective, to their destination, if the conveyance by means of the vehicle that became defective, constituted public transport, and was authorized by an operating licence or, if applicable, a permit, and the conveyance by the replacing vehicle is undertaken in accordance with the provisions of the operating licence or permit, the original of which is kept in the vehicle for production on demand to an authorised officer.
- (e) The conveyance of persons as contemplated in the definition of "lift club" in section 1 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996).
- (f) The conveyance by a person who carries on any industry, trade or business, of the person's own employees from a place where they perform work in the course of that industry, trade or business, to another place where they are so to perform work, by means of a vehicle of which the person is the owner.
- (g) The conveyance of learners and teachers for purposes of sport or recreation or on holiday, sightseeing or educational tours, by means of a vehicle of which the relevant school is the sole owner or which, in terms of an agreement, is set apart for the use of that school for these purposes.

- (h) (i) The conveyance by a university, technikon, technical college or teachers' training college (hereafter called an educational institution) of its own students and staff for educational, cultural or sports purposes by means of a motor vehicle of which that educational institution is the owner, or by means of a motor vehicle which, in terms of an agreement, is set apart for the use of that educational institution for these purposes.
- (ii) However, where the conveyance occurs by means of a vehicle used in terms of such an agreement, a document in which an authorised employee of the educational institution confirms that the passengers being conveyed are enrolled students of, or staff attached to, the institution, must be kept in that vehicle.
- (i) The conveyance of persons in operating a courtesy service.

#### **Continuation and conversion of existing permits**

30. (1) Subject to this Chapter, any permit issued for an indefinite period and any permit 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 Chapter by applying for the conversion, in the manner prescribed—

(a) in the case of a permit for an indefinite period, before the expiry of the period determined by the Minister by notice in the *Gazette* in terms of section 32(2) of the National Act;

(b) in the case of a permit for a definite period, before 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 that subsection;

(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 an operating licence in accordance with this Chapter.

#### **Conversion of permit not allowed in certain circumstances**

31. (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 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**

32. (1) Subject to this section, an operating licence issued in place of a permit pursuant to the conversion contemplated in section 30, 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 time table 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 which is not a metered taxi service that authorises the operation of that service within a defined area or radius, the operating licence to which that permit is converted—

(a) 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 sub-paragraph (ii);

(b) may, where the Board finds on reasonable grounds that exceptional 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.

(6) 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.

(7) 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**

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

### **Applications concerning operating licences**

33A. (1) A person or body wishing to undertake a public transport service other than a service contemplated in section 45, must apply to the Board for the appropriate operating licence.

(2) A holder may apply to the Board for the renewal or amendment of an operating licence.

(3) A person or body wishing to take transfer of an operating licence may apply to the Board with the written consent of the holder for the transfer of the operating licence.

(4) Applications under subsections (1), (2), (3) or (4) must-

- (a) be made on the basis of one application per vehicle;
- (b) be made in the prescribed manner;
- (c) be made on the prescribed form;
- (d) be accompanied by the prescribed fee;
- (e) specify the type of vehicle to be used for providing the services concerned;
- (f) include a detailed description of the route or routes on which the applicant operates or intends to operate and all points where passengers are being or will be picked up or set down.

(34) The Board may issue, on application in the prescribed manner and on payment of the prescribed fee, a temporary operating licence for not more than 14 days-

- (a) to a substitute operator where the holder of an operating licence or permit in terms of a contract fails or refuses to perform the relevant services and it is necessary to appoint such substitute operator on a temporary basis to provide such services; or
- (b) where a contract has been awarded to the applicant and the relevant operating licence contemplated in section 39(1) has not yet been granted by the date of commencement of the contract.

(6) The Board may renew a temporary operating licence contemplated in subsection (5) for a maximum of a further 14 days at a time, on application in the prescribed manner and on payment of the prescribed fee, should the circumstances contemplated in that subsection persist.

### **Disposing of applications with regard to operating licences for non-**



**contracted services**

34. (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)—

- (a) whether the vehicle by means of which the service is to be operated is suitable 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 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;
- (d) whether the applicant has any previous conviction for an offence of the type and seriousness prescribed, committed within the prescribed period 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;
- (f) representations duly submitted in connection with the application by the applicant or any interested party.

(2) An application for an operating licence relating to the operation of a non-contracted service on any 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.

(3) Such an application must be made in the manner prescribed and be 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 for a non-contracted service subject to any conditions, determined by it, that are not inconsistent with this Act or with the National Act.

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

(5) A new operating licence may not be granted unless the applicant has furnished proof to the satisfaction of the Board that the applicant is registered as a tax payer under the Income Tax Act, 1962 (Act No. 58 of 1962), or, in terms of that Act, is not required so to register.

**Cancellation of operating licences or permits not in use**

35. (1) Where it comes to the notice of the Board that an operating licence or permit has not been in use for 180 days or more, the Board must, by notice in writing, call on the holder to advance good reasons, to the satisfaction of the 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 the Board should not cancel that operating licence or permit.

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

(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 or permit and in writing inform the holder accordingly and direct the holder to surrender that operating licence or permit, together with the distinguishing marks with regard thereto, to the Board within seven days after the date of the notice.

#### **Issue of operating licences, and contents thereof**

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

- (a) the person requiring it has applied therefor in accordance with this Act;
- (b) the successful applicant for the granting, renewal, amendment or transfer of the operating licence, has submitted to the Board proof of roadworthy certification in respect of the vehicle to which the operating licence relates in the manner prescribed.

(2) Any operating licence granted, renewed, amended or transferred in accordance with this Act will be issued, in the prescribed manner and form, by an official of the Board designated by the latter for that purpose.

(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, or a duly certified copy of such a certificate; and
- (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.

(4) An operating licence must state at least the following:

- (a) the name and address of the 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;
- (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;
- (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 service to be operated in terms of a

commercial service contract or a subsidised service contract—

- (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 sub-contractor on behalf of the holder of an operating licence, the name and address of the sub-contractor who is the owner of the vehicle by means of which that part of the service is to be operated;
- (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;
- (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) 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 an operating licence**

37. An operating licence granted and issued under this Act—
- (a) does not authorise the holder to undertake transport on or over a public road in the jurisdictional area of any municipality if it is unlawful to do so in terms of any national or provincial law or any by-law of the municipality;
  - (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**

38. An operating licence may only be issued to and held by the person registered, in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996), 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 service in terms of a commercial service contract or a subsidised service contract, and the operator party to the contract has sub-contracted another operator to operate part of that service on behalf of the first-mentioned operator and in such a case—

- (a) the sub-contracted operator must be the so registered owner 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 used for operating that service.

**Rules applicable with regard to various operating licences**

39. (1) In determining the period of operating licences for non-contracted services, due regard must be had to—

- (a) current and envisaged trends in demand on the route or routes, or, where applicable, in the particular area, concerned;
- (b) the efficiency of the proposed services in meeting the demand;
- (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;
- (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 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 and in the case of a minibus taxi-type service, must impose the condition that passengers may not be picked up or set down *en route* unless the operator 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.

(4) Operating licences for charter services, long distance services, staff and tourist services must be granted for a fixed period determined by the Board, but not for longer than five years.

(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, subject to this paragraph—

- (a) the extent to which the service to be provided by the applicant is necessary or desirable in the public interest;
- (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;
- (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.

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

40. (1) (a) A vehicle specified in an operating licence as being the vehicle by means of which a service provided for in a transport plan is to be operated, may not also be specified in the operating licence as being the vehicle by means of which any long distance service is to be operated, except if the planning authority agrees thereto.

(b) However, that planning authority may not so agree 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.

**Amendment of operating licence: Replacement of specified vehicle**

41. (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 service, by another vehicle with the same passenger capacity, the holder must apply for the replacement, in the manner prescribed, 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.

(2) The authorised member or official of the Board must allow the replacement and issue to the holder an amended operating licence, 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; and
- (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;
- (c) the applicant for replacement has provided the information necessary to establish the requirements of this section.

(3) Where a sub-contractor operates any part of the public transport service to which an operating licence relates on behalf of the holder, the sub-contractor 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.

**Special conditions relating to metered taxi and staff services**

42. (1) In the case of a metered taxi service, the vehicle specified in the operating licence authorising 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;

- (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 circumstances in which an operating licence may be granted for staff services.

#### **Duties of holder of operating licence or permit**

**43.** (1) The holder of an operating licence or permit must—

- (a) in operating the public transport service to which the operating licence or permit relates, comply with the terms of the authorisation conferred by it 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;
- (b) keep the original operating licence or permit or a duplicate original in the vehicle specified in such licence or permit, and, where the vehicle so specified is temporarily replaced under section 44, 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 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 71;
- (d) on demand by an authorised officer, produce that operating licence, permit, authorisation or registration certificate;
- (e) keep the operating licence or permit 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 duplicate original in the manner prescribed;
- (f) cause the name, address and nature of the business of the holder to be displayed on the vehicle to which the operating licence or permit relates, in a conspicuous place in the manner prescribed;
- (g) display on or in that vehicle the other particulars as prescribed in any condition determined by the Board;
- (h) affix and keep affixed in the manner prescribed a distinguishing mark on the vehicle to which the operating licence or permit relates;
- (i) except in the case of an operating licence or permit granted for an indefinite period, apply timeously for renewal thereof;
- (j) at all times keep the vehicle to which the operating licence or permit relates in a safe and roadworthy condition and—
  - (i) have that vehicle examined for roadworthiness not later than the time allowed therefor in the National Road Traffic Act, 1996 (Act No. 93 of 1996); and



- (ii) submit the new roadworthy certificate issued after every such examination to the Board within 30 days after it has been issued;
- (k) return an operating licence or permit that has lapsed or has been withdrawn or cancelled, to the Board within seven days;
- (l) comply with the provisions of this Act and with any other relevant laws.

(2) (a) The authority conferred by an operating licence or permit may not—

- (i) be ceded or otherwise alienated by the holder, and no person may be a party to such a cession or alienation, except where the operating licence is transferred in accordance with this Act;
- (ii) be hired out by the holder or be hired by any other person.

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

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

- (a) not later than 21 days after the last day of each calendar month, submit to the Board returns in the form prescribed 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 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 or permit relates, keep for each trip made by means of that vehicle an accurate record showing the number of passengers carried during the trip.

(4) The information and particulars 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.

(5) Where any sub-contractor operates any part of the public transport service to which an operating licence or permit relates on behalf of the holder, the provisions of this section except subsection (1)(j) and (k), applies to the sub-contractor, with the changes required by the context, in all respects as if the sub-contractor were the holder.

(6) Where a special number plate denoting the fact that a vehicle is used for public transport services has been issued to an operator in terms of the Road Traffic Act, 1989 (Act No. 29 of 1989), such number plate must be removed from the vehicle and submitted to the Board within seven days should the relevant operating licence or permit of that operator for the vehicle in question lapse or be cancelled or suspended.

(7) No person may display such a special number plate on a vehicle unless the vehicle is authorised to undertake public transport services by an appropriate operating licence or permit.

### **Temporary replacement of specified vehicle**

**44. (1)** Where the vehicle specified in an operating licence or permit for the operation of a public transport service, has become defective temporarily, the Board or a member of the Board duly authorised by it, may on application by the holder, or, where that vehicle belongs to a sub-contractor, on application by that sub-contractor, in writing authorise the holder or the sub-contractor on behalf of the holder, to use temporarily, in the place of that vehicle, another vehicle for the purpose of operating that service, subject to subsections (2) and (3).

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

- (a) With regard to the holder, the personal particulars mentioned in paragraph (a) of section 36(4)(a), and in the case of such a sub-contractor, that authorisation must in addition contain, with regard to that sub-contractor, the particulars mentioned in section 36(4)(e)(iv).
- (b) With regard to the replacing vehicle, the particulars mentioned in paragraph (b) of section 36(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 or permit relates but 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 or permit, but may—

- (i) be smaller; or
- (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 or permit.

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

(5) The replacing vehicle will, during the authorised period of replacement, be regarded and treated, in all respects as the vehicle operated under the operating licence or permit specifying the replaced vehicle.

### **45. Special events**

(1) No one may undertake a public transport service to or from a special event except—

- (a) in the course of operating a charter service in terms of an appropriate operating licence or permit;
- (b) under the authority of an operating licence or permit which already authorises



- the relevant transport on the route or in the area in question;
- (c) under the authority of a special operating licence granted and issued under this section.
- (2) A person who is not authorised by subsection (1)(a) or (b) to undertake a public transport service to or from a special event, may apply to the Board for a special operating licence in the prescribed manner.
- (3) The Board may grant an application under subsection (2) and issue such a special operating licence if satisfied on reasonable grounds—
- (a) that the existing public transport services available to move passengers to or from the particular special event are not sufficient to meet the estimated demand; and
- (b) that the applicant has the ability to provide a satisfactory public transport service.
- (4) The onus of proving the matters mentioned in subsection (3) rests on the applicant.
- (5) The Board may require the applicant to supplement the application with any information in support thereof.
- (6) Such a special operating licence may be granted only for one, particular special event and for a period that is not longer than the duration of such event.
- (7) A special operating licence in terms of this section must—
- (a) specify the particular special event and the date or dates on which it occurs;
- (b) state the route or routes on which the transport to and from the special event may be provided;
- (c) specify the terminals, ranks or stopping places that may be used.
- (8) A special operating licence in terms of this section may be issued with a special distinguishing mark which must be affixed to the vehicle to which the licence relates for the duration of the public transport to and from the special event.

#### **46. Withdrawal, suspension or amendment of an operating licence**

- (1) Where an operating licence has been granted on the basis of a contract, the authority that has granted the contract may request the Board to withdraw the operating licence where the contract has been terminated for any reason, whereupon the Board must do so.
- (2) Subject to subsection (3), in the case of an operating licence that has not been granted on the basis of a contract, the Board may at any time withdraw, amend or suspend for such period as it may deem fit, the operating licence—
- (a) if the holder of the operating licence or employee of the holder has been convicted of an offence under this Act or under a law relating to motor vehicles or the regulation of traffic or occupational safety or labour relations of a type and seriousness as prescribed; or
- (b) if, in the opinion of the Board, the holder of the operating licence has not carried out faithfully the conditions of the operating licence; or
- (c) if the holder of the operating licence has failed to initiate the service authorised by the operating licence or any part thereof within 180 days of the

- issuing of the operating licence; or
- (d) if the holder of the operating licence has ceased to operate the service or any part thereof for 180 consecutive days.
- (3) The Board may not under subsection (1) or (2) withdraw or suspend an operating licence unless
- (a) at least 21 days' written notice of its intention to do so, with reasons, has been given to the holder of the operating licence by registered or certified post;
- (b) the holder has been given an opportunity, either personally or through a representative, to appear before the Board and provide evidence or submit representations in regard to the proposed action; and
- (c) the transport authority, or where no transport authority has been designated, the relevant municipality has been given an opportunity to submit representations and make alternative arrangements.

**47. Forfeiture of vehicles used for unauthorised public transport services**

(1) The court convicting a person of an offence under section 85(1)(a) or (b) of this Act may, and must after a third or subsequent such conviction, declare the motor vehicle used to commit the offence or the convicted person's rights in the vehicle, to be forfeited to the Province, subject to subsection (2).

(2) A declaration under subsection (1) shall not affect any rights which a person other than the convicted person may have to that motor vehicle if it is proved that the other person did not know that the motor vehicle was being or would be used to provide such unauthorized public transport or that he or she could not prevent its use.

(3) Section 35 (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply with the necessary changes with reference to a forfeiture under subsection (1).

**CHAPTER 5: PROVINCIAL TRANSPORT APPEAL BOARD**

**Provincial Transport Appeal Board**

**48.** (1) The MEC may establish a Provincial Transport Appeal Board for the Province.

(2) The function of the Appeal Board shall be to hear appeals relating to applications for or in connection with operating licences for public transport where passengers are picked up and set down entirely within the boundaries of the Province.

(3) The Appeal Board, if established, may consist of officials of the Department and other members appointed by the MEC who have experience or qualifications in legal matters or who possess experience of or have shown ability in public passenger transport or commercial, or financial matters or the conduct of public affairs. The Minister must appoint one of the members as chairperson.

(4) Members of the Appeal Board who are not members of the public service must be appointed for a period not exceeding five years and, subject to the

other provisions of this Act, shall hold office on the conditions that the MEC may determine when making the appointments.

(5) Members of the Appeal Board shall be eligible for reappointment and individual members may be appointed for different periods and on different conditions.

(6) Sections 19 and 20 shall apply, with the changes necessary, to members of the Appeal Board.

#### **Remuneration of members of the Appeal Board**

49. (1) The members of the Appeal Board shall be paid the remuneration and allowances determined by the MEC in consultation with the Member of the Executive Council responsible for finance.

(2) A member of the Appeal Board who is a member of the public service shall not be paid remuneration in addition to his or her salary, except for travelling and out-of-pocket expenses.

#### **Meetings of the Appeal Board**

50. (1) The first meeting of the Appeal Board must be held at the time and place determined by the MEC, and thereafter meetings will be held at the times and places determined by the chairperson of the Appeal Board. The Appeal Board must meet often enough to enable it to comply with subsection (7).

(2) The chairperson or, in his or her absence, the deputy chairperson, may at any time in his or her discretion convene a special meeting of the Appeal Board, and must convene the meeting when requested to do so by the MEC.

(3) A quorum for a meeting of the Appeal Board shall be two members.

(4) The procedure at meetings of the Appeal Board, including the procedure for taking decisions, shall be determined by the Appeal Board subject to the directions, if any, of the MEC.

(5) The decision of the majority of the members of the Appeal Board present at a meeting shall constitute the decision of the Appeal Board in respect of those proceedings and in the event of an equal number of votes, the person presiding at the meeting has a casting (decisive) vote in addition to his or her deliberative (normal) vote.

(6) A member of the Appeal Board may not take part in the discussion of or the making of decisions about a matter before the Appeal Board in which he or she or his or her spouse, partner, immediate family, dependants, business partner or employer, other than the State, or the partner or employer of his or her spouse, has, directly or indirectly, a financial interest.

(7) The Appeal Board must hear appeals within 60 days of receipt of the notice of appeal and communicate decisions thereon to all relevant parties within the period prescribed.

#### **Appeal to Appeal Board against act, direction or decision of Board**

51. (1) Save as otherwise provided in this Act and subject to subsection

(2), a person who—

- (a) has applied to the Board for the grant, amendment or transfer of an operating licence or whose operating licence or permit has been withdrawn, varied or suspended by the Board;
- (b) is the holder of an operating licence or permit issued by the Board;
- (c) in the manner and within the time prescribed, submitted representations to the Board objecting to or supporting an application,

and is affected by an act, direction or decision of the Board, may, in the manner and within the time prescribed after the said act was performed or the said direction or decision was given by the Board, appeal against the act, direction or decision to the Appeal Board.

(2) Where the Board notifies a person of a direction or decision contemplated in subsection (1) by means of a written document, the date of that document shall be deemed to be the date on which that direction or decision was given.

(3) The Appeal Board must receive and, subject to the provisions of this section and the regulations, consider an appeal lodged with it in terms of subsection (1) and may, in its discretion—

- (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 the Board's decision with another act, direction or decision which the Board could have performed or given; or
  - (ii) remit the matter which gave rise to the appeal to the Board for consideration afresh; or
- (c) uphold the appeal partially and vary the act, direction or decision appealed against.

(4) The chairperson of the Appeal Board or a member thereof nominated by the chairperson may, in his or her discretion and without giving prior notice to or hearing any interested party—

- (a) grant an application for condonation of the late filing of a notice or appeal, provided the appeal is lodged in the manner prescribed by regulation within 42 days after the Board performed the act or gave the direction or decision appealed against, or refuse it;
- (b) grant or refuse an application to suspend the operation of an act, direction or decision of the Board appealed against;
- (c) set aside an act, direction or decision of the Board appealed against and remit the matter to the Board for consideration afresh.

(5) An act, direction or decision of the Appeal Board under subsection (3)(b)(i) or (c) shall, except for the purposes of subsection (1), be deemed to be an act, direction or decision of the Board.

#### **Staff of Appeal Board**

52. The head of the Department must, subject to the laws governing the provincial public service, provide the staff and other means necessary to enable the



Appeal Board to perform its functions.

#### **Publication of reasons**

**53.** The Appeal Board must provide interested parties on request within 14 days with written reasons for decisions taken by it in terms of this Act, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

#### **Transitional provisions**

**54.** Any appeal pending before—

- (a) the Commission (National Transport Commission) as defined in the Road Transportation Act, 1977 (Act No. 74 of 1977); or
  - (b) the Transport Appeal Tribunal established under section 3 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998),
- on the date of coming into effect of this Act, shall be disposed of by such Commission or Tribunal in terms of those Acts, notwithstanding section 51.

### **CHAPTER 6: REGISTRATION AND RELATED MATTERS**

#### **Appointment of Provincial Transport Registrar**

**55.** (1) The MEC must appoint a Transport 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 Chapter. A Registrar whose period of office has expired shall be eligible for re-appointment.

(2) If the Registrar is in the full time employment of the State, he or she shall hold office for the period that the MEC determines, but not exceeding five years and if not in such employment, shall be appointed for such period not exceeding two years, and shall, subject to the provisions of this Act, hold office upon the conditions as to remuneration and otherwise, as the MEC may, with the concurrence of the Member of the Executive Council responsible for finance, determine when appointing the Registrar and which must be specified in the Registrar's letter of appointment.

(3) The head of the 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 56, 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**

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

- (a) if a minor or subject to any other legal disability;
- (b) upon having been nominated—
  - (i) as a candidate in any election of members of the National Assembly or a provincial legislature in terms of the Electoral Act, 1998 (Act No. 73 of 1998), or as a candidate in any election or by-election of a municipality in terms of any law; or
  - (ii) to fill a vacant seat in Parliament or a provincial legislature;
- (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;
- (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;
  - (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 85 of this Act, or convicted before the commencement of this Act of any offence in terms of the Road Transportation Act, 1977 (Act No. 74 of 1977), if that offence is similar to any offence mentioned in section 85 of this Act;
- (f) who 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 he or she may have in any part of the public transport industry.

#### **Resignation of Registrar, and removal from office**

57. (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 to perform the duties of the Registrar fairly, impartially, diligently or efficiently.
  - (b) for misconduct; or
  - (c) if the Registrar has become incapable of performing the duties attached to the Registrar's office, or performing them efficiently.

#### **Vacation of office**

58. (1) The Registrar must vacate office—
- (a) if the Registrar becomes subject to a disqualification mentioned in section 56;
  - (b) in the case where the Registrar has resigned when the resignation takes effect; or
  - (c) upon removal from office under section 57(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

55, of a fit and proper person who is not subject to a disqualification mentioned in section 56, to such an appointment.

### **Functions of the Registrar**

- 59. (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 this Chapter;
  - (b)** advise the MEC on matters falling within the scope of this Chapter, and provide the MEC with information on matters of public importance acquired in the course of performing the functions of that office;
  - (c)** take all reasonable steps to monitor and acquire information with regard to the compliance or non-compliance—
    - (i)** by registered associations, with the provisions of their respective constitutions;
    - (ii)** by registered members and by registered non-members, with the Code of Conduct;
    - (iii)** of the registered associations' constitutions, with the provisions of section 74;
  - (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 this Chapter, 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 to ensure that the amendments are consistent with the requirements of section 74, 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 and particulars 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;
  - (i)** keep records of all other information and particulars required to maintain the National Transport Register.
- (2)** The information and particulars recorded in the provincial register will be open to inspection by the public during the Department's normal office hours.
- (3)** At the request of any interested person and on payment of the fee, if any that has been prescribed, the Registrar must furnish the person with a certified copy of or extract from any record contained in the provincial transport register, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

(4) 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 prescribed form 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;
- (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.

(5) 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 do so without delay.

(6) For the purposes of this section, any reference to "registration" and "registered" must be construed as including a reference to "provisional registration" and "provisionally registered", respectively.

#### **Registrar required to disclose commercial and financial interests**

60. (1) The Registrar may not attend to and dispose of any matter in which the Registrar has a direct commercial or financial interest which is greater than that which a member of the general public has in that matter.

(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—

- (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) The MEC must without delay, in writing, notify the Registrar of the decision taken on the issue.

(4) 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



accordance with section 55 to dispose of the matter that was so suspended.

(5) Any act performed by the Registrar in disposing of a matter contrary to subsection (1), is invalid and has no legal force or effect whatsoever.

### **Registrar to report annually**

61. (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—

- (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 this Chapter;
- (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 Chapter.

(2) The MEC must table the Registrar's report in the Provincial Legislature within 21 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**

62. (1) The MEC, after consultation with the Registrar, may by notice in the *Gazette* establish a panel of assessors consisting of the number of assessors specified in the notice, of whom—

- (a) at least one must have special knowledge of the minibus taxi industry in the province;
- (b) at least one must have special knowledge of the needs and interests of the communities who rely on minibus taxi-type services;
- (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) Before appointing persons as assessors, the MEC must—

- (a) make known his or her intention to appoint them by notice in the *Gazette* and invite comments or objections relating to the appointment within a time stated in the notice;
- (b) consider any comments or objections received.

(3) Assessors must be fit and proper persons who are characterised by their impartiality.

(4) Assessors will be appointed as part of a panel that can be drawn upon as and when required, for periods and on conditions determined by the MEC, which must be notified to the assessor in his or her letter of appointment. The MEC may cancel such appointment at any time.

(5) The MEC may not appoint any person as an assessor if the person is disqualified from being appointed Registrar.

- (6) Each of the assessors is entitled to—
- (a) remuneration for each day or part of day on which the assessor performed work as an assessor, at a rate determined by the MEC with the concurrence of the Member of the Executive Council responsible for finance;
  - (b) be reimbursed, in accordance with a tariff determined by the MEC for all reasonable travelling and subsistence expenses necessarily incurred while the assessor performed such work.
- (7) 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, functions and duties;
  - (b) to make recommendations to the Registrar in connection with any matter falling within the scope of those powers, functions 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.

#### **Meetings of panel of assessors**

63. (1) The panel of assessors will meet only when requested to do so by the MEC or the Registrar.

(2) For that purpose, any meeting of the panel of assessors is held at the place and time determined by the MEC or Registrar, as the case may be. The MEC or Registrar must chair meetings, unless they appoint one of the assessors as the chairperson of the meeting concerned.

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

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

#### **Disclosure of assessors' commercial and financial interests**

64. (1) An assessor may not attend or participate in any meeting of the panel where the proceedings at the meeting entail the discussion of any matter in which the assessor has a direct commercial or financial 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 MEC or Registrar to determine whether the assessor is so precluded; and
- (b) that assessor's disclosure and the determination of the MEC or Registrar in

terms of paragraph (a), must be recorded in the minutes of the meeting concerned.

(3) The MEC must cancel the appointment of an assessor who fails to comply with subsections (1) or (2).

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

65. (1) For the purposes of section 55 of the National Act 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 54(1)(a) of the National Act by entering the latter's name and the required particulars as prescribed in the Provincial Transport Register.

(2) The onus rests on the association or non-member to ensure that provisional registration occurs in terms of subsection (1).

(3) The provisional registration of an association or non-member in terms of subsection (1), will lapse on whichever one of the following events occurs first:

- (a) when the period mentioned in section 65(1) expires; or
- (b) when the provisional registration is converted to full registration in terms of subsection (4).

(4) 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 it has terminated the membership of every member who, as at the date of the application, does not hold an appropriate operating licence or permit for each vehicle by means of which a public transport service is operated by the member; and
- (b) that it meets the requirements of section 66, the provisions of which will apply with the changes necessary in 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 70.

(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 67.

#### **Provisional registration of associations not qualifying directly for full registration**

66. (1) An association may be provisionally registered if—
- (a) the association has been in existence for a period not shorter than the prescribed period.
  - (b) the number of its membership as at the date of application is not less than the minimum number as prescribed;

- (c) all its members have subscribed, as a minimum, to those provisions of the Code of Conduct that are specified by the MEC by notice in the *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 will 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 74 as determined by the MEC by notice in the *Gazette*;
- (e) the amounts of the joining fee and membership fee do not exceed the maximum amounts as prescribed.

(2) 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 in the Provincial Transport Register, subject to this section, and must issue to the association an appropriate registration certificate in the form prescribed.

#### **Full registration of associations directly**

67. An association qualifies for registration and, upon having applied therefor, must be registered, if—

- (a) every member of the association—
  - (i) holds an appropriate operating licence or permit 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 or permit relates, in compliance with the terms of, and conditions attached to, the authorisation conferred by such licence or permit;
  - (iii) has subscribed to a constitution that complies with this Act;
- (b) the association's application for registration has been made by the association's authorised representatives in the manner provided for in this Act;
- (c) the association has been in existence for a period not less than the period prescribed;
- (d) the number of its membership as at the date of the application is not less than the minimum number prescribed;
- (e) the prescribed application fee, if any, has been paid;
- (f) the amounts of the joining fee and membership fee of the association do not exceed the maximum amounts as prescribed; and
- (g) the association is not disqualified in terms of an order issued under section 75(5) from being registered.

#### **Application and registration procedure**

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



- (a) an application in the form prescribed, 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;
- (c) a copy of its membership record reflecting the names of its members and, in relation to each of those members, the particulars prescribed;
- (d) such other proof of the applicant's compliance with the requirements of this Act, as may be prescribed; and
- (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 or convert its provisional registration to full registration, or provisionally register the association by entering its name and the required particulars as prescribed in the Provincial Transport Register.

(3) Upon having registered, converted the registration or provisionally registered an 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 Transport Register their names and the prescribed particulars.

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

- (a) an application in the prescribed form 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 whereby the applicant subscribes to the Code of Conduct; and
- (c) such other proof of the applicant's compliance with the requirements of this Act as may be prescribed.

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

#### **Registration or provisional registration of members**

69. (1) Where an association has been registered, every member of the association who has subscribed to its constitution and to the Code of Conduct and who complies with the other requirements of this Act must be registered as a member

(2) Where an 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.

(3) The onus rests on any member of an association which has been provisionally registered to take the steps necessary to ensure that he or she becomes registered in terms of subsection (1).

(4) 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 must be registered as a

member.

(5) Within one month after the admission of a new member to any association mentioned in subsection (1) or (2), 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 for the new member's registration as a member.

(6) 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 the new member—

- (a) holds an appropriate operating licence or permit for each vehicle by means of which the member operates a public transport service, or has applied to the Board for such an operating licence; and
- (b) in the case of an existing operating licence or permit, operates the public transport service to which such an operating licence or permit relates, in compliance with the terms of, and conditions attached to, such licence or permit;
- (c) has subscribed to the constitution of the association concerned and to the Code of Conduct.

(7) The Registrar must cancel the registration or provisional registration of a member whose application for an operating licence has been refused by the Board, and who is not the holder of another appropriate operating licence or permit.

#### **Registration of non-members**

70. (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;
- (b) the non-member, if a juristic person,—
  - (i) has been in existence for a period not less than the prescribed period; 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;
- (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 licence or permit relates, in compliance with the terms of, and conditions attached to, such licence or permit;
- (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 the prevailing circumstances, the applicant reasonably cannot be expected to become a member of the association; or
    - (dd) the applicant, if admitted to membership of the association, will be subjected to unfair discrimination.
- (2) A new 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**

71. (1) The Registrar must upon having registered or provisionally registered an association, member or non-member, allocate a unique registration number and issue a certificate of provisional registration, or registration, as the case may be, in the prescribed form, to the association, member or non-member.

(2) Where the member or non member is registered or provisionally registered the Registrar, with effect from a date determined by the MEC in the *Gazette*, issue, in the manner and form prescribed—

- (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.

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

- (a) the registration certificate of the registered member or non-member 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

- (ii) provisionally registered member or non-member; or proof, to the satisfaction of the Registrar, that the provisionally registered member or non-member has made application for such a licence.

**Duties of registered and provisionally registered associations and non-members**

- 72. (1)** A registered association must—
- (a) take all steps that are reasonably necessary to prevent 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 Chapter;
  - (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 Chapter;
  - (b) if requested thereto by any organ of state, transport authority or core city 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) The provisions of subsection (1) will apply, with the changes required by the context, to any provisionally registered association.

**Standard Minimum Constitution and Code of Conduct**

- 73. (1)** The MEC must, as soon as possible after the commencement of



this Act, by notice in the *Gazette* and after having followed the appropriate public consultation procedure, prescribe—

- (a) a model constitution for associations, to be known as the Standard Minimum Constitution, which complies with the requirements of section 74; and
- (b) a code of ethics, to be known as the Code of Conduct, providing for at least the matters provided for in section 74.

(2) The Standard Minimum Constitution sets a yardstick for the preparation of a constitution for an association with a view to enable the registration of associations in accordance with this Chapter, provided the other requirements for registration 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.

(4) Until publication of such Standard Minimum Constitution and Code of Conduct, the documents published in that regard before the commencement of this Act will serve as such for all purposes required by this Act.

### **Requirements for constitutions of associations**

74. (1) The constitution of an association must for the purposes of full registration, comply with the minimum requirements, if any, prescribed by the Minister in terms of section 59 of the National Act, and—

- (a) state the association's full name, 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;
- (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 will no longer be entitled to the benefits of membership, and provide for the termination of membership and the circumstances in which membership may be terminated;
- (e) stipulate conduct that will constitute 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;
- (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 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;

- (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 functions, duties and powers 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;
  - (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;
  - (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;
  - (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 practising for own account as a public accountant and auditor;
  - (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.
  - (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;
  - (b) the election of members of the executive committee or body, 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;
  - (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;
  - (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;
- (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 will be carried only with the support of at least two thirds of the members present at the meeting (provided there is a quorum);
- (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;
- (j) matters that constitute misconduct, must declare the following to be misconduct:
  - (i) the breach of the Code of Conduct by any member;
  - (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 72.

#### **Non-compliance with registered constitution, and breach of Code of Conduct**

75. (1) 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 this Chapter, or that a registered non-member has breached the Code of Conduct, the Registrar must conduct an investigation into the matter.

(2) 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.

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

(4) 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.

(5) If the Registrar finds such an association or non-member to be guilty of such a non-compliance or breach, the Registrar, by notice in writing, must 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.

(6) 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.

(7) Upon failure to comply with such a notice, the Registrar may impose a fine not exceeding the prescribed amount 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.

(8) 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 (7), 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.

(9) Where the registration of an association has been terminated or suspended temporarily in terms of subsection (8), the registrations of all its members will be cancelled or suspended as the case may be for the same period.

(10) 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.

(11) The Registrar must within one week after having acted in terms of this section 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.

(12) 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.

(13) 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.

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

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

**76. (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;
    - (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; or
    - (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, or has not applied for such a licence in the case of a non-member provisionally registered;
  - (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.
- (2) An association, member or non-member whose registration or provisional registration has been cancelled or temporarily suspended as provided for in this section, 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 prescribed time.
- (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.
- (4) The Registrar may cancel, or suspend temporarily for a period not exceeding one year, the registration or provisional registration of—
- (a) any association for failure to comply with any provision of its registered constitution that is material for the application of this Chapter;
  - (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;
  - (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 85.

**Effect of lapsing or cancellation of registration on an operating licence or permit**

77. (1) Where the full registration of an association lapses or is cancelled, all operating licences and permits held by the members of that association

which relate to the route or routes in question, shall lapse on a date calculated as 90 days after such lapsing or cancellation, unless—

- (a) the association has been re-registered provisionally or fully, and the member is still a member thereof; or
- (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.

(2) Where the registration of a non-member lapses or is cancelled, all operating licences and permits held by the non-member which relate to the route or routes in question shall lapse on a date calculated as 180 days after such lapsing or cancellation, unless—

- (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**

78. 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 85(1)(a).

### **CHAPTER 7: LAW ENFORCEMENT**

#### **Land transport law enforcement**

79. (1) In addition to the measures provided for in this Act with regard to law enforcement, the MECs, transport authorities, core cities and municipalities must take active steps to develop systems to improve land transport law enforcement in their respective jurisdictions.

(2) Despite the provisions of any other law—

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

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

- (d) land transport law enforcement functions will be undertaken by one enforcement authority in the area of jurisdiction of another;
- (e) authorised officers of one such authority may be seconded to another authority temporarily;
- (f) 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 shall bear the costs involved.

### **MEC may appoint inspectors**

80. (1) The MEC may designate employees in the 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.

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

(3) 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 85 which have been committed within the Province or transport area, subject to the directions of the MEC and the head of the Department.

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

(5) 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 his or her certificate of appointment.

### **Impoundment of vehicles**

81. (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 85(1)(a) or (b).

(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—

(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 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 determined.

(4) 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.

(5) The MEC or, where applicable, the relevant municipality must appoint

any inspector or an authorised officer in the service of the municipality as the person in charge of the depot.

### **Emergency measures in certain areas**

82. (1) The MEC may declare an area, which may be the entire Province, by notice in the *Gazette* in which the special measures provided for in this section will apply, where the MEC is of the opinion that this is necessary to normalize a situation in the area caused by violence, unrest, conflict or instability in the minibus taxi industry, or between operators of minibus taxi services and other road transportation services, or in the interests of passengers.

(2) The MEC may make regulations providing that one or more or all of the routes or ranks in an area declared under subsection (1) shall be closed to the operation of minibus taxi-type services or other classes of public transport services, for a period stated in the notice, and that no person may undertake the services on the closed route or routes or in the closed rank or ranks during that period.

(3) Before taking action under subsection (2), the MEC must cause a notice to be published in the *Gazette* or in a newspaper circulating in the area containing a brief description of the nature and purpose of the intended action and a list of the routes or ranks that will be closed, or a statement that all routes or ranks in the area will be closed, for the period so stated, and stating that any interested or affected persons shall be entitled to provide representations and may request reasons within a time stated in the notice, which may not be less than 24 hours, at an address and in the manner so stated.

(4) The MEC must consider any representations received under subsection (3) before taking action under subsection (2).

(5) Regulations under subsection (2) may provide that the contravention thereof will constitute an offence and prescribe penalties in respect thereof.

(6) Regulations under subsection (2) may provide for the issuing of temporary operating licences to operators of motor vehicles of specified types, to operate the closed routes for the period of their closure.

(7) The MEC may, by notice in the *Gazette*, temporarily suspend any operating licence or permit insofar as it authorises public transport services in an area declared under subsection (1), for the period the MEC deems appropriate, which shall not exceed seven days, after giving notice as contemplated in subsection (3), the necessary changes being made thereto as required by the context.

### **Presumptions and proof of certain facts**

83. (1) A document which purports to be an operating licence issued under this Act, or a permit issued under the Road Transportation Act, 1977 (Act No. 74 of 1977) or a copy thereof certified as a true copy, will on mere production in any prosecution for an offence mentioned in section 85(1), be admissible in evidence as proof that it is such a 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.

(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, will on mere production in a prosecution under this Act, be admissible as sufficient proof of person's registered ownership of the vehicle and of the truth and accuracy of the particulars contained therein.

#### **Powers of authorised officers**

**84.** In addition to the functions and duties imposed on an authorised officer by or in terms of this Act, an authorised officer may—

- (a) cause a motor vehicle to be stopped in the manner prescribed and enter it 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;
- (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 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 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;
- (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 question any person who, in the opinion of the authorised officer, may be able to furnish any information required for that purpose, and may require such a person to produce, for examination or inspection, any books and documents, and any other records of any type whatsoever, that may be relevant for monitoring purposes, and make extracts therefrom or copies thereof, and demand an explanation of any entries in such a book, document, or other record. However, any person so questioned or required to furnish an explanation, is entitled to all the privileges to which any person testifying before a court of law is entitled;
- (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 the previous law (as the case may be) and which, in terms of this Act or that law have to be kept on that vehicle;

- (h) upon the order of the 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 the Board.

(2) (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 or property, the authorised officer may order the driver or other person in charge of the motor vehicle to surrender that licence or permit, as well as all distinguishing mark 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 will be retained by the officer until the holder has satisfied the officer that the defects have been remedied and that the vehicle is in a roadworthy condition, the onus of proving which will rest on the holder.

### **Offences and penalties**

85. (1) A person is guilty of an offence—

- (a) if the person operates or undertakes a public transport service in contravention of section 33 of the National Act;
- (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 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;
- (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 another official document or that it has been altered, defaced, damaged or added to, utters or uses the document;
- (h) if the person furnishes or gives false information in or with regard to any application made to the Board or Registrar, or in the course of appearing in any proceedings, investigation or inquiry before the Board or Registrar;
- (i) if the person impersonates an authorised officer;
- (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 the lawful order of an authorised officer;
- (l) if the persons 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;
- (m) 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;
- (n) if the person, without good reason—
- (i) refuses or fails to appear before the Board or Registrar in compliance with an order or subpoena issued under this Act; or
  - (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 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;
- (o) 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 alcohol on that vehicle in contravention of a notice on the vehicle which forbids smoking or drinking, or
  - (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;
  - (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;
- (p) if the person, being the holder of an 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;
- (q) if the person sets down passengers at or near an international border in contravention of section 45(2) of the National Act;
- (r) if the person uses a vehicle for a public transport service in contravention of section 31 of the National Act;
- (s) if the person fails to comply with subsection (6) of section 43 or displays a special number plate in contravention of subsection (7) of that section.
- (2) Where a person is convicted of any one of the offences mentioned in—
- (a) paragraphs (a), (b), (d) or (e) of subsection (1), a term of imprisonment not exceeding two years, or a fine not exceeding R100 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 an operating licence or permit performs or omits to perform any act which, if the holder of an 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 will be guilty of that offence if—
- (a) the holder—

- (i) connived at or knowingly permitted the act or omission concerned; or
  - (ii) did not take all reasonable measures to prevent that act or omission; and
- (b) an act or omission of the nature of the act or 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 8: GENERAL MATTERS**

### **86. Transitional provisions**

(1) A person appointed as a member of the Local Road Transportation Board for the Province under section 4 of the Road Transportation Act, 1977 (Act No. 74 of 1977), shall be deemed to be a member of the Board until new members are appointed under section 16.

(2) Where, at any time before the commencement of this Act—

- (a) a person was convicted, in terms of that Act, of an offence which is an offence in terms of this Act, the person is, where relevant for the purposes of this Act, regarded and treated as a person who had committed a corresponding offence provided for in this Act; and
- (b) any distinguishing mark issued in terms of that Act for a vehicle in relation to which a permit relates is regarded and treated for the purposes of this Act until such time as that permit lapses, is converted to an operating licence, or is withdrawn or cancelled in terms of this Act, as a distinguishing mark issued under this Act.

(3) An appointment, designation, regulation, notice or document made, published or issued, or another thing done, under that Act shall be deemed to have been declared, established, made, published, issued or done under the corresponding provisions of this Act.

(4) For the purposes of subsection (3) an application for the issue or grant of a permit which has not been disposed of at the commencement of this Act, shall be deemed to be an application under this Act for the grant of the appropriate operating licence.

### **Exclusion of Act 74 of 1977 from operation in Province**

87. The Road Transportation Act, 1977 (Act No. 74 of 1977) is hereby excluded from operation in the Province.

### **Act binds the State**

88. This Act binds the State.

### **Short title and commencement**

89. (1) This Act shall be called the Northern Cape Land Transport Act,



2000, and shall come into effect on a date determined by the Premier by Proclamation in the *Gazette*.

(2) Different parts or sections of this Act may be brought into effect on different dates, or in respect of different areas.

## MEMORANDUM ON THE OBJECTS OF THE NORTHERN CAPE LAND TRANSPORT BILL, 2000

### 1. Purpose of the Bill

The Northern Cape Land Transport Bill, 2000 (the Bill) is intended to provide for land transport matters in the Northern Cape in a comprehensive manner, in response to the National Land Transport Transition Act 22 of 2000 (the National Act). It deals with the same matters as, and is designed to complement and replace certain sections of the National Act and to promote public transport, in line with provincial and national transport policy.

### 2. Background

The National Act was prepared pursuant to the *White Paper on National Transport Policy* that was published in 1996. That Act also takes account of the recommendations of the *National Taxi Task Team* which were approved by the National Cabinet, the recommendations of the *Moving South Africa* project undertaken by the National Department of Transport (NDoT) and other initiatives. The National Act is also the product of various consultative endeavours 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. It was also prepared taking into account the provisions of the new local government legislation, such as 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 and the National Act refer to the Road Traffic Act, 1989 or replacing road traffic legislation, and are intended to function within the ambit of this legislation (now mainly the National Road Traffic Act, 1996). The approach followed and principles contained in the Bill and the National Act have been agreed to by the provinces and metropolitan authorities through the MINCOM structure.

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

By providing for formalisation and regulation of the minibus taxi industry, the Bill and the National Act will serve as invaluable tools for the government to achieve order and harmony in the industry and are essential for the implementation of the envisaged

minibus taxi recapitalisation project.

The National Act was subjected to a protracted process of consultation with all spheres of government and other interested parties. This process can be summarised as follows:

- A working document of the National Act as a draft 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. This working document consisted of a national bill and a *pro forma* provincial bill.
- In 1997 it was decided to combine the two bills into one, with two main chapters: one on matters of national concern and one on matters of provincial concern.
- The draft bill was published for comment in January 1999.
- The bill 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 National Act has been passed by both houses of Parliament, and is awaiting signature by the President.

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. Chapter 2 will apply in the Province as setting national norms and standards and applying national land transport policy. Chapter 3 deals with matters of provincial concern, and will apply in the Province unless it promulgates or has promulgated its own legislation to replace the provisions of Chapter 3. Chapters 1 and 4 deal with general matters and will apply throughout the country.

### 3. Objectives of the Bill

Of necessity, Chapter 3 of the National Act is general in nature, as it must cater for the needs of all nine provinces. It is intended as a stop-gap measure for provinces that do not have their own legislation on land transport issues, and provides issues of provincial concern that the provinces may change if they wish to do so. In this regard, the Bill contains more detail and is designed to tailor the issues to the unique needs of the Northern Cape. The Bill also caters for matters that are not covered by the National Act, such as exemptions, which the National Act leaves to be dealt with by the 1977 Road Transportation Act or replacing provincial legislation.

Legislation that currently applies in the Province regarding road transport is the Road Transportation Act 74 of 1977, which is a national act, most of which was assigned to the Province in 1996. The Road Transportation Act, 1977 will be excluded from operation in the Province and will be replaced by the Bill.

The new system provided for by the Bill and the National Act recognises the need both for regulation and flexibility in the interests of creating an economic and institutional

environment conducive for public transport operators to provide services, while at the same time protecting the rights and safety of passengers.

The Bill is founded on certain principles, that include the following:

- All public passenger road transport operations must be undertaken in terms of a valid and specific operating licence or permit;
- public passenger transport operators providing minibus taxi-type services must be registered with the Provincial Registrar. In the longer term, other modes will also be registered;
- protection of passengers;
- professional operating practices;
- supportive and appropriate institutional structures;
- the promotion of public transport rather than private transport;
- efficient and effective law enforcement;
- integration both of modes and of land use and transport planning, to improve passenger mobility and the efficiency of the system;
- the need to regulate public transport subsidies.

In view of the fact that the National Act will probably be put into operation soon, the Bill is urgent to prevent a situation where the system introduced by the National Bill will be modified again when the Bill comes into effect. The Bill is designed to complement and fully introduce the system proposed by the National Act.

#### **4. Contents of the Bill**

The Bill is divided into seven Chapters, as follows:

- Chapter 1: Introductory matters
- Chapter 2: Transport authorities
- Chapter 3: Provincial Operating Licence Board
- Chapter 4: Operating licences
- Chapter 5: Provincial Transport Appeal Board
- Chapter 6: Registration and related matters
- Chapter 7: Law enforcement
- Chapter 8: General matters.



**CHAPTER 1: INTRODUCTORY MATTERS**

Clause 1 provides for definitions.

Clause 2 provides for powers and duties of the MEC, and includes matters such as the taking of measures to promote public transport. It also provides that the MEC may impose charges and contributions, for example on developers, for the promotion of public transport.

Clause 3 provides for the making of regulations to support the Bill by the MEC.

**CHAPTER 2: TRANSPORT AUTHORITIES**

Clause 4 provides for agreements for the formation of transport areas and transport authorities. In terms of the National Act, the MEC and one or more municipalities may by agreement establish a transport authority (TA) for a declared transport area. Such an agreement is called a founding agreement. 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.

Clause 5 provides that where a TA is established, the MEC must give notice of and publish the founding agreement, which will then have the force of law.

Clause 6 provides for detailed requirements for founding agreements, in addition to those in Chapter 2 of the National Act.

Clause 7 provides for the optional functions and competencies of TAs. The compulsory functions of TAs are found in Chapter 2 of the National Act.

Clause 8 provides for ancillary powers of TAs.

Clause 9 provides for governance of TAs. They will be governed by a governing body consisting exclusively of councillors of the participating municipalities.

Clause 10 sets requirements for the dissolution of TAs.

Clause 11 provides for requirements to be met by TAs relating to financial matters.

Clause 12 provides that the governing body of a TA may delegate certain of its functions.

Clause 13 provides for conditions under which the governing body of a TA may delegate its functions.

Clause 14 provides for transport executives, i.e. one or more municipal departments

or an independent body that will be responsible for the administrative, technical, professional and clerical work of a TA.

Clause 15 provides that two or more TAs may agree to have a joint transport executive, in agreement with the MEC.

### **CHAPTER 3: PROVINCIAL OPERATING LICENCE BOARD**

Clause 16 provides for the establishment of a Provincial Operating Licence Board (the Board) to hear applications for the granting, amendment, renewal or transfer of operating licences (formerly permits) for public transport services. The Board is essentially the same type of body as the current Northern Cape Local Road Transportation Board, but will have to be reconstituted.

Clause 17 provides that Board members will have to be impartial and will not be allowed to have a financial interest in the public passenger road transport industry. It also provides for certain duties of the Board.

Clause 18 provides for the seat and offices of the Board, which will be jointly at Kimberley and Upington.

Clause 19 provides for circumstances under which Board members will be disqualified from membership of the Board.

Clause 20 provides for resignation and removal from office of Board members.

Clause 21 provides for the vacation of their office by Board members.

Clause 22 provides for meetings of the Board.

Clause 23 provides for the quorum and decisions at meetings of the Board.

Clause 24 provides that decisions of the Board will not be invalidated by casual vacancies on the Board.

Clause 25 provides that Board members must disclose their commercial and other interests in the public transport industry.

Clause 26 provides that minutes of Board meetings may be used as evidence in court proceedings or proceedings at tribunals or commissions of inquiry.

Clause 27 provides for procedure at Board meetings, including the power to summon witnesses.

Clause 28 provides that the Provincial Department responsible for transport affairs must provide staff for the Board.

**CHAPTER 4: OPERATING LICENCES**

Clause 29 provides for exemptions from the definition of "public transport service". These are substantially the same as those provided for in the 1977 Act.

Clause 30 provides that all existing permits authorising public transport services will have to be converted to operating licences by a date determined by the National Minister by notice in the *Government Gazette*. Every holder of a permit will have to apply for conversion thereof to an operating licence, by that date. Operating licences will grant the same authority as that contained in the current permit, and permits that have been issued for an indefinite period will be replaced by indefinite-period operating licences.

Clause 31 provides that a permit may not be converted to an operating licence unless the transport authorised by the permit was provided continuously for at least 180 days before application was made for conversion.

Clause 32 provides for the manner of converting permits to operating licences. Permits that are radius or area based will be converted to route-based operating licences, except in exceptional circumstances.

Clause 33 provides that applications for the conversion of permits to operating licences for larger vehicles, as allowed by the National Act, must be made in the manner and form prescribed by the MEC in regulations.

Clause 34 provides for the matters that the Board must consider in disposing of applications with regard to operating licences for non-contracted services.

Clause 35 provides that the Board may cancel operating licences and permits that have not been in use for 180 days, unless the holder can show good reasons for the non-use.

Clause 36 provides for the manner of issuing operating licences, and the information that they must contain.

Clause 37 provides that the authority conveyed by an operating licence does not exempt the holder from complying with municipal by-laws and other laws and requirements.

Clause 38 provides that an operating licence may be granted only to the owner of the relevant motor vehicle, or to the operator thereof as defined in road traffic legislation. The only exception is for sub-contractors in terms of a contracted service.

Clause 39 provides for the matters that the Board must consider in disposing of applications with regard to operating licences for long distance services, and for other rules applicable to operating licences.

Clause 40 provides for the circumstances in which the same vehicle may be used for long distance and other public transport services.

Clause 41 provides for the amendment of an operating licence to replace the vehicle specified therein.

Clause 42 provides for special conditions relating to metered taxi and staff services.

Clause 43 provides for the duties of the holder of an operating licence.

Clause 44 provides for the circumstances in which a vehicle specified in an operating licence may be replaced temporarily, e.g. in the case of an accident.

Clause 45 provides for the granting and issuing of special operating licences for special events.

Clause 46 provides that the Board may withdraw, suspend or amend an operating licence where the holder has been guilty of specified types of misconduct, e.g. where the holder has failed to comply with the conditions of the operating licence. Notice must be given to the holder of the intention to withdraw the operating licence, and the holder must be given an opportunity to appear before the Board and provide reasons why it should not be withdrawn.

Clause 47 provides that a court that convicts a person of undertaking unauthorised public transport may declare the vehicle used for that transport forfeit to the Province. In the case of a third or subsequent conviction, the court must do so.

#### **CHAPTER 5: PROVINCIAL TRANSPORT APPEAL BOARD**

Clause 48 provides for the establishment of a Provincial Transport Appeal Board. The functions of the Appeal Board will be to hear appeals related to applications for operating licences in respect of intra-provincial services.

Clause 49 provides for remuneration of Appeal Board members.

Clause 50 provides for meetings of the Appeal Board.

Clause 51 provides for the circumstances in which persons may apply to the Appeal Board against decisions of the Board.

Clause 52 provides that the Provincial Department responsible for transport affairs must provide staff for the Appeal Board.

Clause 53 provides that the Appeal Board must provide interested parties on request with reasons for its decisions.

Clause 54 provides for necessary transitional provisions related to appeals.



**CHAPTER 6: REGISTRATION AND RELATED MATTERS**

Clause 55 provides for the appointment of a Provincial Transport Registrar.

Clause 56 provides for disqualifications for holding the Registrar's office. The Registrar must be impartial and have no financial interest in the public transport industry.

Clause 57 provides for resignation of the Registrar, and removal from office.

Clause 58 provides for vacation of office by the Registrar.

Clause 59 provides for the functions of the Registrar. The Registrar's duties are mainly to register minibus taxi associations, their members, and non-members, and to monitor compliance by such associations and persons with the provisions of a published Standard Minimum Constitution and Code of Conduct. Initially, the Registrar will register only minibus taxi-type services, but the intention is to expand the Registrar's functions later to other public transport modes.

Clause 60 provides that the Registrar must disclose any commercial and other interests that he or she may have in the public transport industry.

Clause 61 provides that the Registrar must submit an annual report on his or her activities to the MEC.

Clause 62 provides for the establishment of a panel of assessors to advise the Registrar.

Clause 63 provides for meetings of the panel of assessors.

Clause 64 provides that assessors must disclose any commercial and other interests that they may have in the public transport industry.

Clause 65 provides for provisional and full registration of associations and non-members registered before the Bill comes into effect. In terms of the National Act, such associations and non-members will be deemed to be provisionally registered and may apply for full registration if they comply with the new provisions.

Clause 66 provides for provisional registration of associations that do not qualify directly for full registration.

Clause 67 provides that associations may apply directly for full registration, if they meet the prescribed qualifications.

Clause 68 provides for procedures in relation to registration.

Clause 69 provides for provisional and full registration of members of associations, and

for new members joining associations.

Clause 70 provides for registration of non-members. Non-members will be subject to certain restrictions on application, such as that they may register only where there is no registered association on the route in question, or the non-member can show that the association's requirements for registration are unfair.

Clause 71 provides for the issuing of certificates of registration and distinguishing marks to registered associations, members and non-members.

Clause 72 provides for the duties of registered and provisionally registered associations and non-members.

Clause 73 provides that the MEC must publish a Standard Minimum Constitution and Code of Conduct for the Province. Until this is done, the existing published ones will remain in force.

Clause 74 provides for requirements of constitutions of associations.

Clause 75 provides that the Registrar may cancel or suspend the registration or provisional registration of an association, member or non-member for misconduct after holding an inquiry.

Clause 76 provides for circumstances in which the Registrar must cancel or suspend the registration or provisional registration of associations, members and non-members.

Clause 77 provides that where the registration of an association lapses or is cancelled, all operating licences and permits of its members will lapse within 90 days, unless the association is re-registered or the member joins another registered association. Similar consequences follow where a non-member becomes deregistered.

Clause 78 provides that registration is no bar to prosecution of a person for unauthorised public transport services.

#### **CHAPTER 7: LAW ENFORCEMENT**

Clause 79 provides that the MEC, transport authorities, core cities and municipalities must take active steps to develop systems to improve land transport law enforcement in their respective jurisdictions. They are also empowered to enter into agreements related to law enforcement.

Clause 80 provides that the MEC may appoint inspectors to undertake public transport law enforcement functions.

Clause 81 provides for the impoundment of vehicles used for unauthorised public transport services. The Province and municipalities are empowered to establish pounds, as currently all impounded vehicles must be handed over to the South African

Police Services for disposal.

Clause 82 empowers the MEC to declare emergency areas in the case of unrest or violence, and close routes and ranks in such an area for a specified period.

Clause 83 provides for presumptions, and that certain facts may be proved by production of certain documents.

Clause 84 lists the powers of authorised officers, which relate to law enforcement.

Clause 85 provides for offences and penalties.

#### **CHAPTER 8: GENERAL MATTERS**

Clause 86 provides for transitional matters.

Clause 87 provides that the Road Transportation Act, 1977 will no longer apply in the Province.

Clause 88 provides that the Bill will bind the State.

Clause 89 provides for the short title and commencement of the Bill.

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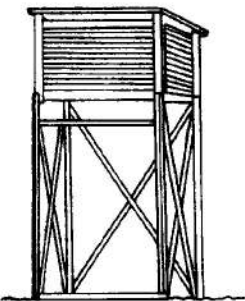
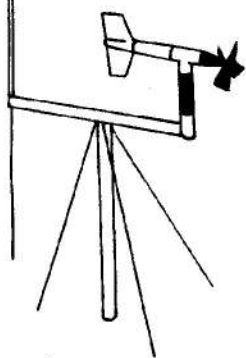
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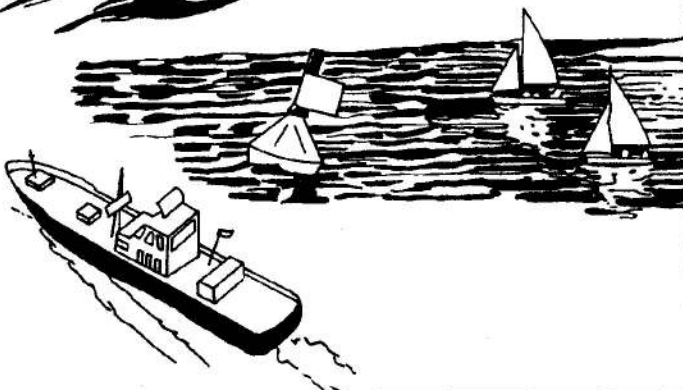
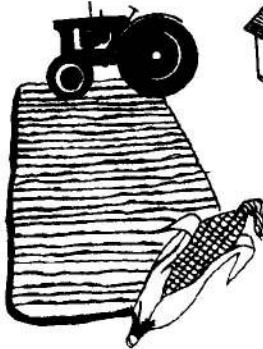
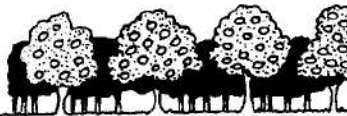
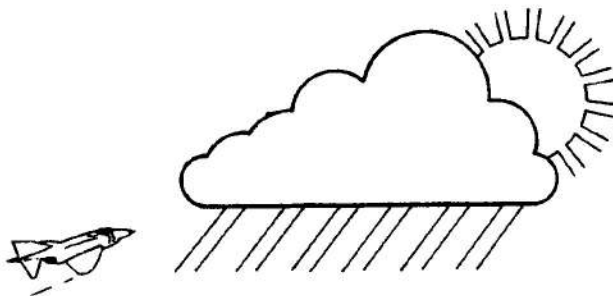
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