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VAN  
SUID-AFRIKA

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## GENERAL NOTICE ALGEMENE KENNISGEWING

DEPARTMENT OF TRANSPORT  
DEPARTEMENT VAN VERVOER

NOTICE 63 OF 1999

### PUBLICATION FOR PUBLIC COMMENT: NATIONAL LAND TRANSPORT TRANSITION BILL, 1999

The draft legislation set out in the Schedule hereto, which the Minister of Transport proposes to introduce in Parliament is hereby published for public comment in compliance with section 154(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

Interested parties are invited to lodge their written comments not later than 2 February 1999 with:

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D D PATEL

Director-General

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**KENNISGEWING 63 VAN 1999**

**PUBLIKASIE VIROPENBARE KOMMENTAAR: KONSEP NASIONALE  
OORGANGSWETSONTWERP OP VERVOER OOR LAND**

Die Engelse teks van die konsepwetgewing in die Bylae hierby uiteengesit, wat die Minister 154(2) van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996).

Belanghebbendes word uitgenooi om hulle kommentaar nie later nie as 2 Februarie 1999 in te dien by:

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Departement van Vervoer

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Direkteur-Generaal

# BYLAE

# BILL

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

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

## CHAPTER 1: INTRODUCTORY PROVISIONS

### PART 1: INTRODUCTORY PROVISIONS

#### Definitions

1. (1) In this Act, except where inconsistent with the context —

“association” means any group of persons associated with one another in operating minibus taxi-services, and—

- (a) which has been formed not for gain,
- (b) which has as its main object to promote the interests of its members; and
- (c) the funds of which are to be applied in promoting those interests;

“authorised officer” means any inspector, any member of the South African Police Service, any person in the service of any province’s provincial department or any municipal traffic officer or other officer who is an inspector of motor vehicles or motor vehicle licences or a traffic controller, and includes a person who is an authorised officer as defined in section 1 of the Cross Border Road Transport Act, 1998 (Act No. 4 of 1998);

"charter service" means a public transport service provided by road and involving the charter of a vehicle and driver for a journey and at a charge arranged beforehand between the operator and the charterer, where—

- (a) neither the operator nor the driver charges the passengers individual fares; and
- (b) the charterer has the right to decide the route, date and time of travel; and
- (c) the passengers are conveyed to a common destination;

"Code of Conduct" means the Code of Conduct required by section 101 and prescribed in compliance with that section by the MEC under section 123(1)(b);

"commercial service contract" means an agreement concluded between a contracting authority and a public transport operator, or a province and a public transport operator, in terms of which the operator is to provide a public transport service along a particular route or on a network, or is to provide a metered taxi service, in accordance with a public transport plan or integrated transport plan, where—

- (a) in terms of the agreement, that operator's consideration consists of fares payable by the passengers to be carried and, in the case where passengers are charged concessionary fares, also of reimbursements that are due for carrying the latter passengers, in terms of any concessionary fares agreement; and
- (b) the operator does not receive any subsidy or other financial support from any organ or structure in any sphere of government. For the purposes of this paragraph, contributions payable to the operator as part of concessionary fares will not be regarded as financial support;

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

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

whether or not the public transport operator, in terms of the agreement, is also required to construct, maintain or rehabilitate the infrastructure and other assets used in connection with that service;

"concessionary fare" means that part of the normal fare to be paid for a particular journey to the operator of a public transport service by a passenger falling within a special category, the normal fare being that payable for the same journey by passengers falling outside that category;



“contracting authority” means any province’s provincial department, any transitional transport authority, any designated municipality and any core city, bound to a contract or concessionary agreement concluded with a public transport operator, and includes the Department when party to such a 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 an MTA, and includes any municipality which, after the commencement of this Act, is so designated;

“courtesy service” means a transport service provided by an organisation for its customers or clients, without a direct charge to them, by means of a vehicle owned by the organisation or a vehicle provided by an operator in terms of a contract with the organisation;

“cross-border transport” means cross-border transport as defined in section 1 of the Cross-Border Road Transport Act, 1998;

“current public transport record” means a transport plan that is a current public transport record contemplated in section 30;

“current tendered contract” means a contract for the provision of a public transport service, the term of which expires only after the date of the commencement of this Act, which —

- (a) was concluded before that date between the Department or a province, of the one part, and, of the other part, a public transport operator to whom the tender for the provision of that service was awarded by the State Tender Board or the competent provincial tender board or authority in accordance with law, and which is still binding between them; or
- (b) is binding between the public transport operator and a province due to the assignment to the province of the Department’s rights and obligations under a contract contemplated in paragraph (a) that the Department had so concluded, irrespective of whether the assignment occurred before or occurs after the commencement of this Act; or
- (c) is binding between the public transport operator and a transitional transport authority or a designated municipality or a core city to which the province, after the commencement of this Act—

- (i) may have assigned its rights and obligations under a contract contemplated in paragraph (a) it had so concluded; or
- (ii) as the case may be, may have further assigned the rights and obligations that had been assigned to the province by the Department as contemplated in paragraph (b);

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

"designated municipality" means a municipality designated under section 29(1)(c) as the planning authority for its jurisdictional area;

"Director General" means the Director General of the Department;

"framework" means an outline which provides the structure within and the form according to which a plan, policy or strategy is determined and developed;

"grievance procedure" means the procedure which in terms of the constitution of an association is to be followed to resolve a grievance internal to the association raised by a member or a group of members, through a progressive process of discussion and conflict resolution, whether by a process of conciliation, mediation or arbitration;

"infrastructure", in relation to land transport, means fixed capital equipment and facilities in the land transport system;

"inspector" means an inspector designated under section 128;

"integrated development plan" means the integrated development plan which, in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), is to be prepared by a municipality;

"integrated transport plan" means an integrated transport plan contemplated in section 34;

"interim contract" means a contract, not being a current tendered contract, for the provision of a subsidised scheduled service the term of which expires after the date of the commencement of this Act, and which—

- (a) was concluded before that date between the province and the Department on

the one hand and the public transport operator who is to operate that service on the other hand, and is still binding between them or only between the province and that public transport operator; or

(b) is binding between that public transport operator and any transitional transport authority or a designated municipality or a core city, due to the assignment to it, after the commencement of this Act, of the province's rights and obligations under the contract contemplated in paragraph (a);

"interprovincial association" means an association whose members undertake interprovincial transport;

"interprovincial transport" means public transport so conducted that passengers are picked up in any province and set down in some other province;

"intraprovincial transport" means public transport so conducted that passengers are picked up and set down entirely within the boundaries of a single province;

"key performance indicator" means a yardstick or standard established to measure levels of performance and achievement;

"land transport" means the movement of persons and goods on or across land by means of any conveyance and through the use of the infrastructure and facilities in connection therewith;

"long distance service" means a regular scheduled or unscheduled public transport service operated by road where passengers are charged fares individually and are not carried for the purpose of or in the course of daily commuting;

"MEC" means the member of the Executive Council of a province who is responsible for the province's public transport affairs;

"metered taxi service" means a public transport service operated by means of a motor vehicle which is designed or lawfully adapted to carry fewer than nine seated persons, including the driver, where that vehicle—

- (a) is available to be hailed for hire;
- (b) may stand for hire at a rank; and
- (c) is equipped with a sealed meter, in good working order, for the purpose of determining the fare payable;

"minibus" means a motor vehicle designed or lawfully adapted to carry from nine to 28 seated persons, including the driver;

"minibus taxi service" means a public transport service operated on a specific route or within a defined area by means of a motor vehicle with a seating capacity of from nine to 28 seated persons, including the driver, where the service is not operated according to a regular time table and each passenger is charged a fare individually;

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

"motor vehicle" and "vehicle" means a motor vehicle and a vehicle as respectively defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989);

"MTA" means a metropolitan transport area declared and existing under section 3 of the Urban Transport Act, 1977;

"municipal transport operator" means a public transport operator which is a municipality or an organisation in which the majority of the shares or the controlling interest is held by a municipality, or which is otherwise controlled or is owned by a municipality;

"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;

"non-member" means any person, whether a natural or juristic person who does not belong to an association;

"parastatal transport operator" means a public transport operator that is an organisation in which the majority of the shares or the controlling interest is held by a province or which is otherwise controlled or is owned by a province;

"participating municipality" means any municipality that is party to a founding agreement establishing a transitional transport authority;

"permission" means a permission required by section 43, granted and issued in

accordance with Part 8 of Chapter 2 and Part 16 of Chapter 3, but does not include a special permission;

"permissions board" means the permissions board established for a province in compliance with section 36 to perform the functions mentioned in that section;

"permissions strategy" means a transport plan consisting of a permissions strategy contemplated in section 31;

"permit" means a public road carrier permit issued under a previous law which is in force at the commencement of this Act;

"permit authority" —

- (a) except in the circumstances mentioned in paragraph (b) of this definition, means a local road transportation board established under section 4 of the Road Transportation Act, 1977 (Act No. 74 of 1977), or a previous law for an area declared a road transportation area under section 2(a) of that Act or a similar provision of a previous law; or
- (b) where that Act has been superseded in any province by a law of the province, means any board, authority or other body which in terms of such a law performs in that province or any part thereof functions which are substantially the same as those that such a local road transportation board performs in relation to its own area of jurisdiction;

"planning area" means the area of jurisdiction of a planning authority;

"planning authority" means any body which is the planning authority for a particular area in terms of section 29(1);

"prescribed" means prescribed by regulation by the Minister or an MEC, as the case may be;

"previous law" means any law the operation and application of which is excluded by or in terms of section 3, and which is superseded by this Act in accordance with that section;

"provincial department" means the department within the administration of a province that

is charged with public transport matters within the province;

"provincial land transport framework" means a provincial land transport framework contemplated in section 27;

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

"public transport plan" means a public transport plan contemplated in section 33;

"public transport service" means a service for the carriage of passengers by road or rail, where the service is provided for a fare or other consideration or reward, including any service that is—

- (a) provided in terms of a commercial service contract;
- (b) provided in terms of a subsidised service contract;
- (c) provided, in the interim, in terms of a current tendered contract or interim contract;
- (d) a charter service;
- (e) a long-distance service;
- (f) a metered taxi service;
- (g) an unscheduled service;
- (h) a scheduled service;
- (i) a rail service;
- (j) a tourist service;
- (k) a staff service.

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

"rationalisation plan" means a plan contemplated in section 32;

"registered", in relation to any association, the members of any association and any non-members, means their registration in the provincial taxi register in accordance with Part 10 of Chapter 2 and Part 17 of Chapter 3;

"Registrar" means the person appointed provincial taxi registrar for a province by its MEC—

- (a) in compliance with section 64; and



(b) in terms of section 109 or any replacing law of the province concerned;

"Registrars' Administration System" means the computerised database of details relating to the registration of public transport operator associations, members and non-members maintained jointly by the Department and the nine provincial departments;

"regulation" means any regulation made from time to time by the Minister under this Chapter, or by any MEC under Chapter 3 (as the case may be) and, respectively, in force in the Republic as a whole or in the province concerned, and, unless clearly inappropriate, includes any regulation remaining in force in terms of section 10 or 132;

"Regulator" means the Rail Safety Regulator contemplated in section 77;

"replacing provincial law" means a law or a provision of a law of a provincial legislature with regard to matters to which Chapter 3 of this Act applies and which, for all or any of the arrangements made in that Chapter, substitutes its own arrangements within the framework of the national land transport policy and the scope and ambit of the provisions of Chapter 2 of this Act;

"roadworthy certificate" means a certificate of roadworthiness of a motor vehicle required by applicable road traffic legislation;

"scheduled service" means a public transport service provided by road on a particular, specified route in accordance with a regular timetable;

"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 specific number of specific consecutive days at a predetermined venue;

"special permission" means a special permission contemplated in section 107(1)(c);

"staff service" means a public transport service by road provided with a vehicle owned by an employer or a vehicle provided under private contract with a public transport operator for the exclusive use of an employer's employees in terms of a permission;

"subsidised service contract" means an agreement concluded between a contracting authority or province and a public transport operator to operate a scheduled service in

terms of a public transport plan under which the public transport operator is remunerated partly by passenger fares and/or from financial support in terms of a tendered contract;

“this Act” includes the regulations;

“tourist service” means a public transport service by road to tourist attractions, accompanied by a registered tour guide, for the carriage of tourists which is publicly available;

“transitional transport area” means the area of jurisdiction of a transitional transport authority contemplated in section 14;

“transitional transport authority” or “transport authority” means the authority established under section 12 or 13 for a transitional transport area;

“transport plan” means any plan provided for in section 28;

“travel demand management” means a system of actions to maximise the capacity of the transport system for the movement of people and goods rather than vehicles and includes increasing vehicle occupancy, priority measures for public transport, encouraging off-peak travel, shifting demand between modes, restricting the space available for parking, the pricing of parking and other like measures;

“Tribunal” means the Transport Appeal Tribunal established by section 3 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998);

“unscheduled service” means a public transport service by road operating on a specified route or within a defined area not subject to a regular time table, by a vehicle with a seating capacity defined by regulation, where fares are charged to individuals.

(2) Any reference in this Chapter, Chapter 2 or Chapter 4 to Chapter 3 or any part, section or provision of Chapter 3, however expressed, must in the case of a province that has adopted a replacing provincial law, be regarded and treated for all purposes as a reference to the corresponding chapter, part, portion, section or provision of that replacing law.

## **Purpose and scope of Act**

2. (1) This Act provides measures necessary to give effect to the national policy concerning the first phases of the process for transforming and restructuring the Republic's land transport system and to achieve a smooth transition to the new system being a system applicable nationally, and—

- (a) which is so structured as to prioritise public transport;
- (b) which is developed with due regard to transport planning in accordance with formalised, defined and standardised principles, processes and procedures;
- (c) where the official permissions required for the operation of public transport services are dependant, among others, on provision having been made therefor in the transport planning process;
- (d) in which competition for the operation of public transport services is regulated in a manner aimed at ensuring that they are effective in meeting demand and efficient and economic in the use of resources, and eliminate wasteful competition in the system;
- (e) whereby a formalised, viable, efficient and secure environment is established for the operation of unscheduled services generally, with specific reference to taxi services;
- (f) in which institutions to be created for the third tier of government, to be termed transitional transport authorities, together with municipalities, are destined to play a major role;
- (g) which entrusts the planning, implementation, management and development of the land transport systems in the areas of local communities, in accordance with national and provincial policies and frameworks, to the municipalities and transitional transport authorities accountable to those communities, while the provinces and the national government play a facilitating, supporting, co-ordinating, monitoring and overseeing role;
- (h) which serves as the foundation for the Republic's comprehensive land transport system for the long term.

(2) Accordingly, this Act—

- (a) in Chapter 2, prescribes those policies, principles, requirements, guidelines, frameworks, norms and standards that necessarily must be the same for all the provinces of the Republic in order to achieve and deal effectively with the transformation and restructuring of the land transport system of the Republic nationally, in the process introducing and establishing the new land transport system contemplated in subsection (1), for the Republic as a whole;
- (b) in Chapter 3, contains provisions that are ancillary or incidental to the application of the provisions of Chapter and are either necessary or expedient for that purpose.

## **Application of this Act in provinces**

3. In keeping with the arrangements made in section 146(2) of the Constitution of the Republic

of South Africa, 1996 (Act No. 108 of 1996)—

- (a) this Chapter and Chapter 2 will apply to the exclusion of any other law that is in force in any province or in the Republic as a whole and which is inconsistent with that Chapter; and
- (b) Chapter 3 will—
  - (i) not apply in a province in so far as it relates to a matter with regard to which there is a replacing provincial law in force in the province concerned, to the extent that such a replacing law deals with the matter;
  - (ii) apply to the exclusion of any other law of any province with regard to a matter dealt with in Chapter 3 in so far as the province's law is inconsistent with Chapter (2).
- (c) In the case of Chapter 4—
  - (i) insofar as it relates to Chapter 2, paragraph (a) of this section will apply, with the changes necessary in the context;
  - (ii) insofar as it relates to Chapter 3, paragraph (b) will apply with the changes necessary in the context.

## **CHAPTER 2: MATTERS OF NATIONAL CONCERN**

### **PART 2: NATIONAL LAND TRANSPORT PRINCIPLES AND POLICY**

#### **Chapters 2 and 3 to be applied in conjunction with each other**

4. Insofar as there are provisions in Chapters 2 and 3, which are reliant on each other for the proper application of this Act, or such a provision in either chapter, the relevant provisions in those respective chapters must be read and applied as one.

#### **Principles for national land transport policy**

5. The following principles will apply with regard to the determination, formulation, development and application of land transport policy in the Republic:

- (a) All role players must strive to achieve an effective land transport system through integrated planning, provision and regulation of infrastructure and services and diligent and effective law enforcement.
- (b) Safety and effective law enforcement must be promoted as vital factors in land transport management and regulatory systems, and the efforts in this regard of all competent authorities and functionaries must be co-ordinated to prevent duplication.

- (c) For the purposes of land transport planning and the provision of land transport infrastructure and facilities, public transport must be given higher priority than private transport.
- (d) Scarce resources available for the provision of land transport must be used optimally.
- (e) Investment in infrastructure and operations must be sustainable.
- (f) Efficiency and effectiveness must be promoted in the provision and operation of land transport services and administering land transport matters.
- (g) Co-ordination of institutional functions in land transport must be promoted.
- (h) Land transport functions must be integrated with related functions such as land use and economic development through but not exclusively restricted to corridor development, densification and infilling.
- (i) In the planning and provision of public transport, infrastructure and services, cognisance must be taken of the needs of special categories of passengers, which may include the elderly, persons with disabilities, students and learners.
- (j) Public transport services, facilities and infrastructure must as far as may be reasonably possible, be so provided and developed as to integrate different modes of land transport.
- (k) Public participation in the course of the land transport planning process must be encouraged and promoted.
- (l) Public transport services —
  - (i) must be aimed at reducing the cost of transport to the public;
  - (ii) must so be designed as to achieve —
    - (aa) cost efficiency and service quality;
    - (bb) the optimal allocation and utilisation of the available resources;
    - (cc) market development;
  - (iii) must so be designed as to have —
    - (aa) value to the community; and
    - (bb) the least harmful impact on the environment.
- (m) The computerised land transport information systems of the national government and the provincial governments must be compatible with one another and be so designed as to allow mutual access as well as access by the systems of the provinces' permissions boards, and those of planning authorities, subject to section 9(5).
- (n) A province may not act in a manner that will or is likely to prejudice or hamper the flow of inter-provincial transport and cross-border transport or the promotion of public transport.

## National land transport policy

6. (1) The Minister by notice in the Government Gazette, from time to time must make known the national land transport policy, including, but not limited to—

- (a) the government's goals concerning land transport in the Republic;
- (b) the policy objectives to be pursued to achieve those goals; and
- (c) the key performance indicators, and the targets to be met, to achieve those goals and objectives.

(2) In that notice the Minister also may prescribe that policy in greater detail.

(3) Whenever any proposals relevant to determining or amending the national transport policy is to be considered and decided by the Government, the Minister by notice in the Government Gazette must make known those proposals and in that notice invite any interested persons and the public to comment on the proposals and make representations with regard thereto.

(4) All provincial land transport policies and frameworks and all transport planning required or envisaged by this Act must be developed, prepared and formulated within the ambit of the national transport policy and in accordance with the requirements thereof and goals and objectives set thereby.

## PART 3: FUNCTIONS OF MINISTER

### Functions of Minister

7. The Minister must —

- (a) monitor the implementation of the national land transport policy and, where necessary, any investigations conducted into matters arising from implementation, and cause the necessary adjustments (if any) to be made to that policy;
- (b) facilitate the increased utilisation of public transport;
- (c) strive to ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner;
- (d) assist provincial departments that lack the necessary staff or resources, in meeting their responsibilities and performing their functions and duties with regard to land transport;
- (e) take the necessary steps to prevent the duplication of effort among the provinces or between the provinces and the national government;
- (f) cause to be prepared a national land transport research programme aimed at achieving the goals and objectives of national policy and have it carried out and financed systematically, and assign research projects to persons or institutions considered best



- equipped to carry out the research;
- (g) give guidance concerning education and training in connection with land transport matters; and prescribe requirements in this regard. However, the Minister—
- (i) may do so only after consultation with the Minister of Labour with a view to ensuring that education and training in subjects or training courses relating to land transport, are directed towards complying with the National Qualifications Framework defined in section 1 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
  - (ii) in so doing, must thereby promote uniform standards for the relevant courses and subjects in all the provinces;
- (h) in taking any measures to promote public transport —
- (i) accommodate therein national and international benchmarks and best practice;
  - (ii) further, within overall land transport objectives, the reasonable safety of passengers;
  - (iii) encourage efficient and commercial conduct on the part of transport operators in their provision of public transport services, and encourage competitive tendering for contracts and concessions;
  - (iv) further a strategic and integrated approach to the provision of public transport;
  - (v) further or encourage the efficient use of energy resources, and limit or reduce adverse environmental impacts to the minimum;
- (i) so promote public transport 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;
- (j) strive to ensure that in the promotion of integrated transport due consideration is given to the needs of transport users;
- (k) promote the performance of integrated transport planning in accordance with section 26;
- (l) where this Chapter requires public consultation and participation before taking any decision or performing any official act, prescribe the procedures to be followed in this regard.

### **Training courses in land transport**

8. (1) The Minister may enter into an agreement with any public or private educational or training institution to provide education, training and instruction, in accordance with and subject to the

terms and conditions of the agreement, in courses, subjects or matters with regard to land transport as specified in the agreement.

(2) The Minister must, where applicable, liaise with the Minister of Education and the Minister of Labour with a view to ensuring that the courses, subjects and any other training offered or to be offered at such an institution are directed at complying with the National Qualifications Framework defined in the South African Qualifications Authority Act, 1995.

**Establishment of national integrated land transport information system, and collection of information therefor**

9. (1) The Minister must develop, establish and maintain a national information system with regard to land transport and in collaboration with the provinces integrate that system with the information systems kept by them in relation to land transport.

(2) (a) Every MEC with regard to the province concerned, every transitional transport authority with regard to its transitional transport area, and every core city in its capacity as planning authority or contracting authority, must provide the Minister, in the manner and at the times or occasions as prescribed, with the prescribed information and particulars about their actions, conduct or position with regard to prescribed matters that concern or are relevant to—

- (i) the objects and purposes of this Act;
- (ii) the national land transport policy;
- (iii) the utilisation of moneys made available to them by the Department, whether directly or indirectly, for the purposes of performing their functions with regard to land transport in terms of this Act.

(b) The provisions of paragraph (a) will apply, with the changes necessary in the context, also with regard to every municipality required by the MEC to comply therewith or, by agreement between the MEC and the municipality, by the province.

(3) Despite subsection (2), the Minister, by notice in writing, may at any time require any transitional transport authority or municipality, to provide the Minister with any information or particulars about its actions, conduct or position with regard to any non-prescribed matter of the nature mentioned in subparagraph (i), (ii) or (iii) of subsection (2)(a), that may be specified in the notice.

(4) The information provided in compliance with subsections (2) and (3), will serve as the basis for monitoring the implementation of national transport policy, as well as planning, and will serve to assist all spheres of government in making decisions on public sector investments in public transport.

(5) The regulations required for the purposes of subsection (2), may be made only after consultation with the provinces, all transport authorities, and all municipalities contemplated in paragraph (b) of that subsection.

(6) The Minister must have all the information and particulars that were provided by virtue

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

(7) Information and particulars which, potentially, are commercially sensitive and may harm the business or commercial interests or viability of any particular organisation or entity, may not be so included in that system, nor be specified in such a manner as to lead, directly or indirectly, to the identification of that organisation or entity or to its being so harmed.

(8) Where any province or transitional transport authority or any such municipality fails to provide any information or particulars in compliance with subsection (2), or, where applicable, subsection (3), the Minister may withhold any payment to the province or transitional transport authority, or, where applicable, to such a municipality, until such time as it has remedied its default.

## **Regulations**

10. (1) The Minister may make regulations, not inconsistent with this Act, with regard to any matter which, in terms of this Act, may or must be prescribed by the Minister, or be governed, regulated or determined by way of a regulation made by the Minister.

(2) The regulations may, in appropriate cases, provide that any contravention or failure to comply with any regulation is an offence, and provide for the imposition of a term of imprisonment which may not be longer than three months or a fine which may not be higher than R10 000.

(3) Any regulation made in terms of any previous law and in force immediately before the commencement of this Act with regard to matters in relation to which the Minister, in terms of subsection (1), is competent to make regulations, will be regarded and treated for the purposes of this Act, as regulations made in terms of that subsection until such time as the Minister makes a superceding regulation under this section.

## **Delegations by Minister**

11. (1) Any power, function or duty of the Minister in terms of this Chapter, except a power to make regulations, may be delegated to any officer in the Department. However, the Minister will not be divested of any power nor be relieved of any duty that has been so delegated, and may revoke such a delegation at any time and amend or withdraw any decision made on the authority of such a delegation and take an own decision on the matter.

(2) Such a delegation must be made in writing and be made known by the Minister by notice in the Government Gazette.

#### **PART 4: TRANSPORT AUTHORITIES**

##### **Agreements to have metropolitan transport areas converted to transitional transport areas and transitional transport authorities established**

12. Where any area declared under section 3 of the Urban Transport Act, 1977 (Act No. 78 of 1977), to be a metropolitan transport area (in this section called an MTA), consists exclusively of the whole of the area or areas of jurisdiction of one or more municipalities, the MEC and that municipality or (as the case may be) all those municipalities, may, subject to section 16 enter into an agreement that complies with the provisions of section 15, in terms of which—

- (a) the area of jurisdiction of that municipality, or areas of jurisdiction of all those municipalities jointly (as the case may be), is or are to become a transitional transport area; and
- (b) a transport authority is to be established for such a transitional transport area.

##### **Agreements for the formation of other transitional transport areas and the establishment of transport authorities therefor**

13. (1) In terms of this section, municipalities' areas of jurisdiction that are not included, either wholly or partly, in MTA's, may become transitional transport areas, and transport authorities may be established for those transitional transport areas, only as provided for in this section read with section 14.

(2) Any single municipality that qualifies in terms of subsection (4) (hereafter called a qualifying municipality), or any two or more qualifying municipalities, may, subject to section 16, enter into an agreement with the MEC that complies with the provisions of section 15, in terms of which—

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

(3) Only the whole of the area of jurisdiction of any qualifying municipality may be included in any transitional transport area.

(4) A municipality qualifies for the purposes of subsection (2) if, in law—

- (a) it has exclusive municipal executive and legislative authority within its area of jurisdiction; or
- (b) it has municipal executive and legislative authority in its area of jurisdiction in which there is one or more other municipalities.

### **Declaration of transitional transport areas, and concomitant establishment of transitional transport authorities.**

14. (1) Not later than 14 days after the conclusion of an agreement mentioned in section 12 or 13 (hereafter called a founding agreement), the MEC, by notice in the provincial gazette, must—
- (a) give notice of and publish the founding agreement, which must comply with the provisions of section 15; and
  - (b) declare the area comprised of the jurisdictional area of the municipality party to the founding agreement, or, where two or more municipalities are party to that agreement, comprised of the jurisdictional areas of all those municipalities jointly, to be a transitional transport area, and assign to it the name provided for in that agreement; and
  - (c) where applicable, withdraw, in the manner provided for in paragraph (c) of section 3(1) of the Urban Transport Act, 1977, the notice by which the area or areas of the municipality or municipalities concerned had been included in the relevant MTA under paragraph (a) or (b) of section 3(1) of that Act; and
  - (d) in accordance with and subject to the founding agreement, establish for that transitional transport area a transport authority with effect from the date specified for that purpose in the founding agreement.

(2) A transport authority so established (in this Act also called a transitional transport authority) is a juristic person.

(3) A founding agreement, upon having been so published, has the force of law, and no amendment thereof will have any legal force or effect until the amendment has been made known by the MEC by notice in the provincial gazette.

### **Requirements for founding agreement**

15. (1) The founding agreement must be in writing and, subject to subsection (2), provide at least for the following:
- (a) A declaration by the contracting parties affirming their agreement on the establishment of a transport authority for a transitional transport area—
    - (i) comprised of the jurisdictional area of the municipality party to the founding agreement; or
    - (ii) where two or more municipalities are party to the founding agreement, that comprises the jurisdictional areas of all those municipalities, jointly.
  - (b) A cadastral description of the boundaries of the transitional transport area.
  - (c) The name to be assigned to the transitional transport area.
  - (d) The date with effect from which that transport authority is to be established.
  - (e) 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. However, 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.

- (f) The designation and appointment of a chairperson and deputy chairperson for the governing body.
- (g) Voting procedures and members' voting rights at meetings of the governing body, and of any committee thereof (where applicable), and mechanisms and procedures for breaking deadlocks in decision-making.
- (h) The appointment or designation of a chief executive officer for that transport authority, and the responsibilities, functions and powers attached to that office.
- (i) Subject to Chapter 3, 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.
- (j) The venue for the head office of that transport authority and for meetings of its governing body.
- (k) The physical address at which all correspondence, documents, notices and court process may be delivered or sent to or served on that transport authority.
- (l) In the case where the transitional transport area consists of the areas of jurisdiction 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 in terms of this Chapter and Chapter 3;
  - (iii) subject to this Chapter, 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, subject to section 23.

(2) In addition, the founding agreement must make provision for any other matters for which a law of the province may require provision to be made.

(3) For guidance, the Minister by notice in the *Gazette* may determine a *pro forma* founding agreement that complies with the requirements of subsection (1).

(4) In the case where the transitional transport area and the transitional transport authority is to extend across one or more provincial boundaries, the provisions of the founding agreement must be consistent with the terms of the authorising agreement concluded, in accordance with section 17, with regard to the formation of the transitional transport area and transport authority concerned.



**Factors relevant to determining boundaries of transitional transport areas**

16. (1) In considering the formation of a transitional transport area pursuant to a founding agreement to be concluded in terms of section 10, the MEC and the municipality or municipalities that propose to enter into such an agreement must have due regard to—

- (a) dominant passenger movements;
- (b) economic inter-dependency between inhabitants as regards predominant travel patterns for purposes of work, education or training, medical care, sport and other recreational or social activities, entertainment, and consumer spending;
- (c) integrated land use and transport development potential;
- (d) the extent to which public transport services are provided and operated effectively and efficiently within the area;
- (e) the capacity to finance land transport infrastructure and the provision of subsidised service contracts and concessions from within the area;
- (f) whether any subsidised transport services provided by road or rail are operative within the area;
- (g) whether there is a capacity within the area to perform or carry out any technical or specialised functions or work necessary for or arising from the governance of a transitional transport area in terms of this Act;
- (h) demographic, natural and geographical factors and characteristics;
- (i) any other criteria (if any) that may be prescribed by a law of the province and are not inconsistent with this Chapter; and
- (l) the current public transport services record prepared for the transitional transport area in compliance with section 33 read with section 29.

(2) Despite subsection (1), a transitional transport area may not include only a portion of a municipality's jurisdictional area.

**Transitional transport areas and transport authorities extending across provincial boundaries**

17. (1) The MECs of two or more provinces may enter into an agreement which, subject to subsection (2) of this section and to the conclusion, in terms of section 12 or 13, of a founding agreement that complies with section 15, gives authorisation for—

- (a) the formation of a single transitional transport area extending across one or more of the common provincial boundaries and comprised of the areas of jurisdiction of municipalities falling within the respective provinces; and
  - (b) the establishment of a single transport authority for such a transitional transport area.
- (2) However, such an authorising agreement may be concluded only if—
- (a) the affected area falling in one province is contiguous to the affected area falling in the

other province or, as the case may be, one or more of the other provinces concerned; and

- (b) the municipalities concerned have agreed in principle on the establishment of a transport authority for a transitional transport area consisting of their jurisdictional areas jointly; and
- (c) those MECs are satisfied that those jurisdictional areas, taken together, meet the requirements for a functional transport area, due regard being had to the provisions of section 16.

(3) (a) The agreement further must provide that, in relation to the transitional transport area and the transport authority that may be established for it, one of those MECs, who must be identified in the agreement, will be the competent MEC as regards any powers, functions, duties and responsibilities which, in terms of this Act, may be exercised or must be performed or carried out by an MEC with regard to a transitional transport area or its transport authority, subject to paragraph (b).

(b) However, where the transitional transport area encompasses or includes the jurisdictional area of a municipality that is a metropolitan municipality, the MEC within whose province that jurisdictional area is situated, must be designated as the competent MEC.

(4) The MECs may enter into such an agreement only in consultation with their respective provinces' Member of the Executive Council responsible for local government affairs.

(5) The provisions of Chapter 3 will apply to the exclusion of any replacing provincial law as far as such a transitional transport area and transport authority are concerned.

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

18. (1) A transport authority established for a transitional transport area—
- (a) is responsible for the development of land transport policies within its area based on national and provincial guidelines and the visions for the transitional transport area, incorporating spatial development policies relating to matters such as densification and infilling as well as development corridors;
  - (b) must, if it has not already done so in terms of the National Land Transport Interim Arrangements Act, 1998 (Act No. 45 of 1998), prepare a current public transport record for the transitional transport area in accordance with the document titled "Requirements and Format for the Preparation of Current Public Transport Records for Core Cities", as published in the *Gazette* on 22 May 1998 under General Notice No. 847 of 1998, which will apply to transitional transport authorities with reference to their transitional transport areas, taking into account the changes necessary in the context;
  - (c) must from time to time, in its capacity as planning authority, prepare transport plans for the transitional transport area, and is responsible for the implementation thereof,

- including, but not limited to, operations, infrastructure and maintenance, where appropriate;
- (d) must carry out financial planning with regard to land transport within or affecting the transitional transport area, with particular reference to transport planning, infrastructure, operations, services, maintenance, monitoring and administration;
  - (e) is responsible for the regulation and management of the movement of persons and goods on or over land;
  - (f) must make recommendations to the permissions board about the conversion of permits to permissions as contemplated in section 41;
  - (g) must make recommendations to the permissions board about applications for new permissions as contemplated in section 49;
  - (h) is responsible for the calling of tenders for contracted public transport services, the preparation of the tender specifications and documents for that purpose, the evaluation of the tenders received and the award of the tenders;
  - (i) must ensure that the requirements of the public transport plan are available to the permissions board for consideration in disposing of applications for permissions;
  - (j) is responsible for the promotion of security in public transport;
  - (k) must 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; and
  - (l) must develop, maintain and operate a land transport information system in collaboration with the MEC.
- (2) A transitional transport authority may—
- (a) market and promote and assume responsibility for publicity associated with the public transport system;
  - (b) provide information to users or potential users of public transport;
  - (c) in the case of subsidised services, determine fare structures and fare levels, and concessionary fares for special categories of passengers (which will include elderly or disabled persons, learners or students), and periodically adjust fares in consultation with stakeholders;
  - (d) make payments to public transport operators providing public transport services in terms of subsidised service contracts and concessionary fare agreements to which it is a party;
  - (e) institute and conduct investigations into the financial circumstances and operating practices of—
    - (i) persons who, at the time, are existing or potential providers of public transport services in relation to or in the transitional transport area; or
    - (ii) the holders of permissions who, at the time, are operating in relation to or in that

area, and, if the holder is a company belonging to a group of companies, also into those of any other company in that group of companies;

- (f) 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 amongst the operators involved in that system;
- (g) 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;
- (h) develop, implement and monitor a strategy to prevent, minimise or reduce any adverse impacts of the land transport system on the environment;
- (i) encourage, promote and facilitate public consultation, participation or involvement through hearings, seminars and workshops and any other means that are appropriate to ensure effective communication with communities, inhabitants and transport operators;

(3) A transitional transport authority may, with the agreement of a participating municipality, assume co-responsibility for or assist the participating municipality in—

- (a) the application of traffic management techniques aimed at improving road traffic movement in that part of the transitional transport area that coincides with the jurisdictional area of that participating municipality;
- (b) the application of measures to limit damage to the road system in that part of the transitional transport area that so coincides.

(4) With a view to ensuring co-ordinated transport law enforcement within its transitional transport area, the transitional 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).

(5) (a) Whenever a transitional transport authority, in circumstances where it is under a duty to do so, fails to perform any of its functions in terms of subsection (1) or fails to perform such a function properly and effectively, in accordance with this Act, the MEC, by notice in writing addressed to the transitional transport authority through the latter's governing body or chief executive officer, may order that authority to remedy its default and perform the function concerned, or, as the case may be, to perform it properly and effectively, not later than the date stated in the notice, and thereupon the governing body and the chief executive officer will be responsible to ensure that authority's speedy compliance with that direction.

(b) Should the transitional transport authority fail to remedy its default within the period allowed therefor in the notice, the MEC may—

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

#### **Ancillary powers of transitional transport authorities**

19. (1) A transitional transport authority may enter into an agreement with a municipality that is not party to it in terms of which the transitional 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 Chapter or Chapter 3, provided that the transitional transport authority itself is competent in terms of this Chapter or Chapter 3 or that provincial law, to exercise or perform the same or a similar power or function with regard to its transitional transport area.

(2) In addition to the powers conferred on it elsewhere by or in terms of this Chapter and Chapter 3, a transitional transport authority may perform any legal act or do anything which a juristic person is competent in law to perform or do, except where inconsistent with this Act.

#### **Governance of transitional transport authority**

20. (1) A transitional transport authority is governed and controlled by a governing body established for it in accordance with the founding agreement in force with regard to that authority under this Chapter.

(2) The governing body represents the transitional 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.

#### **Delegations by governing body**

21. (1) Whereas the powers and functions of a transitional transport authority in terms of this Chapter and Chapter 3 or any provincial law, are entrusted, by the operation of section 20(1), to that authority's governing body, that body may delegate any such power or function, except the power of governance contemplated in subsection (1) of that section, and this subsection and the power to make by-laws, to any member of that governing body.

(2) The provisions of this section will apply with regard to any delegation in terms of subsection (1) in so far as there is no replacing provincial law making its own arrangements in that regard.



(3) The governing body will not be divested of any power or relieved of any function that it has delegated.

### **Transitional transport authorities not subject to liquidation**

22. Despite the provisions of any other law, a transitional transport authority may not be placed in liquidation.

### **Dissolution of transitional transport authorities**

23. (1) (a) Subject to section 22 and paragraph (b) of this subsection, a transitional 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 MEC for local government, when acting in terms of section 14 of the Local Government: Municipal Structures Act, 1998, to make any arrangements having the opposite effect, nor will those provisions detract from the legal force and effect of any arrangements so made.

(2) A transitional transport authority will 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 transitional transport authority, it has decided to terminate its participation in the transitional transport authority and has notified the MEC in writing of the decision;

(ii) where there are two or more municipalities party to the transitional transport authority—

(aa) the municipalities concerned have agreed in principle that the transitional 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 (as the case may be), each of the other municipalities, of the decision.

(b) The MEC, within seven days after having been so notified, has by notice published in the provincial gazette and a newspaper generally read in the transitional transport area affected by that notification, made known the proposed dissolution of the transitional transport authority concerned, invited interested persons to comment and make representations with regard thereto,



and directed them to furnish those comments and representations, in writing, to the MEC not later than the date specified in that notice. However a period of at least 30 days must be allowed for that purpose.

- (c) If all the parties to the transitional 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—
- (i) the succession to the assets, liabilities and commitments of the transitional transport authority upon dissolution;
  - (ii) the continuation and finalisation of any projects and work commenced by the transitional transport authority before dissolution;
  - (iii) the responsibilities, obligations and duties of the municipality or each of the municipalities party to the transitional transport authority with regard to the execution or implementation of any other commitment made or decision made or taken by the transitional transport authority in the exercise or performance of its powers and functions in terms of this Chapter and Chapter 3; and
  - (iv) the date on which the dissolution is to take effect. However, notice of the dissolution must be so determined as to allow for notice being given in accordance with subsection (4).

(3) Should the MEC and the municipality or (as the case may be) the municipalities, party to that authority fail to reach agreement on any of the matters mentioned in subparagraphs (i) and (ii) of 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 will be 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 seven days of the date of an agreement contemplated in subsection (2) or (3), by notice published in the provincial gazette and a newspaper generally read in the transitional transport area concerned, made known the dissolution of the transitional transport authority and publish the terms of that agreement, subject to subsection (2)(c)(iv).

## Finances

24. (1) Every transitional transport authority must—

- (a) conduct and manage its affairs in an effective, economical and efficient manner so as to optimise the use of its resources in addressing the land transport needs of the community in its area and those travelling to and from that area;
- (b) conduct its financial affairs in an accountable and transparent manner;
- (c) prepare a financial plan as an integral part of its transport plans;
- (d) structure and manage its planning, administration and budgeting processes in a manner that gives priority to the basic transport needs of the community in its area and those having to be moved to and from that area, and that supports the implementation of national and provincial transport policy;
- (e) manage its financial resources in a manner that will enable it to meet its objectives and make them sustainable; and
- (f) regularly monitor and assess its progress in and performance towards achieving the objectives set in its transport plans.

(2) (a) The chief executive officer of a transport authority must have proper accounting records kept in accordance with generally accepted accounting practice so as to fully reflect the income and expenditure of the transitional transport 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 transitional transport authority, and must be debited with the expenses incurred by that authority.

(3) The chief executive officer must open an account in the name of the authority with a registered banking institution in which all moneys received by the authority are to be deposited and from which its expenses are to be paid.

(4) (a) Each transitional transport authority must, not later than three months before the end of each financial year prepare a statement of estimated income and expenditure (that is, a budget) 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. However, that authority may at any time during the course of a current financial year submit a supplementary budget for that financial year to the municipality or municipalities for approval.

(b) The transitional transport authority may not incur any expenditure in excess of the total amount (including a supplementary amount) of the budget as approved by the municipalities in terms of paragraph (a)).

(c) A transitional transport authority may establish a reserve fund for any purpose connected with its functions in terms of this Part and Part 13, which the MEC may approve, and allocate to the reserve fund the moneys that may be available for that purpose in the budget (including any supplementary budget) approved under paragraph (a).

(5) Every transitional transport authority must establish and maintain an internal audit and

control system with a view to ensuring proper financial control.

(6) A transitional transport authority must award contracts for goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(7) (a) Subject to paragraph (b), a transitional transport authority may, with the approval of the MEC, raise loans.

(b) No loan may be raised in terms of this subsection—

(i) except to meet capital expenditure provided for in the approved budget of the transitional transport authority; and

(ii) unless authorised by a resolution supported by a majority of all the members of the governing body.

(8) The Minister, after consulting the Minister of Finance in the national sphere of government and the nine MECs, may make regulations relating to the responsibilities and duties of transitional transport authorities concerning financial and fiscal matters. These matters may relate, amongst others, to—

(a) the financial records and accounts to be kept and the financial statements which are to be prepared;

(b) the auditing of those records, accounts and financial statements. However, only a person registered and practising for own account as a public accountant and auditor, may perform such an audit;

(c) the time or period allowed for the submission of its audited financial statements to the governing body, the participating municipalities and the MEC;

(d) consequences or procedures where persons cause the transitional transport authority financial loss or damage, or where unauthorised expenditure has been incurred;

(e) procedures to be followed and measures to be taken to remedy the situation where the finances of a transitional transport authority have become unsound;

(f) the procedure applicable to the preparation and compilation of the budgets of transitional transport authorities;

(g) procedures and requirements for the procurement of goods and services, subject to subsection (6); and

(h) the investment of the moneys of transitional transport authorities.

(9) The financial year of any transitional transport authority will co-incide with the municipal financial year.

## **PART 5: FUNDING LAND TRANSPORT**

### **Minister may provide funds for land transport**

25. (1) (a) The Minister may use moneys appropriated by Parliament for that

purpose for the performance of the Minister's functions in terms of Chapter 2 and to meet the expenditure incurred by the Department in the performance of work arising from or otherwise connected with those functions or the performance thereof.

(b) The Minister may, from funds appropriated by Parliament, make moneys available to the provinces to assist them in fulfilling their responsibilities in terms of this Act and achieving the objects thereof.

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

- (a) specific purposes for which the moneys are to be utilised;
  - (b) the transfer of a specified portion of the moneys to transitional transport authorities and municipalities or to planning authorities;
  - (c) the portion of the moneys made available that is to be used for public transport facilities and infrastructure.
- (3) Moneys made available to a province under this section may be used only—
- (a) to assist planning authorities in defraying the cost of transport planning for their respective areas and the performance of their other duties in terms of Part 6 of Chapter 2 and Part 14 of Chapter 3;
  - (b) defray the operating costs of the province's permissions board or the provincial taxi registrar;
  - (c) to assist the province in making payments in terms of interim contracts, current tendered contracts and subsidised service contracts, and in terms of any concessionary fares agreement ancillary to a commercial service contract, to which it is bound, or to financially assist any transitional transport authority, municipality or core city in making payments in terms of such a contract or agreement to which the authority, municipality or core city is a party, whether as original contracting authority or by virtue of an assignment;
  - (d) make payments to any railway operator providing a public transport service in terms of a concessionary agreement concluded by the province or a transitional transport authority;
  - (f) contribute to or defray the cost of constructing or maintaining rail infrastructure and equipment or of acquiring or maintaining rail rolling stock in accordance with the provincial land transport framework or, at the request of a transitional transport authority, an applicable transport plan.

(4) A transitional transport authority to which moneys are transferred by a province under subsection, may use those moneys only—

- (a) for meeting the costs incurred by it in performing its functions as planning authority in terms of Part 6 and Part 14;
  - (b) to meet part of the costs of equipment acquired by a municipality for regulating and controlling traffic in the transitional transport area;
  - (c) make payments to passenger transport operators in terms of subsidised service contracts, current tendered contracts, interim contracts, concession agreements and in terms of any concessionary fares agreements ancillary to commercial service contracts to which the transitional transport authority is bound;
  - (d) pay compensation in terms of section 62 for loss suffered by a public transport operator as a result of the withdrawal of any permission of the latter pursuant to changes made to the transport plan for the transitional transport area in its capacity as planning authority;
  - (e) to acquire specialised vehicles for use by a public transport operator in providing a public transport service in terms of a subsidised service contract or concessionary agreement;
  - (f) for the performance of its other functions in terms of this Chapter and Chapter 3;
  - (g) for the administration and management of the business and affairs of the transitional transport authority.
- (5) In transferring moneys under this section, the MEC may impose conditions that are considered fit and are not inconsistent with this Act or with national and provincial land transport policies.
- (6) Moneys made available or transferred in terms of the preceding provisions of this section—
- (a) for use with regard to a particular or specified purpose, may not be used for any other purpose;
  - (b) subject to specified conditions, may not be dealt with contrary to those conditions.

## **PART 6: TRANSPORT PLANNING**

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

26. (1) Subject to this section, land transport planning must be so carried out as to cover both public and private transport and all the modes of land transport relevant in the area concerned, and must focus on the most effective and economic way of moving from point to point in the system.
- (2) Land transport planning must be integrated with the land development process. For that purpose, the transport plans required by this Act must be accommodated in and form an essential part of the integrated development plans which, in terms of any relevant local government laws are to be prepared by municipalities.
- (3) Transport plans must be so developed as to—



- (a) enhance the effective functioning of cities, towns and rural areas through integrated planning of transport infrastructure and facilities, transport operations including freight movement, bulk services and public transport services within the context of those integrated development plans and the land development objectives set in terms of section 27 of the Development Facilitation Act, 1995, or, where applicable, land development objectives of that nature set in terms of relevant provincial laws;
  - (b) direct employment opportunities and activities, mixed land uses and high density residential development into high demand public transport corridors interconnected through development nodes within the corridors, and discourage urban sprawl where public transport services are inadequate;
  - (c) give priority to infilling and densification along public transport corridors;
  - (d) give higher priority to public transport than private transport by ensuring the provision of adequate public transport services and applying travel demand management measures to discourage private transport;
  - (e) enhance accessibility to public transport services and facilities; and
  - (f) minimise adverse impacts on the environment.
- (4) Public transport planning must be viewed as a continuous process by which planning authorities professionally develop and implement integrated public transport services for their areas.
- (5) Unless clearly inappropriate or not reasonably practical in the circumstances, a planning authority, in preparing any public transport plan or integrated transport plan, must ensure co-ordination and integration within and between land transport modes so as to optimise the accessibility and utilisation of public transport services, facilities and infrastructure.

### **Provincial land transport frameworks**

27. (1) Each MEC must annually, not later than a date to be agreed to by the nine MECs, approved and made known by the Minister by notice in the Government Gazette, prepare a provincial land transport framework for the province for the five year period commencing on the first day of the next ensuing financial year, with due regard to the provisions of subsection (2) and in accordance with the guidelines and in the manner and form as generally prescribed by the Minister, and must at the same time submit a copy of that framework to the Minister.

(2) The provincial land transport framework must serve to guide land transport in the province, including land transport to and from neighbouring provinces.

(3) The provincial land transport framework must—

- (a) be consistent with the province's official vision, policy and objectives;
- (b) specify the changes to the province's land transport policies and strategies since the previous year's five-year plan;



- (c) include a priority list showing, in order of precedence, a summary of the projects and project segments to be carried out in that five year period, and the cost of each. This summary must include those projects identified in public transport plans and integrated transport plans in the province. This list must be prepared with due regard to the relevant integrated development plans prepared in terms of any relevant local government law and the relevant land development objectives set in terms of section 27 of the Development Facilitation Act, 1995, or, where applicable, land development objectives of that nature as set in terms of a law of the province;
- (d) describe the measures to be taken by the province with a view to ensuring proper co-ordination between the transport plans of the planning authorities in respect of which the province has jurisdiction, where appropriate;
- (e) set out the estimated funding requirements for each of the five years, and indicate the sources from which the necessary funds are expected to be obtained;
- (f) include the province's detailed budget with regard to land transport for the relevant financial year in the format prescribed by the Minister;
- (g) specify the province's financial strategies for funding projects in the short term;
- (h) set out a general strategy or plan for the movement of dangerous substances by road along designated routes;
- (i) set out the key performance indicators to be used to measure the performance by planning authorities of their functions and responsibilities in terms of this Act; and
- (j) where a law of the province requires that any other short-term matter be dealt with in that framework, deal with that matter in compliance with that law.

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

#### **Types of plans required by this Act**

**28.** (1) The following plans are required for the purposes of this Act:

- (a) Current public transport records provided for in section 30.
- (b) Permissions strategies provided for in section 31.
- (c) Rationalisation plans provided for in section 32.
- (d) Public transport plans provided for in section 33.
- (e) Integrated transport plans provided for in section 34.

(2) (a) The process begins with the preparation of the current public transport record which provides the basis for developing—

- (i) a permissions strategy;

- (ii) a rationalisation plan before the process of tendering for subsidised service contracts that are to be provided for in a public transport plan;
- (iii) a public transport plan.

(a) A rationalisation plan is a tactical plan whereas a public transport plan and an integrated transport plan are strategic and operational plans.

(3) Long distance services, charter services, staff services and tourist services are not to be provided for or made subject to any of the plans mentioned in subsection (1).

(4) (a) As soon as possible after the commencement of this Act, the Minister, by notice in the Government Gazette, must in respect of each of the plans mentioned in subsection (1), determine a date by which each planning authority in the Republic required by this Part to prepare such plans, must have done so.

(b) The date to be determined under paragraph (a) will be as agreed upon by the nine MECs and approved by the Minister.

(5) Before or on the date determined in terms of subsection (3) the planning authority must have a notice, in English and at least one other official language, published in a newspaper circulating in the area of the planning authority and indicating that the plan concerned has been completed and is available for inspection at a place stated in the notice.

(6) Any MEC may provide financial or other assistance to planning authorities to enable them to fulfil their obligations under this Part.

(7) Where a planning authority cannot or does not fulfil its obligations in terms of this Part, the MEC may act in accordance with the provisions of section 139(1) of the Constitution, which will apply reading in the changes necessary in the context.

### Planning authorities

29. (1) Plans contemplated in section 28(1)(a) and (b) and, where appropriate, section 28(1)(c), (d) and (e), must be prepared by the following authorities, to be known as planning authorities:

- (a) Transitional transport authorities, in respect of their transitional transport areas.
- (b) Core cities designated under section 4 of the Urban Transport Act, 1977 in respect of their MTAs;
- (c) Other municipalities in the Republic whose jurisdictional areas have not been included in transitional transport areas or have not been included wholly or partly in MTAs, and which the Minister designates for this purpose by notice in the Government Gazette—
  - (i) in agreement with the respective MECs; and
  - (ii) by virtue of the demand for and supply of public transport to and from the area and passenger transport activities through the area.

Municipalities so designated must prepare the relevant plans for their respective jurisdictional areas.

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

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

### **Current public transport records**

30. (1) As soon as reasonably possible after the commencement of this Act, but not later than a date to be determined by the Minister in consultation with the relevant MEC, every planning authority must prepare for its area a current public transport record that complies with the requirements of this section.

(2) The current public transport record must be prepared in accordance with the document titled "Requirements and Format for Preparation of Current Public Transport Records by Core Cities" published in the *Gazette* on 22 May 1998 under General Notice No. 847 of 1998, taking into account the changes necessary in the context, and showing—

- (a) all of the following services that are operated in the area of the planning authority:
  - (i) All scheduled services that are—
    - (aa) provided in terms of interim contracts;
    - (bb) provided in terms of current tendered contracts;
    - (cc) operated by an existing municipal transport operator;
    - (dd) operated by an existing parastatal transport operator;
    - (ee) operated in terms of permits or permissions where the service is for daily commuting;
    - (ff) operated as staff services having a material impact on the public transport system;
    - (gg) public transport services of any other nature provided in terms of a contract for any contracting authority;
    - (hh) provided by any other operator or in any other manner, whether lawful or unlawful.
  - (ii) All unscheduled services—
    - (aa) for daily or non-daily commuting, operated under the authority of permits and converted to permissions in terms of section 38;
    - (bb) operated as metered taxi services under the authority of permits or permissions;
    - (cc) provided by any other operator or in any other manner, whether lawful or unlawful.

- (iii) All scheduled services, unscheduled services and metered taxi services provided in terms of commercial service contracts; and
  - (b) all the facilities and infrastructure in place and utilised in the area concerned for the purpose or in connection with the public transport services mentioned in subparagraphs (i) to (iii) of paragraph (a), as well as the facilities and infrastructure being developed for that purpose or in that connection within the area concerned.
- (3) The current public transport records—
- (a) must be submitted to the MEC by the planning authorities not later than the date determined for that purpose by the MEC with the agreement of the Minister and made known by the MEC by notice in the provincial gazette;
  - (b) must be updated by planning authorities on a continuous basis by recording changes in the supply of public transport services with regard to their respective areas, due regard being had, amongst others, to the amendment, transfer, suspension, lapsing, withdrawal and issuing of permits or permissions by the permissions board;
  - (c) constitute the basis for the development of permissions strategies, rationalisation plans and public transport plans.

### Permissions strategies

31. (1) For the purpose of ensuring that planning authorities' recommendations to the permissions board in terms of section 49 will enable that board, in disposing of applications regarding permissions, to achieve a balance between public transport supply and demand that is both effective and efficient, every planning authority must, in the absence of a public transport plan, prepare a plan known as a permissions strategy which contains and sets out the planning authority's policy and strategies in relation to—

- (a) the role of each transport mode with regard to its area;
- (b) the circumstances in which permissions or permits authorising the operation of public transport within any part of its area, should be allowed;
- (c) the use of public transport facilities within its area;
- (d) the avoidance of wasteful competition between transport operators;
- (e) the conclusion of commercial service contracts for unsubsidised public transport services; and
- (f) the conditions which it would prefer the permissions board to impose in respect of permissions.

(2) Every planning authority must ensure that its permissions strategy is updated on a continuous basis and consolidated regularly, but at least twice a year.

## Rationalisation plans

32. (1) Where it is proposed that a public transport service being operated in terms of a current tendered contract or interim contract, or by a municipal or parastatal operator, be continued, after expiry of the contract in terms of which it is operated, in terms of a subsidised service contract, the planning authority in whose area the service is operated must prepare a rationalisation plan, for submission to the MEC, before the service to be operated in terms of the subsidised service contract, is put out to public tendering, with a view to—

- (a) minimising the level of subsidy;
- (b) avoiding competition on the road between subsidised services;
- (c) structuring subsidised service contracts in such a way as to attract adequate competitive bidding by qualifying tenderers;
- (d) ensuring that routes and route networks are optimised so as to meet passenger demand effectively and efficiently; and
- (e) facilitating the future development of an integrated public transport system.

(2) Every rationalisation plan must be followed up by a public transport plan, giving operational effect to the rationalisation plan.

(3) The rationalisation plan must contain—

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

## Public transport plans

33. (1) A planning authority that has prepared a rationalisation plan must prepare a public transport plan with a view to determining and specifying the public transport services that it wishes to have provided—

- (a) in terms of commercial service contracts for—
  - (i) scheduled services;
  - (ii) unscheduled services;
  - (iii) metered taxi services;
- (b) in terms of subsidised service contracts for scheduled services;

- (c) as uncontracted services that are—
  - (i) scheduled services;
  - (ii) unscheduled services;
  - (iii) metered taxi services,and operated without subsidy other than those provided in terms of a commercial service contract contemplated in paragraph (a).

(2) The public transport plan must be prepared with a view to developing and implementing the integration of public transport services and should contain—

- (a) the planning authority's vision, goals and objectives for public transport in its area;
- (b) the planning authority's strategies for—
  - (i) determining the role for each mode;
  - (ii) minimising the level of subsidy and enhancing commercial viability;
  - (iii) avoiding wasteful competition on the road between public transport services;
  - (iv) structuring subsidised service contracts and commercial service contracts in such a way as to attract competitive bidding by qualifying tenderers;
  - (v) ensuring that routes and networks are optimised so as to meet passenger demand effectively and efficiently; and
  - (vi) facilitating the future development of an integrated public transport system; and
- (c) the operational plan including—
  - (i) all contracts envisaged in subsection (1)(a) and (b);
  - (ii) the permissions strategy for services envisaged in subsection (1)(c).

### **Integrated transport plans**

**34.** (1) The MEC may require planning authorities to prepare annually, not later than 60 days before the beginning of the relevant financial year, for their respective areas, integrated transport plans for the five year period commencing on the first day of that financial year—

- (a) in accordance with guidelines and in the manner and form as generally prescribed by the MEC; and
- (b) which comply with subsection (2),

and at the same time submit the plan so prepared to the Minister.

(2) The integrated transport plan must—

- (a) be consistent with national and provincial policies and the planning authority's official vision, policy and objectives, due regard being had to any relevant integrated development planning or land development objectives;
- (b) specify the changes to the planning authority's land transport policies and strategies since the previous year's five-year plan;



- (c) include a priority list showing, in order of precedence, the projects and project segments to be carried out in that five year period, and the cost of each. This list must be prepared with due regard to the relevant integrated development plans prepared in terms of any relevant local government law and the relevant land development objectives set in terms of section 27 of the Development Facilitation Act, 1995, or, where applicable, land development objectives of that nature as set in terms of a law of the province;
- (d) set out the estimated funding requirements for each of the five years, and indicate the sources from which the necessary funds are expected to be obtained;
- (e) include the planning authority's detailed budget with regard to land transport for the relevant financial year in the format prescribed by the MEC;
- (f) specify the planning authority's financial strategies for funding projects in the short term;
- (g) include the planning authority's public transport plan;
- (h) set out a general strategy for travel demand management; and
- (i) set out a general strategy or plan for the movement of dangerous substances by road along designated routes.

#### **Co-ordination of transport planning**

35. The MEC must ensure the co-ordination of the planning processes of all planning authorities under the jurisdiction of the province. In so doing, particular attention must be given to—

- (a) public transport services operating across the boundaries of the relevant areas of planning authorities;
- (b) road and rail planning;
- (c) rivalry between neighbouring planning authorities that may result in the duplication or over-supply of transport facilities and infrastructure in the region.

### **PART 7: PROVINCIAL PERMISSIONS BOARDS**

#### **Establishment and functions of provincial permissions boards**

36. (1) (a) The MEC of each province must establish a single permissions board for the province and appoint as members thereof persons who are characterised by their independence, impartiality and fairness and who further are suitable for membership by reason of their understanding of and expertise in or knowledge of the public transport industry and not having any direct or indirect financial interest in that industry.

(b) The permissions board of each province will consist of the number of members determined by or in terms of a law of the province concerned, or, in the absence of such a law, as

determined by the MEC of that province by notice in the provincial gazette.

(c) No re-determination of the membership of a permissions board will become effective before the expiry of the terms of office of all persons serving as members of the permissions board at the time of the re-determination.

(2) The functions of a permissions board are to receive, consider and decide on or otherwise dispose of, in accordance with this Chapter and Chapter 3—

- (a) applications for permissions with regard to intra-provincial transport;
- (b) applications for the granting of permissions with regard to inter-provincial transport involving the province for which the permissions board has been established, subject to the approval of the permissions board of the other province, or (as the case may be) of every other province, in which the inter-provincial transport is to occur, subject to subsection (4);
- (c) applications for the renewal, amendment or transfer of permissions with regard to intra-provincial transport; and
- (d) applications for the renewal, amendment or transfer of permissions that had been so granted by it with regard to inter-provincial transport, subject to the approval of the permissions board of the other province, or (as the case may be), of every other province, in which the inter-provincial transport occurs, but subject to subsection (4).

(3) In addition, a permissions board may, on application made to it by the holder of any permit at any time before the day on which the period determined under section 39(1) expires, if, in terms of subsection (2), it would have had jurisdiction had the applicant for the conversion of the permit applied for the granting of a permission involving the same kind of transport, convert the permit to a permission, subject to this Chapter and Chapter 3 or, where appropriate, a replacing law of the province for which that board was established.

(4) (a) If, in the case of any application mentioned in paragraph (b) or (d) of subsection (2), the permissions board considering the application, has not succeeded in obtaining the required approval of another permissions board contemplated in paragraph (b) or (d) by the expiry of the period prescribed by the Minister for that purpose, the first-mentioned permissions board may refer the matter to the Tribunal for decision.

(b) A permissions board approached for its approval in terms of paragraph (b) or (d) of subsection (2), that fails to communicate its decision before expiry of that prescribed period to the permissions board that requested the approval, will be regarded and treated for the purposes of, respectively, paragraph (a) or (b) of that subsection, as having refused its approval.

(5) Any permission granted, renewed, amended or transferred in terms of this section, must be issued on behalf of the permissions board in the manner and form as prescribed by the MEC.

**Duties of permissions boards in exercising or performing their powers and functions**

37. (1) A permissions board must exercise or perform its powers and functions in terms of this Act independently, free from governmental, political or other outside influence, and impartially, without fear, favour or prejudice.

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

(3) Every permissions board must keep minutes of its proceedings and keep records of all applications mentioned in section 36(2) and (3) that have been made to it.

(4) A permissions board must—

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

**Evidentiary value of minutes**

38. The minutes of any meeting of a permissions 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.

**PART 8: PERMISSIONS****Continuation and conversion of existing permits**

39. (1) Subject to subsection (5) and section 42, 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, will remain in force temporarily as provided for in this section.

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

- (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 Government Gazette;
- (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) will lapse—

(a) where an application for its conversion has not been made as provided for in subsection (2)—

(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 permission in accordance with this Part and Part 16 of Chapter 3.

(4) (a) The Minister, by notice in the Government Gazette, must determine a date by which all permits must have been converted for the purposes of this section.

(b) The Minister may, on the request of the MECs, defer the date so determined.

(5) Subject to this Part, the authority conferred by a permit may not be renewed, amended or transferred, unless it has first been converted to a permission in accordance with this Part and Part 16 of Chapter 3.

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

40. (1) A permit may not be converted to a permission unless the transport service that it authorises has been provided uninterruptedly for a period of at least 180 days before the date on which application is made for conversion.

(2) When considering an application for the conversion of a permit to a permission, the permissions board may require the applicant to furnish proof, to the latter's satisfaction that the applicant meets the requirement set by subsection (1).

#### **Manner of converting permits to permissions**

41. (1) Subject to this section and to compliance with section 39 in other respects, a permission issued in place of a permit pursuant to the conversion contemplated in section 39, must confer the same authority as that which had been conferred by the permit.

(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 permission to which that permit is converted must authorise the operation of that service according to one or more routes that are specified in detail, 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 permission to which that permit is converted must be made specific to that contract.

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

(a) (not being a metered taxi service) that authorises the operation of that service within a defined area, the permission to which that permit is converted must authorise the operation of that service according to one or more routes. The route or routes must be specified in detail, except in any of the following circumstances, namely—

(i) if the service—

(aa) is provided to or from informal settlements where there are no defined roads;

(bb) is a feeder service between a particular area and a major terminal or interchange facility;

(cc) is not provided at peak times or is provided over weekends between a particular area and a major destination of public passengers such as a hospital or shopping centre; or

(ii) any other circumstances which the permissions board on reasonable grounds finds to justify the non-detailed specification of the route or routes;

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

(i) must authorise the operation of that service according to one or more routes that must be specified in detail, subject to sub-paragraph (ii);

(ii) may, where any circumstance mentioned in subparagraph (i) or (ii) of paragraph (a) exists, 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 permission 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) In the case of the conversion of a permit for a long distance service, the permission to which that permit is converted 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.

(6) Except where clearly inappropriate, the permission to which a permit has been converted in terms of this section must be regarded and treated for all purposes as a permission granted and issued in terms of this Chapter and Chapter 3.

(7) A permit for public transport in a radius or area must be converted to a permission for public transport on a particular, specified route or routes or, where applicable, a particular, specified area.



(8) Except where the permit to be converted already authorises public transport services on a particular route or routes, the permissions 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 permission to which that permit is to be converted.

(9) Permits for unscheduled services operated by minibus vehicles may be converted to permissions for minibus taxi services operated by vehicles with a seating capacity of not more than 28 passengers including the driver, on the basis of one permission for the surrender of two permits: provided that the permission shall be for a fixed period not exceeding five years and must specify in addition to the matters in section 52 the number of seated passengers authorised, provided that no standing passengers may be carried;

(10) Permits for unscheduled services operated by vehicles with a seating capacity of less than nine persons, including the driver, may be converted to permissions—

- (a) for minibus taxi services operated by vehicles with a seating capacity of nine to 16 persons, including the driver, on the basis of one permission for the surrender of two permits: provided that the permission must be for a fixed period not exceeding five years; or
- (b) for scheduled services operated by vehicles with a seating capacity exceeding 16 persons, including the driver, but not more than 28 persons, including the driver, on the basis of one permission for the surrender of four permits: provided that the permission must be for a fixed period not exceeding five years and must specify in addition to the matters in section 52 the number of seated passengers authorised, provided that no standing passengers may be carried.

(11) A permit converted to a permission in terms of this section may not be issued to a person as the nominee of another person.

(12) However, no compensation will be payable to the holder of a permission where, as a result of a conversion in terms of this section, the authority conferred by the permission to which the permit is converted is less than that which was conferred by the permit and has resulted in the reduction of the operator's authorised transport operations.

#### **Cancellation of certain permissions not brought into use**

42. (1) Subject to subsection (2), the permissions board may cancel any permission that has been converted from a permit in accordance with this Part if the holder of the permission has failed to bring it into use, that is to say, has failed to commence the operation of the public transport service to which the permission relates, within 180 days after the date of conversion.

(2) (a) Where it comes to the notice of the permissions board that a permission so converted



from a permit has not so been brought into use, the permissions board must, by notice in writing, call on the holder to advance good reasons, to the satisfaction of that board and within the period stated in the notice, for not having commenced operating the public transport service to which that permission relates, and, accordingly, why that permission should not be cancelled by that board.

(b) Where the permissions board is satisfied with the reasons advanced, it must allow the holder of that permission a further period specified by it, but not more than 180 days, to commence with the operation of that service, and in writing inform the holder accordingly.

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

(3) A holder to whom notice in terms of subsection (1)(c) has been given who fails to comply with the direction, is guilty of an offence and liable on conviction to the penalty prescribed in section 109.

#### **Permission or permit prerequisite for operation of public transport services**

43. (1) Subject to subsection (2), a person may not operate a public transport service by road without being authorised thereto—

- (a) by the necessary permit, subject to section 39;
- (b) by the necessary permission in terms of this Part;
- (c) in the case of a public transport service to or from a special event, by a special permission granted and issued under section 91.

(2) Subsection (1) does not apply to any person operating a public transport service in the course of conducting—

- (a) cross-border transport on the authority of a permit granted and issued to the person in accordance with Part 6 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998); or
- (b) cabotage on the authority of a permit mentioned in section 31 of that Act, issued to the person in accordance with that Act.

#### **No person entitled to permission as of right**

44. (1) Except on the conversion of a permit to a permission in accordance with this Chapter, no person has a right to be issued with a permission.

(2) A permission will not be issued unless—

- (a) the person requiring the permission has applied therefor in accordance with the provisions of this Chapter and Chapter 3 or a replacing provincial law; and

- (b) in the disposal of the application in accordance with those provisions, the permission has been granted to that person pursuant to the application being successful; and
- (c) the successful applicant has complied with the requirements of section 52(2).

#### **Permissions board to which application must be made**

45. Any application for—
- (a) the granting, renewal, amendment or transfer of a permission for intraprovincial transport particular to a province, must be made to the permissions board of the province concerned;
  - (b) the granting of a permission for interprovincial transport involving any two or more provinces, may be made to the permissions board of any one of those provinces;
  - (c) the renewal, amendment or transfer of a permission for interprovincial transport that had been granted by the permissions board of a particular province, must be made to the permissions board of that province.

#### **Permissions board to give notice of applications and consider comments and representations received**

46. (1) Permissions boards must give notice in the provincial gazette of receipt of an application for the granting, renewal, transfer or amendment of a permission (except an application for the amendment of a permission where the amendment concerns particulars of the vehicle to which the permission relates), and in that notice state the essential particulars thereof and invite interested persons to comment and make representations with regard thereto, in writing, and to submit them to the permissions board not later than a date so mentioned.

(2) Permissions boards must allow members of the public to inspect any application of which notice has been so given and to make copies thereof or extracts therefrom, upon payment of the fee prescribed (if any).

(3) The applicant, likewise, may inspect any representations received by the permissions board in response to its notice in terms of subsection (1) and may make copies thereof or extracts therefrom upon payment of the fee prescribed (if any).

#### **Simplified procedure for replacing or temporarily replacing vehicles specified in permission, or changing their particulars**

47. (1) Where the proposed amendment of a permission entails the replacement of the vehicle

specified therein for the operation of the public transport service to which the permission relates with the same passenger capacity and is of the same nature, quality and standard as the vehicle that is specified in the permission and is to be replaced, or where the application otherwise relates to the particulars of that vehicle, any application for such an amendment may, in the manner provided in section 88 or a replacing provincial law, be disposed of on behalf of the permissions board by any member thereof authorised thereto by that board.

(2) Where such a specified vehicle is temporarily unavailable for use due to any defect or damage, the permissions board or any member thereof acting on its authority, on application by the holder, or, where applicable, the holder and the latter's sub-contractor, may authorise the temporary replacement of that vehicle, pending its repair, by means of another vehicle, in the manner provided for in section 105 or a replacing provincial law.

#### **Requirements and disqualifications with regard to holding of permissions**

48. (1) A permission may not be issued to or held by any person as the nominee of any other person, nor by any association.

(2) A permission may only be issued to and held by the person registered, in terms of the Road Traffic Act, 1989 (Act No. 29 of 1989), as the owner of the vehicle specified in the permission, except where the permission relates to the operation of a public transport service in terms of a commercial service contract or a subsidised service contract, and the public transport operator party to the contract has sub-contracted another operator to operate part of that service on behalf of the firstmentioned operator. 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 permission as the vehicle to be so used for operating that service.

(3) No employee of any contracting authority or of any municipality (including a municipality in the capacity of core city), nor the spouse, child, partner or associate of such an employee, may be issued with or hold a permission authorising the operation of a public transport service in the jurisdictional area of that transitional transport authority or municipality, or in any area forming part of an MTA in which the jurisdictional area of that municipality has been included.

(4) (a) No employee of a provincial department, and no member of the South African Police Service employed in a particular province, may be issued with or hold a permission authorising the operation of a public transport service anywhere within the province or authorising an interprovincial public transport service involving that province.

(b) No employee of the Department may be issued with or hold a permission authorising the operation of a public transport service.

**Provisions applicable specially to applications concerning permissions authorising public transport services subject to transport plans**

**49.** (1) Before considering any application for the granting, renewal, amendment or transfer of a permission authorising the operation of any public transport service other than a charter service in the area of a planning authority, the permissions board must inform the planning authority by written notice of the application concerned, with the request to make recommendations with regard to the application, together with any representations, to the permissions board within the period stated in the notice (which may not be shorter than 21 days reckoned from the date of the notice).

(2) The planning authority must make its recommendations and any representations it considers fit, having due regard to the transport plans prepared for its area in compliance with section 28, and submit them to the permissions board within the period allowed therefor by the notice issued in terms of subsection (1). However, the permissions board may condone the late submission of those recommendations and representations.

(3) Subject to subsection (5), the permissions board, in disposing of such an application in terms of section 50, must duly take into account—

- (a) those transport plans; and
- (b) the recommendations and representations submitted in terms of subsection (2).

(4) Where the planning authority's transport plans include a public transport plan or an integrated transport plan, a permission may not be granted contrary to the plan concerned.

(5) Where the planning authority—

- (a) has not prepared any transport plan for its area or has not prepared at least a current public transport record and a permissions strategy, the permissions board may dispose of the matter in terms of the relevant provisions of section 50 as it considers fit, in all respects as if this section had not been enacted; or
- (b) has prepared the necessary transport plans but has failed to make recommendations and representations to the permissions board in response to the latter's request, the permissions board may, dispose of and decide the application without any input from the planning authority, but subject to subsection (4).

**Disposing of applications with regard to permissions for non-contracted services**

**50.** (1) In the case of any application for the granting, renewal or amendment of a permission that is to authorise the operation of a non-contracted service, whether within or outside any area constituting or included in the area of a planning authority, the permissions board, subject to

subsections (2), (3) and (6), must grant or refuse the application after having considered—

- (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 space for boarding or alighting from and for holding or parking vehicles engaged in the operation of that service, and the recommendations of the relevant municipality or transitional transport authority (as the case may be), and of any other municipality or transitional transport authority with an interest in the matter, with regard thereto;
- (c) the ability of the applicant to provide the service for which the permission is sought, in a manner satisfactory to the public;
- (d) 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 permission to which the application relates;
- (e) whether the applicant has any previous conviction for an offence in terms of any law (including any previous law) with regard to land transport, road traffic or road safety, or for any offence connected with or arising from the applicant's driving of a vehicle, whether committed before or after the commencement of this Act, and the seriousness of any such offence;
- (f) any previous failure by the applicant as a public transport operator;
- (g) representations duly submitted in connection with the application by the applicant or any interested party; and
- (h) any other relevant factors which in the opinion of the Board may affect the desirability of granting or refusing the application.

(2) In the case where the transport service to which the application relates, is operated or to be operated in the area of a planning authority, the provisions of section 49 must be complied with.

(3) In the case of an application for the granting, renewal or amendment of a permission relating to a long distance service, the permissions board also must consider the following additional factors—

- (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 between the points across or between which the applicant proposes to operate.
- (c) The existing transport facilities available to the public over the route or between those points.
- (d) The need to ensure co-ordination of all forms of transport, including transport by rail, on an economically sound basis and 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.



(4) In the case of an application for a permission to operate a long distance service, the onus is on the applicant to prove—

- (a) that the existing transport services are neither satisfactory nor sufficient to meet the transport requirements along the route or between the points where the applicant proposes to operate the service for which the permission is required;
- (b) that the applicant has the ability to provide the transport service for which the permission is required, in a manner satisfactory to the public; and
- (c) that, in the circumstances, it is necessary or desirable in the public interest to grant the permission.

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

(6) (a) In the case of any application for the transfer of a permission, the permissions board must grant or refuse the application after having considered the matters mentioned in subsection (1)(a), (c), (e), (f) and (g), which will apply, reading in the necessary changes. Where the application relates to the transfer of a permission authorising the operation of a non-contracted service in the area of a planning authority, the provisions of section 49 must also have been complied with.

(b) Such an application must be made in the manner prescribed by the MEC.

(7) (a) The permissions board may grant a permission for the renewal or amendment of a permission subject to any conditions, determined by it, that are not inconsistent with this Act.

(b) A condition may be so imposed only after consideration of the matters which, in terms of subsection (1) and, where applicable, subsection (3), are to be taken into consideration for the purposes of deciding the application.

#### **Rules applicable with regard to the various permissions**

**51.** The following rules apply particularly with reference to the granting of applications concerning the permissions mentioned below:

- (a) Permissions for vehicles to operate public transport services to be provided in terms of commercial service contracts or subsidised service contracts may be granted only for the duration and subject to the terms and conditions of the contract concerned.
- (b) Permissions for vehicles to operate non-contracted public transport services, must be for a fixed period not to exceed five years. In determining the period, due regard must be had to—
  - (i) current and envisaged trends in demand along the route or routes or in the particular area concerned;



- (ii) the efficiency of the proposed services in meeting the demand;
  - (iii) where applicable, the likelihood that, in future, the public transport service with regard to which application concerning a permission is made, may cease to be required in terms of the public transport plan;
  - (iv) the likelihood that the public transport service with regard to which application concerning a permission is made, may become the subject of a commercial service contract or a subsidised service contract.
- (c) In the case of permissions for long distance services, the permissions board—
- (i) 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
  - (ii) when determining the picking up and setting down points for a long distance service—
    - (aa) may not act contrary to the public transport plan or integrated transport plan that may have been prepared by a competent planning authority for an area affected by that service. In addition, where the service is to be provided by a minibus vehicle, the permissions board may consider the recommendations of any taxi associations with an interest in the matter;
    - (bb) provided by a minibus vehicle, 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 transitional transport authorities and municipalities and with the taxi associations operating locally in the area concerned.
- (d) Permissions for charter services and tourist services are to be valid throughout the Republic.
- (e) In the case of permissions for staff services, the permissions board must specify the routes authorised.
- (f) Permissions for charter services, long distance services and tourist services are to be granted for an indefinite period, whereas permissions for staff services are to be granted for a fixed period determined by the permissions board.

#### **Issue of permissions, and contents thereof**

52. (1) Except as provided in subsection (2), any permission granted, renewed, amended or transferred in accordance with this Chapter and Chapter 3 or a replacing provincial law, will

be issued, in the manner and form prescribed by the MEC, by an official of the permissions board designated by it for that purpose.

(2) A permission may not be issued in terms of this section unless the successful applicant for—

- (a) the granting, renewal, amendment or transfer of the permission, has submitted to that official a current roadworthy certificate which was issued for the vehicle to which the permission relates, not earlier than a point in time to be prescribed by the MEC, or a duly certified copy of such a certificate; and
- (b) the renewal, amendment or transfer of a permission, has returned to the permissions board the relevant permission that was issued previously for the same public transport service.

(3) A permission must state—

- (a) the name and address of the public transport operator and, where applicable, particulars of the operator's registration as a member of an association or a non-member (as the case may be);
- (b) the registration number, make, vehicle identification number, year of manufacture, type and seating or passenger capacity of the vehicle for which the permission was granted;
- (c) the types of service for which the permission has been granted;
- (d) whether the permission 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 a permission for a public transport service to be provided in terms of a subsidised service contract or commercial 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 operated by a sub-contractor on behalf of the holder of a permission, 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) the points between which and a detailed description of the route or routes on or the particular area for which the vehicle is to be used for the purpose of operating the service to which the permission relates, by specifying 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 that the Board has imposed under section 50(7); and

- (j) all other particulars that may be prescribed.

### **Special conditions relating to metered taxi services**

53. In the case of a metered taxi service, the vehicle specified in the permission authorising the operation of that service, may—

- (a) leave the area described in the permission 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.

### **Restriction on specification of same vehicle for operating both long distance and other public transport services**

54. (1) (a) A particular vehicle specified in a permission as being the vehicle by means of which a public transport service provided for in a public transport plan or integrated transport plan is to be operated, may not also be specified in the permission as being the vehicle by means of which any long distance service is to be operated, except if the planning authority which prepared that plan, agrees thereto.

(b) However, that planning authority may not so agree where the operation of the long distance service by means of that particular vehicle will or is likely to be detrimental to the provision, by means of that vehicle, of the public transport service provided for in that planning authority's public or integrated transport plan.

(2) A particular vehicle specified in a permission as being the vehicle by means of which a long distance service is to be operated, may not also be specified in the permission as being the vehicle by means of which a public transport service provided for in a public transport plan or integrated transport plan is to be operated except if the planning authority for the area to which the plan relates has agreed thereto.

### **Duties of the holder of a permission**

55. (1) The holder of a permission must—

- (a) in operating the public transport service to which the permission relates, comply with the terms of the authorisation conferred by the permission and the conditions to which it is subject, and, where that service is one provided for in a public transport or integrated

- transport plan, operate that service as so provided for;
- (b) carry the original of permission on the vehicle specified therein, and, where the vehicle so specified is temporarily replaced under section 105, carry the permission and the authorisation issued for the replacing vehicle on that vehicle for the duration of the temporary replacement;
  - (c) if a member of an association registered in terms of Part 10, or a non-member so registered, carry on such a vehicle the registration certificate issued to the holder in terms of section 67;
  - (d) on the demand of an authorised officer, produce that permission, authorisation or registration certificate;
  - (e) keep the permission and duplicate originals thereof in such a condition that the letters and figures thereon are clearly legible and, if the permission 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 borne in or at a conspicuous place, in the manner prescribed by the MEC, on the vehicle to which the permission relates, in the manner prescribed by the MEC;
  - (g) exhibit on or in that vehicle the other particulars as prescribed in any condition imposed by the permissions board;
  - (h) affix and keep affixed in the manner prescribed by the MEC, a distinguishing mark on the vehicle to which the permission relates;
  - (i) except in the case of a permission granted for an indefinite period, apply timeously for renewal of the permission;
  - (j) at all times keep the vehicle to which the permission relates in a safe and roadworthy condition and—
    - (i) have that vehicle examined for roadworthiness not later than the time allowed therefor in the Road Traffic Act, 1989; and
    - (ii) submit the new roadworthy certificate issued after such examination if requested thereto by the official mentioned in section 52(1) within seven days after having been so requested.
  - (k) return a permission that has been withdrawn or has lapsed, to the permissions board within seven days;
  - (l) comply with the provisions of this Chapter and Chapter 3 or a replacing provincial law, and with any other requirements imposed by a relevant law of any province to whose jurisdiction the holder, in or through the operation of the service to which the permission relates, may be subject at any point in time.
- (2) (a) The authority conferred by a permission may not—
- (i) be ceded or alienated by the holder of the permission, and no person

may be a party to such a cession or alienation, except where the permission is transferred in accordance with this Act;

- (ii) be hired out by the holder of the permission or be hired by any other person.

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

(3) From a date determined by the MEC by notice in the provincial gazette, the holder of a permission 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 permissions board returns in the form prescribed by the MEC on the recommendation of the permissions board, in which must be shown the number of passengers conveyed during the previous calendar month by means of the vehicle to which the permission relates and the distance, in kilometres, which, in the process, was covered within the area or on the route specified in the permission;

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

(c) on the vehicle to which the permission 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 (2), 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 a permission relates, on behalf of the holder of the permission, the provisions of this section except subsection (1)(i) and (k), will apply to the sub-contractor, reading in the changes necessary in the context, in all respects as if the sub-contractor were the holder of that permission.

**Authority conferred by permission, not a suspension of or exemption from duty to comply with legal measures and requirements of municipalities and other authorities**

**56.** A permission granted and issued under this Chapter—

(a) does not authorise the holder of the permission 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 in force with regard to the municipality 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.



**Special provisions concerning applications for permissions relating to contracted services**

57. (1) (a) Where any subsidised service contract has been awarded, or where any commercial service contract has been awarded by a competent tender board or authority after completion of a process of public tendering in accordance with law, the permissions board may not refuse the application of the relevant public transport operator for the granting or renewal of a permission required for the purposes of that service, except if justified in the circumstances mentioned in section 50(1)(d) or (e).

(b) In making the application mentioned in subsection (1), that public transport operator must specify every vehicle by means of which the public transport service in terms of such a contract is to be provided.

(2) Upon having applied successfully with regard to such a permission, that public transport operator will be entitled to be issued with a permission for every vehicle by means of which the public transport service in terms of such a contract is to be provided.

**PART 9: REGULATED COMPETITION****Subsidised service contracts**

58. (1) After the expiry of any interim contract or current tendered contract, the public transport service that had been provided in terms thereof, must, where it is proposed to continue a similar service thereafter, be provided in terms of a subsidised service contract.

(2) A provincial department, a transitional transport authority, a core city and a municipality that has the capacity to do so, may enter into a subsidised service contract only if—

- (a) the service to be provided in terms thereof, has been put out to public tendering in accordance with a procedure prescribed by or in terms of a law of the province;
- (b) the tender has been awarded by the tender authority in accordance with that procedure; and
- (c) the contract is entered into with the successful tenderer.

**Requirements for qualifying as tenderer for commercial service contract or subsidised service contract**

59. (1) To qualify as a tenderer for a commercial service contract or a subsidised service contract, an operator—

- (a) in the case of a minibus taxi-type service, must be registered with the provincial registrar of the province in which the relevant contract is to be performed; and
  - (b) must operate according to business principles with financial ringfencing; and
  - (c) must furnish proof to the satisfaction of the tender or procurement board or authority that the operator 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 to so register.
- (2) For the purposes of subsection (1)(b), an operator is financially ringfenced if—
- (a) the business of the operator's entity or undertaking is conducted separately from that of another entity or undertaking or any other organisation;
  - (b) the operator keeps separate accounting records, in accordance with generally accepted accounting practice and procedures, of its assets, liabilities, income, expenditure, profits and losses;
  - (c) the business or entity is financially sustainable in terms of its financial statements; and
  - (d) the operator has no unfair advantage as regards access to financial or other support or resources. In the context of this subsection and without detracting from the generality of the meaning of "unfair" in that context, any advantage that may be enjoyed by such an entity or undertaking —
    - (i) on any basis that is commercially justifiable and lawful, will not be regarded as unfair;
    - (ii) will be unfair if any organ or functionary in any sphere of government, directly or indirectly —
      - (aa) guarantees or honours any of the obligations of the entity or undertaking connected or associated with or arising from its business, operations or activities;
      - (bb) makes any grant or contribution to, or generally subsidises the operation of, the entity or undertaking, whether in money or in kind, or
      - (cc) provides the entity or undertaking with a loan bearing no interest or interest at a nominal rate, or arranges or facilitates the granting of such a loan to the entity or undertaking by any other institution or person.

However, any contribution or payment for capital purposes, received once only, from an organ in any sphere of government, with a view to enabling deserving public transport operators to continue the operation of their public transport services in the public interest, will not be regarded as an unfair advantage.

**Involvement of municipalities and transitional transport authorities in operation of public transport services**

**60.** (1) A transitional transport authority may not operate any public transport service.

(2) After the commencement of this Act—

- (a) a municipality that is a party to a transitional transport authority may not conclude a subsidised service contract with that transitional transport authority;
- (b) no municipality may conclude a subsidised service contract with any other transitional transport authority, a province or any other municipality; and
- (c) no body established by a municipality to conduct public transport operations may tender for any commercial service contract or subsidised service contract unless it is financially ringfenced as contemplated in section 59(2).

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

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

(5) Subsection (1) comes into effect on a date determined by the Minister by notice in the Government Gazette with the agreement of the nine MECs.

**Commercial service contracts**

**61.** A province, any transitional transport authority, any core city and any designated municipality may, by notice published in the provincial gazette and in a newspaper generally circulating in the area where a public transport service is to be provided—

- (a) invite quotations from public transport operators for the operation of that service in terms of a commercial service contract; or
- (b) invite public transport operators to tender for the operation of that service.

**Withdrawal of permission in rationalisation of public transport services**

**62.** (1) (a) When a planning authority proposes to rationalise the provision of the public transport services in its area as a result of which an existing non-contracted public transport service is no longer required, the planning authority must use its best endeavours to offer the holder of the permission any viable alternative service or services in the place of the existing service, which offer may not be refused unreasonably by that holder.

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

- (i) the holder of the existing permission must apply forthwith to the permissions

board in accordance with Part 8 of this Chapter and the provisions of Chapter 3 or a replacing provincial law for the granting of the necessary permission or permissions with regard to the alternative service or services;

- (ii) the planning authority must forthwith furnish its recommendations to the permissions board;
- (iii) that holder must surrender the permission for the existing service to the permissions board when it has decided the application.

(2) (a) If the planning authority is unable to offer any viable alternative service or services to the holder of the existing permission, it may apply to the permissions board to withdraw the permission.

(b) Upon receipt of such an application, the permissions board, in writing, must notify the holder of the existing permission accordingly, and request the holder to furnish reasons, within the time mentioned in the notification, why the existing permission should not be withdrawn.

(c) If, after having considered the application and the reasons and representations, if any, furnished by the holder of the existing permission, the permissions board is satisfied that the operation of the public transport service to which the existing permission relates, is inconsistent with the proposed new public transport plan or integrated transport plan, it may withdraw the existing permission with effect from the date when the relevant plan becomes operative or a date six months as from the date of its decision, whichever occurs last, and by written notice inform the holder of the existing permission, accordingly.

(3) Where a permission is withdrawn in terms of subsection (2), the planning authority is liable to pay fair compensation to the person who was the holder of that permission at the time of its withdrawal, for loss suffered as a result of the withdrawal, if—

- (a) there are no other grounds which, in terms of this Chapter, justify the withdrawal of that permission; and
- (b) the public transport service to which that permission relates, is not supported financially or provided by a municipality or is not provided by an institution that is funded wholly or partly by the State; and
- (c) that holder is registered as a taxpayer in terms of the Income Tax Act, 1962 (Act No. 58 of 1962).

(4) That compensation must be calculated in accordance with guidelines determined by the MEC of each province by notice in the provincial gazette. The guidelines so determined must be best suited to the circumstances and conditions in the province.

(5) (a) A notice in terms of subsection (2)(c) must be sent to the former holder of the withdrawn permission within the period and in the manner as prescribed by the MEC so as to give that holder sufficient opportunity to submit a claim for compensation which sets out in detail the manner in which the claimed amount and substantiated in the prescribed manner.

- (b) The amount claimed must be duly substantiated.

(6) (a) The planning authority and such a holder must use their best endeavours to reach agreement on the amount of the compensation within the guidelines determined by the MEC in terms of subsection (4).

(b) Should the parties fail to reach agreement as to such amount, they may approach the High Court having jurisdiction to resolve the matter.

## **PART 10: REGISTRATIONS AND OTHER MATTERS RELATING TO MINIBUS TAXI INDUSTRY**

### **National Taxi Register**

63. (1) There will be a National Taxi Register in which must be recorded the particulars and information about associations, taxi services and operators, the vehicles used for operating those services and other relevant information contained in the provincial registers, that may be prescribed by the Minister from time to time.

(2) The National Taxi Register will be kept and maintained by an official of the Department designated in writing by the Minister.

(3) (a) The information and particulars recorded in the National Taxi Register will be open to inspection by the public during the Department's normal office hours.

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

### **Appointment of provincial taxi registrars**

64. (1) The MEC of each province must, on terms and conditions applicable to members of the public service, appoint a fit and proper person as the provincial taxi registrar for the province.

(2) A person who has any direct or indirect financial or business interest in any sector of the public transport industry or is an official, office bearer or member of, or holds any honorary position in, any association, may not be appointed or remain a provincial taxi registrar.

(3) A provincial taxi registrar must exercise or perform the powers, functions and duties of that office independently, fairly and impartially.

### **Functions of provincial taxi registrar**

65. (1) A provincial taxi registrar will—

(a) receive and, in accordance with this Act, consider and decide on applications for the registration or provisional registration of associations based in the province



- and their members, and of any non-members so based;
- (b) in the circumstances determined in this Act, decide on and effect the suspension or cancellation of such a registration of any association or any of its members or any non-member in accordance with this Act;
  - (c) keep a current register in which is recorded, in the manner prescribed, the name of every association, association member 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, association member or non-member so registered, and the vehicles used for providing and operating those services;
  - (d) keep records of all other information and particulars required to maintain the National Taxi Register.
- (2) (a) The information and particulars recorded in the Provincial Taxi Register will be open to inspection by the public during the Department's normal office hours.
- (b) At the request of any interested person and on payment of the fee that has been prescribed (if any), the Registrar must furnish the person with a certified copy of or extract from any record contained in the Provincial Taxi Register.
- (3) For the purposes of this section, "prescribed" means prescribed by the Minister.

#### **Registration of association or non-member in one province only**

66. (1) (a) Neither an association and its members nor any non-member may at any time be registered or provisionally registered in more than one province.
- (b) For the purposes of paragraph (a) and section 68(f)(i) every association must select the province where it is based. A selection, once made, may be changed only in accordance with a resolution adopted by the members of the association at an annual general meeting of its members in accordance with the association's constitution.
- (2) A registration or provisional registration of any association or non-member occurring in any province during the currency of such a registration of the association or non-member in another province, will be invalid and without any legal force and effect whatsoever.
- (3) Upon having so registered any interprovincial association in accordance with this section, the Registrar concerned must forward a copy of that association's registration certificate to the Registrar of each other province to or from which public transport services are operated by that association's members.

**Issuing of certificates and distinguishing marks upon registration or provisional registration**

67. (1) (a) Upon having registered or provisionally registered any association, any member or any non-member in terms of this Part and Part 17, the Registrar must allocate a registration number to the association, member or non-member concerned and issue to the association, member or non-member a registration certificate or a certificate of provisional registration in the manner and form and containing the particulars as prescribed by the MEC, subject to subsection (5).

(b) The Registrars of the nine provinces must liaise with one another so as to ensure that the registration numbers allocated by each of them are unique.

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

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

- (i) that is used under the authority of such an appropriate permission; or
- (ii) in respect of which the provisionally registered member or non-member has made application for an appropriate permission in accordance with Parts 8 and 16.

(3) With effect from a date determined by the MEC by notice in the provincial gazette, the Registrar must, where the member or non member that is registered or provisionally registered is engaged in intraprovincial transport, issue, subject to subsection (5), in the manner and form prescribed by the MEC—

- (a) a distinguishing mark for every vehicle of the registered member or registered non-member that is used, under the authority of an appropriate permission or permit, to operate the intraprovincial transport;
- (b) a distinguishing mark for every vehicle of the provisionally registered member or non-member—
  - (i) that is used under the authority of such an appropriate permission; or
  - (ii) in respect of which the provisionally registered member or provisionally registered non-member has made application for an appropriate permission in accordance with Parts 8 and 16.

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

- (a) the relevant registration certificate of the registered member or non-member concerned, and a current permission or permit relating to each vehicle used by that registered

- member or non-member to operate the intraprovincial transport;
- (b) the relevant certificate of provisional registration of the provisionally registered member or non-member, and—
  - (i) a current permission or permit relating to the vehicle used by the provisionally registered member or non-member to operate the intraprovincial transport; or
  - (ii) proof, to the satisfaction of the Registrar that the provisionally registered member or non-member has made application for such a permission.
- (5) The Minister must prescribe the minimum particulars to be contained in any registration certificate or certificate of provisional registration and any distinguishing mark to be issued in terms of this section.

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

**68.** Subject to sections 71 and 72, an association qualifies for registration and, upon having applied therefor, must be registered, if—

- (a) the association has been in existence for a period not shorter than the period determined by the MEC by notice in the provincial gazette;
- (b) every member of the association—
  - (i) holds an appropriate permission for each vehicle by means of which the member operates a public transport service; and
  - (ii) operates the public transport service to which such a permission relates, in compliance with the terms of, and conditions attached to, the authorisation conferred by the permission;
- (c) that its members no longer hold any current permits under the authority of which they would be entitled, in terms of section 39, to operate their respective public transport services, due to, either the one or the other or both, of the following:
  - (i) The conversion of those permits to permissions as provided for in Part 8 of this Chapter.
  - (ii) The termination of the membership of any member who is the holder of such a permit and has failed so to convert that permit to a permission.
- (d) the number of its membership as at the date of the application is not below the minimum as so determined by the MEC;
- (e) a constitution that complies with section 69 has been subscribed to by all the association's members;
- (f) the association's application for registration has been made—
  - (i) to the Registrar of the province where it is based; and
  - (ii) by the association's authorised representatives in the manner provided for in

Chapter 3, accompanied by the application fee prescribed by the MEC (if any).

- (g) the amounts of the joining fee and membership fee do not exceed the maximum amounts as so determined;
- (h) the association is not disqualified in terms of an order issued under section 124(5)(a) from being registered.

#### **Requirements for constitutions of associations seeking registration**

**69.** (1) For the purposes of full registration in terms of section 68, the constitution of an association must—

- (a) state the association's full name and official address, 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 an executive committee or body to represent and manage the affairs and act on behalf of the association and its members, and define its functions, duties and powers in that regard;
- (k) describe the manner in which decisions are to be made by the executive committee;

- (l) establish the office of secretary and define its functions;
  - (m) provide for other office-bearers on that committee or body and define their respective functions;
  - (n) prescribe a procedure for nominating and electing the members of that committee or body;
  - (o) establish the circumstances and manner in which members of that committee or 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, 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 require it to be held;
  - (b) the election of members of the executive committee, not allow them to be elected for a single term longer than two years;
  - (c) the annual general meeting, must require that the election of the members of the executive committee 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 and the three standing committees must be 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 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;
- (h) the qualifications for membership, must require that an application for admission to membership will be refused unless the applicant has subscribed to the Code of Conduct or the association's own code of ethics (which must be annexed to the constitution and incorporate not less than the matters provided for in 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 permission, 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 or that code of ethics (whichever is applicable).
  - (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 (as the case may be), to comply with the requirements of section 73(3)(a).

#### **Minister to determine minimum requirements for codes of conduct**

70. (1) The MEC of each province is responsible to ensure that minibus taxi services in the province are operated in accordance with a code of conduct, being an ethical code aimed, amongst others, at achieving orderly competition between operators, the availability of reliable transport services to the public and the safety of passengers at all times.

(2) As soon as possible after the commencement of this Act, the Minister, by notice in the Government Gazette, must determine the matters which, as a minimum, must be included in such a code of conduct.

**Special provisions regarding registration of associations and non-members registered under previous laws**

71. (1) (a) Despite section 68 but subject to section 66(1)(a), any association which, immediately before the commencement of this Act, was registered in terms of any previous law, will be regarded and treated as an association registered under this Act provisionally for a period ending on a date to be determined generally by the Minister by notice in the Government Gazette after having consulted the nine MECs.

(b) For the purposes of paragraph (a), the Registrar, if satisfied that an association qualifies for provisional registration in terms of paragraph (a), must register it provisionally, subject to section 66(1)(a), by entering its name and the required particulars as prescribed by the MEC in the provincial taxi register.

(c) The onus rests on an association to ensure that its registration occurs in terms of paragraph (a).

(2) The provisional registration of associations in terms of subsection (1) will lapse on whichever of the following events occurs first:

(a) When the period mentioned in subsection (1)(a) expires.

(b) When the association's provisional registration is converted to full registration in terms of subsection (3).

(3) The Registrar must register any association which, before the expiry of the period of its provisional registration, has applied to the Registrar to convert its provisional registration to full registration and has satisfied the Registrar—

(a) that its members no longer hold any current permits under the authority of which they would be entitled, in terms of section 39, to operate their respective public transport services, due to, either the one or the other or both, of the following:

(i) The conversion of those permits to permissions as provided for in Part 8 of this Chapter.

(ii) The termination of the membership of any member who is the holder of such a permit and has failed so to convert that permit to a permission; and

(b) that it has terminated the membership of every member who, as at the date of the application, does not hold an appropriate permission for each vehicle by means of which a public transport service is operated by the member; and

(c) that it meets the requirements of section 68, the provisions of which will apply, taking into account 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—

- (a) has converted each permit that was held by that non-member, to a permission as provided for in Part 8 of this Chapter; and
  - (b) holds a permission for each vehicle by means of which the non-member operates a public transport service, or has applied for such a permission; and
  - (c) has subscribed to the Code of Conduct applicable in the province.
- (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 61.

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

**72.** (1) Any associations which are not associations mentioned in section 71(1)(a), may be provisionally registered in accordance with section 71, once only, for a period determined by the Minister by notice in the Government Gazette after consultation with the nine MECs, if—

- (a) the association has been in existence for a period not shorter than the period determined in the manner provided in terms of section 68(a);
  - (b) the number of its membership is not below the minimum as determined by the MEC by notice in the provincial gazette;
  - (c) all its members have subscribed, as a minimum, to those provisions of the Code of Conduct that are specified by the Minister by notice in the Government 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 69 as determined by the Minister by notice in the provincial gazette;
  - (e) a minimum percentage of its members, as determined by the MEC by notice in the provincial gazette, are persons who hold appropriate permissions or permits for each vehicle by means of which they operate their respective public transport services, or have applied for such appropriate permissions;
  - (f) the amounts of the joining fee and membership fee do not exceed the amounts as so determined for those purposes by the MEC;
  - (g) the association's application for registration has been made—
    - (i) to the Registrar for the province where it is based; and
    - (ii) by the association's authorised representatives in the manner provided for in Part 16, accompanied by the application fee prescribed by the MEC (if any).
- (2) For the purposes of subsection (1), the Registrar, if satisfied that an applicant association

meets the requirements for provisional registration imposed by subsection (1), must register such an association provisionally, by entering its name and the required particulars prescribed by the MEC, in the provincial taxi register in the same manner as that provided for in section 68, subject to this section, and issue to the association an appropriate registration certificate in the form prescribed by the MEC.

(3) The provisions of section 71(2), (3) and (5) will apply, with the necessary changes, with regard to any association provisionally registered in terms of subsection (1).

(4) An association's provisional registration in terms of this section does not constitute a waiver or condonation of the requirements of section 43 in Part 8 as far as the members of such association are concerned.

### **Registration of associations' members**

73. (1) Where any association has been registered by virtue of section 68, every member of the association who has subscribed to the association's constitution as contemplated in subsection (1)(e) of that section and to the Code of Conduct applicable in the province where that association is registered, and whose membership fees were paid up as at the date of that association's application for registration, must be registered as a member.

(2) (i) Where any association has been provisionally registered in terms of subsection (1) of section 71, or in terms of section 72, every person who holds an appropriate permission or permit for each vehicle by means of which the member operates a public transport service or has applied for the appropriate permission or permit and is a paid-up member of the association, must be registered as a member provisionally for a period ending when that association's provisional registration lapses in terms of subsection (2) of section 71 or the latter subsection read with section 72(3) (as the case may be).

(ii) The onus rests on any member of an association provisionally registered in terms of section 72, to ensure that the member's registration occurs in terms of subparagraph (i).

(b) Where the provisional registration of an association has been converted to full registration in terms of subsection (3) of section 71 or that subsection read with section 72(3), as the case may be, every member of the association who has subscribed to the association's constitution as contemplated in section 61(e) read with subsection (3)(c) of section 71 or with section 72(3) and subsection (3)(c) of section 71, and to the Code of Conduct applicable in the province where that association is registered, and whose membership fees were paid up as at the date of the association's application for conversion to full registration, must be registered as a member.

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

(b) A new member on behalf of whom such an application has been made, must be

registered as a member if the Registrar is satisfied that—

- (i) the new member—
  - (aa) holds an appropriate permission for each vehicle by means of which the member operates a public transport service; and
  - (bb) operates the public transport service to which such a permission relates, in compliance with the terms of, and conditions attached to, the authorisation conferred by the permission;
- (ii) the new member has subscribed to the constitution of the association concerned and to the Code of Conduct applicable in the province where that association is registered; and
- (iii) the membership fees of the new member were paid up as at the date of the application.

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

**74.** A non-member qualifies for registration and, upon having applied therefor, must be registered, where—

- (a) the non-member has subscribed to the Code of Conduct applicable in the province where registration is sought;
- (b) the non-member—
  - (i) holds an appropriate permission 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 a permission relates, in compliance with the terms of, and conditions attached to, the authorisation conferred by the permission;
- (c) the application for registration has been made—
  - (i) to the Registrar of the province where the non-member is based; and
  - (ii) in the manner provided for in Part 17 of Chapter 3, accompanied by the application fee prescribed by the MEC;
- (d) the non-member, if a juristic person,—
  - (i) has been in existence for a period not shorter than the period determined by the MEC by notice in the provincial gazette; and
  - (ii) the members of 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 the public transport services operated by that company or close corporation; or



- (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 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 applicant does not meet the association's requirements for admission to membership; or
    - (cc) the association's requirements for admission to membership are unfair; or
    - (dd) in view of the prevailing circumstances, the applicant reasonably cannot be expected to become a member of the association; or
    - (ee) the applicant, if admitted to membership of the association, will be subjected to unfair discrimination.

#### **Benefits of registration**

75. (1) Only registered or provisionally registered associations, members and non-members—
- (a) may receive financial and other assistance from any organ of state in any sphere of government or from any transitional transport authority or core city, for the purposes of establishing or operating a co-operative for minibuss taxi operators;
  - (b) may avail themselves of training, workshops and seminars financed wholly or partly by such an organ or by a transitional transport authority or core city.
- (2) Only registered members and registered non-members will be eligible to be awarded a commercial service contract or a subsidised service contract.
- (3) An organ of state in any sphere of government, a transitional transport authority and a core city will not render financial assistance for any purpose to any operators of minibuss taxi services who are not registered or provisionally registered members or non-members, or to any associations that are not so registered.

#### **Cancellation or temporary suspension of registration or provisional 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) if it 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 in terms of paragraph (a) or subsection (2)(a);
  - (ii) membership of that association has been duly terminated in accordance with its constitution:

However, where the association has terminated membership due to the member's breach of the Code of Conduct, the Registrar may, if justified in the circumstances, cancel that member's registration or provisional registration in respect of any other association of which a member, after having given the member concerned sufficient opportunity to make representations and advance reasons why that should not be done;

- (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 permission or permit for each vehicle used by the non-member to operate a public transport service, or has not applied for such a permission in the case of a non-member provisionally registered in terms of section 71(4);
- (d) a member of an association provisionally registered in terms of section 72, who does not hold an appropriate permission or permit for each vehicle used by such a member to operate a public transport service, or has not applied for such a permission.

(2) 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 Part and Part 17 of Chapter 3;
- (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 127(1)(a), unless at the time of conviction the member's application for a permission was pending.

(3) An association, member or non-member whose registration or provisional registration has been cancelled or suspended temporarily 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 seven days after the date of the Registrar's written notice in which the association, member or non-member is notified of the cancellation or suspension.

## **PART 11: RAIL SAFETY**

### **Appointment of Rail Safety Regulator**

77. (1) The Minister may appoint a Rail Safety Regulator who will be responsible for making the arrangements and taking steps aimed at ensuring the safety of rail operations.

(2) The Regulator is charged with taking responsible for shall be to take steps to enhance the safety of rail operations and lay down operational requirements relating to rail safety, and to perform the other functions conferred on him or her in terms of this Act or by regulation.

(3) The Regulator must perform those functions with due regard to the provisions of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), and liaise regularly with the Department of Labour in that regard.

(4) The Director-General, subject to the laws governing the public service, must provide the staff necessary to assist the Regulator in the performance of the functions of that office.

(5) The Regulator must from time to time have particulars published in the Government Gazette about the physical and postal addresses of the Regulator's offices and sub-offices.

### **Regulations**

78. The Minister may make regulations at the request of the Regulator relating to—

- (a) principles for safe movement by rail so as to provide the railway industry with rail safety standards;
- (b) the maintenance of safety management principles;
- (c) the auditing of safety management systems; and
- (d) the investigation of incidents and accidents, and the analysis of incident and accident tendencies.

**CHAPTER 3: MATTERS OF PROVINCIAL CONCERN****PART 12: FUNCTIONS OF MECs****Functions of MEC****79. The MEC must —**

- (a) monitor the implementation of the provincial land transport policy and, where necessary, any investigations conducted into matters arising from implementation, and cause the necessary adjustments (if any) to be made to that policy;
- (b) facilitate the increased utilisation of public transport for the province;
- (c) strive to ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner;
- (d) assist planning authorities that lack the necessary staff or resources, in meeting their responsibilities and performing their functions and duties with regard to land transport;
- (e) take the necessary steps to prevent the duplication of effort among the planning authorities or between such authorities and the province;
- (f) give guidance concerning education and training in connection with land transport matters, and prescribe requirements in this regard. However, the MEC—
  - (i) may do so only after consultation with the Minister of Labour with a view to ensuring that education and training in subjects or training courses relating to land transport, are directed towards complying with the National Qualifications Framework defined in section 1 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
  - (ii) in so doing, must thereby promote uniform standards for the relevant courses and subjects in all the provinces;
- (g) in taking any measures to promote public transport —
  - (i) accommodate therein national and international benchmarks and best practice;
  - (ii) further, within overall land transport objectives, the reasonable safety of passengers;
  - (iii) encourage efficient and commercial conduct on the part of transport operators in their provision of public transport services, and encourage competitive tendering for contracts and concessions;
  - (iv) further a strategic and integrated approach to the provision of public transport;
  - (v) further or encourage the efficient use of energy resources, and limit or reduce adverse environmental impacts to the minimum;
- (h) so promote public transport 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;
  - (l) strive to ensure that in the promotion of integrated transport due consideration is given to the needs of transport users;
  - (j) promote the performance of integrated transport planning in accordance with section 26;
  - (k) where this Chapter or Chapter 2 requires public consultation and participation before taking any decision or performing any official act, prescribe the procedures to be followed in this regard.

### **Regulations**

**80.** (1) The MEC may make regulations, not inconsistent with this Act, with regard to any matter which, in terms of this Act, may or must be prescribed by the MEC, or be governed, regulated or determined by way of a regulation made by the MEC.

(2) The regulations may, in appropriate cases, provide that any contravention or failure to comply with any regulation is an offence, and provide for the imposition of a term of imprisonment which may not be longer than three months or a fine which may not be higher than R10 000.

(3) Any regulation made in terms of any previous law and in force immediately before the commencement of this Act with regard to matters in relation to which the MEC, in terms of subsection (1), is competent to make regulations, will be 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 superceding regulation under this section.

## **PART 13: TRANSPORT AUTHORITIES**

### **Provisions applicable to delegations**

- 81.** (1) A delegation made by the governing body under section 21—
- (a) may be made on and subject to any conditions determined by the governing body;
  - (b) may be given together with the power to subdelegate, on and subject to any conditions so determined (if any);
  - (c) must be notified to the delegate in writing. The written notification must contain full particulars of the matters being delegated and of the conditions determined under paragraph (a), if any, and, where the power of sub-delegation is conferred, must state that fact as well as any conditions determined under paragraph (b), if any.
- (2) The governing body may at any time—
- (a) amend or revoke a delegation made under section 21;



(b) withdraw any decision made by the delegatee with regard to a delegated matter, and decide the matter itself. However, a decision made by a delegatee may not be withdrawn where it confers a right or entitlement on any third party.

(3) The MEC, if satisfied that the interests of land transport in the province or the transitional transport area so require, may from time to time by notice in the provincial 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.

**Performance of professional, technical, administrative and other work arising from or otherwise connected with transitional transport authority's functions and business**

82. (1) For the purposes of paragraph (l)(ii) of section 15(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 transitional transport authority in terms of this Act or the exercise or carrying out of its powers and functions thereunder, is to be performed for the transitional transport authority by the municipal administration of any participating municipality specified in that agreement or any one or more specified departments in the municipal administration of one or more participating municipalities so specified. However, where the municipal administrations of two or more municipalities are involved with the performance of that work, the participating municipalities concerned must appoint a joint committee that will be responsible for the co-ordination of the work; or
- (b) for the establishment by the transitional 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 transitional transport authority.

(2) Where the founding agreement provides for the establishment of a transport executive in accordance with subsection (1)(b)—

- (a) provision may also be made therein that the transitional transport authority, if requested thereto by another transitional transport authority, may make its transport executive available to perform work of that nature for that other authority—
  - (i) in terms of an agreement entered into in writing between the transitional 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 or prescribed in the by-laws of the requested transitional transport authority; and
  - (bb) the special terms and conditions stipulated in that agreement; and
- (b) provision must be made therein at least for the following:
  - (i) Where not all the abovementioned professional, technical, administrative, clerical and associated work of the transitional transport authority is to be performed by the transport executive, the specification of the type or category of work for the performance of which the joint transport executive is to be responsible.
  - (ii) The place where the transport executive's offices will be situated.
  - (iii) The appointment of a general manager.
  - (iv) The manner in or procedure according to which the transport executive's staff establishment is to be determined.
  - (v) The depository of the power to appoint and dismiss its staff.

#### **Joint transport executives**

83. (1) The MEC and any two or more transitional transport authorities authorised thereto by the participating municipality, or (as the case may be) by all of the participating municipalities in each of them, may enter into an agreement providing for the formation of a transport executive under the auspices of those transitional 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 transitional transport authority in terms of this Act and exercising or carrying out its powers and functions thereunder (hereafter called a joint transport executive).

- (2) In such an agreement provision further must be made for at least—
  - (a) the matters mentioned in section 82(2)(b), which, reading in the changes necessary in the context, will apply in relation to a joint transport executive;
  - (b) the participating transport authorities' powers with regard to the exercise of supervision and control over their joint transport executive.
  - (c) the contribution of each participating transitional transport authority to the funding of their joint transport executive.

#### **Withdrawal or amendment of notices designating transitional transport authorities**

84. (1) The MEC may withdraw or amend a notice designating a transitional transport authority, at the request of one or more of the participating municipalities, after consultation with the

authority or authorities concerned and after giving prescribed written notice.

(2) The MEC may not act under subsection (1) unless he or she gives the authority not less than six months' notice and provided that the date of dissolution of the authority must co-incide with the end of the municipal financial year.

### **By-laws**

**85.** (1) A transitional transport authority may in accordance with any applicable approved transport plan make by-laws regarding—

- (a) the preparation of tender specifications and documents;
- (b) the security of public transport operated in its area;
- (c) the special categories of passengers qualifying for concessionary fares;
- (d) the matters mentioned in section 18(2)(f) and (g)(i);
- (e) the use of ranks, stands and terminals within its area and the other picking up and setting down points for passengers;
- (f) the regulation of the size, class or number of motor vehicles that may enter a specified portion of its area and determine the time or times when a class of vehicle may enter any such portion.

(2) By-laws made under subsection (1)(b) and (e) may provide that a contravention thereof or failure to comply therewith will be an offence punishable with a fine not exceeding R2 000.

(3) A transitional transport authority and the municipality or municipalities party thereto, must liaise with one another with a view to ensuring that their by-laws are not inconsistent with one another.

## **PART 14: TRANSPORT PLANNING**

### **General provincial principles and policy for land transport in the context of development**

**86.** The MEC, by notice in the provincial gazette, may—

- (a) prescribe principles for land transport in the province, not inconsistent with the general principles mentioned in section 5 or the policy made known or further prescribed by the Minister under section 6, that are in support of development; and
- (b) publish in the provincial gazette, for general information, the provincial policy relating to land transport in the context of spatial development or any aspect thereof which is consistent with the principles of national land transport policy mentioned in section 5 or prescribed by the Minister under section 6 and thereupon the provincial policy must be applied and complied with in the province.

**Conflicts between transport planning and land development objectives or planning**

**87.** (1) Every planning authority must ensure that any transport plan prepared in terms of this Act is not inconsistent with the land development objectives prepared under section 30 of the Development Facilitation Act, 1995 or, where applicable, a law of the province, or with integrated development planning conducted in terms of any relevant local government law.

(2) Where a transport plan prepared in terms of this Act is inconsistent with existing land development objectives, or existing integrated development planning of a municipality, and the matter cannot be resolved between the planning authority and the municipality, the planning authority must refer the matter to the MEC, who must decide the matter in consultation with the MEC responsible for land affairs.

(3) No transport planning may be undertaken unless there has been consultation with the relevant interest groups in the manner prescribed.

**MEC's power to make regulations regarding transport planning**

**88.** The MEC, by notice in the provincial gazette, may make regulations—

- (a) prescribing requirements regarding the procedures for, and the preparation, adjustment, revision, updating, submission and content, of transport plans required by this Act;
- (b) prescribing guidelines for the provision of public transport services and facilities by planning authorities and for their regulating the use thereof;
- (c) with regard to the co-ordination of land transport in all areas under the jurisdiction of the province;
- (d) with regard to matters or factors of provincial concern to be taken into consideration in preparing permissions strategies, public transport plans or integrated transport plans; and
- (e) prescribing any matter which, in terms of this Part, may or must be prescribed by the MEC.

**PART 15: PROVINCIAL PERMISSIONS BOARD****Appointment, terms of office, remuneration and service conditions of members of permissions board**

**89.** (1) The MEC must—

- (a) appoint the members of the permissions board subject to the requirements of section 36(1) and the provisions of section 91; and

- (b) designate one of the members so appointed as chairperson and another as deputy chairperson of the permissions board.

(2) The members of the permissions board—

- (a) are appointed for a period of three years unless the MEC has determined a shorter term of office in respect of any particular member, which is hereby authorised;
- (b) serve as such members on the terms and conditions, receive the salaries and allowances and are entitled to the benefits, that are determined by the MEC with the agreement of the MEC who is entrusted with the finances of the province concerned. In applying this paragraph, the MEC may differentiate between the chairperson, deputy chairperson and the remaining members of the permissions board.

(3) The MEC must issue to each member of the permissions board a letter of appointment in which must be specified the member's term of office, terms and conditions of appointment, salary, allowances and service benefits.

(4) A member of the permissions board whose term of office expires, will be eligible for reappointment.

#### **Seat and offices of permissions board**

90. (1) The permissions board will have its seat and administrative offices at a place determined by the MEC and made known by the MEC by notice in the provincial gazette.

(2) The MEC may, for the convenience of the public, establish a sub-office for the permissions board for any region in the province, and where—

- (a) applications to the permissions board may be lodged and received;
- (b) assistance may be rendered to the public in the making of applications.
- (c) permissions granted, renewed, amended or transferred by the permissions board, and any distinguishing marks for the vehicles to which the permissions relate, may be issued.

#### **Disqualifications for membership of permissions board**

91. (1) A person may not be appointed or remain a member of a permissions 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; or
    - (iv) before the commencement of this Act, in terms of any law relating to land transport that is superseded by this Act, if the offence concerned is similar to any offence created by or in terms this Act;
  - (f) if the person or the person's spouse, child, parent, partner or business or other 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 duties attached to the office of a member impartially or to interfere with the impartial discharging of those duties by the person.

(2) When the appointment of any person as a member of the permissions board is considered, the person may be required to disclose to the MEC, in writing, any interests which the person may have in the road transport industry.

### **Resignation of members of permissions board, and their removal from office**

92. (1) A member of the permissions board may resign on one month's notice in writing given to the MEC.

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

- (a) for having failed—
  - (i) to discharge the duties of that office fairly and impartially; or
  - (ii) otherwise, repeatedly, to perform the duties of that office efficiently, or for neglecting those duties;
- (b) for misconduct or conduct unbecoming a member of the permissions board;

- (c) for being absent from three consecutive meetings of the permissions board without the prior permission of that board, or, where appropriate, of its chairperson, unless that board has condoned the absence on good reasons advanced; or
- (d) if, because of any physical or mental illness or disability, the member has become incapable of performing the duties of that office or performing them efficiently.

#### **Vacation of office by members of permissions board**

93. (1) A member of the permissions board vacates office—

- (a) upon becoming subject to a disqualification mentioned in section 91(1);
- (b) upon removal from office under section 92(2); or
- (c) when the member's resignation in terms of section 92(1) takes effect.

(2) (a) A vacancy in the permissions board may be filled by the MEC through the appointment of another person as member in accordance with section 89(1).

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

#### **Meetings of permissions board**

94. (1) (a) Any meeting of the permissions board will be held at the place and time determined by it. However, the first meeting of a newly constituted board will be held at the place and time determined by the MEC.

(b) The meetings of the permissions board must be so arranged that any application to it in terms of this Part and Part 8 is disposed of within 90 days of its receipt by that board.

(2) All members of the permissions board must be given sufficient notice, in writing, of every meeting of that board.

(3) (a) Whenever the office of chairperson is vacant or the chairperson is absent or incapacitated temporarily or for any other reason unable to preside at any meeting of the permissions board and perform the functions attached to that office, or fails or refuses to act as perform the functions of chairperson, the deputy chairperson must so preside and perform those functions until the vacancy has been filled or the relevant impediment no longer exists.

(b) Should the deputy chairperson, when required in terms of paragraph (a) to act as chairperson, be absent or incapacitated temporarily or refuse or fail to act as and perform the functions of chairperson, the remaining members of the permissions board must elect one of their number 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 permissions board**

95. (1) A majority of the total number of the members of the permissions board forms a quorum at any meeting thereof.

(2) A decision agreed to by a majority of the members of the permissions board present at a meeting, will be the decision of that board, subject to subsection (1).

**Decisions or acts of permissions board not invalidated by casual vacancy**

96. No decision taken or given and no other act performed by the permissions board will be invalid merely because—

- (a) there existed a vacancy in that board at the time; or
- (b) a person disqualified from membership in terms of section 91(1)(a),(b), (c), (d) or (e), sat as a member or participated in the proceedings of that board at the time,

if that decision or that act was authorised by the required majority of that board's members who were entitled to sit and participate as members.

**Disclosure of commercial and certain other interests**

97. (1) A member of the permissions board may not attend or participate in any meeting thereof where the proceedings at the meeting entail the discussion of or voting on—

- (a) any matter in which the member or the member's spouse, child, parent, partner or associate has a direct or indirect commercial, or pecuniary 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 permissions board is or may become a party and in which the member or the member's spouse, child, parent, 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 permissions 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 permissions board fails to disclose any interest in compliance with subsection (2) when that 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 null and void, and the member concerned will be guilty of misconduct.

### Procedure

98. (1) In dealing with any matter contemplated in section 36(2) the permissions board may—
- (a) allow a person affected by or interested in the matter, or the duly authorised representative of such person, to appear before the board 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 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 it served in the prescribed manner;
  - (c) order any person present in or 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 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 made an affirmation as a witness.
- (2) Any party affected by any decision made or given by the permissions board in disposing of an application brought in terms of section 36, may require that board to furnish its reasons for that decision in writing, whereupon the permissions board must do so without delay.

**Staff of permissions board**

99. The head of the provincial department must provide, subject to the laws governing the public service, the staff that may be necessary to assist the permissions board in the performance of the work arising from the performance of its functions.

**PART 16: PERMISSIONS****Permissions board may invite applications for permissions authorising operation of non-contracted services**

100. If requested thereto by a planning authority, the permissions board by notice published in the provincial gazette and in at least one newspaper generally circulating in the province, may invite applications for permissions authorising the operation of a public transport service provided for in a permissions strategy, public transport plan or integrated transport plan that is not subject to a commercial service contract or a subsidised service contract.

**Manner of making application with regard to permissions**

101. (1) An application for the granting, renewal, amendment or transfer of a permission must be made in the manner and on the form, and be accompanied by the information (if any), prescribed by the MEC.

(2) The permissions board may require an applicant to furnish it with additional information with regard to any matter relevant to the application.

**Exemptions**

102. (1) For the purposes of this Act, "public transport" does not include the conveyance of persons in the following circumstances, subject to subsection (2):

(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 they 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; or
- (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; or
- (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.

For the purposes of this paragraph, workers employed by a co-operative society, registered under the law relating to co-operative societies, of which the farmer is a member, or prisoners as defined in section 1 of the Correctional Services Act, 1959, (Act No. 8 of 1959), who are or have been or are to be employed by a farmer in connection with the farmer's farming operations, are to be regarded and treated as the farmer's workers.

- (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 the Road Traffic Act, 1989, 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 a permission, and the conveyance by the replacing vehicle is undertaken in accordance with the provisions of the permission, the original of which is carried on the vehicle for production on demand to an authorized 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 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) (i) The conveyance by any State employee in connection with the performance of the employee's duties, by means of a vehicle of which the employee is the

owner and which is used by him or her in the performance of those duties, of a person for whose conveyance that employee is entitled to receive from the employer.

(ii) For the purposes of subparagraph (i), "State employee" means any person who is an employee of any "organ of state" as defined in section 239 of the Constitution, or of a body controlled by an organ of state or of any company of which the State, through the national or any provincial government or local government institution, is the only member and shareholder.

(h) The conveyance of learners and teachers for the purpose 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.

(i) (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 employed in terms of such an agreement, a document in which an authorised official of the educational institution confirms that the passengers being conveyed are enrolled students of, or staff attached to, the institution, must be carried on that vehicle.

(j) the conveyance for reward by a person who has been summoned to appear at a place as a witness in criminal proceedings, of another person who has been summoned to appear as a witness in those proceedings or in any other criminal proceedings, whether at the same place and on the same day or at another place or on another day, to or from the place at which the person conveyed has been summoned to appear, by means of a motor vehicle of which the firstmentioned person is the owner.

(k) Where a person has been summoned in accordance with law to appear at a place to give evidence before a commission of inquiry or a body established under any law to conduct any investigation, the conveyance by that person to or from the place at which the person is so to appear, of another person who has been so summoned to appear before that commission or body to give evidence on the same day and at the same place.

(l) The conveyance of a person who necessarily must be conveyed in connection with persons' conveyance which, in terms of a preceding paragraph, is not public transport;

(m) The conveyance of persons in providing a courtesy service.

**Permissions board to give notice of applications and consider comments and representations received**

**103.** (1) The permissions board must, within 30 days of receipt of an application for the granting, renewal, transfer or amendment of a permission (except where the amendment concerns the particulars of the vehicle to which the permission relates), give notice as provided in section 46, of receipt of the application, stating the essential particulars thereof and inviting interested persons to make comments and representations with regard thereto.

(2) All comments and representations concerning the application that were received by the permissions board in response to and in compliance with that notice and which are relevant to the disposal of that application in accordance with the provisions of this Chapter and Chapter 3 or a replacing provincial law, must be duly considered by that board in dealing with the application in terms of those provisions.

**Amendment of permission: Substitution of specified vehicle**

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

(2) The authorised member or official of the permissions board must allow the replacement and, subject to section 52(2) issue to the holder an amended permission, if satisfied that—

- (a) the replacing vehicle has the same passenger capacity and is of the same nature, quality and standard as the vehicle that is specified in the permission and is to be replaced; and
- (b) the replacing vehicle is otherwise suitable for the operation of the public transport service authorised by that permission.

(3) Where any sub-contractor operates any part of the public transport service to which a permission relates, on behalf of the holder of the permission, 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 permission, in all respects as if the subcontractor were the holder of that permission.

## Written authorisation of permissions board required for temporary replacement of specified vehicle

**105.** (1) Where the vehicle specified in a permission for the operation of the public transport service authorised thereby, has become defective or temporarily is not capable of being used due to damage caused to it in an accident, the permissions board or a member of that board duly authorised by it, may on application by the holder of the permission, or, where that vehicle belongs to a sub-contractor mentioned in section 48(2), on application by that subcontractor, in writing authorise the holder or the subcontractor on behalf of the holder, to use temporarily, in the place of that vehicle, another vehicle for the purpose of operating that public transport service, subject to subsections (2) and (3).

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

- (a) With regard to the holder, the personal particulars mentioned in paragraph (a) of section 52(3). Where the vehicle belongs to such a sub-contractor, that authorisation must in addition contain, with regard to that sub-contractor, the particulars mentioned in section 52(3)(e)(iv).
- (b) With regard to the replacing vehicle, the particulars mentioned in paragraph (b) of that section.
- (c) The period for which the replacing vehicle may be used for the operation of the public transport service to which the holder's permission relates.

However, the period so specified may not be longer than 21 days calculated with effect from the date on which the authorisation is issued.

(2) (a) The passenger capacity of the replacing vehicle preferably must be equal to that of the vehicle specified in the relevant permission, 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 Chapter and Chapter 3 or a replacing provincial law with regard to the vehicle so specified in the permission.

(3) The written authorisation must be carried on the replacing vehicle to which it relates, together with the permission applicable to the replaced vehicle for the duration of the period of replacement provided for in that authorisation.

(4) The replacing vehicle will, during the authorised period of replacement, be regarded and treated as the vehicle operated under the permission specifying the replaced vehicle.

**Temporary amendment and temporary or complete withdrawal of permissions and, where applicable, permits**

106. (1) (a) Where a commercial service contract, subsidised service contract, current tendered contract or interim contract has been terminated for any reason, the permissions board must, upon proof of termination furnished by the relevant contracting authority, withdraw the permission or, as the case may be, every permission, relating to the operation of the public transport service provided in terms of such a contract.

(b) Upon the termination of a current tendered contract or interim contract for any reason, the provisions of paragraph (a) will apply, with the changes necessary in the context, with regard to the permit or, as the case may be, every permit, relating to the operation of the public transport service operated in terms of such a contract.

(2) Despite subsection (1) but subject to subsection (4), the permissions board may at any time temporarily amend or temporarily withdraw, for any period it considers fit, or withdraw completely, a permission relating to a vehicle used for the operation of any public transport service whatsoever, if the holder of the permission or an employee of the holder is convicted of any offence mentioned in section 46(1)(e) in which that vehicle was involved and which is of such a serious nature as to justify such an action.

(3) Subject to subsection (4), the permissions board may at any time temporarily amend or temporarily withdraw, for any period it considers fit, a permission authorising the operation of any non-contracted service, or withdraw it completely, if the holder of the permission—

- (a) has failed diligently to carry out or comply with the terms and conditions of the permission; or
- (b) has failed to commence with the operation of the public transport service authorised by the permission or with the operation of any part thereof, within 180 days of the issuing of the permission; or
- (c) has ceased the operation of the public transport service or any part thereof for 180 consecutive days; or
- (d) has failed to comply with section 55(1)(j); or
- (e) is no longer using the vehicle specified in a permission for the operation of the public transport service authorised by the permissions;
- (f) becomes disqualified in terms of section 48(3) or (4) from holding a permission.

(4) The permissions board may not take any action under subsection (1), (2) or (3) unless—

- (a) it has given the holder of the relevant permission at least 21 days' written notice, sent by registered post, that it considers taking that action, and of the reasons motivating the action under consideration; and
- (b) the holder has been given an opportunity—
  - (i) to appear before the permissions board either personally or through a representative, to advance reasons why the action under consideration should



not be taken and give evidence or make or submit representations with regard to the matter; and

- (ii) if the holder so requires, to call witnesses to give evidence for that purpose; and
- (c) where the public transport service to which the permission relates, is provided for in a permissions strategy, public transport plan or integrated transport plan, the planning authority which prepared such a plan has been given an opportunity to make or submit its representations with regard to the matter; and
- (d) after having duly considered all the available evidence and representations relevant to the matter, it is satisfied on reasonable grounds that it is justified, in terms of this Act, to temporarily amend or temporarily withdraw the holder's permission, or to withdraw it completely, in terms of this section.

### **Transport to or from special events**

**107.** (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 under the authority of and in accordance with an appropriate permit or any permission granted and issued under Part 8 and this Part or;
- (b) under the authority of and in accordance with an appropriate permit or a permission so granted and issued for the operation of a scheduled or unscheduled service—
  - (i) on any route which begins or ends at the place where the special event occurs or is held; or
  - (ii) along any route on which that place, in terms of the permission, is an authorised picking-up and setting-down point; or
- (c) under the authority of a special permission granted and issued as provided for in this section.

(2) Any person who, is not authorised by virtue of subsection (1)(a) or (b) to undertake a public transport service to or from a special event, may apply for a special permission to the permissions board in the manner prescribed by the MEC.

(3) (a) Subject to subsection (4), the permissions board may grant the application and issue a special permission to the applicant, if satisfied on reasonable grounds —

- (i) that the public transport services available for the movement of members of the public to or from the particular special event, are not sufficient to meet the demand or estimated demand of the public; and
- (ii) that the applicant has the ability to provide a satisfactory public transport service.

(b) The onus of proving the matters mentioned in paragraph (a) rests on the applicant.

(c) The permissions board may require the applicant to supplement the application with any particulars of information in support of the application which that board may require.

(4) A special permission may be granted and issued only for one particular, specified special event and for a period which is not longer than the duration of that special event.

(5) A special permission in terms of this section, must—

(a) specify the particular special event in relation to which the temporary operation of a public transport service by the holder is authorised, and the date or dates on which that special event occurs or is held;

(b) state the route or routes on which the holder is authorised to operate that public transport service temporarily;

(c) specify the terminals, ranks and stopping places that may be used by the holder in so operating that public transport service;

(d) be issued together with the special distinguishing mark (if any) designed with reference to the special event and to be affixed to the vehicle to which the special permission relates.

(6) The holder of a special permission must, for the duration of the special event—

(a) keep the special permission or a duplicate original thereof in the vehicle to which it relates; and

(b) keep the distinguishing mark (if any) issued for the vehicle in relation to the special event in terms of subsection (5)(d), affixed to the vehicle.

## **PART 17: REGISTRATION OF MINIBUS TAXI ASSOCIATIONS AND OPERATORS**

### **Definitions**

**108.** For the purposes of this Part, “registered constitution” means an association’s constitution, filed in the Registrar’s records, pursuant to the association’s successful application, in terms of this Part, for its—

(a) registration in terms of section 68; or

(b) conversion, in terms of section 71 or 72, of its provisional registration to full registration;  
or

(c) provisional registration in terms of section 72.

### Appointment of Provincial Taxi Registrar

**109.** (1) Subject to section 64, the MEC must appoint a Provincial Taxi Registrar for the province to exercise the powers and perform the functions and duties conferred and imposed on the holder of that office by Chapter 2 and this Part.

(2) (a) The Registrar will receive the salary and allowances and be entitled to the benefits determined by the MEC with the agreement of the MEC entrusted with the financial affairs of the province.

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

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

(4) When the office of Registrar is vacant or the Registrar is unable to act due to any temporary physical or mental disability, the MEC may appoint any fit and proper person who is not subject to any disqualification mentioned in section 110, to act as Registrar and exercise or perform the powers, functions and duties of that office until the vacancy is filled or, as the case may be, the incumbent of that office has resumed duty.

### Disqualifications for holding Registrar's office

**110.** (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 due to 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) created by the Cross Border Road Transport Act, 1998, or this Act; or
- (iv) mentioned in section 110 of this Act, or if convicted before the commencement of this Act, of any similar offence in terms of any previous law;

(f) if the person or the person's spouse, child, parent or other immediate relative, partner or associate, or the employer last served by the person—

- (i) has a direct or indirect business or financial interest in the public transport industry;
- (ii) is an elected or appointed office-bearer or official of any association;
- (iii) is otherwise engaged, directly or indirectly, in any activity connected with any association or the minibus taxi industry which is calculated to preclude the person from discharging the functions and duties of Registrar impartially or to interfere with the impartial discharging of those functions and duties by the person.

(2) When the appointment of any person as Registrar is considered, the person may be required to disclose to the MEC, in writing, any interests which the person may have in the minibus taxi industry or any other part of the public transport industry, or in any other matter mentioned in paragraph (f)(iii) of subsection (1), or to explain the person's relationship with any other person with a direct or indirect financial, business or other personal interest of the nature mentioned in this subsection or subsection (1)(f).

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

111. (1) The Registrar may resign on one month's notice in writing given to the MEC.

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

(a) for having failed—

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

(b) because of misconduct; or

(c) if, because of any physical or mental illness or disability, the Registrar has become incapable of performing the duties of that office or performing them efficiently.

#### **Vacation of office**

112. (1) The incumbent of the office of Registrar must vacate office—

(a) upon becoming subject to a disqualification mentioned in section 94;

(b) when the incumbent's resignation in terms of section 111 takes effect; or

(c) upon removal from office under section 111(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 109, of a fit and proper person who is not

subject to a disqualification mentioned in section 110, which will apply, with the changes necessary in the context, to such an appointment.

### Functions of Registrar

- 113.** (1) The Registrar must—
- (a) receive, consider and decide upon applications for the registration of associations and their members, and applications for the registration of non-members as provided for in this Part and Part 10 of Chapter 2;
  - (b) advise the MEC on matters falling within the scope of this Part and Part 10 of Chapter 2, and provide the MEC with information on matters of public importance acquired in the course of performing the functions of that office in terms of those Parts;
  - (c) take all reasonable steps to monitor and acquire information with regard to the compliance or non-compliance—
    - (i) by registered associations, with the provisions of their respective constitutions;
    - (ii) by registered associations and their members and by registered non-members, with the Code of Conduct;
    - (iii) of the registered association's constitution with the provisions of section 62;
  - (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 Part and Part 10 of Chapter 2, and provide advice and assistance to enable them to apply successfully for registration;
  - (f) consider and decide on the suspension or cancellation of the registration of an association or any member thereof or of any non-member;
  - (g) evaluate proposed amendments to the constitutions of registered associations in order to ensure that the amendments are consistent with the requirements of section 62 and liaise with associations with a view to preventing the adoption of amendments that are not so consistent or informing them of the inconsistency of amendments adopted by them and calling on them to abandon such amendments.
- (2) 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 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 prescribed manner;
  - (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 made an affirmation as a witness.
- (3) Any party affected by any decision made or given by the Registrar in disposing of an application contemplated in section 65 may require the Registrar to furnish reasons for that decision in writing, whereupon the Registrar must do so without delay.
- (4) 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 pecuniary interests**

**114.** (1) The Registrar may not attend to and dispose of any matter in which the Registrar or the Registrar's spouse, child, parent, other immediate relative, partner or associate has a direct or indirect commercial or pecuniary interest which is greater than that which a member of the general public has in that matter.

(2) If at any stage 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) (a) The MEC must without delay, in writing, notify the Registrar of the decision taken on the issue.

(b) Where the MEC finds—

- (i) such an interest not to exist, the MEC in that notification must inform the Registrar accordingly and direct the Registrar to proceed with the matter that was so suspended; or
- (ii) such an interest to exist, the MEC must appoint another suitable person in accordance with section 109(4) to dispose of the matter that was so suspended.

(4) Any act performed by the Registrar in disposing of a matter contrary to subsection (1), will be invalid and have no legal force or effect whatsoever.

#### **Establishment and functions of panel of assessors**

**115.** (1) The MEC, after consultation with the Registrar, may by notice in the provincial gazette establish a panel of assessors consisting of the number of assessors specified in the notice, but not fewer than five and not more than seven, of whom—

- (a) 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 those inhabitants of the province who rely on the services operated in the minibus taxi industry as their means of transportation;
  - (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 transitional transport authorities and municipalities in the province or under its jurisdiction.
- (2) The functions of the panel of assessors will be—
- (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 under this Part;
  - (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.

#### **Appointment, remuneration and conditions of service of assessors**

**116.** (1) Subject to subsection (2), the MEC must appoint the number of assessors specified in terms of section 99(1).

(2) In so doing, the MEC must appoint fit and proper persons who are characterised by their impartiality, but may not appoint any person as an assessor if, in terms of section 94, the person is disqualified from being appointed Registrar.

(3) An assessor will be appointed—

- (a) for a period specified in the assessor's letter of appointment but not exceeding two years, on the expiry of which the person concerned will be eligible for re-appointment for one more term;
- (b) on general terms and conditions specified in each of the assessors' letter of appointment.

- (4) Each of the assessors will be entitled to—
- (a) remuneration for each day in any month (including a part of a day) on which the assessor was officially occupied with the work of the panel of assessors in terms of this Part, at a daily rate determined by the MEC with the agreement of the MEC entrusted with the province's financial affairs;
  - (b) be reimbursed for all reasonable travelling and subsistence expenses necessarily incurred while officially occupied with the work of that panel in accordance with a tariff so determined.

### Meetings of panel of assessors

117. (1) (a) The panel of assessors will meet as often as may be necessary so as to conduct its business expeditiously and efficiently.

(b) For that purpose, any meeting of the panel of assessors will be held at the place and time determined by its chairperson or as decided by that panel at a previous meeting. However, its first meeting will be held at the place and time determined by the Registrar. At that meeting, which must be attended by all the assessors, they must elect one from their number as the chairperson.

(c) All the assessors must be given notice in writing of any meeting of the panel.

(2) A majority of the total specified number of assessors forms a quorum at any meeting of that panel.

(3) (a) A decision agreed to by a majority of the assessors present at a meeting will be the decision of the panel of assessors, subject to subsection (2).

(b) Where there is an equality of votes, the chairperson, who has a casting vote in addition to an ordinary vote, must exercise that casting vote so as to break the deadlock in decision making.

(4) No decision taken or given and no other act performed by the panel of assessors will be invalid merely because—

(a) there existed a vacancy in that panel at the time; or

(b) a person disqualified from membership in terms of section 110, sat as an assessor or participated in the proceedings of that panel at the time,

if that decision was taken or that act was authorised by the required majority of the assessors who were entitled to sit and participate as members of that panel.

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

(b) The minutes of any meeting of the panel of assessors, when confirmed at a next meeting and signed by the person who 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.

#### **Panel of assessors may co-opt in certain circumstances**

118. (1) The panel of assessors may, with the approval of the Registrar, co-opt to that panel one or two persons who are not disqualified in terms of section 110 to be appointed Registrar, for the purpose of assisting that panel with any matter before it which falls within such a person's particular field of expertise or specialisation.

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

(3) Section 117(4) will apply, taking into account the changes necessary in the context, to any person co-opted in terms of this section.

#### **Resignation and removal from and vacation of office (Assessors)**

119. The provisions of sections 111 and 112 relating to the Registrar's resignation and removal from and vacation of office and to the filling of a vacancy in that office, will apply, with the changes necessary in the context, with regard to the resignation and removal from office and vacation of office of an assessor and the filling of a vacancy in the panel of assessors.

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

120. (1) An assessor may not attend or participate in any meeting of the panel where the proceedings at the meeting entail the discussion of or voting on any matter in which the assessor or the assessor's spouse, child, parent, or other immediate relative, partner or associate has a direct or indirect commercial, or pecuniary interest which is greater than that which a member of the general public has in that matter.

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

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

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

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

121. (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 by the MEC for that purpose, that has been duly completed and is signed by the association's authorised representatives;
- (b) a copy of the association's constitution as signed by all its paid-up members; and
- (c) a copy of its membership record reflecting the names of its members and, in relation to each of those members, the particulars which the MEC has prescribed for the purposes of this paragraph;
- (d) such other proof of the applicant's compliance with the requirements of section 68, or, where applicable, section 71(3) or section 72(3) read with section 71(3) (as the case may be), as may be prescribed by the MEC; and
- (e) any other information that may assist the Registrar in determining whether the requirements for registration imposed by section 61, or, as the case may be, the requirements for conversion to full registration imposed by section 71(3), or by the latter section read with section 71(3), have been met.

(2) The Registrar, if satisfied that the applicant association meets those requirements, must register the association concerned as contemplated in section 68, convert the association's provisional registration to such a full registration as contemplated in section 71(3) or in the latter section read with section 72(3), or provisionally register the association as contemplated in section 72, by entering its name and the required particulars as prescribed by the MEC, in the provincial tax register.

(3) Upon having registered, converted the registration or provisionally registered any association in accordance with subsection (2), all persons found by the Registrar to be members of that association and to meet the requirements of section 73(1) or (3), as the case may be, must be registered or provisionally registered as members by entering their names and the required particulars as prescribed by the MEC for the purposes of this subsection, in the provincial tax register.

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



- (a) an application in the form prescribed by the MEC for that purpose that has been duly completed and signed by the applicant or the latter's duly authorised representative;
  - (b) a statement under oath or affirmation whereby the applicant subscribes to the Code of Conduct; and
  - (c) such other proof of the applicant's compliance with the requirements of section 74 as may be prescribed by the MEC.
- (5) The Registrar may require further information in support of any application made in accordance with this section.

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

- 122.** (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 enforce disciplinary procedures against members whenever necessary;
  - (b) inform the Registrar expeditiously and timeously of the outcome of all disciplinary proceedings against members and grievance procedures by members;
  - (c) inform the MEC of any impending or current conflict with any other association or associations;
  - (d) inform the Registrar expeditiously and timeously of any changes—
    - (i) in its membership; and
    - (ii) with regard to the information furnished by it to the Registrar in compliance with this Part and Part 17;
  - (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, transitional transport authority or core city which has rendered financial assistance to the association and its members for a particular purpose, furnish it with information as to the application of the funds received from that source.
- (2) Every registered or provisionally registered non-member must—

- (a) inform the Registrar expeditiously and timeously of any changes with regard to the information furnished by the non-member to the Registrar in compliance with this Part and Part 17;
- (b) if requested thereto by any organ of state, transitional transport authority or core city which has rendered financial assistance to the non-member for a particular purpose, furnish it with information as to the application of the funds received from that source.
- (3) The provisions of subsection (1) will apply, with the changes necessary in the context, with regard to any provisionally registered association.

#### **MEC to prescribe Standard Minimum Constitution and Code of Conduct**

**123.** (1) As soon as possible after the commencement of this Act, the MEC, by notice in the provincial gazette and after having followed the appropriate public consultation procedure as prescribed in terms of section 7(l), must prescribe—

- (a) a model constitution for associations, to be known as the Standard Minimum Constitution, which complies with the requirements of section 71; and
  - (b) a code of ethics, to be known as the Code of Conduct, providing for not less than the matters determined under section 72.
- (2) The Standard Minimum Constitution sets a yardstick for the preparation of a constitution for an association in accordance with section 69(1) and (2) with a view to enabling the association's registration in accordance with this Part and Part 10 of Chapter 2, 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 service is to be operated.

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

**124.** (1) (a) Where the Registrar on reasonable grounds suspects that a registered association has failed to comply with any provision of its registered constitution that is material for the application of Part 10 of Chapter 2 or for the application of this Part, or that a registered non-member has breached the Code of Conduct, the Registrar must conduct an investigation into the matter.

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

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

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

(3) (a) 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.

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

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

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

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

(6) Upon being notified by a registered association that it has cancelled 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.

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

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

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

(9) The preceding provisions of this section will apply, with the necessary changes, to any provisionally registered association or non-member.

#### **Registrar to furnish report annually**

**125.** (1) Annually, as soon as possible after the end of each financial year, the Registrar must submit to the MEC a report on—

- (a) the functioning of the Registrar's office;
- (b) the functioning of the panel of assessors, and their role and contribution in assisting the Registrar in the performance of the functions of that office in terms of Part 10 and this Part;
- (c) matters concerning the registration of associations, the members thereof, and non-members; and
- (d) other topical matters in connection with or arising from the application of this Part.

(2) The MEC must lay the Registrar's report on the table 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.

### **CHAPTER 4: GENERAL MATTERS**

#### **PART 18: LAW ENFORCEMENT**

##### **Land transport law enforcement by MECs, transport authorities, municipalities and the South African National Roads Agency Limited**

**126.** (1) In addition to the measures provided for in this Act with regard to law enforcement, the MECs, transitional transport authorities and municipalities (including municipalities in their capacity as core cities in respect of their respective MTAs) 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, the South African National Roads Agency Limited established by section 2 of the South African National Roads Agency and National Roads Act, 1998 (Act No. 7 of 1998) is hereby given authorisation to undertake land transport law enforcement, through its duly authorised employees, on or at any national road as defined in section 1 of that Act and, for that purpose, to take active steps to develop systems to improve land transport law enforcement on or at national roads.

**Offences and penalties**

127. (1) A person is guilty of an offence—
- (a) upon operating a public transport service in contravention of section 43;
  - (b) when operating or undertaking a public transport service contrary to the terms and conditions of a permission, or, where applicable, a permit;
  - (c) contravenes section 55(2);
  - (d) when bringing a firearm onto a public transport vehicle without having obtained the permission of the driver of that vehicle. However, such a driver may not give such a permission unless authorised thereto by the holder of the permission or permit relating to that vehicle;
  - (e) if, being the holder of a permission or permit or the agent or employee of such a holder, the person allows someone else to use that permission or permit for a vehicle other than the vehicle specified in the permission or permit;
  - (f) upon applying for or obtaining a permission knowing that a current permission has already been issued with regard to the same vehicle;
  - (g) if the person, with the intent to deceive, forges, alters, defaces, mutilates or adds to any permission or other official document issued under Chapter 2 or 3;
  - (h) if, knowing that a document is not a permission or other official document issued under Chapter 2 or 3, or that such a document has been altered, defaced, mutilated or added to, utters or uses the document;
  - (i) if the person furnishes or gives false information in or with regard to any application made to a permissions board or a Registrar, or in the course of appearing in any proceedings, investigation or inquiry before such a board or any Registrar;
  - (j) when impersonating an authorised officer;
  - (k) when wilfully obstructing or hindering an authorised officer in discharging the duties of the office concerned;
  - (l) fails to comply with the order of an inspector issued under section 131(2)(a);
  - (m) upon failing to comply with any order, direction or demand lawfully made by an authorised officer in the discharge or performance of any function or duty attached to that office by or in terms of section 128 or another law;
  - (n) if, while suffering from a notifiable medical condition as defined in the Health Act, 1977 (Act No. 63 of 1977), the person, being aware of that fact, has boarded a public transport vehicle or travels therein;
  - (o) upon having contravened section 55(1)(j)(ii) or (k);



- (p) upon contravening section 55(1)(h) or 107(6), or failing to return a distinguishing mark to the Registrar as required by a notice issued under section 70(3);
  - (q) if the person, without good reason—
    - (i) fails or refuses to appear before a permissions board or Registrar in compliance with a direction or subpoena issued in terms of section 98(1) or 113(2), respectively; or
    - (ii) fails or refuses 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 permissions board or by the Registrar (as the case may be); or
    - (iii) fails to produce any book, document or plan or any other record of any nature or kind whatsoever, or any article, in the possession of the person and specified in the subpoena or direction, has been so required to produce;
  - (r) if, where the person is conveyed as a passenger in the course of the operation of a public transport service, the person—
    - (i) fails to pay the fair due for the journey when the payment is requested by the driver or conductor of the vehicle concerned;
    - (ii) smokes on that vehicle in contravention of a notice on the vehicle which forbids smoking, or
    - (iii) wilfully acts in a manner that inconveniences a fellow passenger;
    - (iv) disobeys a reasonable instruction issued by the driver or conductor of a public transport vehicle for the purpose of maintaining order or ending a disturbance on that vehicle or controlling any emergency arising or existing therein or thereon;
    - (vi) 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;
  - (s) if the person, being the holder of a permission or permit or the driver of a vehicle to which that permission or permit relates, fails to comply with any duty or obligation imposed on such a holder driver by or in terms of Chapter 2 or 3.
- (2) A person convicted of any one of the offences mentioned in—
- (a) paragraphs (a) to (d) of subsection (1), may be imposed a term of imprisonment not longer than two years, or a fine not higher more than R 100 000;
  - (b) paragraphs (e) to (l) of that subsection, may be imposed a term of imprisonment not longer than one year or a fine not higher than R50 000;
  - (c) paragraphs (m) to (s), may be imposed a term of imprisonment not longer than six months or a fine not exceeding R30 000.
- (3) Whenever a manager, agent or employee of the holder of a permission or permit performs or omits to perform any act which, if the holder of a permission 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.

### **MEC may appoint inspectors**

**128.** (1) (a) The MEC may designate employees in the provincial department who are fit and proper persons as inspectors for the purposes of matters which, in terms of Chapters 2 and 3, fall under the jurisdiction of the province.

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

(2) The functions of inspectors so appointed are to monitor compliance with this Act in the province and to assist with the investigation and prevention of offences contemplated in section 127(1) which have been committed within the province, subject to the directions of the MEC and the head of the provincial department.

(3) In performing those functions, an inspector will have all the powers conferred on an authorised officer by or in terms of Chapters 2 and 3.

(4) When performing any function or duty or exercising any power in terms of Chapter 2 or 3, an inspector must on demand by any person in relation to whom the power, function or duty is exercised or performed, produce the certificate of appointment.

### **Impoundment of vehicles**

**129.** (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 permission or permit or contrary to the conditions imposed with regard thereto, may impound the vehicle pending the investigation and prosecution of that person for an offence mentioned in section 127(1)(a) or (b).

(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, the provisions of subsection (2) will apply, with the changes necessary in the context, except that the impoundment fee will be increased in accordance with the scale so determined.

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

(b) The MEC must appoint any inspector as the person in charge of the depot.

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

(1) A document which purports to be a permission or special permission issued under Parts 8 and 16, or a permit issued under a previous law or a copy of such a permission, special permission or permit certified to be a true copy by a person who is an officer of the permissions board or permit authority (as the case may be), which had issued the original, will on mere production in any prosecution for an offence mentioned in section 127(1), where the possession or contents such a permission, special permission or permit may be relevant, be admissible in evidence as proof that it is such a permission, special permission 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**

**131.** In addition to the functions and duties imposed on an authorised officer by or in terms of Chapter 2 or 3, by order of a permissions board, may attach a permission or permit that has expired or lapsed or has been withdrawn or temporarily withdrawn in terms of this Act, an authorised officer may—

- (a) cause a motor vehicle to be stopped in the manner prescribed by the MEC, and enter such a vehicle in order to establish if the vehicle is used for public transport or monitor

compliance with any provision of Chapter 2 or 3, or with the terms of any permission, permit or special permission, 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 he or she had or has to make the payment;

(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 in 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 permissions board, issued when the permission or permit was withdrawn either completely or temporarily, attach the permission and hand it over to the permissions board.

(2) (a) Where an authorised officer finds a vehicle used for public transport under the authority of a permission or permit to be so defective as to be a danger to persons and property, the authorised officer may order the driver or other person in charge of the motor vehicle, to surrender that permission

or permit, as well as the distinguishing mark relating to the vehicle, and prohibit that driver or person forthwith to use the vehicle for public transport.

(b) The permission or permit so surrendered, will be retained by the inspector until the holder of the permission or permit has satisfied the inspector 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 of the permission or permit.

## **PART 19: GENERAL**

### **Transitional provisions**

**132.** Where, at any time before the commencement of this Act-

(a) a person was convicted, in terms of any previous law, of an offence which is an offence in terms of this Act, the person will, where relevant for the purposes of this Act, be 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 any previous law for a vehicle in relation to which a permit had been issued thereunder, will be regarded and treated for the purposes of this Act, until such time as that permit lapses, is converted to a permission, or is withdrawn or cancelled in terms of this Act, be regarded and treated for all purposes as a distinguishing mark issued under this Act.

### **Act binding on State**

**133.** This Act binds the State.

### **Short title and commencement**

**134.** (1) This Act is called the National Land Transport Transition Act, 1999, and will come into operation on a date to be determined by the President by proclamation in the Government Gazette, subject to subsection (2).

(2) Section 63(3) will come into operation on a date so determined which occurs after the date determined under subsection (1).



## MEMORANDUM ON THE OBJECTS OF THE NATIONAL LAND TRANSPORT TRANSITION BILL, 1999

### 1. Background

The Bill has been prepared pursuant to the *White Paper on National Transport Policy* that was approved by the Cabinet and published in 1996, the recommendations of the *National Taxi Task Team* (NTTT) in 1995 and 1996 which were approved by the Cabinet and the recommendations of the *Moving South Africa* project recently undertaken by the National Department of Transport. The Bill is also the product of various consultative 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. The Bill has also been prepared taking into account the provisions of the new Local Government: Municipal Demarcation Act, 1998 and the Local Government: Municipal Structures Act, 1998. The approach followed and principles contained in the Bill have been agreed to by the provinces and metropolitan authorities through the MINCOM structure.

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

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

A working document of the full version of the Bill, catering for the short, medium and long term, was published for comment on 20 December 1996 and a draft bill was approved by the Cabinet during May 1997. The current Bill focuses on the short term, as it is planned to draft a final bill at a later stage. This Bill sets the stage for medium and long term policy implementation.

## **2. Structure of the Bill**

The Bill is divided into the following four chapters:

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

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

## **3. Contents of the Bill**

Part 1 of the Bill, which also constitutes Chapter 1, deals with introductory matters, i.e. definitions and the constitutional application of the Bill.

Part 2 deals with national land transport principles and policy. Clause 2 lays down principles that will apply to land transport policy in the country. Clause 5 provides that the Minister of Transport in the National sphere of government, called "the Minister", will also be able to make known national land transport policy by publishing it in the Government Gazette. Part 3 also empowers the Minister to undertake various functions related to land transport (clauses 7 and 8) and provides for the establishment of a national, integrated land transport information system (clause 9). This system will provide the National Department with the information and statistics that it needs to fulfil its functions of co-ordinating land transport and improving the situation with regard to the provision of adequate and affordable transport for the public.

Part 4 provides for the establishment of transport authorities for transitional transport areas. Where an area has been declared a metropolitan transport area (called an MTA) under the Urban Transport Act, 1977, and consists of the whole area or areas of jurisdiction of one or more municipalities, the MEC responsible for transport and those municipalities may by agreement establish a transitional transport authority (TTA) for the area, which will be known as a transitional transport area. The core cities of metropolitan transport areas will, however, not be obliged to change their status to that of a TTA. Municipalities (or a single municipality) may likewise form transitional transport authorities by agreement between themselves and the relevant MEC, if the municipality or municipalities are type A or C municipalities contemplated in section 155(1) of the Constitution (i.e. have exclusive authority over their areas of jurisdiction or over an area in which there is/are one or more other municipalities). Transitional transport areas will be able to extend across provincial boundaries.

The Bill lays down requirements for agreements establishing TTAs, called "founding agreements", which must be published after they have been concluded. The Bill also lists factors to be considered when determining the boundaries of transitional transport areas (clause 16). It provides for functions

and competencies of TTAs (clause 18) and provides for their dissolution (clause 23).

The functions of TTAs will be to formulate transport policies for their areas and to co-ordinate modes of public transport by preparing various types of transport plans as a planning authority. These plans will be implemented to integrate modes (bus, rail and taxi) by making recommendations for the issuing of permissions (authorisations to operate public transport services). They will be responsible for entering into contracts with public transport operators for the provision of services and to see that the community in their area, and those travelling to, from or through it, are adequately served by public transport. TTAs will be empowered to make by-laws on matters related to their functions (clause 85).

A founding agreement may provide that the professional, technical, administrative and other work of a TTA may be performed by one or more departments of the municipalities concerned, or by a separate body established for this purpose and called a "transport executive" (clause 82). The MEC and two or more TTAs will be able to form joint transport executives (clause 83).

Part 5 provides for the Minister to make money available to provinces for land transport from money that Parliament will appropriate for this purpose, subject to conditions that the Minister may impose. Likewise, the provinces will be empowered to make this money received available to TTAs and municipalities in their areas for land transport. The Bill provides for annual budgets to be prepared by TTAs, and will regulate their financial affairs (see clause 24).

Parts 6 and 14 provide for land transport planning. The Bill lays down general principles that will have to be considered by all those involved in planning transport services (clause 26). Each MEC will be empowered to prescribe such principles and/or land transport policy for the relevant province by notice in the

provincial gazette (clause 86). Provinces will also be required to draw up provincial transport frameworks on an annual basis, by a uniform date to be determined between the MECs and made known by the Minister (see clause 28). The Bill provides that the following authorities will be "planning authorities" (clause 29):

- TTAs for their transitional transport areas;
- core cities designated under the Urban Transport Act for their MTAs;
- other municipalities designated by the Minister in agreement with the relevant MECs for their areas, if those do not fall within transitional transport areas or MTAs.

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

- Current public transport records, which are detailed records of all existing public transport services and facilities and which form the basis for preparing rationalisation plans, permissions strategies and public transport plans (see clause 30).
- Permissions strategies, which are to be prepared by planning authorities where public transport plans are not prepared and upon which the planning authority will base its recommendations to the permissions board in its disposal of applications for permissions (see clause 31).
- Rationalisation plans, which are tactical plans prepared by planning authorities for the rationalisation of existing services prior to their conversion to subsidised service contracts through public tendering (see clause 32).
- Public transport plans, which contain the planning authority's strategies for public transport, the operational plan for contracted services and the permissions strategy for non-contracted services in the area (see clause 33).



Each MEC will be able to require planning authorities to prepare integrated transport plans to cover a five year period commencing from the then current financial year. This will be a strategic plan including a detailed budget for the financial year and a priority list of projects for the next five years. It will integrate transport planning with development plans and land development objectives (see clause 34).

Where scheduled public transport services are to be operated in their areas that are subsidised by any sphere of government, such authorities will also have to prepare rationalisation plans. A planning authority that has the stated objective of integrating public transport modes, will also have to prepare a public transport plan (clause 33). In addition, the MEC may require planning authorities to prepare integrated transport plans on an annual basis for the five year period beginning on the first day of the financial year in question (clause 34.) (The financial year of TTAs will co-incide with that of municipalities.)

Where transport planning conflicts with land development objectives or planning and the matter cannot be resolved between the (transport) planning authority and the municipality concerned, the matter will have to be referred to the MEC for resolution in consultation with the MEC responsible for land affairs (clause 87).

Transport planning will have to be undertaken in consultation with relevant interest groups in the manner prescribed by the MECs (clause 87). The MECs will be empowered to make regulations for their provinces on transport planning (clause 88).

Parts 7 and 15 provide that each MEC must establish a single permissions board for the province, with members who are impartial and have no financial interest in the public transport industry (clause 36). Such boards will be responsible for dealing with applications for the granting, renewal amendment or transfer of

permissions (i.e. authorisations to undertake public transport). These Parts also provide for related matters such as powers and functions of the boards and qualifications for membership. Clause 90 provides that the boards will be able to establish satellite offices in regions of the province for the convenience of the public. The satellite offices will assist the public in making applications for permissions, will receive applications and will issue permits and distinguishing marks to be placed on vehicles.

Parts 8 and 16 deal with permissions to undertake public transport services. Any permit authorising such services validly issued before the date of commencement of the Bill, when adopted by Parliament and becoming law, will remain valid only for a limited period, within which the holder will have to apply to the relevant permissions board to convert it to a permission (clause 39). The Minister, by notice in the Government Gazette, will determine a date by which all permits must have been converted for the purposes of this section. The Minister will be able to defer that date at the request of the MECs. Any permit not so converted within that time will lapse (clause 39). Permits issued for an indefinite period will be converted to permissions that will be valid for the maximum period determined by the MEC. Permits issued for a definite period will be converted to permissions valid for the same period. Permits issued on a radius basis will have to be converted to permissions that specify particular routes or, in limited circumstances specified in the Bill, to specified, particular areas. Holders of permits will not be able to convert them to permissions unless the permit is active in the sense that the services authorised by the permit have been provided uninterruptedly for a period of at least 180 days before application is made for conversion (clause 40).

Regarding new permissions, no one will be entitled to a permission as of right (clause 44). Application will have to be made to the relevant permissions board for a permission, which will be granted or refused in terms of relevant transport plans if the applicant has the ability to provide the service and is not disqualified

by previous convictions for offences (clauses 46 and 47). Only one permission may be issued per vehicle, if the vehicle is acceptable for the service, and only to the owner of the vehicle, as defined in the Road Traffic Act, 1989 (clause 44). No employee of a TTA or a core city of an MTA or a municipality will be allowed to hold a permission authorising services in the area of that authority, core city or municipality (clause 48).

Where a permission will authorise services other than charter services in the area of a planning authority, the board will have to inform that authority of the application for the permission and allow it time to make recommendations (clause 49). The board will be obliged to take into account such recommendations and the provisions of relevant transport plans. Permissions boards will invite applications for permissions for services not subject to a subsidised service contract or a commercial service contract at the request of a planning authority, where the services are provided for in transport plans (clause 100). Where such a contract has been awarded, the board must issue a permission to the operator for the duration, and subject to the conditions, of the contract (clause 51). In the case of a non-contracted service, the board will have to consider the matters set out in clause 50.

Holders of permissions will not be allowed to hire them out to other persons (clause 55(2)). (However, in the case of contracted services, sub-contracting will be allowed in specified circumstances.)

Certain types of services will not be classed as "public transport" services (clause 102). These exemptions are substantially the same as those contained in section 2(2) of the Road Transportation Act, 1977, and include lift clubs and farmers transporting workers. A significant change from the status quo, is that operators conveying learners and students will require permissions if and when the Bill is passed, except for sport or educational tours or holiday or sightseeing tours where the educational institution owns the vehicle or it has been set aside for the use of that institution.

Special permissions will be required for special events (clause 107). These permissions will be substantially the same as the temporary permits provided for in section 20 of the Road Transportation Act, 1977. They will be issued for the period of the special event only. Although this arrangement is not ideal, after much consideration it was considered to be the best arrangement that can be made for special events in the transitional term that will be covered by the Bill. Each province will be able to make different arrangements in this regard if it so wishes.

Part 9 deals with "regulated competition", and is based in the White Paper's recommendation that competition should be "for routes but not on routes". Where contracts have been concluded for subsidised services before the date of commencement of the Bill if adopted by Parliament and becoming an act, these will have to be converted to subsidised service contracts (clause 58(1)). All new subsidised services will have to be put out to tender (clause 58(2)). To qualify as a tenderer for such a contract or a commercial service contract, an operator will have to-

- be registered in the case of a minibus taxi-type service;
- be "financially ringfenced" as provided for in clause 59(2), and
- be registered as a taxpayer.

Municipalities will not be allowed to tender for subsidised or commercial service contracts (clause 60). A body established by a municipality to operate public transport services, will also not be allowed to do so unless financially ringfenced. The concept of "financial ringfencing" means that the entity is a separate business unit and receives no unfair financial support from any sphere of government, either directly or indirectly. The concept is explained in clause 55.

Where in the course of rationalising public transport services in its area, a planning authority determines that services authorised by permissions are no longer required, it will have to try to offer the holder of the permission alternative services, failing which it may apply to the board to withdraw the permission. The board will be empowered to withdraw the permission after allowing the holder to make representations, and having considered those representations, in specified circumstances, provided that the holder is compensated (clause 58). Where compensation has not been agreed upon between the planning authority and the holder, the parties may approach the High Court having jurisdiction to resolve the matter.

Parts 10 and 17 deal with the registration of minibus taxi associations, their members, and persons who do not belong to such associations (called "non-members"). In terms of clause 63A, a National Taxi Register must be established to contain information related to such registration, and a provincial taxi register for each province. Each MEC will have to appoint a provincial taxi registrar. (These registrars have already been appointed in terms of provincial laws or administrative processes.)

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

- They will have to have been in existence for the minimum period prescribed by the MEC.
- Each member of the association will have to hold a valid permit or permission and operate public transport within the authority of the permit or permission.
- Members of the association will have to have converted their permits to permissions.
- The number of members will have to be above the minimum prescribed by the MEC.



- The association will have to have a constitution that complies with the standard minimum constitution prescribed by the MEC.
- The association will have to subscribe to a prescribed code of conduct.
- The association will have to be based in the province.

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

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

Persons will be allowed to register as non-members if they—

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

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

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

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

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

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

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

Part 11 provides for the appointment of a Rail Safety Regulator who will have to take steps to enhance safety with regard to rail services. The Minister will be empowered to make regulations on rail safety matters, at the request of the

Regulator. These measures have been necessitated by the fact that there are several rail operators in the country, and that private rail operations have been permissible since 1990.

Part 17 deals with matters related to law enforcement and other general matters. Provincial transport departments will be empowered to appoint employees as road transport inspectors to monitor compliance with the Act and assist with the investigation and prevention of offences.

### **3. Consultation**

A more comprehensive version of the Bill was published for comment as a working document in December 1996. Copies of the Bill were also sent to the stakeholders listed in Annexure A. At that stage it was couched in the form of a national bill and a model provincial bill, but the issues covered were substantially the same. A large number of comments were received, considered and incorporated where appropriate. Various meetings were held with the provinces and metropolitan municipalities to discuss the provisions of the Bill in detail. Ad hoc meetings were also held with other stakeholders, such as Transnet, the South African Rail Commuter Corporation Limited and representative structures of the bus and taxi industries.

In compliance with section 154(2) of the Constitution, the Bill will be published again for comment.

### **4. Procedure**

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

## ANNEXURE A

## LIST OF STAKEHOLDERS: NATIONAL LAND TRANSPORT BILL

## 1. PRESENTATION MADE TO THE PORTFOLIO COMMITTEE ON TRANSPORT

## 2. INTER-GOVERNMENTAL STRUCTURES

- Ministerial Conference of Ministers of Transport, consisting of the National Minister of Transport and the Members of the Executive Councils for Transport of the nine Provinces.
- Land Transport Co-ordinating Committee
- Committee of Land Transport Officials
- Committee of Urban Transport Authorities

## 3. GOVERNMENT DEPARTMENTS

- Department of Finance
- Department of State Expenditure
- South African Revenue Services
- Department of Provincial Affairs & Constitutional Development
- Department of Labour
- Department of Land Affairs
- Department of Housing
- Department of Education
- Department of Public Enterprises
- Department of Mineral and Energy Affairs
- Department of Health
- Department of Trade & Industry
- Department of Environmental Affairs and Tourism

## 4. ORGANISED LABOUR

- NEDLAC (National Economic Development and Labour Council)
- TGWU (Transport and General Workers Union)
- TAWU (Transport and Allied Workers Union)
- SAMWU (South African Municipal Workers Union)

- South African Taxi Drivers Union
- SALSTAFF
- BLATU

## 5. BUS INDUSTRY

- Coach Operators Association of Southern Africa
- South African Bus Operators Association
- National Association of Bus Owners
- Durban Transport
- South Coast Bus Service (Pty) Ltd
- KwaZulu Transport (Pty) Ltd
- Golden Arrow Bus Services (Pty) Ltd
- Algoa Bus Company (Pty) Ltd
- Northern Cape Bus Service CC
- Marinpine Transport (Pty) Ltd
- Bahwaduba Bus Service (Pty) Ltd
- Interstate Bus Lines (Pty) Ltd
- Matstrans (Pty) Ltd
- Elwierda Tours (Pty) Ltd
- Impendhle Bus Service (Pty) Ltd
- GM Phadziri and Sons (Pty) Ltd
- Laeveld Bus Service Ltd
- Knysna Bus Service
- Maphumulo Mail Services (Pty) Ltd
- Darnall Motor Transport (Pty) Ltd
- Mabirimisa Bus Service (Pty) Ltd
- Midland Bus Service CC
- Putco Limited
- Jackson Risaba Bus Service
- Town Council of Brakpan
- City Council of Bloemfontein
- North West Star (Pty) Ltd
- Vaal Transport Corporation (Pty) Ltd
- Eastern Bus Lines (Pty) Ltd
- Great North Transport (Pty) Ltd
- Maluti Bus Services
- Autonet



**6. RAIL INDUSTRY**

- South African Rail Commuter Corporation
- Transnet
- Metrorail
- Spoornet

**7. MINIBUS TAXI INDUSTRY**

- National Taxi Task Team
- Provincial Registrars
- Provincial Taxi Offices
- South African Black Taxi Association
- Federated National Transport Organisation
- South African Long Distance Taxi Association.

**8. BUSINESS & FINANCIAL ORGANISATIONS**

- Afrikaanse Handelsinstituut
- Business South Africa
- Council of South African Bankers
- Financial Service Board
- Foundation of African Business and Consumer Services
- Free Market Foundation of Southern Africa
- National African Federated Chamber of Commerce
- National Business Initiative for Growth, Development and Democracy.
- South African Chamber of Business

**9. LOCAL GOVERNMENT**

- Cape Town Metropolitan Council
- East Londen Transitional Local Council
- Pietermaritzburg Transitional Local Council
- Western Gauteng Services Council
- Eastern Gauteng Services Council
- Lekoa/Vaal Transitional Metropolitan Council
- Welkom City Council
- Tygerberg City Council
- Kimberley City Council
- Klerksdorp City Council

- Rustenburg City Council
- Witbank City Council
- Krugersdorp Transitional Local Council
- Richards Bay Transitional Local Council
- Potchefstroom City Council
- Amatola Regional Council
- Greater Johannesburg Transitional Metropolitan Council
- Cape Town Metropolitan Council
- George Transitional Local Council
- Pietersburg City Council
- Nelspruit City Council
- Pretoria City Council
- Durban Metropolitan Council
- Ermelo Town Council
- Brakpan City Council
- Bloem-Area District Council
- Bushveld District Council
- Diamantveld District Council
- Highveld Services Council
- Kalahari Services Council
- Lowveld Escarpment District Council
- Natal Midlands Services Board
- North East Rand Metropolitan Council
- Northern District Council
- Eastern Free State Regional Services Council
- East Vaal Regional Council
- Durban Metropolitan Council
- Huhundi District Council
- Southern Cape Regional Council
- Southern Natal Joint Services Board
- Thukela Regional Council
- West Vaal Regional Council
- Zululand Regional Council
- Winelands District Council

#### **10. DEVELOPMENT BODIES**

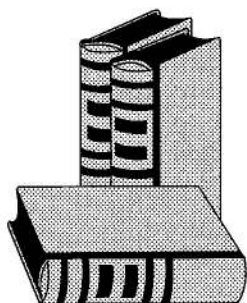
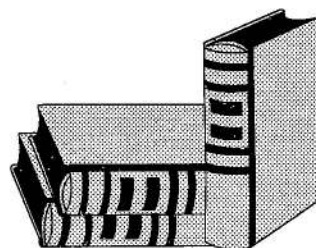
- Development Bank of Southern Africa
- Independent Development Trust
- Industrial Development Corporation of South Africa

- Rural Foundation
- Small Business Development Corporation
- South African Housing Trust

#### 11. OTHER ORGANISATIONS

- SATOUR
- South African Police Services
- Commercial Aviation Association of SA
- SA Association of Road Transport Consultants
- Transport Consultative Committee
- Foundation of Contemporary Research
- Peninsula Technikon
- Mercedes Benz SA
- SA Footplate Staff Association
- Institute of Traffic Officers
- SA Commuters Organisation
- Mindscapes Unlimited
- Transportek - CSIR
- Drive Alive
- University of Westville
- Law Society of the Transvaal
- The National Council for Persons with Physical Disabilities in SA
- The Road Freight Association
- Chamber of Mines in SA
- South African Petroleum Industry Association
- Automobile Association of SA
- NAAMSA (National Association of Automobile Manufacturers of SA)

*Where is the largest amount of meteorological information in the whole of South Africa available?*



*Waar is die meeste weerkundige inligting in die hele Suid-Afrika beskikbaar?*

*Department of Environmental Affairs and Tourism*  
Departement van Omgewingsake en Toerisme

# Keep South Africa Clean



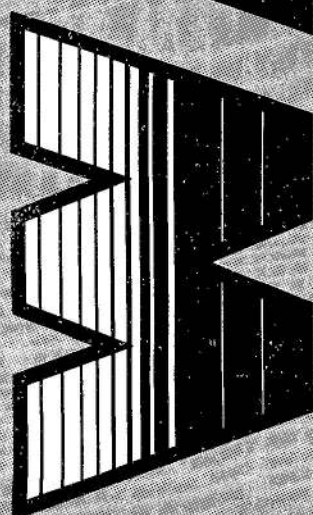
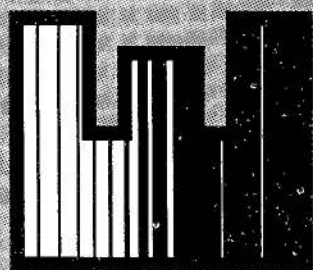
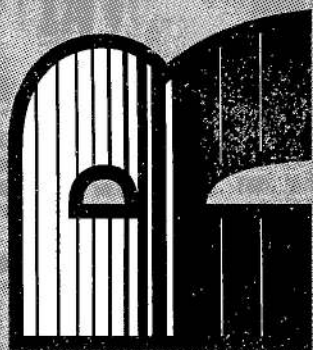
**Throw trash where it belongs**



# Hou Suid-Afrika Skoon



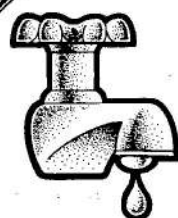
**Gooi rommel waar dit hoort**

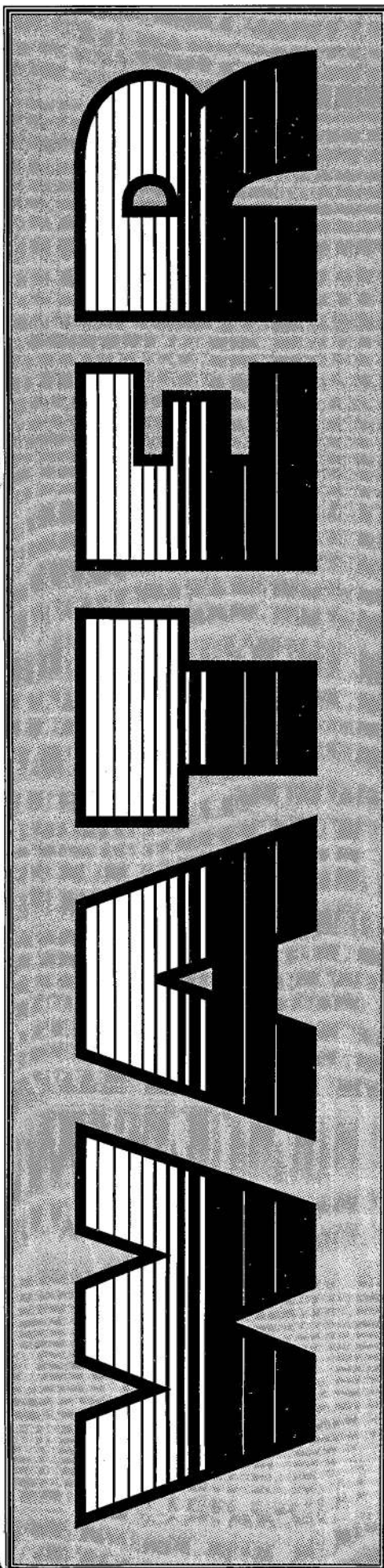


**DON'T**

**WASTE**

**It!**

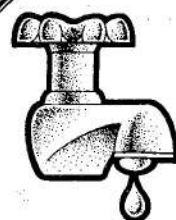




**W**ERK

**S**PAARSAAM

**D**AARMEE !



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