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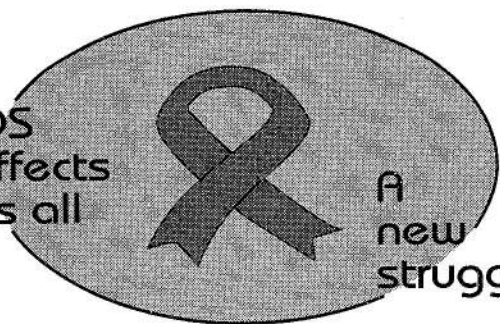
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PRETORIA, 10 SEPTEMBER 1999

No. 20445

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GENERAL NOTICE
ALGEMENE KENNISGEWING

NOTICE 2078 OF 1999

DEPARTMENT OF TRANSPORT

**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 written comments by not later than 15 October 1999 with:

Mrs A Nothnagel
Department of Transport
Room 4099 Forum Building
Corner of Struben and Bosman Streets
PRETORIA.
Tel: (012) 309 3638
Fax: (012) 323 9370
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**DEPARTEMENT VAN VERVOER
KENNISGEWING 2078 VAN 1999**

**PUBLIKASIE VIR OPENBARE KOMMENTAAR: NASIONALE
OORGANGSWETSONTWERP OP VERVOER OOR LAND**

Die Engelse teks van die konsepwetgewing wat in die Bylae hiervan uiteengesit is, wat die Minister van Vervoer van voornemens is om by die Parlement in te dien, word hiermee ter voldoening aan artikel 154(2) van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996) vir openbare kommentaar gepubliseer.

Belanghebbendes word uitgenooi om skriftelike kommentaar nie later nie as 15 Oktober 1999 in te dien by:

Mev A Nothnagel

Departement van Vervoer

Kamer 4099 Forumgebou

Hoek van Struben- en Bosmanstrate

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Draft approved by MINCOM on 3 September 1999

NATIONAL LAND TRANSPORT TRANSITION BILL

To provide for the transformation and restructuring 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:—

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CHAPTER 1: INTRODUCTORY PROVISIONS

PART 1 INTRODUCTORY PROVISIONS

Definitions

1. (1) In this Act, except where inconsistent with the context —
- (i) "association" means any group of persons associated with one another for the operation of 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;
 - (ii) "authorised officer" means an inspector as defined in this section, a member of the South African Police Service, a person in the service of a province's provincial department, a municipal traffic officer or other officer who is an examiner or motor vehicles or inspector of motor vehicle licences and a road transport inspector contemplated in section 39 of the Cross Border Road Transport Act, 1998 (Act No. 4 of 1998);
 - (iii) "bus" means a motor vehicle designed, or lawfully adapted in compliance with the Road Traffic Act, 1989 (Act No. 29 of 1989), to carry more than 35 persons, including the driver, subject to section 27A;
 - (iv) "charter service" means a public transport service operated 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;
 - (v) "Code of Conduct" means the code of conduct prescribed for a province by the MEC under section 108;

- (vi) "commercial service contract" means an agreement concluded between a contracting authority and a public transport operator, in terms of which the operator is to operate a public transport service, provided for in a public transport plan, where—
 - (a) in terms of the agreement, that operator's consideration consists of fares payable by the passengers that are carried and, where passengers pay concessionary fares, also of the reimbursements made by the contracting authority to that operator; and
 - (b) the operator does not receive any subsidy or other financial support from any organ in any sphere of government. For the purposes of this paragraph, reimbursements made to the operator in respect of concessionary fares will not be regarded as a subsidy or other form of financial support;
- (vii) "concession agreement" or "concession" means any agreement between a public transport operator and a contracting authority for the operation of a public transport service on a railway line or rail network—
 - (a) in accordance with a public transport plan; and
 - (b) at a price and on a service level provided for in that agreement, whether or not the public transport operator, in terms of the agreement, is also required to construct, maintain or rehabilitate the infrastructure and other assets used in connection with that service;
- (viii) "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;
- (ix) "contracting authority" means any province's provincial department, any transport authority, any designated municipality and any core city, bound to a contract or concession agreement concluded with a public transport operator, and includes the Department when party to such a contract;
- (x) "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;
- (xi) "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;
- (xii) "cross-border road transport" means cross-border road transport as defined in section 1 of the Cross-Border Road Transport Act, 1998;
- (xiii) "current public transport record" means a transport plan that is a current public transport record contemplated in section 22;
- (xiv) "current tendered contract" means a contract for the operation 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, on the one hand and, on the other hand, 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 the commencement of this Act or occurs thereafter; or

- (c) is binding between the public transport operator and a 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);
- (xv) "Department" means the Department of Transport in the national sphere of government;
- (xvi) "Director General" means the Director General of the Department;
- (xvii) "framework" means an outline for the structure within and the form according to which a plan, policy or strategy is determined and developed;
- (xviii) "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;
- (xix) "infrastructure", in relation to land transport, means fixed capital equipment and facilities in the land transport system;
- (xx) "inspector" means an inspector designated under section 114;
- (xxi) "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;
- (xxii) "integrated transport plan" means an integrated transport plan contemplated in section 26;
- (xxiii) "interim contract" means a contract, not being a current tendered contract, for the operation of a subsidised scheduled service the term of which expires after the date of the commencement of this Act, and which—
 - (a) was concluded before that date between the province and the Department on the one hand and the public transport operator who is to operate that service on the other hand, and is still binding between them or only binding between the province and that operator; or
 - (b) is binding between that public transport operator and any transport authority or a core city or a municipality, due to the assignment to it, after the commencement of this Act, of the province's rights and obligations under the contract contemplated in paragraph (a);
- (xxiv) "interprovincial transport" means public transport so conducted that passengers are picked up in any province and set down in some other province;
- (xxv) "intraprovincial transport" means public transport so conducted that passengers are picked up and set down entirely within the boundaries of a single province;
- (xxvi) "key performance indicator" means a yardstick or standard established to measure levels of performance and achievement;
- (xxvii) "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;
- (xxviii) "long distance service" means a scheduled or unscheduled public transport service operated by road, other than a service for daily commuting, that is provided beyond the boundary of the area covered by a transport plan, where passengers are charged fares individually;
- (xxix) "MEC" means the member of the executive council of a province who is responsible for the administration of this Act, where appropriate in consultation with the member or

members of such council responsible for other aspects dealt with in this Act;

- (xxx) "member" means a member of an association;
- (xxxi) "metered taxi service" means a public transport service operated by means of a motor vehicle which is designed, or lawfully adapted in compliance with the Road Traffic Act, 1989, to carry fewer than nine seated persons, including the driver, where that vehicle—
 - (a) is available for hire by hailing, by telephone or otherwise;
 - (b) may stand for hire at a rank; and
 - (c) is equipped with a sealed meter, in good working order, for the purpose of determining the fare payable;
- (xxxii) "midibus" means a motor vehicle designed, or lawfully adapted in compliance with the Road Traffic Act, 1989, to carry from 19 to 35 seated persons, including the driver;
- (xxxiii) "minibus" means a motor vehicle designed, or lawfully adapted in compliance with the Road Traffic Act, 1989, to carry from 10 to 18 seated persons, including the driver, subject to section 27A;
- (xxxiv) "minibus taxi-type service" means an unscheduled public transport service operated on a specific route or routes, or where applicable, within a particular area, by means of a motor-car, minibus or midibus, subject to section 27A;
- (xxxv) "Minister" means the Minister of Transport in the national sphere of government;
- (xxxvi) "motor car" means a motor vehicle, other than a motor cycle, motor tricycle or motor quadrucycle as those vehicles are defined in the Road Traffic Act, 1989, (Act No. 29 of 1989), designed or lawfully adapted to carry not more than nine persons, including the driver;
- (xxxvii) "motor vehicle" and "vehicle" means a motor vehicle as defined in section 1 of the Road Traffic Act, 1989;
- (xxxviii) "MTA" means a metropolitan transport area declared and existing under section 3 of the Urban Transport Act, 1977;
- (xxxix) "municipal transport operator" means a municipality which operates a public transport service or an organisation which operates such a service and in which the majority of the shares or the controlling interest is held by a municipality, or which is otherwise controlled or is owned by a municipality;
- (xL) "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;
- (xLi) "non-member" means any person, whether a natural person or a juristic person, who is not a member of an association;
- (xLii) "parastatal transport operator" means an organisation which operates a public transport service and in which the majority of the shares or the controlling interest is held by a province, or which is otherwise controlled or is owned by a province;
- (xLiii) "participating municipality" means any municipality that is party to a founding agreement for the establishment of a transport authority;
- (xLiv) "permission" means a permission required by section 29, granted and issued in accordance with Part 16;
- (xLv) "permissions board" means the permissions board established for a province in compliance with section 27 to perform the functions mentioned in that section;
- (xLvi) "permissions strategy" means a transport plan consisting of a permissions strategy contemplated in section 23;
- (xLvii) "permit" means a public road carrier permit or similar authority issued under a

- previous law, and which is in force at the commencement of this Act in terms of section 74;
- (xLviii) "planning authority" means any body which, in terms of section 20, has to prepare transport plans for its area;
- (xLix) "prescribed" means prescribed by regulation in terms of this Act, by the Minister or an MEC, as the case may be;
- (L) "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;
- (Li) "provincial department" means the department within the administration of a province that is charged with public transport matters within the province;
- (Lii) "provincial land transport framework" means a provincial land transport framework contemplated in section 21;
- (Liii) "provincial law" includes the provisions of Chapter 3 and any other applicable provincial legislation;
- (Liv) "public transport operator" means a person carrying on the business of operating a public transport service;
- (Lv) "public transport plan" means a public transport plan contemplated in section 25;
- (Lvi) "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) operated in terms of a commercial service contract;
 - (b) operated in terms of a subsidised service contract;
 - (c) operated, 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 (which includes a minibus taxi-type 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;
- (Lvii) "rationalisation plan" means a plan contemplated in section 24;
- (Lviii) "registered", in relation to any association, the members of any association and any non-members, means their registration in the provincial transport register in accordance with this Act and relevant provincial laws;
- (Lix) "registered constitution" means an association's constitution, filed in the Registrar's records, pursuant to the association's successful application for provisional or full registration;
- (Lx) "Registrar" means the person appointed as the provincial transport registrar for a province by its MEC in compliance with relevant provincial laws and section 46;
- (Lxi) "replacing provincial law" means a law or a provision of a law of a provincial legislature with regard to matters to which Chapter 3 of this Act applies and which, for all or any of the arrangements made in Chapter 3, substitutes its own arrangements within the framework of the national land transport policy and the scope and ambit of the provisions of this Act;

- (Lxii) "roadworthy certificate" means a certificate certifying the roadworthiness of a motor vehicle in accordance with the requirements of the Road Traffic Act, 1989;
- (Lxiii) "scheduled service" means a public transport service operated by road by a motor car, minibus, midibus or bus on a particular route or routes in accordance with a timetable;
- (Lxiv) "special event" means a cultural, religious, sporting or recreational event, or any entertainment, conference, exhibition or show, which is to occur or be held on a specific day or a number of specific consecutive days at a predetermined venue;
- (Lxv) "staff service" means a public transport service by road provided by means of a vehicle owned by an employer or a vehicle provided by a public transport operator in terms of a contract with the employer, when used exclusively for the conveyance of the employer's employees;
- (Lxvi) "subsidised service contract" means an agreement, other than an interim contract or a current tendered contract, concluded between a contracting authority and a public transport operator to operate a scheduled service provided for in a public transport plan and in terms of which the public transport operator, in addition to the passenger fares paid, receives financial support in terms of a tendered contract;
- (Lxvii) "this Act" includes any regulation from time to time in force;
- (Lxviii) "time table" means a published document informing passengers of times when and places where public transport services are available, indicating at least origin and destination points and significant intermediate locations along the route;
- (Lxix) "tourist service" means a public transport service by road for the carriage of tourists to or from tourist attractions, where the tourists are accompanied by a tour guide registered under section 21 of the Tourism Act, 1993 (Act No. 72 of 1993);
- (Lxx) "transfer" in relation to a permission means a transfer from the holder of the permission to another person;
- (Lxxi) "transport area" means the area of a transport authority, declared under section 61;
- (Lxxii) "transport authority" means the authority declared under section 61 for a transport area;
- (Lxxiii) "transport plan" means any plan provided for in section 19;
- (Lxxiv) "travel demand management" means a system of actions to maximise the capacity of the transport system for the movement of people and goods rather than vehicles, among others through increasing vehicle occupancy, developing priority measures for public transport, encouraging travel during off-peak periods, shifting demand between modes, restricting the space available for parking, adjusting the price of parking, and other appropriate measures; and
- (Lxxv) "unscheduled service" means a public transport service operated by road on a particular route or routes, or, where applicable, within a particular area, without a time table, where passengers are charged fares individually.

(2) Any reference in this Chapter, Chapter 2 or Chapter 4 to Chapter 3 or any part, section or provision of Chapter 3, however expressed, must in the case where there is a replacing provincial law, be regarded and treated as a reference to the corresponding chapter, part, section or provision of that replacing law.

Purpose and scope of Act

2. (1) This Act provides the measures necessary to 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 give priority to public transport;
- (b) which is developed with due regard to transport planning, which includes public transport, freight transport, road networks and the transport of tourists, 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 dependent, 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 in the local sphere and to be termed 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 transport authorities accountable to those communities, while the provinces and the national government play a facilitating, supporting, co-ordinating, monitoring and overseeing role; and
- (h) which serves as the foundation for the Republic's comprehensive land transport system for the long term.

(2) Chapter 2 of this Act prescribes those policies, principles, requirements, guidelines, frameworks, norms and standards that necessarily must be the same for all the provinces of the Republic, and other matters contemplated in section 146(2) of the Constitution, in order to achieve and deal effectively with the transformation and restructuring of the land transport system of the Republic nationally, in the process introducing and establishing the new land transport system contemplated in subsection (1), for the Republic as a whole;

Application of Act in provinces

3. 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), the following arrangements apply with regard to the application of this Act:

- (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.
- (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 subsection will apply, with the changes necessary in the context;

- (ii) insofar as it relates to Chapter 3, paragraph (b) of this subsection will apply with the changes necessary in the context.

CHAPTER 2: MATTERS OF NATIONAL CONCERN

PART 2 NATIONAL LAND TRANSPORT PRINCIPLES AND POLICY

Principles for national land transport policy

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

- (a) Public transport services —
 - (i) should be aimed at providing affordable transport to the public;
 - (ii) should be so designed as to achieve —
 - (aa) integration of modes;
 - (bb) cost efficiency and service quality;
 - (cc) the optimal allocation and utilisation of the available resources;
 - (dd) market development;
 - (iii) should be so designed as to have —
 - (aa) value to the customer; and
 - (bb) the least harmful impact on the environment;
 - (iv) should be so designed that appropriate modes should be selected and planned for on the basis of where they have the highest impact on reducing the total systems cost of travel. This decision should be informed by an appropriate assessment of the impact on the customer and anticipated customer reaction to such change;
 - (v) should be planned so that customer needs should be met by facilitating customer reaction to system change in the planning process and by maximising the integration of such services;
 - (vi) should be planned where possible so that subsidies are aimed to assist currently marginalised users and those who have poor access to social and economic activity;
- (b) All role players must strive to achieve an effective land transport system through integrated planning, provision and regulation of infrastructure and services and diligent and effective law enforcement.
- (c) Public transport services, facilities and infrastructure must be so provided and developed as to integrate the different modes of land transport.
- (d) Safety and effective law enforcement must be promoted as vital factors in land transport management and regulatory systems, and the efforts in this regard of all competent authorities and functionaries must be co-ordinated to prevent duplication.
- (e) For the purposes of land transport planning and the provision of land transport infrastructure and facilities, public transport must be given higher priority than private transport.
- (f) Scarce resources available for the provision of land transport must be used optimally.
- (g) Investment in infrastructure and operations must promote sustainability.
- (h) Effectiveness and efficiency must be promoted in the provision and operation of land transport services and administering land transport matters.
- (i) Co-ordination of institutional functions in land transport must be promoted.

- (j) Land transport functions must be integrated with related functions such as land use and economic planning and development through, among others, development of corridors, and densification and infilling. Transport planning must guide land use and development planning.
- (k) The special needs of learners, the elderly, users with disabilities, tourists and transferring long distance passengers should be considered in planning and providing public transport infrastructure, facilities and services. These needs should be met as far as may be possible by the system provided for mainstream public transport.
- (l) Public participation in the course of the land transport planning process must be encouraged and promoted.
- (m) The computerised land transport information systems of the national government, provinces, municipalities and transport authorities 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 the systems of planning authorities, subject to section 6.
- (n) All spheres of government must promote public transport and the flow of inter-provincial transport and cross-border road transport.
- (o) The principle of user charging or cost recovery from direct users must be applied wherever appropriate and possible.
- (p) The following persons must be impartial, have no direct financial or business interest in any sector of the public transport industry, and may not decide or adjudicate on a matter in which they have such an interest:
 - (i) Members of permissions boards;
 - (ii) staff of such boards who are directly involved in issuing permissions;
 - (iii) members of provincial transport appeal bodies contemplated in section 119;
 - (iv) members of the Transport Appeal Tribunal established by section 3 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998);
 - (v) officials of planning authorities directly responsible for the development of permissions strategies;
 - (vi) officials directly involved in the management and execution of public transport related law enforcement.

PART 3

POWERS AND DUTIES OF MINISTER

Functions of Minister

5. (1) The Minister by notice in the Government Gazette, from time to time and after consultation with the nine MECs, 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 monitor the implementation of national land transport policy and national norms and standards and to compare them with international norms and standards.

(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 interested parties 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.

(5) The Minister must—

- (a) monitor the implementation of the national land transport policy and, where necessary, any investigations conducted into matters arising from the implementation, and cause 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) promote co-ordination between the three spheres of government with a view to avoiding duplication of effort;
- (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 in consultation with the Minister of Education and the Minister of Labour with a view to ensuring that education and training in subjects or training courses relating to land transport, are directed towards complying with the National Qualifications Framework defined in section 1 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
 - (ii) in so doing, must thereby promote uniform standards for the relevant subjects and courses in all the provinces;
 - (iii) may take measures to promote, facilitate and co-ordinate the provision of training by public and private institutions;
- (h) in taking any measures to promote public transport —
 - (i) accommodate therein relevant national and international benchmarks and best practice;
 - (ii) further, within overall land transport objectives, the reasonable safety of passengers;
 - (iii) encourage efficiency and entrepreneurial behaviour on the part of transport operators in the operation of public transport services, and encourage them to tender competitively for contracts and concessions;
 - (iv) further a strategic and integrated approach to the provision of public transport;
 - (v) further or encourage the efficient use of energy resources, and limit 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 services operated, are of an effective standard 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;
 - (l) where this Act requires public consultation and participation before taking any decision or performing any official act, prescribe the procedures to be followed in this regard;
 - (m) publish a report annually on the key performance indicators mentioned in subsection (1)(c).
- (6) The Minister may, after consulting the relevant MEC—
- (a) and, where applicable, after consulting the relevant transport authority, set maximum or minimum fares for subsidised public transport by rail until the Minister has assigned the rail function to another sphere of government;
 - (b) by notice in the Government Gazette, set norms and standards of a general nature in respect of fares for subsidised public transport services by road or rail with a view to—
 - (i) effective targeting of subsidy in terms of national policy;
 - (ii) providing integrated fare and ticketing systems in public transport networks;
 - (iii) achieving cost recovery by operators.
 - (c) prescribe norms and standards relating to the qualifications or conduct of inspectors.

National integrated land transport information system

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

(2) (a) Every MEC with regard to the province concerned, every transport authority, every core city and every municipality, must provide the Minister, in the manner and at the times or occasions as prescribed by the Minister, with the so prescribed information and particulars about their actions, conduct or position with regard to matters so prescribed 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 performance of 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 other municipality required by the MEC to comply therewith. However, the provincial department may, in accordance with an agreement between the MEC and such a municipality, act on behalf of the municipality for the purposes of this paragraph.

(3) Despite subsection (2), the Minister, by notice in writing, may at any time require any transport authority, core city 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 investing 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 core cities, and organised local government.

(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 person, organisation or entity, or are of a personal nature that may lead to the invasion of the privacy of any person, may not be so included in that system, nor be specified in such a manner that it will lead, directly or indirectly, to the identification of that person, organisation or entity, or to their being so harmed or to their privacy being invaded.

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

Regulations by Minister

7. (1) The Minister may make regulations after consultation with the MECs, not inconsistent with this Act, with regard to any matter which, in terms of this Act, may or must be prescribed, 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 a 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 exceed R10000.

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

Delegations by Minister

8. (1) Any power, function or duty of the Minister in terms of this Act, except the 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 function or 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 FUNCTIONS OF MECs

Functions of MECs

9. (1) Each MEC shall be responsible for land transport matters in the province, and in addition to the land transport powers and duties assigned to the MEC by the Constitution and other legislation, must as a minimum—

(a) make known provincial land transport policy in terms of subsection (2);

- (b) 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;
- (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) in taking measures to promote public transport, accommodate therein relevant national and international benchmarks and best practice.

(2) Each MEC must, by notice in the provincial gazette, from time to time and after consultation with transport authorities and core cities in the province and the relevant provincial organisation contemplated in section 2(1)(b) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), make known provincial land transport policy, including, but not limited to—

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

(3) In that notice the MEC also may prescribe that policy in greater detail.

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

(5) Each MEC must prepare a provincial transport framework for the relevant province in accordance with section 21.

PART 5

TRANSPORT AUTHORITIES

Principles for the establishment of transport authorities for transport areas

10. (1) Transport authorities may be established for transport areas by a written agreement between the MEC and the municipality, or, as the case may be, the municipalities, whose areas of jurisdiction fall wholly or partly within the transport area (hereafter called a founding agreement).

(2) The purpose of establishing a transport authority shall be to effect improved transport service delivery in the local sphere of government by grouping the transport functions into a single, well managed and focussed institutional structure..

(3) Subsection (1) shall apply also to municipalities whose jurisdictional areas or parts thereof are situated in a MTA, in which case the MEC must withdraw, in the manner provided for in section 3(1)(c) 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.

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

(5) The founding agreement must be in writing and reflect the agreement reached

between the MEC and the participating municipalities, and provide at least for the following:

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

(6) The MEC must publish founding agreements, after their conclusion, in the relevant provincial gazette and declare the relevant area as a transport area by such publication.

(7) A transport authority so established is a juristic person.

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

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

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

- (a) the municipal administration of one of the participating municipalities specified in that agreement; or
- (b) any one or more specified departments in the municipal administration of one or more participating municipalities so specified; or
- (c) by a body under the auspices and subject to the control of the transport authority; hereafter called a transport executive.

(11) A province may provide staff or other assistance to a transport authority to enable it to perform its professional, technical, administrative and other work.

(12) Subject to legislation applicable to local government, a transport authority must perform the following functions, as well as those assigned to a transport authority by provincial laws:

- (a) In its capacity as planning authority, prepare transport plans for the transport area, and be responsible for the implementation thereof, and monitor its performance in achieving its goals and objectives;
- (b) develop land transport policy within its area based on national and provincial guidelines, which includes its visions for the area, and incorporate spatial development policies on matters such as densification and infilling as well as development corridors;
- (c) perform financial planning with regard to land transport within or affecting the transport area, with particular reference to transport planning, infrastructure, operations, services, maintenance, monitoring and administration;
- (d) manage the movement of persons and goods on or over land;
- (e) encourage, promote and facilitate public consultation, participation or involvement through hearings, seminars and workshops and any other means that are appropriate to ensure effective communication with customers, communities, inhabitants and transport operators;
- (f) call for tenders for public transport services to be operated in terms of commercial service contracts and subsidised service contracts, prepare tender specifications and documents for that purpose, evaluate the tenders received and the award of the tenders, provided that this function may be undertaken after the date of declaration of the transport authority under subsection (6), but not later than a date to be determined by the Minister in consultation with the MEC's.

(13) Transport authorities may be dissolved only if all of the parties to the transport authority have entered into an agreement in terms of which proper arrangements are made for dissolution of the authority and for—

- (a) succession to the assets, liabilities and commitments of the transport authority upon dissolution;
- (b) the continuation and finalisation of any projects and work commenced by the transport authority before dissolution;
- (c) the responsibilities, obligations and duties of the municipality or each of the municipalities party to the transport authority with regard to the execution or implementation of any other commitment made or decision made or taken by the transport authority in the exercise or performance of its powers and functions; and
- (d) the date on which the dissolution is to take effect.

(14) For guidance, the Minister by notice in the Government Gazette may publish a *pro forma* founding agreement.

Factors relevant to determining boundaries of transport areas

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

- (a) dominant passenger movements;
- (b) economic inter-dependency between inhabitants;
- (c) integrated land use and transport development potential;
- (d) the extent to which public transport services are provided and operated effectively and efficiently within the area;
- (e) demographic, natural and geographical factors and characteristics;
- (f) other criteria (if any) that may be prescribed by a law of the province and are not inconsistent with this Act.

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

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

Transport areas and transport authorities extending across provincial boundaries

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

- (a) the formation of a single transport area extending across one or more of the common provincial boundaries and comprised of the jurisdictional areas, or part thereof, of municipalities falling within the respective provinces; and
- (b) the establishment of a single transport authority for such a 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 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 11.

(3) The agreement further must provide that, in relation to the transport area and the transport authority that may be established for it, one of those MECs, who must be identified in the agreement, 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 transport area or its transport authority.

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

Finances of transport authorities

13. (1) Every transport authority must—

- (a) conduct and manage its affairs in an effective, economic and efficient manner so as to optimise the use of its resources in addressing the land transport needs of the community in its area and those traveling to and from that area;
- (b) conduct its financial affairs in an accountable and transparent manner and have proper accounting records kept in accordance with generally accepted accounting practice;
- (c) prepare a financial plan as an integral part of its transport plans;
- (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) The chief executive officer of the transport authority must open an account in the name of the authority with a registered banking institution in which all moneys received by the authority are to be deposited and from which its expenses are to be paid.

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

(4) A transport authority, in awarding contracts for goods and services, must apply a system which is fair, equitable, transparent, competitive and cost-effective.

(5) The Minister, after consulting the Minister of Finance in the national sphere of government and the MECs, may make regulations relating to the responsibilities and duties of transport authorities concerning financial and fiscal matters. These matters may relate, among 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 practicing for own account as a public accountant and auditor, may perform such an audit;
- (c) the time allowed for the submission of its audited financial statements to the governing body, the participating municipalities and the MEC;
- (d) consequences and procedures where persons cause the transport authority financial loss or damage, or unauthorised expenditure has been incurred;
- (e) procedures to be followed and measures to be taken to remedy the situation where the financial position of a transport authority has deteriorated unduly;

- (f) procedures applicable to the preparation and compilation of the budgets of transport authorities;
 - (g) procedures and requirements for the procurement of goods and services, subject to subsection (4);
 - (h) the investment of the moneys of transport authorities;
 - (i) the charging of fees for or the generating of revenue from services rendered by transport authorities.
- (6) The financial year of transport authorities will co-incide with the municipal financial year.

Use of funds received by transport authorities

14. A transport authority must use moneys—
- (a) received from the Minister under section 15(1)(b);
 - (b) received by the relevant province under section 16(1)(b);
 - (c) received from its participating municipalities under section 17,
- for the performance of that authority's functions in terms of this Act or a replacing provincial law, to meet the expenditure incurred by it in the performance of work arising from or otherwise connected with those functions or the performance thereof and to give effect to the national and provincial land transport policy.

PART 6

INTERIM FUNDING ARRANGEMENTS FOR LAND TRANSPORT

Minister may provide funds for land transport

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

(b) The Minister may, from funds contemplated in paragraph (a), make moneys available to transport authorities to assist them in fulfilling their responsibilities in terms of this Act or replacing provincial laws, 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 and provincial land transport policy and achieve the objects and purposes of this Act and replacing provincial laws. For that purpose the Minister may impose conditions that are considered fit and are not inconsistent with this Act, including conditions relating to specific purposes for which the moneys are to be utilised.

- (3) Moneys made available in terms of this section—
- (a) for use for a particular or specified purpose, may not be used for any other purpose; or
 - (b) subject to specified conditions, may not be dealt with contrary to those conditions.

MEC may provide funds for land transport

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

(b) The MEC may, from funds received or appropriated under paragraph (a), make moneys available to transport authorities to assist them in fulfilling their responsibilities in terms of this Act or replacing provincial laws, 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 and provincial land transport policy and achieve the objects and purposes of this Act and replacing provincial laws. For that purpose the MEC may impose conditions that are considered fit and are not inconsistent with this Act and replacing provincial laws.

(3) Moneys made available in terms of this section—

- (a) for use for a particular or specified purpose, may not be used for any other purpose; or
- (b) subject to specified conditions, may not be dealt with contrary to those conditions.

Municipalities may provide funds for land transport

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

PART 7 TRANSPORT PLANNING

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

18. (1) Land transport planning must be integrated with the land development process. For that purpose, the transport plans required by this Act are designed to give structure to the constitutional transport planning powers and duties of municipalities, and must be accommodated in and form an essential part of integrated development plans. For this purpose—

- (a) where the relevant planning authority is a municipality contemplated in section 20(1)(c), the plans mentioned in paragraphs (c) to (g) of subsection (1) of section 19 shall form the transport component of the integrated development plan of the municipality;
- (b) where the jurisdictional area of a municipality falls wholly or partly in a transport area or MTA, the plans mentioned in paragraphs (c) to (g) of that subsection shall constitute the transport component of the integrated development plans of such municipality in respect of that part of its jurisdictional areas that falls within the transport area or MTA.

(2) 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.

(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) 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 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.
- (6) 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 areas of planning authorities;
 - (b) road and rail networks;
 - (c) freight movements;
 - (d) the needs of learners and users with disabilities;
 - (e) rivalry between neighbouring planning authorities that may result in the duplication or over-supply of transport facilities and infrastructure in the region;
 - (f) the integration of transport and land use planning within the context of the Development Facilitation Act, 1995 or any other similar provincial law.

Types of plans required by this Act

19. (1) The following plans are required for the purposes of this Act:
- (a) A national land transport strategic framework provided for in section 20A;
 - (b) Provincial land transport frameworks provided for in section 21.
 - (c) Current public transport records provided for in section 22.
 - (d) Permissions strategies provided for in section 23.
 - (e) Rationalisation plans provided for in section 24.
 - (f) Public transport plans provided for in section 25.
 - (g) Integrated transport plans provided for in section 26.
- (2) (a) The relationship and sequence of transport plans which are illustrated in Figures 1 and 2 is as follows:
- (i) The Department must prepare a national land transport strategic framework to guide land transport planning countrywide.
 - (ii) Every province must prepare its initial provincial land transport framework as an overall guide to transport planning.
 - (iii) Every planning authority must prepare a public transport plan of which a current public transport record and a permissions strategy, and, if it has subsidised public transport services, a rationalisation plan, form components.
 - (iv) Transport Authorities and Core Cities, and other municipalities requested by the MEC, must prepare an integrated transport plan of which the public transport plan forms a component
 - (v) Every province must prepare subsequent provincial land transport frameworks which, in addition to (i) above, must summarise the local plans in the province.

(b) Planning authorities, depending upon their resources and capabilities, may choose to prepare their public transport plan incrementally via a current public transport record and a permissions strategy, or they may choose to prepare their public transport plan immediately.

(c) The provincial land transport framework and current public transport records are prepared more or less simultaneously while the cycle initially lasts for approximately 12 months and it is then repeated annually. The subsequent annual updates would be of a shorter duration.

(3) Transport plans must include the planning of both intra- and interprovincial long distance services, which must be linked where applicable with other public transport services, and may provide for charter services, staff services and tourist services. In the case of interprovincial transport, this must be done in consultation with the MEC of the other province or provinces concerned.

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

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

(5) Before or on the date determined in terms of subsection (4), 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 making known that the plan concerned has been completed and is available for public inspection at a place stated in the notice.

(6) In transport areas where the rail function has not been assigned to the provincial or local spheres of government, the MEC must submit to the Minister all transport plans that affect public transport by rail, and the Minister may approve or disapprove the financial aspects of such plans that affect rail transport.

(7) The Minister and any MEC may provide financial or other assistance for planning to enable authorities to fulfil their obligations under this Part.

(8) The content of plans mentioned in subsection (1)(b) to (g) shall be as required by this Act, but the Minister, in consultation with the relevant MEC or MECs, may modify the provisions of those sections in relation to rural areas in particular provinces.

Planning authorities

20. (1) Plans contemplated in section 19(1)(c) and (d) and, where appropriate, section 19(1)(e), (f) and (g), must be prepared by the following authorities, to be known as planning authorities. These plans shall however be different in rural planning authorities excepting for those that have subsidised public transport services:

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

(b) Core cities, in respect of their MTAs.

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

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

(a), as well as the facilities and infrastructure being developed for those purposes or in that connection within the area concerned.

(3) The MEC may make regulations as to the content of current public transport records in addition to the content prescribed in the document referred to in subsection (2).

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

(5) The current public transport record must be updated annually. In updating current public transport records, planning authorities must record changes in the supply of public transport services with regard to their respective areas, due regard being had, among other things, to the granting and issuing of permissions and the amendment, transfer, suspension, lapsing, withdrawal and cancellation of permissions or permits by the permissions board.

Permissions strategies

23. (1) For the purpose of ensuring that planning authorities' recommendations to the permissions board 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 prepare a plan known as a permissions strategy, which must eventually form part of its public transport plan.

(2) A permissions strategy must contain and set out the planning authority's policy and strategies in relation to at least—

- (a) the role of each transport mode and identification of the preferred road based mode or modes with regard to its area, including transport into or from the areas of other planning authorities, and interprovincial transport;
- (b) the circumstances in which 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, in its opinion should be imposed by the permissions board in respect of permissions.

(3) Permissions strategies must be in accordance with the requirements, and in the manner and form as generally prescribed by the Minister in consultation with the MECs.

The MEC may make regulations as to the content of permissions strategies in addition to such requirements.

(4) The permissions strategy must be submitted to the MEC for approval before it is finalised, whose approval will relate only to procedures, financial issues that affect the province, provincial policy and principles, transport across the boundaries of the areas of planning authorities, interprovincial transport and other matters provided for in provincial laws.

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

Rationalisation plans

24. (1) Where it is proposed that a public transport service being operated in terms of a subsidy, be continued, after expiry of the basis in terms of which it is currently

operated, in terms of a subsidised service contract or concession, every planning authority in whose area the service is operated must prepare a rationalisation plan, which must eventually become part of its public transport plan, before the service to be operated in terms of the subsidised service contract, is put out to public tendering, with a view to—

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

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

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

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

(4) The rationalisation plan so prepared must be submitted to the MEC for approval before it is finalised. The MEC's approval will only relate to procedures, financial issues that affect the province, provincial policy and principles, transport across the boundaries of the areas of planning authorities and other matters provided for in provincial laws.

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

Public transport plans

25. (1) Every planning authority must not later than the date determined by the MEC, prepare a public transport plan with a view to determining and specifying the public transport services that it wishes to have provided in terms of the matters mentioned in section 22(2)(a) and (b).

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

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

- (b) the planning authority's strategies for—
 - (i) the needs of learners and users with disabilities;
 - (ii) including modal integration proposals and fare systems for public transport (fare structure, level and technology);
 - (c) an operational component, including—
 - (i) the provisions of the rationalisation plan for contracted services and concessions, and
 - (ii) the permissions strategy for all public transport services not covered under paragraph (i).
- (3) Public transport plans must be in accordance with the requirements, and in the manner and form as generally prescribed by the Minister in consultation with the MECs.

The MEC may make regulations as to the content of public transport plans in addition to such requirements.

(4) The plan so prepared must be submitted to the MEC for approval by not later than the date so determined. The MEC's approval will only relate to procedures, financial issues that affect the province, provincial policy and principles, transport across the boundaries of the areas of planning authorities and other matters provided for in provincial laws.

(5) Every planning authority must ensure that its public transport plan is updated at least once a year by a date determined by the MEC and made known in the provincial gazette.

Integrated transport plans

26. (1) Transport authorities and core cities, and other municipalities required by the MEC to do so, must prepare annually, not later than the date determined by the MEC, integrated transport plans for their respective areas for the five year period commencing on the first day of that financial year which comply with subsection (2).

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

- (a) specify the changes to the planning authority's land transport policies and strategies since the previous year's five-year plan;
- (b) include a list 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;
- (c) include all modes and infrastructure, including new or amended roads, airports, harbours (where applicable) and commercial developments having an impact on the land transport system;
- (d) include the planning authority's detailed budget, including funding sources, with regard to land transport for the relevant financial year in the format prescribed by the MEC;
- (e) include the planning authority's public transport plan;
- (f) set out a general strategy for travel demand management; and
- (g) set out a road and transport infrastructure provision, improvement and maintenance strategy;
- (h) set out a general strategy or plan for the movement of dangerous substances by road along designated routes.

(3) An integrated transport plan must be in accordance with requirements and in

the manner and form as generally prescribed by the Minister in consultation with the MECs. The MEC may make regulations as to the content of integrated transport plans in addition to such requirements.

(4) The plan so prepared must be submitted to the MEC for approval by not later than the date so determined. The MEC's approval will only relate to procedures, financial issues that affect the province, provincial policy and principles, transport across the boundaries of the areas of planning authorities, interprovincial transport and other matters provided for in provincial laws.

(5) No one may transport hazardous (dangerous) substances, as defined in section 1 of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), in the area of a planning authority except on a route determined under paragraph (h) of subsection (4), where such a route has been determined and published under section 26A(1), and any person who does so shall be guilty of an offence.

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

26A. (1) On completion and approval of the national land transport strategic framework, a provincial transport framework, a public transport plan or an integrated transport plan, the Department or planning authority, as the case may be, must publish, in the provincial gazette, or, in the case of the national land transport strategic framework, in the Government Gazette, the prescribed particulars of such plans, which must include particulars of routes determined under section 25(4)(h).

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

- (a) no substantial change or intensification of land use on the property of such a person or institution may be undertaken without the written consent of the relevant planning authority;
- (b) developments on property belonging to such institutions within a transport area shall be subject to traffic impact assessments and public transport assessments as prescribed by the MEC;
- (c) where new or upgraded transport infrastructure or services are suggested in such a traffic impact assessment or public transport assessment, the costs thereof must be paid by such institution, or as otherwise decided by the relevant planning authority or by the relevant MEC, in agreement with such institution. Where such agreement cannot be reached, any of the parties may approach a court having jurisdiction for determination of such costs;
- (d) no action may be taken that would have the result of substantially decreasing the quantity or availability of land transport infrastructure or services, unless the owner of the land on which the infrastructure is situated, or the holder of the relevant permission, as the case may be, has notified the relevant planning authority in writing not less than 30 days before the action is taken.

PART 8 PROVINCIAL PERMISSIONS BOARDS

Establishment and functions of provincial permissions boards

27. (1) Subject to subsection (2), the MEC of each province must establish a 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.

(2) A province may provide in provincial laws for the functions of the board to be transferred to similar bodies to be established by transport authorities, in respect of applications related to transport within their transport areas, but only if the MEC is satisfied that the particular transport authority is competent to do so and is performing the functions contemplated in section 10(12) satisfactorily.

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

- (a) applications for the granting of permissions for intraprovincial transport;
- (b) applications for the granting of permissions for interprovincial transport involving the province for which the permissions board has been established, subject to the approval of the relevant permissions board of the other province, or (as the case may be) of every other province, in which the interprovincial transport is to occur, subject to subsection (5);
- (c) applications for the renewal, amendment or transfer of permissions for intraprovincial transport (provincial legislation may, however, limit or prohibit such transfer); and
- (d) applications for the renewal, amendment or transfer of permissions that had been so granted by it for interprovincial transport, subject to the approval of the relevant permissions board of the other province, or (as the case may be), of every other province, in which the interprovincial transport occurs, but subject to subsection (5).

(4) In addition, a permissions board, on application made to it by the holder of any permit at any time before the day on which the permit lapses in terms of section 28, may convert the permit to a permission in terms of this Act and relevant provincial laws, 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.

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

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

PART 9 PERMISSIONS

Use of vehicle types for public transport services

27A. (1) From a date to be determined by the Minister by notice in the Government Gazette, which may not be earlier than 31 December 2003, no vehicle may be used for the operation of a public transport service unless it is designed, or lawfully adapted in compliance with the Road Traffic Act, 1989, to carry—

- (a) less than nine persons, including the driver; or
- (b) 18 persons, including the driver; or
- (c) 35 persons, including the driver; or

- (d) 50 or more persons, including the driver.
- (2) A midibus may be used for the operation of an unscheduled service only where—
 - (a) there are no existing scheduled services on the same route or on another route in the same corridor; and
 - (b) relevant transport plans allow for this.

Continuation and conversion of existing permits

28. (1) Subject to provincial laws, all permits must be converted to permissions by the date mentioned in subsection (2), failing which they will lapse.

(2) (a) The MECs and the Minister, must determine a date by which all permits must have been converted for the purposes of this section, which must be published in the Government Gazette.

(b) Each MEC may defer the date so determined in consultation with the Minister and the other MECs.

(3) A conversion under this section may not have the result that the total number of passengers that may be conveyed in terms of the permission is more than fifteen percent greater than the total number of passengers that could be conveyed under the permits from which the permission was converted, unless relevant transport plans allow for this.

Permission or permit prerequisite for operation of public transport services

29. (1) Subject to subsection (2), no one may operate a road based public transport service without holding the necessary permit or permission or, in the case of a special event, a temporary permit issued in terms of section 20 of the Road Transportation Act, 1977, or a replacing provincial law.

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

- (a) cross-border road transport on the authority of a permit granted and issued to the person in accordance with Part 6 of the Cross-Border Road Transport Act, 1998; 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

30. (1) Except on the conversion of a permit to a permission, no one has a right to be issued with a permission.

(2) A permission in respect of a minibus taxi-type service may be granted only to a person who is a member of a provisionally or fully registered association, or to a registered non-member, or to a person who has applied for registration as a non-member and has been granted a certificate contemplated in section 105(2).

Maximum validity period of permissions

31. No permission may be issued for longer than five years except where the permission is issued pursuant to the conversion of a permit or permits and this is allowed for in section 76 or relevant provincial laws.

Permissions board to which application must be made

32. 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, must be made to the permissions board of the province where the journey originates;
 - (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.

Notice of applications regarding permissions

33. (1) Subject to subsection (2), permissions boards must give notice in the provincial gazette of receipt of applications for the granting, renewal, transfer or amendment of permissions (except where provincial laws provide for exemptions from this requirement) and of the conversion of permits to permissions where the permit is converted from a radius or area based permit to a route based permission, or where there is a conversion to a permission for a larger vehicle, and in that notice state the essential particulars of the applications and invite interested persons to comment and make representations with regard thereto by a specified date.

(2) All applications involving inter-provincial services must be advertised in the Government Gazette.

Disqualifications with regard to holding of permissions

34. A person directly involved in the following functions or directly involved in the management thereof, may not hold a permission authorising the operation of a public transport service or be engaged in the operation of such a service:

- (a) Evaluating applications related to, or issuing, permissions;
- (b) preparing permissions strategies;
- (c) undertaking law enforcement related to public transport.

Permissions for public transport services provided for in transport plans

35. (1) Before considering any application for—

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

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.

(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, or, if there are no such plans, according to due inquiries and investigations carried out by it, 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 section 78, the permissions board, in disposing of such an

application, must act according to and may not grant a permission contrary to—

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

(4) Where the planning authority has failed to submit recommendations and representations to the permissions board in response to the latter's request, that board may dispose of and decide the application without any input from the planning authority, in the light of the best information available to it.

Permissions for contracted services

36. (1) (a) Where any commercial service contract or subsidised service contract has been awarded by a competent tender board or authority after completion of a process of public tendering in accordance with law, 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.

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

(2) Upon having applied successfully with regard to such a permission, that 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 operated.

(3) Permissions for the operation of public transport services to be provided in terms of commercial service contracts or subsidised service contracts must be granted only for the duration and subject to the terms and conditions of the contract concerned, and may be amended to extend the duration thereof where the duration of the relevant contract is extended.

Withdrawal of permissions upon termination of contracts

37. (1) 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.

(2) Upon the termination of a current tendered contract or interim contract for any reason, the provisions of subsection (1) 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 in terms of such a contract.

Duties of the holder of a permission

38. The holder of a permission must—

- (a) on demand by an authorised officer, produce the permission or any authorisation or registration certificate issued in terms of this Act or replacing provincial laws, subject to section 86(1)(b);
- (b) affix and keep affixed in the manner prescribed by the MEC, a distinguishing mark on the vehicle to which the permission relates.

Conveyance of learners, students, teachers and lecturers

39. The conveyance of learners, students, teachers or lecturers to and from a school or other educational institution on a regular basis, shall be regarded as public transport.

Minister may prescribe minimum information to be contained in permissions

39A. The Minister may prescribe minimum information to be contained in permissions issued by a provincial permissions board, from a date so prescribed.

**PART 10
REGULATED COMPETITION**

Subsidised service contracts

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

(2) Only a provincial department and a transport authority may enter into a subsidised service contract, and, subject to subsection (3), only if—

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

(3) The MEC may grant exemption from the requirements of paragraphs (a), (b) and (c) of subsection (2) and allow that a contract be negotiated with an operator, once only in respect of a particular service—

- (a) where the operator is a parastatal or municipal transport operator that is being restructured in order to comply with section 41, and assistance is being provided for the promotion of small business; and
- (b) only in the case of a transition from an uncontracted service to a contracted one or from an interim contract or current tendered contract to a subsidised service contract, and
- (c) where the contract is substantially in the form of the model contract documents contemplated in subsection (4).

(4) The Minister must provide model tender and contract documents, in consultation with the MECs, and publish them in the Government Gazette, for subsidised public transport services as a requirement for contracting authorities, who may not deviate therefrom unless this is agreed to by the Minister.

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

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

- (a) in the case of an unscheduled service must be registered with the Registrar of the province in which the relevant contract is to be performed, where this Act or a replacing provincial law requires such registration; and
- (b) must conduct public transport operations according to business principles with financial ringfencing; and
- (c) must furnish proof to the satisfaction of the competent tender 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 so to register.

- (2) For the purposes of subsection (1)(b), an operator is financially ringfenced if—
- (a) the business of the operator's undertaking is conducted separately from that of another entity or undertaking or any other organisation;
 - (b) the operator keeps separate accounting records, in accordance with generally accepted accounting practice and procedures, of its assets, liabilities, income, expenditure, profits and losses;
 - (c) the operator's undertaking is financially sustainable in terms of its financial statements; and
 - (d) the operator has no unfair advantage as regards access to financial or other support or resources.

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

42. (1) A transport authority may not operate any public transport service.

- (2) After the commencement of this Act, unless that body complies with section 41—
- (a) a municipality that is a party to a transport authority may not conclude a subsidised service contract with that transport authority;
 - (b) no municipality may conclude a subsidised service contract with any other transport authority, a province or any other municipality; and
 - (c) no body established by a municipality to conduct public transport operations may tender for any commercial service contract or subsidised service contract.

(3) Subject to section 40(3), no moneys made available for the purposes of this Act may be used in connection with the operation of a public transport service by a municipal transport operator or parastatal transport operator otherwise than in accordance with a commercial service contract or a subsidised service contract.

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

Commercial service contracts

43. A planning authority 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 operated—

- (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 or permit in rationalisation of public transport services or where surpluses exist

44. (1) (a) When a planning authority proposes to rationalise the operation of the public transport services in its area or where a transport plan reveals that there is a surplus of public transport services on a particular route, as a result of which an existing non-contracted public transport service is no longer required, the planning authority must use its best endeavours to offer the holder of the permission or permit concerned 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 or permit must apply forthwith to the permissions board in accordance with this Act and applicable provincial laws 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 or permit 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, or such holder has refused to accept such alternative service, that authority 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 or permit relates, is inconsistent with the proposed new public transport plan, the permissions board may withdraw the existing permission or permit 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 must by written notice inform the holder of the existing permission or permit, accordingly.

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

- (a) there are no other grounds which, in terms of this Act, justify the withdrawal of that permission; and
- (b) the public transport service to which that permission relates, is neither supported financially or operated by a municipality nor operated 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.

(4) That compensation must be calculated in accordance with guidelines determined by the Minister in consultation with the MECs, by notice in the Government Gazette. The compensation must be best suited to the circumstances and conditions prevailing in the province.

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

(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 Minister in terms of subsection (4).

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

PART 11 REGISTRATIONS

National Transport Register

45. (1) There is a National Transport Register in which must be recorded the particulars and information about associations, public transport services and operators, the vehicles used for operating those services and any other relevant information derived from the provincial registers, that may be prescribed by the Minister from time to time.

(2) The purpose of the National Transport Register will be to serve as a data base to monitor the implementation of formalisation of the public transport industry and to serve as input to the government's programme of economic assistance to that industry.

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

(4) (a) Subject to subsection (7) of section 6, which will apply with the necessary changes, the information and particulars recorded in the National Transport 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 (if any) that has been prescribed by the Minister, that official must furnish the person with a certified copy of or extract from any record contained in the Register.

Appointment of provincial registrars

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

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

(3) Subject to subsection (4), a provincial registrar must exercise or perform the powers, functions and duties of that office independently, fairly and impartially.

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

PART 12 REGISTRATIONS AND OTHER MATTERS RELATING TO MINIBUS TAXI INDUSTRY

Functions of registrar

47. A registrar will—
(a) receive and, in accordance with this Act and applicable provincial laws, 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 such laws;
- (c) keep records of all other information and particulars required to maintain the National Transport Register.

Registration of association or non-member in one province only

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

(b) For the purposes of paragraph (a) and section 50(b)(i), associations and non-members must select the province where they are based. A selection, once made, may in the case of an association, be changed only in accordance with a resolution adopted by the members of the association at an annual general meeting of its members in accordance with the association's constitution.

(2) A registration or provisional registration of an association and its members and of any non-member who undertake inter-provincial transport in a province while registered in another province, will be invalid and without any legal force and effect whatsoever.

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

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

49. (1) Any association and any non-member which, immediately before the commencement of this Act, was registered in terms of any provincial law, will be regarded and treated as an association or non-member registered provisionally for a period ending on a date to be determined by the MEC by notice in the provincial gazette after having consulted the Minister and the other MECs.

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

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

(3) An association that has been provisionally registered under subsection (1) may not become fully registered unless it complies with section 50.

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

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

Full registration of associations, directly

50. Associations will qualify for full registration only if—

- (a) 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;
- (iii) has had all permits held by that member converted to permissions;
- (iv) has subscribed to a constitution that complies with this Act;
- (b) 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 this Act and applicable provincial laws;
- (c) the association complies with relevant provincial laws in all other respects.

Registration of members

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

Issuing of certificates and distinguishing marks upon registration or provisional registration

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

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

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

(3) The Minister may prescribe the minimum particulars to be contained in any registration certificate or certificate of provisional registration to be issued for inter-provincial transport.

Requirements for constitutions of associations

53. For the purposes of full registration, the constitution of an association must comply with the minimum requirements, if any, prescribed by the Minister in consultation with the MECs.

Minister to determine minimum requirements for codes of conduct

54. Each MEC must prescribe a code of conduct for operators of minibus taxi-type services in the province, and the Minister, in consultation with the MECs, may prescribe the matters which, as a minimum, must be included in such a code of conduct.

Benefits of registration

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

(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 transport authority and a core city will not render financial assistance for any purpose to any operators of minibus taxi-type services who are not registered or provisionally registered members or non-members, or to any associations that are not so registered, except assistance related to training or instruction.

[No sections 56 and 57.]

CHAPTER 3: MATTERS OF PROVINCIAL CONCERN

PART 13 FUNCTIONS OF THE MEC

Functions of the MEC

58. (1) The MEC must, in addition to the functions imposed by section 9—
- (a) facilitate the increased utilisation of public transport for the province;
 - (b) take the necessary steps to promote co-ordination between transport authorities and other planning authorities in the province, or between such authorities and the province, with a view to avoiding duplication of effort;
 - (c) in taking any measures to promote public transport —
 - (i) further, within overall land transport objectives, the reasonable safety of passengers;
 - (ii) encourage efficient and commercial conduct on the part of transport operators in their provision of public transport services, and encourage competitive tendering for contracts and concessions;
 - (iii) further a strategic and integrated approach to the provision of public transport;
 - (iv) further or encourage the efficient use of energy resources, and limit or reduce adverse environmental impacts to the minimum;
 - (d) 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;

- (e) strive to ensure that in the promotion of integrated transport due consideration is given to the needs of transport users;
- (f) promote the performance of integrated transport planning in the province and cause to be prepared a provincial transport framework in accordance with section 21;
- (g) where this Act requires public consultation and participation before taking any decision or performing any official act, prescribe the procedures to be followed in this regard.

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

(3) A transport authority may apply to the MEC for the transport authority to take over the planning of the services contemplated in subsection (2). In deciding whether to do so, the MEC must consider primarily—

- (a) the extent to which the services are being operated within the transport area concerned, and
- (b) the ability of the transport authority to carry out the responsibilities related to this function.

(4) Where at the commencement of this Act, the province has been undertaking planning of public transport (other than of services contemplated in subsection (2)) which in terms of the Constitution should be undertaken by municipalities, the MEC and the planning authorities concerned must make arrangements for the transfer of the planning functions to the planning authorities concerned.

Regulations by the MEC

59. (1) The MEC may make regulations with regard to any matter which, in terms of this Act, may or must be prescribed by a MEC, or be governed, regulated or determined by way of a regulation made by a 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 exceed three months or a fine which may not exceed 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 superseding regulation under this section.

(4) The MEC may—

- (a) set maximum or minimum fares for subsidised public transport by rail, if the Minister has assigned the rail function to the province concerned;
- (b) by notice in the provincial gazette, set norms and standards in respect of matters relating to the operation of subsidised public transport services by road that are subsidised from the provincial budget, and related infrastructure, to the extent that this function has been assigned to the province.

PART 14 TRANSPORT AUTHORITIES

Agreements for the formation of transport areas and transport authorities

60. (1) Transport authorities may be established for transport areas, only as

provided for in this Part and Part 5 and only if the functions of such authority in relation to the functions of the municipalities involved complies with the Constitution and with sections 84 and 85 of the Municipal Structures Act, 1998.

(2) Any single municipality or any two or more municipalities, may, subject to section 11, enter into an agreement with the MEC that complies with the provisions of section 62 (hereafter called a founding agreement), in terms of which—

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

(3) The parties to a founding agreement may agree to amend the boundaries of the transport area concerned, provided that should such amendment involve the area of an additional municipality, the transport authority, if already established, will have to be dissolved in terms of section 66 and reconstituted.

Declaration of transport areas, and concomitant establishment of transport authorities

61. (1) Not later than 14 days after the conclusion of an agreement mentioned in section 60, the MEC, by notice in the provincial gazette, must—

- (a) give notice of and publish the founding agreement, which must comply with the requirements of section 62; and
- (b) declare the area concerned to be a transport area, and assign to it the name provided for in that agreement; and
- (c) where applicable, withdraw, in the manner provided for in section 3(1)(c) 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 transport area a transport authority with effect from the date specified for that purpose in the founding agreement.

(2) A founding agreement, upon having been so published, has the force of law, and no amendment thereof 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 agreements

62. The founding agreement must be in writing and provide at least for the following:

- (a) A declaration by the contracting parties affirming their agreement on the establishment of a transport authority for the transport area concerned.
- (b) The name to be assigned to the transport area.
- (c) The date with effect from which that transport authority is to be established.
- (d) The establishment and structure of a governing body for that transport authority, the number of its members and the manner in which they are to be designated and appointed. 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.
- (e) The designation and appointment of a chairperson and deputy chairperson for the governing body.
- (f) Voting procedures and members' voting rights at meetings of the governing body and any committee thereof (where applicable), and mechanisms and procedures for

- breaking deadlocks in decision-making.
- (g) The appointment or designation of a chief executive officer for that transport authority, and the responsibilities, functions and powers attached to that office.
 - (h) The powers of the governing body that may be delegated to any of its members or to the chief executive officer of that transport authority.
 - (i) The venue for the head office of that transport authority and for meetings of its governing body.
 - (j) The physical address for delivering, sending or serving all correspondence, documents, notices and court process directed to the transport authority.
 - (k) In the case where the transport area consists of the jurisdictional areas, or parts of the jurisdictional areas, of two or more participating municipalities—
 - (i) the contribution of each participating municipality to the funding of that transport authority;
 - (ii) the performance of the professional, technical, administrative, clerical, secretarial and other work arising from, necessary for, or relevant or incidental to, the exercise and performance by that transport authority of its powers and functions in terms of this Act;
 - (iii) subject to this Act, the requirements to be observed and procedures to be followed by any participating municipality that wants to withdraw from that transport authority, and its responsibilities, duties and obligations with regard to the then current or outstanding commitments and liabilities of that authority; and
 - (iv) the procedures to be followed for and pursuant to the voluntary dissolution of that transport authority, subject to section 22;
 - (l) The arrangements made for the performance of the professional, technical, administrative, clerical and other work of the transport authority in terms of section 70, if not already covered under paragraph (l)(ii).

Functions and competencies of transport authorities

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

- (a) promote security in public transport;
- (b) encourage and promote the optimal use of the available travel modes so as to enhance the effectiveness of the transport system and reduce travelling time and costs;
- (c) develop, operate and maintain a land transport information system;
- (d) market and promote and assume responsibility for publicity associated with the public transport system;
- (e) provide information to users or potential users of public transport;
- (f) in the case of subsidised services, determine fare structures and fare levels, and concessionary fares for special categories of passengers (which will include elderly or disabled persons, learners or students), and periodically adjust fares in consultation with stakeholders, if the MEC has entrusted the subsidy function to the transport authority;
- (g) in the case of unsubsidised public transport services, set minimum fares;
- (h) make payments to public transport operators operating public transport services in terms of subsidised service contracts and concessionary fare agreements to which it is a party, if the MEC has entrusted this function to the authority;
- (i) institute and conduct investigations into the financial circumstances and operating

practices of—

- (i) persons who, at the time, are existing or potential operators of public transport services in relation to or in the transport area; or
 - (ii) the holders of permissions who, at the time, are operating public transport services in relation to or in that area, and, if the holder is a company belonging to a group of companies, also into those circumstances and practices of any other company in that group of companies;
- (j) introduce or establish, or assist in or encourage, promote and facilitate the introduction or establishment of integrated ticketing systems and determine or prescribe measures for the regulation and control of revenue-sharing among the operators involved in that system;
- (k) exercise control over service delivery through—
- (i) the setting of operational and technical standards, and monitoring compliance therewith; and
 - (ii) the monitoring of contracts and concessions;
- (l) develop, implement and monitor a strategy to prevent, minimise or reduce any adverse impacts of the land transport system on the environment;
- (m) in agreement with relevant participating municipalities—
- (i) take over functions related to municipal roads;
 - (ii) apply measures to limit damage to the road system in that part of the transport area.
- (3) The MEC and a transport authority may agree—
- (a) that different functions will be undertaken in rural areas as opposed to urban areas in the transport area concerned; or
- (b) in the case of a district municipality being a participating municipality that is a Category C municipality contemplated in section 155(1)(c) of the Constitution, that different functions may be undertaken within the areas of jurisdiction of the Category B municipalities in the area concerned, as opposed to areas outside of such areas.
- (4) With a view to ensuring co-ordinated transport law enforcement within its area, the transport authority must liaise on a continuous basis with the South African Police Service, the relevant provincial and municipal law enforcement authorities or agencies, and the inspectors appointed and serving under the Cross-Border Road Transport Act, 1998.
- (5) A transport authority may, with the agreement of a participating municipality, assume co-responsibility for or assist the participating municipality in the application of traffic management techniques aimed at improving road traffic movement in that part of the transport area that coincides with the jurisdictional area of that participating municipality;
- (6) (a) Whenever a transport authority fails to perform its functions in terms of subsection (1), or having undertaken a voluntary function contemplated in subsection (2), fails to perform it, or fails to perform such a function properly and effectively in accordance with this Act and applicable provincial laws, the MEC, by notice in writing addressed to the transport authority through the latter's governing body or chief executive officer, may order that authority to remedy its default and perform the function concerned, or, as the case may be, to perform it properly and effectively, not later than the date stated in the notice, 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 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

transport authority, to pay the costs arising from taking those steps, or recover those costs from the transport authority.

Ancillary powers of transport authorities

64. (1) A transport authority may enter into an agreement with a municipality that is not a participating municipality in terms of which the transport authority is to exercise or perform on behalf of that municipality, any power or function entrusted to the municipality by or in terms of this Act or applicable provincial laws, provided the transport authority itself is competent in terms of this Act and applicable transport legislation, to exercise or perform the same or a similar power or function with regard to its transport area.

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

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

Governance of transport authorities

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

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

Dissolution of transport authorities

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

(b) The provisions of paragraph (a) do not affect the capacity of any 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 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 transport authority, it has decided to terminate its participation in the transport authority and has notified the MEC in writing of the decision;

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

(aa) the municipalities concerned have agreed in principle that the transport authority be dissolved, and have so notified the MEC of that fact;

(bb) one or some (as the case may be) of those municipalities has or have decided to terminate its or their participation in that transport authority (as the case may be), and every municipality that has so decided, has so notified the MEC and the other municipality, or (as the case may be), each of the other municipalities, of the decision.

(b) The MEC, within 30 days after having been so notified, has by notice published in the

provincial gazette and a newspaper generally read in the transport area affected by that notification, made known the proposed dissolution of the transport authority concerned, invited interested parties to comment and make representations with regard thereto, and requested 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 transport authority have entered into an agreement in terms of which arrangements are made, with due regard to the comments and representations (if any) furnished in response to the MEC's notice in terms of paragraph (b), with regard to the matters listed in section 10(12). However, the date of dissolution must be so determined as to allow opportunity for sufficient 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 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 30 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 transport area concerned, make known the dissolution of the transport authority and publish the terms of that agreement. However, the date of dissolution must be so determined as to allow opportunity for sufficient notice being given.

Finances of transport authorities

67. (1) (a) The chief executive officer of a transport authority must have proper accounting records kept in accordance with generally accepted accounting practice and procedures so as to fully reflect the income and expenditure of that authority and the state of its financial affairs;

(b) The accounting records must include a revenue account which must be credited with all moneys which accrue to and are received by the transport authority, and must be debited with the expenses incurred by that authority.

(2) (a) Each transport authority must, not later than three months before the end of each financial year prepare a statement of estimated income and expenditure (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 the current financial year submit a supplementary budget for that financial year to the municipality or municipalities for approval.

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

(c) A transport authority may establish a reserve fund for any purpose connected with its functions in terms of this Act, which has been approved by the MEC, and allocate to the reserve fund the moneys made available for that purpose in the budget (including any supplementary budget) approved under paragraph (a).

Delegations by governing body

68. (1) Whereas the powers and functions of a transport authority in terms of this Act are entrusted to that authority's governing body, that body may delegate any of its powers or functions, except the power of governance contemplated in section 65, the power conferred by this subsection, and the power to make by-laws, to any member of that governing body.

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

Provisions applicable to delegations

69. (1) A delegation by the governing body under section 68—

- (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 delegatee in writing. The written notification must contain full particulars of the matters being delegated and of any conditions attached to the delegation, and, where the power of sub-delegation is conferred, must state that fact as well as any conditions attached.

(2) The governing body may at any time—

- (a) amend or revoke a delegation made under section 68;
- (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 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 of transport authority by a transport executive

70. (1) The parties to a founding agreement may provide therein—

- (a) that the professional, technical, administrative, clerical and other work arising from, necessary for, associated with or incidental to the functioning of the transport authority in terms of this Act or the exercise or carrying out of its powers and functions thereunder, is to be performed for the transport authority by the municipal administration of one of the participating municipalities specified in that agreement or any one or more specified departments in the municipal administration of one or more participating municipalities so specified. In the latter case, the provisions of Part 8 of the Municipal Systems Act, 1999 will apply; or
- (b) for the establishment by the transport authority of a body under its auspices and subject to its control (hereafter called a transport executive), to perform all work of that nature or any specified type or category of that work for the transport authority.

(2) Where the founding agreement provides for the establishment of a transport executive—

- (a) provision may also be made in that agreement that the transport authority, if requested thereto by another transport authority, may make its transport executive available to

perform work of that nature for that other authority—

- (i) in terms of a written agreement entered into between the transport authorities concerned;
 - (ii) for a fee or against payment of an amount specified in that agreement; and
 - (iii) in accordance with and subject to—
 - (aa) the standard terms and conditions (if any) stipulated in the founding agreement or prescribed in the by-laws of the requested transport authority; and
 - (bb) the terms and conditions specially stipulated in that agreement; and
- (b) provision must be made at least for the following:
- (i) Where not all the abovementioned professional, technical, administrative, clerical and associated work of the transport authority is to be performed by the transport executive, specification of the type or category of work for the performance of which the transport executive is to be responsible.
 - (ii) The place where the offices of the transport executive will be situated.
 - (iii) The manner in or procedure according to which the staff establishment of the transport executive is to be determined.
 - (iv) The repository of the power to appoint and dismiss its staff.

Joint transport executives

71. (1) The MEC and any two or more transport authorities authorised thereto by their respective participating municipalities, may enter into an agreement providing for the formation of a transport executive under the auspices of those transport authorities jointly, to perform, for each of them, the professional, technical, administrative, clerical and other work arising from, necessary for, associated with or incidental to its functioning as a transport authority 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 70(2)(b), which, with the changes necessary in the context, will apply in relation to a joint transport executive;
- (b) the powers of the participating transport authorities with regard to the exercise of supervision and control over their joint transport executive;
- (c) the contribution of each participating transport authority to the funding of their joint transport executive.

PART 15 PROVINCIAL PERMISSIONS BOARD

Appointment of members of permissions board

72. (1) The permissions board will consist of the number of members determined by the MEC by notice in the provincial gazette.

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

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

Duties of permissions board

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

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

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

(4) Every 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 System as prescribed by the Minister.

PART 16 PERMISSIONS

Continuation and conversion of existing permits

74. (1) Subject to this Part, 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 permit 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 MEC by notice in the provincial 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 such an application for conversion has not been made—

- (i) in the case of a permit for an indefinite period, on the expiry of the period mentioned in paragraph (a) of that subsection;
- (ii) in the case of a permit for a definite period, on the expiry of the definite period or the period mentioned in that paragraph, whichever occurs first; or

- (b) where such an application has been made, upon the conversion of the permit to an appropriate permission in accordance with this Act.

(4) The authority conferred by a permit may not be renewed, amended or transferred, unless the permit has first been converted to a permission in accordance with this Part.

Conversion of permit not allowed in certain circumstances

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

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

Manner of converting permits to permissions

76. (1) Subject to this section, a permission issued in place of a permit pursuant to the conversion contemplated in section 74, 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, based on the holder's actual operations for the period of 180 days prior to the date of application, and must set out the time table for that route or each of them (as the case may be);
- (b) where that service is provided in terms of an interim contract or current tendered contract, the 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, based on the holder's actual operations for the period of 180 days prior to the date of application. The route or routes must be specified in detail, except in circumstances where the Board on reasonable grounds finds the non-detailed specification of the route or routes justified;
- (b) that authorises operation within a particular radius, the 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, based on the holder's actual operations for the period of 180 days prior to the date of application, subject to sub-paragraph (ii);
 - (ii) may, where the Board finds on reasonable grounds that circumstances exist to justify such action, authorise operation of the transport service in a particular area that is described in detail.

(4) In the case of the conversion of a permit for a metered taxi service, the 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) 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.

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

(7) No compensation will be payable to the holder of a radius or area-based permit by virtue of its conversion to a route-based permission in terms of this section.

Conversion of permits to permissions for larger vehicles

77. (1) Subject to subsection (3), permits for unscheduled services operated by minibus vehicles may be converted to permissions for unscheduled or scheduled services operated by midibuses, depending on relevant transport plans, on the basis of one permission

for the surrender of two permits. The permission must be issued for an indefinite period if both such permits were issued for an indefinite period, otherwise for a fixed period not exceeding five years and must, in addition to the matters mentioned in provincial laws, specify the number of seated passengers that may be carried. No standing passengers may be carried by virtue of this permission.

(2) Subject to subsection (3), 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 unscheduled services operated by minibuses on the basis of one permission for the surrender of two permits. The permission must be issued for an indefinite period if both such permits were issued for an indefinite period, otherwise for a fixed period not exceeding five years; or
- (b) for unscheduled or scheduled services operated by midibuses on the basis of one permission for the surrender of four permits. The permission must be issued for an indefinite period if all four such permits were issued for an indefinite period, otherwise for a fixed period not exceeding five years, and must, in addition to the matters mentioned in provincial laws, specify the number of seated passengers that may be carried. No standing passengers may be carried by virtue of this permission.

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

78. (1) Where any application is made for the granting, renewal, amendment or transfer of a permission in respect of a non-contracted service, the permissions board may grant or refuse the application only 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 spaces for boarding or alighting from and for holding or parking vehicles engaged in the operation of that service, and the recommendations with regard thereto of the relevant planning authority or municipality and of any other planning authority and municipality with an interest in the matter;
- (c) the existence of any by-law, regulation, prohibition, limitation or restriction by a municipality that has relevance to the transport service that the applicant proposes to operate under the authority of the permission to which the application relates;
- (d) whether the applicant has any previous conviction for an offence arising from the operation of a public transport service, in respect of which imprisonment was imposed without the option of a fine or imprisonment was imposed for not less than six months with the option of a fine, and the seriousness of any such offence.
- (e) the ability of the applicant to operate the service for which the permission is sought, in a manner satisfactory to the public;
- (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.

(2) 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 a then existing public transport service of a similar nature, standard or quality provided in terms of a commercial service contract or subsidised service contract or in terms of permissions as shown by relevant transport plans.

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

(4) (a) The permissions board may grant an application for the granting, renewal, amendment or transfer of a permission subject to any conditions, determined by it, that are not inconsistent with this Act or with relevant provincial laws, but subject to section 36.

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

Cancellation of permissions not brought into use

79. (1) Where it comes to the notice of the permissions board that a permission converted from a permit has not been brought into use within 180 days, 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 board should not cancel that permission.

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

(3) 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.

Issue of permissions, and contents thereof

80. (1) A permission will not be issued unless—

- (a) the person requiring it has applied therefor in accordance with the provisions of this Act and applicable provincial laws;
- (b) the successful applicant for the granting, renewal, amendment or transfer of the permission, has submitted to the permissions board proof of roadworthy certification in respect of the vehicle to which the permission relates in the manner prescribed by the MEC;
- (c) the successful applicant has furnished proof to the satisfaction of the permissions board that the applicant is registered as a tax payer under the Income Tax Act, 1962 (Act No. 58 of 1962), or, in terms of that Act, is not required so to register.

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

(3) 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.

(4) A permission must state the following:

- (a) The name and address of the public transport operator and, where applicable,

- particulars of the operator's registration as a member of an association or a non-member (as the case may be);
- (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 operated in terms of a commercial service contract or a subsidised service contract—
 - (i) the type of contract;
 - (ii) the contract reference number;
 - (iii) the names and addresses of the parties to the contract; and
 - (iv) where part of such a service in terms of such a contract is to be operated by a sub-contractor on behalf of the holder of 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) a detailed description of the route or routes on which, or, where applicable, the particular area in which, the vehicle is to be used for the operation of the service to which the permission relates, through specification of the relevant street names, road numbers, beacons or land marks for each city, suburb, town, village or settlement;
 - (g) the authorised ranks or terminals and other points for picking up and setting down passengers, where applicable;
 - (h) in the case of scheduled services, the relevant timetables;
 - (i) the conditions imposed by the permission board (if any); and
 - (j) all other particulars that may be prescribed.
- (5) Permissions for long distance services must specify the route or routes, the ranks or terminals for the picking up and setting down of passengers and any other points along the route or routes where passengers may be picked up or set down.

Authority conveyed by a permission

81. A permission granted and issued under this Act—
- (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 or in a transport area if it is unlawful to do so in terms of any national or provincial law in force with regard to the municipality or, in terms of any by-law of the municipality or relevant transport authority;
 - (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.

Permission may be held only by registered owner or operator of vehicle

82. A permission may only be issued to and held by the person registered, in terms of the Road Traffic Act, 1989, as the owner or operator of the vehicle, as defined in that Act, and 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 first-mentioned 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.

Rules applicable with regard to the various permissions

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

- (a) In determining the period of permissions for non-contracted public transport services, due regard must be had to—
 - (i) current and envisaged trends in demand on the route or routes, or, where applicable, 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 no longer 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.
- (b) 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 prepared by a competent planning authority for an area affected by that service. In addition, where the service is to be operated by a minibus, the permissions board may consider the recommendations of any taxi associations with an interest in the matter;
 - (bb) in the case of a minibus taxi-type service, must impose the condition that passengers may not be picked up or set down *en route* unless the operator has reached agreement in this regard with the relevant transport authorities and municipalities and with the taxi associations operating locally in the area concerned.
- (c) In the case of permissions for staff services to be provided on a regular basis, the permissions board must specify the route or routes authorised.
- (d) Permissions for charter services, long distance services, staff and tourist services must be granted for a fixed period determined by the permissions board, subject to section 31.
- (e) In the case of an application for the granting, renewal or amendment of a permission relating to a long distance service, the provisions of any transport plans prepared by the relevant planning authority and of any applicable provincial laws and, subject to this paragraph—
 - (i) The extent to which the service to be provided by the applicant is necessary or desirable in the public interest.
 - (ii) The requirements of the public for the service along the route or routes on which or the particular area in which the applicant proposes to operate.
 - (iii) The existing transport facilities available to the public on that route or those routes or in that area.
 - (iv) The need to ensure co-ordination of all forms of transport, including transport

by rail, to achieve an economically sound balance between the transport modes with due regard to the public interest.

- (v) In the case of a minibus taxi-type service, the recommendations of any taxi associations that have an interest in the matter.

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

83A. (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 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 agrees thereto.

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

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

Amendment of permission: Replacement of specified vehicle

84. (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 the nature of the replacing vehicle and the quality and standard of the service are not affected by the replacement.

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

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

(3) Where a sub-contractor operates any part of the public transport service to which 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.

Special conditions relating to metered taxi and staff services

85. (1) 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.

(2) The MEC may make special regulations, in addition to the provisions of this Act, regarding the circumstances in which a permission may be granted for staff services.

Duties of the holder of a permission

86. (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 plan, operate that service in accordance with that plan;
- (b) keep the original permission or a duplicate original in the vehicle specified in the permission, and, where the vehicle so specified is temporarily replaced under provincial laws, keep the permission and the temporary authorisation issued for the replacing vehicle in that vehicle for the duration of the temporary replacement. However, the board may direct in writing that the annexures to a permission do not have to be kept in such vehicle where they are too bulky to allow for this;
- (c) if a member of an association registered in terms of this Act, or a non-member so registered, keep in such a vehicle the registration certificate issued to the holder in terms of section 106;
- (d) on demand by an authorised officer, produce that permission, authorisation or registration certificate;
- (e) keep the permission and any duplicate original 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 by the MEC;
- (f) cause the name, address and nature of the business of the holder to be displayed on the vehicle to which the permission relates, in a conspicuous place in the manner prescribed by the MEC;
- (g) display on or in that vehicle the other particulars as prescribed in any condition determined 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 every such examination to the permissions board within 90 days after it has been issued;
- (k) return a permission that has lapsed or has been withdrawn or cancelled, to the permissions board within seven days;
- (l) comply with the provisions of this Act and with any other requirements imposed by a relevant law of any province to whose jurisdiction the holder, in or through the operation of the service to which the permission relates, may be subject at any given time.

(2) (a) The authority conferred by a permission may not—

- (i) be ceded or otherwise 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 was covered on the route or routes or, where applicable, in the area, specified in the permission, during that previous calendar month;
 - (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) in 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 (3), must be recorded by the driver of the vehicle, or by the conductor if one is on duty, at the end of each forward and return journey.
- (5) Where any sub-contractor operates any part of the public transport service to which 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, with the changes necessary in the context, in all respects as if the sub-contractor were the holder of that permission.

PART 17

REGISTRATIONS AND OTHER MATTERS RELATING TO MINIBUS TAXI INDUSTRY

Appointment of Transport Registrar

87. (1) Subject to section 46, the MEC must appoint a Transport Registrar for the province to exercise the powers and perform the functions and duties conferred and imposed on the holder of that office by this Part and Part 12.

(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 member of the executive council entrusted with the province's financial affairs.

(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 88, 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

- 88.** (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) in terms of the Cross Border Road Transport Act, 1998, or this Act; or
 - (iv) in terms of section 118 of this Act, or convicted before the commencement of this Act of any offence in terms of a previous law, if that offence is similar to any offence mentioned in section 118 of this Act;
 - (f) who, subject to section 46(4), has any direct financial or business interest in any sector of the public transport industry.
- (2) When the appointment of any person as Registrar is considered, the person may be required to disclose to the MEC, in writing, any interests which the person may have in the minibus taxi industry or any other part of the public transport industry.

Resignation of Registrar, and removal from office

- 89.** (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 attached to that office fairly and impartially; or
 - (ii) to perform those duties 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

- 90.** (1) The incumbent of the office of Registrar must vacate office—
- (a) when the incumbent becomes subject to a disqualification mentioned in section 88;
 - (b) when the incumbent's resignation in terms of section 89 takes effect; or
 - (c) upon removal from office under section 89(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 87, of a fit and proper person who is not subject to a disqualification mentioned in section 88, which will apply, with

the changes necessary in the context, to such an appointment.

Functions of Registrar

91. (1) The Registrar must—

- (a) receive and consider, and decide upon applications for the registration of associations and their members, and of non-members, as provided for in Part 12 and this Part;
- (b) advise the MEC on matters falling within the scope of Part 12 and this Part, and provide the MEC with information on matters of public importance acquired in the course of performing the functions of that office in terms of those Parts;
- (c) take all reasonable steps to monitor and acquire information with regard to the compliance or non-compliance—
 - (i) by registered associations, with the provisions of their respective constitutions;
 - (ii) by registered members and by registered non-members, with the Code of Conduct;
 - (iii) of the registered associations' constitutions, with the provisions of section 109;
- (d) assist in the promotion of professional practices by registered associations and their members and by non-members;
- (e) take any steps that are reasonably necessary with a view to encouraging associations to register in accordance with Part 12 and this Part, and provide advice and assistance to enable them to apply successfully for registration;
- (f) consider and decide on the suspension or cancellation of the registration of an association or any member thereof or of any non-member;
- (g) evaluate proposed amendments to the constitutions of registered associations in order to ensure that the amendments are consistent with the requirements of section 109, and liaise with associations with a view to preventing the adoption of amendments that are not so consistent, or inform them of the inconsistency of amendments adopted by them, and call on them to abandon such amendments.
- (h) keep a provincial transport register in which is recorded, in the manner prescribed, the name of every association, member of an association or non-member whose application for such a registration has been granted, together with the prescribed information and particulars about the taxi service or services rendered by the association, member of the association or non-member so registered, and the vehicles used for operating those services;
- (i) keep records of all other information and particulars required to maintain the National Transport Register.

(2) (a) The information and particulars recorded in the provincial register will be open to inspection by the public during the provincial department's normal office hours.

(b) At the request of any interested person and on payment of the fee (if any) that has been prescribed by the MEC, the Registrar must furnish the person with a certified copy of or extract from any record contained in the provincial transport register, subject to subsection (7) of section 6.

(3) In dealing with any matter contemplated in subsection (1)(a) or (f), the Registrar may—

- (a) allow a person affected by or interested in the matter, or the duly authorised representative of such a person, to appear before the Registrar and—
 - (i) give evidence or make oral representations relevant to the matter;
 - (ii) call witnesses and lead evidence on any question concerning a matter relevant to the proceedings before the Registrar;
 - (iii) question a person who testifies as a witness in those proceedings;
- (b) issue a subpoena in the form prescribed by the MEC requiring a person to appear

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

92. (1) The Registrar may not attend to and dispose of any matter in which the Registrar has a direct commercial or pecuniary interest which is greater than that which a member of the general public has in that matter.
- (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 87 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.

Registrar to report annually

93. (1) Annually, as soon as possible after the end of the province's 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 its role and contributions in assisting the Registrar in the performance of the functions of that office in terms of Part 12 and this Part;
 - (c) matters concerning the registration of associations, the members thereof, and non-members; and
 - (d) other topical matters in connection with or arising from the application of this Part and

Part 12.

(2) The MEC must table the Registrar's report in the provincial legislature within 21 days of receipt, if the legislature is then sitting, or if it is not then sitting, within 21 days of the beginning of its next session.

Establishment and functions of panel of assessors

94. (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 for their transport;
- (c) at least one must have a formal qualification in law;
- (d) at least one must have special knowledge of the functioning and operations of transport authorities and municipalities in the province or under its jurisdiction.

(2) The functions of the panel of assessors 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 Part 12 and 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

95. (1) Subject to subsection (2), the MEC must appoint the number of assessors specified in terms of section 94(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 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 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, in accordance with a tariff so determined, for all reasonable travelling and subsistence expenses necessarily incurred while the assessor was officially occupied with the work of that panel.

Meetings of panel of assessors

96. (1) (a) The panel of assessors will meet as often as may be necessary 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 of their number as the chairperson.

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

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

(3) (a) A decision 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 disqualified person 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

97. (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 95(2), 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 96(4) will apply, with the changes necessary in the context, also where any person has been co-opted in terms of this section.

Resignation and removal from and vacation of office (Assessors)

98. The provisions of sections 89 and 90 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, 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

99. (1) An assessor may not attend or participate in any meeting of the panel where the proceedings at the meeting entail the discussion of or voting on any matter in which

the assessor has a direct commercial or pecuniary interest which is greater than that which a member of the general public has in that matter.

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

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

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

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

100. (1) (a) For the purposes of section 49, the Registrar, if satisfied that an association or non-member qualifies for provisional registration in terms of that section, must register the association or non-member provisionally, subject to section 48((1)(a), by entering the latter's name and the required particulars as prescribed by the MEC in the provincial transport register.

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

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

- (a) When the period mentioned in section 49(1) expires.
- (b) When the provisional registration is converted to full registration in terms of subsection (3).

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

- (a) that its members no longer hold any current permits under the authority of which they would be entitled, in terms of section 74, 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 this Act and applicable provincial laws.
 - (ii) The termination of the membership of any member who is the holder of such a permit and has failed to have that permit so converted to a permission;
- (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 101, the provisions of which will apply with the changes necessary in the context.

(4) The Registrar must register any non-member who, before the expiry of the period of provisional registration, has applied to the Registrar to convert the non-member's provisional registration to full registration and has satisfied the Registrar that the non-member complies with section 105.

(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 101.

Provisional registration of associations not qualifying directly for full registration

- 101. (1)** An association may be provisionally registered if—
- (a) the association has been in existence for a period not shorter than the prescribed period;
 - (b) the number of its membership as at the date of application is not below the minimum number 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 MEC by notice in the provincial gazette;
 - (d) the association has a constitution—
 - (i) which has been subscribed to by all its members, and in terms of which any breach of those specified provisions of the Code of Conduct by any member 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 109 as determined by the MEC by notice in the provincial gazette;
 - (e) the amounts of the joining fee and membership fee do not exceed the maximum amounts as so determined for those purposes by the MEC.
- (2) The Registrar, if satisfied that an applicant association meets the requirements for provisional registration imposed by subsection (1), must register it provisionally, by entering its name and the particulars prescribed by the MEC in the provincial transport register, subject to this section, and must issue to the association an appropriate registration certificate in the form so prescribed.

Full registration of associations directly

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

- (a) the association complies with the requirements of section 50;
- (b) the association has been in existence for a period not shorter than the period determined by the MEC by notice in the provincial gazette;
- (c) the number of its membership as at the date of the application is not below the minimum number as so determined by the MEC;
- (d) the application fee prescribed by the MEC (if any) has been paid;
- (e) the amounts of the joining fee and membership fee of the association do not exceed the maximum amounts as so determined; and
- (f) the association is not disqualified in terms of an order issued under section 110(5) from being registered.

Application and registration procedure

103. (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; and
- (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; and

- (d) such other proof of the applicant's compliance with the requirements of this Act, 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 this Act, or, as the case may be, the requirements for conversion to full registration, have been met.

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

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

(4) A non-member applies for 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, in the case of a non-member that is a juristic person, by the latter's duly authorised representative;
- (b) a statement under oath or affirmation whereby the applicant subscribes to the Code of Conduct; and
- (c) such other proof of the applicant's compliance with the requirements of this Act, 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.

Registration or provisional registration of members

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

(2) (a) (i) Where any association has been provisionally registered, every person who is a member of the association and 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, must be registered as a member provisionally for a period ending when that association's provisional registration lapses.

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

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

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

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

satisfied that—

- (i) the new member—
 - (aa) holds an appropriate 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 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.

Registration of non-members

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

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

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

Certificates of registration and distinguishing marks

106. (1) Upon having registered or provisionally registered any association, any

member or any non-member, the Registrar must allocate a unique registration number to the association, member or non-member concerned and issue to the association, member or non-member a registration certificate or a certificate of provisional registration in the manner and form and containing the particulars as prescribed by the MEC, subject to section 52.

(2) Where the member or non member that is registered or provisionally registered is engaged in intraprovincial transport the Registrar, with effect from a date determined by the MEC by notice in the provincial gazette, must issue, in the manner and form prescribed by the MEC—

- (a) a distinguishing mark for every vehicle of the registered member or non-member that is used, under the authority of an appropriate 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 so used under the authority of an appropriate permission or permit; or
 - (ii) in respect of which the provisionally registered member or non-member has made application for an appropriate permission in accordance with this Act and applicable provincial laws.

(3) 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 or provisionally registered non-member, whose registration occurred before the date of that notice, upon mere submission to the Registrar of—

- (a) the registration certificate of the registered member or non-member concerned, and a current permission or permit for 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 for each 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.

Duties of registered and provisionally registered associations and non-members

107. (1) A registered association must—

- (a) take all steps that are reasonably necessary to prevent breaches of the Code of Conduct and any other misconduct on the part of its members and their drivers, and to take disciplinary steps against members whenever necessary;
- (b) inform the Registrar expeditiously and timeously of the outcome of all disciplinary proceedings against members and grievance procedures by members;
- (c) inform the MEC of any impending or current conflict with any other association or associations;
- (d) inform the Registrar expeditiously and timeously of any changes—
 - (i) in its membership; and
 - (ii) with regard to the information furnished by it to the Registrar in compliance with this Part and Part 12;
- (e) inform the Registrar of the termination or temporary suspension of the membership of any registered member, within seven days after the termination or suspension;
- (f) timeously give the Registrar notice of all general meetings of members, and allow the Registrar or the Registrar's representative to attend such a meeting as an observer;
- (g) inform the Registrar timeously of any amendment proposed to its constitution and the nature and effect thereof;

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

MEC to prescribe Standard Minimum Constitution and Code of Conduct

108. (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, must prescribe—

- (a) a model constitution for associations, to be known as the Standard Minimum Constitution, which complies with the requirements of section 109; and
- (b) a code of ethics, to be known as the Code of Conduct, providing for not less than the matters prescribed by this Act.

(2) The Standard Minimum Constitution sets a yardstick for the preparation of a constitution for an association with a view to enabling the registration of associations in accordance with this Part and Part 12 provided the other requirements for registration are met.

(3) The Code of Conduct constitutes the set of ethical norms in accordance with which any minibus taxi-type service is to be operated.

Requirements for constitutions of associations

109. (1) For the purposes of full registration, the constitution of an association must comply with the minimum requirements, if any, prescribed by the Minister in terms of section 53, and—

- (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 a governing body to represent and manage the affairs of the association and its members and act on its behalf, and define the functions, duties and powers of the governing body in that regard;
 - (k) describe the manner in which decisions are to be made by the governing body;
 - (l) establish the office of secretary and define the functions attached thereto;
 - (m) provide for other office-bearers on that body and define their respective functions;
 - (n) prescribe a procedure for nominating and electing the members of that body;
 - (o) establish the circumstances and manner in which members of that body may be removed from office;
 - (p) provide for appeals against their removal from office, and prescribe a procedure for those appeals and determine the body to which those appeals may be made;
 - (q) establish the circumstances and manner in which a ballot must be conducted;
 - (r) provide for a grievance procedure, and the establishment of a standing grievances committee;
 - (s) stipulate the requirements for amalgamation with any other association;
 - (t) require proper accounting records to be kept and financial statements prepared in accordance with generally accepted accounting practice and procedures, and establish a standing financial committee;
 - (u) determine a date for the end of its financial year;
 - (v) provide for the appointment of an accounting officer, for financial control and responsibility, and for the annual audit of the association's accounts and statements by a person registered and practising for own account as a public accountant and auditor;
 - (w) provide for the opening of a banking account for the association, and the banking of its money;
 - (x) establish the purposes for which the association's money may be used.
 - (y) prescribe a procedure for changing its constitution; and
 - (z) prescribe a procedure by which it may be decided to dissolve the association.
- (2) The constitution also, in making provision in terms of subsection (1) for—
- (a) special meetings of members, must provide for members to call a special general meeting if a stipulated number or percentage of the members indicate that they so require such a meeting;
 - (b) the election of members of the executive committee or body, not allow members to be elected thereto for a single term longer than two years.
 - (c) the annual general meeting, must require that the election of the members of the governing body and of the association's office-bearers be held, and its audited financial statements and budget for the following financial year be considered and disposed of, at that general meeting;
 - (d) the matters mentioned in paragraph (q) of subsection (1), must provide that the election of the members of the executive committee or body and of the three standing committees must be conducted by secret ballot;
 - (e) the matters mentioned in paragraph (t) of subsection (1), must require interim financial statements to be prepared quarterly for scrutiny by members;
 - (f) joining fees and membership fees, must allow those fees to be determined and to be re-determined or adjusted only at the annual general meeting of members;

- (g) the matters mentioned in paragraphs (s), (y) and (z) of subsection (1), must require that a decision to amalgamate with another association, to amend the constitution or to dissolve the association will be carried only with the support of at least two thirds of the members present at the meeting (provided there is a quorum);
- (h) the qualifications for membership, must provide that an application for admission to membership will be refused unless the applicant has subscribed to the Code of Conduct;
- (i) the circumstances in which membership may be terminated, must provide for the termination of the membership of any member operating a public transport service without the necessary 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.
 - (iv) Failure on the part of the association's governing body or any member thereof or office-bearer of the association authorised by that body to comply with the requirements of section 104(3)(a).

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

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

(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 as prescribed by the MEC for the specific non-compliance or breach, or cancel the registration of the association or non-member or suspend the registration temporarily, as dictated by the gravity of the non-compliance or breach and the circumstances relevant thereto.

(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 terminated 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 terminated or temporarily suspended the membership of a registered member for non-compliance with its registered constitution or breach of the Code of Conduct, the Registrar must cancel that member's registration or suspend it for the same period, respectively.

(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 planning authority 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 changes necessary in the context, to any provisionally registered association or non-member, subject to the relevant provisions of this Act.

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

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

- (a) an association—
 - (i) which has ceased to exist or is no longer based in the Province; or
 - (ii) if it has secured registration or provisional registration through fraudulent conduct;
- (b) a member in respect of a particular association where—
 - (i) the registration or provisional registration of that association is cancelled;
 - (ii) membership of that association has been duly terminated in accordance with its constitution.
- (c) a non-member—
 - (i) who is no longer based in the province; or
 - (ii) who, if a juristic person, has ceased to exist; or
 - (iii) who does not hold an appropriate 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;
- (d) a member of an association provisionally registered 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) An association, member or non-member whose registration or provisional registration has been cancelled or temporarily suspended as provided for in this section or a provincial law, must return the registration certificate or certificate of provisional registration and the distinguishing marks (if any) issued with regard to the registration or provisional registration so cancelled or suspended to the Registrar within the time specified in provincial

laws.

(3) Where an association has terminated membership due to a 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 the former is a member, after having given the member sufficient opportunity to make representations and advance reasons why that should not be done.

(4) The Registrar may cancel, or suspend temporarily for a period not exceeding one year, the registration or provisional registration of—

- (a) any association for failure to comply with any provision of its registered constitution that is material for the application of this Part and Part 12;
- (b) any member—
 - (i) whose membership of an association has been suspended temporarily; or
 - (ii) of an association whose registration or provisional registration has been suspended temporarily;
- (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 118, unless at the time of conviction the member or non-member's application for a permission was pending.

Effect of lapsing or cancellation of registration on holding of a permit or permission

111A. (1) Where the full registration of an association lapses or is cancelled, all permits and permissions held by the members of that association which relate to the route or routes in question, shall lapse on a date calculated as 90 days after such lapsing or cancellation, unless—

- (a) the association has been re-registered provisionally or fully, and the member is still a member thereof; or
- (b) the member has obtained membership of another registered or provisionally registered association operating on the route or routes in question; or
- (c) the member has obtained registration as a non-member in respect of the route or routes in question.

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

- (a) the non-member has obtained membership of a registered or provisionally registered association operating on the route or routes in question; or
- (b) the non-member has obtained re-registration as a non-member in respect of the route or routes in question.

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

112. The registration or provisional registration of any member or any non-member, is no bar to the prosecution of such a member or non-member for an offence mentioned in section 118(1)(a) (operating without the necessary permission or permit).

PART 18 LAW ENFORCEMENT

Land transport law enforcement

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

(2) Despite the provisions of any other law—

- (a) a MEC;
 - (b) a transport authority;
 - (c) a municipality,
- called in this section an enforcement authority, may enter into an agreement in terms of which—
- (d) land transport law enforcement functions will be undertaken by one enforcement authority in the area of jurisdiction of another;
 - (e) authorised officers of one such authority may be seconded to another authority temporarily;
 - (f) land transport law enforcement functions are undertaken jointly, or by a public or private sector agency on behalf of the authority,
- on terms and conditions set out in the agreement, including conditions as to which authority shall bear the costs involved.

MEC may appoint inspectors

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

(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 or transport area concerned and to assist with the investigation and prevention of offences contemplated in section 118 which have been committed within the province, subject to provincial laws and 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 this Act.

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

Impoundment of vehicles

115. (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 118(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.

Presumptions and proof of certain facts

116. (1) A document which purports to be a permission issued under this Act, or a permit issued under a previous law or a copy of such a permission or permit certified to be a true copy, will on mere production in any prosecution for an offence mentioned in section 118(1), where the possession or contents of such a permission or permit may be relevant, be admissible in evidence as proof that it is such a 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

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

- (a) cause a motor vehicle to be stopped in the manner prescribed by the MEC, and enter such a vehicle in order to establish if it is used for public transport or monitor compliance with any provision of this Act, or with the terms of any permission or permit, and may for those purposes examine or inspect the vehicle and any documentation that may be relevant;
- (b) require from the driver to furnish the latter's full name and residential address, and documentary proof thereof, as well as the name and address of the owner of the vehicle, and particulars of the business in connection with which the vehicle is being used;
- (c) require that the driver or other person in charge of the vehicle forthwith produce for inspection any documents or other records that are in or on the vehicle in the possession of the driver or that person that relate to the persons being conveyed on such vehicle;
- (d) require that any person on a motor vehicle suspected on reasonable grounds to be used for public transport, or a person suspected on reasonable grounds to have been on such a vehicle recently, furnish the latter's full name and address and documentary proof thereof and state if the latter has paid or has to pay any consideration for conveyance on the vehicle, and furnish the name and address of the person to whom the payment has been made or will have to be made;

- (e) to require that the records to be kept in or on the vehicle in terms of this Act, be produced by the driver of the vehicle or by the conductor, (if any), for inspection;
- (f) enter or enter upon any business premises at any reasonable time to monitor compliance with this Act, and question any person who, in the opinion of the authorised officer, may be able to furnish any information required for that purpose, and may require such a person to produce, for examination or inspection, any books and documents, and any other records of any type whatsoever, that may be relevant for monitoring purposes, and make extracts therefrom or copies thereof, and demand an explanation of any entries in such a book, document, or other record. However, any person so questioned or required to furnish an explanation, is entitled to all the privileges to which any person testifying before a court of law is entitled;
- (g) require that the driver or other person in charge of a motor vehicle used for public transport, produce any documents whatsoever, that were issued by a competent authority, in terms of this Act, or a previous law, with regard to the vehicle or the public transport for which it may be used 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 a permissions board, attach a permission or permit that has expired or lapsed or has been withdrawn temporarily in terms of this Act, and hand it over to that 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 or 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 all 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 officer until the holder of the permission or permit has satisfied the officer that the defects have been remedied and that the vehicle is in a roadworthy condition, the onus of proving which will rest on the holder of the permission or permit.

Offences and penalties

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

- (a) upon operating a public transport service in contravention of section 29;
- (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 any other provision of this Act;
- (d) 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;
- (e) upon applying for or obtaining a permission knowing that a current permission has already been issued with regard to the same vehicle;
- (f) if the person, with the intent to deceive, forges, alters, defaces, damages or adds to any permission or other official document issued under this Act, or any permit;
- (g) if, knowing that a document is not a permission or permit, or such another official document or that it has been altered, defaced, damaged or added to, utters or uses the document;
- (h) if the person furnishes or gives false information in or with regard to any application made to 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;
- (i) when impersonating an authorised officer;
- (j) when wilfully obstructing or hindering an authorised officer in discharging the duties

- attached to the office concerned;
- (k) refuses or fails to comply with the lawful order of an authorised officer;
 - (l) upon refusing or failing to comply with any lawful order, direction or demand made by an authorised officer in the discharge or performance of any function or duty entrusted to the officer by or in terms of this Act;
 - (m) if, while suffering from a notifiable medical condition contemplated in section 28 of the Health Act, 1977 (Act No. 63 of 1977), the person, being aware of that fact, has boarded a vehicle while being used in operating a public transport service, or travels therein;
 - (n) when failing to return a registration certificate or certificate of provisional registration, or a distinguishing mark to the Registrar if required to do so by this Act;
 - (o) if the person, without good reason—
 - (i) refuses or fails to appear before a permissions board or Registrar in compliance with an order or subpoena issued under this Act; or
 - (ii) refuses or fails to answer, or to answer to the best of the person's knowledge and ability, any question lawfully put to the person by any member of the permissions board or by the Registrar (as the case may be); or
 - (iii) refuses or fails to produce any book, document or plan or any other record of any nature or kind whatsoever, or any article, in compliance with such an order or subpoena;
 - (p) if, where the person is conveyed as a passenger on a vehicle in the course of the operation of a public transport service, the person—
 - (i) fails to pay the fare due for the journey when payment is requested by the driver or conductor of the vehicle concerned;
 - (ii) smokes 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 that vehicle for the purpose of maintaining order or ending a disturbance or controlling any emergency arising or existing on that vehicle;
 - (v) wilfully performs any act in or on that vehicle that could cause injury to or endanger the life of any person or cause damage to any property;
 - (q) 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 this Act.
- (2) Where a person is convicted of any one of the offences mentioned in—
- (a) paragraphs (a) to (d) of subsection (1), a term of imprisonment not longer than two years, or a fine not higher than R 100 000, may be imposed;
 - (b) paragraphs (e) to (l) of that subsection, a term of imprisonment not longer than one year or a fine not higher than R50 000 may be imposed;
 - (c) paragraphs (m) to (s), a term of imprisonment not longer than six months or a fine not higher than R30 000 may be imposed.
- (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.

CHAPTER 4: GENERAL MATTERS

PART 19 GENERAL MATTERS

Appeals in general

119. (1) Any province may establish a provincial transport appeal body to hear appeals relating to applications in connection with intra-provincial public transport. Where such a body is not established, such appeals must be noted with the Transport Appeal Tribunal established by section 3 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998), (called the Tribunal in this section) in terms of this section.

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

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

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

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

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

(6) Appeals concerning inter-provincial services must be noted with the National Transport Commission in terms of the Road Transportation Act, 1977 or other provincial legislation or to the Tribunal in terms of the Transport Appeal Tribunal Act, 1998, whichever is applicable.

(7) Appeals concerning cross-border (international) transport must be made to the National Transport Commission in terms of the Road Transportation Act, 1977 or to the Tribunal in terms of the Transport Appeal Tribunal Act, 1998, whichever is applicable, in terms of the Cross-Border Road Transport Act, 1998.

Appeals to the Transport Appeal Tribunal

120. (1) Subject to section 119, and save as otherwise provided in this Act, a planning authority or a person who—

(a) has applied to a permissions board for the grant, renewal, amendment or transfer of a permission;

(b) is the holder of a permission issued by such a board;

(c) in the manner and within the time prescribed, submitted representations to the board objecting to or supporting an application published under section 33,

and is affected by an act, direction or decision of that board, may, in the manner and within the time prescribed, after the board has performed the act or given the direction or decision, appeal against that act, direction or decision to the Tribunal.

(2) The Tribunal must receive and, subject to any applicable regulations, consider

an appeal lodged with it in terms of subsection (1) and may, in its discretion—

- (a) reject the appeal and confirm the act, direction or decision appealed against; or
- (b) uphold the appeal, set aside the act, direction or decision appealed against, and—
 - (i) substitute therefor another act, direction or decision which the board could have performed or given; or
 - (ii) remit the matter which gave rise to the appeal to the board for consideration afresh; or
- (c) uphold the appeal partially and vary the act, direction or decision appealed against.

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

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

(4) In considering an appeal in terms of subsection (1), the Tribunal shall be bound by the provisions of applicable transport plans.

(5) An act, direction or decision of the Tribunal under subsection (2)(b)(i) or (c) shall be deemed to be an act, direction or decision of the Board.

Transitional provisions

121. 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, as a distinguishing mark issued under this Act.

Act binding on State

122. This Act binds the State.

Short title and commencement

123. 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.

6 September 1999

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

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, the Local Government: Municipal Structures Act, 1998 and the latest available version of the draft Municipal Systems Bill, 1999. As regards vehicle standards, driver and vehicle fitness and related issues, the Bill refers to the Road Traffic Act, 1989 or replacing road traffic legislation, and is intended to function within the ambit of this legislation. The approach followed and principles contained in the Bill have been agreed to by the provinces and metropolitan authorities through the MINCOM structure.

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

Redrafting of the Bill

The Bill as published was rejected by MINCOM in February 1999. It was referred to a drafting committee consisting of representatives of the three spheres of government. A new version of the Bill was drafted by the drafting committee and approved by COLTO on 27 July 1999 and by MINCOM on 3 September 1999.

Structure of the Bill

The Bill is divided into the following four chapters:

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

Chapter 1 deals with introductory matters. Chapter 2 is designed to deal with matters of national concern contemplated in section 146(2) of the Constitution, and to take precedence over all provincial laws dealing with similar matters (see clause 3 in that regard). Chapter 2 will therefore apply in the provinces, as setting national norms and standards and applying national land transport policy. Chapter 3 deals with matters of provincial concern, and will apply in each province unless a particular province

promulgates or has promulgated its own legislation to replace the provisions of Chapter 3 (see section 2(2) of the Bill and the definition of "replacing provincial law"). Chapter 4 deals with general matters and, like Chapter 1, will apply throughout the country.

Contents of the Bill

Part 1 of the Bill, which also constitutes Chapter 1, deals with introductory matters, i.e. definitions and the constitutional application of the Bill. The definitions of "minibus" (10 to 18 persons) and "midibus" (19 to 35 persons) have been formulated to provide for the proposed project to recapitalise vehicles used for minibus taxi-type services.

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

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

Part 5 provides for the establishment of transport authorities for transport areas. The MEC responsible for transport and one or more municipalities may by agreement establish a transport authority (TA) for the area, which will be known as a transport area. Where an area has been declared a metropolitan transport area (called an MTA) under the Urban Transport Act, 1977, the municipalities within the MTA will likewise be able to establish a TA. The core cities of metropolitan transport areas will, however,

not be obliged to change their status to that of a TA. Transport areas will be able to extend across provincial boundaries.

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

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

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

Part 6 provides for the Minister to make money available to provinces for land transport from money 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 TAs and municipalities in their areas for land transport. The Bill provides for annual budgets to be prepared by TAs, and will regulate their financial affairs. This Part is tentative at this stage, and can be finalised only after completion of discussions with the Department of Finance.

Parts 7 and the corresponding provincial part 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. Each MEC will be empowered to prescribe such principles and/or land transport policy for the relevant province by notice in the provincial gazette. The national Department will be required to draw up an annual national land transport strategic framework for the country for a five year period corresponding with the Department's financial year. Provinces will also be required to draw up provincial transport frameworks on an annual basis, by a uniform date to be determined between the MECs and made known in the Government Gazette. The Bill provides that the following authorities will be "planning authorities":

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

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

- Current public transport records, which 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.
- Permissions strategies, which are to be prepared by planning authorities and must eventually form part of their public transport plans, and upon which the planning authority will base its recommendations to the permissions board in its disposal of applications for permissions.
- Rationalisation plans, which are tactical plans prepared by planning authorities for the rationalisation of existing services prior to their conversion to subsidised service contracts through public tendering. Rationalisation plans are to be prepared where there are subsidised public transport services that are to be continued.
- Public transport plans, which will be prepared by all planning authorities by a

date to be determined by the MEC, and will contain the planning authority's strategies for public transport, the operational plan for contracted services and the permissions strategy for non-contracted services in the area.

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.

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 prepared a rationalisation plan will also have to prepare a public transport plan. 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. (The financial year of TAs 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.

Transport planning will have to be undertaken in consultation with relevant interest groups in the manner prescribed by the MECs. The MECs will be empowered to make regulations for their provinces on transport planning.

Parts 8 and the corresponding provincial part 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. 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. A province will be able to make laws providing for the functions of the board to be transferred to similar bodies to be established by transport authorities, in respect of applications related to transport within their transport areas, but only if the MEC is satisfied that the particular transport authority is competent to do so and is performing its functions satisfactorily. The boards will be able to establish satellite offices in regions of the province for the convenience of the public. The satellite offices will assist the public in making applications for permissions, will receive applications and will issue permits and distinguishing marks to be placed on vehicles.

Parts 9 and the corresponding provincial part 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. The MEC, by notice in the Provincial Gazette, will determine a date by which all permits must have been converted for the purposes of this section. The MEC will be able to defer that date in consultation with the Minister. Any permit not so converted within that time will lapse. Permits issued for an indefinite period will be converted to permissions that are also valid for an indefinite period. 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.

Regarding new permissions, no one will be entitled to a permission as of right. 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. 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. Persons directly involved in evaluating applications related to permissions, preparing permissions strategies or undertaking law enforcement related to public transport will not be allowed to hold permissions.

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. 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. 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. In the case of a non-contracted service, the board will have to consider the matters set out in the Bill.

Holders of permissions will not be allowed to hire them out to other persons. (However, in the case of contracted services, sub-contracting will be allowed in specified circumstances.) Vehicles specified in permissions providing services in terms of public transport plans, will not be able to be specified also in permissions for long distance services.

Exemptions from the definition of "public transport" services have not been dealt with as the exemptions contained in section 2(2) of the Road Transportation Act, 1977, or replacing provincial legislation, will apply. A significant change from the status quo, is that operators conveying learners and students will require 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.

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

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

- be registered in the case of a minibus taxi-type service;
- be "financially ringfenced" as provided for in the Bill, and
- be registered as a taxpayer.

Municipalities will not be allowed to tender for subsidised or commercial service contracts. 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 the Bill.

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. 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.

Part 12 and the corresponding provincial part deal with the registration of minibus taxi associations, their members, and persons who do not belong to such associations (called "non-members"). A National Taxi Register must be 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.

According to Chapter 3 (provincial), 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 certain financial and other benefits provided by the government, TAs, 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 18 deals with law enforcement. 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.

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

Consultation

A more comprehensive version of the Bill was published for comment as a working document in December 1996. Copies of the Bill were also sent to various stakeholders. At that stage it was couched in the form of a national bill and a model provincial bill, but

the issues covered were substantially the same. A large number of comments were received, considered and incorporated where appropriate. Various meetings were held with the provinces 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. Further meetings and discussions will be held with stakeholders.

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".

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