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GENERAL NOTICE

NOTICE 424 OF 2008

DEPARTMENT OF TRANSPORT

PUBLICATION FOR COMMENTS: NATIONAL LAND TRANSPORT BILL, 2008

The above-mentioned draft Bill is hereby published for public comments. Interested persons are invited to submit written comments on the draft Bill by not later than 30 April 2008.

Submission should be posted to the Director – General
Department of Transport for the attention of Mr. Muzi Simelane at:

The Department of Transport

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DEPARTMENT OF TRANSPORT**NATIONAL LAND TRANSPORT BILL**

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

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

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CHAPTER 1 GENERAL PROVISIONS

Definitions

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

“adapted light delivery vehicle” means such a vehicle that has been manufactured or modified by a registered manufacturer to carry persons in accordance with the National Road Traffic Act;

“authorised officer” means—

- (a) an inspector contemplated in section 95;
- (b) a member of the South African Police Service, including a member of a municipal police service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (c) a person in the service of a provincial department or a municipality, or the Road Traffic Management Corporation established by the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999), whose duty is to control traffic or to inspect motor vehicles or licences for motor vehicles;
- (d) a road transport inspector contemplated in section 39 of the Cross Border Road Transport Act, 1998 (Act No. 4 of 1998);

“bus” means a motor vehicle designed or modified to carry more than 34 persons, including the driver;

“charter service” means a public transport service operated by road involving the hire of a vehicle and a driver for a journey at a charge arranged beforehand with the operator, where—

- (a) neither the operator nor the driver charges the passengers individual fares;
 - (b) the person hiring the service has the right to decide the route, date and time of travel; and
 - (c) the passengers are conveyed to a common destination;
- and includes vehicles hired with drivers contemplated in section 76;

“commercial service contract” means an agreement concluded between a contracting authority and an operator in terms of section 52, and in terms of which the operator—

- (a) is to operate a public transport service, provided for in an ITP; and
- (b) does not receive any subsidy or other financial support from any organ of state except, where applicable, subsidy in respect of concessionary fares;

“commuting” means travelling daily between home and work by means of a public transport service, and “commuter” has a corresponding meaning;

“concession agreement” or “concession” means any agreement between an operator and a contracting authority for the operation of a service on a railway line or rail network;

“concessionary fare” means the fare paid by a passenger falling within a special category ;

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“contract” means a subsidised service contract, negotiated contract or commercial service contract;

“contracting authority” means—

- (a) a designated planning authority; or
- (b) a provincial department—
 - (i) for areas of the province not covered by designated planning

authorities; and

- (ii) where the Minister, in consultation with the Minister of Finance, determines that the relevant subsidy funds will be administered by that provincial department in the transitional phase until those funds are transferred to a designated planning authority.

“courtesy service” means a complementary service provided by or on behalf of an organisation such as an hotel, which is not an operator, for its customers or clients, either by means of its own vehicle or the vehicle of an operator in terms of a contract with that organisation, with no direct charge to the passengers;

“Cross-Border Act” means the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);

“cross-border road transport” means cross-border road transport between the Republic and another country as defined in section 1 of the Cross-Border Act;

“Department” means the Department of Transport in the national sphere of government;

“designated planning authority” means—

- (a) a transport authority;
- (b) a metropolitan municipality;
- (c) the Buffalo City Local Municipality;
- (d) the Mangaung Local Municipality;
- (e) the Mbombela Local Municipality;
- (f) the Msunduzi Local Municipality;
- (g) the Mangaung Local Municipality;
- (h) the Polokwane Local Municipality;
- (i) the Rustenburg Local Municipality;

and any other district or local municipality designated by the Minister as a designated planning authority, after consultation with the MEC: Provided that in the case of municipalities contemplated in paragraphs (b) to (i) the municipality will be the designated planning authority only for areas of its jurisdiction not covered by a transport area;

“designed or modified” means designed, or lawfully adapted by a registered manufacturer in compliance with the National Road Traffic Act, 1996 (Act No. 29 of 1989);

“DPA” means a designated planning authority;

“eNaTIS” means the electronic National Traffic Information System controlled by the Department, or any similar replacing system;

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

“Gazette” means the national *Government Gazette*;

“holder” means the holder of an operating licence;

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

“inspector” means an inspector designated under section 95;

“integrated development plan” means the integrated development plan which, in terms of Chapter 5 of the Systems Act must be prepared by a municipality;

“integrated public transport network” means a system in a particular area that integrates public transport services between modes, with through-ticketing and other appropriate mechanisms to provide users of the system with the optimal solutions to be able to travel from their origins to destinations in a seamless manner;

“integrated transport plan” means an integrated transport plan contemplated in section 45;

“interprovincial service” means a public transport service operating between two or more provinces;

“intraprovincial service” means a public transport service operating within the boundaries of a province;

“ITP” means an integrated transport plan contemplated in section 45;

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

“lift club” means an arrangement whereby every member of the club has a turn to convey or cause to be conveyed by means of a motor car the other members of such a club or other person designated by such members to or from or to and from specified places for a specified purpose as contemplated in section 78, and subject to that section;

“long distance service” means a scheduled or unscheduled public transport service, other than a service for commuting, that is provided beyond the boundary of the area covered by an ITP, where passengers are charged fares individually, as contemplated in section 74;

“major special event” means an event such as, but not limited to, the FIFA 2010 Soccer World Cup, and includes the periods before and after that event necessary to conduct and finalise the necessary land transport arrangements;

“MEC” means the member of the Executive Council of a province who is responsible for public transport in that province;

“metered taxi service” means a public transport service operated by means of a

motor vehicle contemplated in section 75 which—

- (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, that is calibrated for such fare;

“MFMA” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“midibus” means a motor vehicle designed or modified solely or principally for conveying more than 16 but less than 35 persons, including the driver, and for the purposes of the National Road Traffic Act, is a sub-category of bus;

“minibus” means a motor vehicle designed or modified solely or principally for conveying more than nine but not more than 16 seated persons, including the driver;

“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;

“Minister” means the Minister of Transport in the national sphere of government;

“motor car” means a motor vehicle, other than a motor cycle, motor tricycle or motor quadrucycle as defined in the National Road Traffic Act, designed or modified solely or principally for conveying not more than nine persons, including the driver;

“motor vehicle” and **“vehicle”** means a motor vehicle as defined in section 1 of the National Road Traffic Act;

“municipal entity” means a municipal entity as defined in section 1 of the Systems Act;

“municipal fund” means a municipal land transport fund established in terms of section 35;

“municipality” includes all types of municipalities contemplated in section 155(6) of the Constitution;

“municipal public transport” means any public transport that takes place within the area of a municipality for which the municipal sphere of government is responsible in terms of the Constitution, this Act or any other law;

“municipal operator” means a municipality or municipal entity which operates a public transport service;

“National Fund” means the National Land Transport Fund established by section 33;

“National Road Traffic Act” means the National Road Traffic Act, 1996 (Act No. 93 of 1996) and includes regulations made under that Act;

“negotiated contract” means a first-phase negotiated contract contemplated in section 50;

“NLTSF” means the National Land Transport Strategic Framework contemplated in section 43;

“non-contracted service” means a public transport service other than one operated in terms of a commercial service contract, subsidised service contract or negotiated contract;

“operating licence” means such a licence required by section 59 and granted and issued in accordance with this Act or the previous Act;

“NPTR” means the National Public Transport Regulator contemplated in section 24;

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

“organ of state” means an organ of state as defined in section 239 of the Constitution;

“participating municipality” means any municipality that is party to a founding agreement for the establishment of a transport authority;

“permit” means a public road carrier permit or similar authority issued in terms of the Road Transportation Act, 1977 (Act No. 74 of 1977) or another law predating the previous Act and recognised as valid by the previous Act, and which is in force and has not yet been converted to an operating licence on the date of commencement of this Act;

“persons with disabilities” means all persons whose mobility is restricted by temporary or permanent physical or mental disability, and includes the very young, the blind or partially-sighted and the deaf or hard of hearing;

“PLTF” means a provincial land transport framework contemplated in section 44;

“PFMA” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“planning authority” means—

- (a) a transport authority for its transport area; and
- (b) metropolitan, district and local municipalities, including ones that are designated planning authorities, for the parts of their areas that are not situated in a transport area;

“PRE” means a provincial regulatory entity contemplated in section 27;

“**prescribed**” means prescribed by regulation by the Minister unless otherwise indicated or the Minister has delegated to the MEC the power to make the regulation in question by notice in the *Gazette*;

“**previous Act**” means the National Land Transport Transition Act, 2000 (Act No. 22 of 2000);

“**provincial department**” means the department within the administration of a province that is charged with public transport matters;

“**provincial fund**” means a provincial land transport fund established in terms of section 34;

“**provincial land transport framework**” means a provincial land transport framework contemplated in section 44;

“**provincial law**” includes a provincial act or regulations made by the MEC under this Act;

“**public transport service**” means a scheduled or unscheduled service for the carriage of passengers by road or rail, whether subject to a contract or not, and where the service is provided for a fare or any other consideration or reward, including cabotage in respect of passenger transport as defined in the Cross-Border Act, and except where clearly inappropriate, the term “public transport” must be interpreted accordingly;

“**rail service**” means a public transport service operated on a rail track or electromagnetic guideway, and includes light and heavy rail;

“**registered manufacturer**” means a manufacturer, importer or builder of motor vehicles registered under section 5 of the National Road Traffic Act;

“**roadworthy certificate**” means a certificate certifying the roadworthiness of a motor vehicle in accordance with the requirements of the National Road Traffic Act;

“**SARPC**” means the South African Rail Passenger Corporation Limited established by section 23 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);

“**scheduled service**” means a public transport service operated by road on a particular route or routes in accordance with a timetable;

“**service**” means a public transport service;

“**special categories of passengers**” means scholars, students, persons with disabilities, tourists, transferring long distance passengers, the aged, pregnant women and those who are limited in their movements by children with or without pushchairs or prams;

“special event” means a one-off cultural, religious, sporting or recreational event, or any entertainment, conference, exhibition or show;

“staff service” means a public transport service by road provided by means of a vehicle owned by an employer or a vehicle provided by an operator in terms of a contract with the employer, used exclusively for conveying the employer’s employees;

“subsidised” in relation to services means a situation where passengers are provided with financial assistance to be able to afford services that they could not otherwise afford;

“subsidised service contract” means an agreement between a contracting authority and an operator to operate a scheduled service provided for in an ITP and in terms of which the operator receives direct or indirect financial support in terms of a tendered contract;

“Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000),

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

“this Act” includes any regulation made and in force in terms of this Act;

“timetable” means a published document informing passengers of headways, that is intervals between departures or the passing of vehicles, or times when and places where public transport services are available, indicating at least origin and destination points and significant intermediate locations along the route;

“tourist service” means a scheduled, unscheduled or chartered public transport service by road for the carriage of tourists to or from tourist attractions according to a predetermined itinerary, and includes transfers of tourists, for example from hotels to and from airports;

“transfer” in relation to an operating licence means a transfer from the holder of the operating licence to another person;

“transport area” means the area of a transport authority, contemplated in section 16(3);

“transport authority” means a transport authority contemplated in section 16;

“transport plan” includes the NLTFS, a PLTF and an ITP;

“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 offpeak periods, shifting demand between modes, restricting the space available for parking,

adjusting the price of parking, and other appropriate measures;

"tuk-tuk" means a three-wheeled motor vehicle designed or modified solely or principally for conveying less than four seated persons, including the driver;

"unscheduled service" means a public transport service operated by road on a particular route or routes, or, where applicable, within a particular area, without a timetable, where passengers are charged fares individually.

Purpose and scope of Act

2. This Act provides for final land transport legislation to complete the process of transforming and restructuring the land transport system started by the previous Act, and to give effect to national policy as it has developed since the promulgation of the previous Act.

Application of Act in provinces

3. (1) This Act is intended to prescribe policies, principles, requirements, guidelines, frameworks, norms and standards that must be the same for all provinces, and other matters contemplated in section 146(2) of the Constitution, to achieve the objects of section 2.

(2) The provisions of this Act are regarded as provisions contemplated in section 146(2) of the Constitution and, except where indicated otherwise, apply to the exclusion of any other inconsistent national or provincial laws.

(3) MECs may promulgate regulations in terms of section 7 that add to or supplement the provisions of this Act, or which provide more detailed substance to its provisions.

(4) Subject to section 146 of the Constitution, provincial laws must be read with this Act as being supplementary to it where possible, but where a provincial law is inconsistent with this Act and the two cannot be read together or reconciled, this Act will take precedence.

Principles for national land transport policy

4. The Minister may prescribe principles that apply with regard to the determination, formulation, development and application of land transport policy in the Republic.

Functions of Minister

5. (1) The Minister may publish national land transport policy after consulting the MECs, which may include target dates for the transformation of the land-based public transport sector.

(2) The Minister must monitor all provincial land transport policies and frameworks and all transport planning required or envisaged by this Act to see that it is developed, prepared and formulated within the ambit of the national transport policy.

(3) The Minister takes responsibility for land transport arrangements with other countries regarding transport between the Republic and those

countries, and all communications, negotiations and conferences in that regard must take place or be arranged through the office of the Minister or, where required by the Cross-Border Act, the Cross-Border Road Transport Agency established by that Act, in collaboration with the Minister of Foreign Affairs.

(4) The Minister must—

- (a) monitor the implementation of national land transport policy and any investigations conducted into matters arising from its implementation, and cause the necessary adjustments if any to be made to that policy;
- (b) facilitate the increased use of public transport;
- (c) strive to ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner;
- (d) assist provincial departments that lack the necessary staff or resources, in meeting their responsibilities and performing their functions and duties with regard to land transport;
- (e) co-ordinate between the three spheres of government and public entities with a view to avoiding duplication of effort and resources;
- (f) give guidance concerning education, training, and capacity building in connection with land transport matters, and prescribe requirements in this regard, subject to specific legislation on education and training;
- (g) in taking any measures relating to public transport—
 - (i) accommodate therein relevant national and international benchmarks and best practice;
 - (ii) promote, within overall land transport objectives, the safety of passengers;
 - (iii) encourage efficiency and entrepreneurial behaviour on the part of operators and encourage them to tender competitively for contracts and concessions;
 - (iv) promote a strategic and integrated approach to the provision of public transport;
 - (v) promote the efficient use of energy resources, and limit adverse environmental impacts in relation to land transport;
- (h) so promote public transport that—
 - (i) it is effective in satisfying user needs;
 - (ii) it operates efficiently as regards the use of resources;
 - (iii) the services operated are of an acceptable standard and readily accessible and are operated in conjunction with effective infrastructure provided at reasonable cost;
 - (iv) in the operation of public transport services, high priority is given to safety;
- (i) strive to ensure the integration of public transport modes, giving due consideration to the needs of users; and
- (j) promote effective integrated transport planning.

(5) The Minister may, after consultation with the MECs, by notice in the *Gazette*, set general norms and standards in respect of fares for subsidised services by road or rail with a view to—

- (a) effective targeting of subsidy in terms of national policy;
- (b) providing integrated fare and ticketing systems in public transport networks; and
- (c) achieving cost recovery by operators;

(6) Where the Minister is of the opinion that a province, municipality or

public entity is acting in a manner prejudicial or tending to be prejudicial to the strategic or economic interests of the Republic in relation to transport matters, the Minister may issue a directive to such entity to cease the activity or to take the steps indicated by the Minister, subject to this Act, and that entity must comply with such directive.

(7) Where an MEC has failed to make regulations on any matter on which provincial regulations are required under this Act within a reasonable time, the Minister may make such regulations after consultation with that MEC.

National integrated land transport information system

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

(2) Every MEC, transport authority and municipality must provide the Minister, in the manner and at the times prescribed by the Minister, with the information so prescribed about their actions or position with regard to—

- (a) the objects and purposes of this Act;
- (b) the national land transport policy; and
- (c) 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.

(3) Despite subsection (2), the Minister may at any time by notice in writing, require a MEC, transport authority or municipality to provide the Minister with any information or particulars about its actions or position.

(4) The Minister must have all the information that was provided in terms of subsections (2) and (3), included in the national information system, and may make it available to interested parties on payment of the prescribed fee, if any, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

(5) Where a province, transport authority or municipality fails to provide any information in compliance with this section, the Minister may withhold any payment to them until they have provided the information.

(6) As part of the NIS, the Minister must establish an Operating Licence Administrative System (OLAS) in the prescribed manner and containing the prescribed information, which must be accessible to and maintained by the NPTR and each NPE and DPA.

(7) The Minister must integrate the former Registration Administration System (RAS) with the OLAS system, and such system and eNATIS must be on line to each other.

Regulations by Minister

7. (1) The Minister may, after consultation with the MECs, make regulations relating to—

- (a) any matter which, may or must be prescribed by way of a regulation under this Act;
- (b) requirements for integrated fare systems, comprising fare structures, levels and technology, to ensure compatibility between such systems;

- (c) after consultation with the MECs, norms and standards relating to the qualifications and conduct of inspectors;
- (d) a process to be followed for offering alternative services in the place of existing services to holders of operating licences or permits under section 48;
- (b) the types of vehicles that may or may not be used for public transport services as from future dates to be specified in the regulations, and standards or specifications for such vehicles, subject to the National Road Traffic Act, and such vehicle types, standards or specifications may differ for different types of services, for rural as opposed to urban areas, or for any other reason;
- (c) procedures for the regulation of interprovincial transport;
- (d) standard forms for responses of planning authorities under section 64;
- (e) colour coding and branding of vehicles used for public transport;
- (f) special requirements for drivers of vehicles used for public transport including, but not limited to, testing for knowledge of the area in question;
- (g) the control of ranks, terminals and other facilities by planning authorities, including fees that may be charged for entry to or use thereof and the control of loading by queue marshals, subject to the rights of municipalities to make by-laws on those issues;
- (h) electronic fare collection and ticketing systems and the control of such systems by the public sector, either alone or in partnership with operators;
- (i) monitoring and control of operator associations, including minimum contents of their constitutions, requirements for elections of office bearers and maximum joining or membership fees;
- (j) information systems to be kept by the NPTR, PREs, transport authorities, DPAs and other municipalities relating to this Act and information to be supplied to the NIS from these systems, including the time within which it must be submitted and the consequences of failure to do so;
- (k) information to be kept by operators and supplied to authorities contemplated in this Act, including the time within which it must be submitted and the consequences of failure to do so;
- (l) meetings of the NPTR and DPAs;
- (m) procedures at those meetings, quorums and the keeping of records;
- (n) the powers and duties of the NPTR and DPAs;
- (o) principles for transport planning;
- (p) the content of transport plans;
- (q) procedures for the preparation, updating and approval of transport plans;
- (r) procedures to be followed in promoting public participation in the transport planning process;
- (s) requirements and procedures for negotiated contracts and their conversion to tendered contracts;
- (t) providing that operators must deposit prescribed amounts with the Department or other entity as prescribed to cover possible fines or penalties should the operator fail to comply with this Act or other prescribed requirements;
- (u) on information that must be supplied to the NPTR by tourist operators applying for accreditation under section 91; and
- (v) on required signage, vehicle identification or livery for vehicles used for tourist services.

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

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

Delegations by Minister

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

(2) The Minister may delegate to the MECs the power to make any regulation contemplated in section 7.

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

- (a) does not prevent the Minister from exercising that power or performing that duty;
- (b) must be done in writing; and
- (c) may at any time be amended or withdrawn.

Functions of MECs

9. (1) The MEC may, after consulting planning authorities in the province, publish provincial land transport policy.

(2) Every MEC must—

- (a) monitor the implementation of provincial land transport policy and any investigations conducted into matters arising from the implementation, and cause the necessary adjustments if any to be made to that policy;
- (b) strive to ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner;
- (c) assist planning authorities that lack the necessary staff or resources, in meeting their responsibilities and performing their functions and duties with regard to land transport; and
- (d) produce an annual report on the state of transport affairs in the province in the prescribed manner and submit it to the Minister in the prescribed time;
- (e) strive to improve the planning, co-ordination and facilitation of the land transport functions of the province;
- (f) promote intergovernmental relations within the land transport environment;
- (g) strive to ensure that there is a linkage with matters having an impact on transport in the province, including land use management, environmental issues, population growth, economic development and investment in infrastructure, to facilitate integration and efficient transport;
- (h) set standards, performance criteria and related indicators to ensure intermodal co-ordination and efficient management of investment in transport, and of transport infrastructure and systems;
- (i) take an active role in sourcing international, national, local, private and public funding to promote the objects of this Act in the province; and

- (j) co-ordinate transport initiatives with municipalities, transport authorities and other stakeholders in the transport field by establishing co-ordinating structures or by other methods.

Regulations by MEC

10. (1) The MEC may make regulations with regard to any matter which, in terms of this Act, may or must be prescribed by an MEC under this Act.

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

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

(4) The MEC may make regulations—

- (a) providing a code of conduct for operators or drivers of public transport vehicles, which may differ according to the mode of transport concerned;
- (b) on the establishment, membership and procedures of co-ordinating structures for transport planning in the province;
- (c) frequency of meetings of PREs;
- (d) procedures at the meetings of PREs, quorums and the keeping of records;
- (e) the powers and duties of PREs; and
- (f) procedures to be followed in promoting public participation in the transport planning process.

CHAPTER 2

INSTITUTIONAL ARRANGEMENTS FOR LAND TRANSPORT

Part 1

Institutional arrangements: general matters

Roles of the spheres of government

11. (1) As indicated by section 156(4) of the Constitution, the primary responsibility for the execution of land transport functions rests with the municipal sphere of government, which includes transport authorities that are established to undertake municipal transport functions.

(2) Subject to the Constitution and to subsection (1), the roles of the three spheres of government in relation to land transport are as follows:

- (a) The national sphere of government is responsible—
 - (i) for policy and strategy formulation;
 - (ii) for overall strategic transport planning and co-ordination in the national sphere, and preparing the NLTSF in terms of section 43;
 - (iii) to co-ordinate between provinces and to address arrangements between the three spheres of government and public entities;
 - (iv) to allocate functions to the most appropriate sphere of government

- by promoting legislation and promoting or concluding agreements, as appropriate;
- (v) to liaise with other government departments in the national sphere with portfolios that impact on transport issues and bring together key players;
 - (vi) to assist provinces that lack capacity or resources and to see that gaps left by them are filled;
 - (vii) to intervene where provinces fail to perform their functions, subject to section 100 of the Constitution;
 - (viii) to co-ordinate transport relations between the Republic and other countries and implement international agreements; and
 - (ix) to perform the other functions of the Minister in terms of this Act;
- (b) the provincial sphere of government is responsible—
- (i) for more detailed provincial policy and strategy formulation;
 - (ii) for more detailed transport planning and co-ordination in the provincial sphere, and preparing the PLTF in terms of section 44;
 - (iii) to co-ordinate between municipalities and transport authorities and to promote provincial legislation and municipal by-laws, and promote or conclude agreements, as appropriate, in the provincial sphere;
 - (iv) to liaise with other government departments in the provincial sphere with portfolios that impact on transport issues and bring together key players;
 - (v) to assist transport authorities and municipalities that lack capacity or resources and to see that gaps left by those authorities are filled, subject to section 139 of the Constitution; and
 - (vi) to perform the other functions of the MEC in terms of this Act;
- (c) the municipal sphere of government is responsible for municipal transport functions, including municipal public transport in their areas of jurisdiction, which involves primary responsibility to—
- (i) where appropriate, plan, implement and manage modally integrated public transport networks and travel corridors, including operational planning; and
 - (ii) integrate municipal transport planning with land use planning.
- (3) If the spheres of government cannot agree on any issue for which agreement is contemplated by this Act, such as the establishment of a transport authority, or relevant municipalities cannot agree on the terms of the founding agreement for a transport authority, they must act in a manner and spirit consistent with the principles of co-operative government prescribed by section 41 of the Constitution and apply the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

Impartiality

12. (1) The following persons and their spouses, partners and immediate family members 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:

- (a) Members of the National Public Transport Regulator, provincial regulatory entities and designated planning authorities directly involved in dealing

- with applications concerning operating licences;
- (b) members of the Transport Appeal Tribunal established by section 3 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998);
 - (c) officials of planning authorities directly responsible for the development of integrated transport plans;
 - (d) officials directly involved in the management and execution of public transport related law enforcement; and
 - (e) officials operating or working at testing stations contemplated in the National Road Traffic Act;
- or such a member or official who has been such in the three years prior to his or her appointment.

(2) No serving member of Parliament or of a provincial legislature or councillor of a municipal council, or a person who has been such a member or councillor in the previous three years, may be a member or official contemplated in paragraphs (a) to (e) of subsection (1).

Part 2

Institutional arrangements: planning authorities

Planning authorities

- 13.** All planning authorities must—
- (a) prepare the integrated transport plans required by section 45;
 - (b) perform the constitutional transport functions listed in Parts B of Schedules 4 and 5 of the Constitution;
 - (c) where they are not designated planning authorities, supply directions to the entities responsible for the granting, renewal, amendment or transfer of operating licences in terms of their ITPs in the prescribed manner; and
 - (d) perform other land transport-related functions assigned to them in terms of the Constitution and this Act.

Intermodal planning committees

14. (1) Every planning authority with passenger rail services in its area must establish an intermodal planning committee (IMPC) consisting of the prescribed technical officials of the planning authority and prescribed representatives of rail operators, other public transport modes, users and organised business.

(2) The functions of an IMPC are to co-ordinate public transport between the modes to achieve the objects of this Act, especially while different institutional bodies or spheres of government are responsible for different modes of public transport.

(3) The Minister may make regulations on the structure, functioning and other aspects of IMPCs, but the absence of such regulations must not prevent the planning authority from running the IMPCs effectively.

Land transport advisory boards

15. (1) A planning authority may establish a land transport advisory board with representation from government and the private sector, to advise it in

relation to land transport matters.

(2) The Minister may make regulations on the membership of such advisory boards, the appointment and qualifications for membership, procedures and frequency of meetings, and related matters.

Part 3

Institutional arrangements: transport authorities

Establishment of transport authorities and related matters

16. (1) A transport authority must be established where it will have the effect of improving transport service delivery in the municipal sphere of government by grouping transport functions into a single, well managed and focussed institutional structure.

(2) A municipality may participate in a transport authority either in respect of its whole area of jurisdiction or part of that area.

(3) Every municipality must have regard to the prescribed factors, among others decided by it, to decide whether a transport authority should be established for transport moving within a functional transport area to or from its area either on its own or together with the areas of other municipalities.

(4) 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 prescribed under subsection (3), and procedures for such determination.

(5) Before deciding to establish a transport authority, the relevant municipality or municipalities must consult with the Minister and with the relevant MEC or MECs.

(6) Transport authorities are juristic persons separate from the participating municipality or municipalities.

(7) Section 86B(2) of the Systems Act does not apply to the establishment of a transport authority, which is not intended to be a municipal entity as defined in section 1 of that Act.

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

(9) Any transport authority established in terms of the previous Act is deemed to have been established under this Act and, if necessary, its founding agreement must be amended to bring it into line with this Act.

Directions by Minister

17. Despite section 16, the Minister, after consulting the relevant MEC or MECs, and the relevant municipality or municipalities, may direct one or more municipalities to establish a transport authority, who must then do so in terms of this Act.

Founding agreements for transport authorities

18. (1) Transport authorities are established by a written founding agreement between the relevant municipality or municipalities.

(2) The Minister and the relevant MEC or MECs may be a party to the founding agreement if the Minister or province provides funding for the transport

authority, but only in relation to those issues for which such funding is provided.

(3) The founding agreement must be in writing and reflect the agreement reached between the parties and provide at least for the prescribed matters.

(4) After their conclusion founding agreements must be published in the relevant *Provincial Gazette* with a notice declaring the relevant area as a transport area.

(5) The Minister may by notice in the *Gazette* publish a *pro forma* founding agreement which sets out minimum terms to be included.

Transport authorities: governing bodies and staffing

19. (1) A transport authority is governed and controlled by a governing body appointed for it in accordance with its founding agreement, which must, subject to subsection (3), consist solely of councillors of the constituent municipality or municipalities, the number of which is determined in the founding agreement.

(2) The councillors appointed to the governing body must be of sufficient number to take effective decisions, and must, where possible, include councillors with a special interest, training or experience in transport matters.

(3) Subject to the founding agreement, the governing body may co-opt members who are not councillors in an advisory and non-voting capacity, either from the public or private sectors, who are qualified by virtue of their interest in transport matters in the area or their expertise in the transport field.

(4) The technical, professional, administrative, clerical and other work of a transport authority is performed by the following, as specified in the founding agreement and subject to the control of the governing body:

- (a) Staff employed by the transport authority or seconded to it by the Department, a province or participating municipality;
- (b) a municipal entity established for that purpose in terms of the Systems Act; or
- (c) one or more specified departments in the municipal administration of one or more participating municipalities.

(5) Every transport authority must appoint staff with appropriate qualifications or experience to enable them to perform the functions relating to evaluating applications for operating licences in their capacity as DPA.

Powers and functions of transport authorities

20. (1) Subject to the Constitution and legislation applicable to local government, a transport authority must perform the prescribed functions, as well as any functions assigned to them by provincial laws, and must—

- (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) in relation to the functions contemplated in paragraph (a), include operational and service-level planning for passenger rail on a corridor network basis in consultation with the SARPC, and other rail-related functions if they have been assigned to the relevant municipality or municipalities in terms of the Constitution;

- (c) develop land transport policy within its area based on national and provincial guidelines, which includes its vision for the area, and incorporate spatial development policies on matters such as densification and infilling as well as development corridors;
- (d) 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;
- (e) manage the movement of persons and goods on land by co-ordinating such movement;
- (f) encourage and promote the optimal use of the available travel modes so as to enhance the effectiveness of the transport system and reduce traveling time and costs;
- (g) develop, implement and monitor a strategy to prevent, minimise or reduce any adverse impacts of the land transport system on the environment;
- (h) develop, operate and maintain a land transport information system;
- (i) encourage, promote and facilitate public consultation, participation or involvement through hearings, seminars and workshops and any other means that are appropriate to ensure effective communication with customers, communities, organised labour and transport operators, and the Minister may prescribe requirements and procedures in this regard;
- (j) market and promote and assume responsibility for publicity associated with the public transport system;
- (k) provide information to users or potential users of public transport;
- (l) introduce or establish, or assist in or encourage and facilitate the establishment of integrated ticketing systems and determine measures for the regulation and control of revenue-sharing among operators involved in those systems;
- (m) in the case of subsidised services, determine fare structures and fare levels, and concessionary fares for special categories of passengers, and periodically adjust fares in consultation with stakeholders;
- (n) 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;
- (o) as a DPA, 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.
- (p) 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;
- (q) institute and conduct investigations into the financial circumstances and operating practices of existing or potential operators in relation to or in the transport area and, if the operator is a company belonging to a group of companies, also into those circumstances and practices of any other company in that group of companies;
- (r) promote security in public transport;
- (s) with a view to ensuring co-ordinated transport law enforcement within its area, liaise on a continuous basis with the South African Police Service,

the relevant provincial and municipal law enforcement authorities or agencies, and the inspectors appointed under the CrossBorder Road Transport Act, 1998 (Act No. 4 of 1998);

- (t) perform the functions in relation to applications for operating licences as a designated planning authority; and
- (u) develop and manage intelligent transport systems in the prescribed manner.

(2) Subject to the Constitution and legislation applicable to local government, a transport authority may—

- (a) after consultation with the Minister and MEC, and subject to norms and standards set by the Minister under section 5(5), set general norms and standards in respect of fares for subsidised services by road with a view to—
 - (i) effective targeting of subsidy in terms of national and provincial policy;
 - (ii) providing integrated fare and ticketing systems in public transport networks; and
 - (iii) achieving cost recovery by operators;
- (b) set minimum fares for unsubsidised public transport services.
- (c) advise participating municipalities in the application of traffic management techniques aimed at improving road traffic movement; and
- (d) if so provided in the founding agreement, perform other functions that are directly or indirectly related to land transport including, but not limited to, undertaking functions relating to municipal roads, as well as measures to limit damage to the road system.

(3) A founding agreement may provide that—

- (a) 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, that different functions may be undertaken within the areas of the different local municipalities in the district.

(4) 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 provincial laws.

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

(6) An agreement in terms of subsection (4) may involve the use 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.

(7) 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.

(8) A province may enter into an agreement with one or more municipalities or transport authorities in the province to provide for joint exercise or performance of their respective powers and functions contemplated in this Act, and may establish a provincial entity or similar body in this regard, subject to the Constitution and section 11.

Transport areas and transport authorities extending across provincial boundaries

21. (1) Subject to subsection (2), municipalities in two or more provinces, after consulting the Minister and relevant MECs, may enter into an agreement which gives authorisation for—

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

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

- (a) the affected areas are all contiguous; and
- (b) those municipalities are satisfied that those areas, taken together, meet the requirements for a functional transport area.

(3) The agreement must also designate one of the MECs as the nominated MEC as regards any functions of MECs in this Act in relation to transport authorities.

Finances of transport authorities

22. (1) Every transport authority must conduct—

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

(2) The Minister may, after consulting the Minister of Finance, prescribe responsibilities and duties of transport authorities concerning financial and fiscal matters.

(3) A transport authority must use moneys received by it in terms of this Act for the performance of its functions, to meet the expenditure incurred by it in the performance of work arising from or connected with those functions and to give effect to national and provincial land transport policy.

Dissolution of transport authorities

23. A transport authority may be dissolved only if all of the parties to the founding agreement have entered into an agreement in terms of which proper arrangements are made for dissolution of the authority and for other prescribed matters.

Part 4

Institutional arrangements: National Public Transport Regulator

Establishment of National Public Transport Regulator

24. (1) The Minister must establish the National Public Transport Regulator (NPTR) within the Department, to perform the functions of that

Regulator in terms of this Act and other legislation.

(2) The NPTR must consist of not more than five designated officials of the Department, appointed either on a full-time or part-time basis, whose specialised knowledge, training or experience, taken collectively, at least covers—

- (a) public transport;
- (b) transport economics;
- (c) accounting, auditing or actuarial science; and
- (d) the law.

(3) No person contemplated in section 12 may be an official of the NPTR.

(4) Communications between the NPTR and other persons or entities should be electronic where possible.

Functions of National Public Transport Regulator

25. (1) The NPTR has the following functions:

- (a) To monitor and oversee public transport in the country in general and the activities of PREs and designated planning authorities in particular;
- (b) to receive and decide on applications relating to operating licences or accreditation for—
 - (i) interprovincial transport;
 - (ii) tourist transport services;
 - (iii) any other services designated by the Minister by notice in the *Gazette*; and
 - (iv) to oversee fares charged for public transport services throughout the country and to advise the Minister on the making of regulations in relation to fares or fare structures in terms of section 7.

(2) The NPTR must produce and regularly update a standardized procedures manual for itself and for PREs, DPAs, contracting authorities and the TAT in respect of their activities in terms of this Act, subject to this Act.

(3) In the case of an application for an operating licence for an interprovincial service other than a tourist service or charter service, the NPTR must consult the relevant PREs and DPAs in the prescribed manner.

(4) Where a PRE refuses to receive an application, or delays an application unduly in the prescribed manner, the applicant may submit the application to the NPTR in the prescribed manner.

(5) Any application concerning an operating licence or conversion of a permit to an operating licence that is pending before a provincial operating licensing board on the date that this section comes into operation that relates to a service specified in subsection (1)(b), must be finalised by that board if the NPTR has not yet been established, or by the NPTR once it has been established, applying the provisions of this Act.

Powers of National Public Transport Regulator

26. (1) The NPTR may, in appropriate cases, make inquiries or hold hearings to enable it to perform its functions set out in section 25.

(2) In dealing with any matter before it the NPTR shall have the prescribed powers.

Part 5 Provincial Regulatory Entities

Establishment of provincial regulatory entities

27. (1) Every MEC must establish a provincial regulatory entity (PRE) within the relevant provincial department, to perform the functions of that entity in the province.

(2) The PRE must consist of not more than four designated officials of the provincial department, appointed either on a full-time or part-time basis by virtue of their specialised knowledge, training or experience of public transport or related matters.

(3) No serving member of Parliament or of a provincial legislature or councillor of a municipal council may be an official of the PRE.

(4) No person contemplated in section 12 may be an official of the PRE.

Functions of provincial regulatory entities

28. (1) Each PRE has the following functions:

- (a) To monitor and oversee public transport in the province;
- (b) to receive and decide on applications relating to operating licences for intraprovincial transport in areas where no DPA exists or where the date on which a DPA must take over this function has been deferred under section 31(9), but excluding applications that must be made to the NPTR in terms of section 25.

(2) As soon as possible after this section comes into operation, the MEC must take steps to disestablish the relevant operating licensing board and to establish the relevant PRE and transfer that board's functions to the PRE.

(3) Any application concerning an operating licence or conversion of a permit to an operating licence that is pending before a provincial operating licensing board on the date that this section comes into operation, must be finalised either by that board before it is disestablished or by the PRE after it is established, in terms of the provisions of this Act and directions given by the MEC.

Powers of provincial regulatory entities

29. (1) A PRE may, in appropriate cases, make inquiries or hold hearings to enable it to perform its functions set out in section 28.

(2) In dealing with any matter before it a PRE shall have the prescribed powers.

Part 6 Designated planning authorities

Designated planning authorities

30. (1) Every DPA that is not a transport authority must establish a division within its administration to perform the functions of a DPA in terms of this

Act for those parts of its area that do not form part of a transport area.

(2) Such division must consist of designated officials of the municipality, appointed either on a full-time or part-time basis by virtue of their specialised knowledge, training or experience of public transport matters or related matters.

(3) No person contemplated in section 12 may be an official of such division.

(4) Such a DPA must arrange or, if necessary, reorganise its administration so that the functions of managing and funding transport matters, and land use planning, as well as the other DPA functions contemplated by this Act, are integrated.

Functions of designated planning authorities

31. (1) Apart from functions assigned elsewhere in this Act, each DPA, whether it is a transport authority or not, must perform the functions of a transport authority listed in section 20(1), and may perform the functions listed in section 20(2), reading in the necessary changes.

(2) With regard to the function mentioned in section 20(1)(f), such a DPA must receive and decide on applications relating to operating licences for services wholly in their areas of jurisdiction or starting in their areas of jurisdiction, but excluding applications that must be made to the NPTR or a PRE, subject to subsection (9).

(3) Where there is doubt as to the area where a service starts, the applicant may apply to any relevant DPA, subject to subsection (3).

(4) Where a service takes place or will take place in the areas of more than one DPA, the DPA may not grant the application without the concurrence of the other DPA or DPAs, obtained in the prescribed manner.

(5) Where services take place partly in the area of a DPA and partly in the area of another planning authority that is not a DPA, the DPA must ask that planning authority for its recommendations in the prescribed manner.

(6) DPAs must liaise closely with each other and with other neighbouring planning authorities on an ongoing basis to discuss applications for services between their areas, and where there are any applications for concurrence pending, must meet with each other at least once every two weeks.

(7) In considering applications regarding operating licences, DPAs must, where applicable, apply their ITPs and give due regard to the relevant PLTF.

(8) A DPA may give notice that it will no longer receive applications for operating licences for new services except in accordance with invitations given by the DPA for specified services on specified routes or in specified areas in accordance with its ITP, either for the purpose of concluding a contract or because those routes or areas are already adequately served.

(9) The Minister may, by notice in the *Gazette*, defer the date on which a DPA that is not part of a transport authority must commence executing the functions relating to operating licences in terms of subsection (1)(b) where the Minister is of the opinion that—

- (a) the ITP of that DPA is inadequate;
- (b) it lacks the necessary capacity; or
- (c) it has not arranged or organised its administration as required by section 30(4);

and in such a case the DPA must take the necessary steps as soon as possible to remedy the matter, and to persuade the Minister in the prescribed manner that it has done so, after which the Minister may publish a similar notice stating that the DPA will undertake such functions from the date stated in the notice.

(9) Every DPA must establish a call centre in the prescribed manner where passengers and other interested persons may lodge complaints or inquiries regarding public transport services in its area, and must follow up such complaints and, where appropriate, take the necessary action to remedy the situation.

Powers of designated planning authorities

32. (1) A DPA may, in appropriate cases, make inquiries or hold hearings to enable it to perform its functions set out in section 31.

(2) In dealing with any matter before it a DPA shall have the prescribed powers.

CHAPTER 3 FUNDING ARRANGEMENTS FOR LAND TRANSPORT

National Land Transport Fund

33. (1) The Minister must establish a Fund to be known as the National Land Transport Fund, into which shall be paid—

- (a) money appropriated by Parliament for the Fund;
- (b) the percentage of the fuel levy mentioned in subsection (2);
- (c) interest on invested cash balances; and
- (d) donations and contributions to the Fund from any other source, including foreign aid agencies.

(2) The Minister of Finance, in agreement with the Minister, must designate a percentage of the fuel levy collected in terms of the National Roads Act, 1971 (Act No. 54 of 1971) in each financial year for the Fund.

(3) The Minister must administer the National Fund and use it to defray the costs of the functions of the Minister or national government in terms of this Act or the NLTSF, and to cover any other expenditure that will promote the objects of this Act.

(4) The Minister may from the National Fund make money available to provinces, transport authorities or municipalities to perform their functions in terms of this Act.

(5) Subject to the PFMA and MFMA, the Minister may grant loans from the Fund to a provincial fund, transport authority or municipal fund.

(6) The MEC, transport authority or DPA, as the case may be, must pay interest on such a loan and redeem it in such instalments and within such period as the Minister determines with the concurrence of the Minister of Finance.

(7) The Minister may invest money in the Fund that is not immediately required by it subject to the Public Investment Corporation Act, 2004 (Act No. 23 of 2004), the PFMA and other applicable legislation.

(8) The Minister must keep proper accounts of all money accruing to or paid out of the Fund, which must be audited by the Auditor-General.

(9) Before making a payment from the National Fund to a provincial fund, transport authority or municipal fund, the Minister must be satisfied that the relevant province, transport authority or municipality is carrying out its responsibilities under this Act satisfactorily.

Provincial land transport funds

34. (1) There is hereby established a fund for each province known as the provincial land transport fund into which shall be paid—

- (a) money appropriated by the Minister from the National Fund;
- (b) money appropriated by the relevant provincial legislature for the provincial fund;
- (c) interest on invested cash balances; and
- (d) donations and contributions to the provincial fund from any other source, including foreign aid agencies.

(2) The MEC must administer the provincial fund and use it to defray the costs of the functions of the MEC or provincial government in terms of this Act or the PLTF, and to cover any other expenditure that will promote the objects of this Act in the province.

(3) The MEC may from the provincial fund make money available to transport authorities or municipalities in the province to perform their functions in terms of this Act.

(4) Subject to the PFMA and MFMA, the MEC may grant loans from the Fund to a transport authority or municipal fund.

(5) The transport authority or DPA, as the case may be, must pay interest on such a loan and redeem it in such instalments and within such period as the MEC determines with the concurrence of the MEC responsible for financial matters.

(6) The MEC may with the approval of the MEC responsible for financial matters invest money in the provincial fund that is not immediately required by it subject to the Public Investment Corporation Act, 2004 (Act No. 23 of 2004, the PFMA and other applicable legislation.

(7) The MEC must keep proper accounts of all money accruing to or paid out of the provincial fund, which must be audited by the Auditor-General.

(8) The MEC may also use the money in the provincial fund for the purposes prescribed by the Minister, and subject to such regulations.

(9) Before making a payment from the provincial fund to a transport authority or municipality, the MEC must be satisfied that it is carrying out its responsibilities under this Act satisfactorily.

Municipal land transport funds

35. (1) Subject to subsection (2), every DPA must establish a fund for its area known as a municipal land transport fund into which shall be paid—

- (a) money appropriated by the Minister from the National Fund;
- (b) money appropriated by the MEC from the provincial fund;
- (c) user charges collected in terms of section 36;
- (d) interest on invested cash balances belonging to the municipal fund; and
- (e) donations and contributions to the municipal fund from any other source, including foreign aid agencies.

(2) In the case where the DPA is a transport authority, the municipal fund must be kept separate from the funds of the transport authority.

(3) The designated planning authority must administer the municipal fund and use it to defray the cost of the functions of that authority in terms of this Act or its ITP, and to cover any other expenditure that will promote the objects of this Act in its area.

(4) The designated planning authority may also use the money in the municipal fund for the purposes prescribed by the Minister, and subject to such regulations.

(5) The designated planning authority may invest money in the municipal fund that is not immediately required by it subject to the Public Investment Corporation Act, 2004 (Act No. 23 of 2004, the MFMA and other applicable legislation.

(6) The designated planning authority must keep proper accounts of all money accruing to or paid out of the municipal fund, which must be audited by the Auditor-General.

(7) The municipal manager or chief executive officer of a DPA must annually submit to its council, or in the case of a transport authority, all relevant councils, for approval estimates of expenditure to be defrayed from its municipal fund, and may make no payment from that fund except in accordance with such estimates or with the prior approval of those councils.

(8) Unless clearly inappropriate, the provisions of the MFMA will apply to municipal funds, but the Minister, in consultation with the Minister of Finance, may make regulations clarifying the application of the MFMA to those funds.

Public transport user charges

36. (1) Subject to the Municipal Fiscal Powers and Functions Act, 2007 (Act No. 12 of 2007), a DPA may impose user charges, which may differ from case to case, on—

- (a) specified classes of motor vehicles entering specified portions of its area at specified times;
- (b) land, buildings or other developments that generate traffic, including land or buildings of which the State is the owner, in its area;
- (c) the parking of motor vehicles in a building or on land in specified portions of its area;
- (d) parking places for, or the use of ranks, stops and terminals by, motor vehicles in such portions; and
- (e) places where goods are off-loaded from or loaded onto motor vehicles in such portions.

(2) Amounts received in terms of subsection (1) accrue to the municipal fund of the relevant DPA.

Minister may provide funds for land transport

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

(2) Money made available to DPAs must include money paid at the commencement of this Act to the relevant province to finance subsidised service contracts, interim contracts and current tendered contracts in terms of the previous Act in the area of the DPA, and the Minister may prescribe conditions or give directions, either generally or to specific DPAs, as to how that money must be spent.

(3) The moneys made available to provincial funds and municipal funds by the Minister 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 the Minister may for that purpose impose conditions including conditions relating to specific purposes for which the money is to be used.

(4) Money made available in terms of this Act—

- (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

38. (1) For the performance of the MEC's functions in terms of this Act and to meet the expenditure incurred by the provincial department to perform the work connected with those functions the MEC must use moneys received from the Minister or appropriated by the relevant provincial legislature for that purpose.

(2) The MEC may, from funds received under subsection (1), make moneys available to transport authorities or municipalities to perform their responsibilities in terms of this Act.

(3) 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 the MEC may for that purpose impose conditions including conditions relating to specific purposes for which the money is to be used.

(4) 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 to transport authorities

39. A municipality may appropriate money for a transport authority of which it is a part to perform its responsibilities in terms of this Act.

CHAPTER 4 TRANSPORT PLANNING

General principles for transport planning, and its integration with land use and development planning

40. (1) Land transport planning must be integrated with the land development and land use planning processes, and the ITPs required by this Act are designed to give structure to the function of "municipal planning" mentioned in Part B of Schedule 4 of the Constitution, and must be accommodated in and form an essential part of integrated development plans, with due regard to legislation applicable to local government, and for this purpose—

- (a) where the relevant planning authority is a municipality, its ITP must form the transport component of the integrated development plan of the municipality; and
- (b) where the area of a municipality falls wholly or partly in a transport area, the ITP prepared by the relevant transport authority constitutes the transport component of the integrated development plans of such municipality in respect of that part of its area that falls within the transport area.

Types of plans required by this Act

41. The following plans are required for the purposes of this Act:

- (a) A national land transport strategic framework prepared by the Minister;
- (b) provincial land transport frameworks prepared by the MECs; and
- (c) integrated transport plans prepared by planning authorities.

General provisions on transport planning

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

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

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

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

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

(4) The Minister, MEC and planning authority must before finalising the NLTSF, PLTF or ITP, as the case may be, publish a notice in English and at least one other official language in a newspaper circulating nationally, in the province, or in the area of the planning authority, as the case may be, making known that the plan in question has been completed and is available for public inspection at a place stated in the notice.

National land transport strategic framework

43. (1) The Minister must prepare a five-year national land transport strategic framework (NLTSF) for the country to guide land transport planning countrywide.

(2) The last NLTSF prepared in terms of the previous Act must be regarded as the applicable NLTSF until the Minister prepares a replacing one in terms of subsection (1).

(3) The Minister must update the NLTSF every two years.

(4) The NLTSF must serve to guide land transport planning countrywide and must not derogate from the constitutional planning functions of provinces and municipalities.

(5) As regards overall strategic planning for transport, all spheres of government and public entities are bound by the provisions of the NLTSF.

Provincial land transport frameworks

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

(2) The PLTF must provide a transport framework as an overall guide to transport planning within the province, being guided by the NLTSF.

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

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

(5) All PLTFs must include routes for the transporting of dangerous goods through the province.

(6) The dates for preparing ITPs must be linked to the PLTFs and must be as agreed upon by the MECs.

(7) The PLTF must summarise all available ITPs in the province.

(8) Until the PLTF is approved, the last PLTF prepared under the previous Act is regarded for all purposes as the PLTF.

(9) The MEC must update the PLTF every two years.

(10) The PLTF must be submitted to the Minister for approval by the date mentioned in subsection (4) and must be accompanied by copies of all agreements regarding interprovincial transport concluded between the province and other provinces.

(11) The Minister's approval in terms of subsection (10) is limited to—

- (a) monitoring compliance with the NLTSF and with this Act and other applicable legislation;
- (b) procedures and financial issues that affect the national government;
- (c) seeing that the MEC followed the correct procedures and otherwise complied with the prescribed requirements;
- (d) national policies and principles regarding interprovincial and cross-border transport; and
- (e) modes and aspects of transport under the control of the national government or national public entities.

Integrated transport plans

45. (1) All planning authorities must prepare and submit to the MEC by the date determined by the Minister, integrated transport plans (ITPs) for their respective areas for the five-year period commencing on the first day of the financial year determined by the MEC.

(2) ITPs must be in accordance with requirements and in the manner and form as the Minister may prescribe in consultation with the MECs, but the MEC may prescribe the content of ITPs in addition to such requirements and, the aforementioned regulations may prescribe different matters for different types or categories of municipalities.

(3) All ITPs must include routes for the transporting of dangerous goods through their areas.

(4) Each ITP must be submitted to the MEC for approval by the date determined under subsection (1), which approval must relate only to—

- (a) monitoring compliance with the PLTF and with this Act and other applicable legislation;
- (b) procedures and financial issues that affect the province;
- (c) seeing that the planning authority followed the correct procedures and otherwise complied with the prescribed requirements;
- (d) provincial policies and principles regarding transport across the boundaries of planning authorities;
- (e) modes and aspects of transport under the control of the provincial government or provincial public entities;
- (f) procedures and financial issues that affect the province; and
- (g) any other matter provided for in provincial laws.

(5) Until the function of commuter rail is devolved from the national to another sphere of government, the planning authority must submit its ITP to the Minister for approval of the commuter rail component of the ITP, within the prescribed manner and time.

(6) Every planning authority must make its ITP available to the NPTR and relevant PRE and make recommendations to them relevant to applications for new operating licences, in the prescribed manner.

Freight transport

46. (1) Subject to requirements prescribed by the Minister under section 45(2), planning authorities must develop a freight transport strategy, with due regard to national and provincial policy, covering the transporting of goods to, from and through the area by road, rail or ship, including movements to and from airports.

(2) That strategy must identify routes for moving goods so as to promote their seamless movement and, in the case of road freight transport, to avoid conflict with road traffic.

(3) That strategy must also include a plan for the movement of dangerous substances contemplated in section 2(1) of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), by road along designated routes in accordance with the general strategy or plan provided for in the relevant PLTF.

(4) A person may not transport dangerous substances in the area of a

planning authority except on a route so designated and indicated in an ITP, where such a route has been determined and published.

(5) Any person who contravenes or fails to comply with subsection (4) is guilty of an offence.

(6) By virtue of the deregulation of the road freight industry effected by the Transport Deregulation Act, 1988 (Act No. 80 of 1988), planning authorities must collaborate with the MEC and registering authorities contemplated in the National Road Traffic Act, to promote effective regulation of freight operations by means of the operator card system provided for in Chapter VI of the National Road Traffic Act to prevent damage to the road system and achieve the other objects of this Act.

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

47. (1) On approval of the NLTSF, a PLTF or an ITP, the Department, MEC or planning authority, as the case may be, must publish, in the *Provincial Gazette*, or, in the case of the NLTSF, in the *Gazette*, the prescribed particulars of such plans, which must include particulars of routes for dangerous goods.

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

- (a) no substantial change or intensification of land use on any property may be undertaken without the written consent of the relevant planning authority;
- (b) developments on property within the area of the planning authority are subject to traffic impact assessments and public transport assessments as prescribed by the Minister;
- (c) where new or upgraded transport infrastructure or services are suggested in such assessments, the costs thereof must be paid by the planning authority, unless it has agreed with a developer or other person to pay those 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 operating licence, as the case may be, has notified the relevant planning authority in writing not less than 30 days before the action is taken.

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

- (a) within 14 days of receipt of such application and prior to considering or ruling on such application, submit such application to the relevant planning authority for its assessment and determination of the impact of the application on the ITP and public transport services; and
- (b) ensure that such application is accompanied by the required traffic impact assessment and public transport assessment, and has sufficient information for the authority to assess and determine the impact of the application on transport plans and services.

- (4) The planning authority must, within 90 days—
- (a) approve or refuse an application for a change or intensification in land use or development proposal submitted in terms of subsection (3); and
 - (b) submit its written decision and any objections with respect to such application, including directions or conditions for compliance with the ITP, to such authority vested with responsibility for considering the application.
- (5) The authority vested with responsibility for consideration of applications for change or intensification in land use or its development may not approve such application—
- (a) prior to the expiry of the 90-day period referred to in subsection (4); or
 - (b) which is in conflict with the directions of or conditions required by the planning authority as contemplated in subsection (4)(b), except to the extent that the planning authority's directions or conditions are altered by the tribunal or entity contemplated in subsection (6).
- (6) Where any person is aggrieved by any decision of a planning authority in terms of this section, such person may appeal against the decision in the manner and within the time prescribed to the tribunal or other entity in the relevant province responsible to hear appeals lodged by persons who are dissatisfied with the decisions of municipalities regarding applications to establish townships or to change land uses.
- (7) Despite any provision to the contrary in the Deeds Registries Act, 1937 (Act No. 47 of 1937), or any other law—
- (a) conditions imposed in terms of subsection (4)(b) must be registered or endorsed against the relevant title deed; and
 - (b) the registrar of deeds may, with the written approval of the planning authority, cancel any condition which has in terms of subsection (5) been inserted in a deed of transfer or endorsed upon a title deed.
- (8) Any person who undertakes a development involving a change or intensification in land use or development proposal without the approval of the planning authority under this section, or contrary to a condition imposed by such an authority, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding six months.
- (9) Where a building or structure has been erected without the approval of a planning authority in circumstances where such approval should have been obtained under this section, or in conflict with a condition imposed under this section, the relevant planning authority may apply to the High Court having jurisdiction for an order compelling the owner of the property to demolish or remove the building or structure at the owner's cost, or authorising the authority to do so and claim the costs involved from the owner, or making such other order as the Court may consider to be just.

Cancellation of operating licence in rationalisation of public transport services

48. (1) When a planning authority in rationalising public transport services in its area or where an ITP reveals that there is a surplus of 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, where possible, offer the operator an alternative service or, if it is not able to do so, cancel the relevant operating licences or permits or, as the case may be, request the NPTR or

relevant NRE to do so.

(2) The Minister may make regulations on the procedures to be followed in proceeding under subsection (1).

CHAPTER 5 CONTRACTING FOR PUBLIC TRANSPORT SERVICES

Integration of bus contract system into larger public transport system

49. The current bus subsidy system must be integrated into the larger public transport system of the area concerned as soon as possible after the date of commencement of this Act.

First phase negotiated contracts

50. (1) All DPAs must, without delay, enter into negotiations with operators in their areas with a view to entering into first phase negotiated contracts for the provision of services forming part of integrated public transport networks in terms of their ITPs.

(2) The negotiations envisaged by subsection (1) must, where possible, include operators of unscheduled services and other non-contracted services in the area.

(3) A negotiated contract contemplated in subsection (1) shall be for a period calculated in the prescribed manner as adjudged by the contracting authority to enable the services to be tendered under section 51, but not for longer than 12 years.

(4) DPAs must take appropriate steps on a timeous basis before expiry of the first-phase negotiated contract to ensure that the services are put out to tender in terms of section 51 in such a way as to ensure unbroken service delivery to passengers.

(5) On expiry of a negotiated contract the Minister may, on application by the contracting authority, grant permission in writing, not more than once, for extension of such a contract for not more than two years if the contracting authority shows that such extension is essential to enable it to put all relevant contracts out to tender.

(6) Where the Minister wishes to grant permission for an extension under subsection (5), the Minister must give notice in the *Gazette* of the intention to do so, with particulars relating to the proposed action, and allow interested persons to make comments or representations relating thereto within a time specified in the notice.

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

Subsidised service contracts

- 51.** (1) If after expiry of—
- (a) a negotiated contract concluded under section 50;
 - (b) a subsidised service contract concluded under this section; or
 - (c) a negotiated contract, interim contract, current tendered contract or subsidised service contract concluded in under the previous Act,

or any extension thereof, the relevant services will continue to be subsidised, the services must be operated in terms of a subsidised service contract, and the contracting authority must take steps within the prescribed period and in the prescribed manner before expiry of such contract to put arrangements in place for the services to be put out to tender so that the services can continue without interruption.

(2) Where a contract mentioned in paragraphs (a), (b) or (c) of subsection (1) has expired and no arrangements have been put in place to put the services out to tender, or such arrangements are unsatisfactory or inadequate in the Minister's opinion, the Minister must forthwith enter into negotiations with the contracting authority, the National Treasury and the Auditor-General with a view to ensuring compliance with this Act and legislation on financial and procurement issues.

(3) Only a contracting authority may enter into a subsidised service contract with an operator, and only if the services to be operated in terms thereof, have been put out to public tendering and awarded by the entering into of a contract in accordance with prescribed procedures in accordance with other applicable national or provincial laws.

(4) The validity period of a subsidised service contract shall not exceed seven years.

(5) The Minister may, in consultation with the MECs—

- (a) prescribe requirements for tender and contract documents to be used for subsidised service contracts which will be binding on contracting authorities unless the Minister agrees that an authority may deviate from the requirements in a specific case; and
- (b) provide model tender and contract documents, and publish them in the *Gazette*, for subsidised service contracts as a requirement for contracting authorities, who may not deviate therefrom unless this is agreed to in writing by the Minister, but those documents may differ for different authorities or situations;

(6) The model tender and contract documents published in terms of the previous Act shall cease to apply as from the date of commencement of this Act.

Commercial service contracts

52. (1) A contracting authority may enter into a commercial service contract with an operator by placing a notice in the *Provincial Gazette* and in a newspaper generally circulating in the area where the services are to be operated, inviting tenders from operators for the operation of that service.

(2) The validity period of a commercial service contract shall not exceed seven years.

(3) The Minister may make regulations—

- (a) on procedures and requirements for commercial service contracts; and
- (b) providing that all scheduled bus services operated on an uncontracted basis must be converted to commercial service contracts by a date specified in the regulations, and providing procedures and requirements for such conversion.

Requirements to qualify as tenderer for commercial or subsidised service contracts

53. To qualify as a tenderer for a commercial service contract or a subsidised service contract, an operator and, where appropriate, any person or entity exercising ownership control over an operator, or performing services on behalf of, or in the capacity as agent of, an operator must comply with the requirements prescribed by the Minister.

Involvement of municipalities and transport authorities in public transport services

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

(2) Unless it complies with requirements prescribed by the Minister and does so at its own cost—

- (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) Subsections (1) and (2)(c) also apply to a DPA, reading the term “DPA” for “transport authority”, where the DPA is administering subsidy funds sourced directly from national or provincial government.

Validation of previous contracting arrangements

55. (1) Any subsidised service contract, interim contract or current tendered contract as defined in the previous Act concluded before the commencement of this Act and any preparations made or steps taken with a view to the conclusion of such a contract are hereby validated, despite the fact that any procedure required by the previous Act was not followed, provided that it can be shown that—

- (a) adequate steps are underway to convert such contract to a subsidised service contract or negotiated contract in terms of this Act; and
- (b) no criminal act or dishonesty was involved.

(2) Where a contracting authority is establishing an integrated public transport network contemplated in section 50(1) and is hampered in its efforts by an existing contract between itself and an operator, and the parties cannot agree on the involvement of the operator in such network and concomitant amendment or cancellation of the contract, the contract shall lapse on the date determined by the planning authority and communicated in writing to that operator, despite the fact that its validity period is longer and despite the existence of any right of renewal or right of first refusal in that contract, and the operator is not entitled to any compensation by virtue of such lapsing.

CHAPTER 6 REGULATION OF ROAD BASED PUBLIC TRANSPORT

Part 1 Transitional provisions

Rationalisation of existing services: general

56. (1) All permits issued for a definite period remain valid but lapse when that period expires, provided that if such a permit is still valid on a date calculated as seven years from the date of commencement of this Act, it will lapse on that date.

(2) All permits issued for an indefinite period remain valid, subject to sections 57 and 58, but lapse seven years after the date of commencement of this Act, but the holder may apply within that period for its conversion to an operating licence to the entity that is responsible for receiving applications for operating licences for the relevant services.

(3) Despite subsections (1) and (2), where the services authorised by a permit were not provided continuously for 180 days prior to the date of commencement of this Act, the permit must be cancelled by following the procedure in section 87.

(4) The holder of any permit that lapses or is cancelled in terms of this Part is not entitled to any compensation by virtue of its lapsing.

(5) No operator may receive any subsidy or other financial assistance from any sphere of government, unless that operator's permit or permits, where applicable, have been rationalized in terms of this section and sections 57 and 58.

Rationalisation of existing scheduled services

57. (1) Where a permit authorises scheduled services provided for in a contract between a contracting authority and the permit holder, the contracting authority must—

- (a) if a DPA, cancel the permit and issue an operating licence for the vehicle specific to the contract, where appropriate in consultation with other relevant DPAs;
- (b) if a provincial department, refer the permit to the DPA in whose area most of the services take place to so convert the permit or, where there is no such DPA, to the PRE;
- (c) in either case cancel any permit of that holder authorising services on routes in the area on an uncontracted basis, and not carry forward such authorisation to the operating licence mentioned in paragraph (a) unless the authorisation forms part of the contract; and

the holder must submit such permit to the contracting authority in the prescribed manner and in the prescribed time for this purpose, failing which the permit will lapse if not so submitted within that time.

(2) In the case of permits for uncontracted scheduled services, the Minister must make regulations within two years of the date of commencement of this Act, after consulting the NPTR, providing a process for the integration of those services with contracted services, and in the process converting them to

commercial service contracts, and such integration and conversion will be done by the NPTR.

(3) No contract may be awarded to an operator for scheduled services unless all permits and operating licences of that operator have been rationalised under subsection (1) or (2).

Rationalisation of minibus taxi-type services

58. (1) Permits issued for minibus taxi-type services remain valid, subject to section 56(1) and (2) and subsection (3) of this section.

(2) The holder of a permit or operating licence for a vehicle authorising minibus taxi-type services who has not yet done so may apply in the prescribed manner for recapitalisation of the vehicle and may choose either to—

- (a) leave the industry, in which case the Department must pay to that holder the scrapping allowance determined by the Department, scrap the vehicle and cancel that permit or operating licence; or
- (b) acquire a new, compliant vehicle that has the same passenger capacity as the vehicle specified in that permit or operating licence, or not more than 20% more, in which case the operator—
 - (i) must submit that specified vehicle to the Department for scrapping;
 - (ii) must receive such scrapping allowance which must be used to acquire the new vehicle in the prescribed manner; and
 - (iii) shall be entitled to an operating licence for the new vehicle on submission of a valid tax clearance certificate;
- (c) acquire a new, compliant vehicle with more capacity than a vehicle contemplated in paragraph (b) if so approved by the planning authority in writing, in which case sub-paragraphs (i) to (iii) of paragraph (b) apply, and the holder must submit the permit or operating licence to the Department for cancellation, provided that the Minister may prescribe that more than one permit or operating licence held by that holder must be surrendered for cancellation to make up for the increase in capacity of the new vehicle.

(3) Any permit or operating licence authorising minibus taxi-type services issued for an indefinite period, or issued for a definite period that has not yet expired, will lapse seven years after the date of commencement of this Act.

Part 2 General provisions

Regulation of road based public transport

59. (1) No one may operate a road-based public transport service unless he, she or it is the holder of an operating licence issued for the vehicle concerned, subject to this Act.

(2) An operating licence may authorise the vehicle to which it relates to operate more than one service or type of service.

(3) Where an application in connection with an operating licence concerns services provided for in an ITP, the provisions of that plan, where appropriate and where possible, will dictate the decision of the entity considering the application.

Entities that must issue operating licences

60. An operating licence will only be issued on application made in terms of this Act to a person to whom it has been granted by the NPTR, a PRE or a DPA, as the case may be, after considering the factors mandated by this Act.

Maximum validity period of operating licences

61. (1) The maximum validity period of an operating licence is seven years, but where a negotiated contract has been awarded to an operator under section 50 for more than seven years, operating licences must be issued for the period of the contract in terms of section 65.

(2) Operating licences must be granted for a fixed period determined by the entity granting them, where applicable based on the directions of the planning authority, subject to subsection (1).

(3) In determining the validity period of operating licences for non-contracted services, the following must be considered, subject to the dictates, if any, of relevant ITPs:

- (a) Current and envisaged trends in utilisation on the route or routes, or, where applicable, in the area, concerned;
- (b) the efficiency of the proposed services in meeting user needs;
- (c) where applicable, the likelihood that, in future, the service may no longer be required in terms of the ITP; and
- (d) the likelihood that the service may become the subject of a commercial service contract or a subsidised service contract.

Exemptions

62. An operating licence is not required for—

- (a) a courtesy service where the operator operates less than the prescribed number of vehicles or is registered in the prescribed manner, if any such regulations have been made;
- (b) a lift club, subject to section 78;
- (c) farmers carrying their own workers in vehicles of which they are the sole owner;
- (d) municipalities carrying their own workers in vehicles owned by them;
- (e) ambulances carrying patients to places where they will receive medical attention;
- (f) the conveyance by a person who carries on any industry, trade or business, of the person's own employees from a place where they perform work in the course of that industry, trade or business, to another place where they are to perform such work, by means of a vehicle of which the person is the owner;
- (g) the conveyance—
 - (i) of learners and teachers for purposes of sport or recreation or on holiday, sightseeing or educational tours, by means of a vehicle of which the relevant school is the sole owner or which, in terms of an agreement, is set apart for the use of that school for these purposes;
 - (ii) by a university, technikon, technical college or teachers' training

college of its own students and staff for educational, cultural or sports purposes by means of a motor vehicle of which that educational institution is the owner, or by means of a motor vehicle which, in terms of an agreement, is set apart for the use of that educational institution for these purposes,

but the MEC may make regulations providing for information to be recorded or provided to the NPTR or a PRE, DPA or other persons or institutions regarding such conveyance, and, where the conveyance occurs by means of a vehicle used in terms of such an agreement, a document in which an authorised employee of the school or educational institution confirms that the passengers being conveyed are enrolled learners or students of, or staff attached to, the institution, must be kept in that vehicle.

Application for a new operating licence

63. (1) A person wishing to undertake an interprovincial service or a tourist service must apply to the NPTR for the necessary operating licence.

(2) A person wishing to undertake the following intraprovincial services must apply to a DPA for the necessary operating licence, subject to section 31:

- (a) A service taking place in the area of the DPA; or
- (b) a service starting in the area of that DPA and also taking place in the area of another planning authority.

(3) A person wishing to undertake a service other than one contemplated in subsection (1) or (2), must apply to the PRE of the relevant province for the necessary operating licence.

(4) Where a transport plan shows a need for additional services contemplated in subsection (2) on a route or routes in its area, a DPA may invite applications to it for operating licences to provide those services.

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

- (a) be made on the basis of one application per vehicle;
- (b) be made in the prescribed manner;
- (c) be made by completing and submitting the prescribed form, which must allow for the applicant to submit recommendations or documentation in support of the application, either from the applicant or from any other interested person;
- (d) be accompanied by the prescribed fee;
- (e) specify the vehicle or exact type of vehicle to be used for providing the services concerned; and
- (f) in the case of a scheduled service or minibus taxi-type service, include a detailed description of the route or routes on which the applicant operates or intends to operate and all points where passengers will be picked up and set down.

(6) Despite this section, where the applicant has been accredited as a tourist operator under section 90 and the vehicle in question complies with section 93, the operator will be entitled to an operating licence automatically to be applied for and issued in the prescribed manner.

Operating licences for public transport services provided for in transport plans

64. (1) Before the NPTR or a PRE considers any application for the granting, renewal, amendment or transfer of an operating licence other than a tourist or charter service, and other than a contracted service contemplated in section 65, it must by notice in the prescribed manner inform all planning authorities in whose areas the services will be operated of the application with the request to give directions with regard to the application based on its ITP within the period stated in the notice.

(2) The planning authority must in the prescribed format—

- (a) indicate whether there is a need for the service on the route or routes or in the area or areas in terms of its ITP or not, and, if so, direct the NPTR or PRE to grant the operating licence and make any recommendations it considers fit regarding conditions to be attached to the operating licence, having due regard to its ITP: Provided that if its ITP is not yet finalised or is inadequate, it must take the decision based on due inquiries and investigations carried out by it; and
- (b) submit such response to the NPTR or PRE, as the case may be, within the prescribed period or the period stipulated in the notice.

(3) Where the public transport requirements for the particular route or routes are adequately served by a then existing public transport service of a similar nature, standard or quality provided in terms of a commercial service contract or subsidised service contract or in terms of operating licences as shown by its ITP, the planning authority must direct the NPTR or PRE to refuse the application.

(4) The NPTR or PRE may condone the late submission of a response under subsection (2).

(5) Subject to subsection (6), the NPTR or PRE, in disposing of an application, must act according to and may not grant an operating licence contrary to relevant ITPs and the directions of the planning authority submitted in terms of subsection (2).

(6) Where the planning authority has failed to respond to such a request, the NPTR or PRE may dispose of the application without any input from the planning authority, by considering the matters mentioned in section 66.

Operating licences for contracted services

65. (1) Where a contracting authority has concluded a negotiated contract, subsidised service contract or commercial service contract with an operator, the relevant DPA or DPAs, or outside of DPA areas, the PRE must issue to the operator an operating licence for each vehicle involved in the contract or, where the operator already has an operating licence for such a vehicle, such entity must amend the operating licences if necessary to accommodate the services in the contract.

(2) The authority conveyed by an operating licence contemplated in subsection (1) must be made specific to the contract and be for the validity period of the contract, but an operating licence may authorise services in addition to those stipulated in the contract.

(3) Where a contract is amended so as to change the authority conveyed by the operating licences, or the duration of a contract is extended, the DPA, DPAs or PRE, as the case may be, must amend the relevant operating

licences accordingly.

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

66. (1) Where an application is made to the NPTR for the granting, renewal, amendment or transfer of an operating licence in respect of a non-contracted service, it may grant or refuse it after having considered—

- (a) in the case of a service shown in an ITP, the directions of the planning authority submitted in terms of section 64;
- (b) whether the vehicle or type of vehicle by means of which the service is to be operated is suitable for that purpose;
- (c) the availability of ranks, terminals or other facilities, based on the recommendations of the relevant planning authority or other information at its disposal;
- (d) the existence of any relevant by-law, regulation, prohibition, limitation or restriction;
- (e) whether the applicant has any previous conviction for an offence relevant to the operation of public transport services, or of a prescribed type; and
- (f) the ability of the applicant to operate the service for which the operating licence is sought, in a manner satisfactory to the public.

(2) Subject to section 64(6), where an application is made to a DPA for the granting, renewal, amendment or transfer of an operating licence in respect of a non-contracted service, it—

- (a) must refuse the application if granting it would be contrary to the relevant ITP or ITPs; or
- (b) if paragraph (a) does not apply, may grant or refuse it after having considered—
 - (i) whether the vehicle or type of vehicle by means of which the service is to be operated is suitable for that purpose;
 - (ii) the availability of ranks, terminals or other facilities and, in the case of the NPTR and a PRE, the recommendations of the relevant planning authority in that regard;
 - (iii) the existence of any relevant by-law, regulation, prohibition, limitation or restriction;
 - (iv) whether the applicant has any previous conviction for an offence relevant to the operation of public transport services, or of a prescribed type;
 - (v) the ability of the applicant to operate the service for which the operating licence is sought, in a manner satisfactory to the public;
 - (vi) recommendations or documents duly submitted with the application by the applicant or any other interested party.

(3) Where an application is made to a PRE for the granting, renewal, amendment or transfer of an operating licence in respect of a non-contracted service, it—

- (a) must refuse the application if granting it would be contrary to the directions of the relevant planning authority or authorities based on their ITPs; or
- (b) if paragraph (a) does not apply, may grant or refuse it after having considered the matters listed in subsection (2)(b).

(4) The Minister may make regulations prescribing that types of

applications specified in the regulations must be submitted to stakeholder forums or other persons or entities for their comments, and that the relevant entity must consider those comments before it takes its decision.

(5) The entity granting an application for the granting, renewal, amendment or transfer of an operating licence may do so subject to any conditions, determined by it, that are not inconsistent with this Act or with relevant provincial laws or transport plans, and must do so where such conditions have been stipulated by the planning authority based in its ITP.

(6) Such a condition may state that a maximum number of passengers may be carried in the vehicle, even if the capacity of the vehicle is greater.

Renewal, amendment or transfer of an operating licence or permit

67. (1) The holder of an operating licence issued by the NPTR, a PRE or DPA may apply to whichever of those entities issued the licence for renewal, amendment or transfer of the operating licence.

(2) Where an operating licence or permit was issued by a provincial operating licensing board or other competent entity before the date of commencement of this Act, the holder may apply for renewal, amendment or transfer thereof to whichever entity would have been empowered to grant a new operating licence for the services in question in terms of section 63, but, in the case of a permit, an operating licence must be issued if the application is granted.

(3) Where amendment of the operating licence or permit only involves substituting a different vehicle with the same capacity or less, section 82 applies.

(4) A person applying to take transfer of an operating licence or permit must have the written consent of the current holder of the operating licence or permit, or of that holder's executor.

Publication of decisions

68. (1) Where the NPTR, a PRE or a DPA has taken a decision to grant an application for or in connection with an operating licence, except a decision to replace a vehicle under section 82, it must publish prescribed details thereof and brief reasons for its decision by posting them on a notice board in a conspicuously visible place at its premises and allow interested persons an opportunity to comment within the prescribed period.

(2) The Minister may also prescribe that such decisions must be published in the *Gazette* or the press or in any other manner.

(3) The entity concerned must reconsider its decision, and confirm, amend or cancel it if this is justified, in its opinion, based on comments received under subsection (1) and notify the applicant accordingly.

Special events

69. (1) Subject to section 70 no one may undertake a public transport service to or from a special event except—

- (a) in the course of operating a courtesy service or tourist service that complies with this Act;
- (b) under the authority of an operating licence that authorises the relevant transport on the route or in the area in question; or

(c) under the authority of a temporary operating licence granted and issued under this section.

(2) A holder of an operating licence who is not authorised by subsection (1)(a) or (b) to undertake a service to or from a special event, may apply to the prescribed entity for a temporary operating licence in the prescribed manner.

(3) An application for a temporary operating licence may be granted if that entity is satisfied—

(a) on reasonable grounds that the existing services available to move passengers to or from the special event are not sufficient to meet the estimated demand;

(b) on reasonable grounds that existing services will not be disrupted or prejudiced; and

(c) that other prescribed criteria have been met.

(4) The onus of proving the matters mentioned in subsection (3) rests on the applicant.

(5) The entity may require the applicant to supplement the application with any information or documents in support thereof.

(6) A temporary operating licence may be granted only for one, particular special event and for a period that is not longer than the duration of such event, including time needed for preparing for it before the event and transporting passengers to airports, stations and other transfer facilities after the event.

(7) A temporary operating licence in terms of this section must—

(a) specify the special event and the date or dates on which it occurs;

(b) where feasible state the route or routes on which the transport to and from the special event may be provided; and

(c) where appropriate specify the terminals, ranks or stopping places that may be used.

(8) A temporary operating licence in terms of this section may be issued with a special distinguishing mark which must be affixed to the vehicle to which the licence relates in the prescribed manner for the duration of the public transport to and from the special event.

(9) The Minister may make regulations providing that temporary operating licences in terms of this section may be granted and issued by municipalities or other bodies, institutions or officials specified in the regulations on application, after consulting those municipalities or other bodies or institutions, and may also provide therein for—

(a) the manner and form in which—

(i) such applications must be made and the fees payable, if any; and

(ii) such special operating licences must be issued;

(b) the level or rank of officials that must consider such applications or that committees may be formed for that purpose, in consultation with such municipalities, bodies or institutions;

(c) documents and information that must be submitted with such applications; and

(d) other matters related or incidental to the matters contemplated in this subsection.

Major special events

70. (1) The Minister may make regulations to provide or facilitate land transport arrangements for any specific major special event including, but not limited to, the following, despite this Act, the Cross-Border Act or the National Road Traffic Act:

- (a) That foreign-registered vehicles brought into the Republic temporarily for the event will be exempt from specified requirements of this Act, the Cross-Border Act or the National Road Traffic Act;
- (b) providing for expedited procedures for obtaining temporary operating licences for the event;
- (c) appointing one or more institutions to receive applications for special operating licences for the event; or
- (d) providing that members of the South African National Defence Force will have the powers of authorised officers under this Act or traffic officers, traffic wardens or inspectors of licences under the National Road Traffic Act, as well as the powers of peace officers as defined in the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) Despite the Road Accident Fund Act, 1996 (Act No. 56 of 1996), imposing different or additional requirements regarding insurance in respect of passengers using public transport or vehicles used for such transport during the event.

Issue and contents of operating licence

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

- (a) the person requiring it has applied therefor in accordance with this Act and applicable provincial laws;
- (b) the applicant has furnished a valid tax clearance certificate from the South African Revenue Services certifying that his, her or its tax affairs are in order;
- (c) the applicant has signed a statement to the effect that the applicant will comply with labour laws in respect of drivers and other staff, as well as sectoral determinations of the Department of Labour;
- (d) the applicant has submitted a current roadworthy certificate which was issued for the vehicle not earlier than the prescribed point in time, or a duly certified copy of such a certificate, as well as proof that the vehicle is properly licensed and has a national information system model number allocated to it; and
- (e) the applicant, in the case of renewal, transfer or amendment, has returned to the entity issuing it the operating licence that was issued previously for the same service.

(2) Any operating licence granted, renewed, amended or transferred in accordance with this Act must be issued in the prescribed manner and form by an authorised official of the entity concerned.

(3) An operating licence must at least contain the prescribed particulars, and the Minister may prescribe that a tag, electronic card or other device or equipment must be issued with an operating licence and kept in the vehicle, as well as an issuing fee for the licence or such tag, card or equipment.

Authority conveyed by operating licence

- 72.** An operating licence issued under this Act—
- (a) does not authorise the holder to undertake transport on or over a road if it is unlawful to do so in terms of any other law; and
 - (b) does not exempt the holder from the obligation to comply with any requirement or condition imposed by or in terms of any law, licence or permit issued by any other competent authority.

Persons who may hold operating licences

73. An operating licence may only be issued to and held by the person registered, in terms of the National Road Traffic Act, as the owner or operator of the vehicle, as defined in that Act, and specified in the operating licence, except where it relates to a contracted service and the operator has subcontracted another operator to operate part of that service and in such a case—

- (a) the subcontracted operator must be the so registered owner or operator of the vehicle used for that service on behalf of the operator party to the contract; and
- (b) that vehicle must be specified in the operating licence as the vehicle to be so used for operating that service.

Long-distance services

74. (1) If approved by the planning authority, an entity granting an operating licence may authorise the vehicle specified in that licence to be operated for a long-distance service, despite the fact that the vehicle is specified in the operating licence to be used for a service provided for in an ITP.

(2) The planning authority may not grant such an authorisation where the operation of the long-distance service will or is likely to be detrimental to the operation of the services provided for in that ITP.

(3) In the case of an application for the granting, renewal or amendment of an operating licence relating to a long distance service, due regard must be had to the provisions of any ITPs, where they are relevant and of any applicable provincial laws and, subject to this—

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

(4) Operating licences for long distance services other than charter or tourist services must specify the authorised origin and destination points, 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.

Metered taxi services

- 75.** (1) In the case of a metered taxi service—
- (a) the entity granting the operating licence may specify an area for picking up passengers, but does not have to do so;
 - (b) if the operating licence or permit specifies such an area, the vehicle may leave that area 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 empty;
 - (c) the vehicle may pick up passengers outside of that area if the fare is pre-booked and the passengers will return to such area; and
 - (d) any particular journey may be operated at a fare not determined by the meter if the fare for that journey has been agreed upon before the journey begins.

(2) The Minister must set standards for sealed meters for metered taxis in accordance with standards set by the South African Bureau of Standards in terms of the Standards Act, 1993 (Act No. 29 of 1993).

(3) The Minister or MEC, in consultation with the relevant planning authority, may determine a fare structure for metered taxi services and the MEC must publish such fare structure in the *Provincial Gazette*.

(4) The Minister or MEC may make regulations providing for—

- (a) a grading system for metered taxis;
- (b) special requirements for drivers of metered taxis, which may include testing of knowledge of the relevant area; and
- (c) special markings or other requirements for metered taxi vehicles.

Charter services

76. (1) An operating licence may authorise the holder to undertake pre-booked charter services in the areas or zones as specified by the entity granting the operating licence, which may or may not be in addition to other services authorised by that licence.

(2) If the operating licence specifies an area for picking up passengers such a vehicle may—

- (a) leave the area or zone described in the operating licence 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; and
- (b) pick up passengers outside that area or zone if the fare is pre-booked and the passengers will return to such area;

(3) Where application is made for an operating licence for vehicle hires with drivers as charter services, i.e. not as metered taxi services, the entity granting the operating licence must evaluate whether the services should rather be provided as metered taxi services, and, if it grants the application for a charter service, should attach appropriate conditions.

Staff services

77. (1) The Minister may, in addition to the provisions of this Act, prescribe the circumstances in which an operating licence is required for staff services.

(2) In the case of staff services to be provided on a regular basis, the operating licence must specify the route, routes or area authorised.

Lift clubs

78. (1) The Minister may make regulations on the requirements to qualify for a lift club, or operating such clubs, including, but not limited to—

- (a) the requirement that written confirmation from the employer or other documentation must be kept in the vehicle; and
- (b) that lift clubs must be registered with planning authorities or other entities; and
- (c) requirements relating to insurance.

(2) Such regulations may relax the requirement that each member of the lift club must take a turn to convey the others, if sufficient safeguards are provided to prevent abuses and protect passengers.

Tuk-Tuks

79. (1) Tuk-tuks may be used for public transport services where relevant transport plans allow for this.

(2) Where a tuk-tuk is so used the operating licence must stipulate the urban route, road network or area on or within which it must operate, as shown in the relevant ITP, and a maximum speed of operation.

Adapted light delivery vehicles

80. Adapted light delivery vehicles may be used for public transport services in a particular area in prescribed circumstances where there is no other appropriate or acceptable public transport, and subject to prescribed conditions.

Transporting of scholars, students, teachers and lecturers

81. (1) Where a public transport service is dedicated to transporting scholars, students, teachers or lecturers, the Minister may prescribe regulations on special requirements for those services including, but not limited to—

- (a) requirements for supervision of scholars;
- (b) special requirements for drivers;
- (c) requirements for insurance of vehicles;
- (d) documents that must be kept in the vehicle and special vehicle markings or livery; and
- (e) requirements that drivers of other vehicles must stop those vehicles in the vicinity of vehicles loading or offloading scholars or students.

(2) Such regulations may also be made applicable to services that are exempt under section 62(g).

Amendment of operating licence to replace specified vehicle

82. (1) Where the holder of an operating licence or permit wishes to replace the specified vehicle with another vehicle, the holder must apply for the replacement, in the manner prescribed, to an authorised official of—

- (a) the entity that issued the operating licence; or
- (b) where the licence or permit was issued before the date of commencement of this Act, to the entity to which application for a new operating licence

must be made under this Act, provided that the nature of the replacing vehicle and the quality and standard of the service are not affected by the replacement.

(2) The authorised official must allow the replacement and issue to the holder an amended operating licence, or in the case of a permit, a new operating licence, subject to sections 56, 57 and 58, if the replacing vehicle—

- (a) falls in the same category as the replaced vehicle, i.e. motor car, minibus, midibus or bus;
- (b) in the case of a bus, does not exceed the capacity of the replaced vehicle by more than 20%; and
- (c) is otherwise suitable for the operation of the service, has a national information system model number allocated to it and has been certified as roadworthy and is properly licensed in compliance with the National Road Traffic Act.

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

Temporary replacement of vehicle

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

(b) Where the operating licence or permit was issued before the date of commencement of this Act, such authorisation must be granted by the entity to which application for a new operating licence must be made in terms of this Act.

(c) Where a vehicle contemplated in paragraph (a) belongs to a subcontractor operating a service on behalf of the holder in terms of a contract, such an authorisation may also be granted to such a subcontractor.

(2) The written authorisation must be in the prescribed form and must specify at least the prescribed particulars.

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

- (i) be smaller; or
- (ii) exceed that capacity by not more than 20 per cent.

(b) The replacing vehicle must be suitable for the operation of that service and, except insofar as this section provides otherwise, must comply in all other respects with the requirements and conditions that apply in terms of this Act and the National Road Traffic Act with regard to the vehicle.

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

(5) The replacing vehicle is regarded in all respects as the vehicle operated under the operating licence or permit for the period of replacement.

(6) A second or subsequent application under subsection (1) in respect

of the same vehicle may be refused if it appears that the applicant is abusing such written authorisations.

(7) Where vehicles normally used for public transport services in terms of operating licences or permits on a particular route or in a particular area are not available temporarily due to extraordinary circumstances including, but not limited to, natural disasters, unrest or violence, the Minister may authorise operators, who need not be the holders of those operating licences or permits, in writing to use other vehicles temporarily on those routes and in those areas, subject to the conditions and for the periods set out in such authorisation.

Interaction between public transport and cross-border road transport

84. (1) Where on trips involving cross-border road transport, an operator both picks up and sets down passengers within the Republic either on the outward or return journey, that operator must be in possession of the necessary operating licence as required by this Act for the vehicle in addition to any permit required by the Cross-Border Act.

(2) No one may set down passengers at or near to an international border, where it is clear that such passengers intend to cross the border into another state, and no one may pick up passengers at or near such a border where it is clear that those passengers come from another state having crossed such border into the Republic, unless that person is the holder of the necessary permit required by the Cross-Border Act.

(3) Where an operator picks up or sets down passengers within two kilometres of any international border post, that operator will be presumed to be undertaking cross-border road transport, unless the operator proves the contrary in the prescribed manner.

(4) Where the Regulatory Committee defined in section 1 of the Cross-Border Act is considering an application for a permit where ranks or terminals in the Republic will be used, that Committee must allow relevant planning authorities the opportunity, in the prescribed manner, to comment on the use of those facilities.

Duties of holder of operating licence or permit

85. The holder of an operating licence or permit must comply with this Act and the prescribed requirements.

No cession, alienation or hiring out of operating licence

86. (1) The authority conferred by an operating licence or permit may not—

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

(2) A transaction concluded in contravention of subsection (1) has no legal force.

Cancellation of operating licences and permits not in use

87. (1) Where it comes to the notice of the entity that issued an operating licence that it has not been in use for 180 days or more, that entity must, by notice in writing, call on the holder to advance good reasons to its satisfaction and within the period stated in the notice, for not having operated the service to which that licence relates, and, accordingly, why that licence should not be cancelled.

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

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

(4) Where an operating licence or permit was issued before the date of commencement of this Act, this section may be implemented by the entity to which application for a new operating licence must be made in terms of this Act.

(5) A planning authority or other interested person may request such an entity to take action under this section.

Withdrawal, suspension or amendment of operating licence or permit

88. (1) Where an operating licence or permit has been granted on the basis of a contract, the contracting authority may request the relevant entity to withdraw the operating licence or permit where the contract has been terminated for any reason, whereupon that entity must do so.

(2) Subject to subsection (3), in the case of an operating licence or permit that has not been granted on the basis of a contract, the entity that issued it or that would have the power to have issued it may at any time withdraw, amend or suspend it for such period as it may deem fit, if the holder—

- (a) or employee of the holder has been convicted of an offence under this Act or under a law relating to motor vehicles or the regulation of traffic or occupational safety or labour relations, or fraud or dishonesty, of a type and seriousness as prescribed; or
- (b) in the opinion of the entity, has not carried out faithfully the conditions of the operating licence or permit.

(3) Any entity may at any time withdraw an operating licence which was granted or issued by it erroneously or on the basis of incorrect or false information supplied to it.

(4) An entity may not under subsection (1), (2) or (3) withdraw or suspend an operating licence or permit unless—

- (a) at least 21 days' written notice of its intention to do so, with reasons, has been given to the holder by registered or certified post, with the request for the holder to comment on such reasons;
- (b) the holder has been given an opportunity, either personally or through a representative, to appear before it and provide evidence or submit representations in regard to the proposed action or has submitted such comments, which have been considered by the entity; and

- (c) where appropriate, the relevant planning authority has been given an opportunity to submit representations and make alternative arrangements.

Part 3 Regulation of tourist services

Tourist services: general provisions

89. (1) Tourist services are pre-booked services catering for leisure travel where the tourists are accompanied by a tour guide registered under tourism legislation if that legislation requires it.

(2) The driver of a vehicle used for tourist services must at all times while such services are undertaken comply with requirements imposed by tourism legislation and as prescribed.

Accreditation of operators of tourist services

90. (1) As from a date determined by the Minister and published in the *Gazette*, no one may operate tourist services unless accredited by the NPTR.

(2) A person who contravenes subsection (1), or who operates tourist services after his or her accreditation has been cancelled in terms of section 92, commits an offence.

(3) The NPTR must accredit operators of tourist services on application by them if satisfied that they are fit and proper persons or entities to transport tourists in a manner that is safe and will promote South Africa as a tourist destination.

(4) The NPTR must consider the prescribed matters in deciding whether to grant or refuse an application for accreditation.

(5) No such accreditation may be granted unless the NPTR has obtained and considered recommendations from the tourism authority or authorities recognised by the Minister in the prescribed manner, but it may proceed without such recommendations where such tourism authority has not supplied them in the time specified in the entity's request or where no such regulations have been made.

(6) The NPTR must keep a list of accredited tourist operators which is available for inspection to any interested person on request, on payment of the prescribed fee.

(7) Operators accredited under this Part must renew their accreditation every five years in the prescribed manner, failing which their accreditation will lapse.

Application for accreditation

91. (1) An operator of tourist services may apply to the NPTR for accreditation by completing the form required by the NPTR or as prescribed, paying the prescribed fee and submitting the prescribed information or documentation.

(2) The onus will be on the applicant to satisfy the NPTR that he, she or it is a fit and proper person or entity to provide tourist services.

(3) If the NPTR is satisfied that SA Tourism or any other national or

provincial body has an acceptable system in place to accredit operators of tourist services, it may accept such accreditation of an operator by such a body without requiring the operator to apply under subsections (1) or (2).

(4) When it accredits an operator, the NPTR must include the operator's name in the list mentioned in section 90(6) and issue to the operator a certificate of accreditation and a token for each vehicle to be operated, plus, on request, tokens, tags or other equipment as prescribed for use on other vehicles that are properly certified in terms of section 93 that the operator may acquire, hire or borrow in the future.

Cancellation of accreditation

92. (1) The NPTR may cancel the accreditation of an operator if the operator—

- (a) in the opinion of the NPTR no longer complies with section 91(2);
- (b) has provided false or misleading information to the NPTR in the application form for accreditation or at any other time;
- (c) based on three or more inspections or incidents, or on one or more accident or collision that has occurred, has failed to maintain vehicles operated by that operator in a satisfactory condition;
- (d) based on three or more incidents, has failed to use or employ suitably qualified drivers or drivers who do not hold the required professional driving permits in terms of the National Road Traffic Act;
- (e) is the subject of negative complaints against that operator from a planning authority or from passengers or other interested persons that indicate that such cancellation is justified; or
- (f) on failure to comply with any other prescribed requirement.

(2) Before taking a decision to cancel an operator's accreditation, the NPTR must—

- (a) give the operator written notice of the reasons why it intends to cancel it;
- (b) allow the operator a reasonable time, but not less than 14 days to submit representations or comments; and
- (c) consider those representations or comments, if any have been submitted.

(3) On cancellation of an operator's accreditation, the NPTR must remove that operator's name from the list kept in terms of section 90(6)

Use of vehicles for tourist services

93. (1) Only vehicles that have been certified by the NPTR and display a special token, tag or equipment issued by the NPTR under section 91(4) may be used for tourist services.

(2) Any accredited operator or any entity that owns vehicles and rents them out to tourist operators may apply to the NPTR to certify a vehicle.

(3) The NPTR must certify a vehicle on proof submitted to it in the prescribed manner that—

- (a) the vehicle is properly registered and licensed on eNaTIS;
- (b) the vehicle is suitable in all respects for the type of tourist service envisaged;
- (c) a valid and current roadworthy certificate has been issued for the vehicle;
- (d) the vehicle and passengers who will be carried are insured with a

- registered insurer; and
- (e) the vehicle is otherwise acceptable according to the NPTR.
- (4) The NPTR may impose conditions including, but not limited to, that the vehicle must be equipped with a sound system, air conditioning, kitchen equipment or other equipment determined by the entity considering the application, or a toilet where sections of journeys will exceed a certain distance.
- (5) No vehicle used for tourist services may use a rank or terminal without having obtained the written permission of the relevant planning authority, unless a fee is charged for such use and the operator has paid it.
- (6) A person who uses a vehicle for tourist services in contravention of subsection (1) or (5) commits an offence.

CHAPTER 7 LAW ENFORCEMENT

Land transport law enforcement

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

(2) Despite the provisions of any other law—

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

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

- (i) land transport law enforcement functions are undertaken by one enforcement authority in the area of jurisdiction of another;
(ii) authorised officers of one such authority may be seconded to another authority temporarily; or
(iii) land transport law enforcement functions are undertaken jointly, or by a public or private sector agency on behalf of the authority,

on terms and conditions set out in the agreement, including conditions as to which authority must bear the costs involved.

Appointment of inspectors

95. (1) Employees of the following, who are fit and proper persons for the relevant duties, may be appointed as inspectors:

- (a) A provincial department, as appointed by the MEC;
(b) a transport authority or DPA, as appointed by that authority.

(2) The authority appointing an inspector must issue to him or her a certificate of appointment and official proof of identity in the prescribed form.

(3) The functions of inspectors so appointed are to monitor compliance with this Act in the province, transport area or area of the DPA concerned and to assist with the investigation and prevention of offences contemplated in section 99 which have been committed in that province or area, subject to provincial laws, if any, and the directions of the appointing authority.

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

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

Impoundment of vehicles

96. (1) An authorised officer who is satisfied on reasonable grounds that a motor vehicle is being used by any person for the operation of public transport without the necessary operating licence or permit or contrary to the conditions thereof, may impound the vehicle pending the investigation and prosecution of that person for an offence mentioned in section 99(1)(a) or (b).

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

- (a) when the criminal charges against the person have been withdrawn or the person has been acquitted of the offence charged; or
- (b) in the case where the person is convicted of the offence charged, and unless the court has ordered otherwise, on payment to the head of the depot of the amount determined by the MEC.

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

(4) The MEC or a transport authority or municipality by notice in the *Provincial Gazette* may designate any place defined in the notice to be a depot for the purposes of this section, and may in the same manner amend or withdraw such a notice at any time, and must appoint an authorised officer as the person in charge of the depot.

Presumptions and proof of certain facts

97. (1) A document which purports to be an operating licence or permit issued under this Act or a certified copy thereof, will on mere production in any prosecution for an offence mentioned in section 99(1) be admissible in evidence as proof that it is such an operating licence or permit which had been lawfully issued, or that it is a true copy thereof, as the case may be, and of the truth and accuracy of the particulars thereof.

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

Powers of authorised officers

98. (1) 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 prescribed manner and enter such a vehicle in order to establish if it is used for public transport or monitor compliance with any provision of this Act, or with the terms of any operating licence or permit, and may for those purposes examine or inspect the vehicle and any documentation that may be relevant;
- (b) require from the driver to furnish the his or her 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 in 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) require that the records to be kept in or on the vehicle in terms of this Act, be produced for inspection;
- (f) enter or enter upon any business premises at any reasonable time to monitor compliance with this Act, and—
 - (i) question any person who, in the opinion of the authorised officer, may be able to furnish any information required for that purpose;
 - (ii) require such a person to produce, for examination or inspection, any books, documents or other records, that may be relevant for monitoring purposes;
 - (iii) make extracts therefrom or copies thereof; and
 - (iv) demand an explanation of any entries in such a book, document, or other record;
- (g) require that the driver or other person in charge of a motor vehicle used for public transport, produce any documents whatsoever, that were issued by a competent authority, in terms of this Act, or a previous law, with regard to the vehicle or the public transport for which it may be used terms of this Act, or the previous law, as the case may be, and which, in terms of this Act or that law have to be kept in that vehicle; and
- (h) upon the order of the entity that issued an operating licence or permit or the successor to that entity, attach an operating licence or permit that has expired or lapsed or has been withdrawn temporarily in terms of this Act, and hand it over to that entity.

(2) A person questioned or required to furnish an explanation under paragraph (f) of subsection (1), is entitled to all the privileges to which any person testifying before a court of law is entitled.

(3) (a) Where an authorised officer finds a vehicle used for public transport 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 the relevant operating licence or permit, as well as all distinguishing mark relating to the vehicle, and prohibit that driver or person forthwith to use the vehicle for public transport.

(b) The operating licence or permit so surrendered, must be retained by the officer until the holder has satisfied the officer that the defects have been remedied and that the vehicle is in a roadworthy condition, the onus of proving which rests on the holder of the operating licence.

Offences and penalties

- 99.** (1) A person is guilty of an offence—
- (a) if that person operates a public transport service in contravention of section 59;
 - (b) if the person operates a public transport service contrary to the terms and conditions of an operating licence or permit;
 - (c) if the person contravenes any other provision of this Act;
 - (d) if, being the holder of an operating licence or permit or the agent or employee of such a holder, the person allows someone else to use that operating licence or permit for a vehicle other than the vehicle specified therein;
 - (e) if the person applies for or obtains an operating licence knowing that a current operating licence has already been issued with regard to the same vehicle;
 - (f) if the person, with the intent to deceive, forges, alters, defaces, damages or adds to any operating licence or other official document issued under this Act;
 - (g) if, knowing that a document is not an operating licence or permit or such another official document or that it has been altered, defaced, damaged or added to, utters or uses the document;
 - (h) if the person furnishes or gives false information in or with regard to any application made in connection with an operating licence, or in the course of appearing in any proceedings, investigation or inquiry relating thereto;
 - (i) if the person impersonates an authorised officer;
 - (j) if the person wilfully obstructs or hinders an authorised officer who is discharging his or her duties;
 - (k) if the person refuses or fails to comply with the 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;
 - (l) if, where the person is conveyed as a passenger in the course of public transport, he or she—
 - (i) fails to pay the fare due for the journey when payment is requested by the driver or conductor;
 - (ii) smokes or drinks liquor on that vehicle in contravention of a notice on the vehicle which forbids smoking or drinking;
 - (iii) wilfully acts in a manner that inconveniences a fellow passenger;
 - (iv) disobeys a reasonable instruction issued by the driver or conductor for the purpose of maintaining order or ending a disturbance or controlling any emergency; or
 - (v) wilfully performs any act in or on the vehicle that could cause injury to or endanger the life of any person or cause damage to any

- property;
- (m) if the person, being the holder of an operating licence or permit or the driver of a vehicle to which that operating licence or permit relates, fails to comply with any duty or obligation imposed on such a holder or driver by or in terms of this Act;
 - (n) if the person picks up or sets down passengers at or near an international border in contravention of section 84(2);
 - (o) if the person uses a vehicle for a public transport service in contravention of section 59.

(2) Where a person is convicted of any one of the offences mentioned in—

- (a) paragraphs (a), (b), (d), (e) or (o) of subsection (1), a term of imprisonment not exceeding two years, or a fine not exceeding R100 000, may be imposed;
- (b) any other paragraph of that subsection, a term of imprisonment not exceeding three months or a fine not exceeding R10 000 may be imposed.

(3) Whenever a manager, agent or employee of the holder of an operating licence or permit performs or omits to perform any act which, if the holder had performed or omitted to perform that act personally, would have constituted an offence in terms of subsection (1), that holder is guilty of that offence if—

- (a) the holder—
 - (i) connived at or knowingly permitted the 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.

Extraordinary measures in declared areas

100. (1) If in any area in the relevant province the MEC considers that because of violence, unrest or instability in any sector of the public transport industry in the area or between operators in the area, the safety of—

- (i) passengers using the relevant services; or
- (ii) the residents of the area; or
- (iii) any other persons entering the area,

has deteriorated to an unacceptable level, the MEC may, by notice in the *Provincial Gazette*, define the area and declare it to be an area in respect of which regulations prescribing the extraordinary measures contemplated in subsection (2) may be made.

(2) The MEC may make regulations providing that—

- (a) one or more or all the routes or ranks in such a declared area are closed for the operation of any type of public transport service, for the period stated in the regulation;
- (b) any operating licence or permit authorising any of the services referred to in paragraph (a) on a closed route or routes or at a closed rank or ranks in the declared area is suspended for the relevant period;
- (c) subject to subsection (6), no person may undertake any of the services

referred to in paragraph (a) on a closed route or routes or at a closed rank or ranks in the declared area or in terms of an operating licence or permit suspended as contemplated in paragraph (b) for the relevant period.

(3) Before making regulations under subsection (2), the MEC must cause a notice to be published in the *Provincial Gazette*, and in a newspaper circulating in the declared area stating—

- (a) in summary form the nature and purpose of the proposed regulations;
- (b) the route or routes and rank or ranks which are proposed to be closed, or that it is proposed to close all routes and ranks in the declared area;
- (c) the period for which the proposed regulations will be in force;
- (d) that interested or affected parties may request reasons for the proposed regulations;
- (e) that any interested or affected persons are entitled to make representations;
- (f) the time within which representations may be made, which may not be less than 24 hours;
- (g) the address to which representations must be submitted, and
- (h) the manner in which representations must be made.

(4) The MEC must consider any representations received under subsection (3) before making a regulation under subsection (2).

(5) Regulations made under subsection (2) may provide that a contravention thereof or a failure to comply therewith constitutes an offence, and may prescribe penalties in respect thereof which may be a fine, or imprisonment for a period not exceeding six months.

(6) Regulations made under subsection (2) may provide for the issuing of temporary permits to operators of motor vehicles of specified types, to operate services on a closed route or routes or at a closed rank or ranks for the period of their closure in substitution of the forbidden services.

(7) After giving notice as contemplated in subsection (3), which applies with the necessary changes, the MEC may, by notice in the *Provincial Gazette*, temporarily suspend any operating licence or permit insofar as it authorises public transport in a declared area on a route or routes or at a rank or ranks not closed in terms of a regulation made under subsection (2), for the period the MEC considers appropriate.

(8) The MEC may in a like manner and at any time amend a regulation made in terms of subsection (1).

(9) The Minister may exercise any of the powers of the MEC in this section, after consulting the relevant MEC.

CHAPTER 8 APPEALS

Appeals to Transport Appeal Tribunal

101. (1) The following persons may appeal to the TAT against an act, direction or decision of an entity that has granted or refused an application relating to an operating licence, in the manner and within the time prescribed:

- (a) The aggrieved applicant;
- (b) the holder of any operating licence or permit affected by the decision; or

- (c) any other person interested in or affected by the decision.
- (2) In considering an appeal in terms of subsection (1), the TAT is bound by applicable transport plans.
- (3) Appeals pending before provincial transport appeal bodies contemplated in section 128(1) of the previous Act on the date of commencement of this Act, must be finalised by those bodies as if this Act had not been passed, unless the MEC directs that those appeals must be transferred to the TAT for finalisation.

Amendment of Act 39 of 1998

102. (1) The Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998) is hereby amended as follows:

- (a) Section 2 thereof is hereby repealed;
- (b) the word "permissions" in that Act must be read as referring to operating licences; and
- (c) the term "national land transport legislation" must be read as referring to this Act.

CHAPTER 9 TRANSITIONAL AND FINAL MATTERS

Transitional provisions

103. (1) The *pro forma* founding agreement for transport authorities published in terms of the previous Act will apply until a replacing one is published under section 18(5).

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

(3) Any transport plan prepared or approved in terms of the previous Act is deemed to be the corresponding plan prepared or approved, as the case may be, in terms of this Act until the latter has been prepared or approved.

(4) Until the NPTR, a PRE or DPA has been established or is empowered to perform its functions under this Act—

- (a) an operating licensing board established in terms of the previous Act (in this section referred to as a "previous board") may exercise the powers and perform the duties of such an entity under this Act, but only until a date to be determined by the Minister, after consultation with the relevant MEC or DPA, by notice in the *Gazette*;
- (b) any power exercised or duty or function validly performed by a previous

- board in terms of the previous Act or a law previous to that is deemed to have been validly exercised or performed; and
- (c) any application to a previous board relating to the granting, amendment, renewal or transfer of an operating licence which has not been disposed of, is deemed to be an application under this Act relating to the appropriate operating licence.

Act binds State

104. This Act binds the State.

Short title and commencement

105. (1) This Act is called the National Land Transport Act, 2008, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

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