

REPUBLIC OF SOUTH AFRICA

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# NATIONAL LAND TRANSPORT AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill published in Government Gazette No. 39798 of 3 March 2016)  
(The English text is the official text of the Bill)*

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(MINISTER OF TRANSPORT)

**[B 7—2016]**

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**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

                         Words underlined with a solid line indicate insertions in existing enactments.

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## **BILL**

**To amend the National Land Transport Act, 2009, to insert certain definitions and amend others; to provide for non-motorised and accessible transport; to bring the Act up to date with developments since the implementation of the Act; to provide for certain powers of provinces to conclude contracts for public transport services; to expand the powers of the Minister to make regulations and introduce safety measures; to prescribe criteria and requirements for municipalities to enter into contracts for public transport services; to amend other transport-related legislation to bring it into line with the Act; and to clarify or simplify various provisions or solve problems that have arisen since the implementation of the Act; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 5 of 2009**

1. Section 1 of the National Land Transport Act, 2009 (herein after referred to as the principal Act), is hereby amended— 5

(a) by the insertion after the definition of “adapted light delivery vehicle” of the following:

“ **‘association’** means a group of operators—

- (a) which has been formed not for gain;
  - (b) whose object is to promote the interests of its members, and
  - (c) whose funds are to be applied in promoting those interests;”
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(b) by the substitution for the definition of “contracting authority” of the following definition:

“ **‘contracting authority’** means—

- (a) the Department;
  - (b) a province, subject to sections 11(1)(b)(viiA), 11(1)(c)(xxvi), 11(6), 11(8), 11(9) and 11(10); and
  - (c) a municipality, subject to section 11(1)(b)(viiA), 11(1)(c)(xxvi), 11(2), [and (5)] 11(8), (9) and 11(10);
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- (c) by the substitution for the definition of “integrated public transport network” of the following:
- “**integrated public transport network**’ means a system in a particular area that integrates public transport services between modes, including non-motorised transport, with through-ticketing and other appropriate mechanisms, that may be implemented in a phased manner, to provide users of the system with the optimal solutions to be able to travel from their origins to destinations in a seamless manner with integrated pedestrian access for all passengers, and may, in appropriate municipalities, include—
- (a) integrated rapid public transport networks, being high-quality networks of car competitive public transport services that are fully integrated regardless of mode, have dedicated right of way if road based, with or without bus rapid transit systems; and
- (b) bus rapid transit systems, which are high volume bus corridors served by an integrated feeder system;”
- (d) by the substitution for paragraph (c) of the definition of “metered taxi service” of the following paragraph:
- “(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 or complies with any other requirements applicable to such meters as prescribed by the Minister under section 66(4)(cA), or is equipped with an electronic hailing application or similar technology that complies with requirements so prescribed, or both such meter and application or technology;”
- (e) by the insertion after the definition of “municipal public transport” of the following:
- “**Municipal Regulatory Entity**’ means a municipality to which the operating licensing function contemplated in section 11(1)(a)(viii) has been assigned;”
- (f) by the insertion after the definition of “non-contracted service” of the following definition:
- “**non-motorised transport**’ means transport by any mode other than a motor vehicle including, but not limited to, walking, cycling and animal-drawn vehicles and motorised wheelchairs;”
- (g) by the insertion after the definition of “organ of state” of the following definition:
- “**Passenger Rail Agency**’ means the Passenger Rail Agency of South Africa established in terms of section 23 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);”
- (h) by the substitution for the definition of “regulatory entity” of the following:
- “**regulatory entity**’ means the National Public Transport Regulator, a Provincial Regulatory Entity, or a **[municipality to which the operating licence function has been assigned] Municipal Regulatory Entity;**”
- (i) by the deletion of the definition of “South African Rail Commuter Corporation”;
- (j) by the deletion of the definition of “special categories of passengers”;
- (k) by the insertion after the definition of “Systems Act” of the following definition:
- “**targeted categories of passengers**’ means—
- (i) persons with disabilities; and
- (ii) the elderly, pregnant women, scholars, young children and those who are limited in their movements by children;”.

#### Amendment of section 5 of Act 5 of 2009

2. Section 5 of the principal Act is hereby amended by the deletion in subsection (4) of the word “and” at the end of paragraph (i), by the addition of the word “and” at the end of paragraph (j) and by the addition of the following paragraph:

“(k) promote measures to ensure the safety of pedestrians and all forms of passengers using public transport by means of regulations or the publication of guidelines or standards or through other appropriate measures.”.

**Amendment of section 8 of Act 5 of 2009**

3. Section 8 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 5  
 “(d) a process to be followed for offering alternative services in place of existing services to holders of operating licences or permits under section 39, including identifying operators contemplated in section 41(2) and involving them in the negotiation process contemplated in that section;”;
- (b) by the insertion in subsection (1) after paragraph (f) of the following paragraphs: 10  
 “(fA) fees payable for any application made in terms of this Act or any decal or document issued in terms of this Act;  
 (fB) codes of conduct for operators or drivers of public transport services, which may differ in respect of different types of services or different categories of operators or drivers;”;
- (c) by the substitution in subsection (1) for paragraph (h) of the following paragraph: 15  
 “(h) colour coding and branding of vehicles used for public transport where national uniformity is required;”;
- (d) by the substitution in subsection (1) for paragraph (n) of the following paragraph: 20  
 “(n) meetings of the National Public Transport Regulator, Provincial Regulatory Entities and Municipal Regulatory Entities;”;
- (e) by the substitution in subsection (1) for paragraph (y) of the following paragraph: 25  
 “(y) requirements and time frames for vehicles and facilities to accommodate the needs of targeted categories of passengers, including the provision of minimum standards required in any aspect of the public transport network to achieve that objective, and requirements for planning authorities to produce universal access plans for all modes of public transport and safety measures to protect pedestrians and users of public transport;”.

**Amendment of section 9 of Act 5 of 2009**

4. Section 9 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph: 35

- “(d) produce an annual report on the state of transport affairs in the province in the prescribed manner containing the prescribed information and submit it to the Minister **[in]** within the prescribed time.”.

**Amendment of section 10 of Act 5 of 2009**

5. Section 10 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (e) of the following paragraph: 40

- “(eA) colour coding and branding of vehicles used for public transport in the province, subject to any regulations made by the Minister in terms of section 8(1)(h);”.

**Insertion of new section 10A in Act 5 of 2009**

6. The following section is hereby inserted in the principal Act after section 10:

**“Accessible and non-motorised transport**

**10A.** (1) The Minister and all MECs and planning authorities must take steps in performing their functions under this Act to promote accessible transport and non-motorised transport. 50

(2) For the purposes of this section, **“accessible transport”** means transport that is accessible to all persons in the area, including, but not limited to, targeted categories of passengers, pedestrians and cyclists to

their intended destinations in a safe and convenient manner, and in relation to infrastructure means the design of facilities that are usable by all people to the greatest extent possible, with or without the need for adaptation or specialised design.”.

#### Amendment of section 11 of Act 5 of 2009

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#### 7. Section 11 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1)(a) for subparagraph (xi) of the following subparagraph: 10
- “(xi) concluding subsidised service contracts, negotiated contracts, and stopgap contracts contemplated in section 41A, with operators; and”;
- (b) by the deletion in subsection (1)(b) of the word “and” at the end of subparagraph (vii) and the insertion after subparagraph (vii) of the following subparagraphs: 15
- “(viiA) concluding negotiated contracts, subsidised service contracts, commercial service contracts, and stopgap contracts contemplated in section 41A, with operators for services provided in the province where the relevant municipality or municipalities do not meet the requirements or criteria prescribed by the Minister under subsection 10(d), after following the prescribed procedures, which may include issuing directives in terms of subsection 10(b); 20
- (viiB) concluding contracts for dedicated services for transporting scholars contemplated in section 72, unless the Minister directs otherwise under subsection (10)(b); and”;
- (c) by the substitution in subsection (1)(c) for subparagraph (v) of the following subparagraph: 25
- “(v) financial planning with regard to land transport within or affecting its area, in consultation with state-owned rail operators in the case of rail matters, with particular reference to transport planning, infrastructure, operations, services, maintenance, monitoring and administration, with due focus on rehabilitation and maintenance of infrastructure;”; 30
- (d) by the substitution in subsection (1)(c) for subparagraph (xiv) of the following subparagraph: 35
- “(xiv) ensuring that there is provision for the needs of [special] targeted categories of passengers in planning and providing public transport infrastructure, facilities and services to meet their needs, in so far as possible by the system provided for mainstream public transport;”; 40
- (e) by the substitution in subsection (1)(c) for subparagraph (xix) of the following subparagraph: 45
- “(xix) in relation to the planning functions contemplated in paragraph (iv) provide for [include] service level planning for passenger rail on a corridor network basis in [consultation] agreement with the [South African Rail Commuter Corporation] Passenger Rail Agency or other rail service providers;”;
- (f) by the substitution in subsection (1)(c) for subparagraph (xxii) of the following subparagraph: 50
- “(xxii) formulating and [apply] applying travel demand management measures for its area;”;
- (g) by the substitution in subsection (1)(c) for subparagraph (xxiv) of the following subparagraph: 55
- “(xxiv) determining concessionary fares for [special] targeted categories of passengers [in the prescribed manner];”;
- (h) by the substitution in subsection (1)(c) for subparagraph (xxvi) of the following subparagraph: 60
- “(xxvi) concluding subsidised service contracts, commercial service contracts, [and] negotiated contracts, and stopgap contracts contemplated in section [41(1)] 41A with operators for services within their areas, subject to subsections (6) and (9)

- and after following the prescribed procedures: Provided that the municipality meets the requirements and criteria prescribed by the Minister under subsection (10)(d) and the Minister has certified in writing that it has complied;”;
- (i) by the substitution for subsection (2) of the following subsection: 5  
 “(2) The Minister may assign **[any]** the function contemplated in subsection (1)(a)(viii) to a province or municipality, subject to sections 99 and 156(4) of the Constitution and sections 9 and 10 of the Systems Act, to achieve the objectives of the Constitution and this Act.”;
- (j) by the deletion of subsections (3) and (5); 10
- (k) by the substitution for subsection (4) of the following subsection: 15  
 “(4) Any municipality may request the Minister **[or MEC]** to assign **[a]** the function contemplated in subsection (1)(a)(viii) **[or (b)]** to it, subject to section 156(4) of the Constitution and sections 9 and 10 of the Systems Act, where such municipality has an acceptable integrated transport plan.”;
- (l) by the substitution for subsection (6) of the following subsection: 20  
 “(6) **[Subject to section 21, where]** Where a province is performing [a function contemplated in subsection (1)(a)] the function of acting as contracting authority for contracts concluded under the Transition Act on the date of commencement of this Act, it must continue performing that function, [unless that function is assigned to a municipality by the Minister] until those contracts have lapsed or expired or been cancelled, or replaced by other contracts or arrangements in terms of this Act.”; and
- (m) by the addition of the following subsections: 25  
 “(8) Where a subsidised service contract, interim contract, current tendered contract or negotiated contract was concluded in terms of the Transition Act, in this subsection called ‘an old order contract’, and is still in force, and a municipality has not yet concluded one or more contracts to replace the old order contract or is not in the process of negotiating with operators to do so, the relevant province must engage with the operator concerned and the municipality or municipalities in whose areas the services are provided to ensure that either the province or the municipality concludes appropriate new contracts to replace all old order contracts: Provided that the municipality complies with the criteria and requirements prescribed by the Minister under subsection 10(d). 30  
 (9) The contracts referred to in subsection (1)(b)(viiA) and (1)(c)(xxvi)— 35  
 (a) must be designed in accordance with the integrated transport plans of the relevant municipalities, if such plans have been prepared and submitted to the MEC in terms of section 36(1); or 40  
 (b) must be designed by the province in collaboration with the municipality, where such a plan has not been prepared and submitted to the MEC, as part of a capacity building programme for the municipality to conclude or manage the contracts or parts or aspects thereof, where those municipalities lack the necessary capacity. 45  
 (10) For the purposes of subsections (1)(b)(viiA) and (1)(c)(xxvi), the Minister— 50  
 (a) may prescribe a process or procedures to be followed in negotiating or tendering for the contracts;  
 (b) may issue directives in terms of section 5(6) to provinces or municipalities to initiate, expedite or facilitate contracting arrangements;  
 (c) must consult with the MEC, where appropriate, who must ensure that there is connectivity between services provided in different municipal areas to promote seamless movement of passengers; and 55  
 (d) may prescribe requirements and criteria with which municipalities must comply in order to conclude contracts contemplated in subsection (1)(c)(xxvi), in consultation with the Minister responsible for local government matters, which may include, but not limited to the following: 60

- (i) that the Municipality concerned has prepared an acceptable integrated transport plan;
- (ii) that the municipality possesses the necessary capacity to enter into and manage such contracts; and
- (iii) that the quantity and nature of subsidised public transport services, the demographics and size and distribution of population in the area, among other relevant factors, will justify the contract or contracts.”

#### **Amendment of section 13 of Act 5 of 2009**

8. Section 13 of the principal Act is hereby amended— 10

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (d), the addition of the word “and” at the end of paragraph (e) and the addition of the following paragraphs:

- “(f) members of the South African Police Service contemplated in section 5(2) of the South African Police Service Act, 1995 (Act No. 68 of 1995), including members of metropolitan and municipal police services contemplated in Chapter 12 of that Act; and
- (g) traffic officers contemplated in section 3A of the National Road Traffic Act.”

#### **Substitution of section 15 of Act 5 of 2009**

9. The following is hereby substituted for section 15 of the principal Act:

##### **“Intermodal planning committees**

15. (1) Every municipality that is establishing an integrated public transport network or has significant passenger rail services in its area must, by not later than the prescribed date, establish an intermodal planning committee consisting of the prescribed technical officials and prescribed representatives of state-owned rail operators[**other public transport modes, users and organised business**]. 25

(2) The function of an intermodal planning committee is to co-ordinate and integrate public transport[**between the models**], as well as all other aspects relating to the integrated transport plan of the municipality and to perform other prescribed functions in order to achieve the objects of this Act. 30

(3) Where there are significant passenger rail services in the area, the intermodal planning committee must facilitate the conclusion of appropriate service level agreements between the municipality and the Passenger Rail Agency as contemplated in section 11(1)(c)(xix).” 35

#### **Amendment of section 17 of Act 5 of 2009**

10. Section 17 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40

- “Every [**municipality to which the operating licence function has been assigned under section 11(2)**] Municipal Regulatory Entity must—”.

#### **Amendment of section 18 of Act 5 of 2009**

11. Section 18 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 45

“(1) A [**municipality to which the operating licensing function has been assigned under section 11(2)**] Municipal Regulatory Entity must receive and decide on applications relating to operating licences for services wholly within [**their areas**] the area of jurisdiction of the municipality concerned, excluding applications that must be made to the National Public Transport Regulator [**or a**] and applications for intraprovincial services where the services cross the boundary of that

municipality, which must be made to the Provincial Regulatory Entity.”;  
and

(b) by the addition of the following subsection:

“(6) A Municipal Regulatory Entity must obtain and keep up to date the information contemplated in section 24(1)(c) insofar as it relates to its functions.”.

#### Amendment of section 20 of Act 5 of 2009

12. Section 20 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) The National Public Transport Regulator consists of not more than seven non-executive members appointed by the Minister, who are accountable to the head of the Department and who, in performing their functions, exercise an independent discretion.”;

(b) by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) The members of the National Public Transport Regulator [consists of designated officials of the Department, appointed] contemplated in subsection (1A) may be appointed either on a full-time or part-time basis, [whose] and must be appointed on the grounds of their specialised knowledge, training or experience, which taken collectively, at least covers—

(a) public transport;

(b) transport economics;

(c) accounting, auditing or actuarial science;

(d) the law;

(e) tourism transport; and

(f) vehicle standards and specifications.”;

(3) The prescribed quorum of members of the National Public Transport Regulator [**contemplated in subsection (2)**] must take decisions of that Regulator.”; and

(c) by the insertion after subsection (3) of the following subsections:

“(3A) The Minister must designate one of the members of the National Public Transport Regulator as chairperson.

(3B) A member of the National Public Transport Regulator—

(a) holds office for not more than five years and may be re-appointed for one further term; and

(b) may resign by giving one month’s written notice to the Minister.

(3C) A member of the National Public Transport Regulator must be paid out of the funds of the Department such remuneration as the Minister, with the concurrence of the Minister of Finance, may determine.”.

#### Amendment of section 21 of Act 5 of 2009

13. Section 21 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(b) for subparagraph (i) of the following subparagraph:

“(i) interprovincial transport.” and

(b) by the deletion in subsection (1) of the word “and” at the end of paragraph (c), insertion of the word “and” at the end of paragraph (d) and addition of the following paragraphs:

“(e) invite comments and complaints from interested parties, including the general public, and take appropriate action in response thereto;

(f) advise the Minister on the treatment of all passengers using public transport, including targeted categories of passengers; and

(h) obtain and keep up to date the information contemplated in section 24(1)(c) insofar as it relates to the functions of the National Public Transport Regulator.”;

(c) by the substitution for subsection (2) of the following subsection:

“(2) The National Public Transport Regulator must produce and regularly update a standardised procedures manual for itself and for

Provincial Regulatory Entities, **[municipalities,] Municipal Regulatory Entities and contracting authorities [and the Transport Appeal Tribunal]** in respect of their activities in terms of this Act, subject to this Act.”; and

- (d) by the addition of the following subsection: 5
- “(7) The National Public Transport Regulator may issue a directive to a Provincial Regulatory Entity, Municipal Regulatory Entity or planning authority which has not fulfilled or is not fulfilling its obligations under this Act, describing the extent of the failure to fulfil its obligations and stating any steps required to meet those obligations, and that entity or authority must comply with such a directive, or as an alternative the National Public Transport Regulator may request the Minister to issue such a directive under section 5(6).”.

#### Amendment of section 23 of Act 5 of 2009

14. Section 23 of the principal Act is hereby amended— 15

- (a) by the substitution of the following for subsection (2):
- “(2) The Provincial Regulatory Entity consists of not more than seven non-executive members appointed by the MEC who are accountable to the head of the provincial department with regard to administrative and employment issues and who in performing their quasi-judicial functions exercise an independent discretion.”; and 20
- (b) by the insertion after subsection (2) of the following subsections:
- “(2A) The members of the Provincial Regulatory Entity contemplated in subsection (2) may be appointed either on a full-time or part-time basis, and must be appointed on the grounds of their specialised knowledge, training or experience, which taken collectively, at least covers—
- (a) public transport;
- (b) transport economics;
- (c) accounting, auditing or actuarial science; 30
- (d) the law; and
- (e) vehicle standards and specifications.
- (2B) The prescribed quorum of members of the Provincial Regulatory Entity must take decisions of that Entity.
- (2C) The MEC must designate one of the members of the Provincial Regulatory Entity as chairperson. 35
- (2D) A member of a Provincial Regulatory Entity—
- (a) holds office for not more than five years and may be re-appointed for one further term; and
- (b) may resign by giving one month’s written notice to the MEC. 40
- (2E) A member of the Provincial Regulatory Entity must be paid out of the funds of the provincial department such remuneration as the MEC, with the concurrence of the MEC responsible for financial affairs in the province, may determine.”.

#### Amendment of section 24 of Act 5 of 2009 45

15. Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Each Provincial Regulatory Entity must—
- (a) monitor and oversee public transport in the province;
- (b) receive and decide on applications relating to operating licences for intra-provincial transport **[where no municipality exists to which the operating licence function has been assigned]**, but excluding applications that must be made to the National Public Transport Regulator in terms of section 21 or to a Municipal Regulatory Entity in terms of section 18; 50
- (c) obtain and keep up to date the prescribed information in the Operating Licence Administrative System contemplated in section 6 insofar as it relates to its functions on the following: 55
- (i) Particulars of associations operating in its area, their members and the vehicles operated by them;

- (ii) particulars of operators operating in its area who are not members of those associations and the vehicles operated by them, in this section called non-members; and
- (iii) in the case of minibus taxi-type services, particulars of the routes operated by the associations and non-members operating in its areas, the descriptions of which routes must correlate with those in the relevant integrated transport plans.”

#### **Amendment of section 27 of Act 5 of 2009**

**16.** Section 27 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: 10

“(5) The municipal manager [**or chief executive officer**] of such a municipality must submit, annually to its council, for approval estimates of expenditure to be defrayed from the fund, and may make no payment from that fund except in accordance with such estimates or with the prior approval of that council.”

#### **Amendment of section 35 of Act 5 of 2009** 15

**17.** Section 35 of the principal Act is hereby amended by the deletion of subsection (9).

#### **Amendment of section 36 of Act 5 of 2009**

- 18.** Section 36 of the principal Act is hereby amended—
- (a) by the substitution in subsection (4) for paragraph (c) of the following paragraph: 20
    - “(c) seeing that the planning authority and other organs of state involved in or affected by provincial planning followed the correct procedures and otherwise complied with the prescribed requirements;”
  - (b) by the insertion in subsection (4) of the word “and” at the end of paragraph (f); and 25
  - (c) by the deletion of paragraph (g) of subsection (4).

#### **Amendment of section 39 of Act 5 of 2009**

- 19.** Section 39 of the principal act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 30
    - “When a planning authority in rationalising public transport services in its area concludes, based on its integrated transport plan, that there is a surplus of legally operated services by operators on a particular route as a result of which an existing non-contracted public transport service is no longer required, the planning authority [**must**] may, where possible, and after consultation with affected operators, take the following actions, but must not be limited to those actions:” 35
  - (b) by the substitution for subsection (2) of the following subsection: 40
    - “(2) The Minister may make regulations on the procedures to be followed in proceeding under subsection (1) [**and (2)**].”
  - (c) by the addition of the following subsection:
    - “(3) Before rationalising public transport services in terms of subsection (1), the planning authority must consult relevant regulatory entities and take steps to apply law enforcement measures to reduce or prevent the operation of illegal services on a particular route, and where appropriate, take measures under section 78 to cancel operating licences and permits that are not in use on that route.” 45

#### **Amendment of section 41 of Act 5 of 2009**

- 20.** Section 41 of the principal Act is hereby amended— 50
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Contracting authorities may enter into one or more negotiated contracts or a combination of such contracts with operators in their areas, once only, with a view to—”

- (b) by the insertion after subsection (1) of the following subsection: 5  
 “(1A) Where a negotiated contract is concluded in terms of subsection (1), the contracting authority is not precluded from—  
 (a) concluding other such contracts with different operators or in respect of different routes, even if such routes are in the same area;  
 (b) providing in such contract for the services to be provided under the contract to be increased or amended in a phased manner during the period of the contract: Provided that the total duration of the contract does not extend beyond 12 years; or  
 (c) concluding stopgap contracts contemplated in section 41A.”;
- (c) by the substitution for subsection (2) of the following subsection: 10  
 “(2) The negotiations envisaged by **[subsections (1) [and (2)] subsection (1)]** must where appropriate include affected operators [in the area] on the relevant route or routes subject to interim contracts, subsidised service contracts, commercial service contracts, existing negotiated contracts and operators of unscheduled services and non-contracted services, but the contracting authority may exclude from the negotiations operators or classes of operators—  
 (a) in terms of regulations made under section 8(1)(d); or  
 (b) where the contracting authority has made an offer in writing to an individual operator or class of operators in the prescribed manner and they have rejected the offer in writing within 42 days or have failed to respond to the offer within that time.”;
- (d) by the substitution for subsection (3) of the following subsection: 20  
 “(3) A negotiated contract contemplated in subsection (1) **[or (2)]** shall be for a period not longer than 12 years.”; and
- (e) by the addition of the following subsection: 25  
 “(6) Section 42(6) applies with the necessary changes to negotiated contracts contemplated in this section.” 30

#### Insertion of new section 41A in Act 5 of 2009

21. The following section is hereby inserted in the principal Act after section 41:

- “**Stopgap contracts** 35
- 41A.** (1) A contracting authority may enter into a stopgap contract which—  
 (a) is a separate contract from the proposed negotiated contract and from any existing contract concluded under the Transition Act or this Act  
 (b) is a contract with a duration of not more than three years;  
 (c) can be concluded in the process of conducting negotiations for a negotiated contract, or while establishing a network contemplated in section 41(1)(a), to provide continuity of services; and  
 (d) may be concluded with an operator operating a contract concluded under the Transition Act or any other operator or operators. 40  
 (2) The duration of such a stopgap contract will not be counted as part of the 12 year period mentioned in section 41(3).” 45

#### Amendment of section 42 of Act 5 of 2009

22. Section 42 of the principal Act is hereby amended—  
 (a) by the substitution of the following for subsection (4): 50  
 “(4) 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, subject to section 80(1)(a) of the Systems Act, 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.”; and 55

- (b) by the substitution in subsection (6) for paragraphs (a) and (b) of the following paragraphs, respectively:
- “(a) prescribe requirements for tender and contract documents to be used for subsidised service contracts which **[must] may be made** binding on contracting authorities unless the Minister agrees in writing that an authority may deviate from the requirements in a specific case on written application by that authority; 5
- (b) provide model tender and contract documents, and publish them in the *Gazette*, for subsidised service contracts as a minimum requirement for contracting authorities who may not **[deviate] leave** out substantive provisions from **[the model tender and contract]** those documents, unless this is agreed to in writing by the Minister in a specific case on written application by the relevant contracting authority, but those documents may differ for different authorities or situations;”. 10 15

#### **Amendment of section 43 of Act 5 of 2009**

23. Section 43 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A contracting authority may enter into a commercial service contract with an operator, subject to section 80(1)(a) of the Systems Act, 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.”. 20

#### **Amendment of section 45 of Act 5 of 2009**

24. Section 45 of the principal Act is hereby repealed. 25

#### **Amendment of section 46 of Act 5 of 2009**

25. Section 46 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “Where there is an existing interim contract, current tendered contract or negotiated contract as defined in the Transition Act in the area of **[the relevant contracting authority, that authority may]** a municipality, that municipality or the relevant province, as determined under section 11 may—”; and 30
- (b) by the deletion of subsection (2). 35
- (c) by the substitution of the following for subsection (3):
- “(3) The Minister may make regulations providing for the transition of existing contracting arrangements and the transfer of the contracting function in terms of this section, section 11 or section 41, including the transfer or amendment of existing permits or operating licences to give effect to **[its]** the provisions of the aforesaid sections **[in the case of an assignment under section 11(2)]**.” 40

#### **Substitution of section 47 of Act 5 of 2009**

26. The following is hereby substituted for section 47 of the principal Act:

**“Conversion of permits to operating licences and of indefinite period operating licences to definite period licences, and rationalisation of operating licences** 45

**47.** (1) All permits and operating licences issued before the date of commencement of this Act, issued for a definite period remain valid but lapse when that period expires, provided that if such permit or operating licence is still valid on a date calculated as **[seven]** five years from the date of commencement of **[this Act]** the National Land Transport Amendment 50

Act, 2016, it will lapse on that date unless converted in the case of a permit, or renewed in the case of an operating licence, before that date.

(2) All permits and operating licences issued for an indefinite period remain valid, subject to sections 48 and 49, but lapse [seven] five years after the date of commencement of [this Act] the National Land Transport Amendment Act, 2016, but the holder may apply within that period in the case of a permit for its conversion to an operating licence, or, in the case of an operating licence, for its renewal, 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 or operating licence were not provided continuously for 180 days prior to the date of commencement of this Act, the permit or operating licence must be cancelled by following the procedure in section 78.

(4) The holder of any permit or operating licence 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 permits, where applicable, have been rationalised in terms of this section and sections 48 and 49.]**

(5) Where the holder of a permit applies for renewal, amendment or transfer of the permit in terms of section 58, that holder must apply simultaneously for conversion of the permit to an operating licence, and the applications must be dealt with simultaneously.

(6) Regulatory entities must take immediate steps to put in place the necessary administrative processes to convert permits and renew operating licences to implement this section.

(7) The Minister may make regulations providing for—

- (a) procedures for conversion of permits and renewal of operating licences as contemplated in this section; and
- (b) other procedural or other administrative arrangements to implement the matters contemplated in this section.”.

#### **Amendment of section 48 of Act 5 of 2009**

27. Section 48 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) (a) In the case of permits for scheduled non-contracted services specified in integrated transport plans, the Minister may make regulations, after consulting the National Public Transport Regulator, providing a process for the integration of those services with contracted services, and in the process converting them to commercial service contracts.

(b) The integration and conversion contemplated in paragraph (a) must be done by the National Public Transport Regulator.

(c) The regulations contemplated in paragraph (a) may differ in respect of different types of services, different areas or peak periods as opposed to off-peak periods.”.

#### **Amendment of section 49 of Act 5 of 2009**

28. Section 49 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Permits and operating licences issued for minibus taxi-type services remain valid, subject to section 47(1) and (2) [and subsection (3) of this section].”;

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) acquire a new vehicle that complies with the Department's requirements for recapitalisation and with the National Road Traffic Act, in which case the operator shall be entitled to an operating licence for the new vehicle authorising the same services on submission of a valid tax clearance certificate, and such operating licence must specify in detail the route or routes to be operated,

which must be those operated by the operator for the period of 180 days prior to the date of application, and the holder must submit the permit or operating licence for the replaced vehicle to the Department for cancellation: Provided that where the new vehicle has more capacity than the replaced vehicle 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." 5

- (b) by the deletion of paragraph (c) of subsection (2); and  
(c) by the deletion of subsection (3). 10

#### **Substitution of section 51 of Act 5 of 2009**

29. The following is hereby substituted for section 51 of the principal Act:

##### **“Entities that must issue operating licences**

51. An operating licence must only be issued on application made in terms of this Act by the National Public Transport Regulator, a Provincial Regulatory Entity or a **[municipality to which the operating licence function has been assigned]**, Municipal Regulatory Entity as the case may be, after considering all of the factors mandated by this Act." 15

#### **Amendment of section 53 of Act 5 of 2009**

30. Section 53 of the principal Act is hereby amended— 20

- (a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:

“(bA) a staff service provided by means of a vehicle owned by the employer contemplated in section 68(3);”;

- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 25

“(c) farmers carrying their own workers from one place where they perform work in the course of their farming activities to another place where they will perform such work in vehicles of which they are the sole owners;”;

- (c) by the addition after subsection (1) of the following subsection: 30

“(1A) The exemptions contemplated in subsection (1) (bA), (c), (d), (f) and (g) will not apply where the relevant conveyance is provided for a fare or any other consideration or reward.”;

- (d) by the substitution for subsection (2) of the following subsection: 35

“(2) The MEC may make regulations providing for information to be recorded or provided to the National Public Transport Regulator, Provincial Regulatory Entity, **[municipality to which the operating licence function has been assigned]** a Municipal Regulatory Entity or other persons or institutions regarding conveyance in terms of a service contemplated in subsection (1).” 40

#### **Amendment of section 54 of Act 5 of 2009**

31. Section 54 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A person wishing to undertake a service provided wholly within the area of jurisdiction of a Municipal Regulatory Entity must apply to that Entity.” 45

#### **Amendment of section 56 of Act 5 of 2009**

32. Section 56 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Where a contracting authority has concluded a negotiated contract, subsidised service contract or commercial service contract with an operator, or a stopgap contract contemplated in section 41A, the relevant regulatory entity[,] must issue to the operator an operating licence for each vehicle involved in the 50

contract, or where the operator already **[has]** holds an operating licence for such a vehicle, such entity must amend the operating licence if necessary to accommodate the services in the contract.”.

#### **Amendment of section 57 of Act 5 of 2009**

33. Section 57 of the principal Act is hereby amended— 5
- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (e) and the insertion after paragraph (e) of the following paragraphs:
- “(eA) recommendations or documents submitted with the application  
by the applicant or any other interested party; 10
- (eB) particulars recorded in terms of section 21(1)(g) or 24(1)(c);
- (eC) whether the applicant has contravened any code of conduct for operators prescribed under section 8(1)(fB), or the drivers employed by that holder habitually contravene any code of conduct for drivers so prescribed; and”.
- (b) by the insertion in subsection (2)(b) after subparagraph (v) of the following subparagraphs: 15
- “(vA) particulars recorded in terms of section 18(6);
- (vB) whether the applicant has contravened any code of conduct for operators prescribed under section 8(1)(fB), or the drivers employed by that holder habitually contravene any code of conduct for drivers so prescribed; and”. 20

#### **Amendment of section 59 of Act 5 of 2009**

34. Section 59 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading: 25
- “**Publication of [decisions] applications**”; and
- (b) by the substitution for subsection (1) of the following subsection:
- “(1) Regulatory entities must, in the prescribed manner, give notice of receipt of an application for or in connection with an operating licence, except an application for a contracted service contemplated in section 56, an application to renew an operating licence under section 58, an application to replace a vehicle under section 73, an application for a temporary operating licence contemplated in section 60 or any other application that is prescribed as not requiring such publication, and in that notice state the prescribed particulars and allow interested persons an opportunity to comment and make representations within the prescribed period.” 30
- 35

#### **Amendment of section 60 of Act 5 of 2009**

35. Section 60 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 40
- “(2) A holder of an operating licence or permit who is not authorised by subsection (1)(a) or (b) to undertake a service to or from a special event, **[may]** must apply to the prescribed entity for a temporary operating licence in the prescribed manner, and need not comply with section 62(1)(b), (c) or (f) in relation to such an application.”;
- (b) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words: 45
- “The Minister **[must]** 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 for—”; 50
- (c) by the addition of the following subsection:
- “(10) A regulatory entity may delegate its functions in terms of this section to an official or member of the entity.”.

**Amendment of section 62 of Act 5 of 2009**

36. Section 62 of the principal Act is hereby amended by the deletion of paragraph (f) of subsection (1).

**Amendment of section 64 of Act 5 of 2009**

37. Section 64 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 5

- “(1) An operating licence may only be issued to and held by—
- (a) 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; or 10
  - (b) a tourist transport operator accredited in terms of section 81, if the vehicle complies with section 84, even if another person is so registered as the owner or operator of the vehicle.”.

**Amendment of section 66 of Act 5 of 2009**

38. Section 66 of the principal Act is hereby amended— 15

- (a) by the deletion of subsection (2);
- (b) by the deletion in subsection (4) of the word “and” at the end of paragraph (c) and the insertion of the following paragraph in that subsection after paragraph (c):

“(cA) standards or requirements for meters or electronic hailing applications or similar technology, where such applications or technology either operate in tandem with a meter or without a meter, to be installed in or applied by metered taxis, as prescribed including the following: 20

- (i) the manner in which the meter must be calibrated and sealed after calibration; 25
- (ii) prescribing measures to ensure accurate readings of meters and such applications or technology;
- (iii) prescribing information regarding the driver that must be communicated to the passenger; and 30
- (iv) prescribing information that the meter, electronic hailing applications or similar technology must provide to passengers.”; and

- (c) by the addition of the following subsections: 35

“(5) Meters, electronic hailing applications or similar technology must—

- (a) have the facility to estimate distances and fares, taking into account distance and time, and communicating such estimate to passengers in advance, and
- (b) communicate the fare to the passenger at the conclusion of the journey; 40

(6) A meter must be installed where an electronic hailing application or similar technology will not be able to function optimally in areas where the metered taxi concerned is licensed to operate.”.

**Amendment of section 67 of Act 5 of 2009** 45

39. Section 67 of the principal Act is hereby amended—

- (a) by the insertion of the following subsection after subsection (1):

“(1A) Before granting an application for an operating licence authorising a charter service, the relevant regulatory entity must be satisfied that— 50

- (a) there will be a need for the charter service or services applied for by the operator that cannot be supplied by any other type of public transport service already being provided; or
- (b) the service will be provided on a regular basis in terms of a contract, letter of appointment or other arrangement; 55

and must refuse the application if not so satisfied, and if it grants the application, must attach appropriate conditions to prevent abuse of the licence.”;

(b) by the deletion of subsection (3); and

(c) by the addition of the following subsection:

“(4) When converting a permit authorising services described as “organized parties” to an operating licence under section 47, the relevant regulatory entity must describe the services in the operating licence as charter services if they fall within the definition of such services in section 1.”.

#### **Amendment of section 68 of Act 5 of 2009**

40. Section 68 of the principal Act is hereby amended by the addition of the following subsections:

“(3) Where a staff service is provided by means of a vehicle owned by the employer and the employees are not charged any fare, consideration or reward for the conveyance, an operating licence is not required for the conveyance.

(4) Where a staff service is provided by means of a vehicle in terms of a contract between the employer and an operator, the operator requires an operating licence, but applications relating to such a service need not be published in terms of section 59.”.

#### **Amendment of section 73 of Act 5 of 2009**

41. Section 73 of the principal Act is hereby amended by the substitution for subsection (2) of the following:

“(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 47, 48 and 49, if the replacing vehicle—

(a) is a motor car, minibus or midibus; or

(b) in the case of a bus, has the same capacity as or less capacity than the replaced vehicle or a capacity which does not exceed that of the replaced vehicle by more than 40%; and

(c) is properly licensed and certified as roadworthy in compliance with the National Road Traffic Act.”.

#### **Amendment of section 74 of Act 5 of 2009**

42. Section 74 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) in of the following paragraph:

“(a) The entity that issued an operating licence or an [employee] official 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, or where the vehicle has been sold, stolen or destroyed and the operator is in the process of obtaining a replacement vehicle, for the holder to use another vehicle in place of the defective sold, stolen or destroyed vehicle, subject to subsections (2), (3) and (6).”.

#### **Amendment of section 75 of Act 5 of 2009**

43. Section 75 of the principal Act is hereby amended by the deletion of subsection (3).

#### **Amendment of section 79 of Act 5 of 2009**

44. Section 79 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“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 relevant entity may, at any time, withdraw, amend or suspend the operating licence or

- permit for such a period as it may deem fit, if the holder or employee of the holder—”; and
- (b) by the insertion in subsection (2) after paragraph (a) of the following paragraphs:
- “(aA) has contravened a provision of this Act or the National Road Traffic Act that is, in the opinion of that entity serious enough to warrant the withdrawal, amendment or suspension;
- (aB) has contravened any code of conduct for operators prescribed under section 8(1)(fB), or if the drivers employed by that holder habitually contravene any code of conduct for drivers so prescribed;”

#### **Amendment of section 81 of Act 5 of 2009**

45. Section 81 of the principal Act is hereby amended by the insertion of the following subsections after subsection (2):
- “(2A) The prescribed particulars of applications for accreditation must be published in the Gazette and interested persons must be given the opportunity to comment on the applications within the prescribed period.
- (2B) The National Public Transport Regulator must consider any comments received under subsection (2A) before granting or refusing the application.”.

#### **Substitution of section 84 of Act 5 of 2009**

46. The following is hereby substituted for section 84 of the principal Act:

##### **“Vehicles used for tourist transport services**

- 84.** (1) An accredited tourist transport operator may use any motor vehicle to provide tourist transport services, provided that it is suitable for those services and that an operating licence has been issued for it under subsection (2), and that the vehicle displays a special token, tag, decal or equipment issued by the National Public Transport Regulator in the prescribed form and manner.
- (2) The National Public Transport Regulator must issue an operating licence for a vehicle to be used by an accredited operator in the prescribed manner, either when accrediting the operator or on later application made by an accredited operator, in the prescribed manner, using the prescribed form and on payment of the prescribed fee, and on proof submitted to it in the prescribed manner that—
- (a) the vehicle is properly registered and licensed in terms of the National Road Traffic Act;
- (b) a valid and current roadworthy certificate has been issued for the vehicle in terms of the National Road Traffic Act;
- (c) the vehicle is suitable in all respects for the type of tourist service envisaged;
- (d) the vehicle and passengers who will be carried are adequately insured with a registered insurer; and
- (e) the vehicle is otherwise acceptable according to the National Public Transport Regulator.
- (3) Such an operating licence may be issued by an official of the Department designated to do so by the National Public Transport Regulator.
- (4) The National Public Transport Regulator may impose conditions when issuing such an operating licence including, but not limited to, the use and maintenance of the vehicle, which conditions must be specified on the licence, and must issue with the licence a token, tag, decal or other equipment as contemplated in subsection (1) or as prescribed.”.

#### **Amendment of section 86 of Act 5 of 2009**

47. Section 86 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) a [municipality to which the operating licence function has been assigned,] Municipal Regulatory Entity as appointed by [that authority] the municipality concerned.”.

#### Amendment of section 92 of Act 5 of 2009

48. Section 92 of the principal Act is hereby amended— 5

(a) by the substitution for subsection (1) of the following subsection:

“(1) The following persons may appeal to the Transport Appeal Tribunal against [an] any act, direction or decision of [an] a regulatory entity [that has granted or refused an application relating to an operating licence], in the manner and within the time prescribed:”; and 10

(b) by the addition of the following subsection:

“(4) Where the decision contemplated in subsection (1) was taken by a Municipal Regulatory Entity, an appeal may be noted with the Transport Appeal Tribunal despite section 62 of the Systems Act.”.

#### Amendment of section 93 of Act 5 of 2009

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49. Section 93 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Any transport authority established in terms of the Transition Act will cease to be a juristic person independent from the relevant municipality or municipalities, on a date to be determined by the Minister, and those municipalities must amend or restructure their administration as soon as possible [after the determined date], to bring them in line with this Act.”. 20

#### Insertion of new sections 93A and 93B in Act 5 of 2009

50. The following sections are hereby inserted in the principal Act after section 93:

“**Delays and exemptions** 25

**93A.** (1) The Minister may by notice in the *Gazette*—

(a) delay the implementation of a provision of this Act for a transitional period not exceeding five years from the date on which this section comes into operation; or 30

(b) where practicalities impede the strict application or implementation of a specific provision of this Act, exempt the National Public Transport Regulator or any province, Provincial Regulatory Entity, municipality or Municipal Regulatory Entity from, or in respect of, such provision for a period and on conditions determined in the notice. 35

(2) A delay or exemption in terms of subsection (1) may—

(a) apply to provinces, Provincial Regulatory Entities, municipalities or Municipal Regulatory Entities generally; or 40

(b) be limited in its application to a particular—  
 (i) province or Provincial Regulatory Entity;  
 (ii) municipality or Municipal Regulatory Entity; or  
 (iii) kind of municipality, which may, for the purposes of this section, be defined in relation to a category or type of municipality or in any other manner. 45

#### Arrangements for public transport between district and local municipalities

**93B.** Any arrangements regarding municipal public transport between district and local municipalities that are contemplated in section 84(1)(g) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), are subject to this Act and any regulations or arrangements made under this Act.”.

**Amendment of section 23 of Act 9 of 1989**

**51.** Section 23 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) ensure that, at the request of the Department of Transport or a municipality, rail commuter services are provided within, to or from the Republic in the public interest, subject to the agreements contemplated in section 11(1)(c)(xix) of the National Land Transport Act, 2009 (Act No. 5 of 2009), and operational budget availability; and” 5

**Repeal of sections 26, 26A and 27 of Act 74 of 1977** 10

**52.** Sections 26, 26A and 27 of the Road Transportation Act, 1977 (Act No. 74 of 1977), are hereby repealed.

**Short title**

**53.** This Act is called the National Land Transport Amendment Act, 2016.

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL LAND TRANSPORT AMENDMENT BILL, 2016**

### **1. BACKGROUND AND PURPOSE**

The National Land Transport Act, 2009 (Act No. 5 of 2009) (“the principal Act”) was enacted to further the process of transformation and restructuring of the national land transport system initiated by the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) (“the Transition Act”) and provide for related matters.

The principal Act was enacted in some haste in order to implement the *Public Transport Strategy and Action Plan, 2007* and cater for the introduction of bus rapid transit (BRT) systems being introduced pursuant to that Strategy, as well as to provide certain arrangements for the 2010 FIFA Football World Cup. The parliamentary Portfolio Committee on Transport expressed the view when passing the principal Act that it should be revised to ensure that the relevant policy has been correctly captured and to cater for possible problems and issues that may arise with implementing the Act.

The principal Act has been in operation since December 2009 (some of its provisions since August 2009) and has met with a large measure of success in achieving its objectives, which included the consolidation of transport functions at the local level. However a number of issues, mostly technical in nature, have necessitated amendment of the Act as envisaged by the abovementioned Parliamentary Committee.

### **2. CLAUSE-BY-CLAUSE ANALYSIS**

#### **2.1 Clause 1: Amendment of section 1 of Act 5 of 2009**

Clause 1 substitutes, deletes and adds certain definitions. New definitions of “accessible transport” and “targeted categories of passengers” are inserted to bring those concepts in line with international best practice. A new definition of “association” is inserted because regulatory entities will be required to keep certain information on operator associations and take it into account in managing operating licences. The definition of “metered taxi service” is amended to include electronic hailing or similar technology which may be used along with or instead of a meter, as will be prescribed by the Minister in regulations. A new definition of “municipal regulatory entity” is inserted to make the Act easier to read. A new definition of “non-motorised transport” is inserted as the Act is amended to provide more clearly for this concept. The definition of “integrated public transport network” is amended to make it clearer that such networks include integrated rapid public transport networks (IRPTNs) and BRT systems. Consequential amendments are made to other definitions.

#### **2.2 Clause 2: Amendment of section 5 of Act 5 of 2009**

Clause 5 is amended to require the Minister to promote measures to ensure the safety of pedestrians and passengers by means of regulations, guidelines or other measures.

#### **2.3 Clause 3: Amendment of section 8 of Act 5 of 2009**

Clause 3 amends section 8 of the Act to empower the Minister to make regulations on a number of additional issues, which include regulations on the process of negotiating with incumbent operators to establish contracts for integrated public transport networks, regulations providing for the needs of targeted categories of passengers, and regulations on codes of conduct for operators and drivers of public transport vehicles. Some consequential amendments are also made to section 8.

#### **2.4 Clause 4: Amendment of section 9 of Act 5 of 2009**

Clause 4 amends section 9 of the Act to empower the Minister to prescribe the information that must be contained in annual reports submitted by the MECs.

#### **2.5 Clause 5: Amendment of section 10 of Act 5 of 2009**

Clause 5 amends section 10 of the Act to empower the MECs to make regulations on colour coding and branding of public transport vehicles, subject to any regulations made by the Minister in that regard.

#### **2.6 Clause 6: Insertion of new section 10A in Act 5 of 2009**

Clause 6 inserts a new section 10A into the principal Act to provide for the promotion of accessible transport and non-motorised transport by the Minister, MECs and planning authorities.

#### **2.7 Clause 7: Amendment of section 11 of Act 5 of 2009**

Clause 7 amends section 11 of the Act to provide that municipalities may enter into new contracts for public transport services only where they meet criteria that will be prescribed by the Minister in consultation with the Minister responsible for local government matters. They must also follow procedures that will be prescribed in regulations.

Provisions have also been inserted to empower provinces to intervene, and if necessary, enter into the contracts themselves, where municipalities do not comply with the prescribed requirements or criteria

The Department will be empowered to enter into the contracts which it will only do in exceptional circumstances where there are gaps and services are urgently required.

The powers of municipalities over financial planning of public transport are amended so that they will be exercised in consultation with state owned rail operators (PRASA and Transnet) in the case of rail matters.

The power of the Minister to assign the function of managing the “old order contracts” concluded under the Transition Act to municipalities is amended to provide that provinces will continue to manage them until new contracts are concluded under the principal Act, either by municipalities if they meet the prescribed criteria or by the province.

Section 11 is also amended to facilitate the process of converting the public transport contracts concluded under the previous Transition Act into new contracts. Other consequential amendments are also made to section 11.

#### **2.8 Clause 8: Amendment of section 13 of Act 5 of 2009**

Clause 8 amends section 13 of the Act to include members of the SAPS and traffic officers in the list of persons who may not have a financial or business interest in the public transport industry.

#### **2.9 Clause 9: Amendment of section 15 of Act 5 of 2009**

Clause 9 amends section 15 of the Act to provide that municipal intermodal planning committees must be established by a prescribed date and to clarify the functions of those committees. It is also amended to provide for those committees to facilitate appropriate service level agreements between the municipality and PRASA where there are significant passenger rail services in the area.

**2.10 Clause 11: Amendment of section 17 of Act 5 of 2009**

Clause 10 effects a consequential amendment to section 17 of the principal Act.

**2.11 Clause 11: Amendment of section 18 of Act 5 of 2009**

Clause 11 amends section 18 of the Act to clarify the functions of municipal regulatory entities (MREs).

**2.12 Clause 12: Amendment of section 20 of Act 5 of 2009**

Clause 12 amends section 20 of the principal Act to rationalise the appointment of members of the National Public Transport Regulator (NPTR) and to accommodate comments received from the National Treasury.

**2.13 Clause 13: Amendment of section 21 of Act 5 of 2009**

Clause 13 amends section 21 of the principal Act on the functions of the NPTR, to include additional functions. The NPTR must also keep information on minibus taxi associations and their members in relation to interprovincial transport, and on the routes operated by the various associations. The NPTR is also empowered to issue directives to PREs, MREs and planning authorities that are not fulfilling their obligations under the Act. The NPTR may also request the Minister to issue directives.

**2.14 Clause 14: Amendment of section 23 of Act 5 of 2009**

Clause 14 amends section 23 of the principal Act to rationalise the appointment of members of Provincial Regulatory Entities (PREs) to bring the section into line with section 20 on the appointment of NPTR members and to promote standardisation of PRE structures throughout the country. Also, the period of appointment of PRE members is limited to a maximum of five years.

**2.15 Clause 15: Amendment of section 24 of Act 5 of 2009**

Clause 15 amends section 24 of the principal Act on the functions of PREs to provide that PREs must keep specified information on minibus taxi associations and their members, and on the routes operated by the various associations. Those routes must correlate with the route descriptions in the relevant integrated transport plans (ITPs) of municipalities. This information must be taken into account in managing the issuing of operating licences.

**2.16 Clause 16: Amendment of section 27 of Act 5 of 2009**

Clause 16 amends section 27 of the principal Act to delete a redundant reference.

**2.17 Clause 17: Amendment of section 35 of Act 5 of 2009**

Clause 17 amends section 35 of the principal Act to provide that provincial land transport frameworks must be updated every five years, as opposed to the current two years.

**2.18 Clause 18: Amendment of section 36 of Act 5 of 2009** Clause 18 amends section 36 of the principal Act to provide that in checking municipal ITPs, the MEC must ensure that other organs of state, e.g. SANRAL and ACSA, that are involved in provincial planning have followed the correct procedures etc. A paragraph is also deleted to remove duplication.

**2.19 Clause 19: Amendment of section 39 of Act 5 of 2009** Clause 19 amends section 39 of the principal Act to provide that planning authorities must,

before rationalising services on routes, first apply law enforcement measures to prevent illegal operations and take steps under section 78 of the Act to cancel operating licences and permits that are not in use. At the request of Nedlac the options for planning authorities to take have been broadened so as not to be limited to the options currently in the Bill. The section is also amended to require that the planning authority must first consult with affected operators before taking those actions.

#### **2.20 Clause 20: Amendment of section 41 of Act 5 of 2009**

Clause 20 amends section 41 of the principal Act to insert various provisions that are currently found in the Regulations on Contracting for Public Transport Services, 2009 that were made under the Act. With reference to the requirement that negotiated contracts may be concluded “once only”, the amendment clarifies that one or more such contracts or a combination thereof may be concluded. Different contracts may be concluded with different operators on different routes, and the services may be increased or amended in a phased manner. They may also enter into stopgap contracts — see the notes on the new section 41A below. Procedures on making offers to incumbent operators that are contained in the regulations are inserted in the Act to avoid possible disputes and court challenges.

The power of the Minister in section 42 to prescribe requirements and provide model tender and contract documents for public transport service contracts is also extended to negotiated contracts under section 41.

#### **2.21 Clause 21: Insertion of new section 41A in Act 5 of 2009**

Clause 21 inserts a new section on stopgap contracts which may be concluded to ensure continuity of service while the municipality or province is negotiating with incumbent operators, or to cover situations where an incumbent operator ceases to operate. These contracts will be for a maximum of three years, which will not eat into the 12 year period allowed for the negotiated contracts that will be concluded.

#### **2.22 Clause 22: Amendment of section 42 of Act 5 of 2009**

Clause 22 amends section 42 of the principal Act to make the tendering requirement subject to section 80(1)(a) of the Municipal Systems Act, which provides that where a municipality has established a municipal entity (ME) to provide services, it is not required to put the services out to tender but may conclude a negotiated contract with the ME.

The power of the Minister to prescribe requirements and provide model tender and contract documents for public transport service contracts is amended to provide that the Minister may make them binding on contracting authorities.

#### **2.23 Clause 23: Amendment of section 43 of Act 5 of 2009**

Clause 23 amends section 43 of the principal Act on commercial services contracts to make the tendering requirement subject to section 80(1)(a) of the Municipal Systems Act (see 2.20 above).

#### **2.24 Clause 24: Repeal of section 45 of Act 5 of 2009**

Clause 24 repeals section 45 of the principal Act. The requirements and restrictions regarding municipal operators are no longer relevant because the Municipal Systems Act (MSA) allows a municipality to contract with MEs established by it and the issue is adequately regulated by the MSA and Municipal Finance Management Act (MFMA). Also, municipalities and municipal entities may not tender for services in areas outside of the area of jurisdiction of the municipality except in limited circumstances that are regulated by other legislation.

**2.25 Clause 25: Amendment of section 46 of Act 5 of 2009**

Clause 25 amends section 46 of the principal Act to provide that provinces or municipalities may negotiate with incumbent operators in the case of existing interim bus contracts, according to which of them is the contracting authority as determined by section 11 and regulations to be prescribed by the Minister.

The requirement to refer disputes in respect of interim contracts to mediation or arbitration is deleted, because court actions have shown that it is better to resolve disputes by normal court procedures. The parties to a dispute are free in any event to subject the matter to mediation or arbitration if they both agree. Also, the issue is dealt with by the terms and conditions of the relevant contract.

**2.26 Clause 26: Amendment of section 47 of Act 5 of 2009**

Clause 26 amends section 47 of the principal Act to extend the provisions on the conversion of permits to operating licences (OLs) that were issued under the Transition Act. The section is also amended to make it clearer that when an operator applies for renewal, amendment or transfer of a permit, there must be a simultaneous application for conversion of the permit. New provisions are inserted to empower the Minister to make regulations on procedures for conversion. Subsection (5) which prohibits the payment of subsidies to operators whose permits have not been converted is deleted, because of delays being experienced with the conversion process (the subsection was never brought into operation).

**2.27 Clause 27: Amendment of section 48 of Act 5 of 2009**

Clause 27 amends section 48 of the principal Act to remove the requirement that where the Minister makes regulations to integrate non-contracted scheduled services and convert them to commercial service contracts this must be done within two years. The process of doing so is expected to take much longer.

**2.28 Clause 28: Amendment of section 49 of Act 5 of 2009**

Clause 28 amends section 49 of the principal Act to clarify its provisions. The requirements that the planning authority must approve and that the replacing vehicle may not be more than 20% larger have been removed because these aspects are already covered by the Department's requirements for recapitalisation. Subsection (3) is deleted because its provisions are already covered by section 47 and have been creating some confusion.

**2.29 Clause 29: Amendment of section 51 of Act 5 of 2009**

Clause 29 effects a consequential amendment to section 51 of the principal Act.

**2.30 Clause 30: Amendment of section 53 of Act 5 of 2009**

Clause 30 amends section 53 of the principal Act to make it clearer that staff services, as well as other types of public transport services, are exempt where no consideration or fare is charged, and to bring the exemption for farmers carrying their own workers into line with the other exemptions. It should be noted that the carrying of workers in goods compartments of goods vehicles and LDVs is covered in the National Road Traffic Regulations, 2000.

A consequential amendment is also made to subsection (2).

**2.31 Clause 31: Amendment of section 54 of Act 5 of 2009**

Clause 31 amends section 54 of the principal Act to limit applications made to MREs to services that will be provided entirely within the area of jurisdiction of the relevant municipality.

**2.32 Clause 32: Amendment of section 56 of Act 5 of 2009**

Clause 32 amends section 56 of the principal Act to provide that where a stopgap contract referred to above has been concluded, OLs must be issued to the operator to enable him/her to implement the contract, as is the case with other contracts concluded with contracting authorities.

**2.33 Clause 33: Amendment of section 57 of Act 5 of 2009**

Clause 33 amends section 57 of the principal Act to include two paragraphs that should have been included in the principal Act and to provide that regulatory entities must also take into account the fact that the applicant for an OL may have infringed codes of conduct that are prescribed by the Minister.

**2.34 Clause 34: Amendment of section 59 of Act 5 of 2009**

Clause 34 amends section 59 of the principal Act to correct the heading and to provide more clearly for types of applications that do not have to be advertised in the *Government Gazette*.

**2.35 Clause 35: Amendment of section 60 of Act 5 of 2009**

Clause 35 amends section 60 of the principal Act on temporary OLs to clarify that they can be obtained “over the counter” by a shortened procedure from an official or member of the regulatory entity delegated by that entity.

**2.36 Clause 36: Amendment of section 62 of Act 5 of 2009**

Clause 36 amends section 62 of the principal Act to delete the requirement that proof of insurance must be provided when an OL is issued, due to the 2008 amendment of section 21 of the Road Accident Fund Act 56 of 1996 providing that claims can no longer be brought against the owner or driver of a motor vehicle for death or personal injury.

**2.37 Clause 37: Amendment of section 64 of Act 5 of 2009**

Clause 37 amends section 64 of the principal Act to create an exception to the rule that an OL may only be issued to the registered owner or operator of the relevant vehicle, in the case of accredited tourist operators where they hire or use vehicles that comply with section 84.

**2.38 Clause 38: Amendment of section 66 of Act 5 of 2009**

Clause 38 amends section 66 of the principal Act to provide that the Minister may prescribe requirements and standards for meters to be installed in metered taxis, and that the Minister may prescribe that electronic hailing applications or similar technology may be used either in tandem with or instead of a meter. The Minister may also prescribe requirements and standards for meters and electronic hailing and similar technology.

**2.39 Clause 39: Amendment of section 67 of Act 5 of 2009**

Clause 39 amends section 67 of the principal Act at the request of some PREs to provide measures to prevent the abuse of charter services.

**2.40 Clause 40: Amendment of section 68 of Act 5 of 2009**

Clause 40 amends section 68 of the principal Act to clarify the position in relation to staff services.

**2.41 Clause 41: Amendment of section 73 of Act 5 of 2009**

Clause 41 amends section 73 of the principal Act to clarify that the shortened process that applies on application to replace the vehicle specified in an OL will also apply where the replacing vehicle has the same capacity or is smaller than the replaced vehicle or does not exceed the capacity of the replaced vehicle by more than 40%.

**2.42 Clause 42: Amendment of section 74 of Act 5 of 2009**

Clause 42 amends section 74 of the principal Act to provide that an operator can replace a vehicle temporarily under an OL or permit also where the vehicle has been sold, stolen or destroyed and the operator is in the process of obtaining a replacement vehicle.

**2.43 Clause 43: Amendment of section 75 of Act 5 of 2009**

Clause 43 amends section 75 of the principal Act to delete subsection (3), as this provision should more appropriately be included in the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998).

**2.44 Clause 44: Amendment of section 79 of Act 5 of 2009**

Clause 44 amends section 79 of the principal Act to correct an omission and to provide that a regulatory entity may also withdraw, amend or suspend an OL or permit where the operator has contravened the Act or the National Road Traffic Act or has infringed codes of conduct that are prescribed by the Minister.

**2.45 Clause 45: Amendment of section 81 of Act 5 of 2009**

Clause 44 amends section 81 of the principal Act to provide that applications for accreditation by tourist transport operators must be published for comment in the *Government Gazette*.

**2.46 Clause 46: Substitution of section 84 of Act 5 of 2009**

Clause 46 substitutes section 84 of the principal Act to make it clearer that operating licences are only issued to accredited tourist transport operators and that they may use any vehicle for the tourist service as long as an OL is obtained and the vehicle complies with the requirements of that section. The process of certifying vehicles for use by such operators has been removed to clarify the position.

**2.47 Clause 47: Amendment of section 86 of Act 5 of 2009**

Clause 46 effects a consequential amendment to section 86 of the principal Act.

**2.48 Clause 48: Amendment of section 92 of Act 5 of 2009**

Clause 48 amends section 92 of the principal Act to provide that persons may also appeal to the Transport Appeal Tribunal in connection with applications relating to permits or to accreditation of tourist transport operators. The interrelationship between section 92 and section 62 of the MSA, which deals with inter-municipality appeals, is also clarified.

**2.49 Clause 49: Amendment of section 93 of Act 5 of 2009**

Clause 49 amends section 93 of the principal Act to make it clear that transport authorities established under the Transition Act (the eThekweni Transport Authority is the only one) must take steps in the meantime to incorporate that authority into the City's administration.

**2.50 Clause 50: Insertion of sections 93A and 93B in Act 5 of 2009**

Clause 50 inserts a new section 93A into the principal Act to provide that the Minister may delay the implementation of certain provisions of the Act where practicalities require it. Similar provisions are found in section 177 of the MFMA.

It also inserts a new section 93B to provide that arrangements for public transport under section 84(1)(g) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), will be subject to the principal Act and any regulations or arrangements made under the principal Act.

**2.51 Clause 51: Amendment of section 23 of Act 9 of 1989**

Clause 51 amends section 23 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), to provide that PRASA must provide passenger rail services at the request of municipalities, as well as at the request of the Department, subject to agreements to be concluded between PRASA and the relevant municipality. The aim of the amendment is to bring the Legal succession to the South African Transport Services Act in line with this Act.

**2.52 Clause 53: Repeal of sections 26, 26A and 27 of Act 74 of 1977**

Clause 52 repeals sections 26, 26A and 27 of the Road Transportation Act, 1977 (Act No. 74 of 1977). These sections are an overhang of the situation when that Act was assigned to the provinces in 1996 and have become redundant. The aim of the repeal is to bring the Road Transportation Act in line with this Act.

**2.54 Short title**

Clause 53 provides the short title of the Bill.

**3. DEPARTMENTS/BODIES CONSULTED**

A workshop to discuss aspects to be included in the draft Bill was held at the CSIR in Pretoria on 5th February 2013, to which a wide range of stakeholders was invited. A draft of the Bill was published for comment in the *Government Gazette* on 8 March 2013. A large volume of comments were received and considered by the Department, and incorporated where appropriate. Where appropriate, workshops or individual meetings were arranged to discuss the draft. A wide range of stakeholders was consulted in the preparation of the Amendment Bill, including the following:

- The Department of Cooperative Governance and Traditional Affairs (COGTA)
- The Department of Trade and Industry (DTI)
- The Department of Tourism
- The National Treasury
- The National Consumer Commissioner
- All provincial departments responsible for public transport

- The Passenger Rail Agency of South Africa (PRASA)
- The Committee of Transport Officials (COTO)
- The Cross-Border Road Transport Agency (CBRTA)
- Written comments were received from the following:
- The National Treasury
- PRASA
- The Cross-Border Road Transport Agency
- The Road Traffic Management Corporation (RTMC)
- The SA Local Government Association (SALGA)
- The eThekweni Metropolitan Municipality
- The eThekweni Transport Authority
- The City of Johannesburg Metropolitan Municipality
- The City of Cape Town Metropolitan Municipality
- The KwaZulu-Natal Department of Transport
- The Mpumalanga Department of Transport
- The Limpopo Operating Licensing Board
- The Limpopo Department of Transport
- The Gauteng Department of Roads and Transport
- The Eastern Cape Department of Transport
- The Free State Department of Police, Roads and Transport
- The Western Cape Provincial Regulatory Entity
- The Western Cape Department of Transport and Public Works
- The SA National Taxi Council (SANTACO)
- The National Taxi Alliance (NTA)
- Eastern Cape Taxi Operators
- The SA Network of Women in Transport (SANWIT)
- The Southern African Bus Operators' Association (SABOA)
- Mr Paul Browning

A number of meetings were held with the National Economic Development and Labour Council (Nedlac) around July 2014 when a task team was established to consider the Bill in detail. The task team suggested some changes to the Bill, which were incorporated as appropriate.

The Bill was sent to the State Law Advisors for scrutiny and they have given us a preliminary opinion.

The Bill was presented and approved by the Special Economic Sectors, Employment & Infrastructure Development Cluster (ESEID DG Cluster) Meeting on 22 April 2015.

The Minister of Cooperative Governance and Traditional Affairs wrote a letter to the Minister indicating the support regarding the Amendment Bill.

#### **4. FINANCIAL IMPLICATIONS**

The Bill proposes clarifications on roles and powers as well as expansions on definitions and is therefore not expected to have any additional financial implications that were not envisaged by the principal Act.

#### **5. PARLIAMENTARY PROCEDURE**

5.1 The Department is of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution as it deals with “public transport” envisaged in Schedule 4 to the Constitution.

5.2 The Department is of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.