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KWAZULU-NATAL PUBLIC TRANSPORT ACT, 2005

(Act No. 3 of 2005)

(Assented to on 2005-11-03)

ACT

To provide for the transformation and restructuring of the public transport system in the Province of KwaZulu-Natal; to develop and implement provincial public transport policy; to provide for an effective institutional framework; to facilitate the development and provision of public transport for all communities; to enhance the quality of life of historically disadvantaged communities through improved mobility and access to transport services; to provide for transparency in the development and implementation of provincial public transport policies and practices; to bring about effective regulation and enforcement of the public transport system; to substitute provincial arrangements for matters dealt with in Chapter 3 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000), within the framework of prevailing national land transport policy; and to provide for matters connected therewith.

BE IT ENACTED by the Legislature of the Province of KwaZulu-Natal as follows:-

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CHAPTER 1

INTRODUCTORY PROVISIONS

Definitions

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

"Appeals Tribunal" means the KwaZulu-Natal Transport Appeals Tribunal established in terms of section 68;

"applicant", in the context of applications for operating licences as provided for in section 48, means a member or an aspirant member of an association, a non-member, an existing operator of public transport services, a duly registered entity, or an individual acting either in a personal capacity or on behalf of a duly registered entity;

"area-defined operating licence" means an operating licence which authorises operations within a defined geographical area;

"aspirant member" means a person or a duly registered entity that has been granted temporary membership of an association pending approval of full membership of an association;

"Board" means the KwaZulu-Natal Public Transport Licensing Board established by section 23;

"Code of Conduct" means the Code of Conduct prescribed by the MEC in terms of section 106;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

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

"Department" means the KwaZulu-Natal Department of Transport;

"Gazette" means the official *Provincial Gazette* of the Province;

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

"Interim Taxi Act" means the KwaZulu-Natal Interim Minibus Taxi Act, 1998 (Act No. 4 of 1998);

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

"MEC for Finance" means the Member of the Executive Council of the Province responsible for finance;

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

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

"National Road Traffic Act" means the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"non-member" has the meaning assigned to it by the National Land Transport Transition Act, but for purposes of this Act, where appropriate, also includes an operator;

"operating licence" means an authorisation to undertake a public transport service as defined in the National Land Transport Transition Act, 2000 (Act No. 22 of 2000), and granted and issued in accordance with Chapter 5 of this Act, but does not include a temporary operating licence;

"operator" means a person or a duly registered entity carrying on the business of operating a public transport service;

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

"planning authority" means an authority contemplated in Chapter 2 of this Act and section 20 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000);

"prescribe" means prescribe by regulation in terms of this Act;

"Province" means the Province of KwaZulu-Natal;

"Provincial Legislature" means the Legislature of the Province of KwaZulu-Natal;

"radius permit" has the meaning set out in the Interim Taxi Act;

"registered entity" means an entity registered in accordance with any legislation governing the constitution and operation of that type of entity, which has been established for the purposes of rendering public transport services;

"Registrar" means the person appointed as the Provincial Transport Registrar in terms of section 82 (1);

"Road Transportation Act" means the Road Transportation Act, 1977 (Act No. 74 of 1977);

"route-based operating licence" means an operating licence which broadly describes the route or combination of routes by specifying the origin and destination of the service and any intermediate point necessary for proper identification of the service;

"this Act" includes regulations made in terms section 4 of this Act;

"transport area" means an area contemplated in section 9(2)(a) and declared in terms of section 10 (1)(b);

"transport authority" means an authority contemplated in section 9(2)(b) and established in terms of section 10(l)(d); (2) Any other word, term or expression bears the meaning assigned to it in the National Land Transport Transition Act.

Application, status and purpose of Act

2.(1) This Act applies in the Province of KwaZulu-Natal.

(2) This Act -

(a) must be read with Chapters 1, 2 and 4 of the National Land Transport Transition Act;

(b) is a replacing provincial law for the Province as provided for in section 3(b)(i) of the National Land Transport Transition Act with regard to all matters dealt with in this Act; and

(c) replaces Chapter 3 of the National Land Transport Transition Act.

(3) This Act provides the measures necessary to -

(a) bring about institutional reform in the public transport sphere;

(b) restructure, regulate and enforce the public transport system of the Province;

(c) give effect to national and provincial public transport policies, norms and standards; and

(d) achieve a smooth transition to the new system mandated in the National Land Transport Transition Act.

Powers, functions and duties of MEC

3.(1) The MEC must, in addition to the functions provided for in section 9(1) of the National Land Transport Transition Act -

(a) facilitate the increased utilisation of public transport in the Province;

(b) take the necessary steps to promote co-ordination between planning authorities in the Province, or between such authorities and the Province, with a view to avoiding duplication of effort;

(c) in taking any measures to promote public transport -

(i) further, within overall public transport objectives, the reasonable safety of passengers;

(ii) encourage efficient and commercial conduct on the part of operators in their provision of public transport services, and encourage competitive tendering for contracts and concessions; (iii) further a strategic and integrated approach to the provision of public transport; and

(iv) further or encourage the efficient use of energy resources, and limit or reduce adverse environmental impact to the minimum;

(d) promote public transport so that -

(i) it is effective in meeting user needs;

(ii) it operates efficiently as regards the use of resources;

(iii) the services provided are of acceptable quality and readily accessible and are operated in conjunction with effective infrastructure provided at reasonable cost; and

(iv) in the operation of public transport services, high priority is given to safety;

(e) strive to ensure that in the promotion of integrated transport due consideration is given to the needs of transport users;

(f) promote integrated transport planning in the Province and cause to be prepared a provincial transport framework in accordance with the relevant provisions of the National Land Transport Transition Act; and

(g) prepare a Black Economic Empowerment Strategic Framework and relevant plans for public transport in line with section 11 of the Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

(2) Notwithstanding any powers, functions and duties specifically contained in this Act, the MEC may take any action required to pursue the objectives of this Act: Provided that the primary purpose of such action is to enhance public transport services and to ensure the safety and security thereof.

(3) Where, at the commencement of this Act, the Province has been undertaking planning of public transport, other than of services contemplated in section 20(4) of the National Land Transport Transition Act, which in terms of the Constitution should be undertaken by municipalities, the MEC and the planning authorities concerned must make arrangements for the transfer of the planning functions to the planning authorities concerned.

Regulations by MEC

4.(1) The MEC may, by notice in the *Gazette*, make regulations with regard to any matter which -

(a) may or must be prescribed by the MEC in terms of this Act; and

(b) is necessary for the effective administration of this Act.

(2) 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 a regulation made in terms of that subsection until such time as the MEC makes a superseding regulation in terms of this section.

Delegations by MEC

5.(1) The MEC may delegate to the Head of Department -

(a) any power conferred on the MEC by this Act, except the power, in terms of section 4, to make regulations;

(b) any duty imposed on the MEC by this Act, except any duty regarding the appointment, and termination of office, of the members of the Board, the members of the Appeals Tribunal, the Registrar and the panel of assessors.

(2) Any power or duty delegated in terms of subsection (1) must be exercised or performed subject to such conditions as the MEC may determine.

(3) Any delegation in terms of subsection (1) -

(a) must be in writing;

(b) does not prohibit the MEC from exercising that power or performing that duty;

(c) may at any time be withdrawn or amended in writing by the MEC; and

(d) does not divest the MEC of the responsibility concerning the exercise of the power or the performance of the duty.

Information and reporting system

6.(1) The MEC must -

(a) in consultation with the Minister; and

(b) after consultation with transport authorities and municipalities, develop and maintain an information and reporting system, which is necessary to give effect to the objectives of this Act or of national and provincial public transport policy.

(2) Such system must apply uniformly to transport authorities and municipalities in the Province.

(3) From a date determined by the MEC, the MEC may withhold from a transport authority or municipality appropriations or grants until the transport authority or municipality has fully complied with the requirements as prescribed and with the reporting requirements provided for in subsection (1).

(4) The MEC must by notice in the *Gazette* publish the system referred to in subsection (1).

(5) The MEC must undertake the collection of information in connection with public transport and

make it available to interested persons or disseminate information in connection with public transport by means of the press, radio, television or other media, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

(6) In addition to the annual reporting requirements required to be observed by the Board, Registrar and the Appeals Tribunal as provided for in this Act, these bodies must comply with any additional reporting requirements which the MEC may determine from time to time.

CHAPTER 2

TRANSPORT PLANNING

Transport planning function

7.(1) Planning authorities are responsible for the transport planning function which must be performed in accordance with the policy parameters, general principles and types of plans prescribed by Part 7 of Chapter 2 of the National Land Transport Transition Act.

(2) The MEC must ensure the co-ordination of the planning processes of all planning authorities and in so doing, must ensure that all plans address -

(a) public transport services operating across the boundaries of the areas of planning authorities;

(b) road and rail networks;

(c) the needs of special categories of passengers;

(d) rivalry between neighbouring planning authorities that may result in the duplication or over-supply of transport facilities and infrastructure in the region; and

(e) the integration of transport and land use planning within the context of the Development Facilitation Act, 1995 (Act No. 67 of 1995), or any other provincial law.

Responsibility for needs determination in transport planning

8.(1) In order to give effect to national and provincial transport policy and to provide for service delivery through a "demand driven" system as opposed to a "supplier driven" system, the planning authority must determine the need for public transport services, which may include the undertaking of inspections *in loco* where deemed necessary, whether or not the planning authority has developed transport plans for its area.

(2) A planning authority may enlist the assistance of the Registrar in the determination of need where transport plans or planning studies are not available to guide the decision on the need for services.

(3) The assistance to be rendered by the Registrar in terms of subsection (2) may, if necessary, include the conducting of inspections *in loco*.

(4) A planning authority having determined the need for service in terms of transport plans or planning studies may make a referral to the Board for the granting of the necessary operating licences.

(5) A planning authority wishing to exercise its right of referral in terms of subsection (4) must channel the referral through the Registrar, who must verify whether the affected area or route is on record as being registered with any association or non-member.

(6) Where, pursuant to subsection (5), the Registrar -

(a) identifies that the affected area or route is part of the registered route network of an existing

association or non-member, the Registrar must offer the relevant association or non-member, as the case may be, the opportunity to satisfy the need for service -(i) in the event of the offer being accepted, the Registrar must -

(aa) register the member, aspirant member of the association or non-member in respect of the affected area or route; and (bb) refer to the Board for publication in the *Gazette* of the details concerning the operating licences to be granted as part of the referral; or

(ii) in the event of the offer not being accepted, the Registrar must notify the planning authority, in which case the planning authority must take immediate steps to invite service providers to apply to render the necessary service;

(b) identifies that the affected area or route does not form part of the registered route network of any association or non-member, the Registrar must notify the planning authority, in which case the planning authority must take immediate steps to invite service providers to apply to render the necessary service.

(7) The offer made in terms of subsection (6)(a) and the invitations to provide service referred to in subsections (6)(a)(ii) and (6)(b) must be dealt with in terms of a process and within time periods prescribed.

(8) Until such time as the Board has granted the necessary operating licences, the offer made in terms of subsection (6)(a) does not constitute an automatic right to operate the service by the candidate operator.

(9) A planning authority must establish a consultative forum comprising representation from key stakeholders to facilitate interaction on the reshaping of the transport system, including the identification of need for services.

(10) The composition of the consultative forum referred to in subsection (9) as well as the procedures governing its functioning must be prescribed.

CHAPTER 3

TRANSPORT AUTHORITIES

Agreements for formation of transport areas and transport authorities

9.(1) Transport authorities may be established for transport areas only as provided for in this Chapter and Part 5 of the National Land Transport Transition Act, and only if the functions of such authority in relation to the functions of the municipalities involved comply with the Constitution and applicable local government legislation.

(2) A municipality or any two or more municipalities jointly, may, subject to the relevant provisions of the National Land Transport Transition Act, in particular section 11 of that Act, enter into a founding agreement with the MEC, in accordance with section 11 of this Act, in terms of which -

(a) the area or areas of jurisdiction of the municipality or of the municipalities acting jointly, or part of such area or areas, as the case may be, will become a transport area; and

(b) a transport authority is to be established for such a transport area.

Declaration of transport areas and establishment of transport authorities

10.(1) The MEC must, not later than 14 days after the conclusion of an agreement referred to in section 9, by notice in the *Gazette* -

- (a) give notice of and publish the founding agreement;
 - (b) declare the area concerned to be a transport area, and assign to it the name provided for in that agreement;
 - (c) where applicable, withdraw, in the manner as provided for in section 3(1)(c) of the Urban Transport Act, 1977 (Act No. 78 of 1977), the notice by which the area or areas of the municipality or municipalities concerned had been included in the relevant metropolitan transport area in terms of paragraph (a) or (b) of section 3(1) of that Act; and
 - (d) in accordance with and subject to the founding agreement, establish for that transport area a transport authority with effect from the date specified for that purpose in the founding agreement.
- (2) A founding agreement, upon having been so published, has the force of law and no amendment thereof has any legal force or effect until the amendment has been published by the MEC by notice in the *Gazette*.

Requirements for founding agreements

11. The founding agreement must be in writing and provide at least for the following -

- (a) a declaration by the contracting parties affirming their agreement on the establishment of a transport authority for the transport area concerned;
- (b) the name to be assigned to the transport area;
- (c) the date with effect from which that transport authority is to be established;
- (d) the establishment and structure of a governing body for that transport authority, the number of its members and the manner in which they are to be designated and appointed: Provided that only a person who serves as a councillor of a municipality party to the founding agreement (hereafter called a participating municipality), may be designated and appointed a member of the governing body;
- (e) the designation and appointment of a chairperson and deputy chairperson for the governing body;
- (f) voting procedures and members' voting rights at meetings of the governing body and any committee thereof, where applicable, and mechanisms and procedures for breaking deadlocks in decision-making;
- (g) the appointment or designation of a chief executive officer for that transport authority, and the responsibilities, functions and powers attached to that office;
- (h) the powers of the governing body that may be delegated to any of its members or to the chief executive officer;
- (i) the venue for the head office of that transport authority and for meetings of its governing body;
- (j) the physical address for delivering, sending or serving all correspondence, documents, notices and court processes directed to the transport authority;
- (k) in the case where the transport area consists of the areas of jurisdiction, or parts of such areas, of two or more participating municipalities -
 - (i) the contribution of each participating municipality to the funding of that transport authority;
 - (ii) the performance of the professional, technical, administrative, clerical, secretarial and other work arising from, necessary for, or relevant or incidental to, the exercise and performance by that transport

authority of its powers and functions;

(iii) subject to this Act, the requirements to be observed and procedures to be followed by any participating municipality that wants to withdraw from that transport authority, and its responsibilities, duties and obligations with regard to the then current or outstanding commitments and liabilities of that authority; and

(iv) the procedures to be followed for and pursuant to the voluntary dissolution of that transport authority;

(l) the arrangements made for the performance of the professional, technical, administrative, clerical and other work of the transport authority in terms of section 20, if not already covered under paragraph (k)(ii).

Functions and competencies of transport authorities

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

(a) promote security in public transport;

(b) encourage and promote the optimal use of the available travel modes so as to enhance the effectiveness of the transport system and reduce travelling time and costs;

(c) market the public transport system and promote and assume responsibility for publicity associated with that system;

(d) provide information to users or potential users of public transport;

(e) 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, if the transport authority is exercising the subsidy function in terms of section 10(13)(f) of the National Land Transport Transition Act;

(f) in the case of commercial (unsubsidised) public transport services, set minimum fares bearing in mind the desirability of encouraging equitable competition between operators of public transport services;

(g) make payments to operators in terms of subsidised service contracts and concessionary fare agreements to which it is a party, if the transport authority is exercising the subsidy function;

(h) institute and conduct investigations into the financial circumstances and operating practices of -

(i) persons who, at the time, are existing or potential operators in relation to or in the transport area; or

(ii) the holders of operating licences who, at the time, are operating public transport services in relation to or in that area;

(i) introduce or establish, or assist in or encourage, promote and facilitate the introduction or establishment of integrated ticketing systems and determine or prescribe measures for the regulation and control of revenue-sharing among the operators involved in that system;

(j) 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;

(k) develop, implement and monitor a strategy to prevent, minimise or reduce any adverse impact of the land transport system on the environment; and

(l) in agreement with relevant participating municipalities -

(i) take over functions related to municipal roads;

(ii) apply measures to limit damage to the road system in that part of the transport area.

(2) The MEC and a transport authority may agree -

(a) that different functions will be undertaken in rural areas as opposed to urban areas in the transport area concerned; or

(b) in the case of a district municipality being a participating municipality that is a category C municipality provided for in section 155(l)(c) of the Constitution, that different functions may be undertaken within the areas of jurisdiction of the category B municipalities in the area concerned, as opposed to areas outside of such areas.

(3) With a view to ensuring co-ordinated transport law enforcement within its area, the transport authority must liaise on a continuous basis with the South African Police Service, the relevant provincial and municipal law enforcement authorities or agencies and the inspectors appointed and serving in terms of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998).

(4) A transport authority may, with the agreement of a participating municipality, assume co-responsibility for, or assist the participating municipality in, the application of traffic management techniques aimed at improving road traffic movement in that part of the transport area that coincides with the area of jurisdiction of that participating municipality.

(5) Whenever a transport authority -

(a) fails to perform a compulsory function provided for in section 10(13) of the National Land Transport Transition Act;

(b) having undertaken a voluntary function referred to in subsection (1), fails to perform it; or

(c) fails to perform such a function properly and effectively in accordance with this Act, the National Land Transport Transition Act and other applicable laws, the MEC may, by written notice addressed to the transport authority through its governing body or chief executive officer, order that transport authority to remedy its default and perform the function concerned, or, to perform it properly and effectively as the case may be, not later than the date stated in the notice.

(6) The governing body and the chief executive officer must ensure speedy compliance with the directive issued by the MEC in terms of subsection (5).

(7) If the transport authority fails to remedy the default within the period allowed for in the notice mentioned in subsection (5), the MEC may -

(a) intervene by taking steps to have the function performed by the Department or any other body or person that has the capacity to do so, subject to section 139 of the Constitution; and

(b) use moneys from the Provincial Revenue Fund that are earmarked for allocation to that transport authority to pay the costs arising from taking those steps, or recover those costs from the transport authority.

(8) A transport authority may apply to the MEC for permission to assume responsibility for the full range of functions of the Board in relation to transport services involving the picking_up and setting down of passengers within the boundaries of the area over which the transport authority has jurisdiction.

(9) Subject to the criteria laid down in section 30(2) of the National Land Transport Transition Act being met by the transport authority, the MEC may approve the application referred to in subsection (8).

(10) Where the transport authority has secured the permission sought under subsection (8) -

(a) the Board's full range of functions will automatically vest with the transport authority; and

(b) the provisions of this Act referring to the Board must for all intents and purposes be construed as references to the appropriate entity of the transport authority set up to perform the relevant functions.

(11) To the extent that it may be deemed necessary for appropriate empowerment of a transport authority and provided that it is not in conflict with the provisions of the founding agreement establishing the transport authority or the assignment of functions provided for in such founding agreement, any reference to a municipality in this Act must be construed as a reference to a transport authority.

Ancillary powers of transport authorities

13.(1) A transport authority may enter into an agreement with a municipality that is not a participating municipality in terms of which the transport authority is to exercise or perform on behalf of that municipality any power or function entrusted to the municipality by or in terms of this Act or the National Land Transport Transition Act.

(2) The transport authority may only enter into such an agreement if it is competent in terms of this Act and other applicable legislation pertaining to public transport, to exercise or perform the same or a similar power or function with regard to its transport area.

(3) An agreement in terms of subsection (1) may involve the utilisation of funds of a transport authority outside of its transport area, if the MEC and the MEC for Finance both agree.

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

Governance of transport authorities

14.(1) A transport authority is governed and controlled by the governing body established for it in accordance with the founding agreement in force in respect of that authority.

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

Finances of transport authorities

15.(1)(a) The chief executive officer of a transport authority must keep proper accounting records in accordance with generally accepted accounting practice and procedures so as to fully reflect the proper state of its financial affairs.

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

incurred by that authority.

(2)(a) Each transport authority must, not later than three months before the end of each financial year prepare a statement of estimated income and expenditure for the next financial year, which must be submitted to the participating municipality or municipalities for approval not later than the date to be determined by the MEC but that authority may at any time during the course of the current financial year submit a supplementary budget for that financial year to the municipality or municipalities for approval.

(b) The transport authority must at the same time submit a copy of the statement of estimated income and expenditure and supplementary budget, if applicable, referred to in paragraph (a) to the MEC.

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

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

Utilisation of transport authority funds

16.(1) A transport authority may in terms of its transport plans -

(a) defray the costs of performing its functions or exercising its powers;

(b) assist special categories of passengers through concessionary fares or by recompensing the relevant operator in respect of a service provided in terms of an approved transport plan;

(c) defray a specified part of the cost of equipment required by a municipality for regulating and controlling traffic in a transport area in terms of an approved transport plan;

(d) pay the agreed price for subsidised service contracts, current tendered contracts, interim contracts or concessions in terms of an approved transport plan;

(e) pay compensation in accordance with section 51 of the National Land Transport Transition Act for operating licences withdrawn under section 51 of that Act;

(f) defray the cost of the introduction of new technology into public transport;

(g) defray the cost of demonstration or pilot projects in land transport; {

(h) make grants for training in transport engineering or transport economics or other matters related to land transport; (i) defray the costs of preparing and implementing transport plans;

(j) pay interest on loans granted to it and redeem such loan in the instalments and within the period as the MEC determines with the concurrence of the MEC for Finance;

(k) defray the capital costs of specialized vehicles used in the provision of public transport under subsidised service contracts or concessions; or

(1) defray the costs of planning, designing, constructing, managing, controlling, maintaining or rehabilitating roads and other transport infrastructure.

(2) The MEC may make regulations regarding the manner in which cash balances of transport authorities may or must be invested.

(3) With the consent of the MEC, a transport authority may spend money in an area outside of its transport area, in agreement with the other transport authorities or municipalities concerned, for the purpose of performing its functions.

Loans to transport authorities

17.(1) The MEC may, from moneys appropriated by the Provincial Legislature, grant loans to a transport authority to assist it in the implementation of this Act, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(2) The transport authority must pay the interest on a loan so granted and redeem the loan in such instalments and within such period as the MEC, with the concurrence of the MEC for Finance, may determine.

Discretionary grants by MEC

18. The MEC may, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), make grants to assist transport authorities in financing, in terms of their transport plans -

(a) capital projects including the acquisition of fixed property, the initial acquisition of rolling stock for public transport systems, alternatives analysis related to the development of public transport systems, and the acquisition of rights of way;

(b) the capital costs of co-ordinating public transport with other types of land transport;

(c) the introduction of new technology into public transport;

(d) land transport projects that enhance socio-economic development and urban or rural restructuring, including industrial, commercial, business and residential development, if the projects -

(i) enhance the effectiveness of public transport to which they are related physically or functionally;

(ii) establish new or enhanced co-ordination between public transport and other land transport; or

(iii) reduce the need for movement by private vehicles as expressed by the average trip length of such vehicles;

(e) public transport projects planned, designed, and carried out to meet the needs of special categories of passengers; or

(f) the capital costs of motor vehicles or rolling stock used in the provision of public transport under subsidised service contracts or concessions.

Delegations by governing body

19.(1) The governing body of a transport authority may delegate any of its powers or functions in terms of this Act, except the power of governance provided for in section 14 to any member of that governing body.

(2) A delegation by the governing body in terms of subsection (1) -

(a) may be made on and subject to any conditions determined by the governing body;

(b) may be given together with the power to sub-delegate, on and subject to any conditions so determined, if any; and

(c) must be in writing and contain full particulars of the matters being delegated and of any conditions

attached to the delegation, and, where the power of sub-delegation is conferred, must state that fact as well as any conditions attached.

(3) The governing body may at any time -

(a) amend or revoke a delegation made in terms of subsection (1); or

(b) withdraw any decision made by any person with regard to a delegated matter, and decide the matter itself: Provided that a decision made in terms of a delegated authority may not be withdrawn where it confers a right or entitlement on any third party.

(4) The MEC may, if he or she is satisfied that the interests of land transport in the province or the transport area so require, by notice in the *Gazette* -

(a) prohibit the delegation of any particular power or function, whether generally or in the circumstances specified in the notice;

(b) limit the circumstances in which any particular power or function may be delegated;

(c) prescribe conditions for the delegation of any particular power or function; or

(d) in relation to any power or function specified in the notice, prohibit sub-delegation in the event of the governing body delegating that power or function.

Transport executives

20.(1) The parties to a founding agreement may provide therein -

(a) that the professional, technical, administrative, clerical and other work arising from, necessary for, associated with or incidental to the functioning of the transport authority or the exercise or carrying out of its powers and functions, is to be performed for the transport authority by -

(i) the municipal administration of one of the participating municipalities specified in that agreement; or

(ii) any one or more specified departments in the municipal administration of one or more participating municipalities, and in

such case, the relevant provisions of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), must apply; or

(b) for the establishment by the transport authority of a body under its auspices and subject to its control (hereafter called a transport executive), to perform all work of that nature or any specified type or category of that work for the transport authority.

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

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

(i) in terms of a written agreement entered into between the transport authorities concerned; (ii) for a fee or against payment of an amount specified in that agreement; and (iii) in accordance with and subject to -

(aa) the standard terms and conditions, if any, stipulated in the founding agreement; and

(bb) the terms and conditions specially stipulated in that agreement; and

(b) provision must be made at least for the following -

(i) where not all the professional, technical, administrative, clerical and associated work of the transport authority is to be performed by the transport executive, specification of the type or category of work for the performance of which the transport executive is to be responsible;

(ii) the place where the offices of the transport executive will be situated;

(iii) the manner in or procedure according to which the staff establishment of the transport executive is to be determined; and (iv) the power to appoint and dismiss its staff.

Joint transport executives

21.(1) The MEC and any two or more transport authorities authorised thereto by their respective participating municipalities, may enter into an agreement providing for the formation of a transport executive under the auspices of those transport authorities jointly, to perform, for each of them, the professional, technical, administrative, clerical and other work arising from, necessary for, associated with or incidental to its functioning as a transport authority and exercising or carrying out its powers and functions (hereafter called a joint transport executive).

(2) In such an agreement provision must further be made for at least -

(a) the matters mentioned in section 20(2)(b), which, with the changes required by the context, applies in relation to a joint transport executive;

(b) the powers of the participating transport authorities with regard to the exercise of supervision and control over their joint transport executive;

(c) the contribution of each participating transport authority to the funding of their joint transport executive.

Dissolution of transport authorities

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

(i) do not affect the capacity of the Member of the Executive Council for local government, when acting in terms of section 14 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), to make any arrangements having the opposite effect; and

(ii) do not detract from the legal force and effect of any arrangements so made.

(2) A transport authority must be dissolved in terms of subsection (1) if the following requirements have been met -

(a) where the transport authority involves only one municipality, it has decided to terminate its participation in the transport authority and has notified the MEC in writing of the decision;

(b) where the transport authority involves two or more municipalities -

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

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

(c) the MEC, within 30 days after having been so notified, has -

(i) by notice published in the *Gazette* and a newspaper generally read in the transport area affected by that notification, made known the proposed dissolution of the transport authority concerned;

(ii) invited interested parties to comment and make representations with regard thereto; and

(iii) requested them to furnish those comments and representations, in writing, to the MEC not later than the date specified in that notice, but a period of at least 30 days must be allowed for that purpose; and

(d) if all the parties to the transport authority have concluded an agreement in terms of which arrangements are made, with due regard to the comments and representations, if any, furnished in response to the MEC's notice in terms of paragraph (c), with regard to the matters listed in section 10 (14) of the National Land Transport Transition Act, but the date of dissolution must be so determined as to allow a period of at least 14 days from the date of the publication of the notice in terms of subsection (4).

(3) If the MEC and the municipality or municipalities, as the case may be, party to that transport authority fail to reach agreement as contemplated in subsection (2)(d) -

(a) the matter or matters concerned must be determined by arbitration in terms of the Arbitration Act, 1965 (Act No.42 of 1965);

(b) the arbitrator's determination is final and binding; and

the arbitrator's determination is regarded for the purposes of subsection (2) as being part of the agreement contemplated in paragraph (d) of that subsection or, where applicable, as constituting that agreement.

(4) The MEC must, within 30 days of the date of an agreement provided for in subsection (2) or (3), by notice in the *Gazette* and a newspaper generally read in the transport area concerned, make known the dissolution of the transport authority and publish the terms of that agreement and the date of dissolution.

CHAPTER 4

PUBLIC TRANSPORT LICENSING BOARD

Establishment of Board

23. The KwaZulu-Natal Public Transport Licensing Board is hereby established.

Nominations for Board

24.(1) The MEC must, using a method designed to reach the greatest number of residents in the Province, invite the nomination of persons for the Board.

(2) The invitation for nominations in terms of subsection (1) must specify the -

(a) nomination procedure;

(b) requirements for nomination; and

(c) date by which a nomination must be received by the MEC.

(3)(a) The MEC must appoint a selection panel of no less than four Departmental senior officials to

review all nominations and make recommendations on the nominees.

(b) The MEC may, in his or her sole discretion, appoint no more than two persons with experience in the transport industry to assist the selection panel with making recommendations on the nominees.

Appointment of Board

25.(1) The MEC must, based on nominations received in terms of section 24(1) and recommendations by the selection panel referred to in section 24(3), appoint no more than five members with experience in public transport, industrial, commercial, financial or legal matters to the Board, which must include -

- (a) one person who is a qualified attorney or advocate;
- (b) one person with extensive financial and commercial expertise;
- (c) one person with expertise or knowledge of the public transport industry;
- (d) two persons recommended by a commuter representative body; and
- (e) at least one female conforming to any of the profiles referred to in paragraph (a) to (d).

(2) The MEC may appoint two alternate members to the Board, who will be available to serve on the Board on an *ad hoc* basis in the event a member has a conflict of interest or is otherwise unavailable for a hearing.

(3) The members referred to in subsection (1) and alternate members referred to in subsection (2) must be fit and proper persons characterised by their independence, impartiality and fairness.

(4) A person may not be appointed as a member or alternate member of the Board if he or she has -

- (a) been or is removed from public office on account of misconduct;
- (b) been or is declared insolvent and has not been rehabilitated;
- (c) been or is convicted of an offence and sentenced to a period of imprisonment exceeding 12 months without the option of a fine; or
- (d) been or is convicted of an offence of which dishonesty is an element.

(5)(a) The MEC must fill any vacancy in the Board or in the alternate members to the Board in accordance with the provisions of section 24.

(b) The provisions of subsections (1) to (4) apply, with the necessary changes, to the filling of any vacancy.

Term of appointment of member of Board

26.(1) A member of the Board must be appointed for an initial term not exceeding three years.

(2) Subject to subsection (1), the MEC may re-appoint a member of the Board for an additional term not exceeding three years.

(3) The members of the Provincial Operating Licensing Board referred to in section 30 of the National Land Transport Transition Act and appointed by the MEC before the commencement of this Act must continue in office: Provided that should the member, at the commencement of this Act, have served on the Board for a total period of service -

(a) in excess of the maximum period provided for in subsections (1) and (2), such member's tenure with the Board must be limited to serving the remainder of his or her current term;

(b) which does not exceed the maximum period provided for in subsections (1) and (2), such member must serve the remainder of his or her current term and may be re-appointed for a further period that will not exceed the maximum period provided for in subsections (1) and (2).

Appointment of Chairperson and Deputy Chairperson of Board

27. The MEC must appoint both the Chairperson and the Deputy Chairperson of the Board.

Declaration of financial or other interests by members of Board

28.(1) A nominee to the Board must -

(a) within 10 days of being nominated, submit to the MEC a written declaration of any and all financial or other interests in the transport industry which could be related to or may be in conflict with an appointment as a member of the Board, which declaration must include relevant information about any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) in the declaration referred to in paragraph (a) include financial and other interests in the transport industry of immediate family members or close associates, which could be related to or may be in conflict with an appointment as a member of the Board; and

(c) not be considered for the position of a member of the Board where it is found that the nominee deliberately withheld information pertaining to financial or other interests contemplated in this section.

(2) Where a member of the Board or immediate family member or close associate experiences a change in financial or any other interests in the transport industry or acquires an interest in the transport industry or has reason to know of any such change or acquisition, the member of the Board must, within 10 days of the date of the change or acquisition, submit a written declaration to that effect to the MEC.

Failure to declare financial or other interests

29.(1) A member of the Board who fails to make a declaration envisaged in section 28 commits an offence.

(2) The Head of Department on becoming aware that a Board member has failed to comply with the provisions of section 28 must investigate the matter and refer the matter to the MEC for appropriate disciplinary action.

Recusal of member of Board

30.(1) A member of the Board must recuse himself or herself in any matter or proceeding where he or she, an immediate family member or close associate has or reasonably could be expected to have a financial or other conflict of interest in the outcome of a decision by the Board.

(2) Any interested person may make an application, orally or in writing, for a member of the Board to recuse himself or herself where the person has reason to believe that the member of the Board, a family member or close associate has or could reasonably be expected to have a financial or other conflict of interest in the outcome of a decision by the Board.

(3) A person making an application referred to in subsection (2) must give reasons for his or her request.

(4) In the event of an application referred to in subsection (2), the Chairperson of the Board must decide on the matter, save that in cases where the application concerns the Chairperson of the Board, the matter must be decided by the Deputy Chairperson.

Resignation of member of Board

31. A member of the Board may, at any time and on not less than 30 days' written notice to the MEC or to his or her nominee resign, save that the MEC or his or her nominee may accept a shorter period of notice where this would not be detrimental to the efficient functioning of the Board.

Termination of appointment of member of Board

32.(1) A person may not remain in office as a member or alternate member of the Board if he or she has -

- (a) been or is removed from public office on account of misconduct;
- (b) been or is declared insolvent and has not been rehabilitated;
- (c) been or is convicted of an offence and sentenced to a period of imprisonment exceeding 12 months without the option of a fine;
- (d) been or is convicted of an offence of which dishonesty is an element;
- (e) failed to declare his or her financial interests or other possible conflicts of interest in terms of section 28;
- (f) failed to recuse himself or herself as required by section 30;
- (g) engaged in conduct which, in the opinion of the MEC, brings or could bring the office of the member or activities of the Board into disrepute or threatens the integrity of the Board; or
- (h) failed to carry out the duties and functions of the Board to the best of his or her ability.

(2) The MEC may, after due inquiry, terminate the appointment of a member or alternate member on any of the grounds provided for in subsection (1).

(3) The MEC must, on request of a Board member or alternate member whose services have been terminated as provided for in subsection (1), give written reasons for the termination of services.

Powers and functions of Board

33.(1) The functions of a Board are to receive, consider and decide on or otherwise dispose of, in accordance with this Act -

- (a) referrals from planning authorities for the granting of operating licences required to give effect to the implementation of transport plans developed by the relevant planning authorities;
- (b) applications for the granting of operating licences for intra-provincial transport;
- (c) applications for the granting of operating licences for inter-provincial transport originating within the Province, subject to the approval of the relevant licensing board of the other province, or of every other province, in which passengers are picked up or set down, as the case may be, subject to section 30 (5) of the National Land Transport Transition Act;
- (d) applications for the renewal, amendment or transfer of operating licences for intra-provincial transport;

(e) applications for the renewal, amendment or transfer of operating licences that had been so granted by it for inter-provincial transport, subject to the approval of the relevant licensing board of the other province, or of every other province, in which passengers embark or disembark;

(f) applications for temporary operating licences;

(g) applications for the permanent replacement of motor vehicles specified in operating licences; and

(h) applications for temporary replacement of the vehicle specified in an operating licence.

(2) Upon finalisation of the radius conversion process contemplated under section 45, the Board may recall an operating licence for purposes of redefining the route or routes where the Board is of the opinion that the route description is vague or inadequate: Provided that in so doing the Board must redefine the route in accordance with specific details to be supplied by the planning authority.

(3) The Board may, by written notice sent to his or her last-recorded address, require any holder to satisfy the Board within the time specified in the notice, that the services authorised by the relevant operating licence are still being provided or are being provided sufficiently, or to provide the Board with other reasonable information relating to the relevant operating licence, and the holder must comply with such a notice.

Applications and referrals for granting of operating licences

34.(1) The Board, in deciding an application or referral for an operating licence, renewal, amendment or transfer of an operating licence must consider -

(a) the basis of any referral made by a planning authority and the Registrar, in particular the basis of any referral made in terms of section 8;

(b) the extent to which the public transport to be provided is consistent with national and provincial policy and relevant frameworks and transport plans developed by planning authorities;

(c) the extent to which the public transport service to be provided is necessary or desirable in the public interest;

(d) the needs of the commuting public within the transport area or along the route which the applicant proposes to operate;

(e) whether the existing public transport services and facilities available to the commuting public in the transport area or along the proposed route are adequate;

(f) whether the need for service applied for can be met through already approved transport plans or plans in the process of being developed by a planning authority;

(g) the need for co-ordination of all forms of public transport, including transport by rail, on an economically sound basis with due regard to the public interest;

(h) the ability of the applicant to provide satisfactory transport on the proposed route or routes;

(i) any previous criminal record of the applicant;

(j) the existence of a prohibition, limitation or restriction imposed by law on the use of motor vehicles in the area or on a street or road on the route on which the applicant proposes to operate;

(k) any representations by an interested party submitted in connection with the application;

(l) the registration status of the applicant in the event of the applicant being a member or aspirant member of an association or a non-member;.

(m) any report or document drawn up as a result of an inquiry into the financial circumstances and operating practices of the applicant;

(n) the claims made by operators who have historically provided the service, in circumstances where the application is in response to the provision of services along upgraded routes; and

(o) any other factor which, in the opinion of the Board, may affect the decision to grant an application or to attach or vary a condition or requirement.

(2) Where a person or body makes application for a new service, amendment of route or conversion to a vehicle of higher capacity, the Board must refer the application for consideration by the relevant planning authority and the Registrar in accordance with the principles envisaged in section 8, the object of which consideration is to -

(a) determine the need for service;

(b) verify the registration status of the applicant; and

(c) confirm whether or not the affected area or route is part of the route network of an existing association or non-member.

(3) The planning authority and the Registrar must respond to the referral mentioned in subsection (2) in the manner and within the prescribed period.

(4) The Board must not consider an application if the same person made a previous application for the same purpose or route within six months of the date on which the application was initially considered and refused by the Board, unless the Board is satisfied that it is in the public interest to consider the application.

(5) In disposing of any referral for the granting of operating licences, the Board may grant operating licences in favour of operators other than those identified by the Registrar as the candidate service providers in accordance with the provisions of section 8(6), where the Board is satisfied that to do so will be in compliance with provincial policies.

Procedures of Board

35.(1) The quorum for a meeting of the Board is at least three members of the Board.

(2) The Board must, for the purpose of dealing with those matters provided for in section 34 (l)(a) to (o), allow any person affected by or interested in such matter, or the duly authorised representative of such person, to appear before the Board and -

(a) give evidence or make oral representations;

(b) call witnesses and lead evidence on any question relevant to such matter; or

(c) question any person who testifies as a witness in such matter.

(3) The Board may, for the purpose of dealing with any matter before it in terms of this Act -

(a) by written notice prescribed by regulation and served in the manner so prescribed, require any person to appear before the Board to give evidence or to produce any book, plan or other document or article in his or her possession or under his or her control;

(b) call upon any person present in or at the place where such matter is dealt with by the Board, to appear before it to give evidence or to produce any book, plan or other document or article which such person may at the time have in his or her possession;

- (c) question any person appearing before the Board as a witness;
 - (d) refuse to hear any person appearing before the Board as a witness who refuses to be sworn in or to be affirmed;
 - (e) *subpoena* a person to attend Board hearings or to produce any documents;
 - (f) request clarification from the planning authority, Registrar or any other person on a matter before the Board;
 - (g) authorise payment of witness fees pursuant to the tariff as specified from time to time by the MEC in regulations; (h) issue an order as to costs for a party who fails to comply with a statutory obligation without good cause;
 - (l) hold hearings as required, with hearings open to the public except where the Board has reason to believe that the interests of justice would be served by holding a hearing or listening to the testimony of a specific witness behind closed doors; and
 - (j) not hear or decide any matter which is frivolous, vexatious, does not clearly state a claim or the Board does not have authority to hear the matter as provided for in this Act: Provided that written reasons must be given where a matter is not heard or decided.
- (4) The Chairperson or other Board member presiding over a Board hearing at which a person appears as a witness as provided for in subsection (3) must administer an oath or affirmation to the witness.
- (5) Decisions of the Board must be served in writing on all interested parties within 14 days of the decision.
- (6) A person who unlawfully disrupts the proceedings of the Board is guilty of an offence.
- (7) Prior to placing an application before the Board for a decision, the Secretariat of the Board must scrutinise the application for compliance with the basic requirements referred to in section 48(4).
- (8) Where the basic requirements referred to in section 48(4) have not been met by the applicant, the application must be put on hold by the Secretariat of the Board and dealt with as prescribed.
- (9) Except as specified in this Act, the Head of Department or his or her designee must determine the administrative procedures to be followed by the Board.

Appeal against decision of Board

36.(1) Subject to regulations governing the appeal process, a decision of the Board is final and may be appealed on the record, within 14 days of the date of the decision being served on the parties, to the Appeals Tribunal established in terms of section 68 on intra-provincial transport matters or the Transport Appeal Tribunal established in terms of section 3 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998), on inter-provincial transport matters.

(2) The Board may, where an applicant appeals a decision, make written submissions on the matter to the Appeals Tribunal.

(3) A planning authority or the Registrar forfeits the right of appeal where they have failed to meet the requirements of section 34(3), or in the case of a planning authority where the circumstances referred to in section 50(5) apply.

Staff of Board

37. The Head of Department must appoint staff to provide administrative assistance required by the Board, subject to the laws governing the public service.

Funding of Board

38. The funds of the Board consist of-

(a) money appropriated by the Provincial Legislature; and . (b) donations or contributions lawfully received by the Board from any legal source.

Remuneration and allowances of members of Board

39. Members of the Board are entitled to remuneration and allowances as may be determined by the MEC in consultation with the MEC for Finance.

Annual report of Board

40.(1) The Chairperson of the Board must submit an annual report on the activities of the Board to the MEC within 30 days of the end of the financial year.

(2) The Chairperson may, in the annual report, recommend necessary legislative, regulatory and procedural amendments to this Act.

Financial accountability

41. The Chairperson of the Board is, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), responsible for -

(a) accounting for State and any other funds received or paid out for or on account of the office of the Board; and

(b) maintaining proper accounting and other records.

CHAPTER 5

OPERATING LICENCES AND ASSOCIATED MATTERS

Obligations placed on applicants

42. Where an applicant applies for an operating licence, or the renewal, amendment or transfer of an operating licence, the *onus* is on the applicant to prove that -

(a) with due regard to the circumstances, it is in the public interest to grant the application;

(b) the public transport to which the application refers can be rendered on a sustainable basis; and

(c) the applicant is capable of providing the necessary passenger liability insurance cover for passengers.

One operating licence issued per vehicle

43. Only one operating licence may be issued for any vehicle, but such licence may contain authorisation to operate on more than one route.

Legitimation process of the Interim Taxi Act

44.(1) This Act does not preclude the finalisation of the legitimisation process as provided for in Part X of the Interim Taxi Act.

(2) The MEC may, for purposes of facilitating the finalisation of the legitimisation process referred to in subsection (1), by notice in the *Gazette*, revise the dates by which this process must be finalised.

(3) Notwithstanding other provisions governing the status of permits and the granting and issuing of operating licences contained in this Act, an authorisation to operate granted by the Provincial Operating Licensing Board established in terms of section 30 of the National Land Transport Transition Act, in terms of the legitimisation process referred to in subsection (1), must take the form of an operating licence.

Conversion of radius permit

45.(1) A holder of a radius permit must in the manner prescribed, submit an application to the Board for the conversion of such permit to a route based or area defined operating licence within the period determined by the MEC in the *Gazette*.

(2) The procedure for and manner of lodging applications for conversion of radius permits in terms of subsection (1), is as provided for in regulation 5 of the Interim Taxi Act Regulations, contained in Notice No. 346 of 1998 as published in (Provincial) *Gazette* No. 5316 of 26 November 1998, read with regulation 3 of the National Land Transport Transition Regulations on Operating Licences and Related Matters for the Province, contained in Notice No. 149 of 2001 as published in (Provincial) *Gazette* No. 6020 of 23 April 2001.

(3) The conversion process referred to in sub-section (2) must be undertaken in accordance with section 55 of the Interim Taxi Act, it being provided that in line with the principles enunciated in section 32 of the National Land Transport Transition Act, the original validity period of any permit so converted will remain unaltered.

Continuation and conversion of existing permits as required by National Land Transport Transition Act

46.(1) Subject to section 45(1), permits which on the date of the commencement of this Act have not yet expired, are deemed to have been automatically converted to an operating licence.

(2) Operating licences for unscheduled services, which have been automatically converted in terms of subsection (1), may if operated by -

(a) minibus vehicles, be further converted to operating licences for unscheduled or scheduled services operated by midibuses, depending on relevant transport plans, if any, on the surrender of two operating licences for one: Provided that the replacing operating licence must be issued for an indefinite period if both of the original operating licences carried an indefinite validity period, otherwise for a fixed period not exceeding five years, and must, in addition to the matters mentioned elsewhere in this Act, specify the number of seated passengers that may be carried;

(b) vehicles with a seating capacity of less than nine persons, including the driver, be further converted to operating licences -

(i) for unscheduled services operated by minibuses on the surrender of two operating licences for one, and the operating licence must be issued for an indefinite period if both of the original operating licences carried an indefinite validity period, otherwise for a fixed period not exceeding five years; or

(ii) for unscheduled or scheduled services operated by midibuses, on the surrender of four operating licences for one, and the operating licence must be issued for an indefinite period if all four of the original operating licences carried an indefinite validity period, otherwise for a fixed period not exceeding five years, and must, in addition to the matters mentioned elsewhere in this Act, specify the number of seated passengers that may be carried.

Operating licence prerequisite for operation of public transport service

47. No person may operate a public transport service without being the holder of the appropriate operating licence for the vehicle concerned.

Applications concerning operating licences

48.(1) Any person who intends operating a public transport service must apply to the Board for an operating licence.

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

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

(4) Applications in terms of subsections (1), (2) and (3) must -

(a) be made in the prescribed manner;

(b) be made on the prescribed form; and

(c) be accompanied by the prescribed fee.

Applications concerning temporary operating licences

49. (1) Any person who intends operating a public transport service on a temporary basis on a particular date in connection with a particular event or occurrence, must apply to the Board for a temporary operating licence.

(2) The onus is on the applicant referred to in subsection (1) to prove the necessity for the temporary operating licence.

(3) An application referred to in subsection (1) must -

(a) be made in the prescribed manner;

(b) be made on the prescribed form; and

(c) be accompanied by the prescribed fee.

Operating licences for public transport services provided for in transport plans

50.(1) Before considering any application -

(a) for the granting, renewal, amendment or transfer of an operating licence authorising the operation of any public transport service other than a charter service; or

(b) in terms of the conversion processes provided for in sections 45 and 46(2), in the area of a planning authority, the Board must by written notice inform the planning authority of the application concerned, with the request to make recommendations with regard to the application, together with any representations, to the Board within the period stated in the notice.

(2)(a) The planning authority must make its recommendations and any representations it considers fit, having due regard to the transport plans prepared for its area, or, if such plans have not yet been prepared, approved or published, according to due inquiries and investigations carried out by it and to any requirements that may be prescribed or guidelines that may be provided by the MEC, and submit

them to the Board within the period allowed therefore by such notice.

(b) The Board may condone the late submission of the recommendations and representations referred to in paragraph (a).

(3) The Board, in disposing of such an application, must act according to and may not grant an operating licence contrary to any approved transport plans.

(4) The Board must consider any recommendations and representations submitted in terms of subsection (2).

(5) Where the planning authority has failed to submit recommendations and representations to the Board in response to the latter's request, the Board may dispose of and decide the application without any input from the planning authority, by considering the matters mentioned in section 53(1).

Operating licences for contracted services

51.(1) Where any commercial service contract or subsidised service contract has been awarded by a competent tender board or authority after completion of a process of public tendering in accordance with the law, the Board may not refuse the application of the relevant operator for the granting or renewal of an operating licence required for the purposes of that service.

(2) That operator must specify in the application every vehicle by means of which the public transport service in terms of such a contract is to be operated.

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

(4) Operating licences for the operation of public transport services to be provided in terms of commercial service contracts or subsidised service contracts must be granted only for the duration and subject to the terms and conditions of the contract concerned, and may, subject to section 48(2), be amended to extend the duration thereof where the duration of the relevant contract is extended.

Publication of particulars of applications and submission of objections

52.(1) Subject to subsection (2), the Board must before considering an application for the granting, renewal, amendment or transfer of an operating licence for intra-provincial public transport services, cause to be published in the *Gazette* and in newspapers that are widely read such particulars of the application as may be prescribed.

(2) An application need not be published in terms of subsection (1) where it is an application -

(a) in respect of a contracted service provided for in section 51;

(b) to amend the particulars of the same vehicle specified in the operating licence;

(c) for replacement of a specified vehicle as provided for in section 60;

(d) for temporary replacement of a specified vehicle as provided for in section 63; or

(e) relating to the formalisation of a dedicated learner transport service that complies with requirements prescribed by the MEC and which specifies a cut-off date.

(3) An interested person who wishes to submit representations to the Board objecting to or supporting an application published in terms of subsection (1), must do so in the manner and within the time prescribed, and the Board -

(a) must allow a person who, within the time prescribed, submits representations to inspect the applicant's application form and related documents at the office of the Board on payment of the prescribed fee; and

(b) may, at the request of such a person, provide him or her with copies thereof on payment of the prescribed fee.

(4) The Board must likewise allow the applicant to inspect, free of charge, at its offices, and to make copies on payment of the prescribed fee, of representations objecting to or supporting the application.

(5)(a) The right to lodge objections or submit representations also applies to the matters referred to in paragraphs (a)(i)(bb), (a)(ii) and

(b) of section 8(6).

(b) The provisions of subsections (1) and (2) apply, with the necessary changes, to objections or representations referred to paragraph (a).

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

53.(1) Where any application is made for the granting, renewal, amendment or transfer of an operating licence in respect of a non-contracted service, the Board may grant or refuse the application only after having considered, subject to subsection (2) -

(a) whether the vehicle by means of which the service is to be operated is suitable for that purpose;

(b) representations by a planning authority as to the availability of ranks or terminals or other facilities or spaces for boarding or alighting from and for holding or parking vehicles engaged in the operation of that service;

(c) the existence of any by-law, regulation, prohibition, limitation or restriction by a municipality that has relevance to the transport service that the applicant proposes to provide under the authority of the operating licence;

(d) whether the applicant, or the transferee in the case of a transfer, has any previous conviction for an offence of the type and seriousness prescribed, committed within the prescribed period before the date of the application;

(e) the ability of the applicant, or the transferee in the case of a transfer, to operate in a satisfactory manner the service for which the operating licence is sought;

(f) representations duly submitted in connection with the application by the applicant or any interested party; and

(g) representations from the Registrar as to the status of registered operators, if any, who provide public transport services in the affected routes or areas.

(2) An application for an operating licence relating to the operation of a non-contracted service on any route or routes in the area of a planning authority may not be granted if the public transport requirements for the particular route or routes are adequately served by existing public transport services provided in terms of a commercial service contract or subsidised service contract or in terms of operating licences as shown by relevant transport plans, if any.

(3)(a) The Board may grant an application for the granting, renewal, amendment or transfer of an operating licence for a non-contracted service subject to any conditions determined by it: Provided that such conditions may not be inconsistent with this Act or with the National Land Transport Transition Act.

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

Provisions specific to minibus taxi-type services

54.(1) No operating licence authorising minibus taxi-type services may be granted unless -

(a) the applicant is a member of a registered association;

(b) the applicant in terms of section 99(2) has been accepted as a temporary member by an association pending the outcome of his or her application to the Board, and the Registrar has confirmed this in writing; or

(c) the Registrar certifies in writing that the applicant has been registered as a non-member in terms of section 100.

(2) An operating licence for a minibus taxi-type service may be granted for more than one route: Provided that an operating licence may be granted for a specified area in instances where the need for operational flexibility demands it, such as in cases of feeder services.

Issuing of operating licences, and contents thereof

55.(1) The MEC must prescribe the procedure to be followed by the Board for the issuing of operating licences.

(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 official of the Board designated by the Head of the Department for that purpose.

(3) An operating licence may not be issued unless -

(a) the person requiring it has applied for the granting, renewal, amendment or transfer thereof, or for conversion of a radius permit in terms of section 45, as the case may be, in accordance with this Act;

(b) the applicant has submitted to the official referred to in subsection (2) a current roadworthy certificate which was issued for the vehicle to which the operating licence relates not earlier than a point in time to be prescribed, or a duly certified copy of such a certificate;

(c) in the case of the renewal, amendment or transfer of an operating licence, and in the case of the conversion of a radius permit in terms of section 45, the applicant has returned to the Board the relevant permit or operating licence, as the case may be, that was issued previously for the same public transport service;

(d) the applicant has submitted to the Board, as applicable -

(i) written confirmation from the Registrar that the applicant is a registered member of an association, or a registered non-member; or

(ii) written confirmation from the association operating on the route or routes in question confirming that the applicant has been accepted as a member of that association, or (iii) a certificate referred to in section 87 (1); and

(e) satisfactory proof of passenger liability insurance cover has been produced.

(4) An operating licence must contain such details as may be prescribed.

(5) A new operating licence may not be issued unless the applicant has furnished proof to the satisfaction of the Board that the applicant is registered as a taxpayer in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), or, in terms of that Act, is not required so to register: Provided that for purposes of the requirements of this section any operating licence issued pursuant to the processes referred to in sections 44,45 and 46 must not be regarded as a new operating licence.

Authority conveyed by operating licence

56. An operating licence granted and issued in terms of this Act -

(a) does not authorise the holder to undertake transport on or over a public road in the area of jurisdiction of any municipality if it is unlawful to do so in terms of any national or provincial law or any by-law of the municipality; 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 or licence issued by any other competent authority.

Persons who may hold operating licences

57. 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 the operating licence relates to the operation of a service in terms of a commercial service contract or a subsidised service contract, and the operator party to the contract has sub-contracted another operator to operate part of that service on behalf of the first-mentioned operator and in such a case -

(a) the sub-contracted operator must be the so registered owner or operator of the vehicle used by the latter for operating that service on behalf of the operator party to the commercial service contract or subsidised service contract; and

(b) that vehicle must be specified in the operating licence as the vehicle to be so used for operating that service.

Rules applicable with regard to various operating licences

58.(1) In determining the period of operating licences for non-contracted services, the Board must consider -

(a) current and envisaged trends in demand on the route or routes, or, where applicable, in the particular area, concerned;

(b) the efficiency of the proposed services in meeting the demand;

(c) where applicable, the likelihood that, in future, the service may no longer be required in terms of any relevant transport plans; and

(d) the likelihood that the service may become the subject of a commercial service contract or a subsidised service contract.

(2) In the case of operating licences for long-distance services, the Board when determining the picking up and setting down points must impose the condition that passengers may not be picked up or set down en route, unless the operator has reached agreement in this regard with the respective transport authorities and municipalities.

(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 given to the provisions of any transport plans prepared by the relevant planning authority and, subject to this paragraph -

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

(b) the requirements of the public for the service along the route or routes on which or the particular area in which the applicant proposes to operate;

(c) the existing transport facilities available to the public on that route or those routes or in that area;

(d) the need to ensure co-ordination of all forms of transport, including transport by rail, to achieve an economically sound balance between the transport modes with due regard to the public interest;

(e) in the case of a minibus taxi-type service, the recommendations of any taxi associations that may be directly affected.

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

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

(b) The planning authority may not grant the consent referred to in paragraph (a) where the operation of the long-distance service will or is likely to be detrimental to the operation, by means of that vehicle, of the public transport services provided for in that transport plan.

(2) A vehicle specified in an operating licence to provide a long-distance service may not also be specified in the operating licence as being the vehicle by means of which a public transport service provided for in a transport plan is to be operated, unless the planning authority has consented thereto.

Amendment of operating licence: Replacement of specified vehicle

60.(1) Where the holder of an operating licence for the operation of any public transport service wishes to replace the vehicle that is specified in that operating licence with another vehicle with the same passenger capacity, the holder must apply for the replacement, in the manner prescribed, to an official of the Board whom the Head of the Department has authorised in writing to dispose of the matter: Provided the nature of the replacing vehicle is not affected by the replacement.

(2) The authorised official of the Board must allow the replacement and issue an amended operating licence to the holder, if satisfied that -

(a) the replacing vehicle has the same passenger capacity as the replaced vehicle, or less, or such capacity is less than twenty percent greater than that of the replaced vehicle, and is of the same nature as the replaced vehicle, and that the quality and standard of the service which is authorised by the operating licence will not be affected by the replacement;

(b) the replacing vehicle is otherwise suitable for the operation of the public transport service authorised by that operating licence, has been certified as roadworthy and is properly licensed in compliance with road traffic laws; and

(c) the applicant for the replacement has provided the information necessary to establish the requirements of this section.

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

Special conditions relating to metered taxi services

61. In the case of a metered taxi service, the vehicle specified in the operating licence authorising the operation of that service, may - (a) leave the area described in the operating licence 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) operate any particular journey at a fare not determined by operating the meter fitted to that vehicle if the fare for the particular journey has been agreed upon between the driver and the passenger or passengers concerned before the journey begins.

Duties of holder of operating licence

62.(1) The holder of an operating licence must -

(a) in operating the service to which the operating licence relates, comply with the terms of the authorisation conferred by it and the conditions to which it is subject, and, where that service is one provided for in a transport plan, operate that service in accordance with that plan;

(b) keep the original operating licence or a duplicate original in the vehicle specified in such licence, and, where the vehicle so specified is temporarily replaced in terms of section 63, keep the operating licence and the temporary authorisation issued for the replacing vehicle in that vehicle for the duration of the temporary replacement, but the Board may direct in writing that the annexes to an operating licence do not have to be kept in such vehicle where they are too bulky to allow for this;

(c) on demand by an authorised officer, produce the operating licence;

(d) keep the operating licence and any duplicate original thereof in such a condition that the letters and figures thereon are clearly legible and, if the operating licence is damaged or ceases to be clearly legible, or is lost or stolen, apply for a duplicate original in the manner prescribed;

(e) affix and keep affixed in the manner prescribed a distinguishing mark on the vehicle to which the operating licence relates;

(f) except in the case of an operating licence valid for an indefinite period, apply timeously for renewal thereof;

(g) at all times keep the vehicle to which the operating licence relates in a safe and roadworthy condition and -

(i) have that vehicle examined for roadworthiness not later than the time allowed therefore in the National Road Traffic Act; and

(ii) submit the new roadworthy certificate issued after every such examination to the Board within 30 days after it has been issued;

(h) return an operating licence that has lapsed or has been withdrawn or cancelled, to the Board within seven days; (i) notify the Board in writing in the prescribed manner within seven days of ceasing to operate the service authorised by the operating licence, or of suspending such services for reasons other than those provided for in section 63;

(j) ensure that passenger liability insurance cover in compliance with prescribed requirements is maintained for the services to which the operating licence relates as well as all other public transport services operated by the holder; and (k) comply with the provisions of this Act and with any other relevant laws.

(2)(a) The authority conferred by an operating licence may not -

(i) be ceded or otherwise alienated by the holder, and no person may be a party to such a cession or alienation, except where the

operating licence is transferred in accordance with this Act; or

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

(b) A transaction concluded in contravention of paragraph (a) has no legal force or effect whatsoever and constitutes an offence in terms of this Act.

Temporary replacement of specified vehicle

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

(2) The written authorisation must be in the form and for a period as prescribed.

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

(i) be smaller; or

(ii) exceed that capacity by not more than 20 per cent.

(b) The replacing vehicle must be suitable for the operation of that public transport service and, except in so far as this section provides otherwise, must comply in all other respects with the requirements and conditions that apply and are in force in terms of this Act with regard to the vehicle so specified in the operating licence.

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

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

Special events

64.(1) No person may operate a public transport service to or from a special event except -

(a) in the course of operating a charter service in terms of an appropriate operating licence;

(b) under the authority of an operating licence which already authorises the relevant transport on the route or in the area in question; or

(c) under the authority of a special operating licence granted and issued to a holder in terms of this section.

(2) A person who is not authorised by subsection (1)(a) or (b) to undertake a public transport service to or from a special event, may apply to the Board for a special operating licence in the prescribed manner.

(3) The Board may grant an application in terms of subsection (2) and issue such a special operating licence if -

(a) satisfied, on reasonable grounds, that the existing public transport services available to move

passengers to or from the particular special event are not sufficient to meet the estimated demand;

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

(c) other criteria as may be prescribed are met.

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

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

(6) A special operating licence may be granted only for one particular, special event and for a period that is not longer than the duration of such event.

(7) A special operating licence in terms of this section must -

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

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

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

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

(9) The MEC may make regulations providing that special operating licences in terms of this section may be granted and issued by municipalities or other bodies, institutions or officials specified in the regulation.

Withdrawal, suspension or amendment of operating licence

65.(1) Where a service operated in terms of a contract has been terminated for any reason, the Board must, upon proof of termination furnished by the relevant contracting authority, withdraw all operating licences previously granted in relation to that contract.

(2) Where it comes to the notice of the Board that an operating licence has not been in use for 7 days or more, the Board must by notice, in writing, call on the holder to advance good reasons, within 14 days of the date of delivery of the notice, for not operating the public transport service to which that operating licence relates, and, accordingly, why the Board should not cancel that operating licence: Provided that where the Board is -

(a) satisfied with the reasons advanced, the holder must be allowed a further period, but not more than 7 days, to resume the operation of that service, and the holder, must be informed in writing, accordingly; or

(b) not satisfied, or where the holder has failed to advance good reasons within the time allowed in the notice, the Board must cancel the operating licence and within 72 hours in writing inform the holder accordingly and direct the holder to surrender that operating licence, together with the distinguishing marks with regard thereto, to the Board within seven days after the date of the notice.

(3) The Board may at any time withdraw, amend or suspend an operating licence for such period as it may deem fit, if the holder -

(a) or employee of the holder has been convicted of an offence in terms of this Act or in terms of a law relating to motor vehicles or the regulation of traffic;

(b) contravenes or fails to comply with the provisions of any determination, agreement, award, licence or exemption which relates to remuneration for work or hours of work and which in terms of any law is binding on the holder as an employer and upon his or her employees;

(c) is convicted of an offence that renders him or her incapable of providing the public transport services;

(d) has not abided by the conditions and requirements of the operating licence;

(e) has failed to initiate the service authorised by the operating licence or any part thereof within 30 days of the issuing of the operating licence;

(f) is no longer capable of providing the necessary passenger liability insurance as provided for in section 62(l)(j);

(g) has failed to comply with a notice issued in terms of section 33(3); or

(h) contrary to the requirements of section 101 is not registered as a member or non-member, after the date contemplated therein, or has ceased to be so registered, or in the case of an operating licence authorising public transport services other than minibus taxi-type services the holder ceases to comply with the requirements of section 104.

(4) The Board 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 the Board.

(5) The Board may at any time withdraw or suspend for a period it deems fit, any operating licence if the circumstances under which the operating licence was granted have materially changed.

(6) Notwithstanding the circumstances referred to in subsections (2) and (3) the Board may for any other reason, cancel or vary any condition or requirement of or add any condition or requirement to, or define, redefine, curtail or otherwise amend the terms and conditions of an operating licence: Provided that the primary purpose for doing so is to enhance public transport services and to ensure safety and security thereof.

(7) The Board may not withdraw or suspend any operating licence or cancel or vary any condition or requirement of or add any condition or requirement to or amend an operating licence as provided for in subsections (3) to (6) unless -

(a) the Board has given no less than 14 days written notice of its intention, together with written reasons, by registered or certified post to the holder of the operating licence: Provided that the Board may impose a shorter period of notice in circumstances where the Board deems it to be in the public interest to do so;

(b) the holder of the operating licence has been given an opportunity, either personally or through his or her duly authorised representative, to appear before the Board and adduce evidence and submit representations on the proposed action; and

(c) the transport authority or municipality has been given an opportunity to submit representations to the Board on the proposed action in the manner and within the time prescribed by regulations.

Disqualification with regard to holding of operating licence

66. A person directly involved in the following functions or management thereof may not hold an operating licence or be engaged in the provision of a public transport service if he or she -

(a) evaluates applications for operating licences;

(b) issues operating licences;

(c) is engaged in the preparation and/or development of transport policy, strategy, frameworks, plans or any other associated management and administrative processes;

(d) is involved with the process of registering operators of public transport services; or

(e) is an authorised officer as defined in the National Land Transport Transition Act.

Inter-provincial services

67. To the extent that inter-provincial services fall within the ambit of national competence -

(a) applications for inter-provincial public transport services originating in the Province must be made in accordance with the relevant provisions of the National Land Transport Transition Act; and

(b) the Board must dispose of applications for inter-provincial services in accordance with the relevant provisions of the National Land Transport Transition Act.

CHAPTER 6 TRANSPORT APPEALS TRIBUNAL

Establishment of Appeals Tribunal

68. The KwaZulu-Natal Transport Appeals Tribunal is hereby established.

Nominations for Appeals Tribunal

69.(1) The MEC must, using a method designed to reach the greatest number of residents in the Province, invite the nomination of persons-

(a) who, for the purpose of appointing two members as contemplated under section 70(l)(a), are -

(i) qualified, practicing attorneys or advocates with at least 10 years experience; or (ii) have experience as judicial officers in the High Court, and

(b) who, for the purpose of appointing a third member as contemplated under section 70(l)(b), have at least 5 years experience in the public transport industry.

(2) The invitation for nominations in terms of subsection (1) must specify the -

(a) nomination procedure;

(b) requirements for nomination; and

(c) date by which a nomination must be received by the MEC.

(3)(a) The MEC must appoint a selection panel of no less than four Departmental senior officials to review all nominations and make recommendations on the nominees.

(b) The MEC may, in his or her sole discretion, appoint no more than two persons with experience in the transport industry or who are attorneys or advocates to assist the selection panel provided for in paragraph (a) by making recommendations on the nominees.

Appointment of Appeals Tribunal members

70.(1) The MEC must, based on nominations received in terms of section 69(1) and recommendations

by the selection panel provided for in section 69(3), appoint three members, of whom -

(a) two must -

(i) be qualified, practicing attorneys or advocates with at least 10 years experience; or (ii) have experience as judicial officers in the High Court, and

(b) the third member must have at least 5 years experience in the public transport industry.

(2) The MEC must, based on the nominations received in terms of section 69(1) and the recommendations by the selection panel provided for in section 69(3), and subject to subsection (3), appoint at least one alternate member and no more than two alternate members to the Appeals Tribunal, who will serve on the Appeals Tribunal in the event a member has a conflict of interest or is otherwise unavailable for a hearing.

(3) The alternate member or members provided for in subsection (2) must be qualified, practising attorneys or advocates with at least 10 years experience.

(4) The Appeals Tribunal members provided for in subsection (1) and alternate members provided for in subsection (2) must be fit and proper persons characterised by their independence, impartiality and fairness.

(5) A person may not be appointed or remain in office as a member or alternate member of the Appeals Tribunal if he or she has -

(a) been or is removed from public office on account of misconduct;

(b) been or is declared insolvent and has not been rehabilitated; or

(c) been or is convicted of an offence -

(i) of which dishonesty is an element; or

(ii) for which a term of imprisonment without the option of a fine has been imposed;

(d) a financial interest in a business in any sector of the public transport industry or is engaged in an activity connected therewith; or

(e) an immediate family member or close associate who has any direct financial or business interest in any sector of the public transport industry.

Term of appointment of Appeals Tribunal members

71.(1) The MEC must, at the time of making the initial appointments to the Appeals Tribunal, appoint -

(a) one person for an initial term of two years; and

(b) the balance of members of the Appeals Tribunal for a term of three years.

(2) Members of the Appeals Tribunal may be re-appointed for one additional term of three years.

Appointment of Chairperson and Deputy Chairperson of Appeals Tribunal

72. The MEC must appoint the Chairperson and the Deputy Chairperson of the Appeals Tribunal, both of whom must be qualified in terms of section 70(1)(a).

Declaration upon nomination to Appeals Tribunal

73.(1) A nominee to the Appeals Tribunal must within 10 days of being nominated, submit to the MEC a written declaration confirming that he or she does not have any financial or other interests in the transport industry which could be related to or are in conflict with an appointment as a member of the Appeals Tribunal, which declaration must include relevant information about any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) The declaration provided for in subsection (1) must include financial and other interests in the transport industry of immediate family members or close associates, which could be related to or are in conflict with an appointment as a member of the Appeals Tribunal.

(3) A nominee must not be considered for a position on the Appeals Tribunal where he or she fails to submit the declaration referred to in this section.

(4) Where a member of the Appeals Tribunal or an immediate family member or close associate experiences a change in financial or any other interests in the transport industry, or acquires an interest in the transport industry, or has reason to know of any changed circumstances which have the effect of impairing his or her ability to continue functioning as a member of the Appeals Tribunal, the member of the Appeals Tribunal must, within 10 days of becoming aware of the changed circumstances, submit a written declaration to the MEC advising -

(a) of such changed circumstances; and

(b) his or her intended action consequent to the changed circumstances.

Failure to declare financial or other interests

74.(1) A member of the Appeals Tribunal who has failed to make a declaration envisaged in section 73 commits an offence.

(2) The Head of Department on becoming aware that an Appeals Tribunal member has failed to comply with the provisions of section 73 must investigate the matter and refer the matter to the MEC for appropriate disciplinary action.

Remuneration of members of Appeals Tribunal

75.(1) The members of the Appeals Tribunal must be paid the remuneration and allowances determined by the MEC in consultation with the MEC for Finance.

(2) A member of the Appeals Tribunal who is a member of the public service may not be paid remuneration in addition to his or her salary, except for travelling and out-of-pocket expenses related to the business or activities of the Appeals Tribunal.

Meetings of Appeals Tribunal

76.(1) The first meeting of the Appeals Tribunal must be held at the time and place determined by the MEC, and thereafter meetings will be held at the times and places determined by the Chairperson of the Appeals Tribunal.

(2) The Chairperson of the Appeals Tribunal must convene a special meeting -

(a) at the request or agreement of the majority of the members; and

(b) when requested to do so by the MEC.

(3) A *quorum* for a meeting of the Appeals Tribunal is at least two members.

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

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

Powers and functions of Appeals Tribunal

77.(1) The Appeals Tribunal is an independent body which must act in a fair and impartial manner to hear appeals against decisions made by the Board, the Registrar and a planning authority.

(2)(a) Subject to subsection (4), the Appeals Tribunal must hear appeals based solely on the record provided by the entities against which the appeal is directed and may not hear new evidence.

(b) If new evidence is introduced in an appeal proceeding, the Appeals Tribunal must refer the matter back to the entity against whom the appeal is directed.

(3) The Appeals Tribunal is bound by relevant transport plans.

(4) The Appeals Tribunal may, in its discretion and for the purpose of dealing with a matter before it in terms of this Act -

(a) allow a person affected by or interested in the matter, or the duly authorised representative of that person, to appear before it and -

(i) give evidence or make oral representations relevant to the appeal;

(ii) call witnesses and lead evidence on a question relevant to the appeal; or

(iii) question a person who testified at the appeal;

(b) by written notice as prescribed and served in the manner prescribed, require a person to appear before it to give evidence or to hand over a book, plan or other document or article in his or her possession or under his or her control;

(c) call upon a person present at the place where the Appeals Tribunal deals with the matter, to appear before it to give evidence or to hand over a book, plan or other document or article which the person has in his or her possession;

(d) question a person appearing before it as a witness; and

(e) refuse to hear a person appearing before it as a witness who refuses to be sworn in or to be affirmed.

(5) The person presiding at a meeting of the Appeals Tribunal at which a person appears as a witness as provided for in subsection (4), must administer an oath or affirmation to the person so appearing.

Appeals to Appeals Tribunal

78.(1) Save as otherwise provided in this Act and subject to subsection (2), a person who, or association which -

(a) has applied to the Board for the grant, amendment or transfer of an operating licence or whose operating licence has been withdrawn, varied or suspended by the Board;

(b) is the holder of an operating licence issued by the Board;

(c) in the manner and within the time prescribed, submitted representations to the Board objecting to or supporting an application;

(d) has applied to the Registrar for registration in terms of this Act or whose registration has been withdrawn or suspended by the Registrar;

(e) has been registered by the Registrar;

(f) is affected by an act, direction or decision of the Board, planning authority or Registrar; or

(g) has an interest in an inquiry conducted by any of these entities, may, in the manner and within the time prescribed after the said act was performed or the said direction or decision was given, appeal against the act, direction or decision to the Appeals Tribunal.

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

(3) The Appeals Tribunal must -

(a) receive and, subject to the provisions of this section and the regulations, consider an appeal lodged with it in terms of subsection (1) within 60 days of receipt of the notice of appeal; and

(b) communicate its decision to all relevant parties within the prescribed period.

(4) The Appeals Tribunal, in considering an appeal, may -

(a) reject the appeal and confirm the act, direction or decision appealed against;

(b) uphold the appeal, set aside the act, direction or decision appealed against, and -

(i) substitute the decision of the Board, Registrar or planning authority with another act, direction or decision which the Board, Registrar or planning authority could have performed or given; or

(ii) remit the matter which gave rise to the appeal to the Board, Registrar or planning authority, as the case may be, for consideration afresh; or

(c) uphold the appeal partially and vary the act, direction or decision appealed against.

(5) The Chairperson of the Appeals Tribunal or a member thereof nominated by the Chairperson may, in his or her discretion and without giving prior notice to or hearing any interested party -

(a) grant an application for condonation of the late filing of a notice of appeal: Provided the application for condonation and the appeal are lodged simultaneously, in the manner prescribed by regulation within six weeks after the Board, Registrar or planning authority performed the act or gave the direction or decision appealed against, or refuse it; or

(b) set aside an act, direction or decision of the Board, Registrar or planning authority appealed against and remit the matter to the Board or Registrar, as the case may be, for consideration afresh.

(6) An act, direction or decision of the Appeals Tribunal in terms of subsection (4)(b)(i) or (c) is, except for the purposes of subsection (1), deemed to be an act, direction or decision of the Board, Registrar or planning authority, as the case may be.

Annual report of Appeals Tribunal

79.(1) The Chairperson of the Appeals Tribunal must submit an annual report on the activities of the Appeals Tribunal to the MEC within 30 days of the end of the financial year.

(2) The Chairperson may, in the annual report, recommend necessary legislative, regulatory and procedural amendments to this Act.

Transitional provisions

80. Any appeal pending before -

(a) the Commission (National Transport Commission) as defined in the Road Transportation Act; or

(b) the Transport Appeal Tribunal established in terms of section 3 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998), on the date of commencement of this Act, must be disposed of by such Commission or Tribunal in terms of those Acts, despite the provisions of section 78.

Staff of Appeals Tribunal

81. The Head of Department must, subject to the laws governing the public service, provide the staff and other means necessary to enable the Appeals Tribunal to perform its functions.

CHAPTER 7

PROVINCIAL TRANSPORT REGISTRAR

Appointment of Provincial Transport Registrar

82.(1) The MEC must, appoint a fit and proper person as the Provincial Transport Registrar for the Province on terms and conditions agreed to between the MEC and the MEC for Finance.

(2) Despite the provisions of subsection (1), (3) and (4), the Registrar appointed in terms of the Interim Taxi Act, is regarded as the Provincial Transport Registrar appointed in terms of subsection (1) and may continue in office until expiry of the period for which he or she was appointed.

(3) Before appointing a person as Registrar, the MEC must -

(a) using a method designed to reach the greatest number of residents in the Province, invite the application of persons for the position of Registrar;

(b) publish, in a notice in the *Gazette* and province-wide newspapers, the name of the person he or she proposes to appoint as Registrar, and invite comment and representations in that regard; and

(c) give due consideration to any comments and representations received in connection with the proposed appointment of the Registrar.

(4)(a) The MEC must appoint a selection panel of no less than four Departmental senior officials to review all applications for the post of Registrar.

(b) The MEC may, in his or her sole discretion, appoint no more than two persons with experience in the transport industry to assist the selection panel referred to in paragraph (a) with reviewing all applications for the post of Registrar.

(c) The MEC must, consider the recommendations referred to in paragraphs (a) and (b) before appointing the Registrar.

(5) The Registrar must be impartial, independent and fair in the exercise of powers and performance of duties assigned to him or her by this Act and any powers assigned or delegated by the MEC and

must do so without fear, favour or prejudice.

(6) The Registrar and his or her family members and close associates may not have any direct financial or business interest in any sector of the public transport industry.

(7) A person may not be appointed or remain in office as Registrar if he or she has -

(a) been or is removed from public office on account of misconduct;

(b) been or is declared insolvent and has not been rehabilitated;

(c) been or is convicted of an offence and sentenced to a period of imprisonment exceeding 12 months without the option of a fine; or

(d) been or is convicted of an offence of which dishonesty is an element.

Term of appointment of Registrar

83.(1) The Registrar is appointed for a term of three years.

(2) The Registrar is eligible for re-appointment for one additional term of three years.

Appointment of Acting Registrar

84. When the office of Registrar is vacant or the Registrar is removed or is unable to perform his or her functions, the MEC may appoint any fit and proper person who is not subject to any disqualification referred to in section 82(7), to act as Registrar and exercise the powers, functions and duties of that office until the vacancy is filled or the incumbent of the office has resumed duty, as the case may be.

Remuneration and allowances

85. The Registrar or a person appointed to act in place of the Registrar must be paid the remuneration and allowances determined by the MEC in consultation with the MEC for Finance.

Functions of Registrar

86. The Registrar must -

(a) consider and decide upon any application for registration in terms of this Act;

(b) grant a certificate of provisional or full registration, as the case may be, to any registered association and its members, or to non-members, in terms of this Act;

(c) keep a register in which he or she must cause to be recorded and kept up to date such details or particulars of each association, member or non-member registered in terms of this Act as prescribed;

(d) take reasonable steps to collate information and monitor compliance or non-compliance of registered associations with their registered constitutions and applicable legislation, and of registered members and non-members with the provisions of the Code of Conduct prescribed in terms of section 106;

(e) assist in the promotion of professional practices by registered associations and their members and by registered non-members;

(f) take all reasonable steps to ensure that associations and operators register in terms of this Act;

(g) provide advice and assistance to associations and operators to enable them to apply successfully for registration;

(h) consider and give a decision on the suspension and cancellation of the registration of an association, member or non-member as provided for in section 102;

(i) where registration is cancelled or suspended for any reason, notify the Board accordingly within a period to be prescribed, after which the Board must withdraw, or suspend for an appropriate period the relevant operating licences;

(j) upon registration of an inter-provincial association or non-member, forward a copy of the certificate of registration and all registered details of the association or non-member to the Registrar or department responsible for transport affairs in each province to or from which the members of the said association or non-members operate;

(k) evaluate proposed amendments to the constitutions of registered associations in order to ensure that the amendments are consistent with the requirements of the Minimum Standard Constitution as provided for in section 106, and liaise with associations with a view to preventing the adoption of amendments that are not so consistent, or inform them of the inconsistency of amendments adopted by them, and call on them to abandon such amendments;

(l) facilitate democratic procedures within associations;

(m) keep records of all other information and particulars required to maintain the National Transport Register; (n) receive, investigate or mediate disputes and complaints submitted by -

(i) an association with respect to an unresolved dispute with one or more of its members;

(ii) an association member with respect to an unresolved dispute with the member's association;

(iii) an association with respect to an unresolved dispute with another association or its members;

(iv) a non-member;

(v) any entity engaged in the provision of public transport services; or

(vi) a member of the public;

(o) receive, investigate or mediate disputes and complaints within the transport industry-

(i) referred by the MEC;

(ii) referred by the Board;

(iii) referred by a planning authority; or

(iv) referred by another government body;

(p) by written notice within two weeks after having acted in terms of section 102 against -

(i) a registered association notify the MEC and the Board; or

(ii) a member or non-member notify the Board, of the action so taken and the reasons therefor; and

(q) undertake any other duties required in terms of this Act.

Certificates of registration, registration numbers and distinguishing marks

87.(1) Upon having registered an association, a member or non-member, the Registrar must allocate a unique registration number to the association, member or non-member concerned and issue to him, her or it a registration certificate or a certificate of provisional registration, as the case may be, in the manner and form and containing the particulars as prescribed.

(2) Where a member or non-member is registered the Registrar, with effect from a date determined by the MEC in the *Gazette*, must issue, in the manner and form prescribed, a distinguishing mark for every vehicle of the registered member or non-member that is used, under the authority of an appropriate operating licence.

Resignation, vacation of office and removal from office

88.(1) The Registrar may resign by giving one calendar month's written notice to the MEC.

(2) The Registrar must vacate his or her office if he or she -

(a) is no longer compliant with section 82(6);

(b) becomes disqualified under section 82(7);

(c) is removed from office in terms of subsection (3); or

(d) resigns.

(3) The MEC may remove the Registrar from office if he or she -

(a) has failed to comply with a condition of his or her appointment;

(b) has been guilty of improper conduct or has regularly neglected his or her duties as Registrar;

(c) is unable to perform efficiently his or her duties as Registrar; or

(d) is incapacitated to the extent of not being able to perform his or her duties;

(e) as a result of a change in circumstances, is no longer likely to be impartial in the exercise of his or her duties.

Establishment and functions of panel of assessors

89.(1) The MEC may, after consultation with the Registrar, by notice in the *Gazette* establish a panel of the number of assessors determined by the MEC.

(2) The functions of the panel of assessors are -

(a) to assist the Registrar;

(b) to advise the Registrar and make recommendations with regard to any matter which may be referred to it by the Registrar and which relates to the exercise or performance of the Registrar's powers, functions and duties in terms of this Act;

(c) at the request of and subject to the directions of the Registrar, to -

(i) undertake any investigation and report its findings and recommendations to the Registrar; and

(ii) monitor compliance of registered associations with their registered constitutions and applicable legislation, and of registered members and non-members with the relevant Code of Conduct.

(3) Assessors must exercise or perform their powers and functions independently and impartially, without fear, favour or prejudice.

Appointment, remuneration and conditions of service of assessors

90.(1) Subject to subsection (2), the MEC must appoint the assessors referred to in section 89(1) as members of a panel from which members may be drawn by the Registrar when necessary.

(2) In so doing, the MEC must appoint fit and proper persons who are characterised by their impartiality, but may not appoint any person who does not comply with the requirements of section 82 (7) applicable to the Registrar.

(3) Assessors are appointed to the panel for a maximum initial term of three years, which may be extended for a final further term of three years.

(4) Each of the assessors is entitled to -

(a) remuneration for time when the assessor was officially occupied with the work of the panel of assessors in terms of this Act, at a daily or hourly rate determined by the MEC in consultation with the MEC for Finance;

(b) be reimbursed, in accordance with a tariff determined by the MEC, for all reasonable travelling and subsistence expenses necessarily incurred while the assessor was officially occupied with the work of that panel.

(5) Section 88 relating to the disqualifications for and termination of office of the Registrar applies, with the necessary changes, to the office of an assessor.

Meetings of panel of assessors

91.(1)(a) The Registrar may call meetings of assessors when deemed necessary, at the place and time determined by the Registrar, (b) The Registrar must chair meetings with assessors unless the Registrar decides otherwise in a particular case.

(2) The Registrar must ensure that minutes are kept of the proceedings at meetings with assessors.

Staff to assist Registrar

92. The Head of the Department must, subject to the laws governing the public service, provide the staff necessary to assist the Registrar in the performance of his or her functions.

Annual reporting and financial accountability

93.(1) The Registrar must submit an annual report on the activities of his or her office to the MEC within 30 days of the end of the financial year which report must, inter alia, deal with the following -

(a) the functioning of the Registrar's office;

(b) the functioning of the panel of assessors, and its role and contributions in assisting the Registrar in the performance of the functions of that office;

(c) matters concerning registrations in terms of this Act; and

(d) other topical matters in connection with or arising from the application of this Act.

(2) The MEC must table the Registrar's report in the Provincial Legislature within 30 days of receipt, if the legislature is then sitting, or if it is not then sitting, at its next sitting.

(3) The Registrar is, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999) responsible for-

(a) accounting for State and any other funds received or paid out for or on account of the Registrar; and

(b) maintaining accurate and up to date accounting and other records.

CHAPTER 8

REGISTRATION OF MINIBUS TAXI ASSOCIATIONS, MEMBERS AND NON-MEMBERS

Provisional registration of associations previously registered

94. An association which, before the commencement of this Act was provisionally registered in terms of section 8(4) of the Interim Taxi Act, is regarded and treated as provisionally registered in terms of the relevant provisions of the National Land Transport Transition Act.

Provisional registration of associations not qualifying directly for full registration

95.(1) The Registrar must grant provisional registration to any association, for the prescribed period, if the association upon application made by it satisfies the Registrar that -

(a) it has been in existence for a period not less than the minimum period prescribed;

(b) the number of members meets the prescribed minimum;

(c) all its members, in accordance with a method to be prescribed by regulation, have subscribed to the provisions of the Code of Conduct;

(d) the association has a constitution -

(i) which has been subscribed to by all its members, and in terms of which any breach of those specified provisions of the Code of Conduct by any member will result in the imposition of an appropriate penalty or sanction by a standing disciplinary committee after due inquiry; and (ii) which complies with the minimum requirements prescribed by the MEC in terms of section 106;

(e) all of its members hold appropriate operating licences for each vehicle by means of which they operate their respective minibus taxi-type services, or have applied for such operating licences;

(f) the association's application for provisional registration has been made by the association's authorised representatives, accompanied by the prescribed application fee (if any);

(g) the amounts of the joining fee and membership fee do not exceed the maximum amounts as prescribed; (h) that the association has supplied all of the information reasonably required by the Registrar.

(2) The Registrar, if satisfied that an applicant association meets the requirements for provisional registration imposed by subsection (1), must register it provisionally and must issue to the association an appropriate registration certificate.

(3) The provisional registration of an association will lapse when either one of the following events occurs -

- (a) when the period determined by the MEC in terms of subsection (1) expires;
- (b) when the association obtains full registration in terms of section 97.

Conversion of provisional registration to full registration

96.(1) The Registrar must grant full registration to an association which, before the expiry of the period of its provisional registration, has applied to the Registrar to convert its provisional registration to full registration and has satisfied the Registrar -

- (a) that it meets the requirements of section 97; and
- (b) that it has terminated the membership of every member who at the date of the application does not hold a valid and appropriate operating licence for each vehicle by means of which the member operates minibuss taxi-type services.

(2) This section does not prevent an association whose provisional registration has lapsed from applying for full registration in terms of section 97.

Full registration of associations

97. The Registrar must grant full registration to any association and each of its members who upon application made by it satisfies the Registrar that -

- (a) the association complies with paragraphs (a), (b), (c) and (d) of section 95(1);
- (b) the association's application for registration has been made by the association's authorised representatives in the manner referred to in this section, accompanied by the prescribed application fee (if any);
- (c) each member in respect of whom application for registration is made holds a valid operating licence for each vehicle by means of which the member operates minibuss taxi-type services;
- (d) the amounts of the joining fee and membership fee of the association do not exceed the maximum amounts as prescribed; and
- (e) the association has supplied all of the information reasonably required by the Registrar.

Registration of existing members of associations

98.(1) Upon having registered an association in terms of sections 94 to 97, as the case may be, all persons in respect of whom the association has submitted the required particulars as members of that association must be registered by the Registrar, in the prescribed manner.

(2) The onus rests on a member of an association to take the steps necessary to ensure that he or she becomes registered in terms of subsection (1).

(3) No person may remain as a registered member of an association who is not the holder of a valid operating licence.

Registration of new members

99.(1) Where a registered association has admitted a new member who holds an operating licence which coincides with the area or routes for which the association is recognised by the Registrar, the executive committee, other body or office-bearer of the association duly authorised by that committee or body, must apply to the Registrar in the manner prescribed for the new member's registration as a member within 14 days of such admission.

(2) Where a registered association grants temporary membership to an aspiring member pending the outcome of that member's application to the Board for the granting of an operating licence over the area or routes for which the association is recognised by the Registrar, the association must notify the Registrar of that temporary membership within 14 days of granting such membership.

(3) Should the application for an operating licence referred to in subsection (2) be -

(a) successful, the Board must notify the Registrar within 14 days, who must then register the said member of the association accordingly; or

(b) unsuccessful, the Board must notify the Registrar within 14 days, who must direct the association to terminate the membership of that temporary member within 14 days of the issuing of the directive, and failure by the association to do so will amount to misconduct.

Registration of non-members

100.(1) A non-member who, as at the date of commencement of this Act, is the holder of an operating licence for minibus taxi-type services must within the prescribed period, apply to the Registrar for registration as a non-member, and upon registration must, subscribe to the Code of Conduct prescribed in terms of section 106.

(2) The Registrar may not register a non-member as referred to in subsection (1), in respect of an operating licence which coincides with the area or routes for which the Registrar has already recognised an association, unless -

(a) the non-member can provide valid reasons as to why the non-member cannot join an association registered for the relevant area or routes; or

(b) the Registrar is able to confirm that there is no registered association with regard to the area or routes in question or, where there is such a registered association -

(i) the applicant has been refused membership of the association; (ii) the requirements for admission to membership are unfair; or

(iii) the applicant cannot reasonably be expected to become a member of the association in view of the prevailing circumstances.

(3) Subject to subsection (2) the Registrar may not withhold registration from a non-member if the non-member -

(a) holds an appropriate operating licence for each vehicle by means of which the non-member operates a minibus taxi-type service; and

(b) operates the service to which such an operating licence relates, in compliance with the terms of, and conditions attached to, the operating licence.

(4) A non-member's failure to apply for registration as referred to in subsection (1) may result in the affected operating licence -

(a) lapsing and the non-member forfeiting his or her rights with regard to that operating licence; and

(b) being withdrawn by the Board as prescribed by regulation.

Compulsory registration of associations and operators of minibus taxi-type services

101. As from the date of commencement of this Act -

(a) every association engaged in the operation of minibus taxi-type services must be at least provisionally registered in terms of this Chapter, and no association may carry on business as such unless it is so registered;

(b) no person may operate minibus taxi-type services unless that person is a registered member of an association registered in terms of this Chapter, or in the case of a non-member is duly registered by a date prescribed by the MEC having regard to the provisions of section 100(1); and

(c) the Board must withdraw all operating licences authorising minibus taxi-type services where the holder thereof is not a member of an association that is registered in terms of this Chapter and has failed to comply with the requirements of section 100(1).

Cancellation or suspension of registration

102.(1) The Registrar must cancel the registration of -

(a) an association which -

(i) has ceased to exist or is no longer based in the Province; or (ii) has secured registration through fraudulent conduct;

(b) a member, in respect of a particular association, where -

(i) the registration of that association is cancelled; or

(ii) membership of that association has been duly terminated in accordance with its constitution; or

(c) a registered non-member who -

(i) is no longer based in the Province;

(ii) if a juristic person, has ceased to exist; or

(iii) does not hold an appropriate operating licence for each vehicle used to operate the relevant service.

(2) The Registrar may suspend, for a period to be prescribed, the registration of-

(a) any association for failure to comply with this Act or any other relevant legislation, or any provision of its registered constitution that is material for the application of this Act;

(b) any member whose membership of an association has been suspended;

(c) any member or non-member for having breached the Code of Conduct; or

(d) any member or non-member who has been convicted of an offence referred to in section 115.

(3) The Registrar by written notice must inform an association, member or non-member of cancellation or suspension of registration and the reasons therefor, and where the Registrar considers it necessary direct the association, member or non-member, as the case may be, to return the relevant registration certificate and distinguishing marks to the Registrar within a period to be prescribed.

(4) Upon being notified by a registered association that it has terminated or suspended the membership of a registered member for non-compliance with its registered constitution or breach of the Code of Conduct, the Registrar must cancel that member's registration or suspend it for the same period, respectively, only after the Registrar is satisfied that the affected member -

(a) has chosen not to appeal against the decision; or

(b) having appealed against the decision of the association has been unsuccessful and has not lodged an appeal with the Registrar.

(5) In the event that the member referred to in subsection (4) has appealed to the Registrar against the decision of the association, the Registrar must withhold cancellation of that member's registration pending his or her decision on the outcome of the appeal.

(6) Where an association has terminated membership due to a member's breach of the Code of Conduct, the Registrar may, if justified in the circumstances, cancel that member's registration in respect of any other association of which the former is a member, after having given the member sufficient opportunity to make representations and advance reasons why the action contemplated should not be invoked.

Application and registration procedure

103. The form of application and registration procedure must be as prescribed.

CHAPTER 9

REGISTRATION OF MODES OTHER THAN MINIBUS TAXI-TYPE SERVICES

Regulations on registration of modes other than minibus taxi-type services

104. The MEC may make regulations providing for the registration of associations, their members and operators of modes other than minibus taxi-type services which should be broadly based on the principles referred to in Chapter 8 of this Act, but may include deviations therefrom or additions thereto, and such regulations may make such registration compulsory as from a date determined by the MEC, and provide for sanctions for failure to register.

CHAPTER 10

OBLIGATIONS IMPOSED ON ASSOCIATIONS, OPERATORS AND DRIVERS

Accreditation of operators and drivers

105. The MEC may prescribe conditions to be imposed and norms and standards to be observed by operators of public transport services and drivers of public transport vehicles, for the purposes of certification as accredited operators and drivers in the public transport sector.

Minimum Standard Constitution and Code of Conduct

106.(1) The Code of Conduct and Minimum Standard Constitution referred to in regulations 26 and 27, respectively, of the National Land Transport Transition Regulations on Operating Licences and Related Matters for the Province, contained in Notice No. 149 of 2001, as published in (Provincial) *Gazette* No. 6020 of 23 April 2001, must continue to apply as at the date of commencement of this Act.

(2) The constitution of a registered association must conform to the requirements of the Minimum Standard Constitution prescribed by the MEC from time to time.

(3) In an event of a conflict between the provisions of the constitution of an association with those of the Minimum Standard Constitution, the provisions of the latter prevail.

(4) Operators of public transport services and drivers of public transport vehicles must observe the Code of Conduct as prescribed by the MEC from time to time.

(5) The MEC may prescribe additional rules -

(a) as to the requirements with which an association registered in terms of this Act must comply in conducting its affairs;

(b) as to the requirements with which an operator registered in terms of this Act must comply in conducting his or her business; and

(c) prescribing conduct on the part of a registered association, member, non-member or operator which constitutes improper conduct for the purposes of section 107.

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

107.(1)(a) Where the Registrar on reasonable grounds suspects that a registered association has failed to comply with any provision of this Act or other applicable legislation or its registered constitution, or that a registered operator has breached the relevant Code of Conduct, the Registrar must conduct an investigation into the matter.

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

(c) In deciding the matter, the representations and evidence presented by the association or operator must be taken into consideration.

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

(3)(a) If the Registrar finds an association or operator guilty of such a non-compliance or breach, the Registrar, by notice in writing, must direct the association or operator to remedy the non-compliance or breach within the period stated in the notice, (b) An association or operator to whom such a notice has been given, may approach the Registrar's office for assistance.

(4) Upon failure to comply with such a notice, the Registrar may impose a fine in the amount as prescribed for the specific non-compliance or breach, or cancel the registration of the association or operator or suspend the registration.

(5) Without derogating from the powers conferred by subsections (1) to (4) and where the Registrar has reason to believe that the ability of an association to govern its affairs has become irretrievably impaired, the Registrar may take any appropriate action, including but not limited to the calling of elections in terms of the constitution of that association, which he or she may consider necessary to restore good governance.

Registration no bar to prosecution

108. The registration of any operator is no bar to the prosecution of such operator for an offence mentioned in section 116(1)(a).

CHAPTER 11

LAW ENFORCEMENT

Public transport law enforcement

109.(1) In addition to the measures provided for in this Act with regard to law enforcement, the MEC,

transport authorities and municipalities must take active steps to develop systems to improve public transport law enforcement in their respective jurisdictions.

(2) Despite the provisions of any other law -

(a) the MEC;

(b) a transport authority; or

(c) a municipality, called in this section an enforcement authority, may enter into an agreement in terms of the matters mentioned in subsection (3).

(3) An agreement referred to in subsection (2) may provide that -

(a) public transport law enforcement functions will be undertaken by one enforcement authority in the area of jurisdiction of another;

(b) authorised officers of one such enforcement authority may be seconded to another enforcement authority temporarily; or

(c) public transport law enforcement functions are undertaken jointly, or by a public or private sector agency on behalf of an enforcement authority;

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

Appointment of non-enforcement personnel as inspectors

110.(1) The MEC or the delegated representative of a transport authority or municipality may designate employees in their respective Departments who are fit and proper persons, as inspectors for the purposes of matters which, in terms of this Act, fall under the jurisdiction of the Province, a transport authority or municipality, as the case may be.

(2) The Head of Department or the delegated representative of a transport authority or municipality, as the case may be, must issue to every inspector so designated a certificate of appointment and official proof of identity in the prescribed form.

(3) The functions of inspectors so appointed are to monitor compliance with this Act in the Province, or in the transport area concerned, and to assist with the investigation and prevention of offences referred to in section 116.

(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.

Impounding of vehicles

111.(1) An authorised officer who is satisfied on reasonable grounds that a motor vehicle is -

(a) being used by any person for the operation of public transport without the necessary operating licence or contrary to the conditions imposed with regard thereto; or

(b) unroadworthy, may impound the vehicle pending the investigation and prosecution of that person for an offence mentioned in section 116(l)(a) or (b).

(2) The procedures in terms of which vehicles must be impounded, stored for safekeeping, subsequently released or disposed of must be prescribed by the MEC.

(3) The scale of storage fees applicable to impounded vehicles must be determined by the head of the relevant enforcement authority mentioned in section 109(2).

Proof of certain facts

112.(1) An official document which purports to be an operating licence or a copy thereof certified as a true copy, will on mere production in any prosecution for an offence mentioned in section 115(1), be admissible in evidence as proof, at face value, that it is such a licence 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) An official document which states that the motor vehicle described therein is registered, in terms of the relevant law, in the name of a person specified therein as the owner, and which purports to have been issued in terms of such a law by an employee of the registering authority for motor vehicles of the place where the vehicle was so registered, will on mere production in a prosecution in terms of this Act, be admissible as proof, at face value, of the person's registered ownership of the vehicle and of the truth and accuracy of the particulars contained therein.

Conflict resolution

113.(1) Where a situation of conflict arises in the public transport sector, the MEC may prescribe conflict resolution procedures, which may include, but are not limited to, establishing an ad hoc conflict resolution committee to act as arbitrator in the conflict.

(2) Such a committee, if established, must consist of a number of members as prescribed, and the MEC may prescribe procedures for and venues for meetings thereof, which may provide for procedures to investigate the situation and for reporting to the MEC on the outcome of the arbitration.

(3) This section does not derogate from any of the powers of any statutory body in terms of this Act to proceed with disciplinary proceedings or take other steps, as the case may be, regardless of the committee's activities.

(4) A person may not be appointed to serve on a conflict resolution committee if he or she has -

(a) been or is removed from public office on account of misconduct;

(b) been or is declared insolvent and has not been rehabilitated;

(c) been or is convicted of an offence -

(i) of which dishonesty is an element; or

(ii) for which a term of imprisonment exceeding 12 months without the option of a fine has been imposed;

(d) a financial interest in a business in any sector of the public transport industry or is engaged in an activity connected therewith; or

(e) an immediate family member who has any direct financial or business interest in any sector of the public transport industry..

Emergency measures

114.(1) Where the MEC is of the opinion that emergency measures are necessary to normalize

transport services in an area affected by violence, unrest, conflict or instability, the MEC may declare the area, which may be the entire Province, as a "transport crisis area" for purposes of this section, by notice in the *Gazette*.

(2) Having made a declaration in terms of subsection (1), the MEC may close one or more or all of the routes in the affected area for a period as may be deemed fit and, if necessary in the public interest, the MEC may request the Board to -

(a) temporarily suspend any operating licence insofar as it authorises public transport services in the area declared in terms of subsection (1); or

(b) issue temporary operating licences authorising other operators to operate the closed routes for the period of their closure.

(3) Notwithstanding any provision to the contrary, before taking action in terms of subsection (2), the MEC or affected municipality must publicise through an appropriate medium the nature and purpose of the intended action together with details of the routes or ranks that will be closed.

(4) Any interested or affected persons may make representations to the MEC or municipality, in the manner and within the time period prescribed, as to why the decisions made in terms of subsection (1) and (2) should be reconsidered.

(5) Where the Board acts in terms of subsection (2), the normal provisions of this Act relating to matters such as notice to affected operators, notification of Board decisions, opportunity to lodge objections and any other protection of service provider rights, which would normally be applicable in a stable environment, will not apply.

Powers of authorised officers

115.(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) stop a motor vehicle to enter it and establish if it is used for public transport or to monitor compliance with any provision of this Act, or with the terms of any operating licence, and may for those purposes examine or inspect the vehicle and any documentation that may be relevant;

(b) require that the records to be kept in the vehicle in terms of this Act, be produced by the driver of the vehicle or by the conductor, if any, for inspection;

(c) require from the driver to furnish the latter's full name and residential address, and documentary proof thereof, as well as the name and address of the owner of the vehicle, and particulars of the business in connection with which the vehicle is being used;

(d) 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;

(e) require that any person on a motor vehicle suspected on reasonable grounds to be used for public transport, or a person suspected on reasonable grounds to have been on such a vehicle recently, furnish the latter's full name and address and documentary proof thereof and state if the latter has paid or has to pay any consideration for conveyance on the vehicle, and furnish the name and address of the person to whom the payment has been made or will have to be made;

(f) enter or enter upon any business premises at any reasonable time to monitor compliance with this Act, and question any person who, in the opinion of the authorised officer, may be able to furnish any information required for that purpose, and may require such a person to produce, for examination or inspection, any books and documents, and any other records of any type whatsoever, that may be relevant for monitoring purposes, and make extracts therefrom or copies thereof, and demand an

explanation of any entries in such a book, document, or other record, but any person so questioned or required to furnish an explanation is entitled to all the privileges to which any person testifying before a court of law is entitled;

(g) require that the driver or other person in charge of a motor vehicle used for public transport produce any documents whatsoever, that were issued by a competent authority in terms of this Act, or the Road Transportation Act with regard to the vehicle or the public transport for which it may be used in terms of this Act, or such other Act (as the case may be) and which, in terms of this Act or that law have to be kept on that vehicle; and

(h) upon the order of the Board, attach an operating licence that has expired or lapsed or has been withdrawn temporarily in terms of this Act, and hand it over to the Board.

(2)(a) Where an authorised officer finds a vehicle used for public transport under the authority of an operating licence to be so defective as to be a danger to persons or property, the authorised officer may order the driver or other person in charge of the motor vehicle to surrender that operating licence, as well as all distinguishing marks relating to the vehicle, and prohibit that driver or person forthwith to use the vehicle for public transport, and may impound the vehicle as provided for in section 111(1).

(b) The operating licence so surrendered will be retained by the authorised officer until the defects have been remedied and the vehicle is certified to be roadworthy in accordance with procedures prescribed by the MEC.

Offences and penalties

116.(1) A person is guilty of an offence if he or she -

(a) operates or undertakes a public transport service without holding the necessary operating licence;

(b) operates or undertakes a public transport service contrary to the terms and conditions of an operating licence, or who operates a vehicle which does not comply with the requirements of section 62(l)(g);

(c) being the holder of an operating licence or the agent or employee of such a holder, the person allows someone else to use that operating licence for a vehicle other than the vehicle specified in the operating licence;

(d) applies for or obtains an operating licence knowing that a current operating licence has already been issued with regard to the same vehicle;

(e) with the intent to deceive forges, alters, defaces, damages or adds to any operating licence or other official document issued in terms of this Act;

(f) knowingly that a document is not an operating licence, or such another official document or that it has been altered, defaced, damaged or added to, uses the document;

(g) furnishes or gives false information in or with regard to any application made to the Board or Registrar, or in the course of appearing in any proceedings, investigation or inquiry before the Board or Registrar;

(h) impersonates an authorised officer;

(i) hires out or hires from the holder an operating licence in contravention of the provisions of section 62(2);

(j) contravenes the provisions of section 66 relating to disqualification with regard to the holding of operating licences;

- (k) fails to provide and maintain the passenger liability insurance cover referred to in section 62(1)(j);
- (l) being the holder of an operating licence or the driver of a vehicle to which that operating licence relates, fails to comply with any duty or obligation imposed on such a holder or driver by or in terms of this Act;
- (m) wilfully obstructs or hinders an authorised officer who is discharging the duties attached to the office concerned;
- (n) refuses or fails to comply with any lawful order, direction or demand made by an authorised officer in the discharge or performance of any function or duty entrusted to the authorised officer by or in terms of this Act;
- (o) fails to return an operating licence, registration certificate, or a distinguishing mark to the Board or Registrar, as the case may be, if required to do so by this Act; (p) without good reason -
- (i) refuses or fails to appear before the Board, Registrar or Appeals Tribunal in compliance with an order or subpoena issued in terms of this Act;
- (ii) refuses or fails to answer, or to answer to the best of the person's knowledge and ability, any question lawfully put to the person by any member of the Board, Registrar or Appeals Tribunal, as the case may be; or
- (iii) refuses or fails to produce any book, document or plan or any other record of any nature or kind whatsoever, or any article, in compliance with such an order or subpoena; (q) whilst being conveyed as a passenger on a vehicle in the course of the operation of a public transport service, the person -
- (i) fails to pay the fare due for the journey when payment is requested by the driver or conductor of the vehicle concerned;
- (ii) smokes or consumes alcohol or any intoxicating or illegal substance on that vehicle;
- (iii) acts in a manner that is prejudicial to the well - being of a fellow passenger;
- (iv) disobeys a reasonable instruction issued by the driver or conductor of that vehicle for the purpose of maintaining order or ending a disturbance or controlling any emergency arising or existing on that vehicle; or
- (v) performs any act in or on that vehicle that could cause injury to or endanger the life of any person or cause damage to any property;
- (r) sets down passengers at or near an international border in contravention of section 46(2) of the National Land Transport Transition Act;
- (s) uses a vehicle for a public transport service in contravention of section 31 of the National Land Transport Transition Act;
- (t) being the holder of an operating licence, fails to notify the Board of cessation or suspension of the relevant service in terms of section 62(1)(i);
- (u) being the holder of an operating licence, fails to comply with a notice referred to in section 33(3);
- (v) operates or undertakes a public transport service without the written authorisation referred to in section 63;
- (w) contravenes any other provision of this Act.

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

(a) paragraphs (a) to (k) of subsection (1), a fine or a term of imprisonment not exceeding two years, or both, may be imposed; or

(b) any other paragraph of that subsection, a fine or a term of imprisonment not exceeding three months, or both, may be imposed.

(3) Whenever a manager, agent or employee of the holder of an operating licence 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 will be guilty of that offence if -

(a) the holder -

(i) connived at or knowingly permitted the act or omission concerned; or (ii) did not take all reasonable measures to prevent that act or omission; and

(b) an act or omission of the nature of the act or omission charged, whether legal or illegal, fell within the scope of the authority or the course of the employment of the manager, agent or employee.

CHAPTER 12

GENERAL MATTERS

Provisions relating to drivers and vehicles

117.(1) Subject to section 106 the MEC may prescribe codes of conduct for drivers of vehicles used to provide public transport services, which may differ according to different types of services, and such drivers must comply with such codes of conduct at all times while those services are undertaken.

(2) The MEC may prescribe requirements that drivers of vehicles used to provide public transport services must undergo training, for example to familiarise them with the areas in which the services are operated and the features and attractions of those areas, or for other purposes, and may provide in the requirements that drivers may not drive such vehicles unless they successfully complete such training, or impose other conditions.

(3) Subject to this Act and relevant provisions of the National Land Transport Transition Act, the MEC may prescribe regulations governing the type of vehicle to be used to provide a particular public transport service and such regulations may provide for requirements and standards for such vehicles, where the MEC is of the opinion that measures are needed to enhance the safety of passengers.

(4) Requirements prescribed in terms of subsection (3) are in addition to, and not in substitution of, the requirements of the National Road Traffic Act.

By-laws

118. A municipality may, in accordance with applicable legislation and transport plans, make by-laws to -

(a) regulate the size or number of motor vehicles used for public transport services that may enter a specified sector of its area of jurisdiction and determine the time or times when such a vehicle may enter that sector;

(b) regulate or prohibit the entry of such a motor vehicle in a specified sector during a set period;

(c) prohibit the picking up or setting down of passengers by such a vehicle in a specified sector during a set period, and determine the time or times when the picking up or setting down may take place;

(d) provide for the numbering of routes and allocation thereof to particular associations or operators, and the form and issuing of distinguishing marks in that regard;

(e) allocate facilities, including ranks, to particular operators or associations and the charging of fees in that regard;

(f) regulate the conduct of rank marshals;

(g) provide for any other matter to further the objects of this Act that are not in conflict with this Act or regulations made thereunder.

Transitional provisions

119. (1) Having regard to the preservation of the legitimisation process of the Interim Taxi Act provided for in section 44 of this Act, and the power conferred upon the MEC to revise deadlines for this process, the previous non-exercise of the power to alter process deadlines may not -

(a) render invalid any decisions or actions taken in terms of the Interim Taxi Act; and

(b) render any permits so affected as lapsed.

(2) Any distinguishing mark issued before the commencement of this Act in terms of the Road Transportation Act for a vehicle in relation to which an operating licence relates, is regarded and treated for the purposes of this Act* until such time as that operating licence lapses, is withdrawn or cancelled in terms of this Act, as a distinguishing mark issued in terms of this Act.

(3) An appointment, designation, regulation, notice or document made, published or issued, in terms of the Road Transportation Act is deemed to have been declared, established, made, published, issued or done in terms of the corresponding provisions of this Act.

(4) An application for the issue or grant of a permit which has not been disposed of at the commencement of this Act, is deemed to be an application in terms of this Act for the granting of the appropriate operating licence.

CHAPTER 13

REPEAL OF PRIOR STATUTES AND INTERPRETATION OF THIS ACT

Repeal and amendment of laws and savings

120.(1) Subject to the provisions of subsection (2), the laws referred to in the first column of the Schedule are hereby repealed to the extent set out in the third column of the said Schedule.

(2) Notwithstanding the repeal of the laws referred to in subsection (1) -

(a) anything done in terms of the repealed law which is capable of being done in terms of a provision of this Act, is deemed to have been done in terms of the relevant provision of this Act;

(b) any proceedings commenced in terms of the repealed law, must be continued and concluded as if such law had not been repealed: Provided that any appeal arising therefrom must be dealt with in accordance with the provisions of this Act.

(3) If there is a conflict between this Act and any other provincial law affecting public transport in the Province, this Act prevails.

Short title and commencement

121.(1) This Act is called the KwaZulu-Natal Public Transport Act, 2005, and comes into operation on a date to be determined by the MEC in the *Gazette*.

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

SCHEDULE

Repeal and amendment of laws and savings

(Section 120(1))

<i>Number and year of law</i>	<i>Title</i>	<i>Extent of repeal</i>
Act No. 74 of 1977	Road Transportation Act, 1977	The whole - (a) except sections 3 , 8, 11(1), 26, 26A, 27, 43 and 44; and (b) except in so far as any provision of the Act is applied with respect to transport across the borders of the Republic and with respect to the powers and functions of the commission
Act No. 4 of 1998	KwaZulu-Natal Interim Minibus Taxi Act, 1998	The whole, except Part X which is preserved until such time as the legitimisation process referred to in section 44 of the KwaZulu-Natal Public Transport Act, 2005, is completed