

## DEPARTMENT OF TRANSPORT

NO. 1137

27 OCTOBER 2017

**TRANSPORT APPEAL TRIBUNAL ACT, 1998 (ACT NO. 39 OF 1998)****PUBLICATION FOR PUBLIC COMMENT: DRAFT TRANSPORT APPEAL TRIBUNAL AMENDMENT BILL, 2017**

The Minister of Transport hereby publishes the draft Transport Appeal Tribunal Amendment Bill, 2017 for public comment.

Interested persons are invited to submit written comments on the draft Bill within 30 days from the date of publication hereof. Comments should be sent to the following postal or e-mail address, or faxed to the following number, or delivered by hand to:

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**TRANSPORT APPEAL TRIBUNAL AMENDMENT BILL, 2017****GENERAL EXPLANATORY NOTE:**

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

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

**BILL**

**To amend the Transport Appeal Tribunal Act, 1998 to bring the Act up to date with the developments since the implementation of the Act; to provide for certain powers of the Transport Appeal Tribunal; to allow the Minister to extend the term of the members of the Tribunal; to clarify or simplify various provisions since the implementation of the Act; and to provide for matters connected therewith.**

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

**Substitution of Long Title of Act 39 of 1998**

1. The following is hereby substituted for the Long Title of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998) ("the principal Act"):

**"To provide for the establishment of the Transport Appeal Tribunal to consider and decide on appeals noted in terms of the National Land Transport Act, 2009 and the Cross-Border Road Transport Act, 1998; and for matters connected therewith."**

**Amendment of section 1 of Act 39 of 1998**

2. Section 1 of the principal Act is hereby amended—

- (a) by the deletion of the definitions of "board", "intraprovincial transport" and "national land transport legislation";
- (b) by the insertion of the following definitions before the definition of "Director-General":

**"Act" or "this Act" means the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998);"**

**"act, direction or decision" includes—**

- (a) an act, direction or decision contemplated in section 92 of the National Land Transport Act;
- (b) a decision contemplated in section 34(1) of the Cross-Border Act;
- (c) a decision to cancel an operating licence in terms of section 78 of the National Land Transport Act;
- (d) a decision to withdraw, suspend or amend an operating licence or permit in terms of section 79 of the National Land Transport Act;
- (e) a decision by the National Public Transport Regulator, as defined in section 1 of the National Land Transport Act, on an application for accreditation made to it under section 81(2) of the National Land Transport Act or renewal of such accreditation in terms of section 81(8) of that Act;
- (f) an administrative action by a regulatory entity or the Regulatory Committee that is subject to judicial review in terms of section 6(2) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and
- (g) any other act, direction, decision or omission by a regulatory entity or the Regulatory Committee made in the process of implementing the National Land Transport Act or Cross-Border Act.

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

- (c) by the insertion of the following definition after the definition of “Minister”:

“National Land Transport Act” means the National Land Transport Act, 2009 (Act No. 5 of 2009); and

- (d) by the insertion of the following definition after the definition of “Regulatory Committee”:

“regulatory entity” means a regulatory entity as defined in section 1 of the National Land Transport Act;”.

#### **Amendment of section 4 of Act 39 of 1998**

**3. Section 4 of the principal Act is hereby amended—**

- (a) by substituting the following for subsection (1):

**“(1) The Tribunal consists of not more than nine, but not less than five, members appointed by the Minister [after consultation with every member of the Executive Council in every province responsible for road transport matters].”**

- (b) by substituting the following for paragraph (a) of subsection (2):

**“(a) appoint fit and proper persons as members of the Tribunal on the grounds of their knowledge of, or experience in, [financial,] economic, commercial, legal, public transport or other matters relating to the functions of the Tribunal; and”**

**Amendment of section 7 of Act 39 of 1998**

4. Section 7 of the principal Act is hereby amended by the addition of the following subsection:

“(4) Despite subsection (3), the Minister may, upon expiry of the term of office of a member of the Tribunal, extend the term of office of that member for a period not exceeding twelve months.”

**Amendment of section 9 of Act 39 of 1998**

5. Section 9 of the principal Act is hereby amended by substituting the following for subsection (1):

“(1) The Tribunal will sit on such days and during such hours and at such place as the chairperson of the Tribunal may determine in consultation with the Director-General.”

**Amendment of section 11 of Act 39 of 1998**

6. The following is substituted for section 11 of the principal Act:

**“Fees in respect of appeals**

11. The Tribunal may not deal with any appeal noted under the **[national land transport legislation] National Land Transport Act** or under the Cross-Border **[Road Transport] Act, [1998,]** unless any such appeal is accompanied by the fees referred to in section 17(1)(a).”

**Amendment of section 12 of Act 39 of 1998**

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

(a) by substituting the following for the words preceding paragraph (a) in subsection (1):

“(1) Subject to **[the provisions of]** this Act, the Tribunal must consider an appeal noted with the Tribunal in accordance with the **[provisions of the national land transport legislation] National Land Transport Act** or the Cross-Border **[Road Transport] Act, [1998]** as the case may be, whereupon the Tribunal may—“

(b) by substituting the following for paragraph (a) of subsection (1):

“(a) **[reject] dismiss** the appeal and confirm the act, direction or decision appealed against; or”

— (c) by substituting the following for sub-paragraphs (i) and (ii) of paragraph (b):

- (i) substitute therefor any other act, direction or decision which the **[board] regulatory entity** or the Regulatory Committee, as the case may be, could have performed or given; or
- (ii) refer the matter which gave rise to the appeal to the **[board] regulatory entity** or the Regulatory Committee, as the case may be, for reconsideration; or”
- (c) by substituting the following for subsections (2) and (3):
- “(2) No decision taken by the Tribunal under this section may be inconsistent with the **[national land transport legislation] National Land Transport Act** or the Cross-Border **[Road Transport] Act, [1998,]** as the case may be.
- (3) Any act, direction or decision of the Tribunal under subsection(1)(b)(i) or (c) will, except for the purposes of subsection (1), be deemed to be an act, direction or decision of the **[board] regulatory entity** or Regulatory Committee, as the case may be, against whose act, direction or decision the appeal was brought.”
- (d) by substituting the following for paragraph (a) of subsection (4):
- “(a) within the prescribed period cause the parties involved in the appeal to be notified in writing of the decision of the Tribunal , including any time limits specified by the Tribunal for the implementation of such decision;”
- (e) by the addition of the following subsections:
- “(5) Where a regulatory entity or the Regulatory Committee fails to implement or give effect to a ruling of the Tribunal within the time specified by the Tribunal, or within a time considered by the Tribunal to be reasonable, the Tribunal may issue a directive to the regulatory entity or Regulatory Committee, as the case may be, describing the extent of its failure to comply with its obligations and stating the steps required to meet those obligations, and the regulatory entity or Regulatory Committee, as the case may be, must comply with such directive within the time specified by the Tribunal in the notice.
- (6) Where the Tribunal issues a directive under subsection (5), it must notify the Director-General and request the Director-General to notify—
- (a) the Minister in the case where the directive is issued to the Regulatory Committee or to the National Public Transport Regulator as defined in section 1 of the National Land Transport Act;
- (b) the relevant MEC in the case where the directive is issued to a Provincial Regulatory Entity as defined in that section, or
- (c) the council of the relevant municipality in the case where the directive is issued to a Municipal Regulatory Entity as defined in that section,
- of the issuing of the directive and request the Director General and the Minister, MEC or council, as the case may be, to assist in assuring compliance with the directive.”

**Amendment of section 13 of Act 39 of 1998**

8. Section 13 of the principal Act is hereby amended by substituting the following for paragraphs (a) and (b):

- “(a) grant an application for condonation of the late filing of an appeal against the act, direction or decision of the [board] regulatory entity or the Regulatory Committee, as the case may be, provided the appeal is noted in the prescribed manner and within the prescribed period, or refuse such an application; or
- (b) grant or refuse an application to suspend the operation of any act, direction or decision appealed against, provided that such an act, direction or decision shall automatically be suspended where the appeal was lodged within 30 days after such act, direction or decision was communicated to the appellant.”

**Amendment of section 14 of Act 39 of 1998**

9. Section 14 of the principal Act is hereby amended—

- (a) by substituting the following for paragraph (a) of subsection (4):

“(4)(a) Where, in terms of the [national land transport legislation] National Land Transport Act or the Cross-Border [Road Transport] Act, [1998,] it would have been permissible for the [board] regulatory entity or the Regulatory Committee, as the case may be, to take a person’s road transport law enforcement profile or previous traffic or transport-related contraventions into consideration, the Tribunal may compel any such person to give self-incriminating evidence, but the person presiding at the appeal must direct that such evidence will be given *in camera* and that it will not be made public in any manner whatsoever, except by order of a competent court for the purposes of review or appeal.”

- (b) by the addition of the following subsections:

“(5) The Tribunal must investigate any delay caused by a person in the completion of its proceedings or frivolous actions on the part of any person in the course of its proceedings, which appears to the Tribunal to be unreasonable and which could cause substantial prejudice to the State, the appellant or any other interested party, and must consider the following factors in deciding whether a delay or frivolous action is unreasonable:

- (a) The duration of the delay or action;
- (b) the reasons advanced for the delay or action;
- (c) whether any person can be blamed for the delay or action;
- (d) the effect of the delay or action on the personal or financial circumstances of the State, the appellant or any other interested party, or
- (e) any other factor which in the opinion of the Tribunal should be taken into account.



(6) If the Tribunal finds that the completion of its proceedings is being delayed unreasonably, it may issue any such order that it deems fit to eliminate the delay or frivolous action and any prejudice resulting from it or to prevent further delay or prejudice, including an order—

(a) refusing further postponement of the proceedings;

(b) granting a postponement subject to such conditions as it may determine.”

#### **Amendment of section 16 of Act 39 of 1998**

10. Section 16 of the principal Act is hereby amended by substituting the following for subsection (1):

“(1) The Director-General must, **[after consultation with the Tribunal,]** designate such officers in the Department of Transport as may be necessary to perform the administrative and secretarial work of the Tribunal and any investigations required by the Tribunal that are necessary for the taking of its decisions.”

#### **Amendment of section 17 of Act 39 of 1998**

11. Section 17 of the principal Act is hereby amended by substituting the following for paragraph (b) of subsection (1):

“(b) as to the information to be provided by the **[board]** regulatory entity or the Regulatory Committee to the Tribunal or an applicant in connection with any appeal, and the manner in which and the time within which such information must be provided;”

#### **Amendment of section 18 of Act 39 of 1998**

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

(a) by substituting the following for paragraph (a) of subsection (1):

“(a) any matter corresponding to that in respect of which the **[Board]** board as defined in section 1 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) is authorised by law to perform or give any act, direction or decision;”

(b) by substituting the following for paragraph (a) of subsection (3):

“(a) subsection (1)(a) will come into operation on the date on which the **[national land transport legislation]** National Land Transport Transition Act, 2000 comes into operation, subject to the National Land Transport Act;”

### Short title and commencement

13. This Act is called the Transport Appeal Tribunal Amendment Act, 2017.

## MEMORANDUM ON THE OBJECTS OF THE TRANSPORT APPEAL TRIBUNAL AMENDMENT BILL, 2017

### 1. BACKGROUND AND PURPOSE

The Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998) ("the principal Act") was passed in 1998 to create the Transport Appeal Tribunal (TAT) for the purpose of dealing with appeals relating to applications for road carrier permits (now called operating licences). Prior to the establishment of the TAT the National Transport Commission was responsible for dealing with such appeals.

The National Land Transport Transition Act 22 of 2000 (Transition Act) read with the Transport Appeal Matters Amendment Act 70 of 1998 provided that persons who applied to the Regulatory Committee of the Cross-Border Road Transport Agency (CBRTA) or to an operating licensing board for an operating licence, and were aggrieved by the decision of the Regulatory Committee or board, could appeal to the TAT.

Section 128 of the Transition Act provided that provinces could establish their own provincial appeal bodies to hear appeals in respect of operating licence applications. These provincial appeal bodies would replace the TAT in the relevant province. A few provinces did establish such provincial appeal bodies.

In 2007 the then Minister commissioned the *National Land Transport Strategy for the Drafting of the National Land Transport Bill*. This Strategy recommended the following:

- "A new national regulatory entity should be established. It should deal with all long-distance and tourist service operating licence (OL) applications, and perform an oversight role over the regulatory entities in other spheres and serve as their appeal body. (Alternatively this could be done by the Transport Appeal Tribunal.) It should develop standardised nationally-applicable procedures for the processing of all OL applications and decisions. These procedures should be gazetted as regulations to the new Act and will be binding on the regulatory entities in other spheres.
- The Transport Appeal Tribunal (TAT) should be retained as an appeal body for decisions made by the national regulatory entity."

In the process of drafting the National Land Transport Act 5 of 2009 (NLTA) it was decided—

- a) to establish the National Public Transport Regulator (NPTR) as a national body to deal with operating licences for interprovincial and tourist transport, among other functions;
- b) that the TAT should be retained as the appeal body for all appeals, and
- c) that the provincial appeal bodies should be dis-established.



These matters are provided for in the NLTA. In terms of the NLTA, the TAT must hear appeals from the following, which are collectively called regulatory entities:

- a) The NPTR – appeals relating to operating licences for interprovincial and tourist transport services. The NPTR started operating on 29 July 2016, and is at present only dealing with licences for tourist transport services as well as applications for accreditation of tourist transport operators. Its other functions will be phased in over time.
- b) The Provincial Regulatory Entities (PREs).
- c) Municipal Regulatory Entities (MREs). To date no MREs have been established, but some cities have applied to establish them.

Since its establishment the TAT has encountered a number of problems and issues, which require amendments to the principal Act. The principal Act also requires to be updated in respect of developments since 1998. These problems and issues are addressed in the Bill and are elaborated in the Clause-by-Clause Analysis in 2 below.

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

### **2.1 Clause 1: Substitution of Long Title of Act 39 of 1998**

Clause 1 will replace the Long Title of the principal Act to give effect to developments since the passing of the Act in 1998.

### **2.2 Clause 2: Amendment of section 1 of Act 39 of 1998**

Clause 2 deletes, substitutes and adds certain definitions. Redundant definitions of “board”, “interprovincial transport” and “national land transport legislation” are deleted. The concept of “board” has been replaced by “regulatory entity” in the NLTA. The term “interprovincial transport” was only relevant to provincial appeal bodies, which no longer exist. The term “national land transport legislation” was included in the Act because such legislation had not yet been enacted in 1998. The term is replaced by a reference to the NLTA.

A new definition of “act, direction or decision” is inserted to clarify and expand upon the acts, directions and decisions which are subject to appeal by the TAT, to address doubts expressed about this in the past. The TAT will also be empowered to hear appeals against administrative actions by a regulatory entity or the Regulatory Committee of the CBRTA that are subject to judicial review in terms of section 6(2) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

A new definition of “Cross-Border Act” is inserted to make it easier to read the principal Act and to standardise with the same definition in the NLTA.

A new definition of “National Land Transport Act” is inserted to replace the general reference to land transport legislation.

A new definition of “regulatory entity” is inserted to standardise with the NLTA.

### **2.3 Clause 3: Amendment of section 4 of Act 39 of 1998**

The principal Act provides that the Minister must consult with the nine provincial MECs before appointing TAT members. This has proved to be unworkable and unnecessary, and clause 3(a) of the Bill will remove this requirement.

Also, the Act does not provide for the appointment of members with expertise in public transport matters, which will be cured by clause 3(b) of the Bill.

### **2.4 Clause 4: Amendment of section 7 of Act 39 of 1998**

In terms of the principal Act, TAT members must be appointed for a fixed term of office, but not for longer than three years. It sometimes happens that it would be expedient for the terms of office of individual members to be extended, for example to enable them to deal with matters that are partly completed because of their knowledge of or insight into a matter. Clause 4 of the Bill will allow the Minister to extend the period of office of any member for a period not exceeding one year.

### **2.5 Clause 5: Amendment of section 9 of Act 39 of 1998**

It is important for the TAT when fixing dates and times for hearings, to consult with the Director-General of the Department (DG) so that the necessary administrative arrangements can be put in place timeously subject to budgetary considerations. Clause 5 of the Amendment Bill will require the TAT to consult the DG before fixing such dates and times.

### **2.6 Clause 6: Amendment of section 11 of Act 39 of 1998**

This clause makes consequential amendments to section 11 of the principal Act.

### **2.7 Clause 7: Amendment of section 12 of Act 39 of 1998**

This clause makes consequential amendments and improvements to section 12 of the principal Act as well as the following:

Sometimes when the TAT takes a decision imposing duties on parties, such as a regulatory entity, it is advisable for the TAT to impose time limits for performing the duty to ensure implementation of the TAT's decision. Clause 7(d) of the Bill will empower the TAT to impose such time limits when it makes its decision known to the relevant parties.

It often happens that regulatory entities or the Regulatory Committee fail to implement or give effect to a ruling of the TAT within the time specified by the TAT, or within a reasonable time, or at all. Clause 7(e) of the Bill thus provides that the TAT may issue a directive to the regulatory entity or Regulatory Committee, as the case may be, describing the extent of its failure to comply with its obligations and stating the steps required to meet those obligations, and that such entity must comply with the directive within the time specified by the TAT. It also provides that when such a directive is issued, the TAT must notify the Minister, or relevant MEC, as the case may be, so that they can assist in assuring compliance with such directives.

### **2.8 Clause 8: Amendment of section 13 of Act 39 of 1998**

This clause makes consequential amendments to section 13 of the principal Act.

### **2.9 Clause 9: Amendment of section 14 of Act 39 of 1998**

It sometimes happens in proceedings before the TAT that parties deliberately delay the proceedings, for example where the TAT's decision is likely to have an adverse effect on the finances of the delaying party. Parties also sometimes engage in frivolous actions, either to cause delays or for other reasons. These actions not only waste the time of the TAT and cause wasted costs, but are also unfair to the other party or parties to the appeal. Clause 9(b) of the Bill will allow the TAT to investigate such delays or frivolous actions and take certain steps to counter them as listed in the Bill.

This clause also makes consequential amendments to section 14 of the principal Act.

### **2.10 Clause 10: Amendment of section 16 of Act 39 of 1998**

The principal Act currently provides that the DG must appoint officers in the Department to perform the administrative and secretarial work of the TAT. Clause 10 of the Bill will also permit such staff to be appointed to undertake investigations that are necessary for the TAT to reach its decisions.

### **2.11 Clause 11: Amendment of section 17 of Act 39 of 1998**

This clause makes consequential amendments to section 17 of the principal Act.

### **2.12 Clause 12: Amendment of section 18 of Act 39 of 1998**

This clause updates section 18 of the principal Act to take account of developments since 1998 and effects consequential amendments.

### **2.13 Clause 13: Short title**

Clause 13 provides the short title of the Bill.

## **3. FINANCIAL IMPLICATIONS**

The Bill is not expected to have any additional financial implications either for Government or the public transport industry.

## **4. PARLIAMENTARY PROCEDURE**

- 4.1 The Department is of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution (ordinary bills affecting provinces).
- 4.2 The Department is of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) since it does not contain provisions pertaining to customary law or customs of traditional communities.