

# **NORTH WEST ROAD TRANSPORT AMENDMENT ACT, 1997/7/97**

## **No 5 of 1997**

To amend the Road Transportation Act, 1977, insofar as it applies in the Province, to add a definition, to provide for the appointment of a Provincial Taxi Registrar and specify his or her powers and duties, to provide for the registration of minibus taxi associations and their members, and non-members to provide for special measures in respect of minibus taxi services in certain area, and for matters connected therewith.

(English text signed by the Premier on 03 July 1997)

Be it enacted by the Provincial Legislature of the Province of North West as follows:

### **Amendment of section 1 of Act 74 of 1977**

1. The Road Transportation Act, 1977 insofar as the administration of provisions thereof has been assigned to a competent authority within the jurisdiction of the government of the province of North West ( hereinafter referred to as the principal Act) is hereby amended insofar as it applies in the Province in Section 1 by the insertion after the definition of "local authority" in subsection (1) of the following definition:

"minibus taxi service" means a service for the conveyance of passengers rendered by means of a motor vehicle with a carrying capacity of not less than nine persons and not more than sixteen persons, including the driver, with no prescribed time table or fares"

### **Insertion of section 7A in the principal Act after section 7**

2. The following section is hereby inserted in the principal Act after section &:

**7A. Appointment, powers and duties of Provincial Taxi Registrar and registration of minibus taxi associations, members and non members**

(1) In this section:-

(a) "association" means a formal grouping of minibus-taxi operators or body to which two or more such groupings are affiliated, which is formed not for gain and having the main object of promoting the group interests of its members, and which intends to apply its income in promoting such interests;

(b) "inter-provincial association" means an association whose members pick up or set down passengers in two or more different provinces.

(c) "non-member" means the holder of a permit who does not belong to an association.

(d) "primary association" means an association to which no other association is affiliated;

(e) "registered" means conditionally or fully registered;

(f) "secondary association" means an association to which two or more other registered associations are affiliated;

(2) The Minister must, subject to the laws governing the public service, appoint a Provincial Taxi Registrar under the control of the Minister who shall be or have been a judge or magistrate, or an attorney or advocate who has practised as such for as least five years, or who, in the opinion of the Minister has an equivalent legal background or experience, who shall exercise the powers and perform the duties assigned to him or her under this section.

(3) The Chief Director: Transport and Civil Aviation must, subject to the laws governing the Public Service, provide the staff necessary to assist the Registrar in the performance of his or her duties.

(4) No person shall be appointed as Registrar if he or she or any of his or her spouse or partner, immediate family, dependants, business partner or employer, is financially interested in any business of public transport or is an elected office bearer in an association, or is engaged in any activity which, in the opinion of the Minister, will interfere with the impartial discharge by the Registrar of the duties of his or her office.

(5) When the office of Registrar is vacant or when the Registrar is absent or is for any other reason unable to perform his or her duties, the Minister may appoint an acting registrar who must act temporarily in the Registrar's stead.

(6) The Registrar shall have the power to:-

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

(b) grant conditional registration to any primary association or interprovincial association and their members in terms of this section;

(c) grant full registration to any primary association or interprovincial association and their members, secondary association or non-member in terms of this section;

(d) decide upon the form of the register and certificates to be kept, maintained or issued under this section;  
and

(e) take all reasonable steps to monitor and receive information with respect to the compliance or non-compliance of registered associations and registered non-members with the provisions of the Standard Constitution and Code of Conduct prescribed in terms of this section;

(f) advise the minister and supply the Minister with information regarding minibus taxi matters.

(7) The Registrar shall have the following duties:

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

(b) to take all reasonable steps to encourage associations to register in terms of this section;

(c) to provide as much advice and assistance to associations as is reasonably possible to enable them to apply successfully for registration;

(d) to receive and consider applications for registration from associations and non-members;

(e) to consider and give a decision on-

(i) the suspension, as contemplated in subsection (26) of the registration of any registered association, member or non-member;

(ii) the deregistration, as contemplated in subsection (26), of any registered association, member or non-member.

(8) The Registrar must grant a certificate of conditional registration and a registration number to any primary association or interprovincial association and each of its members who upon application made it satisfies him or her:-

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

(ii) that the number of members meets the minimum prescribed by the Minister;

(iii) that all of the information required by the Registrar in terms of this section has been provided by the association and this information has been verified in the manner described by regulation:

Provided that such conditional registration shall lapse if the association has not been fully registered within the prescribed period.

(9) The Registrar must grant a certificate of full registration and a registration number to any primary association, interprovincial association or secondary association and each of its members who upon application made by it satisfies him or her-

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

(ii) that the number of members meets the minimum prescribed by the Minister;

(iii) that the constitution and code of conduct submitted by the association has been signed and accepted by each of its members as binding upon such member;

(iv) that the said constitution and code of conduct are consistent with and encompass the provisions of the Standard Constitution and Code of Conduct prescribed in terms of this section;

(v) that the association enjoys the support of relevant municipalities;

(vi) that each member in respect of whom application for registration is made holds a valid public permit for each motor vehicle that he or she operates and that his or her operations are legally within the authority of such permit;

(vii) that all of the information required by the Registrar in terms of this section has been provided by the association.

(10) The Registrar must grant a certificate of conditional registration to any member of a conditionally registered primary association or interprovincial association who upon application made by the association on his or her behalf satisfies the Registrar-

- (a) that the primary or interprovincial association to which he or she belongs is conditionally registered;
- (b) that all of the information required by the Registrar in terms of this section has been provided by the member and this information has been verified in the manner described by regulation: Provided that such conditional registration shall lapse if the member has not been fully registered within the prescribed period.

(11) The Registrar must grant a certificate of full registration to any member of a fully registered primary or interprovincial association who upon application made by the association on his or her behalf satisfies the Registrar-

- (a) that the primary or interprovincial association to which he or she belongs is fully registered;
- (b) that he or she holds a valid public permit for each vehicle that he or she operates and that his or her operations are legally within the authority of such permit;
- (c) that the said constitution and code of conduct are consistent with and encompass the provisions of the Standard Constitution and Code of Conduct prescribed in terms of this section, and
- (d) that all of the information required by the Registrar in terms of this section has been provided by the association.

(13) The Registrar must grant a certificate of registration to any non-member who upon application made by him or her satisfies the Registrar that:-

- (a) no primary association has been established in respect of the route or routes on which he or she operates, or

(b) a primary association has been established in respect of the route or routes on which he or she operates but the conditions set by the associations for membership are unfair according to the criteria prescribed in the Standard Constitution and Code of Conduct or in regulations, or

(c) a primary association has been established in respect of the route or routes on which he or she operates but the association has failed in two or more applications to be granted registration, and

(d) he or she holds a valid public permit for each motor vehicle that he or she operates and that this or her operations are legally within the authority of such permit;

(e) that he or she has signed and agreed to abide by the Standard Constitution and Code of Conduct prescribed in terms of this section, and

(f) that all of the information required by the Registrar in terms of this section has been provided by such non-member.

(14) The Department of Transport and Civil Aviation may issue a distinguishing mark to any member of an association that has been conditionally registered under subsection (8) in the manner prescribed by regulation, and such member shall affix such mark and keep it affixed in the manner prescribed by regulation on all motor vehicles concerned.

(15) A distinguishing mark issued to a member of an association pursuant to a conditional registration under subsection (12) shall not exempt such member from the obligation to obtain the requisite public permit and shall be handed back to the Department of Transport and Public Works or destroyed within twenty-four hours of demand being made for its return or destruction.

(16) The Registrar must 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 section as are prescribed by regulation.

(17) The Registrar must, on request and on payment of the prescribed fee, provide any person with information or statistics from the said Register.

(18) The Registrar must in every calendar year submit to the Minister an annual report containing information concerning the activities of his or her office, registration of associations and their members, the registration of non-members and other matters as the Minister may direct, and the Minister must table the report in the Provincial Legislature.

(19) The Minister must prescribe a Standard Constitution and Code of Conduct for associations and may make additional rules:-

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

(b) as to the requirements with which a non-member registered in terms of this section must comply in conducting his or her business in relation to minibuss taxi services, and

(c) prescribing conduct on the part of a registered association, member or non-member which shall constitute improper conduct for the purposes of this section.

(20) The Minister must make regulations prescribing:-

(a) the minimum number of members associations shall be required to have in order to be eligible for registration under this section.

(b) the minimum period of time for which associations must have been in existence in order to be eligible for registration under this section;

Provided that different regulations may be made for different areas in the Province and different regulations may be made for new associations as opposed to established ones.



(21) The Minister may make regulations:

(a) prescribing-

(i) a tariff of maximum joining and annual membership fees that is payable to any registered association by its members;

(ii) any other additional requirements with which an association must comply in order to qualify for registration;

(b) determining the method of inquiry into allegations of improper conduct or failure to comply with the provisions of the Standard Constitution and Code of Conduct of which any association, member or non-member registered in terms of this section is alleged to have been guilty :

(c) providing that forms of assistance contemplated by the Provincial Government for holders of permits authorizing minibus-taxi services and associations shall be reserved for persons and associations registered under this section;

(d) prescribing the manner in which an association or non-member must apply for registration and prescribing the fees payable to the Register in respect of any such application and prescribing any annual fees which may be payable to the Registrar by any association or non-member registered in terms of this section:

Provided that different regulations may be made for different areas in the Province and different regulations may be made for new associations as opposed to established ones.

(22) Any association or non-member who desires to be registered must lodge with the Registrar in the manner prescribed an application in writing for such registration, accompanied by the prescribed application fee and such information as may be required by the Registrar.

(23) If after considering the application and verifying the information submitted, the Registrar is satisfied that the applicant has satisfied the relevant requirements, the Registrar must register the applicant and issue to the applicant a certificate of registration and registration number.

(24) If after considering the application the Registrar is not satisfied that the applicant has satisfied the relevant requirements, the Registrar must inform the applicant of the requirements the applicant has failed to meet, and may provide the applicant with advice and assistance to enable the applicant to meet the said requirements.

(25) Upon registration of an interprovincial association, the Registrar must forward a copy of the certificate of registration and all registered details of the association to the registrar or department responsible for transport affairs in each province to or from which the members of the said association operate.

(26) Upon receiving an application from an interprovincial association which has already obtained registration in another province, the Registrar may register such association if it meets the relevant requirements specified in this section, but may exempt such association from the obligation to pay an application fee and annual registration fees, if similar fees have been paid or are payable in another province.

(27) The Registrar may, on receipt of a complaint, accusation or allegation or on the ground of information which has come to his or her notice and which may point to the failure of an association or non-member registered in terms of this section to comply with the rules set out in

the Standard Constitution and Code of Conduct, conduct an inquiry in the manner determined or prescribed in terms of this section.

(28) Where any registered association or registered non-member is found in terms of such inquiry to have failed to comply with the rules set out in the Standard Constitution and Code of Conduct, for reasons within the control of the association or non-member directing that the Standard Constitution and Code of Conduct be complied with an setting out the steps to be followed within a stated period, and if such notification is not

complied with, a warning to comply within a state period.

(29) If the notification referred to in subsection (25) is not complied with the Registrar must supply the association or non-member with reasonable assistance to comply therewith, and still failing such compliance may-

(a) impose a fine not exceeding the amount prescribed or

(b) send a written order signed by him or her of temporary suspension of the certificate of registration; or

(c) send a written order signed by him or her withdrawing the certificate of registration.

(30) The Registrar must immediately after issuing an order that the name of any association or non-member be struck off the Register, forward a certified copy thereof to a senior official in any government department or institution providing any benefits or assistance to that association or its members or that non-member.

(31) A person who is dissatisfied with a decision of the Registrar, may take the matter on appeal to the Minister within the time and in the manner which shall be prescribed by regulation.

(32) The Minister may establish a panel of assessors to be known as the Taxi Registrar's Panel of Assessors, the constitution and functioning of which shall be determined by the Minister by regulation.

(33) The functions of the Panel shall be to advise the Registrar in the performance of his or her functions and to monitor the performance of such functions at the request to the Minister.

(34) No person shall be appointed as an assessor if he or she or his or her spouse or partner, immediate family, dependant, business partner or employer, is financially interested in any business of public transport or is an elected office bearer in an association, or is engaged in any activity which, in the opinion of the Minister, will interfere with the impartial discharge by the Registrar of the duties of his or her office.

(35) Any person who displays a distinguishing mark on a vehicle used for minibus taxi services, which has not been lawfully issued in terms of this Act or any other law, shall be guilty of an offence and liable on

conviction to a fine not exceeding R1500.

**Insertion of Section 7B in the principal Act after section 7A**

3. The following section is hereby inserted in the principal Act after section 7A:

**7B. Special emergency measures in respect of minibus taxi services in certain areas**

(1) The Minister may require that every holder of a public permit authorizing the conveyance of persons in respect of minibus taxi services in an area to be announced by the Minister by notice in the Gazette, shall apply in the manner and on the form prescribed for the reissuing to him, her or it of such permit, within the time prescribed, failing which such permit shall lapse: Provided that all such reissued permits shall specify the route or network of routes on which the holder may operate.

(2) In an area declared under subsection(1), an authorized officer who is reasonable satisfied that a motor vehicle is being used for unauthorized road transportation in respect of minibus taxi services, may impound

such vehicle for a period not exceeding fourteen days unless the operator concerned proves to the satisfaction of the Department of Transport and Civil Aviation that he, she or it was not undertaking unauthorized road transportation or that he, she or it qualifies for conditional registration in terms of section 7A(8).

(3) Subject to the fourteen day restriction in subsection(2), a vehicle impounded under subsection (2) shall be dealt with in the manner prescribed by regulation and shall not be released until the Minister is satisfied that the operator concerned has obtained the requisite public permit to operate on the route concerned, or has obtained conditional registration under section 7A(8), or that the situation in the area concerned has normalised in terms of a cessation of violence and lawlessness, and an administration fee of R500 has been paid to the Department of Transport and Civil Aviation, which fees shall be used to defray the costs of establishing and maintaining the relevant pound or pounds and the balance, if any, shall be paid into the Provincial Revenue Fund.

(4) If a vehicle impounded under subsection (3) is again apprehended for undertaking unauthorized road transportation in the area, it may be impounded again, in which case subsections (2) and (3) above shall apply mutatis mutandis, except that the administration fee referred to in subsection (3) shall be R1000 for the second impoundment and shall be doubled for each subsequent impoundment.

(5) Impoundment of a vehicle under this subsection shall not exempt the operator, owner or driver thereof from being prosecuted for any offence under this Act or a law relating to the regulation and control of road traffic.

(6) The Minister may make regulations providing that one or more routes or ranks shall be closed to the

operation of minibus taxi services in an area declared under subsection (1) for a period stated in the notice, and that no person may undertake such service on such route or routes or in such rank or ranks during such period. Such regulations may provide that the contravention thereof will constitute an offence and prescribe penalties in respect thereof.

(7) Regulations under subsection (6) may provide for the issuing of emergency permits to motor vehicles with a carrying capacity of more than sixteen persons, including the driver, to operate the closed routes for the period of their closure.

### **Repeal of Act 31 of 1979**

(4) (1) The Bophuthatswana Road Transportation Act 31 of 1979 is hereby repealed.

(2) Subject to the provisions of this section, any appointment, designation, regulation, notice or document made, published or issued or any other thing done under any provisions of a law repealed by subsection (1) shall be deemed to have been made, published, issued or done under the corresponding provisions of this Act.

(3) Any local road transportation board or transportation board operating in the Province established under the Act repealed by subsection (1) is hereby dissolved.

(4) For the purpose of subsection (2), any motor carrier certificate or exemption from the obligation to take out a motor carrier certificate which was issued under the Act repealed by subsection (1) and which according to the nature of the road transportation authorized by it, could be granted and issued under this Act as a public permit, shall be deemed to be a public permit granted and issued under this Act.

(5) Any application for the grant of such a certificate or exemption which has not been disposed of at the commencement of this section shall be deemed to be an application under this Act for the grant of the appropriate permit.

### **Short title**

**4.** This Act shall be called the North West Road Transportation Amendment Act, 1997.

## **NORTH WEST ROAD TRANSPORTATION ACT AMENDMENT ACT, 1997**

### **EXPLANATORY MEMORANDUM**

Continuous violence in the minibus taxi industry has been responsible for the death and injury of many drivers and their passenger over the past years, and this unacceptable situation has escalated recently. The situation in the Soshanguve area in particular has led to the death of several persons in the space of a few weeks.

A major cause of the violence is the operation on various routes by taxi operators not authorized to do so in terms of agreements between various taxi associations, and the breach of such agreements by such associations and their members. This leads to confrontation and violence.

The National Minister of Transport in 1995 initiated a process of consultation with the taxi industry through the establishment of the National Taxi Task Team (NTTT). This forum tabled final recommendations on 6 August 1996 which are acceptable to the minibus taxi industry. Government policies have been set out in the White Paper on National Transport Policy published in September 1996. Pursuant to the White Paper on National Land Transport Bill has been approved by the National Cabinet and is currently in the legislative process. When this Act enters into force, it will apply in the provinces and regulate the minibus taxi industry, among other modes, according to the negotiated and agreed guidelines and principles.

One of the recommendations of the NTTT was that taxi operators should be registered and that there should be a process of legalising existing illegal operations that meet certain criteria. Therefore, the Province in conjunction with the National Department of Transport and other provinces has initiated a process of registering taxi associations and members as an administrative process. The bill provides for the appointment

of a Provincial Taxi Registrar by the MEC, as a permanent institution, with support staff, and provides for his or her powers and duties. Later, if so decided, the Registrar's duties can be expanded to include the registration of operators in other transport modes.

The Bill provides for the registration of associations and their members. Non-members who hold valid permits may be registered if they can show that there is no primary association operating on the route in question or that there is such an association but its conditions for membership are unfair, or that such an association has failed in two or more attempts to obtain registration.

The MEC, together with the National Minister of Transport and the MEC for Gauteng Province, has initiated urgent action plans to address the violence referred to above and other problems in the taxi industry. The enforcement of the law relating to minibus taxis is bedevilled by the fact that it is impossible to identify legal operators and those who are in the process of being legalised and distinguish them from totally unacceptable operators. This Bill will enable the controlling authorities to properly control and enforce the proper operations of taxi operators, for the good of the commuter being served, by instituting the compulsory prominent display of identifying marks in respect of permit on the vehicle and of distinguishing marks for operators whose associations have been conditionally registered.

The Action Plan, supported by this Bill, will empower the enforcement agencies (Traffic Officers, road transportation inspectors, SA Police Services and the SA Defence Services) to act against offenders and to apply the appropriate penalties and enforcement measures.

This draft Bill is consistent with the national and provincial policies referred to above, and its provisions will probably later form part of future more permanent legislation.

It should be noted that the definition of "Minister" in the principal Act refers to the MEC.



