



## **NATIONAL LAND TRANSPORT ACT 2009**

### **DRAFT AMENDMENT BILL**

### **COMMENTS OF SANTACO**

This document comprises the comments of the SA National Taxi Council (SANTACO) to the draft Bill which was published on 8 March 2013 for public comment.

**5 April 2013**

## Foreword

This document contains the comments of SANTACO on a number of the proposed amendments included in the draft Bill. [It makes some suggestions for additional amendments.](#)

We wish to make clear, however, that our doing so does not imply [acceptance by SANTACO of the Amendment Bill nor of the National Land Transport Act 2009](#) itself. [We are submitting separately, as part of our comments on the Amendment Bill, a general critique of the Act in relation to government policy in general and the 2007 Public Transport Strategy and Action Plan in particular.](#)

Public transport in South Africa has been in a state of change since the publication in March 2007 of the Department of Transport's Public Transport Strategy and its associated Action Plan. The proposals in those documents were given statutory force in the National Land Transport Act, Act No 5 of 2009 (the NLTA).

The rationale behind the 2007 Strategy was that of transformation of public transport. It is self-evident that this has not happened. With one or two exceptions, public transport continues almost exactly as it has for the past several decades.

The inability of government to facilitate transformation has meant that the large bus companies continue to receive billions of Rands in annual subsidy, whilst the taxi industry gets none. Some of the proposals in the Amendment Bill appear to be directly designed to ensure that this position is maintained.

SANTACO cannot allow this to continue. Whilst commenting on the Amendment Bill, we wish at the same time to give notice to the Department of Transport of the following :

- 1) We are preparing to take legal steps [to prevent](#) the continuation of certain actions which we believe are either against other current legislation or, in the case of the discriminatory nature of the subsidy system, against the letter and spirit of the South African Constitution.
- 2) More generally, [we believe that there should be](#) a full-scale review of public transport policy. There has not been a transport policy review since the publication of the National Land Transport Policy in 1996 (the 1999 Moving South Africa project produced an 'Action Agenda, and the 2007 documents were respectively a Strategy and an Action Plan).

The 1996 White Paper was itself based on the proposals of the Reconstruction and Development Programme of 1994. So our present policy is in effect almost 20 years old. Much has happened in those two decades, not least the recent publication of the National Development Plan.

SANTACO wishes to engage with the Department on the development of a genuine policy of transformation in public transport – one which, because it will be based on practical realities, will have a far greater chance of success than the present efforts.

Our comments on the draft Amendment Bill must be seen in the light of the above.

In this document, the sections of the Bill on which SANTACO offers comment are shown in italics, with the SANTACO comment following immediately after each section.

References to taxi operators as 'he/him/his' should of course be read to mean operators of either gender.

Where a form of wording is suggested, this must be seen as an indication of what SANTACO would like to see rather than a precise legal definition.

## ***Proposed amendment of section 6 of Act 5 of 2009***

*Section 6 of the principal Act is hereby amended by the addition of the following subsection :*

*"(7) Regulatory entities must, in addition to the other information required by this section, include the prescribed information on the following in the Operating Licence Administrative System :*

*(a) particulars of operator associations operating in their areas and their members*

*(b) particulars of operators operating in their areas who are not members of those associations, in this section called non-members; and*

*(c) where appropriate, particulars of the routes operated by the associations and non-members operating in their area, the descriptions of which must correlate with those in the relevant integrated transport plans."*

### **SANTACO comment**

This amendment refers to one element of the duties and powers which were given to the provincial Transport Registrars in the National Land Transport Transition Act 2000 (NLTTA). That Act was repealed by the NLTA. No provision was made in the NLTA for a Transport Registrar at any level of government, nor for the reallocation of those powers and their related duties.

The National Land Transport Act 2009 (NLTA) should be amended to give to SANTACO all those powers, including registration, which were previously the responsibility of the Transport Registrar.

SANTACO should be empowered to act in the capacity of a professional standards body for the taxi industry, to ensure that :

- all taxi associations (no matter to whom they may be affiliated) and their members are registered with the SANTACO professional standards body; SANTACO will make this information available to the relevant Regulatory Entity
- all taxi associations (no matter to whom they may be affiliated) act in accordance with professional standards of organisation and in accordance with their constitution, and are subject to disciplinary processes for breach of those standards or their constitution; and that
- all taxi operators and their employees maintain professional standards of operation, and are subject to disciplinary processes for breach of those standards.

A fuller motivation for this proposed amendment is attach as an Annexure.

On a separate but related matter, we do not agree with the wording of the proposed amendment in the draft Bill which refers to 'non-members' of associations. In the interests of good order and discipline, all operators must be members of a registered association.

***Proposed amendment of section 8 of Act 5 of 2009 (1)***

4. Section 8 of the principal Act is hereby amended:

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

*“(d) a process to be followed for offering alternative services in place of existing services to holders of operating licences or permits under section 39, including :*

*(i) identifying operators contemplated in section 41(2); and*

*(ii) how to involve them in the negotiation process contemplated in section 41.”*

**SANTACO comment**

- 1) We have concerns about the whole issue of the rationalisation of public transport services and about the negotiation process. These concerns are described in the appropriate place in our later comments.
- 2) We propose a further amendment by the insertion of the following paragraphs :
  - (l) make provision for the formal recognition of SANTACO as the regulatory body for all minibus-taxi operators, and
  - (m) make provision for taxi industry representation in the Intermodal Planning Committees as contemplated in sec 15(1)

***Proposed amendment of section 8 of Act 5 of 2009 (2)***

(c) *by the substitution of the following paragraph for paragraph (h) of subsection (1):*

*“(h) colour coding and branding of vehicles used for public transport where national uniformity is required;”*

**SANTACO comment**

The imposition of a standard colour scheme for taxis has caused problems for operators. They have not been able to benefit from advertising on the vehicle, but government has not offered any compensation. An association has not been able to arrange for all the vehicles of its members to be branded in a common colour scheme, even though this might help passengers to recognise which taxis operate on the particular route.

We note that buses are not subject to the same restrictions.

It is important that the circumstances in which ‘national uniformity is required’ should be clearly specified in the Amendment Bill.

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

*“(d) a process to be followed for offering alternative services in place of existing services to holders of operating licences or permits under section 39, including-*

*(i) identifying operators contemplated in section 41(2); and*

*(ii) involving them in the negotiation process contemplated in section 41;”*

**SANTACO comment**

We propose a further amendment by the insertion of the following sub-paragraph :

*“(iii) in the case of minibus-taxi operators of unscheduled and non-contracted services, involving their associations in the negotiation process contemplated in section 41;”*

*(Section 8 cont. overleaf)*

### ***Proposed amendment of section 8 of Act 5 of 2009 (3)***

“(bbA) for the protection of consumers in the sphere of land transport as contemplated by the Consumer Protection Act, 2008 (Act No. 68 of 2008), and subject to section 5(3) and (4) of that Act, including but not limited to the following:

- (i) Requiring the provision of information to passengers by operators, organs of state and other persons;
- (ii) providing tickets to passengers using public transport services and information to be shown on those tickets;
- (iii) preventing the exploitation of passengers who have purchased multi-journey tickets and are not able to use them to their full value; and
- (iv) providing for refunds to passengers where services are not provided at all or in time, or otherwise inadequately;

(bbB) to provide criteria for deciding the issues contemplated in section 11(1)(b)(vii)(ee); and”

#### **SANTACO comment**

Although SANTACO is trying to capacitate its members in order to [meet a range of legal requirements, including those of the Consumer Protection Act \(CPA\)](#), it is unrealistic to believe that its targets will be met in the near future especially in light of the funding and logistical challenges it currently faces.

[We suggest that a moratorium is placed on the application of the section in respect of taxi operations pending proper consultation with SANTACO on its plans for the implementation of advanced fare collection systems, together with consideration of funding from government to enable the industry to comply with the requirements of the CPA](#)



***Proposed amendment of section 10 of Act 5 of 2009***

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

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

**SANTACO comment**

Our comments above apply.

***Proposed insertion of new section 10A in Act 5 of 2009***

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

**Accessible and non-motorised transport**

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

**SANTACO comment**

Our view is that this provision is redundant, does not require any action and cannot be legally enforced. In fact, the scope for its application is limitless in as far as the provisions of the Act in general attempt to prescribe such steps that government must take in order to promote universal access.

### ***Proposed amendment of section 11 of Act 5 of 2009 (1)***

- (a) *by the insertion of the following sub-paragraph after sub-paragraph (vii) of paragraph (b) of subsection (1):*

*“(viiA) concluding negotiated contracts contemplated in section 41, subsidised service contracts contemplated in section 42 and commercial service contracts contemplated in section 43 with operators for services provided in the province in the areas of municipalities that are not listed in Schedule 1, after consultation with the Minister provided that those contracts must be designed in accordance with the integrated transport plans of those municipalities if such plans have been prepared and submitted to the MEC in terms of section 36(1), or designed by the province in collaboration with the municipality where such a plan has not been prepared and submitted, as part of a capacity building programme for the municipality to conclude or manage the contracts or parts or aspects thereof, where those municipalities lack the necessary capacity.*”

#### **SANTACO comment**

[We do not support this amendment.](#)

This addition to the powers of provinces serves to ensure continued existence of the old order bus service contracts – see our later comment under the proposed insertion of new sub-section (8).

The amendment in its entirety misses the opportunity to conclusively settle the outstanding issue regarding the involvement of the taxi industry in the subsidy regime.

We are concerned that, given the very slow pace of preparation and subsequent updating of Integrated Transport Plans (ITPs), linking contracting responsibilities to the preparation of ITPs by municipalities is a deliberate tactic aimed at delaying the involvement of the taxi industry in the entire contractual regime.

[Section 11 \(1\) \(a\) \(xi\) of the existing Act allocates to the national sphere of government the responsibility of acting as contracting authority for \*inter alia\* negotiated contracts. We believe that, if the Minister and his Department are serious about transformation in public transport, they should actively assume this responsibility, and themselves take urgent action to begin the process of implementing negotiated contracts with existing operators.](#)

## ***Proposed amendment of section 11 of Act 5 of 2009 (2)***

*Existing Section 11 (1) (c)*

*The municipal sphere of government is responsible for :*

- (iv) in its capacity as planning authority, preparing transport plans for its area, ensuring the implementation thereof and monitoring its performance in achieving its goals and objectives.*

### **SANTACO comment**

To the best of our knowledge, not a single municipality has a current Integrated Transport Plan as contemplated in Sections 32, 33, 34, 35 and 36. On what basis, therefore, are municipalities to determine “excess capacity” (the basis upon which taxi operators are required to surrender their Operating Licenses). How is a municipality to respond to a request by a regulatory entity for approval or rejection of an application for an Operating Licence?

We believe that it serves no purpose to perpetuate laws which experience shows have not been implemented, and which cannot be implemented unless and until there is a change of substance in the administrative situation which is intended to underpin those laws. The Amendment Bill should deal with realities, rather than some desired state of affairs. Our separate submission will make proposals for such a realistic approach.

### ***Proposed amendment of section 11 of Act 5 of 2009 (3)***

(f) *by the addition of the following subsection:*

“(8) Where a contract contemplated in section 11(1)(a)(xi) was concluded in terms of the Transition Act, in this subsection called “an old order contract”, and is still in force, and the contracting function in relation to that contract has not been assigned to the relevant municipality, the relevant province must engage with the operator concerned and the municipality or municipalities in whose areas the services are provided to strive to ensure that–

(a) in the case of a municipality listed in Schedule 1, that municipality concludes appropriate new contracts to replace all old order contracts ; and

(b) in the case of a municipality not listed in Schedule 1, the municipality concludes such new contracts or the province does so as a transitional measure as contemplated in subsection (1)(b)(viiA).”

### **SANTACO comment**

Our concern with regard to these contracts (the interim ones especially) is that they have entrenched the current bus operators by making provision for the Right of First Refusal.

We know that government is aware of the resistance the bus operators have put up in view of the prevailing threats against this right. Our position with regard to this right is that it is unconstitutional and contravenes the provisions of the PFMA. It excludes other operators from participating in the industry and effectively ring-fences access to bus service subsidies to a few operators.

We are of the view that these contracts cannot stand constitutional and PFMA scrutiny. SANTACO is considering court action to [challenge](#) the Right of First Refusal.

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

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

***“Intermodal planning committees***

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

**SANTACO comment**

As the wording above makes clear, the NLTA currently provides for an intermodal planning committee to include representatives of rail and ‘other public transport modes’. It is not clear why the representatives of other public transport modes will no longer be part of the intermodal planning committee.

In the absence of any explanation, SANTACO expresses its objection to the blanket removal of the representatives of other public transport modes.

***Proposed amendment of section 20 of Act 5 of 2009***

*Section 20 of the principal Act is hereby amended by the substitution of the following for the introductory portion of subsection (2):*

*“(2) The National Public Transport Regulator consists of designated officials of the Department who are accountable to the head of the Department and who in performing their functions exercise an independent discretion and are appointed either on a full-time or part-time basis, whose specialised knowledge, training or experience, taken collectively, at least covers-“*

**SANTACO comment**

The requirement to report to the head of the Department might be seen to conflict with the duty to exercise an independent discretion.

## ***Proposed amendment of section 21 of Act 5 of 2009***

*Section 21 of the principal Act is hereby amended:*

(a) *by the substitution of the following for sub-paragraph (i) of paragraph (b) of subsection (1):*

*“(i) interprovincial transport[, **excluding daily commuter transport to and from the area of a municipality to which the operating licensing function has been assigned under section 11(2), which must be dealt with by that municipality**].”*

### **SANTACO comment**

This subsection as amended gives the National Public Transport Regulator the power to receive and adjudicate on applications for Operating Licences for interprovincial transport.

We intend to process the necessary requests for information in terms of the Promotion of Access to information Act of 2000 with respect to the following:

- Number of applications received for interprovincial transport
- Number of decisions made with respect to applications received
- Number of decisions pending/outstanding with respect to applications received.

(c) *by the addition of the following subsection:*

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

### **SANTACO comment**

The contents of this amendment are potentially in violation of the spirit of co-operative governance. We do not necessarily object to the intention contained therein, but we believe that the provision is worded in such a way that it may be contrary to the [Constitution](#) and hence unenforceable.



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

*Section 23 of the principal Act is hereby amended by the substitution of the following for subsection (2):*

*“(2) The Provincial Regulatory Entity must consist of **[dedicated]** persons appointed as officials of the provincial department either on a full-time or part-time basis by virtue of their specialised knowledge, training or experience of public transport or related matters, but who, in performing their duties exercise an independent discretion, and is accountable to the head of the provincial **[government]** department.”*

### **SANTACO comment**

The requirement to report to the head of the provincial Department might be seen to conflict with the duty to exercise an independent discretion.

## ***Proposed amendment of section 24 of Act 5 of 2009***

*Section 24 of the principal Act is hereby amended by the substitution of the following for paragraph (b) of subsection (1):*

*“(b) receive and decide on applications relating to operating licences for intra-provincial transport **[where no municipality exists to which the operating licence function has been assigned]**, but excluding applications that must be made to the National Public Transport Regulator in terms of section 21 or to a Municipal Regulatory Entity in terms of section 18.”*

### **SANTACO comment**

This subsection as amended gives the Provincial Regulatory Entity the power to receive and adjudicate on applications for Operating Licences for intraprovincial transport.

We intend to process the necessary requests for information in terms of the Promotion of Access to information Act of 2000 with respect to the following:

- Number of applications received for intraprovinciatransport
- Number of decisions made with respect to applications received
- Number of decisions pending/outstanding with respect to applications received.

## ***Proposed Substitution of section 39 of Act 5 of 2009***

**17.** *The following is hereby substituted for section 39 of the principal Act:*

### ***"Rationalisation of public transport services***

*"(1) When a planning authority in rationalising public transport services in its area concludes, after consulting relevant regulatory entities and taking active steps to apply law enforcement measures to prevent the operation of illegal services on a particular route, and, where appropriate, taking measures under section 78 to cancel operating licences and permits that are not in use on that route, and based on its integrated transport plan, that there is a surplus of legally operated services by operators on that [a particular] route as a result of which an existing non-contracted public transport service is no longer required, the planning authority may [must], where possible–*

*(a) offer the operator an alternative service; or*

*(b) allow the operator to continue providing the service and impose a moratorium on the issuing of new operating licences on that route."*

### **SANTACO comment**

SANTACO has always been concerned about the implications of 'rationalisation'. We agree in principle that if a route is over-traded, consideration should be given to imposing a moratorium on new operating licences; this must be done through a process of consultation with the affected association.

It is not clear whether the two options will be offered to the operator for him to choose which he wishes to accept, or whether the planning authority can require that he accepts an alternative service. An alternative service must be reasonable – it is not reasonable, for example, for an operator in Motherwell to be asked to transfer to a route in Aliwal North.

The most important aspect is that the offer of an alternative service must be one which the operator may accept or reject. This is not clear in the proposed wording of the clause. Nor is it clear what is the sequence of the two options. Will the authority always try first to offer an alternative service, or may it move straight to the 'moratorium option.

We suggest that the wording be revised to read on the following lines :

***Proposed Substitution of section 39 of Act 5 of 2009 (cont.)***

(The planning authority may) :

*(a) offer the operator an alternative service, which the operator may accept or reject; and if the operator rejects the offer, or alternatively without **the offer** of an alternative service*

*(b) allow the operator to continue providing the service and impose a moratorium on the issuing of new operating licences on that route*

*and must, in these and any similar circumstances, offer monetary compensation to an operator whose income has been reduced by the decisions of the planning authority.*

***Proposed amendment of section 41 of Act 5 of 2009 (1)***

**21.** Section 41 of the principal Act is hereby amended by–

(a) the substitution of the following for the introductory portion of subsection (1):

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

**SANTACO comment**

The three paragraphs in the Act which follow the words ‘with a view to’ may be interpreted as being mutually exclusive – that is, they are could be read as being either/or options.

We are particularly concerned that the second of these motivations for a negotiated contract, that which refers to the intention to ‘promote the economic empowerment of small business or of persons previously disadvantaged by unfair discrimination’ might in one interpretation be seen as being optional. In the view of SANTACO this must always be a consideration in a negotiated contract. The wording of the paragraphs of this subsection should be reviewed and revised accordingly.

## ***Proposed amendment of section 41 of Act 5 of 2009 (2)***

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

“(1A) Where a negotiated contract is concluded in terms of subsection (1), the contracting authority will not be precluded from—

- (i) concluding other such contracts with different operators or in respect of different routes, even if such routes are in the same area;
- (ii) providing in such contract for the services to be provided under the contract to be increased or amended in a phased manner during the period of the contract, provided that the total duration of the contract does not extend beyond 12 years; or
- (iii) concluding contracts of a temporary nature before concluding a negotiated contract in terms of subsection (1), provided that it complies with laws and procedures applying to procurement of the services in relation to such interim contracts.”

### **SANTACO comment**

In general, SANTACO welcomes the change from the previously strict condition that a negotiated contract may be entered into once only.

We feel that the provision for interim contracts and phased implementation will provide the opportunity for taxi operators to ‘test the waters’ without committing themselves irrevocably to something of which they have no previous experience (unlike the bus companies).

There are, however, **three** serious concerns about the whole process of contracting. These relate to :

- (a) the safeguarding of the existing financial position of the operator and
- (b) the maximum duration of the negotiated contract(s)
- (c) the situation which will apply at the end of the 12 years.

#### Financial guarantees

There is no mention anywhere in the Act, nor in the Amendment Bill, of the guarantees which government has given in respect of the finances of existing operators.

The taxi industry is relying on the assurance given by Transport Minister Jeff Radebe at the taxi summit held on 20 April 2009 :

“We guarantee that there will be no loss of legitimate jobs and profits in the move to the BRT company.”

### ***Proposed amendment of section 41 of Act 5 of 2009 (2) (cont.)***

That is unambiguous. There may be a need to define what constitutes 'legitimate profits'. This can be dealt with in the form of regulations which will be developed by the Department of Transport in consultation with SANTACO. But it is essential that the Act itself should include a reference to the principle.

As we have mentioned earlier, the principle must be extended to cover not merely BRT (or IRPTNs/IPTNs) but any other circumstances in which the income of an existing taxi operator is reduced by the decisions of a planning authority.

#### Duration of negotiated contract(s)

The Act says that a negotiated contract shall be for 'not longer than 12 years', and this period is further mentioned in the proposed amendment shown above. The taxi industry has understood this to mean that the negotiated contracts will be awarded for a period of 12 years.

The model contract documents published recently by the Department show that contracts will now be for an initial 7 years, with an option of an extension for a further 5 years. This is quite different from the previously understood position. It is important that the Act should clearly define the duration of the initial contract(s) as being 12 years.

#### Continuation of contracts

The taxi industry developed, and owners have invested their money, on the basis that a permit was issued for an indefinite period. It has been the practice for the holder of a permit, when he or she retires, to pass that permit on to a family member.

We are now being asked to accept that at the end of 12 years this position will be put at risk. Contracts will be opened to competitive tender. This constitutes a major change to the business prospects of the taxi operator.

This position must be reviewed and clarified in discussions with SANTACO before any further 12-year contracts are negotiated and concluded.

### ***Proposed amendment of section 41 of Act 5 of 2009 (3)***

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

(2) *The negotiations envisaged by subsection[s] (1) **[and (2)]** must where appropriate include operators in the area subject to interim contracts, subsidised service contracts, commercial service contracts, existing negotiated contracts and operators of unscheduled services and non-contracted services **[in the prescribed manner]**, but the contracting authority shall be relieved of this duty if it has made an offer to such an individual operator or class of operators in the prescribed manner and they have accepted or rejected the offer in writing within 21 days or have failed to respond to the offer within that time.*

### **SANTACO comment**

This appears to mean that a contracting authority may decide either :

- to enter into negotiations with existing operators, or alternatively
- not to enter into negotiations with existing operators but rather simply make them an offer.

SANTACO cannot believe that the latter is intended. We assume that this clause is badly worded. Our position is clear – there must be genuine negotiations with existing operators, and these must be allowed to take place without the operators being under pressure to agree to the proposals of the contracting authority.

We are concerned that the requirement currently in the Act which refers to negotiations being undertaken “in the prescribed manner” is, according to the amendment, being removed. We think it should be retained in the Act, and that details of the form and substance of, and the process for, contract negotiations be included in regulations to be agreed in discussions with SANTACO before any further 12-year contracts are negotiated and concluded.



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

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

**"Conversion of permits to operating licences and of indefinite period operating licences to definite period licences, and rationalisation of operating licences [existing services: general]"**

- "47. (1)** *All permits, and operating licences issued before the date of commencement of this Act, issued for a definite period remain valid but lapse when that period expires, provided that if such permit or operating licence is still valid on a date calculated as five **[seven]** years from the date of commencement of the National Land Transport Amendment Act, 2013 **[this Act]**, it will lapse on that date unless converted in the case of a permit, or renewed in the case of an operating licence, before that date.*
- (2)** *All permits and operating licences issued for an indefinite period remain valid, subject to sections 48 and 49, but lapse five **[seven]** years after the date of commencement of the National Land Transport Amendment Act, 2013 **[this Act]**, but the holder may apply within that period in the case of a permit for its conversion to an operating licence that complies with the provisions of this Act, or, in the case of an operating licence, for its renewal, to the entity that is responsible for receiving applications for operating licences for the relevant services.*

### **SANTACO comment**

- 1) As can be seen from our comments above in respect of the proposed amendments to Sec 41 of the NLTA, SANTACO has always been opposed to the introduction of operating licences valid only for a limited period.

Following representations from SANTACO, it was agreed that these clauses could be included in the Act but that protective measures would be included in regulations to be published when the Act became operative.

The regulations published on 17 December 2009 (Notice 1208) did indeed state clearly that a regulatory entity may not refuse to renew an application for renewal of an operating licence. However, a number of exceptions were included. The regulatory entity is allowed to refuse an application for renewal if :

***Proposed Substitution of section 47 of Act 5 of 2009 (cont.)***

- i) the applicant is no longer a fit and proper person
- ii) the applicant has failed to provide proof of registration, roadworthiness, etc
- iii) the services have not been provided for 180 days
- iv) a planning authority has directed the entity to refuse the application for renewal
- v) there is another reason in the NLTA not to renew.

The principle is clear. An operating licence will be automatically renewed, unless there are very good reasons for not doing so. SANTACO has no problems with the first three of the exceptions as noted above, as long as they are implemented fairly and there is a right of appeal.

We are, however, very concerned with the latter two exceptions.

The final one, "another reason", is far too vague and open to misuse as a result.

But the fourth exception, that "a planning authority has directed the entity to refuse the application" goes to the heart of the SANTACO concerns. As we have made clear elsewhere in this submission, we simply do not accept that because a planning authority has decided that the taxi does not fit into its plans, this is a reason for trying to phase the taxi out of existence.

SANTACO agrees that Clause 47 of the NLTA should be substituted. It does not, however, agree with the proposed amendment. We will insist that the principle of the regulations of 17 December 2009 be incorporated into the Act, and that the exceptions contained in those regulations should be reviewed in discussions between the Department of Transport and SANTACO [to ensure that the principle of automatic renewal is maintained.](#)

- 2) There is no mention in this section of the Act, nor in the proposed amendment, of compensation for the withdrawal of permits or Operating Licences.

We have commented earlier that permits were historically issued for an indefinite period, and that as a result, taxi operators have grown accustomed to the fact that they were permanent, and that they would have an ongoing source of income generation through their small or micro business.

If that situation is to be changed, it cannot be done arbitrarily by the planning authority or the regulatory entity. There must be a recognition by government of :

***Proposed Substitution of section 47 of Act 5 of 2009 (cont.)***

- the principle of the 'Going Concern' - a basic accounting concept which assumes that a firm will continue to operate in the foreseeable future; and
- the requirements of section 25 of the Constitution in respect of deprivation of property.

## ***Proposed amendment of section 48 of Act 5 of 2009***

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

*“(2) In the case of permits for **[uncontracted scheduled]** non-contracted services specified in integrated transport plans, the Minister **[must]** may make regulations **[within two years of the date of commencement of this Act]**, after consulting the National Public Transport Regulator, providing a process for the integration of those services with contracted services, and in the process converting them to commercial service contracts, and such integration and conversion must be done by the National Public Transport Regulator and such regulations may differ in respect of different types of services, different areas or peak periods as opposed to off-peak periods.”*

### **SANTACO comment**

We are very concerned that this sub-section will pave the way for the exclusion of taxi operations from being the beneficiaries of subsidy. Existing bus subsidies are made available by means of a contract in one form or another. These are defined in the present Act as ‘subsidised service contracts’.

If the unscheduled services of taxi operators are merely to be incorporated into commercial service contracts, then there will be no need for a planning authority to offer a subsidised service contract.

This is quite unacceptable to SANTACO. We believe that sub-section 2 of section 48 should be removed in its entirety.

### ***Proposed amendment of section 49 of Act 5 of 2009***

**23.** Section 49 of the principal Act is hereby amended by :

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

"(b) acquire a new **[compliant]** vehicle that complies with the Department's requirements for recapitalisation and with the National Road Traffic Act, that has the same passenger capacity **as** the vehicle specified in that permit or operating licence, or not more than a 20% variance, in which case the operator shall be entitled to an operating licence for the new vehicle authorising the same services on submission of a valid tax clearance certificate, and such operating licence must specify in detail the route or routes to be operated, which must be those operated by the operator for the period of 180 days prior to the date of application;"

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

"(c) acquire such a new **[compliant]** vehicle with more capacity than a vehicle contemplated in paragraph (b) provided that [on approval by] the planning authority approves in writing, in which case paragraph (b) applies, and the holder must submit the existing permit or operating licence to the Department for cancellation, provided further that the Minister may prescribe that more than one permit or operating licence held by that holder must be surrendered for cancellation to make up for the increase in capacity of the new vehicle."

### **SANTACO comment**

The second of these proposed paragraphs is very cumbersome. When a taxi operator is in the process of acquiring a replacement vehicle he needs above all to secure finance. Once that is in place he wants to complete the deal without delay. It is quite unfair to expect him to wait until a distant planning authority decides to approve his application in writing, together with **such** conditions as the authority wishes to impose.

SANTACO is of the view that all applications of this kind should be able to be completed 'over the counter'.

## **ANNEXURE**

### **SANTACO proposed amendment to Section 6 : Motivation**

The powers referred to in the draft Amendment Bill are largely those which were given to the provincial Transport Registrars in the National Land Transport Transition Act 2000 (NLTTA). That Act was repealed by the NLTA. No provision was made in the NLTA for a Transport Registrar at any level of government, nor for the reallocation of those powers and their related duties.

The draft NLTA Amendment Bill requires the relevant regulatory entity, as part of its duties in respect of Information Systems (Sec 6 of the NLTA) to assume the duties of the former Transport Registrar in respect of the registration and recording of taxi associations and their members, and the routes they operate

The NLTA is, however, silent on the other duties and powers of the former Transport Registrar which were included in the NLTTA. These other duties as included in the NLTTA included promoting professionalism amongst operators, and the powers provided for disciplinary actions to be taken and sanctions to be imposed, where an association or an operator is in breach of either stipulated conditions (eg, a Code of Conduct) or generally expected standards of professionalism. We attach a summary of the provisions of the NLTTA in respect of these matters.

It is not at all clear why the NLTA did not provide for the continuation of the other duties and powers of the Transport Registrar. It could be that many of the duties other than those directly related to actual registration were, in the light of experience, considered inappropriate for the Registrar, but this does not mean that they are not necessary. However, the NLTA did not indicate by whom those duties should be carried out nor to whom the powers should be awarded.

We comment that in the view of the SANTACO structures, the former Transport Registrars did very little to carry out effectively most of their duties. Even their principal duty – that of registration – was poorly administered. There are no obvious instances of actions to promote professionalism. SANTACO would argue that this dereliction of duty is one of the reasons for the sometimes unsatisfactory standards of operation of taxi services. Nor is there any real evidence of sustained efforts by the nine Registrars to monitor compliance by associations with their constitutions, nor the compliance by operators with the Code of Conduct by which they are bound.

Whatever might be the differing views on these matters, it is the case that - by virtue of the fact that the NLTA repealed the NLTTA and did not make renewed provision for the posit of the Transport Registrar - that functionary is no longer in existence to ensure that these requirements are met. Yet there is still a need for these requirements, and even that they should be added to.

The draft Amendment Bill suggests that the relevant regulatory entity will record, for information purposes, details of the associations in their area together with the

operators and routes. SANTACO argues that it is not the duty of the regulatory entity either to register operators or to ensure standards of professionalism. The Transport Registrar is no longer in existence. Who then, might be charged with the responsibility of ensuring that the former powers and duties of the Registrar are continued?

SANTACO believes that it should be given those duties and granted appropriate powers to act as the professional standards body for the taxi industry. Its duties would include registration, but would extend well beyond that basic task.

This should be seen as quite separate from the role of SANTACO as the representative body for the associations affiliated to it. It is true that government has failed to meet its commitment to recognise SANTACO as the sole representative body for the taxi industry, and we will continue to argue that case elsewhere.

However, the requirements which were contained in the NLTTA and which we recommend should be re-introduced and even extended via the current NLTA Amendment Bill, will require a structure to implement and enforce them. The Transport Registrar is no longer available to do this, and it is clearly not an appropriate area for the regulatory entities.

SANTACO has a strong national, provincial and regional structure. It is the obvious body to act as the professional standards body for the whole of the taxi industry. We recognise that it may be necessary to draw a distinction between our representative functions and the role of professional standards body. In the first of these functions we represent the interests of our members. In the second we must act impartially irrespective of the affiliation of the association or operator concerned.

We will undertake to advise the relevant regulatory entity of the status of registration of both associations or operators, and of any change in that status. In the same way as the regulatory entity is required to ask the opinion of the relevant planning authority on an application affecting it, so we would expect it to consult with the SANTACO professional standards body on the status of the applicant in respect of any disciplinary matters or similar issues.

We recognise that the details must be discussed in some depth with the Department of Transport, and that those details must be published in the form of regulations. However, it is essential that the actual recognition of SANTACO in the role of professional standards body should be included in the Amendment Bill now under discussion.

The section which follows describes the powers and duties of the Transport Registrar as contained in the NLTTA 2000.

## **Relevant Provisions of the NLTTA 2000**

### **Registrar's functions**

#### **National Section 54**

The Registrar's function is to receive, consider and decide applications for registration (at least for associations and operators in the minibus-taxi industry). Registrars may also suspend or cancel registration. They must keep records of information required for the National Transport Register.

#### **Provincial Section 99,101**

A Registrar must also:

- advise the MEC about registration matters;
- keep the MEC informed about matters of public importance that come to light in the course of his or her work;
- monitor the compliance of registered associations and operators with their constitutions and the Code of Conduct respectively, and assist in promoting their professionalism;
- encourage and assist associations to register;
- ensure that associations' constitutions and any amendments to them are consistent with the requirements of the NLTTA;
- keep a provincial transport register recording the details of all registered associations and operators and their services and vehicles (This information must be accessible to the public unless it is commercially sensitive or of a personal nature, and access is subject to the Promotion of Access to Information Act, No. 2 of 2000); and
- submit an annual report to the MEC, for tabling in the provincial legislature.

### **Standard Minimum Constitution and Codes of Conduct**

#### **National Section 60, 61**

The minister may prescribe minimum requirements with which the constitution of an association must comply for the purposes of full registration.

Each MEC must prescribe a Code of Conduct for operators of minibus taxi-type services in the province, and the Minister may prescribe the matters which must as a minimum be included.



### **Provincial, Section 116, 117**

Each MEC must prescribe a model constitution for associations to be known as the standard minimum constitution, which sets a yardstick for the preparation of a constitution by an association for the purposes of meeting registration requirements. Section 117 lists 36 content requirements that a registered association's constitution must satisfy as a minimum; for example, the constitution must provide for annual general meetings, special general meetings, the keeping of proper financial statements, annual auditing, disciplinary and grievance procedures, membership rules and so on.

Each MEC must also prescribe a Code of Conduct , which is the set of ethical norms in accordance with which any minibuss tax-type service is to be operated.

### **Non-compliance with registered constitution and breach of code of conduct and cancellation or temporary suspension of registration or provisional registration**

#### **Provincial, Section 118 and 119**

If the Registrar decides, after due investigations, that a registered association has failed to comply with its constitution, the Registrar may require the association to remedy the situation, or to pay a fine, or he may suspend or cancel registration – depending on the gravity of the matter.

When registration is cancelled, the Registrar may disqualify the association from re-registration for up to a year. When an association's registration is cancelled or suspended, that of its members is also cancelled or suspended for the same period. Registrars must inform the MEC, the Registrars in the other provinces, and the province's planning authorities of disciplinary action taken.

If a registered association expels or suspends a member for a breach of the code of conduct or for not complying with its constitution, the Registrar must cancel the member's registration or suspend it for the same period, respectively.

The Registrar may also cancel the registration of a member who does not hold an appropriate operating licence or permit for each vehicle or who has been convicted of one of the offences listed in the Act.

Registration may also be cancelled for a range of administrative reasons, for example when an association ceases to exist.

## **Effects of deregistration**

### **Provincial, Section 120**

The permits and operating licences of the members of an association that is deregistered will lapse 90 days later. (This affects only those held for the routes of that association.) The permits or operating licences will not lapse, however, if the association re-registers or the member joins another association operating on the routes in question

## **Duties of registered associations**

### **Provincial Section 115**

Once registered, associations have various obligations, including holding their members to the code of conduct and disciplining those who breach it; and providing the MEC and Registrar with specified information about the association on an ongoing basis.