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NATIONAL LAND TRANSPORT AMENDMENT BILL [B 7 – 2016]

SUBMISSIONS RECEIVED

17 NOVEMBER 2017

Submissions received		
1.	City of Cape Town	NLT [B 7 – 2016]: 2/1
2.	CODETA Taxi Association	NLT [B 7 – 2016]: 2/2
3.	UBER	NLT [B 7 – 2016]: 2/3
Late submission : received on 20 November 2017		
4.	Philip van Ryneveld	NLT [B 7 – 2016]: 2/4

NLT [B7-2016] 2/1

TDA
CAPE TOWN
The City of Cape Town's Transport and Urban Development Authority

Memorandum

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To : Valerie Carelse

From : Jody van Wyk (TDA Manager: Contracts, Compliance and Risk)

Subject : Comments on National Land Transport Amendment Bill (B7-2016)

Date : 20 November 2017

The National Land Transport Amendment Bill [B 7 – 2016] ("Bill") was referred to Parliament's Portfolio Committee on Transport ("Committee") on 15 April 2016. Comment was requested on the new amendments to the Bill.

This memorandum responds with comments to the new amendments, which pertain mainly to electronic-hailing, the establishment of provincial authorities, and the allocation of responsibilities between the different spheres of government, but in some cases these comments may also pertain to the version of the Bill as it was.

These comments are submitted on behalf of the City of Cape Town's ("City") Transport and Urban Development Authority ("TDA").

1 Allocation of responsibilities between spheres of government

The most important issue identified in this comment pertains to the proposed amendments to the allocation of responsibilities between the spheres of government, particularly in terms of the contracting authority. Through sections 11(1)(b)(viiA), 11(1)(c)(xxvi) and 11(10), the Bill proposes that the province be the default sphere of government for concluding subsidised service contracts, commercial service contracts, negotiated contracts and stopgap contracts. For a municipality to take on these functions, it would need to receive written confirmation from the Minister that it complies with criteria that may be set by the Minister. In addition, the national sphere may enter into these contracts in terms of proposed section 11(1)(a)(xi).

This is a significant shift from the current situation, where under section 11(1)(c)(xxvi) of the NLTA, the municipal sphere is responsible for concluding the above-named contracts with operators for services within their areas. This blanket shift away from municipalities as the contracting authority is contrary to long standing policy and is unconstitutional.

2 Policy imperatives for effective service delivery

Starting with the 1996 White Paper, and then supported by the Public Transport Strategy and Action Plan, and the 2009 National Land Transport Act ("NLTA"), since the adoption of the South African Constitution transport policy has supported decentralisation of land transport functions in order to ensure most effective performance of functions, and delivery of integrated and efficient services.

The critical objective in having a public transport system is to improve access to the opportunities in the area. Access is determined by a combination of good land use planning (ie origins and destinations are close to one another) and mobility. Mobility needs are complex and varied and require a number of modes working together to differentially service demand. Optimal outcomes are achieved where the government authority is not committed to any particular mode but is able to facilitate the best mix of different modes. The internationally recognised ideal is therefore to co-locate responsibility for land use planning and transport at a city level, where the boundaries of the city are widely drawn so as to encompass the bulk of daily movement patterns within the city as a functional unit.

In line with this, the 1996 White Paper confirmed 'the principle of subsidiarity and devolution of public passenger transport functions, powers and duties to the lowest appropriate level of government', and highlighted two key thrusts to achieve the goals of improved customer oriented transport services, namely the promotion of integration and inter-modalism. The 1996 White Paper placed particular emphasis on the metropolitan conurbations, arguing that metropolitan structures were required to 'take full responsibility for execution and implementation in metropolitan areas'.

Because of the inertia in shifting functions between spheres of government this objective has proven difficult to achieve. Unfortunately, while the proposed amendments to the NLTA seek to address instances where lack of capacity at local level or the need for integration of public transport services between municipalities makes devolution of functions to local government impractical, it does so in ways that will seriously undermine the process of devolution even where it is quite clearly the most appropriate course of action. It does this by essentially making provincial governments the default sphere of government for land use transport, and giving the national Minister unconstrained powers in deciding how devolution will be effected. The Minister is given to power to set criteria for

devolution but, until the Minister set these criteria there is effectively a recentralisation of the function.

This shift away from decentralisation is not in keeping with the policy that has been developed, and will undermine the provision of integrated and efficient services. Such a shift warrants significant policy debate and discussion before any legislative changes are made.

Section 156(1) and Schedule 4B of the Constitution make municipal public transport a municipal function. We believe it is not in alignment with the Constitution to shift to an arrangement where the Minister sets criteria that municipalities must comply with for devolution to take place, and where the Minister must give written confirmation of meeting these criteria.

In addition, specifically in the case of the City of Cape Town, the City must remain responsible for concluding public transport contracts for the following reasons:

- ***Proven capacity for planning, implementation and management*** – The City has developed financially sustainable plans for integrated public transport across the City, and is a leader in the country in development and implementation of integrated public transport networks. In addition, the City has built up significant capacity to take on this responsibility, and has demonstrated this capacity through entering into negotiated contracts in terms of section 41 of the NLTA and management of these contracts.
- ***Undermining of progress made and current planning, implementation and services*** – Although in terms of the proposed section 11(10)(d), the City may receive written confirmation from the Minister that it meets the relevant criteria, the City is concerned that there will be an unavoidable delay in the drafting and issuing of these criteria and in the Minister issuing this confirmation, which in turn will seriously undermine the City's current planning and implementation initiatives underway. It could even raise questions as to the City's powers to manage contracts already entered into in terms of section 41 of the NLTA.

It is acknowledged that some municipalities may not have the capacity to conclude public transport contracts, and in such cases it may be preferable to allow the provincial sphere to play a more significant role. In addition, there are cases where several large

municipalities are located in close proximity, and a significant amount of daily public transport movement happens between the municipalities. Here some form of combined authority including both provincial and local governments able to manage transport across the region may be preferable to each municipality managing its own network.

In light of the above, it is proposed that the following approach may be appropriate:

- In the case of metropolitan municipalities, the metro should be responsible for concluding subsidised service contracts, commercial service contracts, negotiated contracts and stopgap contracts.
- The exception to this would be where one or more metropolitan municipalities agree that it will be preferable to perform the function through a joint authority with the province, in which case they may enter into agreement with the relevant municipalities and province.
- In non-metropolitan municipalities, it may be appropriate for the provincial sphere to have initial responsibility for concluding subsidised service contracts, commercial service contracts, negotiated contracts and stopgap contracts, until such time as the municipalities are capacitated to take on the functions or, better still, that the functions can be moved to provinces where municipalities does not have the required capacity. However, this must be addressed in the legislation in a way that is consistent with the Constitution.
- The national sphere's responsibility for entering into the above-named contracts should exclude services within municipal areas where the municipality has been identified as having responsibility for concluding the public transport service contracts.

3 Further comment on specific sections of the Bill

In line with the broad approach articulated above, comments on specific sections of the Bill are provided below. These comments cover the above discussion regarding allocation of responsibilities, and also highlight questions or comments on other proposed amendments in the Bill.

Cl	Proposed amendment in the Bill	Comment from the City
Amendment of section 1 of Act 5 of 2009 (Definitions)		
1(b)	…'contracting authority' means - … (a) a province, subject to sections	The province should not have default responsibility for concluding negotiated contracts, subsidised service contracts,

Cl	Proposed amendment in the Bill	Comment from the City
	11(1)(b)(viiA), 11(1)(c)(xxvi), 11(6), 11(8), 11(9) and 11(10); and	commercial service contracts, and stopgap contracts. This would not be in alignment with section 156(1) and Schedule 4B of the Constitution, which places the responsibility for municipal public transport with the municipal sphere, nor with public transport policy. The responsibility for entering into the named contracts should default to the municipal sphere for at least metropolitan municipalities, unless such municipalities agree to combine their responsibilities with other municipalities in some form of inter-municipal transport authority. In the case of the City of Cape Town the City has demonstrated capacity for planning, implementation and management of these types of contracts. The City has financially sustainable plans for its IPTN, and the City has successfully implemented and is managing negotiated contracts entered into in terms of sections 11(1)(c) and 41 of the NLTA. See further comments on the amendments to 11(1)(b)(viiA), 11(1)(c)(xxvi), 11(8), 11(9) and 11(10) below.
	(b) a municipality, subject to section 11(1)(b)(viiA), 11(1)(c)(xxvi), 11(2), 11(8), (9) and 11(10)	The default position should make municipalities responsible for concluding negotiated contracts, subsidised service

Cl	Proposed amendment in the Bill	Comment from the City
		contracts, commercial service contracts, and stopgap contracts within their areas rather than require them to be subjected to a qualification process See detailed comments on the amendments to 11(1)(b)(viiA), 11(1)(c)(xxvi), 11(2), 11(8), 11(9) and 11(10) below.
Amendment of section 8 of Act 5 of 2009 (Regulations by Minister)		
3(e)	(v) requirements and timeframes for vehicles and facilities to accommodate the needs of targeted categories of passengers including the provision of minimum standards required in any aspect of the public transport network...	It is not reasonable for the Minister to impose timeframes for vehicles and facilities to accommodate the needs of targeted categories of passengers, as the ability to implement changes will be largely determined by funding availability. The Minister's power in this regard should be limited to issuing guidelines, that can be implemented subject to available funds.
Amendment of section 11 of Act 5 of 2009		
7(a)	National function: 11(1)(a)(xi) concluding subsidised service contracts, negotiated contracts and stopgap contracts contemplated in section 41A, with operators	[Inserted clause] Such powers must be limited to national level contracts. If they are used by national government at a municipal level it broadens the responsibility contained in the NLTA and encroaches on the Constitutionally defined municipal sphere. Unless inter-municipal arrangements such as transport authorities have been established, metropolitan governments are the most appropriate sphere to have responsibility for entering into these types

Cl	Proposed amendment in the Bill	Comment from the City
		of contracts, and should be the only sphere responsible for entering into these contracts in its area to ensure integrated and efficient services. The national sphere may be responsible for entering into contracts outside of the city-area, particularly for long distance routes that cross provincial lines.
7(b)	Provincial functions: 11(1)(b)(viiA) concluding negotiated contracts, subsidised service contracts, commercial service contracts and stopgap contracts contemplated in section 41A, with operators for services provided in the province where the relevant municipality or municipalities do not meet the requirements or criteria prescribed by the Minister under subsection 10(d), after following the prescribed procedures, which may include issuing directives in terms of subsection 10(b);	As described above, for alignment with the Constitution, policy and effective performance of the function, the City is best-placed to enter into these types of contracts in the Cape Town metro area, and therefore should be the only sphere responsible for entering into these contracts in its area. The provincial sphere should not be responsible for entering into the listed contracts within the Cape Town metro area.
7(i)	11(2) The Minister may assign the function contemplated in subsection (1)(a)(viii) to a municipality, subject to section 156(4) of the Constitution and sections 9 and 10 of the Systems Act, to achieve the objectives of the Constitution and this Act.	This has been narrowed to allow assignment of the OL function only. The clause previously allowed assignment of any function in 11(1)(a). This is a major concern for the City. This needs to be reviewed in the light of an overall approach as expressed in this submission whereby at least metropolitan governments have default powers in this regard.

Cl	Proposed amendment in the Bill	Comment from the City
7(j)	Deletion of 11(3): ~~The MEC may assign any function contemplated in subsection (1)(b) to a municipality...~~ Deletion of 11(5): ~~Where a municipality is performing a function contemplated in subsection (1)(a) on the date of commencement of this Act, such function is deemed to have been assigned to that municipality under subsection (2).~~	The deletion of 11(3) is not supported. The deletion of 11(5) may affect what happens with negotiated contracts already entered into by municipalities under the current wording of NLTA.
7(k)	11(4) Any municipality may request the Minister to assign the function contemplated in subsection (1)(a)(viiii)...	This has been narrowed to only being able to request the OL function. It needs to be reviewed in the light of the approach proposed here where metropolitan governments are the default authority for functions
7(h)	11(1)(c)(xxvi) concluding subsidised service contracts, commercial service contract, negotiated contracts, and stopgap contracts contemplated in section 41A with operators for services within their areas, subject to subsections (6) and (9) and after following the prescribed procedures; Provided that the municipality meets the requirements and criteria prescribed by the Minister under subsection (10)(d) and the Minister has certified in writing that it has complied	The responsibility for concluding these contracts should rest with metropolitan governments for the reasons stated above. Cities should not have to follow a process to re-qualify for this responsibility. As explained in the first part of this memorandum, the most appropriate arrangement at least in the case of metropolitan municipalities is for the contracting responsibility to rest with the municipal sphere. In the case of the City of Cape Town, if the City loses this responsibility, or if there is a delay in giving the City this responsibility, it will significantly delay plans already in progress, and will raise significant questions regarding contracts that have

Cl	Proposed amendment in the Bill	Comment from the City
		already been entered into. The amendment does not discuss implications for contracts that have already been concluded between municipalities and operators under the NLTA.
7(m)	11(8) Where a subsidised service contract, interim contract, current tendered contract or negotiated contract was concluded in terms of the Transition Act, in this subsection called 'an old order contract' and is still in force, and a municipality has not yet concluded one or more contracts to replace the old order contracts or is not in the process of negotiating with operators to do so, the relevant province must engage with the operator concerned and the municipality or municipalities in whose areas the services are provided to ensure that either the province or the municipality concludes appropriate new contracts to replace all old order contracts: Provided that the municipality complies with the criteria and requirements prescribed by the Minister under subsection 10(d).	To be reviewed in the light of an approach which makes metropolitan governments the default sphere responsible.
7(m)	11(10) For the purposes for subsections (1)(b)(viiA) and (1)(c)(xxvi) the Minister (a)may prescribe a process or procedures to be followed in negotiating or tendering for the contracts;	The process and procedures for entering into negotiated or tendered contracts are best left with the sphere of government entering into the contracts, as the contracting party would understand the context and requirements.

Cl	Proposed amendment in the Bill	Comment from the City
	(b) may issue directives in terms of section 5(6) to provinces or municipalities to initiate, expedite or facilitate contracting arrangements;	Issuing of such directives not aligned with the planning and contracting authority's plans is likely to undermine the authority's ability to implement financially sustainable, efficient and effective networks.
	(c)must consult with the MEC, where appropriate, who must ensure that there is connectivity between the services provided in different municipal areas...	The City should have the default responsibility for entering into contracts in its area for reasons previously identified.
	(d)may prescribe requirements and criteria with which municipalities must comply in order to conclude contracts contemplated in subsection (1)(c)(xxvi)...which may include...(i) that the Municipality concerned has prepared an acceptable integrated transport plan, (ii) that the municipality possesses the necessary capacity to enter into and manage such contracts, (iii) that the quantity and nature of subsidised public transport services, the demographics and size and distribution of population in the area, among other relevant factors, will justify using the contract...	An additional concern is that if the Minister does not develop criteria, then municipalities would not be able to conclude negotiated contracts, subsidised service contracts, commercial service contracts and stopgap contracts, even if a particular municipality is best-placed to do so. This would seriously undermine the progress and current efforts of a number of municipalities, and would not be in alignment with the Constitution. (d)(iii) implies that the Minister would potentially be able to comment on the justification for every single contract entered into. This would undermine the City's ability to plan, negotiate and implement infrastructure and services.

Cl	Proposed amendment in the Bill	Comment from the City
Amendment of section 12 of Act 5 of 2000 (Intergovernmental relations)		
8(a)	12(1) A province may pass legislation or enter into an agreement with one or more municipalities in the province to provide for the joint exercise or performance of their respective powers and functions...	This is acceptable and may provide a sound mechanism to deal with cases where municipalities do not have capacity, or where many of the services cross municipal boundaries. However, it must not be exercised in ways which compromise complete assignment to municipal sphere where this is most appropriate, and obviously subject to the provisions of the Constitution.
Amendment of section 36 of Act 5 of 2009 (Integrated transport plans)		
19(a)	36(4)(c) seeing that the planning authority and all other organs of state involved in or affected by provincial planning followed the correct procedures and otherwise complied with the prescribed requirements	There is a concern that this makes ITP approval by the MEC contingent upon actions of many entities outside of the planning authority. This proposal should be reconsidered.
Amendment of section 41 of Act 5 of 2009 (Negotiated contracts)		
21(e)	41(6) Section 42(6) applies with the necessary changes to negotiated contracts contemplated in this section.	While there is scope for the provision of guidelines this will undermine a contracting authority's ability to negotiate the most appropriate contract for its situation. It is proposed that the wording is amended to refer to the power to issue guidelines, without a requirement that the contract may not deviate.
Amendment of section 42 of Act 5 of 2009 (Subsidised service contracts)		
23(b)	42(6)The Minister may, in consultation with the MECs (a) Prescribe requirements for tender and contract documents to be used for subsidised service	The requirements for tender and contract documents may be guided by the Minister, but the final decision should be left to the authority. The clause should be amended accordingly, as per the

Cl	Proposed amendment in the Bill	Comment from the City
	contracts which may be made binding on contracting authorities unless the Minister agrees in writing that an authority may deviate from the requirements in a specific case on written application by that authority (b) Provide material tender and contract documents...as a minimum requirement for contracting authorities who may not leave out material provisions...unless this is agreed to in writing by the Minister in a specific case on written application...	comment re s 41(6) above.
Substitution of section 47 of Act 5 of 2009 (Conversion of permits to operating licences and of indefinite period operating licences to definite period licences, and rationalisation of operating licences)		
27	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 to be determined by the Minister...such permit or operating licence will lapse on the date so determined unless converted to an operating licences...or renewed... Proposed deletion of 47(2) All permits issued for an indefinite period remain valid, subject to sections 48 and 49, but	Section 47(2), which refers to indefinite licences is proposed to be removed. Since the 7 year mark provided in terms of NLTA has passed they may have all lapsed. If not, it is unclear what this means for indefinite licences? The City oppose this amendment and request that the current section be retained. Any administrative action to extend the validity of indefinite licences (i.e. to suspend the operation of s 47(1)) should further be brought to a planned and systematic end so indefinite licence

Cl	Proposed amendment in the Bill	Comment from the City
	lapse seven years after the date of commencement of this Act, but the holder may apply within that period...	either terminate by operation of law or are converted to definite licence for a set period after which it lapses.

Kind regards

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Manager: Contracts, Compliance and Risk

TDA Business Enablement

criteria and then decide whether municipalities have met such criteria holds significant dangers of further delaying this process.

Moreover, it is not clear that this is compliant with the Constitution. 'Municipal Public Transport' is listed under Part B of Schedule 4, which, in terms of section 156 of the Constitution, means that a municipality 'has executive authority in respect of, and has the right to administer' the function. Giving the minister unfettered power to set criteria for the exercise of this power, and the right to decide whether the municipality has met those criteria – and beyond this, giving the national sphere the right to enter into transport contracts itself in the municipal space needs to be tested against this constitutional provision.

6 Possible solutions

While significantly more could have been done to implement the NLTA, the problems inherent in the implementation of the current legislation must be recognized.

While maintaining the principles as set out repeatedly in national policy, and remaining consistent with international best practice, solutions need to be found for how

a) to address instances of low municipal capacity; and
b) address the particular requirements of Gauteng, with its inter-municipal movement patterns, while still acknowledging the primacy of local government in much of the decision making around land use and the management of the built environment.

This must be done in ways which:

a) create clarity of accountability
b) are consistent with the Constitution

For a start, there is no reason why metropolitan governments should not be the default sphere of government responsible for contracting – unless they expressly support a different approach, or where they have agreed to the creation of a single, multi-jurisdictional transport authority.

- Inertia, possibly made worse by vested interests

In response to this complexity there has been a tendency to leave the situation unchanged. This may suit current vested interests; although a well designed restructuring could be to the benefit of those currently involved. Furthermore, the contracts cannot be rolled over indefinitely since this is unconstitutional, and in some instances the current subsidies are unable to support ongoing operations.

- Lack of capacity at local level

Taking responsibility for public transport entails substantial challenges. In many instances local governments do not currently have the capacity to take over such responsibilities. While metropolitan governments, at least, should have, or be able to develop this capacity, in smaller cities and towns this is likely to be an ongoing challenge.

- The need for an approach that addresses the movement patterns across the metropolitan areas of Gauteng

In the case of the Gauteng local authorities there has been uncertainty as to what the best institutional arrangements are for the management of public transport. There is extensive movement across the metropolitan and local boundaries in Gauteng, which has led to calls for a transport authority to be formed combining the metropolitan and other municipalities into a Gauteng wide authority; in which case a devolution to cities may be inappropriate.

On the other hand, in the case of the City of Cape Town, which has demonstrated a capacity to run public transport, has formally requested the contracting function to be assigned, and has been formally supported in this by the provincial government, various relevant national government departments and the FFC, the national minister has not made the assignment, nor given clear reasons for not doing so.

5 Specific problems with current amendments

The key problem with the current amendments is that while the NLTA has sought, albeit unsuccessfully thus far, to implement decentralization in line with national policy, the new amendments now leave the decision to decentralize fully in the hands of the national minister.

This is evident in the fact that where section 11(1)(c)(xxvi) of the NLTA made the municipal sphere responsible for concluding subsidised service contracts, commercial service contracts, negotiated contracts and stopgap contracts with operators for services within their areas, the proposed amended sections 11(1)(b)(viiA), 11(1)(c)(xxvi) and 11(10) make the province the default sphere of government for concluding such contracts.

Furthermore, for a municipality to take on these functions, it would need to receive written confirmation from the Minister that it complies with criteria that may be set by the Minister. In addition, the national sphere may enter into these contracts in terms of proposed section 11(1)(a)(xi).

With past experience showing that even where legislation has mandated the decentralization of responsibility to city governments this has not occurred, giving the national minister the right to set

The National Land Transport Transition Act (no 22 of 2000) was passed after the completion of the first two policy documents, while the National Land Transport Act (no 5 of 2009) was passed after the adoption of the Public Transport Strategy and Action Plan in 2007.

The rail environment is governed by the Legal Succession to the South African Transport Services Act, (no 9 of 1989). This was amended through the Legal Succession to the South African Transport Services Amendment Act (no 38 of 2008).

3.2 Approach to decentralization of public transport in metropolitan areas

Initial direction was set with the publication of the 1996 White Paper on National Transport Policy. Subsequent policies have built on this with shifts in emphasis rather than any substantial new direction, although actual practice has not always been consistent with policy.

In this regard the White Paper stated:

> The principle of subsidiarity and devolution of public passenger transport functions, powers and duties to the lowest appropriate level of government is confirmed.

The White Paper recognized that the metropolitan conurbations, in particular, were of major importance, with 'a large proportion of South Africa's transport activities tak(ing) place within metropolitan areas'. Thus, metropolitan structures were required, and, besides planning, these should 'take full responsibility for execution and implementation in metropolitan areas'.

While the National Land Transport Transition Act (Act 22 of 2000), which followed the Transport White Paper sought to create integrated transport authorities across fragmented local metropoles, the Local Government White Paper (1998) subsequently led to the creation of single tier metropolitan governments from December 2000 and a much simpler path to achieve the same objective. This was provided for in the National Land Transport Act (Act 5 of 2009).

4 Lack of progress in the implementation of the NLTA

For various reasons there has been very little progress in implementing the NLTA. These include:

- Complexity in the restructuring of Public Transport Operating Grant (PTOG) funded, provincially contracted, bus services

The PTOG funded contracts represent an important part of current road based public transport. They originated mostly during the apartheid period, beginning in the 1950's as part of government's responses to bus boycotts in places such as Alexandra, Johannesburg.

There have been various attempts to restructure them, part of which requires new tendering processes. Challenges include the possibility of a) leaving some passengers worse off as a result of the restructuring; b) loss of employment amongst existing bus company staff; c) increased costs to the contracting authority d) objections from the minibus-taxi industry that they should also receive subsidies.

Furthermore, land use powerfully affects the passenger experience when boarding and alighting from public transport. Transport authorities which also have land use powers are generally better able to ensure that, over time, land use is managed in ways that allow for the optimisation of public transport.

- Sufficient, predictable financial resources that optimise local transport authority accountability

Good public transport systems in large cities are expensive to create and run. Often they are infrastructure intensive, involve complex operations, and need to be affordable to the inhabitants, many of whom are often relatively poor. While clearly needing to be sufficient, funding also needs to be predictable; not only do public transport investments have long lead times for planning and construction, but operational subsidies must be secure to avoid the abrupt curtailing of services.

Ideally, transport authorities should be able to generate resources from their own areas rather than receive their funds from national or other levels of government, although receiving some portion of revenues in the form of grant funding from national government as part of the mix can be leveraged to good effect.

- Administratively strong local transport body

The design, implementation and management of public transport is extremely challenging. The number of people being served is often very substantial, as are the financial resources required for public transport infrastructure and other investments. Local transport authorities – in whatever form they take – need a substantial and wide set of skills so as to be capable organisations. Strong local capability is more important to success than capability at national level, although both are needed.

- High degree of local autonomy within a supportive national framework

An administratively strong, well-resourced local transport authority should be able to operate optimally if it has significant autonomy. However, a well-designed and supportive national framework can enhance outcomes so long as it does not seek to dictate to local bodies decisions which are best taken locally.

3 South African policy on public transport

3.1 Key policies and legislation

South African policy on public transport has sought to implement systems largely consistent with international best practice.

There have been four official policy documents on public transport published since 1994 and two important sets of legislation. The four key policy documents have been

- White Paper on National Transport Policy (1996)
- Moving South Africa (1999)
- Public Transport Strategy and Action Plan (2007)
- Draft Rail White Paper (2017)

NLT [B7-2016] 2/4

Background information note as part of submission to Transport Portfolio Committee on Transport in respect of the National Land Transport Amendment Bill

Philip van Ryneveld

November 2017

1 Introduction

The National Land Transport Amendment Bill represents, amongst other things, the latest attempt to address the issue of decentralization in the provision of public transport. Unfortunately, in trying to address some of the challenges that have been encountered in the implementation of the National Land Transport Act (Act 5 of 2009), the latest version takes an approach which contradicts accepted national policy since the 1996 White Paper, is likely to lead to outcomes that are contrary to international best practice, and may even be unconstitutional.

While public transport is important throughout the country it is fundamental to the functioning of urban economies, and it is in the metropolitan areas and larger cities where most public transport activity is located. This submission, while recognizing the need for a national focus places emphasis on the governance of public transport in the bigger cities.

The essence of the problem lies in the fact that the amendments fundamentally shift the default locus of responsibility for public transport from the local to the provincial sphere of government, and in doing so, threaten to undermine efforts to establish sound governance arrangements for public transport in the larger cities. The approach taken is likely to be contrary to the Constitution.

2 Good practice in urban public transport governance

International experience suggests that in order to achieve successful public transport outcomes in metropolitan areas and large cities a number of key elements are vital.

- Integrated governance over the bulk of daily movement patterns in an urban conurbation

Large urban conurbations, such as metropolitan areas, represent complex systems where daily movement patterns tend to traverse the whole area. Ideally, the governance of public transport within these areas should be integrated within a single authority. This enables the creation and integrated management of public transport networks in ways which maximise efficiencies, and allow for more convenient, seamless travel across the functional area.

- Combining land use management and the transport function

A critical element that is required to optimise city economies (sometimes referred to as agglomeration economies) is not mobility, but access. Cities that are well designed spatially allow much higher levels of access with less mobility, or with mobility patterns which are easier to service cost-effectively.

(a) not in any way allow or facilitate the provision of e-hailing services for that vehicle, unless the operator of the vehicle holds a valid operating licence or permit for the vehicle in compliance with section 50(1); and

(b) where it comes to the notice of the person providing an e-hailing software application that an operator using that application for a vehicle does not have a valid operating licence or permit for that vehicle, or whose operating licence or permit has lapsed or been cancelled, de-connect the e-hailing application forthwith and keep it disconnected until a valid operating licence has been obtained for the vehicle.

(5) A person who fails to comply with subsection (4) commits an offence;

(6) The provisions of subsection (4) shall not apply in circumstances where an applicant has lodged a fully compliant application for an operating licence with a municipality or the relevant regulatory entity, as the case may be, been issued with a receipt therefor or any similar proof of lodgement, and has not received the outcome of the application within a period of two (2) months from the date of lodgement."

5. Conclusion

Uber appreciates this opportunity to make these submissions. We are willing to amplify any of the submissions made and would welcome an opportunity to make oral submissions at the appropriate time so that our proposed amendments can be canvassed more fully.

(b) if the operating licence or permit specifies such an area, the vehicle may leave that area if, on the return journey, it is to carry the same passengers that it carries on the outward journey or if the vehicle is to return empty;

(c) the vehicle may pick up passengers outside of that area if the fare is pre-booked and the passengers will return to such area; and

(d) e-hailing technology may be utilised by any public transport operator provided it complies with the operator's permit conditions.

(2) The Minister or MEC may make regulations providing for standards or requirements for electronic hailing applications or similar technology, including the following:

(a) prescribing measures to ensure accurate readings of such applications or technology;

(b) prescribing information regarding the driver that must be communicated to the passenger; and

(c) prescribing information that the electronic hailing applications or similar technology must provide to passengers.

(3) Electronic hailing applications or similar technology must -

(a) have the facility to estimate distances and fares, taking into account distance, time and demand, and communicating such estimate to passengers in advance; and

(b) communicate the fare to the passenger at the conclusion of the journey.

(4) Any person who conducts a business providing or facilitating an e-hailing software application for a vehicle, whether or not such a person is an operator, must -

3.8 Uber respectfully submits that it will be totally unfair and prejudicial both to service providers like Uber, and to applicants like the prospective Uber driver partners, for the proposed new section 50(4) or 66(7) of the NLTA to be enforced in circumstances where a fully compliant application has been lodged and has not been granted within a period of, say, two months.

3.9 Precedents exist for this type of dispensation. For example, when a driver's licence expires, the driver is permitted to continue to drive provided he or she has submitted a new application for a fresh driver's licence. The receipt issued by the relevant traffic department is sufficient in those circumstances.

3.10 Accordingly, Uber proposes that a proviso be included in the proposed new sections 50(4) and 66(7) excluding from the ambit thereof persons who have submitted fully compliant operating licence applications and who have waited a period of three months or longer for the disposal thereof.

3.11 This is a reasonable and sensible proposal which retains the proposed offence, while at the same time imposing a time obligation on the municipalities and regulatory entities which are required in terms of the NLTA to process operating licence applications timeously.

3.12 The suggested wording which we have included in the proposed new section 66A below includes the proviso we have proposed, while at the same time drawing on the essence of the proposed new section 50(4) and the proposed new section 66(7). If our proposal is accepted, then consequential amendments will need to be made to the proposed new section 66.

4. The proposed new section 66A

4.1 In the light of all the above, and taking account of the amendments included in both the original draft of the Bill (B7-2016) and in the revised draft of the Bill (B7B-2016), we propose that the new section 66A be worded as follows:

"*66A.* ***E-hailing services***

(1) In the case of an e-hailing service -

(a) the entity granting the operating licence may specify an area for picking up passengers;

lapsed or been cancelled, that person must disconnect the e-hailing application forthwith and keep it disconnected until a valid operating licence has been obtained for the vehicle."

3.4 The proposed new section 66(7) reads as follows:

> *"Any person who conducts a business providing or facilitating a metered taxi service, or provides an e-hailing software application for a vehicle, whether or not such a person is an operator, may not in any way allow or facilitate the provision of metered taxi services, including e-hailing services, for that vehicle, unless the operator of the vehicle holds a valid operating licence or permit for the vehicle in compliance with section 50(1)."*

3.5 Firstly, Uber proposes the deletion of the offence in section 50 and the incorporation of the proposed new section 50(4) in the new section 66(7). It is simply going to create confusion if there are two offences, similarly worded, and addressing the same "mischief". It makes more sense, if the offence is to be included in the Bill at all, to locate it in the new section 66A (if our proposal in paragraph 2 above is accepted), or in section 66 (if our proposal is not accepted).

3.6 However, Uber has a more fundamental concern with regard to this proposed new offence. That concern relates to the fact that almost all of the municipalities where Uber operates and the relevant regulatory entities are not yet in a position to process applications for e-hailing licences timeously. Uber partners, when applying for operating licences, constantly encounter problems.

3.7 If consideration is given to the times for which provision is made in the NLTA and the regulations promulgated in terms of the NLTA in respect of an application for an operating licence, then from start to finish the application for an operating license should not take longer than six weeks. This assumes that all the required documentation is submitted, the applicant complies with the provisions of the NLTA and the NLTA Regulations, and there are no objections. Yet in Uber's experience, applications generally take three months or even a year.longer. In one municipality, for example, the relevant Provincial Regulatory Entity has stated that they cannot publish applications as they are required to do in terms of section 59(1) of the NLTA. The purported reason is their apparent lack of the necessary finances.

2.3 There are fundamental distinctions between traditional metered taxi services and e-hailing services such as Uber. From a regulatory perspective the major differences are the following:

2.3.1 while traditional metered taxis are generally hired either at ranks, by telephone or while roaming, e-hailing services are on-demand services that are acquired through the use of a technology-enabled application service; and

2.3.2 while traditional metered taxis self-evidently use a meter to determine the fare charged, e-hailing services base their fare exclusively on a pre-determined time and distance calculation.

2.4 These distinctions lend support to the concept of e-hailing as a distinct category.

2.5 But more importantly, e-hailing is a concept which can be utilised by other public transport operators, provided their permit conditions can accommodate e-hailing. Thus, for example, there is no reason why a charter service cannot use an e-hailing application such as the Uber App.

2.6 We therefore recommend that, rather than regulating e-hailing in both section 50 and section 66 (as is currently the case in the Bill), a new section 66A should be included in the NLTA headed *"E-hailing Services"*. We set out the proposed wording for section 66A in paragraph 4 below.

3. Second principal submission: the new offences established in paragraphs 30 and 40 of the Bill

3.1 Two new offences are established in the Bill, the one in paragraph 30 (a proposed new section 50(4) and (5) of the NLTA) and the other in paragraph 40 (the proposed new section 66(7) and (8) of the NLTA).

3.2 They are similarly worded and the "mischief" which they are seeking to address is the same.

3.3 The proposed new section 50(4) is worded as follows:

> *"Where it comes to the notice of a person providing an electronic-hailing software application that an operator using that application for a vehicle does not hold a valid operating licence or permit for that vehicle, or whose operating licence or permit has*

ANNEXURE A

COMMENTS ON THE NATIONAL LAND TRANSPORT AMENDMENT BILL [B7B-2016]

1. Introduction

1.1 Uber B.V ("**Uber**") supports the objects and purports of the Bill which are, amongst others, to bring the National Land Transport Act, No 5 of 2009 ("**NLTA**") up to date with developments in the road-based public transport industry. One such development has been the arrival of Uber and other digital network or technology-enabled application services. With this in mind, Uber supports the committed endeavour in the Bill to address the changed landscape triggered by technology-enabled mobility solutions, and in particular electronic hailing or e-hailing.

1.2 However, Uber respectively submits that further amendments need to be made to the Bill to ensure that the new technology-enabled mobility solutions work optimally for government, operators, e-hailing companies such as Uber and, most importantly, the commuters who depend on public transport.

1.3 With the above in mind, Uber requests that two further amendments be made to the Bill which will significantly improve it.

1.4 In our submissions on the earlier draft of the Bill made in 2016, we set out in some detail how Uber operates and the advantages of e-hailing. We do not intend repeating that background information, but can provide it to the Portfolio Committee if required.

2. First Principal Submission: E-hailing as a distinct category

2.1 We appreciate that the Portfolio Committee accepted our proposal to include "electronic hailing" or "e-hailing" as a distinct definition in section 1 of the Act. This new definition, which Uber supports, has been added in paragraph 1(c) of the Bill. Uber furthermore supports the cross reference to the new regulations referred to in paragraph (e) of the new definition.

2.2 However, it is inappropriate for e-hailing to be addressed as a *de facto* subcategory of the metered taxi service category. In the NLTA, metered taxi services are principally regulated in section 66. In paragraph 40(d) of the Bill, a proposal is made to introduce new subsections to section 66 which specifically regulate e-hailing.

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UBER

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The Chairperson
Portfolio Committee on Transport
Attention: Ms Dikeledi Magadzi
c/o Ms Valerie Carelse
vcarelse@parliament.gov.za

RE: AMENDMENT OF THE NLTA NO 5 OF 2009 BILL[B7B-2016]

Dear Ms Magadzi

Uber B.V ("Uber") welcomes this opportunity to make these submissions on the National Land Transport Amendment Bill [B7B-2016] ("the Bill"). Last year Uber submitted comments on an earlier draft of the Bill. We were pleased to see that many of our comments on the earlier draft were taken into consideration in the latest draft of the Bill. As Uber has consistently stated, we support the introduction of the concept of e-hailing within our legislation.

We set out in Annexure "A" hereto our comments on the latest draft of the Bill.

We thank you in anticipation of your consideration of these comments.

Kind regards,

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The only person who is placed in a disadvantaged position here by the lack of subsidy is the commuter, especially from poor communities.

they are not involved. The government at all levels will have failed in achieving the objectives of the NLTA.

The historical innovative contribution of the minibus taxi industry to the South African public transport sector during the difficult times would have been undermined. The economic contribution of the operators would be lost forever to the SA economy.

4 Enforceability of compliance with transformation requirements

The Act and the National Department need to improve the enforceability of compliance with the transformation requirements or expectations made in this regard. The other spheres of government and public institutions needs to be rated on this element with a sanction or consequences where appropriate, otherwise the implementation of the legislation may move far from the letter and the spirit of the NLTA.

5 Minibus taxi subsidy

The definition of integrated public transport network in the bill, is good but the proposed amendment misses an opportunity to address the much talked about issue of subsiding the passengers or the minibus taxi operators. A true integrated public transport system will be difficult to achieve for as long as the minibus taxi operators are expected to compete or operate alongside operators that are subsidised. The much talked about issues of quality and safety will continue to be difficult to overcome in the industry as the minibus industry is completely unassisted by government. It is not fair to make demands on safety and quality when the entire risk of operating a minibus taxi is with the operator.

future integrated transport system will not be effectively integrated and their contribution will be lost to the sector based on short term objectives.

2 Monopoly

The reference to monopoly in section 41 should not only be limited to parastatals or municipal transport operator. There are historical bus operators that have been in business for a very long time that end up participating and benefiting from all government subsidy and municipal payments under BRT operations. These operators can become a monopoly and be in a position to manage competition.

Maybe a definition of what a monopoly is can be considered, also the silo operations between the different spheres of government will make it difficult for government to achieve its transformative objective for land transport.

3 Tender process after 12 years

The national department should be aware that the contracting arrangements that are being entered into at some municipal levels will make it difficult to integrate minibus taxi operators into BRT. The minibus operators in some of these models are left out of the operations and only allowed to benefit financially. The day to day operations at all levels remain with the experienced traditional bus operators. This is often done to expedite the rollout of the BRT or done for the convenience of the municipality and at the expense of the ignorance of the minibus taxi operators. If these models are allowed to continue the will not be any competition at the end of the negotiated contract terms. The minibus taxi industry operators may be unhappy when they realise that they are out of the system as they will not be in a position to compete or to demonstrate business knowledge if

Comments on the National Land Transport Amendment Bill

The input below is related to the observations of where the gaps are in the land transport legislation.

1 Capacity building

There is an opportunity for the public transport authorities at National, Provincial and Municipality level to set standards of what is envisaged in capacity building as envisaged in section 5(4)(f) of the NLTA. This will allow public funds that are used to capacitate minibus taxi operators to be used effectively. Those capacitated must be put in a position that they will take over the BRT operations and be on the main stream. Capacity building should instil among other things the operating standards, behaviour, conduct that the transport authorities wish to encounter in the future.

The use of public funds in this area should be accounted for better based on what is happening now in different municipalities.

There is also an opportunity to incentives old transport operators to participate positively in upskilling new comers to the bus operating business, in the context of BRT rollout. The experienced operators may take a long-term view of seeing new minibus taxi operators who have become bus operators as future competitors and seek to disempower them or not share their knowledge fairly.

If the government at any level keeps on just spending public funds with no understanding of what is achieved in this regard the consequences may be dire in that the NLTA transformation object will not be achieved instead the opposite will be true. The minibus taxi operators that were intended to be integrated in the

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Valerie Carelse

From:	Nebu Phohlela <nebu.phohlela@gmail.com>
Sent:	Friday, 17 November 2017 6:27 PM
To:	Valerie Carelse
Subject:	Comments on the National Land Transport Amendment Bill
Attachments:	Comments on the National Land Transport Amendment Bill.docx

Dear Portfolio Committee

Please comments from CODETA in Cape Town. If you have any questions on the contents of this submission do not hesitate to contact the writer.

Regards