

25 January 2018

DEPARTMENT OF TRANSPORT

NATIONAL LAND TRANSPORT AMENDMENT BILL, 2016: COMMENTS SUBMITTED TO PORTFOLIO COMMITTEE ON TRANSPORT AND RESPONSES BY THE DEPARTMENT OF TRANSPORT ON THE BILL AS AMENDED AND ADVERTISED FOR COMMENT [B7B-16]

Clause of the Bill	Section of the Act	Comment	Response
City of Cape Town's Transport and Urban Development Authority (TDA)			
General			
1(b)	1 Def of "contracting authority"	<p>The province should not have default responsibility for concluding negotiated contracts, subsidised service contracts, 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.</p> <p>The responsibility for entering into the named contracts should default to the municipal sphere for at least the 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.</p>	<p>The Department agrees with the TDA's suggestion that in the case of municipalities that have already concluded contracts, e.g for the bus rapid transit (BRT) systems in Cape Town, Johannesburg and Tshwane, those municipalities should not have to qualify as to capacity etc. It is suggested that the Bill be amended to provide that where a municipality has already concluded such contracts, those contracts will remain valid and such municipality will have full contracting capacity without having to qualify in terms of the envisaged regulations. It should be pointed out that while municipal public transport is a municipal function in terms of the Constitution, the national and provincial spheres enjoy concurrent powers over public transport in terms of Schedule 4</p>

		See further comments on the amendments to 11(1)(b)(viiA), 11(1)(c)(xxvi), 11(8), 11(9) and 11(10) below.	
1(b)	1 Def of "contracting authority"	The default position should make municipalities responsible for concluding negotiated contracts, subsidised service 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.	See response above
3(e)	8(1)(y)	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.	The Department agrees to this suggested change
7(a)	11(1)(a)(xi)	[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 of contracts, and should be the only sphere responsible for entering into these contracts in its area to ensure integrated and efficient services.	The clause has been inserted to empower the national sphere to enter into contracts mainly in three circumstances: <ul style="list-style-type: none"> a) Where the relevant province(s) and municipalities request and agree to it b) Where there are gaps, e.g. because the province and municipality(ies) fail to conclude the contracts or cannot agree on arrangements, and c) Where it is appropriate, e.g. in the case of a situation like the Moloto route which traverses 3 provinces (Limpopo, Mpumalanga and Gauteng) and various municipal areas.

		The national sphere may be responsible for entering into contracts outside of the city-area, particularly for long distance routes that cross provincial lines.	The Department feels that it would not serve the purpose of the proposed amendment to limit the clause in the way suggested. The Department also suggests that the proposed new section 11(10) be amended to empower the Minister to prescribe or direct the process of transition from the old order contracts to new contracts under subsection (8) and provide for the necessary transitional arrangements, for example where a province and municipality are unable to agree on the arrangements
7(b)	11(1)(b)(viiA)	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.	See the response above. The Department suggests that the Bill be amended to allow cities such as Cape Town who have already concluded contracts to do so without having to qualify first
7(i)	11(2)	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.	See the responses above
7(j)	11(3) and 11(5)	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.	The Department's view is that the concerns will be addressed by the solution proposed above

7(k)	11(4)	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	See solution proposed above
7(h)	11(1)(c)(xxvi)	The responsibility for concluding these contracts should rest with the 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 process and will raise significant questions regarding contracts that have already been entered into. The amendment does not discuss implications for contracts that have already been concluded between municipalities and operators under the NLTA.	The approach suggested above will solve these problems
7(m)	11(8)	To be reviewed in the light of an approach which makes metropolitan governments the default sphere responsible.	See responses above
7(m)	11(10)(a)	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.	See responses above
7(m)	11(10)(b)	Issuing of such directives not aligned with the planning and contracting authority's plans is likely to undermine the authority's ability to implement	The purpose of such directives will only be to address situations where provinces and municipalities are failing to perform their functions, resulting in, for example, lack of

		financially sustainable, efficient and effective networks.	service to passengers. The Department disagrees that they could undermine the planning authority
7(m)	11(10)(c)	The City should have the default responsibility for entering into contracts in its area for reasons previously identified	See responses above
7(m)	11(10)(d)	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.	Concerns noted. See responses above
7(m)	11(10)(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.	See responses above
8(a)	12(1)	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.	Comment noted. The establishment of a provincial transport authority will be dependent on agreement with the relevant municipalities, as constitutionally their powers cannot be taken away. The functions listed in the proposed section (4) are obvious ones for allocation to such an authority
19(a)	36(4)(c)	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	This amendment was inserted at the request of the City of Cape Town when the Bill was first published for comment in 2013. The comment of the City was as follows: "It is suggested that paragraph (b) be amended as follows: [it is now paragraph (c)]

			<p>“(b) procedures and financial issues that affect the province and all parastatals involved in or affected by provincial planning or any of the other provincial functions contemplated in section 11(1)(b);”</p> <p>If the City now wishes to remove this amendment the Department has no objection</p>
21(e)	41(6)	<p>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</p>	<p>Bus subsidies are paid by way of a conditional grant called the PTOG Grant via the Division of Revenue Act. In terms of the Grant Conditions and the PFMA the Director-General of the Department is the accounting officer and takes responsibility for the proper allocation and spending of the subsidies. For this reason the published model contact documents contain safeguards and requirements that the Department regards as essential. Furthermore, the Minister is not obliged to make the model documents compulsory, but may do so in certain appropriate cases</p>
23(b)	42(6)	<p>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 comment re s 41(6) above.</p>	<p>See the response to the comment on section 41(6)</p>
27	47(1)	<p>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.</p> <p>The City oppose the 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</p>	<p>The indefinite licences/permits have not yet lapsed because the Department obtained an order from the High Court suspending the operation of these provisions until the Amendment Bill is passed. The Bill must therefore make provision for the ordered conversion of any outstanding indefinite authorities by way of a prescribed administrative process. For this reason the Bill provides that the Minister will be able to publish</p>

		end so indefinite licences either terminate by operation of law or are converted to definite licence for a set period after which it lapses.	a final date for conversion as well as the necessary administrative regulations
CODETA			
Capacity building	General	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 ...	Section 11(1)(a) of the principal Act places the duty on national government to capacitate provinces and municipalities, and section 11(1)(b) places a similar duty on provinces to capacitate municipalities. Under section 5(4)(f) the Minister must give guidance on training etc. The suggested standards would be better placed in guideline documents and it would not be appropriate to include them in the Act
Monopoly	General	The reference to monopoly in section 41 should not only be limited to parastatals and municipal transport operators. There are historical bus operators that have been in business for a very long time and end up participating and benefitting from all government subsidy ...	Section 41 also includes promoting the economic empowerment of small business and previously disadvantaged persons. Subsidies are not intended to benefit operators, but to enable them to charge passengers lower fares
Tender process after 12 years	General	The national government 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	Contracting authorities are bound to take policy on benefitting small operators and previously disadvantaged persons into account. Furthermore, section 41(2) requires them to include minibus taxi operators in the negotiations to conclude negotiated contracts
Enforceability of compliance with transformation requirements	General	The Act and the National Department need to improve the enforceability of compliance with the transformation requirements ...	Noted. Not an issue for inclusion in the Act
Minibus taxi subsidy	General	The definition of integrated public transport network in the Bill is good but ... misses the much talked about issue of subsidising the passengers of the minibus taxi operators ...	See the response above. Not an issue for inclusion in the Act
Uber South Africa Technology (Pty) Ltd			

40	66	<p>... it is inappropriate for e-hailing to be addressed as a <i>de facto</i> sub-category of the metered taxi service category There are fundamental distinctions between traditional metered taxi services and e-hailing services such as Uber.... We therefore recommend that rather than regulating e-hailing in both section 50 and 66 ... a new section 66A should be inserted ...</p>	<p>The Department's view is that a sub-category is more appropriate</p>
30 and 40	50(4) and 66(8)	<p>Two new offences are established in the Bill They are similarly worded and the "mischief" which they are seeking to address is the same</p>	<p>The Department agrees that there is a duplication and that one of the two provisions could be removed</p>
30 and 40	50(4) and 66	<p>The proposed new section 66A: "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; (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 carried on the outward journey or if the vehicle is to return empty; (c) the vehicle may pick up passengers outside of the 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</p>	<p>The Department will adopt relevant aspects of this proposed section for possible inclusion in the regulations that will be made under section 66(2)</p>

		<p>applications or similar technology, including the following:</p> <ul style="list-style-type: none"> (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 application or similar technology must provide to passengers. <p>(3) Electronic hailing applications or similar technology must-</p> <ul style="list-style-type: none"> (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) communicating the fare to the passenger at the conclusion of the journey. <p>(4) Any person who conducts a business providing or facilitating an e-hailing software application for a vehicle, whether or not such person is an operator, must-</p> <ul style="list-style-type: none"> (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 accordance 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 	
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		<p>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.</p> <p>(5) A person who fails to comply with subsection (4) commits an offence.</p> <p>(6) The provisions of subsection (4) shall not apply in circumstances where an applicant has lodged a fully completed 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.”</p>	<p>The principal Act makes it clear that no one may operate a public transport service for reward without holding the required operating licence. To allow operation on the basis of a receipt may lead to abuses. It will be better for the processes of the regulatory entities to be streamlined to speed up applications</p>
Philip van Ryneveld			
7	11	<p>The key problem with the current amendments is that while the NLTA has sought, albeit unsuccessfully thus far, to implement decentralisation in line with national policy, the new amendments now leave the decision to decentralise fully in the hands of the national Minister. [in essence the same comment as that of the TCA above]</p>	<p>See responses above.</p>