



Wes-Kaapse Provinsiale Parlement
 Western Cape Provincial Parliament
 IPalamente yePhondo leNtshona Koloni

Reference number: WCPP 11/4/22

COMMITTEE REPORT

(Negotiating mandate stage) Report of the Standing Committee on Mobility on the Transport Appeal Tribunal Amendment Bill [B 8B–2020] (NCOP), dated 11 March 2024, as follows:

The Standing Committee on Mobility, having considered the subject of the Transport Appeal Tribunal Amendment Bill [B 8B–2020] (NCOP) referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape’s delegation in the NCOP the authority to support the Bill. The Committee further proposes the following:

<u>Comments on specific provisions</u>		
Clause	Comment	Recommendation
Clause 1(a)	<p>Definition of ‘act, direction or decision’ in (c): It is proposed that the word “permit” be added to the text of this intended amendment since not all permits have been converted to operating licences.</p>	<p>It is proposed that this subclause be amended as follows:</p> <p>“(c) a decision to cancel an operating licence <u>or permit</u> in terms of section 78 of the National Land Transport Act;”.</p> <p>It is proposed the definition of ‘act, direction or decision’ 1 be expanded to include the following: “A decision of a Provincial Operating licensing Board where a Provincial Regulatory Entity has not yet been established in relation to a decision to grant, amend or transfer an operating licence or to convert a permit as well as decisions relating to the cancellation or withdrawal of permits or operating licences.</p>
Clause 1 (b)	<p>The definition of “board” can only be deleted if all provinces have established Provincial Regulatory Entities and disestablished Provincial Operating Licence Boards. Section 93(3) of the National Land Transport Act, 2009 (Act 5 of 2009) (“the NLTA”), which provides for transitional provisions, allows an operating licensing board to perform the functions of the Provincial Regulatory Entity until such</p>	<p>Consider the deletion of the definition of “board” in light of the comment in column 2.</p> <p>It is proposed that the definition of ‘act, direction or decision’ be expanded to include the following:</p>

	time that the latter has been established.	"A decision of a Provincial Operating licensing Board where a Provincial Regulatory Entity has not yet been established in relation to a decision to grant, amend or transfer an operating licence or to convert a permit as well as a decision relating to the cancellation or withdrawal of a permit or operating licence.
Clause 4	<p>The proposal in this clause seeks to replace the power of the chairperson of the Tribunal to determine when, where and for how long the Tribunal will sit with the power of the Director-General to determine these matters. The Tribunal should operate independently from the Department.</p> <p>It is unclear why this has been proposed, as the chairperson will be familiar with the case load, the nature of the cases, the availability of members of the Tribunal and is best placed to estimate, in conjunction with the members of the Tribunal, the amount of time that will be required for the Tribunal to complete its work. It is thus suggested that the current version of section 9(1) be retained.</p> <p>At best, if the Director-General is to have any role in the business of the sittings of the Tribunal, it would be to ensure proper financial planning for the coming financial year by planning, in consultation with the chairperson of the Tribunal, the number of sittings for the year, the estimated number of hours per sitting and the estimated preparation time for sittings. This can be based on statistics from previous years of the number of cases heard <i>per annum</i>.</p> <p>It is therefore suggested that the chairperson of the Tribunal is to retain the power to determine where, when and for how long the Tribunal will sit, but that the Director General, in consultation with the chairperson, determine a year plan for the number of sittings for the upcoming year, the estimated number of hours per sitting and the estimated preparation time for sittings.</p>	<p>It is suggested that section 9(1) of the Act be retained.</p> <p>It is further suggested that clause 4 be amended by the insertion of a subsection (4) as follows:</p> <p><i>"(4) The Director-General, in consultation with the chairperson of the Tribunal, must determine the number of sittings of the Tribunal for the next financial year, the estimated number of hours per sitting and the estimated preparation time for sittings."</i></p>
Clause 5	See the proposed wording in column 3.	<p>In relation to the proposed wording: "or any relevant transport legislation", the following wording is the preferred wording: "any relevant national or provincial transport legislation". This would apply to the other instances in the Bill where this wording is proposed in clause 6.</p>

<p>Clause 7</p>	<p>Although the operation and execution of an appeal usually suspends the outcome of a decision that is the subject of the appeal, has the question of prejudice to applicants been considered in light of the proposed amendment to section 13(b) of the Act, which would allow the automatic suspension of an act, direction or decision if the appeal is lodged within 30 days?</p>	<p>Consider whether there ought to be exceptional circumstances which an applicant could utilise as a procedural tool to argue against the automatic suspension of a decision.</p>
<p>Clause 8(b)</p>	<p>There is an error in the wording in line 37.</p>	<p>It is proposed that the error be corrected as follows: “...delays or [actions] could cause substantial prejudice...”.</p>
<p>Clause 9</p>	<p>The proposal in this clause is <u>not supported</u>.</p> <p>As previously stated in these comments, the independence of the Tribunal is essential for purposes of overseeing the acts, directions or decisions of regulatory entities and Regulatory Committees. It is concerning that the Director-General is proposed to be empowered to designate officers in the Department of Transport to carry out “<i>any investigations required by the Tribunal that are necessary for the taking of its decisions</i>” without the need to consult the Tribunal in this regard.</p> <p>The Tribunal’s investigations ultimately affect the outcome of its decisions. The Tribunal’s investigatory powers must therefore be exercised independently of the executive. If it is necessary for operational reasons that Department of Transport officials be designated to carry out investigations, then the Tribunal must also be consulted on the matter.</p> <p>The removal of the words ‘after consultation with the Tribunal’</p> <ol style="list-style-type: none"> 1. Section 3 (2) of the Principal Act, states that ‘<i>the Tribunal must be impartial and must perform its functions without fear, favour or prejudice.</i>’ 2. The words ‘must’ when applying a plain grammatical meaning to the provision shows that there is an obligation that is placed on the Tribunal to discharge their duties impartially, that is the objective. 3. Section 16 of the Principal Act reads that ‘1) <i>The Director-General must, after consultation with the Tribunal, designate such officers in the Department of Transport as may be necessary to perform the administrative and secretarial work of the Tribunal.</i>’ 4. The intended amendment reads ‘(1) <i>The Director-General must [, after consultation with the Tribunal,]</i> 	<p>It is strongly suggested that the requirement to consult the Tribunal be retained.</p> <p>It is proposed that section 16 be expanded to allow the Tribunal to, from time to time, request the Director-General to designate officials of the Department to perform any investigations required by the Tribunal that are necessary to take decisions on appeal.</p>

designate such officers in the Department of Transport as may be necessary to perform the administrative and secretarial work of the Tribunal and to perform any investigations required by the Tribunal that are necessary for the taking of its decisions.'

5. The removal of the words '*after consultation with the Tribunal*' would compromise the impartiality of the Tribunal.
6. When a court applies the constitutional principle of rationality to a legislative provision, it is obliged to decide whether the provision is irrational or arbitrary, if the court so decides, then it declares it to be unconstitutional and invalid.

[see: Scalabrini Centre of Cape Town and Another v Minister of Home Affairs and Others ZACC 45]

7. In this instance the intended amendment of removing those words although for a seemingly legitimate reason, does not fulfil the rationality test.
8. In other words, there is no rational link between the objective of the principal act to create an impartial Tribunal and the intended amendment to remove the requirement of consultation with the Tribunal.
9. Accordingly, that amendment would not pass constitutional muster.

The insertion of the words '*and to perform any investigations required by the Tribunal that are necessary for the taking of its decisions.*'

Interpretation is the process of attributing meaning to the words used in a document, be it legislation having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Consideration must be given to the language used in the light of the ordinary rules of grammar.

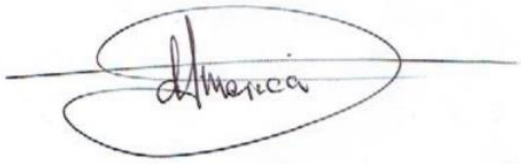
The context in which the provision appears.

The apparent purpose to which it is directed.

[see: Auction Alliance (Pty) Ltd v Wade Park (Pty) Ltd 2018 (4) SA 358 SCA; Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)]

1. The difficulty with the words '*and to perform any investigations required by the Tribunal that are necessary for the taking of its decisions*' is that the

	<p>provision does not provide sufficient particularity and is coached in a manner that is too wide.</p> <p>2. If a judge is seized with determining a case in terms of this provision, nowhere does it appear expressly in the principal Act and the Bill, the context in which the provision appears. There is nothing to contextualize the insertion of those words.</p> <p>3. Nowhere does it appear expressly, the subject matter of those investigations and the scope of those investigations. Therefore, a judge will be left to draw inferences that may lead to the incorrect interpretation.</p>	
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A handwritten signature in blue ink, appearing to read 'D. America', is enclosed within a hand-drawn oval shape.

MR D AMERICA, MPP
CHAIRPERSON: STANDING COMMITTEE ON MOBILITY
11 MARCH 2024