

Private Sector Tourism Submission to Portfolio Committee for Transport – 18 July 2008-07-17

Under the auspices of the Tourism Business Council of South Africa – containing combined inputs from SABOA, SATSA, and SAVRALA.

With regard to

NATIONAL LAND TRANSPORT - BILL B51/2008

Addendums attached –

- 1) The Report & Recommendations of the Steering Committee (Centurion Lake Hotel, 8 March 2007)
- 2) The final working document prepared by Grant Thornton on behalf of TGCSA – to develop a Grading/Accreditation process for Tour Operators.

It is important to note that our submission is based on the **Bill B51/2008 15 May 2008**. It was only brought to our attention by DoT officials, during a meeting at DoT offices on 17 July, that newer versions exist. Upon initial investigation it would appear that the Bill that features on the Parliament website is different to the Bill that we have studied, and both differ to the Bill presented to the Portfolio Committee. The deadline for written submission precludes the opportunity for sufficient study of the newer versions. We have decided on advice from the DoT to continue with the submission based on the older version of the Bill; however we reserve the right to make verbal submissions to the Portfolio Committee that may differ from our written submission, after having had time to study the new versions of the Bill.

PREFACE TO TOURISM INDUSTRY COMMENTS

During the passage of the 2006 NLTAA Amendment Bill SATSA and SABOA made comment on a number of issues related to the problems associated with licensing of tourism services.

During the final reading of the Amendment Bill 29th August 2006 the Minister stated that during the committee stages the department was made aware of these issues, in response it had been decided to set up a Steering Committee under DEAT to advise the DoT on changes to the licensing process for tourism transport to address the issues.

This Steering Committee was duly constituted and contained broad representation from the wider tourism industry including DoT, DEAT, DTI, SATSA, SABOA, SAVARLA, TBCSA, and many and varied representation by SME's and provincial authorities. After due deliberations a Report & Recommendations from the Steering Committee was tabled in March 2007; containing recommended changes that would be needed in order to develop a licensing process for tourism transport that would take account of the realities of the tourism industry in the new millennium. This detailed report was forwarded to the DoT in due course for onward consideration (and is attached to this submission as an addendum).

We are pleased to see that this Report has been consulted in the development of the tourism sections of this NLT Bill (Sections 89 to 93). Most notable is the envisaged creation of one national transport authority (the NPTR) to regulate all tourism transport services within the Republic, separating tourism services from other modes of transport. The NPTR is envisaged to perform this function through an accreditation process for tour operators with a primary

requirement of two detailed inspections, namely both a detailed technical and an equally detailed operational (tourism industry specific) inspection.

The purpose of this submission is to ensure that we retain the essence of the Report & Recommendation in the process that accompanies the turning of the Bill into an Act (and subsequent accompanying regulations).

We congratulate the DoT for their sensible approach to develop an Act which is intended to perform the critical role of providing a Legislative skeleton but leaves the exceptionally detailed and extensive “meat” of the process to Regulations.

We find ourselves, however, at the dual disadvantage of having to:

- 1) Make a submission when, as already raised above, there are various versions of the Bill
- 2) Comment on the structural Legislative skeleton contained within this Bill, without sight of the accompanying Regulations that still have to be written. Verbal interactions with DoT officials have revealed that the bulk of the concepts raised should actually be included in regulations and not the Act, and it is of concern that the regulations will be quite extensive, and thus we are entrusting our concurrence with this Bill on “credit” which will hopefully be “cashed in” when the regulations are being written – in other words we are agreeing to this “on tick”.

We have to work on the assumption that the writers of this Bill have accepted and understood the principles of the Report. Without clear guidance as to what aspects might have been categorically rejected (and even if such rejection is an issue), and what aspects that DoT might anticipate including in forthcoming regulations, we have chosen to proceed with a drafting of a submission to the current Bill, to be presented before the Portfolio Committee, that seeks to summarise the original report’s intentions and then on an item-by-item basis show how we feel that the current Bill might fail to provide legal enactment of the recommendations made by the tourism industry Task Team.

With regard to the promulgation of regulation; our main experiences have been with the RTA and RTR, where on a regular basis regulations are created, the first that industry is aware of a new regulation is when it pops up in the Gazette. In other words, there is no consultation before a regulation is made, and after the event is a little late as the process to revoke flawed regulations is very difficult. The point is that the DoT frequently do not consult with industry.

We would point out that without the industry there would be no need for Legislation or Regulation, no need for a Department of Transport, Transport Portfolio Committees, as long as the DoT and Government choose to ignore industry and in isolation write and promulgate flawed Legislation we will never create decent public transport in South Africa.

We as the tourism industry can only solve the challenges facing the tourism section. We take encouragement from a general agreement to change the licensing process from one of licensing inanimate vehicles, to one of licensing responsible operators. (Such changes should also be considered crucial for other transport sectors in the quest to provide quality services). We also are encouraged by verbal comments in various meetings with DoT officials (including the meeting at DoT offices on 17 July) that industry will be consulted in the development of

regulations to support this Bill, and in particular the sections that relate to tourism transport. Industry commits to making itself willingly available for such interactions.

The problem is that often the various stages in the development of laws and regulations are conducted in isolation. In addition the various contributors to this development also work in isolation (sometimes by choice, but sometimes imposed by structures and protocols), and even when industry is consulted, it is often in a serial monologue format – where our ideas are put forward in writing and then the officials and/or Portfolio Committee discuss these ideas further on their own in some forum that is closed to industry. Thus if there are any misunderstandings or confusions about detail then the ideas do not get the full and proper airing that they should. Valuable professional industry input is lost, resulting in poorer laws and regulations that are often unworkable.

We would like to make a serious recommendation that some form of structure be developed that allows for the regular interaction between all committed stakeholders (maybe through their associations) in an open/workshop type of interaction to explore and develop new ideas with regards to tourism transport. The intention would be to create a “best of breed” situation – DoT staff (admin and legal experience), Portfolio Committee (legislative processes and political experience), and industry (extensive practical transport and business experience derived from the coal-face) – all working together.

This could be a Select Committee-type of structure where DoT, industry, and parliamentarians could raise problems and new ideas; bring all the necessary skill, experience and minds to bear on the matter; and workshop rational, logical and (above all) workable solutions that are acceptable to all. The travelling public, the passenger, will be the ultimate winner!

While we are not legislative writers we have compiled some thoughts (attached below) on the shape we feel that the final tourism Transport Licensing procedure should take after the enactment of the NLTA and its accompanying regulations. It would be for the Portfolio Committee and DoT to determine which aspects should be allocated to Act and which to Regulation; our summary is simply to provide a holistic overview of process. This is to provide a better platform from which to proceed to analyse the actual contents of the Bill before us.

ENVISAGED PROCESS FLOW FOR THE REGULATION OF TOURISM SERVICES

1. Accreditation of operators of tourism services

As from a date determined by the Minister and published in the Gazette no one may operate tourism services unless accredited by the identified authority appointed by DoT to handle tourism transport. (The Bill identifies this body as the NPTR – National Public Transport Regulator).

A person who operates without such accreditation would be acting illegally and is committing a serious offence.

The NPTR is responsible to create procedures to accredit operators of tourist services to ensure that :

- they are fit and proper persons or entities to transport tourists in a manner that is safe and will promote South Africa as a tourist destination;
- that they meet the prescribed operational and technical requirements; and have the experience and ability to safely and successfully operate a tourism transport business

The accreditation of operators should be a hands-on process, and thus the NPTR will need to consider the establishment of NPTR offices in various locations within the Republic, but could begin with offices that serve the main tourism hubs/gateways, such as Johannesburg, Cape Town and Durban. These offices would be under the direct control of the NPTR Head Office, and would perform the localised NPTR functions of:

- processing applications (with necessary primary inspections),
- accredit and issue relevant documentation,
- monitor accredited operators (within their area of operation) in an on-going and active manner (with a suitable blend of random and scheduled on-site/depot inspections by NPTR inspectors).

We envisage that these NPTR offices would be staffed with their own complement of licensed/authorised vehicle inspectors, a manager to oversee all functions, and the necessary legal and administration staff.

2. Accreditation procedures

The NPTR, a fully resourced and funded off-shoot from DoT, will be responsible for undertaking the full primary accreditation analysis of applicant operators. This would comprise both a Technical analysis and an Operational (Tourism) analysis.

2 (a). Technical accreditation

The NPTR itself would be responsible for the primary Technical analysis (including on-site inspection to determine the suitability of depots, maintenance facilities, suitability of maintenance staff, and suitability of admin and record keeping with regard to maintenance and legalities, etc.).

We envisage that the NPTR will carry out the technical accreditation with in-house technically competent vehicle inspectors employed and deployed to the NPTR offices with the powers, via the NPTR, to nationally inspect and enforce according RTA, RTR, NLTA and NPTR legislation and regulation

These inspectors will carry out primary accreditation inspections of all new applicants, and also carry out random and regular ongoing inspection of accredited operators and their offices and depots/workshops to ensure the accredited operators are meeting the required standards. In addition the inspectors would investigate any accident involving a tourism vehicle. It is to be noted that the report from the primary technical inspection would also include recommendations to the NPTR as to the size of the fleet that the operator is capable of operating as well as taking into account the type and class of vehicles need for the operators chosen type of operation.

2 (b). Operational accreditation

An approved and suitable tourism body would be responsible for the primary Operational analysis (including on-site inspection to determine the suitability of facilities and staff for conducting tourism operations, insurance levels, company documentation and SARS registration, etc.).

The NPTR, in consultation with the relevant ministers and industry and encoded in regulation, will approve a body (such as the Tourism Grading Council of South Africa – TGCSA) to undertake the primary and on-going Operational (Tourism) accreditation inspections according to one set of standards that are uniformly applicable across the republic.

[We will use the TGCSA name during this submission for illustrative purposes only. However, it is noted that some preparatory ground work and a consultative process has already been undertaken by TGCSA, at the express direction of the minister of tourism. The TGCSA process was fairly advanced but it was decided to suspend the process until suitable transport legislation was enacted. The provisional report was attached to the tourism industry's Report & Recommendations in 2007, and is again attached as an addendum to this submission.]

As with the Technical aspect to the NPTR's functions, the required on-going Operational inspections should be at intervals still to be decided upon in consultation with the relevant ministers and industry. This should include both random and scheduled inspections, and the schedule could be on a quarterly, bi-yearly, annual or bi-annual basis.

3. Application for accreditation

An existing or aspirant operator of a tourism service should apply to the NPTR for accreditation by completing the initial form developed by the NPTR. This form should be obtainable electronically and physically from the various NPTR offices, and once completed should be submitted to the NPTR via their offices or electronically.

If the operator is accepted for accreditation the NPTR will require the operator to complete detailed information on the application form, pay the prescribed fee, and submit to the primary Operational and Technical accreditation inspections. The reports that arise from these primary inspections will be submitted in conjunction with the application form to the NPTR decision making staff. Without both reports a decision on accreditation should not be made.

4. Licensing of tourism operators

Once the NPTR is satisfied that an operator has met and satisfied the requirements for accreditation the operator will be issued with suitable operator documentation – such as a Certificate of Accreditation (COA) - which will detail the number and capacity of vehicles he may operate, maintenance requirements, his area of operations, and passenger liability insurance levels required. The NPTR will maintain a register of these accredited operators.

The NLTR will provide some form of token or disc that the accredited operator must affix to his vehicles to show they are been operated under his master COA, for the purposes of law enforcement. If possible this should be smart technology enabled to further empower enforcement authorities.

5. Dual use of tourism vehicles

It is recognized that some tourism vehicles are also used for operations not covered by the rather limiting definitions of tourism transport services, e.g. the chartering of luxury tourism coaches to take company staff to a conference. The realities of tourism operations are such that services need to be provided to tourists that are standard services around the world, but conflict with transport definitions in South Africa. The purpose of the very stringent accreditation process - far in excess of that required by any other transport mode - is to remove the possibility of other modes applying for tourism accreditation and then misusing this accreditation on, for example, commuter routes. With the process of accreditation and the functional abilities of the NPTR it should be possible for an accredited operator to add additional services to their scope of operations as contained in their COA – for example Charter services. Any fears about their suitability to provide safe and proper services would have been answered in the primary inspections for accreditation.

DETAILED COMMENTS ON THE NATIONAL LAND TRANSPORT BILL
(as per B51 – 2008; published in Gazette No. 31060 of 15 May 2008)

As has been noted at the start to this submission, the many variations of the Bill make it difficult to comment properly. This is especially the case with the Section entitled “Regulations by Minister”. In some versions of the Bill it is dealt with under Section 7, in others as Section 8. Similarly, the numbering/lettering sequence of the detailed topics contained within the Section is also different. That aside, there are some concepts that can still be commented upon.

Section: 8. (1)

Regulations by Minister

8. (1) The Minister may, after consultation with the MECs, make regulations relating to—

Comment: 1

We are worried that this is a blanket coverage of possible regulatory aspects, and some aspects that could negatively affect tourism are (or could be) lumped rather loosely with aspects that primarily designed to affect other sectors of the transport industry. This comes back to our earlier comments on the vital need for good and healthy sustained interaction between those drafting regulations and the industry that will be affected by them. Future regulations need to be carefully thought out so that the “baby is not thrown out with the dishwater”, to ensure that regulations important to control one sector do not mistakenly impact on another sector.

We currently have a situation where there is RTR regulation to determine and dictate livery and branding on MBT mini-busses. This regulation was sufficiently unclear as to whether it also applied to tourism transport vehicles. It was so ambiguous that some provincial and local law enforcement agencies chose, incorrectly, to impound tourism vehicles, as they were deemed not to meet the prescribed requirements; only for magistrates to correct the error. But by then the damage had been done to the tourism operator, whose clients were inconvenienced, his reputation was damaged unnecessarily, and had financially lost out due to having to pay lawyers, fines and other operators to sub-contract replacement vehicles.

This could easily happen again, with such a broad scope of regulation. We understand that the Act is to give the Minister sufficient power to achieve his objectives, but we worry for future unintended negative consequences. Here are a few examples:

Regulations by Minister

8. (1) The Minister may, after consultation with the MECs, make regulations relating to—

(c) national norms and standards relating to the qualifications and conduct of inspectors;

{NPTR inspectors would have additional and different functions to those in other sectors}

(e) the types of vehicles that may or may not be used for public transport services and standards or specifications for vehicles, subject to the National Road

Traffic Act;

{also numbered as b) and containing additional wording. Fit for purpose is so sector specific that superior clarity would need to be designed in}

- (f) procedures for the regulation of interprovincial transport;
{also numbered as c) and should take account of NPTR}
- (g) standard forms for responses of planning authorities under section 64;
{also numbered as d) and should take care to exclude tourism, which is a national competency}
- (h) colour coding and branding of vehicles used for public transport;
{also numbered as d) and should differentiate between commuter and tourism transport requirements}
- (i) special requirements for drivers of vehicles used for public transport including, but not limited to, testing for knowledge of the area in question;
{important that there are very specific Tourism Act requirements, as this is designated as the function of a tourist guide, with special care given to training, examination and registration}
- (q) functions and duties of the National Public Transport Regulator and designated planning authority in addition to those specified in this Act;
{also numbered as u) and will require extensive interaction and discussion}
- (w) amounts to be paid as a deposit to the Department or other entity to cover possible fines or penalties should the operator fail to comply with this Act or other prescribed requirements;
{also numbered as j) and should not really apply to NPTR accredited operators as the penalty system for disobedience is not only monetary but, as part of on-going inspection, disobedience should result in the loss of accreditation}
- (x) information that must be supplied to the National Public Transport Regulator by tourist transport operators applying for accreditation under section 91;
{also numbered as u) and needs detailed discussion}
- (y) required signage, vehicle identification or livery for vehicles used for tourist transport services;
{also numbered as v) and needs detailed discussion}

Section: 8.(1)

Regulations by Minister

8. (1) The Minister may, after consultation with the MECs, make regulations relating to—

Comment: 2

We refer to our comments in the earlier sections of this submission, where we have noted the varying flavours of quality in regulations published by DoT in the past: where proper consultation with industry and stakeholders has resulted in good quality and workable regulations; whereas a lack of, or insufficient, consultation has often resulted in very poor and/or unworkable regulation.

When taken in conjunction with the fact that the implementation of the NLTA will be primarily driven through regulation, we feel it important to note here our concerns that no reference is made in this part of the Bill for the inclusion of stakeholders in the list of people the Minister is required to consult before making regulations. We request that this be seriously considered. We feel that industry needs some form of institutionalised interaction to ensure a workable outcome to this very important Act and its accompanying regulation.

Just as a note: the use of the concept of stakeholders is applied in other parts of this Bill, such as in Section **20.(1) (m)**.

Section: 8. (1)(l)

(*l*) monitoring and control of operator associations, including prescribing the contents of their constitutions, requirements for elections of office bearers and maximum joining or membership fees;

Comment: 3

We note with concern that the DoT may seek to control aspects of associations. Does this also include tourism associations? Within the tourism and interprovincial sectors the associations are voluntary and membership driven. Tourism associations also have membership far wider than just tour operators. Without the ability to set their own fees it would be exceptionally difficult for these associations to operate and maintain suitable staffing structures, without whom they could in turn not perform their stated purposes and would be unable to meet the needs of the members, and would thus quite quickly cease to exist. That would leave the member/operator in a far worse-off position, no matter how unintentional this outcome was. We view this clause as rather unsettling.

Section: 24.(2)(a) to (d)

Establishment of National Public Transport Regulator

- 24.** (1) The Minister must establish the National Public Transport Regulator within the Department, to perform the functions of that Regulator in terms of this Act.
(2) The National Public Transport Regulator consists of not more than five designated officials of the Department, appointed either on a full-time or part-time basis, whose specialised knowledge, training or experience, taken collectively, at least covers—
(a) public transport;
(b) transport economics;
(c) accounting, auditing or actuarial science; and
(d) the law.

Comment:

We note that there is no specific reference, nor provision made, in this Section for tourism experience relevant to transport, as we feel that this specific experience is crucial for the NPTR to properly understand and perform its accreditation functions. This is after all a very specific

institution being created to serve two very specific sectors of the industry – namely interprovincial transport and tourist transport services.

We also note that there is no specific reference, nor provision made, in this Section for vehicle inspection skills, as we feel that this specific experience is crucial for the NPTR to properly perform its functions. This is after all a very specific institution being created to serve two very specific sectors of the industry – namely interprovincial transport and tourist transport services.

The NPTR is to be based on a dual Technical and Operational (Tourism) accreditation, and therefore must have people well versed and expert in these skills. Such an influential structure has to be lead by experts who know how to run a transport business. It is crucial that the 5 designated officials allocated to the NPTR from the DoT have to be professionals with appropriate and relevant skills and experience. If this does not happen then the success of the NPTR is in jeopardy from the very beginning.

The whole purpose behind the NPTR is that both sectors are so distinct and different from the mainstream of the transport industry that they merit being administered in a different manner, and through a unique departmental structure. With such a specific scope and focus for tourism accreditation process we feel that tourism transport and vehicle inspection experience are essential skills.

Section: 25.

Comment: 1

With regard to the structure of the NPTR, given the scope and functions that are outlined and envisaged in this Section, we would suggest that provision is made for two distinct divisions within the NPTR; one to handle the needs of administering interprovincial transport and the other to handle tourism transport services. Currently one of the most serious problems within the provincial Permit Boards and Operating License Boards is that these two specific sectors have been subsumed within the much larger commuter transport sectors in terms of administration resources, focus, and dedication. This, as much as anything else, has lead to the excessive delays and other problems. Our fear is that without dedicated allocation of staff that swamping will occur once again. We feel that specialisation and dedication (which will also allow for specific and far more extensive training and experience) by the staff will lead to far higher levels of service delivery, which will result in the NPTR achieving its aims.

Section: 25.(2)(b) (i) to (iii)

25. (1) The National Public Transport Regulator must—

(a) monitor and oversee public transport in the country in general and the activities of Provincial Regulatory Entities and designated planning authorities in particular;

(b) receive and decide on applications relating to operating licences or accreditation for—

- (i) interprovincial transport;
- (ii) tourist transport services; and
- (iii) any other services designated by the Minister by notice in the *Gazette*;
- (c) oversee fares charged for public transport services throughout the country;

Comment: 2

In support of concepts outlined in the preceding sections of this submission, we request that other services be included within the scope of tourist transport services, such as Charter services. This sector is now going to be regulated by a far more stringent process. This will have at least two beneficial outcomes in that firstly the quality of operators will now be of a known and measurable quality, hence of a consistently high standard; and secondly that the process will restrict accredited operators to only those who focus their businesses on the tourism and interprovincial sectors. This means it is highly unlikely that NPTR accreditations will be abused to perform services outside the envisaged scope, and quicker to stop if it is attempted. There are many flavours of service that the many different types of tourists to South Africa require from their tour operators. The majority fall mostly within the scope of definitions contained in the various transport acts (including this Bill), but some do not. The realities of the industry trying to provide a world class tourism service in competition with other long-haul competitor countries should be taken into account.

Section: 62 (1)

Exemptions

- 62.** (1) An operating licence is not required for—
(a) a courtesy service where the operator operates less than the prescribed number of vehicles set out in the regulations promulgated in terms of this Act;

Comment:

It is of concern that this Bill anticipates leaving courtesy services outside of the ambit of its control. Whilst this is a continuation of the approach taken by the NLTTA, we also note that Gauteng province chose to incorporate courtesy services within their provincial Act. This shows some serious-minded and sensible doubt as to the correctness of the original intention to exclude courtesy services. We feel that courtesy services should be incorporated within the NLTA, specifically the tourism flavours of courtesy services.

There are three reasons for this. Primarily the concept behind any licensing is that government needs to have applied its mind and attention to the operators of transport to ensure that the transport is maintained to acceptable technical levels; in order to provide protection for the passenger – who does not have the ability nor expertise to inspect vehicles in order to protect them self. The passenger quite correctly expects that the government has ensured that any transport on offer has been properly assessed and measured. By keeping courtesy services outside of the ambit of the NLTA this concept does not hold true.

Secondly, courtesy services run by hotels and accommodation establishments carry tourists, including rather expensive upmarket tourists. Thus there is the danger that in the case of an accident any damages suffered by the tourist would have to be claimed back from only the RAF, as there is no way of requiring and enforcing the use of proper passenger and public liability insurance. The RAF is, as we all know, already under pressure as it is. If courtesy services were

included under the Act, then it could be ensured that the proper insurance is carried by the operator; as is envisioned by Section 8. (1)(cc).

Thirdly, there is the case that many new entrants into the tourism transport market start by providing a variety of smaller or short range services – including day tours (half day and full day tours of the their city environment) and airport transfers. They then find themselves in unequal competition with the hotel courtesy service. It seems rather unfair that only one of the two competitors is required to jump through the hoops envisaged by this Bill. They are providing essentially the same service, so logically they should be governed by the same rules and regulations in order to provide a level playing field.

In conclusion, it is our opinion that hotel courtesy services do need to comply with the requirements for accreditation with the NPTR and conform to NPTR-required levels of public liability insurance, with the granting of a certificate of accreditation (COA) allowing specifically for the operation of courtesy services.

Section: 90. (2), (3), (4), (5); and Section 91. (3)

Comment:

We have taken these Sections together as we are not at all sure that these Sections provide for the concept of the equal importance of Technical and Operational procedures in order for the NPTR to accredit operators. The focus seems to be primarily on Technical accreditation, with Operational accreditation seemingly taking on a nice-to-have/second-cousin status. We would like to ensure that any future reading of the Act does not allow for this miss-interpretation - that Operational accreditation is in any way inferior.

If we read Section 90.(5) in conjunction with Section 91.(3), then it is possible that the interpretation may be made that Operational accreditation is inferior.

90. (5) Accreditation may be granted without such recommendations where such tourism authority has not supplied them in the time specified in the entity's request or where no such requirement is prescribed.

91. (3) If the National Public Transport Regulator is satisfied that any national or provincial tourism body has an acceptable system in place to accredit operators of tourist transport services, the National Public Transport Regulator may accept such accreditation by such a tourism body without requiring the operator to apply in terms of subsection (1), provided that the operator also complies with the prescribed technical requirements.

We accept that it is anticipated that the Technical accreditation is to be conducted "in-house" by the NPTR, whereas the Operational accreditation is to be "out-sourced" to a yet-to-be-determined tourism body (such as the Tourism Grading Council – TGCSA). This would account for the fact that there are more lines of the Bill dedicated to empowering the NPTR. However, there is no need to "dis-empower" the Operational accreditation body. Creating a fall-back procedure straight away diminishes the status of the Operational accreditation process. One should write legislation in anticipation that the staff employed to turn concept into reality will deliver what they are hired to do. We are in a dangerous situation if we start writing poor

legislation simply to account for anticipated poor service delivery! Rather set a higher standard up front and recruit the right calibre of staff accordingly.

A far better approach would be to design suitable measures – such as the correct form of MOU, Minister-to-Minister formal agreement, and Service Level Agreement (SLA), with proper payment for services rendered – that should provide more than sufficient contractual protection for the NPTR; such that the NPTR can reasonably expect the required documentation to a set standard of time and quality.

And even when viewed in isolation, Section 91. (3) is very worrying. We believe that this Operational accreditation process should be handled by only one nationally based tourism authority. We refer back to the preceding section of this submission entitled “Envisaged process flow for the regulation of tourism services”. There are sound reasons for this. Firstly, the concept behind the NPTR is create one national body to regulate tourism transport – to ensure an even and uniform application of standards to an industry that is fundamentally a nationally-based, not provincially and locally. To introduce the concept of provincial variations is to subvert this concept, and take us back to where we are currently - with Permit Boards/OLBS that apply varying rules and measures, and often hamper an operator’s ability to function properly by failing to respond to requests for concurrencies, etc. we are looking to create a functional NPTR that is national in scope, and that deals evenly with all operators in tourism, regardless of where they are located. One national body is the only way to ensure an even and uniform standard of output. This is the thinking behind one national SABS, for instance.

Secondly, provincial tourism bodies are not set up to function as regulators. Their primary function is that of marketing bodies that are to attract business to their specific provinces. Some do have an additional developmental function, seeking to create a suitable blend of products and service providers (attractions, cultural villages, museums, events, etc.); to support their marketing function and better attract increased volumes of tourists. Conducting specialized Operational accreditation inspections and on-going monitoring and inspection is outside of their mandates and scope of business. We simply cannot proceed in this direction.

Section: 90. (7)

90. (7) Accredited operators must renew their accreditation every five years in the prescribed manner, failing which their accreditation will lapse.

Comment:

If proper primary accreditations are conducted, accompanied by thorough regular inspections carried out in terms of the powers vested in the NPTR, as envisaged in Section 92, the accreditation could even be indefinite. However, if it has to be for a limited period, then we would suggest a period of not less than 7 years, in order to harmonise the time period with that written into other sections of the Bill.

Section: 92: (3)

92. (3) On cancellation of an operator's accreditation, the National Public Transport Regulator must remove that operator's name from the register kept in terms of section 90(6).

Comment:

On cancellation the operator should do more than simply be removed from the registers. The operator should also be required to return his certificate of accreditation (COA), vehicle tokens, and any other relevant documentation. Failure to do so should be the subject of an additional punishment, such as a fine.

Section: 93: Certification of vehicles for tourist transport services

Comment:

The whole process of multiple certifications for individual vehicles needs to be considered in-depth with discussion in great detail, in order to prevent unnecessary duplication. The concept of inspecting vehicles simply for the sake of inspecting the vehicle is a waste of departmental manpower, a huge additional time and financial burden on the operator. A yearly COF/COR already provides (or doesn't) this sort of once-off snapshot view of the vehicle already

We have to stop writing legislation to certify individual vehicles, as vehicles do not make driver-related decisions nor maintenance-related decisions. Human interaction is required to make decisions that affect the safety of the vehicle, good or bad. The concept of accreditation, if properly implemented, should resolve most of the problems this section is trying to fix.

The new Bill is introducing the radical concept of accrediting and certifying operators as being capable and responsible enough to maintain their vehicles, along with employing good and responsible drivers. The radical aspect is that the operator becomes the responsible entity, not the individual vehicles themselves. The NPTR and their inspectors provide the necessary enforcement - on-going, on-site, hands-on, visits by NPTR inspectors should ascertain if the operator is working to required standard. If not, the operator loses his accreditation.

We do not see how a third layer of vehicle-focused paper work will provide any more safety or integrity than provided for by the current system – which has been shown to be ineffective (the Permit Boards/OLBs are swamped with an inability to process excessive paperwork, and the yearly inspections of vehicles in isolation of the operator are equally powerless to improve safety and quality records). This aspect needs a thorough discussion to prevent a clause that will be ineffectual and add to the burden, rather than improve the situation.