

REPUBLIC OF SOUTH AFRICA

TRANSPORT APPEAL TRIBUNAL AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 43057
of 28 February 2020
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 8—2020]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Transport Appeal Tribunal Act, 1998, so as to insert, delete and amend certain definitions; to bring the Act in line with the developments since the implementation of the Act; to provide for certain powers of the Transport Appeal Tribunal; to allow the Minister to extend the term of office of the members of the Tribunal; to empower the Transport Appeal Tribunal to take appropriate steps in cases where its rulings are not implemented or effected timeously and empower it to investigate delays in the completion of its proceedings; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 39 of 1998, as amended by section 3 of Act 70 of 1998

1. Section 1 of the Transport Appeal Tribunal Act, 1998 (hereinafter referred to as the “principal Act”), is hereby amended— 5

(a) by the insertion before the definition of “board” of the following definition:

“**act, direction or decision**’ includes—

- (a) an act, direction or decision contemplated in section 92 of the National Land Transport Act;
- (b) a decision contemplated in section 34(1) of the Cross-Border Road Transport Act; 10
- (c) a decision to cancel an operating licence in terms of section 78 of the National Land Transport Act;
- (d) a decision to withdraw, suspend or amend an operating licence or permit in terms of section 79 of the National Land Transport Act; 15
- (e) a decision by the National Public Transport Regulator, as defined in section 1 of the National Land Transport Act, on an application for accreditation made to it under section 81(2) of the National Land Transport Act or renewal of such accreditation in terms of section 81(8) of that Act; and 20
- (f) any other act, direction, decision or omission by a regulatory entity or the Regulatory Committee made in the process of implementing the National Land Transport Act or Cross-Border Road Transport Act;

- (g) by the deletion of the definition of “board”;
- (h) by the insertion after the definition of “board” of the following definition:
 “**‘Cross-Border Road Transport Act’** means the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);”;
- (i) by the deletion of the definition of “intraprovincial transport”; 5
- (j) by the insertion after the definition of “Minister” of the following definition:
 “**‘National Land Transport Act’** means the National Land Transport Act, 2009 (Act No. 5 of 2009);”;
- (k) by the deletion of the definition of “national land transport legislation”;
- (l) by the substitution for the definition of “Regulatory Committee” of the following definition:
 “**‘Regulatory Committee’** means the Regulatory Committee referred to in section 13 of the Cross-Border Road Transport Act [1998]; and 10
- (m) by the insertion after the definition of “Regulatory Committee” of the following definition:
 “**‘regulatory entity’** means a regulatory entity as defined in section 1 of the National Land Transport Act;”. 15

Amendment of section 4 of Act 39 of 1998, as amended by section 18 of Act 42 of 2007

2. Section 4 of the principal Act is hereby amended— 20
- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The Tribunal consists of not more than nine, but not less than five, members appointed by the Minister [**after consultation with every member of the Executive Council in every province responsible for road transport matters**].”; and 25
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 “(a) appoint fit and proper persons as members of the Tribunal on the grounds of their knowledge of, or experience in, [**financial,**] economic, commercial, legal, public transport or other matters relating to the functions of the Tribunal; and” 30

Amendment of section 7 of Act 39 of 1998

3. Section 7 of the principal Act is hereby amended by the addition of the following subsection:
 “(4) Despite subsection (3), the Minister may, upon expiry of the term of office of a member of the Tribunal, extend the term of office of that member for a period not exceeding 12 months.” 35

Amendment of section 9 of Act 39 of 1998

4. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 40
- “(1) The Tribunal will sit on such days and during such hours and at such place as the [**chairperson of the Tribunal**] Director-General may determine after consultation with the Tribunal.”.

Substitution of section 11 of Act 39 of 1998, as amended by section 5 of Act 70 of 1998 45

5. The following section is hereby substituted for section 11 of the principal Act:

“Fees in respect of Appeals

11. The Tribunal may not deal with any appeal noted under [**national land transport legislation,**] the National Land Transport Act or under the Cross-Border Road Transport Act, [1998,] unless any such appeal is accompanied by the fees referred to in section 17(1)(a).” 50

Amendment of section 12 of Act 39 of 1998, as amended by section 6 of Act 70 of 1998

6. Section 12 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5
 “Subject to **[the provisions of]** this Act, the Tribunal must consider an appeal noted with the Tribunal in accordance with the **[provisions of national land transport legislation]** National Land Transport Act or the Cross-Border Road Transport Act, **[1998]** as the case may be, whereupon the Tribunal may—”; 10
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) **[reject]** dismiss the appeal and confirm the act, direction or decision appealed against; or”;
- (c) by the substitution in subsection (1)(b) for subparagraphs (i) and (ii) of the following subparagraphs, respectively: 15
 “(i) substitute therefor any other act, direction or decision which the **[board]** regulatory entity or the Regulatory Committee, as the case may be, could have performed or given; or
 (ii) refer the matter which gave rise to the appeal to the **[board]** regulatory entity or the Regulatory Committee, as the case may be, for reconsideration; or”;
- (d) by the substitution for subsections (2) and (3) of the following subsections, respectively: 25
 “(2) No decision taken by the Tribunal under this section may be inconsistent with **[national land transport legislation]** the National Land Transport Act or the Cross-Border Road Transport Act, **[1998,]** as the case may be.
 (3) Any act, direction or decision of the Tribunal under subsection (1)(b)(i) or (c) will, except for the purposes of subsection (1), be deemed 30
 to be an act, direction or decision of the **[board]** regulatory entity or Regulatory Committee, as the case may be, against whose act, direction or decision the appeal was brought.”;
- (e) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 35
 “(a) within the prescribed period cause the parties involved in the appeal to be notified in writing of the decision of the Tribunal, including any time limits specified by the Tribunal for the implementation of such decision;”; and
- (f) by the addition of the following subsections: 40
 “(5) Where a regulatory entity or the Regulatory Committee fails to implement or give effect to a ruling of the Tribunal within the time specified by the Tribunal, or within a time considered by the Tribunal to be reasonable, the Tribunal may issue a directive to the regulatory entity or Regulatory Committee, as the case may be, in the prescribed manner, 45
 describing the extent of its failure to comply with its obligations and stating the steps required to meet those obligations, and the regulatory entity or Regulatory Committee, as the case may be, must comply with such directive within the time specified by the Tribunal in the directive.
 (6) Where the Tribunal issues a directive under subsection (5), it must 50
 notify the Director-General and request the Director-General to notify—
 (a) the Minister, in the case where the directive is issued to the Regulatory Committee or to the National Public Transport Regulator as defined in section 1 of the National Land Transport Act;
 (b) the relevant member of the Executive Council, in the case where the 55
 directive is issued to a Provincial Regulatory Entity as defined in section 1 of the National Land Transport Act; or
 (c) the municipal council of the relevant municipality, in the case where the directive is issued to a municipality to which an operating licence function has been assigned, 60

of the issuing of the directive and request the Director-General, Minister, member of the Executive Council or municipal council, as the case may be, to assist in assuring compliance with the directive.”.

Amendment of section 13 of Act 39 of 1998, as amended by section 7 of Act 70 of 1998

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7. Section 13 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs, respectively:

- “(a) grant an application for condonation of the late filing of an appeal against the act, direction or decision of the **[board]** regulatory entity or the Regulatory Committee, as the case may be, provided the appeal is noted in the prescribed manner and within the prescribed period, or refuse such an application; or
 (b) grant or refuse an application to suspend the operation of any act, direction or decision appealed against, provided that such act, direction or decision is automatically suspended if the appeal was lodged within a period of 30 days after the date on which such act, direction or decision was communicated to the appellant.”.

Amendment of section 14 of Act 39 of 1998, as amended by section 8 of Act 70 of 1998

8. Section 14 of the principal Act is hereby amended—

- (a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) Where, in terms of **[national land transport legislation]** the National Land Transport Act or the Cross-Border Road Transport Act, [1998,] it would have been permissible for the **[board]** regulatory entity or the Regulatory Committee, as the case may be, to take any person’s road transport law enforcement profile or previous traffic or transport-related contraventions into consideration, the Tribunal may compel any such person to give self-incriminating evidence, but the person presiding at the appeal must direct that such evidence will be given *in camera* and that it will not be made public, in any manner whatsoever, except by order of a competent court for the purposes of review or appeal.”; and

- (b) by the addition of the following subsections:

“(5) The Tribunal must investigate any unreasonable delay caused by a person in the completion of its proceedings or any frivolous, vexatious or irrelevant actions on the part of any person in the course of its proceedings which appear to the Tribunal to be unreasonable and which delays or actions could cause substantial prejudice to the State, the appellant or any other interested party, and must consider the following factors in deciding whether a delay is unreasonable:

- (a) The duration of the delay;
 (b) the reasons advanced for the delay;
 (c) whether any person can be held responsible for the delay;
 (d) the effect of the delay on the personal or financial circumstances of the State, the appellant or any other interested party; and
 (e) any other factor which, in the opinion of the Tribunal, must be taken into account.

(6) If the Tribunal finds that the completion of its proceedings is being delayed unreasonably, or that any action is frivolous, vexatious or irrelevant, it may issue any order that it considers necessary to eliminate the delay or action concerned and any prejudice resulting from it or to prevent further delay or prejudice, including an order—

- (a) refusing further postponement of the proceedings; or
 (b) granting a postponement subject to such conditions as it may determine.”.