PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

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ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

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WEDNESDAY, 25 OCTOBER 2023

COMMITTEE REPORTS

1. *(Negotiating mandate stage)* Report of the Standing Committee on Mobility on the Economic Regulation of Transport Bill [B 1B–2020] (NCOP), dated 23 August 2023, as follows:

The Standing Committee on Mobility, having considered the subject of the Economic Regulation of Transport Bill [B 1B–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 subject to the following amendments.

1. General: Concessions to private operators

As mentioned in the 2020 comments, it is apparent from the objectives of the Memorandum on the Objects of the Bill that the intention is for the Bill to address the consequences of the current ills of transport and transport infrastructure as well as the domination by large inefficient state-owned companies with a high degree of market power over infrastructure and services.

Proposal: Competition should be introduced by granting concessions to private operators to utilise publicly created transport infrastructure, including ports and rail. It is recognised that the Bill made some provisions for private sector participation, which is supported.

2. General: Potential integration of Regulator and related bodies into existing structures

The Bill envisages the establishment of a Regulator (with a panel and a Board), a Council and the appointment of various officers.

The establishment of the various bodies and the appointment of officers should not become an additional burden on the taxpayer.

Could the establishment of the above bodies and the appointment of said officers not be undertaken within existing structures, with existing personnel?

The Bill makes a couple of improvements on the *status quo*, which must be commended:

2.1 The powers which stand to be conferred to the new Regulator are far broader than those at the current disposal of the Ports Regulator, which will likely make for more effective regulation.

2.2 Whereas the Ports Regulator is currently funded by Treasury and has been known to suffer challenges emanating from a lack of funding, the Bill contemplates that the Regulator will be funded in part by an annual fee levied against regulated entities, each contributing according to the proportional cost of regulating each entity. If implemented correctly, such a funding model has the potential to be effective and sustainable.

Comments submitted by the Province previously highlighted the importance of absorbing existing personnel into the new organisational structure to avoid overburdening the taxpayer with additional resources being directed to the Public Wage Bill.

While the Bill attempts to address this by ensuring that the Regulator is partly funded through levies against the industry, existing capacity should be used to staff the administration. It has been seen in the past, more recently with the Information Regulator, that failure to use existing human resources to drive new functions causes undue delay and uncertainty in implementation.

Proposal: The Bill should provide for the transition of the above bodies and said officers to be recruited from within existing structures as far as justifiable and in the best interests of all.

3. Concessions to private operators

It is apparent from the objectives set out in the Memorandum on the Objects of the Bill that the intention is for the Bill to address the consequences of the current ills of transport and transport infrastructure as well as the domination by large state-owned companies with a high degree of market power over infrastructure and services.

Proposal: Competition should be introduced by granting concessions to private operators to utilise publicly created transport infrastructure, including ports and rail.

4. Language and drafting errors

The Bill and the Schedules thereto contain various language and drafting errors.

Some of the errors are as follows (this is not a closed list):

4.1 In certain cases, spaces are inserted before m dashes (e.g. clause 45(2)). This is incorrect.

4.2 Some of the clauses are not in the correct order (e.g. some of the functions of the Regulator are set out before the Regulator is established).

4.3 There is a general provision dealing with regulations (clause 54), but also other provisions that deal with regulations (e.g. see clauses 4(10) and 51(2)*(c)*). This is not ideal, as it could lead to confusion.

4.4 The Bill contains numerous vague words and expressions (e.g. "*appropriate*", "*appreciable*", "*immediately before*" and "*recent history*"), which could lead to confusion and difficulties in interpretation.

4.5 The Bill contains grammatical errors (e.g. see the definition of the word "*market*", in which the word "*exist*" should be changed to "exists").

4.6 Some of the punctuation marks are incorrect (e.g. see clause 4(2), where an m dash was used instead of a colon).

Proposal: To improve the text, it is recommended that the legislative drafter review the Bill using generally accepted Commonwealth legislative drafting practices, as well as enlist the support of a language practitioner familiar with these practices.

5. Comments on specific provisions

Clause	Comment	Recommendation
Clause 1: Definition of "access"	The definition of 'access' should be extended to provide for other types of access seekers; not only those who provide goods or services to customers.	Revise the definition in light of the comments.
Clause 1: Definitions "facility"	This definition is very broad and its meaning is uncertain. It is especially unclear what constitutes "*physical infrastructure*".	Elaborate on this definition, for the sake of clarity. This definition affects many provisions of the Bill and, therefore, clarity is important.
Clause 1: Definitions "market power"	NA	It is recommended that the word "*or*", that appears before the words "*to exclude",* be deleted.
Clause 1: Definitions "prohibited conduct" *(a)*(i)	Prohibiting any act or omission that contravenes the Act is very broad and could lead to unintended consequences.	Reconsider the wording.
Clause 1: Definitions "service"	This definition is very broad and it is unclear what is meant.	Elaborate on this definition, for the sake of clarity. This definition affects many provisions of the Bill and, therefore, clarity is important.
Clause 1: Definitions "transport sector"	NA	The term "*infrastructure*" should be clarified.
Clause 2: Interpretation	It is unclear why the provisions relating to interpretation are not included in clause 1. Typically provisions of this nature appear in subclauses after the definitions.	Consider incorporating the contents of clause 2 into clause 1.
Clause 3: Purpose of Act	A key component of an efficient, reliable and viable transport industry in South Africa is the	It is recommended that climate change considerations, linked to the

3(1)*(a)*, *(c)* and 38	consideration of impacts outside the normal area of concern for the transport industry. Evidence shows that climate change will have greater impacts on infrastructure and the way in which infrastructure needs to be planned for, designed, constructed, operated and maintained. The projected increases in extreme events, such as floods, storms and droughts, as well as the impacts of increasing temperatures and greater variability in temperature and the projected changes to rainfall (including less rainfall events) all have significant implications on infrastructure. There is thus a need to move away from a "business as usual" approach to infrastructure planning and management. It is essential that the risks to transport infrastructure management, planning and operations, and the costs associated with responding to those risks, are included in transport planning and decision-making. It is critical to understand that decisions made in the short-term without considering climate change could likely result in stranded assets or increased maintenance and replacement costs in future. There is also a risk to transport economic viability should these considerations not be included in the decision-making and planning.	economic viability of the transport sector, be considered in the Bill.
Clause 4: Application of Act **General**	Clause 4(2) allows the Minister to include any other market, entity or facility (public or private), if a single operator controls more than 70% of the market concerned, or the preconditions for efficiency and cost-effectiveness do not exist in the market concerned. It is assumed that the current Integrated Public Transport Networks (IPTNs), established in terms of the National Land Transport Act, 2009 (Act 5 of 2009), may fall into the above, as the municipality is setting a single tariff (although there may be multiple operators). Some of the Public Transport Operating Grant (PTOG) contractors, such as Golden Arrow Bus Services in the Western Cape, may also fall under this definition of "*single operator*". The nature of the current public transport industry is that subsidised services sometimes appear to compete with unsubsidised services.	It is submitted that a more suitable proposal, one which would serve the purpose of introducing certainty, would be for a single declaration to be made by the Minister, after consultation with the Regulator, that the listed regulators are incorporated into the Regulator. Subsequent to the declaration by notice in the Gazette, the relevant regulators are then given a three-year period within which to institute the necessary legislative reforms to align with the Regulator. The imposition of regulation on a service which appears to be uncompetitive, but where, in actual fact, there are different levels of service being provided (e.g. a supply-led service versus a scheduled demand-led service) is

	The reality is that the subsidised service usually provides a minimum level of quality and reliability (dependability), which may not be evident in the unsubsidised service. It would, therefore, be problematic to attempt to regulate a service where a single prescribed tariff may have an adverse outcome on the quality of service provided.	hopefully catered for by clause 4(2), but note is made here of the risk of the Minister imposing regulation without due consultation with the provincial or municipal authority in that service area. It is, thus, recommended that a new clause be inserted in clause 4, which makes it clear that the Regulator must consult with the affected provincial and municipal authorities with respect to the service or entity that is to be regulated in their area.
Clause 4: Application of Act **4(2)**	It would be useful if the Bill could elaborate on what is meant by "*privately or state owned*". It would also be useful for the Bill to include a list of regulated entities (e.g. in a Schedule).	It is recommended that the Bill be amended as set out in the comments.
Clause 4: Application of Act **4(2)*(a)***	NA	For the sake of clarity, it is recommended that the term "*operator*" be defined.
Clause 4: Application of Act **4(2)*(a)* and *(b);*** **4(4)*(a)***	In terms of clause 4(2)*(a)* of the Bill, if at least one entity has market power, the entire market can be regulated. Regulation is a cost to the entity, market, as well as the consumers. This could discourage market entry and new investments.	It is recommended that the specific entity with market power be regulated, rather than the entire market.
Clause 4: Application of Act **4(5)*(b)***	It is unclear what will happen should objections be received from the public. How will the process be affected?	Consider and revise this clause accordingly. This also applies to clause 4(8).

Clause 4: Application of Act **4(5)*(c)***	The intention is to regulate the private market; however, public hearings are "optional".	It is recommended that public hearings be compulsory towards enhancing transparency.
Clause 4: Application of Act **4(10)*(a)***	It is important that sufficient time be afforded to the public to provide comment and that extensions are permitted, where necessary.	Reconsider the wording of the clause in light of the comments.
Clause 4: Application of Act **4(11)**	The inclusion of regulators should follow a process of consultation with such regulators (i.e. before they are included). Further, it is unclear what grounds the Minister will use to determine that a regulator should be included in the Regulator. This should be clarified. If the intention is that the grounds set out in paragraph *(b)* apply, then this should be stated.	Revise the proposed subsection (11) to address these matters.
Clause 4: Amendments set out in paragraph 1: addition of subsection (11) **4(11)*(a)*(v)**	It is unclear what other types of regulators are envisaged in clause 4(11)*(a)*(v). This should be clarified.	The other types of regulators should be clarified.
Clause 4: Application of Act **4(11)*(b)***	Clause 4(11)*(b)* presents performance-based prerequisites for the subsuming of other regulatory authorities into the Regulator, where the only prerequisite should be the functions of those regulatory authorities in relation to the mandate of the Regulator. As stated previously, it is not rational to propose that the strategic imperative of consolidating regulatory functions across multiple regulatory authorities should be delayed by an assessment that any particular regulatory authority, performing functions vital to the administration of the Act as set out in section 2 of the Bill, has failed to demonstrate the requisite performance and capabilities for incorporation.	Consider the matter.

Clause 5: Determination of access costs and review of access agreements **5(4)**	The provision states that "*[a]n infrastructure owner must lodge all existing agreements with the Regulator within one year from the date of the determination contemplated in subsection (1)*". However, it is unclear what will happen if an infrastructure owner does not do so. What will the consequences be? To what extent can such an owner be forced to provide the agreements?	Reconsider the clause in light of the comments and amend the Bill accordingly.
Clause 6: Types of access requests and access fees **6(1)*(a)* and *(b)***	These clauses should cross-refer to particular subclauses of clause 4.	Reconsider the wording in light of the comments.
Clause 6: Types of access requests and access fees **6(2)**	The word "*prescribed*" is defined to mean "*prescribed by regulation*" (see clause 1 of the Bill). Clause 6(2) states that the Regulator must "*prescribe fees for the processing of access applications*". It may be prudent to use alternative wording to avoid confusion with the making of regulations by the Minister. It must also be clear where the fees are to be published.	Reconsider the clause in light of the comments.
Clause 7: Contents of access agreements and notification to Regulator **7(1)*(e)***	Should there not also be a cross-reference to clause 11?	Consider whether a cross-reference to clause 11 is required.
Clause 7: Contents of access agreements and notification to Regulator **7(2)**	It is noted that an infrastructure owner must confirm to the Regulator that the access agreement is consistent with the provisions of the Act. Would it not be more appropriate to provide in the Bill that an access agreement must be consistent with the provisions of the Act (as opposed to requiring an infrastructure owner to confirm this)?	Reconsider the clause in light of the comments.
Clause 8: Request for and consideration of access approval by Regulator **8(4)*(b)***	NA	It is recommended that the term "*access applicant*" be changed to "access seeker", as the latter is a defined term.

Clause 8: Request for and consideration of access approval by Regulator **8(5)*(a)*(ii)**	It is unclear why the words "*where possible*" were included in this clause. The projections would presumably be based on underlying documents. Thus, there should presumably be "*written evidence*".	Reconsider the use of the words "*where possible*".
Clause 8: Request for and consideration of access approval by Regulator **8(6)**	NA	Consider adding how much of the infrastructure is currently in use by existing access users and the period of each agreement. This will assist the Regulator to have a global view of existing demand / use of the infrastructure.
Clause 8: Request for and consideration of access approval by Regulator **8(7)**	This clause is arguably over-reaching. The provision is too broad, does not guide the discretion of the Regulator and could potentially lead to an abuse of power. The clause does not include an indication of the process that will be followed for reassignment.	Reconsider the clause in light of the comments.
Clause 9: Decision on access approval **9(2)**	The Regulator should give a decision within a set period in order to ensure the granting of access is not subject to undue delay.	It is recommended that a decision be provided within a reasonable period e.g. 20 working days after receipt of all information received in terms of clause 8(4).
	NA	It is recommended that the comma that appears before the words "*to fund*" be deleted.
Clause 10: Cession, transfer or assignment of access rights **General**	It is possible that an entity that has been granted access approval could have the intention from the start to cede its access rights for monetary gain. It is unclear how this clause links with clause 9(2). The Regulator may grant access approval even if the requirements of clause 8(4)*(a)* are not met, provided that the access seeker has given a written undertaking to the Regulator to fund the required investment in infrastructure.	The Bill should contain more prescriptive details regarding third party use. The Bill sets out lengthy requirements for an entity to gain access, however, access rights can then simply be shifted to another party. This defeats the purpose of free, fair and equal usage. It is recommended that more specific requirements be included regarding the cession or transfer of access rights to a third party.
Clause 11: Determination of price controls **General**	Clause 11 does not expressly provide for consultation with the affected sphere(s) of government. It is unclear from clause 11(1) whether the intention is for the Bill to regulate any transport-	It is recommended that clause 11 be amended to require the Regulator to consult with the affected provincial and municipal authorities with respect to the price

	related fees or tariffs set by other spheres of government. This should be clarified.	control affecting their area of jurisdiction. It is recommended that clarity be provided in the Bill in this regard.
Clause 11: Determination of price controls **11(1)**	Regulation and price determination should be avoided. Maximum prices / fees lead to supply shortages and increase in informal market activity. Minimum prices lead to oversupply and higher prices to consumers. Regulating the pricing of transport entities and access to their infrastructure, does not address the inefficiency within these institutions.	Other potential options for consideration and further investigation include forced break-up of monopolies by government or to encourage more competition. It is recommended that competition be introduced by granting concessions to private operators to utilise publicly created transport infrastructure, including ports and rail.
Clause 11: Determination of price controls **11(2)**	On initial assessment, the clause appears too prescriptive in the way it places limits on regulated entities' ability to generate revenue and utilise returns from assets. This will discourage investment. While these entities serve public functions and should accordingly be subject to price controls, they should be encouraged to increase revenue and exploit assets if this would serve to improve facilities and services offered to the public.	It is recommended that the clauses relating to the limits on revenue and utilisation on returns be deleted, alternatively, that they be revised to remove these limits.
Clause 11: Determination of price controls **11(3)**	As stated earlier, the definitions of "*facility*" and "*service*" are very broad. Thus, it is unclear what is meant by these terms. Accordingly, it is unclear which "*facilities*" or "*services*" would be subject to price regulation.	Amend the Bill to provide clarity on what is meant by these terms.
	NA	To avoid year-on-year requests, it is recommended that requests be made by regulated entities for a period of three years, linked to the Medium-Term Expenditure Framework period.
Clause 11: Determination of price controls **11(4)*(a)***	Interested parties and the public should be afforded a reasonable period within which to comment on the proposal.	It is recommended that the clause be revised to refer to a reasonable commenting period.
Clause 11: Determination of price controls **11(4)*(b)*(iii)**	NA	For the sake of clarity, it is recommended that the Bill be amended to elaborate on what is meant by the term "*opportunity cost of capital*".
Clause 11: Determination of price controls	The phrase "*any other characteristic that the Regulator may deem relevant*" is too broad. The Bill should provide sufficient guidance to the	It is recommended that the Bill be amended to provide guidance to the Regulator on the types of

11(4)*(b)*(v)	Regulator to enable it to exercise its discretion appropriately.	characteristics that could be relevant.
Clause 11: Determination of price controls **11(4)*(b)*(vi)**	NA	For the sake of clarity, it is recommended that the Bill be amended to elaborate on what is meant by the phrase "*small or medium enterprises*".
	What will the Regulator consider when determining what the "*likely effect*" will be?	Elaborate on what the Regulator will use as a measure to determine the "*likely effect*".
Clause 11: Determination of price controls **11(10)**	NA	The comma that appears before the em dash should be deleted.
Clause 11: Determination of price controls **11(12)*(c)***	NA	It is recommended that a requirement be included which states that the new price must be reviewed should the agreement remain in place for more than a 12-month period.
Clause 11: Determination of price controls **11(12)*(c)*(i)**	In this clause, the word "*Court*" should start with a lower case "c". Where appropriate, this amendment should also be made in other provisions of the Bill e.g. clause 20(3)*(a)* (except, for example, in the case of references to a particular court like the High Court).	It is recommended that the Bill be revised accordingly.
Clause 12: Extraordinary review of price controls **General**	It is unclear what happens after the extraordinary review has been conducted.	It is recommended that the Bill be amended to clarify this matter.
Clause 12: Extraordinary review of price controls **12(2)*(b)*(i)**	NA	The comma that appears after the word "*entity*" should be changed to a semi-colon.
Clause 13: Information from regulated entities **General**	NA	The word "*licenced*" should be changed to "licensed" throughout this clause.
Clause 13: Information from regulated entities **13(1)**	NA	It is recommended that the frequency of reporting be specified.

Clause 15: Complaints against regulated entities **15(1)**	Some of the matters listed in clause 15(1) do not seem to relate to the purposes set out in clause 3 of the Bill. Thus, it is unclear why the Regulator should have the power to consider complaints relating to such matters. For example, where a regulated entity refuses to issue a licence. This could also create a problem where other pieces of legislation already provide for processes to deal with such matters (there could potentially be a duplication of functions and processes).	Reconsider the list in clause 15(1) and delete matters that do not relate to the purposes in clause 3.
Clause 16: Direct referrals to Council **16(6)**	The Council is an appeal authority. A finding of the Council must be binding unless taken on review to a court. It suggested the word "*may*" be substituted with "must" to ensure enforceability of the Council's findings.	It is recommended that the wording be revised in light of the comments.
Clause 17: Consideration of complaints by Regulator **17(1)*(a)*(i)**	The wording is too broad and could lead to unintended consequences.	It is recommended that the wording be revised in light of the comments.
Clause 17: Consideration of complaints by Regulator **17(2)**	It is noted that the Regulator may act on its own initiative and direct an inspector to commence an investigation. In order to guide the discretion of the Regulator and to avoid a potential abuse of power, the clause should explain the circumstances in which it would be appropriate to launch an investigation into a matter.	It is recommended that clause 17 be revised in light of the comments.
Clause 17: Consideration of complaints by Regulator **17(3)**	It is unclear which persons the Regulator may designate to assist the inspector in conducting an investigation. This should be clarified.	It is recommended that clause 17 be revised in light of the comments.
Clause 18: Outcome of investigation **18*(a)***	Clause 17(1)*(a)*(i) states that the Regulator may issue a non-referral notice (if the matter is deemed to be frivolous or vexatious) before an investigation is done. Clause 18*(a)* provides for the Regulator to issue a non-referral notice after the investigation is completed and a report is provided to the Regulator. It is unclear why non-referral can occur upon receiving a complaint and then later again after receiving a report of an investigation. This must be clarified.	Reconsider the provisions relating to non-referral in light of the comments.

Clause 19: Consent orders **19(1)**	The clause does not clarify how the Regulator and the respondent must engage one another on the outcome of the investigation. Further, it is unclear why the Council may confirm an agreement without hearing any evidence.	Reconsider and revise clause 19(1) in light of the comments.
Clause 20: Issuance of compliance notices **20(2)*(b)***	It is unclear why the words "*if any*" appear in this clause. A compliance notice is normally only issued if a person fails to comply with a particular provision of a piece of legislation.	It is recommended that the words "*if any*" be deleted.
Clause 28: Decision at end of hearing **28(1)**	Clause 28(1) refers to publication of a decision on "*the site*". The clause should preferably use the word "website" and clarify that it is the Regulator's website that is being referred to.	It is recommended that the Bill be amended as set out in the comments.
Clause 30: Governance of Transport Economic Regulator **30(6)**	The word "*some*" is vague and open to interpretation.	Specify the number of Board members to be appointed for three years.
Clause 30: Governance of Transport Economic Regulator **30(10)*(c)***	It is noted that the full citation of the Public Finance Management Act, 1999 (Act 1 of 1999) is used in this clause. There are also other instances in the Bill where "*Public Finance Management Act, 1999*" is used. The defined term "*Public Finance Management Act*" should be used consistently throughout the Bill.	It is recommended that the defined term "*Public Finance Management Act*" be used consistently throughout the Bill. Further, where other terms are defined in the Bill they should also be used consistently throughout the Bill.
Clause 31: Qualifications for Board membership **31(1)*(a)***	The term "*suitably qualified*" is vague and open to interpretation.	It is recommended that suitable qualifications be specified in the Bill e.g. honours degree in economics, law, or transport.
Clause 31: Qualifications for Board membership **31(2)*(g)***	NA	A comma should be inserted after the year "*1993*".
Clause 33: Resignation, removal from office and vacancies **33(1)*(a)* and *(b)***	NA	An apostrophe should be inserted after the word "*months*".
Clause 33: Resignation, removal from office and vacancies	NA	It is recommended that the wording be revised to state that the person must be afforded an opportunity to

33(3)		state why he or she should not be removed from office.
Clause 34: Regulator's executive structures **34(4)**	It is unclear where the internal procedures will be published. This should be clarified.	Revise the clause in order to clarify the matter.
Clause 38: Functions of Regulator **General**	The National Land Transport Act, 2009 (Act 5 of 2009) (the NLTA) sets out various functions of the three spheres of government insofar as land transport is concerned. While it is noted that the Bill amends a provision of the NLTA dealing with the functions of the National Public Transport Regulator, it is unclear to what extent the various functions of the three spheres of government set out in the NLTA were considered during the drafting of the Bill. The Regulator should not duplicate these functions.	It is recommended that the provisions of the NLTA be considered to ensure that the Regulator does not duplicate the functions of the three spheres of government set out therein.
Clause 38: Functions of Regulator **38*(i)***	NA	Delete the comma that appears after the word "*Act*".
Clause 39: General provisions concerning Regulator **39(1)*(b)***	Clause 39(1)*(b)* should be qualified to state that the Regulator may consult any person, organisation or institution with regard to any matter that falls within the scope of its mandate (i.e. and not simply "*any matter*").	It is recommended that this clause be revised accordingly.
Clause 41: Promotion of legislative and regulatory reform **41(1)*(b)* & *(c)***	Provinces may legislate freely on matters contained in Schedules 4 and 5 to the Constitution of the Republic of South Africa, 1996 (the Constitution). Where there are conflicts between national and provincial legislation in relation to a Schedule 4 competence, section 146 of the Constitution applies. When there are conflicts in relation to a Schedule 5 competence, section 147 of the Constitution applies. While the Constitution requires all spheres of government to "*co-operate with one another in mutual trust and good faith*" by, among other things, "*co-ordinating their actions and legislation with one another*" (see section 41(1)*(h)* of the Constitution), this does not mean that national may interfere in provincial matters beyond what is permitted by the Constitution (see e.g. sections 146(2)*(b)* and *(c)* and 44(2) of the Constitution). Clauses 41(1)*(b)* and 41(1)*(c)* create the impression that provinces would be required to amend their legislation to conform with the	Delete clauses 41(1)*(b)* and 41(1)*(c)* and any other similar provisions (e.g. clause 44*(b)*). Alternatively, amend the clauses to ensure that they do not go beyond what is contemplated in the Constitution.

	proposed amendments from the Regulator. This goes beyond what is contemplated in the Constitution. Accordingly, a reasonable argument could be made that clauses 41(1)*(b)* and 41(1)*(c)* of the Bill are unconstitutional.	
Clause 42: Research and public information **42(1)*(d)***	It may also be useful for the public to have access to a guide that sets out the functions of the Regulator.	Consider providing in the Bill for the publication of a guide that explains the functions of the Regulator.
Clause 43: Relations with other regulatory authorities **General**	NA	It is recommended that the Department consults with all relevant regulatory authorities for the purpose of obtaining their input on the provisions of this Bill. This will assist in mitigating the potential unintended consequences of the Bill.
Clause 43: Relations with other regulatory authorities **43(1)**	The different roles, functions and jurisdiction of the Regulator and other regulating entities must be clarified upfront. This will avoid public confusion, uncertainty and undue delays. This is one of the main objectives of a regulatory reform of this nature. Once clarified, these different roles and functions must be formally published to stakeholders.	Amend these clauses to provide clarity and certainty.
Clause 45: Minister may call for enquiries or investigations **45(1)**	The term "*economic aspect*" is vague. This could lead to interpretation problems.	The Bill should be revised to clarify what is meant by this term.
Clause 47: Council members **47(7)**	NA	It is recommended that clause 47(7) also be made subject to clause 47(13).
Clause 48: Council functions and procedures **48(3)*(a)***	The term "*legal training*" is too broad. What about formal qualifications?	It is recommended that suitable qualifications be specified.
Clause 51: Minister to determine annual fees to be paid by regulated entities	Clause 51 states that the cost of regulation should be borne by the regulated entities, in proportion to the actual cost of undertaking such regulation. Clause 4 requires that regulation should only be undertaken where economic problems exist that can be addressed by means of economic regulation, and clause 53(4) empowers the Minister to conduct five yearly reviews of the exercise of the functions and powers of the Regulator and of the	NA

	Council, relative to the policy and purposes of the Act. These provisions seek to ensure that the scope of regulation is kept proportionate to the size of the economic problems in the market, and thus that the cost of regulation does not become disproportionate and excessive. The inclusion of this provision must be lauded as a provision that appears cognizant of the consequences of overregulation on businesses and the state administration.	
Clause 51: Minister to determine annual fees to be paid by regulated entities **51(1)**	It is unclear how long before the new financial year this must be attended to. Regulated entities must know in advance what they will pay.	It is recommended that the time frame for the submission of the joint proposal be specified, cognisant that regulated entities need to know the annual fee in advance in terms of their planning and budgeting processes.
Clause 53: Reviews and reports by Regulator and Council **53(4)**	It appears that the powers and functions must be reviewed every term. This seems excessive.	Reconsider the frequency of the review.
Clause 55: Appointment of inspectors and investigators **55(1)*(a)***	The term "*suitable*" is very vague and open to interpretation.	It is recommended that detail be provided for in the Bill regarding which categories of employees may be appointed as an inspector. There must be measurable indicators to base the appointment on.
Clause 59: Conduct of entry and search **59(4)*(b)***	The word "*practicable*" is vague and open to interpretation.	It is recommended that alternative phrasing be used, as it is not clear what is meant by "*practicable*".
Clause 59: Conduct of entry and search **59(9)**	This clause appears to be too broad. Will the regulations (to be determined) provide more clarity in this regard? What is the process to be followed when claiming damages?	It is recommended that the Bill be revised to clarify these matters.
Clause 60: Claims that information is confidential **60(3)*(b)***	The decision should be supported by reasons. It should be clear why the Regulator made the decision.	Amend the clause accordingly.
Clause 60: Claims that information is confidential **60(5)**	The period is very short.	Consider changing the period to seven days.
Clause 61: Powers of Court	This provision is not necessary, as it provides for the ordinary powers of the courts.	It is recommended that the clause be deleted.

Clause 63: Hindering administration of Act **63(2)*(a)***	It is unclear what would constitute "*sufficient cause*". This should be clarified in the Bill.	It is recommended that examples of "*sufficient cause*" be stated in the Bill.
Clause 64: Offences relating to Regulator and Council **64*(d)***	This clause is too broad and may lead to unintended consequences e.g. the word "*misbehaves*" is very broad and open to interpretation.	Revise the clause to narrow the types of behaviour that will be criminalised.
Clause 69: Serving documents **Words preceding paragraph *(a)***	NA	It is recommended that the word "*will*" be changed to "is" (it currently reads "*will deemed*").
Clause 69: Serving documents **69*(b)***	The sender must follow up with the intended recipient to ensure that he or she received the email.	It is recommended that the Bill be revised to place an obligation on the sender of the email to check that the intended recipient received the email.
Schedule 1 **Consequential amendments** **General**	NA	Where applicable, insertions in the legislation must be underlined.
	The word "*hereby*" is not normally used in legislation (except in the case where a body is being established), as it is archaic.	Delete the references to "*hereby*" throughout the Schedule.
Schedule 1 **Consequential amendments** **Proposed item 1(9)**	NA	The word "*Must*" should start with a lower case "*m*".

Schedule 1 **Consequential amendments**	Although it appears that the National Land Transport Act, 2009 (Act 5 of 2009) (the NLTA), will only be impacted during the third phase of the implementation of the Bill, the following provisions of the NLTA (besides those already mentioned in Schedule 1) will also be impacted. There appears to be another necessary consequential amendment to the NLTA, namely to section 28 thereof ('Public Transport User Charges'). It is recommended that this provision be amended to make it subject to the direction of the Regulator. Section 38 of the NLTA is also impacted upon by the Bill, as it will also be subject to the determination of the Regulator. Municipal Freight Transport Policy and Strategy should be mindful of the Regulator's determinations.	It is recommended that section 28 of the NLTA be amended by the insertion of the words 'and any price controls determined by the Regulator,' after the words "*Subject to the Municipal Fiscal Powers and Functions Act, 2007 (Act 12 of 2007),*". Please also refer to the other comments in the column to the left.
	Section 41(1)*(c)* of the NLTA (Negotiated contracts) will also be impacted upon. Contracting authorities are empowered to enter into negotiated contracts, one of the purposes of which is "*facilitating the restructuring of a parastatal or municipal transport operator to discourage monopolies*". This is also a function of the Regulator (please refer to clause 38*(a)-(f)* of the Bill) and the Regulator should be called upon to investigate the potential monopoly before the negotiated contract is concluded. The Bill will also impact broadly on the provisions of Chapter 6 of the NLTA (Regulation of Road Based Public Transport), especially the rationalisation of existing permits and scheduled bus services. The Regulator would have to do its own investigations and make its determinations on anti-competitive practices (or if it is competitive, efficient and viable).	

Schedule 2: Transitional provisions **Proposed item 2(3)*(b)***	The words starting with "*remain*" and ending with "*as the case may be*." should be moved down to the next line.	Amend the clause as set out in the comments.

2. ***(Negotiating mandate stage*)** Report of the Standing Committee on Mobility on the National Land Transport Amendment Bill [B 7F–2016], dated 23 August 2023, as follows:

The Standing Committee on Mobility, having considered the subject of the National Land Transport Amendment Bill [B 7F–2016] 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 subject to the following amendments.

Clause	Comment	Recommendation
Additional comment – section 11(1)*(b)*	Section 11(1)*(b)* of the National Land Transport Act, 2009 (Act 5 of 2009) (the Act), provides for the responsibilities of the provincial sphere of government. It is submitted that it should be specified that the provincial sphere of government is able to plan, implement and manage provincial land transport initiatives, including public transport services. This would include provincial public transport services operating within the borders of the province but across the boundaries of multiple municipalities.	It is recommended that the section be revised to include these recommendations.
Additional comment – section 11(1)*(b)*	Pursuant to the President's concerns about the constitutionality of a province unilaterally concluding contracts with operators for services provided in the province where the municipality did not meet requirements or criteria prescribed by the Minister, these provisions (clause *7(b)* in the previous draft of the Bill [B7B—2016]) were removed from the Bill. This in effect means that the local sphere of government is responsible for entering into contracts with operators of services in their areas as contemplated in subsection (1)*(c)*(xxvi) of the Act. This is consistent with the Constitution of the Republic of South Africa, 1996, (the Constitution) where municipal public transport is listed in Schedule 4 Part B as being a local government matter. However, it must be noted that section 12(1) of the Act states that a province may enter into an agreement with one or more municipalities in the province to provide for the joint exercise or	It is submitted that a province should be able to enter into public transport contracts in specific circumstances when requested to do so by a municipality and subject to a section 12(1) agreement with the municipality. Such contracts could be utilised when contracted public transport services operate across municipal borders. It is currently not clear how municipalities will negotiate and conclude contracts where the operators for services provide these services within a province but across borders between municipalities. It is submitted that clarity is required as to who would undertake the negotiation and conclusion of the contracts with these operators.

	performance of their respective powers and functions contemplated in the Act. Furthermore, section 11(1)*(b)*(v) of the Act provides that a province may assist a municipality that lacks capacity and resources to perform their land transport functions. This is consistent with section 155(6)*(a)* of the Constitution which states that a provincial government must provide for the support of local government in the province.	
Clause 7*(a)*	The proposed amendment to section 11(1)*(c)*(v) includes a reference to "state-owned rail operators".	It is submitted that a definition for this term should be inserted in section 1 of the Act.
Clause 7*(c)*	The proposed amendment to section 11(1)*(c)* (xix) uses the term "other rail service providers" but does not define this term and does not clarify whether this is a reference to private or state-owned service providers or both. Furthermore, requiring "agreement" from the Passenger Rail Agency or other rail service providers in relation to the provision of service level planning for passenger rail on a corridor network basis could delay or hinder the completion of the relevant integrated transport plan if such agreement is not forthcoming or delayed. It is submitted that "consultation" is a lesser and more realistic standard to achieve. Furthermore, municipal planning is a functional area in terms of Part B of Schedule 4 of the Constitution and one which a municipality has executive authority in respect of and has the right to administer in terms of section 156(1) of the Constitution. Requiring "consultation" would be in accordance with these rights.	It is submitted that a definition for "other rail service providers" should be inserted in section 1 of the Act. It is submitted that "consultation" should replace "agreement" in the proposed amendments of this subparagraph.
Clause 7*(g)*	Regarding the insertion of proposed subsection (10)*(a)*, it is submitted that the inclusion of a prescribed process or procedures to be followed in the negotiation or tendering of contracts contemplated in proposed subsections (1)*(c)*(xxvi) and (8) is problematic. A municipality has executive authority in respect of and has the right to administer those local government matters listed in Part B of Schedule 4 of the Constitution, including municipal public transport, and in terms of any other matter assigned to it by national or provincial legislation as contemplated in section 156(1)*(b)* of the Constitution. Proposed subsection (10)*(a)* empowers the Minister to make regulations about the process or procedures to be followed in negotiating or tendering for contracts. It is submitted that this does not accord with the right of municipalities to administer municipal public transport. Furthermore, the	In the previous draft of the Bill [B7B—2016] a proposed provision in clause 7*(n)* inserted subsection (9)*(d)* in section 11 which empowered the Minister to prescribe requirements and criteria with which municipalities must comply in order to conclude contracts. This was deleted after the President raised concerns about the constitutionality thereof in that national and provincial governments are not generally permitted, through legislation, to assume local government functions for themselves. In a similar vein it is submitted that proposed section 11(10)*(a)* inserted by clause 7*(g)* should be deleted. Not only does it encroach on the functions of the municipality, but the deletion thereof will

	inclusion of a provision that does not permit municipalities to negotiate and conclude a contract in a manner that considers the specific circumstances of the transaction and the parties involved is problematic and potentially hampers the conclusion of such contracts. Contractual flexibility will enable the parties to negotiate terms that are best suited to them.	enable municipalities to manage the negotiation and tendering for contracts in a manner that considers the specific circumstances of the matter and that will be advantageous to them. Section 11(1)*(b)*(v) of the Act states that the provincial sphere of government is responsible for ensuring that municipalities that lack capacity and resources are capacitated to perform their land transport functions. Consequently, it is submitted that a province can assist a municipality that requires assistance to negotiate and conclude contracts.

3. ***(Negotiating mandate stage)*** **Report of the Standing Committee on Mobility on the National Road Traffic Amendment Bill [B 7B–2020], dated 23 August 2023, as follows:**

The Standing Committee on Mobility, having considered the subject of the National Road Traffic Amendment Bill [B 7B–2020] 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 amendments:

Clause	**Comment**	**Suggestion**
Clause 1	**Definition of "motor vehicle"** Clarity is sought as to whether any vehicles of the category "power assisted pedal cycle, except for a power assisted pedal cycle contemplated in subparagraph (iii)" will be required to register and licence, as well as under which category these vehicles will resort for the payment of licence fees. Alternatively, would a new category for the payment of licence fees need to be established?	Provide clarity on: • Whether a "power assisted pedal cycle, except for a power assisted pedal cycle contemplated in subparagraph (iii)" will be required to register and licence; • which category the abovementioned vehicles will resort for the payment of licence fees. Clarify whether a new category for the payment of licence fees need to be established?
Clause 2(f)	Correct the mistake as to numbering in the additional subparagraph inserted after subparagraph (vi) of paragraph *(b)* of subsection (1) of section 3A.	The numbering for the addition of "reserve traffic warden" should be corrected from (v) to (vii) as follows: ''(vi) NaTIS officer; and (vii) reserve traffic warden,''.
Clause 4*(a)*	The proposed amendment to **section 3C(2)*(a)*** seeks to root out corruption in the examination of vehicles by examiners of vehicles and envisages that these	It is suggested that the wording of section 3C(2)*(a)* be broadened to include persons known or

	examiners will not be registered or be entitled to remain registered if they acquire financial interests in the manufacturing, selling, rebuilding etc of motor vehicles. The proposed amendment is, however, limited to the acquisition of financial interests by the examiner him or herself or *"through his or her spouse or partner"* as the case may be. The category of spouse or partner is not the only relationship through which a financial interest can be obtained. The draft amendment should be broadened to include other persons known or connected to the examiner. Please see the proposed re-wording of this section in the third column.	connected with examiners of vehicles, as follows: *"… an examiner of vehicles if he or she, or through any other person known to or connected with him or her, has or acquires a direct or indirect financial interest in the manufacturing, selling, rebuilding, repairing or modifying of motor vehicles;**[or]**'';* A corresponding amendment should also be made to section 3(2)*(b)* of the Act.
Clause 4*(c)*	This proposed amendment to **section 3C(2)*(c)*** is essentially the same as the proposed amendment to section 3C*(a)* as it applies to the registration of a traffic officer, traffic warden or NaTIS officer and the prevention of corruption in the business of road transport. Therefore, it is proposed that the draft amendment be broadened to include, in addition to spouses or partners, other persons known or connected to the traffic officer, traffic warden or NaTIS officer. Please see the proposed re-wording of this section in the third column.	It is suggested that the wording of section 3C(2)*(c)* be broadened to include persons known or connected with traffic officers, traffic wardens or NaTIS officers, as follows: *"…a traffic officer, traffic warden or NaTIS officer, if he or she, or through any other person known to or connected with him or her, has or acquires a direct or indirect financial interest in a road transport services business:''.*
Clause 5 (c)	There is only an appropriate formal qualification for a traffic officer and not for the other categories of officers.	Since there is only a formal qualification for a traffic officer and not for the other categories of officers or wardens it is proposed that the following wording be inserted after the word "qualification" to read as follows: "…an appropriate **[diploma]** qualification or completed appropriate training at a training centre approved by the Shareholders Committee;''.
Clause 6(d)	It is unclear as to which considerations were taken into account in determining or distinguishing Schedule 1 or 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977) (Criminal Procedure Act) as the only schedules to be taken into account when determining whether to suspend or cancel the registration of an examiner for driving licences or examiner of vehicles.	It is suggested that the rationale for limiting the offences to those included in Schedules 1 and 2 of the Criminal Procedure Act be specified in the Memorandum on the Objects of the Bill to inform members of the public as to the specific factors that were taken into account in exclusively

	The Bill's Memorandum on the Objects does not provide any explanation or rationale and it is not clear as to why an official (an examiner for driving licences or examiner of vehicles) convicted of, for instance an offence under Schedule 5 or 6 would not be subjected to a possible cancellation or suspension. Schedules 5 and 6 include Schedule 1 and 2 offences, but refer to more aggravated forms of these offences.	designating Schedules 1 or 2 as the only schedules to be considered when determining a possible suspension or cancellation of the registration of an examiner for driving licences or examiner of vehicles. It is further suggested that consideration be given to including the other serious schedules, such as Schedule 5 and 6 expressly in the formulation of Clause 6*(e)*. If the above consideration is taken into account, the Memorandum on the Objects must detail the rationale behind the inclusion or the designation of the relevant schedules in this clause. The same comment applies to the insertion of section 28B (1A) in clause 30*(d)*.
Clause 7*(c)*	There is a drafting error in the proposed amendment to **section 3I**. The legislative sentence does not flow grammatically in the proposed subsection *(q)*. The word "may" in the first line of the closing paragraph should be deleted, since the word "may" in the context of this subsection already appears in the opening paragraph to subsection 3I.	Delete the word "may" in the closing paragraph, as follows: *"**[may]** impound the vehicle …"*
	Paragraph *"q"* that has been inserted by Clause 7(c) provides in sub-clause "q (iv)" that a vehicle that has been impounded pending the investigation and prosecution of the person for an offence in terms of any applicable law may be impounded and must be dealt with in terms of the **relevant sections** of the Criminal Procedure Act. The omission to insert or indicate expressly the "relevant sections" or the specific sections applicable in terms of the Criminal Procedure Act creates an interpretational burden on anyone, particularly lay members of the public, attempting to understand or figure out this provision.	It is suggested that the relevant sections referred to in the Criminal Procedure Act be identified in the proposed paragraph *(q)* of section 3I of the Act. The use of the words "relevant sections" must be deleted and substituted with the precise reference to the applicable provisions of the Criminal Procedure Act.
Clause 11	In the proposed amendment of **section 5E**, the word "body" is used interchangeably with the word "organisation". In the context of section 5E, a weighbridge facility is required to be registered if the organisation/body operating it is registered.	Replace the word "body" with "organisation" as follows: *"unless such person, authority or organisation is registered as a weighbridge…".*
	The content of the wording in the proposed **section 5J** is inconsistent with the heading as it does not take into	Correct the wording in the body of section 5J as follows:

	account registration as a supplier of microdots and operator of a microdot fitment centre. See the suggested wording in the third column.	"…..desiring to manufacture microdots, supply microdots or operate a microdot fitment centre shall apply…..".
Clause 12	There are two aspects of the proposed amendments to **section 6(1)** that require consideration. Firstly, the legislative sentence is too long and is difficult to read. Secondly, there are words missing, which impacts on the clarity. The right to appeal is contemplated against the following kinds of decisions: • a refusal of the chief executive officer to register a person as a manufacturer, builder, importer etc; • a refusal of the Member of the Executive Council ("MEC") to issue an exemption permit in terms of section 81(3); • a suspension or cancellation of a person's registration as a manufacturer, builder, importer etc (this proposal does not state who the relevant decision-maker is in each instance of a suspended or cancelled registration). The above categories of the right to appeal can be separated by means of paragraphs to subsection (1). The term "body builder" is missing from the text. The term MEC must be qualified to refer to the MEC concerned.	• It is suggested that subsection (1) be broken up into three paragraphs, each dealing separately with the decision, which may be appealed against. • Amend the wording to read as follows: "...at the refusal of the chief executive officer to register him or her as a manufacturer, builder, body builder, importer …". • "…or at the refusal of the MEC concerned to issue an exemption…".
Clause 15 (a)	The South African Police Services and the South African National Defence Force have engaged the national and provincial departments to apply for the operation of Driving Licence testing centres. Given that only a provincial department responsible for transport or a municipality may operate a driving licence testing centre, clarity is sought on the future of driving licence testing centres that are intended to be operated by national state departments such as the South African Police Services and the South African National Defence Force.	It is suggested that clarity be provided as to the rationale for not including national departments from applying for approval to operate a driving licence testing centre.
Clause 15 (b)	A similar concern to the one raised in relation to clause 15(a) is raised here.	It is proposed that the wording "No department of State" be retained.
Clause 22 *(b)*	Clarity is sought regarding the instances where an appropriate motor vehicle can be made available to an applicant for a driving licence examination.	It is suggested that in these instances measures be introduced to combat fraud, corruption and theft, for example, by stipulating that these motor vehicles be fitted

		with cameras and other necessary equipment.
Clause 34	The word "learner's" is missing in the proposed amendment to **section 29(2)**.	Insert the word "learner's" as follows: "The MEC concerned may, after such learner's licence, driving licence…..".
Clause 40	There is a drafting error in the proposed amendment to section 58(3)(b), which is affecting the meaning of the subsection. It is noted that section 58(3) deletes all the references to fire-fighting vehicle, fire-fighting response vehicle etc and replaces these with the general term "emergency vehicle". For this reason, the references to these kinds of vehicles should be deleted in subsection(b) since the term "emergency vehicle" is inserted here. See column 3 for the suggested amendment.	Correct the drafting error in section 58(3)(b) as follows: "(b) in the case of any **[such fire-fighting vehicle, fire-fighting response vehicle, rescue vehicle, emergency medical response vehicle, ambulance,]** emergency vehicle or any vehicle driven by a person **[issued with the necessary authorisation]** while such person is responding to a disaster as contemplated in the Disaster Management Act, 2002 (Act No. 57 of 2002), such vehicle shall be fitted with a device capable of emitting a prescribed sound and with an identification lamp, as prescribed, and such device shall be so sounded and such lamp shall be in operation while the vehicle is driven in disregard of the road traffic sign**[.]**;".
Clause 41	There is a typographical error in the proposed amendment to **section 60.**	Delete the word "a" as follows: "…the driver of **[a]** …an emergency vehicle…".
Clause 43	There is a grammatical error in the proposed amendment to section 76(4).	Correct as follows: "re-incorporate" must be "re-incorporates".
Clause 45	There is a technical drafting error in the proposed substitution of **section 81**.	Correct as follows: The line indicating the start of the proposed text should include the heading (not only the first sentence), since the text in the heading is also part of what is being amended.