

National Land Transport Act 5 of 2009 (NLTA)

Topic: Road Transportation

IN A CALABASH

Introduction

Land transportation services include the movement of persons and goods on or across land by means of any conveyance and through the use of any infrastructure and facilities in South Africa.

There are a number of laws in place in South Africa which govern and regulate land transportation services.

The National Land Transport Act 5 of 2009 (NLTA) regulates and monitors the transportation of public passengers for reward. The Act does not apply to the transportation of goods or to the transportation of passengers when no fee is charged for transportation services.

Objectives of the Act

The purpose of the NLTA is to provide for the transformation and restructuring of the national land transport system.

The NLTA regulates and governs the transportation of passengers for reward.

Application of the Act and its implication to Tourism

The NLTA applies to any person who provides a public transportation service in and across the borders of South Africa. For the purposes of the tourism industry, such a service includes–

- taxi services;
 - bus services;
 - contract services;
 - metered taxi services;
 - special events transport;
 - tourism-based transport services; and
 - chartered services
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Summary of the provisions of the Act

Regulation of road-based public transport

No person may operate a road-based public transport service without an operating license or permit issued for the vehicle concerned.

An operating license may authorise the vehicle to which it relates to operate more than one service or type of service.



The following categories of transport have to apply for a license—

- taxi services;
- bus services;
- contract services;
- metered taxi services;
- special events transport;
- tourism-based transport services;
- chartered services;
- tuk tuks;
- lift clubs;
- scholar transport services; and
- courtesy services.

Services which do not require a license are—

- courtesy services when the operator operates less than the prescribed number of vehicles;
- lift clubs;
- farmers carrying their own workers in vehicles of which they are the sole owners;
- municipalities carrying their own workers in vehicles owned by them;
- ambulances carrying patients to places where they will receive medical attention; and
- the conveyance by a person who carries on any industry, trade or business of the person's own employees from a place where they perform work to another place where they are to perform work by means of a vehicle of which the person is the owner.

Rationalisation of existing permits

The permitting of passenger and freight transportation was previously covered by the Road Transportation Act 74 of 1977 (RTA).

All permits public road carrier permits issued in terms of the RTA or another law predating and recognised as valid by the National Land Transport Transition Act 22 of 2000 which is in force and has not yet been converted to an operating license on the date of commencement of the NLTA, issued for a definite period will remain valid but will lapse when that definite period expires. If such a permit is still valid on 8 December 2009, it will lapse on 7 December 2017.

All permits issued for an indefinite period remain valid but lapse on 7 December 2017. The holder of such license may apply, within that period, for conversion to an operating license under the NLTA.

When the services authorised by a permit were not provided continuously for 180 days prior to 8 December 2009, that permit must be cancelled.

No holder of any permit that lapses or is cancelled is entitled to any compensation.

No operator, being any person carrying on the business of operating a public transport service, may receive any subsidy or other financial assistance from any sphere of government unless that operator's permit or permits have been rationalised in terms of the Act.

Entities that must issue operating licenses

An operating license must only be issued on application made in terms of the Act by the National Public Transport Regulator (NPTR), a provincial regulatory entity or a municipality to which the operating license function has been assigned after considering all the factors mandated by the Act.

Maximum validity period of operating licenses

An operating license is valid for a maximum period of seven years, unless a negotiated contract has been awarded to an operator for more than seven years, in which case, such an operating license must be issued for the period of the contract.

Operating licenses must be granted for a fixed period determined by the entity granting them based on the directions of the planning authority.

Tourist transport services

The driver of a vehicle used for tourist transport services must, at all times while such services are undertaken, comply with requirements imposed by tourism legislation, the Act and other applicable legislation.

No one may operate tourist transport services unless he or she is accredited by the NPTR.

The NPTR must accredit operators of tourist services, on application, if satisfied 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;
- meet the prescribed technical requirements; and
- have access to acceptable vehicles and maintenance facilities.

The NPTR must consider the prescribed matters in deciding whether to grant or refuse an application for accreditation.

Such accreditation may specify classes or the maximum number of vehicles that may be operated by the particular operator.

No accreditation may be granted unless the NPTR has obtained and considered recommendations from the tourism authority or authorities recognised by the Minister.

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



The NPTR must keep a register of accredited tourist operators and make it available for inspection to any interested person on request and payment of the prescribed fee.

Accredited operators must renew their accreditation every five years in the prescribed manner, after which it will lapse.

Certification of vehicles for tourist transport services

Only vehicles that have been certified by the NPTR and display the issued special token, tag or equipment may be used for tourist transport services.

Application for renewal of accreditation

An operator applying for renewal of accreditation must lodge the application by completing the application form and submitting it to the NPTR with the application fee not later than 60 days before the date that operator's accreditation expires.

Certification of vehicles

When accrediting a tourism operator, the NPTR must verify the validity and authenticity of the particulars and documents relating to the operator's vehicles as supplied on the application form for accreditation and, if satisfied that the vehicle or vehicles comply, certify each vehicle.

An accredited operator may apply for certification of additional vehicles by completing the application form and submitting it to the NPTR with the application fee. Such an application may be lodged electronically.



The applicant must submit with the application—

- proof of registration and licensing of the vehicle, showing a valid and current roadworthy certificate; and
- any other document or matter required by the NPTR.

On receipt of such an application for certification, an authorised official of the NPTR must verify the validity and authenticity of the documents and matters submitted by checking eNaTIS and by other acceptable means and, if satisfied that the vehicle complies with the prescribed provisions, must certify the vehicle.

On certification of a vehicle, the NPTR must issue to the owner a certificate and token for the vehicle. The token must be affixed to the lower, inside, left-hand corner of the windscreen of the vehicle so that the print on its face is clearly legible from the outside to a person standing in front of or to the left of the vehicle.



The token must–

- be bar-coded or otherwise made or designed to enable authorised officers to quickly determine, by means of e-NaTIS or OLAS, whether the vehicle is compliant with the Act and the National Road Traffic Act 93 of 1996 (NRTA);
- be colour coded in relation to the class of vehicle; and
- show the operating license number, the words ‘tourist transport service’ and the vehicle registration number.

One is not allowed to operate a vehicle for tourist transport services on a public road–

- without such a token;
- with a token or anything purporting to be such a token which is not applicable to that vehicle; or
- with a token which is in any way obscured or has become illegible, unless it this was temporarily beyond the control of the operator.

Where such a token has been lost or has become obscured or illegible, the operator must apply within four working days for a duplicate by completing the form. The operator must submit that form with the damaged or obscured token to the NPTR for destruction or an affidavit stating why it cannot be submitted and the fee.

A issued certificate or token may be couriered to an operator but may not be used until the operator has acknowledged receipt in writing to the NPTR by e-mail or fax.

Operating licenses for tourist transport operators

When the NPTR has certified a tourist transport vehicle for an accredited operator must issue an operating license for that vehicle to operate tourist transport to replace any permit or operating license already issued for that vehicle.

When an entity owns vehicles, wishes to rent them to tourist transport operators and has obtained certification of a vehicle, such vehicle may only be used for tourist transport services by an accredited operator. The operating license may only be issued to an accredited operator for the period of the hiring.

Before being issued with any operating license, an accredited operator must submit to the NPTR any permit or operating license previously issued for the relevant vehicle. Previous permits or licenses will be cancelled within 24 hours of issuing the new operating license.

When on accreditation of the applicant the NPTR has imposed a condition that only a certain number of vehicles may be operated or that only vehicles of certain classes may be operated, an operating license may not be issued in conflict with such a condition.



An operating license must stipulate–

- appropriate conditions imposed by the NPTR, either at the stage of accreditation or at the stage of issuing the operating license; and
- the area within which the vehicle may be operated, which may be the Republic as a whole.

An operating license may also authorise the operator to undertake charter services subject to conditions imposed by the NPTR and reflected in the license.

Cancellation of accreditation

The NPTR may cancel the accreditation of an operator if the operator–

- no longer complies with the Act, in the opinion of the NPTR;
- has provided false or misleading information to the NPTR in the application form for accreditation or at any other time;
- has failed to maintain vehicles operated by that operator in a satisfactory condition, based on three or more inspections or incidents or on one or more accidents or collisions that have occurred;
- has failed to use or employ suitably qualified drivers or used drivers who do not hold the required professional driving permits in terms of the NRTA, based on three or more incidents;
- is the subject of negative complaints against that operator from a planning authority or from passengers or other interested persons, which indicates that such cancellation is justified; or
- fails to comply with any other prescribed requirement.

In addition to the reasons mentioned above, the NPTR may cancel the accreditation of a tourist transport operator if the operator–

- fails to comply with a condition imposed by the NPTR at the stage of accreditation of the operator or stipulated in an operating license held by the operator;
- uses a token by that operator on a vehicle that has not been certified; or
- allowed a person that has not been properly accredited to use the vehicle for tourist transport services.

When the NPTR becomes aware that an accredited operator is or has been guilty of misconduct, it must engage with the operator to discuss the issue or issues and steps to be taken by the operator to comply.

Before taking a decision to cancel an operator's accreditation, the NPTR must–

- give the operator written notice of the reasons why it intends to cancel it;
- give the operator a reasonable time to submit representations or comments, which must not be less than 14 days; and
- consider those representations or comments, if any have been submitted.

On cancellation of an operator's accreditation, the NPTR must remove that operator's name from the register and such an operator must submit to the NPTR for cancellation of his or her certificate of accreditation and all operating licenses, tokens, tags or other equipment issued by that regulator to that operator within 14 days of cancellation of that operator's accreditation.

Call centre

The NPTR must establish a call centre where complaints against tourism operators or their drivers, suggestions or other input from interested persons can be received.

When a complaint against an operator is received, the NPTR must dispatch, within 48 hours, one or more inspectors to investigate and take appropriate action to follow up the matter.

Authorised officers investigating an accident scene who become aware of possible offences committed by accredited operators or their drivers must notify the NPTR in writing or by e-mail within 48 hours.

Transitional provisions

When an operator has applied for a tourism accreditation, that operator may use any operating license or permit issued to that operator for the vehicle in question until a new operating license is issued and the permit or operating license is cancelled. Licenses or permits will lapse if the application for accreditation is refused on the date that such refusal is communicated to the applicant.

Interaction between public transport and cross-border road transport

When, on trips involving cross-border road transport, an operator both picks up and drops off passengers within the Republic, either on the outward or return journey, that operator must be in possession of the necessary operating license for the vehicle in addition to any permit required by the Cross-Border Road Transport Act 4 of 1998.

No one may drop off passengers at or near an international border, when it is clear that such passengers intend to cross the border into another state or pick up passengers at or near such a border when it is clear that those passengers come from another state and have crossed such border into the Republic, unless that person is the holder of the necessary permit required by the Cross-Border Act.

In any prosecution in terms of the Act, when an operator has picked up or dropped off passengers within two kilometres of any international border post, that operator will be presumed to be undertaking cross-border road transport unless the operator proves the contrary in the prescribed manner.

When the regulatory committee of the Cross-Border Act is considering an application for a permit where ranks or terminals in the Republic will be used, that committee must allow relevant planning authorities the opportunity to comment on the use of those facilities in the prescribed manner.

Courtesy services

A person providing courtesy services by means of fewer than three motor cars is exempt from the operating licensing requirements of the Act.

All persons providing courtesy services that are exempt must, before operating courtesy services—

- notify the NPTR in writing that they are providing courtesy services and supply particulars of the relevant vehicles and services on the prescribed form and pay the specified registration fee;

- display a decal issued by or on behalf of the NPTR on each vehicle clearly marked 'Courtesy service'; and
- comply with any directions issued by the NPTR or other regulatory entity.

Persons operating courtesy services by means of three or more motor cars, or a minibus, midibus or bus, must obtain an operating license from the relevant regulatory entity.

Offences to be considered by regulatory entities

In considering an application for the granting, renewal, amendment, transfer or conversion of an operating license or permit, a regulatory entity must consider the following offences–

- an offence created by the Act, the NRTA or a provincial road traffic act;
- an offence listed in the Criminal Procedure Act 51 of 1977;
- possession of an unlicensed firearm, explosives or a dangerous weapon; and
- any other offence considered relevant by that entity.

Temporary operating licenses for special events

A person wishing to apply for a temporary operating license must apply to the regulatory entity to which application must be made for normal operating licenses by submitting the completed application form with the application fee.

Particulars to be displayed on vehicles



The licensing or operating details and particulars to be painted or displayed on a vehicle must have–

- height of figures and letters: 40mm;
- width of figures and letters: 20 mm;
- breadth of stroke of figures and letters: 5 mm;
- space between consecutive figures and letters: 5 mm; and
- space between words on the same line: 15mm.

Those particulars must be painted or appear on a magnetic or other sticker in a conspicuous place on the vehicle in a colour that shows up clearly against the background.

Decals

A decal issued to an operator must be affixed to the lower, inside, left-hand corner of the windscreen of the vehicle to which it relates in such a manner that the print on its face is clearly legible from the outside to a person standing in front of or to the left of the vehicle.

A decal must–

- be bar-coded or otherwise made or designed to enable authorised officers to quickly determine, by means of e-NaTIS or OLAS, whether the vehicle is compliant with the Act and the NRTA and is being operated by the relevant operator; and

- show the operating license number, the name of the operator, the vehicle registration number, the date of expiry of the license and the base facility or rank and indicate where passengers may be picked up or set down.

When a decal is issued to a holder in terms of the Act, the Transition Act or a previous law, that holder may operate the vehicle for a public transport service on a public road—

- without a decal;
- with a decal or anything purporting to be a decal which is not applicable to that vehicle; or
- with such a decal which is in any way obscured or has become illegible, unless this was temporarily beyond the control of the operator.

Duplicate operating license or decal

When an operating license or decal has been lost or has become obscured or illegible, the operator must apply within four working days for a duplicate by completing the form. The operator must submit the damaged or obscured license or decal to that entity for destruction or an affidavit explaining why it cannot be so submitted with the application fee.



WHAT HAPPENS IF YOU DO NOT COMPLY?

A person is guilty of an offence if he or she—

- operates a public transport service without the required permit or operator license or certificate;
- operates a public transport service contrary to the terms and conditions of an operating license or permit;
- allows someone else to use an operating license or permit for a vehicle other than the vehicle specified in such license or permit if he or she is the holder of an operating license or permit or the agent or employee of such a holder;
- applies for or obtains an operating license knowing that a current operating license has already been issued with regard to the same vehicle;
- forges, alters, defaces, damages or adds to any operating license or permit or other official document with the intent to deceive;
- utters or uses a document knowing that the document is not an operating license or permit or such other official document or that it has been altered, defaced, damaged or added to;
- furnishes or gives false information in or with regard to any application made in connection with an operating license or in the course of appearing in any proceedings, investigation or inquiry relating thereto;
- impersonates an authorised officer;
- wilfully obstructs or hinders an authorised officer who is discharging his or her duties;

- refuses or fails to comply with the lawful order, direction or demand made by an authorised officer in the discharge or performance of any function or duty entrusted to the officer;
- is conveyed as a passenger in the course of public transport and–
 - o fails to pay the fare due for the journey when payment is requested by the driver or conductor;
 - o smokes or drinks liquor on that vehicle in contravention of a notice on the vehicle which forbids smoking or drinking;
 - o wilfully acts in a manner that inconveniences a fellow passenger;
 - o disobeys a reasonable instruction issued by the driver or conductor for the purpose of maintaining order or ending a disturbance or controlling any emergency; or
 - o wilfully performs any act in or on the vehicle that could cause injury to or endanger the life of any person or cause damage to any property;
- fails to comply with any duty or obligation imposed on the holder of an operating license or permit or the driver of a vehicle to which that operating license or permit relates;
- if the person picks up or sets down passengers at or near an international border in contravention of the Cross-Border Act requirements;
- uses a vehicle for a public transport service in contravention of this Act;
- operates a tourist transport service without accreditation by the NPTR or operates a tourist transport service after his or her accreditation has been cancelled;
- uses a vehicle for tourist transport services without permission; or
- contravenes any other provisions of the Act.

When a person is convicted of any one of the offences listed above: a term of imprisonment of up to two years or a fine of up to R100 000 may be imposed.

When a person is convicted of any one of the offences NOT highlighted in red above, a term of imprisonment of up to three months or a fine of up to R10 000 may be imposed.

Whenever a manager, agent or employee of the holder of an operating license or permit performs or omits to perform any act which, if the holder had performed or omitted to perform that act personally, would have constituted an offence, that holder is guilty of that offence if–

- the holder–
 - o connived at or knowingly permitted the act or omission concerned; or
 - o did not take all reasonable measures to prevent that act or omission; and

- an act or omission of the nature of the act or omission charged, whether legal or illegal, fell within the scope of the authority or the course of the employment of the manager, agent or employee.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

- Awareness of the NLRA and how it may apply to one;
- When operating a public transport service for reward, either convert one's permit to a tourist operator license or certificate or apply for the relevant license or certificate;
- Awareness of the forms of transportation which do not require a license;
- Operation of a public transport service in accordance with the NLTA and the terms and conditions of an operating license or permit;
- Prohibit any person from using one's operating license or permit for a vehicle other than the vehicle to which it applies; and
- Keep decals and prescribed details on vehicles.

FURTHER INFORMATION

Regulator

Department of Transport

Website

www.transport.gov.za