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11 June 2024

No. 50799

THE PRESIDENCY

No. 4958

11 June 2024

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 06 of 2024: The Economic Regulation of Transport Act, 2024

UMONGAMELI

No. 4958

11 Junie 2024

Kwaziswa ukuthi uMongameli uvumile uMthetho olandelayo oshicilelwa lapha ukuze kwaziwe wonke umuntu:—

No. 06 Ka 2024: Umthetho wokulawula umnotho wezokuthutha, 2024



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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.

(English text signed by the President)
(Assented to 6 June 2024)

ACT

To consolidate the economic regulation of transport within a single framework and policy; to establish the Transport Economic Regulator; to establish the Transport Economic Council; to make consequential amendments to various other Acts; and to provide for related incidental matters.

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

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UMBHALO OCHAZA OKUJWAYELEKILE:

- [] Amagama agqamile akubakaki abayisikwele amele okukhishiwe emthethweni osebenzayo.
- Amagama adwetshelwe ngomugqa ogqamile amele okufakiwe emthethweni osebenzayo.

(English text signed by the President)
(Assented to 6 June 2024)

UMTHETHO

Ukuhlanganisa ukulawulwa kwezomnotho wezokuthutha ngaphakathi kohlaka nenqubomgomo eyodwa; ukusungula uMlawuli wezoMnotho wezokuThutha; ukusungula uMkhandlu wezoMnotho wezokuThutha; ukwenza izinguquko ezibalulekile kweminye iMithetho eyahlukene; kanye nokuhlinzekela izindaba ezihlobene.

UZOMISWA iPhalamende laseRiphabhulikhi yaseNingizimu Afrika, ngale ndlela elandelayo:—

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CHAPTER 1**INTERPRETATION, PURPOSE AND APPLICATION**

20

Part A***Interpretation*****Definitions**

1. In this Act unless the context indicates otherwise—
 - “**access**” means the use of infrastructure, a facility or a resource by an access seeker to provide goods or services to customers of that access seeker; 25
 - “**access agreement**” means an agreement between an access seeker and an infrastructure or resource owner, setting out the terms and conditions for access by an access seeker to the infrastructure, resource or facility, excluding any agreement regarding the safe operation of such access that is required by safety legislation; 30
 - “**access seeker**” is an individual or an organisation or an agent of an individual that seeks to utilise infrastructure, resource or facility of an infrastructure or resource owner;
 - “**Air Traffic and Navigation Services Company**” means the Air Traffic and Navigation Services Company Limited established in terms of the Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993); 35
 - “**Airports Company of South Africa**” means the Airports Company Limited established in terms of the Airports Company Act, 1993 (Act No. 44 of 1993);
 - “**annual fee**” means a fee referred to in section 51(2);
 - “**Board**” means the governing body of the Transport Economic Regulator established by section 30; 40
 - “**Cabinet**” means the body of the national executive described in section 91 of the Constitution;
 - “**Chief Executive Officer**” means the person holding the office of Chief Executive Officer of the Regulator, in terms of sections 35 and 36; 45
 - “**Competition Act**” means the Competition Act, 1998 (Act No. 89 of 1998);
 - “**complainant**” means a person who has submitted a complaint to the Regulator in terms of section 15;
 - “**confidential information**” means trade, business or industrial information that belongs to a person, firm or the State, has a particular economic value, and is not generally available to or known by others; 50

SHEDULI 1

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2. Ukuchitshiyelwa kwe-*Airports Company Act*
3. Ukuchitshiyelwa kwe-*Air Traffic and Navigation Services Company Act* 5
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5. Ukuchitshiyelwa kwe-*South African National Roads Agency Limited and National Roads Act*

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2. Ukuqhubeka kwemithelo esebenzayo ngesikhathi sokuqala ukusebenza
3. Amacala kanye nezikhalazo
4. Ukulondolozwa okujwayelekile kwemithetho, amalungelo, imisebenzi, izaziso kanye namanye amathuluzi 15
5. Imithetho
6. Ukuguqulwa kwesilawuli samachweba
7. Amalungiselelo esikhashana okuphatha oMkhandlu

ISAHLUKO 1

UKUHUMUSHA, INHLOSO KANYE NOKUSEBENZA

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*Ingxenywe A**Ukuhumusha***Izincazelo**

1. Kulo Mthetho ngaphandle uma isimo sisho ngenye indlela—
 “**ukufinyelela**” kusho ukusetshenziswa kwengqalasizinda, isikhungo noma insiza 25
 ukusetshenziswa umuntu ofuna ukufinyelela ofuna ukuhlinzeka ngezimpahla noma
 amasevisi kumakhasimende alowo mfuni wokufinyelela.
 “**isivumelwano sokufinyelela**” sisho isivumelwano phakathi kwalowo ofuna
 ukufinyelela kanye nengqalasizinda noma umnikazi wezinsiza, ebeka imigomo
 nemibandela yokufinyelela kwingqalasizinda, izinsiza noma indawo, ngaphandle 30
 kwanoma yisiphi isivumelwano mayelana nokusebenza ngokuphephile kwalokho
 kufinyelela okudingekayo ngokomthetho wezokuphepha;
 “**umuntu ofuna ukufinyelela**” umuntu noma inhlangano noma i-ejenti yomuntu
 ngamunye ofuna ukusebenzisa ingqalasizinda, izinsiza noma indawo 35
 yengqalasizinda noma umnikazi wensiza;
 “**i-Air Traffic and Navigation Services Company**” ichaza i-*Air Traffic* kanye
 ne-*Navigation Services Company Limited* esungulwe ngokuya nge-*Air Traffic*
 kanye noMthetho Wenkampani Yezinkonzo Zokuhamba, we-1993 (uMthetho 45
 we-1993);
 “**i-Airports Company of South Africa**” ichaza i-*Airports Company Limited* 40
 eyasungulwa ngokoMthetho Wezinkampani Zezindiza, we-1993 (uMthetho 44
 we-1993);
 “**imali yonyaka**” ichaza imali okukhulunywe ngayo esigabeni sama-51(2);
 “**iBhodi**” lisho umgwamanda olawulayo woMlawuli wezoMnotho wezokuThutha
 osungulwe ngokwesigaba sama-30; 45
 “**iKhabhinethi**” isho umgwamanda wesigungu sikazwelonke esichazwe
 esigabeni sama-91 soMthethosisekelo;
 “**Isikhulu Esiphezulu Esiphethe**” kushiwo umuntu osehhovisi lesiKhulu
 esiyinhloko soMlawuli, ngokwezigaba zama-35 no-36;
 “**UMthetho Wokuncintisana**” kushiwo uMthetho Wezokuncintisana, we-1998 50
 (uMthetho 89 we-1998);

- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Council**” means the Transport Economic Council, established by section 46;
- “**economic regulation**” in respect of this Act means the regulation of markets, entities, facilities or services within the transport sector by determining—
- (a) the price control for access to facilities or for services; 5
 - (b) access to facilities or services; and
 - (c) service levels and service conditions;
- “**effective date**” means the date upon which this Act came into operation in terms of section 71;
- “**electronic communication**” has the meaning set out in section 1 of the 10
Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- “**essential facility**” means a facility or resource that cannot reasonably be duplicated, and without access to which competitors cannot reasonably provide goods or services to their customers;
- “**Executive Administrative Committee**” means the executive structure of the 15
Regulator constituted in terms of section 34(5);
- “**Executive Regulatory Panel**” means the executive structure of the Regulator constituted in terms of section 34(4);
- “**facility**” means any physical infrastructure used for the transportation of persons or goods within the transport sector; 20
- “**goods or services**”, when used with respect to particular goods or services, includes any other goods or services that are reasonably capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints;
- “**inspector**” means a person who has been appointed as an inspector in terms of 25
section 55(1);
- “**inter-related**” has the meaning set out in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);
- “**investigator**” means a person who has been appointed as an investigator in terms of section 55(3); 30
- “**market**” means any place or platform where exchange for goods and services at a certain value exists;
- “**market inquiry**” has the meaning set out in section 43A of the Competition Act;
- “**market power**” means the power of an entity to control prices, or to exclude competition or to behave to an appreciable extent independently of its competitors, 35
customers or suppliers;
- “**Minister**” means the Minister responsible for transport matters;
- “**National Land Transport Act**” means the National Land Transport Act, 2009 (Act No. 5 of 2009);
- “**National Ports Act**” means the National Ports Act, 2005 (Act No. 12 of 2005); 40
- “**National Ports Authority**” means the Authority established in terms of Chapter 2 of the National Ports Act;
- “**organ of state**” has the meaning set out in section 239 of the Constitution;
- “**PAIA**” means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); 45
- “**Passenger Rail Agency of South Africa**” means the Corporation defined in section 1 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);
- “**person**” includes a juristic person;
- “**POPIA**” means the Protection of Personal Information Act, 2013 (Act No. 4 of 50
2013);
- “**prescribed**” means prescribed by regulation;
- “**President**” means the President of the Republic of South Africa;
- “**price control**” means a method for setting the price that can be charged, or revenue that can be earned, by a regulated entity for the use of or access to its 55
assets, facilities or services, referred to in section 11(2);

- “**ummangali**” kushiwo umuntu ofake isikhalazo kuMlawuli ngokwemibandela yesigaba se-15;
- “**imininingwane eyimfihlo**” ichaza ulwazi lwezohwebo, lwebhizinisi noma lwezimboni olungolomuntu, lwefemu noma loMbuso, inenani elithile lezomnotho, futhi ayivamile ukutholakala noma ukwaziwa ngabanye; 5
- “**uMthethosisekelo**” uchaza uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996;
- “**Umkhandlu**” usho uMkhandlu wezoMnotho wezokuThutha, osungulwe ngokwesigaba sama-46;
- “**umthetho wezomnotho**” mayelana nalo Mthetho usho ukulawulwa kwezimakethe, amabhizinisi, izinsiza noma amasevisi ngaphakathi komkhakha wezokuthutha ngokunquma— 10
- (a) ukulawulwa kwamanani okufinyelela ezikhungweni noma ezinsizeni noma kumasevisi;
- (b) ukufinyelela ezinsizeni noma kumasevisi; futhi 15
- (c) amazinga amasevisi nemibandela yamasevisi;
- “**usuku lokuqala ukusebenza**” luchaza usuku lo Mthetho owaqala ngalo ukusebenza ngokwesigaba sama-71;
- “**ukuxhumana nge-elektronikhi**” kunencazelo ebekwe esigabeni soku-1 soMthetho Wezokuxhumana Nge-elektronikhi kanye Nezentengiselwano, wezi- 20
- 2002 (uMthetho 25 wezi-2002);
- “**insiza ebalulekile**” ichaza insiza noma insizakusebenza engeke iphendeke kabili, futhi ngaphandle kokufinyelela izimbangi ngeke zikwazi ukukunikeza ngokufanelekile izimpahla noma amasevisi kumakhasimende azo;
- “**IKomidi Eliphethe Lezokuphatha**” lichaza uhlaka lwesigungu soMlawuli 25
- olwakhiwe ngokwesigaba sama-34(5);
- “**iPhaneli yeziPhathimandla Elawulayo**” ichaza uhlaka lwesigungu soMlawuli olwakhiwe ngokwesigaba sama-34(4);
- “**insiza**” ichaza noma iyiphi ingqalasizinda ebonakalayo esetshenziselwa ukuthutha abantu noma izimpahla ezingaphakathi kwemboni yezokuthutha; 30
- “**izimpahla noma izinsiza**” uma isetshenziswa ngokuphathelele nezimpahla noma amasevisi athile, kuhlenganisa noma yiziphi ezinye izimpahla noma amasevisi akwaziyo ukuba khona esikhundleni sazo, kucatshangelwa umkhuba ojwayelekile wokuhweba kanye izithiyo zendawo, ezobuchwepheshe kanye nezesikhashana; 35
- “**umhloli**” kushiwo umuntu oqokwe njengomhloli ngokwemibandela yesigaba sama-55(1);
- “**okuhlobene**” kunencazelo ebekwe esigabeni soku-1 soMthetho Wezinkampani, wezi-2008, (uMthetho 71 wezi-2008);
- “**umphenyi**” kushiwo umuntu oqokwe njengomphenyi ngokwesigaba sama- 40
- 55(3);
- “**imakethe**” isho noma iyiphi indawo noma inkundla lapho kushintshisana khona ngezimpahla namasevisi ngenani elithile elikhona;
- “**uphenyo lwemakethe**” lunencazelo ebekwe esigabeni sama-43A soMthetho Wokuncintisana; 45
- “**amandla emakethe**” asho amandla ebhizinisi okulawula amanani, noma ukukhipha ukuncintisana noma ukuziphatha ngendlela encomekayo ngaphandle kwalabo abaqhudelana nabo, amakhasimende noma abahlinzeki;
- “**uNgqongqoshe**” uchaza uNgqongqoshe obhekele izindaba zokuthutha;
- “**i-National Land Transport Act**” kusho i-National Land Transport Act, 2009 (Act 50
- No. 5 of 2009);
- “**i-National Ports Act**” ichaza i-National Ports Act, 2005 (Act No. 12 of 2005);
- “**i-National Ports Authority**” ichaza isigungu seziPhathimandla esisungulwe ngokwesahluko sesi-2 soMthetho Wezamazweba Kazwelonke;
- “**igatsha lombuso**” linencazelo ebekwe esigabeni sama-239 soMthethosisekelo; 55
- “**i-PAIA**” ichaza uMthetho Wokukhuthazwa Kokutholakala Kolwazi, wezi-2000 (uMthetho 2 wezi-2000);
- “**i-Passenger Rail Agency of South Africa**” ichaza iNhlangothi echazwe esigabeni 1 se-Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989); 60
- “**umuntu**” uhlanganisa ungoti wezomthetho;

“prohibited conduct” means an act or omission—

- (a) which is in contravention of—
 - (i) this Act; or
 - (ii) any condition attached to a price control that has been determined in terms of this Act; or
- (b) that constitutes a charge greater than allowed under—
 - (i) a price control that has been determined in terms of this Act; or
 - (ii) an agreement permitted in terms of section 11(9)(c);

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“public regulation” means any national, provincial or local government legislation or subordinate legislation, or any licence, price control, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;

“regulated entity” means an entity to which this Act applies in terms of—

- (a) section 4(1); or
- (b) a declaration contemplated in section 4(2);

“regulation” means a regulation made in terms of this Act;

“Regulator” means the Transport Economic Regulator established by section 29;

“regulatory authority” means an entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry, but does not include a regulated entity in terms of this Act;

“related”; when used in respect of two persons, has the meaning set out in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);

“service” means activity involved in the transportation of persons or goods within the transport sector;

“South African National Roads Agency Limited” means the Agency defined in section 1 of The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);

“tariff” means any charge, fee, toll, fare or other amount that may be imposed by a regulated entity for the use of, or access to, any transport service or facility;

“the State” includes an organ of state;

“this Act” includes any regulations made, notice or direction given, or price control determined and published, in terms of the Economic Regulation of Transport Act; and

“transport sector” means shipping and ports, aviation, rail or road transport and infrastructure.

Interpretation

2. (1) This Act must be interpreted in a manner that gives effect to the purposes set out in section 3.

(2) If a provision of this Act requires a document to be signed or initialled by a party to a transaction, that signing or initialling may be effected in any manner recognised by law, including by use of—

- (a) an advanced electronic signature, as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); or
- (b) an electronic signature, as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

- “i-POPIA”** kusho uMthetho Wokuvikelwa Kolwazi Lomuntu, wezi-2013 (uMthetho 4 wezi-2013);
- “okunqunyiwe”** kuchaza okunqunywe wumthetho;
- “uMongameli”** kushiwo uMongameli weRiphabhulikhi yaseNingizimu Afrika;
- “ukulawula amanani”** kusho indlela yokubeka inani elingakhokhiswa, noma imali engenayo engatholwa, yibhizinisi elilawulwayo ukuze lisetshenziswe noma lifinyelele kwizimpahla, izinsiza noma amasevisi, okukhulunywe ngazo esigabeni se-11(2); 5
- “ukuziphatha okunqatshelwe”** kusho umthetho noma ukweqiwa—
- (a) okuyinto ephambene— 10
- (i) nalo Mthetho; noma
- (ii) noma imuphi umbandela ohambisana nokulawulwa kwentengo onqunywe ngokwalo Mthetho; noma
- (b) okuyinkokhiso enkulu kunalokho okuvunyelwe ngaphansi— 15
- (i) ukulawulwa kwentengo okunqunywe ngokwalo Mthetho; noma
- (ii) isivumelwano esivunyelwe ngokwesigaba se-11(9)(c);
- “Umthetho Wokuphathwa Kwezimali Zomphakathi”** usho uMthetho Wokuphathwa Kwezimali Zomphakathi, we-1999 (uMthetho 1 we-1999);
- “umthetho womphakathi”** uchaza noma yimuphi uhulumeni kazwelonke, wesifundazwe noma wasekhaya umthetho noma umthetho ongaphansi, nanoma iyiphi ilayisensi, ukulawula intengo, isiyalelo noma ukugunyazwa okufanayo okukhishwe isiphathimandla esilawulayo noma ngokulandela noma yimuphi umthetho igunya; 20
- “ibhizinisi elilawulwayo”** lichaza ibhizinisi lapho lo Mthetho usebenza khona—
- (a) ngokwesigaba sesi-4(1); noma 25
- (b) isimemezelo esihlongozwe esigabeni sesi-4(2);
- “umthetho”** kushiwo umthetho owenziwe ngokwalo Mthetho;
- “Umlawuli”** uchaza Umlawuli Wezomnotho Wezokuthutha owasungulwa isigaba sama-29;
- “igunya elilawulayo”** lichaza ibhizinisi elisungulwe ngokomthetho kazwelonke noma wesifundazwe elinesibopho sokulawula imboni, noma umkhakha wemboni, kodwa ayibandakanyi ibhizinisi elilawulwayo ngokwalo Mthetho; 30
- “okuhlobene”** uma kusetshenziswa ngokuqondene nabantu ababili, kunenzazelo ebekwe kwisigaba soku-1 soMthetho Wezinkampani, wezi-2008 (uMthetho 71 wezi-2008); 35
- “isevisi”** kusho umsebenzi obandakanyekayo ekuthuthweni kwabantu noma izimpahla ngaphakathi kwimboni yezokuthutha;
- “i-South African National Roads Agency Limited”** kusho Umenzeleli ochazwe esigabeni soku-1 se-South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998); 40
- “umthelo”** uchaza noma iyiphi imali ekhokhiswayo, imali ekhokhwayo, umthelo, imali yokugibela noma enye imali engase ibekwe ibhizinisi elilawulwayo ukuthi isetshenziselwe, noma ukufinyelela, kunoma iyiphi isevisi yezokuthutha noma indawo;
- “umbuso”** kubandakanya uhlaka lukahulumeni; 45
- “lo Mthetho”** uhlanganisa noma yimiphi imithetho eyenziwe, isaziso noma isiqondiso esinikezwayo, noma ukulawulwa kwentengo okunqunywe nokushicilelwe, ngokoMthethoWokulawulwa Kwezomnotho Wezokuthutha; futhi
- “imboni yezokuthutha”** ichaza imikhumbi namachweba, indiza, ujjantshi noma ezokuthutha zomgwaqo kanye nengqalasizinda. 50

Ukuhumusha

2. (1) Lo Mthetho kufanele uhunyushwe ngendlela ezosebenza ezinhlosweni ezibekwe esigabeni sesi-3.

(2) Uma umhlinzeko walo Mthetho udinga ukuthi idokhumenti isayinwe noma ifakwe amanishela yiqembu ekukhokhelaneni, loko kusayina noma ukufakwa kwamanishela kungenziwa nganoma iyiphi indlela egunyaziwe ngokomthetho, okuhlanganisa ukusetshenziswa— 55

- (a) isiginesha ye-elektronikhi ethuthukisiwe, njengoba ichazwe kwi- *Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)*; noma
- (b) isiginisha ye-elektronikhi njengoba kuchaziwe kwi- *Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)*. 60

(3) If there is an inconsistency between any provision of this Act and a provision of the Public Finance Management Act, the provisions of the Public Finance Management Act shall prevail.

(4) In respect of any matter arising under this Act, the provisions of this Act prevail in the case of an inconsistency between any provision of this Act, and a provision of any other transport legislation. 5

(5) The access, protection and dissemination of information, including personal and confidential information, must be done in a manner consistent with and in accordance with POPIA and PAIA.

Part B

10

Purpose and Application of Act

Purpose of Act

3. (1) The purposes of this Act are to—

- (a) promote the development of a competitive, efficient and viable South African transport sector contributing to economic growth and development; 15
- (b) promote the development of an integrated system of economic regulation of transport of passengers and goods, by air or through airports or ports, and by road or rail;
- (c) promote efficiency, reliability, safety, climate change and performance in the management and operation of transport facilities and services, in accordance with recognised international standards and local requirements; 20
- (d) establish appropriate institutional arrangements and procedures to support the consistent economic regulation of transport facilities and services;
- (e) enhance transparency in the management of transport facilities and services;
- (f) promote appropriate investment in transport facilities and services; and 25
- (g) develop complaints and dispute resolution mechanisms.

(2) The purposes of this Act are to be pursued in a manner that promotes—

- (a) the development of small and medium enterprises; and
- (b) the achievement of equality through measures designed to advance persons or categories of persons historically disadvantaged by unfair discrimination in the operation of and access to transport facilities and services. 30

Application of Act

4. (1) Subject to any exemptions contemplated in subsections (7) to (9), this Act applies to any market, entity or facility in the transport sector that was, immediately before the effective date, subject to economic regulation by the Minister. 35

(2) The Minister, in consultation with the Regulator, by notice in the *Gazette*, may declare that this Act applies to any market, or any entity or facility, irrespective whether privately or state owned, within the transport sector, if the Minister has determined that either of the following circumstances apply—

- (a) a single operator controls more than 70% of the market concerned; or 40
- (b) the preconditions for efficiency and cost-effectiveness do not exist in the market concerned.

(3) The extent of regulation introduced must be proportionate to the competition problems in the market.

(4) When making a determination in terms of subsection (2)(b), the Regulator must have found that— 45

- (a) at least one firm operating in the market has market power; or

(3) Uma kukhona ukungqubuzana phakathi kwanoma yimuphi umhlinzeko walo Mthetho kanye nemihlinzeko yoMthetho Wokuphathwa Kwezimali Zomphakathi, imihlinzeko Yokuphathwa Kwezimali Zomphakathi Izonqoba.

(4) Maqondana nanoma yiluphi udaba oluvela ngaphansi kwalo Mthetho, imihlinzeko yalo Mthetho yiyo esebenza esimweni lapho kunokungqubuzana phakathi kwanoma yimiphi imihlinzeko yalo Mthetho, kanye nemihlinzeko yanoma yimuphi omunye umthetho wezokuthutha. 5

(5) Ukufinyelela, ukuvikelwa kanye nokusatshalaliswa kolwazi, okubandakanya nolwazi lomuntu oluyimfihlo, kumele kwenziwe ngendlela ehambisanayo futhi ehambisana ne-POPIA kanye ne-PAIA. 10

Ingxenye B

Inhloso Nokusebenza koMthetho

Inhloso yoMthetho

3. (1) Izinhlalo zalo Mthetho—

- (a) ukukhuthaza ukuthuthukiswa komkhakha wezokuthutha eNingizimu Afrika ekwazi ukuncintisana, esebenza kahle futhi ekwazi ukusebenza kahle efaka isandla ekukhuleni komnotho nasekuthuthukisweni; 15
 - (b) ukukhuthaza ukuthuthukiswa kohlelo oludidiyelwe lokulawulwa komnotho wezokuthutha kwabagibeli nezimpahla, ngendiza noma ngezikhumulo zezindiza noma emachwebeni, nangomgwaqo noma ujangshi; 20
 - (c) ukuthuthukisa ukusebenza kahle, ukwethembeka, ukuphepha kwesimo sezulu esiguquguqukayo kanye nokusebenza ekuphathweni nasekusebenzeni kwezinsiza zokuthutha kanye nezinsizakalo, ngokuhambisana namazinga ahlonishwayo omhlaba kanye nezimfuneko zendawo; 25
 - (d) ukusungula izinhlelo nezinqubo zesikhungo ezifanele ukusekela ukulawulwa kwezomnotho okungaguquki kwezindawo zokuthutha kanye namasevisi; 30
 - (e) ukuthuthukisa ukusebenza obala ekuphathweni kwezinsiza zokuthutha kanye nezinsiza; 30
 - (f) ukukhuthaza ukutshalwa kwezimali okufanele ezikhungweni zezokuthutha kanye nezinsiza; futhi 30
 - (g) Ukwakha izindlela zokuxazulula izikhalazo kanye nezingxabano.
- (2) Izinhlalo zalo Mthetho kufanele zilandelwe ngendlela ekhuthaza—
- (a) ukuthuthukiswa kwamabhizinisi amancane naphakathi; futhi
 - (b) ukuzuzwa kokulingana ngezinyathelo eziklanyelwe ukuthuthukisa abantu noma izigaba zabantu ababencishwe amathuba ngaphambilini ngenxa yobandlululo olungafanele ekusebenzeni nasekufinyeleleni kwizinsiza zokuthutha kanye nezinsizakalo. 35

Ukusebenza koMthetho

4. (1) Kuncike kunoma yikuphi ukukhululwa okuhlongozwe esigatshaneni sesi-(7) kuya kwesesi-(9), lo Mthetho usebenza kunoma iyiphi imakethe, ibhizinisi noma insiza esemkhakheni wezokuthutha, eyayingaphambi nje kosuku lokusebenza, ngaphansi komthetho wezomnotho kaNgqongqoshe. 40

(2) UNgqongqoshe, ngokubonisana noMlawuli, ngesaziso kwiGazethi, angamemezela ukuthi lo Mthetho usebenza kunoma iyiphi imakethe, nanoma iyiphi inhlangotho noma isikhungo, kungakhathalekile ukuthi ngeyizelele noma ekahulumeni, embonini yezokuthutha, uma uNgqongqoshe enqume ukuthi kulezi zimo ezilandelayo ziyasebenza— 45

- (a) umshayeli oyedwa ulawula ngaphezu kwamaphesenti angama-70 emakethe ethintekayo; noma
 - (b) imibandela yangaphambili yokusebenza kahle kanye nokonga imali azikho emakethe ethintekayo. 50
- (3) Ububanzi bomthetho othuliwe kufanele bulingane nezinkinga zokuncintisana ezimakethe.
- (4) Lapho enza isinqumo ngokwesigatshana sesi-(2)(b), uMlawuli kufanele athole ukuthi— 55
- (a) okungenani ifemu eyodwa esebenza emakethe inamandla emakethe; noma

- (b) a facility or resource in the market is an essential facility,
after having received and considered—
- (i) an opinion from the Competition Commission—
 - (aa) after conducting a market inquiry in terms of chapter 4A of the Competition Act; or
 - (bb) on the basis of the Competition Tribunal finding that anti-competitive abuses have occurred within the relevant market; or
 - (ii) a report from the market inquiry, conducted by the Regulator in terms of section 43(2)(b).
- (5) Before the Minister may consider making a determination contemplated in subsection (2), the Regulator, in the prescribed manner and form—
- (a) must publish the relevant opinion or report contemplated in subsection (4) in the *Gazette*, within the prescribed period;
 - (b) must publish, in the *Gazette*, a notice that such a determination is being considered, and invite public submissions in response to the notice; and
 - (c) may conduct public hearings on the matter in appropriate circumstances.
- (6) A determination made by the Minister, as contemplated in subsection (2), remains in force until withdrawn by a further determination by the Minister, but any such further determination may be made only after complying again with the requirements of subsections (4) and (5).
- (7) The Minister in consultation with the Regulator, by notice in the *Gazette*, may grant an exemption from the application of this Act to any specific market, entity, facility or service that is otherwise subject to the application of this Act, if the Minister is satisfied that—
- (a) the market, entity, facility or service does not have a material effect on competitive conditions within the transport sector; or
 - (b) none of the economic conditions contemplated in subsection (4) apply with respect to that market, entity, facility or service.
- (8) The Minister may grant an exemption in terms of subsection (7) either—
- (a) in conjunction with a determination in terms of subsection (2) that would otherwise affect the entity being exempted; or
 - (b) at any other time, after complying with the requirements of subsections (4) and (5).
- (9) An exemption granted by the Minister in terms of subsection (7), remains in force until withdrawn by a notice by the Minister published in the *Gazette*, but any such notice may be made only after complying again with the requirements of subsections (4) and (5).
- (10) The Minister may make regulations regarding—
- (a) the timing, manner and form of notices and periods of public submissions contemplated in subsection (5)(b);
 - (b) procedures for requesting and considering requests for exemptions; and
 - (c) other matters required for the proper application of this section.
- (11) The Minister may, in consultation with the Regulator, from time-to-time, by notice in the *Gazette*, declare that any other regulator, in no particular order, are consolidated into the Regulator—
- (a) including the following regulators, but not limited to:
 - (i) Cross-Border Road Transport Agency;
 - (ii) National Public Transport Regulator;
 - (iii) Air Service Licensing Council;
 - (iv) International Air Services Council;
 - (v) any other regulator; and
 - (b) if the Minister has determined that one or more of the regulators referred to in paragraph (a) must be incorporated, the Department must produce a report from conducting a review of their performance and capabilities, including the initiation of the legislative reform required to facilitate the incorporation of these regulators within three years from the effective date and from time-to-time, thereafter.
- (12) Before the Minister may consider making a determination contemplated in subsection (11), the Department, in the prescribed manner and form—

- (b) indawo noma insiza emakethe iyisikhungo esibalulekile, ngemva kokwamukela nokucutshungulwa—
- (i) umbono ovela kwiKhomishana Yezokuncintisana—
- (aa) ngemuva kokwenza uphenyo lwemakethe ngokwesahluko sesi-4A soMthetho Wokuncintisana; noma 5
- (bb) ngesisekelo sesiGungu Sokuncintisana esithole ukuthi ukuhlukumeza okungahambisani nokuncintisana kwenzeke ngaphakathi kwemakethe efanele; noma
- (ii) umbiko ovela ophenyweni lwemakethe, oqhutshwa nguMlawuli ngokwesigaba sama-43(2)(b). 10
- (5) Ngaphambi kokuba uNgqongqoshe acabange ukwenza isinqumo esihlongozwe esigatshaneni sesi-(2), uMlawuli, ngendlela enqunyiwe kanye nefomu—
- (a) kufanele ishicilele umbono ofanele noma umbiko ohlongozwe esigatshaneni sesi-(4) kwiGazethi, esikhathini esinqunyiwe;
- (b) kumele ishicilele, kwiGazethi, isaziso sokuthi lokho kunqunywa kuyacutshungulwa, futhi limeme izethulo zomphakathi ngokuphendula isaziso; futhi 15
- (c) lingaqhuba ukulalelwa kwemibono yomphakathi ngalolu daba ezimeni ezifanele.
- (6) Isinqumo esenziwe uNgqongqoshe, njengoba kuhlongozwe esigatshaneni sesi-(2), sizoqhubeka sisebenza kuze kube sihoxiswa ngesinye isinqumo sikaNgqongqoshe, kodwa noma isiphi esinye isinqumo esinjalo singenziwa kuphela ngemva kokuhambisana futhi nezimfuneko zesigatshana sesi-(4) kanye neses-(5). 20
- (7) UNgqongqoshe ngokubonisana noMlawuli, ngesaziso kwiGazethi, anganikeza inkululeko ekusetshenzisweni kwalo Mthetho kunoma iyiphi imakethe, ibhizinisi, isikhungo noma izevisi encike ekusetshenzisweni kwalo Mthetho, uma uNgqongqoshe enelisekile ukuthi— 25
- (a) imakethe, ibhizinisi, isikhungo noma izevisi ayinawo umthelela obonakalayo ezimeni ezincintisanayo ngaphakathi komkhakha wezokuthutha; noma azikho izimo zezomnotho ezihlongozwe esigatshaneni sesi-(4) ezisebenza kuleyo makethe, ibhizinisi, isikhungo noma izevisi. 30
- (8) UNgqongqoshe anganikeza ukukhululwa ngokwesigatshana (7) noma—
- (a) ngokuhambisana nesinqumo ngokwesigatshana sesi-(2) esingaba uma kungenjalo kuthintela ibhizinisi elikhululiwe; noma nganoma yisiphi esinye isikhathi, ngemva kokuhambisana nezidingo zesigatshana sesi-(4) neses-(5). 35
- (9) Ukukhululwa okunikezwe uNgqongqoshe ngokwesigatshana sesi-(7), kuhlala kusebenza kuze kuhoxiswe ngesaziso sikaNgqongqoshe esishicilelwe kwiGazethi, kodwa noma yisiphi leso saziyo singenziwa kuphela ngemva kokuhambisana futhi nezidingo zesigatshana sesi-(4) kanye neses-(5). 40
- (10) UNgqongqoshe angenza imithetho mayelana—
- (a) isikhathi, indlela kanye nohlobo lwezaziso kanye nezikhathi zokwethulwa komphakathi ezihlongozwe esigatshaneni sesi-(5)(b);
- (b) izinqubo zokucela nokucutshungulwa kwezicelo zokukhululwa; kanye
- (c) nezinye izindaba ezidingekayo ukuze lesi sigaba sisetshenziswe ngendlela. 45
- (11) UNgqongqoshe ngokubonisana noMlawuli, ngezikhathi ezithile, ngesaziso kuGazethi, angamemezela ukuthi noma yimuphi omunye umlawuli, ngaphandle kwesimiso esithile, kuhlangukane kuMlawuli—
- (a) kuhlangukane nabalawuli abalandelayo, kodwa kungacini kulokhu: 50
- (i) *Cross-Border Road Transport Agency*;
- (ii) *National Public Transport Regulator*;
- (iii) *Air Service Licensing Council*;
- (iv) *International Air Services Council*;
- (v) Noma imuphi omunye umlawuli; futhi
- (b) uma uNgqongqoshe enqume ukuthi umlawuli oyedwa noma abaningi okukhulunywe ngabo endimeni (a) kumele bahlangukane, uMnyango kufanele ukhiphe umbiko wokubuyekeza ukusebenza kwawo namandla, okuhlangukane ukuqaliswa kwezinguquko zomthetho ezidingekayo. ukwenza lula ukufakwa kwalaba balawuli phakathi neminyaka emithathu kusukela osukwini lokuqala nokusebenza ngezikhathi ezithile, ngemva kwalokho. 60
- (12) Ngaphambi kokuba uNgqongqoshe acabange ukwenza isinqumo esihlongozwe esigatshaneni se-(11), uMnyango, ngendlela enqunyiwe kanye nefomu—

- (a) must publish the relevant report contemplated in subsection (11)(b) in the *Gazette*, within the prescribed period;
- (b) must publish, in the *Gazette*, a notice that such a determination is being considered, and invite public submissions in response to the notice; and
- (c) may conduct public hearings on the matter in appropriate circumstances. 5

CHAPTER 2

ACCESS TO RAIL INFRASTRUCTURE

Determination of access costs and review of access agreements

5. (1) Once the Minister has determined, in terms of section 4, that this Act applies to rail infrastructure or facilities, the Regulator must determine the cost of access to that infrastructure or facilities, in terms of section 11. 10

(2) All entities that, immediately before the effective date, had access to rail infrastructure, continues to have such access rights in terms of the existing access agreements. 15

(3) Within one year from the date of the determination contemplated in subsection (1), an infrastructure owner must review all existing agreements that contain provisions that are inconsistent with this Act. 15

(4) An infrastructure owner must lodge all existing agreements that relate to rail infrastructure or facilities with the Regulator within one year from the date of the determination contemplated in subsection (1). 20

Types of access requests and access fees

6. (1) The following types of access requests may be regulated:

- (a) use of infrastructure that has been determined in terms of section 4, to run trains;
- (b) requests to physically interconnect infrastructure with infrastructure that has been determined in terms of section 4; or 25
- (c) requests to make investments in order to increase the capacity of infrastructure that has been determined in terms of section 4, where the owner of the said infrastructure has declined to make the requested investment to the requested specifications. 30

(2) The Regulator must prescribe reasonable fees for the processing of access applications, and different fees may be set depending on the type of access requested, and the size and complexity of the access request.

Contents of access agreements and notification to Regulator

7. (1) An access agreement, at a minimum, must contain— 35

- (a) the type of access request made;
- (b) the description of the infrastructure or facility that is subject to the access agreement;
- (c) the duration of the agreement;
- (d) the details of all the parties to the agreement; 40
- (e) the agreed access fees and associated conditions of service, as well as, any penalties for non-performance that may have been agreed to;
- (f) dispute resolution mechanisms; and
- (g) any additional services and fees levied.

(2) Before concluding an access agreement, the infrastructure owner must submit, in the prescribed manner and form, a notification to the Regulator detailing the terms of that access agreement and confirming that such terms are consistent with the provisions of this Act. 45

- (a) kufanele ishicilele umbiko ofanele ohlongozwe esigatshaneni (11)(b) encwadini IGazethi, phakathi nesikhathi esinqunyiwe;
- (b) kumele ishicilele, kwiGazethi, isaziso sokuthi lokho kunqunywa kuyacutshungulwa, futhi limeme izethulo zomphakathi ngokuphendula isaziso; futhi
- (c) lingaqhuba ukulalelwa kwemibono yomphakathi ngalolu daba ezimeni ezifanele.

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ISAHLUKO 2

UKUFNYELELA KWINGQALASIZINDA YAJANTSHI

Ukunqunywa kwezindleko zokufinyelela kanye nokubuyekezwa kwezivumelwano zokufinyelela 10

5. (1) Uma uNgqongqoshe esenqume, ngokwesigaba sesi-4, ukuthi lo Mthetho usebenza nengqalasizinda kaloliwe noma izinsiza, uMlawuli kufanele anqume izindleko zokufinyelela kuleyo ngqalasizinda noma izinsiza, ngokwesigaba se-11.

(2) Wonke amabhizinisi okuthi, ngaphambi nje kosuku lokuqala, afinyelele ingqalasizinda kaloliwe, aqhubeka nokuba nalawo malungelo okufinyelela ngokwemibandela yezivumelwano zokufinyelela ezikhona.

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(3) Ungakapheli unyaka owodwa kusukela osukwini lwesinqumo esihlongozwe esigatshaneni soku-(1), umnikazi wengqalasizinda kufanele abuyekeze zonke izivumelwano ezikhona eziqethe imihlinzeko ehambisani nalo Mthetho.

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(4) Umnikazi wengqalasizinda kufanele afake zonke izivumelwano ezihambisana nengqalasizinda kaloliwe nezinsiza ezikhona kuMlawuli ungakapheli unyaka owodwa kusukela ngosuku lwesinqumo esihlongozwe esigatshaneni soku-(1).

Izinhlobo zezicelo zokufinyelela kanye nezimali zokufinyelela

6. (1) Izinhlobo ezilandelayo zezicelo zokufinyelela zingase zilawulwe: 25

- (a) ukusetshenziswa kwengqalasizinda okunqunyiwe ngokwesigaba sesi-4, ukushayela izitimela;
- (b) izicelo zokuxhumanisa ingqalasizinda nengqalasizinda enqunye ngokwesigaba sesi-4; noma
- (c) izicelo zokutshalwa kwezimali ukuze kwandiswe amandla engqalasizinda enqunye ngokwesigaba sesi-4, lapho umnikazi wale ngqalasizinda eshiwo enqabile ukutshala imali eceliwe ngokwemibandela eceliwe.

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(2) Umlawuli kufanele abeke izimali ezifanele zokucutshungulwa kwezicelo zokufinyelela, futhi izimali ezihlukene zingahlelwa kuye ngohlobo lokufinyelela oluceliwe, kanye nobukhulu nobunkimbinkimbi besicelo sokufinyelela.

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Okuqukethwe kwezivumelwano zokufinyelela kanye nesaziso kuMlawuli

7. (1) Isivumelwano sokufinyelela, okungenani, kufanele siqukathe—

- (a) uhlobo lwesicelo sokufinyelela esenziwe;
- (b) incazelo yengqalasizinda noma isikhungo esingaphansi kwesivumelwano sokufinyelela;
- (c) ubude besikhathi sesivumelwano;
- (d) imininingwane yabo bonke abathintekayo esivumelwaneni;
- (e) izindleko zokufinyelela okuvunyelwene ngazo kanye nezimo zesevisi ezihambisana nazo, kanye nanoma yiziphi izinhlawulo zokungenzi kahle okungenzeka kuvunyelwene ngazo;
- (f) izindlela zokuxazulula izingxabano; futhi
- (g) noma yimaphi amasevisi engeziwe kanye nezimali ezikhokhiswayo.

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(2) Ngaphambi kokuphuthula isivumelwano sokufinyelela, umnikazi wengqalasizinda kufanele alethe, ngendlela enqunyiwe kanye nefomu, isaziso kuMlawuli esichaza ngemibandela yaleso sivumelwano sokufinyelela futhi eqinisekisa ukuthi leyo migomo iyahambisana nemihlinzeko yalo Mthetho.

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Requests for and consideration of access approval by Regulator

8. (1) Before approaching the Regulator, an access seeker must first try to negotiate the terms of the access agreement with an infrastructure owner in good faith.

(2) If the parties fail to reach an agreement, either party can refer the matter to the Regulator for resolution. 5

(3) When considering the matter referred to the Regulator in terms of subsection (2), the Regulator must invite the infrastructure owner and the access seeker to make written representations to the Regulator, within such period as the Regulator may determine.

(4) In determining whether to grant access approval, the Regulator must have regard to the following— 10

(a) whether there is available capacity on the infrastructure or facility;

(b) whether the access seeker is able to meet financial and other technical requirements necessary to successfully operate the infrastructure; and

(c) whether the applicant has received other regulatory approvals that may be required by or in terms of any law or regulations, or is likely to receive such approvals before the finalisation of its application. 15

(5) When determining whether there is available capacity in the infrastructure or facility, the Regulator must—

(a) request written representations from all entities that are currently using the infrastructure or facility— 20

(i) detailing the recent history of utilisation of the infrastructure or facility, and the projected volumes for the ensuing year, and

(ii) substantiating the said projections, where possible, with written evidence.

(6) The infrastructure owner must provide the Regulator with an updated report of capacity, including— 25

(a) maintenance downtime requirements;

(b) technical specifications;

(c) route schematics;

(d) investment plans on the route; and 30

(e) any other information that the Regulator may need to assess capacity.

(7) The Regulator may reassign unused capacity if there is no reasonable prospect of the current user needing that capacity, and if doing so may improve system efficiency.

Decision on access approval

9. (1) The Regulator must grant access approval, if all the requirements set out in section 8(4) are met. 35

(2) The Regulator may grant access approval, even if the requirements of section 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.

(3) If the Regulator grants access approval in terms of subsection (2), the terms of the access agreement must reasonably allow for the access seeker to realise the value of its investment. 40

(4) The Regulator may grant access to the access seeker contemplated in subsection (2), only once the new infrastructure or facility is built.

(5) If the Regulator has granted access approval in terms of subsection (1) or (2), the access seeker and the infrastructure owner must enter into an access agreement within a period specified in the access approval, failing which the Regulator must determine the terms of the access agreement. 45

(6) Any party that is aggrieved by a decision of the Regulator in terms of this section, may appeal to the Council against a decision or apply to the Council for a review of the decision, in terms of section 22. 50

Isicelo nokubhekwa kwemvume yokufinyelela nguMlawuli

8. (1) Ngaphambi kokuya kuMlawuli, umuntu ofuna imvume yokufinyelela kumele aqale azame ukuxoxisana nomnikazi wengqalasizinda ngobuqotho ngemibandela yesivumelwano sokufinyelela.

(2) Uma amaqembu ehluleka ukufinyelela esivumelwaneni, noma yiliphi iqembu lingadlulisela udaba kuMlawuli ukuze kuxazululwe. 5

(3) Lapho ecubungula udaba oludluliselwe kuMlawuli ngokwesigatshana sesi-(2), uMlawuli kufanele ameme umnikazi wengqalasizinda kanye nomuntu ofuna ukufinyelela ukuba benze izethulo ezibhaliwe kuMlawuli, esikhathini esinganqunywa uMlawuli. 10

(4) Ekunqumeni ukuthi uyayinikeza yini imvume yokufinyelela, uMlawuli kufanele abheke lokhu okulandelayo—

- (a) ukuthi akhona yini amandla kwingqalasizinda noma kwinsiza;
- (b) ukuthi odinga ukuhlangabezana nezidingo zezezimali kanye nezinye izidingo zobuchwepheshe ezidingekayo ukuze aqhube ingqalasizinda ngempumelelo; 15

- (c) ukuthi umfakisicelo usezitholile yini ezinye izimvume zokulawula ezingadingeka ngokwanoma yimuphi umthetho noma izimiso, noma kungenzeka azithole lezo zimvume ngaphambi kokuphothulwa kwesicelo sakhe. 20

(5) Lapho enquma ukuthi akhona yini amandla kwingqalasizinda noma kwinsiza, uMlawuli kufanele—

- (a) acele izethulo ezibhaliwe kuzo zonke izinhlangano ezisebenzisa ingqalasizinda noma insiza njengamanje—
 - (i) ezichaza ngomlando wakamuva wokusetshenziswa kwengqalasizinda noma isikhungo, kanye nenani elihlongozwayo lonyaka olandelayo; 25
 - (ii) ukufakazela lokho okushiwo, ngobufakazi obubhaliwe, lapho kungenzeka khona.

(6) Umnikazi wengqalasizinda kumele anikeze uMlawuli umbiko obuyekaziwe wamandla, okuhlanganisa— 30

- (a) izidingo zesikhathi sokulungisa;
- (b) imininingwane yobuchwepheshe;
- (c) izinhlelo zomzila;
- (d) izinhlelo zokutshala izimali emzileni; kanye 35
- (e) noma yiluphi olunye ulwazi uMlawuli angaludinga ukuze ahlole amandla.

(7) Umlawuli anganikeza kabusha umthamo ongasetshenzisiwe uma lingekho ithemba elizwakalayo lomsebenzisi wamanje odinga lowo mthamo, futhi uma ukwenza kanjalo kungathuthukisa ukusebenza kahle kwesistimu.

Isinqumo sokuvunyelwa ukufinyelela 40

9. (1) Umlawuli kufanele anikeze imvume yokufinyelela, uma zonke izidingo ezibekwe esigabeni sesi-8(4) zihlangatsheziwe.

(2) Umlawuli anganikeza imvume yokungena, ngisho noma ngabe izidingo zesigaba sesi-8(4)(a) akuhlangatshezwananga nazo: Kuncike ekutheni ofuna ukufinyelela enikeze isibophezelo esibhaliwe kuMlawuli sokuxhasa ukutshalwa kwezimali okudingekayo kwingqalasizinda. 45

(3) Uma uMlawuli enikeza imvume yokufinyelela ngokwemibandela yesigatshana sesi-(2), imigomo yesivumelwano sokufinyelela kufanele ivumele umuntu ofuna ukufinyelela ukuba abone ukubaluleka kokutshalwa kwayo.

(4) Umlawuli anganikeza ukufinyelela kumfakisicelo ohlongozwe esigatshaneni sesi-(2), kuphela uma ingqalasizinda entsha noma isikhungo sesakhiwe. 50

(5) Uma uMlawuli enikeze imvume yokungena ngokwesigatshana soku-(1) noma sesi-(2), ofuna ukufinyelela kanye nomnikazi wengqalasizinda kufanele bangene esivumelwaneni sokufinyelela phakathi nesikhathi esishiwo ekugunyazweni kokungena, uma kungenjalo uMlawuli kufanele anqume imigomo yesivumelwano sokufinyelela. 55

(6) Noma yiliphi iqembu elinesikhalo ngesinqumo soMlawuli ngokwemibandela yalesi sigaba, lingadlulisela isikhalo eMkhandlwini ngesinqumo noma lifake isicelo eMkhandlwini ukuba ubuyekaziwe isinqumo, ngokwesigaba sama-22.

Cession, transfer or assignment of access rights

10. An entity that has been granted access approval in terms of section 9(1) or (2), may cede or transfer any or all of its access rights to a third party, on condition that—

- (a) the entity must first notify the infrastructure owner and the Regulator of its intention to cede or transfer access rights;
- (b) the entity ensures that all its obligations remain fulfilled; and
- (c) third parties may not cede or transfer such access rights to any operator.

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CHAPTER 3**ECONOMIC REGULATION OF TRANSPORT FACILITIES AND SERVICES****Part A**

10

Price Regulation**Determination of price controls**

11. (1) Every regulated entity is subject to price regulation in accordance with a price control determined by the Regulator.

(2) The price control for a regulated entity may comprise—

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- (a) a schedule of tariffs, charges, fees, tolls or other amounts that may be imposed by the regulated entity for the use of, or access to, any transport service or facility offered by that regulated entity;
- (b) a limit on the total amount of revenue it may raise from the facilities and services offered by it;
- (c) a limit on the return it may derive from the assets utilised by it to provide its facilities and services; or
- (d) any other appropriate pricing method, including any combination of the methods contemplated in paragraphs (a) to (c).

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(3) Each regulated entity must submit a proposal to the Regulator, requesting approval of a price control for the facilities and services offered by that regulated entity.

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(4) When considering a proposal submitted in terms of this section, the Regulator must—

- (a) consult with interested parties and the public in the prescribed manner;
- (b) determine whether the proposal is fair and reasonable, after considering all relevant circumstances, including—
 - (i) the regulated entity's operating efficiency and effectiveness;
 - (ii) the need for investment and security of supply in the regulated market;
 - (iii) the opportunity cost of capital including the average rate of return on other domestic or international facilities or services having similar or comparable risk;
 - (iv) the actual or forecast cost of debt;
 - (v) any reasonable cost differentials between the different types of facilities or services provided, arising due to geographical location or any other characteristic that the Regulator may deem relevant;
 - (vi) the likely effect of the proposed price control on the economy, employment, consumers and small or medium enterprises;
 - (vii) any advantage or disadvantage an operator has as a result of state investments, transfers, laws and regulation; and
 - (viii) any other specific criteria prescribed by regulation.

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Ukunikezela, ukudluliswa noma ukwabiwa kwamalungelo okufinyelela

10. Ibhizinisi elinikezwe imvume yokufinyelela ngokwesigaba sesi-9(1) noma sesi-(2), lingadela noma lidlulisele noma yimaphi noma wonke amalungelo alo okufinyelela komunye umuntu, ngaphansi kombandela wokuthi—

- (a) ibhizinisi kufanele lazise umnikazi wengqalasizinda kanye noMlawuli ngenhloso yayo yokuyeka noma yokudlulisa amalungelo okufinyelela; 5
- (b) ibhizinisi liqinisekisa ukuthi zonke izibopho zalo zihlala zigcwalisekile; futhi
- (c) abantu besithathu akumele bayeke noma badlulisele lawo malungelo kunoma yimuphi umqhubi.

ISAPHLUKO 3

10

**UKULAWULWA KWEZOMNOTHO WEZINSIZA NAMASEVISI
EZOKUTHUTHA*****Ingxenye A******Ukulawulwa kwentengo*****Ukunqunywa kwezilawuli zentengo**

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11. (1) Yonke inhlangothi elawulwayo ingaphansi kokulawulwa kwentengo ngokuvumelana nokulawulwa kwenani okunqunywe uMlawuli.

(2) Ukulawulwa kwentengo kwebhizinisi elilawulwayo kungase kuhlenganise—

- (a) uhlelo lwezindleko, izinkokhiso, izimali ezikhokhwayo, ezikhokhelwayo/ ezithelwayo noma ezinye izimali ezingabekwa yinhlangano elawulwayo ukuze kusetshenziswe, noma kufinyelelwe, kunoma iyiphi isevisi yezokuthutha noma indawo ehlinzekwa yilelo bhizinisi elilawulwayo; 20
- (b) umkhawulo enanini eliphelele lemali engenayo elingayithola ezinsizeni nakumasevisi ewahlinzekayo;
- (c) umkhawulo wembuyiselo engase iwuthole ezimpahleni ezisetshenziswe yiyo ukuze ihlinzeke ngezinsiza zayo namasevisi; noma 25
- (d) noma iyiphi enye indlela yentengo efanele, okuhlanganisa noma iyiphi inhlangothi yezindleko ezihlongozwe ezindimeni (a) kuya ku-(c).

(3) Inhlangothi ngayinye elawulwayo kufanele iletthe isiphakamiso kuMlawuli, icele ukugunyazwa kokulawulwa kwentengo yezinsiza namasevisi ahlinzekwa yilelo bhizinisi elilawulwayo. 30

(4) Lapho ecubungula isiphakamiso esilethwe ngokwalesi sigaba, uMlawuli kufanele—

- (a) abonisane nabathintekayo kanye nomphakathi ngendlela enqunyiwe;
- (b) anqume ukuthi isiphakamiso sinobulungiswa futhi sinomqondo yini, ngemva kokucubungula zonke izimo ezifanele, kuhlenganisa— 35
 - (i) ukusebenza kahle nempumelelo kwebhizinisi elilawulwayo;
 - (ii) isidingo sokutshalwa kwezimali kanye nokuvikeleka kokuhlinzekwa kwempahla emakethe elawulwayo;
 - (iii) izindleko zethuba lekhephithali kuhlenganisa isilinganiso esivamile sembuyiselo kwezinye izinsiza zasekhaya noma zamazwe ngamazwe noma amasevisi anobungozi obufanayo noma obuqhathanisekayo; 40
 - (iv) izindleko zangempela noma zesibikezelo sesikweletu;
 - (v) noma yikuphi ukwehluka kwezindleko okunengqondo phakathi kwezinhlobo ezehlukene zezinsiza noma izinsiza ezihlinzekiwe, ezivela ngenxa yendawo noma ezinye izici uMlawuli angazibona zifanelekile; 45
 - (vi) umphumela ongaba khona wokulawulwa kwentengo okuhlongozwayo emnothweni, ukuqashwa, abathengi kanye namabhizinisi amancane noma aphakathi nendawo; 50
 - (vii) noma yikuphi okuhle noma okubi umqhubi anakho ngenxa yokutshalwa kwezimali kombuso, ukudluliswa kwemali, imithetho kanye neziqondiso; futhi
 - (viii) nanoma yiziphi ezinye izindleko ezishiwo zomthetho.

(5) If the proposal for the price control approval relates to a service that is subsidised, the Regulator must consult with a party that is providing a subsidy, in the prescribed manner.

(6) The Regulator must consider any requests of the subsidising party, and to the extent possible, in a cost-effective manner, must grant requests for— 5

- (a) the details of the price control to be coordinated with the subsidising party's budget cycle;
- (b) changes to the service level associated with the price control;
- (c) slower implementation of price changes, subject to the payment of compensation for the delay to the operator; or 10
- (d) access to any data on operator performance collected by the Regulator.

(7) If the level of an existing subsidy changes materially, or a subsidy is introduced for a new service, the Regulator, on request by any interested party, may undertake research on the impact of the subsidy on intermodal competition, and provide an opinion to the party providing the subsidy and the requesting party. 15

(8) The Regulator must consider each price control proposal on its merits in terms of subsection (4), and may—

- (a) determine the price control—
 - (i) as proposed by the regulated entity, with or without conditions; or
 - (ii) as varied by the Regulator, with or without conditions; or 20
- (b) require the regulated entity to submit a new or additional request, addressing any concerns that the Regulator may have, which may include a requirement to propose a different price control than originally proposed.

(9) When determining a price control, the Regulator may impose conditions that—

- (a) provide for an annual adjustment to reflect changes in the relevant price index; 25
- (b) set service standards and a price rebate mechanism if such service standards are not met in respect of any activity that is subject to the price control; or
- (c) permit the relevant regulated entity to enter into an agreement with any other person to charge and pay at a rate other than set by the price control, if the deviation from the price control can be justified in terms of a mutually acceptable deviation from standard terms of service, which is associated with changes in the cost of service provision. 30

(10) Before the price control deviation is implemented, the relevant regulated entity must submit, to the Regulator—

- (a) a calculation of the impact of the proposed price control deviation on the entity's revenues, costs and profitability, as well as, any other relevant material financial management metrics; 35
- (b) a statement declaring whether the proposed price control deviation will materially affect the basis on which the overarching price control is determined; and 40
- (c) a statement declaring that other customers of the regulated entity will not be subjected to price increases or reductions in service quality as a result of the proposed price control deviation.

(11) Within 15 business days of receipt of the price deviation request contemplated in subsection (10), the Regulator may, within 60 business days review the impact of the proposed price deviation and determine whether or not to approve it. 45

(12) A price control, or any amendment to it, as determined by the Regulator—

- (a) must be published by the Regulator in the *Gazette* or in any other appropriate manner;
- (b) takes effect on a date determined by the Regulator by notice in the *Gazette* or in any other manner contemplated in paragraph (a); and 50

(5) Uma isiphakamiso sokugunyazwa kokulawulwa kwentengo sihlobene nomsebenzi oxhaswe, uMlawuli kufanele abonisane neqembu elihlinzeka ngosizo, ngendlela enqunyiwe.

(6) Umlawuli kufanele abheke noma yiziphi izicelo zeqembu elixhasayo, futhi ngendlela okungenzeka ngayo, ngendlela eyongayo, kumele anikeze izicelo— 5

- (a) imininingwane yokulawulwa kwentengo okufanele ihlanganiswe nesayikili yesabelomali senhlangano exhasayo;
- (b) izinguquko ezingeni lesevisi elihlobene nokulawulwa kwentengo;
- (c) ukusebenza kancane kancane kwezinguquko zentengo, kuncike ekukhokhweni kwesinxephezelo ngokubambezeleka komqhubi; noma 10
- (d) ukufinyelela kunoma iyiphi idatha yokusebenza komqhubi eqoqwe uMlawuli.

(7) Uma izinga loxhaso olukhona lushintsha ngokwezinto ezibonakalayo, noma kwethulwa uxhaso lwensizakalo entsha, uMlawuli, ngokucelwa yinoma yimuphi umuntu onentshisekelo, angenza ucwaningo ngomthelela woxhaso emqhudelwaneni ophakathi, futhi anikeze umbono eqenjini elihlinzeka ngoxhaso kanye neqembu elicelayo. 15

(8) Umlawuli kufanele acabangele isiphakamiso sokulawulwa kwentengo ngakunye ngokufaneleka kwaso ngokwesigatshana sesi-(4), futhi—

- (a) anganquma ukulawulwa kwentengo—
 - (i) njengoba kuhlangozwa ibhizinisi elilawulwayo, elinemibandela noma ngaphandle kwemibandela; noma 20
 - (ii) ngokwehluka koMlawuli, ngemibandela noma ngaphandle kwemibandela; noma
- (b) angadinga ibhizinisi elilawulwayo ukuba lilethe isicelo esisha noma esengeziwe, sibhekane nanoma yikuphi ukukhathazeka uMlawuli angaba nakho, okungase kuhlangele imfuneko yokuphakamisa ukulawulwa kwentengo okuhlukile kunalokho okwakhlongozwa ekuqaleni. 25

(9) Lapho kunqunywa ukulawulwa kwentengo, Umlawuli angabeka imibandela—

- (a) ehlinzeka ukulungiswa konyaka ukuze kubonise izinguquko kwinkomba yentengo efanele; 30
- (b) emisa imigomo yesevisi kanye nendlela yokunciphisa intengo uma leyo migomo yesevisi ingafezwanga maqondana nanoma yimuphi umsebenzi ongaphansi kokulawulwa kwentengo; noma
- (c) evumela ibhizinisi elilawulwayo elithintekayo ukuthi lingene esivumelwaneni nanoma yimuphi omunye umuntu ukuze likhokhise futhi likhokhe ngenani elingelona elibekwe ukulawulwa kwentengo, uma ukuchezuka ekulawuleni intengo kungase kuthetheleleke ngokwemibandela yokuphambuka okwamukelekayo imigomo yesevisi ejwayelekile, ehlotshaniswa nezinguquko ezindlekweni zokuhlazekwa kwesevisi. 35

(10) Ngaphambi kokuthi kusetshenziswe ukuchezuka kokulawulwa kwentengo, ibhizinisi elifanele elilawulwayo kufanele lithumele, kuMlawuli— 40

- (a) ukubalwa komthelela wokuchezuka kokulawulwa kwentengo okuhlongozwayo emalini engenayo yebhizinisi, izindleko nenzuzo, kanye, nanoma imaphi amanye amamethrikhi okuphatha ezezimali abalulekile;
- (b) isitatimende esimemezela ukuthi ukuchezuka kokulawulwa kwentengo okuhlongozwayo kuzothinta kakhulu isisekelo okunqunywa kuso isilawuli sentengo esiphezulu; futhi 45
- (c) isitatimende esimemezela ukuthi amanye amakhasimende ebhizinisi elilawulwayo angeke aze abe ngaphansi kokukhushulwa kwamanani noma ekwehlisweni kwekhwalthi yesevisi ngenxa yokuchezuka kokulawulwa kwentengo okuhlongozwayo. 50

(11) Ezinsukwini zokusebenza eziyi-15 kutholwe isicelo sokuchezuka kwentengo esihlongozwe esigatshaneni se-(10), uMlawuli, phakathi kwezinsuku ezingama-60 zokusebenza angase abuyekeze umthelela wokwepulwa kwentengo okuhlongozwayo futhi anqume ukuthi uyakugunyaza noma cha. 55

(12) Ukulawulwa kwentengo, nanoma yikuphi ukuchitshiyelwa kukho, njengoba kunqunywe nguMlawuli—

- (a) kufanele ishicilelwe nguMlawuli kuGazethi noma nganoma iyiphi enye indlela efanele;
- (b) uqala ukusebenza ngosuku olunqunywe nguMlawuli ngesaziso kwiGazethi noma nganoma iyiphi enye indlela ehlongozwe endimeni (a); futhi 60

- (c) remains in effect until it has been withdrawn or replaced by a notice in the *Gazette* or in any other manner contemplated in paragraph (a), subject to—
 - (i) any decision of the Council in terms of section 20, or of a Court after a review in terms of section 28(6); or
 - (ii) any subsequent reduction in terms of section 21. 5
- (13) In respect of any facilities or services that are offered by a regulated entity and subject to a price control contemplated in subsection (2)(a), the regulated entity may not charge any person more than the maximum established—
 - (a) in accordance with the price control as determined and published by the Regulator, or as subsequently reduced in terms of section 21; or 10
 - (b) by agreement to the extent permitted in terms of subsection (9)(c).

Extraordinary review of price controls

12. (1) At any time after a price control takes effect, the Regulator may conduct an extraordinary review if the Regulator is satisfied that unforeseeable changes in economic demand, input costs, technology, the regulatory environment or other similar factors have affected the regulated entity sufficiently to constitute a threat to its economic sustainability during the current price control period and thus justify an early review of the price control. 15
- (2) The Regulator may conduct an extraordinary review in terms of subsection (1) either— 20
- (a) on its own initiative; or
 - (b) on application, in the prescribed manner, by—
 - (i) the relevant regulated entity;
 - (ii) the Minister; or
 - (iii) another person directly affected by that price control. 25
- (3) Section 11 applies to an extraordinary review in terms of this section.

Part B

Economic Oversight of Regulated Entities

Information from regulated entities

13. (1) Each regulated entity must submit to the Regulator, in the prescribed manner and form— 30
- (a) statistical information related to the transport facilities or services that it provides, or has licensed others to provide;
 - (b) forecasts of demand for the transport facilities or services that it provides, or has licensed others to provide; 35
 - (c) development plans for the facilities it operates, or has licensed others to operate, or the services that it provides or has licensed others to provide; and
 - (d) any material change in the control of persons it has licensed to operate facilities or provide services.
- (2) The Regulator may request any other information that is reasonably required by the Regulator to perform its functions in terms of this Act, including confidential information, subject to section 60. 40
- (3) The Regulator must maintain the confidentiality of information provided to the Regulator in terms of this section or any provision of this Act.

Regulatory accounting and disclosure requirements 45

14. (1) The Regulator must define, develop, publish and administer standards for the preparation and presentation, by regulated entities, of financial and other relevant information to be considered in any price control determination or review, including the criteria to be used for the valuation and allocation of assets by regulated entities.
- (2) Each regulated entity must submit financial and other relevant information to the Regulator in accordance with the standards and criteria established in terms of subsection (1). 50

- (c) sihlala sisebenza size sihoxiswe noma esikhundleni saso kufakwe isaziso kuGazethi noma nganoma iyiphi enye indlela ehlongozwe endimeni (a), kuncike ekutheni—
- (i) noma yisiphi isinqumo soMkhandlu ngokwesigaba sama-20, noma seNkantolo ngemuva kokubuyekizwa ngokwesigaba sama-28(6); 5
 - (ii) noma yikuphi ukuncishiswa okulandelayo ngokwesigaba sama-21.
- (13) Maqondana nanoma yiziphi izinsiza noma amasevisi ahlinzekwa yibhizinisi elilawulwayo futhi kuncike ekulawuleni intengo okuhlongozwe esigatshaneni sesi-20(a), ibhizinisi elilawulwayo ngeke likhokhise noma yimuphi umuntu ngaphezu 10 kwenani elibekiwe—
- (a) ngokuhambisana nokulawulwa kwentengo njengoba kunqunye futhi kwashicilelwa Umlawuli, noma encishiswe kamva ngokwesigaba sama-21; noma (b) ngesivumelwano ngokwezinga elivunyelwe ngokwesigatshana sesi-9(c). 15

Ukubuyekizwa okungajwayelekile kwezilawuli zentengo

12. (1) Noma nini ngemva kokuqaliswa kokulawulwa kwentengo, uMlawuli angase enze isibuyekizo esingavamile uma uMlawuli anelisekile ngokuthi izinguquko ezingalindelekile esidingweni sezomnotho, izindleko zokufakwayo, ubuchwepheshe, indawo yokulawula noma ezinye izici ezifanayo ziye zathinta ibhizinisi elilawulwayo ngokwanele ukuba lakheke. usongo ekusimameni kwayo kwezomnotho ngesikhathi samanje sokulawula amanani futhi ngaleyo ndlela ithethelele ukubuyekizwa kwangaphambi kwesikhathi kokulawulwa kwentengo. 20
- (2) Umlawuli angenza ukubuyekizwa okungajwayelekile ngokwesigatshana soku- (1) noma— 25
- (a) ngokuzenzela; noma
 - (b) ngesicelo, ngendlela enqunyiwe—
 - (i) ngebhizinisi elilawulwayo elifanele;
 - (ii) ngoNgqongqoshe; noma
 - (iii) ngomunye umuntu othintekile ngqo kulokho kulawulwa kwentengo. 30
- (3) Isigaba se-11 sisebenza ekubuyekizweni okungajwayelekile ngokwalesi sigaba.

Ingxenye B

Ukwengamela Kwezomnotho Kwamabhizinisi Alawulwayo

Ulwazi oluphuma kumabhizinisi alawulwayo

13. (1) Ibhizinisi ngalinye elilawulwayo kufanele lithumele kuMlawuli, ngendlela enqunyiwe kanye nefomu— 35
- (a) imininingwane yezibalo ehlobene nezinsiza zokuthutha noma izinsiza ezihlinzekayo, noma linikeze abanye ilayisense ukuba bayihlinzeke;
 - (b) izibikezelo zesidingo sezinto zokuthutha noma izinsiza elizihlinzekayo, noma linikeze abanye ilayisensi ukuba bayihlinzeke; 40
 - (c) izinhlelo zokuthuthukisa izakhiwo elisebenza kuzo, noma elinikeze abanye ilayisense ukuthi liziqhube, noma izinsiza elizihlinzekayo noma linikeze abanye amalayisensi ukuthi bazihlinzeke; futhi
 - (d) noma yiluphi ushintsho oluphathekayo ekulawuleni abantu kubanikeze ilayisensi yokusebenzisa izakhiwo noma ukuhlinzeka ngemisebenzi. 45

Izidingo zokubalwa kwezimali kanye nokudalula

14. (1) Umlawuli kufanele achaze, athuthukise, ashicilele futhi alawule imigomo yokulungiselela nokwethulwa, yizinhlangano ezilawulwayo, zolwazi lwezezimali nolunye olufanele okufanele lucatshangelwe kunoma yikuphi ukunqunywana noma ukubuyekizwa kokulawulwa kwentengo, okuhlanganisa nemibandela okufanele isetshenziselwe ukulinganisa nokwabiwa kwezimpahla ngamabhizinisi alawulwayo. 50
- (2) Inhlangano ngayinye elawulwayo kufanele ilethe ulwazi lwezezimali kanye nolunye oluhlobene Umlawuli ngokuhambisana namazinga nemibandela esungulwe ngokwesigatshana soku-(1).

(3) The Regulator may require a regulated entity to have an independent review of the financial and other relevant information contemplated in this section.

(4) A review required in terms of subsection (3) may be carried out by the regulated entity's auditor, or by an alternative auditor nominated by the Regulator in consultation with the regulated entity.

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Complaints against regulated entities

15. (1) Any person may file a complaint with the Regulator, in the prescribed manner and form, alleging that a regulated entity—

- (a) has unreasonably or improperly refused to issue a licence or amended licence to the complainant; 10
- (b) has unreasonably or improperly taken a decision that adversely affects the rights of the complainant;
- (c) has failed to provide access to transport facilities or services in a non-discriminatory, fair and transparent manner;
- (d) treats its own operations or those of its subsidiary, more favourably than, and derives an unfair competitive advantage over, other providers of services; 15
- (e) has failed to meet the service standards attached to a price control;
- (f) impedes the efficiency of inter-modal transport operations; or
- (g) has engaged in prohibited conduct.

(2) Before submitting a complaint to the Regulator in terms of this section, the complainant, in appropriate cases, must have afforded a regulated entity an opportunity to resolve the complaint. 20

(3) The Regulator must consider or investigate every complaint in accordance with the provisions of Part C, and the regulations.

Part C

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Complaint Investigations by Regulator

Direct referrals to Council

16. (1) Upon receiving a complaint in terms of section 15(1)(a) or (b), the Regulator—

- (a) may refer the complaint directly to the Council, to be considered in accordance with this section, if the Regulator has concluded that the complaint does not raise issues of general economic or public policy concern in terms of this Act; or 30
- (b) otherwise, must consider the complaint in terms of section 18.
- (2) If the Regulator refers a complaint to the Council in terms of subsection (1)(a)— 35
 - (a) the Regulator may not be a party to the Council proceedings; and
 - (b) the Council must consider that complaint as an appeal by the complainant against the decision by the relevant regulated entity.

(3) The Council may conduct a hearing of each matter referred to it in terms of this section in accordance with the provisions of section 23. 40

(4) Despite subsection (2)(a), the Council may invite the Regulator to provide any information that the Council may consider relevant to the proceedings in terms of subsection (3).

(5) After considering a complaint referral under this section, the Council must confirm, set aside or vary the decision by the regulated entity. 45

(6) If the Council has set aside a decision, as contemplated in subsection (5), the relevant regulated entity may consider the matter afresh, having regard to the Council's reasons for setting aside the decision that was the subject of the complaint, and take a new decision.

Consideration of complaints by Regulator

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17. (1) Unless it has referred a complaint to the Council in terms of section 16, the Regulator, upon receiving a complaint, may—

(3) UMlawuli angadinga ukuthi inhlango elawulwayo ibe nokubuyekeza okuzimele kolwazi lwezizimali nolunye oluhlobene oluhlongozwe kulesi sigaba.

(4) Ukubuyekeza okudingekayo ngokwesigatshana sesi-(3) kungase kwenziwe umcwaningi mabhuku wenhlango elawulwayo, noma ngomunye umcwaningi mabhuku oqokwe nguMlawuli ngokubonisana nenhlango elawulwayo.

5

Izikhazazo ngokumelene nezinhlangano ezilawulwayo

15. (1) Noma yimuphi umuntu angafaka isikhazazo kuMlawuli, ngendlela nefomu elinqunyiwe, esho ukuthi ibhizinisi elilawulwayo—

- (a) lenqabe ngokungenamqondo noma ngokungafanele ukunikeza ummangali ilayisensi noma ilayisensi echitshiyelwe; 10
- (b) lithathe ngokungafanele noma ngokungafanele isinqumo esithinta kabi amalungelo ommangali;
- (c) lehlulekile ukuhlinzeka ngezinsiza zokuthutha noma izinsiza ngendlela engacwasi, enobulungiswa nesobala;
- (d) iphatha imisebenzi yayo noma leyo yenkampani engaphansi kwayo, ngendlela evuna kakhulu, futhi ithola inzuzo engafanele yokuncintisana ngaphezu kwabanye abahlinzeki bezinsizakalo; 15
- (e) lehlulekile ukuhlangabezana nemigomo yesevisi ehambisana nokulawulwa kwentengo;
- (f) likhinyabeza ukusebenza kahle kwezindlela zokuthutha ezihlukene; noma 20
- (g) lihlanganyela ekuziphatheni okungavunyelwe.

(2) Ngaphambi kokuhambisa isikhazazo kuMlawuli ngokwemibandela yalesi sigaba, ummangali, ezimweni ezifanele, kufanele abe enikeze inhlango elawulwayo ithuba lokuxazulula isikhazazo.

(3) UMlawuli kufanele acubungule noma aphenye zonke izikhazazo ngokuhambisana nezinhlinzeko zeNgxenywe C, kanye nemithetho. 25

Ingxenywe C

Ukuphenywa kwezikhazazo ziphenywa nguMlawuli

Ukudluliselwa ngqo emkhandlwini

16. (1) Lapho kutholwa isikhazazo ngokwesigaba se-15(1)(a) noma (b), uMlawuli— 30
- (a) angadlulisela isikhazazo ngqo eMkhandlwini, ukuze sicutshungulwe ngokuhambisana nalesi sigaba, uma uMlawuli ephethe ngokuthi isikhazazo asiphakamisi izindaba ezithinta umnotho jikelele noma inqubomgomo yomphakathi ngokwalo Mthetho; noma
 - (b) uma kungenjalo, kufanele acubungule isikhazazo ngokwesigaba se-18. 35
- (2) Uma uMlawuli edlulisela isikhazazo eMkhandlwini ngokwesigatshana soku- (1)(a) —
- (a) uMlawuli angeke abe yingxenywe yezinqubo zoMkhandlu; futhi
 - (b) uMkhandlu kufanele ubheke leso sikhazazo njengesikhazazo sommangali ngesinqumo sebhizinisi elifanele elilawulwayo. 40
- (3) UMkhandlu ungaqhuba ukulalelwa kodaba ngalunye oludluliselwe kuwo ngokwalokhu isigaba ngokuhambisana nemihlinzeko yesigaba sama-23.
- (4) Naphezu kwesigatshana sesi-(2)(a), uMkhandlu ungamema uMlawuli ukuthi anikeze noma yiluphi ulwazi uMkhandlu ongalubona lubalulekile ezinqubeni ngokwesigatshana sesi-(3). 45
- (5) Ngemva kokucubungula ukudluliselwa kwesikhazazo ngaphansi kwalesi sigaba, uMkhandlu kufanele uqinisekisa, ubeke eceleni noma uguqule isinqumo sebhizinisi elilawulwayo.
- (6) Uma uMkhandlu ubeke eceleni isinqumo, njengoba kuhlongozwe esigatshaneni sesi-(5), uhlaka oluthintekayo lungacubungula lolu daba, lubheke izizathu zoMkhandlu zokuhoxisa isinqumo ebesiyisihloko sesikhazazo, futhi thatha isinqumo esisha. 50

Ukucutshungulwa kwesikhazazo nguMlawuli

17. (1) Ngaphandle uma lisidlulisele isikhazazo eMkhandlwini ngokwesigaba se-16, uMlawuli, lapho ethola isikhazazo, angakwazi—

- (a) issue a notice of non-referral to the complainant in the prescribed form, if the complaint—
 - (i) appears to be frivolous or vexatious; or
 - (ii) does not allege any facts which, if proven, would constitute grounds for a remedy under this Act; 5
 - (b) refer the complaint to another regulatory authority with jurisdiction over the matter for investigation; or
 - (c) direct an inspector to investigate the complaint as quickly as practicable.
- (2) At any time, the Regulator, acting on its own initiative, may direct an inspector to commence an investigation into any matter contemplated in section 15(1)(c) to (g), despite not having received a complaint in terms of that section. 10
- (3) At any time during an investigation, the Regulator may designate one or more persons to assist the inspector in conducting the investigation.
- (4) The procedure for conducting an investigation contemplated in this section, may be determined by the Regulator, with due regard to the circumstances of each case. 15

Outcome of investigation

18. After receiving a report of an investigation, the Regulator may—
- (a) issue a notice of non-referral to the complainant in the prescribed form;
 - (b) refer the matter to the National Prosecuting Authority, if the Regulator alleges that a person has committed an offence in terms of this Act; 20
 - (c) propose a draft consent order, in terms of section 19;
 - (d) issue a compliance notice in terms of section 20; or
 - (e) direct a price control reduction, in terms of section 21.

Consent orders

19. (1) If a matter has been investigated by the Regulator, and the Regulator and the respondent agree to the proposed terms of an appropriate order, the Council, without hearing any evidence, may confirm the agreement as a consent order, in accordance with section 48(1)(b), and lodge it with the High Court, for enforcement purposes. 25
- (2) Without limiting the generality of subsection (1), a consent order may include a directed price control reduction contemplated in section 21. 30
- (3) With the consent of a complainant, a consent order confirmed in terms of subsection (1) may include an award of damages to that complainant.

Issuance of compliance notices

20. (1) Subject to subsection (2), the Regulator may issue a compliance notice, in the prescribed form, to the respondent in any investigation conducted by the Regulator in terms of section 17. 35
- (2) A compliance notice contemplated in subsection (1) must set out—
- (a) the person, association or entity to whom the notice applies;
 - (b) the provision of this Act, or another Act, that has not been complied with, if any; 40
 - (c) details of the nature and extent of the non-compliance or other reason for issuing the notice;
 - (d) any steps that are required to be taken and the period within which those steps must be taken; and
 - (e) any penalty that may be imposed in terms of this Act if those steps are not taken. 45
- (3) A compliance notice issued in terms of this section remains in force until—
- (a) it is set aside by the Council or a Court; or
 - (b) the Regulator issues a compliance certificate contemplated in subsection (4).

- (a) ukukhipha isaziso sokungadluliswa kummangali ngefomu elinqunyiwe, uma isikhalazo—
- (i) sibonakala siwubala noma sidla lubi; noma
 - (ii) singagodli noma yimaphi amaqiniso okuthi, uma efakazelwa, abe izizathu zesixazululo ngaphansi kwalo Mthetho; 5
- (b) sidlulisela isikhalazo kwesinye isiphathimandla esilawula udaba ukuze siphenywe; noma
- (c) iyalele umhloli ukuthi aphenye ngesikhalo ngokushesha ngangokunokwenzeka.
- (2) Nganoma isiphi isikhathi, uMlawuli, ngokuzihambela kwakhe, angayalela umhloli ukuthi aqale uphenyo nganoma yiluphi udaba oluhlongozwe esigabeni se-15(1)(c) kuya ku-(g), nakuba engasitholanga isikhalo ngokwaleso sigaba. 10
- (3) Nganoma yisiphi isikhathi phakathi nophenyo, uMlawuli angaqoka umuntu oyedwa noma ngaphezulu ukusiza umhloli ekwenzeni uphenyo.
- (4) Inqubo yokwenza uphenyo ehlongozwe kulesi sigaba, inganqunywa nguMlawuli, ngokubheka izimo zecala ngalinye. 15

Umpfumela wophenyo

18. Ngemva kokuthola umbiko wophenyo, uMlawuli—

- (a) angakhipha isaziso sokuthi kungadluliselwa kummangali ngefomu elinqunyiwe; 20
- (b) adlulisele udaba kwiSigungu Sikazwelonke Sokushushisa, uma uMlawuli ethi umuntu wenze icala ngokwalo Mthetho;
- (c) aphakamise umyalelo wemvume oyidrafthi, ngokwesigaba se-19;
- (d) akhiphe isaziso sokuthobela umthetho ngokwesigaba sama-20; noma
- (e) aqondise ukwehliswa kokulawulwa kwentengo, ngokwesigaba sama-21. 25

Imiyalelo yemvume

19. (1) Uma udaba seluphenywe nguMlawuli, futhi uMlawuli kanye nommangalelwa bevumelana nemibandela ehlongozwayo yomyalelo ofanelekile, uMkhandlu, ngaphandle kokuzwa noma yibuphi ubufakazi, ungaqinisekisa isivumelwano njengomyalelo wemvume, ngokuhambisana nesigaba sama-48(1)(b), futhi awufake eNkantolo Ephakeme, ngezinhloso zokuwuphoqelela. 30

(2) Ngaphandle kokunciphisa okujwayelekile kwesigatshana soku-(1), umyalelo wemvume ungabandakanya ukwehliswa kokulawulwa kwentengo okuhlongozwe esigabeni sama-21.

(3) Ngemvume yommangali, imvume yemvume eqinisekisiwe ngokwemibandela yesigatshana soku-(1) ingase ihlanganise nomklomelo wamademeshe kulowomma-ngali. 35

Ukukhishwa kwezaziso zokuthobela imithetho

20. (1) Ngokwesigatshana (2), uMlawuli angakhipha isaziso sokuthobela umthetho, ngendlela enqunyiwe, kummangalelwa kunoma yiluphi uphenyo olwenziwa nguMlawuli ngokwesigaba se-17. 40

(2) Isaziso sokuthobela umthetho esihlongozwe esigatshaneni soku-(1) kufanele sibeke—

- (a) umuntu, inhlangothi noma ibhizinisi okusebenza kuyo isaziso;
- (b) imihlinzeko yalo Mthetho, noma omunye uMthetho, engathotshelwanga, uma ikhona; 45
- (c) imininingwane yohlobo kanye nezinga lokungathobeli umthetho noma esinye izizathu sokukhishwa kwesaziso;
- (d) noma yiziphi izinyathelo okudingeka zithathwe kanye nesikhathi okumele kuthathwe ngazo lezo zinyathelo; futhi 50
- (e) noma iyiphi inhlawulo engase ibekwe ngokwalo Mthetho uma lezo zinyathelo zingathathiwe.

(3) Isaziso sokuthobela umthetho esikhishwe ngokwalesi sigaba sihlala sisebenza kuze kube—

- (a) sibekwa eceleni uMkhandlu noma iNkantolo; noma 55
- (b) uMlawuli ukhipha isitifiketi sokuthobela esihlongozwe esigatshaneni sesi-(4).

(4) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the Regulator must issue a compliance certificate.

(5) If a person, association or entity to whom a compliance notice has been issued fails to comply with the notice, the Regulator may either—

- (a) refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of section 65; or 5
- (b) direct a price control reduction, in terms of section 21.

(6) Any person, association or entity issued with a notice in terms of this section may appeal to the Council, or apply to the Council for a review, in the prescribed manner and form within— 10

- (a) 15 business days after receiving that notice; or
- (b) a longer period as may be allowed by the Council on good cause shown.

Directed price control reduction

21. (1) In the circumstances contemplated in section 18(e), 19(2) or 20(5)(b), the Regulator may direct a reduction in the current applicable price control for any facilities or services provided by a regulated entity. 15

(2) When determining an appropriate reduction, the Regulator must consider the following factors—

- (a) the nature, duration, gravity and extent of the contravention or other conduct;
- (b) the market circumstances in which the contravention or other conduct took place; 20
- (c) any undue increase in profit directly derived from the contravention or other conduct;
- (d) any loss or damage suffered by third parties as a result of the contravention or other conduct; 25
- (e) any potential negative effect on third parties resulting from the reduction;
- (f) the ability of such a reduction to correct any economic distortion resulting from the regulated entity's conduct;
- (g) any similar previous contraventions or similar conduct by the respondent; and
- (h) the level of cooperation of the respondent during the investigation. 30

(3) A reduction in terms of this section—

- (a) applies only from the date on which the Regulator issues a directive in terms of this section;
- (b) may be either— 35
 - (i) temporary, for a period determined by the Regulator; or
 - (ii) permanent, until the expiry of the price control that is being reduced;
- (c) may apply to all, or any particular facilities or services to which the price control applies; and
- (d) must not be included in the consideration of price controls in the next price control determination cycle. 40

(4) The total annual financial cost of the reduction to the regulated entity may not exceed more than 10% of the entity's annual turnover of its regulated business during the regulated entity's preceding financial year.

(5) When a reduction has been imposed, the regulated entity must take reasonable steps to publicise the fact of the reduction and the extent, duration and reason for the reduction. 45

(4) Uma izidingo zesaziso sokuthobela umthetho esikhishwe ngokwesigatshana soku-(1) zifeziwe, uMlawuli kufanele akhiphe isitifiketi sokuthobela umthetho.

(5) Uma umuntu, inhlango noma ibhizinisi okukhishwe kuyo isaziso sokuthobela umthetho ehluleka ukuthobela isaziso, uMlawuli—

(a) angadlulisela udaba kuPhiko Lwezokushushisa Likazwelonke njengecala 5 ngokwesigaba sama-65; noma

(b) angayalela ukwehliswa kokulawulwa kwentengo, ngokwesigaba sama-21.

(6) Noma yimuphi umuntu, inhlango noma ibhizinisi elikhishwe ngesaziso ngokwemibandela yalesi sigaba lingadlulisela icala eMkhandlwini, noma lifake isicelo eMkhandlwini ukuba kubuyekwe, ngendlela enqunyiwe kanye nefomu 10 ngaphakathi—

(a) izinsuku zokusebenza eziyi-15 ngemuva kokuthola lesi sazo; noma

(b) isikhathi eside esingavunyelwa uMkhandlu ngesizathu esihle esikhonjisiwe.

Ukwehliswa kokulawulwa kwentengo okuqondisiwe

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21. (1) Ezimweni ezihlongozwe esigabeni se-18(e), 19(2) noma sama-20(5)(b), uMlawuli angayala ukwehliswa kokulawulwa kwentengo okusebenzayo kwamanje kunoma yiziphi izinsiza noma amasevisi ahlinzekwa yibhizinisi elilawulwayo.

(2) Lapho kunqunywa ukuncishiswa okufanele, uMlawuli kufanele acabangele loku okulandelayo—

20

(a) uhlobo, ubude besikhathi, igravithi kanye nezinga lokwephulwa noma okunye ukuziphatha;

(b) izimo zemakethe lapho kuphulwa noma okunye ukuziphatha okwenzeke khona;

(c) noma yikuphi ukwenyuka okungadingekile kwenzuzo etholakala 25 ngokuqondile ekwephuleni umthetho noma okunye ukuziphatha;

(d) noma yikuphi ukulahlekelwa noma umonakalo owenziwe abantu besithathu ngenxa yokwephulwa noma okunye ukuziphatha;

(e) noma yimuphi umthelela omubi ongaba khona kubantu besithathu ngenxa yokwehliswa; 30

(f) ikhono lokwehliswa okunjalo ukulungisa noma yikuphi ukuhlanekizela kwezomnotho okubangelwa ukuziphatha kwebhizinisi elilawulwayo;

(g) nanoma yikuphi ukwephulwa okufanayo kwangaphambilini noma ukuziphatha okufanayo kummangalelwa; kanye

(h) nezinga lokubambisana lommangalelwa ngesikhathi sophenyo. 35

(3) Ukwehliswa ngokwalesi sigaba—

(a) sisebenza kuphela kusukela ngosuku uMlawuli akhipha ngalo umyalelo ngokwemibandela yalesi sigaba;

(b) kungaba noma yikuphi—

(i) okwesikhashana, kwesikhathi esinqunywe uMlawuli; noma 40

(ii) okonomphela, kuze kuphele isikhathi sokulawulwa kwentengo eyehliswayo;

(c) lingasebenza kubo bonke, nanoma yiziphi izinsiza noma izinsizakalo ezithile lapho kulawulwa itengo; futhi

(d) akumele kufakwe ekucatshangweni kokulawulwa kwentengo kwisayikili 45 yokunquma elandelayo yokulawulwa kwentengo.

(4) Isamba sezindleko zezezimali zonyaka zokwehliswa ebhizinisini elilawulwayo angeke zeqe ngaphezu kwamaphesenti ayi-10 enzuzo yonyaka yebhizinisi elilawulwayo phakathi nonyaka wezimali owedlule webhizinisi elilawulwayo.

(5) Uma ukwehliswa kubekiwe, ibhizinisi elilawulwayo kufanele lithathe izinyathelo 50 ezifanele zokwazisa iqiniso lokwehliswa kanye nezinga, ubude besikhathi kanye nesizathu sokwehliswa.

Part D**Review of Regulator's Decisions****Right to appeal to Council or apply for review**

22. (1) A person contemplated in subsection (2) may appeal to the Council against, or apply to the Council for a review of, a certificate, notice, determination, ruling or other decision issued or made by the Regulator in respect of— 5

- (a) the determination of a price control by the Regulator in terms of Part A of this Chapter; 10
- (b) a complaint contemplated in section 16 and investigated by the Regulator in terms of section 17;
- (c) access to rail infrastructure in terms of section 9;
- (d) an agreement or a licence contemplated in sections 57(6)(a) and 57(7) of the National Ports Act, respectively; or
- (e) a directed price control reduction in terms of section 21.

(2) The persons who may appeal or apply to the Council for review is any person adversely affected by a certificate, notice, decision, determination or ruling issued or made by the Regulator. 15

(3) After hearing—

- (a) an appeal from a decision of the Regulator, the Council may confirm the decision, set it aside, modify it or refer it back to the Regulator, subject to section 28; or 20
- (b) an application for review of a decision of the Regulator, the Council may confirm the decision or refer the matter back to the Regulator.

(4) If requested to do so by an appellant or applicant for review, the Council may issue an order suspending the decision under appeal or review— 25

- (a) until the Council has determined the appeal or application for review; or
- (b) in the case of a directed price control reduction, only if the applicant can demonstrate exceptional circumstances in favour of such an order.

Part E**Hearing Procedures**

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Procedure at Council hearings

23. (1) Hearings of any matter by the Council—

- (a) must be conducted expeditiously and in accordance with the principles of natural justice; and
- (b) may be conducted as informally as possible, consistent with paragraph (a). 35

(2) The hearing proceedings are open to the public, but the person presiding at the hearing may exclude members of the public, or specific persons or categories of persons, from attending the proceedings—

- (a) if evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected; 40
- (b) if the proper conduct of the hearing requires it; or
- (c) for any other reason that would be justifiable in civil proceedings in a High Court.

(3) The Chairperson of the Council must assign each matter referred to the Council to a panel constituted in accordance with section 48(3). 45

Right to participate in hearing

24. (1) The following persons may participate in any hearing contemplated in this Part, in person or through a legal representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing:

- (a) the Regulator; 50
- (b) the applicant or complainant;
- (c) the respondent;

*Ingxenye D**Ukubuyezwa Kwezinqumo Zomlawuli***Ilungelo lokudlulisa icala eMkhandlwini noma ukufaka isicelo sokubuyezwa**

22. (1) Umuntu ohlongozwe esigatshaneni sesi-(2) angakhalaza eMkhandlwini, noma afake isicelo eMkhandlwini ukuba ubuyezwe, isitifiketi, isaziso, isinqumo, isinqumo noma okunye. isinqumo esikhishwe noma esenziwe nguMlawuli mayelana— 5

- (a) ukunqunywa kokulawulwa kwentengo nguMlawuli ngokweNgxenywe A yalesi Sahluko;
- (b) isikhalazo esihlongozwe esigabeni se-16 futhi saphenywa nguMlawuli ngokwesigaba se-17; 10
- (c) ukufinyelela kwingqalasizinda kaloliwe ngokwesigaba se-9;
- (d) isivumelwano noma ilayisensi ehlongozwe esigabeni sama-57(6)(a) no-57(7) Umthetho Wezamachweba Kazwelonke, ngokulandelana; noma
- (e) ukwehliswa kokulawulwa kwentengo okuqondisiwe ngokwesigaba sama-21.

(2) Abantu abangadlulisela icala noma bafake isicelo eMkhandlwini ukuba ubuyezwe yinoma yimuphi umuntu othinteki kabi yisitifiketi, isaziso, isinqumo, isinqumo noma isinqumo esikhishwe noma esenziwe nguMlawuli. 15

(3) Ngemva kokuzwa—

- (a) isikhalazo esivela kwisinqumo soMlawuli, uMkhandlu ungaqinisekisa isinqumo, usichithe, usiguqule noma usibuyisele kuMlawuli, kuncike kwisigaba sama-28; noma 20
- (b) isicelo sokubuyezwa kwesinqumo soMlawuli, uMkhandlu ungaqinisekisa isinqumo noma ubuyisele udaba kuMlawuli.

(4) Uma ecelwe ukuba enze njalo ngummangali noma umfakisicelo ukuze kubuyezwe, uMkhandlu ungakhipha umyalelo wokumisa isinqumo ngaphansi kwesikhalazo noma sokubuyezwa— 25

- (a) kuze kube uMkhandlu unquma isikhalo noma isicelo sokubuyezwa; noma
- (b) esimweni sokwehliswa kokulawulwa kwentengo okuqondisiwe, kuphela uma umfakisicelo engabonisa izimo ezingavamile ezivuna lowo myalelo.

Ingxenye E

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*Izinqubo Zokulalelwa kwecala***Inqubo Ezigcawini zomkhandlu**

23. (1) Ukulalelwa kwanoma yiluphi udaba nguMkhandlu—

- (a) kumele lwenziwe ngokushesha nangokuhambisana nemigomo yobulungiswa; futhi 35
- (b) singaqhutshwa ngendlela engakahleleki, ngokuhambisana nendima (a).

(2) Ukulalelwa kwecala kuvulelekile kumphakathi, kodwa umuntu ophethe icala angangawabandakanya amalungu omphakathi, noma abantu abathile noma izigaba zabantu, ekuhambeleni ukuqulwa kwamacala—

- (a) uma ubufakazi obuzokwethulwa kuwulwazi oluyimfihlo, kodwa ngokwezininga kuphela ukuthi ulwazi ngeke luvikelwe ngenye indlela; 40
- (b) uma indlela efanele yokuthethwa kodaba iludinga; noma
- (c) nganoma yisiphi esinye isizathu esingaba nokuthetheleleka ekuqulweni kwamacala eNkantolo eNkulu.

(3) USihlalo woMkhandlu kumele abele udaba ngalunye oludluliselwe eMkhandlwini ithimba elakhiwe ngokuhambisana nesigaba sama-48(3). 45

Ilungelo lokubamba iqhaza ekulalelweni kwecala

24. (1) Abantu abalandelayo bangabamba iqhaza kunoma yikuphi ukulalelwa okucatshangwa kulokhu Ingxenye, mathupha noma ngommeleli wezomthetho, futhi ingabuza imibuzo kofakazi kanye hlola noma yiziphi izincwadi, imibhalo noma izinto ezethulwe ekuqulweni kwamacala: 50

- (a) uMlawuli;
- (b) umfakisicelo nommangali;
- (c) ummangalelwa;

- (d) the Minister; and
- (e) any other person who has a material interest in the hearing.

Powers of Council at hearing

25. The Council may—
- (a) direct or subpoena any person to appear at any specified time and place; 5
 - (b) question any person under oath or affirmation;
 - (c) subpoena or order any person—
 - (i) to produce any book, document or item necessary for the purposes of the hearing; or
 - (ii) to perform any other act in relation to this Act; and 10
 - (d) give directions prohibiting or restricting the publication of any evidence given to the Council.

Rules of procedure

26. Subject to the requirements of this Act, the Council—
- (a) must establish rules for its proceedings; and 15
 - (b) may determine any matter of procedure for a particular hearing, with due regard to the circumstances of the case.

Witnesses

27. (1) Every person giving evidence at a hearing must answer any relevant question.
- (2) The law regarding a witness's privilege in a criminal case in a court of law applies equally to a person who provides information during a hearing. 20
- (3) During a hearing, the person presiding may order a person to answer any question, or to produce any article or document, subject to subsection (4).
- (4) Section 56(4) and (5) apply to any person questioned or any evidence given at a hearing in terms of this section. 25

Decision at end of hearing

28. (1) Within 20 business days of the conclusion of a hearing, the panel that heard the matter must publish a decision, together with written reasons for the decision on the website.
- (2) The decision supported by a majority of the members of the Panel is the decision of the Council in that matter. 30
- (3) When considering an appeal or review of a price control determined by the Regulator, the Council must—
- (a) assess the—
 - (i) process followed by the Regulator in approving the price control; and 35
 - (ii) general reasonableness of the price control; and
 - (b) either affirm the price control as determined by the Regulator or refer the price control back to the Regulator for re-consideration.
- (4) When considering an appeal or a review of a compliance notice or price control reduction notice, the Council may confirm, modify or cancel all or part of the notice. 40
- (5) If the Council confirms or modifies all or part of a compliance notice, the applicant must comply with that notice as confirmed or modified, within the time period specified therein.
- (6) A decision by the Council may be taken on review to the High Court, subject to its rules. 45

- (d) uNgqongqoshe; futhi
- (e) nanoma yimuphi omunye umuntu onentshisekelo enkulu ekuthethweni kodaba.

Amandla omkhadlu ekulalelweni kwecala

25. Umkhandlu— 5
- (a) ungayalela noma ubize noma yimuphi umuntu ukuvela enkantolo nganoma yisiphi isikhathi nendawo ethile;
 - (b) ungabuza noma yimuphi umuntu ngaphansi kwesifungo noma isiqinisekiso;
 - (c) ungabizela enkantolo noma ungayala noma yimuphi umuntu—
 - (i) ungakhiqiza noma iyiphi incwadi, umbhalo noma into edingekayo ngezinjongo zalokhu ukulalela; noma
 - (ii) ungenza noma yisiphi esinye isenzo esiphathelene nalo Mthetho; futhi
 - (d) unganikeza iziqondiso ezenqabela noma ezikhawulela ukushicilelwa kwanoma ibuphi ubufakazi obunikeziwe eMkhandlwini.

Imithetho yenqubo

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26. Ngokuya ngezidingo zalo Mthetho, uMkhandlu—
- (a) kumele usungule imithetho yokuqulwa kwamacala; futhi
 - (b) unganquma noma yiluphi udaba lwenqubo yokuqulwa kwecala elithile, ngokufanele mayelana nezimo zecala.

Ofakazi

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27. (1) Wonke umuntu onikeza ubufakazi ekuthethweni kodaba kufanele aphen-dule noma yimuphi umbuzo ofanele.
- (2) Umthetho ophathelene nelungelo likafakazi ecaleni lobugebengu enkantolo yomthetho usebenza ngokulinganayo kumuntu ohlinzeka ngolwazi ngesikhathi sokuthethwa kwecala. 25
- (3) Ngesikhathi sokulalelwa kwecala, umuntu ongamele icala angayalela umuntu ukuthi aphen-dule noma yimuphi umbuzo, noma aveze noma iyiphi i-athikhili noma umbhalo, ngokwesigatshana sesi-(4).
- (4) Isigaba sama-56(4) nesesi-(5) zisebenza kunoma ubani ophenyiwe noma kunoma obuphi ubufakazib obunikeziwe ngesikhathi kulalelwa icala ngokwalesi sigaba. 30

Isinqumo ekupheleni kokulalelwa kwecala

28. (1) Ezinsukwini zokusebenza ezingama-20 kuphuthulwe ukuthethwa kwecala, ithimba elalalela udaba kumele lushicilele isinqumo, kanye nezizathu ezibhalwe phansi zesinqumo kusizindalwazi.
- (2) Isinqumo esisekwe iningi lamalungu eSigungu siyisinqumo soMkhandlu kulolo daba. 35
- (3) Lapho ucubungula isikhalo noma ukubuyekizwa kokulawulwa kwentengo okunqunywe uMlawuli, uMkhandlu kufanele—
- (a) uhlole—
 - (i) inqubo elandelwa uMlawuli ekuvumeleni ukulawulwa kwentengo; futhi
 - (ii) ukuqonda okujwayelekile kokulawulwa kwentengo; futhi
 - (b) noma uqinisekise ukulawulwa kwentengo njengoba kunqunywe uMlawuli noma adlulisele ukulawulwa kwentengo kumlawuli ubuyeke ukuze kubhekwe kabusha. 45
- (4) Lapho kucutshungulwa isikhalazo noma ukubuyekizwa kwesaziso sokuhambisana noma ukulawulwa kwentengo, isaziso sokunciphisa, uMkhandlu ungaqinisekisa, uguqule noma ukhansela sonke noma ingxenye yesaziso.
- (5) Uma uMkhandlu uqinisekisa noma uguqule sonke noma ingxenye yesaziso sokuthobela umthetho, umfakisicelo kufanele ahambisane naleso saziso njengoba siqinisekisiwe noma sishintshiwe, esikhathini esishiwo lapho. 50
- (6) Isinqumo soMkhandlu singathathwa uma sibuyekizwa eNkantolo Ephakeme, kuncike emithethweni yawo.

(7) When exercising its powers in terms of section 22(3), the Council may confirm, modify or set aside all or any part of a ruling or decision.

CHAPTER 4

ESTABLISHMENT OF INSTITUTIONS

Part A

5

Transport Economic Regulator

Establishment of Transport Economic Regulator

29. (1) The Transport Economic Regulator is hereby established as an organ of state within the public administration, but as an institution outside the public service.
- (2) The Regulator— 10
- (a) is a juristic person, with jurisdiction throughout the Republic;
 - (b) is independent and subject only to the Constitution and the law;
 - (c) must be impartial and perform its functions without fear, favour or prejudice; and
 - (d) must exercise the functions assigned to it in terms of any law in— 15
 - (i) the most cost-efficient and effective manner; and
 - (ii) accordance with the values and principles mentioned in section 195 of the Constitution.
- (3) On any matter concerning the governance of the Regulator referred to in section 30(9), or that this Act or any other legislation requires to be determined by the Board, a decision supported by a majority of all of the members of the Board is the decision of the Regulator. 20
- (4) On any matter not contemplated in subsection (3), a decision taken, in accordance with this Act and the Regulator's functions, by a majority of the members of the Executive Regulatory Panel is the decision of the Regulator. 25

Governance of Transport Economic Regulator

30. (1) The Regulator is governed by a Board comprising—
- (a) 6 non-executive members appointed by the Minister; and
 - (b) the Chief Executive Officer, who serves on the Board, subject to subsection (11). 30
- (2) Before appointing non-executive members of Board, the Minister by notice in the *Gazette*, must—
- (a) invite members of the public to submit nominations for persons who meet the requirements set out in section 31(1)(a), to serve on the Board; and
 - (b) establish a panel of experts on governance and public policy, to compile a shortlist of candidates from the received nominations. 35
- (3) The Minister must appoint the non-executive members of the Board from the list of candidates compiled by the panel of experts.
- (4) Within 30 business days from the date of appointment of the non-executive members of the Board, the Minister must publish a notice of such appointment in the *Gazette*. 40
- (5) Each non-executive member of the Board serves on a part-time basis, and for a term of four years, subject to subsection (3) of this section.
- (6) When the first appointments are made to the Board, or at any time there is a complete simultaneous turnover of the Board's non-executive membership, the terms of the non-executive Board members must be varied, so that some are appointed to serve for three years, and the remainder for four years. 45
- (7) A non-executive member may be re-appointed to a second term, subject to section 31.

(7) Lapho usebenzisa amandla awo ngokwesigaba sama-22(3), uMkhandlu ungaqinisekisa, ushintshe noma ubeke eceleni konke noma iyiphi ingxenye yokuphatha noma isinqumo.

ISAHLUKO 4

UKUSUNGULWA KWEZIKHUNGO

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Ingxenye A

Umlawuli wezomnotho wezokuthutha

Ukusungula uMlawuli wezoMnotho wezokuThutha

29. (1) Ngakho-ke uMlawuli wezoMnotho wezokuThutha uyasungulwa njengohlaka lukahulumeni ngaphakathi kokuphathwa komphakathi, kodwa njengesikhungo esingaphandle kwezisebenzi zikahulumeni. 10

(2) Umlawuli—

- (a) ungumuntu ngokomthetho, ongunya lokulawula iRiphabhulikhi yonkana;
- (b) uzimele futhi uncike kuphela kuMthethosisekelo kanye nomthetho;
- (c) kufanele angachemi futhi enze imisebenzi yakhe ngaphandle kokwesaba, ukuchema noma ukubandlulula; futhi 15
- (d) kumele wenze imisebenzi onikezwe yona ngokwanoma yimuphi umthetho—
 - (i) indlela eyonga kakhulu nephumelelayo; futhi
 - (ii) ngokuhambisana nezimiso nemigomo eshiwo esigabeni se-195 soMthethosisekelo. 20

(3) Kunoma yiluphi udaba olumayelana nokubusa koMlawuli okukhulunywe ngakho esigabeni sama-30(9), noma ukuthi lo Mthetho nanoma yimuphi omunye umthetho udinga ukuba unqunywe yiBhodi, Isinqumo esisekwa iningi lawo wonke amalungu eBhodi siyisinqumo soMlawuli.

(4) Kunoma yiluphi udaba olungahlongozwe esigatshaneni sesi-(3), isinqumo esithathwe, ngokuhambisana ngalo Mthetho kanye nemisebenzi yoMlawuli, ngeningi lamalungu ePhaneli Elawulayo kuyisinqumo soMlawuli. 25

Ukubusa uMlawuli wezoMnotho wezokuThutha

30. (1) Umlawuli ulawulwa yiBhodi elakhiwe—

- (a) amalungu ayisi-6 angeyona ingxenye yesigungu esiphezulu aqokwe uNgqongqoshe; futhi 30
- (b) isiKhulu esiPhezulu, esisebenza eBhodini, kuncike esigatshaneni se-(11).
- (2) Ngaphambi kokuqoka amalungu angewona amalungu eBhodi, uNgqongqoshe ngesaziso kuGazethi, kufanele—
 - (a) ameme amalungu omphakathi ukuthi alethe amagama abantu abahlangabezana nezidingo ezibekwe esigabeni sama-31(1)(a), ukuthi basebenze eBhodini; futhi 35
 - (b) asungule ithimba lochwepheshe kwezokuphatha kanye nenqubomgomo yomphakathi, ukuze lihlanganise uhlu olufushane lwabakhethiwe eziphakamisweni ezitholiwe. 40
- (3) UNgqongqoshe kufanele aqoke amalungu angewona amalungu eBhodi ohlwini lwabazokhethwa oluhlanganiswe yithimba lochwepheshe. 40
- (4) Zingakapheli izinsuku zokusebenza ezingama-30 kusukela osukwini lokuqokwa kwamalungu angewona amalungu eBhodi, uNgqongqoshe kufanele ashicilele isaziso salokho kuqashwa kwigazethi. 45
- (5) Ilungu ngalinye leBhodi elingelona ilungu lesigungu esiphezulu lisebenza isikhathi esithile, futhi isikhathi esiyiminyaka eyi-4, kuncike esigatshaneni sesi-(3) salesi sigaba.
- (6) Uma ukuqokwa kokuqala kubekwa eBhodini, noma nganoma isiphi isikhathi kuba khona ukuguquguquka okuphelele ngesikhathi esisodwa kobulungu obungeyona ingxenye yesigungu seBhodi, imigomo yamalungu eBhodi angeyona ingxenye yesigungu esiphezulu kufanele yehlukwe, ukuze abanye baqokwe basebenze iminyaka emithathu, abanye abasele iminyaka emine. 50
- (7) Ilungu elingelona ilungu lesigungu esiphezulu lingase liqokwe kabusha ihlandla lesibili, kuncike esigabeni sama-31. 55

(8) The Minister must designate one of the non-executive member to be the Chairperson of the Board.

(9) The Board must—

- (a) guide the strategic development of the Regulator;
- (b) oversee and ensure the effective and efficient use of the Regulator's resources; 5
- (c) ensure that the Regulator is in compliance with all its legal requirements and its reporting and financial accountability obligations;
- (d) approve and monitor compliance with the procedures for the consideration of regulatory matters by the Executive Regulatory Panel;
- (e) appoint and oversee the performance in office of the Chief Executive Officer 10 and each Executive Officer; and
- (f) provide advice to the Chief Executive Officer, upon request in terms of section 35(1)(c) or (d), on any matter concerning the functioning of the Regulator.

(10) The Board—

- (a) must not interfere in the decisions of the Executive Regulatory Panel in the 15 performance of its regulatory functions;
- (b) may refer to the Minister any matter concerning the functioning of the Regulator; and
- (c) is the Accounting Authority of the Regulator, in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 20

(11) The Chief Executive Officer is an ex officio member of the Board, who has a vote in any decision by the Board or a Board committee relating to the appointment, performance evaluation and dismissal of Executive Officers, but may not otherwise vote in Board or Board committee meetings.

(12) The Board must meet at least once every three months, at a place and time 25 determined by the Chairperson.

(13) The quorum for any meeting of the Board is a majority of non-executive members of the Board.

(14) Proceedings of the Board and any decisions taken by a majority of the members present and entitled to participate in those decisions, are valid despite the fact that— 30

- (a) there may have been a vacancy in the Board at the time;
- (b) a member of the Board failed to disclose an interest as required by section 32(3); or
- (c) a member of the Board, who had an interest contemplated in section 32(3), attended those proceedings, participated in them in any way, or directly or 35 indirectly influenced those proceedings.

Qualifications for Board membership

31. (1) Each person appointed as a non-executive member of the Board must—

- (a) be suitably qualified, with relevant experience in transport, economics, law, accounting, public finance or governance; and 40
- (b) submit to the Minister a written declaration stating that the person is not subject to any disqualification in terms of subsection (2).

(2) A person may not be appointed or remain as a non-executive member of the Board if that person—

- (a) is an office bearer of any party, movement, organisation or body of a partisan 45 political nature;
- (b) personally—
 - (i) has or acquires a direct financial interest in, or is a director of, a regulated entity;
 - (ii) has been in the three years preceding the appointment, or becomes, a 50 director or an employee of an entity or enterprise that is subject to regulation in terms of this Act; or
 - (iii) has or acquires an interest in, or is a director or an employee of, a business or enterprise that may conflict or interfere with the proper performance of the duties of a member of the Board; 55

(8) UNgqongqoshe kufanele aqoke ilungu elilodwa elingelona ilungu lesigungu esiphezulu ukuba libe uSihlalo weBhodi.

(9) Ibhodi kufanele—

- (a) libheke isu lokuthuthukiswa loMlawuli;
- (b) lengamele futhi liqinisekise ukusetshenziswa ngempumelelo nangokushesha 5 kwezinsiza zoMlawuli;
- (c) liqinisekise ukuthi uMlawuli uyazithobela zonke izidingo zawo ezingokomthetho kanye nezibopho zawo zokubika kanye nokuziphendulela kwezezimali;
- (d) ligunyaze futhi liqaphe ukuthotshelwa kwezinqubo zokucutshungulwa 10 kwezindaba zokulawula yiPhaneli Elikhulu Elilawulayo;
- (e) liqoke futhi lengamele ukusebenza ehhovisi lesiKhulu esiPhezulu esiPhethe kanye nesiKhulu esiPhezulu ngasinye; futhi
- (f) lihlizeke ngezeluleko kwisiKhulu esiPhezulu, uma ecelwa ngokwesigaba sama-35(1)(c) noma (d), nganoma yiluphi udaba oluthinta ukusebenza 15 koMlawuli.

(10) Ibhodi—

- (a) akumele ligxambukele ezinqumweni zeSigungu Esikhulu esilawulayo ekwenzeni imisebenzi yalo yokulawula;
- (b) lingadlulisela kuNgqongqoshe noma yiluphi udaba olupathelene 20 nokusebenza koMlawuli; futhi
- (c) liyisiGungu Sokubalwa kwezimali soMlawuli, ngokoMthetho Wokuphathwa Kwezimali Zikahulumeni, we-1999 (uMthetho 1 we-1999).

(11) IsiKhulu esiPhezulu siyilungu leBhodi ngokwesikhundla, esinevoti kunoma yisiphi isinqumo seBhodi noma sekomidi leBhodi esimayelana nokuqokwa, ukuhlolwa 25 kokusebenza kanye nokuxoshwa kwezikhulu eziPhezulu, kodwa angeke ngenye indlela livotele Imihlangano yebhodi noma yekomidi leBhodi.

(12) IBhodi kufanele lihlangele okungenani kanye njalo ezinyangeni ezintathu, endaweni nesikhathi esinqunywe uSihlalo.

(13) Ikhoram yanoma yimuphi umhlangano weBhodi iningi lamalungu angewona 30 amalungu eBhodi.

(14) Izinqubo zeBhodi nanoma yiziphi izinqumo ezithathwe iningi lamalungu akhona futhi anelungelo lokubamba iqhaza kulezo zinqumo, ziyasebenza ngale kokuthi—

- (a) kungenzeka ukuthi kwakunezikhala eBhodini ngaleso sikhathi;
- (b) ilungu leBhodi lehlulekile ukudalula intshisekelo njengoba kudingwa 35 esigabeni sama-32(3); noma
- (c) ilungu leBhodi, elinentshisekelo ehlongozwe esigabeni sama-32(3), lethamele lezo zinqubo, lahlanganyela kuzo nganoma iyiphi indlela, noma ngokuqondile noma yaba nomthelela ngokungaqondile kulezo zinqubo.

Izimfanelo zobulungu beBhodi

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31. (1) Umuntu ngamunye oqokwe njengelungu elingelona ilungu lesigungu esiphezulu seBhodi kufanele—

- (a) abe neziqu ezifanele, abe nolwazi olufanele kwezokuthutha, ezomnotho, ezomthetho, ezokubalwa kwezimali, ezezimali zikahulumeni noma ezokuphatha; futhi 45
- (b) athumele kuNgqongqoshe isimemezelo esibhaliwe esisho ukuthi lowo muntu akakho ngaphansi kwanoma yikuphi ukuhoxiswa ngokwesigatshana sesi-(2).

(2) Umuntu angeke aqokwe noma ahlale njengelungu elingelona ilungu lesigungu esiphezulu seBhodi uma lowo muntu—

- (a) ephethe isikhundla sanoma yiliphi iqembu, imuvumenti, inhlangano noma 50 umgwamanda wepolitiki eyingxenywe yepolitiki;
- (b) uma ngokwakhe—
 - (i) enenzalo yezezimali eqondile, noma engumqondisi webhizinisini elilawulwayo;
 - (ii) ubeneminyaka emithathu ngaphambi kokuqokwa, noma eba 55 umqondisi noma umsebenzi wenhlangano noma webhizinisi elincike ekutheni kumthetho ngokwalo Mthetho; noma
 - (iii) enentshisekelo, noma engumqondisi noma umsebenzi webhizinisi noma umsebenzi wamakhono okungashayisana noma kuphazamise ukwenziwa kwemisebenzi yelungu leBhodi; 60

- (c) is related to a person who has an interest in, or is a director of, a business or enterprise contemplated in paragraph (b);
- (d) is an unrehabilitated insolvent;
- (e) is subject to an order of a competent court holding the person to be mentally unfit or disordered; 5
- (f) is subject to an order of a competent court declaring the person to be a delinquent director, or placing the person under probation, in terms of section 162 of the Companies Act, 2008 (Act No. 71 of 2008);
- (g) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 took effect, and sentenced to imprisonment without the option of a fine; or 10
- (h) has been removed from an office of trust, by a competent authority.

Conduct and conflicts of Board members

32. (1) A non-executive member of the Board must promptly inform the Minister in writing if the member, or a person who is related or inter-related to the member, acquires an interest that is, or is likely to become, an interest contemplated in section 31(2)(b). 15

(2) A non-executive member of the Board must not—

- (a) engage in any activity that may undermine the integrity of the Regulator;
- (b) attend, participate in or influence the proceedings during a meeting of the Board, if, in relation to the matter before the Board, that member, or a related or inter-related person, has an interest that precludes that member from performing the functions of a member of the Board in a fair, unbiased and proper manner; 20
- (c) vote at any meeting of the Board in connection with a matter contemplated in paragraph (b); 25
- (d) make private use of or profit from any confidential information obtained as a result of performing that person's functions as a member of the Board; or
- (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Board.

(3) If, at any time, it appears to a member of the Board that a matter being considered by the Board at a meeting concerns an interest of that member, or of a related or inter-related person, referred to in section 31(2)(b), that member must— 30

- (a) immediately and fully disclose the nature of that interest to the meeting; and
- (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter. 35

(4) The disclosure by a member of the Board in terms of subsection (3)(a), and the decision by the Board in terms of subsection (3)(b), must be expressly recorded in the minutes of the meeting in question.

Resignation, removal from office, and vacancies

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33. (1) A non-executive member of the Board may resign by giving to the Minister—

- (a) three months written notice; or
- (b) less than three months written notice, with the approval of the Minister.

(2) The Minister, after taking the steps required by subsection (3), may remove a non-executive member of the Board, only if that member has— 45

- (a) become disqualified in terms of section 31(2);
- (b) acted contrary to section 32(1) or (2);
- (c) failed to disclose an interest or withdraw from a meeting as required by section 32(3); or
- (d) neglected to properly perform the functions of their office. 50

- (c) ehlobene nomuntu onentshisekelo, noma ongumqondisi webhizinisi noma umsebenzi wamakhono okuhlongozwe endimeni (b);
- (d) ecwile ezikweletini ngendlela engalungiseki;
- (e) kuncike emyalweni wenkantolo enamandla ethi umuntu akaphilile ngokwengqondo noma ophazamisekile engqondweni; 5
- (f) kuncike emyalweni wenkantolo enamandla ebeka umuntu njengomqondisi ongahloniphi, noma efaka umuntu ngaphansi kokuhlolwa, ngokwemibandela yesigaba se-162 soMthetho Wezinkampani, wezi-2008 (uMthetho 71 wezi-2008);
- (g) elahlwe icala ngemuva kokusebenza koMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1993, futhi wagwetshwa ukuvalelwa ejele ngaphandle kokunikwa ithuba lenhlawulo; noma 10
- (h) ekhishiwe esikhundleni sokuthenjwa, yisikhulu esifanele.

Ukuziphatha kanye nokungqubuzana kwamalungu eBhodi

32. (1) Ilungu leBhodi elingelona isigungu esiphezulu kufanele lazise uNgqongqoshe ngokubhala ngokushesha uma ilungu, noma umuntu ohlobene noma ohlobene nelungu, ezuzela intshisekelo, noma okungenzeka abe, intshisekelo ehlongozwe esigabeni sama-31(2)(b). 15

(2) Ilungu elingelona ilungu lesigungu esiphezulu seBhodi akufanele—

- (a) lizibandakanye kunoma yimuphi umsebenzi ongabukela phansi isithunzi soMlawuli; 20
- (b) ukwethamela, ukuhlanganyela noma ukuthonya ukuqhubeka komhlangano weBhodi, uma, maqondana nodaba oluphambi kweBhodi, lelo lungu, noma umuntu ohlobene noma ohlobene, enentshisekelo evimbela lelo lungu ekusebenzeni imisebenzi yelungu leBhodi ngendlela engenzeleli, engachemi kanye nangendlela efanele; 25
- (c) livote kunoma yimuphi umhlangano weBhodi mayelana nodaba oluhlongozwe endimeni (b);
- (d) asebenzise ngasese noma azuze kunoma yiluphi ulwazi oluyimfihlo olutholwe ngenxa yokwenza imisebenzi yalowo muntu njengelungu leBhodi; noma 30
- (e) adalule noma yiluphi ulwazi olushiwo endimeni (d) kunoma yimuphi umuntu wesithathu, ngaphandle uma kudingekile njengengxenywe yemisebenzi esemthethweni yalowo muntu njengelungu leBhodi.

(3) Uma, noma ngasiphi isikhathi, kubonakala kwilungu leBhodi ukuthi udaba olucutshungulwa yiBhodi emhlanganweni luthinta intshisekelo yalelo lungu, noma yomuntu ohlobene noma ohlobene ngaphakathi, okukhulunywe ngaye esigabeni sama-31(2)(b), lelo lungu kufanele— 35

- (a) ngokushesha futhi adalule ngokugcwele uhlobo lwaleyo intshisekelo emhlanganweni; futhi
- (b) ahoxe emhlanganweni ukuze avumele amalungu asele ukuba axoxe ngodaba futhi anqume ukuthi ilungu kufanele linqatshelwe yini ukubamba iqhaza kunoma yiziphi izinyathelo eziqhubekayo mayelana nalolo daba. 40

(4) Ukudalulwa kwelungu leBhodi ngokwesigatshana (3)(a), kanye nesinqumo seBhodi ngokwesigatshana (3)(b), kumele kubhalwe ngokucacile emaminithini omhlangano okukhulunywa ngawo. 45

Ukwesula, ukususwa esikhundleni, kanye nezikhala

33. (1) Ilungu elingelona ilungu lesigungu esiphezulu seBhodi lingasula esikhundleni ngokunikeza uNgqongqoshe—

- (a) isaziso esibhaliwe sezinyanga ezintathu; noma
- (b) isaziso esibhaliwe esingaphansi kwezinyanga ezintathu, ngemvume kaNgqongqoshe. 50

(2) UNgqongqoshe, ngemva kokuthatha izinyathelo ezidingwa yisigatshana sesi-(3), angasusa ilungu leBhodi elingelona ilungu lesigungu esiphezulu, kuphela uma lelo lungu—

- (a) selihoxisiwe ngokwesigaba sama-31(2); 55
- (b) lenze ngokuphambene nesigaba sama-32(1) noma (2);
- (c) lehlulekile ukudalula intshisekelo noma ukuhoxa emhlanganweni njengoba kudingwa esigabeni sama-32(3); noma
- (d) Likushaye indiva ukwenza kahle imisebenzi yehhovisi labo.

(3) Before removing a person from office in terms of subsection (2), the Minister must afford the person an opportunity to state a case in defence of their position.

(4) The Minister, after following the process set out in section 30, must fill a vacancy that was caused by the resignation or removal of a non-executive member of the Board in terms of subsection (1) or (2). 5

(5) A non-executive member of the Board appointed in terms of subsection (4) holds office for an unexpired portion of the predecessor's term of office.

(6) Upon the expiry of a non-executive Board member's first term of office, the member may be re-appointed to a further term, subject to section 31.

Regulator's executive structures

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34. (1) The powers and functions of the Regulator are to be exercised and performed, in accordance with this Act and the Regulations, by its Executive Officers, staff and contractors, functioning within the following offices and structures:

- (a) The Chief Executive Officer, who—
 - (i) has the powers and functions set out in section 35 or elsewhere in this Act; and 15
 - (ii) is appointed in terms of section 36;
 - (b) a number of Executive Officers, as—
 - (i) established by the Board on the recommendation of the Chief Executive Officer in terms of subsection (2); and 20
 - (ii) appointed in terms of section 36;
 - (c) the Executive Regulatory Panel, as described in subsection (4); and
 - (d) the Executive Administrative Committee, as described in subsection (5).
- (2) The Chief Executive Officer must recommend to the Board the establishment of at least three positions to be filled by Executive Officers, and the proposed mandate for each of those positions. 25
- (3) Each Executive Officer is responsible for matters pertaining to the functions of the Regulator, as assigned by the Chief Executive Officer.
- (4) The Executive Regulatory Panel—
- (a) comprises the Chief Executive Officer and a minimum of three Executive Officers; 30
 - (b) collectively makes decisions on all regulatory matters in terms of this Act; and
 - (c) must establish and publish internal procedures governing the consideration of the regulatory matters assigned to it and the issuing of regulatory decisions, which must include, at a minimum, the following: 35
 - (i) time frames for the consideration of relevant matters;
 - (ii) information for public dissemination;
 - (iii) treatment of confidential information; and
 - (iv) review of impact of regulatory decisions.
- (5) The Executive Administrative Committee— 40
- (a) comprises the Chief Executive Officer and any other officers or staff of the Regulator, as determined by the Board on the recommendation of the Chief Executive Officer; and
 - (b) considers and may determine internal administrative matters concerning the functioning of the Regulator. 45
- (6) The Board, on the recommendation of the Chief Executive Officer, may establish other Executive committees to address particular matters.

Chief Executive Officer

35. (1) The Chief Executive Officer—

- (a) must provide administrative support to facilitate the Board carrying out its functions; 50
- (b) must provide advice to the Board on any matter that this Act or any other legislation requires the Board to determine;

(3) Ngaphambi kokususa umuntu esikhundleni ngokwesigatshana sesi-(2), uNgqongqoshe kufanele anikeze lowo muntu ithuba lokubeka udaba ukuze avikele isikhundla sakhe.

(4) UNgqongqoshe, emva kokulandela inqubo ebekwe esigabeni sama-30, kufanele avale isikhala esidalwe ukusula noma ukususwa kwelungu elingelona ilungu leBhodi ngokwesigatshana soku- (1) noma sesi-(2). 5

(5) Ilungu leBhodi elingelona ilungu lesigungu esiphezulu eliqokwe ngokwesigatshana sesi-(4) libamba isikhundla ingxenyengakaphelelwa yisikhathi sokuphatha salowo owandulelayo.

(6) Lapho kuphela isikhathi sokuqala sokuba yilungu leBhodi elingelona ilungu lesigungu esiphezulu, ilungu lingaphinde liqokwe kwesinye isikhathi, kuncike esigabeni sama-31. 10

Izakhiwo zesigungu zomlawuli

34. (1) Amandla nemisebenzi yoMlawuli kufanele asetshenziswe futhi enziwe, ngokuhambisana nalo Mthetho kanye neMithetho, yiziPhathimandla, abasebenzi kanye nosonkontileka, abasebenza ngaphakathi kwala mahhovisi nezinhlela ezilandelayo: 15

(a) Umphathi Omkhulu—

(i) unamandla nemisebenzi ebekwe esigabeni sama-35 noma kwenye indawo kulo Mthetho; futhi

(ii) siqokwe ngokwesigaba sama-36; 20

(b) inani lezikhulu eziphethe, njengoba—

(i) esungulwe iBhodi ngokwezincwadi zesiKhulu esiPhezulu ngokwesigatshana sesi-(2); futhi

(ii) oqokwe ngokwesigaba sama-36;

(c) Isigungu Esiphethe Esilawulayo, njengoba kuchazwe esigatshaneni sesi-(4); kanye 25

(d) neKomidi Lezokuphatha, njengoba kuchazwe esigatshaneni sesi-(5).

(2) Isikhulu esiPhezulu kumele siphakamise eBhodini ukusungulwa kwezikhundla okungenani ezintathu okumele zigcwaliswe yiZikhulu eziPhezulu, kanye negunya elihlongozwayo lesikhundla ngasinye salezo zikhundla. 30

(3) Isikhulu esiPhezulu ngasinye sibophezelekile ezindabeni eziphathelene nemisebenzi yoMlawuli, njengoba sinikezwe isikhulu esiPhezulu esiPhethe.

(4) Isigungu Esiphethe Esilawulayo—

(a) sakhiwe isikhulu esiPhezulu esiPhethe kanye nenani elincane Leziphathimandla ezintathu; 35

(b) sithatha izinqumo ngokuhlanganyela kuzo zonke izindaba zokulawula ngokwalo Mthetho; futhi

(c) kumele sisungule futhi sishicilele izinqubo zangaphakathi ezilawula ukucutshungulwa kwezindaba zokulawula ezinikezwe yona kanye nokukhishwa kwezinqumo zokulawula, okufanele zifake, okungenani, lokhu okulandelayo: 40

(i) izikhathi ezibekelwe ukucutshungulwa kwezindaba ezifanele;

(ii) imininingwane ezosathaliswa emphakathini;

(iii) ukuphathwa kolwazi oluyimfihlo; futhi

(iv) ukubuyezwa komthelela wezinqumo zokulawula. 45

(5) Ikomidi Lezokuphatha Leziphathimandla—

(a) kubandakanya isikhulu esiPhezulu esiPhethe kanye nanoma yiziphi ezinye izikhulu noma abasebenzi boMlawuli, njengoba kunqunywe yiBhodi ngokuncwadi kwesiKhulu esiPhezulu esiPhethe; futhi

(b) licubungula futhi linganquma izindaba zokuphatha zangaphakathi eziphathelene nokusebenza koMlawuli. 50

(6) Ibhodi, ngokwesincwadi zesiKhulu esiPhezulu esiPhethe, lingasungula amanye amakomidi apethe ukubhekana nezindaba ezithile.

Isikhulu Esiphezulu Esiphethe

35. (1) Isikhulu Esiphezulu esiPhethe— 55

(a) kumele sihlizwe ngosizo lokuphatha ukuze iqhubekisele phambili iBhodi ukwenza imisebenzi yalo;

(b) kumele sinikeze iseluleko kwiBhodi nganoma yiluphi udaba lo Mthetho nanoma yimuphi omunye umthetho odinga iBhodi ukuba linqume ngawo;

- (c) must refer any governance matter arising under this Act to the Board for an advisory opinion, if requested to do so by the Executive Regulatory Panel; and
- (d) may make a referral contemplated in paragraph (c) at any other time.
- (2) The Chief Executive Officer may—
 - (a) appoint employees or contractors to assist in performing the functions of the Regulator, other than the Executive Officers; 5
 - (b) assign any management or other duties to employees of the Regulator, who have appropriate skills to assist in the management, or control over any function of the Regulator;
 - (c) delegate, with or without conditions, any of the powers or functions of the Chief Executive Officer to any suitably qualified employee of the Regulator, but any such delegation does not divest the Chief Executive Officer of responsibility for the exercise or any power or performance of any duty; and 10
 - (d) establish temporary or permanent staff or administrative committees to advise the Regulator on any technical, administrative or financial matter. 15
- (3) The Chief Executive Officer—
 - (a) is responsible for all matters pertaining to the functions of the Regulator; and
 - (b) is responsible to the Board for—
 - (i) all income and expenditure of the Regulator;
 - (ii) all revenue collected by the Regulator; and 20
 - (iii) all assets, and the discharge of all liabilities, of the Regulator.

Appointment of Executive Officers

- 36.** (1) The Board must appoint suitably qualified persons, with experience in economics, law, accounting, engineering or the transportation industry, as Chief Executive Officer, and as Executive Officers of the Regulator. 25
- (2) A person may not be appointed, or continue to hold office, as Chief Executive Officer or Executive Officer if that person is subject to any disqualification that would apply to a member of the Board, as set out in section 31(2).
- (3) The Chief Executive Officer holds office for a term of four years.
- (4) A person may be re-appointed as Chief Executive Officer on the expiry of the person's first term of office. 30
- (5) Each Executive Officer—
 - (a) holds office for a term of five years, subject to subsection (6); and
 - (b) may be re-appointed on expiry of each term.
- (6) On the recommendation of the Chief Executive Officer, the Board must designate, 35 for each Executive Officer position, a member of staff of the Regulator who is not an Executive Officer to serve as an alternate for the Executive Officer in the case of any absence of the incumbent Executive Officer, or vacancy in the position.

Resignation or removal of Executive Officers

- 37.** (1) The Chief Executive Officer and any Executive Officer may resign by giving three months' notice in writing to the Board. 40
- (2) The Board—
 - (a) must remove the Chief Executive Officer or an Executive Officer who ceases to qualify for that office in terms of section 36(2); or
 - (b) may remove the Chief Executive Officer or Executive Officer only for— 45
 - (i) serious misconduct;
 - (ii) permanent incapacity;

- (c) kumele idlulisele noma yiluphi udaba lokuphatha oluvela ngaphansi kwalo Mthetho eBhodi ukuze lithole umbono wokweluleka, uma licelwa ukuba lenze njalo yisiGungu Esiphethe Esilawulayo; futhi
- (d) angenza ukudluliselwa okuhlongozwe endimeni (c) nganoma yisiphi esinye isikhathi. 5
- (2) Isikhulu Esiphezulu esiPhethe—
- (a) singaqoka abasebenzi noma osonkontileka ukuthi basize ekwenzeni imisebenzi yoMlawuli, ngaphandle kweZikhulu eziPhezulu;
- (b) singanikeza noma yimuphi umsebenzi wokuphatha noma eminye imisebenzi kubasebenzi boMlawuli, abanamakhono afanele okusiza ekuphatheni, noma ukulawula noma yimuphi umsebenzi woMlawuli; 10
- (c) singadlulisela, ngaphandle kwemibandela, noma yimaphi amandla noma imisebenzi yesiKhulu esiPhezulu kunoma yimuphi umsebenzi woMlawuli oqeqeshwe ngokufanele, kodwa noma yikuphi lokho kudluliselwa akususi isiKhulu esiPhezulu esiPhethe esinesibopho sokusebenzisa noma yimaphi amandla. noma ukwenziwa kwanoma yimuphi umsebenzi; futhi 15
- (d) singasungula abasebenzi besikhashana noma abaqashwe ngokugcwele noma amakomidi okuphatha azokweluleka uMlawuli nganoma yiluphi udaba lwezobuchwepheshe, ezokuphatha noma zezezimali. 20
- (3) Isikhulu Esiphezulu esiPhethe— 20
- (a) sinesibopho sazo zonke izindaba eziphathelele nemisebenzi yoMlawuli; futhi
- (b) sinesibopho kwiBhodi—
- (i) sayoyonke imali engenayo kanye nezindleko zoMlawuli;
- (ii) sayoyonke imali engenayo eqoqwe nguMlawuli; futhi
- (iii) sazo zonke izimpahla, kanye nokukhishwa kwazo zonke izikweletu, 25
zoMlawuli.

Ukuqokwa Kwezikhulu Eziphethe

36. (1) Ibhodi kufanele liqoke abantu abaqeqeshwe ngokufanele, abanolwazi kwezomnotho, umthetho, ubunjiniyela kwezokubalwa kwezimali noma imboni yezokuthutha, njengeSikhulu Esiphezulu Esiphethe, kanye Nanjengephathimandla Zomlawuli. 30
- (2) Umuntu angeke aqokwe, noma aqhubeke nokuba sesikhundleni, njengesikhulu esiPhezulu esiPhethe noma isiPhathimandla uma lowo muntu engaphansi kwanoma yikuphi ukuhoxiswa okungasebenza elungeni leBhodi, njengoba kubekwe esigabeni sama-31(2). 35
- (3) Isikhulu esiPhezulu siba sesikhundleni isikhathi esiyiminyaka emine.
- (4) Umuntu angaphinde aqokwe njengesikhulu esiPhezulu esiPhethe ekupheleni kwesikhathi sakhe esesikhundleni.
- (5) IsiPhathimandla ngasinye—
- (a) siba sesikhundleni isikhathi esiyiminyaka emihlanu, kuncike esigatshaneni sesi-(6); futhi 40
- (b) asiphinde siqokwe lapho kuphela isikhathi ngasinye.
- (6) Ngokwesincomo sesiKhulu esiPhezulu esiPhethe, iBhodi kumele liqoke, esikhundleni ngasinye sesiKhulu esiPhezulu esiPhethe, ilungu labasebenzi boMlawuli ongesona isiKhulu esiPhezulu ukuthi lisebenze njengebamba lesiKhulu esiPhezulu uma kwenzeka singekho isiKhulu esiPhezulu. Isikhulu esiphezulu esikhona, noma isikhala esikhundleni. 45

Ukwesula noma ukususwa kwezikhulu eziphezulu

37. (1) Isikhulu esiPhezulu kanye nanoma yisiphi isiKhulu esiPhezulu bangasula ngokunikeza isaziso esibhaliwe sezinyanga ezintathu kwiBhodi. 50
- (2) Ibhodi—
- (a) kufanele lisuse isiKhulu esiPhezulu noma isiKhulu esiPhezulu esiyeka ukufaneleka kuleso sikhundla ngokwesigaba sama-36(2); noma
- (b) lingasusa isiKhulu esiPhezulu noma isiKhulu esiPhezulu ngalezi zizathu kuphela— 55
- (i) ukungaziphathi kahle okukhulu;
- (ii) ukungakwazi ukusebenza unomphela;

- (iii) gross incompetence, gross mismanagement or substantial failure to perform the person's official functions; or
- (iv) contravening section 49, or engaging in any other activity that may undermine the integrity of the Regulator.

Functions of Regulator

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38. The Regulator must carry out the functions and exercise the powers assigned to it by or in terms of this Act or any other national legislation and, in particular, must—

- (a) exercise economic regulation of transport facilities and services in line with national strategic objectives;
- (b) regulate the provision of adequate and efficient transport facilities and services; 10
- (c) promote efficiency in transport facilities and services by facilitating competition, where possible, and implementing regulations;
- (d) promote equitable access to transport facilities and services;
- (e) promote appropriate, adequate and efficient investment in transport facilities and services; 15
- (f) research market structures and service delivery to determine whether or not particular entities, markets, facilities or services within the transport sector are functioning competitively;
- (g) conduct market inquiries in accordance with section 43(2)(b); 20
- (h) determine price controls for transport facilities and services in accordance with Part A of Chapter 3 and, for that purpose, may determine methods of price regulation as appropriate for the economic circumstances of regulated entities;
- (i) monitor and enforce compliance with this Act and with any service levels and other conditions of price controls; and 25
- (j) investigate complaints contemplated in section 15, and initiate investigations in terms of section 17(2).

General provisions concerning Regulator

39. (1) In carrying out its functions, the Regulator may— 30

- (a) have regard to regional or international developments in the field of economic regulation of transport; and
- (b) consult any person, organisation or institution with regard to any matter.

(2) In respect to a particular matter within its jurisdiction or responsibility, the Regulator may exercise its responsibility by way of an agreement contemplated in section 43(11)(c). 35

(3) The Regulator, after consultation with the Minister, may issue directives relating to the functions of the Regulator, including—

- (a) forms;
- (b) time periods; 40
- (c) information required;
- (d) filing fees;
- (e) access to confidential information; and
- (f) manner and form of participation in Regulator procedures.

(4) The remuneration, benefits and conditions of employment of— 45

- (a) the Chief Executive Officer and other Executive Officers must be determined by the Board, after consultation with the Minister; and
- (b) any other staff of the Regulator, must be determined by the Chief Executive Officer, in accordance with the remuneration and conditions of service policy approved by the Board. 50

- (iii) ukungakwazi ukwenza kahle okukhulu, ukuphatha budedengu okukhulu noma ukwehluleka okukhulu ukwenza imisebenzi yakhe esemthethweni; noma
- (iv) ukwephula isigaba sama-49, noma ukuzibandakanya kunoma yimuphi omunye umsebenzi ongabukela phansi isithunzi soMlawuli. 5

Imisebenzi yoMlawuli

38. Umlawuli kufanele enze imisebenzi futhi asebenzise amandla anikezwe wona ngokwalo Mthetho nanoma yimuphi omunye umthetho kazwelonke futhi, ikakhulukazi, kufanele—

- (a) asebenzise ukulawulwa kwezomnotho kwezinsiza zokuthutha kanye nezinsiza ngokuhambisana nezinjongo zamasu kazwelonke; 10
- (b) alawule ukuhlinzekwa kwezinsiza kanye nezinsiza zokuthutha ezanele neziphumelelayo;
- (c) athuthukise ukusebenza kahle ezikhungweni zezokuthutha kanye nezinsiza ngokugqugquzela ukuncintisana, lapho kungenzeka khona, kanye nokusebenzisa imithetho; 15
- (d) akhuthaze ukufinyelela ngokulinganayo ezikhungweni zezokuthutha kanye nezinsiza;
- (e) akhuthaze ukutshalwa kwezimali okufanele, okwanele nokuphumelela ezikhungweni zezokuthutha kanye nezinsiza; 20
- (f) ucwaningo lwezinhloko zezimakethe kanye nokulethwa kwesevisi ukuze kunqunywe ukuthi amabhizinisi athile, izimakethe, izikhungo noma izinsiza ngaphakathi komkhakha wezokuthutha zisebenza kahle ezingeni lokuncintisana yini noma cha; 25
- (g) aqhube imibuzo ngezimakethe ngokuhambisana nesigaba sama-43(2)(b);
- (h) anqume ukulawulwa kwamanani ezinto zokuthutha kanye nezinsizakalo ngokuhambisana neNgxenye A yeSahluko 3 futhi, ngaleyo njongo, linganquma izindlela zokulawula amanani njengezifanele izimo zomnotho zamabhizinisi alawulwayo; 30
- (i) aqaphe futhi aphoqelegele ukuthotshelwa kwalo Mthetho kanye nanoma imaphi amazinga esevisi kanye neminye imibandela yokulawula amanani; futhi
- (j) aphenye ngezikhaziso ezihlongozwe esigabeni se-15, futhi iqale uphenyo ngokwesigaba se-17(2).

Imihlinzeko ejwayelekile mayelana noMlawuli

- 39.** (1) Umlawuli ekwenzeni imisebenzi yakhe— 35
 - (a) angabheka nentuthuko yesifunda noma yamazwe ngamazwe emkhakheni wokulawula umnotho wezokuthutha; futhi
 - (b) angabonisa nanoma imuphi umuntu, inhlangano noma isikhungo ngananoma iluphi udaba.
- (2) Maqondana nodaba oluthile olungaphansi kwamandla noma isibopho saso, uMlawuli angasebenzisa isibopho sawo ngendlela yesivumelwano esihlongozwe esigabeni sama-43(11)(c). 40
- (3) angakhipha iziqondiso eziphathelene nemisebenzi yoMlawuli, okuhlanganisa—
 - (a) amafomu;
 - (b) izikhathi; 45
 - (c) ulwazi oludingekayo;
 - (d) izimali zokugcwalisa;
 - (e) ukufinyelela olwazini oluyifihlo; kanye
 - (f) indlela kanye nendlela yokubamba iqhaza ezinqubweni zoMlawuli.
- (4) Iholo, izinzuzo kanye nemibandela yokuqashwa— 50
 - (a) IsiKhulu esiPhezulu esiPhethe nezinye iziPhathimandla kumele zinqunywe yiBhodi, ngemuva kokubonisa noNgqongqoshe; futhi
 - (b) nanoma yibaphi abanye abasebenzi boMlawuli, kufanele banqunywe yisiKhulu esiPhezulu, ngokuhambisana namaholo kanye nemibandela yenqubomgomo yokusebenza evunywe iBhodi. 55

Development of codes of practice relating to Act

40. The Regulator may develop and promote the voluntary use of codes of practice in respect of any matter in order to better achieve the purposes of this Act.

Promotion of legislative and regulatory reform

41. (1) In order to better achieve the purposes of this Act in relation to laws that govern matters affecting the economic regulation of transport facilities and services, the Regulator must— 5

- (a) identify any international agreement or any national or provincial legislation, or other public regulation, that—
 - (i) affects the economic regulation of transport facilities and services; and 10
 - (ii) is inconsistent with the purposes of this Act;
- (b) consult with relevant provincial authorities, organs of state within the national sphere of government, and the public with respect to legislation identified in terms of paragraph (a) with the object of developing proposals for reform of that legislation; and 15
- (c) report from time to time to the Minister with recommendations for achieving the progressive transformation and reform of laws contemplated in this section.

(2) The Regulator may advise the Minister to consider the promulgation of new regulations in terms of this Act, or the amendment or repeal of any existing regulations. 20

Research and public information

42. (1) The Regulator must promote public awareness and increase knowledge of the economic nature and dynamics of the transport market, and for that purpose, the Regulator—

- (a) must publish— 25
 - (i) its decisions on substantive matters in terms of this Act;
 - (ii) abstracts of non-confidential information reported to the Regulator by regulated entities in terms of section 14;
 - (iii) results of its completed research or studies regarding the purposes of this Act; 30
 - (iv) statistical data collected on the performance of the transport sector; and
 - (v) any orders and findings of the Council or a court in respect of this Act.
- (b) may implement education and information measures to develop public awareness of the purposes of this Act;
- (c) may enter into partnerships with universities and other academic institutions to develop training and research programmes; and 35
- (d) may provide guidance to the public by—
 - (i) issuing explanatory notices outlining its procedures or its non-binding opinion on the interpretation of any provision of this Act; or
 - (ii) applying to a Court for a declaratory order on the interpretation or application of any provision of this Act. 40

(2) The Regulator may request any person requesting the Regulator to conduct any research in terms of this Act, to fund the cost of the research, and may decline to conduct such research, if the required funding is not provided.

(3) Any request for research made to the Regulator in terms of subsection (2) must be considered on the merits of its reasonableness and benefits to the industry, after which the necessary funding arrangements may be made by the Regulator and other interested parties. 45

(4) The Regulator must keep a publicly accessible register, in the prescribed manner and form, of all price controls approved and published in terms of this Act. 50

Ukuthuthukiswa kwamakhodi okusebenza ahlobene noMthetho

40. Umlawuli angasungula futhi athuthukise ukusetshenziswa ngokuzithandela imigomo yokusebenza kunoma oluphi udaba ukuze kufezwe izinjongo zalo Mthetho.

Ukugqugqazelwa kwezinguquko zomthetho nezokulawula

41. (1) Ukuze kuzuzwe kangcono izinhloso zalo Mthetho maqondana nemithetho elawula izindaba ezithinta ukulawulwa kwezomnotho kwezinsiza zokuthutha kanye nezinsiza, Umlawuli kufanele—

- (a) athole noma yisiphi isivumelwano samazwe ngamazwe nanoma yimuphi umthetho kazwelonke noma wesifundazwe, noma ezinye iziqondiso zomphakathi—
 - (i) ezithinta ukulawulwa kwezomnotho kwezinsiza zokuthutha kanye nezinsiza; futhi
 - (ii) ezingahambisani nezinhlalo zalo Mthetho;
- (b) abonisane neziphathimandla zezifundazwe ezifanele, izinhloso zombuso ezingeni likazwelonke likahulumeni, kanye nomphakathi mayelana nomthetho oshiwo ngokwendima (a) ngenhloso yokuthuthukisa iziphakamiso zokugququlwa kwalowo mthetho; futhi
- (c) umbiko ngezikhathi ezithile kuNgqongqoshe kanye nezincwadi zokuzuzwa uguquko oluqhubekayo kanye nokugququlwa kwemithetho ehlongozwe kulesi sigaba.

(2) Umlawuli angeluleka uNgqongqoshe ukuthi acabangele ukumenyezela kwemithetho emisha ngokwalo Mthetho, noma ukuchitshiyelwa noma ukuchithwa kwanoma yimiphi imithethonqubo ekhona.

Ucwaningo nolwazi lomphakathi

42. (1) Umlawuli kufanele akhuthaze ukuqwashisa umphakathi futhi andise ulwazi ngesimo somnotho kanye namandla emakethe yezokuthutha, futhi ngaleyo njongo, Umlawuli—

- (a) kufanele akhiphe—
 - (i) izinqumo zakhe ezindabeni ezibalulekile ngokwalo Mthetho;
 - (ii) izingcaphuno zolwazi olungeyona imfihlo ezibikwe kuMlawuli yizinhlangano ezilawulwayo ngokwesigaba se-14;
 - (iii) imiphumela yocwaningo lwayo oluqediwe noma izifundo mayelana nezinjongo zalo Mthetho;
 - (iv) idatha yemininingwane eqoqwe mayelana nokusebenza komkhakha wezokuthutha; noma yikuphi
 - (v) nanoma yimiphi imiyalelo kanye nokutholwe nguMkhandlu noma inkantolo mayelana nalo Mthetho.
- (b) angasebenzisa izinyathelo zemfundo nolwazi ukuthuthukisa ukuqwashisa umphakathi ngezinjongo zalo Mthetho;
- (c) angakha ubudlelwano namanyuvesi nezinye izikhungo zemfundo ukuze kuthuthukiswe izinhlelo zokuqeqesha nocwaningo; futhi
- (d) anganikeza izaluleko emphakathini—
 - (i) ngokukhipha izaziso ezichazayo ezichaza izinqubo zakhe noma umbono wakhe ongabophezeli ekuchazeni noma yiziphi imihlinzeko yalo Mthetho; noma
 - (ii) ukufaka isicelo eNkantolo somyalelo wokumemezela ngokuchazwa noma ukusetshenziswa kwanoma yimiphi imihlinzeko yalo Mthetho.

(2) Umlawuli angacela noma yimuphi umuntu ocela uMlawuli ukuthi enze noma yiluphi ucwaningo ngokwalo Mthetho, ukuze axhase izindleko zocwaningo, futhi angenqaba ukwenza lolu cwaningo, uma uxhaso oludingekayo lunganikezwanga.

(3) Noma yisiphi isicelo socwaningo esenziwe kuMlawuli ngokwesigatshana sesi-(2) kufanele sicatshangelwe ngokufaneleka kwalo kanye nezinzuzo embonini, ngemva kwalokho izinhlelo zoxhaso lwezimali zizokwenziwa nguMlawuli kanye nezinye izinhlangathi ezinentshisekelo.

(4) Umlawuli kufanele agcine irejista efinyeleleka emphakathini, ngendlela enqunyiwe, yakho konke ukulawulwa kwamanani okugunyazwe futhi kushicilelwe ngokwalo Mthetho.

(5) When communicating with the public, as required by this section, the Regulator must employ effective means of disseminating information, including freely accessible internet publishing.

Relations with other regulatory authorities

- 43.** (1) The Regulator must— 5
- (a) negotiate and conclude an agreement with the Competition Commission to coordinate and harmonise the exercise of jurisdiction over competition matters, and to ensure consistent application of the principles of this Act; and
 - (b) liaise with any entity that has jurisdiction over safety issues within the transportation sector in order to harmonise the exercise of jurisdiction over transportation matters. 10
- (2) At any time, the Regulator, on its own initiative or in response to a request from the Minister in terms of section 45(1)—
- (a) may request the Competition Commission to consider whether particular entities, markets, facilities or services within the transport sector are failing to function competitively or are characterised by anti-competitive abuses; or 15
 - (b) conduct a market inquiry—
 - (i) if it has reasonable grounds to suspect that any feature or combination of features of the market within any transport sector prevents, distorts or restricts competition or leads to anti-competitive outcomes within that market or the economy; or 20
 - (ii) to achieve the purposes of this Act.
- (3) The Regulator must, at least 20 business days before the commencement of a market inquiry, publish a notice in the *Gazette*—
- (a) announcing the establishment of the market inquiry; 25
 - (b) setting out the terms of reference for the market inquiry; and
 - (c) inviting members of the public to provide information to the market inquiry.
- (4) The Regulator may conduct a market inquiry in any manner but, for greater certainty, the provisions of sections 57 to 60, read with the changes required by the context, apply to the conduct of the market inquiry in terms of subsection (2), and to the publication of the report of a market inquiry in terms of subsection (8). 30
- (5) The terms of reference referred to in subsection (3) must include, at a minimum—
- (a) a statement of the scope of the inquiry; and
 - (b) the time within which it is expected to be completed.
- (6) The Regulator may amend the terms of reference referred to in subsection (3), including the scope of the inquiry, or the time within which it is expected to be completed, by a further notice in the *Gazette*. 35
- (7) The Regulator must complete a market inquiry by publishing a report contemplated in subsection (8), within the time set out in the terms of reference contemplated in subsection (3). 40
- (8) Upon completing a market inquiry, the Regulator must—
- (a) publish a report of the inquiry in the *Gazette*; and
 - (b) submit the report to the Minister with or without recommendations.
- (9) The recommendations to the Minister contemplated in subsection (8)(b) may include— 45
- (a) a change in the application of the Act as contemplated in section 4(2);
 - (b) recommendations for new or amended policy, legislation or regulations; or
 - (c) recommendations to other regulatory authorities.
- (10) On the basis of information obtained during a market inquiry, the Regulator may— 50
- (a) initiate a complaint in accordance with section 15(1), with or without conducting any further investigation;
 - (b) initiate and refer a complaint directly to the Council without further investigation;

(5) Lapho kuxhunywana nomphakathi, njengoba kudingwa yilesi sigaba, uMlawuli kufanele asebenzise izindlela ezisebenzayo zokusabalalisa ulwazi, okuhlanganisa nokutholakala ngokukhululeka kwi-inthanethi.

Ubudlelwano nezinye iziphathimandla ezilawulayo

43. (1) Umlawuli kufanele— 5
- (a) axoxisane futhi aphelele isivumelwano neKhomishana Yezokuncintisana ukuze ididiyele futhi ivumelanise ukusetshenziswa kwamandla ezindabeni zokuncintisana, kanye nokuqinisekisa ukusetshenziswa okufanayo kwemigomo yalo Mthetho; futhi
 - (b) axhumane nanoma iyiphi inhlangothi enegunya phezu kwezindaba zokuphepha ngaphakathi komkhakha wezokuthutha ukuze kuvunyelwane ukusetshenziswa kwamandla ezindabeni zezokuthutha. 10
- (2) Noma nini, uMlawuli, ngokuzenzela kwakhe noma ephendula isicelo esivela kuNgqongqoshe ngokwesigaba sama-45(1)—
- (a) angacela Ikhomishini Yezokuncintisana ukuthi icabangele ukuthi amabhizinisi athile, izimakethe, izinsiza noma izinsizakalo ezingaphakathi kwemboni yezokuthutha ziyehluleka yini ukusebenza ngokuncintisana noma zibonakala ngokuxhashazwa okuphambene nokuncintisana; noma 15
 - (b) yenza uphenyo lwemakethe—
 - (i) ukuthi inezizathu ezizwakalayo yini zokusola ukuthi noma isiphi isici noma inhlangothi yezici zemakethe kunoma iyiphi imboni yezokuthutha ivimbela, ihlanekezela noma ikhawulele ukuncintisana noma iholela emiphumeleni emelene nokuncintisana phakathi kwaleyo makethe noma emnothweni; noma 20
 - (ii) ukufeza izinhloso zalo Mthetho. 25
- (3) Umlawuli kufanele, okungenani ezinsukwini ezingama-20 zebhizinisi ngaphambi kokuqala kophenyo lwemakethe, ashicilele isaziso kuGazethi—
- (a) esimemezela ukusungulwa kophenyo lwemakethe;
 - (b) esibeka imigomo yereferensi yophenyo lwemakethe; futhi
 - (c) esimema amalungu omphakathi ukuthi alethe ulwazi kuphenyo lwemakethe. 30
- (4) Umlawuli angenza uphenyo lwemakethe nganoma iyiphi indlela kodwa, ngokuqiniseka okukhulu, imihlinzeko yesigaba sama-57 kuya kwama-60, ezifundwa nezinguquko ezidingwa yingqikithi, zisebenza ekuqhubeni uphenyo lwemakethe ngokwesigatshana sesi-(2), kanye nasekushicilelweni kombiko wophenyo lwemakethe ngokwesigatshana sesi-(8). 35
- (5) Imibandela yokusebenza okukhulunywe ngayo esigatshaneni sesi-(3) kufanele ihlanganise, okungenani—
- (a) isitatimende sobubanzi bophenyo; futhi
 - (b) isikhathi okulindeleke ukuthi kuqedwe ngaso. 40
- (6) Umlawuli angachibiyela imigomo yokusebenza okukhulunywe ngayo esigatshaneni sesi-(3), kuhlangukisa nobubanzi bophenyo, noma isikhathi okulindeleke ukuba kuqedwe ngaso, ngesinye isaziso kuGazethi.
- (7) Umlawuli kufanele agcwalise uphenyo lwemakethe ngokushicilela umbiko ohlongozwe esigatshaneni sesi-(8), ngesikhathi esibekwe emigomeni yokusebenza ehlongozwe esigatshaneni sesi-(3). 45
- (8) Ngemva kokuphuthula uphenyo lwemakethe, uMlawuli kufanele—
- (a) ashicilele umbiko wophenyo kuGazethi; futhi
 - (b) ethule umbiko kuNgqongqoshe onezincomo noma ongenazo.
- (9) Izincomo eziya kuNgqongqoshe ezihlongozwe esigatshaneni sesi-(8)(b) zingabandakanya— 50
- (a) ushintsho ekusetshenzisweni koMthetho njengoba kuhlongozwe esigabeni sesi-4(2);
 - (b) izincomo zenqubomgomo entsha noma echitshiyelwe, imithetho noma izimiso; noma
 - (c) izincomo kwezinye iziphathimandla ezilawulayo. 55
- (10) Ngokolwazi olutholwe ngesikhathi sophenyo lwemakethe, uMlawuli—
- (a) angaqala ukufaka isikhalazo ngokuhambisana nesigaba se-15(1), ngokwenza olunye uphenyo noma ngaphandle kokwenza olunye uphenyo;
 - (b) angaqala futhi adlulisele isikhalo eMkhandlwini ngaphandle kophenyo olwengeziwe; 60

- (c) take any other action within its powers in terms of this Act recommended in the report of the market inquiry; or
- (d) take no further action.
- (11) The Regulator may—
 - (a) advise and receive advice from any regulatory authority; 5
 - (b) liaise with any regulatory authority on matters of common interest and, without limiting the generality of this power, may monitor, require necessary information from, exchange information with, and receive information from, any such authority pertaining to—
 - (i) matters of common interest; or 10
 - (ii) a specific complaint or investigation;
 - (c) negotiate agreements with any regulatory authority to co-ordinate and harmonise the exercise of jurisdiction over the economic regulation of transport within the relevant industry or sector, and to ensure the consistent application of the principles of this Act; and 15
 - (d) participate in the proceedings of any regulatory authority.
- (12) A regulatory authority that, in terms of any public regulation, exercises jurisdiction over transport matters within a particular industry or sector—
 - (a) may negotiate agreements with the Regulator, as anticipated in subsection (11)(c); and 20
 - (b) may exercise its jurisdiction by way of such an agreement in respect of a particular matter within its jurisdiction.
- (13) The President may assign to the Regulator any duty of the Republic to exchange information with a similar foreign agency in terms of an international agreement relating to the purposes of this Act. 25
- (14) The Regulator may liaise with any foreign or international authorities having any objects similar to the functions and powers of the Regulator.

Advice and recommendations to Minister

- 44.** In addition to any other advice or reporting requirements set out in this Act, the Regulator may— 30
- (a) advise the Minister—
 - (i) on matters relating to the economic regulation of transport facilities and services;
 - (ii) of any substantive changes to the structure or competitiveness of any transport market, facility or service; or 35
 - (iii) in respect of any matter referred to it by the Minister.
 - (b) recommend to the Minister changes to bring about uniformity in the legislation in the various provinces in relation to transport facilities and services, as contemplated in section 41; and
 - (c) enquire into and report to the Minister on any matter concerning the purpose of this Act. 40

Minister may call for inquiries or investigations

- 45.** (1) The Minister, by notice in the *Gazette*, may request the Regulator to conduct a market inquiry, in terms of section 43(2), in relation to any economic aspect of the transport sector. 45
- (2) The Minister may —
- (a) give a written direction to the Regulator to investigate any matter or circumstances with respect to the purposes of this Act, whether or not those circumstances appear at the time of the direction to amount to a possible contravention of this Act; or 50
 - (b) consult with the Regulator on any matter arising under this Act.

- (c) angathatha noma yiziphi ezinye izinyathelo ezisemandleni akhe ngokwalo Mthetho otuswe embikweni wophenyo lwemakethe; noma
- (d) angangazithatha ezinye izinyathelo.
- (11) Umlawuli—
- (a) angaluleka futhi amukele iseluleko kunoma yisiphi isiphathimandla esilawulayo; 5
- (b) angaxhumana nanoma yisiphi isiphathimandla esilawulayo ezindabeni ezinentshisekelo efanayo futhi, ngaphandle kokunciphisa ukuvama kwala mandla, angaqapha, adinge ulwazi oludingekayo, ashintshisane ngolwazi, futhi athole ulwazi kunoma yisiphi isiphathimandla esinjalo esiphathelene— 10
- (i) nezindaba ezinentshisekelo efanayo; noma
- (ii) nesikhalazo esithile noma uphenyo;
- (c) angaxoxisana ngezivumelwano nanoma yisiphi isiphathimandla esilawulayo ukuze ahlenganise futhi avumelanise ukusetshenziswa kwamandla okulawula umnotho wezokuthutha ngaphakathi kwemboni noma umkhakha othintekayo, kanye nokuqinisekisa ukusetshenziswa ngendlela izimiso zalo Mthetho; futhi 15
- (d) Angabamba iqhaza kunoma ikuphi ukuthethwa kodaba kwanoma yisiphi isiphathimandla esilawulayo.
- (12) Isiphathimandla esilawulayo, ngokwanoma yimuphi umthetho womphakathi, esinegunya phezu kwezindaba zokuthutha ngaphakathi kwemboni noma umkhakha othile— 20
- (a) angaxoxisana ngezivumelwano noMlawuli, njengoba kulindelekile esigatshaneni se-(11)(c); futhi
- (b) lingasebenzisa amandla alo ngendlela yaleso sivumelwano maqondana nodaba oluthile endaweni yalo. 25
- (13) UMongameli anganikeza uMlawuli noma yimuphi umsebenzi weRiphabhulikhi wokushintshana ngolwazi nesikhungo sangaphandle esifanayo ngokwesivumelwano samazwe ngamazwe ngokwezinjongo zalo Mthetho.
- (14) Umlawuli angaxhumana nanoma yiziphi iziphathimandla zakwamanye amazwe noma zamazwe ngamazwe ezinezinhloso ezifanayo nemisebenzi kanye namandla oMlawuli. 30

Izeluleko nezincomo kuNgqongqoshe

44. Ukwengeza kunoma yisiphi esinye iseluleko noma izidingo zokubika ezibekwe kulo Mthetho, Umlawuli—
- (a) angaluleka uNgqongqoshe— 35
- (i) ezindabeni eziphathelele nokulawulwa kwezomnotho wezinsiza zokuthutha kanye namasevisi;
- (ii) kunoma yiziphi izinguquko ezinkulu esakhiweni noma ekuqhudeleni kwanoma iyiphi imakethe yezokuthutha, indawo noma isevisi; noma 40
- (iii) mayelana nanoma yiluphi udaba oludluliselwe kuyo nguNgqongqoshe.
- (b) angaphakamisa kuNgqongqoshe ukuthi enze izinguquko ukuze kube nokufana kumthetho ezifundazweni ezehlukene maqondana nezinsiza zokuthutha kanye namasevisi, njengoba kuhlongozwe esigabeni sama-41; futhi 45
- (c) iphenyise futhi ibike kuNgqongqoshe nganoma yiluphi udaba oluphathelele nenjongo yalo Mthetho.

UNgqongqoshe angavumela imibuzo noma uphenyo

45. (1) UNgqongqoshe, ngesaziso kwiGazethi, angacela uMlawuli ukuthi aqhube uphenyo lwemakethe, ngokwesigaba sama-43(2), maqondana nanoma iyiphi ingxenye yezomnotho umkhakha wezokuthutha. 50
- (2) UNgqongqoshe—
- (a) anganikeza isiqondiso esibhaliwe kuMlawuli ukuthi aphenye nganoma yiluphi udaba noma izimo maqondana nezinhloso zalo Mthetho, noma ngabe lezo zimo zivela ngesikhathi sesiqondiso ukuze zifinyelele okungenzeka ukwephulwa kwalo Mthetho noma cha; noma 55
- (b) angabonisa noMlawuli nganoma yiluphi udaba oluvela ngaphansi kwalo Mthetho.

Part B**Transport Economic Council****Establishment of Transport Economic Council**

46. (1) The Transport Economic Council is hereby established as an organ of state within the public administration, but as an institution outside the public service. 5

(2) The Council—

- (a) is a juristic person, with jurisdiction throughout the Republic;
- (b) is independent and subject only to the Constitution and the law;
- (c) must be impartial and perform its functions without fear, favour or prejudice; and 10
- (d) must exercise the functions assigned to it in terms of any law in—
 - (i) the most cost-efficient and effective manner; and
 - (ii) accordance with the values and principles mentioned in section 195 of the Constitution.

Council members 15

47. (1) The Council comprises of a chairperson, and no fewer than five and more than nine other members, each appointed by the Minister in accordance with the procedure set out in subsections (3) and (4).

(2) Before making an appointment contemplated in subsection (1), the Minister, by notice in the *Gazette*, must call for nominations of persons who meet the requirements set out in subsection (5) to serve on the Council, from members of the public. 20

(3) The Minister must forward the nominations received, to the relevant Portfolio Committee in the National Assembly, who must in a consensus seeking manner—

- (a) compile a short list of at least nine candidates;
- (b) interview, in a public and transparent manner, each of the candidates whose names appear on the shortlist; 25
- (c) consult with the relevant Select Committee in the National Council of Provinces; and
- (d) compile and forward to the Minister a final short list, provided that no final short list of more than 11 candidates is compiled. 30

(4) The Minister, after consultation with the relevant Portfolio Committee, must appoint the members of the Council from the persons whose names appear on the final short list contemplated to in subsection (3)(d).

(5) The members of the Council, when viewed collectively, must comprise sufficient suitably qualified persons with experience in law, economics, accounting and the transportation industry. 35

(6) A person may not be appointed or continue to serve as a member of the Council if that person is subject to any disqualification that would apply to a member of the Board, as set out in section 31(2).

(7) Each member of the Council serves on a full-time or part-time basis, as determined by the Minister, in accordance with subsection (8). 40

(8) The Minister, having regard to the historical and reasonably anticipated workload of the Council—

- (a) must determine, at the time each member is appointed, whether that member is to be full-time or part-time; and 45
- (b) with the consent of a member at any time during the member's term of office, may change that member from part-time to full-time.

(9) Each member of the Council serves for a term of four years, subject to subsection (10).

*Ingxenye B**Umkhandlu wezoMnotho wezokuThutha***Ukusungulwa koMkhandlu wezoMnotho wezokuThutha**

46. (1) Ngakho-ke uMkhandlu Wezomnotho Wezokuthutha uyasungulwa njengohlaka lukahulumeni ngaphakathi kokuphathwa komphakathi, kodwa njengesikhungo esingaphandle kwezisebenzi zikahulumeni. 5

(2) Umkhandlu—

- (a) ungumuntu ngokomthetho, ongunya lokulawula iRiphabhulikhi yonke;
- (b) uzimele futhi ungaphansi koMthethosisekelo noMthetho kuphela;
- (c) kufanele ungachemi futhi wenze imisebenzi yawo ngaphandle kokwesaba, ukuchema noma ukubandlulula; futhi 10
- (d) kumele wenze imisebenzi enikezwe wona ngokwanoma yimuphi umthetho—
 - (i) indlela eyonga kakhulu nephumelelayo; futhi
 - (ii) ngokuhambisana namagugu nezimiso ezishiwo esigabeni se-195 soMthethosisekelo. 15

Amalungu Omkhandlu

47. (1) UMkhandlu wakhiwe usihlalo, futhi namalungu angekho ngaphansi kwamahlanu kodwa angaphezulu amanye kwayisishiyagalolunye, ilungu ngalinye liqokwe uNgqongqoshe ngokuhambisana nenqubo ebekwe ezigatshaneni esesi-(3) nesesesi-(4). 20

(2) Ngaphambi kokuqoka okuhlongozwe esigatshaneni soku-(1), uNgqongqoshe, ngesaziso kwiGazethi, kufanele abize ukuqokwa kwabantu abahlangabezana nezidingo ezibekwe esigatshaneni sesi-(5) ukusebenza eMkhandlwini, kumalungu omphakathi.

(3) UNgqongqoshe kufanele adlulisele iziphakamiso ezitholiwe kwiSigungu esithintekayo. IKomidi lesiGungu sikaZwelonke, okufanele ngendlela yokufuna ukuvumelana— 25

- (a) ahlanganise uhlu olufushane lwabangenele ukuthola isikhundla okungenani abayisishiyagalolunye;
- (b) kwenziwe inhlolekhono, ngendlela esesidlangalaleni nesobala, ngamunye kwabaqokelwe isikhundla omagama abo avela ohlwini olufushane; 30
- (c) abonisane neKomidi Elikethiwe elifanele eMkhandlwini kaZwelonke weziFundazwe; futhi
- (d) ahlanganise futhi adlulisele kuNgqongqoshe uhla olufushane lokucina, inqobo nje uma alukho uhlu lokucina olufushane lwabafundi abangaphezu kwe-11 oluhlanganisiwe. 35

(4) UNgqongqoshe, ngemuva kokubonisana neKomidi leSikhundla elifanele, kufanele aqoke amalungu oMkhandlu kubantu amagama abo avela ekugcineni uhlu olufushane oluhlongozwe esigatshaneni sesi-(3)(d).

(5) Amalungu oMkhandlu, uma ebhekwa ngokuhlanganyela, kumele ahlanganise ezanele abantu abaneziqu ezifanele abanolwazi kwezomthetho, ezomnotho, ezokubalwa kwezimali kanye nemboni yezokuthutha. 40

(6) Umuntu angeke aqokwe noma aqhubeke nokusebenza njengelungu loMkhandlu uma lowo muntu engaphansi kwanoma yikuphi ukuhoxiswa okungasebenza kwilungu leBhodi, njengoba kubekwe esigabeni sama-31(2).

(7) Ilungu ngalinye loMkhandlu lisebenza ngokugcwele noma ngezikhathi ezithile, njengoba kunqunywa uNgqongqoshe, ngokuhambisana nesigatshana sesi-(8). 45

(8) UNgqongqoshe, ebhekelela umlando nomsebenzi olindelwe ngokufanelekile woMkhandlu—

- (a) kufanele anqume, ngesikhathi ilungu ngalinye liqokwa, ukuthi lelo lungu kufanele lisebenze ngokugcwele noma ngezikhathi ezithile; futhi 50
- (b) ngemvume yelungu nganoma yisiphi isikhathi ngesikhathi ilungu lisebenza, angashintsha lelo lungu lisuke ekusebenzeni ngezikhathi ezithile liye ekusebenzeni ngokugcwele.

(9) Ilungu ngalinye loMkhandlu lisebenza isikhathi esiyiminyaka emine, kuncike esigatshaneni se-15 (10). 55

(10) When the first appointments are made to the Council, or at any time there is a complete simultaneous turnover in the membership of the Council, the terms of Council members must be varied, so that some of the members are appointed to serve for three years and the remainder for four years.

(11) A member of the Council may be re-appointed to one further term, subject to subsection (6). 5

(12) A member of the Council may resign by giving three months' notice in writing to the Minister, but the Minister may permit a member to resign with shorter notice.

(13) A member of the Council must inform the Minister in writing if that member, or a related or inter-related person acquires an interest that is, or is likely to become, an interest contemplated in section 31(2)(b). 10

(14) The Minister—

(a) must remove a member of the Council if the member ceases to qualify for that office in terms of subsection (6); and

(b) may remove a member from office only for— 15

(i) serious misconduct or dereliction of responsibilities;

(ii) permanent incapacity; or

(iii) contravening subsection (13) or section 49, or engaging in any other activity that may undermine the integrity of the Council.

(15) If a member of the Council ceases to hold office before the end of the member's term, the Minister, after following the process contemplated in subsection (2), may appoint another person to serve the remainder of the member's term of office. 20

Council functions and procedures

48. (1) The Council considers and determines—

(a) referrals of complaints against regulated entities, in terms of section 16; 25

(b) referrals of consent agreements in terms of section 19; and

(c) appeals or applications for review in terms of section 22 of any certificate, notice, decision, determination or ruling of the Regulator.

(2) The Council must conduct a hearing, subject to its rules, into every matter referred to it in terms of this Act, and publish its decisions in the prescribed manner and form. 30

(3) The Chairperson of the Council must manage the caseload of the Council, and must convene a hearing before at least three of the members of the Council to consider any matter, and must—

(a) ensure that at least one member of the panel is a person who has legal training and experience; and 35

(b) designate a member of the panel to preside over the proceedings.

(4) The Chairperson of the Panel or a member designated by the chairperson, on application by an interested person, may determine whether a decision by the Regulator is to be suspended pending the outcome of the Council's proceeding on the matter, as contemplated in section 22(4). 40

Part C

Administrative matters concerning Regulator and Council

Conflicting interests

49. (1) The Chief Executive Officer, any employee of the Regulator and any person appointed by the Chief Executive Officer to be an inspector or investigator, and any member of the Council, may not— 45

(a) engage in any activity that may undermine the integrity of the Regulator or the Council, as the case may be;

(10) Uma uqokwa okokuqala ngqa eMkhandlwini, noma nganoma yisiphi isikhathi kuba khona ukuguquka okuphelele obusebenza kanyekanye ebulungwini boMkhandlu, imibandela yamalungu oMkhandlu kumele yehlukahluke, ukuze amanye amalunga akhethwe ukuthi asebenze iminyaka emithathu bese abanye kube iminyaka emine.

(11) Ilungu loMkhandlu lingaphinda liqokwe elinye ihlandla elilodwa, kuya 5 ngokwesigatshana sesi-(6).

(12) Ilungu loMkhandlu lingasula esikhundleni ngokunikeza isaziso esibhaliwe sezinyanga ezintathu kuNgqongqoshe, kodwa uNgqongqoshe angavumela ilungu ukuba lisule ngesaziso esifushane.

(13) Ilungu leBhodi elingelona isigungu esiphezulu kufanele lazise uNgqongqoshe 10 ngokubhala ngokushesha uma ilungu, noma umuntu ohlobene noma ohlobene nelungu, ezuya intshisekelo, noma okungenzeka abe, intshisekelo ehlongozwe esigabeni sama-31(2)(b).

(14) UNgqongqoshe—

(a) kufanele asuse ilungu loMkhandlu uma ilungu lingasafanelekeli kuleso 15 sikhundla ngokwesigatshana sesi-(6); futhi

(b) angasusa ilungu esikhundleni ngalezi zizathu kuphela—

(i) ukungaziphathi kahle okukhulu noma ukuhoxiswa kwemisebenzi yalo;

(ii) ukungakwazi ukusebenza unomphela; noma 20

(iii) ukwephula isigatshana sesi-(13) noma isigaba sama-49, noma ukuzibandakanya kunoma yimuphi omunye umsebenzi ongabukela phansi isithunzi soMkhandlu.

(15) Uma ilungu loMkhandlu liyeka ukusebenza ngaphambi kokuphela kwesikhathi sokusebenza kwalo, uNgqongqoshe, ngemva kokulandela inqubo ehlongozwe 25 esigatshaneni sesi-(2), angaqoka omunye umuntu ukuthi asebenze isikhathi esisele selungu sokuba sesikhundleni.

Imisebenzi nezinqubo zomkhandlu

48. (1) UMkhandlu uyacubungula futhi unqume—

(a) ukudluliselwa kwezikhalazo ngamabhizinisi alawulwayo, ngokwesigaba 30 se-16;

(b) ukudluliselwa kwezivumelwano zemvume ngokwesigaba se-19; futhi

(c) izikhalazo noma izicelo zokubuyezwa ngokwesigaba sama-22 sanoma yisiphi isitifiketi, isaziso, isinqumo, ukuzimisela noma isinqumo soMlawuli.

(2) UMkhandlu kufanele uqhube ukuthethwa kodaba, kuncike emithethweni yawo, 35 kuzo zonke izindaba ezidluliswe kuwo ngokwalo Mthetho, futhi ushicilele izinqumo zawo ngendlela nefomu elinqunyiwe.

(3) USihlalo woMkhandlu kufanele aphaathe umthwalo wecala loMkhandlu, futhi kumele abize ukuthethwa kwecala okungenani phambi kwamalungu amathathu oMkhandlu ukuze kucutshungulwe noma yiluphi udaba, futhi kufanele— 40

(a) aqinisekise ukuthi okungenani ilungu elilodwa lesigungu ngumuntu oqeqeshwe ngezomthetho futhi onasipiliyoni; futhi

(b) aqoke ilungu lesigungu ukuthi lengamele ukuqulwa kwamacala.

(4) USihlalo Wephaneli noma ilungu eliqokwe usihlalo, ngesicelo somuntu onentshisekelo, anganquma ukuthi isinqumo soMlawuli sizomiswa kuze kube 45 umphumela wokuqhubeka koMkhandlu ngalolu daba, njengoba kuhlongozwe esigabeni sama-22(4).

Ingxenye C

Izindaba zokuphatha eziphathelele noMlawuli kanye noMkhandlu

Ukushayana kwemibono

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49. (1) Isikhulu esiPhezulu esiPhethe, noma yimuphi umsebenzi woMlawuli nanoma yimuphi umuntu oqokwe isikhulu esiPhezulu esiPhethe ukuthi abe ngumhloli noma umphenyi, kanye nanoma yiliphi ilungu loMkhandlu, angeke—

(a) lenze noma yimuphi umsebenzi ongabukela phansi isithunzi soMlawuli noma 55 soMkhandlu, noma ngabe yikuphi;

- (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person or a related or inter-related person has an interest that would preclude that person from performing their functions in a fair, unbiased and proper manner;
 - (c) make private use of or profit from any confidential information obtained as a result of performing that person's official functions in the Regulator or the Council, as the case may be; or
 - (d) divulge any information, referred to in paragraph (c), to any third party, except as required as part of that person's official functions.
- (2) Without limiting the generality of subsection (1), an employee, investigator or inspector retained by the Regulator, before participating in any investigation, inquiry or decision by the Regulator, must disclose to the Regulator any significant relationship with a person who is materially affected or likely to be materially affected by that investigation, inquiry or decision.
- (3) For the purpose of subsection (2), "significant relationship" includes any—
- (a) employment relationship or professional engagement, within the immediately preceding 12 months; or
 - (b) connection to a related or inter-related person.

Finances

- 50.** (1) The Regulator and the Council are each financed from—
- (a) the annual fees to be paid by regulated entities, as determined by the Minister in terms of section 51;
 - (b) money appropriated by Parliament;
 - (c) any other fees payable in terms of this Act;
 - (d) income derived from its investment and deposit of surplus money in terms of subsection (2)(b); and
 - (e) other money accruing from any other source that does not create a conflict of interest.
- (2) The Regulator and Council—
- (a) must each prepare their own budgets and administer their own finances in accordance with the provisions of the Public Finance Management Act and other relevant legislation; and
 - (b) may invest or deposit money that is not immediately required for contingencies or to meet current expenditures—
 - (i) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
 - (ii) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).
- (3) The financial year of the Regulator and the Council, respectively, is the period of 12 months beginning 1 April each year and ending on the following 31 March, except that the first financial year—
- (a) begins on the effective date; and
 - (b) ends on the next following 31 March.

Minister to determine annual fees to be paid by regulated entities

- 51.** (1) Each year, the Regulator and the Council must prepare and submit to the Minister a joint proposal, in the prescribed manner and form, requesting the setting of an annual fee to be paid in the following financial year by each regulated entity under this Act, to give effect to the following principles:
- (a) The regulated entities are to bear the cost of the Regulator and the Council; and
 - (b) there must be general proportionality between the cost of regulating each regulated entity, service or facility and the extent of its contribution to the shared revenue pool for the Regulator and the Council.

- (b) abambe iqhaza kunoma yiluphi uphenyo, ekulalelweni noma esinqumweni esiphathelene nodaba lowo muntu noma umuntu ohlobene noma ohlobene naye anesithakazelo esingavimbela lowo muntu ekwenzeni imisebenzi yakhe ngendlela enobulungiswa, engachemi futhi efanele;
- (c) asebenzise ngasese noma enze inzuzo kunoma yiluphi ulwazi oluyimfihlo olutholwe ngenxa yokwenza imisebenzi yalowo muntu esemthethweni kuMlawuli noma UMkhandlu, noma ngabe yikuphi; noma 5
- (d) adalule noma yiluphi ulwazi, okukhulunywe ngalo endimeni (c), kunoma yimuphi umuntu wesithathu, ngaphandle uma kudingekile njengengxenywe yemisebenzi esemthethweni yalowo muntu. 10
- (2) Ngaphandle kokunciphisa ukusetshenziswa okuvamile kwesigatshana soku-(1), umsebenzi, umphenyi noma umhloli ogcinwe nguMlawuli, ngaphambi kokuba abambe iqhaza kunoma yiluphi uphenyo, uphenyo noma isinqumo soMlawuli, kufanele adalule kuMlawuli noma yibuphi ubuhlobo obubalulekile nomuntu abathinteki kakhulu noma abangase bathinteki ngokubonakalayo yilolo phenyo, uphenyo noma isinqumo. 15
- (3) Ngenhloso yesigatshana sesi-(2), “ubudlelwano obubalulekile” buhlanganisa nanoma—
 - (a) yibuphi ubudlelwano bokuqashwa noma ukuxhumana ngezinga lokusebenza, ngaphakathi kwezinyanga eziyi-12 ezisanda kudlula; noma
 - (b) Yikuphi ukuxhumana nomuntu ohlobene noma ohlobene ngaphakathi. 20

Ezezimali

- 50. (1) UMlawuli kanye noMkhandlu ngamunye uxhaswe ngemali—
 - (a) izimali zonyaka ezizokhokhwa amabhizinisi alawulwayo, njengoba kunqunywe uNgqongqoshe ngokwesigaba sama-51;
 - (b) imali eyabiwe yiPhalamende; 25
 - (c) nanoma yiziphi ezinye izimali ezikhokhwa ngokwalo Mthetho;
 - (d) imali engenayo etholakala ekutshalweni kwayo nasekufakeni imali enqwabelene ngokwesigatshana sesi- (2)(b); futhi
 - (e) enye imali enqwabelana kunoma yimuphi omunye umthombo engadali ukungqubuzana kwentshisekelo. 30
- (2) Umlawuli kanye noMkhandlu—
 - (a) kumele umuntu ngamunye azenzele esakhe isabelomali futhi aphaathe ezakhe izimali ngokuhambisana nemihlinzeko yoMthetho Wokuphathwa Kwezimali Zomphakathi kanye neminye imithetho efanele; futhi
 - (b) lingatshala noma lifake imali engadingeki ngokushesha ezimeni eziphuthumayo noma ukuhlangabezana nezindleko zamanje— 35
 - (i) ocingweni noma ngediphozithi egxilile yesikhashana kunoma yiliphi ibhange elibhalisiwe noma isikhungo sezezimali seRiphabhulikhi; noma
 - (ii) kwi-akhawunti yokutshalwa kwezimali eyasungulwa ngesigaba sesi-2 se-*Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984)*. 40
- (3) Unyaka wezimali woMlawuli kanye noMkhandlu, ngokulandelana, isikhathi esiyizinyanga eziyi-12 kusukela mhlaka-1 kuMbasa minyaka yonke futhi siphele zingama-31 kuNdasa olandelayo, ngaphandle kokuthi unyaka wezimali wokuqala—
 - (a) uqala ngosuku lokuqala ukusebenza; futhi 45
 - (b) uphele mhla zingama-31 kuNdasa olandelayo.

UNgqongqoshe uzonquma izimali zonyaka ezizokhokhwa izinhlangano ezilawulwayo

- 51. (1) Unyaka ngamunye, uMlawuli kanye noMkhandlu kufanele balungise futhi balethe kuNgqongqoshe isiphakamiso esihlanganyelwe, ngendlela enqunyiwe nangefomu, becala ukubekwa kwemali yonyaka okufanele ikhokhwe onyakeni wezimali olandelayo yibhizinisi ngalinye elilawulwayo ngaphansi kwalo Mthetho, ukuze kwenze lezi zimiso ezilandelayo zisebenze: 50
 - (a) Amabhizinisi alawulwayo kufanele athwale izindleko zoMlawuli kanye noMkhandlu; futhi 55
 - (b) kufanele kube nokulingana okujwayelekile phakathi kwezindleko zokulawula ibhizinisi ngalinye elilawulwayo, isevisi noma indawo kanye nezinga lomnikelo walo eqoqweni lemali engenayo ehlanganyelwe yoMlawuli noMkhandlu.

- (2) The Minister must, in consultation with the Minister of Finance, determine and publish by notice in the *Gazette*—
- (a) the annual fee to be paid by each regulated entity which may be different for different entities or categories of entities;
 - (b) a formula for sharing, between the Regulator and the Council, the revenue raised by those annual fees; and
 - (c) regulations establishing a framework for allocating and attributing the costs of the Regulator and Council among the regulated entities in a manner generally consistent with the principles set out in subsection (1).
- (3) The formula for sharing the revenue raised from annual fees, to be determined in terms of subsection (2)(b), must ensure that the Regulator and Council each receive an adequate revenue flow, independent of each other, as appropriate to perform their functions and ensure their financial viability, having regard to any other source of funding contemplated in section 50(1).
- (4) Any dispute arising out of or relating to the annual fees, the formula for sharing those fees or the remittance of the fees referred to in this section, must be referred to the Minister for resolution, in consultation with the Minister of Finance.
- (5) At three month intervals, each regulated entity must remit to the Regulator one quarter of the annual fee payable by that entity, as determined by the Minister in terms of subsection (2).
- (6) Within 30 business days after receiving a remittance in terms of subsection (5), the Regulator must—
- (a) apportion the remittance between the Regulator and the Council in accordance with the allocation formula determined in terms of subsection (2); and
 - (b) remit the Council's share to the Council.

Board and Council members remuneration

52. The Minister, in consultation with the Minister of Finance, must determine the remuneration and benefits of the members of the Board and members of the Council.

Reviews and reports by Regulator and Council

53. (1) In addition to any other reporting requirement set out in this Act, the Regulator and the Council must each report to the National Assembly at least once every year on their respective activities, as required by the Public Finance Management Act.
- (2) The Regulator and the Council must each deliver to the Minister copies of their annual reports.
- (3) The Minister may prescribe standards for the form and content of the annual reports, but any such regulation must, at a minimum, require the Regulator to include a report on—
- (a) compliance with this Act by transport sector;
 - (b) significant compliance contraventions;
 - (c) access to infrastructure;
 - (d) outcome of any market inquiry conducted;
 - (e) price controls set or approved; and
 - (f) formal consultations undertaken with regards to proposed changes to price control methodologies.
- (4) At least once every five years, the Minister must conduct a review of the exercise of the functions and powers of the Regulator and of the Council, relative to the policy and purposes of this Act.

Regulations

54. (1) The Minister may, by notice in the *Gazette*, make regulations—
- (a) on any matter which may be prescribed under this Act;
 - (b) on the recommendation of the Council, relating to the functions of the Council, including—

(2) UNgqongqoshe kufanele, ngokubonisana noNgqongqoshe Wezezimali, anqume futhi ashicilele ngesaziso kwiGazethi—

- (a) imali yonyaka okufanele ikhokhwe yibhizinisi ngalinye elilawulwayo elingase lehluke emabhizinisini ahlukene noma izigaba zamabhizinisi;
- (b) indlela yokwabelana, phakathi koMlawuli kanye noMkhandlu, imali eqoqwe ngalezo zimali ezikhokhwa njalo ngonyaka; futhi
- (c) imithetho esungula uhlaka lokwaba kanye nokufakwa kwezindleko zoMlawuli noMkhandlu phakathi kwezinhlelo ezilawulwayo ngendlela evamile evumelana nemigomo ebekwe esigatshaneni soku-(1).

(3) Indlela yokwabelana ngenzuzo eqoqwe ezinkokhelweni zonyaka, ezonqunywa ngokwemibandela yesigatshana sesi-(2)(b), kufanele iqinisekise ukuthi uMlawuli kanye noMkhandlu ngamunye uthola ukungena kwemali okwanele, ngaphandle komunye nomunye, njengoba kufanele. ukwenza imisebenzi yabo kanye nokuqinisekisa ukusebenza kwabo kwezezimali, kubhekwa noma yimuphi omunye umthombo woxhaso oluhlongozwe esigabeni sama-50(1).

(4) Noma yikuphi ukungaboni ngaso linye okuvela ngenxa noma okuhlobene nezimali ezikhokhwa njalo ngonyaka, indlela yokwabelana ngalezo zimali noma ukuthunyelwa kwezimali ezikhokhwayo okukhulunywe ngazo kulesi sigaba, kufanele kudluliselwe kuNgqongqoshe ukuze axazulule, ngokubonisana noNgqongqoshe Wezezimali.

(5) Ezinyangeni ezintathu, ibhizinisi ngalinye elilawulwayo kufanele lithumele kuMlawuli ingxenywe yesine yemali ekhokhwa yilelo bhizinisi, njengoba kunqunywe uNgqongqoshe ngokwesigatshana sesi-(2).

(6) Ezinsukwini ezingama-30 zokusebenza ngemuva kokuthola imali ethunyelwayo ngokwesigatshana sesi-(5), uMlawuli kufanele—

- (a) abe imali ethunyelwayo phakathi koMlawuli kanye noMkhandlu ngokuhambisana nefomula yokwaba enqunywe ngokwesigatshana sesi-(2); futhi
- (b) athumele isabelo soMkhandlu eMkhandlwini.

Iholo lamalungu eBhodi nawoMkhandlu

52. UNgqongqoshe, ngokubonisana noNgqongqoshe Wezezimali, kufanele anqume iholo kanye nezinzuzo zamalungu eBhodi kanye namalungu oMkhandlu.

Ukubuyekwezwa kanye nemibiko yoMlawuli noMkhandlu

53. (1) Ukwengeza kunoma yiziphi ezinye izidingo zokubika ezibekwe kulo Mthetho, uMlawuli kanye noMkhandlu kumele ngamunye abike esiGungwini Sikazwelonke okungenani kanye ngonyaka ngemisebenzi yakhe, njengoba kudingwa uMthetho Wokuphathwa Kwezimali Zikahulumeni.

(2) UMLawuli kanye noMkhandlu kufanele ngamunye balethe kuNgqongqoshe amakhophi emibiko yabo yonyaka.

(3) UNgqongqoshe angabeka imigomo yohlobo nokuqukethwe kwemibiko yonyaka, kodwa noma yimuphi umthetho kufanele, okungenani, udinge uMlawuli ukuba afake umbiko—

- (a) ngokuthotshelwa kwalo Mthetho wumkhakha wezokuthutha;
- (b) ngokwephulwa kwemithetho ebalulekile;
- (c) ngokufinyelela kwingqalasizinda;
- (d) ngomphumela wanoma yiluphi uphenyo lwemakethe olwenziwe;
- (e) ngezilawuli zentengo ezisethiwe noma ezigunyaziwe; kanye
- (f) nokubonisana okusemthethweni okwenziwe mayelana nezinguquko ezihlongozwayo zezindlela zokulawulwa kwentengo.

(4) Okungenani kanye eminyakeni emihlanu, uNgqongqoshe kufanele enze ukubuyekwezwa kokusetshenziswa kwemisebenzi namandla oMlawuli kanye noMkhandlu, ngokuhambisana nenqubomgomo nezinjongo zalo Mthetho.

Imithetho

54. (1) UNgqongqoshe ngesaziso kwiGazethi, angenza imithetho—

- (a) kunoma yiluphi udaba olunganqunywa ngaphansi kwalo Mthetho;
- (b) ngesincomo soMkhandlu, esiphathelene nemisebenzi yoMkhandlu UMkhandlu, kuhlenganise—

- (i) forms;
- (ii) time periods;
- (iii) information required;
- (iv) filing fees;
- (v) access to confidential information; and 5
- (vi) manner and form of participation in Council procedures; and
- (c) regarding any matter that may be considered necessary or expedient to prescribe in order to achieve the objects of this Act.
- (2) Before making any regulations in terms of subsection (1), the Minister must publish the proposed regulations in the *Gazette* for public comment, for a period of at least 30 business days. 10

CHAPTER 5

ENFORCEMENT OF ACT

Part A

Powers in Support of Investigation 15

Appointment of inspectors and investigators

- 55.** (1) The Chief Executive Officer—
- (a) may appoint any suitable employee of the Regulator or any other suitable person employed by the State, as an inspector; and
 - (b) must issue each inspector with a certificate in the prescribed form stating that the person has been appointed as an inspector in terms of this Act. 20
- (2) When an inspector performs any function of an inspector in terms of this Act, the inspector—
- (a) must be in possession of a certificate of appointment issued to that inspector in terms of subsection (1); 25
 - (b) must show that certificate to any person who—
 - (i) is affected by the inspector's actions in terms of this Act; and
 - (ii) requests to see the certificate; and
 - (c) has the powers of a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law. 30
- (3) The Chief Executive Officer may appoint or contract any suitably qualified person, as an investigator, to conduct research, audits, inquiries or other investigations on behalf of the Regulator, but a person appointed in terms of this subsection is not an inspector within the meaning of this Act. 35

Subpoena

- 56.** (1) At any time during an investigation, but prior to the issuing of a subpoena contemplated in subsection (2), an inspector or investigator must afford the person being investigated with an opportunity to participate in a voluntary inspection.
- (2) At any time during an investigation being conducted in terms of this Act, the Chief Executive Officer or any other Executive Officer, may— 40
- (a) issue a subpoena to any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject— 45
 - (i) to appear before the Regulator, an inspector or investigator, to be questioned at a time and place specified in the subpoena; or
 - (ii) to deliver or produce to the Regulator, an inspector or investigator, any book, document or other object referred to in paragraph (a) at a time and place specified in the subpoena. 50

- (i) amafomu;
- (ii) izikhathi;
- (iii) ulwazi oludingekayo;
- (iv) izimali zokugcwalisa;
- (v) ukufinyelela kulwazi oluyimfihl; kanye 5
- (vi) indlela nefomu lokubamba iqhaza ekuqulweleni kwamacala koMkhandlu; futhi
- (c) mayelana nanoma yiluphi udaba olungathathwa njengelunesidingo noma olufanele ukunqunywa ukuze kufezwe izinjongo zalo Mthetho.
- (2) Ngaphambi kokwenza noma yimiphi imithetho ngokwesigatshana sesi-(1), 10 uNgqongqoshe kufanele ashicilele imithetho ehlongozwayo kwiGazethi ukuze umphakathi uphawule ngayo, isikhathi esiyizinsuku eziyi-15 okungenani ezingama-30 zokusebenza.

ISIAHLUKO 5

UKUSEBENZA KOMTHETHO

15

Ingxenye A

Amandla aseka uphenyo

Ukuqokwa kwabaleli nabaphenyi

- 55. (1) Umphathi Omkhulu—
 - (a) singaqoka noma yimuphi umsebenzi ofanelekile woMlawuli noma yimuphi 20 omunye umuntu ofanele oqashwe uMbuso, njengomhloli; futhi
 - (b) kumele sinikeze umhloli ngamunye isitifiketi efomini elinqunyiwe esisho ukuthi lowo muntu uqokwe njengomhloli ngokwalo Mthetho.
- (2) Uma umhloli enza noma yimuphi umsebenzi womhloli ngokwalo Mthetho, 25 umhloli—
 - (a) kumele abe nesitifiketi sokuqokwa esinikezwe lowo mhloli ngokwesigatshana soku-(1);
 - (b) kufanele akhombise lesi sitifiketi kunoma yimuphi umuntu okufanele—
 - (i) uthintwa izenzo zomhloli ngokwalo Mthetho; futhi
 - (ii) ucela ukubona isitifiketi; futhi 30
 - (c) unamandla esisebenzi sokuthula njengoba kuchazwe esigabeni soku-1 se-*Criminal Procedure Act, 1977 (Act No. 51 of 1977)*, futhi engasebenzisa amandla anikezwe isisebenzi sokuthula ngokomthetho.
- (3) IsiKhulu esiPhezulu esiPhethe singaqoka noma sinikeze inkontileka nanoma yimuphi umuntu oqeqeshwe ngokufanelekile, njengomphenyi, ukuba enze ucwaningo, 35 acwaninge amabhuku, imibuzo noma olunye uphenyo egameni loMlawuli, kodwa umuntu oqokwe ngokwalesi sigatshana akayena umhloli ngokwenzazelo yalo Mthetho.

Ukubizelwa enkantolo

- 56. (1) Noma nini phakathi nophenyo, kodwa ngaphambi kokukhishwa kwencwadi yokubizela enkantolo ehlongozwe esigatshaneni sesi-(2), umhloli noma umphenyi 40 kufanele anikeze umuntu ophenywayo ithuba lokubamba iqhaza ekuhlolweni ngokuzithandela.
- (2) Noma ngasiphi isikhathi ngesikhathi sophenyo olwenziwa ngokwalo Mthetho, isiKhulu esiPhezulu esiPhethe noma esinye isiPhathimandla—
 - (a) singakhipha incwadi yokubizela enkantolo kunoma yimuphi umuntu 45 okukholakala ukuthi angakwazi ukunikeza noma yiluphi ulwazi ngodaba lophenyo, noma apha noma alawule noma iyiphi incwadi, incwadi noma enye into enomthelela kuleso sihloko—
 - (i) yokucela phambi koMlawuli, umhloli noma umphenyi, ukuze aphekwe ngemibuzo ngesikhathi nasendaweni ebalulwe encwadini 50 yokubizela; noma
 - (ii) ukuletha noma ukukhiqiza kuMlawuli, umhloli noma umphenyi, noma iyiphi incwadi, umbhalo noma enye into okukhulunywe ngayo endimeni (a) ngesikhathi kanye nendawo ebalulwe encwadini yokubizela enkantolo. 55

- (3) A subpoena contemplated in subsection (2)—
- (a) must be signed by the Chief Executive Officer, an Executive Officer or by an employee of the Regulator designated by the Chief Executive Officer; and
 - (b) may be served in the same manner as a subpoena in a criminal case issued by the magistrate's court. 5
- (4) An inspector or investigator before whom a person is summoned to appear, or to whom a person is required to deliver any book, document or other object, may—
- (a) interrogate and administer an oath to, or accept an affirmation from, the person named in the subpoena; and
 - (b) retain any such book, document or other object for examination, for a period not exceeding two months, or such longer period as the Council, on application and good cause shown, may allow. 10
- (5) A person questioned by the Regulator or by an inspector or investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but— 15
- (a) a person is not obliged to answer any question if the answer is self-incriminating; and
 - (b) the person asking the questions must inform that person of the right set out in paragraph (a). 20
- (6) No self-incriminating answer given or statement made by any person to the Regulator, an inspector or investigator exercising powers in terms of this Act, will be admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 63(3) or 64(d), and then only to the extent that the answer or statement is relevant to prove the offence charged. 25

Authority to enter and search under warrant

57. (1) A judge of the High Court or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate, if, from information on oath or affirmation, there are reasonable grounds to believe that—
- (a) a contravention of this Act has taken place, is taking place, or is likely to take place on or in those premises; or 30
 - (b) that anything connected with an investigation in terms of this Act is in the possession of, or under the control of, a person who is on or in those premises.
- (2) A warrant to enter and search may be issued at any time and must specifically—
- (a) identify the premises that may be entered and searched; and 35
 - (b) authorise an inspector or a police officer to enter and search the premises and to do anything listed in section 58.
- (3) A warrant to enter and search is valid until one of the following events occurs—
- (a) the warrant is executed;
 - (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority; 40
 - (c) the purpose for issuing it has lapsed; or
 - (d) the expiry of one month after the date it was issued.
- (4) A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate, or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances. 45
- (5) A person authorised by warrant issued in terms of subsection (2) may enter and search premises named in that warrant.
- (6) Immediately before commencing with the execution of a warrant, a person executing that warrant must either— 50
- (a) if the owner, or person in control, of the premises to be searched is present—
 - (i) provide identification to the owner or that person and explain to the owner or that person the authority by which the warrant is being executed; and

- (3) Incwadi yokubizelwa enkantolo ehlongozwe esigatshaneni sesi-(2)—
- (a) kufanele isayinwe yisiKhulu esiPhezulu esiPhethe, isiPhathimandla noma ngumsebenzi woMlawuli oqokwe yisiKhulu esiPhezulu; futhi
 - (b) ingahanjiswa ngendlela efanayo nencwadi yokubizela enkantolo ecaleni lobugebengu ekhishwe inkantolo yemantshi. 5
- (4) Umhloli noma umphenyi umuntu abizelwe ukuvela phambi kwakhe, noma okumele umuntu alethe noma iyiphi incwadi, incwadi noma enye into—
- (a) angaphenya futhi afunge, noma amukele isiqiniseko esivela kumuntu obhalwe encwadini yokubizelwa enkantolo; futhi
 - (b) angacina noma iyiphi leyo ncwadi, umbhalo noma enye into ukuze ihlolwe, isikhathi esingqile ezinyangeni ezimbili, noma isikhathi eside uMkhandlu ongavumela ngaso, ngesicelo nangesizathu esihle esitshengisiwe. 10
- (5) Umuntu obuzwa nguMlawuli noma umhloli noma umphenyi ukwenza uphenyo kumele kuphendule umbuzo ngamunye ngeqiniso futhi ngendlela engcono kakhulu yalokho nangamandla onke alowo muntu, kodwa— 15
- (a) umuntu akaphoqelekile ukuthi aphendule noma yimuphi umbuzo uma impendulo imugaxelisa; futhi
 - (b) umuntu obuza imibuzo kufanele azise lowo muntu ngelungelo elibekwe endimeni (a)
- (6) Akukho mpendulo yokuzigaxelisa enikezwa noma isitatimende esenziwe yinoma yimuphi umuntu kuMlawuli, umhloli noma umphenyi osebenzisa amandla ngokwalo Mthetho, iyo okwamukelekayo njengobufakazi obumelene nalowo muntu emacaleni obugebengu abhekiswe kulowo muntu ezibekwe kunoma iyiphi inkantolo, ngaphandle kwamacala obugebengu ngokuqamba amanga noma lapho lowo muntu uquliswa icala elihlongozwe esigabeni sama-63(3) noma sama-64(d), bese kuba ngokwezinga kuphela ukuthi impendulo noma isitatimende sibalulekile ukufakazela icala elibekwe lona. 25

Igunya lokungena nokusesha ngaphansi kwencwadi yemvume yokuthungatha

57. (1) Ijaji Lenkantolo Ephakeme noma imantshi ingakhipha incwadi egunyaza ukungena nokusesha noma yiziphi izakhiwo ezingaphansi kwamandla ejaji noma imantshi, uma, olwazini ngesifungo noma isiqinisekiso, kunezizathu ezizwakalayo zokukholelwa kulokho— 30
- (a) kukhona ukwephulwa kwalo Mthetho, okwenzekayo, noma okungenzeka kwenzeke kuleyo ndawo; noma
 - (b) ukuthi noma yini ehlangene nophenyo ngokwalo Mthetho isezandleni, noma ngaphansi kokulawulwa, komuntu okulezo zakhiwo noma okukulezo zakhiwo. 35
- (2) Incwadi yemvume yokungena nokusesha ingakhishwa nganoma isiphi isikhathi futhi kufanele—
- (a) ikhombe ngqo izindawo okungangenwa kuzo kuseshwe; futhi
 - (b) igunyaze umhloli noma iphoyisa ukuthi lingene liseshe izakhiwo futhi lenze noma yini esohlwini lwesigaba sama-58. 40
- (3) Incwadi yemvume yokungena nokusesha isebenza kuze kube yilapho kwenzeka esinye semicimbi elandelayo—
- (a) incwadi yemvume ikhishiwe;
 - (b) incwadi yemvume isulwa ngumuntu oyikhiphile noma uma engekho, ngumuntu ongunya elifanayo; 45
 - (c) inhloso yokuyikhipha isiphelelwe yisikhathi; noma
 - (d) Ukudlulelwa isikhathi kwenyanga eyodwa ngemuva kosuku eyakhishwa ngalo.
- (4) Incwadi yemvume yokungena nokusesha ingase ikhishwe kuphela emini, ngaphandle uma ijaji, imantshi yesifunda, noma imantshi eyikhiphile igunyaza ukuthi ingenziwa ebusuku ngesikhathi esivumelana nezimo. 50
- (5) Umuntu ogunyazwe ngencwadi yemvume ekhishwe ngokwesigatshana sesi-(2) angangena futhi aseshe izindawo ezibhalwe kuleyo ncwadi yemvume.
- (6) Ngokushesha ngaphambi kokuqala ukukhishwa kwencwadi yemvume, umuntu owenza leyo ncwadi yemvume kufanele noma— 55
- (a) uma umnikazi, noma umuntu olawulayo, wezakhiwo okumele ziseshwe ekhona—
 - (i) anikeze umazisi kumnikazi noma kulowo muntu futhi achazele umnikazi noma lowo muntu igunya okukhishwe ngalo incwadi yemvume ngalo; futhi 60

- (ii) hand a copy of the warrant to the owner, that person or to the person named in it; or
- (b) if none of those persons referred to in paragraph (a) is present, affix a copy of the warrant to the premises in a prominent and visible place.

Powers to enter and search

5

58. (1) A person who is authorised under section 57 to enter and search premises may—

- (a) enter upon or into those premises;
- (b) search those premises;
- (c) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation; 10
- (d) examine any article or document that is on or in those premises that has a bearing on the investigation;
- (e) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information; 15
- (f) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;
- (g) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to— 20
 - (i) search any data contained in or available to that computer system;
 - (ii) reproduce any record from that data; and
- (h) seize any output from that computer for examination and copying; and
- (i) attach, and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the investigation. 25

(2) Section 56(5) applies equally to an answer given or statement made to an inspector or police officer in terms of this section.

(3) An inspector authorised to conduct an entry and search in terms of section 53 may be accompanied and assisted by a police officer. 30

Conduct of entry and search

59. (1) A person who enters and searches any premises under section 58 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

(2) During any search under section 58(1)(c), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person. 35

(3) A person who enters and searches premises under section 58, before questioning anyone—

- (a) must advise that person of the right to be assisted at the time by an advocate or attorney; and 40
- (b) allow that person to exercise that right.

(4) A person who removes anything from premises being searched must—

- (a) issue a receipt for it to the owner of, or person in control of, the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed. 45

(5) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains confidential information.

- (ii) anike umnikazi ikhophi yencwadi yemvume, ukuthi lowo muntu noma lowo muntu obhalwe kuyo; noma
- (b) uma kungekho noyedwa walabo bantu okukhulunywe ngabo endimeni (a) okhona, namathisela ikhophi yencwadi yemvume eya emagcekeni endaweni evelele futhi ebonakalayo. 5

Amandla okungena nokusesha

- 58.** (1) Umuntu ogunyazwe ngaphansi kwesigaba sama-57 ukuthi angene futhi aseshe izakhiwo—
- (a) angangena kulawo magceke; 10
 - (b) angasesha lezo zakhiwo; 10
 - (c) angasesha noma yimuphi umuntu kulezo zakhiwo uma kunezizathu ezizwakalayo zokukholelwa ukuthi lowo muntu unempahla yakhe noma idokhumenti enomthelela ophenyweni; 15
 - (d) angahlola noma iyiphi i-athikhili noma idokhumenti engaphakathi noma ekulezo zakhiwo enomthelela ophenyweni; 15
 - (e) acele ulwazi nganoma iyiphi i-athikhili noma idokhumenti kumnikazi, noma kumuntu olawula, izakhiwo noma kunoma yimuphi umuntu olawula leyo mpahla noma umbhalo, noma kunoma yimuphi omunye umuntu ongaba nolwazi; 20
 - (f) athathe okucashuniwe, noma enze amakhophi, kunoma iyiphi incwadi noma umbhalo ongaphakathi noma ongaphakathi kwizakhiwo ezinomthelela ophenyweni; 20
 - (g) asebenzise noma iluphi uhlelo lwekhompiyutha esakhiweni, noma afune usizo lwanoma yimuphi umuntu kuleyo ndawo ukuze asebenzise lolo hlelo lwekhompiyutha— 25
 - (i) ukusesha noma iyiphi idatha equkethwe noma etholakala kuleyo sistimu yekhompiyutha; 25
 - (ii) ukukhiqiza kabusha noma yiliphi irekhodi kuleyo datha; futhi
 - (h) ashaqe noma iyiphi into ephuma kuleyo khompiyutha ukuze ihlolwe futhi ikopishwe; futhi 30
 - (i) anamathisele, futhi, uma kunesidingo, asuse emagcekeni ukuze ahlolwe futhi agcinwe, noma yini evimba uphenyo. 30
- (2) Isigaba sama-56(5) sisebenza ngokulinganayo empendulweni enikeziwe noma esitatimendeni esinikezwe umhloli noma iphoyisa ngokwalesi sigaba.
- (3) Umhloli ogunyazwe ukungena nokusesha ngokwesigaba sama-53 angaphelezelwa futhi asizwe yiphoyisa. 35

Ukuziphatha kokungena nokusesha

- 59.** (1) Umuntu ongena futhi aseshe noma yiziphi izakhiwo ngaphansi kwesigaba sama-58 kumele angenele futhi afune ngokucophelela isithunzi nokuhleleka, futhi ngokuphathelele nendawo ngayinye, ilungelo lomuntu lesithunzi, inkululeko, ukuphepha kanye nokuba yimfihlo. 40
- (2) Ngesikhathi sokusesha ngaphansi kwesigaba sama-58(1)(c), umhloli wesifazane kuphela noma iphoyisa lesifazane elingasasha umuntu wesifazane, futhi umhloli wesilisa kuphela noma iphoyisa lesilisa elingasasha umuntu wesilisa.
- (3) Umuntu ongena futhi aseshe izakhiwo ngaphansi kwesigaba sama-58, ngaphambi kokubuza noma ubani— 45
- (a) kumele aluleke lowo muntu ngelungelo lokusizwa ummeli noma ummeli ngaleso sikhathi; futhi
 - (b) avumele lowo muntu ukuba asebenzise lelo lungelo.
- (4) Umuntu osusa noma yini ezakhiweni eziseshwayo kumele— 50
- (a) akhiphe irisidi lakho kumnikazi, noma kumuntu olawulayo, wezakhiwo; futhi
 - (b) abuyisele ngokushesha ngangokunokwenzeka ngemva kokufeza inhloso okwakususelwe yona.
- (5) Ngesikhathi sokusesha, umuntu angenqaba ukuvumela ukuhlolwa noma ukususwa kwe-athikhili noma idokhumenti ngezizathu zokuthi iqukethe ulwazi oluyimfihlo. 55

(6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is confidential. 5

(7) A police officer who is authorised to enter and search premises under section 58, or who is assisting an inspector who is authorised to enter and search premises under this section may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises.

(8) Before using force in terms of subsection (7), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search. 10

(9) The Regulator may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the premises was present. 15

Claims that information is confidential

60. (1) When submitting information to the Regulator, or to an inspector or an investigator appointed in terms of this Act, a person may claim that all or part of that information is confidential.

(2) Any claim contemplated in subsection (1) must be supported by a written statement explaining why the information is confidential. 20

(3) The Regulator must—

- (a) consider a claim made in terms of subsection (1); and
- (b) immediately make a decision on the confidentiality of the information and access to that information, which decision may or may not be supported by reasons. 25

(4) When making any ruling, decision or order in terms of this Act, the Regulator or a Council may take confidential information into account.

(5) If any reasons for a decision in terms of this Act would reveal any confidential information, the Regulator or a court must provide a copy of the proposed reasons to the party claiming confidentiality at least seven business days before publishing those reasons. 30

(6) Within seven business days after receiving a copy of proposed reasons in terms of subsection (5), a party may apply to the court for an appropriate order to protect the confidentiality of the relevant information. 35

Powers of Court

61. In addition to any other order that it may make under this Act or any other law, a Court considering a matter in terms of this Act may—

- (a) order a person to alter or discontinue any conduct that is inconsistent with this Act; 40
- (b) make any order specifically contemplated in this Act; and
- (c) award damages for collective injury to all or a class of persons generally, to be paid on any terms or conditions that the Court considers just and equitable and suitable to achieve the purposes of this Act.

Part B 45

Offences and Penalties

Breach of confidence

62. (1) It is an offence to disclose any personal or confidential information concerning the affairs of any person obtained—

- (a) in carrying out any function in terms of this Act; or 50

(6) Uma umnikazi noma umuntu olawula i-athikhili noma incwadi enqaba ngokwesigatshana sesi-(5) sokunikeza lesi sihloko noma incwadi kumuntu ophenyayo, umuntu ophenyayo angacela umbhalisi noma usherifu weNkantolo Ephakeme onegunya lokugunyaza ukuba anamathisele futhi asuse indatshana noma incwadi ukuze igcinwe ngokuphepha kuze kube leyo nkantolo inquma ukuthi ulwazi luyimfihlo noma cha. 5

(7) Iphoyisa eligunyazwe ukungena futhi lipequlule ezakhiweni ngaphansi kwesigaba sama-58, noma elisiza umhloli ogunyazwe ukungena nokusesha ezakhiweni ngaphansi kwalesi sigaba lingakwazi ukunqoba ukungena nokusesha ngokusebenzisa amandla amaningi kudingekile ngokufanelekile, okuhlanganisa ukugqokeza isicabha noma iwindi lezakhiwo. 10

(8) Ngaphambi kokusebenzisa amandla ngokwesigatshana sesi-(7), iphoyisa kufanele lifune ngokuzwakalayo ukwamukelwa futhi kufanele limemezele inhloso yokungenela, ngaphandle uma kunengqondo ukukholelwa ukuthi ukwenza kanjalo kungenza umuntu acekele phansi noma achithe isiqephu noma idokhumenti okuyiyona nto yosesho. 15

(9) Umlawuli anganxephezela noma ngubani olimale ngenxa yokungena ngenkani ngesikhathi kuseshwa kungekho muntu obhekele ezakhiweni.

Izimangalo zokuthi ulwazi luyimfihlo

60. (1) Lapho uhambisa ulwazi kuMlawuli, noma kumhloli noma umphenyi oqokwe ngokwalo Mthetho, umuntu angasho ukuthi konke noma ingxenye yalolo lwazi luyimfihlo. 20

(2) Noma isiphi isimangalo esihlongozwe esigatshaneni soku-(1) kufanele sisekelwe ngokubhaliwe isitatimende esichaza ukuthi kungani ulwazi luyimfihlo.

(3) Umlawuli kufanele—

(a) acubungule isimangalo esenziwe ngokwesigatshana soku-(1); futhi 25

(b) ngokusesha enze isinqumo mayelana nokugcinwa kuyimfihlo kolwazi kanye nokufinyelela kulolo lwazi, yisiphi isinqumo esingase sisekelwe noma singesekwe izizathu.

(4) Lapho enza noma yisiphi isinqumo, isinqumo noma umyalo ngokwalo Mthetho, uMlawuli noma uMkhandlu ungabheka imininingwane eyimfihlo. 30

(5) Uma noma yiziphi izizathu zesinqumo ngokwalo Mthetho zingadalula noma yikuphi okuyimfihlo ulwazi, uMlawuli noma inkantolo kufanele inikeze ikhophi yezizathu ezihlongozwayo kwiqembu elifuna imfihlo okungenani izinsuku eziyisikhombisa zebhizinisi ngaphambi kokushicilela lezo zizathu.

(6) Ezinsukwini eziyisikhombisa zebhizinisi ngemuva kokuthola ikhophi yezizathu ezihlongozwayo ngokwemibandela yesigatshana sesi-(5), uhlangothi lungafaka isicelo enkantolo somyalelo ofanelekile wokuvikela ukugcinwa kuyimfihlo kolwazi olufanele. 35

Amandla Enkantolo

61. Ngaphezu kwanoma yimuphi omunye umyalo engawenza ngaphansi kwalo Mthetho nanoma yimuphi omunye umthetho, Inkantolo ecubungula udaba ngokwalo Mthetho— 40

(a) ingayala umuntu ukuthi aguqule noma ayeke noma yikuphi ukuziphatha okungahambisani nalo Mthetho;

(b) ingenza noma yimuphi umyalo ohlongozwe kulo Mthetho; futhi

(c) ingakhokhela amademeshe okulimala ngokuhlanganyela kubo bonke noma isigaba sabantu ngokujwayelekile, kukhokhwe kunoma yimiphi imigomo noma imibandela iNkantolo eyibona ifanelekile futhi ilingene ifanele ukuzeza izinhloso zalo Mthetho. 45

Ingxenye B

Amacala Nezinhlawulo

50

Ukwephulwa kokuzethemba

62. (1) Kuyicala ukudalula noma yiluphi ulwazi lomuntu noma oluyimfihlo oluphathelele nezindaba zanoma yimuphi umuntu olutholiwe—

(a) ekwenzeni noma yimuphi umsebenzi ngokwalo Mthetho; noma

- (b) as a result of initiating a complaint, or participating in any proceedings in terms of this Act.
- (2) Subsection (1) does not apply to information disclosed—
 - (a) for the purpose of the proper administration or enforcement of this Act;
 - (b) for the purpose of the administration of justice; or 5
 - (c) at the request of an inspector or regulatory authority entitled to receive the information.

Hindering administration of Act

- 63.** (1) It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by this Act. 10
- (2) A person commits an offence who, having been summoned—
- (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
 - (b) attends as required, but— 15
 - (i) refuses to be sworn in or to make an affirmation; or
 - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person.
- (3) A person commits an offence who, having been sworn in or having made an affirmation— 20
- (a) fails to answer any question fully and to the best of that person's ability, subject to section 56(4) and (5); or
 - (b) gives false evidence, knowing or believing it to be false.

Offences relating to Regulator and Council

- 64.** A person commits an offence who— 25
- (a) does anything to improperly influence the Regulator concerning any matter connected with an investigation;
 - (b) does anything in obstruction of an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
 - (c) knowingly provides false information to the Regulator or Council; 30
 - (d) wilfully interrupts the proceedings or misbehaves in the place where a hearing is being conducted;
 - (e) acts contrary to a warrant to enter and search; or
 - (f) without authority, but claiming to have authority in terms of section 55— 35
 - (i) enters or searches premises; or
 - (ii) attaches or removes an article or document.

Offences relating to prohibited conduct

- 65.** (1) It is an offence to fail to act in accordance with a compliance notice.
- (2) A regulated entity may not be prosecuted for an offence under subsection (1) if the Regulator has already imposed a price control reduction in terms of section 21 for the particular failure to satisfy a compliance notice. 40

Penalties

- 66.** (1) Any person convicted of an offence in terms of this Act, is liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and imprisonment.
- (2) Despite anything to the contrary contained in any other law, a Magistrate's Court 45 has jurisdiction to impose any penalty provided for in this section.

- (b) ngenxa yokuvula isikhalazo, noma ukubamba iqhaza kunoma yiziphi izinyathelo ngokwemibandela yalo Mthetho.
- (2) Isigatshana soku-(1) asisebenzi olwazini oludaluliwe—
 - (a) ngenhloso yokuphatha kahle noma ukusetshenziswa kwalo Mthetho;
 - (b) ngenhloso yokuphatha ubulungiswa; noma 5
 - (c) ngesicelo somhloli noma isiphathimandla esilawulayo esinelungelo lokuthola ulwazi.

Ukuvimbela ukwenziwa koMthetho

63. (1) Kuyicala ukuvimbela, ukuphikisana, ukuvimbela noma ukuthonya ngokungafanele noma yimuphi umuntu osebenzisa amandla noma owenza umsebenzi onikelwe, awunikeziwe noma athweswe wona umuntu ngalo Mthetho. 10
- (2) Umuntu wenza icala, othi esebiziwe—
- (a) ahluleke ngaphandle kwesizathu esanele ukuvela ngesikhathi nendawo eshiwo noma ukuhlala ekhona la ebizelwe khona kuze kube uyakhululwa; noma 15
 - (b) eba khona njengoba kudingekile, kodwa—
 - (i) enqaba ukufungiswa noma ukwenza isiqinisekiso; noma
 - (ii) ehluleka ukukhiqiza incwadi, idokhumenti noma enye into njengoba iyaliwe, uma iku-ukuba, noma ngaphansi kokulawulwa, kwalowo muntu. 20
 - (3) Umuntu wenza icala okuthi, esefungile noma esenze isiqinisekiso—
 - (a) ahluleke ukuphendula noma yimuphi umbuzo ngokugcwele nangawo wonke amandla alowo muntu, kuncike esigabeni sama-56(4) no (5); noma
 - (b) anikeze ubufakazi obungamanga, azi noma ekholelwa ukuthi kungamanga. 25

Amacala aphaathelene noMlawuli kanye noMkhandlu 25

64. Umuntu owenza icala—
- (a) owenza noma yini engaba nomthelela ongemuhle kuMlawuli maqondana nanoma yiluphi udaba oluhlobene nophenyo;
 - (b) owenza noma yini evimba uphenyo obekungaba ukwedelela inkantolo uma ngabe ukuqulwa kwamacala bekwenzeka enkantolo yomthetho; 30
 - (c) ohlinzeka ngolwazi olungamanga ngamabomu kuMlawuli noma kuMkhandlu;
 - (d) ophazamisa ngamabomu ukuqulwa kwecala noma ongaziphathi kahle endaweni lapho kuqulwa khona icala;
 - (e) owenza okuphambene nencwadi egunyaza ukungena nokusesha; noma 35
 - (f) ongenalo igunya, kodwa othi unegunya ngokwesigaba sama-55—
 - (i) ongena noma esesha ezakhiweni; noma
 - (ii) onamathisela noma okhipha isihloko noma idokhumenti.

Amacala aphaathelene nokuziphatha okungavunyelwe

65. (1) Kuyicala ukwehluleka ukwenza ngokuhambisana nesaziso sokuthobela umthetho. 40
- (2) Ibhizinisi elilawulwayo angeke lishushiswe ngecala ngaphansi kwesigatshana soku-(1) uma uMlawuli esebeke ukwehliswa kokulawulwa kwentengo ngokwesigaba sama-21 ngokwehluleka okuthile ukwanelisa isaziso sokuthobela umthetho.

Izinhlawulo 45

66. (1) Noma yimuphi umuntu olahlwe icala ngokwalo Mthetho, uyokhokhiswa inhlawulo noma avelwe ejele isikhathi esingeqile eminyakeni emihlanu, noma enze kokubili ukukhokha inhlawulo nokuvalwa ejele.
- (2) Ngaphandle kwanoma yini ephambene equkethwe kunoma yimuphi omunye umthetho, iNkantolo Yezimantshi inegunya lokubeka noma iyiphi inhlawulo ehlinzekwe kulesi sigaba. 50

Part C**Miscellaneous matters****Civil actions and jurisdiction**

67. (1) If an agreement, a provision of an agreement, or a notice to which a transaction or agreement is purported to be subject is, in terms of any provision of this Act considered void, that agreement, provision, or notice must be regarded as being of no force or effect at any time, unless a court has declared that the relevant provision of this Act does not apply to the impugned agreement, provision or notice. 5

(2) A person who has suffered loss or damage as a result of prohibited conduct, or dereliction of required conduct— 10

- (a) may not assert a claim in a Civil Court for the assessment of the amount or awarding of damages if that person has consented to an award of damages in a consent order; or
- (b) if entitled to commence an action referred to in paragraph (a), when instituting proceedings, must file with the Registrar or Clerk of the Court a notice from the Chairperson of the Council in the prescribed form— 15
 - (i) certifying whether the conduct constituting the basis for the action has been found to be prohibited or required conduct in terms of this Act;
 - (ii) stating the date of the Council finding, if any; and
 - (iii) setting out the section of this Act in terms of which the Council made its finding, if any. 20

(3) A certificate referred to in subsection (2)(b) is conclusive proof of its contents.

(4) An appeal or application for review against an order made by the Council in terms of this Act suspends any right to commence an action in a Civil Court with respect to the same matter, unless the Court orders otherwise. 25

Limitations of bringing action

68. (1) A complaint may not be referred or made more than three years after—

- (a) the act or omission that is the cause of the complaint;
- (b) the date on which the Regulator became aware, or ought reasonably to have been aware, of the cause of the complaint; or 30
- (c) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.

(2) A complaint may not be referred against any person who is or has been a respondent in proceedings under another section of this Act relating substantially to the same conduct. 35

Serving documents

69. Unless otherwise provided for in this Act, a notice, order or other document that, in terms of this Act, must be served on a person, is deemed to have been properly served when it has been—

- (a) hand delivered to that person; 40
- (b) sent by electronic mail to that person's email address; or
- (c) delivered by registered mail to that person's registered address.

*Ingxenye C**Ezinye izindaba***Izenzo zomphakathi kanye negunya**

67. (1) Uma isivumelwano, umhlinzeko wesivumelwano, noma isaziso okuhloswe ngaso ukuthengiselana noma isivumelwano, ngokwanoma yimuphi umhlinzeko walo Mthetho sithathwa njengesiyize, lesi sivumelwano, umhlinzeko, noma isaziso kufanele sithathwe nganoma isiphi isikhathi, ngaphandle uma inkantolo isimemezele ukuthi umhlinzeko ofanele walo Mthetho awisebenzi esivumelwaneni esiphikisiwe, umhlinzeko noma isaziso. 5

(2) Umuntu olahlekelwe noma olimale ngenxa yokuziphatha okwenqatshelwe, noma ukuhoxiswa kokuziphatha okudingekayo— 10

- (a) angeke afake isimangalo eNkantolo Yombango ukuze kucutshungulwe inani noma kukhishwe amademeshe uma lowo muntu evumelene nokunikezwa amademeshe kumyalelo wemvume; noma
- (b) uma enegunya lokuqala isinyathelo okukhulunywe ngaso endimeni (a), laphe eqala ukuqulwa kwecala, kufanele athumele kuMabhalane noma kuMabhalane Wenkantolo isaziso esivela kuSihlalo woMkhandlu ngefomu elinqunyiwe.— 15
- (i) eqinisekisa ukuthi ukuziphatha okuyisisekelo sesenzo kutholakale ukuthi kwenqatshelwe noma ukuziphatha okudingekayo ngokwalo Mthetho; 20
- (ii) esho usuku okwatholwa uMkhandlu, uma lukhona; futhi
- (iii) ebeka isigaba salo Mthetho ngokwemibandela uMkhandlu owathola ngayo, uma sikhona.

(3) Isitifiketi okukhulunywe ngaso esigatshaneni (2)(b) siwubufakazi obuqand' ikhanda balokho esikuqukethe. 25

(4) Isikhalazo noma isicelo sokubuyekizwa ngokumelene nomyalelo owenziwe uMkhandlu ngokwalo Mthetho umisa noma yiliphi ilungelo lokuthatha isinyathelo eNkantolo Yombango maqondana nodaba olufanayo, ngaphandle uma iNkantolo ikhipha umyalo ohlukile. 30

Imikhawulo yokuletha isinyathelo

68. (1) Isikhalazo angeke sidluliselwe noma senziwe ngaphezu kweminyaka emithathu ngemva—

- (a) kwesenzo noma ukweqiwa okuyimbangela yesikhalo;
- (b) kosuku uMlawuli azi ngalo, noma obekufanele azi ngalo, ngembangela yesikhalazo; noma 35
- (c) kwesimo sokuziphatha noma umkhuba oqhubekayo, usuku ukuziphatha noma umkhuba owaphela ngalo.

(2) Isikhalazo angeke sidluliselwe kunoma yimuphi umuntu ongummangalelwa noma obekade engummangalelwa ezinqubweni ngaphansi kwesinye isigaba salo Mthetho esihlobene kakhulu nokuziphatha okufanayo. 40

Amaphepha okumangalelwa

69. Ngaphandle uma kuhlinzekwe ngenye indlela kulo Mthetho, isaziso, umyalelo noma omunye umbhalo okufanele, ngokwalo Mthetho, unikezwe umuntu, uthathwa ngokuthi uhanjisiwe ngendlela efanele ngesikhathi— 45

- (a) uhanjisiwe ngesandla kulowo muntu;
- (b) ithunyelwe nge-imeyili ekheleni le-imeyili lalowo muntu; noma
- (c) ilethe ngeposi ebhalisiwe ekheleni elibhalisiwe lalowo muntu.

CHAPTER 6**GENERAL PROVISIONS****Consequential amendments and transitional arrangements**

70. (1) The laws referred to in Schedule 1 are hereby amended to the extent set out in that Schedule.

5

(2) The amendment of the laws specified in this section does not affect the transitional arrangements, which are set out in Schedule 2.

Short title and commencement

71. (1) This Act is called the Economic Regulation of Transport Act, 2024, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

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(2) The President may set different dates for different provisions of this Act to come into operation, subject to item 2 of Schedule 2.

ISAPHLUKO 6**IMIHLENGEKO EJWAYELEKILE****Izichibiyelo ezibalulekile kanye nezinhlelo zesikhashana**

- 70.** (1) Imithetho okukhulunywe ngayo kwiSheduli yoku-1 ngalokhu ichitshiyelwa ngokwezinga elibekwe kuleyo Sheduli. 5
- (2) Ukuchitshiyelwa kwemithetho eshiwo kulesi isigaba ayithinti izinhlelo zenguquko, ezibekwe kwiSheduli yesi-2.

Isihloko esifushane kanye nesiqalo

- 71.** (1) Lo Mthetho ubizwa ngokuthi uMthetho Wokulawula Umnotho Wezokuthutha, wezi-2024, futhi uyoqala ukusebenza ngosuku olubekwe uMongameli ngesimemezelo 10 kwiGazethi.
- (2) UMongameli angase abeke izinsuku ezihlukene zokuthi imihleنگeko ehluکene yalo Mthetho iqale ukusebenza, kuncike ephuzwini lesi-2 leSheduli yesi-2.

SCHEDULE 1

(Section 70(1))

CONSEQUENTIAL AMENDMENTS

Amendment of National Ports Act

1. (1) Section 1 of the National Ports Act, 2005 (Act No. 12 of 2005) is amended by the substitution in subsection (1), for the definition of “Regulator”, of the following definition: 5

“‘**Regulator**’ means the [Ports Regulator established by section 29] Transport Economic Regulator established by section 29 of the Economic Regulation of Transport Act, 2020;” 10

(2) The National Ports Act, 2005 (Act No. 12 of 2005) is hereby amended by the repeal of sections 29 to 45.

(3) The National Ports Act, 2005 (Act No. 12 of 2005) is hereby amended by the substitution for section 46 of the following section:

“**Appeals** 15

46. (1) Any port user or licensed operator whose rights are adversely affected by a decision of the Authority may appeal against that decision to the Regulator, in the manner prescribed in terms of the Economic Regulation of Transport Act, 2020.

[(2) After considering the appeal the Regulator must— 20

(a) confirm, set aside or vary the decision; or

(b) substitute the decision of the Authority for its own.].”

(4) Section 47 of the National Ports Act, 2005 (Act No. 12 of 2005) is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 25

“(1) Any complaint against the Authority must be lodged with the Regulator in the manner as prescribed in terms of the Economic Regulation of Transport Act, 2020.”; and

(b) by the substitution in subsection (2) for the words preceeding paragraph (a) of the following words: 30

“(2) A complaint against the Authority may be based on any ground provided for by the Regulator as prescribed in terms of the Economic Regulation of Transport Act, 2020, or on the ground that—”.

(5) The National Ports Act, 2005 (Act No. 12 of 2005) is hereby amended by the repeal of sections 48 to 55. 35

(6) Section 56 of the National Ports Act, 2005 (Act No. 12 of 2005) is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

“(2) An agreement concluded in terms of this section must—

(a) provide for the Authority to monitor and annually review performance with regard to the operation of the terminal or facility and the provision of the relevant services in terms of a performance standard specified in the agreement[.]; and 40

(b) be lodged with the Regulator within 30 business days from the date of last signature to the agreement.”; 45

ISHEDULI 1

IZICHIBIYELO EZIBALULEKILE

Ukuchitshiyelwa koMthetho wamaChweba Kazwelonke

1. (1) Isigaba soku-1 soMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) sichitshiyelwa ngokufaka endaweni yesigatshana soku-(1), incazelo “Umlawuli”, yale ncazelo elandelayo: 5

“‘Umlawuli’ kushiwo [isiGungu esinguMlawuli wamaChweba esisungulwe ngaphansi kwesigaba 29] Umlawuli wezoMnotho wezokuThutha osungulwe ngokwesigaba sama-29 soMthetho Wokulawula Umnotho Wezokuthutha, wezi-2020;”.

(2) UMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) ngalokhu uchitshiyelwa ngokuchithwa kwezigaba esama-29 kuya kwesama-45. 10

(3) UMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) ngalokhu uchitshiyelwa ngokufaka endaweni yesigaba sama-46 lesi sigaba esilandelayo: 15

“Ukwedluliswa kwezikhalo

46. (1) Noma imuphi umsebenzi wechweba noma onelayisensi olungelo lakho lithakamezekile ngenxa yesinqumo sesiGungu seziPhathimandla angadlulisela udaba lwakhe kulesi siGungu esinguMlawuli ngendlela emiswe ngaphansi kwesigaba 30(3), noma enqunywe ngokoMthetho Wokulawula Umnotho Wezokuthutha, wezi-2020. 20

[(2) Ngemuva kokubheka leso sikhalo isiGungu esinguMlawuli kufanele—

(a) sigcizelele, sichithe seguqule isinqumo; noma 25
(b) sikiphe esaso isinqumo esikhundleni saleso sesiGungu seziPhathimandla.]”.

(4) Isigaba sama-47 soMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) ngalokhu sichitshiyelwa—

(a) ngokufaka endaweni yesigatshana soku-(1) ngale sigatshana esilandelayo: 30

“(1) Noma yisiphi isikhalo esimelene nesigungu seziPhathimandla kumele sifakwe kuMlawuli ngendlela eqondiswe ngaphansi kwesigaba sama-30(3), noma enqunywe ngokoMthetho Wokulawula Umnotho Wezokuthutha, wezi-2020.”; futhi

(b) ngokufaka endaweni yesigatshana sesi-(2) samagama andulela isigaba (a) salamagama alandelayo: 35

“(2) esimayelana nesiGungu seziPhathimandla singaba nganoma yisiphi isizathu esihlinzekwe nguMlawuli ngomyalelo ngaphansi kwesigaba sama-30(3), noma esinqunywe ngokoMthetho Wokulawula Umnotho Wezokuthutha, wezi-2020, noma ngesizathu sokuthi—”. 40

(5) UMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) ngalokhu uchitshiyelwa ngokuchithwa kwezigaba esama-48 kuya kwesama-55

(6) Isigaba sama-56 soMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) ngalokhu siyachitshiyelwa—

(a) ngokufaka endaweni yesigatshana sesi-(2) sale sigatshana esilandelayo: 45

“(2) Isivumelwano esenziwe ngaphansi kwalesi sigaba kufanele—

(a) sinike isiGungu seziPhathimandla amandla okukhalipha nokubukeza ukuqhutshwa komsebenzi ophathelene nokusebenza kwesikhumulo noma izinto ezisetshenziswa esikhumulweni, nokunikezwa kosizo olufanele ngaphansi kwemigomo ethile okuvunyelwene ngayo[.]; futhi 50

(b) sifakwe kuMlawuli zingakapheli izinsuku zokusebenza ezingama-30 kusukela ngosuku lokusayinwa kokugcina esivumelwaneni.”;

- (b) the insertion, after subsection (2), of the following subsection:
“(2A) The performance reviews contemplated in subsection (2)(a) must be lodged with the Regulator, within 30 business days of issue thereof.”; and
- (c) the addition of the following subsections: 5
“(6) The Regulator may prescribe the requirements, that are necessary to achieve the purposes set out in subsection (5).
 (7) If an agreement contemplated in subsection (1) or (4) includes, as a party, an entity that is a subsidiary or a division of an entity under whose ownership, management or control the Authority falls, the agreement— 10
 (a) must be approved by the Regulator; or
 (b) the Regulator may require any variation to the agreement, depending on what the Regulator considers necessary to meet the requirements of subsection (5). 15
 (8) If the circumstances contemplated in subsection (7) apply, the fees payable to the Authority in terms of section 73(1)(c), accrue to the Regulator.”.
- (7) Section 57 of the National Ports Act, 2005 (Act No. 12 of 2005) is hereby amended by the insertion, after subsection (6), of the following subsections: 20
“(6A) If a licence contemplated in subsection (2), is issued to an entity that is a subsidiary or a division of an entity under whose ownership, management or control the Authority falls, the licence—
 (a) must be approved by the Regulator; or
 (b) the Regulator may require any variation to the licence, depending on what the Regulator considers necessary to ensure a fair, equitable, transparent, competitive and cost-effective operation of the market in which the licensee operates. 25
 (6B) If the circumstances contemplated in subsection (6A) apply, the fees payable to the Authority in terms of section 73(1)(c), accrue to the Regulator.”. 30
- (8) Section 62 of the National Ports Act, 2005 (Act No. 12 of 2005) is hereby amended by the addition of the following subsection:
“(6) Every licensed operator, when submitting a report or other information to the Authority in terms of subsection (2), (3) or (5)(a) or (f), must submit a copy of that report or information at the same time to the Regulator.”. 35
- (9) Section 72 of the National Ports Act, 2005 (Act No. 12 of 2005) is hereby amended by the substitution for subsection (1) of the following subsection:
“(1) The Regulator must prepare a proposed price control for approval by the Regulator in terms of the Economic Regulation of Transport Act, 2020.”. 40
- (10) Section 79 of the National Ports Act, 2005 (Act No. 12 of 2005) is hereby amended by the substitution for subsection (2) of the following subsection:
“(2) The Minister must consult with the Authority, the Transport Economic Regulator established by section 29 of the Economic Regulation of Transport Act, 2020 and the Shareholding Minister prior to giving a direction under subsection (1).”. 45
- (11) Section 80 of the National Ports Act, 2005 (Act No. 12 of 2005) is hereby amended by—
 (a) the substitution for subsection (1) of the following subsection:
“(1) The Minister may, in consultation with the Regulator, by notice in the Gazette, make regulations in respect of— 50
 (a) the licensing of activities carried out in the ports and at off-shore cargo-handling facilities; and
 (b) the establishment, construction, maintenance and operation of off-shore cargo handling facilities.”; 55
 (b) the insertion after subsection (1) of the following subsection:

- (b) ngokufakwa kwesigatshana esilandelayo ngemuva kwesigatshana sesi-(2):
 “(2A) Ukubuyekwezwa kokusebenza okuhlongozwe esigatshaneni sesi-(2)(a) kufanele kufakwe kuMlawuli, zingakapheli izinsuku zokusebenza ezingama-30 kukhishiwe.”; futhi
- (c) ukwengezwa kwezigatshana ezilandelayo: 5
 “(6) Umlawuli angabeka izidingo, ezidingekayo ukuze kuzuzwe izinjongo ezibekwe esigatshaneni sesi-(5).
 (7) Uma isivumelwano esihlongozwe esigatshaneni soku-(1) noma sesi-(4) sihlanganisa, njenge qembu, ibhizinisi elingaphansi noma ingxenye yebhizinisi, isigungu seziphathimandla esingaphansi kobunikazi nokuphatha kwalo, isivumelwano—
 (a) kufanele sivunywe nguMlawuli; noma
 (b) uMlawuli angadinga noma yikuphi ukuhluka esivumelwaneni, kuye ngokuthi yini uMlawuli ayibona idingekile ukuze kuhlangelezwane nezidingo zesigatshana sesi-(5). 10
 (8) Uma izimo ezihlongozwe esigatshaneni sesi-(7) zisebenza, izimali ezikhokhwa kusiGungu seziPhathimandla ngokwesigaba sama-73(1)(c), zingena kuMlawuli.” 15
- (7) Isigaba sama-57 soMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) ngalokhu uyachitshiyelwa ngokufaka lezi sigatshana ezilandelayo, 20 ngemuva kwesigatshana sesi-(6):
 “(6A) Uma ilayisensi ehlongozwe esigatshaneni sesi-(2), ikhishelwa ibhizinisi elingaphansi noma ingxenye yebhizinisi isigungu seziphathimandla esingaphansi kobunikazi nokuphatha kwalo, ilayisensi—
 (a) kufanele ivunywe uMlawuli; noma 25
 (b) uMlawuli angadinga noma yikuphi ukuhluka esivumelwaneni, kuye ngokuthi yini uMlawuli ayibona idingekile ukuze aqinisekise ukusebenza ngendlela efanele, elinganayo, esobala, enokuncintisana futhi engabizi kakhulu yemakethe lapho umnikazi welayisensi ezosebenza khona
 (6B) Uma izimo ezihlongozwe esigatshaneni sesi-(6A) zisebenza, izimali 30 ezikhokhwa kwisiGungu seziPhathimandla ngokwesigaba sama-73(1)(c), zingena kuMlawuli.”
- (8) Isigaba sama-62 soMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) ngalokhu siyachitshiyelwa ngokufaka lesi sigatshana esilandelayo: 35
 “(6) Wonke umqhubi onelayisensi, lapho ehambisa umbiko noma olunye ulwazi kwisigungu seziPhathimandla ngokwesigatshana sesi-(2), sesi-(3) noma sesi-(5)(a) noma (f), kufanele ahambise ikhophi yalowo mbiko noma imininigwane ngesikhathi esifanayo kuMlawuli.”
- (9) Isigaba sama-72 soMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) ngalokhu siyachitshiyelwa ngokufaka lesi sigatshana esilandelayo, 40 endaweni yesigatshana soku-(1):
 “(1) Umlawuli kufanele alungise ukulawulwa kwentengo okuhlongozwayo ukuze kugunyazwe uMlawuli ngokoMthetho Wokulawula Umnotho Wezokuthutha, wezi-2020.”
- (10) Isigaba sama-79 soMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) ngalokhu uyachitshiyelwa ngokufaka isigatshana esilandelayo endaweni yesigatshana sesi-(2): 45
 “(2) UNgqongqoshe kufanele abonisane nesiGungu seziPhathimandla, uMlawuli wezoMnotho wezokuThutha osungulwe ngokwesigaba sama-29 soMthetho Wokulawula Umnotho Wezokuthutha, wezi-2020 kanye 50 noNgqongqoshe weZabelomasheya ngaphambi kokukhipha umyalelo okukhulunywa ngaso kusigatshana (1).”
- (11) Isigaba sama-80 soMthetho wamaChweba Kazwelonke, wezi-2005 (uMthetho 12 wezi-2005) ngalokhu siyachitshiyelwa—
 (a) ngokufaka lesi sigatshana esilandelayo endaweni yesigatshana soku-(1): 55
 “(1) UNgqongqoshe, ngokubonisana noMlawuli, ngesaziso kwiGazethi, aenza imithethonqubo maqondana—
 (a) ukugunyazwa kwemisebenzi eyenziwa emachwebeni nasezikhungweni zokuphatha impahla ezingasogwini; kanye
 (b) nokusungulwa, ukwakhiwa, ukugcinwa kanye nokusebenza 60 kwezinsiza zokuphatha impahla ezingasogwini.”;
 (b) ukufakwa ngemuva kwesigatshana soku-(1) lesi sigatshana esilandelayo:

- “(1A) The Minister may, by notice in the *Gazette*, make regulations in respect of any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.”; and
- (c) the deletion, from subsection (2), of paragraphs (e) and (p).

Amendment of Airports Company Act

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2. (1) Section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993) is hereby amended by—

- (a) by the deletion of the definition of “Committee”; and
- (b) by the insertion after the definition of “permission” to insert the following definition:

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“**‘Regulator’** means the Transport Economic Regulator established by section 29 of the Economic Regulation of Transport Act, 2020.”.

(2) Section 5 of the Airports Company Act, 1993 (Act No. 44 of 1993) is hereby amended by the deletion, from subsection (2), of paragraphs (e) and (f).

(3) Section 12 of the Airports Company Act, 1993 (Act No. 44 of 1993) is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) The company shall not levy any airport charge at any company airport **[unless it is in possession of a valid written permission thereto]** except in accordance with a price control approved and published in terms of the Economic Regulation of Transport Act, 2020.”.

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(4) Section 13 of the Airports Company Act, 1993 (Act No. 44 of 1993) is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

- “(1) When the company intends—
- (a) to close or sell any aerodrome contemplated in section 6(1)(a); or
- (b) to terminate or substantially curtail a relevant activity which was performed by the Department or any person on behalf of the Department immediately prior to the transfer date at any such aerodrome,

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the company shall give written notice to the Minister of that intention and at the same time submit a copy of the notice to the **[Committee] Regulator**.”.

(2) The **[Committee] Minister [shall]**— 30

- (a) **shall** consider and evaluate the implications of the intended action of the company mentioned in subsection (1) for—
- (i) the transport system of the Republic;
- (ii) the users of the said aerodrome or relevant activity;
- (iii) the community or region which the said aerodrome serves; and 35
- (iv) any other affected institution or person; and
- (b) **[make recommendations to the Minister]** may request advice from the Transport Economic Regulator, in terms of the Economic Regulation of Transport Act, 2020, regarding any action **[which he]** that the Minister may take in terms of subsection (3) or (4).”.

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(5) Section 14 of the Airports Company Act, 1993 (Act No. 44 of 1993) is hereby amended by the substitution for subsection (1) of the following subsection:

“Any person who feels aggrieved by the failure of the company to comply with any provision of section 5(2) or 12(1) **[or (12)]** may **[lodge with the Committee a complaint, which shall be accompanied by proof of the failure]** file a complaint with the Transport Economic Regulator in terms of section 16 of the Economic Regulation of Transport Act, 2020.”.

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(6) The Airports Company Act, 1993 (Act No. 44 of 1993) is hereby amended by the deletion of sections 5(2)(e) and (f), 11, 12(2) to (12), and 14(2) to (4).

Amendment of the Air Traffic and Navigation Services Company Act

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3. (1) Section 1 of the Air Traffic and Navigations Services Company Act, 1993 (Act No. 45 of 1993) is hereby amended by—

- (a) the deletion of the definition of “Committee”; and
- (b) the insertion after the definition of “permission” to insert the following definition:

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“(1A) UNgqongqoshe, ngesaziso kwiGazethi, angenza imithethonqubo maqondana nanoma yiluphi olunye udaba okudingeka noma okufanele lunqunywe ukuze lo Mthetho usetshenziswe ngendlela efanele.”; futhi

(c) ngokususwa kusukela esigatshaneni sesi-(2) sezindima (e) no (p). 5

Wysiging van Lughawensmaatskappywet

2. (1) Artikel 1 van die Lughawensmaatskappywet, 1993 (Wet No. 44 van 1993), word hierby gewysig—

- (a) deur die omskrywing van “Komitee” te skrap; en
- (b) deur die volgende omskrywing na die omskrywing van “oorgangsdatum” in te voeg: 10

“**‘Reguleerder’** die Ekonomiese Reguleerder vir Vervoer, ingestel by artikel 29 van die ‘Economic Regulation of Transport Act, 2023’.”.

(2) Artikel 5 van die Lughawensmaatskappywet, 1993 (Wet No. 44 van 1993), word hierby gewysig deur, vanaf subartikel (2), paragrawe (e) en (f) te skrap. 15

(3) Artikel 12 van die Lughawensmaatskappywet, 1993 (Wet No. 44 van 1993), word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die maatskappy mag by geen maatskappylughawe enige lughawevordering hef nie [**tensy die maatskappy in besit is van ’n geldige skriftelike vergunning daartoe**] behalwe ooreenkomstig ’n prysbeheer goedgekeur en gepubliseer ingevolge die ‘Economic Regulation of Transport Act, 2023’.”. 20

(4) Artikel 13 van die Lughawensmaatskappywet, 1993 (Wet No. 44 van 1993), word hierby gewysig deur subartikels (1) en (2) deur die volgende subartikels te vervang:

- (1) Indien die maatskappy van voorneme is om—
- (a) ’n vliegveld beoog in artikel 6(1)(a) te sluit of te verkoop; of 25
- (b) ’n relevante bedrywigheid wat onmiddellik voor die oorgangsdatum deur die Departement of iemand anders namens die Departement by enige sodanige vliegveld verrig is, te beëindig of wesenslik in te kort, moet die maatskappy skriftelike kennisgewing van daardie voorneme aan die Minister gee en terselfdertyd ’n afskrif van die kennisgewing aan die [**Komitee**] 30

Reguleerder voorlê.

(2) Die [**Komitee moet**] Minister—

- (a) **moet** die implikasies van die voorgenome optrede van die maatskappy in subartikel (1) vermeld, vir—
- (i) die vervoerstelsel van die Republiek; 35
- (ii) die gebruikers van genoemde vliegveld of relevante bedrywigheid;
- (iii) die gemeenskap of streek wat deur genoemde vliegveld bedien word; en
- (iv) enige ander instelling of persoon wat geraak word, oorweeg en evalueer; en 40

(b) [**by die Minister aanbevelings doen**] kan raad vra van die Vervoer-Ekonomiese Reguleerder, ingevolge die ‘Economic Regulation of Transport Act, 2023’ betreffende enige stappe wat [**hy**] die Minister kragtens subartikel (3) of (4) kan doen.”. 45

(5) Artikel 14 van die Lughawensmaatskappywet, 1993 (Wet No. 44 van 1993), word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang: 45

“Iemand wat hom veronreg voel deur die maatskappy se versuim om aan enige bepaling van artikel 5(2) of 12(1) of (12) te voldoen, kan by die [**Komitee**] Vervoer- Ekonomiese Reguleerder ’n klagte indien[, **wat vergesel moet gaan van bewys van die versuim**] ingevolge artikel 16 van die ‘Economic Regulation of Transport Act, 2023’.”. 50

(6) Die Lughawensmaatskappywet, 1993 (Wet No. 44 van 1993) word hierby gewysig deur artikels 5(2)(e) en (f), 11, 12(2) tot (12), and 14(2) to (4).

Wysiging van die Lugverkeer- en—navigasiedienstemaatskappywet, 1993,

3. (1) Artikel 1 van die Lugverkeer- en -navigasiedienstemaatskappywet, 1993 (Wet No. 45 van 1993), word hierby gewysig— 55

- (a) deur die omskrywing van “Komitee” te skrap; en
- (b) deur die volgende omskrywing na die omskrywing van “oorgangsdatum” in te voeg:

“**‘Regulator’** means the Transport Economic Regulator established by section 29 of the Economic Regulation of Transport Act, 2020;”.

(2) Section 11 of the Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993) is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The company shall not levy an air traffic service charge **[unless it is in possession of a valid written permission thereto]** except in accordance with a price control approved and published in terms of the Economic Regulation of Transport Act, 2020.”.

(3) Section 12 of the Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993) is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) If the company has indicated in a business plan contemplated in section 7 that it intends to close or sell any air navigation infrastructure mentioned in section 6(1)(a) or to terminate or substantially curtail an air traffic service or air navigation service which was rendered by the State or any person on behalf of the State immediately prior to the transfer date, the company shall at the same time as it submits such business plan to the Shareholding Minister in terms of section 7, submit a copy thereof to the **[Committee] Regulator**.”.

(2) The **[Committee] Minister [shall]**—

(a) **shall** consider and evaluate the implications of the intended action of the company mentioned in subsection (1) for—

- (i) the transport system of the Republic;
- (ii) the users of the said infrastructure or such service; and
- (iii) any other affected institution or person; and

(b) **[make recommendations to the Minister]** may request advice from the Transport Economic Regulator, in terms of the Economic Regulation of Transport Act, 2020, regarding any action **[which he]** **that the Minister** may take in terms of subsection (3) or (4)”.

(4) Section 13 of the Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993) is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who feels aggrieved by the failure of the company to comply with any provision of section 5(2) or 11(1) **[or (12)]** may **[lodge with the Committee a complaint, which shall be accompanied by proof of the failure]** file a complaint with the Transport Economic Regulator in terms of section 16 of the Economic Regulation of Transport Act, 2020.”.

(5) The Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993) is hereby amended by the deletion of sections 5(2)(e) and (f), 11(2) to (12), and 13(2) to (4).

Amendment of National Land Transport Act

4. (1) Section 21 of the National Land Transport Act, 2009 (Act No. 5 of 2009) is hereby amended by the deletion in subsection (1) of paragraph (c).

(2) Section 28 of the National Land Transport Act, 2009 (Act No. 5 of 2009) is hereby amended by the substitution in subsection (1), for the words preceding paragraph (a), of the following words:

“Subject to the Municipal Fiscal Powers and Functions Act, 2007 (Act No. 12 of 2007), other relevant legislation and subject to any price controls determined by the Transport Economic Regulator established by section 29 of the Economic Regulation of Transport Act, 2020, a municipality, which has established a **[municipal land transport fund] Municipal Land Transport Fund** under section 27 may impose user charges, which may differ from case to case, on—”.

Amendment of The South African National Roads Agency Limited and National Roads Act

5. (1) Section 27 of The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) is hereby amended by—

“ ‘Reguleerder’ die ‘Vervoer- Ekonomiese Reguleerder ingestel deur artikel 29 van die “Economic Regulation of Transport Act 2023;”.

(2) Artikel 11 van die Lugverkeer- en—navigasiedienstemaatskappywet, 1993 (Wet No. 45 van 1993), word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die maatskappy mag geen lug-verkeerdiensvordering hef nie **[tensy die maatskappy in besit is van ’n geldige skriftelike vergunning daartoe]** behalwe ooreenkomstig ’n prysbeheer wat ingevolge die ‘Economic Regulation of Transport Act, 2023’, goedgekeur en gepubliseer is.”.

(3) Artikel 12 van die Lugverkeer- en navigasiedienstemaatskappywet, 1993 (Wet No. 45 van 1993), word hierby gewysig deur subartikels (1) en (2) deur die volgende subartikels te vervang:

“(1) Indien die maatskappy in ’n bedryfsplan in artikel 7 beoog, aangedui het dat hy voornemens is om ’n lugnavigasie-infrastruktuur in artikel 6(1)(a) vermeld, te sluit of te verkoop of om ’n lugverkeerdiens of lugnavigasiediens wat onmiddellik voor die oorgangsdatum deur die Staat of iemand namens die Staat gelewer is, te beëindig of weselik in te kort, moet die maatskappy wanneer hy sodanige bedryfsplan ingevolge artikel 7 aan die Aandeelhoudende Minister voorlê, terselfdertyd ’n afskrif daarvan aan die **[Komitee] Reguleerder** voorlê.”.

(2) Die **[Komitee moet] Minister—**

(a) **moet** die implikasies van die voorgename optrede van die maatskappy in subartikel (1) vermeld, vir—

(i) die vervoerstelsel van die Republiek;

(ii) die gebruikers van genoemde infrastruktuur of sodanige diens; en

(iii) enige ander instelling of persoon wat geraak word, oorweeg en evalueer; en

(b) **[by die Minister, aanbevelings doen]** kan raad vra van die Vervoer- Ekonomiese Reguleerder, ingevolge die ‘Economic Regulation of Transport Act, 2023’ betreffende enige stappe wat **[hy]** die Minister kragtens subartikel (3) of (4) kan doen.”.

(4) Artikel 13 van die Lugverkeer- en navigasiedienstemaatskappywet, 1993 (Wet No. 45 van 1993), word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Iemand wat hom of haar veronreg voel deur die maatskappy se versuim om aan enige bepaling van artikel 5(2) of 11(1) **[of (12)]** te voldoen, kan **[by die Komitee]** ’n klagte indien[, wat vergesel moet gaan van bewys van die versuim] ’n klagte by die Vervoer- Ekonomiese Reguleerder ingevolge artikel 16 van die ‘Economic Regulation of Transport Act, 2023.’.

(5) Die Lugverkeer- en navigasiedienstemaatskappywet, 1993 (Wet No. 45 van 1993) word hierby gewysig deur artikels 5(2)(e) en (f), 11(2) tot (12), en 13(2) tot (4) te skrap.

Ukuchitshiyelwa koMthetho Wezokuthutha Ezihamba Phansi

4. (1) Isigaba sama-21 soMthetho Wezokuthutha Ezihamba Phansi, wezi-2009 (uMthetho 5 wezi-2009) ngalokhu uyachitshiyelwa ngokususa esigatshaneni soku-(1) sendima (c).

(2) Isigaba sama-28 soMthetho Wezokuthutha Ezihamba Phansi, wezi-2009 (uMthetho 5 wezi-2009) ngalokhu uyachitshiyelwa ngokufaka endaweni yesigatshana soku-(1), samagama andulela indima (a), lamagama alandelayo:

“Ngokulawulwa yiMunicipal Fiscal Powers and Functions Act 12 ka-2007, eminye imithetho efanele futhi kuncike kunoma yiziphi izilawuli zentengo ezingunywe uMlawuli wezoMnotho wezokuThutha osungulwe ngokwesigaba sama-29 soMthetho Wokulawula Umnotho Wezokuthutha, wezi-2020, umasipala osungule **[isikhwama sikamasipala sezinto zokuthutha ezihamba phansi]** Isikhwama Sikamasipala Sezinto Zokuthutha Ezihamba Phansi ngaphansi kwesigaba sama-27 angase afune inkokhiso engase ingafani ezimweni ezihlukahlukene—”.

Wysiging van die Wet op Die Suid-Afrikaanse Nasionale Padagentskap Beperk en op Nasionale Paaie, 1998

5. (1) Artikel 27 van die Wet op Die Suid-Afrikaanse Nasionale Padagentskap Beperk en op Nasionale Paaie, 1998 (Wet No. 7 van 1998), word hierby gewysig—

- (a) the substitution in subsection (3) for paragraph (a) of the following paragraph:
“(a) is determined by the **[Minister]** Transport Economic Regulator in terms of Part A of Chapter 3 of the Economic Regulation of Transport Act, 2020, on the recommendation of the Agency;”;
- (b) the deletion in subsection (3) of paragraphs (c) and (d); and 5
- (c) the deletion of subsection (4).
- (2) Section 28 of The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) is hereby amended by the addition of the following subsection:
- “(5) The Transport Economic Regulator, established by section 29 of the Economic Regulation of Transport Act, 2020, may require an agreement contemplated in subsection (1) to make provision for periodic review by the Transport Economic Regulator, of the level of tolls charged in terms of the agreement.” 10

- (a) deur in subartikel (3) paragraaf (a) deur die volgende paragraaf te vervang:
“(a) word deur die **[Minister]** Vervoer- Ekonomiese Reguleerder
ingevolge Deel A van Hoofstuk 3 van die ‘Economic Regulation of
Transport Act, 2023, op aanbeveling van die Agentskap bepaal;”;
- (b) deur in subartikel (3) paragrafe (c) en (d) te skrap; en 5
- (c) deur subartikel (4) te skrap.
- (2) Artikel 28 van die Wet op Die Suid-Afrikaanse Nasionale Padagentskap Beperk
en op Nasionale Paaie, 1998 (Wet No. 1998), word hierby gewysig deur die volgende
subartikel by te voeg:
- “(5) Die Vervoer- Ekonomiese Reguleerder, deur artikel 29 van die ‘Economic 10
Regulation of Transport Act, 2023’, ingestel, kan ’n ooreenkoms soos beoog in
subartikel (1) vereis om voorsiening te maak vir periodieke hersiening deur die
Vervoer- Ekonomiese Reguleerder, van die vlak van togelde wat ingevolge die
ooreenkoms gehef word.”.

SCHEDULE 2

TRANSITIONAL PROVISIONS

Definitions

1. A reference in this Schedule to—
 - (a) the “Ports Regulator” is a reference to the entity established under that name in terms of Chapter 5 of the National Ports Act, 2005 (Act No. 12 of 2005). 5
 - (b) a section by number is a reference to the corresponding section of this Act; and
 - (c) an item or a sub-item by number is a reference to the corresponding item or sub-item of this Schedule.

Continuation of tariffs in force at effective date 10

2. (1) Despite section 11—
 - (a) a tariff or similar method of price regulation in effect immediately, before the effective date, in terms of any law in respect of a transport facility or service remains in effect as if it had been a price control determined and published in terms of section 11, until the date on which the Regulator first determines and publishes a new price control applicable to that facility or service, subject to sub-item (2); and 15
 - (b) an agreement of the type contemplated in section 11(9)(c), that was in effect immediately before the effective date, remains in effect as if it had been approved in terms of this Act, until the date on which the Regulator first determines and publishes a new price control applicable to the relevant facility or service. 20
- (2) A pre-existing tariff or similar method of price regulation that remains in effect in terms of sub-item (1) may be reviewed in the manner provided for in section 11.
- (3) Despite sub-items (1) and (2), a tariff or similar method of price regulation and review mechanisms in effect immediately before the effective date, in terms of— 25
 - (a) an agreement contemplated in section (1) of The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998), or
 - (b) an agreement or a licence contemplated in sections 56 and 57, respectively, of the National Ports Act, that was concluded before the effective date, remain in effect for the remaining period of that agreement or licence, as the case may be. 30

Appeals and complaints

3. (1) An appeal contemplated in section 46 of the National Ports Act against a decision taken by the National Ports Authority before the effective date, may— 35
 - (a) be filed with the Regulator as a complaint in terms of section 15(1)(a) or (b) of this Act, provided that no such appeal or application for review had been filed under any other law before the effective date; or
 - (b) be considered and determined under the National Ports Act, as if that Act had not been amended in terms of Schedule 1. 40
- (2) A complaint, as contemplated in section 15, in respect of conduct that occurred before the effective date may—
 - (a) be filed with the Regulator in terms of section 15 of this Act, provided that no such complaint or similar process had been commenced under any other law before the effective date; or 45

ISHEDULI 2

IMIHLINZEKO YESIKHASHANA

Izincazelo

1. Ireferensi kule Sheduli—

- (a) “kuMlawuli Wezamachweba” ubhekisela ebhizinisini elisungulwe ngaphansi kwalelo gama lesi-5 ngokweSahluko sesi-5 se-*National Ports Act, 2005 (Act No. 12 of 2005)*. 5
- (b) kwisigaba ngenombolo siyireferensi yesigaba esihambisana nalo Mthetho; futhi
- (c) into noma into encane ngenombolo iyireferensio entweni ehambisanayo noma entweni encane yaleSheduli. 10

Ukuqhubeka kwemithelo esebenzayo ngesikhathi sokuqala ukusebenza

2. (1) Ngale kwesigaba se-11—

- (a) and intela noma indlela efanayo yokulawula intengo esebenza ngokushesha, ngaphambi kosuku lokuqala ukusebenza, ngokwanoma yimuphi umthetho maqondana nesikhungo sokuthutha noma isevisi ihlala isebenza njengokungathi ibiwukulawulwa kwentengo okunqunywe futhi kwashicilelwa ngokwemibandela yesigaba se-11, kuze kube usuku uMlawuli anquma ngalo okokuqala futhi ashicilela ngalo ukulawulwa kwentengo okusha okusebenzayo kuleso sikhungo noma isevisi, kuncike entweni encane yesi-(2); futhi 15
- (b) isivumelwano sohlobo oluhlongozwe esigabeni se-11(9)(c), esaqala ukusebenza ngaphambi nje kosuku lokuqala ukusebenza, sihlala sisebenza sengathi sivunyiwe ngokwalo Mthetho, kuze kufike usuku lapho uMlawuli aqale anqume futhi ashicilele ukulawulwa kwentengo okusha okusebenzayo endaweni noma isevisi efanele. 20
- (2) Imali yentengo ekhona ngaphambili noma indlela efanayo yokulawula intengo ehlala isebenza ngokwesigatshana soku-(1) ingabuyekwezwa ngendlela ehlinzekwe esigabeni se-11.
- (3) Ngaphandle kwezinto ezincane (1) kanye no (2), intela noma indlela efanayo yokulawula amanani kanye nezindlela zokubuyekenza ezisebenza ngokushesha ngaphambi kosuku lokuqala— 30
- (a) ngokwesivumelwano esihlongozwe esigabeni soku-(1) se- *South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998)*; noma 35
- (b) ngokwesivumelwano noma ilayisensi ehlongozwe esigabeni sama-56 kanye nesama-57, ngokulandelayo, zoMthetho Wezamachweba Kazwelonke, esaphethwa ngaphambi kosuku lokuqala ukusebenza, siyohlala sisebenza isikhathi esisele saleso sivumelwano noma selayisensi, kuye ngendlela okungaba ngayo. 40

Amacala kanye nezikhalazo

3. (1) Icala elihlongozwe esigabeni sama-46 soMthetho Wezamachweba Kazwelonke ngokumelene nesinqumo esithathwe uMkhandlu Kazwelonke Wezamachweba ngaphambi kosuku lokuqala ukusebenza—

- (a) Isingafakwa kuMlawuli njengcala ngokwesigaba se-15(1)(a) noma (b) salo Mthetho, inqobo nje uma kungekho lelo cala noma isicelo sokubuyekwezwa esifakwe ngaphansi kwanoma yimuphi omunye umthetho ngaphambi kosuku lokuqala ukusebenza; noma 45
- (b) kubhekwe futhi kunqunywe ngaphansi koMthetho Wezamachweba Kazwelonke, kube sengathi lowo Mthetho awuchitshiyelwanga ngokweSheduli yoku-1. 50
- (2) Isikhalazo, njengoba kuhlongozwe esigabeni se-15, mayelana nokuziphatha okwenzeka ngaphambi kosuku lokuqala ukusebenza—
- (a) singafakwa kuMlawuli ngokwesigaba se-15 salo Mthetho, inqobo nje uma kungekho sikhalazo esinjalo noma inqubo efanayo eke yaqalwa ngaphansi kwanoma yimuphi omunye umthetho ngaphambi kosuku lokusebenza; noma 55

(b) be referred to the Regulator to conclude an investigation into the complaint.

(3) The Regulator may exercise any power of the Ports Regulator, in terms of the National Ports Act, to investigate any complaint in terms of the relevant Act concerning conduct that occurred during the period of three years immediately before the effective date.

(4) In exercising authority under this item, the Council or the Regulator, as the case may be, must conduct the investigation, hearing or other matter in accordance with the relevant Act as if it had not been amended in terms of Schedule 1 of this Act.

General preservation of regulations, rights, duties, notices and other instruments

4. (1) Any right or entitlement enjoyed by or obligation imposed on any person in terms of any provision of a repealed law, that had not been spent or fulfilled immediately before the effective date must be considered to be a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act.

(2) A notice given by any person to another person in terms of any provision of a repealed law must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the repealed law.

(3) A document that, before the effective date, had been served in accordance with a repealed law must be regarded as having been satisfactorily served for any comparable purpose of this Act.

(4) An order given by an inspector, in terms of any provision of a repealed law, and that is in effect immediately before the effective date, continues in effect, subject to the provisions of this Act.

Regulations

5. On the effective date, and for a period of 60 business days after the effective date, the Minister may make any regulation contemplated in the Act without meeting the procedural requirements set out in section 54 or elsewhere in this Act: Provided that the Minister has published those proposed regulations in the *Gazette* for comment for a period of at least 30 business days.

Transition of Ports Regulator

6. (1) A person in the employ of the Ports Regulator before the effective date becomes an employee of the Regulator on the effective date.

(2) The transfer of employees to the Regulator must be effected in accordance with—

- (a) section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995); and
- (b) any collective agreement reached between the State and the trade union parties of the Departmental Chamber of the Public Service Bargaining Council before the effective date.

(3) The terms and conditions of office or employment of a person contemplated in sub-item (2) are identical to the terms and conditions of office or employment subsisting between that person and the Ports Regulator immediately before the effective date, subject to any further determination by the Board and the Chief Executive Officer in the exercise of their respective authority set out in this Act.

(4) Any person transferred in terms of sub-item (1), who—

- (a) before the effective date, was a member of the Government Employees' Pension Fund mentioned in section 2 of the Government Employees' Pension Law, 1996—
 - (i) remains such a member; and

- (b) singadluliselwa kuMlawuli ukuze aqedele uphenyo ngesikhalo.
- (3) UMLawuli angasebenzisa noma yimaphi amandla oMlawuli Wezamachweba, ngokoMthetho Wezamachweba Kazwelonke, ukuphenya nganoma yisiphi isikhalo ngokoMthetho othintekayo mayelana nokuziphatha okwenzeke phakathi neminyaka emithathu ngaphambi nje kosuku lokuqala ukusebenza. 5
- (4) Ekusebenziseni igunya ngaphansi kwalesi sihloko, uMkhandlu noma uMlawuli, kuye ngendlela okungaba ngayo, kufanele enze uphenyo, ukulalela noma olunye udaba ngokuhambisana noMthetho othintekayo kube sengathi awuchitshiyelwanga ngokweSheduli yoku-1 yo Mthetho.

Ukulondolozwa okujwayelekile kwemithetho, amalungelo, imisebenzi, izaziso kanye namanye amathuluzi 10

4. (1) Noma yiliphi ilungelo noma ubunikazi obujatshulelwayo noma isibopho esibekwe kunoma yimuphi umuntu ngokwanoma iyiphi imihlinzeko yomthetho ochithiwe, engazange isetshenziswe noma igcwaliswe ngokushesha ngaphambi kosuku lokuqala lokusebenza kufanele kuthathwe njengelungelo elisemthethweni noma ilungelo, noma isibopho esibekwe, lowo muntu ngokwemibandela yanoma iyiphi imihlinzeko eqhathanisekayo yalo Mthetho, kusukela ngosuku okwavela ngalo ilungelo, amalungelo noma isibopho, kuncike emihlinzekweni yalo Mthetho. 15
- (2) Isaziso esinikezwe yinoma yimuphi umuntu komunye umuntu ngokwanoma iyiphi imihlinzeko yomthetho ochithiwe kufanele sithathwe njengesaziso esinikezwe ngokwanoma iyiphi imihlinzeko eqhathanisekayo yalo Mthetho, kusukela ngosuku isaziso esakhishwa ngalo ngaphansi komthetho ochithiwe. 20
- (3) Umqulu, ngaphambi kosuku lokuqala ukusebenza, okhishwe ngokuhambisana nomthetho ochithiwe kufanele uthathwe njengonikezwe ngendlela egculisayo nganoma iyiphi inhloso eqhathanisekayo yalo Mthetho. 25
- (4) Umyalelo onikezwe umhloli, ngokwanoma yimiphi imihlinzeko yomthetho ochithiwe, futhi osebenza ngokushesha ngaphambi kosuku lokuqala, uyaqhubeka nokusebenza, kuncike emihlinzekweni yalo Mthetho.

Imithetho

5. Ngosuku lokuqala ukusebenza, futhi esikhathini esiyizinsuku zokusebenza ezingama-60 ngemuva kosuku lokuqala ukusebenza, uNgqongqoshe angenza noma yimuphi umthetho ohlongozwe eMthethweni ngaphandle kokuhlangabezana nezidingo zenqubo ezibekwe esigabeni sama-54 noma kwenye indawo kulo Mthetho: Kuncike ekutheni uNgqongqoshe useyishicilele leyo mithetho ehlongozwayo kwiGazethi ukuze kuphawulwe ngayo isikhathi okungenani esiyizinsuku ezingama-30 zebhizinisi. 30 35

Ukugqulwa kwesilawuli samachweba

6. (1) Umuntu oqashwe uMlawuli wezamachweba ngaphambi kosuku lokuqala ukusebenza uba ngumsebenzi woMlawuli ngosuku lokuqala ukusebenza.
- (2) Ukudluliselwa kwabasebenzi kuMlawuli kufanele kwenziwe ngokuhambisana—
- (a) nesigaba se-197 soMthetho Wezabasebenzi, we-1995 (uMthetho 66 we-1995); futhi 40
- (b) nanoma yisiphi isivumelwano esihlanganyelwe esifinyelelwe phakathi koMbuso kanye nezinhlangano zezinyunyana UMkhandlu Womnyango Wezingoxo Zemisebenzi Kahulumeni
- (3) Imigomo nemibandela yesikhundla noma yokuqashwa komuntu ehlongozwe ephuzwini lesi-(2) iyafana nemigomo nemibandela yehhovisi noma yokuqashwa ephakathi kwalowo muntu kanye noMlawuli Wezamachweba ngokushesha ngaphambi kosuku lokuqala ukusebenza, kuncike kunoma yimuphi umuntu nakokunye ukunqunywa yiBhodi kanye nesiKhulu esiPhezulu esiPhethe ekuseenziseni igunya labo elibekwe kulo Mthetho. 45 50
- (4) Noma yimuphi umuntu odluliselwe ngokwesigatshana soku-(1), owathi—
- (a) ngaphambi kosuku lokuqala, owayeyilungu leSikhwama Sempesheni Yabasebenzi Bakahulumeni okukhulunywe ngaso esigabeni sesi-2 soMthetho weSikhwama Sempesheni Yabasebenzi Bakahulumeni, we-1996—
- (i) uhlala eyilungu kanjalo; futhi 55

- (ii) is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service mentioned in section 8 (1)(a)(i) of the Public Service Act; and
 - (b) as an employee or office holder of the Ports Regulator before the effective date, had any rights to participate in or vested rights in terms of any pension scheme or medical scheme, retains those rights, subject to any further determination by the Board in the exercise of its authority set out in this Act. 5
- (5) A person referred to in sub-item (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the effective date, and any proceedings against such a person, that were pending before the effective date, must be disposed of as if this Act had not been enacted. 10
- (6) As of the effective date—
- (a) all movable assets of the Ports Regulator before the effective date, or movable assets of the State that were used or which were at the disposal of by the Ports Regulator before the effective date become the property of the Regulator; 15
 - (b) all contractual rights, obligations and liabilities of the Ports Regulator are vested in the Regulator;
 - (c) all financial, administrative and other records of the Ports Regulator, including all relevant documents in the possession of that office before the effective date, are transferred to the Regulator; 20
 - (d) the term of office of any person serving as a member of the Board of the Ports Regulator immediately before the effective date expires; and
 - (e) the Board of the Ports Regulator is dissolved.

Interim administrative arrangements for Council

7. (1) From the effective date— 25
- (a) the Minister must provide direct secretariat and other administrative support sufficient to enable the Council to perform its functions in terms of this Act;
 - (b) the Council may supplement that support from its own resources; and
 - (c) at any time, the Council may request the Minister to adjust the formula for the sharing of revenue between the Regulator and the Council, contemplated in section 51(2)(b), to provide the Council with adequate budget resources to finance its own secretariat and administrative functions, on the grounds that— 30
 - (i) the Council has sufficient workload to justify doing so, or
 - (ii) that the support provided by the Minister in terms of paragraph (a) is inadequate. 35
- (2) If the Minister accepts a request from the Council in terms of sub-item (1)(c), the Minister must issue a notice terminating the effect of this item as from the beginning of the Council's next financial year.

- (ii) unelungelo lokuthola impesheni kanye nezinzuzo zomhlalaphansi njengokungathi lowo muntu usesikhundleni esibekwe esigabeni sezisebenzi zikahulumeni esishiwo esigabeni sesi-8 (1)(a)(i) soMthetho Wezemisebenzi Kahulumeni; futhi
- (b) njengomsebenzi noma umnikazi wehhovisi loMlawuli wamachweba ngaphambi kosuku lokuqala ukusebenza, wayenamalungelo okubamba iqhaza noma amalungelo anawo ngokwanoma yiluphi uhlelo lwempesheni noma uhlelo lwezokwelapha, ugcina lawo malungelo, kuncike kunoma yikuphi okunye ukunquma kweBhodi. ekusebenziseni igunya layo elibekwe kulo Mthetho. 5 10
- (5) Umuntu okukhulunywe ngaye ephuzwini loku-(1) uhlala encike kunoma yiziphi izinqumo, ukuqulwa kwecala, izinqumo kanye nezinqondiso ezisebenza kulowo muntu ngaphambi kosuku lokuqala, kanye nanoma yiziphi izinyathelo ezibhekiswe kulowo muntu, ebezilindle ngaphambi kosuku lokuqala ukusebenza, kufanele ilahlwe sengathi lo Mthetho awushaywanga. 15
- (6) Kusukela ngosuku lokuqala ukusebenza—
 - (a) zonke izimpahla ezigudlukayo zoMlawuli Wezamachweba ngaphambi kosuku lokuqala ukusebenza, noma izimpahla zoMbuso ezigudlukayo ezasetshenziswa noma ezazilahlwe uMlawuli Wezamachweba ngaphambi kosuku lokuqala lokusebenza zibe impahla yoMlawuli; 20
 - (b) wonke amalungelo enkontileka, izibopho kanye nezikweletu zoMlawuli Wezamachweba kuthweswe uMlawuli;
 - (c) wonke amarekhodi ezezimali, okuphatha kanye namanye oMlawuli Wezamachweba, okuhlanganisa yonke imibhalo efanele ekulelo hhovisi ngaphambi kosuku lokuqala ukusebenza, adluliselwa kuMlawuli; 25
 - (d) isikhathi sokuba sesikhundleni sanoma yimuphi umuntu osebenza njengelungu leBhodi loMlawuli wamachweba ngokushesha ngaphambi kokuphela kosuku lokusebenza; futhi
 - (e) Ibhodi Lokulawula Amachweba lihlakaziwe.

Amalungiselelo esikhashana okuphatha oMkhandlu

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- 7. (1) Kusukela ngosuku lokuqala ukusebenza—
 - (a) uNgqongqoshe kufanele ahlinzeke ngehhovisi likanobhala eliqondile kanye nokunye ukwesekwa kwezokuphatha ngokwanele ukuze uMkhandlu ukwazi ukwenza imisebenzi yawo ngokwalo Mthetho;
 - (b) uMkhandlu ungangezelela lokho kusekwa ngezinsiza zawo; futhi 35
 - (c) nganoma isiphi isikhathi, uMkhandlu ungacela uNgqongqoshe ukuba alungise indlela yokwabiwa kwezimali phakathi koMlawuli noMkhandlu, okuhlongozwe esigabeni sama-51(2)(b), ukuze uhlinzeke uMkhandlu ngemithombo yesabelomali eyanele ukuze uxhase ngezimali. ihhovisi likanobhala kanye nemisebenzi yokuphatha, ngezizathu zokuthi— 40
 - (i) uMkhandlu unomsebenzi owanele wokwenza lokho; noma
 - (ii) ukwesekwa okuhlinzekwe nguNgqongqoshe ngokwendima (a) akwanele.
- (2) Uma uNgqongqoshe esamukela isicelo soMkhandlu ngokwesigatshana soku- (1)(c), uNgqongqoshe kufanele akhiphe isaziso sokuqeda ukusebenza kwalolu shintsho kusukela ekuqaleni konyaka wezimali olandelayo woMkhandlu. 45