

***THE PROVINCE OF
GAUTENG***



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PROCLAMATION • PROKLAMASIE

PROCLAMATION 101 OF 2019

THE PREMIER

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

PROVINCIAL COMMISSIONS ACT, 1997 (ACT NO. 1 OF 1997)

APPOINTMENT OF COMMISSION OF INQUIRY INTO MINIBUS TAXI-TYPE SERVICE VIOLENCE, FATALITIES AND INSTABILITY IN THE GAUTENG PROVINCE IN TERMS OF SECTION 127(2)(e) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996, AND SECTION 2(1) OF THE PROVINCIAL COMMISSIONS ACT, 1997

WHEREAS section 127(2)(e) of the Constitution of the Republic of South Africa, 1996 ("Constitution"), read with section 2(1) of the Provincial Commissions Act, 1997 (Act No. 1 of 1997) ("Act"), vests the power to appoint a commission of inquiry in the Premier;

AND WHEREAS the minibus taxi-type service industry transports more than 75% of commuters during the daily peak hour period, which makes it the most dominant mode of public transport used by commuters in the Province;

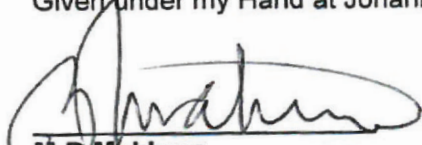
AND WHEREAS the minibus taxi-type service industry continues to be submerged in violence, which despite efforts by law enforcement agencies and the Government in general, continues to worsen and fatalities continue growing in taxi associations and the general public;

AND WHEREAS the Gauteng Provincial Government considers it in the public interest that the underlying reasons giving rise to, and fuelling, the minibus taxi-type service violence, fatalities and instability be enquired into and investigated,

NOW THEREFORE, I, Malemolla David Makhura, Premier of the Gauteng, after consultation with the Member of the Executive Council responsible for Public Transport and Road Infrastructure in the Province—

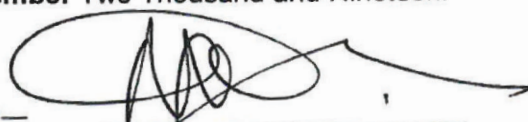
- (a) in terms of section 127(2)(e) of the Constitution, read with section 2(1)(a) of the Act, appoint a Commission of Inquiry ("Commission") into the Minibus Taxi-Type Service Violence, Facilities and Instability in the Province and, for that purpose, appoint Justice Jeremiah Buti Shongwe, Messrs Rudolph Lungile Mabece and Hlula Msimang, as members of the Commission;
- (b) in terms of section 2(1)(e) of the Act, designate Justice Jeremiah Buti Shongwe as the Chairperson of the Commission ("Chairperson");
- (c) in terms of section 2(1)(d) of the Act, appoint Ms Dimakatso Mamiki Selesho as the Secretary to the Commission ("Secretary");
- (d) in terms of section 2(1)(b) of the Act, define the Terms of Reference of the Commission as set out in Part A of the Schedule; and
- (e) in terms of section 2(1)(c) of the Act, make the Regulations applicable to the Commission as set out in Part B of the Schedule.

Given under my Hand at Johannesburg this 12th day of **September** Two Thousand and Nineteen.



M D Makhura
Premier: Gauteng Province

Countersigned by—



P J Mamabolo, MPL
MEC Public Transport and
Road Infrastructure

SCHEDULE

Part A

TERMS OF REFERENCE OF THE COMMISSION OF INQUIRY INTO THE MINIBUS TAXI-TYPE SERVICE VIOLENCE, FATALITIES AND INSTABILITY IN THE GAUTENG PROVINCE

1. The Commission is hereby appointed in terms of section 127(2)(e) of the Constitution, read with section 2(1) of the Act, with the Terms of Reference, generally, to enquire into and investigate, make findings, report on and make recommendations concerning the following aspects:
 - (a) the underlying reasons for the recurring conflict, violence, fatalities and instability within the minibus taxi-type service industry within the Gauteng Province;
 - (b) the activities of operators, legal and illegal, as well as any other group or person that contributes to the recurring conflict, violence, fatalities and instability;
 - (c) the provision of minibus taxi transport services authorised by both interchange based and direct route-based permits and licences;
 - (d) how the minibus taxi business model, including the formation and management of minibus taxi associations, contributes to the recurring conflict, violence, fatalities and instability; and
 - (e) any other matters that are ancillary or related to the matters set out in paragraphs (a) to (d).
2. The Commission must make findings with reference to—
 - (a) the number, nature, locality and pattern of incidents of conflict, violence, fatalities and instability involving different sections of the public, both as victims and suspects, in the Gauteng Province;
 - (b) indications whether the incidents are related to criminal activities or any other internal or external influences or factors which may be considered relevant;
 - (c) the outcome of any police investigation and prosecution of the incidents, including the number of successful prosecutions of the perpetrators; and
 - (d) the perceptions of the different sections of the public in respect of the underlying reasons of the incidents of the recurring conflict, violence, fatalities and instability and the effectiveness of policing thereof by the police service in the Gauteng Province.
3. The Commission must make recommendations on—
 - (a) how to address the underlying reasons giving rise to the recurring conflict, violence, fatalities and instability within the minibus taxi-type service industry in the Gauteng Province, including how the regulatory environment, including the actions of minibus taxi-type service associations and their respective internal management and operations, may be changed or better regulated to minimise or eliminate conflict, violence, fatalities and instability in the industry; and
 - (b) any other matter of whatsoever nature that the Commission considers necessary or appropriate in relation to its terms of reference.
4. The provisions of the Act are applicable to the Commission, subject to such amendments or exemptions as may be specified by the Premier by proclamation in the Provincial *Gazette*.
5. The Department of Roads and Transport in the Gauteng Province is, in accordance with section 11 of the Act, responsible for the funding of the Commission. This includes—
 - (a) the remuneration, allowances and transport expenses of the Chairperson, other members of the Commission, the Secretariat and other personnel involved in the Commission; and
 - (b) related expenses, disbursements and costs, including costs associated with the hiring of venues for and the recording and transcription of the hearings.
6. The venue and dates on which the sittings of the Commission will be held will be determined by the Secretary.

7. The Commission may, where appropriate, refer any matter regarding the conduct of any person for prosecution or further investigation to the appropriate agency department or body.
8. The Commission must complete its work within a period of six months from the date of publication of this Proclamation and submit its report and recommendations in writing to the Premier.
9. Any person or section of the public, including community structures, members of relevant communities and of the public, minibuss taxi-type service associations, drivers, operators, conductors and rank marshals, who or which is in possession of information which may be relevant to the matters to be enquired into by the Commission and wishes to give evidence before the Commission is invited to contact the Secretary to arrange the date and time when it may testify before the Commission. Contact details of the Secretary will be announced in due course.
10. All organs of State and departments are required to assist and co-operate fully with the Commission.
11. These Terms of Reference may be added to, varied or amended from time to time by the Premier.
12. The Commission may, in accordance with section 10 of the Act, determine rules for its own guidance on the conduct and management of its proceedings.

Part B

REGULATIONS APPLICABLE TO THE COMMISSION OF INQUIRY INTO THE MINIBUS TAXI-TYPE SERVICE VIOLENCE, FATALITIES AND INSTABILITY IN THE GAUTENG PROVINCE

1. In these Regulations, unless the context otherwise indicates—
 - "**Chairperson**" means the Chairperson of the Commission of Inquiry into the Minibus Taxi-Type Service Violence, Fatalities and Instability in the Province of Gauteng;
 - "**Commission**" means the Commission of Inquiry into the Minibus Taxi-Type Service Violence, Fatalities and Instability in the Province of Gauteng;
 - "**document**" means any book, pamphlet, record, list, circular, plan, placard, poster, publication, drawing, photograph or picture, in any format, including electronic versions, that are capable of being read;
 - "**enquiry**" means the enquiry conducted by the Commission;
 - "**member**" means a member of the Commission;
 - "**minibus taxi-type service**" has the meaning assigned to that phrase or expression in the National Land Transport Act, 2009 (Act No. 5 of 2009);
 - "**officer**" means a person in the full-time service of the Gauteng Provincial Government or State who has been appointed or designated to assist the Commission in the execution of its functions; and
 - "**premises**" includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft; and
 - "**the Act**" means the Provincial Commissions Act, 1997 (Act No. 1 of 1997);
2. The proceedings of the Commission must be recorded and transcribed in the manner determined by the Chairperson.
3. (1) Any person appointed or designated to take down or record the proceedings of the Commission in shorthand or by mechanical means or to transcribe such proceedings which have been so taken down or recorded must, at the outset, take an oath or make an affirmation in the following form:
 - "I, AB, declare under oath / affirm and declare—
 - (a) that I shall faithfully and to the best of my ability take down / record the proceedings of the Commission of Inquiry into the Minibus Taxi-Type Service Violence, Fatalities and Instability in the Province of Gauteng in shorthand / by mechanical means as ordered by the Chairperson of the Commission; and
 - (b) that I shall transcribe fully and to the best of my ability any shorthand notes / mechanical record of the proceedings of the said Commission made by me or by any other person."
- (2) No shorthand notes or mechanical record of the proceedings of the Commission may be transcribed except by order of the Chairperson.
4. Any person employed in the execution of the functions of the Commission, including any person referred to in regulation 3(1), must assist to preserve secrecy with regard to any matter or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions except, insofar as the publication of such matter or information is necessary for the purposes of the report of the Commission, and every such person, except the Chairperson, any member or any officer, must, before performing any duty in connection with the Commission, take and subscribe before the Chairperson an oath of fidelity and secrecy in the following form:
 - "I, AB, declare under oath / affirm and declare that except insofar as it is necessary in the performance of my duties in connection with the functions of the Commission of Inquiry into the Minibus Taxi-Type Service Violence, Fatalities and Instability in the Province of

Gauteng or by order of a competent court, I shall not communicate to any person any matter of information which may come to my knowledge in connection with the inquiry of the said Commission, or allow or permit any person to have access to any records of the Commission, including any note, record or transcription of the proceedings of the said Commission in my possession or custody or in the possession or custody of the said Commission or any officer".

5. No person may communicate to any other person any matter or information which may have come to his or her knowledge in connection with the enquiry of the Commission, or allow or permit any other person to have access to any records of the Commission, except insofar as it is necessary in the performance of his or her duties in connection with the functions of the Commission or by order of a competent court.
6. The Chairperson may designate one or more knowledgeable persons to assist the Commission in the performance of its functions, in a capacity other than that of a member.
7. The Chairperson or an officer generally or specially authorised thereto by the Chairperson must administer an oath to, or accept an affirmation from, any witness appearing before the Commission.
8. Subject to the provisions of regulation 9, any proceedings of the Commission must, in accordance with section 3(2) of the Act, be open to the public.
9. The Commission may direct that the public or any member thereof not attend any proceedings of the Commission or any portion thereof, where this is justified in the interests of—
 - (a) the conduct of the proceedings or the consideration of the matter in question;
 - (b) the protection of the privacy of any person or of the confidentiality of any information relating to that person warrants the hearing to be conducted in-camera;
 - (c) the proper conduct of the hearing requires it; or
 - (d) any other reason that would be justifiable in civil proceedings in a High Court.
10. Where, at the time of any person giving evidence before the Commission, members of the general public are, or have been, excluded from attendance at the proceedings of the Commission, the Chairperson may, at the request of such a person, direct that no person may disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.
11. A witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination by such person because the Chairperson deems it necessary in the interest of the functions of the Commission.
12. A witness appearing before the Commission may, in the discretion of the Chairperson and in such manner as may be determined by the Chairperson, be assisted by an advocate or an attorney.
13. An officer, attorney or advocate designated thereto by the Chairperson may be present at the hearing of evidence at the inquiry and may adduce evidence and arguments relating to the enquiry.
14. Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's enquiry may adversely affect any existing, instituted or pending legal proceedings or any investigation instituted in terms of any law, evidence which is relevant to such legal proceedings or investigation must be dealt with by the Commission in such a manner as not to adversely affect such legal proceedings or investigation.
15. The Chairperson, or any member or any officer may, with a warrant, for the purposes of the enquiry, at all reasonable times enter and inspect any premises and demand and seize any document which is on such premises.

16. No person may, without the written permission of the Chairperson—
 - (a) disseminate any document submitted to the Commission by any person in connection with the enquiry or publish the contents or any portion of the contents of such document; or
 - (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.
17. No person may, except insofar as is necessary in the execution of the Terms of Reference of the Commission, publish or furnish any other person with the report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission for publication: Provided that the Premier may authorise publication of any such report or part thereof.
18. No person may insult, disparage or belittle the Chairperson or any member of the Commission or prejudice the proceedings or findings of the Commission.
19. Any person who—
 - (a) wilfully hinders, resists or obstructs the Chairperson, any member or any officer in the exercise of any power contemplated in regulation 15; or
 - (b) contravenes a provision of regulation 5, 10, 16, 17 or 18, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months, or both such fine and imprisonment.

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