

NATIONAL TAXI ALLIANCE

Comment on the draft Constitution of the new Taxi Body (prepared by the Constitution Drafting Team of the National Conference Preparatory Committee and dated June 24, 2001)

SUMMARY OF THE MAIN FEATURES OF THE CONSTITUTION

1. It is not a federal Constitution as stated in various places.
2. It is a constitution that centralises all decision-making power in the hands of the central “National Management Council” and “National Executive Committee”.
3. It incorrectly states that affiliates will be autonomous.
4. It takes no cognisance of the existing function-based structures in the industry and deliberately sets out to replace them with area-based structures.
5. The Preamble speaks of peace but the structure set out in the Constitution is bound to be disruptive and cause even more trouble as it does not seek to bring the existing bodies together on a voluntary, non-coercive federal basis, leaving them autonomous but encouraging them to work together for mutual benefit.
6. It provides for elected officials to hold office for four years.
7. It is confusingly set out and has three different meanings for the word “COUNCIL”.
8. It uses the words “proportional representation” but does not apply the term in providing for attendance at National Conferences.
9. The Preamble and Objectives contain wording that is not consistent with the normal aims and objectives of a representative industry body, such as references to the conducting of business by the body.

PREAMBLE (Pg 3)

The difficulties with the proposed Constitution start with the preamble, which makes statements that are not consistent with the views of the majority of taxi owners, operators and drivers:

Quote:

Reaffirming the industry commitment to the principles enshrined by the National Taxi Task Team (NTTT) and its seriousness in transforming itself into a viable business entity.

Firstly, the reference to the NTTT should be omitted, as all the stakeholders did not accept it. Secondly, the taxi “industry” is exactly that – an industry – and it cannot and should not attempt to transform itself into a “viable business entity”. The industry consists of thousands of competing firms and individuals, all providing services to the commuter. A “business entity” has a single owner, and if it is the only firm operating in its field it consists of an unhealthy monopoly, which is not in the interests of the consumer. Any attempt to transform the “taxi industry” into a “business entity”, apart from causing the strife and violence we are trying to avoid, would be bad for the consumer.

Quote:

An industry that operates within the principles of the free enterprise system where the rights of individual and/or collective taxi industry operators are protected and competition with other modes has been regulated.

The nature of the “free enterprise system” has been misstated. In a free enterprise system competition between modes or competitors of any kind is not regulated. What is regulated by law, is mechanical safety of vehicles, proficiency of drivers, compliance with the rules of the road and property rights in taxi ranks. Otherwise there is free, open and peaceful competition without government intervention.

Quote:

An industry that will continuously promote Formalisation and Regulation.

It is not clear what this sentence means, but if it means increasing government interference in the taxi industry, and government domination of the taxi industry, it is not in the best interests of the industry, and in the final analysis, of the commuter.

Quote:

An industry that fuels the sustained growth (and) business diversity of the taxi industry and black economic empowerment in general.

Again, it is not clear what this sentence is intended to convey. By “business diversity” does it mean that taxi owners should deliberately diversify out of the taxi business to the extent of phasing out completely? If so, it is not a statement that should appear in a taxi industry Constitution. The objective of the national taxi industry organisation should be

to look after the interests of the industry in its dealings with government and others, and nothing else? Whatever individual taxi owners, or groups of owners, should wish to decide about their own businesses, should be entirely in their own hands.

Quote:

We shall strive to promote a democratic culture in the manner in which associations and all participatory structures are managed.

This statement is not consistent with the structure and organisation of the taxi industry as described in the proposed Constitution. Adoption of the Constitution as it now reads would lead to the disempowerment of associations and the transfer of total autocratic power to the national body. The result would be anything but democratic.

Quote:

We believe that this could only be achieved under the leadership of a united taxi industry at all levels.

It is not totally clear from the rest of the preamble what the new taxi body is intended to achieve and there is certainly no indication as to why, whatever is intended, could only be achieved under the leadership of a “united taxi industry at all levels”. The statement is particularly problematical in light of the statements that follow.

Quote:

Our experience has taught us that to achieve these goals we will have to carry out the following tasks:

- *Provide a business model that will enable the industry to successfully attain its business objectives;*

The normal purpose of a national industry body is to represent the interests of its members in negotiations with government and other organised bodies such as trade unions. The purpose is generally not to become engaged in business of any kind that may conflict with the activities of its individual and constituent members.

- *Act as a catalyst, reinforce and encourage private sector partnership(s), as well as public/private partnerships;*

Again, a national body has to take care that it does not infringe on the activities of its constituent members.

- *Organise and mobilise taxi operators, and build effective primary, regional, provincial and national structures founded on commercial basic business principles;*

Voluntary associations (not for gain) normally represent the interests of industries and the appropriate organisational structure is that of a voluntary association. They do not “organise” their members.

- *Co-ordinate, encourage, co-operate and unify taxi industry structures under the umbrella of the South African Federal Council of Taxi Associations [SAFCOTA];*

This is the only place in the document where any indication is given of creating an umbrella body to represent the interests of existing organisational structures. The term “federal council” is used, which implies a federation of existing taxi associations. Yet the Constitution that follows would have the effect of atomising the industry, sweeping away the existing interest-group federations of taxi associations, and transferring all power to a single autocratic national council that would hold office for four years.

- *Combat the divisions and unhealthy competition amongst the operators and structures of the taxi industry.*

Competition in an economy is always healthy. What is unhealthy is when there is no competition, when government gives special privileges to some sectors, when government itself is one of the competitors and accords itself special privileges, or when competition does not take place in a peaceful manner.

DEFINITION(S) (Pg 5)

The definitions are not as helpful as they should be in helping the reader to understand the structure and functions of the various bodies created in the body of the Constitution. In particular, the word Council is not defined and the reader remains uncertain whether the word “Council” means the organisation as a whole e.g. section 2. “The Character of the Council” describes the whole organisation and section 3. “Legal status” has the same meaning. Yet objective 27 is to “Raise, acquire and administer the funds of the COUNCIL in such manner as the COUNCIL may deem advisable ...” This sentence appears to be first using the word COUNCIL to mean the whole organisation and then secondly, to be referring to a decision-making body within the organisation. This usage needs to be clarified.

Item (g) and (h) under definitions, referring to “Mother body” and the “Forum of Presidents” are not referred to anywhere in the Constitution and their status and functions need to be described in the body of the Constitution.

Clause 5. PURPOSE AND OBJECTIVES (Pg 7)

Objective 5. Represent and negotiate national deals for the benefit of the taxi industry at all levels;

This objective is not clear. The word “deal” is normally used to describe a business transaction, which is not seen to be a proper function of the national taxi organisation, which should concern itself with policy and regulatory matters affecting the industry.

Objective 8. Promote the establishment and growth of taxi co-operatives and other appropriate forms of business entities suitable to the taxi industry;

The comment regarding objective 5 also applies to this objective.

Objective 10. Organise, negotiate, co-ordinate and or provide various services at local, regional, provincial and national levels to members and the taxi industry in general;

This objective needs clarification to ensure that the “services” do not infringe on the activities of member associations or individual members.

Objective 15. Co-operate with other like-minded organisation(s) to advance the interest(s) of the public transport industry;

The word “public” is often used to describe a service provided by government. To avoid confusion the word should be deleted or clarified.

Objective 19. Enquire into the administrative and/or financial affairs of affiliates;

Objectives are intended to describe the functions to be performed to promote the interests of the members of the organisation and should not refer to enquiries that must necessarily be of a disciplinary nature. The place for such a statement is under the power to be given to the governing body of the organisation.

Clause 7 – MEMBERSHIP (Pg 9)

7.1 (b) says, “*the membership of the COUNCIL shall comprise of all provincial structures of the taxi industry*”.

This means that only provincial structures can become members of the “COUNCIL” and that the existing national sectoral bodies cannot become members. The intention of the drafters of the Constitution therefore appears to be to force the taxi industry into a geographical area-based structure, with local, regional and provincial bodies in the place of the current associations which represent long distance, metered and local taxi associations i.e. representation by area is to take the place of representation by function.

Clause 9 – AUTONOMY OF AFFILIATES (Pg 12)

Affiliates remain autonomous bodies governed by their own constitution(s), subject to clause 7.2 above, but they must abide by this Constitution and the policies of the COUNCIL.

The wording of this clause is what is known as double-speak. The fact is that:

- (1) Clause 7.2.1 requires that affiliates submit their “constitutions and Rules and Regulations” to the “COUNCIL” for approval and may thereafter make no alterations without the written approval of the “COUNCIL”.
- (2) Clause 7.2.2 says that the “articles and Rules of all Affiliates” may not be inconsistent with those of the COUNCIL and all Associations admitted to membership of the affiliates (i.e. local and regional associations joining the

- provincial associations) shall observe the “articles and Rules” of the COUNCIL,
and
(3) Clause 7.2.3 says that “the provisions of this COUNCIL’S Constitution and Rules shall override those of an Affiliate ...”

To then make the statement that “affiliates remain autonomous” is reckless in the extreme as it serves to deceive those who are unfamiliar with constitutions or do not take the trouble to read them carefully.

Clause 10 – NATIONAL CONFERENCE (Pg 12)

The third paragraph of this clause says, *“The National conference shall consist of 800 delegates elected according to the system of proportional representation”*.

However, clause 10.2 (b) says that each affiliate in good standing is entitled to send 88 delegates to the National conference. If proportional representation is to be properly applied, then the number of delegates from a province with a greater number of associations or members should be entitled to send more delegates than a province with a smaller number. The use of the words “proportional representation” is therefore not correct. If the intention is that proportional representation should be applied within a province in some manner in selecting the fixed number of delegates the notion remains confusing.

Clause 10.2 – COMPOSITION (Pg 13)

Sub-clause (a) of clause 10.2 states that “The COUNCIL must be composed of...” which raises further confusion as to what the word “COUNCIL” means. It provides us with a third meaning of the word and in this instance refers to the National Office Bearers and the delegates from affiliates who are entitled to attend the National Convention.

Clause 12 – PERIOD OF OFFICE (Pg 16)

The National Office Bearers hold office for (a) period of (4) four years and thereafter until the next election, provided that no person shall stand for more than two (2) terms of office.

Electing office bearers for a period exceeding one (1) year is highly unusual for a national representative body elected for the purpose of representing the interests of the members of an industry. It is totally undemocratic and contrary to the sentiments expressed in the Preamble.

Clause 13 – NATIONAL MANAGEMENT COUNCIL (Pg 16)

There is uncertainty in the mind of the reader of the Constitution whether the National Management Committee (MANCO) is what its name implies. It is not described in the definitions. The body meets “at least only once a year, except in the years in which a National Conference is held”, and it is difficult to understand the justification for describing it as a “management committee”. The establishment of such a body was conceivably considered necessary to justify the four-year terms of the National Office Bearers.

The role played by provincial representatives in the affairs of MANCO is unclear. Although clause 10.1 (b) (vi) describes the nomination and election of the National Management Council clause 13.2 (ii) speaks of “five National Conference endorsed delegates from each affiliate” and not of the “members of the National Management Council elected by the National Conference”.

It is noticeable that the affiliates are not given the final say over who is to represent them. Clause 10.1 (b) (i) gives the National Conference the power to decide on the “credentials of delegates to the COUNCIL (should this read National Conference?). In terms of clause 13.1 (b)(i) MANCO also considers and decides on “credentials of delegates”. Can it therefore be assumed that delegates nominated by affiliates could be declined by either of these bodies? No detailed provision is made in the Constitution for any such vetting process.

Clause 14 – NATIONAL EXECUTIVE COMMITTEE (Pg 18)

The National Executive Committee (NEC) is also not described in the definitions. From the description of its powers and duties it would appear be the actual management committee of the new taxi body.

The body could conceivably be made up as follows:

1. The eight (8) National Office Bearers.
2. Nine (9) delegates, one from each province represented on MANCO (the Constitution does not say how these delegates are to be elected or appointed).
3. Nine (9) Provincial Executive Officers with no voting rights.
4. One (1) National Executive Officer with no voting rights.

The Constitution does not say whether the National Executive Committee (other than the national and provincial Executive Officers) or the National Office Bearers will serve in an honorary capacity or whether they will be paid executives.

Clause 15 – PROVINCIAL COUNCIL/CHAMBER (Pg 21)

In terms of clause 15.1 (b) the provincial bodies are subordinate to MANCO. On the top-down basis written into the Constitution, MANCO may “(i) Designate powers to the Provincial Conference; (ii) Confirm, amend (amend?) or reverse its decisions; (iii) Limit its powers and duties by way of resolution”.

The wording makes it very clear that there is no intention to have a federation of representative bodies and there is every intention to have power centralised in the national body, entrenched for at least four years unless removed by a Special Conference or a majority vote of MANCO in the case of the National Executive Committee.

35.2 ORGANISATIONAL STRUCTURE CHART

The organisation as described in the Constitution bears very little resemblance to the structure depicted in the chart appearing on Page 37.