

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1)
OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

ILLEGAL CONVERSIONS OF TOYOTA QUANTUM PANEL VANS INTO MINI BUS TAXIS

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**REPORT ON A SYSTEMIC INVESTIGATION INTO THE ILLEGAL CONVERSION OF
GOODS CARRYING TOYOTA QUANTUM PANELVANS INTO PASSENGER
CARRYING MINIBUS TAXIS TO TRANSPORT MEMBERS OF THE PUBLIC FOR
REWARD.**

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LIST OF ACRONYMS

ABSA	Amalgamated Banks of Southern Africa
ACEO	Acting Chief Executive Officer
ADV	Advocate
CEO	Chief Executive Officer
CFO	Chief Financial Officer
Constitution	The Constitution of the Republic of South Africa No. 108 of 1996
DG	The Director-General of the Province
DOT	Department of Transport
DTI	Department of Trade and Industry
E-NATIS NUMBER	National Traffic Information System Number
FNB	First National Bank
IVID	International Vehicle Identification Desk
LOA	Letter of Authority
MIB's	Manufacturer, Importer and Builders
NAAMSA	National Association of Automobile Manufacturers of South Africa
NLTA	National Land Transportation Act No. 5 of 2009
NRCS	National Regulator for Compulsory Specification
NTA	National Taxi Alliance
NRTA	National Road Traffic Act No. 93 of 1996
NRTR	National Road Traffic Regulations, 2000
OLAS	Operating Licensing Administration System
PPA	Public Protector Act 23 of 1994
PPSA	Public Protector South Africa
RTMC	Road Traffic Management Corporation
SABRIC	South African Banking Risk Information Centre
SABS	South African Bureau of Standards
SANS	South African National Standards
SANTACO	South African National Taxi Council

SIU	Special Investigations Unit
TFM	TFM Industries (PTY) Ltd
TFS	Toyota Financial Services
TRP	Taxi Recapitalization Programme
TRIPS	Trade Related Aspects of Intellectual Property Rights
TSAM	Toyota South Africa Motors
VIN	Vehicle Identification Number

Executive Summary

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector Act, 1994.
- (ii) The report communicates my findings and the appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, following a systemic investigation into the illegal conversion of goods carrying Toyota Quantum panel vans into passenger carrying mini bus taxis to transport members of the public.
- (iii) The investigation was conducted following a complaint lodged by Mr Hennie De Beer on 9 March 2012, in both his private capacity as well as in his representative capacity of several taxi owners affected by the conversions of the panel vans. Various other complaints regarding similar conversions of Toyota Quantum Panel Vans into passenger carrying taxis were received during the Public Protector's National Stakeholder Consultative Dialogue in 2012 and various provinces raised similar issues, with taxi owners complaining that their vehicles have been impounded, or are declared by traffic authorities to be unfit for utilization as passenger carrying minibus taxis after it was established that the vehicles could only be licensed to carry 3 passengers.
- (iv) In essence, the allegations by Mr De Beer were that, structural defective and non-homologized Toyota Panel vans were modified by Manufacturer, Importer and Builders (MIB's) and converted into taxis to carry passengers despite the fact that they were not safe for that purpose as well as the fact that they did not meet the South African Government's safety regulations, national standards and requirements in respect of specifications and as such, they should not have been legally permitted to operate as taxis.

- (v) Allegations were that the operation of the illegal converted panel vans into minibus taxis in South African roads contributed to various motor vehicle accidents as these vehicles were alleged to be structurally unsafe and unstable when driving at a high speed, exceeded the rear axle load and lead to increased tyre bursts causing accidents. These accidents are alleged to be serious and fatal for commuters in the vehicles as the seats are not securely anchored to same and tear loose during accidents.
- (vi) Further thereto, it has been alleged that, various financial institutions in the country such as Absa, Nedbank, Standard Bank, Wesbank and South African Taxi Finance as well as Toyota Financial Services have financed these illegal converted vehicles to unsuspecting buyers thus contributing to the risk of death or injury to commuters despite the fact that the manufacturer, Toyota Japan and South Africa declined to authorize these illegal conversions of their product as it did not adhere to Toyota's high international safety standards.
- (vii) However, it was also alleged that in some instances, the purchasers of these vehicles were aware of the scheme where a buyer purchases a panel van for conversion into a minibus taxi and as such, those buyers participated in the scheme under the pretext that it was a cheaper option and/or due to unavailability of purpose built Toyota Quantum minibus taxis, they would be sold panel vans for conversion into passenger carrying minibus taxis.
- (viii) Despite having been warned of the scheme as early as around 2005, banks in South Africa continued to finance these vehicles knowing that they are dealing with unsophisticated clients and when confronted by clients alleging misrepresentation and/or failure to pay, legal action would be taken by the banks against those clients resulting in the vehicles being repossessed and sold again on auction to other unsuspecting buyers. During the investigation, it also transpired that the complainant, Mr Hennie De Beer had firsthand knowledge of the scheme as he was also working for ABSA bank and he knew the financing of these vehicles whilst working for the bank.

- (ix) The Department of Transport (DoT), is also alleged to have continued to illegally register these vehicles as minibus taxis that could carry about sixteen (16) passengers despite the registration certificates indicating that it is officially allowed to carry only three (3) passengers as it is a panel van.
- (x) During or about August 2012 and in the pursuit to conduct a systemic probe with a view to establishing the extent of the problem, the Public Protector South Africa conducted stakeholder consultations throughout the country. The stakeholders who were identified as being relevant to assist in the investigation were;
- i. The Departments of Transport (DoT) and Trade and Industry (DTI);
 - ii. The South African Bureau of Standards (SABS);
 - iii. The National Regulator for Compulsory Specifications (NRCS);
 - iv. Toyota Japan / South Africa;
 - v. The South African National Taxi Council and the National Taxi Alliance;
 - vi. Financial institutions such as; ABSA, Nedbank, Standard Bank, Wesbank, S A Taxi Finance and Toyota Financial Services;
 - vii. The National Automobile Manufacturers of South Africa; and,
 - viii. The Road Traffic Management Corporation.
- (xi) **Based on the analysis of the complaints as well as media reports covering motor vehicle accidents in which these vehicles were involved and information that came to my attention from various sources, the following issues were identified to inform and focus the investigation:**
- a. **Issue 1**-Whether the DoT failed to take effective and efficient action to ensure the safety of commuters travelling in and to protect taxi owners from the consequences of purchasing Toyota Quantum Panel Vans that have illegally been converted into minibus taxis.

- b. **Issue 2-** Whether the NRCS in its official capacity as a National Regulator responsible for the maintenance of compulsory specifications, failed to take effective and efficient steps to ensure that all MIB's comply with the compulsory specifications as envisaged by the NRCS Act so as to restrict the illegal conversions of these vehicles into minibus taxis.
- c. **Issue 3-** Whether the SABS conducted adequate quality assurance tests when it was requested to do so by the DoT in 2009 so as to make a determination whether or not the Toyota Quantum Panel Vans that have been illegally converted into mini bus taxis could be retrofitted to ensure the safety of commuters using these vehicles.
- (xii) The investigation was conducted through correspondence and interviews with the complainant and the relevant stakeholders; meetings with relevant officials from the DoT, SANTACO, Toyota SA, SABS, NRCS, NTA, NAAMSA, Financial institutions such as; ABSA, Nedbank, Standard Bank, Wesbank, S A Taxi Finance and Toyota Financial Services and the RTMC. All relevant documents were analysed and approximately, all relevant laws, and related prescripts applied.
- (xiii) Key laws taken into account to help the Public Protector determine if there had been maladministration by the organs of state who were involved in the matter were principally those imposing administrative standards that should have been upheld by the DoT, the DTI the SABS, the NRCS, the RTMC and perhaps the Provincial Traffic and Licensing departments in the Republic. Those are the following:
- i. **The National Road Act, 1996** which provides for road traffic matters which shall apply uniformly throughout the Republic;
 - ii. **The National Road Traffic Regulations, 2000** which provides guidelines for the implementation of the provisions of the National Road Act.
 - iii. **The National Land Transport Act 2009** which furthers the process of transformation and restructuring the national land transport system.

- iv. **The National Regulator for Compulsory Specifications Act, 2008** which provides for the administration and maintenance of the compulsory specifications in the interests of public safety and health as well as promoting the rights and obligations of government to protect the health and safety of the public.
- v. The legislation also seeks to establish a Regulator for compulsory specifications who will be responsible for the administration and maintenance of compulsory specifications and the implementation of a regulatory and compliance system for compulsory specifications for market surveillance by the National Regulator in order to ensure compliance with the compulsory specifications.
- vi. **The Standards Act, 2008** which seeks to provide for the development, promotion and maintenance of standardisation and quality as well as render conformity assessment services and provide for the continued existence of the SABS as the peak national standardisation entity in the Republic for the development and maintenance of national standards. The SABS is a statutory body that was established in terms of the Standards Act, 1945 (Act No. 24 of 1945) and continues to operate in terms of the Standards Act, 2008 (Act No. 8 of 2008) as the national standardization institution in South Africa which is mandated to develop, promote and maintain South African National Standards as well as promote quality in connection with commodities, products and services.
- vii. **The Road Traffic Management Corporation Act, 1999** which *inter alia* seek to provide in the public interest, facilitation and law enforcement in respect of road traffic matters by all spheres of government and to promote safety, security, order, discipline and mobility on the South African roads as the public transport and road traffic regulation are of vital importance to the development, safety and quality of life of the citizens of the Republic.

(xiv) Having considered the evidence obtained during the investigation weighed against the relevant regulatory framework as well as the complaints received when weighed against the standard that was expected to be upheld by the Department of Transport and all interested parties, I now make the following findings.

1. **Issue 1- Regarding whether the DoT failed to take effective and efficient steps to ensure the safety of commuters using the Toyota Quantum panel vans that have been illegally converted into minibus taxis as a mode of transportation and whether the DoT failed to protect owners of these vehicles from the consequences of purchasing Toyota Quantum Panel Vans that have been illegally converted into minibus taxis:**

- (aa) The allegation that the Department of Transport failed to take effective and efficient steps to ensure the safety of commuters using the Toyota Quantum panel vans that have been illegally converted into minibus taxis for transport and whether it failed to protect taxi owners from the consequences of purchasing Toyota Quantum Panel Vans that have been illegally converted into minibus **is substantiated**;
- (bb) The department was warned about the practice and the existence of these vehicles in 2009 but failed to timeously ensure that all vehicles that were illegally converted and not brought in to be corrected were impounded and thus taken off the road as envisaged in section 87 of the National Land Transport Act.
- (cc) Toyota South Africa became aware of the practice as far back as 2005. Other than warning its motor vehicle dealership through written correspondence and in one particular instance allowing conversions under certain conditions, it does not appear to have taken any severe steps to ensure that its product is not tempered with. This is despite the fact that all parties are in unison that these vehicles are dangerous and many accidents that they were involved in had been fatal.

- (dd) The evidence and information obtained during the investigation demonstrates that, although the DoT took some action, it was ultimately not efficient and effective to ensure the safety of commuters from injuries sustained when these vehicles are involved in motor vehicle accidents and to protect taxi owners from purchasing these vehicles and the effects thereof;
- (ee) However, the department took a progressive step and removed the 1986 illegal converted panel vans off the roads as they were not rectified through the approved retro fitment process. With regard to the illegal converted Toyota Quantum panel vans, the DoT delayed to rectify the matter despite having known about it in 2009. It was only in March 2018 that steps were taken to remove these hazardous vehicles from the South African roads.
- (ff) It was unlawful for these illegal converted vehicles that were not rectified through the approved retro fitment process to be licensed and be registered in the e-NaTiS system as minibus taxis that are used to carry up to sixteen (16) passengers for reward whilst these vehicles are registered and should be licensed as panel vans by DoT.
- (gg) There are gaps when these illegal converted vehicles are captured in the e-NaTiS as the information, ID numbers and VIN-numbers are captured in the Registering Authority and there are chances that fraud could take place where these illegal conversion can be licenced and registered to up to 16 seaters instead of three (3) seaters in the e-NaTiS systems.
- (hh) The DoT conceded that the possibility is that the front-line staff at the licensing offices altered information on the e-NaTiS system, thus opening the system to manipulation and fraudulent activities.

2. Issue 2- Regarding whether the NRCS in its official capacity as a National Regulator responsible for the maintenance of compulsory specifications failed to take effective and efficient steps to ensure that all MIBs comply with the compulsory specifications as envisaged by the NRCS Act so as to restrict the illegal conversions of these vehicles into minibus taxis.

- (aa) The allegation that the NRCS failed to take effective and efficient steps to ensure that all MIBs comply with the compulsory specifications as envisaged by the NRCS Act in order to restrict the illegal conversion of these vehicles into passenger carrying minibus taxis for reward **is substantiated**.
- (bb) It is the primary role and function of the NRCS to administer and maintain compulsory specifications in the interests of public safety and health as well as promoting the rights and obligations of government to protect the health and safety of the public.
- (cc) In its capacity as the Regulator for compulsory specifications, the NRCS is also responsible amongst others, for the implementation of a regulatory and compliance system for compulsory specifications for market surveillance by the National Regulator in order to ensure compliance with the compulsory specifications. The NRCS therefore serves as the inspectorate of MIBs.
- (dd) The NRCS was advised by Toyota SA of the practice of the conversion of Toyota Quantum Panel Vans and the manufacturer's disapproval of the practice. As the national regulator, the NRCS failed to take steps to stop the practice resulting in vehicle accidents which had severe consequences to commuters who were using these vehicles as their daily mode of transport. It is admitted that four hundred and thirty six (436) vehicles were retrofitted to make them safer but the NRCS failed to conduct surveillance to ensure the safety of the public.

- (ee) Therefore, the NRCS failed to ensure that there are no MIBs who are illegally converting these vehicles for use as passenger carrying minibus taxis. This is despite the provisions of section 17 of the NRCS Act which bestows upon the NRCS, powers to inspect, search and seize.
- (ff) The DoT and RTMC established that there are 1986 illegally converted panel vans that did not follow the correct process of retro- fitment through TFM.
3. **Issue 3- Regarding whether the SABS conducted adequate quality assurance tests when it was requested to do so by the DoT in 2009 so as to make a determination whether or not the Toyota Quantum Panel Vans that have been illegally converted to mini bus taxis could be retrofitted to ensure safety of commuter using these vehicles.**
- (aa) The allegation that the SABS failed to conduct adequate quality assurance tests on these vehicles as requested by the DoT in 2009 with a view to making a determination whether the illegal converted vehicles could be retrofitted so as to ensure safety of the commuters using them **is substantiated**.
- (bb) The SABS is a national standardisation entity in the Republic that is responsible for the development and maintenance of national standards. They are experts in the field and government and any other applicant relies on the SABS to advise them with regard to the quality of a commodity, product and/or service.
- (cc) The SABS failed to conduct adequate quality assurance tests in respect of the vehicles to ensure that they are safe as commuter vehicles. The tests that were agreed upon between the DoT's technical task team and the SABS were roll over tests, tilt test, the "type 2" brake test and the seat and seat belt anchorage test.

- (dd) The tests were conducted on a static vehicle (stationery) and could not therefore produce conclusive evidence of the state of these vehicles, in particular structural deficiencies which may be caused by among others, cutting of side panels to put in windows and the anchorage of the safety belts on vehicle seats rather than the chassis to ensure that they are not ripped off during motor vehicle accidents.
- (ee) It would have been prudent for the SABS to conduct high speed crash tests on these vehicles so as to induce conclusive reports on how safe would the passengers be when the vehicle has rolled and what happens to the body of the vehicle when it turns on a curve or brakes suddenly and any other tests which they could have considered necessary in the interests of the members of the public who were using these vehicles as a mode of transportation and mostly on a daily basis.
- (xv) **The appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remedying gross negligence, undue delay, improper conduct and maladministration referred to in this report is the following:**
- a. The Minister of Transport to take urgent and appropriate steps to;**
- (aa) Ensure that the department has an extensive updated record of a number of vehicles (illegally converted Toyota Panel Vans into passenger carrying mini bus taxis) that have been retrofitted as part of the identified two thousand three hundred and fifty three (2353) vehicles, as well as the status of all others so as to establish with certainty, the remaining number of vehicles that would still need to be attended to;
- (bb) Reconcile a database of vehicles that were originally admin marked and the current value of those vehicles so as to consider the number of vehicles that will be due for scrapping and such vehicles should with the consent of its owners be duly scrapped and the owners offered scrapping allowances to enable them to acquire roadworthy and authorized vehicles;

- (cc) Verify operator validity by inspecting Operating Licensing Administration System (OLAS) to determine the number of vehicles attached to Operating Licenses and consider making it a prerequisite that a vehicle should be linked to an operating license for it to qualify for a scrapping allowance;
 - (dd) Facilitate a stakeholder engagement by all relevant parties such as TSM, SANTACO, NTA, NAAMSA, NRCS, SABS, Financial Institutions and Taxi Owner representatives so as to make a determination on details of vehicles that will be eligible for scrapping based on the latest statistics; and;
 - (ee) Ensure that there is an investigation conducted into the e-Natis systems manipulation which resulted in the fraudulent registration of these vehicles with a view to identifying perpetrators of these criminal conduct for arrest and prosecution by the Prosecution Authorities.
- b. The Director-General of the Department of Transport to take urgent and appropriate steps to:**
- (aa) Ensure that the measures taken and agreed to with the Minister are implemented;
 - (bb) Through surveillance and monitoring, ensure that there is no Toyota panel van that has been converted into a mini bus taxi to carry passengers that is on the South African Roads.
- c. The Minister of Trade and Industry to take urgent and appropriate steps to:**
- (aa) Harness and foster good, effective and efficient working relations between the NRCS and the SABS with one being the National Regulator responsible for the maintenance of compulsory specifications and the implementation of a regulatory and compliance system for compulsory specifications and the other being a national standardization institution mandated to maintain national standards and ensure quality of commodities, products and services in the interests of the consumers and the people of South Africa.

- (bb) This will ensure that the two entities complement each other in the interests of the members of the public, the people of South Africa and any other applicant who may be in need of their services.

- d. The Chief Executive Officer of Toyota South Africa to take urgent and appropriate steps to:**
 - (aa) To consult with the Minister of Transport with a view to participating in stakeholder engagements aimed at addressing the problem and where possible assist in the identification and removal of these vehicles on the South African roads and cooperate with the department in its endeavours.

- e. The President and Executive Councils of SANTACO, NTA and all other Taxi formations who were affected by the illegal conversions of Toyota Quantum Panel Vans into passenger carrying minibus taxis to take urgent and appropriate steps to:**
 - (aa) To ensure maximum cooperation with the DoT in its quest to resolve the problem and ensure that all its members cooperate and assist in finding a lasting solution to the problem to minimize further loss of lives.

REPORT ON A SYSTEMIC INVESTIGATION INTO THE ILLEGAL CONVERSION OF GOODS CARRYING TOYOTA QUANTUM PANELVANS INTO PASSENGER CARRYING MINIBUS TAXIS TO TRANSPORT MEMBERS OF THE PUBLIC FOR REWARD.

1. INTRODUCTION

1.1. This is my report as the Public Protector in terms of Section 182 (1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and Section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2. The report is submitted in terms of section 8 of the Public Protector Act to:

1.2.1. His Excellency, President Matamela Cyril Ramaphosa;

1.2.2. The Speaker of the National Assembly, Hon. Ms Baleka Mbete, MP;

1.2.3. The Chairperson of the National Council of Provinces, Hon. Ms Thandi Modise, MP;

1.2.4. The Minister of Transport, Dr Bonginkosi Blade Nzimande;

1.2.5. The Minister of Trade and Industry, Dr Rob Davies;

1.2.6. The Director General of the Department of Transport, Mr Chris Hlabisa;

1.2.7. The President of the South African Taxi Council; and

1.2.8. The President of the National Taxi Alliance.

1.3. Copies of the report are circulated to;

1.3.1. All other relevant stakeholders who assisted the Public Protector in the investigation of this matter; and; the complainant, Mr Hennie De Beer.

1.4. This report relates to a systemic investigation into allegations of illegal conversion of goods carrying Toyota Quantum panel vans into passenger carrying mini bus taxis to transport members of the public for reward as well as failure by the Department of Transport to take effective and efficient steps to ensure the safety of commuters travelling in these vehicles and to protect taxi owners from the consequences of purchasing these vehicles.

2. THE COMPLAINT

2.1. On 9 March 2012, a complaint was lodged by Mr Hennie de Beer, in both his private capacity as well as a representative for several taxi owners affected by the conversions of Toyota Quantum goods carrying panel vans into passenger carrying mini bus taxis. I also received similar complaints in connection with allegations of illegal conversions of these vehicles into passenger carrying minibus taxis.

2.2. On receipt of the complaints, the Public Protector deemed it appropriate to engage in National Stakeholder Consultative Dialogues which were held throughout the country in 2012 as it appeared that the problem is not an isolated incident but systemic in nature. During the Stakeholder Consultative Dialogues in various provinces, similar complaints were raised by taxi owners complaining that their vehicles have been impounded, or declared by the traffic authorities to be unfit to be used as taxis after it was established that the vehicle can only be licensed to carry three (3) passengers.

2.3. In his complaint, Mr De Beer stated *inter alia* that;

2.3.1. Structural defective and non-homologized Toyota Panel vans were modified by Manufacturer, Importer and Builders (MIBs) and converted into taxis to carry passengers despite the fact that they were not safe for that purpose as well as the fact that they did not meet the South African Government's safety regulations, national standards and requirements in respect of specifications and as such, they should not have been legally permitted to operate as taxis. The pictures below depicts Toyota Panel Vans which have been illegally converted into passenger carrying vehicles for a fee.



2.3.2. The operation of the illegally converted panel vans into minibus taxis in South African roads contributed to various motor vehicle accidents as these vehicles are alleged to be structurally unsafe and unstable when driving at a high speed, exceeded the rear axle load and lead to increased tyre bursts causing accidents. These accidents are alleged to be serious and fatal for commuters in the vehicles as the seats are not securely anchored to same and tear loose during accidents. The following pictures depict vehicles that were illegally converted into passenger carrying mini bus taxis which were involved in fatal accidents.



- 2.3.3. It has further been alleged that, various financial institutions such as Absa, Nedbank, Standard Bank, Wesbank, South African Taxi Finance as well as Toyota Financial Services have financed these illegally converted vehicles to unsuspecting buyers thus contributing to the risk of death or injury to commuters despite the fact that the manufacturer, Toyota Japan and South Africa declined to authorize the illegal conversions of their products citing that same does not adhere to their high international safety standards of Toyota Japan.
- 2.3.4. It is also alleged that in some instances, purchasers of these vehicles were unaware that they were purchasing illegally converted vehicles while in other cases they were aware and participated in the scheme under the pretext that it was a cheaper option and/or due to unavailability of purpose built Toyota Quantum minibus taxis, they would be sold panel vans for conversion into passenger carrying minibus taxis.
- 2.3.5. Despite having been warned of the scheme as early as around 2005, banks in South Africa continued and still continue to finance these vehicles knowing very well that they are dealing with unsophisticated clients and when confronted by clients alleging misrepresentation and/or failure to pay, legal action would be taken by the banks against those clients resulting in the vehicles being repossessed and sold again on auction to other unsuspecting buyers.
- 2.3.6. The Department of Transport (DoT) is also alleged to have continued to illegally register these vehicles as minibus taxis that could carry about sixteen (16) passengers despite the registration certificates indicating that it is officially allowed to carry only three (3) passengers as it is a panel van.
- 2.4. During or about August 2012 and in the pursuit to conduct a systemic probe with a view to establishing the extent of the problem, the Public Protector South Africa conducted stakeholder consultations throughout the country. During those consultations, the following issues were raised by the participants:

- 2.4.1. The illegal conversion of Toyota Quantum panel vans into minibus taxis by MIBs that are allegedly not authorized to carry out these conversions despite the manufacturer's express refusal to authorize same;
- 2.4.2. The alleged fraudulent issuing of taxi permits and registration certificates by the DoT thus enabling the illegally converted panel vans to operate as taxis;
- 2.4.3. The effect of purchasing the illegally converted panel vans by unsuspecting buyers as well as the concomitant effect of the financial institutions in participating in such an illegal act;
- 2.4.4. The effect of these illegally converted panel vans on accident victims transported as passengers as well as third parties;
- 2.4.5. The alleged corrupt relationship between the government officials and taxi owners who issue operating taxi permits for the illegally converted panel vans;
- 2.4.6. The effect of car dealerships that are selling these illegally converted panel vans to unsuspecting buyers and ordinary persons' inability to ascertain whether or not they have been converted;
- 2.4.7. Prospective taxi owners who unknowingly bought illegally converted panel vans from reputable car dealerships, and that it was only when the operating licenses were due for renewal that they would be informed that they cannot be provided with licenses as they have bought illegally converted panel vans; and
- 2.4.8. The effect of these illegally converted minibus taxis on the lives of taxi owners, commuters as well as their families as in some instances the said illegally converted panel van is their only source of income.

3. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2. Section 182(1) of the Constitution provides that:

“The Public Protector has the power as regulated by national legislation –

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action.”*

3.3. Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4. The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.5. The Public Protector is also bestowed with power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.6. In the constitutional court, (in the matter of ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016)***), Chief Justice Mogoeng stated the following, when confirming the powers the public protector:

- 3.6.1. Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);
- 3.6.2. An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (para 67);
- 3.6.3. Taking appropriate remedial action is much more significant than making a mere endeavor to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);
- 3.6.4. The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (para 69) ;
- 3.6.5. Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (para 70);
- 3.6.6. The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (para 71);
- 3.6.7. Implicit in the words "*take action*" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure and "*action*" presupposes, obviously where appropriate, concrete or meaningful steps.

- 3.6.8. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (para 71(a));
- 3.6.9. She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d));
- 3.6.10. *“Appropriate”* means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (para 71(e));
- 3.7. The Constitutional Court further held that the remedial action taken by the Public Protector has a binding effect, *“When remedial action is binding, compliance is not optional, and whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”*
- 3.8. The DoT is an organ of state and its conduct amounts to conduct in state affairs, and, as a result the matter falls within the Public Protector’s mandate to investigate. The Public Protector’s power and jurisdiction to investigate, report and take appropriate remedial action was not disputed by any of the parties.

4. THE INVESTIGATION

4.1. Methodology

- 4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
- 4.1.2. The Public Protector Act confers on her, the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2. Approach to the investigation

4.2.1. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1. What happened?

4.2.1.2. What should have happened?

4.2.1.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct or to maladministration?

4.2.1.4. In the event of improper conduct or maladministration what would it take to remedy the wrong occasioned by the said improper conduct or maladministration?

4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination made on what happened based on a balance of probabilities. In this particular case, the factual enquiry focused on whether and to what extent the SAPS fulfilled its responsibilities.

4.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department or organ of state to prevent maladministration and prejudice. In this case, key reliance was placed on legislation, prescripts and policies regulating the SAPS's responsibility to protect citizens and prevent violence.

4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of the improper conduct or maladministration.

4.3 Based on the analysis of the allegations contained in the media reports as well as information that came to my attention from various sources, I identified the following issue to inform and focus this investigation:

- 4.3.1 **Issue 1**-Whether the DoT failed to take effective and efficient steps to ensure the safety of commuters using the Toyota Quantum panel vans that have been illegally converted into minibus taxis as a mode of transportation and whether the DoT failed to protect owners of these vehicles from the consequences of purchasing Toyota Quantum Panel Vans that have been illegally converted into minibus taxis.
- 4.3.2 **Issue 2**- Whether the NRCS in its official capacity as a National Regulator responsible for the maintenance of compulsory specifications failed to take effective and efficient steps to ensure that all MIBs comply with the compulsory specifications as envisaged by the NRCS Act so as to restrict the illegal conversions of these vehicles into minibus taxis.
- 4.3.3 **Issue 3**- Whether the SABS conducted adequate quality assurance tests when it was requested to do so by the DoT in 2009 so as to make a determination whether or not the Toyota Quantum Panel Vans that have been illegally converted to mini bus taxis could be retrofitted to ensure the safety of commuters using these vehicles.

4.4 The Key Sources of Information

4.4.1. Documentation

- 4.4.1.1. South African National Standard - Homologation of vehicle models (SANS 10267:2006).
- 4.4.1.2. SABS Test Report – The strength of large passenger vehicle superstructure Roll-over protection (SANS 1563:2005).
- 4.4.1.3. SABS Test Report – Anchorages for restraining devices in motor vehicles (SANS 1430:2005).
- 4.4.1.4. National Automotive Laboratory Test Report – Type II brake test on Toyota Quantum 2.7 Petrol 15 seater mini-bus taxi (Report No: 506B/09).

- 4.4.1.5. Edict of Government – Transport of dangerous goods – Design, construction, testing, approval and maintenance of road vehicles and portable tanks (SANS 1518:2011).
- 4.4.1.6. Report of the Working Committee of the Standing Committee on Community Safety and the Standing Committee on Finance, Economic Development and 2010 World Cup on the investigation of Toyota Quantum Panel vans into taxis, dated 03 December 2010.
- 4.4.1.7. Department of Transport Memorandum to Minister: Recalling of converted Toyota Quantum Panel Vans.
- 4.4.1.8. MINMEC Meeting Progress Report on Illegal Panel Van Conversions.
- 4.4.1.9. International Vehicle Identification Desk (IVID) Panel Van to Taxi conversion report.

4.4.2. Correspondence exchanged;

- 4.4.2.1. A letter of complainant dated 09 March 2012;
- 4.4.2.2. Telephonic and written correspondence with the Complainant;
- 4.4.2.3. Notice in terms of Section 7 (4) of the Public Protector Act to all stakeholders issued on 15 October 2015;
- 4.4.2.4. Submission received from Standard Bank Head of Vehicle and Asset Finance, Mr Keith Dye on 30 October 2015;
- 4.4.2.5. Submission received from the Wesbank Chief Executive Officer, Mr Chris De Kock on 02 November 2015;
- 4.4.2.6. Response letter received from the Chief Director: Technical Infrastructure of Department of Trade and Industry, Dr Tshenge Demana on 30 October 2015;
- 4.4.2.7. Response letter received from Nedbank Managing Executive, Trevor Browse on 28 October 2015 and 27 December 2018 and from the Group Legal Counsel: Litigation and Disputes, Mr Albert Sorgdrager on 15 June 2016;
- 4.4.2.8. Submission received from SA Taxi CEO, Mr Terry Kier on 30 October 2015 and 25 January 2015;
- 4.4.2.9. Response letter received from Road Accident Fund CEO, Dr E Watson on 23 October 2015;

- 4.4.2.10. Response letter received from Office of the State Attorney Pretoria on 16 November 2015;
- 4.4.2.11. Submission received from the General Secretary of National Taxi Alliance, Mr Alpheus Mlalazi on 21 October 2015;
- 4.4.2.12. Submission received from Toyota SA CEO, Dr JJ Van Zyl on 24 August 2012 and from Ms Michelle Rawlinson of Nortons Inc. on June 2016 and Ms Charmaine Reddy dated 23 February 2019;
- 4.4.2.13. Submission received from ABSA General Counsel, Marthinus Van Rensburg on 23 June 2016 and 17 January 2019;
- 4.4.2.14. Submission received from the CEO of Road Traffic Management Corporation, Adv M Msibi on 22 June 2016;
- 4.4.2.15. Submission received from CEO of National Regulator for Compulsory Specifications, Mr Asogan Moodley on 21 June 2016;
- 4.4.2.16. Letter received from Mr Joseph Leotlela, Interim Group Manager of SABS on 03 December 2015 11 July 2016, and from Mr Garth Strachan on 21 December 2018;
- 4.4.2.17. Supboena issued on 6 June 2016 calling upon all stakeholders to appear before the Public Protector for the period 27 to 29 June 2016;
- 4.4.2.18. Subpoena issued on 20 January 2017 to Mr Chris Hlabisa the Deputy Director General, Road and Transport and Mr Mathabatha Monkonyama the Acting Director General of Transport;
- 4.4.2.19. Response letter from the Acting Director General of the Department of Transport dated 3 February 2017, 12 April 2017, 7 February 2018, 2 March 2018, 27 March 2018 and 13 June 2018;
- 4.4.2.20. Documents and information request letter sent to the Acting Director General of the Department of Transport dated 20 February 2017 and 31 January 2018;
- 4.4.2.21. Letter addressed to the Chief Executive Officer of the National Regulator for Compulsory Specification dated 9 February 2018;
- 4.4.2.22. Response received from the Chief Executive Officer of the National Regulator for Compulsory Specification Mr Edward Mamadise dated 14 September 2017, 5 March 2018 and 31 January 2019;

- 4.4.2.23. Letter addressed to the Minister of Transport, Hon Dipou Peters dated 7 March 2017 and 27 March 2017;
- 4.4.2.24. Response from the Minister of Transport, Hon Dipou Peters dated 20 March 2017
- 4.4.2.25. Letter addressed to the Minister of Transport, Dr Blade Nzimande dated 30 October 2018 and 6 February 2019, and;
- 4.4.2.26. Notice in terms of Section 7 (9) of the Public Protector Act to all stakeholders issued on 11 December 2018.

4.4.3. Interviews, Meetings and Inspections *in loco*

- 4.4.3.1. Meeting with the Acting Director-General of the Department of Transport, Mr Mathabatha Mokonyama and the DoT Team on 27 January 2017;
- 4.4.3.2. Meeting with the Chief Executive Officer (CEO) of Toyota SA, Mr Andrew Kirby, General Manager of Toyota Financial Services (TFS), and Mr Thabo Manaka on 19 July 2016;
- 4.4.3.3. Meeting with the Acting Director- General of Department of Transport, Mr Christopher Hlabisa on 29 June 2016;
- 4.4.3.4. Meeting with the President of South African National Taxi Counsel (SANTACO), Mr Phillip Taaibosch on 28 June 2016;
- 4.4.3.5. Meeting with the Secretary General of the National Taxi Alliance (NTA), Mr Alpheus Mlalaza, and all financial institutions representatives (Standard Bank, ABSA, Wesbank, Nedbank and SA Taxi Finance) on 27 June 2016, and;
- 4.4.3.6. Public Protector's nationwide stakeholder engagements and public hearings during 2012.

4.4.4. Legislation and other prescripts

- 4.4.4.1. The Constitution of the Republic of South Africa, 1996;
- 4.4.4.2. The Public Protector Act, 23 of 1994;
- 4.4.4.3. The National Road Traffic Act 93 of 1996;
- 4.4.4.4. National Land Transportation Act 5 of 2009;
- 4.4.4.5. National Regulator for Compulsory Specification Act, No 5 of 2008;

4.4.4.6. Standards Act, 24 of 1945;

4.4.4.7. The National Road Traffic Regulations, 2000;

4.4.4.8. Compulsory Specifications for Motor Vehicles of Category M2 and M3 Gazetted in Government Gazette No 33059 of 1 April 2010, and

4.4.4.9. South African National Standard - Homologation of vehicle models (SANS 10267:2006).

4.4.5. Case Law

4.4.5.1. *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT143/15; CCT171/15) [2016] ZACC 11; (2016) (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016).

4.4.6. Proclamations

4.4.6.1. Proclamation R37 of 2017, Published in Government Gazette 41271 dated 24 November 2017.

5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Issue 1-Whether the DoT failed to take effective and efficient steps to ensure the safety of commuters who utilizes Toyota Quantum Panel Vans that have been illegally converted into passenger carrying mini bus taxis as a mode of transport and to protect taxi owners from the consequences of purchasing these vehicles.

Issues that are Common Cause

It is not disputed that:

- 5.1.1. During or about the year 2005, Toyota Quantum Panel Vans were converted into minibus-taxis illegally. These vehicles did not comply with the requisite safety standards for passenger carrying vehicles.
- 5.1.2. The conversions were in the public domain since 2005 and the DoT attempted to stop the practice in 2009 by appointing a Technical Task Team Committee whose purpose was to investigate the illegal conversions and financing of these vehicles.
- 5.1.3. The Task Team also included representatives of financial institutions, the SABS, NRCS and the taxi industry represented by the South African Taxi Association Council. The Task Team was also tasked to investigate whether the said converted panel vans could be made safer, if it was possible.
- 5.1.4. The Deputy-Director-General: TRA&II of the DoT submitted a Memorandum to the Minister of Transport on 31 December 2009, recommending that all Toyota Quantum Panel Vans that were converted into minibus taxis should be recalled and that the Department should completely prohibit the conversion of goods carrying vehicles into passenger vehicles. This Memorandum was not approved by the then Director-General.
- 5.1.5. The DoT also appointed a Data Gathering Committee and a Law Enforcement Committee relating to the illegally converted panel vans. The Data Gathering Committee established that (in January 2010) 2353 vehicles had been identified as possible illegally converted Toyota Quantum Panel Vans.
- 5.1.6. On 5 February 2010, the Acting Director-General of the DoT submitted a Memorandum to the Minister of Transport recommending, on the basis of the work conducted by the Technical Task Team Committee *inter alia* that:
- 5.1.7. Approval of a process to legalize the illegally converted Toyota Quantum Panel Vans;

- 5.1.8. Approve a media briefing on the process to legalize the illegally converted Toyota Panel Vans;
- 5.1.9. The Memorandum was approved by the former Minister of Transport Hon. Sbu Ndebele, on 11 February 2010.

Issues in dispute

- 5.1.10. The issue for my determination is whether the DoT took effective and efficient steps to ensure that members of the community who use these vehicles are safe and whether the department took the necessary steps to protect taxi owners from the consequences of purchasing these Toyota Quantum Panel Vans that have illegally been converted into minibus taxis.
- 5.1.11. When a new vehicle is manufactured anywhere in the world, it is given a unique vehicle identification number ("VIN") or chassis number, at the source factory. This number is recorded in accordance with guidelines issued by the *World Manufacturers' Index*, which administers the register of every vehicle factory globally.
- 5.1.12. All new vehicle models, whether locally manufactured or imported, are required to conform to the South African compulsory specifications for vehicles of the relevant class (such as panel vans), and in particular the standards affecting safety critical characteristics of the vehicle and its components.
- 5.1.13. The National Regulator for Compulsory Specifications ("NRCS") is the inspectorate responsible for ensuring the compliance of certain classes of vehicles with the relevant compulsory specifications. In order to prove the conformity of a vehicle or vehicle model with relevant compulsory specifications, it is subjected by the NRCS to the process of homologation, which must be completed successfully before a new vehicle is allocated a National Traffic

Information System number ("e-NATiS number"), that permits the manufacturer or importer to offer it for sale.

- 5.1.14. In order to homologate a vehicle, a sample must be supplied for evaluation, supported by a large body of documented evidence provided by the original manufacturer, including inspection and test reports compiled by recognized laboratories or inspection authorities. The evidence must cover the characteristics of the complete vehicle, as well as all components referred to in the applicable standards and codes of practice.
- 5.1.15. The e-NaTiS number is entered into the computerized e-NaTiS System, which is managed by the DoT. No vehicle may be sold or registered and licensed unless an e-NATiS number has been allocated by the NRCS.
- 5.1.16. Once a new Toyota Quantum Panel van is allocated an e-NaTiS number, Toyota South Africa may sell the vehicle. The purchaser becomes the owner of the new panel van when it is delivered to him/her. It is the responsibility of the new owner to register the vehicle in terms of the National Road Traffic Act, 1996 with the relevant authority in his/her name.
- 5.1.17. The registered owner of the Toyota Quantum panel van may in terms of the National Road Traffic Act only have it converted to be used for a different purpose by an MIB that is registered by the DoT.
- 5.1.18. In order for an MIB to be registered the MIB must be inspected and verified by the South African Police Service and the NRCS. An MIB must be issued with a certificate of registration in order to do conversions.
- 5.1.19. The registered MIB is required to submit a sample of a converted Toyota Quantum Panel Van into a minibus taxi to the NRCS in order for it to determine whether the vehicle complies with the compulsory specifications for the relevant class of vehicles that relates to minibus taxis.

- 5.1.20. This determination involves a homologation process in terms of international practice that has to be completed successfully before the converted vehicle is allocated a new e-NaTiS number that permits the owner to register it as a taxi.
- 5.1.21. In South African law, it is It is not a requirement that Toyota as the original manufacturer of the Quantum Panel Van must approve the conversion to a minibus taxi for it to be issued a valid e-NaTiS number and to be registered.
- 5.1.22. The origin of the complaint lodged by Mr De Beer and others is that Toyota Quantum Panel Vans have since its introduction in the South African market during or about 2005, been converted into minibus taxis without conforming to the requirements and specifications prescribed by law.
- 5.1.23. It was noted that the VIN number JTFH is a short wheel base homologated to carry 3 passengers and JTFP is a long wheel base homologated to carry 3 passengers. The one disc reflects seventeen (17) seats for a short wheel base JTFH.
- 5.1.24. The illegally converted panel vans were registered as minibus taxis without valid e-NaTiS numbers issued by the NRCS following the required homologation process. The pictures below depicts license disks for vehicles which were purchased as three (3) seater panel vans but were registered as sixteen (16) seater passenger carrying motor vehicles.



- 5.1.25. In his complaint, Mr De Beer alleged that the DoT facilitated the certification and registration of illegally converted panel vans into passenger carrying minibus taxis which could carry up to sixteen (16) passengers, despite the vehicle being officially registered on the e-NaTiS system as a commercial vehicle that is allowed to carry three (3) passengers.
- 5.1.26. Mr De Beer further alleged that the DoT approved a process to legalize the illegally converted Toyota Quantum Panel Vans by means of a structural upgrade in defiance of the manufacturer Toyota SA/Japan's notice issued in May 2009, advising that it did not approve any conversion of the Quantum Panel Van as it was designed to carry goods.
- 5.1.27. According to Mr De Beer, the DoT failed to conduct structural safety tests, such as roll over protection tests and/or torsional rigidity on a moving converted panel van and at the allowable speed limit, with regard to the possible structural upgrade of the panel van so as to legalize it for use as a minibus taxi. He further stated that the DoT allowed private and unregistered MIB's to conduct these upgrades and that the DoT did not monitor compliance with the law.

- 5.1.28. Mr De Beer stated that, the DoT had not followed the provisions of the *Paris Convention* and the *Trade-Related Aspects of Intellectual Property Rights (TRIPS)* international agreements to which both South Africa and Japan are signatories, in allowing the illegally converted Toyota Panel Vans (manufactured in Japan) to be legalized by means of structural upgrades.
- 5.1.29. It is his allegation that, Toyota SA also failed to timeously ensure that the South African public were made aware of these illegal converted panel vans. He further alleged that the DoT allowed private and unaccredited testing stations and MIBs to conduct these conversions and that DoT did not monitor compliance with the law.
- 5.1.30. The South African National Taxi Council (SANTACO) issued a media statement on 31 July 2009 applauding the initiative taken by SA Taxi Finance to assist members that innocently bought vehicles from “*unscrupulous*” dealers that were illegally converted, in order to make them safe and bring them up to the TRP safety specification. SANTACO called upon all parties, including the SABS and the DoT to work diligently with SA Taxi Finance to bring this about.
- 5.1.31. During the investigation it transpired that the former Minister of Transport, Mr Sbu Ndebele, issued a media statement on 4 August 2009 *inter alia* in connection with illegally converted panel vans that were operating as minibus taxis. He announced that the DoT was investigating the matter.
- 5.1.32. It also stated that, “*These panel vans which have been converted illegally are a danger to the community, the nation as well as the commuter, who is our most important client. In the event of a road crash, the damage and severity of injury in the case of these illegal panel vans transporting commuters is far more severe when compared to a minibus taxi, which complies with the prescribed safety regulations. We are, however, continuing our engagement with the taxi industry and all other stakeholders in this regard. We commend SA Taxi Finance for its commitment towards investing R20 million to try and rectify the situation with regard to non-complaint taxis it had financed*”.

5.1.33. It was further established during the investigation that the former Deputy Minister of Transport, Mr J Cronin, MP, issued a statement at a media briefing held on 5 March 2010 in connection with illegal panel van conversions. The following paragraphs of the media statement are of particular significance:

“Transporting some sixty four percent (64%) of all public transport users in South Africa and providing jobs for an estimated four hundred thousand (400 000) workers, the minibus sector continues to be the backbone of mobility and access for a majority of South Africans. However, it is no secret that the sector is confronted with many challenges.

In addition to the above measures, government has been involved in an ambitious multi-year taxi recapitalization programme (TRP). This involves scrapping older vehicles and subsidizing the acquisition of a new fleet, with enhanced safety specifications.

In the course of last year, however, the Department of Transport became aware that supposedly as part of the TRP process some 2353 panel vans had been illegally converted into passenger-carrying minibuses and their compliance with the new, enhanced safety standards of the TRP was uncertain. In terms of the National Road Traffic Act, Act 93 of 1996, the conversion of commercial vehicles to passenger vehicles is indeed permissible. However, there is a homologation process to be followed in order to render such conversions legal. In the case of the 2353 converted panel vans in question these processes were by-passed.

To address these concerns the DoT established a technical team to establish facts and make recommendations on a way forward. The team comprised of representatives from the Department of Transport, the taxi industry, financial institutions, the South African Bureau of Standards (SABS) and the National Regulator for Compulsory Standards (NRCS).

Based on the outcome of the investigation, the technical team has recommended a process whereby these illegal panel van conversions can be legalized so that we have vehicles that are indeed compliant with TRP standards.

Extensive tests were carried out on these converted panel vans by the SABS in relation to the required TRP safety requirements. These vehicles passed the Type II brake testing, the tilt testing and the roll-over protection tests.

However, the tests established that the seat and seatbelt anchorages failed to meet the strength requirements of the TRP. After testing various seat and seatbelt combinations, an appropriate combination was found which exceeded the minimum requirements of the TRP.

The compliancy test phase of this project has been successfully concluded. From the results of the tests, it is permissible to upgrade the existing panel van conversions by strengthening the seat belt anchorage, in order to ensure compliance with the safety requirements of the TRP.

5.1.34. The media statement further indicated that:

- 5.1.34.1. Upgraded seats and seat mounting rails had been tested and approved by the SABS;
- 5.1.34.2. A sample vehicle was prepared and presented to the NRCS for approval of TRP compliance, which was successful.
- 5.1.34.3. An approved MIB, TFM Industries (Pty) Ltd (TFM), has been granted an e-NaTIS number and all the modified vehicles will have to be registered with that number on the system.
- 5.1.34.4. All of the identified illegally converted vehicles that had not been converted within six months would be impounded.

5.1.34.5. The media statement set out the operational plan for the retro fitment project as follows:

“A call centre is readily available and will be the starting point for any operator who has an illegally converted panel van. It is at this point where it will be established if the vehicle is financed or privately-owned. The relevant financial institution will be contacted to establish the liability of the costs and the requisition of an order number.

The order number will be forwarded to TFM and a booking date and venue will be secured for the necessary retro fitments to take place. The owner will then be contacted and informed of the arrangements.

In the case of a privately owned vehicle, the owner will be expected to cover the costs of the retro fitments and then follow the necessary process to claim back. TFM will maintain its own database and feed back to the centralised call centre on a weekly basis.

It is expected that the service provided by the TFM will be an all-inclusive process of conducting the approved retro fitment as well as the necessary administration to ensure that the vehicles are all registered into e-Natis with the correct information.”

5.1.35. On 12 April 2017, the Acting Director-General of the DoT, Mr Mathabatha Mokonyama submitted a response to the Public Protector's enquiries relating to the complaints under investigation.

5.1.36. He stated that the DoT is against the illegal conversion of panel vans and when the Department got to know about the illegal conversion of Toyota Quantum Panel Vans in 2009, their first reaction was that those vehicles must be removed from the roads.

- 5.1.37. However, the DoT was requested by the taxi industry to assist in resolving the matter, without compromising their business. The DoT had a responsibility to look into the matter.
- 5.1.38. With regard to the process employed by the DoT to legalize the illegally converted Toyota Quantum Panel Vans, he stated that a task team, consisting of representatives from the SABS, NRCS, National Association of Automobile Manufacturers of South Africa (NAAMSA), financial institutions (including SA Taxi Finance) and the DoT was set up to develop a solution to this critical challenge.
- 5.1.39. In this venture, the DoT relied on the experts in the country whose core competence is vehicle testing and homologation, as provided for in section 7 of the National Road Traffic Act, 1996.
- 5.1.40. According to Mr Mokonyama, *“the corrective process focused on the poor anchorage of the seats and the seat belts.*

The floor was strengthened and anchorage bars were welded and bolted on the chassis of the vehicle for extra strength and stability and rigorous testing of many iterations were conducted by the SABS until finally it met the required standards set by the latter.”

- 5.1.41. He explained that the process of retro- fitment was meant only for the 2353 vehicles that were identified as possibly illegally converted Toyota Quantum Panel Vans. The DoT allowed for a six months window period to have retro-fitment completed, after which illegally converted Toyota Quantum Panel Vans that had not been upgraded and registered as minibus taxis would be impounded.
- 5.1.42. He further stated that: *“As an initial point of clarity it will be appreciated if it be noted and corrected in all future references to this investigation, that the Department did not need authorization from Toyota for the process of retro-fitment.*

5.1.43. *The process of modifying a second hand vehicle is legal in terms of the NRTA (National Road Traffic Act). What is required is simple (sic) to follow the correct process of engaging the SABS and NRCS.”*

As indicated, the Department followed the correct available channels to make the unsafe illegally converted vehicles safe and TRP compliant.”

5.1.44. With regard to the allegation that the DoT conducted structural safety tests, such as roll over protection and/or torsional rigidity on a moving converted panel van and at the allowable speed limit, he stated that only a registered MIB may conduct such tests, with the assistance of the SABS. An entity called *TFM Industries (Pty) Ltd (TFM)*, a legally registered MIB, was approached with the assistance of SA Taxi Finance to conduct tests on illegally converted Toyota Quantum Panel Vans in order to determine whether its safety could be improved by means of retro fitment.

5.1.45. These tests were conducted by the SABS in terms of its standards and under the supervision of the NRCS, to ensure compliance with the relevant prescripts. It was determined that the illegally converted Toyota Quantum Panel Vans could be upgraded to Taxi Recapitalization Programme compliant taxis. He further submitted that the monitoring of MIB's is not the function of the DoT, but of the NRCS.

5.1.46. With regard to whether the DoT facilitated the certification and registration of illegally converted panel vans as passenger carrying minibus taxis, despite the vehicle being officially registered on the e-NaTIS system as a commercial vehicle allowed to carry three (3) passengers, he stated that the process of issuing operating licenses is the function of the Provincial “*Operating Licensing Boards*” and not that of the DoT.

- 5.1.47. The registration of vehicles is done at the Registration Authorities of Municipalities. Therefore he submitted that the DoT is not in a position to respond to queries related to the operating licenses and vehicle registrations.
- 5.1.48. With regard the DoT's understanding and interpretation of the *Paris Convention and TRIPS* agreements to which the South Africa and Japan are signatories to, the Acting Director-General stated that these instruments were meant to protect the intellectual property of member states and also that they provide for limitations and exceptions that may be applied in the interest of member states.
- 5.1.49. On 2 March 2018, the Acting Director-General of the DoT, Mr Mathabatha Monkonyama made further submission to the Public Protector and reiterated that, in terms of the National Road Traffic Act (Act 93 of 1996) (NRTA) the conversions of commercial vehicles into passenger vehicles is permissible and when a vehicle is imported into South Africa, it is given a unique 'vehicle identification number'(VIN) or chassis number, which is recorded on e-NaTIS and this should however be done by the manufacture, builders and importers (MIB) duly authorized by the National Regulator of Compulsory Specification (NRCS) of the South African Bureau of Standards (SABS) in terms of section 7 of the NRTA.
- 5.1.50. With regard to the allegation that Toyota informed the DoT, SABS and NRCS in May 2009 that it would not issue letters of authority for its patented panel vans to be converted into passenger carrying vehicles he further submitted that a letter of authority is not a requirement for this type of exercise.
- 5.1.51. With regard to the allegation that in October 2009, Toyota further informed the DoT, its dealers, and other role players like the SABS, NRCS and international vehicle identification desk ("IVID")that it condemns the practice of modifying the panel vans into passenger carrying vehicles , thus against the conversions.

- 5.1.52. Mr Mokonyama responded and submitted that, in the past meetings with the Public Protector, the Toyota statements and standpoint on the conversion of the panel vans has seemingly been interpreted to mean that the DoT and/or Task team had retro fitted the panel vans to be TRP compliant regardless of the loud protestation of Toyota. According to him the retro fitment process to comply with TRP regulations was conducted with Toyota's knowledge and participation as Toyota is a member of NAAMSA which was part of the task team.
- 5.1.53. One of the other areas that I had to consider during this investigation is the access of financial institutions and car dealers to the e-NaTiS system to enable them to determine whether a minibus taxi is in fact a converted panel van. The DoT was requested to advise whether it together with other authorities involved in the sale, financing and registration of minibus-taxis can identify all panel vans that have been converted into minibus taxis. Mr Mokonyama informed me that the dealerships and financial institutions have access to the particulars of each motor vehicle received from the e-NaTiS pertaining to the registration of a motor vehicle.
- 5.1.54. With regard to whether DoT implemented or responded to the recommendations made at public hearings held by the Western Cape Working Committee, the DoT responded and stated that, with regard to the recommendation that the 68 kg per passenger mass applied to passengers is inadequate and should be revisited, the DoT submitted that the proposed amendment to Regulation 232 of the National Road Traffic Regulations was approved by vehicle Technical Committee, as such the 68 kg is amended to 72 kg”
- 5.1.55. Regarding the recommendation that the controls, policies and systems of the DoT, SABS and NRCS should urgently be reviewed, the DoT provided a copy of the Taxi Recapitalization report, as well as the Cabinet statement of 6 December 2017 wherein the Cabinet approved the TRP review and in connection with a recommendation for the DoT to provide an explanation to the Western Cape Provincial Parliament which justifies permitting these converted vehicles to continue operating, despite having been deemed

'illegal', the DoT stated that it does not condone the operation of illegally converted vehicles and law enforcers should remove those vehicles from the roads and that is the competency of the RTMC, Provinces and Municipalities;

- 5.1.56. On 27 March 2018, Mr Mathabatha Monkonyama made further submissions and stated that the department has called an urgent meeting of the Heads of Departments of all provinces (COTO) on 16 March 2018 to address the issue of illegal converted panel vans, and the meeting resolved that a Working Committee should be established with representation from the Department, Provinces, and Road Traffic Management Corporation (RTMC).
- 5.1.57. In this meeting it was also resolved that, the identified panel vans that were illegally converted and not rectified through an approved process must be admin marked immediately, this was to ensure that these vehicles could no longer be licensed and will be identified through law enforcement initiatives and removed off the roads.
- 5.1.58. According to Mr Mokonyama, the RTMC confirmed to them that a total of 1986 vehicles have been admin marked. On 13 June 2018, I received another correspondence from him reiterating that due process was followed in acquiring approval for the retro fitment of illegally converted panel vans.
- 5.1.59. He further stated that, it was also confirmed in the Western Cape Provincial Report that Toyota SA was aware of the process of retro fitment and acknowledged that since these were second-hand vehicles, Original Equipment Manufacturer approval was not required in this instance. He further stated that, the DoT met with Provinces and Road Traffic Management Corporation on 16 March 2016 to deliberate on how to deal with those illegally converted vehicles that were not rectified through the retro fitment process in 2010.

- 5.1.60. It was also stated that, a decision was taken that all such vehicles should be admin marked on e-NaTiS with immediate effect as admin marking on e-NaTiS is a process that blocks the vehicles from having its license renewed. According to the Acting Director General this process was immediately actioned.
- 5.1.61. He further stated that, since the admin marking was implemented in March 2018, the DoT has been inundated with queries from affected operators demanding solutions in this regard and according to him the majority of these operators are recent owners of these vehicles who purchased via auctions or privately from operators who were trying to flog off their problems. According to him these operators claim they were unaware of the irregularity and would opt for the retro fitment if it were available.
- 5.1.62. On 5 July 2018, a meeting was held with Mr Mokonyama so as to engage the Public Protector regarding the identification of these illegal vehicles and admin marking them with a view to ensuring that they are deregistered to prevent them from operating and thus taken off the South African Roads.
- 5.1.63. However, it was agreed that the department should consult all its stakeholders including Taxi Associations, Taxi owners representatives, financial institutions and motor vehicle dealers to consider the lasting solution as well as considering the inclusion of panel vans into the Taxi Recapitalization Programme and/or retro fitment of these illegal converted panel vans.
- 5.1.64. On 27 June 2017, the Deputy Minister of Public Works and former Deputy Minister of Transport, Mr J Cronin, was interviewed. At the interview, he confirmed having supported the approval of the retro-fitment of the illegally converted vehicles hence the signed Memorandum submitted to the Minister of Transport on 5 February 2010. According to Mr Cronin, he relied on the information that was submitted to him by the experts consulted by the DoT.

- 5.1.65. On 12 July 2012, a stakeholder consultative conference was convened to provide a platform for divergent views from all relevant parties and members of the public on the issue of the illegally converted Toyota Quantum Panel Vans into minibus taxis, in particular its impact on the lives of commuters using these vehicles.
- 5.1.66. SANTACO was duly represented by its Secretary General Mr Philip Taaibosch as well as its President, Mr July Msiza. Mr Msiza submitted that SANTACO was formed in 2001 with its primary objectives being the transformation and formalising of the taxi industry in South Africa. According to Mr Msiza, the main purpose of forming SANTACO was to ensure the safety of their passengers in South Africa as well as serving the needs of the communities.
- 5.1.67. Mr Msiza stated that the South African Government introduced a Taxi Recapitalization Programme (TRP) which was developed as a consequence of unsafe taxis that resulted in injury and even loss of life due to vehicle accidents that these unsafe minibus taxis were involved. SANTACO was duty-bound to adhere to the relevant laws to ensure that all minibus taxis comply with the safety standards of the TRP in the interest of the community.
- 5.1.68. Mr Msiza submitted that the taxi industry is an end-user of vehicles manufactured by different manufacturers. Taxi owners are mere consumers as they purchase a vehicle that has been manufactured and went through the NRCS compliance testing process and has accordingly been registered on the e-NaTiS system. Taxi owners therefore regard these vehicles as reliable and safe.
- 5.1.69. On 20 September 2012, SANTACO submitted supplementary information to the Public Protector, detailing the organization and the taxi industry's involvement in the illegal conversion of Toyota Quantum Panel vans into passenger carrying minibus taxis.
- 5.1.70. SANTACO became aware of this practice in 2009. They blamed unscrupulous body builders (MIB's). The taxi industry resolved to provide assistance to the

Government by availing financial resources until all government objectives of curbing this practice were achieved.

- 5.1.71. In addition, so stated SANTACO, they reported this illegal practice to the South African Banks Risk Investigation Centre (SABRIC) for their urgent attention.
- 5.1.72. According to SANTACO, *“the illegal conversion of panel vans into passenger carrying minibus taxis was spearheaded and promoted by fraudulent practices which resulted in financial institutions funding vehicles which purported to be bona fide taxi vehicles, thus enabling the wide spread purchase of illegally converted vehicles.*
- 5.1.73. To remedy the situation, SANTACO implemented measures, which included identifying the illegally converted vehicles and alert the financial institutions that financed them. This was done in order to ensure that these vehicles are not financed by financial institutions. On 28 June 2016, the President of SANTACO, Mr Phillip Taaibosch made a further proposal that all the illegally converted vehicles that are still operating on the South African roads should be impounded and their registration invalidated.
- 5.1.74. A further stakeholder engagement was held on 27 June 2016. The National Taxi Alliance (NTA) made submissions and explained the process of buying a minibus taxi. According to the NTA, when purchasing a vehicle, taxi owners are assisted at a dealer that sells what purports to be a minibus taxi so as to obtain finance from a financial institution, and once approved, the dealership assists the buyer with the registration of the vehicle in the new owner’s name, after which the new owner would obtain an operating license.
- 5.1.75. According to the NTA, taxi owners are not involved in conversions, as they purchase finished products. Mr Mlalazi of the NTA argued that, the DoT should be held accountable for allowing the illegal conversion of Toyota Quantum Panel Vans prior to the *“warning”* issued by Toyota. Subsequent to the warning, so stated the

NTA, they issued a notice to their structures cautioning them to desist from buying converted panel vans but the original Toyota Quantum Minibus Taxis.

5.1.76. Mr Mlalazi further stated that the NTA regarded the plan by DoT to retrofit the illegally converted vehicles as illegal and expensive as it costs between R18 000 and R20 000 to retrofit. He further informed the Public Protector that taxi owners are innocent victims in the matter.

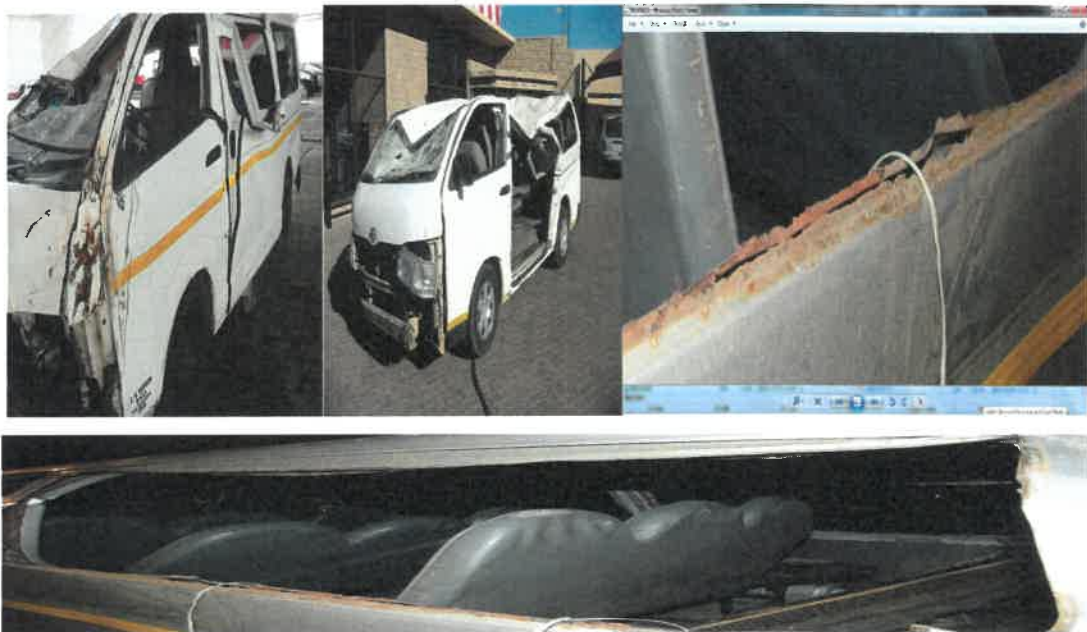
5.1.77. During the investigation, the CEO of Toyota South Africa, Dr J J Van Zyl was also approached. He responded to the Public Protector enquiries on 24 August 2012 and stated that a number of individuals or companies purchased panel vans from dealers.

5.1.78. The buyers of the vehicles would then have them modified by fitting them with seats, windows and safety belts in order to convert them into passenger-carrying minibus taxis, despite the fact that such modifications were not performed in accordance with safety specifications in terms of the amended regulations. These modifications resulted in converted vehicles which did not meet the mandatory safety specifications in a number of respects including *inter alia* that;

5.1.78.1. The panel vans did not have support beams in the chassis for seat mounting points and were therefore not structurally sound to house the seats. In the converted panel vans, the seats are bolted onto the thin floor and in the event of a collision, the seats are often ripped out of the floor. Seatbelts were attached to the seat rather than the body of the vehicle as there were no seatbelt anchoring points in the panel vans. The pictures below depicts seats that have are mounted on the body of the vehicle and ripped off during the taxi accidents;



5.1.78.2. Windows cut into the panel van further weakened the structure of the vehicle; and, there was no structural support in the roof of the vehicle and in the event of a roll-over; the roof of the vehicle could crush on impact. The pictures below depict windows that have been cut as well as roofs that collapsed during motor vehicle accidents in which these vehicles were involved;

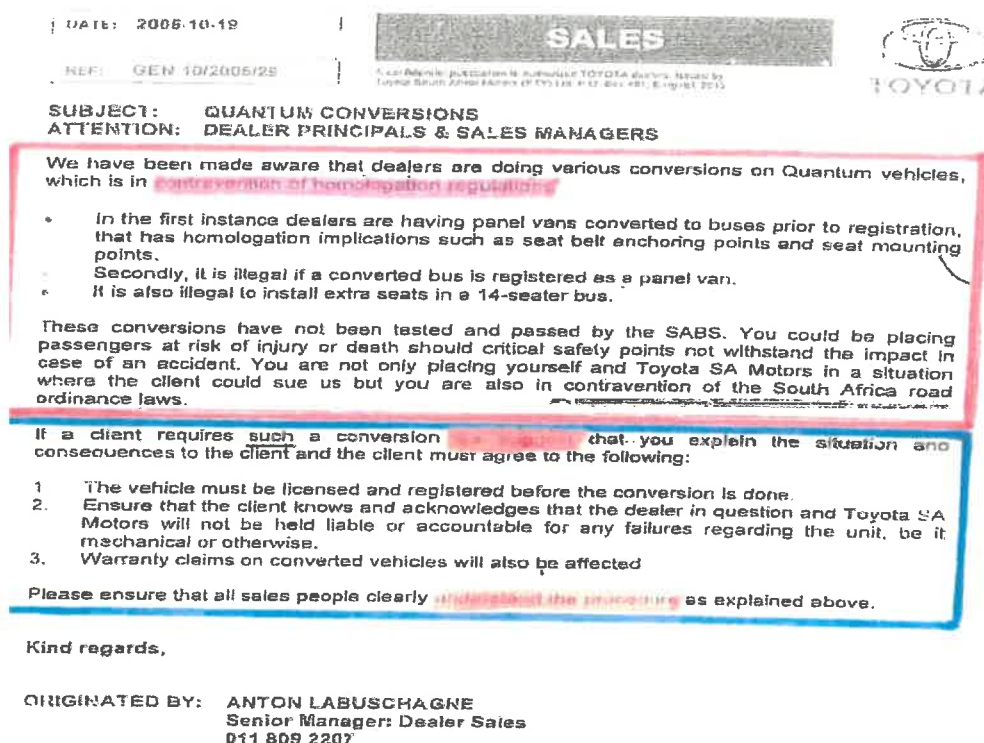


5.1.79. According to Toyota SA, these structurally defective vehicles were sold to prospective taxi owners by a network of vehicle dealers. In order to sell the vehicle as a minibus taxi, it is alleged that the vehicle dealers would arrange for a local vehicle licensing office to change the vehicle description on the e-NaTiS system so as to replace the number of seats from three (3) which was the allowable number in respect of a panel van to accommodate twelve (12) or more passengers, which is the total allowable number in respect of minibus taxis.

- 5.1.80. Dr Van Zyl stated that, these structurally defective vehicles were sold to prospective taxi owners unbeknown to them that they were in fact illegally converted panel vans even though in some cases, taxi operators knowingly participated in the scheme of buying illegally converted panel vans under the illusion that they were less expensive than the original vehicles.
- 5.1.81. Dr J J Van Zyl further stated that the tare/weight of the vehicle was in most instances changed to a higher value and the status of the vehicle on the e-NaTIS system would thus reflect same as a vehicle for “reward” meaning that it could be used as a minibus taxi.
- 5.1.82. In this regard, Toyota SA indicated that it is not possible to determine on the e-NaTIS system which converted vehicles are legal and which have been illegally converted.
- 5.1.83. Dr J J Van Zyl submitted that licensing officers effected changes without proper documentation and in some instances, either out of ignorance of the new requisite specifications provided for in terms of the amended Regulations and the e-NaTIS system requirements or in certain instances or as a result of corrupt activities between the vehicle dealerships and licensing officials.
- 5.1.84. Dr Van Zyl further submitted that Toyota South Africa became aware of the illegal conversions on 19 October 2005 and subsequently issued a notice to all dealers requesting them not to participate in the conversion of panel vans into taxis, as these conversions had not been tested and passed by the SABS, and that it was illegal to register a panel van as minibus taxi.
- 5.1.85. However, the notification to Toyota dealers was not emphatically instructive as it opened a room for manipulation as it read as follows, “*If a client requires such a conversion, we suggest that you explain the situation and consequences to the client and the client must agree to the following:*”

1. *The vehicle must be licensed and registered before the conversion is done.*
2. *Ensure that the client knows and acknowledges that the dealer in question and Toyota SA Motors will not be held liable or accountable for any failures regarding the unit, be it mechanical or otherwise.*
3. *Warranty claims on converted vehicles will also be affected.”*


5.1.86. Below is a copy of the notice issued by Toyota South Africa dated 19 October 2005.



5.1.87. Dr Van Zyl acknowledged that accident reports involving the illegally converted Toyota Quantum Panel Vans show that fatalities are far greater than any other road accidents due to vehicles being structurally unsafe.

5.1.88. He also indicated their concern about the impact that these illegal conversions have on Toyota SA's reputation and the negative impact that it has on the Toyota brand as a consequence of which Toyota's goodwill has been adversely affected.

5.1.89. In another notification issued to Toyota Dealers dated 12 December 2005 under the subject, “*Quantum Panel Van Taxi Modification/Warranty Policy*” Toyota South Africa noted with concern the modification of its Quantum panel van models to that of a passenger carrying minibus taxis. It stated that: “This modification is not acceptable to TSAM and therefore the warranty terms will be cancelled on all vehicles modified as above”. Below is a copy of the notice issued by Toyota South Africa dated 12 December 2005:

DATE: 2005-12-12	WARRANTY	
REF: PCL 11/2005/8	<small>A confidential publication to authorized TOYOTA dealers. Issued by: Toyota South Africa Motors (PTY) Ltd. P.O. Box 491, Germiston, 2012</small>	TOYOTA

SUBJECT: QUANTUM PANEL VAN TAXI MODIFICATION/WARRANTY POLICY

TSAM Warranty has noted with concern the modification of QUANTUM PANEL VAN models modified by agents to that of a passenger carrying taxi.

This modification is not acceptable to TSAM and therefore the warranty terms will be cancelled on all the vehicles modified as above.

The effect of this is that no warranty claims will be allowed on these modified vehicles and the customer will have to carry any possible warranty failure costs.

Thank you for your understanding and co-operation in the above regard.

ORIGINATOR :- J PECK 011 809 2115
APPROVED BY: C E G BREYTENBACH

5.1.90. On 9 October 2008, Toyota SA issued a further notice to all of its dealers confirming that, pursuant to an extensive investigation, Toyota SA has become aware that certain individuals and entities who were purchasing panel vans from dealers with the intention of having them converted into taxis, after which they were being sold to taxi operators as “*registered taxis*”.

5.1.91. In the notice, Toyota SA advised its dealers that they should under no circumstances sell panel vans or similar vehicles to these individuals or entities, which were listed in an annexure to the notice. Toyota South Africa issued a notice on 20 May 2009 to the SABS, the NRCS and the DoT under the heading: “*Letter of Authority – Quantum Panel Van Conversion*”. It stated that:

“Please be advised that Toyota South Africa Motors (TSAM) have not and will not issue letters of approval for: -

Conversions of Toyota Quantum Panel Vans into Toyota Quantum Ses'fikile or other passenger carrying variants. This is due to the fact that the Panel Van is a Commercial vehicle and designed to carry goods" Below is a copy of the notice issued by Toyota South Africa dated 20 May 2009.

TOYOTA

TOYOTA SA MOTORS (PTY) LTD

PO Box 26070, Isipingo Beach 4115
Tel: +27 (0) 31 910 2415
Fax: +27 (0) 31 912 1682

To: South African Bureau of Standards (SABS)
National Regulator for Compulsory Specifications (NRCS)
Department of Transport (DoT)

Date: 20 May 2009

Letter of Authority- Quantum Panel Van Conversion

Please be advised that Toyota South Africa Motors (TSAM) have not and will not issue letters of approval for: -
Conversions of Toyota Quantum Panel Van into Toyota Quantum Ses'fikile or other passenger carrying variants.

This is due to the fact that the Panel Van is a Commercial vehicle and designed to carry goods.

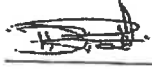
Regards



G. A. Cobb
Senior Manager
Government & Regulatory Affairs
Product Planning



B.G. Govender
General Manager
Product Development & Purchasing



D.R. Powell
Senior Manager
Z Division
Product Planning



N.G. Ward -
Vice President
Product Development & Purchasing

5.1.92. According to Dr Van Zyl, Toyota SA further informed the DoT in October 2009 that it condemned the practice of modifying its Quantum panel vans into passenger carrying minibus taxis. It also informed its dealers and other role players, namely SABS, NRCS and International Vehicle Identification Desk (IVID), that it did not support the conversions. On 9 December 2009, Toyota SA sent a further communication to its dealers, advising them that the only Toyota SA model approved for sale as a minibus taxi in terms of the TRP is the *Toyota Quantum Sesfikile*.

- 5.1.93. Dr Van Zyl further stated that in 2010, Toyota South Africa launched an investigation following new allegations that dealers were continuing to sell panel vans for conversion and on 5 March 2010, Toyota SA issued a press release in which it confirmed that it in no way condones the conversion of Quantum panel vans into taxis, and that the company had clearly communicated this position, since the first incidents of illegal conversions were detected in 2005.
- 5.1.94. Dr Van Zyl further emphasized that the illegal conversions did not comply with standard homologation and/or registration requirements for the vehicle to be used as a commercial taxi to ferry passengers. Toyota SA did not endorse the sale of Quantum panel vans to companies or operators that seek to convert such panel vans into taxis, and that all Toyota dealers had been alerted to this practice. However, Toyota SA had no control over the fate of a vehicle once ownership of same was transferred.
- 5.1.95. Toyota SA noted that tests have been performed by a group of experts from the National Association of Automobile Manufacturers of South Africa (“NAAMSA”) and from the industry, confirming that these vehicles can be converted to TRP compliant taxis.
- 5.1.96. However Toyota SA was adamant in its stance that it was not in any position to approve such conversions, but would provide engineering support to assist in the determination of whether the vehicles could be reconverted according to TRP specifications. Toyota indicated that to date, no engineering support to assist has been requested from them.
- 5.1.97. In a further submission to the Public Protector on 19 July 2016, Toyota SA suggested that it will be in the interest of the public and taxi operators to recall all the illegally converted panel vans, withdraw all the operating licenses from taxi operators and consideration be made to compensate taxi operators.

- 5.1.98. Toyota SA concluded its submission to the Public Protector by identifying regulatory deficiencies that needed to be considered. They proposed that:
- 5.1.98.1. The DoT should take urgent steps to develop clear, concise guidelines, to be used by regulators, traffic law enforcement officials as well as taxi operators, which will assist them in complying with the various pieces of legislation.
 - 5.1.98.2. The various pieces of legislation applicable to the operation of minibus taxis be consolidated in a manner which makes it easily understandable to all.
 - 5.1.98.3. The e-NaTIS system be upgraded and capacitated to enable it to reflect the difference between genuine minibus taxis manufactured and sold as such, panel vans legally converted to minibus taxis (which have been inspected and obtained the relevant regulatory approvals for such conversions), and panel vans sold to be utilised solely as panel vans. This would assist in combatting the illegal conversions.
 - 5.1.98.4. Law enforcement officials seeking to determine whether a particular vehicle operating as a taxi is in fact a legal taxi or illegal conversion could ascertain from the e-NaTIS system whether the taxi is registered on the system as a taxi (including a panel van legally converted into a taxi) or a panel van. In the case of the latter, the law enforcement official would be alerted to the fact that the taxi is an illegally converted panel van and could proceed to impound the vehicle forthwith;
 - 5.1.98.5. Financial institutions approached for finance for a particular vehicle would be in a position to ascertain whether the vehicle is a genuine minibus taxi manufactured as such or, if the vehicle appears to be a taxi but is registered as a panel van, whether it is an illegal conversion. It would therefore be more difficult for a taxi owner to obtain finance for illegally converted vehicles.

- 5.1.98.6. In the event that traffic enforcement officials identify non-compliant and illegally converted Toyota Quantum panel vans being operated as minibus taxis, the vehicle should be impounded.
- 5.1.98.7. On 24 February 2017, I met with representatives of Toyota South Africa at their request to update them on the progress made with the investigation. During this meeting, Toyota SA informed me that there are some conversions that are done on Toyota Quantum Panel Vans that are not related to passenger carrying taxis, for example, where these panel vans are converted and are used as ambulances in South Africa. However, during the investigation, (and when this information about conversions of panel vans to make them ambulances) was verified, it was found not to be entirely correct. The pictures below depicts ambulances that were also involved in fatal accidents with some transporting sickly patients;



- 5.1.99. It must be noted that according to the DoT, they did not need authorization from Toyota for the process of retro fitment and that the process of modifying a second hand vehicle is legal in terms of the NRTA and what is required is to follow the correct process of engaging SABS and NRCS.

- 5.1.100. It is the DoT's submission that, as the authoritative body of standards and the regulator thereof, in South Africa the systems and controls of the SABS and NRCS were used to guide the process of retro fitment. It was submitted by SABS on 6 June 2017 that the view held by DoT that the process of retro fitment did not require authorization by the original manufacturer as the process of modifying a second hand vehicle is legal in terms of the NRTA explains reasons why the retro fitment of conversions were done without the approval of Toyota.
- 5.1.101. It is also the NRCS's submission dated 12 June 2017 that, based on the evidence provided to them and having found such evidence to be in accordance with the acceptance of evidence of compliance criteria by the NRCS, an approval is normally granted to the applicant who in turn has the responsibility of continuity in accordance with the legal safety requirements and current legislation (administered by the NCRS) does not require the "approval/consent" to be given by the original builder of a vehicle to allow modification.
- 5.1.102. Of the two thousand three hundred and fifty three (2353) vehicles, only four hundred and thirty six (436) were identified to be retrofitted have complied and were subsequently retrofitted by TFM. There were also one thousand nine hundred and eighty six (1986) vehicles that were illegally converted, not rectified through the approved retro fitment process and were admin marked by the DoT to ensure that their licenses are not renewed and they be removed off the road. In March 2018, the department took a decision to impound these vehicles.
- 5.1.103. During the investigation, the Public Protector was also made aware that these structurally defective illegally converted panel vans were sold to prospective taxi owners unbeknown to them that they were in fact illegally converted panel vans even though in some cases, taxi operators knowingly participated in the scheme of buying illegally converted panel vans under the illusion that they were less expensive than the original vehicles.

5.1.104. The motor vehicle accidents in which the vehicles were involved were fatal and the pictures below depicts some of the vehicles that were involved in accidents;



5.1.105. During the investigation, I established there was a regulatory gap in the manner in which these illegally converted vehicles were registered as they were registered in the eNatis system as three (3) seater vehicles and yet they were able to be registered to carry up to sixteen (16) passengers in the same e-NaTIS system. The RTMC has established that the 1986 converted panel vans are operating illegally on South African Roads and only 436 complied with the approved retro fitment done through TFM.

5.1.106. The pictures of license discs below illustrates vehicles which were otherwise 3 seater panel vans but were registered as 16 seater passenger carrying minibus taxis. Note must be taken that the VIN Number starting with letters JTFH represents a short-wheel base three (3) seater Toyota Quantum Panel van and JTFF is for a long-wheel base.



5.1.107. On 22 November 2018, I convened a meeting with the Minister of Transport, Dr. Blade Nzimande. The purpose of the meeting was to apprise the Minister about the investigation and to afford him an opportunity to propose realistic and implementable ways of addressing the impasse to the satisfaction of all parties involved as the matter affected communities as well as the owners, drivers and other road users with a view to reaching an amicable and sustainable resolution of the problem in particular because, all parties were in agreement that these vehicles were killing people.

5.1.108. At the meeting Minister Blade Nzimande committed to addressing the problem through resuscitating the Taxi Recapitalization Programme and he also made an offer to incentivize the owners of these vehicles by scrapping the vehicles to enable them to purchase new taxis that comply with all safety requirements of the original manufacturer and any other additional requirements introduced by the DoT.

- 5.1.109. The Minister also conceded to the fact that these vehicles must be taken off the road and the owners be offered an incentive of scrapping them by paying a compensation fee of R124 000.00 (One Hundred and Twenty Four Thousand rand) which would serve as a deposit on purchasing a new authorised and lawfully registered vehicle.
- 5.1.110. He also undertook that his department would also engage with all other stakeholders such as Toyota South Africa and SABRIC to come on board and to assist where they could. He thus proposed to resolve the matter in accordance with the following plan of action:
- 5.1.110.1. **Step 1** : Extensive updated record of the number of vehicles retro fitted as part of the identified 2353 vehicles, as well as the status of all others in order to establish the remaining number that still remains a subject of this investigation;
- 5.1.110.2. **Step 2** : Reconcile data of vehicles originally admin marked and status quo value due to changes of requests such as ambulances that were marked to establish the exact number of vehicles to be considered for Scrapping;
- 5.1.110.3. **Step 3**: Verify operator validity by checking the Operating Licensing administration System (OLAS) to determine how many vehicles are attached to operating licenses. A pre requisite to qualify for scrapping allowance in the Taxi Recapitalization Program is that the vehicle has to be linked to an operating license;
- 5.1.110.4. **Step 4**: Facilitate a stakeholder meeting and invite all affected stakeholders such as Taxi Industry, NAAMSA, SABS, NRCS, Financial Institutions, Toyota and the Dealerships. This meeting will provide details of vehicles that will be eligible for scrapping based on the latest statistics as per step 1 to 3 above, and;

5.1.110.5. **Step 5:** Ensure that the current SIU Proclamation R37- of 2017 in Government Gazette 41271, covers e-NaTIS systems manipulation and identifying perpetrators who registered illegally converted panel vans as passenger carrying minibus taxis.

5.1.111. On 26 November 2018 the Acting Director- General of Transport, Mr Hlabisa confirmed the plan proposed by the Minister and stated that there are two categories of illegal conversions at present, the initially identified 2353 whereby an approved retro fitment process was approved and vehicles illegally converted after this approval. The DoT further stated that any vehicle converted after the approval will not form part of this investigation and they also stated that only 436 vehicles complied with the retro fitment process.

5.1.112. On 11 December 2018, I issued the Department of Transport with a notice in terms of section 7(9)(a) of the Public Protector Act thus affording him a further opportunity to be heard prior to making a final determination on the matter. The section provides that:

"If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances."

5.1.113. Minister Blade Nzimande responded to the notice on 6 February 2019. At the outset, he expressed his and the department's acknowledgment and support for the work of all Chapter 9 Institutions including the Public Protector. In his response, Minister Nzimande confirmed that he stood by the proposals which he made in the meeting of 22 November 2018.

- 5.1.114. He further confirmed that on 21 and 22 January 2019 he engaged provinces throughout the country about the matter and the proposals to resolve same.
- 5.1.115. He reiterated that the DoT is **against** the illegal conversion of panel vans for the purpose of carrying passengers. He stated that the only conversions and/or modifications that are lawful are those done by manufacturers, builder and importers (MIBs) who are duly authorized by the National Regulator for Compulsory Specifications (NRCS) of the South African Bureau of Standards (SABS) in terms of section 7 of the National Road Traffic Act (Act 93 of 1996) (NRTA).
- 5.1.116. According to Minister Nzimande, the DoT was made aware of the illegal conversions of the Toyota Panel Vans into passenger carrying minibus taxis during the course of 2009 and informed the agencies responsible for law enforcement to impound the illegally converted vehicles. The department was then approached and requested by the taxi industry leaders to assist in resolving the situation without compromising their businesses.
- 5.1.117. An intensive remedial process was then undertaken to ensure that the unsafe illegally converted vehicles are modified in a correct manner to ensure compliance with the regulations of the Taxi Recapitalization Programme whilst focusing on passenger safety. Minister Nzimande further stated in his response that, Toyota South Africa agreed that they are agreeable to the process if led and guided by the SABS.
- 5.1.118. He also emphasized that the impoundment of vehicles was painful to owners of these vehicles as it meant taking away bread from their families tables hence the department deemed it appropriate at the time to engage in a retro-fitment exercise to mitigate the pain.

- 5.1.119. According to Minister Nzimande, the Taxi Recapitalization Programme targeted old, unsafe and unroadworthy taxis that had valid operating licenses and this was the understanding when the department agreed to include the illegally converted vehicles.
- 5.1.120. He therefore suggested that these converted vehicles should have operating license and that those that do not have valid operating licenses do not comply with the TRP regulations even if they are part of the 1986 which were already identified in 2009. This is to prevent the situation where illegal operations may be legalized through the TRP as that will expose government to litigation from everybody who is operating on the roads illegally, in particular those operating the “right” or roadworthy vehicles but for one reason or another, do not have operating licenses.
- 5.1.121. He reiterated that the TRP was never terminated and that all the vehicles that qualify for scrapping under the programme will be included in the plan of action that is intended to address the impasse. He stated that the process will include all converted panel vans that are used to carry passengers for reward and re-emphasized that taxi owners would be offered an incentive to scrap their converted panel vans and qualifying owners will be assisted to acquire another vehicle.
- 5.1.122. A further notice in terms of section 7(9)(a) of the Public Protector Act was also issued to the Chief Executive Officer of Toyota SA, Mr Andrew Kirby thus affording him a further opportunity to respond and convince me against making adverse findings against the entity.
- 5.1.123. The TSAM responded on 23 February 2019. With regard to steps taken when TSAM became aware of the illegal conversion of panel vans into minibus taxis; and subsequently issued a notice to all dealers on 19 October 2005.

- 5.1.124. TSAM noted the interpretation by the Public Protector's Office that the notice may have opened room for manipulation by the dealer network. TSAM clarified the issue by stating that it was never its intention and pursuant to becoming aware of such illegal conversions they took action and strongly condemned such practices as demonstrated in paragraph 5.1.84 to 5.1.94 above.
- 5.1.125. TSAM further informed me that, in trying to curb these illegal conversion a Press release was issued on 08 March 2010; wherein TSAM again confirmed that it is in no way condones the conversion of Panel Vans into Taxis and this according to them was clearly communicated since the first incidents of illegal conversion being detected in 2005.
- 5.1.126. TSAM concluded its submission by informing me of its willingness to discuss current activities that would be of benefit to the taxi owners impacted and maintained its stance to support recommendations made by the Public Protector's Office

Application of the relevant law

The Constitution, 1996

- 5.1.127. Section 237 read with section 195(1) (c), (f) and (g) of the Constitution creates an obligation on all state entities to diligently and without delay perform its duties and in doing so be development orientated, accountable and transparent.
- 5.1.128. The DoT thus has an obligation to ensure, through national legislation and programmes, to promote a safe, reliable, effective, efficient, coordinated, integrated and environmentally friendly public transport system by developing norms and standards as well as regulations and legislation to guide the development of public transport for rural and urban passengers.

The National Road Traffic Act (Act 93 of 1996)

- 5.1.129. In terms of the National Road Traffic Act (Act 93 of 1996) (NRTA) the conversion of a commercial vehicle is permissible. When a vehicle is imported into South Africa or manufactured in South Africa it is given a unique 'vehicle identification number' (VIN) or chassis number, which is recorded into the e-NaTIS system.
- 5.1.130. This should however be done by manufacturers, builders and importers (MIB) duly authorised by the National Regulator of Compulsory Specification (NRCS) of the South African Bureau of Standards in terms of section 7 of the NRTA.
- 5.1.131. In terms of the National Road Traffic Act (NRTA), the conversion of commercial vehicles into passenger vehicles is not prohibited, additional regulatory requirements have to be met when a vehicle is converted from a commercial vehicle such as a panel van into a passenger vehicle.
- 5.1.132. The Minister of Transport appoints the Inspectorate of manufacturers, builders and importers in terms of Section 7 of the NRTA. The powers and duties of the inspectorate in relation to the registration and inspection of manufacturers, builders and importers are prescribed in Chapter III, Part II of the *National Road Traffic Regulation (NRTR)*.
- 5.1.133. With regard to how these conversions took place Part IV of Chapter VI of the Regulations published in terms of the National Road Traffic Act No 93 of 1996 ("the Regulations") contains various requirements relating to passenger carrying vehicles, and in addition to a prohibition on the carrying persons in goods compartments for reward, the relevant provisions of the regulations deal with, *inter alia* the following:
- 5.1.133.1. Specifications for the sides and roof of a minibus, midibus or bus;
 - 5.1.133.2. the entrances, exits and emergency exits of minibuses and buses;
 - 5.1.133.3. the mandatory fitment of entrances and exits with doors;

5.1.133.4. seats;

5.1.133.5. goods carried in a bus or minibus conveying persons for reward;

5.1.133.6. windows and windscreen;

5.1.133.7. rear-view mirrors; and

5.1.133.8. the minimum tilt angle.

5.1.134. Section 251 deals with sides and roof of a passenger carrying minibus taxi and provides that:

“(1) No person shall operate, on a public road, a minibus, midibus or bus unless -

(a) the sides of the passenger compartment of a minibus, midibus or bus are enclosed to the height of at least 600 millimetres from the floor with material which is durable and weatherproof;

(b) such minibus, midibus or bus is provided with a weatherproof roof.

(2) No person shall operate a midibus, a minibus or bus operating in terms of an operating licence issued in accordance with the provisions of the NLTTA registered for the first time after 5 October 2001 on a public road, unless the height, along the longitudinal center-line, between the floor and the lowest part of the roof structure of such bus or minibus, between the floor and the ceiling of the lower deck of a double deck bus, as the case may be.

(a) in the case of a bus conveying standing persons, not less than 1,75 metres in the areas where persons may stand in terms of regulation 263;

(b) in the case of a minibus not conveying standing persons, is not less than 1,5 metres; and in the case of a midibus, is not less than 1,75 metres; and

(c) in the case of a rapid transport bus or a rapid transport bus-train is not less than 1,9 metres.

(3) A minibus or midibus operating in terms of an operating licence issued in accordance with the provisions of the NLTTA shall not carry standing persons.”

5.1.135. Regulation 256 of the NRTR deals with seating arrangements in minibus taxis and provides that:

“(1) No person shall operate on a public road a minibus, midibus or bus operating in terms of an operating license issued in accordance with the provision of the NLTTA unless the driving seat of such minibus, midibus or bus is adjustable and has a partition immediately behind it and is so placed as to afford the driver ample space for controlling the minibus, midibus or bus.

(2) Subject to subregulation (3), no person shall operate on a public road a minibus first registered on or before 4 September 2006, operating in terms of an operating license issued in accordance with the provision of the NLTTA, unless a seat provided for a passenger in such minibus has-

- (a) a backrest of which the -
 - (i) top shall be at least 350 millimetres from seat level;*
 - (ii) bottom shall be not more than 200 millimetres from seat level; the width, including the frame, shall be at least 340 millimetres, for every passenger for whom seating accommodation is provided on the seat;**
- (b) a seat height from the floor or footrest of such seat at seat level of at least 250 millimetres, except where a seat is positioned over the wheel arch where no limit shall apply;*
- (c) a seat depth from the front of the seat to the front of the backrest of at least 340 millimetres;*
- (d) a seat width in accordance with regulation 233(2);*
- (e) in the case of a seat facing a partition or similar obstruction, a horizontal distance between the front of the backrest of such seat at seat level to such partition or obstruction of at least 570 millimetres;*
- (f) in the case where seats face each other, a horizontal distance between the fronts of the backrests of such seats at seat level of at least 1 200 millimetres;*
- (g) in the case where seats face in the same direction, a horizontal distance between the front of the backrest of any such seat, at seat level, and the back of the backrest of the seat in front, of at least 570 millimetres.*

- (3) *Where in subregulation (2) a reference is made to a maximum or minimum dimension, a tolerance of 10 millimetres above any such maximum and below any such minimum shall be permissible.*
- (4) *No seat in a bus shall face an entrance or have a side of such seat opposite an entrance, unless a rail or partition is provided between such seat and entrance: Provided that a rail may be fixed to the seat if the side of, such seat faces an entrance.*
- (5) *Every seat in a minibus, midibus or bus shall be securely fixed to such minibus, midibus or bus.*
- (6) *Subject to subregulation (3), no person shall operate any minibus, midibus or bus, first registered after 04 September 2006, operating in terms of an operating licence and issued in accordance with the provision of the NLTTA, unless a seat provided for a passenger in such minibus, midibus or bus has -*
 - (a) *a backrest of which the -*
 - (i) *top shall be at least 600 millimetres from seat level; the width, including the frame, shall be at least 400 millimetres at seat level, and the top may be tapered to a width of more than 250 millimetres; or if the seat design incorporates an integral headrest, top may be tapered to a width of 200 millimetres, for every passenger for whom seating accommodation is provided on the seat;*
 - (b) *a seat height from the floor or footrest of such seat to seat level of at least 400 millimetres, except where a seat is positioned over a wheel arch where no such limit shall apply ;*
 - (c) *a seat depth from the front of the seat to the front of the backrest of at least 400 millimetres ;*
 - (d) *a seat width in accordance with regulation 233(2);*
 - (e) *in the case where a seat faces a partition or similar obstruction, a horizontal distance between the front of the backrest of such seat at seat level to such partition or obstruction of at least 600 millimetres; Provided that in the case of a rapid transport bus or rapid transport bus-train the*

pitch measured from one part of a seat to the same part of the seat in front at seat level shall be at least 730 millimetres;

- (f) in the case where seats face each other , a horizontal distance between the fronts of the backrests of such seats at seat level of at least 1 300 millimeters; Provided that in the case of a rapid transport bus or rapid transport bus-train it shall be at least 1 460 millimeters.*
- (g) in the case where seats face in the same direction, a horizontal distance between the front of the backrest of any such seat, at seat level, and the back of the seat in front, of at least 600 millimeters; Provided that in the case of a rapid transport bus or rapid transport bus-train this shall be at least 730 millimeters.*
- (h) seats and anchorages that meet the requirements of SANS 1429 "Strength of seats and their anchorages " or SANS 1564 'The strength of seats (and their anchorages) of large passenger buses.*

5.1.136. Regulation 258 of the NRTR provides that windows and windscreens of minibus taxi operating for reward and provides that:

"(1) A minibus or bus operating for reward:

- (a) shall have a continuous row of windows on the left and right hand side of the passenger compartment and such windows, other than the windows of entrance and exit doors and the first and the last side window, shall each have a frame, in the case of;*
 - (i) a minibus, of not less than 345 millimeters by 450 millimeters; and*
 - (ii) a bus of not less than 450 millimeters by 450 millimeters;*
- (b) shall have an overall window area of not less than 25 percent of the floor area of the passenger compartment;*
- (c) shall have windows which can be opened to the same extent so that the total area of the open spaces shall be not less than five percent of the floor area of the passenger compartment, other than in the case of a bus with a system of forced ventilation induced by mechanical means, whether such bus is stationary or in motion; and*

- (d) *may have other windows in addition to those referred to in paragraphs (a), (b) and (c).*
- (2) *At least every alternate window in each side of a minibus or a bus operating for reward, other than a bus having a system of forced ventilation induced by mechanical means, whether such bus is stationary or in motion, shall be capable of being opened.*
- (3) *No window in a bus operating for reward shall be capable of being opened in such a manner that a person seated in a normal position is able to put his or her elbow out of the window.*
- (4) *Every window-pane, windscreen and transparent partition of a minibus or bus operating for reward shall be maintained in a sound, unbroken and clear condition”.*
- 5.1.137. The Minister of Trade and Industry, Dr Rob Davies under section 13(1) (a) of the National Regulator for Compulsory Specifications Act 5 of 2008, withdrew the compulsory specifications for Motor Vehicles of Category M2/3 and replaced it with the **Compulsory Specification as set out in Government Gazette 33059 number 245 published on 1 April 2010.**
- 5.1.138. The NRCS is the inspectorate responsible for ensuring the compliance of the following classes of vehicles with the relevant compulsory specifications for: Passenger vehicles (M1, M2, M3); Goods vehicles (N1, N2, N3); Trailers (O1, O2, O3, O4) and Agricultural tractors.
- 5.1.139. According to the NRCS, in order to prove the conformity of a vehicle or vehicle model with relevant compulsory specifications it is subjected by the NRCS to the process of homologation. In South Africa, the homologation process is described in SANS 10267 Homologation of motor vehicle models, and aligned with international practice.

- 5.1.140. Homologation must be completed successfully before a vehicle or vehicle model is allocated a NATIS number that permits the manufacturer or importer to offer it for sale. No vehicle may be sold or registered and licensed unless a NATIS number has been allocated by the NRCS.
- 5.1.141. In order to homologate a vehicle a sample must be supplied for evaluation, supported by a large body of documented evidence provided by the **original manufacturer**, including inspection and test reports compiled by recognised laboratories or inspection authorities. The evidence must cover the characteristics of the complete vehicle, as well as all components referred to in the applicable standards and codes of practice.
- 5.1.142. The NRCS issued homologation certificates for converted panel vans, because according to them the second hand vehicles did not require letters of authority from Toyota Japan.
- 5.1.143. Toyota SA made it clear that they were against the illegal conversions and the retro fitment of these panel vans as these vehicles were structured unsafe.
- 5.1.144. Although NRCS were appointed as part of the Technical Task Team by DoT they should have attended as to why Toyota SA was against the retro fitment of their vehicle because most South Africans use Taxis as their mode of transport and these vehicles are mostly used for the purposes of carrying passengers for reward.
- 5.1.145. A Letter of Authority (LOA) is required by any person or organisation, including a registered manufacturer, importer or builder of vehicles (MIB) and charitable organizations wishing to import a new or used vehicle (passenger vehicle, goods vehicle, special vehicle or trailer) into South Africa; and/or; a person and/or organization NOT registered as a MIB that builds or modifies a vehicle; and/or; a registered MIB that builds or modifies a vehicle to a design or of a model that has not been approved (homologated) by Automotive.

- 5.1.146. The requirements for conformity must be met and a LOA obtained for new and used vehicles irrespective of where the vehicle was built, including gifts, donations and bequests to charitable organizations and individuals.
- 5.1.147. All vehicles used on public roads whether locally manufactured or imported must conform to the requirements for vehicles as set out in the Road Traffic Act and relative compulsory specifications and importers must supply proof of conformity to the NRCS.
- 5.1.148. A memorandum was signed on 11 February 2010 by the Minister approving that the South African Government must proceed to conduct their own tests in order to make these illegally converted panel vans safer and this resulted in all the illegally converted panel vans to be retro-fitted to comply with the TRP despite the manufacturer's warning against the conversion of these vehicles.
- 5.1.149. The Acting Director General of DoT placed on record that an intensive remedial process was undertaken and the aim was to ensure that the unsafe, illegally converted vehicles are modified in the correct manner to ensure compliance with Taxi Recapitalization Programme ("TRP") regulations whilst focusing on passenger safety and the department's main focus in this exercise of correcting the situation of illegal conversions was passenger safety and job security of the operator.
- 5.1.150. The retro fitment of these illegally converted vehicles were done by the DoT in order to make them safer and only 2353 vehicles were identified by the DoT and the period of making them safer was from April 2010 until September 2010, all vehicles that were illegally converted that were not brought in to be corrected are illegal and should be impounded in terms of section 87 of the National Land Transport Act.
- 5.1.151. In terms of section 87 of the National Land Transport Act (NLTA), an authorized officer who is satisfied on reasonable grounds that a motor vehicle is being used by any person for the operation of public transport

without the necessary operating license or permit or contrary to the conditions thereof, may impound the vehicle pending the investigation and prosecution of that person for an offence.

- 5.1.152. Out of the 2353 affected vehicles that were identified to be made safer only 436 complied. In March 2018, DoT with the assistance of RTMC admin marked 1986 and have resolved that these vehicles can no longer be licensed and will be identified through law enforcement initiatives and be removed off the roads.
- 5.1.153. There is no evidence provided by the DoT that proves that they have evoked section 87 of the NLTA before March 2018 and identified and impounded all the illegal converted panel vans that were not part of the identified 2353.
- 5.1.154. The DoT acted in March 2018 and are in the process of removing the 1986 illegal vehicles that were not rectified through the approved retro fitment process. The question to be answered by DoT is how were these 1986 vehicles licensed and some of them used to carry passengers for reward even though they were not rectified through an approved retro fitment process.
- 5.1.154.1. The licensing process applicable to converted vehicles requires that the MIB lodge with licensing authorities the compliance certificate as well as a roadworthy certificate from a testing station and with regard to the licensing of road based public transport services. The National Land Transport Act ("the NLTA") deals with, *inter alia*, the issuing of licenses to operate a public transport service and section 50 of the NLTA provides that "*No person may operate a road-based public transport service, unless he or she is the holder of an operating license or a permit, issued for the vehicle concerned in terms of this Act.*"
- 5.1.154.2. Section 62 of the NLTA provides that certain requirements must be met by an applicant in order to be issued with an operating license and these include, *inter*

alia, the submission of a current roadworthy certificate, as well as proof that the vehicle is properly licensed and has a NATIS number allocated to it.

5.1.154.3. The certification of roadworthiness is governed by the Road Traffic Act, which provides that no person shall operate a motor vehicle which is not in a roadworthy condition on a public road, the Road Traffic Act provides further that no person shall operate a motor vehicle on a public road unless the requirements in respect of a certification of roadworthiness in relation to such motor vehicle are complied with.

5.1.154.4. Regulations to the Road Traffic Act provides that, a roadworthy certificate is compulsory in respect of minibus taxis as well as a minibus which is designed or adapted for the conveyance of 12 or more persons, including the driver; furthermore, in terms of the Regulations, a roadworthy certificate issued in respect of a motor vehicle shall become void where such a motor vehicle is altered in such a manner that the roadworthy certificate no longer correctly describes such motor vehicle or such alteration affects the terms and conditions of such certificate, and liability arises for the licensing of such motor vehicle on the date of the completion of such alteration or reconstruction.

5.1.154.5. An application for the licensing of such an altered vehicle must, in terms of the Regulations, be accompanied by, *inter alia*, a certification of roadworthiness. Section 71 of the NLTA provides that "*adapted light delivery vehicles may be used for public transport services in a particular area in prescribed circumstances and subject to prescribed conditions where there is no other appropriate or acceptable public transport*".

5.1.154.6. It is, however, doubtful whether this provision was intended to apply to the illegal conversion of goods vehicles to minibuses. For purposes of obtaining the roadworthiness certification, the minibus taxi in question must comply with the compulsory safety standards as set out in the Regulations to the Road Traffic Act

and these Regulations were amended in 2006 in order to take into account the safety requirements as envisaged by the Taxi Recapitalization Programme.

- 5.1.155. The DoT sets out to address the issue of commuter safety, with the introduction of the Taxi Recapitalization Programme ("the TRP"). The TRP was an intervention by Government aimed at introducing safe, effective, reliable, affordable and accessible taxi operations and was to ultimately replace, over a seven year period, the aged taxi fleet currently in operation in South Africa, with new taxi vehicles that met the additional mandatory specifications which, it was envisaged, would address the safety concerns identified in existing minibus taxis.
- 5.1.156. In terms of the TRP, owners of ageing vehicles were offered a R50 000 incentive to scrap their old vehicles and purchase new taxis that complied with the additional safety requirements introduced by government.
- 5.1.157. The introduction of the TRP necessitated amendments to the Regulations and in terms of the amended Regulations, a number of additional safety features became compulsory in respect of all minibus taxis first registered on or after 4 September 2006 and these additional safety features included, *inter alia*:
- 5.1.157.1. A roof height of 1.5 m (short wheelbase) or 1.75 m (long wheelbase);
 - 5.1.157.2. A glass partition separating the driver from the passengers behind him or her;
 - 5.1.157.3. Type 11 A brake systems;
 - 5.1.157.4. Rollover bars;
 - 5.1.157.5. Seatbelts for all passengers in the taxi;
 - 5.1.157.6. A "100km /h maximum" sticker at the rear of the vehicle;
 - 5.1.157.7. Commercial steel radial tyres;
 - 5.1.157.8. Yellow reflective warning markings on the sides of the taxi;
 - 5.1.157.9. Minimum seat size of 400mm;
 - 5.1.157.10. No jockey or fold-up seats;
 - 5.1.157.11. The vehicle manufacturer's notice indicating the number of passengers allowed;
 - 5.1.157.12. Seats and anchorages that meet the requirements of SANS;

- 5.1.157.13. The vehicle must be capable of being tilted sideways at an angle of at least degrees in either direction from the upright position without overturning while each seat is loaded with a mass of 68 kilograms; and
- 5.1.157.14. Only one front passenger seat permitted for one passenger in the front seat of the taxi, next to the driver.
- 5.1.158. These vehicle safety standards are controlled by the South African Bureau of Standards ("SABS") in terms of legislation and are enforced by the NRCS. In this regard, section 17 of the NRCS Act, provides NRCS inspectors with powers to enter premises, inspect premises and goods, and search and seize goods in order to enforce the provisions of this Act.
- 5.1.159. The DoT's plan was that once an illegally converted taxi had be upgraded it would qualify to fall under the TRP, the DoT has decided to remove the 1986 illegally converted panel vans of the roads as they were not rectified through the approved retro fitment process.. They have done this in March 2018 even though they were aware of the problem since 2009.
- 5.1.160. The Licensing and registration of a vehicle is governed by section 4. Section 4 (3) which deals with registration and licensing of motor vehicles provides that, no person shall operate a motor vehicle on a public road unless such vehicle is registered and licensed in accordance with the NRTA.
- 5.1.161. The NRTA Regulation 138(1) also provides that subject to sub-regulation (2) and (3), a registered authority shall not issue a licence disc in respect of a:
- 5.1.161.1. Used motor vehicle of which the owner has changed; and
- 5.1.161.2. Motor vehicle in respect of which, a notice to discontinue operation was issued as referred to in section 44 of the Act.
- 5.1.162. The NRTA Regulation 138 (1) (d) provides that a motor vehicle referred to in regulation 31(1), which were reconstructed or altered

- 5.1.163. The NRTA Regulation 144, which deals with voidness of a roadworthy certificate provides that, any roadworthy certificate issued contrary to the provisions of this Chapter shall be void.
- 5.1.164. The 1986 illegally converted vehicles did not follow the correct processes and procedure to be made compliant, but they have been used to ferry passengers for reward and had been licensed and registered by DoT.
- 5.1.165. The retro fitment of these illegally converted vehicles were done by the DoT in order to make them safer and only 2353 vehicles were identified by the DoT and the period of making them safer was from April until September 2010, all vehicles that were illegally converted that were not brought in to be corrected are illegal and should have been impounded by DoT in terms of section 87 of the National Land Transport Act.

The Report of the Western Cape Legislature's Working Committee of the Standing Committee on Community Safety and the Standing Committee on Finance, Economic Development and 2010 World Cup on an investigation into the conversions of Toyota Quantum Panel Vans into Taxis issued on 3 December 2010.

- 5.1.166. The Standing Committee on Community Safety and the Standing Committee on Finance, Economic Development and 2010 World Cup established a Working Committee to investigate the illegal conversion of Toyota Quantum Panel Vans into passenger carrying vehicles (taxis).
- 5.1.167. The Working Committee held public hearings from March to June 2010 and it was required to conduct investigations with a view to establishing whether;
 - 5.1.167.1. The conversion of Toyota Quantum Panel Vans into Taxis could be contributing to the high rates of accidents, fatalities and injuries involving minibus taxis in the Western Cape Province due to possible structural and other shortcomings as taxis;

5.1.167.2.The conversion of these panel vans to taxis is in fact legal;

5.1.167.3.Motor vehicle dealers selling these panel vans are aware that they may be converted to taxis and in some cases recommend companies which can convert them;

5.1.167.4.Body builders converting these vehicles have the necessary approval for such conversions;

5.1.167.5.Financial Institutions financing the purchase and conversion of such vehicles are aware of the end purpose of the vehicles and complying with relevant regulations;

5.1.167.6.Short-term insurance companies in fact insure such converted vehicles;

5.1.167.7.The SABS approved the conversions, and if so, on

5.1.167.8.what basis; and

5.1.167.9.Licensing Authorities in fact licensed some of these vehicles, and if so, on what basis.

5.1.168. At the conclusion of its investigation, the Working Committee made the following findings;

5.1.168.1.The illegal Toyota Quantum conversions contributed to accidents in that the vehicles were unstable, exceeded the rear axle load and led to increased tyre bursts;

5.1.168.2.The accidents are also more serious and fatal in that the seats are not securely anchored to the vehicle and tear loose;

- 5.1.168.3. Taxi operators were in some cases unaware that they purchased converted panel vans, while in other cases they knowingly participated in the illegal conversions;
- 5.1.168.4. Some of the finance houses financed the panel vans with added extras like seats, bull bars, sidesteps and mag wheels which indicated that they knew they would be used as taxis;
- 5.1.168.5. Despite having been warned by their own strategic intelligence report in 2005, banks and finance houses failed to exercise duty of care and continued to lend money, in the knowledge that their clients were unsophisticated and unlikely to hold the institutions to account. When confronted by clients alleging misrepresentation, they resorted to strong-arm tactics, repossessing the vehicles and put them back on the market;
- 5.1.168.6. Some of the dealers knowingly sold the panel vans with the panel van e-NATIS number, as taxis and even recommended to the client which converters will install seats. This cost was often built into the overall finance package.
- 5.1.168.7. The insurance companies provided cover, but may have been unaware that the vehicles were converted panel vans, which meant that the claims would be contested if an accident could be ascribed to the conversion;
- 5.1.168.8. The Western Cape Transport Department licensed the vehicles as taxis, because they did not receive adequate information from the DoT and in some cases were told to continue allowing illegal taxis in the interim until a solution was found to the problem;
- 5.1.168.9. The SABS approved the conversions because regular inspections of MIB's were not executed by the SABS, as per regulations;

- 5.1.168.10. The NRCS issued homologation certificates for converted panel vans, because these second hand vehicles did not require letters of authority from Toyota Japan;
- 5.1.168.11. The DoT and state Agencies like the SABS, NRCS as well as other role-players such as the MIB's and financiers were aware of the situation but failed to act timeously as required by law;
- 5.1.168.12. Toyota South Africa knew about the situation since 2005 but did little to protect its brand and patent design, as well as to ensure the safety of commuters against the illegal conversions;
- 5.1.168.13. The safety aspects of public transport need to be revisited, e.g. the 68kg/passenger mass, which is not realistic in South Africa;
- 5.1.168.14. Fraud and corruption took place in the awarding of e-NaTIS numbers, homologation certificates and the financing of these vehicles;
- 5.1.168.15. The DoT only acted on the illegal practice of conversions in August 2009 when it became of public concern.
- 5.1.168.16. The tests that were done on the converted vehicles by the working group dealing with retro fitment were static tests and not the required dynamic and collision test. This was a serious oversight because collision vulnerability was a prime concern;
- 5.1.168.17. The enforcement of traffic laws is a provincial competence and therefore, the provinces could have impounded the illegal taxis even though the DoT advised otherwise.
- 5.1.169. **The Committee recommended that:**
- 5.1.169.1. The alleged instances of fraud and corruption in the processing and managing of vehicle loans, the conversion and licensing of these

vehicles and the policing of the same must be reported to the authorities for further investigation;

- 5.1.169.2. The 68 kg/ passenger mass applied to passengers is inadequate and should be revisited;
- 5.1.169.3. The TRP should be applied to all 'passenger-carrying vehicles for reward';
- 5.1.169.4. The TRP should be strictly applied in the taxi industry;
- 5.1.169.5. The control, policies and systems of the DoT, SABS and NRCS should urgently be reviewed;
- 5.1.169.6. The financing of the TRP taxis specifically and public transport vehicles in general should be more transparent and in line with the National Credit Act;
- 5.1.169.7. The role of Toyota SA should be investigated to establish whether it benefited financially from the conversions of patented Quantum panel vans into taxis. It must be established if Toyota SA colluded with role-players in this matter and if they actively aided the sale of these vehicles for the purpose of conversions by, for example, putting more powerful engine into the panel vans;
- 5.1.169.8. The DoT must provide an explanation to the Western Cape Provincial Legislature as to how it can justify permitting these converted vehicles to continue trading, despite having deemed them 'illegal'; and
- 5.1.169.9. The DoT should ensure that the retro fitment of the illegal taxis be completed by 30 September 2010.

Proclamation Number R.37 of 2017 issued by President J G Zuma authorizing the Special Investigating Unit (SIU)

- 5.1.170. On 24 November 2017, the President issued a Proclamation in terms of the Special Investigating Unit and Special Tribunals Act, 1996 referring allegations of impropriety made in respect of the affairs of the National Department of Transport, the Provincial Departments of Transport, local authorities and entities that perform functions in terms of the National Road Traffic Act, 1996, for investigation and civil proceedings emanating therefrom, to the Special Investigating Unit (SIU).
- 5.1.171. The Proclamation authorises the SIU to investigate unlawful or improper conduct by employees, officials or agents of the institutions or any other person which relate to *inter alia*:
- 5.1.171.1. Registration and licensing of motor vehicles;
 - 5.1.171.2. Registration of motor vehicle ownership or licensing details;
 - 5.1.171.3. Issuing of roadworthy certificates; or
 - 5.1.171.4. Issuing of operator fitness cards.
- 5.1.172. The entering of, changing, tempering with or manipulation of data or information on the electronic National Traffic Information System in a manner that:
- 5.1.172.1. Was contrary to applicable legislation, manuals, policies, procedures, prescripts instructions or practices of, or applicable to the institutions;
 - 5.1.172.2. Resulted or could potentially result in the circumvention of the payment of licensing fees, penalties or any other outstanding moneys due to the institutions or the State; and
 - 5.1.172.3. The investigation is to cover such allegations of impropriety which took place between 1 January 2010 and the date of publication of this Proclamation or which took place prior to 1 January 2010 or after the

date of publication of this Proclamation, but is relevant to connected with, incidental or ancillary to these matters.

Conclusion

5.1.173. Based on the information and evidence obtained during the investigation as well as the legal framework that is applicable to the facts of this matter, it can be concluded that, the illegal conversions of the Toyota Quantum panel vans into passenger carrying mini bus taxis were done without the manufacturer's (Toyota SA) approval and these vehicles were used to transport passengers for reward, were unsafe and contributed to fatal accidents that occurred around the country.

5.1.174. Communities in the Republic mostly rely on the use of public transport for their day to day transportation and found themselves having to use these unsafe vehicles. Although the DoT took some action, it was ultimately not enough to ensure the safety of commuters and to protect taxi owners.

5.2 Issue 2- Regarding whether the NRCS in its official capacity as the National Regulator responsible for maintenance of compulsory specifications, failed to take effective and efficient steps to ensure that all MIBs comply with the compulsory specifications as envisaged by the NRCS Act so as to restrict the illegal conversion of these vehicles into minibus taxis.

Issues that are Common Cause

It is not disputed that:

5.2.1. In August of 2009, the DoT commenced with the first Technical Task Team Committee meeting in order to investigate the illegal conversion and financing of panel vans. The Technical Task Team was representative of taxi stakeholders and role-players including financing institutions, SABS, NRCS and the taxi industry represented by the

South African National Taxi Association Council (SANTACO) and was headed up by the DoT.

5.2.2. This task team was tasked with investigating how these vehicles could be made safer, if it were at all possible. There were two other committees or teams set up by the DoT to investigate the issue surrounding the conversion and financing of panel vans and these were the Data Gathering committee and the Law Enforcement committee.

5.2.3. The Technical Task team decided that the SABS was to conduct tests on the Quantum panel van to ascertain the primary factors that would make this vehicle safer as a commuter vehicle. The tests that were agreed upon by this team were the following: the Roll over test; the Tilt test; the "Type 2" Brake test; and the seat and seat belt anchorage test.

5.2.4. The following further points had been discussed and resolved at the first Technical Committee meeting:

5.2.4.1 The precise cut-off date in respect of TRP compliance which was 4 September 2006.

5.2.4.2 NRCS and SABS were to commence with the testing of the Quantum panel vans to establish how the vehicle could be made safe as a passenger vehicle. They planned to produce a proto-type which could be used as a benchmark to upgrade the existing unsafe and unlawful conversions.

5.2.4.3 An accredited vehicle converter would then be identified to conduct the assessments and upgrades.

5.2.4.4 Converted vehicles would then be identified and called in for assessment and upgrading where necessary.

5.2.4.5 Vehicles would then be re-registered and put back into circulation.

5.2.4.6 An urgent timeline of three weeks was set to get the initial testing done.

- 5.2.4.7 The committee intended to reconvene again on 8 April 2010 to discuss the upgrade process.
- 5.2.5. After some technical analysis of how the seat and seat belts anchorages could be made stronger in order to pass the test, a solution was then found by the team's technical experts and given the apparent extent of the problem posed by the illegal panel van conversion, the DoT decided at the time to consider and propose an exceptional upgrade plan/retro-fitments to these vehicles so as to make them substantially safer so that they could continue to be used as taxis.
- 5.2.6. The following measures were put in place and dispensations granted by the DoT so that taxi operators were not disadvantaged:
- 5.2.6.1. The vehicles would be upgraded to be made safer and this would include primarily strengthening the seats and seat belt anchorages points.
 - 5.2.6.2. As soon as the Upgrade Plan was approved and launched, operators would have the opportunity to have their affected vehicles upgraded by approved converters in the major centres.
 - 5.2.6.3. It is submitted in the MINMEC Progress Report on illegal Panel Van Conversion dated 23 February 2010, that in terms of the provisions of the Road Traffic Act, the conversion of commercial vehicles to passenger vehicles is a permissible practice in South Africa and for the purposes of the TRP, a second tier of approval has been implemented.
 - 5.2.6.4. In the report it is also submitted that in the case of the Toyota panel van conversion, this process has not been followed and inadequate systems and controls have resulted in these vehicles being granted operating licenses, financed and operated as legitimate taxis under the TRP.

- 5.2.6.5. The report further states that a process has now been developed whereby, reactively, these illegal panel van conversions can be legalized into compliant TRP vehicles and they submitted that:
- 5.2.6.6. A call centre is available and will be the starting point for any operator who has an illegally converted panel van and it is at this point where it will be established if the vehicle is financed or privately-owned.
- 5.2.6.7. The relevant financial institution will be contacted to establish the liability of costs, the requisition of an order number and the order number will be forwarded to TFM and the booking of the date and venue will be secured for the necessary retro fitments to take place.
- 5.2.6.8. The owner will then be contacted and informed of the arrangements and in the case of privately owned vehicles, the owner will be expected to cover the cost of the retro fitments and then follow the necessary processes to claim back.
- 5.2.6.9. TFM will maintain its own database and feedback to the centralized call centre on weekly basis and it is expected that the service provided by TFM will be an all-inclusive process of conducting the approved retro-fitment as well as the necessary administration to ensure that the vehicles are all registered onto e-NaTIS with correct information.
- 5.2.6.10. The report further provided the total number of identified illegally converted vehicles and financial institutions that financed them were follows:

	FINANCE HOUSE	NO OF ILLEGAL TAXIS
1.	ABSA	123
2.	Nedbank & MFC	139
3.	Standard Bank	248

4.	Wesbank	149
5.	SA Taxi Finance	484
6.	Toyota Finance	419
7.	Privately owned	791
	TOTAL	2353

5.2.6.11. The report also provided that combined resources of DoT, NRCS, SABS, NAAMSA , financial institutions and SANTACO made it possible to develop a workable solution for legalising these illegally converted panel vans to be compliant TRP vehicles, an operational plan as to the legalization of illegal conversions was also prepared.

5.2.6.12. According to this report the then Minister of Transport approved the process and retro fitment to commenced on 1 March 2010.

Issues in dispute

5.2.7. The complainant alleged that NRCS did not follow the correct procedures and processes in converting these illegally converted Panel vans.

5.2.8. The complainant further alleged that on 20 May 2009 and in a directive issued to the SABS, NRCS and the DoT under the heading, **“Letter of Authority – Quantum Panel Van Conversion”** Toyota SA declared to the said parties that **“Toyota South Africa Motors (TSAM) have not and will not issue letters of approval for:- Conversions of Toyota Quantum Panel Vans into Toyota Quantum Ses’fikile or other passenger carrying variants. This is due to the fact that the Panel Van is a Commercial vehicle and designed to carry goods”**

5.2.9. Further thereto and on enquiry by the complainant, Mr Hennie De Beer, Toyota SA reiterated its stance on 7 September 2009 that they have in the strongest possible

terms condemned the practice of modification of its Quantum panel vans into passenger carrying minibus taxis and as such they are in no position to consider conversion of these vehicles as they do not conform to Toyota's high safety standards and are simply not acceptable.

- 5.2.10. In October 2009, Toyota further informed the DoT that it condemned the practice of modifying its Quantum panel vans into passenger carrying minibus taxis.
- 5.2.11. Toyota SA also informed its dealers and other role players, namely SABS, NRCS and International Vehicle Identification Desk (IVID), that it did not support the conversions.
- 5.2.12. The complainant further alleged that there are some MIBs like Paterson's Taxi World (533515) and Phillips Motors (535965) that are still converting these panel vans to be passenger carrying taxis.
- 5.2.13. In its submission made on 27 June 2016, the NRCS conceded that they still do allow the conversion of Toyota panel vans into mini bus taxis only if the conversion is meant for private use and not for financial benefit. I then posed a question to the NRCS to clarify how they differentiate between private use and financial benefit but no clear response was forthcoming. They further stated that they are in the process of discussing the conversion for private use with the DoT.
- 5.2.14. The NRCS made further submissions on a correspondence dated 12 June 2017 to me and provided that the approval process is such that the manufacturer, importer, or builder (MIB) of motor vehicles carries the responsibility for compliance and thereafter the safe operation of the vehicle model is presented to the NRCS for approval as per SANS 10267.
- 5.2.15. NRCS further submitted that it confirms that there is enough evidence to prove that the vehicle model presented for approval has been manufactured in accordance with the relevant legal requirements administered by the NRCS.

- 5.2.16. NRCS further stated that based on the evidence provided and having found such evidence to be in accordance with the acceptance of evidence of compliance criteria by the NRCS, an approval is normally granted to the applicant who in turn has the responsibility of continuity in accordance with the legal safety requirements and current legislation (administered by the NCRS) does not require the “approval/consent” to be given by the original builder of a vehicle to allow modification.
- 5.2.17. NRCS further informed me that TFM is the only body builder that made an e-NaTiS number application for the “Taxi –Type” Quantum conversion and they submitted all required tests for the “Taxi- Type” requirements as per the requirements of the National Land Transport Transition Act (NLTTA). The tests were conducted by accredited testing facilities, including the SABS. The NRCS further informed me that they accept test reports from accredited test facilities as per the recommendations of VC8023.
- 5.2.18. NRCS also submitted that TFM still proceeds in doing retro-fitment as per the requirements and the testing is not only limited to TFM but any MIB is allowed to submit test reports for homologation purposes and in this case, only TFM made the application for the homologation.
- 5.2.19. The NRCS also submitted that with regard to the allegation that Peterson’s Taxi World and Phillip Motors are still doing these conversions, that the e-NaTiS numbers issued to some MIBs’ like Paterson’s Taxi World (533515) and Phillips Motors (535965) were issued within the requirements of compulsory specifications VC 8023 (Homologation of M2/M3 vehicles) and not “Taxi-Type” as per the requirements of VC 8023 and some tests required by NLTTA vehicles are not part of the VC 8023 requirements.
- 5.2.20. NRCS further informed me that the above mentioned vehicles were not required to comply with NLTTA as they were not submitted as “Taxi-Type” vehicles.

- 5.2.21. The NRCS also submitted that the above mentioned MIBs vehicles are not listed in the Taxi Recapitalization Program List (TRP List) that lists all vehicles allowed to operate as “Taxi-Type”. This ensures that these vehicles are not registered by the DoT to operate as Taxis. According to NRCS this creates a challenge for the NRCS as legislation may allow abuse which the NRCS cannot control.
- 5.2.22. The NRCS further submitted that the matter has been raised on various occasions with the DoT and an investigation was done at Peterson Taxi World, and the e-NaTiS number was delinked which meant that they would not be able to register them in the system.
- 5.2.23. In conclusion, the NRCS submitted that, the only Toyota panel vans that are allowed to be converted to be minibus taxis are only those that are converted by TFM as they have an e-NaTiS number for such and this is per the retro -fitment project that was initiated by the DoT. NRCS further stated that the only vehicles that can be registered to be used as “Taxi-Type” vehicles are issued with a TRP Certificate and listed on the TRP List and any other homologated vehicles are only registered for other use.
- 5.2.24. According to the NRCS, the possibility of abuse did exist and the DoT and the Taxi Associations Board register individual vehicles and are the only ones who carry out that function, the NRCS only issues the e-NaTiS numbers on homologation and the registering authorities are the ones that need to ensure that the vehicles registered are as per the approved sample and per e-NaTiS details.
- 5.2.25. The relevant law that the NRCS must follow in issuing of homologation certificates in converting these illegal converted vehicles will be discussed hereunder. On 5 March 2018, Mr Mamadise, the Acting Chief Executive Officer (ACEO) of the NRCS made further submissions to the Public Protector, in the submission he stated as follows:
- 5.2.25.1 With regard to what extent did the NRCS consider Toyota South Africa’s disapproval of the conversion of its Quantum Panel Van into a minibus taxi

when it was decided to issue an e-NaTiS number to TFM for the conversions, the ACEO stated that, the NRCS does not have any record of Toyota SA informing the NRCS of its disapproval of the conversion of its Quantum Panel Vans into minibuses.

- 5.2.25.2 With regard to action by the NRCS since 2005 when it was made aware of the illegal conversion of Toyota Quantum Panel Vans to inspect the premises of MIB's to ensure compliance with the relevant compulsory specifications, the ACEO reiterated that the NRCS did not have any records of Toyota SA informing NRCS about the illegal conversion of Toyota Quantum Panel Vans.
- 5.2.25.3 The ACEO further submitted that, following the media release regarding the illegal conversion of the Quantum Panel Vans, the NRCS conducted a blitz inspection project and it also conducted inspections in 2009 at various places as well as registered Manufacturers, Importers and Builders (MIBs) premises in order to ensure that e-NaTiS model numbers issued for non –TRP minibuses were not used for TRP vehicles.
- 5.2.25.4 With regard to whether the NRCS engaged Toyota South Africa to obtain their views whether the conversions would not comply with their safety standards so as to ensure that the compulsory specifications that applied were sufficient to protect the safety of passengers, the ACEO stated that they had no records of engagements with Toyota SA concerning their views to the effect that these conversions would not comply with their safety standards.
- 5.2.25.5 According to the NRCS's ACEO, compulsory specifications are developed with due consideration of South African National Standards, not individual organizations safety standards.
- 5.2.26. In connection with whether the NRCS made any recommendations to the Minister of Trade and Industry regarding the compulsory specifications that apply to the conversions relevant to the Toyota Panel Vans, having been informed of Toyota

South Africa's position and the evidence of injury to passengers travelling in converted panel vans that the NRCS was made aware of, the ACEO submitted that:

- 5.2.26.1 The NRCS did not make any recommendations to the Minister of Trade and Industry because a compulsory specification for medium to heavy passenger vehicles that covers all safety related systems and components already exist, and additional requirements for minibus taxis operating for reward in terms of the National Land Transport Act are included in the NRTA.
- 5.2.27 With regard to the number of inspections conducted by the NRCS at TFM subsequent to the announcement by the former Deputy Minister of Transport that it was approved to modify the identified illegally converted Toyota Panel Vans into minibus taxis, in order to ensure that TFM was complying with the relevant compulsory specifications, the ACEO submitted that:
- 5.2.27.1 Due to the very nature of the project of verifying compliance of the identified illegally modified converted Toyota Panel Vans into minibus taxis with relevant compulsory specification and NRTA Regulations, the NRCS resorted to inspect each modified minibus taxi (Retro-fits) as and when they were required to do so; and;
- 5.2.27.2 This was in accordance with the agreement between NRCS, DoT, TFM, SA Taxi (Representing SA Finance Houses) and SANTACO.
- 5.2.28 According to the Blitz report of the NRCS dated 17 August 2009, which was done by them following the media release on illegal conversion of panel vans which highlighted non-complying TRP vehicles, the NRCS Automotive division initiated the "Blitz" project to determine the status of non-complying TRP vehicles with specific focus on the Toyota Quantum.

- 5.2.29 The objective of this project among others was to-do random visits at dealerships (Toyota & Non Toyota) Taxi Ranks and MIBs (Registered and Non -Registered) who might be involved in these illegal operations in order to determine the primary cause of such activity.
- 5.2.30 According to the report, two hundred and eleven (211) vehicles were inspected and the vehicle inspection process comprised visual inspection at taxi ranks as well as physical inspection at both dealerships and premises of registered builders (converters).
- 5.2.31 With regard to what steps the NRCS took to respond to or implement the recommendations made by the Working Committee of the Western Cape Provincial Legislature, the ACEO submitted that:
“The NRCS ensures that each minibus taxi model adapted for reward, which complies with both the requirements of the relevant compulsory specification and NRTA regulation, is issued with the TRP certificate in addition to the homologation approval and NaTiS number and the TRP certificate is a control measure to differentiate the taxi type minibuses that are not operated for reward.
- 5.2.32 Compulsory Specifications rely on the South African National Standards that stipulate the quality and safety requirements agreed upon by the industry and the quality infrastructure entities (NRCS and SABS) and currently, the national standards related to determining the carrying capacity for vehicles occupants’ compartment refer to a weight of 68 kg per person and the NRTA regulations stipulates 68 kg per person as per Regulations no 262.
- 5.2.33 The ACEO further submitted that they do not have records of discussing the report at the time when the report was produced, the report only came to their attention through the Public Protector office.

- 5.2.34 The ACEO further stated that in terms of the NRCS conformity of Assessment Policy, the NRCS accepts satisfactory evidence of compliance with the requirements of ISO/IEC 17025 or ISO IEC 17020, from any technical assessment body even if an accreditation is not issued. The NRCS's position in accepting SABS test reports is supported by the fact that they have a quality manual prepared according to the requirements of ISO 17025 standard.
- 5.2.35 According to the response of the DoT, out of the 2353 affected vehicles that were identified to be made safer only 436 complied. In March 2018, the DoT with the assistance of RTMC admin marked 1986 vehicles and have resolved that these vehicles can no longer be licensed and will be identified through law enforcement initiatives and be removed off the roads.
- 5.2.36 The question that needs to be asked is why these 1986 vehicles not detected by the NRCS earlier as they have powers of the Inspector to enter, inspect, search and seize In order to monitor and enforce compliance.
- 5.2.37 On 11 December 2018, a notice in terms of section 7(9) of the Public Protector Act was issued against the NRCS. The CEO, Mr Edward Mamadise responded on behalf of the entity on 31 January 2019.
- 5.2.38 In his response, Mr Mamadise confirmed that amongst others, the Minister of Transport conferred on the entity, an additional function to act as the Inspectorate of the MIBs under the provisions of the National Road Transport Act No 93 of 1996 ("the NRTA"). He however stated that the entity was not established to act as the primary transport regulator and as such was not policing public transportation.
- 5.2.39 According to Mr Mamadise, it is the duty of the NRCS to enforce compliance with the compulsory specifications and in respect of the matter under investigation, by acting as an inspectorate of the MIBs within the terms of the

National Road Transport Act and assessing the conformity of the MIBs with compulsory specifications.

- 5.2.40 In terms of the provisions of section 7(9)(a) of the Public Protector Act, a further notice was issued to the NRCS on 11 December 2018 thus affording them a further opportunity to be heard as it appeared to me that the entity could be implicated in the matter and that such implication could be to the detriment of the entity especially in so far as it relates to action that was taken or ought to have been taken by the NRCS.
- 5.2.41 The NRCS responded to the notice on 31 January 2019. In its response, the entity intimated that the Office of the Public Protector misunderstand the legislative mandate and the nature of resources made available to the entity.
- 5.2.42 Besides the mandate derived from NRCS Act and other applicable legislations, the entity conceded that other pieces of legislation governing other government departments such as the Department of Transport, bestows upon the NRCS additional functions. In this regard, the NRCS made an example about the Minister of Transport who confers upon the entity the power to act as Inspectorate of MIBs in terms of the provisions of the National Road Transport Act No. 93 of 1996 (“The NRTA”).
- 5.2.43 According to the NRCS, its role as the National Regulator cuts across several industries and is not only concerned about the automotive industry.
- 5.2.44 It stated that, as a regulator, it exists to ensure that businesses produce, import or sell products or services that are not harmful to consumers or the environment or fall short of the declared quality of measurement. It however confirmed that as part of its functions, it regulates amongst others, automotive products which fall under a unit or directorate within NRCS that is called Automotive Business Unit (“ABU”) with responsibilities emanating from the NRCS Act and the NRTA.

- 5.2.45 In its response the NRCS made mention of the provisions of the NRTA that confers certain powers and functions of the entity in so far as the ABU is concerned , in particular with regard to acting as an inspectorate of the MIBs.
- 5.2.46 Another notice in terms of section 7(9)a of the Public Protector Act was issued against the Minister responsible for the Department of Trade and Industry, Dr Rob Davies. On 15 January 2019, Minister Rob Davies did not immediately respond to the notice but requested further particulars which were provided to him on 20 February 2019.
- 5.2.47 He subsequently responded on 15 March 2019, in his response he emphasised that the NRCS Act of 2008 was only promulgated in 2008 and therefore the NRCS could not have been able to make use of their competencies as envisaged in section 17 of the Act.
- 5.2.48 He was of the view that the NRCS did not know which MIBs did these conversions as there is no evidence to that effect and therefore the entity could not have been expected to know that there were such conversions.
- 5.2.49 According to Minister Davies, the NRCS may not have been aware of the conversions of these vehicles. His averment is despite the fact that Toyota SA warned the DoT, SABS and NRCS of this practice and the fact that as the manufacturer of the brand, they will neither support nor approve of these conversions.
- 5.2.50 In defining the distinct roles of the NRCS and the SABS, Minister Davies stated that the latter develops and promotes National Standards while the other, the NRCS, regulates and enforce compulsory specifications. According to him, the importance of the Regulator's independence is premised on ensuring public safety and health as well as environmental protection.
- 5.2.51 He however insisted that despite the entities being separated, they do not perform their functions in isolation to each other as their legislative framework sets out cooperation between these two entities. He made an example about

the recommendations to declare national standards which first requires the competency /mandate of the SABS.

The Application of the relevant laws and prescripts

- 5.2.52 The Legislative mandate of the NRCS is derived primarily from the following pieces of legislation, namely the National Regulator for Compulsory Specifications Act No 5 of 2008, Legal Metrology Act No 9 of 2014 and the National Building Regulations and Building Standards Act, No 103 of 1977.
- 5.2.53 However, other pieces of legislation that relates to or govern other government departments, may also vest particular powers in the NRCS like the additional function by the Minister of Transport on the NRCS to act as the Inspectorate of MIBs under the provisions of the National Road Transport Act No 93 of 1996.
- 5.2.54 The NRCS is a statutory body, which carries its functions according to the provisions of the NRCS Act as amended (Act 5 of 2008). According to the ACEO it is for that reason that all products covered by the scope of the NRCS Act and NRTA are subjected to an approval process which requires compliance with compulsory specification and technical regulations in the NRTA.
- 5.2.55 Prior to the promulgation of Standards Act, 2008, the SABS had a regulatory function and in 2008 the National Regulator for Compulsory Specifications Act, 2008 established the NRCS, by virtue of the promulgation of Act 8 of 2008 and Act 5 of 2008 the functions of the erstwhile SABS were split and the regulatory function currently vests wholly with the NRCS, the objects of the NRCS are, *inter alia*:

- 5.2.55.1 To administer and maintain compulsory specifications;
 - 5.2.55.2 To carry out market surveillance through inspections in order to monitor compliance with compulsory specifications; and
 - 5.2.55.3 Enforce compliance with compulsory specifications.
- 5.2.56 The legal requirements to be followed by NRCS are outlined in issue one under application of the relevant law above

National Regulator for Compulsory Specifications Act, 2008 (NRCS Act)

- 5.2.57 In terms of section 5 of the National Regulator for Compulsory Specifications Act, 2008 (NRCS Act), the objects of the NRCS include making recommendations to the Minister of Trade and Industry with regard to compulsory specifications and to carry out market surveillance through inspection in order to monitor compliance with compulsory specifications.
- 5.2.58 Section 16, provides in this regard that the Chief Executive Officer may in general or for a specific purpose appoint suitably qualified inspectors to monitor and enforce compliance with the NRCS Act. These inspectors may, *inter alia*, at any reasonable time and without prior notice, enter any premises in or upon which an article in respect of which there is a compulsory specification is manufactured or any manufacturer is reasonably expected or where the records of the manufacturer are kept.
- 5.2.59 In terms of section 14 of the NRCS Act, no person may import, sell or supply a commodity to which a compulsory specification applies, unless it has been manufactured in accordance with the compulsory specification.

“Manufacture” includes, in terms of section 1: “produce, assemble, alter, modify, adapt, convert, process or treat.”

5.2.60 The vehicle safety standards are controlled by the South African Bureau of Standards ("SABS") in terms of legislation and are enforced by the NRCS. In this regard, section 17 of the NRCS Act, provides NRCS inspectors with powers to enter premises, inspect premises and goods, and search and seize goods in order to enforce the provisions of this Act. Section 17 of the NRCS Act reads as follows:

"17. Powers of inspector to enter, inspect, search and seize:

(1) In order to monitor and enforce compliance with this Act and, subject to the conditions of his or her appointment, an inspector may at any reasonable time and without prior notice enter any premises, other than a private dwelling, in or upon which:

(a) an article in respect of which there is a compulsory specification is-

(i) manufactured or sold;

(i) stored or used in the course of any business; or

(ii) stored for any purpose in connection with the import or export of the commodity or product;

(b) any manufacture, sale, use or storage is reasonably suspected; or

(c) any records with regard to the import, manufacture or sale of an article referred to in paragraph (a) or (b) are kept.

(2) An inspector may enter a private dwelling or any place other than a place referred to in subsection (1) only—

(a) with the consent of the owner or occupier; or

(b) if authorised to do so by a warrant issued in terms of subsection (3)

(3) A warrant contemplated in subsection (2) may be issued by a judge or a magistrate if it appears from written information given by the inspector on oath or affirmation that there are reasonable grounds for believing that a contravention of this Act has been or is being committed within the area of jurisdiction of that judge or magistrate."

5.2.60.1 In addition, section 19 of the NRCS Act grants wide-ranging powers to inspectors to enforce the provisions of the NRCS Act, including powers to conduct market surveillance inspections.

5.2.61 Section 34 provides that a person that contravenes or fails to comply with, *inter alia*, section 14, is guilty of an offence.

5.2.62 The process of homologation is explained in the legal framework of issue number one above and the role of NRCS detailed in there.

5.2.63 Out of the 2353 affected vehicles that were identified to be made safer only 436 complied. In March 2018, DoT with the assistance of RTMC admin marked 1986 and have resolved that these vehicles can no longer be licenced and will be identified through law enforcement initiatives and be removed off the roads. If the NRCS was effective and efficient they could have taken measures to ensure that there were no vehicles that were illegally converted and are used to carry passengers for reward as they have the powers of the inspector to enter, inspect, search and seize in order to monitor and enforce compliance with the NRCS Act .

5.2.64 The approval process of manufactured, imported or modified vehicles requires the NRCS to homologate each vehicle model based on the documents presented by the vehicle manufacturer/importer/builder (applicant) together with a sample vehicle for verification purposes. During this process, the NRCS does not make contact with any third party except in the case where test reports and certificates require verification with the technical assessment body that conducted the test.

5.2.65 The issuing of the e-NaTiS number to TFM Industries (Pty) LTD conversions (modification) was because of the evidence provided in TFM application documents that included:

5.2.65.1 Toyota homologation support document;

5.2.65.2 Relevant test reports for vehicle systems affected by the modification, in particular the test reports covered requirements for:

- 1) Braking system,
- 2) Strength of superstructure,
- 3) Strength of seats, and
- 4) Anchorages for Restraining devices seat belts,
- 5) Tilt angle; as well as
- 6) The relevant application letter.

National Road Traffic Act Regulation

5.2.66 Regulation 38 with regard to certain manufacturers, builders and importers to register provides that:

“Any manufacturer, builder or importer who manufactures, builds, modifies or imports motor vehicles for the purpose of his or her business of selling motor vehicles or modifications of motor vehicles, shall register as a manufacturer, builder or importer.”

Regulation 39 with regard to the manner of application for registration as manufacturer, builder or importer provides as follows:

- (1) An application for registration as a manufacturer, builder or importer in terms of section 5 of the Act shall be made on form MIB as shown in Schedule 2.
- (2) An application referred to in sub-regulation (1) shall be accompanied by:
 - (a) the acceptable identification of the applicant and, if such applicant is a body of persons, that of its proxy and representative and a letter of proxy;
 - (b) the appropriate fees as determined by the MEC of the province concerned;

(bA) proof of value added tax registration with the South African Revenue Services; and

- (c) in the case of an importer of motor vehicles, the Customs Code Number of the applicant as issued by the South African Revenue Service in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964);and
- (d) any other additional information or documents as may be required by the chief executive officer.

5.2.67 Regulation 40 with regard to the manner of registration of manufacturer, builder or importer provides that:

“

- (1) *On receipt of an application for registration as manufacturer, builder or importer, the Chief Executive Officer shall*
 - (a) *ensure that such application is in order;*
 - (b) *require the inspectorate of manufacturers, builders and importers to:*
 - (i) *evaluate the applicant in respect of compliance of the vehicles manufactured, built, modified or imported by such applicant with the relevant legislation, standards, specifications and codes of practice applicable in respect of motor vehicles in force in the Republic; and*
 - (ii) *submit a recommendation in respect of the registration of the applicant;*
 - (c) *require the designated officer of the South African Police Service as appointed by the Vehicle Identification Section and Safeguarding Unit to submit a report, in respect of the applicant, and such report may contain any prior convictions recorded against the applicant and the nature of such convictions, and any such official is hereby authorised to report accordingly; and*

- (d) with due regard to the evaluation and recommendations of the inspectorate of manufacturers, builders and importers and the South African Police Service, satisfy himself or herself that the applicant is suitable to be registered.*
- (2) If the Chief Executive Officer is satisfied that the applicant may be registered as a manufacturer, builder or importer, he or she shall:*
- (a) register the applicant subject to any or all of the conditions as are prescribed in regulation 41 and, if he or she deems fit, such conditions as are determined by him or her;*
 - (b) record the particulars pertaining to such applicant on the register of manufacturers, builders and importers; and*
 - (c) issue to such applicant a certificate of registration on form MCR as shown in Schedule 2, which shall reflect the conditions referred to in paragraph (a).*
- (3) If the Chief Executive Officer is not satisfied that the applicant may be registered as a manufacturer, builder or importer, he or she shall notify such applicant accordingly.*
- (4) A registered manufacturer, builder or importer of motor vehicles shall, at any time, be subject to an evaluation by the inspectorate of manufacturers, builders and importers.”*

5.2.68 Regulation 44 (2) (a) &(b)with regard to the Powers and duties of inspectorate of manufacturers, builders and importers provides that a person employed by, or who acts on behalf of, the inspectorate of manufacturers, builders or importers, may at any reasonable time:

- (a) for the purposes of evaluating a manufacturer, builder or importer and making a recommendation as contemplated in regulation 40 (1) (b) (i), inspect, examine or test any motor vehicle which is being manufactured, built, modified or imported by such manufacturer, builder or importer; and*

- (b) without prior notice:
 - (i) enter the premises of any manufacturer, builder or importer;
 - (ii) inspect any records of such manufacturer, builder or importer; or
 - (iii) question any person with regard to any matter relating to the operation of such manufacturer, builder or importer.

Conclusion

5.2.69 Therefore, based on the information and evidence obtained during the investigation as well as the legal framework that is applicable to the facts of this matter, it can be concluded that, even though the NRCS have powers to inspect, search and seize, the DoT with the assistance of RTMC in March 2018 admin marked 1986 illegally converted panel vans that should have not been licenced and should have been removed from the roads.

5.2.70 The NRCS should have inspected and investigated these MIBs who illegally converted these panel vans and also ensured that all illegally converted Toyota Quantums are seized and that all MIBs which are not registered and are illegally converting vehicles are barred from doing conversions and are closed down in terms of section 17 of the NRCS act above.

5.3 Issue 3- Whether the SABS conducted proper and sufficient tests when they were requested by the DoT in 2009 to indicate whether or not illegally converted Toyota Quantum Panel Vans could be upgraded to ensure that it could carry passengers safely.

Issues that are Common Cause

It is not disputed that:

5.3.1. In August of 2009, the DoT commenced with the first Technical Task Team Committee meeting in order to investigate the illegal conversion and financing of panel vans. The

Technical Task Team was headed by the DoT, and the SABS had a representative in that committee representative..

5.3.2. The Technical Task Team Committee decided that the SABS was to conduct tests on the Quantum panel van to ascertain the primary factors that would make this vehicle safer as a commuter vehicle.

5.3.3. The tests that were agreed upon by this team were the following: the Roll over test; the Tilt test; the "Type 2" Brake test; and the seat and seat belt anchorage test.

5.3.4. These are some points that had been discussed and resolved at the first Technical Task Team Committee meeting:

5.3.3.1. NRCS and SABS were to commence with the testing of the Quantum panel vans to establish how the vehicle could be made safe as a passenger vehicle.

5.3.3.2. They planned to produce a proto-type which could be used as a benchmark to upgrade the existing unsafe and unlawful conversions.

5.3.3.3. After some technical analysis of how the seat and seat belts anchorages could be made stronger in order to pass the test a solution was then found by the team's technical experts and given the apparent extent of the problem posed by the illegal panel van conversion, the DoT decided at the time to consider and propose an exceptional upgrade plan/retro-fitments to these vehicles so as to make them substantially safer so that they could continue to be used as taxis.

Issues in dispute

5.3.5. The complainant alleged that the South African Bureau of Standards (SABS) did not perform proper and sufficient tests when they were requested by the DoT in 2009 to indicate whether or not the illegally converted Toyota Quantum Panel Vans could be upgraded to ensure that it could carry passengers safely.

- 5.3.6. The complainant further alleged that these conversions were done although Toyota SA/and Toyota Japan did not issue a letter of approval, and the directive that was issued by Toyota SA to the SABS, NRCS and the DoT on 20 May 2009 was not adhered to.
- 5.3.7. The complainant further alleged that TFM was the only builder issued with e-NaTiS number for the conversion of these "Taxi-Type vehicles" and TFM conversions were not tested by SABS.
- 5.3.8. The complainant also alleged that the SABS never did the final test which was the rollover test as was required. He alleges that Gerotek, the subsidiary of AMSCOR is the only organisation recognized internationally which can do the roll over test in South Africa.
- 5.3.9. The complainant further alleged that in 2009 while these vehicles were being tested they failed the seat test and that when the SABS conducted these tests they did it without the manufacturer's (Toyota SA and/or Toyota Japan) data
- 5.3.10. On 5 December 2015, the SABS made submissions to the Public Protector and stated that they note that the SABS is identified as a stakeholder in the investigation and was thus afforded an opportunity to make submissions on their role and participation in the purchasing and/or conversion of Toyota Quantum panel vans into passenger carrying minibuss taxis.
- 5.3.11. The SABS also submitted that it has already been informed that the National Road Traffic Act, 1996, and its regulations, *inter alia*, the manner of registration of manufactures, builders or importers (MIB) and the requirements for fitness of vehicles, falls within the purview of DoT and that the NRCS is vested with the power to regulate commodities, products or services through compulsory specifications.

- 5.3.12. The SABS further submitted that the NRCS is the regulator responsible for ensuring conformity of vehicles with compulsory specifications through the process of homologation.
- 5.3.13. The SABS submitted that considering the legal and regulatory framework for building and/or conversion and/or conformity of vehicles to legislation, regulations and compulsory specifications it should be patently clear that the SABS is not legally empowered to perform any functions as their role, if any, is limited to testing services within its competence.
- 5.3.14. The SABS concluded by submitting that they do not register vehicle manufacturers nor does it approve any vehicles for conformity with legislation, regulations or compulsory specifications and they also do not approve vehicles for registration and therefore submitted that they could not have participated in the purchasing and/or conversion of vehicles, simply because it lacks statutory and/or regulatory powers to do so.
- 5.3.15. The SABS made further submissions on 6 June 2017 and with regard to the question posed by the Public Protector as to why were these conversions done although Toyota SA/and Toyota Japan did not issue a letter of approval and as to why a directive issued by Toyota SA to the SABS, NRCS and the DoT on 20 May 2009 where not adhered, SABS responded and informed the Public Protector that:

“A directive of this nature to the SABS, at the date as specified in the question, would have been regarded as informative by the SABS as opposed to being instructive and it is common cause that in 2009 the legislative split of the SABS and the NRCS had occurred, as such, the SABS did not possess any authority to regulate the conversion of vehicles.”

In 2009, it appears from the record that the DoT sought to correct the illegal conversions of panel vans ex post facto and indeed DoT has submitted, as per the Public Protector's correspondence under reply, that the process of retro fitment did not require authorization by the original manufacturer as the process of modifying a second hand vehicle is legal in terms of the National Road Traffic Act, No. 93 of 1996 (NRTA). Without expressing any opinion on the submission by DoT, the view held by DoT explains why the retro-fitment of conversions were done without the approval of Toyota.

Regarding the question posed by the Public Protector as to why TFM was the only builder issued with e-NaTiS number for the conversion of these "Taxi-Type vehicles" and why were the TFM conversions not tested by SABS, SABS responded to the Public Protector as follows:

"The Minister of Transport appoints the Inspectorate of manufacturers, builders and importers in terms of Section 7 of the NRTA. The powers and duties of the inspectorate in relation to the registration and inspection of manufacturers, builders and importers are prescribed in Chapter III, Part II of the National Road Traffic Regulation (NRTF) and the appointed Inspectorate in this regard is the NRCS and as such, the SABS cannot explain why TFM was the only builder issued with an e-NaTiS number"

5.3.16. Regarding the second part of the question, that in practice the NRCS does not require the SABS's test report for homologation. The NRCS relies on test reports that are obtained from independent third party conformity assessment service providers, such as the SABS or any other accredited facility. It is therefore possible for MIBs to test their products with other testing facilities other than the SABS, this information is also corroborated by section 5 (2) (h) of the National Regulatory for Specification Act, 2008.

5.3.17. Regarding the question on what was expected of SABS in the testing of these Conversions of Toyota Quantum Panel Vans into Toyota Quantum Ses'fikile or other passenger carrying variants and to what extent was this discharged and the allegation that SABS never did the final test which was the rollover test, SABS responded to the Public Protector as follows:

“That the SABS’s participation can only be limited to testing and they were able to ascertain that the SABS tested two(2) Toyota Quantum vehicles received from SA Taxi Finance and to them that appears to be the extent of the SABS’s involvement in the matter (i.e. testing of the two (2) sample vehicles)”.

5.3.18. Regarding the second part of the question, SABS attached the test reports relating to the tests conducted by the SABS i.e. **RN 2710/ C6019, RN2710 /C6021, RN2710/ C6099** and **RN2710/ C6100**.

5.3.19. Test **RN:2710/C6099** dated 21 November 2009- Anchorages for restraining devices in Motor Vehicles (Toyota Quantum minibus- Converted from panel van), the test concluded that the sample complied with the requirements of SABS 1430:2007, specific to the test conducted.

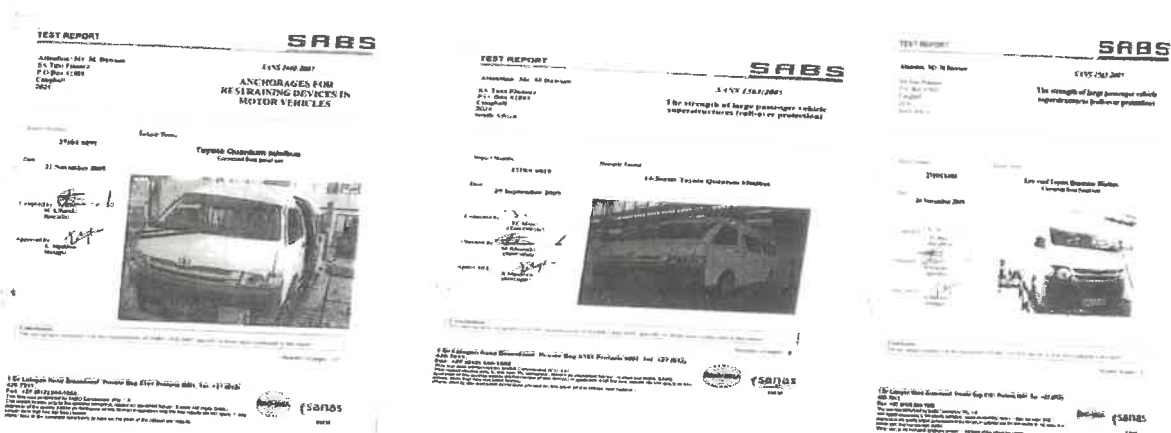
5.3.20. SANS 1429:1987 which deals with the strength of seats and their anchorage test has no performance requirements for attachment of minibus seats to the floor except that they shall be firmly attached that is reason that SABS used SANS 1430:2007 which deals with anchorages for restraining devices and covers the requirements for the location, dimensions and strength of anchorage for safety belt assemblies and lap belts for adult occupants of forward facing seats of vehicles.

5.3.21. In the meeting held on 27 June 2017, SABS however informed me that in testing the seatbelts of the vehicle they did not test the seatbelts anchorage, what they did was to test the components of the seatbelts being the strength of the belt itself and the locking mechanism which were tested separately from the vehicle.

5.3.22. **Test RN: 2710/C6021** dated 29 September 2009- 28 degree Tilt Test (14 Seater Toyota Quantum Minibus), the test concluded that the test sample complied with the requirements of Regulation 262, National Road Traffic Act, 1996 specific to the test conducted.

5.3.23. **Test RN 2710/C6100** dated 20 November 2009 - the strength of large passenger vehicle superstructures (Low-roof Toyota Quantum Minibus converted from Panel-van) (roll-over protection), the test concluded that the test sample complied with requirements of SABS 1563:2005, specific to the test conducted.

5.3.24. **Test RN 2710/C6019** dated 29 September 2009- The strength of large passenger vehicle superstructures (roll-over protection) (14- Seater Toyota Quantum Minibus), the test concluded that the test sample complied with requirements of SABS 1563:2005, specific to those test conducted. The pictures below depicts the tests allegedly done by the SABS.



5.3.25. The SABS also informed the Public Protector that they are not aware if the reports were used for homologation with the NRCS or if they simply informed SA Taxi Finance as the customer that paid for the tests.

5.3.26. According to the SABS, what is clear from the reports is that the test samples complied with the requirements. Regarding the question of the allegation that in 2009 while these vehicles were being tested they failed the seat test and the question with regard to the allegation that when SABS conducted these tests they did it without the manufacturer's (Toyota SA and/or Toyota Japan) data. The SABS responded and stated that:

5.2.26.1. *They are not aware of the failed test report on seat tests as the record of the two (2) vehicles which were tested reflects that all tests conducted by the SABS complied and regarding the second part of the question SABS informed the Public Protector that in conducting tests the SABS does not rely on the manufacturer's data.*

5.2.26.2. The SABS tests samples according to the applicable South African National Standard and Regulations. In the reports provided for the 2(two) samples which were tested, the applicable specifications and regulations applicable to the three (3) tests that were conducted are clearly outlined therein.

5.2.26.3. In addition to the above information, the SABS drew my attention to the fact that the 3(three) tests conducted by the SABS are not the only tests required for the homologation process and that a vehicle cannot be homologated based on the three (3) tests alone. The regulator has additional requirements that must be complied with before a vehicle is homologated.

- 5.3.27. On 3 November 2017, SABS reiterated that all the tests that were conducted, were aimed at making these illegal conversions safer and they were approved to be a testing facility for such by SANAS for that period.
- 5.3.28. On 5 March 2018, the ACEO of the NRCS submitted that the compulsory specifications rely on the South African National Standards that stipulates quality and safety requirements agreed upon by the industry and the quality infrastructure entities (NRCS and SABS) and currently, the national standards related to determining the carrying capacity for vehicles occupants' compartment refer to a weight of 68 kg person and the NRTA regulations stipulates 68 kg person as per Regulations no 262.
- 5.3.29. It was also established during the investigation that the test conducted by SABS used the average weight of 68kg passenger mass whilst the passenger mass of an average South African is far bigger than that.
- 5.3.30. The ACEO further stated that in terms of the NRCS conformity of Assessment Policy, the NRCS accepts satisfactory evidence of compliance with the requirements of ISO/IEC 17025 or ISO IEC 17020, from any technical assessment body even if an accreditation is not issued. The NRCS position in accepting SABS test reports is supported by the fact that they have a quality manual prepared according to the requirements of ISO 17025 standard.
- 5.3.31. On 2 March 2018, the Acting Director General of the Department of Transport submitted with regard to the recommendation that the 68 kg/ passenger mass applied to passengers is inadequate and should be revisited, that the proposed amendment to Regulation 232 of the National Road Traffic Regulations was approved by vehicle Technical Committee, as such the 68 kg is amended to 72 kg.

- 5.3.32. It was also observed during the investigation that the SABS did not test the whole vehicle, it only did the Roll over test; the Tilt test; the "Type 2" Brake test and just like any other privately owned manufactures, builders or importers (MIB) they were informed by NRCS with regard to what to test.
- 5.3.33. The SABS is a testing facility and the NRCS is the regulatory facility which must ensure that all MIBs are properly homologated to do all conversions.
- 5.3.34. On 27 June 2017, a meeting was also held with the NRCS and SABS and during the meeting Dr Boni Mehlomakhulu raised questions regarding the basis for the decision by the South African government to establish the NRCS as a separate entity from the SABS.
- 5.3.35. According to Dr Boni Mehlomakhulu the SABS is treated as a service provider by the NRCS as their regulatory powers have been taken away from the SABS and now it is one of the thousands of service providers to the NRCS. She stated that, by removing the regulatory powers from the SABS, the government weakened it as it is now not compulsory for the NRCS to use the SABS. The NRCS can use any other service provide, meaning that, the NRCS can advertise a tender and appoint whoever they want to. She further stated that SABS does not get the benefit of the responsibility that they are given.
- 5.3.36. She further stated that the SABS never did any tests for TFM and their tests were only for the South African Taxi Finance an entity which is not an MIB or NRCS but a financial institution.
- 5.3.37. According to Dr Boni Mehlomakhulu, although these tests were done, there was no rigorous testing of these converted panel vans. She concluded her testimony by stating that the structure of the regulatory framework in South Africa is not protecting the consumer.

- 5.3.38. On 11 December 2018, the SABS was issued with a notice in terms of section 7(9)(a) of the Public Protector Act thus affording her another opportunity to be heard in particular as it appeared to the Public Protector that it may be implicated in this matter and that such implication may be to its detriment in so far as action that it was expected to have taken in terms of the laws and prescripts applicable and/or conferring on its mandate.
- 5.3.39. The SABS responded on 21 December 2018 and denied any wrongdoing on its part with regard to the testing of these panel vans. According to the entity, its legal mandate prescribes that it can only act on instructions by the Department of Transport and the NRCS. It stated that it does not have any legal obligation in the process of conversion of motor vehicles in the country but can only be regarded as a testing service provider.
- 5.3.40. According to the SABS, the entity can only provide testing services on instructions from customers and regulators such as the NRCS and the DoT and the reports emanating from the testing services of the SABS in the process of conversions of motor vehicles are subject to approval by the NRCS.
- 5.3.41. It was the SABS's contention that the Office of the Public Protector made an incorrect assumption that the entity ought to have conducted proper tests. In this regard the entity stated that its testing regime is informed by the existing and relevant South African National Standards (SANS) which prescribes which tests to conduct in a product and in some instances, how to conduct those tests.
- 5.3.42. Further thereto, it was the entity's argument that the Public Protector made an incorrect assumption that the SABS ought to have conducted sufficient tests. In this regard the entity stated that the NRCS as the regulator and custodian of the homologation process pronounces on whether the requirements and/or tests for the conversion of a motor vehicle are complied with.

- 5.3.43. According to the SABS, it is the Regulator that evaluates samples for homologation supported by a large body of documented evidence, including inspections and test reports compiled by recognised laboratories or inspection authorities. The SABS further stated that inadequacies in this process cannot be put at the SABS's doorstep particularly when the entity rendered services under specific instructions of what to test.
- 5.3.44. The entity thus suggested that, to arrive at the conclusion that it did not conduct sufficient tests, the Public Protector should first establish that the entity was instructed to conduct those specific tests and that such tests were omitted without valid reasons thereof.
- 5.3.45. In addition, so stated the SABS, the final arbiter in the homologation process is the NRCS as the Regulator, it should have sourced such reports elsewhere or instruct the applicant for homologation to produce such test reports as the homologation process could not have been completed without the required tests.
- 5.3.46. The SABS concluded its submission by confirming that the entity was separated from the NRCS based on policy considerations and this process was legislated approximately ten (10) years ago and both entities have since evolved to carry out their legislative mandates.

The Application of the relevant laws and prescripts

The Standards Act, 1945 (Act No.24 of 1945)

- 5.3.47. The SABS is established in terms of section 2 of the Standards Act, 1945 (Act No.24 of 1945) and it continues to exist as a public entity in terms of Section 3 of the Standards Act, 2008 and its functions and objects as prescribed by the Standards Act, 2008 are to:

5.3.46.1 Develop, promote and maintain South Africa National Standards;

5.3.46.2 Promote quality in connection with commodities, products and services; and

5.3.46.3 Render conformity assessment services and matters connected therewith

5.3.48. Prior to the promulgation of Standards Act, 2008, the SABS had a regulatory function and in 2008 the National Regulator for Compulsory Specifications Act, 2008 established the NRCS, by virtue of the promulgation of Act 8 of 2008 and Act 5 of 2008 the functions of the erstwhile SABS were split and the regulatory function currently vests wholly with the NRCS, the objects of the NRCS are, *inter alia*:

5.3.48.1. To administer and maintain compulsory specifications;

5.3.48.2. To carry out market surveillance through inspections in order to monitor compliance with compulsory specifications; and

5.3.48.3. Enforce compliance with compulsory specifications.

5.3.49. The National Road Traffic Act, 1996, and its regulations, *inter alia*, the manner of registration of manufactures, builders or importers (MIB) and the requirements for fitness of vehicles, falls within the purview of DoT and that the NRCS is vested with the power to regulate commodities, products or services through compulsory specifications. The SABS is not legally empowered to perform any functions as their role is limited to testing services within its competence.

5.3.50. The only test that the SABS conducted was test **RN: 2710/C6099** and it followed the standards as outlined in SANS 1430:2007, test **RN: 2710/C6021** and also followed the requirements of Regulation 262, National Road Traffic Act, 1996, test **RN 2710/C6100**. The SABS followed the requirements of SANS 1563:2005 and lastly test **RN 2710/C6019** and the entity followed the requirements of

SANS 1563:2005 all the tests concluded that the test samples complied with the requirements specific to those tests conducted.

- 5.3.51. According to the SABS, it conducted all the tests required as per SANS 1430:2007, Regulation 262, National Road Traffic Act, 1996, and as per SANS 1563:2005 as per the direction of the Technical Task Team appointed by DoT.
- 5.3.52. On 28 November 2017, the South African National Accreditation System (SANS) also confirmed that SABS is an accredited testing laboratory and their accreditation number is T0238 and SANS also confirmed that for Safety testing SABS in the facility accredited in accordance with the recognised International Standards ISO/IEC 17025:2005 with effect from 05 June 2005 and their certificate expired on 5 June 2013. All the tests it conducted do have the facility accreditation number: T0238.
- 5.3.53. On 5 March 2018 The ACEO submitted that in terms of the NRCS conformity of Assessment Policy, the NRCS accepts satisfactory evidence of compliance with the requirements of ISO/IEC 17025 or ISO IEC 17020, from any technical assessment body even if an accreditation is not issued.
- 5.3.54. The NRCS's position in accepting SABS test reports is supported by the fact that they have a quality manual prepared according to the requirements of ISO 17025 standard.

Conclusion

- 5.3.55. Based on the information and evidence obtained during the investigation as well as the legal framework that is applicable to the facts of this matter, it can be concluded that, the tests that were conducted by the SABS on request by the DoT and the Task Team in 2009 were not adequate. The NRCS was responsible for the approval of the tests and stated that they met their standards.

- 5.3.56. It has been accepted by all stakeholders that accident reports involving these converted vehicles show that fatalities are far greater than any other road accident due to the vehicles being structurally unsafe.
- 5.3.57. It was also observed during the investigation that the SABS did not test the whole vehicle, it only did the Roll over test; the Tilt test; the "Type 2" Brake test; and the seat and seat belt anchorage test and these tests were done separately and just like any other privately owned manufacturers, builders or importers (MIB) the SABS were informed by NRCS and the Task Team with regard to what test they should conduct.
- 5.3.58. The other concern is that the Manufacturer never supplied their comprehensive test results to the NRCS even though a minibus taxi is the most utilised mode of public transport in South Africa. The relationship between the SABS and NRCS should be urgently looked into by the Minister of Trade and Industry as the Acting Chief Executive Officer of SABS, Dr Boni Mehlomakhulu believed that the removal of SABS powers made it not compulsory for the NRCS to use the SABS as they can use any other service provider.

6. OBSERVATIONS

The financial institutions that financed these illegally converted panel vans

- 6.1. During the investigation, it was noted that various financial institution deliberately and/or inadvertently financed these vehicles to the prejudice of the buyers who purchased them unknowingly.

Toyota Financial Services

- 6.2. According to the Toyota Financial Service (TFS) submission to the Public Protector dated 24 August 2012 the issues relating to the financing of panel vans for taxi purposes first appeared on the agenda of the South African Banking Risk Information Centre's

- ("SABRIC") Risk Forum in February 2009, where the financiers (including banks and other financial institutions) were asked to investigate firstly, if they had financed panel van conversions and, secondly, if so, to what extent the finance had been provided.
- 6.3. According to TFS, in March 2009 they sent out an internal communication to their employees, advising that illegal panel van conversions had "crept" into their system and reiterated that they would not allow this to recur. TFS brought to their staff's attention the methods which could be utilised to identify such conversions through the format of the VIN number allocated to it.
 - 6.4. According to TFS they then raised an internal IT specification proposal as an automated solution to systematically block all financing of panel vans for taxi use. In April 2009, SABRIC established a Taxi Workgroup involving all taxi financiers as well as a senior representative from the National Department of Transport to investigate this matter further. The first meeting was scheduled for 29 April 2009.
 - 6.5. One of the key concerns expressed by Toyota SA to SANTACO was that, in Toyota SA's view, even additional upgrades would not make the converted vehicles safer. Toyota SA expressed a view that the SABS and NRCS would need to assess any further upgrades.
 - 6.6. The proposal put to the DoT was successful and the DoT proceeded to put together a technical working committee to explore the option of a retro-upgrade to the converted panel vans.
 - 6.7. Press releases which subsequently emerged, reported that the DoT had identified approximately nine hundred and seventy three (973) illegal panel conversions that were operating at the time. It subsequently transpired that this information was inaccurate and that the number of illegally converted panel vans was significantly higher. On detailed analysis, the number of illegally converted panel vans in operation appeared to be in the region of two thousand three hundred and fifty three (2353).

- 6.8. In July 2009, TFS set out to investigate how these vehicles had come to be financed by the respective institutions. They discovered two primary reasons why these converted panel vans had been financed:
- 6.9. There had been some misrepresentation by dealers on the type of vehicle in respect of which finance was sought and TFS was led to believe that these vehicles had been Toyota Quantum ready-built minibuses and not panel van conversions.
- 6.10. It was later discovered that, in some cases, customers (both taxi and non-taxi operators, as was evident from the applications) had purchased panel vans for purposes other than for taxi use, but subsequently had these vehicles converted and used them as taxis.
- 6.11. Upon further investigations with the relevant motor dealers, TFS found that these vehicles had been converted by SABS-approved MIBs or converters thereby being issued with homologation certification and subsequently registered on the e-NaTiS system as vehicles for reward. Furthermore, operating licenses or temporary operating licenses had also been issued in respect of these vehicles.
- 6.12. In November 2009 TFS took precautionary measures internally to ensure that no further vehicles of this nature could be financed for taxi or "reward" purposes. TFS implemented systems to block the financing of panel vans for taxi purposes. In this regard, if a customer wanted to obtain finance for a panel van, TFS would require an affidavit from the customer to the effect that the panel van would not be used as a minibus taxi. Furthermore, if an application for finance was received for a taxi, and a VIN check established it was a panel van, the application would be rejected.

SA Taxi Finance

- 6.13. On 30 October 2015, Mr Terry Kier the CEO of SA Taxi Finance made submissions and informed the Public Protector that the conversions were first brought to their attention during October 2008 and in trying to solve the problem they issued a press statement on 29 July 2009, where they announced a new safety initiative designed

to begin the elimination of unsafe converted panel vans from the South African roads.

- 6.14. They informed the Public that they will be investing R20 million to ensure that those taxis which have been financed by SA Taxi finance are converted into panel vans, will be inspected, made structurally compliant and returned to the roads to continue servicing the needs of commuters.
- 6.15. SA Taxi also stated that they also made one hundred (100) vehicles available at its own expense for use by those taxi operators affected, whilst their non-compliant vehicles were upgraded. According to Taxi finance these conversions started in the early 2000, in response to the shortage of vehicles relative to demand and the fact that once converted these vans could accommodate two (2) extra seats, thus making them more commercially attractive for taxi operators.
- 6.16. SA Taxi finance further stated that in the first quarter of 2007, the government introduced a new, higher level of safety specification, which required all new taxis to have seatbelts and roll over protection and the new specification also stipulated that Toyota vans must be restricted to a maximum of fourteen (14) seats he seats which are fixed to the chassis.
- 6.17. According to the SA Taxi finance, around 2008, the company commissioned an International Vehicle Identification Desk (IVID) to conduct an audit of all taxis ever financed by the group and the exercise established that, of the twenty thousand (20 000) vehicles financed by SA Taxi finance, five hundred and eighty four (584) are converted panel vans of which three hundred and seventy four (374) are compliant and legal in every respect and of the 374 , two hundred and ten (210) are legal but not compliant with the required safety standards.
- 6.18. The SA Taxi finance further stated that it approached government with a proposal that, all four thousand (4000) converted panel vans in the industry be upgraded to the new safety specifications and the SA Taxi Finance would make hundred (100)

vehicles available for use by the 584 operators financed by the group while their risky vehicles are upgraded.

- 6.19. It also proposed that it will assist the police in the investigation of motor vehicle dealerships and converters who might have colluded with buyers and/or owners of these illegally converted vehicles. To circumvent the Government e-NaTiS system all of SA Taxi's documentation should be made available to be used for investigation.

Nedbank

- 6.20. On 28 October 2015 Mr Trevor Browse, the Managing Executive of MFC Nedbank Division made submissions to the Public Protector and provided that Nedbank did not at any time, willingly or knowingly finance an illegal Toyota Quantum Panel Van conversion and in the event that Nedbank financed a Toyota Quantum Panel van conversion, it would have only done so if Nedbank was in possession of a conversion certificate issued by an MIB registered in terms of the NRTA.
- 6.21. According to Mr Browse, Nedbank became aware of the issue of illegally converted Toyota Quantum panel vans for the first time in February 2009 through its participation as a stakeholder at an industry forum namely, the Taxi financier workgroup which was coordinated by the South African Banking Risk Information Centre (SABRIC) and on 11 July 2009, a Nedbank representative, Mr Dion Soine, who testified at the Western Cape Province Parliamentary Portfolio Committee Public Hearings on the illegal conversion of Toyota Quantum Panel Vans into Taxis and testified that they financed one hundred and forty nine (149) Toyota Quantum Panel Vans of which three (3) could possibly be taxis, which could have been converted but at the time it was not yet confirmed as such, as they had not conducted physical inspection on the vehicles.

- 6.22. According to Mr Browse, subsequent to the hearings Nedbank implemented proactive measures to identify in order to decline applications to finance Toyota Quantum Panel Vans conversions. A credit policy dated November 2009 was approved which states that any taxis to be financed is not a converted panel van.
- 6.23. Mr Browse further submitted that SABRIC sent a letter in December 2009, to all known panel van convertors in South Africa advising them of the certification proof needed by banks.
- 6.24. Mr Browse further submitted that by September 2010, Nedbank enlisted the services of Taxi choice, under the guidance of the South African National Taxi association Council (SANTACO) to assist with the pre-screening of taxi finance applications and also engaged the taxi industry, role-players to resolve the various issues emanating from pre-2009 financing of Toyota Quantum Panel Van conversion.
- 6.25. In conclusion, Mr Browse submitted that in the latter part of 2010, the DoT requested all financial institutions to match their vehicle book against a list of potential panel van conversions and Nedbank had twelve (12) matches of which seven (7) were confirmed as commercial goods carriers and no conversion had taken place and the other five (5) were referred to a Toyota dealership for corrective action.

Standard Bank

- 6.26. On 30 October 2015, Mr Keith Dye, the Head of Vehicle and Asset Finance at Standard Bank submitted to the Public Protector that from the time this matter was brought to the attention of the banking industry in 2009, they engaged with different role players with a view to ensure that it does not participate in the financing of any illegal vehicles and they also actively participated in the Taxi Finance Crime Workgroup through SABRIC.

- 6.27. Mr Keith Dye also informed the Public Protector that, Standard Bank has not knowingly financed any illegal vehicles and once they became aware of the issue of illegally converted panel vans their Vehicle and Asset Finance division was instructed not to finance any converted panel vans.
- 6.28. Mr Dye further informed the Public Protector that they naturally have no control over the actions of the client subsequent to the delivery of the vehicles and it appears that some of the vehicles were converted after delivery. He also informed the Public Protector that they did take action to discourage these actions including: obtaining an undertaking from the client in the agreement, not to alter the vehicles and in the case of panel vans they obtained specified undertakings from the client not to use the vehicle to transport passengers for commercial purposes (Taxis).

Wesbank

- 6.29. On 2 November 2015, Mr Chris de Kok, the CEO of Wesbank made submissions to me and provided that the matter dates back to January 2009 and since then they have been involved in finding a workable solution to resolve the problem. In January 2009, they discovered that certain Toyota Quantum panel vans had been converted into taxis and did not meet the safety specifications as laid down as per the Taxi Recapitalisation Programme (TRP) standards, and were thus deemed illegal.
- 6.30. Mr de Kok further informed me that after a meeting they had with SABRIC they found that they had forty two (42) panel vans conversions that were on their books and at that point instructed their staff to exercise vigilance in identifying such vehicles so as to prevent them financing such. They were able to identify the conversions through the method of the Vehicle Identification Number.
- 6.31. He further informed me that after that, they conducted their own investigation on their books and their investigations revealed that the reasons that they financed these vehicles was because motor dealers had invoiced these vehicles to them as being Toyota Quantum ready built minibuses and not panel van conversions. He indicated that customers had purchased panel vans initially for non-taxi use but

without the knowledge or consent of Wesbank, they then converted them into multi seater taxi vehicles.

- 6.32. Mr de Kok further informed me that further investigations with motor dealers revealed that these vehicles had apparently been converted by NRCS approved agents and had been issued with homologation certificates and these vehicles had apparently been registered on the e-NaTiS system as vehicles for reward and the operating licences or temporary operating licences had been issued on these vehicles by the respective Operating Licence Boards.
- 6.33. Mr de Kok also informed me that after the DoT formed a Data Gathering Committee, it was found that eighty one (81) of the vehicles which were illegally converted were in their books.
- 6.34. Mr de Kok further informed the Public Protector that in March 2010, they agreed on an action plan to execute the Government's Upgrade Project and the plan included but not limited to:
- 6.32.1. Establish and verify all affected Wesbank accounts based on the guidelines provided by the Data Gathering Committee;
 - 6.32.2. Appoint a dedicated resource to manage the project;
 - 6.32.3. Set up process to consider re-advances to customers where required; and
 - 6.32.4. Engage with affected customers;
 - 6.32.5. Engage with all involved motor dealers and get their support for the project and implement a final communication strategy with customers to ensure that the upgrade had been carried out successfully.
- 6.35. Mr de Kok also informed me of the challenges they experienced in December 2010, which included the provincial licensing departments not able to re-register the upgraded vehicles as minibuses due to differences in opinion between National and

Provincial spheres of government, affected customers vehicle license discs were not being renewed and letters of authority (LOA's) were not being issued.

- 6.36. With regard to challenges pertaining to the Upgrading Process and operating licenses Mr de Kok submitted that the re-registration process was finally resolved but then another problem emerged in March 2011, where the owners who had not converted their format taxi permits to the new format operating licenses could not have their licenses upgraded.
- 6.37. According to Mr de Kok, in May 2011, they finally got a dispensation from DoT that vehicles could be converted without the requirement of an operating license and this then enabled all customers, whether having operating licenses or not, to have their vehicles upgraded and several customers without operating licenses went ahead and funded the conversion themselves.
- 6.38. Mr de Kock further informed me that they intervened in June 2011 and called all their customers and inviting them to do the upgrades , however, most of their customers were not interested in having their vehicle upgraded due to additional costs,He indicated that of their customers were not interested in having their vehicles upgraded because they did not have the new format operating licenses and firmly believed that they would not be able to get their vehicles re-registered on the e-NaTiS system as minibuses.
- 6.39. According to Mr de Kok dealers who were prepared to fund customers were only prepared to partially contribute to the costs as they believe that this was merely a gesture of goodwill on their part and certain customers were willing to have the upgrade costs financed by them were not creditworthy due to adverse credit ratings.
- 6.40. In conclusion Mr de Kok believes that they had played an integral part in attempting to find an all win solution for all affected stakeholders.

Amalgamated Banks of South Africa (ABSA)

- 6.41. On 27 June 2016, Mr M de Klerk representing ABSA also informed me that when they do finance for a Panel Van they first look at the source of income and financial situation and mostly they finance panel vans for businesses.
- 6.42. Mr de Klerk also informed me that in accordance with the Master Dealer Agreements they have with dealers, if the car has a latent defect they approach the dealer so that the dealer can place the customer where he should have been, and this also means when there is a misrepresentation done by the dealer then this Master Dealer Agreement can be invoked.

General Observations with regard to the Toyota SA Motors

- 6.43. The notification of 19 October 2005 by Toyota SA motors to its Toyota dealers was not emphatically instructive as it opened a room for manipulation as it takes the blame off Toyota SA motors and places it on the illegal converted panel van owner.
- 6.44. There could be some Toyota dealers who converted the panel vans themselves and sold them from their dealer floor as a purpose built homologated Toyota Quantum.
- 6.45. There are some Toyota dealers who sold panel vans to *bona fide* taxi owners and then told them where to go to convert these vehicles.
- 6.46. Toyota Finance continued to finance these vehicles and only acted in July 2009 to investigate how these vehicles had come to be financed whilst Toyota SA knew about these illegal converted vehicles and issued a notification of 19 October 2005 on the danger of these vehicles.
- 6.47. Toyota SA motor sales on panel vans went up during the period 2005 to 2008 when these panel vans were converted and they should have been worried about this and raise public awareness to ensure that these illegal converted panel vans are not used to convey passengers for reward.

Conclusion

- 6.48. It must be noted that the jurisdiction of the Public Protector is limited to section 239 of the Constitution and in terms of section 239 of the Constitution of the Republic of South Africa, financial institutions and motor dealers do not conform to the definition of an organ of state given that financial institutions and motor dealers are not a public body **exercising a public power** or **performing a public function** in terms of legislation.
- 6.49. In terms of section 182 (1) of the Constitution, the Public Protector has power, as regulated by national legislation **to investigate** any conduct in state affairs, or in public administration in any sphere of government, that is alleged or suspected to be improper or to result in any improper conduct. Though the Public Protector has no jurisdiction to investigate financial institutions and motor dealers conduct there is no law that precludes her from making observations that she has become aware of during the course of her investigation.
- 6.50. It was observed during the investigation that some financial institutions did not inspect the goods that they were financing before they paid out the transactions. They only relied only on the Master Dealer agreement they have signed with the Motor vehicle dealers.
- 6.51. It was also observed with regards to the financing of these vehicles that after some banks became aware of these illegal converted vehicles, they did not enforce the master dealer agreement and/or master service agreement which is an agreement between banks and the motor vehicle dealers.
- 6.52. This agreement is to safe guard banks and consumers and it provides for a recourse to the dealer if the vehicle in question cannot be used by the customer for the purpose it was intended for. Some financial institutions never assisted the illegal converted panel van owners to be reimbursed for their deposits and payments made when the owners became aware that they have purchased an illegally converted

vehicle, instead they repossessed the vehicle and then sell it on auction to another unsuspecting buyer and the shortfall to the bank would be recorded as a failure by the illegal converted panel van owners to pay.

7. FINDINGS

Having considered the evidence obtained during the investigation as against the relevant regulatory framework, I make the following findings:

7.1. **Issue 1- Regarding whether the DoT failed to take effective and efficient steps to ensure the safety of commuters travelling in the Toyota Quantum panel vans that have been illegally converted into minibus taxis and whether the department failed to protect taxi owners from the consequences of purchasing Toyota Quantum Panel Vans that have been illegally converted into minibus taxis.**

7.1.1. The allegation that the Department of Transport failed to take effective and efficient steps to ensure the safety of commuters using the Toyota Quantum panel vans that have been illegally converted into minibus taxis for transport and whether it failed to protect taxi owners from the consequences of purchasing Toyota Quantum Panel Vans that have been illegally converted into minibus **is substantiated**;

7.1.2. The department was warned about the practice and the existence of these vehicles in 2009 but failed to timeously ensure that all vehicles that were illegally converted and not brought in to be corrected were impounded and thus taken off the road as envisaged in section 87 of the National Land Transport Act.

7.1.3. Toyota South Africa became aware of the practice as far back as 2005. Other than warning its motor vehicle dealership through written correspondence and in one particular instance allowing conversions under certain conditions, it does not appear to have taken any severe steps to ensure that its product is not tempered with.

- 7.1.4. This is despite the fact that all parties are in unison that these vehicles are dangerous and many accidents that they were involved in had been fatal.
- 7.1.5. The evidence and information obtained during the investigation demonstrates that, although the DoT took some action, it was ultimately not efficient and effective to ensure the safety of commuters from injuries sustained when these vehicles are involved in motor vehicle accidents and to protect taxi owners from purchasing these vehicles and the effects thereof. However, the department took a progressive step and removed the 1986 illegally converted panel vans off the roads as they were not rectified through the approved retro fitment process. With regard to the illegally converted Toyota Quantum panel vans, the DoT delayed to rectify the matter despite having known about it in 2009. It was only in March 2018 that steps were taken to remove these hazardous vehicles from the South African roads.
- 7.1.6. It was unlawful for these illegally converted vehicles that were not rectified through the approved retro fitment process to be licensed and be registered in the e-NaTiS system as minibus taxis that are used to carry up to 16 passengers for reward whilst these vehicles are registered and should be licensed as panel vans by DoT. There are gaps when these illegal converted vehicles are captured in the e-NaTiS as the information such as ID numbers and VIN-numbers are captured in the Registering Authorities and there are chances that fraud could take place where these illegal conversion can be licenced and registered for up to sixteen (16) seaters instead of three (3) seaters in the e-NaTiS systems.
- 7.1.7. The DoT conceded that the possibility is that the front-line staff at the licensing offices altered information on the e-NaTiS system, thus opening the system to manipulation and fraudulent activities.

7.2. Issue 2- Regarding whether the NRCS in its official capacity as a National Regulator responsible for the maintenance of compulsory specifications failed to take effective and efficient steps to ensure that all MIB's comply with the compulsory specifications as envisaged by the NRCS Act so as to restrict the illegal conversions of these vehicles into minibus taxis.

7.2.1. The allegation that the NRCS failed to take effective and efficient steps to ensure that all MIBs comply with the compulsory specifications as envisaged by the NRCS Act in order to restrict the illegal conversion of these vehicles into passenger carrying minibus taxis for reward **is substantiated**.

7.2.2. It is the primary role and function of the NRCS to administer and maintain compulsory specifications in the interests of public safety and health as well as promoting the rights and obligations of government to protect the health and safety of the public.

7.2.3. In its capacity as the Regulator for compulsory specifications the NRCS is also responsible amongst others, for the implementation of a regulatory and compliance system for compulsory specifications for market surveillance by the National Regulator in order to ensure compliance with the compulsory specifications. The NRCS therefore serves as the inspectorate of MIBs.

7.2.4. The NRCS was advised by Toyota SA of the practice of the conversion of Toyota Quantum Panel Vans and the manufacturer's disapproval of the practice. As the national regulator, the NRCS failed to take steps to stop the practice resulting in vehicle accidents which had severe consequences to commuters who were using them as their daily mode of transport. It is admitted that four hundred and thirty six (436) vehicles were retrofitted to make them safer but the NRCS failed to conduct surveillance to ensure the safety of the public".

7.2.5. Therefore, the NRCS failed to ensure that there are no MIB's who are illegally converting these vehicles for use as passenger carrying minibus taxis. This is despite the provisions of section 17 of the NRCS Act which bestows upon the NRCS, powers to inspect, search and seize.

7.2.6. The DoT and the RTMC established that there are 1986 illegally converted panel vans that did not follow the correct process of retro-fitment through TFM.

7.3. Issue 3- Regarding whether the SABS conducted adequate quality assurance tests when it was requested to do so by the DoT in 2009 so as to make a determination whether or not the Toyota Quantum Panel Vans that have been illegally converted to mini bus taxis could be retrofitted to ensure the safety of commuters using these vehicles.

7.3.1. The allegation that the SABS failed to conduct adequate quality assurance tests on these vehicles as requested by the DoT in 2009 with a view to making a determination whether the illegally converted vehicles could be retrofitted so as to ensure safety of the commuters using them **is substantiated**.

7.3.2. The SABS is a national standardisation entity in the Republic that is responsible for the development and maintenance of national standards. They are experts in the field, and the government and any other applicant relies on the SABS to advise them with regard to the quality of a commodity, product and/or service.

7.3.3. The SABS failed to conduct adequate quality assurance tests in respect of the vehicles to ensure that they are safe as commuter vehicles. The tests that were agreed upon between the DoT's technical task team and the SABS were roll over tests, tilt test, the "type 2" brake test and the seat and seat belt anchorage test.

7.3.4. The tests were conducted on a static vehicle (stationery) and could not therefore produce conclusive evidence on the state of these vehicles in particular structural deficiencies which may be caused by among others, cutting of side panels to put in

windows and the anchorage of the safety belts on vehicle seats rather than the chassis to ensure that they are not ripped off during motor vehicle accidents.

- 7.3.5. It would have been prudent for the SABS to conduct high speed crash tests on these vehicles so as to induce conclusive reports on how safe would the passengers be when the vehicle has rolled and what happens to the body of the vehicle when it turns on a curve or brakes applied suddenly and any other tests which they could have considered necessary in the interests of the members of the public who were using these vehicles as a mode of transportation on a daily basis.

8. REMEDIAL ACTION

The appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remedying gross negligence, undue delay, improper conduct and maladministration referred to in this report is the following:

8.1. The Minister of Transport to take urgent and appropriate steps to:

- 8.1.1. Ensure that the department has an extensive updated record of a number of vehicles (illegally converted Toyota Panel Vans into passenger carrying mini bus taxis) that have been retrofitted as part of the identified 2353 vehicles, as well as the status of all others so as to establish with certainty, the remaining number of vehicles that would still need to be attended to;
- 8.1.2. Reconcile a database of vehicles that were originally admin marked and the current value of those vehicles so as to consider the number of vehicles that will be due for scrapping and such vehicles should with the consent of its owners be duly scrapped and the owners offered scrapping allowances to enable them to acquire roadworthy and authorized vehicles;

- 8.1.3. Verify operator validity by inspecting Operating Licensing Administration System (OLAS) to determine the number of vehicles attached to Operating Licenses and consider making it a prerequisite that a vehicle should be linked to an operating license for it to qualify for a scrapping allowance;
 - 8.1.4. Facilitate a stakeholder engagement by all relevant parties such as TSAM, SANTACO, NTA, NAAMSA, NRCS, SABS, Financial Institutions and Taxi Owner representatives so as to make a determination on details of vehicles that will be eligible for scrapping based on the latest statistics; and;
 - 8.1.5. Ensure that there is an investigation conducted into the e-Natis systems manipulation which resulted in the fraudulent registration of these vehicles with a view to identifying perpetrators of these criminal conduct for arrest and prosecution by the Prosecution Authorities.
- 8.2. The Director-General of the Department of Transport to take urgent and appropriate steps to:**
- 8.2.1. Ensure that the measures taken and agreed to with the Minister are implemented;
 - 8.2.2. Through surveillance and monitoring, ensure that there is no Toyota panel van that has been converted into a mini bus taxi to carry passengers that is on the South African Roads.
- 8.3. The Minister of Trade and Industry to take urgent and appropriate steps to:**
- 8.3.1. Harness and foster good, effective and efficient working relations between the NRCS and the SABS with one being the National Regulator responsible for the maintenance of compulsory specifications and the implementation of a regulatory and compliance system for compulsory specifications and the other being a national standardization institution mandated to maintain national standards and ensure quality of commodities, products and services in the interests of the consumers and the people of South Africa.

8.3.2. This will ensure that these two (2) entities complement each other in the interests of government, members of the public and any other applicant who may be in need of their services.

8.4. The Chief Executive Officer of Toyota South Africa to take urgent and appropriate steps to:

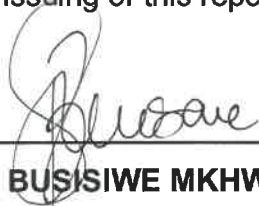
8.4.1. To consult with the Minister of Transport with a view to participating in stakeholder engagements aimed at addressing the problem and where possible assist in the identification and removal of these vehicles on the South African roads and cooperate with the department in its endeavours.

8.5. The President and Executive Councils of SANTACO, NTA and all other Taxi formations who were affected by the illegal conversions of Toyota Quantum Panel Vans into passenger carrying minibus taxis to take urgent and appropriate steps to;

8.5.1. To ensure maximum cooperation with the DoT in its quest to resolve the problem and ensure that all its members cooperate and assist in finding a lasting solution to the problem to prevent further loss of lives.

9. MONITORING

- 9.1. The Administration Heads of the departments of Transport and Trade and Industry, the Taxi Councils as well as Toyota South Africa are to submit action plans indicating how the remedial action in paragraph 8 above will be implemented within thirty (30) days from the date hereof; and;
- 9.2. All the remedial action taken above to be implemented within ninety (90) days of the issuing of this report.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 27/03/2019