



New South Wales

Transport Administration (General) Amendment (Transport Asset Manager) Regulation 2024

under the

Transport Administration Act 1988

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Transport Administration Act 1988*.

JO HAYLEN, MP
Minister for Transport

Explanatory note

The object of this regulation is to amend the *Transport Administration (General) Regulation 2018* to regulate the conversion of the Transport Asset Holding Entity (**TAHE**) to the Transport Asset Manager (**TAM**), including making provisions for the appointment of an interim Chief Executive and the transfer of staff from TAHE to TAM.

Transport Administration (General) Amendment (Transport Asset Manager) Regulation 2024

under the

Transport Administration Act 1988

1 Name of regulation

This regulation is the *Transport Administration (General) Amendment (Transport Asset Manager) Regulation 2024*.

2 Commencement

This regulation commences as follows—

- (a) for Schedule 1[1] and [2]—on the commencement of the *Transport Administration Amendment Act 2024*, Schedule 1.2,
- (b) otherwise—on the day on which this regulation is published on the NSW legislation website.

Schedule 1 Amendment of Transport Administration (General) Regulation 2018

[1] **Clause 15B Use and lease of land for recreation and tourism—the Act, s 99E(2)(a)(i) and (b) and (3)**

Insert at the end of the clause—

Note— TAHE was converted to TAM by the *Transport Administration Amendment Act 2024*. A reference in this instrument to TAHE is taken to be a reference to TAM—see the *Interpretation Act 1987*, section 53.

[2] **Clause 21A Exemption from State taxes for TAHE as a SOC—the Act, Sch 7, cl 227(4)**

Omit the clause.

[3] **Schedule 3**

Insert after Schedule 2—

Schedule 3 Arrangements about establishment of TAM—the Act, Schedule 7, clause 239

1 Definitions

In this schedule—

TAHE staff member means an employee of TAHE.

TAM conversion day means the date of commencement of the *Transport Administration Amendment Act 2024*, Schedule 1.2.

2 Interim Chief Executive

- (1) The Minister may, before the TAM conversion day, appoint a Transport Service employee as interim Chief Executive of TAM.
- (2) The interim Chief Executive may exercise functions in relation to the conversion of TAHE to TAM.
- (3) The appointment of the interim Chief Executive ceases on the TAM conversion day.

3 TAHE staff

- (1) A person's employment with TAHE is terminated on the TAM conversion day.
Note— Under the Act, section 7(4), TAM cannot employ staff.
- (2) The Transport Secretary may, before the TAM conversion day—
 - (a) make an offer to a TAHE staff member to transfer the employment of the TAHE staff member to the Transport Service, and
 - (b) if the TAHE staff member accepts the offer—directly employ the TAHE staff member in the Transport Service.
- (3) Subclause (2) has effect despite any other rules and policies about employment in the Transport Service.
- (4) Nothing in subclause (2)(a) prevents the Transport Secretary, before making an offer, from undertaking any background checks that the Secretary considers appropriate to inform the Secretary's decision to make an offer.

- (5) To avoid doubt, the terms and conditions of the person's employment in the Transport Service must be in accordance with the Act, Part 7A and are not the terms and conditions that applied during the staff member's employment with TAHE.
- (6) A person who is transferred under this clause—
 - (a) is not entitled to receive any payment or other benefit merely because the person ceases to be a TAHE staff member, and
 - (b) is not entitled to claim, under this or another Act, dual benefits of the same kind for the same period of service.
- (7) To avoid doubt, subclause (6)(a) does not affect a transferred staff member's rights or entitlements under the *Fair Work Act 2009* of the Commonwealth.
- (8) Continuous service of a transferred staff member with TAHE is taken, for all purposes, as service in the Transport Service.
- (9) Subclause (8) applies, without limiting its operation, for the purpose of the accrual of leave in the Transport Service and for the purpose of entitlements to redundancy payments if the person's employment in the Transport Service ceases.
- (10) In particular, the following applies to transferred staff members on the transfer of employment—
 - (a) an entitlement to annual leave must be paid out in accordance with the *Fair Work Act 2009* of the Commonwealth,
 - (b) an entitlement to sick leave terminates, but an equivalent number of sick days must be credited to the transferred employee's sick leave balance,
 - (c) an entitlement to long service leave terminates, but—
 - (i) an equivalent number of long service leave days must be credited to the transferred employee's extended leave days balance, and
 - (ii) the transferred employee's service with TAHE is recognised as continuous service with the Transport Service for the purpose of calculating the accrual of new extended leave.
- (11) To avoid doubt, a transferred staff member's leave remuneration must be calculated using the rate applicable when the leave is taken.
- (12) Despite subclause (10)(c)(i), a person may, on the transfer of the person's employment, elect to have the person's long service leave entitlements paid out instead of being transferred to extended leave.

4 Labour hire staff

- (1) The Transport Secretary may, before the TAM conversion day—
 - (a) make an offer to a person engaged by TAHE under a labour hire agreement to employ the person in the Transport Service, and
 - (b) if the person accepts the offer—directly employ the person in the Transport Service.
- (2) Subclause (1) has effect despite any other rules and policies about employment in the Transport Service.
- (3) Nothing in subclause (1)(a) prevents the Transport Secretary, before making an offer, from undertaking any background checks that the Secretary considers appropriate to inform the Secretary's decision to make an offer.