

Passed by both Houses



New South Wales

Passenger Transport Amendment (Taxi Licensing) Bill 2009

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2009*



New South Wales

Passenger Transport Amendment (Taxi Licensing) Bill 2009

Act No , 2009

An Act to amend the *Passenger Transport Act 1990* with respect to taxi-cab licences; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Passenger Transport Amendment (Taxi Licensing) Act 2009*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Passenger Transport Act 1990 No 39

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

annual licence for a taxi-cab—see section 32B (3).

Metropolitan transport district means the Metropolitan transport district established under section 108 of the *Transport Administration Act 1988*.

ordinary licence for a taxi-cab—see section 32B (4) (a).

short-term licence for a taxi-cab—see section 32B (4) (b).

[2] Section 3 (1)

Omit the definitions of *Department* and *Director-General*. Insert instead:

Department means the Department of Transport and Infrastructure.

Director-General means the Director-General of the Department of Transport and Infrastructure.

[3] Section 3 (1)

Omit “(including a short-term licence)” from the definition of *licence*.

[4] Section 32B Grant or refusal of application

Insert after section 32B (2):

- (3) A licence issued by the Director-General must have a term of 12 months (an *annual licence*), if:
 - (a) the licence is for a taxi-cab operated wholly or partly within the Metropolitan transport district, or
 - (b) the licence is a licence, or a licence of a class, prescribed by order of the Director-General published in the Gazette.
- (4) In any other case, the Director-General may issue a licence:
 - (a) designated as an ordinary licence, having a term, determined by the Director-General and specified in the licence (an *ordinary licence*), or
 - (b) designated as a short-term licence, having a term, not exceeding 6 years, determined by the Director-General and specified in the licence (a *short-term licence*).
- (5) A licence remains in force for the period of the term of the licence unless sooner suspended or cancelled.

- (6) Without limiting subsection (3), an order under that subsection may apply that subsection to all licences issued after a specified date or may apply that subsection to licences for taxi-cabs operated wholly or partly within a specified area or areas of the State.

[5] Sections 32C–32DB

Omit sections 32C and 32D. Insert instead:

32C Availability of annual licences (other than licences for wheelchair accessible taxi-cabs)

- (1) The Director-General must determine, before 31 March in each year, the number of annual licences to be issued for taxi-cabs during the year commencing on the following 1 July.
- (2) Any such determination may also do any of the following:
- (a) determine the number and class of annual licences that are to be issued to authorised taxi-cab drivers who are also accredited taxi-cab operators or who have applied for such accreditation,
 - (b) limit the number of annual licences that may be granted to the same applicant or related applicants if, in the opinion of the Director-General, such a limitation is likely to promote competition that will benefit the public,
 - (c) provide for any other matter relating to the issue of annual licences that is prescribed by the regulations.
- (3) In making a determination, the Director-General is to have regard to the following matters:
- (a) likely passenger demand and latent demand for taxi-cab services,
 - (b) the performance of existing taxi-cab services,
 - (c) the demand for new taxi-cab licences,
 - (d) the viability and sustainability of the taxi-cab industry,
 - (e) any other matters the Director-General considers relevant, having regard to the objective of ensuring improved taxi-cab services.
- (4) The Director-General may, if the Director-General thinks fit, obtain expert advice in relation to any of the matters referred to in subsection (3).

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- (5) The Director-General may seek public submissions before making a determination and may take into account any submissions received for the purposes of making the determination.
 - (6) The Director-General is to have regard to any applicable determination under this section when determining an application for an annual licence.
 - (7) This section does not apply to licences for wheelchair accessible taxi-cabs.

32D Renewal of licences

- (1) A licence (other than a short-term licence) is renewable from time to time on payment of the administrative fee prescribed by the regulations.
- (2) The Director-General may determine the procedures for renewal, subject to any provisions of the regulations.
Note. A licence fee is also payable under section 32H on renewal of an annual licence.
- (3) An annual licence must not be renewed more than 9 times (that is, so that a licence is in force for a total period of not more than 10 years).
- (4) A person may apply for a new annual licence, with a new fee determined under section 32JA, before or after the end of the 10 year period during which another annual licence held by the person may be renewed.

32DA Transfer of licences

- (1) An ordinary licence may be transferred.
- (2) Any other licence may be transferred only on the application of the holder's legal personal representative or of a trustee of the holder's estate.
- (3) This section is subject to any condition imposed on a licence under this Act.

32DB Letting and subletting of licences

- (1) A licence may be let or sublet without the approval of the Director-General.
- (2) This section is subject to any condition imposed on a licence under this Act.
Note. See section 30 for licensing and accreditation requirements to operate taxi-cabs.

[6] Section 32H Licence fees

Insert “(in the case of an ordinary licence or a short-term licence) or when a licence is first issued or renewed (in the case of an annual licence)” after “issued” in section 32H (1).

[7] Section 32H (3)

Insert after section 32H (2):

- (3) The Director-General may determine a licence fee under this Act that exceeds the amount required to cover the administrative or other costs of the taxi-cab licensing scheme.

[8] Section 32I Licence fee for ordinary licence

Omit “a licence” from section 32I (1). Insert instead “an ordinary licence”.

[9] Section 32I (3)

Omit the subsection.

[10] Section 32JA

Insert after section 32J:

32JA Licence fee for annual licences

- (1) The amount of the licence fee for an annual licence (other than a licence for a wheelchair accessible taxi-cab) must be determined by inviting applicants for the licence to bid for it at public auction or to submit sealed tenders for it.
- (2) The Director-General may, in the circumstances specified in the regulations, determine a licence fee for any such annual licence without complying with subsection (1).
- (3) The amount of the licence fee for an annual licence determined under subsection (1) or (2) is the licence fee payable on each renewal of the licence.
- (4) The amount of the licence fee for an annual licence for a wheelchair accessible taxi-cab is an amount determined by the Director-General.

[11] Schedule 3 Savings and transitional provisions

Insert at the end of clause 2 (1):

Passenger Transport Amendment (Taxi Licensing) Act 2009

[12] **Schedule 3, Part 12**

Insert after Part 11:

**Part 12 Provisions consequent on enactment of
Passenger Transport Amendment (Taxi
Licensing) Act 2009**

Division 1 Preliminary

56 Definitions

In this Part:

2009 Act means the *Passenger Transport Amendment (Taxi Licensing) Act 2009*.

licence means a licence for a taxi-cab.

nexus licence means a licence identified as a nexus licence by order of the Director-General under clause 64.

operative pre-1990 licence means a licence to which Division 3 applies.

paired licence means a licence identified as a paired licence by order of the Director-General under clause 64.

57 Application of Part

- (1) This Part prevails to the extent of any inconsistency with any other provision of this Schedule.
- (2) Regulations made under clause 2 of this Schedule may have effect despite any provision of this Part.

Division 2 Existing licences and new licensing scheme

58 Application of Division

This Division is subject to Divisions 3 and 4.

59 Continuation of ordinary and short-term licences

- (1) This clause applies to an ordinary or short-term licence that was in force immediately before the commencement of the 2009 Act.
- (2) Any such licence continues in force for the remainder of its term subject to Division 4 of Part 4 of this Act.

- (3) Any such licence, and any subsequent renewed licence (in the case of an ordinary licence), may be renewed and transferred in accordance with the provisions of Division 4 of Part 4 of this Act that are applicable to the type of licence concerned.

60 Effect of application of annual licence scheme

- (1) The continuation of an ordinary or short-term licence (whenever issued), or the granting of an application for the renewal of an ordinary licence, is not affected by the application of section 32B (3) of this Act to the issue of a licence of that kind (however applied).
- (2) Any applications for ordinary or short-term licences pending immediately before the application of section 32B (3) of this Act to the issue of a licence of that kind (however applied) are to continue to be dealt with, and may be issued, as ordinary or short-term licences, as the case requires.

Division 3 Licences issued before 1990

61 Application of Division to certain operative licences

- (1) This Division applies to a licence that was first granted or purported to be granted under the *Transport Licensing Act 1931* if the Director-General is of the opinion that:
 - (a) the licence was used for the purpose of operating a taxi-cab immediately before the commencement of the 2009 Act, or
 - (b) the licence was a licence under which a taxi-cab would have been permitted to be operated but was not being operated, or the licence was suspended, immediately before that commencement.
- (2) This Division so applies whether or not the licence was validly in force immediately before the commencement of the 2009 Act.
- (3) However, this Division does not apply to a licence that was surrendered or cancelled or purported to be cancelled before the commencement of the 2009 Act.
- (4) The Director-General may, at the request of the holder of a licence, notify the holder in writing as to whether or not the Director-General is of the opinion that the licence is a licence referred to in subclause (1).
- (5) This Division is subject to Division 4.

62 Validation of licences and provisions applying to licences

- (1) An operative pre-1990 licence is taken to have been (and always to have been) validly issued and in force.
- (2) Any transfer, lease or sublease of, or other transaction relating to, an operative pre-1990 licence before the commencement of the 2009 Act is taken to have been valid (and always to have been valid), to the extent to which that transaction could validly have been done after the commencement of the 2009 Act.
- (3) A transfer of an operative pre-1990 licence or other transaction referred to in subclause (2) is valid whether or not it complies with any conditions that would, under this Part, be applicable to such a transfer after the commencement of the 2009 Act.

63 Provisions applying to operative pre-1990 licences

- (1) An operative pre-1990 licence is subject to the following provisions:
 - (a) the licence remains in force until surrendered or cancelled under this Act and may be transferred,
 - (b) the area of operation, if any, of the taxi-cab concerned is (subject to section 32F) the same as it was immediately before the commencement of the 2009 Act,
 - (c) any condition imposed on the licence before the commencement of the 2009 Act, and not revoked before that commencement, is taken to have been validly imposed and may be amended or revoked under this Act.

Note. If the licence is a nexus licence or a paired licence, the conditions are revoked under Division 4 and new conditions are imposed under clause 66.
- (2) Division 4 of Part 4 of this Act (other than sections 32B (3)–(6), 32D and 32H–32JA) and Part 4B of this Act apply to an operative pre-1990 licence as if the licence were a licence issued under this Act.

Division 4 Nexus and paired licences

Note. The object of this Division is to recognise, and standardise provisions and conditions applying to, the category of licences for taxi-cabs (nexus licences) associated with licences for wheelchair accessible taxis (paired licences).

64 Identification of nexus licences and paired licences

- (1) The Director-General may, by order published in the Gazette:
 - (a) identify a licence, or a class of licences, as nexus licences, and

- (b) identify a licence, or a class of licences, as paired licences and identify the nexus licence, or class of nexus licences, with which they are associated.
- (2) In determining whether to identify a licence or class of licences as nexus licences, the Director-General may have regard to the following:
- (a) whether the issue or continuing operation of the licence or class of licences is or was regarded as being part of a scheme to subsidise the provision of wheelchair accessible taxi-cab services,
 - (b) whether the licence or class of licences was issued, or is or was regarded as being issued, subject to the issue of a licence for a wheelchair accessible taxi-cab,
 - (c) whether the licence or class of licences is or was when issued, or at any time afterwards, regarded as being subject to a limitation on transfer relating to the transfer of a licence for a wheelchair accessible taxi-cab,
 - (d) whether no licence fee or a reduced licence fee was paid for the licence,
 - (e) any other matter the Director-General thinks fit.
- (3) An order may identify a licence as a paired licence only if the Director-General is of the opinion that the licence is, or is regarded as, a licence for a wheelchair accessible taxi-cab.
- (4) An order under this clause may also identify a nexus or paired licence, or class of nexus or paired licences, (other than operative pre-1990 licences) as ordinary or short-term licences.
- (5) An order may identify a licence as an ordinary or short-term licence only if the Director-General is of the opinion that the licence was an ordinary or short-term licence when issued under this Act.
- (6) The Director-General may identify an operative pre-1990 licence or a licence issued after the commencement of this Act as a nexus licence or a paired licence.
- (7) This clause does not apply to a licence first issued after the commencement of the 2009 Act.

65 Validation of, and provisions applicable to, nexus licences and paired licences

- (1) A nexus licence or a paired licence (other than an operative pre-1990 licence) is taken to have been (and always to have been) validly issued and in force and this Act applies accordingly.

Note. Operative pre-1990 licences are validated under clause 62.

- (2) To avoid doubt, Division 4 of Part 4 of this Act applies, subject to this Division, to a nexus licence or paired licence that is an ordinary or short-term licence.

Note. For provisions applying to nexus licences or paired licences that are operative pre-1990 licences, see Division 3.

66 Conditions of nexus licences or paired licences

- (1) The area of operation, if any, of a taxi-cab for which there is a nexus or paired licence is (subject to section 32F) the same as it was immediately before the commencement of the 2009 Act.

- (2) Any other condition imposed on a nexus licence or a paired licence before the commencement of the 2009 Act, and not revoked before that commencement, is revoked.

- (3) A nexus licence is subject to the following conditions:

- (a) the taxi-cab for the licence must not be operated unless the taxi-cab for the associated paired licence is also operated in accordance with the conditions of the paired licence,
- (b) the licence may be transferred only to an authorised taxi-cab network that is an accredited taxi-cab operator,
- (c) the licence may be transferred only in conjunction with the transfer of the associated paired licence,
- (d) the holder of the licence must ensure that there is a registered taxi-cab for the licence.

- (4) A paired licence is subject to the following conditions:

- (a) the taxi-cab for the licence must be available for hire for not less than 35 hours a week and must meet any other minimum service level conditions for such a taxi-cab set out in the regulations or imposed under section 32F,
- (b) the licence may be transferred only to an authorised taxi-cab network that is an accredited taxi-cab operator,
- (c) the licence may be transferred only in conjunction with the transfer of the associated nexus licence,

- (d) the holder of the licence must ensure that there is a registered taxi-cab for the licence and that it complies with the measurement standards approved by the Director-General for wheelchair accessible taxi-cabs.
- (5) Section 32F applies to a condition imposed by this clause as if it were a condition imposed under that section.
- (6) Words and expressions used in this clause have the same meaning as they have in Part 4 of this Act.

67 Terms of nexus and paired licences (other than operative pre-1990 licences)

- (1) This clause does not apply to operative pre-1990 licences.
- (2) A nexus licence or a paired licence is taken to have a term, commencing on the day on which an order is made identifying it as a nexus licence or a paired licence:
 - (a) of a period equivalent to the original term of the licence when first issued, or
 - (b) if the Director-General cannot ascertain that term, of 3 years.
- (3) The Director-General must notify the holder of a nexus or paired licence in writing of the term of the licence.
- (4) This clause has effect despite section 32B.
Note. An ordinary licence may be renewed (see clause 65 (2) and section 32D).

68 Issue of new licence documents

- (1) The Director-General may issue new licence documents for licences identified as nexus or paired licences.
- (2) One licence document may be, but is not required to be, issued for a nexus licence and any other licence that is an associated paired licence for that licence.
- (3) The issue of the new licence documents does not affect the continuity of such licences under this Part or result in the creation of a new licence.
- (4) The holder of a nexus or paired licence must, on the issue of the new licence document:
 - (a) surrender any former licence document relating to the licence to the Director-General, or

- (b) provide the Director-General with such information or other evidence as the Director-General may require as to why the holder is unable to surrender the document.

Division 5 Annual licences

69 Issue of annual licences before 1 July 2010

- (1) Despite section 32C, the Director-General may issue up to 100 annual licences during the period commencing on the commencement of the 2009 Act and ending on 1 July 2010.
- (2) This clause does not apply to annual licences for wheelchair accessible taxi-cabs.