

PASSENGER TRANSPORT BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill provides a scheme for the regulation of passenger transport, replacing the scheme embodied in the Transport Licensing Act 1931. The main features of the new scheme are broadly outlined in the statement of objects of the proposed Act (in clause 4 of the Bill).

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 defines the various kinds of public passenger services and vehicles to which the proposed Act is to apply, and terms and expressions used in the proposed Act.

Clause 4 contains a brief description of the objects of the proposed Act.

Clause 5 provides that the proposed Act binds the Crown. In particular, it is to apply to bus and ferry services operated by the State Transit Authority and the State Rail Authority.

Clause 6 enables regulations to be made which identify types of public passenger vehicles not for the time being dealt with by the proposed Act and which may apply the proposed Act to those vehicles.

PART 2 - CREDENTIALS OF OPERATORS AND DRIVERS

Division 1 - Accreditation of operators

Clause 7 describes the purpose of accreditation of the operators of public passenger services, and prohibits the carrying on of such services by persons who are not accredited.

Clause 8 enables the Director-General of the Department of Transport to issue accreditations according to procedures determined by the Director-General or by the regulations.

Clause 9 requires accreditations to be particularised in writing, specifying the services for which they are appropriate.

Clause 10 enables the variation, suspension or cancellation of an operator's accreditation by the Director-General. Such action may only be taken in light of a failure by the operator to meet standards of financial viability, reputation, safety or maintenance standards or other standards on which accreditation is based.

Division 2 - Drivers' authorities

Clause 11 describes the purpose of the issue of authorities to the drivers of public passenger vehicles, and prohibits the driving of such a vehicle by persons who are not authorised.

Clause 12 requires applicants for a driver's authority to meet criteria specified by the regulations or by the Director-General and enables the issue of authorities according to procedures determined by the Director-General or by the regulations.

Clause 13 requires an authority to be particularised in writing, specifying the vehicles for which it is appropriate.

Clause 14 enables the variation, suspension or cancellation of a driver's authority by the Director-General. Such action may only be taken in light of a failure by the driver to meet standards of aptitude or reputation or other standards on which the authority is based.

Division 3 - Fees

Clause 15 allows a fee to be prescribed for investigation of an application for any credential under Part 2 of the proposed Act.

PART 3 - REGULAR PASSENGER SERVICES

Clause 16 requires each accredited operator desiring to operate a regular passenger service to enter into a service contract with the Director-General (on behalf of the Crown), and prohibits the carrying on of a regular passenger service otherwise than under a service contract.

Clause 17 describes certain matters for which the service contract must make provision and certain other matters for which it may make provision. The contract must specify its duration, the manner in which it may be terminated, the safety and vehicle maintenance standards to be observed and any other matters required by the

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proposed Act or the regulations to be specified. It may make provision relating to penalties for breaches of the contract, bonds securing performance under it and such other matters as the parties consider appropriate. The contract may also provide for the periodic review of any matter determined by or under it.

Clause 18 provides for service contracts to be classified as "commercial" or "non-commercial". The holder of a commercial contract is to be remunerated from revenue from fares, whereas the holder of a non-commercial contract will be paid a fixed contract price, or at an agreed rate, by the government.

Clause 19 requires a commercial contract to fix a scale of maximum fares. Such a scale under a commercial contract must be fixed at not less than the average level prevailing for comparable services and must have due regard to inflationary factors likely to affect costs.

Clause 20 requires a service contract to specify a scale of minimum service levels. In fixing the scale, regard must be had to industry averages in relation to the times at which services are provided, and their frequency, in communities of comparable needs and population densities.

Clause 21 provides that a commercial contract that specifies a route of operation is to confer the exclusive right to operate regular passenger services on that route. The right of a holder of a contract that specifies a region of operation is to be an exclusive right to operate regular passenger services in that region (subject to any existing route specified in the contract).

Clause 22 contains the mechanism by which the Director-General may arrange the provision of additional services in a region or on or near to a route in respect of which there is already a commercial contract on foot, taking into account the existing rights of contract-holders.

Clause 23 provides that the holder of a commercial contract who has performed satisfactorily under that contract is generally entitled to a renewal, at the expiry of its term, for a further period of 5 years.

Clause 24 provides that the region or route of operation of a contract may be varied only by consent of the parties. The clause further provides that any renewal of a commercial contract offered under clause 23 must be in relation to the same region or route as that defined in the expired contract unless the parties agree otherwise or the Director-General determines that the variation is necessary for reasons of public interest.

Clause 25 provides that the benefit of a service contract is not assignable without the consent of the Director-General. The Director-General's consent is not to be given unless the Director-General is satisfied that the person has the appropriate accreditation and will make adequate provision for the conduct of the service.

Clause 26 describes the circumstances in which the Director-General may vary, suspend or cancel a service contract. These include a serious or persistent failure to observe the provisions of the contract or a conviction of the holder for an offence relating to the furnishing of information regarding the service. Should the holder lose the appropriate accreditation, his contract will automatically be cancelled.

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Clause 27 provides that a fee, additional to any other fee payable under the proposed Act, is payable in respect of each award or renewal of a service contract.

Clause 28 provides that those provisions of proposed Part 3 (except for the provision that creates an offence) that confer or impose any rights, powers or duties on the parties are to be taken to be included in each service contract. Any contravention of such a provision may be remedied in the ordinary way that breaches of contract may be remedied, and the availability of such a remedy precludes persons from resorting to judicial review of the decisions of the Director-General.

PART 4 - TAXI-CABS AND PRIVATE HIRE VEHICLES

Division 1 - Licensing requirements

Clause 29 prohibits the provision of a taxi-cab or private hire vehicle service otherwise than under the authority of, and in accordance with the terms and conditions of, an appropriate licence.

Clause 30 specifies the manner in which application for the appropriate licence or renewal of licence is to be made.

Clause 31 describes the circumstances in which the Director-General is not to issue or renew a licence. The clause also provides that the duration of a licence (other than a licence granted under clause 32) is to be determined by the Director-General and specified in it.

Clause 32 enables the Director-General to issue, on the applicant's request, a short-term licence, valid for a period of 12 months. Such a licence (which is not renewable) is transferable only on the death or incapacity of the holder.

Clause 33 requires a licence to specify the area in which the vehicle concerned may operate. (If no area is specified, the vehicle may operate anywhere in New South Wales.) The licence does not confer any exclusive right to operate in the area specified in it.

Clause 34 provides that a licence may specify certain conditions (which will be subject to the regulations). The conditions may include the fares etc. to be charged (which may be determined by the Director-General having regard to the public interest and to the general level of fares etc. applying to similar vehicles).

Clause 35 empowers the Director-General to vary the area of operation or the conditions specified in a licence. The licensee may request such a variation and the Director-General may (having regard to the public interest) accede to or refuse the request.

Clause 36 provides that a licensee may not transfer a licence. The Director-General must, however, on the application of the licensee (or his legal personal representative), transfer the licence to a nominated person if the person has the appropriate accreditation and the relevant transfer tax payable under proposed Division 2 has been paid. If that tax has not been paid, the Director-General must withhold approval of the transfer.

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Clause 37 describes certain circumstances in which the Director-General may suspend or cancel a licence. These include:

- (a) non-compliance with the provisions of the proposed Act or the regulations, or with the terms and conditions of the licence, where the non-compliance is attributable to default by the licensee or the licensee's agents or employees;
- (b) conduct of the service in a dangerous manner;
- (c) the conviction of the licensee of an offence relating to the furnishing of information regarding the service; and
- (d) the licensee's failure to obtain a satisfactory policy of insurance.

Clause 38 provides that a fee, additional to any application fee and being an amount equivalent to the current open market value of the licence, is payable on the first issue of a licence (other than a short-term licence). The Director-General is empowered, however, in circumstances specified in the regulations, to set the fee at an amount less than that value, or to decide not to impose any fee.

Clause 39 provides for a fee to be payable for a short-term licence.

Clause 40 specifies the criteria that a vehicle (known as a "stand-by taxi-cab") must meet if it is to be used as a substitute for a licensed vehicle while that vehicle is undergoing repair or service.

Clause 41 prohibits the operation of a taxi-service radio communication network otherwise than in compliance with the terms and conditions contained in the Director-General's written authority in respect of it. The clause also specifies the grounds on which the Director-General may refuse to grant such an authority, and the grounds on which it may be revoked or suspended. The Director-General is further empowered to vary, add or revoke a condition or restriction of the authority.

Clause 42 provides for the inspection of licensed vehicles and of vehicles that the Director-General considers require licensing.

Division 2 - Transfer tax

Clause 43 defines "transport district", and "current market value" of a taxi-cab licence, for the purposes of the proposed Division.

Clauses 44, 45 and 46 re-enact the substantive provisions of the Transfer of Public Vehicles (Taxation) Act 1969, which is repealed by the proposed Act (clause 64).

PART 5 - REVIEW OF CERTAIN DECISIONS

Division 1 - Notifications

Clause 47 requires that parties entitled to request a review of certain decisions made by the Director-General be given written notification of those decisions, and of the reasons for them. The clause also provides that the Director-General's decisions are effective from the time when the person concerned is notified, and

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remain in effect unless rescinded by the Director-General or by a Court hearing an appeal against the decision.

Division 2 - Review by review panels

Clause 48 entitles the holder of a service contract to request a review, by a review panel, of certain decisions of the Director-General.

Clause 49 provides for the appointment of review panels.

Clause 50 specifies the form any request for a review is to take. The clause further specifies the circumstances in which a panel may decline to investigate a case.

Clause 51 relieves the Director-General of any obligation to accept any recommendation of the panel. It also specifies that nothing in the provisions relating to reviews affects the operation of clause 28 (which incorporates the provisions of proposed Part 3 into service contracts).

Division 3 - Appeals

Clause 52 specifies the classes of persons who may appeal under this Division to the Local Court against certain decisions affecting them.

Clause 53 specifies the matters to which the Court must have regard when deciding an appeal. The clause also specifies that the Court's decision is final.

PART 6 - MISCELLANEOUS

Clause 54 prohibits certain activities relating to the provision of credentials.

Clause 55 requires offenders to state their names and residential addresses to a member of the Police Force or to an authorised officer on request.

Clause 56 prohibits the hindrance or obstruction of an authorised officer.

Clause 57 specifies the extent to which authorised officers may exercise the powers conferred on them.

Clause 58 provides that any director or manager of a corporation who knowingly authorised or permitted the corporation to contravene a provision of the proposed Act or of the regulations is to be taken to have contravened that provision.

Clause 59 defines "penalty notice offence" and "penalty notice" and provides for the issue and service of such notices.

Clause 60 specifies the venue for proceedings for offences.

Clause 61 provides for the recovery of any money payable under the proposed Act or the regulations.

Clause 62 requires the Director-General to keep certain records and provides that a certificate of the Director-General in relation to any matter in those records is prima facie evidence of what it certifies and is admissible in any legal proceedings.

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Clause 63 empowers the Governor to make regulations in aid of the proposed Act.

Clause 64 gives effect to the repeal of the Transport Licensing Act 1931 and other enactments and gives effect to a Schedule of savings and transitional provisions.

Clause 65 gives effect to a Schedule of amendments of other Acts.

**SCHEDULE 1 - TAX ON TRANSFER OF LICENCES
FOR TAXI-CABS**

This Schedule re-enacts a scale of transfer taxes that was contained in the Transfer of Public Vehicles (Taxation) Act 1969, repealed by the proposed Act.

SCHEDULE 2 - REPEALS

This Schedule lists the enactments repealed by the proposed Act.

SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS

This Schedule enacts appropriate savings and transitional provisions consequent on the enactment of the proposed Act and the repeal of the Transport Licensing Act 1931.

SCHEDULE 4 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

This Schedule contains amendments of other Acts that are made as a consequence of the enactment of the proposed Act and the repeal of the Transport Licensing Act 1931.

The expression "penalty unit", used throughout the Bill, has its basis in section 56 of the Interpretation Act 1987. At present, 1 penalty unit is equivalent to \$100.
