

# Passenger Transport Act 1990 No 39

[1990-39]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
  - [Associations Incorporation Act 2009 No 7](#) (not commenced)
  - [Coroners Act 2009 No 41](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) (not commenced — to commence on 17.7.2009)

### Authorisation

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# Passenger Transport Act 1990 No 39



New South Wales

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# Passenger Transport Act 1990 No 39



New South Wales

An Act to regulate public transport services; to repeal the *Transport Licensing Act 1931* and certain other enactments; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Passenger Transport Act 1990*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**accredited service operator**, in relation to a public passenger service, means a person accredited under Division 1 of Part 2 for a service of that kind (or for services that include such a service).

**authorised officer** means an authorised officer appointed under section 46W.

**Board of Inquiry** means a Board of Inquiry constituted by the Minister under section 46BC.

**bus** means a motor vehicle which seats more than 8 adult persons, and includes a vehicle of any class prescribed by the regulations for the purposes of this definition.

**bus safety work** means any of the following classes of work:

- (a) work relating to the driving or other operation of a bus, the loading or disembarking of passengers from a bus or the movement of buses,
- (b) work relating to the repair, maintenance or upgrading of buses, bus terminals or bus maintenance facilities,
- (c) work involving the development, management or monitoring of safe working systems for public passenger services carried on by means of buses,

(d) any other work that is prescribed by the regulations as bus safety work.

**bus service contract region** means a region declared (and as varied from time to time) by the Director-General under section 28EA.

**charter service** means a public passenger service in which a bus or ferry or another vehicle prescribed by the regulations, and the services of a driver of the vehicle, are pre-booked for hire to take passengers for an agreed fee, but only if, according to the terms of the hire:

- (a) the hirer is entitled to determine the route for the journey and the time of travel, and
- (b) all passengers' journeys have a common origin or a common destination, or both, and
- (c) individual fares are not payable by the passengers (either to the operator of the service or to the driver of the vehicle), and
- (d) service is not provided according to regular routes and timetables.

**Chief Investigator** means the Chief Investigator of the Office of Transport Safety Investigations appointed under section 45 of the [Transport Administration Act 1988](#).

**corporation** means any incorporated body of the kind referred to in section 5A (1) (c).

**Department** means the Ministry of Transport.

**Director-General** means the Director-General of the Department.

**driver** means a person who drives any public passenger vehicle (or, where the vehicle is a vessel, means the master for the time being of the vessel).

**emergency route** means a route determined under section 28H.

**ferry** means a vessel which seats more than 8 adult persons, and includes a vessel of any class prescribed by the regulations for the purposes of this definition.

**ferry safety work** means any of the following classes of work:

- (a) work relating to the driving or other operation of a ferry (including, but not limited to, the course, propulsion or berthing of a ferry), the loading or disembarking of passengers from a ferry or the movement of ferries,
- (b) work relating to the repair, maintenance or upgrading of ferries, ferry terminals, ferry wharves or ferry maintenance facilities,
- (c) work involving the development, management or monitoring of safe working

systems for public passenger services carried on by means of ferries,

(d) any other work that is prescribed by the regulations as ferry safety work.

**ferry service contract**—see section 16AA.

**holder**, in relation to a service contract, means the person who (apart from the Director-General) is a party to the contract.

**licence** means a licence (including a short-term licence) for a taxi-cab, or a licence for a private hire vehicle, in force under this Act.

**long-distance service** means a public passenger service conducted according to one or more regular routes, in which each passenger is carried for a distance of not less than 40 kilometres.

**Maritime Authority** means the Maritime Authority of NSW constituted under Part 4 of the [Ports and Maritime Administration Act 1995](#).

**passenger** does not include the driver of a public passenger vehicle (or, where the vehicle is a vessel, the master or crew of the vessel).

**previous offender**, in relation to the maximum penalty for an offence, means a person who has, at any time before being sentenced for that offence, been convicted of an offence of any kind against this Act or the regulations.

**private hire vehicle** means a motor vehicle (other than a bus or taxi-cab) which is used to provide a public passenger service (other than a regular passenger service, a long-distance service, a charter service or a tourist service).

**public passenger service** means the carriage of passengers for a fare or other consideration:

(a) by motor vehicle (other than a light rail vehicle) along a road or road related area, or along the whole or part of a transitway route, or

(b) by vessel within any New South Wales waterway.

**public passenger vehicle** means:

(a) a bus used to provide a public passenger service, or

(b) a ferry used to provide a regular passenger service, or

(c) a taxi-cab or private hire vehicle, or

(d) a vehicle declared by a regulation under section 6 to be a public passenger vehicle.

**rail passenger service** means the carriage of passengers for a fare or other consideration by rail, but does not include any rail passenger service of a class prescribed for the purposes of this definition.

**rail services contract** means a contract entered into under section 28K.

**regular bus service** means any regular passenger service conducted by bus (including any transitway service).

**regular ferry service** means any regular passenger service conducted by ferry, but does not include any service of a class prescribed for the purposes of this definition.

**regular passenger service** means a public passenger service conducted according to regular routes and timetables, but does not include a tourist service or a long-distance service.

**regulator** means:

- (a) in relation to a public passenger service carried on by means of a ferry—the Maritime Authority, and
- (b) in relation to a public passenger service carried on otherwise than by means of a ferry—the Director-General.

**road** means a road within the meaning of the [Road Transport \(General\) Act 2005](#) (other than a road that is the subject of a declaration made under section 15 (1) (b) of that Act relating to all of the provisions of that Act).

**road related area** means a road related area within the meaning of the [Road Transport \(General\) Act 2005](#) (other than a road related area that is the subject of a declaration made under section 15 (1) (b) of that Act relating to all of the provisions of that Act).

**service contract** means a contract entered into under Part 3.

**service levels** means:

- (a) the periods of time during which services are to be operated, and
- (b) the frequency and extent of operation of services during any specified period of time.

**strategic transport corridor** means a transport corridor declared (and as varied from time to time) by the Director-General under section 28EB.

**taxi-cab** means a motor vehicle:

- (a) which is used to provide a public passenger service (other than a regular passenger service, a long-distance service, a charter service or a tourist service),

and

- (b) which, for the purpose of procuring passengers, is made to ply or stand for hire in a road or road related area.

**tourist service** means a public passenger service provided by a bus or ferry or another vehicle prescribed by the regulations, being:

- (a) a pre-booked service designed for the carriage of tourists to destinations listed on a publicly available tour itinerary, or
- (b) a service designed for the carriage of tourists where all passengers' journeys have a common origin or a common destination, or both.

**transitway route** means a route determined (and as varied from time to time) under Subdivision 3 of Division 3 of Part 3, other than an emergency route.

**transitway service** means a regular passenger service conducted by bus by means of a transitway route or emergency route, or one or more parts of any such route.

**transport safety employee** means:

- (a) an employee or a contractor of an accredited service operator, or of an operator of a public passenger service carried on by means of a ferry, who performs transport safety work, or
- (b) a person who, without remuneration or reward, voluntarily and without obligation performs transport safety work for an accredited service operator, or an operator of a public passenger service carried on by means of a ferry, or
- (c) an individual who is an accredited service operator, or an operator of a public passenger service carried on by means of a ferry, and who performs transport safety work.

**transport safety inquiry** has the same meaning that it has in section 46BC.

**transport safety work** means bus safety work or ferry safety work, as the case requires.

**vehicle** includes a vessel.

- (2) Notes in the text of this Act do not form part of this Act.

#### 4 Objects

The objects of this Act are:

- (a) to require the accreditation or authorisation, by the Director-General, of the operators of and drivers involved in public passenger services (other than ferry services), and

- (b) to dispense with the licensing of ferries and buses used to provide a public passenger service, providing instead for:
  - (i) ferry and bus services to be operated under fixed-term contracts entered into between the Director-General and operators, and
  - (ii) deregulation of long-distance and tourist services, and
  - (iii) regulation of government and non-government buses and ferries on a more equal basis, and
- (c) to encourage the provision of school bus services on a more commercial basis, without disregarding the reasonable expectations of traditional service operators, and
- (d) to provide for rail services contracts between RailCorp and the Director-General, and
- (e) to encourage public passenger services that meet the reasonable expectations of the community for safe, reliable and efficient passenger transport services, and
- (f) to encourage co-ordination of public transport services.

## **5 Crown bound by Act**

- (1) This Act binds the Crown not only in right of New South Wales but also, in so far as the legislative power of Parliament permits, in all its other capacities.
- (2) In particular, this Act, in so far as it applies to public passenger services, applies to any such services carried on by Sydney Ferries, the State Transit Authority and Rail Corporation New South Wales.

### **5A Persons who may be accredited**

- (1) For the purposes of this Act, the following are eligible to be accredited to carry on a public passenger service:
  - (a) a single individual,
  - (b) two or more individuals carrying or proposing to carry on the service jointly under a partnership or other agreement or arrangement,
  - (c) a body incorporated by or under the law of this or any other jurisdiction (including the *Corporations Act 2001* of the Commonwealth, the *Associations Incorporation Act 1984* or the *Co-operatives Act 1992*).
- (2) If 2 or more individuals are jointly accredited and any one of them dies or ceases to jointly carry on the service:
  - (a) the accreditation is automatically suspended on the expiration of 21 days after the death or cessation if the Director-General has not been notified before that time of



the death or cessation, and

(b) the accreditation may be cancelled, suspended or varied under this Act because of the death or cessation (whether before or after any such notification).

(3) If 2 or more individuals are jointly accredited to carry on a public passenger service, each of those individuals has the obligations imposed on accredited operators of any such service under this Act.

## **6 Other public passenger vehicles**

(1) The regulations may declare that any specified class of vehicles, being vehicles used for the carriage of passengers for hire or for any consideration or in the course of any trade or business, are to be taken to be public passenger vehicles for the purposes of this Act.

(2) The regulations may apply all or any of the provisions of this Act (with or without modification) to any such class of vehicles.

### **6A (Repealed)**

## **Part 2 Credentials of operators and drivers (other than taxi-cabs and private hire vehicles)**

### **Division 1 Accreditation of operators**

#### **7 Accreditation**

(1) A person who carries on a public passenger service by means of a bus or other vehicle (other than a vessel), being a service operating within, or partly within, New South Wales, is guilty of an offence unless the person is an accredited service operator for that service.

Maximum penalty: 1,000 penalty units.

(2) The purpose of accreditation under this Division is to attest:

(a) that the accredited person is (or, in the case of an accredited corporation, the designated directors and managers of the corporation are) considered to be of good repute and in all other respects fit and proper to be responsible for the operation of a public passenger service, and

(b) that the accredited person has demonstrated the capacity to meet the government's standards of:

(i) financial viability, and

(ii) safety of passengers and the public, and

(iii) vehicle maintenance,

to the degree and in the manner required in respect of services of the kind specified in the accreditation.

(3) Standards for the purposes of subsection (2) (b):

(a) may be prescribed by the regulations, or

(b) to the extent that they are not so prescribed, may be determined and published by the Director-General and made available to interested persons.

(3A) Different standards for the purposes of subsection (2) (b) may be prescribed or determined under subsection (3) for different classes of public passenger services and different classes of operators of public passenger services.

(4) Any person wishing to obtain from the Director-General a copy of a standard published under subsection (3) (b) must pay the fee (if any) prescribed by the regulations.

(5) Standards published under subsection (3) (b) may be re-determined by the Director-General from time to time, and are to be re-published and made available as occasion requires.

## **8 Procedure**

(1) Having regard to the purpose of accreditation, the Director-General may accredit persons applying for accreditation.

(2) For the purposes of this section:

(a) a corporation may nominate, and the Director-General may accept the nomination of, any number of its directors and managers, and

(b) further nominations may be made and accepted from time to time, and

(c) a person so nominated becomes a designated director or manager, as referred to in section 7 (2) (a), only when the Director-General certifies acceptance of the nomination.

(3) Procedures for the purposes of this section may be settled by the Director-General, subject to any provision in that behalf made by the regulations.

## **9 Style of accreditation**

(1) Particulars of accreditation are to be given in writing by the Director-General to the accredited person.

(2) An accreditation may be given so as to be general or limited, that is to say:

(a) appropriate for all public passenger services to which this Part applies, or

- (b) appropriate only for the service or services designated in the accreditation, or for a service or services having the scope or characteristics so designated.

#### **9A Issue and renewal of accreditation**

- (1) An accreditation, unless sooner suspended or cancelled, remains in force for a period determined by the Director-General and specified in the particulars of accreditation, but is renewable from time to time on payment of the fee (if any) fixed under section 15 for the renewal.
- (2) Procedures for renewal may be settled by the Director-General, subject to any provision in that behalf made by the regulations.

#### **9B Conditions of accreditation**

- (1) An accreditation is subject to:
  - (a) the conditions prescribed by the regulations, and
  - (b) such additional conditions as the Director-General, having regard to the purpose of accreditation, may from time to time impose on the accreditation.
- (2) Conditions in force under subsection (1) (b) may be varied (whether by amendment, addition, revocation or suspension of one or more conditions) by the Director-General from time to time by notice served on the accredited person.
- (2A) Without limiting subsection (1) (a), the regulations may prescribe conditions of accreditation relating to the reporting of occurrences of a specified kind to the Director-General.
- (3) An accredited service operator who contravenes or fails to comply with a condition of the operator's accreditation is guilty of an offence.  
  
Maximum penalty: 500 penalty units.
- (4) A variation of conditions imposed on an accreditation by the Director-General under subsection (1) (b) is, for the purposes of Division 3 of Part 5 (Reviews by Administrative Decisions Tribunal), a variation of the accreditation.

#### **9C Accreditation conditions relating to drug and alcohol programs and testing**

- (1) Without limiting section 9B, it is a condition of an accreditation of an accredited service operator that carries on a public passenger service by means of a bus:
  - (a) that the operator prepare and implement a drug and alcohol program for its transport safety employees that complies with guidelines approved by the Director-General for the purposes of this section and published in the Gazette, and
  - (b) that the operator ensure that all transport safety employees employed, or

contracted, by the operator to perform transport safety work are not under the influence of alcohol or any other drug when about to carry out, or while on duty for the purposes of carrying out (whether or not carrying out), transport safety work.

- (2) The drug and alcohol program is to include any matters required to be included by the guidelines approved by the Director-General for the purposes of this section.
- (3) Without limiting subsection (1) (a), the guidelines are to include provisions for or with respect to the following:
  - (a) protocols for fair procedures,
  - (b) education and assistance of transport safety employees.
- (4) The Director-General may at any time arrange with accredited service operators for the random testing of any person on duty for the purposes of carrying out transport safety work for the presence of alcohol or any other drug to ensure that the accredited service operators are complying with the conditions imposed by this section.
- (5) Nothing in this Act or the regulations derogates from the operation of Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999* or Part 3 of and Schedule 1 to the *Marine Safety Act 1998*.
- (6) Schedule 5 has effect.
- (7) For the purposes of this section, a transport safety employee is to be regarded as being about to carry out transport safety work if the employee:
  - (a) has left home or a temporary residence for work (being transport safety work), and
  - (b) has not commenced work after having so left home or the temporary residence.
- (8) (Repealed)

#### **9D Safety management systems for bus services**

- (1) Without limiting section 9B, it is a condition of an accreditation of an accredited service operator that carries on a public passenger service by means of a bus that the operator has, and implements, a safety management system that complies with the requirements of this section.
- (2) The safety management system must be documented and must:
  - (a) identify any significant risks that have arisen or may arise from providing the service, including carrying out any associated transport safety work, and
  - (b) specify the controls (including audits, expertise, resources and staff) that are to be employed by the operator to manage the risks and to monitor safety outcomes in

relation to the provision of the service, and

- (c) comply with any requirements prescribed by the regulations or set out in any guidelines issued by the Director-General under this section and published in the Gazette.

**Editorial note—**

For guidelines under this subsection, see Gazette No 142 of 25.11.2005, p 9811.

- (3) The Director-General may issue guidelines with respect to policy objectives and safety initiatives to be adopted by accredited service operators in safety management systems.
- (4) An accredited service operator must, if directed to do so by the Director-General, vary a safety management system.
- (5) An accredited service operator who fails to comply with the condition of accreditation referred to in subsection (1) is guilty of an offence.

Maximum penalty: 1,000 penalty units.

- (6) (Repealed)

**10 Variation, suspension or cancellation of accreditation**

- (1) Having regard to the purpose of accreditation, the Director-General may at any time vary, suspend or cancel any person's accreditation.
- (2) The accreditation of a corporation is automatically cancelled when there is no designated director or manager for the purposes of section 7 (2) (a).

**Division 2 Drivers' authorities**

**11 Authorities**

- (1) A person who drives a public passenger vehicle (other than a ferry) is guilty of an offence unless the person is the holder of an appropriate authority under this Division.

Maximum penalty: 100 penalty units.

- (2) The purpose of an authority under this Division is to attest:
  - (a) that the authorised person is considered to be of good repute and in all other respects a fit and proper person to be the driver of a public passenger vehicle, and
  - (b) that the authorised person is considered to have sufficient responsibility and aptitude to drive the vehicle or vehicles to which the authority relates:
    - (i) in accordance with the conditions under which a public passenger service is

operated, and

(ii) in accordance with law and custom.

(3) The regulations may create categories or grades of authority.

#### **11A Issue and renewal of authorities**

- (1) An authority, unless sooner suspended or cancelled, remains in force for a period determined by the Director-General and specified in the authority, but is renewable from time to time on payment of the fee (if any) fixed under section 15 for the renewal.
- (2) Procedures for renewal may be settled by the Director-General, subject to any provision in that behalf made by the regulations.

#### **11B Conditions of authority**

- (1) An authority is subject to:
  - (a) the conditions prescribed by the regulations, and
  - (b) such additional conditions as the Director-General, having regard to the purpose of an authority, may from time to time impose on the authority.
- (2) Conditions in force under subsection (1) (b) may be varied (whether by amendment, addition, revocation or suspension of one or more conditions) by the Director-General from time to time by notice served on the holder of the authority.
- (3) The holder of an authority who contravenes or fails to comply with a condition of the authority is guilty of an offence.

Maximum penalty: 100 penalty units.
- (4) A variation of conditions imposed on an authority by the Director-General under subsection (1) (b) is, for the purposes of Division 3 of Part 5 (Appeals), a variation of the authority.

#### **12 Criteria and procedure**

- (1) Having regard to the purpose of an authority, the Director-General may grant authorities to persons applying for them.
- (2) Applicants must meet any criteria set forth in the regulations and must satisfy the Director-General as to any matter the Director-General considers relevant.
- (3) Procedures for the purposes of this section may be settled by the Director-General, subject to any provision in that behalf made by the regulations.

### **13 Style of authority**

- (1) An authority is to be given in writing by the Director-General to the person authorised.
- (2) The authority must specify the kind or kinds of vehicles for which it is appropriate.

### **14 Variation, suspension or cancellation of authority**

Having regard to the purpose of an authority, the Director-General may at any time vary, suspend or cancel any person's authority.

## **Division 3 Fees**

### **15 Fees for applications for, and renewals of, accreditations and authorities**

- (1) The Director-General may, by order published in the Gazette, fix fees for all or any of the following:
  - (a) applications for an accreditation or authority,
  - (b) the renewal of an accreditation or authority.
- (2) Without limiting subsection (1):
  - (a) different fees may be fixed for different categories of accreditations or authorities, and
  - (b) different fees may be fixed for different categories of applications or renewals.
- (3) An applicant for an accreditation or authority under this Part must pay any fee fixed under this section for the application.

**Note—**

Section 9A (1) requires the fee fixed under this section for the renewal of an accreditation to be paid on any such renewal. Section 11A (1) requires the fee fixed under this section for the renewal of an authority to be paid on any such renewal.

- (4) Sections 39, 40 and 41 of the *Interpretation Act 1987* apply to an order made under this section in the same way as they apply to statutory rules within the meaning of that Act.

**Editorial note—**

For orders under this section, see Gazette No 69 of 10.6.2005, p 2006.

## **Division 4 Application of Part**

### **15A Application of Part**

- (1) The other Divisions of this Part do not apply to or in relation to taxi-cabs and private hire vehicles.

- (2) Accordingly, in this Part, references to public passenger vehicles do not include references to taxi-cabs or private hire vehicles, and references to public passenger services do not include references to public passenger services carried on by means of one or more taxi-cabs or one or more private hire vehicles.

## **Part 3 Regular passenger services and rail passenger services**

### **Division 1 Services to be supplied under contract**

#### **16 Service contracts**

- (1) The terms and conditions on which any regular passenger service is to be carried on within, or partly within, New South Wales are to be set forth in a contract entered into between an accredited service operator or, in the case of a ferry service, the operator and the Director-General (on behalf of the Crown).
- (2) The Director-General may invite contracts by tender or in such other manner as the Director-General thinks fit.
- (3) A person who:
- (a) carries on a regular passenger service (other than a transitway service) otherwise than under the authority of a service contract, or
  - (b) carries on a public passenger service along any part of a transitway route otherwise than under the authority of a service contract for a regular bus service,
- is guilty of an offence.

Maximum penalty: 1,000 penalty units.

- (3A) Nothing in this section requires a person who carries on a regular bus service within or on a region, corridor, route or other area to enter into a service contract with the Director-General in respect of the service if:
- (a) the person is an accredited service provider, and
  - (b) the service is being provided under a subcontract or other arrangement with the holder of a service contract in respect of provision of the service within or on the region, corridor, route or area (the **primary service contract**), and
  - (c) the subcontract or other arrangement is authorised or otherwise permitted under the primary service contract.
- (4) This section has effect subject to this Act and the regulations.

### **Division 1A Service contracts for regular ferry services**



### **16AA Application of Division**

This Division applies to service contracts for regular ferry services (**ferry service contracts**).

### **16AB Service contracts for regular ferry services**

- (1) A ferry service contract is to be for a term not exceeding 8 years.
- (2) A ferry service contract may be renewed from time to time in accordance with any provision of the contract concerning renewal.
- (3) Provision for regular ferry services in accordance with this section and section 16 may be made in one or more contracts.
- (4) It is the duty of the Director-General to ensure that any ferry service contract is not inconsistent with:
  - (a) the government's standards of safety for passengers and the public and maintenance, and
  - (b) standards for, or any other requirements relating to, ferries, the operator of the service or employees of the operator under this or any other Act or any regulation, and
  - (c) the terms and conditions of any certificate or other authority issued to an employee of the operator of the service under any other Act or regulation.
- (5) Nothing in this Division is to be construed as affording a right or expectation of renewal of a ferry service contract.
- (6) The Director-General is precluded from entering into a proposed ferry service contract if the Director-General would be precluded from entering into that contract by section 21 (4) if it were a contract to which Division 2 applies.

### **16AC Matters to be included in ferry service contracts**

- (1) A ferry service contract (other than for a service operated by Sydney Ferries) must make provision with respect to the following:
  - (a) requirements relating to the financial viability of the operator,
  - (b) requirements relating to the fitness of the operator to be an operator and the character of the operator or of any directors and managers of the operator.
- (2) A ferry service contract may specify a region or route of operation.
- (3) A route may proceed across water and a region may consist of a navigational area.
- (4) The regulations may provide for other matters that are to be included in ferry service

contracts.

#### **16AD Performance standards**

- (1) A ferry service contract is to provide for performance standards to be observed by the contract holder.
- (2) Without limiting subsection (1), the performance standards may include any model performance standards for ferry services that the Director-General may, by order published in the Gazette, approve from time to time.
- (3) Performance standards are to be enforced by civil penalty provision or in such other manner as the contract may provide.
- (4) In subsection (5), **civil penalty provision** means a provision of a ferry service contract that is expressed to be a civil penalty provision for the purposes of this section.
- (5) Despite anything to the contrary in any Act or other law, a person who breaches a civil penalty provision is liable to pay, as a debt due to the State, an amount determined in accordance with the ferry service contract as the penalty for the breach of that provision.
- (6) Subsections (3)–(5) do not apply to a contract between the Director-General and Sydney Ferries.

#### **16AE Determination of maximum fare pricing policy for ferry services**

- (1) This section applies to any ferry service contract that authorises or otherwise provides for the fares charged by the contract holder to be determined in accordance with this section.

**Note—**

If its ferry service contract does not provide for this matter, Sydney Ferries may make an order under section 85 of the [Transport Administration Act 1988](#) determining fares.

- (2) The Independent Pricing and Regulatory Tribunal (the **Tribunal**) is to conduct investigations and make reports to the Minister on the following matters:
  - (a) the determination of appropriate maximum fares for regular ferry services supplied under contracts to which this section applies,
  - (b) a periodic review of fare pricing policies in respect of such services.
- (3) In respect of an investigation or report under this section, the Minister may require the Tribunal to consider specified matters when making its investigations.
- (4) Division 7 of Part 3 of the [Independent Pricing and Regulatory Tribunal Act 1992](#) is taken to apply to an investigation under this section in the same way as it applies to

an investigation under Part 3 of that Act.

- (5) In making a determination under this section, the Tribunal is to consider the following matters:
- (a) the cost of providing the services concerned,
  - (b) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standards of service,
  - (c) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers,
  - (d) the need to maintain ecologically sustainable development (within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*) by appropriate pricing policies that take account of all of the feasible options to protect the environment,
  - (e) the social impact of the determination,
  - (f) standards of quality, reliability and safety of the services concerned (whether those standards are specified by legislation, agreement or otherwise) and any suggested or actual changes to those standards,
  - (g) contractual arrangements prevailing in the industry,
  - (h) such other matters as the Tribunal considers relevant.
- (6) A ferry service contract to which this section applies is taken to include a term to the effect that the contract holder must not charge a passenger of the service a fare that exceeds the maximum fare determined under this section from time to time for the provision of such a service to a passenger of that kind.
- (7) Any contravention of the term implied in a ferry service contract by subsection (6) may be remedied at law or in equity as though the term were an essential term to which the parties had by contract agreed.
- (8) A ferry service contract to which this section applies may make provision for maximum fares for the provision of regular ferry services concerned to passengers pending the first determination of maximum fares under this section.
- (9) Any provision of the kind referred to in subsection (8) ceases to have effect as part of the ferry service contract on and from the first determination of maximum fares under this section that applies to the provision of the regular ferry services to which the contract relates.

## **Division 2 Ferry services subject to existing contracts**

### **16A Application of Division**

- (1) This Division applies to service contracts for ferry services in force immediately before the commencement of Division 1A, or that are renewed as referred to in subsection (3).
- (2) A service contract must not be entered into under this Division after the commencement of Division 1A.
- (3) Subsection (2) does not prevent the renewal, under this Division, of a contract in force immediately before the commencement of Division 1A or any succeeding renewed contract.

### **17 (Repealed)**

#### **17A Service contracts for ferry services**

- (1) A service contract relating to a ferry service must make provision with respect to:
  - (a) the period for which it operates, and
  - (b) the manner in which it may be terminated, and
  - (c) standards of safety for passengers and the public, and of maintenance, and
  - (d) requirements relating to the financial viability of the operator, and
  - (e) requirements relating to the fitness of the operator to be an operator and the character of the operator or of any directors and managers of the operator, and
  - (f) any other matters required by this Act or the regulations to be specified in it.
- (2) A service contract relating to a ferry service may make provision for or with respect to:
  - (a) monetary or other penalties for breaches of the contract and the recovery of any such penalties, and
  - (b) bonds for the performance of any or any specified obligations under the contract, and
  - (c) such other matters as the parties think fit to include in the circumstances of the case.
- (3) The contract may provide for the periodic review, in a manner and at such periods as the contract may specify, of any matter for the time being determined by or under it.
- (4) It is the duty of the Director-General to ensure that any regular passenger service contract is not inconsistent with:

- (a) the government's standards of safety for passengers and the public and maintenance, and
  - (b) standards for, or any other requirements relating to, ferries, the operator of the service or employees of the operator under this or any other Act or any regulation, and
  - (c) the terms and conditions of any certificate or other authority issued to an employee of the operator of the service under any other Act or regulation.
- (5) However, in the event of any inconsistency between any such standards or requirements or terms or conditions and the provisions of the contract, the provisions of the contract prevail to the extent of the inconsistency.

### **18 Commercial and non-commercial contracts**

- (1) For the purpose of determining the manner in which a contract holder is to be remunerated for the performance of services under the contract, a service contract may be classified as a "commercial" or a "non-commercial" contract.
- (2) Under a commercial contract, the holder's remuneration is to be derived from revenue generated by passengers' fares.
- (3) Under a non-commercial contract, the holder's remuneration is to be a contract price, or remuneration fixed at an agreed rate, payable by the Crown to the holder in the manner provided by the contract.
- (4) A commercial contract is to be entered into for a term of 5 years.
- (5) A non-commercial contract may be entered into for any term.
- (6) Nothing in this section precludes the holder of a non-commercial contract from charging and collecting fares from passengers in accordance with the contract.

### **19 Fares**

- (1) A commercial contract must fix a scale of maximum fares.
- (2) The scale must be fixed at not less than the average level of fares for the time being prevailing in the industry for comparable services, and due allowance must be made for inflationary movements in the costs of providing the service.
- (3) Maximum fares should be specified in terms of the distance for which a passenger, on payment of a fare, is entitled to be carried. For that purpose the contract may resort to terms of average or minimum distances, but it is not sufficient to describe distance in terms only of the intervals between stopping-places along a route.
- (4) Under a non-commercial contract, provision may be made for adjustments in respect

of any shortfall or surplus resulting from the difference between the agreed contract price and any revenue generated by fares.

## **20 Service levels**

- (1) (Repealed)
- (2) A service contract must fix a scale of minimum service levels.
- (3) In fixing the scale for a service to be carried on under a commercial contract, regard should be had to:
  - (a) the needs of the community to be served by the service, and
  - (b) the average service levels for the time being prevailing in the industry with respect to communities which have similar population densities and which are in other respects comparable.
- (4) For the purposes of subsection (3) (b), average service levels may be analysed with respect to significant time categories such as peak work-based journey periods, shopping off-peak hours, Sundays and holidays, and so forth.

## **21 Exclusive rights**

- (1) A service contract must specify a region or route of operation.
- (2) A route may proceed across water and a region may consist of a navigational area.
- (3) A commercial contract operating on a particular route is to confer on the holder the exclusive right to operate regular passenger services on that route.
- (4) The right conferred on a holder by subsection (3) precludes the Director-General from subsequently entering into a contract to which this Division applies with any other person for the operation of a similar service along a route sufficiently proximate that it would result in substantial competition with the service carried on by that holder.
- (5) A commercial contract operating in a region may either:
  - (a) confer on the holder the exclusive right to operate regular passenger services in the region, or
  - (b) confer on the holder a right to operate such services in the region, being a right that is an exclusive right except with respect to a route or routes specified in the contract or in a variation made to the contract.

## **22 New services**

- (1) If, while a commercial contract is on foot with respect to a particular region or route:
  - (a) the Director-General determines that, in the public interest, additional services

should be provided in that region or on, or in proximity to, that route, and

(b) the holder of the contract declines to vary the contract, or enter into a new contract, for the provision of those additional services,

the holder thereby waives the exclusive right to operate regular passenger services in that region or on that route, but only to the extent necessary to enable the operation of those additional services by someone else.

- (2) The Director-General may propose the terms and conditions of any variation of the holder's contract or of any new contract to be offered to the holder.
- (3) Subsection (1) does not apply if, considering the nature and extent of the proposed additional services, the terms and conditions proposed by the Director-General are unreasonable in light of the provisions of this Act and the regulations and the circumstances of the case.
- (4) For the purposes of subsection (3), the average level of fares prevailing in the industry for comparable services must be considered, together with any other matters relevant to the circumstances of the case.
- (5) In the event that additional services proposed by the Director-General affect the exclusive rights of two or more contract holders, it is the duty of all parties to endeavour to agree on a just compromise of their respective rights. Failing such an agreement, the exclusive rights of any one of them (called the **first holder**) are, to the extent necessary to enable the additional services to be performed by someone else, extinguished by this subsection when:
  - (a) a variation of contract is effected, or a new contract is entered into, with another holder so affected, if the proposed additional services are likely to reduce patronage of the services operated by that other holder to a greater extent than they would reduce those of the first holder, or
  - (b) a new contract is entered into jointly with two or more other holders, patronage of whose services is likely to be reduced to any such greater extent.
- (6) Section 28 applies to subsection (5) as though all the holders affected were bound by a common agreement.

### **23 Performance assessment and renewal of commercial contracts**

- (1) The performance of service operators under commercial contracts is to be assessed according to a performance assessment regime established by the Director-General that prescribes best-practice objectives and standards of service to be met by operators while their respective contracts remain in force.
- (2) Objectives and standards of service prescribed by the performance assessment

regime are to be settled by the Director-General after consultation with the Transport Advisory Group constituted under the *Transport Administration Act 1988* and such persons, representative of commercial regular passenger service operators, as the Minister may direct.

- (3) The objectives and standards may apply differently to different services according to relevant population densities of communities served by them, or other factors, and may relate to (among other matters):
  - (a) service levels, and
  - (b) the costs to government (if any) of the service, and
  - (c) fares and ticketing, and
  - (d) any aspect of service quality.
- (4) The performance assessment regime may be varied from time to time by the Director-General. Subsections (2) and (3) apply to any variation of the objectives and standards prescribed by the regime.
- (5) Service operators are to be notified by the Director-General of:
  - (a) the objectives and standards of service applicable to contracts to which they are a party, and
  - (b) the manner in which assessments of operators' performance are to be undertaken,and of any variations made in either case.
- (6) The objectives and standards of service prescribed by the performance assessment regime that are applicable to assessment of the performance of a service operator during the term of a commercial contract are only those specified by the regime as at the commencement (or, as the case may be, the last renewal) of the contract.
- (7) A commercial contract is to be renewed by the Director-General for a further period of 5 years if the contracted operator, on the Director-General's assessment, has met the objectives and standards prescribed by the performance assessment regime that were applicable during the term of the contract, unless the region or route of operation of the contract is varied in accordance with section 24 or the operator declines to take up a renewal.
- (8) A contract is not to be renewed if the contracted operator, on the Director-General's assessment, has not met the prescribed objectives and standards, even if minimum service levels and all other requirements of the contract have been met.



## **24 Variation of region or route**

- (1) The region or route of operation of a service contract cannot be varied during the term of the contract except by consent of the parties.
- (2) The region or route of a commercial contract offered pursuant to section 23 as a renewal of a previous contract must be the same as the region or route defined in respect of that previous contract except by consent of the parties or by a determination of the Director-General under this section.
- (3) A renewal of contract may be offered in respect of a varied region or route if the variation:
  - (a) is necessary to extend services in developing areas, or
  - (b) is necessary as a result of altered traffic conditions or for reasons of public safety, or
  - (c) is otherwise necessary for improvement of transport services in the public interest.

## **25 Assignment of benefit of service contracts**

- (1) The benefit of a service contract may not be assigned by its holder without the consent of the Director-General.
- (2) If the Director-General is satisfied:
  - (a) in the case of a contract relating to a service other than a ferry service, that the person nominated is an accredited service operator of an appropriate kind, and
  - (b) in any case, that adequate provision will be made by the assignee for the conduct of the service concerned,the Director-General may, by instrument in writing, consent to such an assignment.
- (3) When the benefit of a contract is assigned, the assignee is bound, by force of this subsection, to perform the obligations which the assignor was bound under the contract to perform.
- (4) Any purported assignment in contravention of this section is void.

## **26 Variation, suspension or cancellation of service contracts**

- (1) A service contract may, at any time during its currency, be varied, suspended or cancelled by the Director-General if:
  - (a) there has been a serious or persistent failure to observe the terms and conditions of the contract, or

(b) the holder is convicted of an offence against this Act or the regulations with respect to the furnishing of information concerning the service.

- (2) A service contract relating to a service other than a ferry service is automatically cancelled when the holder ceases to be an accredited service operator or ceases to be an accredited service operator of an appropriate kind.
- (3) Nothing in this Act prevents the Director-General from making such arrangements as the Director-General thinks fit for the provision, by an accredited service operator, of temporary services in place of any regular passenger services for the time being discontinued by a variation, suspension or cancellation under this section.

## **27 Fee for service contract**

- (1) In addition to any other fee payable under this Act, a contract fee is payable to the Director-General when a service contract for a regular passenger service is first awarded or is subsequently renewed.
- (2) The Director-General may determine the amount of the fee, subject to any maximum amount prescribed by the regulations.
- (3) The fee should reflect the administrative costs associated with negotiating, preparing and entering into the contract and the estimated costs associated with subsequent monitoring and assessment by the Director-General of the holder's performance.

## **28 Provisions of this Division form part of contract**

- (1) Every contract to which this Division applies is taken to include all the provisions of this Division that confer or impose any rights, powers or duties on the parties, and any contravention of such a provision may be remedied at law or in equity as though the provision were one to which the parties had by contract agreed.
- (2) In proceedings for any such remedy, every duty imposed on either party by any such provision is to be regarded as a duty performable for the benefit of the other party.
- (3) To the extent that an adequate alternative remedy is provided by this section, no other proceedings by way of judicial review of any decision or action of the Director-General may be taken by or on behalf of the holder of a service contract.

# **Division 3 Regular bus services**

## **Subdivision 1 General**

### **28A Application of Division**

- (1) This Division applies to service contracts for regular bus services.
- (2) The State Transit Authority is authorised to bid for a service contract for a regular bus

service.

## **Subdivision 2 Service contracts for regular bus services**

### **28B Service contracts for regular bus services**

- (1) A service contract for a regular bus service is to be for a term not exceeding 8 years.
- (2) A service contract for a regular bus service may specify a region or route of operation for the contract by reference to any bus service contract region, strategic transport corridor, transitway route, emergency route or other geographical area or route of travel (or by reference to any combination of these).
- (3) The Director-General must, if the regulations so provide, refuse to enter into a service contract for a regular bus service if the proposed holder is already the holder of such number and kind of other service contracts for regular bus services as may be prescribed by the regulations.
- (4) A service contract for a regular bus service is taken to include a term to the effect that the holder of the contract must comply with the holder's obligations under any industrial instrument applicable to the holder concerning the conditions of employment of bus drivers or conductors (or both) as in force from time to time during the term of the contract.
- (5) Any contravention of the term implied in a service contract by subsection (4) may be remedied at law or in equity as though the term were an essential term to which the parties had by contract agreed.
- (6) In this section, ***industrial instrument*** means:
  - (a) an industrial instrument within the meaning of the [Industrial Relations Act 1996](#),  
or
  - (b) an award or agreement made or entered into in accordance with the provisions of the [Workplace Relations Act 1996](#) of the Commonwealth.

### **28C Performance standards**

- (1) A service contract for a regular bus service is to provide for performance standards to be observed by the operator of the service.
- (2) Without limiting subsection (1), the performance standards may include any model performance standards for regular bus services that the Director-General may, by order published in the Gazette, approve from time to time.
- (3) Before the Director-General makes an order under subsection (2) approving a model performance standard, the Director-General must consult with each of the following about the standard:

- (a) the Transport Advisory Group constituted under the *Transport Administration Act 1988*,
  - (b) the Bus and Coach Association of New South Wales,
  - (c) such other persons or bodies as the Minister may direct.
- (4) The performance standards are to include standards concerning greenhouse emissions by buses that have been developed by the Director-General following consultation with the NSW Greenhouse Office in the Cabinet Office.
- (5) Performance standards are to be enforced by civil penalty provision or in such other manner as the contract may provide.
- (6) In subsection (5), **civil penalty provision** means a provision of a service contract that is expressed to be a civil penalty provision for the purposes of this section.
- (7) Despite anything to the contrary in any Act or other law, a person who breaches a civil penalty provision is liable to pay, as a debt due to the State, an amount determined in accordance with the service contract as the penalty for the breach of that provision.

#### **28D Renewal of contract**

- (1) A service contract for a regular bus service may be renewed from time to time in accordance with any provision in the contract concerning renewal.
- (2) Nothing in this section or in any other provision of this Division is to be construed as affording a right or expectation of renewal of a service contract for a regular bus service.

### **Subdivision 3 Contract regions, strategic transport corridors, transitway routes and emergency routes**

#### **28E Definitions**

In this Subdivision:

**region or route** of operation, in relation to a service contract, includes any bus service contract region, strategic transport corridor, transitway route, emergency route or any other area or route to which the contract relates.

**road** means:

- (a) any thoroughfare (whether or not consisting, wholly or in part, of a road or road related area as defined in section 3) that, in the opinion of the Director-General, is capable of supporting vehicular traffic (including buses), or
- (b) the site of any such thoroughfare that is being, or is to be, constructed.

**road portion** means one or more lanes of a road that is divided into lanes.

**transitway description** means a description, for the time being listed in Schedule 4, of linked destinations by reference to which transitway routes may be determined under this Subdivision.

#### **28EA Bus service contract regions**

- (1) The Director-General may from time to time, by order published in the Gazette, declare an area of the State specified in the order to be a bus service contract region for the purposes of this Division with effect from the date specified in the order.
- (2) The Director-General may at any time, by order published in the Gazette, vary or abolish any bus service contract region with effect from the date specified in the order.
- (3) A bus service contract region may be declared (or a declaration of a contract region varied):
  - (a) by naming, or illustrating by means of a map or plan, the area or routes (or both) that constitute the region or that are affected by the variation (as the case may be), or
  - (b) in such other manner as is sufficient to specify the region or variation.
- (4) A bus service contract region may be declared in respect of an area even if that area contains transitway routes, emergency routes or strategic transport corridors.
- (5) The declaration, variation or abolition of a bus service contract region under this section does not affect the continued operation of a service contract for a regular passenger service entered into on or after the commencement of this section unless the service contract so provides.

#### **Note—**

Part 7 of Schedule 3 provides for a declaration or variation of a bus service contract region to vary certain service contracts for regular bus services that were in existence before the commencement of this section.

#### **28EB Strategic transport corridors**

- (1) The Director-General may from time to time, by order published in the Gazette, declare a transport corridor to be a strategic transport corridor for the purposes of this Division with effect from the date specified in the order.
- (2) The Director-General may at any time, by order published in the Gazette, vary or abolish a strategic transport corridor with effect from the date specified in the order.
- (3) In deciding whether to declare a transport corridor to be a strategic transport corridor or to vary an existing strategic transport corridor, the Director-General may take into

account:

(a) the potential for the corridor:

- (i) to link regional centres and provide access to hospitals, educational institutions, shopping centres and other facilities or locations that generate major passenger transportation demands, and
- (ii) to integrate bus services with other key modes of transport along the corridor, and
- (iii) to provide fast, frequent and direct transportation for passengers, and
- (iv) to provide a blueprint for the implementation of appropriate bus priority measures, and

(b) such other matters as the Director-General considers relevant.

(4) A strategic transport corridor may be declared (or a declaration of a corridor varied):

(a) by naming, or illustrating by means of a map or plan, the area or routes (or both) that constitute the corridor or that are affected by the variation (as the case may be), or

(b) in such other manner as is sufficient to specify the corridor or variation.

(5) A strategic transport corridor may be varied:

(a) temporarily—that is, between dates specified in the order effecting the variation, or

(b) until further order (if any).

(6) Without affecting the generality of subsection (5), a strategic transport corridor may be varied temporarily to permit construction or maintenance of a road or road portion along which the route proceeds.

(7) The declaration, variation or abolition of a strategic transport corridor under this section does not affect the continued operation of a service contract for a regular passenger service entered into on or after the commencement of this section unless the service contract so provides.

**Note—**

Part 7 of Schedule 3 provides for a declaration or variation of a strategic transport corridor to vary certain service contracts for regular bus services that were in existence before the commencement of this section.

**28F Variation of transitway descriptions**

The regulations may amend Schedule 4 so as to omit, add to or vary the transitway

descriptions listed in it.

### **28G Determination and variation of transitway routes**

- (1) The Director-General may from time to time, by order published in the Gazette, determine, vary or abolish a transitway route, with effect from a date determined by the order.
- (2) The Director-General must not determine or vary a transitway route unless:
  - (a) a study has been conducted to determine whether any parts of the transitway or proposed transitway that have not previously been used as a road would be suitable for use for the purpose of light rail, and
  - (b) the study has found that those parts of the transitway or proposed transitway would be suitable for that purpose, and
  - (c) the details of the study have been laid upon the table of each House.
- (3) A transitway route, as determined or varied under this section, must enable travel between the destinations mentioned in a transitway description (or between places that lie near, or between any two of, those destinations).
- (4) Transitway routes may intersect with one another and may have portions in common.
- (5) A transitway route may be determined or varied:
  - (a) by naming, or illustrating by means of a map or plan, the roads or road portions along which the route proceeds or that are affected by the variation (as the case requires), or
  - (b) in such other manner as may be sufficient to specify the route or variation.
- (6) A transitway route may be varied:
  - (a) temporarily—that is, between dates specified in the order effecting the variation, or
  - (b) until further order (if any).
- (7) Without affecting the generality of subsection (5), a transitway route may be varied temporarily to permit construction or maintenance of a road or road portion along which the route proceeds.

### **28H Emergency routes**

- (1) If, in the opinion of the Director-General, it is expedient in the circumstances of an emergency, or for the purpose of urgent maintenance of any road or road portion, or from other pressing necessity, to suspend the operation of transitway services along

the whole or part of a transitway route, the Director-General may by order in writing:

- (a) prohibit, for a period of time (not exceeding 14 days) specified in the order, the operation of such services along so much of the route as may be described in the order, and
- (b) authorise the operation, during the period so specified, of such services on an alternative route determined (in a manner referred to in section 28G (5)) by the order,

and such an order has effect according to its terms.

- (2) The period specified by the order may be a period commencing before execution of the order, but not commencing earlier than the beginning of the business day last preceding its execution.
- (3) As soon as practicable after its execution:
  - (a) a copy of the order is to be served, personally or by post, on the holder of any service contract whose region or route of operation is affected by it, and
  - (b) the terms of the order are to be published in one or more newspapers circulating in an area that includes the affected transitway route.

## **28I Effect of creation of transitway routes or emergency routes**

- (1) To the extent that a transitway route, or any part of a transitway route, resulting from a determination or variation under this Subdivision lies within or on a region or route of operation specified in a service contract for a regular passenger service:
  - (a) the region or route so specified is by this section varied by excluding from it the transitway route or part, and
  - (b) the right of the service operator under the contract to operate a public passenger service within that region or route is extinguished in respect of the excluded transitway route or part.
- (2) To the extent that an emergency route, or any part of an emergency route, resulting from a determination under this Subdivision lies within or on a region or route of operation specified in a service contract for a regular passenger service, any exclusive right of the service operator under the contract to operate a public passenger service within that region or route ceases to be an exclusive right in respect of the emergency route or part.
- (3) While rights under a service contract are affected by the operation of this section, the contract continues to have effect, with any necessary modifications, as if the rights concerned had been altered by consent of the parties to the contract.



- (4) The operation of subsection (1) in respect of a region or route ceases, and a right extinguished by that subsection is revived, on abolition or variation of the transitway route concerned.
- (5) Nothing in subsection (4) affects the operation of subsection (1) in relation to any transitway route resulting from a variation.
- (6) A right affected by subsection (2) is restored as an exclusive right on expiry of the order that determined the emergency route concerned.

## **Subdivision 4 Fare determinations**

### **28J Determination of maximum fare pricing policy for regular bus services**

- (1) This section applies to any service contract for a regular bus service that authorises or otherwise permits the holder (or a person providing the service for the holder under a subcontract or other arrangement) to charge passengers of the service a fare for the use of the service.
- (2) The Independent Pricing and Regulatory Tribunal (the **Tribunal**) is to conduct investigations and make reports to the Minister on the following matters:
  - (a) the determination of appropriate maximum fares for regular bus services supplied under service contracts to which this section applies,
  - (b) a periodic review of fare pricing policies in respect of such services.
- (3) In respect of an investigation or report under this section, the Minister may require the Tribunal to consider specified matters when making its investigations.
- (4) Division 7 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* is taken to apply to an investigation under this section in the same way as it applies to an investigation under Part 3 of that Act.
- (5) In making a determination under this section, the Tribunal is to consider the following matters:
  - (a) the cost of providing the services concerned,
  - (b) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standards of service,
  - (c) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers,
  - (d) the need to maintain ecologically sustainable development (within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*) by appropriate pricing policies that take account of all of the feasible options to

- protect the environment,
- (e) the social impact of the determination,
  - (f) standards of quality, reliability and safety of the services concerned (whether those standards are specified by legislation, agreement or otherwise) and any suggested or actual changes to those standards,
  - (g) contractual arrangements prevailing in the industry,
  - (h) such other matters as the Tribunal considers relevant.
- (6) A service contract to which this section applies is taken to include a term to the effect that:
- (a) the holder of the contract must not charge a passenger of the service a fare that exceeds the maximum fare determined under this section from time to time for the provision of such a service to a passenger of that kind, and
  - (b) if the regular bus service is to be provided for the holder by another person—the holder must ensure (whether by contract or other means) that the person providing the service for the holder is not permitted to charge a passenger of the service a fare that exceeds the maximum fare determined under this section from time to time for the provision of such a service to a passenger of that kind.
- (7) Any contravention of the term implied in a service contract by subsection (6) may be remedied at law or in equity as though the term were an essential term to which the parties had by contract agreed.
- (8) A service contract to which this section applies may make provision for maximum fares for the provision of the regular bus service concerned to passengers pending the first determination of maximum fares under this section.
- (9) Any provision of the kind referred to in subsection (8) ceases to have effect as part of the service contract on and from the first determination of maximum fares under this section that applies to the provision of the kind of regular bus services to which the contract relates.

## **Division 4 Rail services**

### **28K Rail services contract for rail services**

- (1) The terms and conditions on which rail services are to be carried out by RailCorp are to be set out in a contract entered into between RailCorp and the Director-General (on behalf of the Crown).
- (2) In this Division, ***rail services*** means:

- (a) rail passenger services and any bus services (other than regular passenger services) operated by RailCorp, and
  - (b) the carrying out of functions as a rail infrastructure owner (within the meaning of the *Transport Administration Act 1988*), and
  - (c) the provision of access and network control services.
- (3) A rail services contract is to be for a term not exceeding 8 years.
- (4) A rail services contract may be renewed from time to time in accordance with any provision of the contract concerning renewal.
- (5) Provision for rail services in accordance with this section may be made in one or more rail services contracts.
- (6) The regulations may provide for matters that are to be included in rail services contracts.

#### **28L Performance standards**

- (1) A rail services contract is to provide for performance standards to be observed by RailCorp.
- (2) Without limiting subsection (1), the performance standards may include any model performance standards for rail services that the Director-General may, by order published in the Gazette, approve from time to time.

### **Part 4 Taxi-cabs**

#### **Division 1 Preliminary**

##### **29 Application of Part**

This Part applies to and in relation to taxi-cabs.

##### **29A Definitions**

In this Part:

**accredited taxi-cab operator** means a person accredited under Division 3 for the purpose of carrying on a taxi-cab service.

**affiliation** means the affiliation of accredited taxi-cab operators with authorised taxi-cab networks, as referred to in Division 6.

**applicable contract determination** means:

- (a) the *Taxi Industry (Contract Drivers) Contract Determination 1984*, as in force from time to time under the *Industrial Relations Act 1996*, or

- (b) if that determination ceases to have effect, the contract determination, as in force from time to time under that Act, applying for the purpose of determining the amount of chargeable fares payable by contract drivers of taxi-cabs.

**authorised taxi-cab driver** means a person authorised under Division 5 to drive a taxi-cab.

**authorised taxi-cab network** means a taxi-cab network carried on by an authorised taxi-cab network provider.

**authorised taxi-cab network provider** means a person authorised under Division 6 to operate a taxi-cab network.

**service standard** means a service standard determined under this Part for or with respect to taxi-cab operators or taxi-cab network providers.

**taxi-cab booking service** means the service of:

- (a) accepting bookings for taxi-cabs from members of the public, and
- (b) transmitting messages to taxi-cab drivers by telecommunication to appropriate receivers with which the taxi-cabs are fitted,

in order to facilitate the provision of taxi-cab services.

**taxi-cab network** means a facility provided for the delivery of taxi-cab services involving affiliated accredited taxi-cab operators, including a taxi-cab booking service.

**taxi-cab service** means a public passenger service carried on by means of one or more taxi-cabs.

## Division 2 Taxi-cab services

### 30 Taxi-cab service requirements

- (1) A person who carries on a taxi-cab service, being a service operating wholly or partly within New South Wales, by means of a taxi-cab is guilty of an offence if:
  - (a) the person is not accredited for the purposes of carrying on the service under Division 3, or
  - (b) the taxi-cab is not licensed under Division 4, or
  - (c) the person is not affiliated with a taxi-cab network authorised under Division 6, unless exempted by the Director-General from the provisions of this paragraph.
- (2) A person who carries on a taxi-cab service, being a service operating wholly or partly within New South Wales, by means of a taxi-cab is guilty of an offence if:
  - (a) the service is carried on otherwise than in accordance with the terms and

conditions of the person's accreditation under Division 3, or

- (b) the service is carried on otherwise than in accordance with such of the terms and conditions of the taxi-cab's licence as are applicable to the person under Division 4.

Maximum penalty: 1,000 penalty units.

## **Division 3 Taxi-cab operators**

### **31 Accreditation**

- (1) The Director-General may accredit persons for the purpose of carrying on taxi-cab services, subject to and in accordance with this Division. A person accredited under this Division is referred to in this Part as an "accredited taxi-cab operator".
- (2) The purpose of accreditation under this Division is to attest:
  - (a) that the accredited person is (or, in the case of an accredited person that is a corporation, the designated directors and managers of the corporation are) considered to be of good repute and in all other respects fit and proper to be responsible for the operation of a taxi-cab service, and
  - (b) that the accredited person has demonstrated the capacity to meet and continue to meet the appropriate requirements with respect to:
    - (i) financial viability, and
    - (ii) safety of drivers, passengers and the public, and
    - (iii) vehicle maintenance,to the degree and in the manner required in respect of services of the kind specified in the accreditation.
- (3) The appropriate requirements are:
  - (a) such requirements as may be prescribed by the regulations, and
  - (b) the standards determined under section 31E.

#### **31A Application for accreditation**

- (1) A person may apply to the Director-General for accreditation under this Division.
- (2) An applicant is required to pay any fee fixed by the regulations for consideration of the application.
- (3) An application made by a corporation is not to be considered by the Director-General unless the corporation nominates designated directors or managers (as referred to in

section 35).

- (4) For the purposes of subsection (3), the Director-General may, from time to time, determine the number of persons who are to be nominated as designated directors and the number of persons who are to be nominated as designated managers. Such a determination may be made generally or in any particular case or class of cases.
- (5) Procedures for making and dealing with applications may be settled by the Director-General, subject to any provisions of the regulations.

### **31B Grant or refusal of application**

- (1) Having regard to the purpose of accreditation under this Division, the Director-General may grant an application and accredit the applicant for the purpose of carrying on a taxi-cab service, or may refuse the application.
- (2) Before an application is granted, the applicant must meet any criteria set forth in the regulations and must satisfy the Director-General as to any matter the Director-General considers relevant.
- (3) An applicant is required to pay any fee fixed by the regulations for the accreditation when first issued.
- (4) Particulars of an accreditation are to be given in writing by the Director-General to the accredited person.
- (5) An accreditation may be given so as to be general or limited, that is to say:
  - (a) appropriate generally for a taxi-cab service, or
  - (b) appropriate only for the service or services designated in the accreditation, or for a service or services having the scope or characteristics so designated.

### **31C Term of and renewal of accreditation**

- (1) An accreditation under this Division, unless sooner suspended or cancelled, remains in force for a period determined by the Director-General and specified in the particulars of the accreditation.
- (2) An accreditation is renewable from time to time on payment of the fee fixed by the regulations.
- (3) Procedures for renewal may be settled by the Director-General, subject to any provisions of the regulations.

### **31D Conditions of accreditation**

- (1) An accreditation under this Division is subject to:

- (a) the condition imposed by this Division, and
  - (b) the conditions prescribed by the regulations, and
  - (c) such additional conditions as the Director-General, having regard to the purpose of accreditation under this Division, may impose on the accreditation.
- (2) Conditions imposed by the Director-General may be varied (whether by amendment, addition, revocation or suspension of one or more conditions) by the Director-General from time to time by notice served on the accredited person.
- (3) An accredited taxi-cab operator who contravenes a condition of the operator's accreditation is guilty of an offence.

Maximum penalty: 1,000 penalty units.

- (4) A variation of conditions imposed on an accreditation by the Director-General is, for the purposes of Division 3 of Part 5 (Reviews by Administrative Decisions Tribunal), a variation of the accreditation.

### **31E Statutory condition regarding service standards**

- (1) Each accreditation under this Division is subject to a condition that the accredited taxi-cab operator must comply with service standards determined under this section.
- (2) The Director-General may from time to time determine service standards with which accredited taxi-cab operators are required to comply.
- (3) Without limitation, standards may make provision for or with respect to:
- (a) requiring accredited taxi-cab operators to comply with such service requirements imposed by the taxi-cab network with which the operator is affiliated as are necessary to enable the network to comply with its obligations imposed by or under this Act, and
  - (b) enabling the Director-General to impose financial sanctions for contraventions of the standards by accredited taxi-cab operators (not exceeding an amount equal to 500 penalty units for any such contravention), and
  - (c) requiring accredited taxi-cab operators to comply with the applicable contract determination in respect of amounts of chargeable fares required to be paid to the operators by drivers to whom the determination applies.
- (4) Any person may obtain from the Director-General a copy of the standards on payment of the fee (if any) prescribed by the regulations.
- (5) The regulations may make provision for or with respect to:
- (a) the procedures to be followed in making determinations under this section, and

- (b) the publication of determinations under this section, and
  - (c) the imposition of financial sanctions under this Division.
- (6) Nothing in this section limits the matters for or with respect to which regulations may be made under this Act.

**31F Variation, suspension or cancellation of accreditation**

- (1) Having regard to the purpose of accreditation under this Division, the Director-General may at any time vary, suspend or cancel any person's accreditation under this Division.
- (2) Without limiting subsection (1), the Director-General may vary, suspend or cancel a person's accreditation under this Division:
- (a) for failure to comply with a service requirement imposed by the taxi-cab network with which the operator is affiliated, but only if the Director-General is satisfied that the requirement is reasonable and necessary to enable the network to comply with its obligations imposed by or under this Act, and
  - (b) for failure to comply with a service standard requiring compliance with the applicable contract determination, and
  - (c) for failure to pay a financial sanction imposed under the standards under this Division.
- (3) The accreditation of a corporation is automatically cancelled when there is no designated director or manager.

**31G Taxi-cab service to be linked to network booking service**

An accredited taxi-cab operator must ensure that, at all times while a taxi-cab is being used for the purposes of the operator's taxi-cab service:

- (a) arrangements are in force with a taxi-cab network for the provision of a taxi-cab booking service in respect of the taxi-cab, and
- (b) the taxi-cab is fitted with a receiver, appropriate for receipt of messages from the network, in working order,

unless exempted by the Director-General from the provisions of this section.

Maximum penalty: 1,000 penalty units.

**Division 4 Taxi-cab licences**

**32 Licence**

- (1) The Director-General may license motor vehicles as taxi-cabs, subject to and in



accordance with this Division.

(2) Subject to subsection (3):

- (a) the authority of a licence for a taxi-cab, if the licence is let or sublet, inures to the benefit of the lessee or sublessee to the exclusion of the lessor or sublessor, and
- (b) a reference in this Act or the regulations to the licensee of, or the holder of a licence for, a taxi-cab is a reference to the person having the benefit of the authority of the licence concerned.

(3) However:

- (a) the regulations may provide that such a lessor is subject to specified provisions of this Act or of the regulations relating to licensed taxi-cabs, either to the exclusion of any lessee or sublessee or jointly with any lessee or sublessee, and
- (b) the conditions of a licence may provide that such a lessor is subject to the provisions of specified terms and conditions of the licence, either to the exclusion of any lessee or sublessee or jointly with any lessee or sublessee.

The regulations or conditions referred to in this subsection may provide that the lessor and any lessee or sublessee are jointly and severally liable under any specified provisions or for any matters arising in connection with them.

(4) The following provisions have effect:

- (a) the regulations may provide that specified kinds of terms and conditions of licences apply to accredited taxi-cab operators carrying on taxi-cab services by means of the taxi-cabs concerned, and
- (b) the conditions of a licence may provide that specified terms and conditions of the licence apply to an accredited taxi-cab operator carrying on a taxi-cab service by means of the taxi-cab concerned.

The regulations or conditions referred to in this subsection may provide that such a term or condition applies to a taxi-cab operator to the exclusion of a licensee or may provide that the operator and licensee are jointly and severally liable in connection with such a term or condition.

### **32A Application for licence**

- (1) A person may apply to the Director-General for a licence under this Division.
- (2) An applicant is required to pay any fee fixed by the regulations for consideration of the application.
- (3) An application made by a corporation is not to be considered by the Director-General unless the corporation nominates designated directors or managers (as referred to in

section 35).

- (4) For the purposes of subsection (3), the Director-General may, from time to time, determine the number of persons who are to be nominated as designated directors and the number of persons who are to be nominated as designated managers. Such a determination may be made generally or in any particular case or class of cases.
- (5) Procedures for making and dealing with applications may be settled by the Director-General, subject to any provisions of the regulations.

### **32B Grant or refusal of application**

- (1) The Director-General may grant an application and issue to the applicant a licence for the taxi-cab concerned, or may refuse the application.
- (2) Before an application is granted, the applicant must meet any criteria set forth in the regulations and must satisfy the Director-General as to any matter the Director-General considers relevant.

### **32C Term of and renewal of licence**

- (1) A licence, unless sooner suspended or cancelled, remains in force for a period determined by the Director-General and specified in the licence.
- (2) A licence is renewable from time to time on payment of the fee fixed by the regulations.
- (3) Procedures for renewal may be settled by the Director-General, subject to any provisions of the regulations.
- (4) This section does not apply to a short-term licence issued under this Division.

### **32D Short-term licences**

- (1) If an applicant for a licence requests a short-term licence, the Director-General may issue to the applicant a licence for a limited duration.
- (2) A short-term licence, unless sooner suspended or cancelled, remains in force for the period (not exceeding 6 years) determined by the Director-General and specified in the licence.
- (3) Such a licence is not renewable and cannot be transferred except on the application of the holder's legal personal representative or of a trustee of the holder's estate.

### **32E Area of operation of licences**

- (1) A licence for a taxi-cab may specify the area of operation of the taxi-cab.
- (2) If no area is specified, the taxi-cab may be used to carry on a taxi-cab service

anywhere in New South Wales.

- (3) A licence for a taxi-cab does not confer on any person an exclusive right to operate a taxi-cab in the area of operation specified in the licence.

### **32F Conditions of licence**

- (1) A licence is subject to:

- (a) the conditions prescribed by the regulations, and
- (b) such additional conditions as the Director-General may impose on the licence.

- (2) Conditions imposed by the Director-General may be varied (whether by amendment, addition, revocation or suspension of one or more conditions) by the Director-General from time to time by notice served on the licensee.

- (3) A licensee who contravenes a condition of the licence is guilty of an offence.

Maximum penalty: 1,000 penalty units.

- (4) A variation of conditions imposed on a licence by the Director-General is, for the purposes of Division 3 of Part 5 (Reviews by Administrative Decisions Tribunal), a variation of the licence.

### **32G Variation, suspension or cancellation of licence**

- (1) The Director-General may at any time vary, suspend or cancel any licence if:

- (a) owing to the default of the licensee, or the agents or employees of the licensee:

- (i) the provisions of this Act or the regulations, or
- (ii) the terms and conditions of the licence,

have not been or are not being complied with, or

- (b) the taxi-cab service carried on under the authority of the licence has been or is being conducted in such a manner as to cause danger to the public, or

- (c) the licensee is convicted of an offence against this Act or the regulations with respect to the furnishing of information concerning the service, or

- (d) the licensee does not have a policy of insurance covering third-party property damage in respect of the taxi-cab, being a policy:

- (i) issued by a corporation authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business, and

- (ii) providing cover that in the opinion of the Director-General is sufficient for the taxi-cab, or

- (e) owing to the default of the licensee, or the agents or employees of the licensee, the applicable contract determination has not been complied with in respect of drivers of the taxi-cab concerned to whom the determination applies, or
- (f) owing to the default of the licensee, or the agents or employees of the licensee, the taxi-cab concerned is not made available in accordance with a service requirement imposed by the taxi-cab network provider with which the taxi-cab operator who operates the taxi-cab is affiliated, but only if the Director-General is satisfied that the requirement is reasonable and necessary to enable the network provider to comply with its obligations imposed by or under this Act.

- (2) A licence issued to a corporation is automatically cancelled when there is no designated director or manager.

### **32H Licence fee**

- (1) In addition to any application fee, a licence fee is payable to the Director-General when a licence is first issued.
- (2) The licence fee is payable by the person to whom the licence is issued in the manner determined by the Director-General.

### **32I Licence fee for ordinary licence**

- (1) The amount of the licence fee for a licence must be determined by inviting applicants for the licence to bid for it at a public auction or to submit sealed tenders for it or by using such other method chosen by the Director-General as will, in the Director-General's opinion, yield as the fee for the licence an amount equivalent to its current value on the open market.
- (2) The Director-General may, in the circumstances specified in the regulations, fix the licence fee at less than the current value of the licence on the open market or decide not to impose a licence fee for the licence.
- (3) This section does not apply to a short-term licence issued under this Division.

### **32J Licence fee for short-term licences**

The amount of the licence fee for a short-term licence issued under this Division is an amount determined by the Director-General.

### **32K Stand-by taxi-cabs**

- (1) An accredited taxi-cab operator may, if a licensed taxi-cab used in the taxi-cab service is out of operation while undergoing repair or service, operate in place of that taxi-cab another motor vehicle even though no licence is in force for it, but only if that other motor vehicle complies with the requirements of this section.

- (2) A motor vehicle that is operated in place of a licensed taxi-cab must:
- (a) display the number-plates allocated to the taxi-cab by virtue of its being so licensed, and
  - (b) be registered under the *Road Transport (Vehicle Registration) Act 1997*, and
  - (c) in addition to the number-plates referred to in paragraph (a), display the number-plates allocated to that vehicle by virtue of its registration under the *Road Transport (Vehicle Registration) Act 1997*, and
  - (d) comply, to the satisfaction of the Director-General, with the standards prescribed for taxi-cabs, and
  - (e) except to the extent authorised by the Director-General, conform to the terms and conditions imposed by the licence for that taxi-cab, and
  - (f) display a sign in accordance with the regulations identifying the vehicle as a stand-by taxi-cab, and
  - (g) comply with such other requirements as are prescribed by the regulations for the purposes of this subsection.
- (3) While a motor vehicle that is being operated in place of a licensed taxi-cab complies with the requirements of this section, that motor vehicle is taken, for the purposes of this Act, to be a taxi-cab for which a licence is in force.

## **Division 5 Taxi-cab drivers**

### **33 Authorities**

- (1) The Director-General may, by the issue of authorities under this Division, authorise persons to drive taxi-cabs, subject to and in accordance with this Division. A person authorised under this Division is referred to in this Part as an “authorised taxi-cab driver”.
- (2) A person who drives a taxi-cab is guilty of an offence unless the person is an authorised taxi-cab driver.
- Maximum penalty: 100 penalty units.
- (3) The purpose of an authority under this Division is to attest:
- (a) that the authorised person is considered to be of good repute and in all other respects a fit and proper person to be the driver of a taxi-cab, and
  - (b) that the authorised person is considered to have sufficient responsibility and aptitude to drive a taxi-cab:

(i) in accordance with the conditions under which the taxi-cab service concerned is operated, and

(ii) in accordance with law and custom.

(4) The regulations may create categories or grades of authorities.

(5) Without limitation, the regulations may provide that subsection (2) does not apply in specified circumstances, including, for example, when a taxi-cab is being driven to a place to have it repaired or serviced.

### **33A Application for authorisation**

(1) A person may apply to the Director-General for authorisation under this Division.

(2) An applicant is required to pay any fee fixed by the regulations for consideration of the application.

(3) Procedures for making and dealing with applications may be settled by the Director-General, subject to any provisions of the regulations.

### **33B Grant or refusal of application**

(1) Having regard to the purpose of authorisation under this Division, the Director-General may grant an application and authorise the applicant to drive a taxi-cab, or may refuse the application.

(2) Before an application is granted, the applicant must meet any criteria set forth in the regulations and must satisfy the Director-General as to any matter the Director-General considers relevant.

(3) An applicant is required to pay any fee fixed by the regulations for the authority when first issued.

(4) An authority is to be given in writing by the Director-General to the authorised person.

(5) The authority may specify the category or grade of the authority, and (without limitation) may specify the kind or kinds of vehicles for which the authority is granted.

### **33C Term of and renewal of authority**

(1) An authority under this Division, unless sooner suspended or cancelled, remains in force for a period determined by the Director-General and specified in the authority.

(2) An authority is renewable from time to time on payment of the fee fixed by the regulations.

(3) Procedures for renewal may be settled by the Director-General, subject to any provisions of the regulations.

### **33D Conditions of authority**

- (1) An authority under this Division is subject to:
  - (a) the condition imposed by this Division, and
  - (b) the conditions prescribed by the regulations, and
  - (c) such additional conditions as the Director-General, having regard to the purpose of authorisation under this Division, may impose on the authority.
- (2) Conditions imposed by the Director-General may be varied (whether by amendment, addition, revocation or suspension of one or more conditions) by the Director-General from time to time by notice served on the authorised person.
- (3) An authorised taxi-cab driver who contravenes a condition of the driver's authority is guilty of an offence.  
Maximum penalty: 100 penalty units.
- (4) A variation of conditions imposed on an authority by the Director-General is, for the purposes of Division 3 of Part 5 (Reviews by Administrative Decisions Tribunal), a variation of the authority.

### **33E Statutory condition regarding network directions**

- (1) Each authorisation under this Division is subject to a condition that the authorised taxi-cab driver when in charge of a taxi-cab must comply with directions given by the relevant taxi-cab network to the driver, being conditions of a kind authorised to be given by or under the standards applying to the network.
- (2) The relevant taxi-cab network is the network with which the taxi-cab's accredited taxi-cab operator is affiliated under Division 6.

### **33F Variation, suspension or cancellation of authority**

Having regard to the purpose of authorisation under this Division, the Director-General may at any time vary, suspend or cancel any person's authority under this Division.

## **Division 6 Taxi-cab networks**

### **34 Requirement for authorisation**

- (1) The Director-General may authorise persons to operate taxi-cab networks, subject to and in accordance with this Division. A person authorised under this Division is referred to in this Part as an "authorised taxi-cab network provider".
- (2) A person who operates a taxi-cab network, being a network operating wholly or partly within New South Wales, is guilty of an offence unless the person is an authorised taxi-

cab network provider.

Maximum penalty: 1,000 penalty units.

- (3) The purpose of authorisation under this Division is to attest:
- (a) that the authorised person is (or, in the case of an authorised person that is a corporation, the designated directors and managers of the corporation are) considered to be of good repute and in all other respects fit and proper to be responsible for the operation of a taxi-cab network, and
  - (b) that the authorised person has demonstrated the capacity to meet and continue to meet the appropriate requirements with respect to:
    - (i) financial viability, and
    - (ii) the delivery of taxi-cab services, including a taxi-cab booking service, and
    - (iii) supervising and monitoring taxi-cab operators and taxi-cab drivers, to the degree and in the manner required in respect of a taxi-cab network.
- (4) The appropriate requirements are:
- (a) such requirements as may be prescribed by the regulations, and
  - (b) the standards determined under section 34E.

#### **34A Application for authorisation**

- (1) A person may apply to the Director-General for authorisation under this Division.
- (2) An applicant is required to pay any fee fixed by the regulations for consideration of the application.
- (3) An application made by a corporation is not to be considered by the Director-General unless the corporation nominates designated directors or managers (as referred to in section 35).
- (4) For the purposes of subsection (3), the Director-General may, from time to time, determine the number of persons who are to be nominated as designated directors and the number of persons who are to be nominated as designated managers. Such a determination may be made generally or in any particular case or class of cases.
- (5) Procedures for making and dealing with applications may be settled by the Director-General, subject to any provisions of the regulations.

#### **34B Grant or refusal of application**

- (1) Having regard to the purpose of authorisation under this Division, the Director-General



may grant an application and authorise the applicant to operate a taxi-cab network, or may refuse the application.

- (2) Before an application is granted, the applicant must meet any criteria set forth in the regulations and must satisfy the Director-General as to any matter the Director-General considers relevant.
- (3) An applicant is required to pay any fee fixed by the regulations for the authorisation when first issued.
- (4) Particulars of an authorisation are to be given in writing by the Director-General to the authorised person.
- (5) An authorisation may be given so as to be general or limited, that is to say:
  - (a) appropriate generally for taxi-cab services, or
  - (b) appropriate only for the service or services designated in the authorisation, or for a service or services having the scope or characteristics so designated.

#### **34C Term of and renewal of authorisation**

- (1) An authorisation under this Division, unless sooner suspended or cancelled, remains in force for a period determined by the Director-General and specified in the particulars of the authorisation.
- (2) An authorisation is renewable from time to time on payment of the fee fixed by the regulations.
- (3) Procedures for renewal may be settled by the Director-General, subject to any provisions of the regulations.

#### **34D Conditions of authorisation**

- (1) An authorisation under this Division is subject to:
  - (a) the conditions imposed by this Division, and
  - (b) the conditions prescribed by the regulations, and
  - (c) such additional conditions as the Director-General, having regard to the purpose of authorisation under this Division, may impose on the authorisation.
- (2) Conditions imposed by the Director-General may be varied (whether by amendment, addition, revocation or suspension of one or more conditions) by the Director-General from time to time by notice served on the authorised person.
- (3) An authorised taxi-cab network provider who contravenes a condition of the provider's authorisation is guilty of an offence.

Maximum penalty: 1,000 penalty units.

- (4) A variation of conditions imposed on an authorisation by the Director-General is, for the purposes of Division 3 of Part 5 (Reviews by Administrative Decisions Tribunal), a variation of the authorisation.

### **34E Statutory conditions regarding affiliation and service standards**

- (1) Each authorisation under this Division is subject to a condition that the accredited taxi-cab network provider must have arrangements in place for the affiliation of accredited taxi-cab operators with the taxi-cab network.
- (2) Each authorisation under this Division is subject to a condition that the authorised taxi-cab network provider must comply with service standards determined under this section.
- (3) The Director-General may from time to time determine service standards with which authorised taxi-cab network providers are required to comply, being:
- (a) standards with which the network providers must themselves comply, and
  - (b) standards that the providers must ensure taxi-cab operators and taxi-cab drivers comply with.
- (4) Without limitation, standards for an authorised taxi-cab network provider may make provision for or with respect to:
- (a) requiring the network provider to accept applications for affiliation by, and to maintain affiliation with, accredited taxi-cab operators, so long as they pay the network booking service fees and abide by the rules of the network, and
  - (b) the rules of the network so far as they apply to taxi-cab operators and taxi-cab drivers, and
  - (c) maintenance of vehicles used as taxi-cabs, and
  - (d) safety of taxi-cab drivers and of their passengers, and
  - (e) training of taxi-cab drivers, and
  - (f) requiring the network provider to ensure that specified service levels for the carrying out of services related to the network provider's taxi-cab booking service, and the provision of booked taxi-cabs, are met, and
  - (g) requiring the network provider to ensure that a specified number or type of taxi-cabs, or a percentage of the total number or type of taxi-cabs, operated by taxi-cab operators affiliated with the network provider are on the road:
    - (i) from time to time, or

- (ii) at a specified location or locations, or
  - (iii) at a specified time or times or during a specified period or periods, or
  - (iv) for the purpose of meeting demand arising from a specified event or events, and
- (h) authorising the kinds of directions that the network provider is authorised to give taxi-cab operators and taxi-cab drivers, and
- (i) without limiting paragraph (h), authorising or requiring the network provider to impose such service requirements on individual taxi-cab operators and taxi-cab drivers, or groups of taxi-cab operators and taxi-cab drivers, as are necessary to enable the network provider to comply with its obligations imposed by or under this Act, and
- (j) requiring the network provider to supervise and monitor taxi-cab operators and taxi-cab drivers in relation to compliance with service requirements and other matters, and
- (k) requiring reports to be furnished to the Director-General, whether on a regular basis or in specified circumstances or classes of circumstances or both, and
- (l) providing facilities, including electronic monitoring facilities, as required by the Director-General, for the purpose of enabling or assisting the Director-General to monitor the performance of the network, the delivery of taxi-cab services by the network and the network's supervision and monitoring of taxi-cab operators and taxi-cab drivers, and entering into arrangements with the Director-General for this purpose, and
- (m) enabling the Director-General to impose financial sanctions for contraventions of standards on the network provider (not exceeding an amount equal to 500 penalty units for any such contravention), and
- (n) any other aspect of or relating to taxi-cab services, or affiliation under this Division.
- (5) Any person may obtain from the Director-General a copy of the standards on payment of the fee (if any) fixed by the regulations.
- (6) The regulations may make provision for or with respect to:
- (a) the procedures to be followed in making determinations under this section, and
  - (b) the publication of determinations under this section, and
  - (c) the imposition of financial sanctions under this Division.

- (7) Nothing in this section limits the matters for or with respect to which regulations may be made under this Act.

### **34F Variation, suspension or cancellation of authorisation**

- (1) Having regard to the purpose of authorisation under this Division, the Director-General may at any time vary, suspend or cancel any person's authorisation under this Division.
- (2) Without limiting subsection (1), the Director-General may vary, suspend or cancel a person's authorisation under this Division for failure to pay a financial sanction imposed on the person under the standards under this Division.
- (3) The authorisation of a corporation is automatically cancelled when there is no designated director or manager.

## **Division 7 Miscellaneous**

### **35 Designated directors and managers of corporations**

For the purposes of this Part:

- (a) a corporation may nominate, and the Director-General may accept the nomination of, any number of its directors or managers as designated directors or managers, and
- (b) further nominations may be made and accepted from time to time, and
- (c) a person so nominated becomes a designated director or manager, but only when the Director-General certifies acceptance of the nomination.

### **35A Exemptions regarding networks**

- (1) The Director-General may, by order in writing or by the terms or conditions of an authorisation under this Division, exempt an accredited taxi-cab operator from the provisions of section 30 (1) (c) or section 31G or both.
- (2) Nothing in this section affects any other power of exemption under this Act.

## **Part 4A Private hire vehicles**

### **Division 1 Preliminary**

#### **36 Application of Part**

This Part applies to and in relation to private hire vehicles.

#### **36A Definitions**

In this Part:

**accredited private hire vehicle operator** means a person accredited under Division 3 to carry on a private hire vehicle service.

**authorised private hire vehicle driver** means a person authorised under Division 5 to drive a private hire vehicle.

**private hire vehicle service** means a public passenger service carried on by means of one or more private hire vehicles.

## **Division 2 Private hire vehicle services**

### **37 Private hire vehicle service requirements**

- (1) A person who carries on a private hire vehicle service, being a service operating wholly or partly within New South Wales, by means of a private hire vehicle is guilty of an offence if:
  - (a) the person is not accredited for the purpose of carrying on the service under Division 3, or
  - (b) the private hire vehicle is not licensed under Division 4.
- (2) A person who carries on a private hire vehicle service, being a service operating wholly or partly within New South Wales, by means of a private hire vehicle is guilty of an offence if:
  - (a) the service is carried on otherwise than in accordance with the terms and conditions of the person's accreditation under Division 3, or
  - (b) the service is carried on otherwise than in accordance with such of the terms and conditions of the private hire vehicle's licence as are applicable to the person under Division 4.

Maximum penalty: 1,000 penalty units.

## **Division 3 Private hire vehicle operators**

### **38 Accreditation**

- (1) The Director-General may accredit persons for the purpose of carrying on private hire vehicle services, subject to and in accordance with this Division. A person accredited under this Division is referred to in this Part as an "accredited private hire vehicle operator".
- (2) The purpose of accreditation under this Division is to attest:
  - (a) that the accredited person is (or, in the case of an accredited person that is a corporation, the designated directors and managers of the corporation are) considered to be of good repute and in all other respects fit and proper to be

responsible for the operation of a private hire vehicle service, and

(b) that the accredited person has demonstrated the capacity to meet and continue to meet the appropriate requirements with respect to:

- (i) financial viability, and
- (ii) safety of drivers, passengers and the public, and
- (iii) vehicle maintenance,

to the degree and in the manner required in respect of services of the kind specified in the accreditation.

(3) The appropriate requirements are such requirements as may be prescribed by the regulations.

### **38A Application for accreditation**

- (1) A person may apply to the Director-General for accreditation under this Division.
- (2) An applicant is required to pay any fee fixed by the regulations for consideration of the application.
- (3) An application made by a corporation is not to be considered by the Director-General unless the corporation nominates designated directors or managers (as referred to in section 41).
- (4) For the purposes of subsection (3), the Director-General may, from time to time, determine the number of persons who are to be nominated as designated directors and the number of persons who are to be nominated as designated managers. Such a determination may be made generally or in any particular case or class of cases.
- (5) Procedures for making and dealing with applications may be settled by the Director-General, subject to any provisions of the regulations.

### **38B Grant or refusal of application**

- (1) Having regard to the purpose of accreditation under this Division, the Director-General may grant an application and accredit the applicant for the purpose of carrying on a private hire vehicle service, or may refuse the application.
- (2) Before an application is granted, the applicant must meet any criteria set forth in the regulations and must satisfy the Director-General as to any matter the Director-General considers relevant.
- (3) An applicant is required to pay any fee fixed by the regulations for the accreditation when first issued.

- (4) Particulars of an accreditation are to be given in writing by the Director-General to the accredited person.
- (5) An accreditation may be given so as to be general or limited, that is to say:
  - (a) appropriate generally for a private hire vehicle service, or
  - (b) appropriate only for the service or services designated in the accreditation, for a service or services having the scope or characteristics so designated.

### **38C Term of and renewal of accreditation**

- (1) An accreditation under this Division, unless sooner suspended or cancelled, remains in force for a period determined by the Director-General and specified in the particulars of the accreditation.
- (2) An accreditation is renewable from time to time on payment of the fee fixed by the regulations.
- (3) Procedures for renewal may be settled by the Director-General, subject to any provisions of the regulations.

### **38D Conditions of accreditation**

- (1) An accreditation under this Division is subject to:
  - (a) the conditions prescribed by the regulations, and
  - (b) such additional conditions as the Director-General, having regard to the purpose of accreditation under this Division, may impose on the accreditation.
- (2) Conditions imposed by the Director-General may be varied (whether by amendment, addition, revocation or suspension of one or more conditions) by the Director-General from time to time by notice served on the accredited person.
- (3) An accredited private hire vehicle operator who contravenes a condition of the operator's accreditation is guilty of an offence.  
Maximum penalty: 1,000 penalty units.
- (4) A variation of conditions imposed on an accreditation by the Director-General is, for the purposes of Division 3 of Part 5 (Reviews by Administrative Decisions Tribunal), a variation of the accreditation.

### **38E Variation, suspension or cancellation of accreditation**

- (1) Having regard to the purpose of accreditation under this Division, the Director-General may at any time vary, suspend or cancel any person's accreditation under this Division.

- (2) The accreditation of a corporation is automatically cancelled when there is no designated director or manager.

## **Division 4 Private hire vehicle licences**

### **39 Licence**

- (1) The Director-General may license motor vehicles as private hire vehicles, subject to and in accordance with this Division.
- (2) Subject to subsection (3):
- (a) the authority of a licence for a private hire vehicle, if the licence is let or sublet, inures to the benefit of the lessee or sublessee to the exclusion of the lessor or sublessor, and
  - (b) a reference in this Act or the regulations to the licensee of, or the holder of a licence for, a private hire vehicle is a reference to the person having the benefit of the authority of the licence concerned.
- (3) However:
- (a) the regulations may provide that such a lessor is subject to specified provisions of this Act or of the regulations relating to licensed private hire vehicles, either to the exclusion of any lessee or sublessee or jointly with any lessee or sublessee, and
  - (b) the conditions of a licence may provide that such a lessor is subject to the provisions of specified terms and conditions of the licence, either to the exclusion of any lessee or sublessee or jointly with any lessee or sublessee.

The regulations or conditions referred to in this subsection may provide that the lessor and any lessee or sublessee are jointly and severally liable under any specified provisions or for any matters arising in connection with them.

- (4) The following provisions have effect:
- (a) the regulations may provide that specified kinds of terms and conditions of licences apply to accredited private hire vehicle operators carrying on private hire vehicle services by means of the private hire vehicles concerned, and
  - (b) the conditions of a licence may provide that specified terms and conditions of the licence apply to an accredited private hire vehicle operator carrying on a private hire vehicle service by means of the private hire vehicle concerned.

The regulations or conditions referred to in this subsection may provide that such a term or condition applies to a private hire vehicle operator to the exclusion of a licensee or may provide that the operator and licensee are jointly and severally liable in connection with such a term or condition.



### **39A Application for licence**

- (1) A person may apply to the Director-General for a licence under this Division.
- (2) An applicant is required to pay any fee fixed by the regulations for consideration of the application.
- (3) An application made by a corporation is not to be considered by the Director-General unless the corporation nominates designated directors or managers (as referred to in section 41).
- (4) For the purposes of subsection (3), the Director-General may, from time to time, determine the number of persons who are to be nominated as designated directors and the number of persons who are to be nominated as designated managers. Such a determination may be made generally or in any particular case or class of cases.
- (5) Procedures for making and dealing with applications may be settled by the Director-General, subject to any provisions of the regulations.

### **39B Grant or refusal of application**

- (1) The Director-General may grant an application and issue to the applicant a licence for the private hire vehicle concerned, or may refuse the application.
- (2) Before an application is granted, the applicant must meet any criteria set forth in the regulations and must satisfy the Director-General as to any matter the Director-General considers relevant.

### **39C Term of and renewal of licence**

- (1) A licence, unless sooner suspended or cancelled, remains in force for a period determined by the Director-General and specified in the licence.
- (2) A licence is renewable from time to time on payment of the fee fixed by the regulations.
- (3) Procedures for renewal may be settled by the Director-General, subject to any provisions of the regulations.
- (4) This section does not apply to a short-term licence issued under this Division.

### **39D Short-term licences**

- (1) If an applicant for a licence requests a short-term licence, the Director-General may issue to the applicant a licence for a limited duration.
- (2) A short-term licence, unless sooner suspended or cancelled, remains in force for the period (not exceeding 6 years) determined by the Director-General and specified in the licence.

- (3) Such a licence is not renewable and cannot be transferred except on the application of the holder's legal personal representative or of a trustee of the holder's estate.

**39E Area of operation of licences**

- (1) A licence for a private hire vehicle may specify the area of operation of the private hire vehicle.
- (2) If no area is specified, the private hire vehicle may be used to carry on a private hire vehicle service anywhere in New South Wales.
- (3) A licence for a private hire vehicle does not confer on any person an exclusive right to operate a private hire vehicle in the area of operation specified in the licence.

**39F Conditions of licence**

- (1) A licence is subject to:
  - (a) the conditions prescribed by the regulations, and
  - (b) such additional conditions as the Director-General may impose on the licence.
- (2) Conditions imposed by the Director-General may be varied (whether by amendment, addition, revocation or suspension of one or more conditions) by the Director-General from time to time by notice served on the licensee.
- (3) A licensee who contravenes a condition of the licence is guilty of an offence.  
Maximum penalty: 1,000 penalty units.
- (4) A variation of conditions imposed on a licence by the Director-General is, for the purposes of Division 3 of Part 5 (Reviews by Administrative Decisions Tribunal), a variation of the licence.

**39G Variation, suspension or cancellation of licence**

- (1) The Director-General may at any time vary, suspend or cancel any licence if:
  - (a) owing to the default of the licensee, or the agents or employees of the licensee:
    - (i) the provisions of this Act or the regulations, or
    - (ii) the terms and conditions of the licence,have not been or are not being complied with, or
  - (b) the private hire vehicle service carried on under the authority of the licence has been or is being conducted in such a manner as to cause danger to the public, or
  - (c) the licensee is convicted of an offence against this Act or the regulations with respect to the furnishing of information concerning the service, or

(d) the licensee does not have a policy of insurance covering third-party property damage in respect of the private hire vehicle, being a policy:

(i) issued by a corporation authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business, and

(ii) providing cover that in the opinion of the Director-General is sufficient for the private hire vehicle.

(2) A licence issued to a corporation is automatically cancelled when there is no designated director or manager.

### **39H Licence fee**

(1) In addition to any application fee, a licence fee is payable to the Director-General when a licence is first issued.

(2) The licence fee is payable by the person to whom the licence is issued in the manner determined by the Director-General.

### **39I Licence fee for ordinary licence**

(1) The amount of the licence fee for a licence must be determined by inviting applicants for the licence to bid for it at a public auction or to submit sealed tenders for it or by using such other method chosen by the Director-General as will, in the Director-General's opinion, yield as the fee for the licence an amount equivalent to its current value on the open market.

(2) The Director-General may, in the circumstances specified in the regulations, fix the licence fee at less than the current value of the licence on the open market or decide not to impose a licence fee for the licence.

(3) This section does not apply to a short-term licence issued under this Division.

### **39J Licence fee for short-term licences**

The amount of the licence fee for a short-term licence issued under this Division is an amount determined by the Director-General.

## **Division 5 Private hire vehicle drivers**

### **40 Authorities**

(1) The Director-General may, by the issue of authorities under this Division, authorise persons to drive private hire vehicles, subject to and in accordance with this Division. A person authorised under this Division is referred to in this Part as an "authorised private hire vehicle driver".

(2) A person who drives a private hire vehicle is guilty of an offence unless the person is

an authorised private hire vehicle driver.

Maximum penalty: 100 penalty units.

(3) The purpose of an authority under this Division is to attest:

(a) that the authorised person is considered to be of good repute and in all other respects a fit and proper person to be the driver of a private hire vehicle, and

(b) that the authorised person is considered to have sufficient responsibility and aptitude to drive a private hire vehicle:

(i) in accordance with the conditions under which the private hire vehicle service concerned is operated, and

(ii) in accordance with law and custom.

(4) The regulations may create categories or grades of authorities.

(5) Without limitation, the regulations may provide that subsection (2) does not apply in specified circumstances, including, for example, when a private hire vehicle is being driven to a place to have it repaired or serviced.

#### **40A Application for authorisation**

(1) A person may apply to the Director-General for authorisation under this Division.

(2) An applicant is required to pay any fee fixed by the regulations for consideration of the application.

(3) Procedures for making and dealing with applications may be settled by the Director-General, subject to any provisions of the regulations.

#### **40B Grant or refusal of application**

(1) Having regard to the purpose of authorisation under this Division, the Director-General may grant an application and authorise the applicant to drive a private hire vehicle, or may refuse the application.

(2) Before an application is granted, the applicant must meet any criteria set forth in the regulations and must satisfy the Director-General as to any matter the Director-General considers relevant.

(3) An applicant is required to pay any fee fixed by the regulations for the authority when first issued.

(4) An authority is to be given in writing by the Director-General to the authorised person.

(5) The authority may specify the category or grade of the authority, and (without limitation) may specify the kind or kinds of vehicles for which the authority is granted.

#### **40C Term of and renewal of authority**

- (1) An authority under this Division, unless sooner suspended or cancelled, remains in force for a period determined by the Director-General and specified in the authority.
- (2) An authority is renewable from time to time on payment of the fee fixed by the regulations.
- (3) Procedures for renewal may be settled by the Director-General, subject to any provisions of the regulations.

#### **40D Conditions of authority**

- (1) An authority under this Division is subject to:
  - (a) the conditions prescribed by the regulations, and
  - (b) such additional conditions as the Director-General, having regard to the purpose of authorisation under this Division, may impose on the authority.
- (2) Conditions imposed by the Director-General may be varied (whether by amendment, addition, revocation or suspension of one or more conditions) by the Director-General from time to time by notice served on the authorised person.
- (3) An authorised private hire vehicle driver who contravenes a condition of the driver's authority is guilty of an offence.

Maximum penalty: 100 penalty units.

- (4) A variation of conditions imposed on an authority by the Director-General is, for the purposes of Division 3 of Part 5 (Reviews by Administrative Decisions Tribunal), a variation of the authority.

#### **40E Variation, suspension or cancellation of authority**

Having regard to the purpose of authorisation under this Division, the Director-General may at any time vary, suspend or cancel any person's authority under this Division.

### **Division 6 Miscellaneous**

#### **41 Designated directors and managers of corporations**

For the purposes of this Part:

- (a) a corporation may nominate, and the Director-General may accept the nomination of, any number of its directors or managers as designated directors or managers, and
- (b) further nominations may be made and accepted from time to time, and
- (c) a person so nominated becomes a designated director or manager, but only when the

Director-General certifies acceptance of the nomination.

**42** (Renumbered as section 55A)

## **Part 4B Taxi-cabs and private hire vehicles: transfer tax**

### **43 Definitions**

- (1) In this Division, **transport district** means a transport district established under the *Transport Administration Act 1988* or that was previously established under the *Transport Act 1930*.
- (2) For the purposes of this Division, the current market value of the licence for a taxi-cab which is transferred is an amount that, in the opinion of the Director-General, represents the current market value, at the date of the transfer, of the licence.

### **44 Transfer of licences for taxi-cabs**

(1) If:

(a) the licence in respect of a taxi-cab authorised to operate in a transport district:

- (i) was first granted under the *Transport Licensing Act 1931* before 25 December 1986 (the date of commencement of the *Transfer of Public Vehicles (Taxation) Amendment Act 1986*), or
- (ii) was first granted under the *Transport Licensing Act 1931*, or under this Act, on or after that date but is not a licence to which subsection (2) applies, and

(b) the holder of the licence transfers it to another person,

there is to be charged, levied, collected and paid for the use of the Crown in right of New South Wales a tax on the transfer of the licence, calculated at the rate of 2.5% of its current market value.

(c), (d) (Repealed)

(2) If:

(a) the licence in respect of a taxi-cab authorised to operate in a transport district was first granted under the *Transport Licensing Act 1931*, or under this Act, on or after 25 December 1986 (the date of commencement of the *Transfer of Public Vehicles (Taxation) Amendment Act 1986*), and

(b) the licence fee payable in respect of the grant of the licence was an amount equivalent to the then current market value of the licence, and

(c) the holder of the licence transfers it to another person,

there is to be charged, levied, collected and paid for the use of the Crown in right of

New South Wales a tax on the transfer of the licence calculated at the rate of 2.5 per cent of its current market value.

(3) If:

(a) the taxi-cab to which a licence relates is not authorised to operate in a transport district, and

(b) the holder of the licence transfers it to another person,

there is to be charged, levied, collected and paid for the use of the Crown in right of New South Wales a tax on the transfer of the licence calculated at the rate of 2.5 per cent of its current market value.

#### **45 Transfer of licences for private hire vehicles**

There is to be charged, levied, collected and paid for the use of the Crown in right of New South Wales a tax of \$500:

(a) on the transfer of a licence for a private hire car granted under the *Transport Licensing Act 1931*, and

(b) on the transfer of a licence for a private hire vehicle granted under this Act.

#### **46 Exemption from tax**

The transfer of a licence for a taxi-cab or private hire vehicle is exempt from tax under this Division if the holder of the licence has died and the transferee is entitled to the licence under the will or on the intestacy of the holder.

### **Part 4C Investigations and enforcement**

#### **Division 1 Investigations**

##### **46A Provision of information relating to safety to regulator**

- (1) A person who carries on a public passenger service by means of a bus or ferry must provide to the regulator the information concerning measures taken by the person to promote safety or concerning other matters relating to safety that the regulator reasonably requires.
- (2) A person who carries on a public passenger service by means of a bus or ferry must, if required by notice in writing given to the person by the regulator, submit a safety report to the regulator.
- (3) The person must provide the information or report in the form and manner approved by the regulator.

Maximum penalty: 500 penalty units.

#### **46AA Provision of information to Chief Investigator**

A regulator is to make available to the Chief Investigator all information that is provided to the regulator under section 46A that relates to a transport accident or incident that may affect the safe provision of a public passenger service carried on by means of a bus or ferry.

#### **46B Persons must report notifiable occurrences**

- (1) A person who carries on a public passenger service by means of a bus or ferry must report any occurrence, of a kind prescribed by the regulations as a notifiable occurrence, affecting the public passenger service.

Maximum penalty: 100 penalty units.

- (2) A report under subsection (1) is to be made to the regulator, or such other person or persons as may be prescribed, in the time and manner prescribed.
- (3) The regulations may prescribe different reporting requirements in respect of different occurrences.

#### **46BA Investigations by the Chief Investigator**

- (1) The Chief Investigator may investigate any transport accident or incident that may affect the safe provision of public passenger services carried on by means of buses or ferries.
- (2) The Chief Investigator must provide to the Minister a written report on an investigation under this section.
- (3) The Minister may require the Chief Investigator to investigate and report to the Minister on any transport accident or incident that may affect the safe provision of public passenger services carried on by means of buses or ferries.
- (4) The Chief Investigator may recover the reasonable costs of conducting an investigation under this section as a debt due to the Crown in a court of competent jurisdiction. The costs are recoverable jointly or severally from any one or more service operators in respect of the services concerned.
- (5) An investigation under this section may be carried out and a report provided under this section whether or not:
  - (a) an investigation is being, or has been, conducted under any other Act or law (including a law of the Commonwealth) relating to the same matter, or
  - (b) the matter is or may be subject to any criminal or civil proceedings, or
  - (c) the matter is the subject of an inquest or inquiry under the [Coroners Act 1980](#), or



(d) the matter is or may be the subject of a transport safety inquiry.

#### **46BB Chief Investigator and transport safety investigator's functions**

- (1) The Chief Investigator may, by notice in writing, require either or both of the following:
  - (a) the attendance of any person at any place to answer questions in relation to an investigation under section 46BA,
  - (b) the production of any documents or other things required for the purposes of any such investigation.
- (2) The Chief Investigator may require a person to answer questions in relation to an investigation under section 46BA.
- (3) A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this section.

Maximum penalty: 100 penalty units.

#### **Note—**

Section 46U provides protection in relation to self-incriminating evidence.

- (4) A person attending at a place to answer questions is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.
- (5) The Chief Investigator may appoint an authorised person (within the meaning of section 45DA of the [Transport Administration Act 1988](#)) as a transport safety investigator for the purposes of conducting an investigation under section 46BA.

#### **Note—**

Section 45DA of the [Transport Administration Act 1988](#) permits the Chief Investigator to delegate any of his or her functions.

- (6) The Chief Investigator and each transport safety investigator have, in respect of any investigation under section 46BA, all the functions and immunities of an authorised officer and in the exercise of those functions, any reference in Division 2 of Part 4C to the regulator is taken to be a reference to the Chief Investigator.

#### **46BC Transport safety inquiries**

- (1) The Minister may constitute one or more persons as a Board of Inquiry to conduct an inquiry (a **transport safety inquiry**) into any transport accident or incident or any other event, occurrence, practice or matter that may affect the safe provision of a public passenger service carried on by means of a bus or ferry.
- (2) A transport safety inquiry may be carried out and a report provided whether or not:

- (a) an investigation is being, or has been, conducted under any other Act or law (including a law of the Commonwealth) relating to the same matter, or
  - (b) the matter is or may be subject to any criminal or civil proceedings, or
  - (c) the matter is the subject of an inquest or inquiry under the *Coroners Act 1980*.
- (3) The Minister may not terminate a transport safety inquiry.
- (4) A Board of Inquiry may, at a transport safety inquiry conducted by it, take evidence on oath or affirmation and, for that purpose, the person constituting the Board:
- (a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding, and
  - (b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.
- (5) In conducting a transport safety inquiry, a Board of Inquiry:
- (a) is not bound to act in a formal manner, and
  - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate.
- (6) If the Board of Inquiry agrees, an agent (including a legal practitioner) may represent a person or body at a transport safety inquiry.
- (7) A Board of Inquiry is to determine its own procedure, except as provided by this Act or the regulations.

**46BD Chief Investigator may request transport safety inquiry**

- (1) The Chief Investigator may, if he or she considers it to be appropriate in the circumstances, give a written notice to the Minister requesting that any transport accident or incident or any other event, occurrence, practice or matter that may affect the safe provision of a public passenger service carried on by means of a bus or ferry be the subject of a transport safety inquiry.
- (2) If the Minister receives a written notice under subsection (1) from the Chief Investigator, the Minister is to:
- (a) constitute a Board of Inquiry to conduct a transport safety inquiry into the accident, incident, event, occurrence, practice or matter, or
  - (b) within one month after receiving the notice, provide the Chief Investigator with written reasons for not doing so and table the notice and the reasons in each House of Parliament.

#### **46BE Assessors**

- (1) A Board of Inquiry, when conducting, and making a determination in respect of, a transport safety inquiry is to sit with any assessors that may be appointed by the Minister for the purposes of the inquiry.
- (2) An assessor sitting with a Board of Inquiry has the power to advise the Board of Inquiry but not to adjudicate on any matter before the Board of Inquiry.
- (3) A Board of Inquiry has the right to consult, either collectively or individually, and either in public or in private, with assessors sitting with it.

#### **46BF Witnesses and evidence at transport safety inquiries**

- (1) A Board of Inquiry may summon a person to appear at a transport safety inquiry conducted by the Board to give evidence and to produce any documents that are specified in the summons.
- (2) A Board of Inquiry may require a person appearing at a transport safety inquiry to do any one or more of the following:
  - (a) be sworn or affirmed,
  - (b) produce a document,
  - (c) answer a question.
- (3) A person attending as a witness before a Board of Inquiry is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.
- (4) A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this section.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

#### **46BG Report on transport safety inquiry**

A Board of Inquiry must, within the period required by the Minister, prepare a report as to the causes of the accident or incident or prepare a report on the other event, occurrence, practice or matter into which it was to inquire and provide a copy of the report to the Minister.

**46C (Repealed)**

**46D Tabling of reports**

- (1) The Minister is to lay (or cause to be laid) a report under section 46BA (2) or 46BG before both Houses of Parliament as soon as reasonably practicable, but not later than 7 days, after the Minister receives the report.
- (2) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (3) The report:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

**46E Confidential reporting of safety information by transport safety employees**

- (1) The Chief Investigator may establish a system for the voluntary reporting by transport safety employees of matters that may affect the safe carrying out of a public passenger service by means of a bus or ferry.
- (2) The Chief Investigator must not disclose to any other person, or to any court, any information that may identify an employee who provides information under any such voluntary reporting system unless:
  - (a) the employee consents to the disclosure, or
  - (b) the Chief Investigator or a court is of the opinion that it is necessary in the public interest that the information be disclosed.
- (3) Nothing in this section prevents the Chief Investigator from disclosing information obtained under this section to the regulator.
- (4) Regulations may be made for or with respect to the following matters:

- (a) the form and manner in which reports may be made,
- (b) the manner in which reports are to be dealt with and the purposes for which information reported under this section may be used,
- (c) other requirements for a system established under this section.

(5) (Repealed)

## **Division 2 Inspection powers**

### **46F (Repealed)**

### **46G Use of powers by authorised officers**

Subject to section 46W, an authorised officer may exercise the powers conferred by this Division for the purposes of this Act, including the following purposes:

- (a) the purposes of an inspection, investigation, transport safety inquiry or other inquiry under this Act,
- (b) the purpose of determining whether there has been a contravention of this Act, the regulations or the terms of an accreditation, licence, authority, authorisation, service contract, requirement or exemption under this Act.

### **46H Inspections by regulator of bus and ferry services**

- (1) The regulator may cause inspections to be carried out to ensure that a person who carries on a public passenger service by means of a bus or ferry is complying with the terms of the person's accreditation or service contract under this Act or with the requirements of this Act relating to a safety management system.
- (2) Inspections under this section may be carried out at such intervals as the regulator thinks fit.
- (3) For the purposes of this section, the regulator may cause the following to be inspected:
  - (a) the performance of transport safety employees,
  - (b) any bus or ferry used for the purposes of a public passenger service and any equipment, furnishings or fittings in or about the bus or ferry,
  - (c) the carrying out of a public passenger service by means of a bus or ferry,
  - (d) any other thing the regulator considers to be relevant to the safe carrying on of a public passenger service by means of a bus or ferry.

#### **46I Power of entry**

- (1) An authorised officer may enter premises (other than any premises, or a part of any premises, that are used as a dwelling) that the officer reasonably suspects are being used for the purposes of a public passenger service, a taxi-cab network (as defined in section 29A) or for the keeping of records for any such purposes.
- (2) Entry may be made only at a reasonable hour in the daytime or at any hour during which a public passenger service is in operation or other related activity is in progress or is usually carried out in or on the premises.

#### **46J Powers on entry**

An authorised officer has the following powers in or on premises that the officer is authorised to enter under this Act:

- (a) power to inspect any vehicle that the officer reasonably suspects is being used for the purposes of a public passenger service and inspect or test any taxi-meter, radio receiver or other equipment, or inspect any furnishings or fittings, in or on or about the vehicle,
- (b) power, by notice in writing, to require the owner or person in charge of any such vehicle or equipment specified in the notice to have the vehicle or equipment inspected or tested within a time limit specified by the notice,
- (c) power to inspect any maintenance facilities, equipment or apparatus used for the purposes of or in connection with a public passenger service,
- (d) power to inquire into any transport accident or other incident affecting the safe carrying out of a public passenger service or the personal security of members of the public using a public passenger service or transport safety employees that has happened in or on the premises,
- (e) power to take samples and photographs in connection with any inspection or inquiry,
- (f) power to search for evidence of any contravention of this Act, the regulations or the terms of an accreditation, licence, authority, authorisation, service contract, requirement or exemption under this Act,
- (g) power to search for and inspect relevant documents and require any person in or on the premises to produce to the authorised officer any relevant documents in the person's custody or under the person's control,
- (h) power to require any person in or on the premises to answer questions or otherwise give information in relation to the matter the subject of the inspection, investigation or inquiry,
- (i) power to exercise functions under section 46L in relation to any relevant documents

found in or on the premises or produced to an authorised officer,

- (j) power to seize anything that the authorised officer suspects on reasonable grounds is connected with an offence against this Act or the regulations and to secure any such thing against interference,
- (k) power to secure the perimeter of the site of any transport accident or other incident concerning a public passenger service by whatever means, and for such period, as the authorised officer considers appropriate or the regulator specifies.

**Note—**

For the purposes of this Act, **vehicle** is defined to include a vessel (see section 3 (1)).

**46K Inspection and testing of vehicles**

- (1) An authorised officer may, for the purposes of an inspection of a vehicle that the officer is authorised to inspect under this Act:
  - (a) enter and remain in or on the vehicle, and
  - (b) enter and remain in any workshop or other premises where the vehicle is located, and
  - (c) operate the vehicle and any operable equipment in, on or about the vehicle.
- (2) The driver or person in charge of a vehicle that is being driven or used on a road or road related area or in any other place must, for the purpose of enabling an authorised officer to inspect or test the vehicle or equipment under this Division, comply with any reasonable direction by an authorised officer to stop, stand, park or manoeuvre the vehicle, or to do any other thing, for the purpose of facilitating the inspection or testing of the vehicle.
- (3) A direction to stop the vehicle may be given by the authorised officer by displaying a sign or by any other reasonable method.
- (4) If a vehicle has been stopped in compliance with a direction under this section, any inspection and testing of the vehicle or equipment under this Division must be carried out:
  - (a) at or as near as practicable to the place where the direction to stop the vehicle is given, and
  - (b) as soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction.
- (5) A notice under this Division requiring a vehicle or equipment to be tested may require the vehicle or equipment:

- (a) to be inspected or tested at a specified place (being a place within 80 kilometres of the owner's or person's place of residence or place of business), or
- (b) to be tested by or in the presence of an authorised officer.

**46L Functions of authorised officers in relation to relevant documents**

- (1) An authorised officer has the following powers in relation to relevant documents found by an authorised officer in or on premises or a vehicle entered by the authorised officer or produced to the authorised officer pursuant to a requirement made under this Division:
  - (a) power to take possession of the documents or secure them against interference,
  - (b) power to take copies of, or take extracts from, the documents,
  - (c) power to require any person who was party to the creation of the documents to make a statement providing any explanation that the person is able to provide as to any matter relating to the creation of the documents or as to any matter to which the documents relate,
  - (d) power to retain possession of the documents for such period as is necessary to enable the documents to be inspected, and copies of, or extracts from, the documents to be made or taken.
- (2) While an authorised officer retains possession of a document, the authorised officer must permit a person who would be entitled to inspect the document were it not in the possession of the authorised officer to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.
- (3) If an authorised officer takes possession of or secures against interference any relevant document on which a person has a lien, the authorised officer's actions do not prejudice the lien.

**46M Other powers related to documents**

- (1) An authorised officer may, by notice in writing, require a person to furnish records or information.
- (2) The notice must specify the manner in which records or information are required to be furnished and a reasonable time by or at which they must be furnished.
- (3) The authorised officer may take copies of, or extracts from, records furnished in response to a notice.
- (4) If any record required by the notice to be furnished is in electronic form or a form other than writing, the notice requires the record to be furnished in writing, unless the notice otherwise provides.



#### **46N Notice of entry**

Before an authorised officer enters premises or a vehicle under this Act, the authorised officer must give the owner or occupier of the premises, or the owner or person in charge of the vehicle, reasonable notice of the intention to enter the premises or vehicle unless:

- (a) the giving of notice would defeat the purpose for which it is intended to enter the premises or vehicle, or
- (b) entry to the premises or vehicle is made with the consent of the owner or occupier of the premises or the owner or person in charge of the vehicle, or
- (c) entry is required in an emergency.

#### **46O Use of force**

A power conferred by this Act to enter any premises or vehicle, or to do anything in or on any premises or vehicle, may not be exercised unless the authorised officer proposing to exercise the power uses no more force than is reasonably necessary to effect the entry or to do the thing for which entry is effected.

#### **46P Care to be taken**

In the exercise of a function under this Division, an authorised officer must do as little damage as possible.

#### **46Q Compensation**

- (1) The regulator must pay compensation for any damage caused by any authorised officer in the exercise of a power to enter premises or a vehicle under this Division, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of this Act or any other Act or law.
- (2) Section 66 does not apply to a liability under this section.

#### **46R Authority to enter**

- (1) A power conferred by this Division to enter premises or a vehicle, or to make an inspection or take other action in or on premises or a vehicle, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority, if required to do so by the owner or occupier of the premises or the driver or person in charge of the vehicle.
- (2) The authority must be a written authority that is issued by the regulator and that:
  - (a) states that it is issued under this Act, and
  - (b) states an identifying number or other means of identifying the person to whom it is issued, and

- (c) describes the nature of the powers conferred, and
- (d) states the date (if any) on which it expires, and
- (e) describes the premises or vehicles to which it extends, and
- (f) bears the signature of:
  - (i) the Director-General or a person approved by the Director-General—if the Director-General is the regulator, or
  - (ii) the Chief Executive of the Maritime Authority or a person approved by the Chief Executive—if the Maritime Authority is the regulator.

(3) This section does not apply to a power conferred by a search warrant.

#### **46S Assistance to be given to authorised officers**

- (1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Division.
- (2) The regulator may, by notice in writing served on the occupier of premises referred to in section 46I, require the person to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) A person who fails to comply with a requirement under this section is taken to have obstructed the authorised officer in the exercise of the authorised officer's functions under this Division.

#### **46T Premises used for residential purposes**

The powers of entry and inspection conferred by this Division are not exercisable in relation to any premises or part of premises that are being used for residential purposes except:

- (a) with the permission of the occupier of the premises or part of the premises, or
- (b) under the authority conferred by a search warrant.

#### **46U Protection from incrimination**

- (1) A person is not excused from any of the following requirements made under this Act on the ground that the statement might tend to incriminate him or her:
  - (a) a requirement to answer a question or produce a thing,
  - (b) a requirement to make a statement.
- (2) However, the answer to the question, production of the thing, any information obtained as a direct result of the answer or production, or the statement, is not

admissible in evidence against the person in criminal proceedings:

- (a) if the person claims before giving the answer, producing the thing or making the statement that it might tend to incriminate the person, or
  - (b) unless the person's entitlement to make a claim of the kind referred to in paragraph (a) was drawn to the person's attention before the answer was given, the thing was produced or the statement was made.
- (3) Except as provided by subsection (2), an answer to a question, production of a thing, any information obtained as a direct result of any such answer or production, or a statement made by a person, in compliance with a requirement under this Act, may be used in evidence in any criminal or civil proceedings against the person.

#### **46V Search warrants**

- (1) An authorised officer may apply to an authorised justice for a search warrant if the authorised officer has reasonable grounds for believing that the provisions of this Act, the regulations or the terms of an accreditation, licence, authority, authorisation, service contract, requirement or exemption under this Act have been or are being contravened in or on any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:
  - (a) to enter the premises, and
  - (b) to search the premises for evidence of a contravention of this Act, the regulations or the terms of an accreditation, licence, authority, authorisation, service contract, requirement or exemption under this Act.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer:
  - (a) may accompany an authorised officer executing a search warrant issued under this section, and
  - (b) may take all reasonable steps to assist the authorised officer in the exercise of the officer's functions under this section.
- (5) In this section:

**authorised justice** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **46W Appointment of authorised officers**

- (1) A regulator may appoint a member of staff of the regulator (or if the regulator is the Director-General, a member of staff of the Department) or a person of a class prescribed by the regulations, to be an authorised officer for the purposes of this Act.
- (2) An authorised officer appointed by the Maritime Authority may exercise the functions of an authorised officer under this Act only in so far as those functions relate to any one or more of the following:
  - (a) a public passenger service carried on by means of a ferry,
  - (b) a person who carries on a public passenger service by means of a ferry,
  - (c) the employees of a person who carries on a public passenger service by means of a ferry.
- (3) An authorised officer appointed by the Director-General may exercise the functions of an authorised officer under this Act except in so far as those functions relate to any of the matters set out in subsection (2).
- (4) The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.
- (5) In addition to other persons who may be appointed as authorised officers under this Act, a regulator may, for the purposes of a specified bus or ferry accident or incident, appoint as an authorised officer a person exercising powers, or holding office under a Commonwealth Act.

### **Part 5 Review of certain decisions**

#### **Division 1 Notifications**

##### **47 Effect of notification of decisions of the Director-General**

- (1) If the Director-General makes a decision that is able to be reviewed under this Part, it is the duty of the Director-General to cause any person entitled to request the review, or to lodge the application with the Administrative Decisions Tribunal for a review:
  - (a) in the case of a person entitled to lodge an application with the Tribunal—to be given notice that is in accordance with section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997* and a statement of reasons setting out the matters specified by section 49 (3) of that Act, or
  - (b) in other cases—to be notified in writing of the fact of the decision and of the reasons for it.

- (2) If the Director-General makes a decision that is able to be reviewed under this Part, any such decision has effect from the time the notice is given and continues in effect unless rescinded by the Director-General or by the Administrative Decisions Tribunal determining an application under Division 3.
- (3) A notice given under this section is a sufficient notice for the purposes of section 48 of the *Administrative Decisions Tribunal Act 1997*.

## **Division 2 Review by review panels**

### **48 Review of decisions concerning service contracts**

- (1) The holder of a service contract who is aggrieved by any decision of the Director-General:
  - (a) with respect to the variation, suspension, cancellation, renewal or transfer of the contract, or
  - (b) that affects the holder's exclusive rights under the contract,may request the Director-General to cause the decision to be reviewed under this Division.
- (2) This section does not apply to a decision of the Director-General with respect to a ferry service contract, a service contract for a regular bus service or a rail services contract.

### **49 Review panels**

For the purposes of a review requested under this Part, the Minister may appoint a review panel consisting of nominees of the Director-General, who are to be taken to represent the Ministry of Transport, and persons who, in the opinion of the Director-General, are representative of persons engaged in carrying on a passenger transport business.

### **50 Conduct of review**

- (1) A request for a review under this Part must be accompanied by a written submission from the person who requests it, setting out the reasons why that person thinks the decision concerned is incorrect or should not have been made.
- (2) A review panel may decline to investigate any case that is not supported by such a submission or if the submission concerned appears on the face of it to be frivolous or vexatious or to be otherwise not worth considering.
- (3) Otherwise the panel must, in accordance with any directions of the Director-General, consider any case referred to it and report to the Director-General, setting out its reasons why the relevant decision of the Director-General should stand or should be reconsidered by the Director-General, as the case requires.

## 51 Effect of review

- (1) The Director-General is not bound to accept any recommendation of a review panel.
- (2) Nothing in this Part affects the operation of section 28.

## Division 3 Reviews by Administrative Decisions Tribunal

### 52 Applications to Administrative Decisions Tribunal

- (1) Any person whose application under Part 2, 4 or 4A has been refused, or whose accreditation, authority or authorisation has been varied, suspended or cancelled may apply to the Administrative Decisions Tribunal for a review of the refusal, variation, suspension or cancellation.
- (2) If, on an application to the Administrative Decisions Tribunal by a driver employed by the State Transit Authority whose authority has been varied, suspended or cancelled, the Administrative Decisions Tribunal is satisfied that another dispute pending before the Transport Appeals Board involves substantially the same issues, it may remit the application for hearing by that Board. In that event, the Transport Appeals Board has jurisdiction to hear and determine the application as if it were the Administrative Decisions Tribunal.
- (3) A person aggrieved by a decision of the Director-General:
  - (a) to refuse to issue or transfer a licence to the person, or
  - (b) to suspend or cancel the person's licence, or
  - (c) with respect to the conditions imposed on the person's licence, or any variation or proposed variation of them,may apply to the Administrative Decisions Tribunal for a review of the decision.
- (4) (Repealed)

## Part 6 Miscellaneous

### 53 Exchange of information

- (1) The regulator may enter into an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging information held by the regulator and the agency.
- (2) The information to which an information sharing arrangement may relate is limited to the following:
  - (a) information concerning possible breaches of this Act or the regulations,

- (b) information concerning the safe provision of a public passenger service carried on by means of a bus or ferry or a rail passenger service,
  - (c) any other information that may be prescribed by the regulations.
- (3) Under an information sharing arrangement, the regulator and the relevant agency are, despite any other Act or law of the State, authorised:
- (a) to request and receive information held by the other party to the arrangement, and
  - (b) to disclose information to the other party,
- but only to the extent that the information is reasonably necessary to assist in the exercise of functions of the regulator under this Act (or any other Act administered by the Minister for Transport, whether solely or jointly with another Minister) or the functions of the relevant agency concerned.
- (4) This section does not limit the operation of any Act under which the regulator or a relevant agency is authorised or required to disclose information to another person or body.
- (5) This section does not permit the disclosure of information in contravention of section 46E.
- (6) In this section:
- relevant agency** means:
- (a) the WorkCover Authority constituted by the *Workplace Injury Management and Workers Compensation Act 1998*, or
  - (b) the Chief Investigator, or
  - (c) any other person or body prescribed by the regulations.

### 53A Advertising

- (1) A person must not cause to be published any advertisement that advertises a commercial service involving the operation of a vehicle if:
- (a) the service is of a kind that requires the operator of the service to be accredited or authorised under this Act and the service is not so accredited or authorised, or
  - (b) the vehicle is of a kind that is required to be licensed under this Act and the vehicle is not so licensed.
- Maximum penalty: 50 penalty units.
- (2) A reference in this section to an advertisement includes a reference to any form of

notice or statement in the nature of an advertisement.

### **53B Requirement to return documents or number-plates**

- (1) If an accreditation, authority, authorisation or licence under this Act is suspended or cancelled or otherwise ceases to be in force, the person to whom it was granted must immediately return it to the Director-General.

Maximum penalty: 25 penalty units.

- (2) If a licence is cancelled, or is suspended for a period of more than 28 days, or otherwise ceases to be in force, the person to whom it was granted must, unless otherwise directed by the Director-General in writing, return any number-plates allocated to the taxi-cab or private hire vehicle by virtue of its being licensed to the Roads and Traffic Authority or the Commissioner of Police within 7 days of the cancellation, suspension or discontinuation taking effect.

Maximum penalty: 25 penalty units.

### **53C Drug and alcohol programs and testing relating to ferry services**

- (1) This section applies to a person (the **operator**) who carries on a public passenger service by means of a ferry.
- (2) An operator must:
  - (a) prepare and implement a drug and alcohol program for its transport safety employees that complies with guidelines approved by the Maritime Authority for the purposes of this section and published in the Gazette, and
  - (b) ensure that all transport safety employees employed, or contracted, by the operator to perform transport safety work are not under the influence of alcohol or any other drug when about to carry out, or while on duty for the purposes of carrying out (whether or not carrying out), transport safety work, and
  - (c) report to the Maritime Authority, if requested in writing by the Maritime Authority to do so, as to the implementation of the operator's drug and alcohol program.

Maximum penalty: 500 penalty units.

- (3) The drug and alcohol program is to include any matters required to be included by the guidelines approved by the Maritime Authority for the purposes of this section.
- (4) Without limiting subsection (2) (a), the guidelines are to include provisions for or with respect to the following:
  - (a) protocols for fair procedures,
  - (b) education and assistance of transport safety employees.



- (5) The Maritime Authority may at any time arrange with an operator for the random testing of any person on duty for the purposes of carrying out transport safety work with respect to services operated by the operators for the presence of alcohol or any other drug to ensure that the operator is complying with this section.
- (6) For the purposes of this section, a transport safety employee is to be regarded as being about to carry out transport safety work if the employee:
  - (a) has left home or a temporary residence for work (being transport safety work),  
and
  - (b) has not commenced work after having so left home or the temporary residence.
- (7) (Repealed)

**Note—**

Schedule 5 (which is given effect to by section 9C) applies to the testing of employees and contractors of operators.

**Editorial note—**

For guidelines under this section, see Gazette No 58 of 19.3.2004, p 1478.

**53D Ferry operators to have approved safety management systems**

- (1) A person who carries on a public passenger service by means of a ferry, being a service operating within, or partly within, New South Wales, is guilty of an offence unless the person has, and implements, a safety management system that complies with this section.  
  
Maximum penalty: 1,000 penalty units.
- (2) The safety management system must be documented and must:
  - (a) identify any significant risks that have arisen or may arise from providing the service, including carrying out any associated transport safety work, and
  - (b) specify the controls (including audits, expertise, resources and staff) that are to be employed by the operator to manage the risks and to monitor safety outcomes in relation to the provision of the service, and
  - (c) comply with any requirements prescribed by the regulations or set out in guidelines issued by the Maritime Authority under this section and published in the Gazette.
- (3) The Maritime Authority may issue guidelines with respect to policy objectives and safety initiatives to be adopted in safety management systems by persons who carry on public passenger services by means of a ferry.

(4) A person who carries on a public passenger service by means of a ferry must, if directed to do so by the Maritime Authority, vary a safety management system.

(5) (Repealed)

**Editorial note—**

For guidelines under this section, see Gazettes No 162 of 15.10.2004, p 8024 and No 43 of 18.4.2008, p 2781.

**53E Recommendations arising from investigations**

(1) The Minister, in consultation with the Maritime Authority, may, by order in writing, direct a person who carries on a public passenger service by means of a ferry to comply with a recommendation contained in a report provided to the Minister under section 46BA (2) or 46BG.

(2) A person who, without reasonable excuse, fails to comply with an order of the Minister under this section is guilty of an offence.

Maximum penalty: 1,000 penalty units.

**54 Offences involving credentials**

A person who:

(a) by any false statement or misrepresentation, obtains or attempts to obtain any accreditation, authority or authorisation under this Act or procures or attempts to procure a service contract, or

(b) forges or fraudulently alters or uses any such accreditation, authority or authorisation, or

(c) fraudulently allows any such accreditation, authority or authorisation to be used by any other person,

is guilty of an offence.

Maximum penalty: 20 penalty units.

**55 Offenders to state name and address**

(1) A person reasonably suspected by a police officer or by an authorised officer to be committing or to have committed an offence against this Act or the regulations may be required to state his or her full name and residential address.

(2) A person who:

(a) fails or refuses to comply with the requirements of a police officer or authorised officer made under this section, or

(b) in purported compliance with such a requirement, states a name that is not his or

her name or an address that is not his or her residential address,  
is guilty of an offence.

Maximum penalty: 5 penalty units.

- (3) A person is not guilty of an offence under this section unless it is established that the police officer or authorised officer:
- (a) warned the person that a failure or refusal to comply with the requirement is an offence, and
  - (b) identified himself or herself as a police officer or as an authorised officer, as the case requires.

**55A (Repealed)**

**56 Obstruction**

A person must not:

- (a) hinder or obstruct an authorised officer in a manner that interferes with the performance by the officer of his or her functions under this Act or the regulations, or
- (b) being the occupier or person in charge of any place or land entered by the authorised officer under a power conferred by this Act, fail to provide the officer with all reasonable facilities and assistance for the effective exercise of the officer's functions under this Act, or
- (c) fail, without reasonable excuse, to answer questions or provide information when required to do so by an authorised officer in the exercise of his or her functions as an authorised officer, or
- (d) fail to produce for inspection any documents when required to do so by an authorised officer in the exercise of his or her functions as an authorised officer.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units, or
- (b) in the case of an individual—500 penalty units.

**57 (Repealed)**

**58 Offences by corporations**

- (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

## **59 Penalty notices for certain offences**

- (1) In this section:

**penalty notice** means a notice to the effect that, if the person served with the notice does not wish to have an alleged offence dealt with by a court, the person may pay, in accordance with the notice, the penalty specified in the notice.

**penalty notice offence** means an offence against this Act or the regulations declared by the regulations to be a penalty notice offence.

- (2) An authorised officer may serve a penalty notice on a person who appears to the officer to have committed a penalty notice offence.
- (3) The amount of the penalty to be specified in a penalty notice is the amount prescribed by the regulations for the alleged offence concerned, being an amount not exceeding the maximum amount of penalty which could be imposed for the offence by a court.
- (3A) The regulations may:
  - (a) prescribe different amounts of penalties for different offences or classes of offences, and
  - (b) prescribe different amounts of penalties for the same penalty notice offence.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of the penalty prescribed by the regulations for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment of a penalty under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) This section does not limit the operation of any other provision of this or any other Act or of any statutory rule.

## **60 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with in a summary manner before a Local Court or before the Supreme Court in its summary

jurisdiction.

- (2) The maximum monetary penalty that may be imposed by a Local Court for an offence under a provision of this Act or the regulations is 500 penalty units or the maximum monetary penalty provided for the offence, whichever is less.
- (3) Despite the *Criminal Procedure Act 1986* or any other Act, proceedings for an offence under this Act or the regulations may be commenced not later than one year after the date alleged to be the date on which the offence was committed.

#### **60A Fares or other remuneration**

The Director-General may from time to time, by notice published in the Gazette, determine fares (including maximum fares) or approve other arrangements for remuneration in connection with taxi-cab or private hire vehicle services.

#### **61 Recovery of amounts due**

Any fees, charges or taxes payable under this Act or the regulations may be recovered by the Director-General as a debt in any court of competent jurisdiction.

#### **62 Records and evidentiary matters**

- (1) The Director-General must keep records of the grant, refusal, variation, suspension and cancellation of accreditations, authorities, contracts, authorisations and licences under this Act.
- (2) A certificate purporting to be signed by the Director-General and certifying that:
  - (a) on a date specified in the certificate, or
  - (b) during any period so specified,the particulars set forth in the certificate as to any matter required to be recorded under this section did or did not appear on or from the records is, for the purposes of any legal proceedings, prima facie evidence of what it certifies.
- (3) Such a certificate is admissible in any proceedings:
  - (a) without proof of the authenticity of the Director-General's signature, and
  - (b) without production of any record or document on which the certificate is founded.
- (4) In any legal proceedings under this Act, proof is not required (until evidence is given to the contrary) of the following:
  - (a) the fact that a vehicle is subject to a provision of this Act or the regulations in question,
  - (b) the fact that the defendant is, or at any relevant time was, the driver of any

vehicle in question,

(c) the fact that the defendant is, or at any relevant time was, the owner or agent of the owner of any vehicle in question,

(d) the fact that, at any relevant time, any vehicle was used for commercial purposes.

### **63 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following:

(a) the prohibition or restriction of the use of public passenger vehicles on any specified road or road related area or any portion of a road or road related area, or within any specified area, either generally or within certain hours, and

(b) the sections, terminal points and stopping-places on bus or ferry routes, and

(c) the number of public passenger vehicles of any class or description which may ply or stand for hire in any road or road related area, and

(d) the regulation or prohibition of eating, drinking or smoking in public passenger vehicles, and

(e) the methods which may be adopted by the drivers of public passenger vehicles plying for hire in any road or road related area and the regulation or prohibition of plying for hire in any particular road or road related area or part of a road or road related area, and

(f) the prohibition of any person from touting or calling out or otherwise importuning any person to use a public passenger vehicle, and

(g) requirements as to service contracts, licences, authorities and authorisations under this Act, including:

(i) their form, and the terms, conditions and particulars applying to them, and

(ii) forms and conditions to be observed when submitting applications or tenders for them, and

(iii) matters relating to their award, refusal, transfer, suspension, cancellation or surrender, and

(iv) conditions of service applicable to school bus services or in other special circumstances, and

- (h) the adjustment of payments and refunds in connection with contract and licence fees, and
- (i) the conduct of passengers and drivers on public passenger vehicles, and
- (j) the powers and duties of drivers of public passenger vehicles and of authorised officers, and
- (k) the authority of drivers of buses or other public passenger vehicles, and of authorised officers, to eject persons guilty of any contravention of a regulation, and
- (l) the dress to be worn by the drivers of public passenger vehicles, and
- (m) the wearing of badges by drivers of public passenger vehicles and the regulation of the form and description, and the issue, wearing and return, of those badges, and
- (n) the taking up or setting down of passengers or other matters incidental to the transport of passengers, and
- (o) the carriage of passengers' luggage or other goods, and animals, on public passenger vehicles, and
- (p) the regulation or prohibition of the carriage of passengers standing in or on any part of a public passenger vehicle, and
- (q) the publication of fares or other arrangements for remuneration payable by passengers on public passenger vehicles, and
- (q1) the issue of tickets or passes to passengers on regular passenger services, including:
  - (i) tickets or passes allowing travel by services or routes of different kinds or descriptions, and
  - (ii) tickets or passes allowing travel on a service provided by another service operator, and the apportionment of fares or other receipts derived from such travel, and
- (r) the collection of fares or other remuneration, and the determination of maximum or minimum fares or rates of remuneration, payable for the carriage of passengers or of passengers' luggage or other goods by public passenger vehicles, and
- (s) the remuneration of persons constituting a review panel, and
- (t) the furnishing by accredited service operators of returns (verified as prescribed) containing information (including particulars of income and expenditure)

- necessary or convenient to be ascertained to enable any matter concerning a public passenger service (including its profitability) to be determined, and
- (u) the furnishing by owners of public passenger vehicles of returns and other information, verified as prescribed, and
  - (v) the imposition of penalties for the failure, neglect or refusal by a passenger to pay any fare or for quitting the public passenger vehicle before paying the fare, and
  - (w) the age of vehicles that may be used as public passenger vehicles, and
  - (x) the design, equipment and fittings (internal or external) of public passenger vehicles, and
  - (y) the more effective checking of time-tables and ensuring that buses or ferries are not withdrawn from the ordinary route for special service unless the approval of the Director-General is first obtained, and
  - (z) the compilation, publication and observance of time-tables, and
  - (aa) the custody and return of property left in public passenger vehicles, the payment of compensation for any such property and the disposal or sale of any such property not claimed and the time of any such disposal or sale, and
  - (bb) the regulation or prohibition of advertisements relating to public passenger vehicles or services, including advertisements displayed within or on the outside of public passenger vehicles, and
  - (cc) the declaration of the speed not to be exceeded by buses whether generally or in any specified locality or on any specified road or road related area or part of a road or road related area, and
  - (dd) the exhibition in or on any public passenger vehicle of such notices in the public interest as the Director-General considers necessary, and
  - (ee) the erection and display of signs and notices for the guidance of the drivers of public passenger vehicles and the public, and
  - (ff) the records and accounts to be kept by holders of service contracts and the holders of provisional authorities and the manner of keeping them, and
  - (gg) the records to be kept by the drivers and owners of public passenger vehicles and by accredited service operators, the manner of keeping those records and their inspection, and
  - (hh) the sale of tickets and the conditions under which tickets must be sold, and
  - (ii) the granting of free or concession passes on public passenger vehicles, and



(jj) generally as to the regulation and control of public passenger vehicles, their drivers and passengers.

- (3) The regulations may exempt, or provide for the exemption (either absolutely or subject to conditions) of, any person or vehicle or any class of persons or vehicles from all or any of the provisions of this Act.
- (4) The regulations may create offences punishable by a penalty not exceeding 50 penalty units.
- (5) (Repealed)
- (6) To the extent that this section enables provision to be made by regulation for or with respect to any matter in relation to a road or road related area, the regulations may also make provision for or with respect to that matter in relation to a transitway route that proceeds along thoroughfares that do not, or do not entirely, consist of roads or road related areas.

#### **64 Repeals and savings**

- (1) Each Act specified in Schedule 2 is repealed.
- (2) Regulations in force under the *Transport Licensing Act 1931* are repealed.
- (3) Schedule 3 has effect.

#### **65 Prevention of proceedings concerning transitways**

- (1) No compensation is payable to or by any person for loss or damage arising directly or indirectly from:
  - (a) the entry of parties, under and in accordance with Part 3, into a service contract for a transitway service, or
  - (b) the determination or variation, under and in accordance with Subdivision 3 of Division 3 of Part 3, of a transitway route, or
  - (c) the determination, under and in accordance with Subdivision 3 of Division 3 of Part 3, of an emergency route, or
  - (d) the use, by a person authorised under section 28H to do so, of an emergency route for the operation of a transitway service, or
  - (e) the variation of a region or route, or the extinguishment or compromise of a right, by the operation of section 28I, or
  - (f) the exercise, under and in accordance with this Act or the *Transport Administration Act 1988*, of any function of the Director-General concerning transitway routes, emergency routes or transitway services,

and no proceedings for damages or other relief, whether grounded on the provisions of any contract or otherwise arising at law or in equity, for the purpose of restraining any action referred to in paragraphs (a)–(d) or (f), or of obtaining compensation in respect of any such loss or damage, may be instituted or maintained.

- (2) Without limiting the generality of subsection (1), no compensation is payable by or on behalf of the Crown for the introduction of transitway services.
- (3) For the purposes of subsection (2), compensation for the introduction of transitway services includes:
  - (a) compensation because of the enactment or operation of the amendments made to this Act by the *Passenger Transport Amendment (Transitways) Act 2001*, or for any consequence of that enactment or operation, and
  - (b) compensation because of any statement or conduct relating to a matter referred to in paragraph (a) or to any aspect of transitway services.
- (4) This section applies to or in respect of any act, statement or conduct whether occurring before or after the commencement of this section.
- (5) In this section:

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes a representation of any kind:

  - (a) whether made verbally or in writing, and
  - (b) whether negligent, false, misleading or otherwise.

**the Crown** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes the Director-General and any officer of the Ministry of Transport.
- (6) Nothing in this section affects a right conferred by a service contract for a transitway service.
- (7) This section has effect despite any provision of this or any other Act.

## 66 Exclusion of liability of the State

No act or omission of the Minister, the Director-General, the Chief Investigator, a member of a Board of Inquiry, an assessor appointed in relation to a transport safety inquiry, the Chief Executive of the Maritime Authority or an officer of the Ministry of Transport, the Chief Investigator or the Maritime Authority in the course of exercising functions under this Act gives rise to any civil liability (including, for example, liability in negligence or for breach of statutory duty) against the State or any authority of the State.

## Schedule 1 (Repealed)

## Schedule 2 Repeals

(Section 64 (1))

*Transport Licensing Act 1931 No 32*

*Transfer of Public Vehicles (Taxation) Act 1969 No 35*

*State Transport (Co-ordination) Amendment Act 1986 No 138*

*State Transport (Co-ordination) Amendment Act 1987 No 297*

*State Transport (Co-ordination) Amendment Act 1988 No 36*

*State Transport (Co-ordination) (Transport Administration) Amendment Act 1988 No 113*

## Schedule 3 Savings and transitional provisions

(Section 64 (3))

### Part 1 Preliminary

#### 1 Definition

In this Schedule, **the former Act** means the *Transport Licensing Act 1931*.

#### 2 Regulations

- (1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act or any of the following Acts:

*Passenger Transport Amendment Act 1997*

*Traffic Legislation Amendment Act 1997* (but only in relation to the amendments made to this Act)

*Passenger Transport Amendment Act 2000*

*Passenger Transport Amendment (Transitways) Act 2001*

*Rail Safety Act 2002* (but only in relation to the amendments made to this Act)

*Transport Legislation Amendment (Safety and Reliability) Act 2003* (but only to the extent that it amends this Act)

*Passenger Transport Amendment (Bus Reform) Act 2004* (but only to the extent that it amends this Act)

*Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005* (but only to the extent that it amends this Act)

*Passenger Transport Amendment (Maintenance of Bus Services) Act 2005*

*Passenger Transport Amendment Act 2006*

*Transport Administration Amendment (Rail and Ferry Transport Authorities) Act*

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- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the classification (as “commercial” or “non-commercial”) of licences that, by the operation of this Schedule or of a regulation, are to be regarded as operating, from a specified date, as service contracts, and
  - (b) the transitional application of any regulation imposing a limit on the age of a vehicle that may be used as a public passenger vehicle.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **3 Operators of regular passenger services**

- (1) A person who, immediately before the commencement of Part 3, was licensed under the former Act to carry on a regular passenger service may still do so, without benefit of a service contract authorising the service, until such a contract is entered into, unless the parties otherwise agree or the Director-General sooner enters into a service contract with another person for the operation of the service.
- (2) The right conferred by subclause (1) may be varied, cancelled, suspended and otherwise dealt with in the same manner as the relevant licence under the former Act.
- (3) A person to whom this clause applies is to be regarded, on and after the commencement of Part 3, as holding (subject to this Act) an accreditation under this Act that is appropriate for the service concerned.
- (4) Rights conferred by a licence under the former Act held, at the commencement of Part 3, by any person are preserved by this subsection for the benefit of that person but any such rights are subject to the provisions of that Part, and to the powers, duties and functions of the Director-General under that Part, as if they were rights conferred on a holder by that Part or by a service contract entered into for the purposes of that Part.

- (5) For the purposes of subclause (4), the region or route of operation of a licensed service is to be taken to be the region or route of operation of a service identified in a service contract.

#### **4 Tax on transfer of licences for taxi-cabs and private hire vehicles**

Division 2 of Part 4 does not operate to impose a tax on the transfer of a licence in respect of which a tax has been paid under the *Transfer of Public Vehicles (Taxation) Act 1969* or in respect of which a tax is payable by virtue of that Act and any saving contained in the *Interpretation Act 1987*.

#### **5 Drivers of vehicles used in regular passenger services**

- (1) The Director-General, by order published in the Gazette, may:
- (a) set out criteria, in the nature of qualifications or experience, for the purposes of this clause, and
  - (b) declare that a person satisfying those criteria is authorised, for a period specified in the order or (if, with respect to any class of cases, the order so provides) for an indefinite period, in the same manner as if he or she held an authority under Division 2 of Part 2 of this Act.
- (2) Any such order has effect in accordance with its tenor.
- (3) The benefit of such an order may be varied, suspended or cancelled in the same circumstances as an authority under Division 2 of Part 2 may be varied, suspended or cancelled.

#### **6 Licences for taxi-cabs and private hire cars**

A licence in force, immediately before the commencement of this clause, under the former Act with respect to a taxi-cab or private hire car is to be taken to be a licence of the same type issued under this Act, and conferring the same authority on its holder, as if this Act had been in force when the licence was issued.

### **Part 3 Provisions consequent on enactment of *Passenger Transport Amendment Act 1997***

#### **7 Definitions**

In this Part of this Schedule:

**the amending Act** means the *Passenger Transport Amendment Act 1997*.

**the new contract provisions** means the provisions of section 23, as re-enacted by the amending Act.

**the old contract provisions** means the provisions of section 23, as in force immediately

before the repeal of that section by the amending Act.

## **8 Existing accreditations and authorities**

An accreditation under Division 1 of Part 2, and any driver's authority under Division 2 of that Part, that was in force immediately before the commencement of this clause, remains in force, subject to this Act and the regulations, until the date prescribed in respect of the accreditation or authority by regulations made in accordance with clause 2.

## **9 Renewal of commercial passenger service contracts**

- (1) A performance assessment regime established under the new contract provisions:
  - (a) applies to a commercial regular passenger service contract entered into after the regime takes effect, and
  - (b) to the extent that it is specified so to apply, applies to a commercial regular passenger service contract that was already in force when the regime took effect (and so applies on and from any specified date in the current term of the contract), except as provided by subclause (3).
- (2) To the extent necessary to give effect to subclause (1) (b), the new contract provisions extend to apply to a contract that was entered into before their commencement.
- (3) Despite their repeal by the amending Act, the old contract provisions are taken to continue to apply (to the exclusion of the new contract provisions) to a commercial regular passenger service contract that was in force at the time their repeal became effective and that had not by then been renewed, but cease to apply on the date of its first renewal.
- (4) The objectives, standards and methods of assessment comprised in a performance assessment regime established under the new contract provisions, to the extent that the regime applies to a commercial regular passenger service contract that is in force at the time the regime takes effect, must be reasonable in view of the fact that the regime has commenced to apply during the currency of the contract and must, in particular, afford the operator reasonable opportunity to make any adjustments necessary to be made in order to meet the requirements of the regime.
- (5) A provision of a commercial regular passenger service contract entered into before or after the enactment of the amending Act, to the extent that it is inconsistent with the provisions of this clause, or with the new contract provisions, is of no effect.
- (6) No compensation is payable to a service operator or any other person as a consequence of the repeal of the old contract provisions and the enactment of the new contract provisions, or of the operation of any provision of this clause, and proceedings for recovery of any such compensation may not be instituted or (even if instituted before the commencement of this clause) maintained.

(7) Section 28 has effect subject to this clause.

#### **10 Network authorities**

An authority that was in force under section 41 of the Act immediately before its repeal by the amending Act is taken to be an authority granted and in force under section 41 as inserted by the amending Act, and remains in force, subject to this Act and the regulations, until the date prescribed in respect of the authority by regulations made in accordance with clause 2.

### **Part 4 Provisions consequent on enactment of [Passenger Transport Amendment Act 2000](#)**

#### **11 Definition**

In this Part:

***the amending Act*** means the [Passenger Transport Amendment Act 2000](#).

#### **12 Accredited operators: taxi-cab services**

- (1) A person accredited under Division 1 of Part 2 immediately before the insertion of Division 4 into that Part by the amending Act for a public passenger service carried on by means of a taxi-cab is taken to be a person accredited under Division 3 of Part 4 as inserted by that Act.
- (2) Accordingly, the accreditation of that person is taken to be an accreditation of that person for that service under Division 3 of Part 4 as so inserted.

#### **13 Drivers' authorities: taxi-cabs**

- (1) A person who was the holder of an authority under Division 2 of Part 2 immediately before the insertion of Division 4 into that Part by the amending Act authorising the person to drive taxi-cabs is taken to be a person authorised under Division 5 of Part 4 as inserted by that Act.
- (2) Accordingly, the authority held by that person is taken to be an authority under Division 5 of Part 4 as so inserted.

#### **14 Licences: taxi-cabs**

- (1) A person who was the holder of a licence under Division 1 of Part 4 immediately before the omission of sections 29–41 (other than section 34A) by the amending Act for a taxi-cab is taken to be a person licensed under Division 4 of Part 4 as inserted by that Act.
- (2) Accordingly, the licence held by that person is taken to be a licence issued under Division 4 of Part 4 as so inserted.

- (3) Section 29 (3) as in force immediately before its repeal by the amending Act, and section 32 (2) (b) as inserted by that Act, do not apply to references in this clause to the holder of such a licence.

#### **15 Taxi-cab networks**

An authority in force under section 41 before its omission by the amending Act for a taxi-cab network is taken to be an authorisation granted under Division 6 of Part 4 as inserted by that Act.

#### **16 Accredited operators: private hire vehicle services**

- (1) A person accredited under Division 1 of Part 2 immediately before the insertion of Division 4 into that Part by the amending Act for a public passenger service carried on by means of a private hire vehicle is taken to be a person accredited under Division 3 of Part 4A as inserted by that Act.
- (2) Accordingly, the accreditation of that person is taken to be an accreditation of that person for that service under Division 3 of Part 4A as so inserted.

#### **17 Drivers' authorities: private hire vehicles**

- (1) A person who was the holder of an authority under Division 2 of Part 2 immediately before the insertion of Division 4 into that Part by the amending Act authorising the person to drive private hire vehicles is taken to be a person authorised under Division 5 of Part 4A as inserted by that Act.
- (2) Accordingly, the authority held by that person is taken to be an authority under Division 5 of Part 4A as so inserted.

#### **18 Licences: private hire vehicles**

- (1) A person who was the holder of a licence under Division 1 of Part 4 immediately before the omission of sections 29–41 (other than section 34A) by the amending Act for a private hire vehicle is taken to be a person licensed under Division 4 of Part 4A as inserted by that Act.
- (2) Accordingly, the licence held by that person is taken to be a licence issued under Division 4 of Part 4A as so inserted.
- (3) Section 29 (3) as in force immediately before its repeal by the amending Act, and section 39 (2) (b) as inserted by that Act, do not apply to references in this clause to the holder of such a licence.

#### **19 Reissue of authorities or licences**

Without limiting any functions of the Director-General, the Director-General may reissue any authorities or licences referred to in this Part, with such alterations as the Director-



General considers appropriate having regard to the provisions and operation of the amending Act.

## **20 Proceedings for offences**

Section 60 (3) as inserted by the amending Act does not apply to offences committed before the commencement of the subsection.

## **Part 5 Provision consequent on enactment of [Passenger Transport Amendment \(Transitways\) Act 2001](#)**

### **21 Effect of transitway and emergency route on existing regions and routes**

Section 28I applies in respect of service contracts entered into before or after the commencement of that section.

## **Part 6 Provisions consequent on enactment of [Transport Legislation Amendment \(Safety and Reliability\) Act 2003](#)**

### **22 Definition**

In this Part:

**the amending Act** means the [Transport Legislation Amendment \(Safety and Reliability\) Act 2003](#).

### **23 Safety management systems**

- (1) An accredited service operator is not required to comply with section 9D until 12 months after the commencement of that section.
- (2) A person who carries on a public passenger service by means of a ferry is not required to comply with section 53D until 12 months after the commencement of that section.
- (3) The regulations may extend the period under this clause for which a person, or a class of persons, is not required to comply with section 9D or 53D.

### **24 Service contracts for ferry services**

- (1) A service contract relating to a service provided by a ferry immediately before the commencement of this clause is required to comply with section 17A not later than 12 months after the commencement of that section.
- (2) The regulations may extend the period under this clause within which a contract, or a class of contracts, is required to comply with section 17A.

### **25 Investigation of bus or ferry accidents or incidents**

Section 46B, as inserted by the amending Act, applies to an accident or incident that

occurred before, on or after the commencement of that section.

## 26 Authorised officers

Nothing in the amending Act:

- (a) affects the appointment of a person as an authorised officer if the person was an authorised officer immediately before the commencement of this clause, or
- (b) affects a function exercised by an authorised officer before the commencement of this clause.

## Part 7 Provisions consequent on enactment of **Passenger Transport Amendment (Bus Reform) Act 2004**

### 27 Definitions

In this Part:

**commencement day** means the day on which Schedule 1 [14] to the amending Act commences.

**exercise** a function includes perform a duty.

**existing bus service contract** means an existing commercial bus service contract or an interim contract for the provision of regular bus services.

**existing commercial bus service contract** means:

- (a) an existing regular passenger service contract for a regular bus service that was a commercial contract for the purposes of section 18 immediately before the commencement day, or
- (b) an existing regular passenger service contract for a transitway service.

**existing non-commercial bus service contract** means an existing regular passenger service contract for a regular bus service that was a non-commercial contract for the purposes of section 18 immediately before the commencement day.

**existing regular passenger service contract** means a service contract for a regular passenger service in force immediately before the commencement day and that is still in force.

**existing service provider** means the holder of an existing bus service contract.

**function** includes a power, authority or duty.

**interim contract for the provision of regular bus services** means a bus service contract for the provision of temporary services in place of a regular bus service

discontinued because of the expiry of the term, or the termination or variation, of an existing commercial bus service contract or an interim contract replacing any such contract.

**step-in arrangements** means arrangements under clause 39B.

**the amending Act** means the *Passenger Transport Amendment (Bus Reform) Act 2004*.

**transitional period expiry day** means the day that is the third anniversary of the commencement day.

## **28 Effect of amendments to Part 3 by amending Act**

Except as provided by this Part, Part 3 of this Act and any regulations made for the purposes of that Part (as in force immediately before the commencement day) continue to apply to any existing regular passenger service contract as if that Part had not been amended by the amending Act.

## **29 Termination of existing commercial bus service contracts**

- (1) On or after the commencement day, the Director-General may, by written notice served on or given to the holder of an existing commercial bus service contract, terminate the contract on and from the date specified in the notice.
- (2) An existing commercial bus service contract is, by operation of this clause, terminated on the date specified in a notice served or given under subclause (1).

## **30 Effect of creation of bus service contract regions on existing commercial bus service contracts**

- (1) If a bus service contract region (or any part of a bus service contract region) resulting from a declaration or variation under section 28EA lies within or on a region or route of operation specified in an existing commercial bus service contract, the order making the declaration or variation may also specify how much (if any) of the bus service contract region (or part of the bus service contract region) should be excluded from that region or route of operation for the purposes of this clause.
- (2) To the extent that a bus service contract region (or any part of a bus service contract region) resulting from a declaration or variation under section 28EA lies within or on a region or route of operation specified in an existing commercial bus service contract:
  - (a) the region or route so specified is by this clause varied by excluding from it so much (if any) of the bus service contract region (or part of the bus service contract region) as may be specified for exclusion in the order making the declaration or variation, and
  - (b) the right of the service operator under the contract to operate a regular bus service within or on that region or route is extinguished in respect of so much of

the bus service contract region (or part of the bus service contract region) as is so excluded.

- (3) A contract affected by the operation of this clause continues to have effect, with any necessary modifications, as if the rights concerned had been altered by consent of the parties to the contract.
- (4) Any subsequent abolition or variation of the bus service contract region concerned does not operate to revive a right extinguished by this clause.

### **31 Effect of creation of strategic transport corridors on existing commercial bus service contracts**

- (1) If a strategic transport corridor (or any part of a strategic transport corridor) resulting from a declaration or variation under section 28EB lies within or on a region or route of operation specified in an existing commercial bus service contract, the order making the declaration or variation may also specify how much (if any) of the strategic transport corridor (or part of the corridor) should cease to be affected by any exclusive right to operate a regular bus service within or on that route or region of operation for the purposes of this clause.
- (2) To the extent that a strategic transport corridor (or any part of a strategic transport corridor) resulting from a declaration or variation under section 28EB lies within or on a region or route of operation specified in an existing commercial bus service contract, any exclusive right of the service operator under the contract to operate a regular bus service within or on that region or route of operation ceases to be an exclusive right in respect of so much (if any) of the strategic transport corridor (or part of the corridor) as may be specified for the cessation of exclusive rights in the order making the declaration or variation.
- (3) A contract affected by the operation of this clause continues to have effect, with any necessary modifications, as if the rights concerned had been altered by consent of the parties to the contract.
- (4) Any subsequent abolition or variation of the strategic transport corridor concerned does not operate to revive a right extinguished by this clause.

### **32 Effect of creation of transitway routes and emergency routes on existing regular passenger service contracts**

- (1) Section 28I (as amended by the amending Act) extends to any existing regular passenger service contract in respect of any determination or variation of a transitway route or emergency route on or after the commencement day.
- (2) Section 65 (as amended by the amending Act) extends to service contracts for transitway services entered into before its amendment in respect of any determination or variation of a transitway route or emergency route on or after the commencement

day.

### **33 Renewal of existing bus service contracts**

- (1) Despite clause 28, section 23 (7) and (8) and section 24 (as in force immediately before the commencement day) cease to apply to any existing commercial bus service contract on and from the commencement day.
- (2) Despite clause 28 or any other law, the holder of an existing non-commercial bus service contract has no right or expectation of renewal of the contract on its expiry.
- (3) Despite clause 28 or the provisions of any existing commercial bus service contract, the holder of any such contract has no right or expectation of renewal of the contract on its expiry.
- (4) To avoid doubt, the continuing provision of bus services by the former holder of an existing non-commercial or commercial bus service contract on or after expiry of the contract is not a renewal of the contract and does not confer any right or expectation of renewal of the contract.

### **34 Review of decisions under Part 5**

- (1) Section 48 (2) (as inserted by the amending Act) does not apply to any decision of the Director-General made in respect of an existing commercial bus service contract or existing non-commercial bus service contract or an interim contract for the provision of regular bus services.
- (2) However, Part 5 of the Act does not apply to any of the following decisions of the Director-General made on or after the commencement day in respect of an existing commercial bus service contract or existing non-commercial bus service contract or an interim contract for the provision of regular bus services:
  - (a) a decision to enter into a service contract for a regular bus service with another person under Division 3 of Part 3 of the Act (as amended by the amending Act),
  - (b) a decision to terminate the contract under clause 29,
  - (c) any other decision made under this Part (including a decision made under clause 30, 31, 39A or 39B).
- (3) In this clause, ***interim contract for the provision of regular bus services*** includes a bus service contract for the provision of temporary services in place of a regular bus service discontinued because of the expiry of the term, or the termination or variation, of an existing non-commercial bus service contract or an interim contract replacing any such contract.

### **35 Temporary bus services can be arranged following termination or variation**

Nothing in this Act prevents the Director-General from making such arrangements as the Director-General thinks fit for the provision, by an accredited service operator, of temporary services in place of any regular bus service that is discontinued because of the expiry of the term, or the termination or variation, of an existing commercial bus service contract or existing non-commercial bus service contract by operation of this Part or otherwise.

### **36 Protection for exercise of functions by Minister or Director-General in connection with this Part**

- (1) This clause applies to any function of the Minister or Director-General under a protected provision concerning:
  - (a) the termination of an existing commercial bus service contract or an interim contract for the provision of regular bus services, or
  - (b) the declaration or variation of a bus service contract region or strategic transport corridor before the transitional period expiry day, or
  - (c) a service breach notice or the implementation of step-in arrangements.
- (2) The exercise by the Minister or Director-General of any function to which this clause applies may not be:
  - (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
  - (b) restrained, removed or otherwise affected by any proceedings.
- (3) Without limiting subclause (2), the protected provision and the rules of natural justice (procedural fairness), so far as they apply to the exercise of any function to which this clause applies, do not place on the Minister or Director-General any obligation enforceable in a court of law or administrative review body.
- (4) Accordingly, no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by the Minister or Director-General, with those provisions or with those rules so far as they apply to the exercise of any function to which this clause applies.
- (5) This clause does not affect the generality of clause 37.
- (6) This clause has effect despite any provision of this or any other Act or any other law.
- (7) In this clause:

**exercise** of functions includes the purported exercise of functions and the non-exercise or improper exercise of functions.

**proceedings** includes proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief.

**protected provision** means any of the following provisions:

- (a) section 28EA,
- (b) section 28EB,
- (c) a provision of this Part.

### **37 Compensation for operation of this Part and the amending Act**

- (1) No compensation is payable to any person by or on behalf of the Crown for loss or damage arising directly or indirectly from:
  - (a) the entry of parties, under and in accordance with Part 3 of this Act, into a service contract for a regular bus service on or after the commencement day, or
  - (b) the declaration or variation, under and in accordance with this Part and Division 3 of Part 3 of this Act, of a bus service contract region or strategic transport corridor on or after the commencement day, or
  - (c) the termination of an existing commercial bus service contract by operation of this Part, or
  - (d) the variation of a region or route, or the extinguishment or compromise of a right or expectation, by the operation of this Part, or
  - (e) the giving of a service breach notice or the implementation of step-in arrangements, and any thing done or omitted to be done under or in connection with a service breach notice or step-in arrangements,

and no proceedings for damages or other relief, whether grounded on the provisions of any contract or otherwise arising at law or in equity, for the purpose of restraining any action referred to in paragraphs (a)–(e), or of obtaining compensation in respect of any such loss or damage, may be instituted or maintained.

- (2) Without limiting the generality of subclause (1), no compensation is payable by or on behalf of the Crown for the introduction of new regular bus services.
- (3) For the purposes of subclause (2), compensation in respect of the introduction of new regular bus services includes:
  - (a) compensation because of the enactment or operation of the amendments made to this Act by the amending Act or the *Passenger Transport Amendment (Maintenance of Bus Services) Act 2005*, or for any consequence of that enactment or operation, and

(b) compensation because of any statement or conduct relating to a matter referred to in paragraph (a) or to any aspect of regular bus services.

(4) This clause applies to or in respect of any act, statement or conduct whether occurring before or after the commencement of this clause.

(5) The protection against the liability to pay compensation afforded by this clause extends to any person exercising a function or engaging in conduct to which this clause applies at the request or direction of the Crown (whether under contract or otherwise), but does not extend to any of the following:

(a) the holder or former holder of a service contract (whether entered into before or after the commencement of this clause), and

(b) any person providing, or who provided, public passenger services to which such a service contract relates or related on behalf of, or instead of, the holder or former holder (whether under a subcontract or by other arrangement).

(6) In this clause:

**compensation** includes damages or any other form of compensation (whether or not monetary).

**conduct** includes:

(a) a representation of any kind:

(i) whether made verbally or in writing, and

(ii) whether negligent, false, misleading or otherwise, and

(b) an omission of any kind.

**the Crown** means the Crown within the meaning of the [Crown Proceedings Act 1988](#) and includes:

(a) the Director-General, and

(b) any member of staff of a government Department.

(7) This clause has effect despite any provision of this or any other Act or any other law.

### **38 Existing fees under sections 11A and 15**

(1) Until an order is made by the Director-General under section 15 (as substituted by the amending Act) fixing a fee for such an application or renewal:

(a) the fee payable under section 11A (1) (as amended by the amending Act) for the renewal of an authority to drive a bus continues to be the fee prescribed by clause 57 (2) of the [Passenger Transport \(Bus Services\) Regulation 2000](#) (as in force



immediately before its repeal by the amending Act), and

- (b) the fee payable under section 11A (1) (as amended by the amending Act) for the renewal of an authority to drive a tourist service vehicle continues to be the fee prescribed by clause 10 (2) of the *Passenger Transport (General) Regulation 2000* (as in force immediately before its repeal by the amending Act), and
- (c) the fee payable under section 15 (3) (as substituted by the amending Act) for an application for accreditation as a bus operator or for an authority to drive a bus continues to be the fee prescribed by clause 57 (1) of the *Passenger Transport (Bus Services) Regulation 2000* (as in force immediately before its repeal by the amending Act), and
- (d) the fee payable under section 15 (3) (as substituted by the amending Act) for an application for accreditation as an operator of a tourist service or for an authority to drive a tourist service vehicle continues to be the fee prescribed by clause 10 (1) of the *Passenger Transport (General) Regulation 2000* (as in force immediately before its repeal by the amending Act).

(2) In this clause:

**bus operator** has the same meaning as in clause 57 of the *Passenger Transport (Bus Services) Regulation 2000* (as in force immediately before its repeal by the amending Act).

**tourist service vehicle** has the same meaning as in the *Passenger Transport (General) Regulation 2000* (as in force immediately before the repeal of clause 10 by the amending Act).

### **39 Valuation and acquisition of certain bus service assets**

(1) In this clause:

**bus service asset** of an existing service provider means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description used in connection with the provision of a regular bus service in the existing service area, but does not include any goodwill.

**existing service area** of an existing service provider means the region or route of operation (or part of the region or route) for which the provider is to cease to provide a regular bus service.

**existing service provider** means the holder of an existing commercial bus service contract or existing non-commercial bus service contract or an interim contract who is not to be awarded a new service contract under the provisions of Division 3 of Part 3 (as inserted by the amending Act) to provide a regular bus service for the region or route of operation (or part of the region or route) for which the holder is currently

providing a regular bus service under the existing contract.

**interim contract** means a bus service contract for the provision of temporary services in place of a regular bus service discontinued because of the expiry of the term or termination or variation of an existing commercial bus service contract or an existing non-commercial bus service contract.

**modification** includes addition, exception, omission or substitution.

**proposed new service provider** means a person to whom the Director-General proposes to award a new service contract under the provisions of Division 3 of Part 3 (as inserted by the amending Act) to provide a regular bus service in the existing service area of an existing service provider.

- (2) An existing service provider who wishes to sell or otherwise dispose of any bus service asset to a proposed new service provider who has refused to acquire it (whether at a particular price or at any price) may apply to the Director-General for the Director-General to make it a condition of the service contract of the proposed new service provider that the provider acquire the asset.
- (3) On any such application, the Director-General may:
  - (a) reject the application, or
  - (b) refer the question of the valuation of the bus service assets in question to arbitration under this clause.
- (4) The [Commercial Arbitration Act 1984](#) applies to any such arbitration subject to this clause and with such modifications as may be prescribed by the regulations.
- (5) Without limiting subclause (4), the regulations may make provision for or with respect to any of the following matters:
  - (a) the persons who are qualified to be appointed as arbitrators and the nomination of such arbitrators,
  - (b) the matters that may be considered, or not considered, in making a valuation of bus service assets in an arbitration under this clause.
- (6) Following any such arbitration, the Director-General may (but need not) require the proposed new service provider to acquire any bus service asset that was the subject of the arbitration at the value determined in the arbitration as a condition of any service contract entered into to provide a regular bus service in the existing service area.
- (7) An application may be made under this clause if the contract held by the existing service provider is terminated or expires, but may not be made later than 60 days after the termination or expiration of the contract.

- (8) An application may be made under this clause even if step-in arrangements are implemented under this Part in relation to the regular bus services provided by the existing service provider.

### **39A Service breaches**

- (1) The Director-General may, by notice in writing given to an existing service provider (in this Part called a **service breach notice**), require the existing service provider to take the action specified in the notice within the period specified in the notice.
- (2) The Director-General may give a service breach notice if:
- (a) the Director-General is of the opinion that a regular bus service contract of the existing service provider is, or is likely to be, for a period longer than 24 hours:
    - (i) interrupted, disrupted or not delivered, or
    - (ii) not provided to a reasonable standard to meet community needs, or
  - (b) in such other circumstances as may be provided by the regulations.
- (3) The notice may require the action to be taken immediately if the Director-General is of the opinion that it is necessary to do so having regard to the urgency of the circumstances.
- (4) If the existing service provider fails to comply with a service breach notice within the period specified in the notice, the Director-General may apply to the Minister for approval to take one or both of the following actions:
- (a) terminate the existing bus service contract on the ground of failure to comply with the notice,
  - (b) implement step-in arrangements under clause 39B (3).
- (5) The Minister may approve or refuse the application.
- (6) If the Minister approves the application, the Director-General may take the action approved by the Minister. Termination of a contract is to be by notice in writing given to the existing service provider.
- (7) The Director-General may give more than one service breach notice under this clause in relation to the same contract.
- (8) Nothing in this clause limits any other action that may be taken by the Director-General or any other person in relation to an existing bus service contract, including any other power to terminate the contract concerned or to exercise any function under clause 39B (2) on the expiry or termination of the contract.

### **39B Step-in arrangements for existing bus service contracts**

- (1) The Director-General may, by notice published in the Gazette, implement the step-in arrangements specified in the notice if of the opinion that it is necessary to do so to maintain regular bus services provided under an existing bus service contract.
- (2) The Director-General may take action under subclause (1):
  - (a) on or before the expiry of an existing bus service contract, or
  - (b) on or before termination of an existing bus service contract by the Director-General (other than under this Part), or
  - (c) not later than 60 days after notice of termination, or termination without notice, of an existing bus service contract by an existing service provider, or
  - (d) in such other circumstances as may be prescribed by the regulations.
- (3) The Director-General may, with the approval of the Minister under clause 39A, also take action under subclause (1) if an existing service provider fails to comply with a service breach notice, whether or not the existing bus service contract concerned has been terminated or has expired.
- (4) The step-in arrangements take effect on the day the notice is published in the Gazette, or on such later day as may be specified in the notice.
- (5) Step-in arrangements implemented under subclause (2) may not take effect before the expiry or termination of the contract concerned.
- (6) The step-in arrangements may do any one or more of the following:
  - (a) provide for the appointment of the Director-General, or a person nominated by the Director-General, (the **step-in party**) to exercise functions of the existing service provider that are or were conferred under the existing bus service contract,
  - (b) authorise the step-in party to take possession of, and use, buses or premises or other assets used or required by the existing service provider to provide the regular bus services concerned,
  - (c) require the existing service provider or any other person to take such steps as are necessary in the opinion of the Director-General to make buses, premises or other assets referred to in paragraph (b) available to the step-in party,
  - (d) authorise or require the step-in party or any other person to carry out functions under the contract as if the contract were in force,
  - (e) specify the terms and conditions on which the step-in arrangements are to be implemented,

- (f) without limiting paragraph (e), specify terms and conditions relating to the following matters:
    - (i) payments to the existing service provider of a kind payable under the contract after deduction of the costs of the step-in party and other specified costs from amounts payable to the existing service provider,
    - (ii) the use of staff employed by the existing service provider in connection with the provision of the regular bus services and arrangements for payment for the use of services of those staff,
    - (iii) payments to third parties (such as suppliers, lessors and providers of assets and services) in connection with the provision of the regular bus services under the step-in arrangements,
  - (g) specify the period (being a period not exceeding 12 months) for which the step-in arrangements are in force,
  - (h) specify any other circumstances in which the step-in arrangements cease to be in force,
  - (i) contain any other necessary consequential or ancillary provisions.
- (7) In determining the step-in arrangements, and any terms and conditions on which they are to be implemented, the Director-General is to consider the terms and conditions of the existing bus service contract concerned and any relevant commercial arrangements or security transactions of the existing service provider or other persons, being arrangements or transactions entered into at arms-length, relating to assets affected by the proposed step-in arrangements or the provision of the regular bus services.
- (8) A step-in party may provide bus services in accordance with step-in arrangements in force under this clause despite any other provision of this Act or the regulations or any other law.
- (9) A notice under this clause may be revoked or varied by the Director-General by notice published in the Gazette.
- (10) Nothing in this clause prevents the Director-General from making arrangements of a kind referred to in clause 35 or taking action under any other law to maintain a regular bus service that may be the subject of arrangements under this clause.

**Note—**

This clause is a transitional clause and does not apply to contracts entered into under Division 3 of Part 3 (as substituted by the [Passenger Transport Amendment \(Bus Reform\) Act 2004](#)) and so will only affect commercial bus service contracts in force before that Division was inserted and certain interim contracts entered into pending new contracts coming into force. When these existing and interim contracts cease to be in force, this

clause will cease to have operation.

**39BA Additional provisions relating to step-in arrangements after service breach notices**

- (1) This clause applies to step-in arrangements implemented under clause 39B (3) after a failure to comply with a service breach notice, and so applies in addition to clause 39B.
- (2) The terms and conditions of the step-in arrangement may, if the existing bus service contract is in force, make provision for or with respect to the operation of the contract, including obligations, rights and liabilities under the contract, and exclusion from liability under the contract, during the period that the step-in arrangements are in force.
- (3) A provision of a step-in arrangement of a kind specified in subclause (2) has effect in relation to the bus service contract during the period that the step-in arrangements are in force despite any provision of the contract or any other law.
- (4) A step-in arrangement that affects an existing bus service contract that is in force does not affect the term of the contract.
- (5) A step-in arrangement that results from a failure to comply with a service breach notice has effect for the period specified in the notice under clause 39B or until the Director-General revokes the notice, by notice published in the Gazette, on the ground that the service breach notice has been complied with or on for any other reason, whichever occurs first.
- (6) The Director-General may take action under this clause to revoke a notice on the Director-General's own initiative or on the application of an existing service provider.

**39C Offence relating to step-in arrangements**

- (1) A person must not, without reasonable excuse, fail to comply with a requirement imposed on the person under step-in arrangements in force under clause 39B.  
Maximum penalty: 100 penalty units.
- (2) A person must not enter into an agreement, arrangement or other transaction or take action with the intention of, or with intentions that include, preventing the use of staff or a bus, premises or other assets in accordance with step-in arrangements under clause 39B.  
Maximum penalty: 100 penalty units.

**39D Liability of step-in parties, existing service providers and other parties under step-in arrangements**

- (1) In determining step-in arrangements, the Director-General must specify terms and conditions relating to the liability or protection from liability (including indemnities or

releases to be given) of the existing service provider and the step-in party in connection with acts or omissions done or omitted for the purposes of implementing step-in arrangements.

- (2) Any such terms and conditions are to be determined having regard to the following principles (subject to any necessary exceptions determined in a particular case by the Minister):
  - (a) the step-in party should be protected from liability to the existing service provider or any other person for acts done or omitted in good faith for the purposes of implementing step-in arrangements,
  - (b) the step-in party should be protected from liability for acts or omissions of the existing service provider done or omitted before the implementation of the step-in arrangements,
  - (c) the existing service provider should be protected from liability for acts done or omitted by the step-in party or any other person for the purposes of implementing step-in arrangements,
  - (d) a person dealing with the step-in party in the course of implementing step-in arrangements should be protected from liability for acts or omissions done in good faith at the lawful request or requirement of the step-in party.
- (3) Without limiting subclause (1), the step-in arrangements may, for the purposes of this clause, specify terms and conditions containing one or more of the following requirements:
  - (a) a requirement that indemnities or releases be given to or by or on behalf of the step-in party or the existing service provider in connection with the step-in arrangements,
  - (b) a requirement that indemnities or releases be given to or by or on behalf of the step-in party or the existing service provider in connection with obligations, rights and liabilities under the workers compensation Acts and other legislation or laws relating to employer or occupier liability or liability in relation to environmental obligations,
  - (c) a requirement that warranties or agreements be given or entered into by or on behalf of the step-in party or the existing service provider in relation to specified obligations, rights and liabilities.
- (4) A term or condition of a step-in arrangement of a kind referred to in this clause, and any thing done in accordance with any such term or condition, has effect despite any other provision of this Act or the regulations or any other law.
- (5) Nothing in this clause permits a term or condition of a step-in arrangement that has

the effect of:

- (a) removing from an existing service provider the obligation to have and maintain in force an insurance policy, or to be a self-insurer, under the workers compensation Acts in respect of any of its staff whose services are made use of under step-in arrangements, or
  - (b) removing any liability of an existing service provider in respect of injury to any such staff under those Acts or that exists independently of those Acts.
- (6) The Director-General may prepare model terms and conditions for the purposes of this clause and is to consult with industry representatives of bus service providers in relation to any such model terms and conditions.
- (7) In this clause:

**workers compensation Acts** means the [Workers Compensation Act 1987](#) and the [Workplace Injury Management and Workers Compensation Act 1998](#) and any instruments made under those Acts.

### **39E New contractual arrangements to end step-in arrangements**

- (1) The Director-General must, after implementing step-in arrangements on the expiry or termination of an existing bus service contract, use his or her best endeavours to enter into a new service contract with a person under the provisions of Division 3 of Part 3 to provide a regular bus service for the region or route or operation (or part of the region or route) for which the existing service provider was providing a regular bus service under the existing bus service contract.
- (2) The Director-General must revoke the notice under clause 39B on or before the new service contract takes effect.

### **39F Operation of step-in arrangements**

- (1) The operation of clause 39A or 39B or a service breach notice or any step-in arrangements is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the provision of bus services, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, or
  - (d) as an event of default under any contract or other instrument.
- (2) The operation of clause 39A or 39B or a service breach notice or any step-in arrangements do not adversely affect any entitlements arising out of employment of



any staff whose services are made use of under step-in arrangements.

- (3) Subclause (1) and clauses 36 and 37 do not prevent a step-in party from bringing proceedings in respect of a contract between the Director-General and the step-in party for provision of services for the purposes of step-in arrangements.

### **39G Public consultation during operation of step-in arrangements**

- (1) As soon as reasonably practicable after implementing step-in arrangements, the Director-General is to establish a community reference group.
- (2) The community reference group is to comprise persons nominated by the Director-General, being persons who the Director-General considers:
- (a) have a knowledge of, or interest in, the bus services to which the step-in arrangements relate, or
  - (b) live in the area serviced by those bus services, or
  - (c) have some expertise in the provision of bus services generally.
- (3) The community reference group is to conduct public consultation and is to:
- (a) assess the frequency, reliability and relevance of the bus services to which the step-in arrangements relate, and
  - (b) assess the long term viability of those bus services, and
  - (c) consider alternative bus service arrangements, and
- is to report to the Director-General on these matters.
- (4) In determining the terms of a new bus service contract that relates to a region or route (or part of a region or route) for which bus services are being provided under step-in arrangements, the Director-General is to take account of any relevant report provided under subclause (3).

## **Part 8 Provisions consequent on enactment of [Transport Legislation Amendment \(Waterfall Rail Inquiry Recommendations\) Act 2005](#)**

### **40 Definitions**

In this Part:

***Independent Transport Safety and Reliability Advisory Board*** has the same meaning that it has in the [Transport Administration Act 1988](#).

***ITSRR*** means the Independent Transport Safety and Reliability Regulator constituted under the [Transport Administration Act 1988](#).

**the amending Act** means the *Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005*.

#### **41 Guidelines and directions by ITSRR**

- (1) Any guidelines issued by the ITSRR under section 9D, and in force immediately before that section was amended by the amending Act, are, after that amendment, taken to have been issued in accordance with that section by the Director-General.
- (2) Any direction given by the ITSRR to an accredited service operator under section 9D that has not been complied with before that section was amended by the amending Act is taken to have been given in accordance with that section by the Director-General.

#### **42 Investigation of bus or ferry accidents or incidents**

Sections 46BA and 46BC, as inserted by the amending Act, apply to an accident or incident that occurred before, on or after the commencement of those sections.

#### **43 Existing inquiries**

- (1) Any inquiry being carried out by the ITSRR or the Chairperson of the Independent Transport Safety and Reliability Advisory Board (**the Chairperson**) under section 46B immediately before the substitution of that section by the amending Act is to be completed by the Chief Investigator as an investigation under section 46BA as inserted by the amending Act.
- (2) For any inquiry to which subclause (1) applies, the ITSRR or the Chairperson is to provide all relevant information and documents to the Chief Investigator to permit the Chief Investigator to complete the investigation.

#### **44 Provision of information to regulator**

Section 46E (3), as substituted by the amending Act, applies to information provided to the Chief Investigator before, on or after the substitution of that subsection.

#### **45 Authorised officers**

- (1) A person who was an authorised officer immediately before section 46W was substituted by the amending Act is taken to have been:
  - (a) appointed as an authorised officer by the regulator under that section as substituted and subject to the limitations specified in the person's instrument of appointment, and
  - (b) authorised under clause 3 (1) (a) of Schedule 5, as amended by the amending Act.
- (2) This clause does not prevent the variation or revocation of any limitations specified in the person's instrument of appointment.

#### **46 Authority to enter**

An authority issued by the ITSRR under section 46R and in force immediately before that section was amended by the amending Act is taken to have been issued on the same terms by the regulator under that section as amended.

#### **47 Assistance to authorised officers**

A notice in writing served by the ITSRR on the occupier of premises under section 46S, and in force immediately before that section was amended by the amending Act, is taken to have been served on the same terms by the regulator under that section as amended.

#### **48 Guidelines**

Guidelines issued by the Director-General under section 53C and in force immediately before that section was amended by the amending Act are, after that amendment, taken, for the purposes of that section, to have been issued in accordance with that section by the Maritime Authority.

#### **49 Exclusion of liability**

Section 66 continues to apply to the ITSRR, the Chairperson and other members of the Independent Transport Safety and Reliability Advisory Board in relation to any act or omission occurring before that section was amended by the amending Act.

### **Part 9 Provisions consequent on enactment of [Passenger Transport Amendment Act 2006](#)**

#### **50 Definition**

In this Part:

***the amending Act*** means the [Passenger Transport Amendment Act 2006](#).

#### **51 Validation of accreditation, contracts and other matters**

(1) This clause applies to:

- (a) any accreditation purportedly issued or renewed under this Act, or
- (b) any service contract purportedly entered into under this Act, or
- (c) any other act or thing purportedly done or omitted under this Act or under any such accreditation or contract,

at any time before the commencement of the amending Act.

(2) Any such accreditation, contract, act or thing that would have been validly issued, renewed, entered into, done or omitted if the amending Act had been in force at that time is taken to be (and always to have been) validly issued, renewed, entered into,

done or omitted.

## **Part 10 Provisions consequent on enactment of [World Youth Day Amendment Act 2007](#)**

### **52 Effect of repeal of [World Youth Day Act 2006](#)**

- (1) The repeal of the [World Youth Day Act 2006](#) does not affect the continued operation in relation to matters arising before the repeal of that Act of:
- (a) section 44H (Protection of exercise of certain functions) of that Act, or
  - (b) section 46E (Bus services for World Youth Day events) of that Act, or
  - (c) any other exemption or immunity from, or limitation of, liability under that Act, as in force before that repeal.

**Note—**

The [World Youth Day Act 2006](#) is to be repealed on 1 January 2009 by section 62 of that Act.

- (2) The provisions of subclause (1) are in addition to, and do not derogate from, section 30 of the [Interpretation Act 1987](#).

**Note—**

Section 30 of the [Interpretation Act 1987](#) provides that the repeal of an Act or statutory rule does not, among other things, affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule.

## **Part 11 Provisions consequent on enactment of [Transport Administration Amendment \(Rail and Ferry Transport Authorities\) Act 2008](#)**

### **Division 1 Preliminary**

#### **53 Definition**

In this Part:

**2008 amending Act** means the [Transport Administration Amendment \(Rail and Ferry Transport Authorities\) Act 2008](#).

### **Division 2 Provisions relating to rail services contracts**

#### **54 Rail services contracts**

- (1) RailCorp may continue to carry on a rail passenger service and provide other rail services (within the meaning of Division 4 of Part 3 of the Act, as inserted by the 2008 amending Act) without a rail services contract until such a contract is entered into.

- (2) This clause ceases to have effect 2 years after the commencement of Division 4 of Part 3 of the Act, as inserted by the 2008 amending Act, or on such later day as may be prescribed by the regulations.

## **Division 3 Provisions relating to ferry service contracts**

### **55 Ferry service contracts**

- (1) Sydney Ferries may continue to carry on a regular ferry service without a ferry service contract until such a contract is entered into.
- (2) This clause ceases to have effect 2 years after the commencement of Division 1A of Part 3 of the Act, as inserted by the 2008 amending Act, or on such later day as may be prescribed by the regulations.

## **Schedule 4 Transitways**

(Sections 28E and 28F)

Liverpool to Parramatta  
Parramatta to Strathfield  
St Marys to Penrith  
Parramatta to Blacktown  
Blacktown to Castle Hill  
Blacktown to Wetherill Park  
Parramatta to Mungerie Park

## **Schedule 5 Transport safety employees—alcohol or other drugs**

(Section 9C (6))

### **1 (Repealed)**

### **2 Application of Schedule**

This Schedule applies to the testing of transport safety employees for the presence of alcohol or drugs.

### **3 Regulations**

- (1) The regulations may make provision for or with respect to the following:
- (a) the authorisation of persons (including authorised officers):
    - (i) to administer breath tests, breath analyses or other tests for the purpose of detecting the presence of alcohol or drugs, and
    - (ii) to operate equipment for that purpose,
  - (b) the circumstances when tests for detecting the presence of alcohol or drugs may be conducted, including (but not limited to) random testing and testing of

- employees when about to carry out, or while on duty for the purpose of carrying out, transport safety work,
- (c) the conduct of testing, which may include the taking of blood or urine samples or other body tissues or fluids,
  - (d) the taking of samples of blood or urine or other body tissues or fluids,
  - (e) the devices used in carrying out breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,
  - (f) the accreditation of persons conducting analyses for the presence of drugs,
  - (g) the procedure for the handling and analysis of samples of blood or urine or other body tissues or fluids,
  - (h) offences relating to the carrying out of transport safety work while under the influence of alcohol or any other drug,
  - (i) offences relating to the carrying out of transport safety work while the prescribed concentration of alcohol is present in the employee's breath or blood,
  - (j) offences relating to the carrying out of transport safety work while a drug (other than alcohol), or a prescribed concentration or amount of any such drug, is present in the employee's blood or urine or other body tissues or fluids,
  - (k) offences relating to refusal or failure to undergo tests or otherwise comply with test procedures or interference with test results,
  - (l) offences relating to refusal or failure to administer tests or take samples or to do so in accordance with required procedures,
  - (m) evidence in proceedings as to matters relating to drug and alcohol testing,
  - (n) without limiting paragraph (m), the use of certificates as to concentration of alcohol or presence of drugs as evidence of the matters stated in the certificate in proceedings for offences,
  - (o) confidentiality of test results,
  - (p) protection against liability for persons administering tests or taking samples of blood or urine or other body tissues or fluids,
  - (q) disciplinary action that may be taken consequent on a breach of regulations made under this clause.
- (2) An offence under a regulation made under this clause relating to the carrying out of transport safety work by a transport safety employee while under the influence of alcohol or any other drug or while the prescribed concentration of alcohol or

prescribed concentration or amount of another drug is present in the employee's breath, blood or urine, a refusal or failure by a transport safety employee to undergo tests or otherwise comply with test procedures or to interference by a transport safety employee with test results, may, in addition to the penalty provided for by section 63 for offences under the regulations, be punishable by a period of imprisonment not exceeding 9 months.

- (3) Subject to the regulations, section 8B (Measurement of alcohol concentrations) of the *Road Transport (Safety and Traffic Management) Act 1999* applies in relation to the measurement of the concentration of alcohol in a person's breath or blood for the purposes of the regulations in the same way as it applies for the purposes of Part 2 of that Act.

## **Schedule 6 (Repealed)**