

# Passenger Transport Act 2014 No 46

[2014-46]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# Passenger Transport Act 2014 No 46



New South Wales

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# Passenger Transport Act 2014 No 46



New South Wales

An Act with respect to passenger transport services; and to repeal the *Passenger Transport Act 1990* and the *Air Transport Act 1964*.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Passenger Transport Act 2014*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to facilitate the delivery of safe, reliable, efficient and integrated public passenger services that are responsive to customer needs,
- (b) to regulate certain public passenger services and the providers of those services,
- (c) to facilitate a flexible service procurement framework for public passenger services for the State that:
  - (i) establishes clear lines of accountability for operators of services, and
  - (ii) provides mechanisms to improve access to public transport, and
  - (iii) encourages innovation in service development, including the use of new technologies.

### 4 Definitions

(1) In this Act:

**accredited** means accredited under this Act for the time being.

**air route licence** means a licence for a regulated air route in force under Division 2 of Part 3.

**air transport service**—see section 7.

**authorised** means authorised under this Act for the time being.

**authorised officer** means an authorised officer appointed under Division 1 of Part 9 or a police officer.

**Board of Inquiry** means a Board of Inquiry constituted by the Minister under section 140.

**bus** means:

- (a) a motor vehicle that seats more than 8 adults, or
- (b) a vehicle of any class prescribed by the regulations for the purposes of this definition.

**bus service** means a public passenger service provided by a bus (other than a bus while being used to provide a taxi service or a hire car service), and includes a community transport service that provides transport by bus.

**charter service** means a public passenger service provided by a bus or a ferry where:

- (a) the provision of the service is pre-booked for hire for an agreed fee and individual fares are not payable by the passengers to the operator or driver, and
- (b) the hirer is entitled to determine the route for the journey and the time of travel, and
- (c) all passengers' journeys have a common origin or common destination, or both, and
- (d) the service is not provided in accordance with a fixed schedule.

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

**close associate**—see section 13.

**community transport service**—see section 6.

**driver** of a vehicle means the person who drives the vehicle or, if it is an aircraft or a vessel, is the pilot of the aircraft or the master for the time being of the vessel and **drive** a vehicle includes pilot an aircraft or vessel.

**driver authority** means an authority to drive a vehicle granted under Part 4.

**fare** includes any consideration paid or given to use a public passenger service

(whether or not it is paid or given to the operator or driver), but does not include a consideration of a kind prescribed by the regulations for the purposes of this definition.

**ferry** means:

- (a) a vessel that seats more than 8 adults, or
- (b) a vessel of any class prescribed by the regulations for the purposes of this definition.

**ferry service** means a public passenger service provided by means of a ferry.

**hire car**—see section 9 (2).

**hire car licence**—see section 90.

**hire car service**—see section 9 (1).

**IPART** means the Independent Pricing and Regulatory Tribunal established under the [Independent Pricing and Regulatory Tribunal Act 1992](#).

**licensed** means licensed under this Act for the time being.

**member operator** of a taxi booking service—see section 72.

**member operator** of a taxi network—see section 72.

**motor vehicle** means a vehicle that is built to be propelled by a motor that forms part of the vehicle, but does not include an aircraft, a train or a vessel.

**operate** a public passenger service, taxi network or taxi booking service means to carry on the business of providing the service.

**operator's taxi booking service**—see section 72.

**operator's taxi network**—see section 72.

**ordinary taxi licence**—see section 95 (1).

**passenger**—see section 5 (6).

**passenger service contract** means a contract entered into under Division 1 of Part 3.

**premises** include a vehicle.

**public passenger service**—see section 5 (1).

**rail passenger service** means the carriage of passengers for a fare by train, but

does not include any rail passenger service of a class prescribed for the purposes of this definition.

**railway** has the same meaning as it has in the [Rail Safety National Law \(NSW\)](#), but does not include a railway to which that Law does not apply.

**railway operations** has the same meaning as it has in the [Rail Safety National Law \(NSW\)](#), but does not include any thing to which that Law does not apply.

**railway premises** has the same meaning as it has in the [Rail Safety National Law \(NSW\)](#), and includes a vehicle being used by the operator of a rail passenger service for the carriage of passengers in connection with that service, but does not include any railway premises to which that Law does not apply.

**regular air service**—see section 7 (4).

**regulated air route** means an air route declared to be a regulated air route under section 7 (2).

**road** means a road within the meaning of section 4 (1) of the [Road Transport Act 2013](#) (other than a road that is the subject of a declaration made under section 18 (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 section 4 (1) of the [Road Transport Act 2013](#) (other than a road related area that is the subject of a declaration made under section 18 (1) (b) of that Act relating to all of the provisions of that Act).

**Roads and Maritime Services** or **RMS** means Roads and Maritime Services constituted under the [Transport Administration Act 1988](#).

**taxi**—see section 8 (2).

**taxi booking service**—see section 72.

**taxi booking service standard** means a service standard prescribed by the regulations under section 87.

**taxi contract determination**—see section 12.

**taxi licence**—see section 90.

**taxi network**—see section 72.

**taxi network service standard** means a service standard prescribed by the regulations under section 86.

**taxi service**—see section 8 (1).

**taxi service standard** means a service standard prescribed by the regulations under section 32.

**tourist service** means a public passenger service provided by a bus or ferry or other vehicle prescribed by the regulations for the purposes of this definition that is a pre-booked service designed to transport tourists to destinations on a publicly available itinerary, or a service designed to transport tourists where the journeys of each passenger have a common origin or destination (or both).

**train** has the same meaning as in the [Rail Safety National Law \(NSW\)](#), and includes a vehicle being used by the operator of a rail passenger service for the carriage of passengers in connection with that service.

**Note—**

A train is defined as being 2 or more units of rolling stock coupled together, at least 1 of which is a locomotive or other self-propelled unit or a unit of rolling stock that is a locomotive or other self-propelled unit. Rolling stock includes a light rail vehicle.

**Transport for NSW** or **TfNSW** means Transport for NSW constituted under the [Transport Administration Act 1988](#).

**transport safety employee** means an operator of a bus service or ferry service who performs transport safety work and any of the following persons who performs transport safety work for the operator:

- (a) an employee or contractor of the operator,
- (b) a person who performs the work on a voluntary basis for the operator (irrespective of whether the person receives out-of-pocket expenses).

**transport safety inquiry** means an inquiry under Division 3 of Part 8.

**transport safety investigation** means an investigation under section 133.

**transport safety investigator** means a transport safety investigator appointed under section 146.

**transport safety work** means any of the following classes of work carried out in relation to a bus service or a ferry service:

- (a) work relating to the driving or operation of a vehicle, the loading or disembarking of passengers, the movement of a vehicle or the berthing of a vessel,
- (b) work relating to the repair, maintenance or upgrading of vehicles, terminals, wharves or maintenance facilities,
- (c) work involving the development, management or monitoring of safe working systems for public passenger services,

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

**vehicle** includes an aircraft, a train, or a vessel.

(2) Notes included in this Act do not form part of this Act.

## 5 Public passenger services

- (1) In this Act, **public passenger service** means the transport, by a motor vehicle, vessel, aircraft, train, or other vehicle prescribed by the regulations for the purposes of this definition, of passengers within, or partly within, New South Wales for a fare.
- (2) A community transport service is also a public passenger service for the purposes of this Act.
- (3) The regulations may provide that the provision of any transport prescribed by the regulations for the purposes of this section is or is not a public passenger service.
- (4) A road-ferry service under the control of a roads authority under the [Roads Act 1993](#) is not a public passenger service.
- (5) A service providing transport by a motor vehicle that is generally conducted on land that is not a road or road related area is not a public passenger service.
- (6) In this Act, **passenger** does not include a transport safety employee employed with respect to a public passenger service or any person carrying out work for the operator of a public passenger service, or any authorised officer or transport safety investigator, while carrying out work or on duty in that capacity.

## 6 Community transport services

In this Act, **community transport service** means the transport, by a vehicle, of specified individuals or specified classes of individuals under a community transport agreement entered into by the operator of the service with TfNSW.

## 7 Air transport services

- (1) In this Act, **air transport service** means a public passenger service that consists of transport by an aircraft on a regular air service for a regulated air route.
- (2) The Minister may, by order published in the Gazette, declare a specified air route from a place in New South Wales to another place in New South Wales to be a regulated air route.
- (3) In determining whether to make an order the Minister must have regard to the following matters:
  - (a) the needs of the public of New South Wales as a whole, and of the public of any area or district, for air transport services along the route,



- (b) fostering competition between airlines in relation to the route,
  - (c) the effect, if any, on the maintenance and development of adequate and reasonable public air transport services within New South Wales of the operation of aircraft over the route,
  - (d) the effect, if any, on the economic development of, or on the environment in, any area or district within New South Wales, of the operation of aircraft over the route.
- (4) A service is a **regular air service** for the purposes of this section if it is provided:
- (a) in accordance with a fixed schedule, or
  - (b) on 5 or more occasions within any period of 28 days.

## 8 Taxi services and taxis

- (1) In this Act, **taxi service** means a public passenger service provided by one or more motor vehicles where the service is obtained by hiring a motor vehicle that:
- (a) plies or stands for hire on a road or road related area, or
  - (b) is authorised to ply or stand for hire on a road or road related area (whether or not the motor vehicle is hired by other means for the purposes of providing the taxi service).
- (2) In this Act, **taxi** means a motor vehicle used to provide a taxi service.
- (3) The following public passenger services are not taxi services for the purposes of this Act:
- (a) a service conducted according to regular routes and timetables or according to regular routes and at regular intervals,
  - (b) a service conducted according to one or more regular routes, in which each passenger is transported for a distance of not less than 40 kilometres,
  - (c) a tourist service,
  - (d) a charter service,
  - (e) a service provided by a bus that may also be used as a taxi, if the bus is being used for the purposes of a bus service under a passenger service contract or for any other service prescribed by the regulations for the purposes of this paragraph.

## 9 Hire car services and hire cars

- (1) In this Act, **hire car service** means a public passenger service provided by a motor vehicle that is not any of the following services:

- (a) a taxi service,
- (b) a service conducted according to regular routes and timetables or according to regular routes and at regular intervals,
- (c) a service conducted according to one or more regular routes, in which each passenger is transported for a distance of not less than 40 kilometres,
- (d) a tourist service,
- (e) a charter service,
- (f) a bus service provided by a bus that may also be used as a hire car, if the bus is being used for the purposes of a bus service under a passenger service contract or for a charter service or tourist service.

(2) In this Act, **hire car** means a motor vehicle used to provide a hire car service.

#### **10 Act to be construed not to exceed legislative power of State**

- (1) This Act is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the State.
- (2) If a provision of this Act, or the application of a provision of this Act to a person, subject matter or circumstance, would, but for this section, be construed as being in excess of the legislative power of the State:
  - (a) it is a valid provision to the extent to which it is not in excess of the power, and
  - (b) the remainder of this Act, and the application of the provision to other persons, subject matters or circumstances, is not affected.
- (3) This section applies to this Act in addition to, and without limiting the effect of, any provision of this Act.

#### **11 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **Part 2 Accreditation of operators of public passenger services**

### **Division 1 Preliminary**

#### **12 Definitions**

In this Part:

**accrediting authority** for a public passenger service means TfNSW, in the case of an air transport service, or RMS, in any other case.

**Note—**

TfNSW may delegate any of its functions (see section 31 of the *Transport Administration Act 1988*) and RMS may also delegate any of its functions (see section 50 of that Act).

**taxi 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 remuneration arrangements for contract drivers of taxis.

**13 Meaning of “close associate”**

- (1) For the purposes of this Act, a person is a **close associate** of an applicant for accreditation as an operator, or an operator, of a public passenger service if the person:
  - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person’s own right or on behalf of any other person), in the business of the applicant or operator that is or will be carried on under the authority of the accreditation, and by virtue of that interest or power is or will be able (in the opinion of the accrediting authority) to exercise a significant influence over or with respect to the management or operation of that business, or
  - (b) holds or will hold any relevant position, whether in the person’s own right or on behalf of any other person, in the business of the applicant or operator that is or will be carried on under the authority of the accreditation, or
  - (c) is or will be engaged as a contractor or employed in the business of the applicant or operator that is or will be carried on under the authority of the accreditation.
- (2) For the purposes of this section, a financial institution is not a close associate by reason only of having a relevant financial interest in relation to a business.
- (3) The provisions of this section extend to relevant financial interests and relevant powers even if those interests and powers are not payable, exercisable or otherwise enforceable as a matter of law or equity, but are nevertheless payable, exercisable or otherwise enforceable as a matter of fact.
- (4) In this section:

**relevant financial interest**, in relation to a business, means:

  - (a) any share in the capital of the business, or
  - (b) any entitlement to receive any income derived from the business, or to receive

any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or

- (c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business is or is to be carried on (such as, for example, an entitlement of the owner of the premises at which the business is carried on to receive rent as lessor of the premises).

**relevant position** means:

- (a) the position of director, manager or corporate secretary, or
- (b) any other position, however designated, if it is an executive position.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

#### **14 Application of Part**

This Part does not apply to the following public passenger services:

- (a) a service that is provided using aircraft, other than an air transport service,
- (b) a service that is provided using a vessel or a train (not being a motor vehicle being used by the operator of a rail passenger service for the carriage of passengers in connection with that service).

**Note—**

For accreditation of public passenger services provided by train (including light rail), see the [Rail Safety National Law \(NSW\)](#) and for provisions relating to ferries or other vessels, see the [Marine Safety Act 1998](#).

### **Division 2 Accreditation offences**

#### **15 Operator of public passenger service must be accredited**

A person must not operate a public passenger service unless the person is accredited as the operator of that service.

Maximum penalty: 1,000 penalty units.

**Note—**

See section 75 for an additional requirement for the operator of a taxi service to be a member operator of a taxi network.

#### **16 Operator of public passenger service must comply with accreditation conditions**

An operator of a public passenger service must not contravene a condition of the

operator's accreditation.

Maximum penalty: 1,000 penalty units.

## **Division 3 Applications for accreditation**

### **17 Applications for accreditation**

- (1) The following persons may apply for accreditation as an operator of a public passenger service:
  - (a) an individual,
  - (b) 2 or more individuals who intend to carry on the public passenger service jointly under a partnership or other agreement,
  - (c) a body corporate incorporated under a law of this or any other jurisdiction (including the *Corporations Act 2001* of the Commonwealth, the *Associations Incorporation Act 2009* and the *Co-operatives National Law (NSW)*).
- (2) An application for accreditation is to be made to the accrediting authority for the public passenger service.
- (3) An application is:
  - (a) to be in a form approved by the accrediting authority, and
  - (b) to contain the information that the accrediting authority requires to be provided, and
  - (c) in the case of a body corporate, to specify one or more directors or managers as nominated directors or managers for the purposes of this Part, and
  - (d) to be accompanied by the fee prescribed by the regulations.
- (4) The accrediting authority may, by written notice given to the applicant, require the applicant to provide further information relevant to the application that is specified in the notice.
- (5) The accrediting authority may from time to time determine the number of persons who are to be nominated as directors or managers under this section, either generally or in any particular case or class of cases.

### **18 Determination of applications for accreditation generally**

- (1) The accrediting authority may determine an application for accreditation as an operator of a public passenger service by granting or refusing the application.
- (2) The accrediting authority must not grant an application for accreditation as the operator of a public passenger service unless it is satisfied that the applicant meets

the general standards for accreditation or the standards for a current operator.

- (3) The general standards for accreditation (other than as the operator of a public passenger service that is an air transport service) are as follows:
  - (a) that the applicant is a fit and proper person to be responsible for the management of a public passenger service,
  - (b) in the case of a body corporate, that the directors or managers nominated for the purposes of this Part are fit and proper persons to be responsible for the management of a public passenger service,
  - (c) that the applicant has demonstrated the capacity to comply with the standards for financial viability, passenger and public safety and vehicle maintenance prescribed by the regulations for any such service or operator,
  - (d) in the case of an application to operate a taxi service, that the applicant has demonstrated the capacity to comply with the taxi service standards.
- (4) The general standards for accreditation as an operator of a public passenger service that is an air transport service are as follows:
  - (a) that the applicant is a fit and proper person to be responsible for the management of a public passenger service,
  - (b) in the case of a body corporate, that the directors or managers nominated for the purposes of this Part are fit and proper persons to be responsible for the management of a public passenger service,
  - (c) that the applicant and the applicant's aircraft, pilots and passengers will be adequately insured,
  - (d) that the applicant owns, or has sufficient rights to operate, the aircraft to be used by the applicant.
- (5) The standards for a current operator are as follows:
  - (a) that the applicant is the holder of an accreditation to operate another public passenger service of the same or a different kind,
  - (b) that the applicant has demonstrated that the applicant complies with any standards applicable to the accreditation being applied for that are additional to those for the accreditation currently held,
  - (c) that the applicant is not the subject of any action being taken or proposed to be taken by the accrediting authority relating to an accreditation held by the applicant.
- (6) In the case of a joint application for an accreditation, each individual applying for the

joint accreditation must meet the requirements for accreditation.

- (7) The regulations may prescribe additional standards that are required to be met for accreditation as an operator of a public passenger service, either generally or in a particular case or class of cases.

## **19 Close associates**

The accrediting authority may refuse to grant an accreditation on the ground that a close associate of the applicant has previously held an accreditation (whether for the operation of the same or a different public passenger service), or an air route licence, that has been cancelled.

## **20 Grants of accreditation**

- (1) An accreditation to operate a public passenger service granted by an accrediting authority may accredit the operator:
  - (a) to operate one or more specified public passenger services, or
  - (b) to operate a public passenger service having specified characteristics.
- (2) The accrediting authority may grant an application for accreditation unconditionally or subject to the conditions specified by the authority in the accreditation.

### **Note—**

The accrediting authority may also vary the conditions of an accreditation at any time (see section 26).

## **21 Form of accreditation**

An accreditation is to be in the form approved by the accrediting authority.

## **22 Term of accreditation**

- (1) An accreditation is in force for the period specified by the accrediting authority in the accreditation unless it is sooner cancelled.
- (2) An accreditation does not have effect while suspended and the suspension of an accreditation does not affect the day on which the term of an accreditation expires.

## **23 Renewal of accreditation**

- (1) An accreditation may be renewed on application to the accrediting authority made before the accreditation expires.
- (2) This Act applies to an application for the renewal of an accreditation in the same way as it applies to an application for an accreditation.

## **24 Notice of accreditation decision**

- (1) An accrediting authority must give an applicant for accreditation or renewal of an

accreditation written notice of the decision on the application.

- (2) If notice of a decision is not given to an applicant within 90 days of an application being made, the application is taken to have been refused.
- (3) Subsection (2) does not prevent an application from being granted after the period of 90 days has elapsed.

## **25 Joint accreditation**

If 2 or more individuals are jointly accredited as operators of a public passenger service, each of those individuals has the obligations of an operator of that service under this Act or the regulations.

## **Division 4 Conditions of accreditation**

### **26 Conditions of accreditation generally**

- (1) An accreditation to operate a public passenger service is subject to the following conditions:
  - (a) any conditions imposed by the accrediting authority and in force from time to time,
  - (b) any conditions specified by this Act or prescribed by the regulations.
- (2) The accrediting authority may at any time, by written notice given to an accredited operator, impose a condition on the accreditation or vary or revoke a condition of the accreditation imposed by the accrediting authority.
- (3) The accrediting authority must not impose a condition on an accreditation that is inconsistent with this Act or the regulations.
- (4) Without limiting subsection (1), the regulations may prescribe conditions of accreditation relating to reporting occurrences of a specified kind to the accrediting authority or other persons.

### **27 Changes to nominated directors and managers**

- (1) An operator of a public passenger service may, by written notice given to the accrediting authority, nominate, or revoke the nomination of, a director or manager for the purposes of this Part.

#### **Note—**

An accreditation may be suspended or cancelled if the operator does not meet an accreditation standard, including the requirement that a nominated director or manager be a fit and proper person to be responsible for the management of a public passenger service. An accreditation is automatically suspended if there are no nominated directors or managers for a body corporate.

- (2) It is a condition of the accreditation of a body corporate that is an operator of a public



passenger service that the operator give written notice to the accrediting authority, within 21 days, if a director or manager of the body corporate nominated for the purposes of this Part dies or ceases to be a director or manager of the body corporate.

## **28 Operation of regulated air routes**

It is a condition of the accreditation of an operator of an air transport service that the operator must not operate a regular air service on a regulated air route unless the operator holds an air route licence for that route.

## **29 Bus services—drug and alcohol programs and testing**

- (1) **Drug and alcohol program** It is a condition of an accreditation of an operator of a bus service:
  - (a) that the operator prepares and implements a drug and alcohol program for its transport safety employees that complies with guidelines approved by TfNSW for the purposes of this section and published in the Gazette, and
  - (b) that the operator ensures 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 TfNSW 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 relating to the operation of the drug and alcohol program,
  - (b) education and assistance of transport safety employees in relation to the drug and alcohol program.
- (4) **Random testing** RMS may at any time arrange with accredited operators of bus services for the random testing of any person about to carry out transport safety work or on duty for the purposes of carrying out transport safety work for the presence of alcohol or any other drug to ensure that the operators are complying with the conditions imposed by this section.
- (5) **Definition** 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.

### **30 Other Acts not affected by testing provisions**

Nothing in this Act or the regulations derogates from the operation of Division 4 of Part 2 of Schedule 3 to the *Road Transport Act 2013*.

**Note—**

Schedule 2 contains regulation-making powers for procedures for testing for alcohol and other drugs.

### **31 Bus services—safety management systems**

- (1) It is a condition of the accreditation of an operator of a bus service that the operator has, and implements, a safety management system that complies with 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 bus 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 bus service, and
  - (c) comply with any requirements prescribed by the regulations or set out in any guidelines issued by TfNSW under this section and published in the Gazette.
- (3) TfNSW may issue guidelines with respect to policy objectives and safety initiatives to be adopted by operators in safety management systems.
- (4) An operator must, if directed to do so by RMS, vary a safety management system.

**Note—**

A community transport service that uses buses is also a bus service.

### **32 Taxi service standards**

- (1) It is a condition of the accreditation of an operator of a taxi service that the operator comply with the taxi service standards prescribed by the regulations for the purposes of this section.
- (2) The taxi service standards may provide for the following:
  - (a) a requirement that the operator of a taxi service comply with service requirements of the operator's taxi network or taxi booking service that are necessary to enable the network or booking service to comply with obligations imposed on it under this Act or the regulations,
  - (b) a requirement that the operator of a taxi service comply with the provisions of the

taxi contract determination.

- (3) This section does not limit the matters that may be included in the taxi service standards.

## **Division 5 Variation, suspension or cancellation of accreditation**

### **33 Variation, suspension or cancellation of accreditation generally**

- (1) The accrediting authority may vary, suspend or cancel the accreditation of an operator if:
- (a) the operator does not comply with a standard required to be met for accreditation as the operator of the public passenger service to which the accreditation relates, or
  - (b) the operator fails to comply with a condition of the accreditation, or
  - (c) the operator fails to comply with this Act or the regulations or an applicable passenger service contract or air route licence, or
  - (d) a close associate of the operator has previously held an accreditation (whether for the operation of the same or a different public passenger service), or an air route licence, that has been cancelled, or
  - (e) for any other reason it thinks fit.

#### **Note—**

The accrediting authority may also vary the conditions of an accreditation at any time (see section 26).

- (2) Without limiting subsection (1), the accrediting authority may take action under this section on the ground that an accredited operator of a public passenger service or a director or manager nominated for the purposes of this Part is not a fit and proper person to be responsible for the management of a public passenger service if the accrediting authority is of the opinion that the operator has failed, on written request given to the operator by the accrediting authority, to provide the accrediting authority with sufficient evidence that the operator, director or manager is a fit and proper person to be responsible for the management of a public passenger service.
- (3) The accrediting authority may take action against an operator or person on the ground referred to in subsection (2) without making a written request referred to in that subsection.

### **34 Additional grounds for action against accreditation of operator of taxi service or hire car service**

- (1) The accrediting authority may also vary, suspend or cancel the accreditation of an operator of a taxi service if:

- (a) the operator fails to comply with a service requirement of the operator's taxi network or taxi booking service and the accrediting authority is satisfied that the requirement is reasonable and necessary to comply with the obligations imposed on the taxi network or taxi booking service under this Act or the regulations, or
  - (b) in the opinion of the accrediting authority, the taxi service has been or is being conducted in a manner that causes danger to the public, or
  - (c) the holder of the licence for any taxi used by the taxi service does not have a third-party property insurance policy that provides cover that, in the opinion of the accrediting authority, is sufficient for the taxi and is issued by a body corporate authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business.
- (2) The accrediting authority may also vary, suspend or cancel the accreditation of an operator of a hire car service if:
- (a) in the opinion of the accrediting authority, the hire car service has been or is being conducted in a manner that causes danger to the public, or
  - (b) the holder of the licence for any hire car used by the hire car service does not have a third-party property insurance policy that provides cover that, in the opinion of the accrediting authority, is sufficient for the hire car and is issued by a body corporate authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business.

### **35 Automatic suspensions**

- (1) If 2 or more individuals hold a joint accreditation and any one of them dies or ceases to jointly provide the public passenger service:
- (a) the accreditation is automatically suspended 21 days after the death or cessation if the accrediting authority 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 cessation).
- (2) If an accredited operator that is a body corporate ceases to have any directors or managers who are nominated for the purposes of this Part, the accreditation is automatically suspended when the body ceases to have any directors or managers so nominated.

## **Part 3 Service procurement**

### **Division 1 Passenger service contracts**

#### **36 Passenger service contracts**

- (1) TfNSW may enter into a passenger service contract on behalf of the State for the provision of a public passenger service with an accredited operator of a public passenger service or the operator of a public passenger service who is not required to be accredited under this Act.
- (2) TfNSW may enter into a passenger service contract that is subject to a condition precedent that requires a party to obtain an accreditation to operate a public passenger service.
- (3) A passenger service contract may relate to, but is not limited to, any of the following:
  - (a) a particular area or route,
  - (b) one or more modes of transport,
  - (c) services for specified passengers or classes of passengers.
- (4) TfNSW may invite passenger service contracts by tender or in any other manner TfNSW thinks fit.
- (5) A passenger service contract is to specify the term of the contract.
- (6) A passenger service contract is not to provide a right to renew the contract.
- (7) A passenger service contract may provide for the operator of the public passenger service to have the first right to negotiate a further contract, subject to meeting any specified requirements.
- (8) A passenger service contract must provide for the performance standards to be met by the operator of the public passenger service.

#### **37 Further contracts**

- (1) TfNSW may enter into a further passenger service contract with an operator on, before or after the expiry of the term of a passenger service contract with the operator.
- (2) A further contract may be on the same or different terms.
- (3) However, nothing in this Part confers a right to or expectation of a further contract.

#### **38 Enforcement of performance standards and civil penalties**

- (1) Performance standards provided for by a passenger service contract are to be

enforced by civil penalty provisions or in any other manner that the contract may provide.

- (2) A person who contravenes a provision of a passenger service contract that is enforceable by a civil penalty provision is liable to pay, as a debt due to the State, an amount determined in accordance with the contract as the penalty for the contravention.
- (3) A passenger service contract may provide that an amount payable under a civil penalty provision may also be recovered by withholding amounts otherwise payable under the contract and may contain other related provisions.
- (4) Subsection (1) does not limit the provisions of a passenger service contract that may be enforced by civil penalty provisions.
- (5) In this section:

***civil penalty provision*** means a provision of a passenger service contract that provides for the payment of an amount of penalty for the contravention of a specified provision of the contract.

- (6) This section has effect despite any other law.

### **39 Regular timetabled services must have contract**

- (1) A person must not operate a public passenger service that is conducted according to regular routes and timetables or according to regular routes and at regular intervals otherwise than under the authority of a passenger service contract.

Maximum penalty: 1,000 penalty units.

- (2) This section does not apply to the following public passenger services:
  - (a) an air transport service,
  - (b) a bus service or a ferry service conducted according to one or more regular routes, in which each passenger is transported for a distance of not less than 40 kilometres,
  - (c) a tourist service,
  - (d) a community transport service.
- (3) This section does not apply to an operator of a public passenger service if:
  - (a) the person is an accredited operator of the public passenger service or is not required to be accredited, and
  - (b) the service is operated under a subcontract or other arrangement with the holder

of the passenger service contract for the service, and

(c) the subcontract or other arrangement is authorised under the passenger service contract.

(4) This section does not apply to a public passenger service exempted by TfNSW by order published in the Gazette. An exemption may be unconditional or subject to conditions specified in the order.

(5) TfNSW must have regard to any applicable policy approved by the Minister for the purposes of subsection (4) before making an order under that subsection.

#### **40 Exclusive rights**

(1) A passenger service contract may confer on the operator of a bus service, ferry service or rail passenger service the exclusive right to operate a service conducted according to regular routes and timetables or according to regular routes and at regular intervals in the area or route to which the contract applies.

(2) An exclusive right granted under a contract under this section does not affect any right to provide the following bus, ferry or rail passenger services in the same area or on the same route:

(a) a service conducted according to one or more regular routes, in which each passenger is transported for a distance of not less than 40 kilometres,

(b) a tourist service.

(3) The following are specifically authorised by this Act for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*:

(a) any passenger service contract or other agreement containing a provision authorised by this section or giving effect to a provision of this section,

(b) the entering or making of any such contract or agreement,

(c) conduct authorised or required by or under the terms or conditions of any such contract or agreement.

(4) Conduct authorised by subsection (3) is authorised only to the extent (if any) that it would otherwise contravene Part IV of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*.

(5) TfNSW is to cause a register to be kept of all exclusive rights in force under a term of a contract that is authorised under this section and is to make that register publicly available.

## **Division 2 Licensing for regulated air routes**

### **41 Operator of regulated air route must be licensed**

A person must not operate an air transport service unless the person holds an air route licence for the regulated air route for which the service is provided.

Maximum penalty: 1,000 penalty units.

### **42 Licence holder must comply with conditions**

The holder of an air route licence must not contravene a condition of the licence.

Maximum penalty: 1,000 penalty units.

### **43 Applications for air route licences**

(1) The following persons may apply for a licence for a regulated air route:

- (a) an individual,
- (b) 2 or more individuals who intend to operate the route under a partnership or other agreement,
- (c) a body corporate incorporated under a law of this or any other jurisdiction (including the *Corporations Act 2001* of the Commonwealth, the *Associations Incorporation Act 2009* and the *Co-operatives National Law (NSW)*).

(2) An application for an air route licence is to be made to TfNSW.

(3) TfNSW may invite applications by tender or in any other form for an air route licence for one or more specified regulated air routes and may specify the time within which the applications are to be made. TfNSW is not required to consider any application that is not made within the specified time.

(4) An application is:

- (a) to be in a form approved by TfNSW, and
- (b) to contain the information that TfNSW requires to be provided, and
- (c) in the case of an application for which tenders have been invited, to be accompanied by a sealed tender if required by TfNSW, and
- (d) to be accompanied by the fee prescribed by the regulations.

(5) TfNSW may, by written notice given to the applicant, require the applicant to provide further information relevant to the application that is specified in the notice.



#### **44 Determination of applications for air route licence**

- (1) TfNSW may determine an application for an air route licence by granting or refusing the application.
- (2) In determining an application for an air route licence, TfNSW must take into account the following matters and is not to consider any additional matters:
  - (a) the air transport service needs of the public in relation to the route concerned and whether the grant of the licence will meet those needs,
  - (b) the allocation of air transport routes so as to facilitate the provision of adequate and reasonable public passenger transport by air in New South Wales by more than one airline and to discourage the development of any monopoly of the provision of such transport in New South Wales,
  - (c) the effect, if any, of the operation of the service over the proposed routes on the maintenance and orderly development of adequate and reasonable public passenger transport by air in New South Wales,
  - (d) the effect, if any, on the economic development or on the environment of any area within New South Wales, of the operation of aircraft by the applicant over the proposed routes.
- (3) Nothing in this Part requires TfNSW to grant an air route licence for which applications have been invited to be made or have otherwise been made.

**Note—**

A person who operates a regulated air route under an air route licence is also required to comply with the requirements of the *Civil Aviation Act 1988* of the Commonwealth. These include a requirement to hold an Air Operator's Certificate of the appropriate kind granted by the Civil Aviation Safety Authority of the Commonwealth under that Act.

#### **45 Grants of air route licences**

- (1) An air route licence is to specify the regulated air route or routes to which it applies.
- (2) TfNSW may grant an application for an air route licence unconditionally or subject to the conditions specified by TfNSW in the licence.

**Note—**

TfNSW may also vary the conditions of a licence at any time (see section 51).

#### **46 Form of air route licence**

An air route licence is to be in the form approved by TfNSW.

#### **47 Term of air route licence**

- (1) An air route licence is in force for the period specified by TfNSW in the licence unless

it is sooner cancelled.

- (2) An air route licence does not have effect while suspended and the suspension of an air route licence does not affect the day on which the term of an air route licence expires.

#### **48 No renewals of air route licences**

- (1) There is no right to a renewal of an air route licence.
- (2) However, this section does not prevent a person from being granted an air route licence for the same regulated air route for which the person was the previous holder of an air route licence.

#### **49 Notice of decision**

- (1) TfNSW must give an applicant for an air route licence written notice of the decision on the application.
- (2) If notice of a decision is not given to an applicant within 90 days of an application being made, the application is taken to have been refused.
- (3) Subsection (2) does not prevent an application from being granted after the period of 90 days has elapsed.

#### **50 Joint holders**

If 2 or more individuals are jointly holders of an air route licence, each of those individuals has the obligations of a holder of that licence under this Act or the regulations.

#### **51 Conditions of air route licences**

- (1) An air route licence is subject to the following conditions:
  - (a) any conditions imposed by TfNSW and in force from time to time,
  - (b) any conditions specified by this Act or prescribed by the regulations.
- (2) TfNSW may at any time, by written notice given to the holder of an air route licence, impose a condition on the licence or vary or revoke a condition of the licence imposed by TfNSW.
- (3) In deciding whether to impose a condition on an air route licence or to vary or revoke a condition of a licence, TfNSW must have regard to the matters set out in section 44 (2).
- (4) TfNSW must not impose a condition on an air route licence that is inconsistent with this Act or the regulations.

## 52 Variation, suspension or cancellation of air route licence

TfNSW may vary, suspend or cancel an air route licence if:

- (a) having regard to the matters specified in section 44 (2) that TfNSW thinks relevant, TfNSW thinks it appropriate to do so, or
- (b) the holder ceases to be accredited to operate an air transport service, or
- (c) the holder ceases to operate a regulated air route to which the licence relates or fails to operate it to the satisfaction of TfNSW.

### Note—

TfNSW may also vary the conditions of a licence at any time (see section 51).

## 53 Temporary air route licences

- (1) TfNSW may grant a temporary air route licence for a regulated air route to an accredited operator of a public passenger service if:
  - (a) the licence of a current holder of an air route licence for the regulated air route (the **current holder**) is suspended or cancelled or TfNSW is of the opinion that the current holder is failing to operate the regulated air route or failing to operate it to the satisfaction of TfNSW, and
  - (b) TfNSW is of the opinion that the issue of the temporary air route licence is necessary to maintain an air transport service pending the determination or completion of action against the current holder's air route licence or the granting of a new air route licence.
- (2) TfNSW may determine the procedures for applications for and the granting of, the requirements for and any conditions of a temporary air route licence.
- (3) TfNSW may suspend, vary or cancel a temporary air route licence at any time and for any reason.
- (4) A temporary air route licence ceases to have effect if:
  - (a) TfNSW gives written notice to that effect to the holder of the temporary licence, or
  - (b) TfNSW grants an air route licence for the same regulated air route.
- (5) No compensation is payable to any person by or on behalf of TfNSW or otherwise by or on behalf of the State for loss or damage arising directly or indirectly from the grant of or any action taken with respect to a temporary air route licence, or a licence held by a current holder or a current holder, under this section. No proceedings for damages or other relief, whether grounded at law or in equity, for the purpose of restraining the taking of an action under this section, or of obtaining compensation in

respect of any such loss or damage may be maintained.

(6) Subsection (5) extends to the following:

- (a) compensation because of any act, statement or conduct relating to the grant of or any action taken with respect to a temporary air route licence or the operation of an air transport service,
- (b) any person exercising a function or engaging in conduct for the purposes of this section at the request or direction of TfNSW or otherwise by or on behalf of the Crown, other than the current holder or a person who provided services on behalf of the current holder.

(7) In this section:

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

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

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

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

**the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#) and includes an officer, employee or agent of the Crown.

## 54 Joint licences

If 2 or more individuals hold a joint air route licence and any one of them dies or ceases to jointly provide the air transport service concerned:

- (a) the air route licence is automatically suspended 21 days after the death or cessation if TfNSW has not been notified before that time of the death or cessation, and
- (b) the licence may be cancelled, suspended or varied under this Act because of the death or cessation (whether before or after any such cessation).

## Part 4 Driver authorities

### Division 1 Preliminary

#### 55 Application of Part

This Part applies to drivers of motor vehicles used for the purposes of the following public passenger services:

- (a) a bus service,
- (b) a taxi service,
- (c) a hire car service,
- (d) a tourist service provided by a motor vehicle,
- (e) a charter service provided by a bus,
- (f) any other public passenger service prescribed for the purposes of this section.

#### **56 Types and classes of driver authority**

The regulations may provide for the types and classes of driver authorities.

### **Division 2 Driver authority offences**

#### **57 Driver for public passenger service must hold driver authority**

A person must not drive a vehicle used to provide a public passenger service referred to in section 55 unless the person is the holder of a driver authority to drive a vehicle of that kind for a service of that kind.

Maximum penalty: 100 penalty units.

#### **58 Driver of public passenger service must comply with driver authority conditions**

The holder of a driver authority must not contravene a condition of the driver authority.

Maximum penalty: 100 penalty units.

### **Division 3 Applications for driver authorities**

#### **59 Applications for driver authority**

- (1) An individual who is not less than 20 years of age may apply for a driver authority.
- (2) An application for a driver authority is to be made to RMS.
- (3) An application is:
  - (a) to be in a form approved by RMS, and
  - (b) to contain the information that RMS requires to be provided, and
  - (c) to be accompanied by the fee prescribed by the regulations.
- (4) RMS may, by written notice given to the applicant, require the applicant to provide further information relevant to the application that is specified in the notice.

## **60 Determination of applications for driver authorities generally**

- (1) RMS may determine an application for a driver authority by granting or refusing the application.
- (2) RMS must not grant an application for a driver authority to drive a vehicle used to provide a public passenger service unless it is satisfied that the applicant meets the general standards for an authority or the standards for a current driver.
- (3) The general standards for a driver authority are as follows:
  - (a) that the applicant is at least 20 years of age,
  - (b) that the applicant is of good repute and is in all other respects a fit and proper person to be the driver of a vehicle used to provide a public passenger service,
  - (c) that the applicant has demonstrated sufficient responsibility and aptitude to drive the vehicle to which the authority relates in accordance with law and custom and the standards under which the public passenger service operates,
  - (d) that the applicant holds an unrestricted driver licence (within the meaning of the [Road Transport Act 2013](#)) to drive a vehicle to which the authority relates or any other licence to drive the vehicle prescribed by the regulations for the purposes of this subsection.
- (4) The standards for a current driver are as follows:
  - (a) that the applicant is the holder of a driver authority to drive a vehicle used to provide a public passenger service of the same or a different kind,
  - (b) that the standards required to be met for the grant of the driver authority are substantially similar to those required for the authority being applied for or the applicant has demonstrated that the applicant meets any additional standards applicable to the driver authority being applied for,
  - (c) that the applicant is not the subject of any action being taken or proposed to be taken by RMS relating to a driver authority held by the applicant.
- (5) The regulations may prescribe additional standards that are required to be met for the grant of a driver authority, either generally or in a particular case or class of cases.

## **61 Additional standards for bus drivers**

It is also a standard for a driver authority to drive a bus used to provide a bus service that the applicant has successfully completed a bus driver training course approved by TfNSW and conducted by a registered training organisation or RMS is satisfied the applicant has the appropriate competence.

## **62 Additional standards for taxi drivers**

The following are also standards for a driver authority to drive a taxi used to provide a taxi service:

- (a) that the applicant has successfully completed a taxi driver training course approved by TfNSW and conducted by a registered training organisation or RMS is satisfied the applicant has the appropriate competence,
- (b) that the applicant has passed any examinations or assessments prescribed for the purposes of this section by the regulations.

## **63 Applications after refusal or cancellation**

- (1) RMS may refuse to consider an application for a driver authority if the applicant:
  - (a) has made an unsuccessful application for a driver authority or was the holder of a driver authority (whether of the same or a different kind) that has been cancelled under this Act, and
  - (b) the application is made within 12 months after the refusal or the cancellation took effect.
- (2) There is no right to apply to the Civil and Administrative Tribunal for an administrative review of a decision under this section to refuse to consider an application.

## **64 Conditions of driver authorities**

RMS may grant an application for a driver authority unconditionally or subject to the conditions specified by RMS in the authority.

## **65 Form of driver authority**

- (1) A driver authority is to be in the form approved by RMS.
- (2) The regulations may make provision for or with respect to the issue, use or replacement of or other dealings with driver authority cards for holders of driver authorities.

## **66 Term of driver authority**

- (1) A driver authority is in force for the period specified by RMS in the authority unless it is sooner cancelled.
- (2) A driver authority does not have effect while suspended and the suspension of an authority does not affect the day on which the term of an authority expires.

## **67 Renewal of driver authority**

- (1) A driver authority may be renewed on application to RMS made before the expiry of

the authority.

- (2) This Act applies to an application for the renewal of a driver authority in the same way as it applies to an application for an authority.

#### **68 Notice of decision**

- (1) RMS must give an applicant for a driver authority or renewal of an authority written notice of the decision on the application.
- (2) If notice of a decision is not given to an applicant within 90 days of an application being made, the application is taken to have been refused.
- (3) Subsection (2) does not prevent an application from being granted after the period of 90 days has elapsed.

### **Division 4 Conditions of driver authorities**

#### **69 Conditions of driver authorities generally**

- (1) A driver authority to drive a vehicle used to provide a public passenger service is subject to the following conditions:
  - (a) any conditions imposed by RMS and in force from time to time,
  - (b) any conditions specified by this Act or prescribed by the regulations.
- (2) RMS may at any time, by written notice given to the holder of a driver authority, impose a condition on the authority or vary or revoke a condition of the authority imposed by RMS.
- (3) RMS must not impose a condition on a driver authority that is inconsistent with this Act or the regulations.
- (4) Without limiting subsection (1), the regulations may prescribe conditions on a driver authority relating to reporting occurrences of a specified kind to RMS or other persons.

#### **70 Taxi drivers—taxi network service and booking service standards**

It is a condition of the driver authority of a driver of a taxi that the driver comply with directions given by the taxi network or taxi booking service of which the operator of the taxi service is a member operator, if those directions are authorised to be given under the taxi network service standards that apply to that network or the taxi booking service standards that apply to that taxi booking service.



## **Division 5 Variation, suspension or cancellation of driver authorities**

### **71 Variation, suspension or cancellation of driver authorities generally**

- (1) RMS may vary, suspend or cancel a driver authority if:
- (a) the holder does not comply with a standard required to be met for the grant of a driver authority of that kind, or
  - (b) the holder fails to comply with a condition of the driver authority, or
  - (c) the holder fails to comply with this Act or the regulations, or
  - (d) a driver licence held by the holder is cancelled, suspended or expires or the holder is otherwise disqualified from driving a motor vehicle, or
  - (e) proceedings have been commenced against the holder for an offence of a kind prescribed by the regulations, or
  - (f) for any other reason it thinks fit.

**Note—**

RMS may also vary the conditions of a driver authority at any time (see section 69).

- (2) Without limiting subsection (1), RMS may take action under this section on the ground that the holder of a driver authority is not of good repute and in all other respects a fit and proper person to hold a driver authority if RMS is satisfied that the holder has failed, on written request given to the holder by RMS, to provide RMS with sufficient evidence that the holder is a person of good repute and is in all other respects a fit and proper person to hold a driver authority.
- (3) RMS may take action against the holder of a licence on the ground referred to in subsection (2) without making a written request referred to in that subsection.

## **Part 5 Accreditation and membership of taxi network providers and taxi booking services**

### **Division 1 Preliminary**

#### **72 Definitions**

In this Part:

**accreditation** means accreditation as the operator of a taxi network or a taxi booking service.

**member operator** of a taxi booking service means an operator of a taxi service in respect of which the operator of the booking service provides booking services to the

operator or a driver of a taxi used for the taxi service.

**member operator** of a taxi network means an operator of a taxi service who is a member of, or is otherwise affiliated with, the taxi network.

**operator's taxi booking service** means a taxi booking service that provides booking services to the operator or the driver of a taxi used for the taxi service operated by the operator.

**operator's taxi network** means a taxi network of which the operator is a member operator.

**taxi booking service** means a facility that:

- (a) facilitates bookings for taxi services, and
- (b) can be accessed by taxi drivers for the purpose of obtaining passengers.

**taxi network** means a facility for the provision of services to member operators relating to the delivery of taxi services by the member operators, but does not include a taxi booking service.

## **Division 2 Accreditation and affiliation offences**

### **73 Taxi network providers and booking services must be accredited**

- (1) A person must not operate a taxi network unless the person is accredited as an operator of a taxi network.
- (2) A person must not operate a taxi booking service unless the person is accredited as an operator of a taxi booking service.

Maximum penalty: 1,000 penalty units.

### **74 Operator of taxi network or taxi booking service must comply with accreditation conditions**

- (1) An operator of a taxi network must not contravene a condition of the operator's accreditation.
- (2) An operator of a taxi booking service must not contravene a condition of the operator's accreditation.

Maximum penalty: 1,000 penalty units.

### **75 Taxi service operator must be member of, or affiliated with, taxi network**

- (1) A person must not operate a taxi service unless the person is a member of, or is otherwise affiliated with, an accredited taxi network.

- (2) A member operator of a taxi network must ensure that a taxi used for the operator's taxi service is fitted with a working device that:
  - (a) enables communication with the network or another person or body for the purpose of the security and safety of drivers and passengers, and
  - (b) is capable of being activated by the taxi network, and
  - (c) is capable of being operative at all times when a taxi service is being provided by the taxi.
- (3) A person is not guilty of an offence under this section if the person is a person or a member of a class of persons exempted by RMS by order published in the Gazette from having to comply with this section.

Maximum penalty: 1,000 penalty units.

## **Division 3 Applications for accreditation**

### **76 Applications for accreditation**

- (1) The following persons may apply for accreditation as an operator of a taxi network or a taxi booking service:
  - (a) an individual,
  - (b) 2 or more individuals who intend to carry on the taxi network or taxi booking service jointly under a partnership or other agreement,
  - (c) a body corporate incorporated under a law of this or any other jurisdiction (including the *Corporations Act 2001* of the Commonwealth, the *Associations Incorporation Act 2009* and the *Co-operatives National Law (NSW)*).
- (2) An application for accreditation is to be made to RMS.
- (3) An application is:
  - (a) to be in the form approved by RMS, and
  - (b) to contain the information that RMS requires to be provided, and
  - (c) in the case of a body corporate, to specify one or more directors or managers as nominated directors or managers for the purposes of this Part, and
  - (d) to be accompanied by the fee prescribed by the regulations.
- (4) RMS may, by written notice given to the applicant, require the applicant to provide further information relevant to the application that is specified in the notice.
- (5) RMS may from time to time determine the number of persons who are to be

nominated as directors or managers under this section, either generally or in any particular case or class of cases.

## **77 Determination of applications for accreditation generally**

- (1) RMS may determine an application for accreditation by granting or refusing the application.
- (2) RMS must not grant an application for accreditation unless it is satisfied that the applicant meets the general standards for accreditation.
- (3) The general standards for accreditation are as follows:
  - (a) that the applicant is a fit and proper person to be responsible for the management of a taxi network or taxi booking service,
  - (b) in the case of a body corporate, that the directors or managers nominated for the purposes of this Part are fit and proper persons to be responsible for the management of a taxi network or taxi booking service,
  - (c) that the applicant has demonstrated the capacity to comply with the requirements for financial viability, the delivery of taxi services, supervision and monitoring of taxi services prescribed by the regulations for the purposes of this section for any such taxi network or taxi booking service,
  - (d) that the applicant has demonstrated the capacity to comply with the taxi network service standards or taxi booking service standards.
- (4) The regulations may prescribe additional requirements that are required to be met for accreditation as an operator of a taxi network or a taxi booking service, either generally or in a particular case or class of cases.
- (5) In the case of a joint application for an accreditation, each individual applying for the joint accreditation must meet the requirements for accreditation.

## **78 Grants of accreditation**

- (1) An accreditation to operate a taxi network or a taxi booking service granted by RMS may accredit the operator:
  - (a) to operate one or more specified taxi networks or taxi booking services, or
  - (b) to operate a taxi network or taxi booking service having specified characteristics.
- (2) RMS may grant an application for accreditation unconditionally or subject to the conditions specified by RMS in the accreditation.

### **Note—**

RMS may also vary the conditions of an accreditation at any time (see section 84).

### **79 Form of accreditation**

An accreditation is to be in the form approved by RMS.

### **80 Term of accreditation**

- (1) An accreditation is in force for the period specified by RMS in the accreditation unless it is sooner cancelled.
- (2) An accreditation does not have effect while suspended and the suspension of an accreditation does not affect the day on which the term of an accreditation expires.

### **81 Renewal of accreditation**

- (1) An accreditation may be renewed on application to RMS made before the expiry of the accreditation.
- (2) This Act applies to an application for the renewal of an accreditation in the same way as it applies to an application for an accreditation.

### **82 Notice of decision**

- (1) RMS must give an applicant for an accreditation or renewal of an accreditation written notice of the decision on the application.
- (2) If notice of a decision is not given to an applicant within 90 days of an application being made, the application is taken to have been refused.
- (3) Subsection (2) does not prevent an application from being granted after the period of 90 days has elapsed.

### **83 Joint accreditation**

If 2 or more individuals are jointly accredited as operators of a taxi network or a taxi booking service, each of those individuals has the obligations of an operator of the network or booking service under this Act or the regulations.

## **Division 4 Conditions of accreditation**

### **84 Conditions of accreditation generally**

- (1) An accreditation as the operator of a taxi network or a taxi booking service is subject to the following conditions:
  - (a) any conditions imposed by RMS and in force from time to time,
  - (b) any conditions specified by this Act or prescribed by the regulations.
- (2) RMS may at any time, by written notice given to an accredited operator of a taxi network or a taxi booking service, impose a condition on the accreditation or vary or

revoke a condition of the accreditation imposed by RMS.

- (3) RMS must not impose a condition on an accreditation that is inconsistent with this Act or the regulations.

## **85 Changes to nominated directors and managers**

- (1) An operator of a taxi network or taxi booking service may, by written notice given to RMS, nominate, or revoke the nomination of, a director or manager for the purposes of this Part.

### **Note—**

An accreditation may be suspended or cancelled if the operator does not meet an accreditation standard, including the requirement that a nominated director or manager be a fit and proper person to be responsible for the management of a taxi network or taxi booking service. An accreditation is automatically suspended if there are no nominated directors or managers for a body corporate.

- (2) It is a condition of the accreditation of a body corporate that is an operator of a taxi network or taxi booking service that the operator give written notice to RMS, within 21 days, if a director or manager of the body corporate nominated for the purposes of this Part dies or ceases to be a director or manager of the body corporate.

## **86 Taxi network service standards**

- (1) It is a condition of the accreditation of an operator of a taxi network that the operator comply with the taxi network service standards prescribed by the regulations for the purposes of this section.
- (2) The taxi network service standards may provide for the following:
  - (a) requirements for arrangements for member operators, including accepting taxi service operators as member operators,
  - (b) safety (including maintenance) requirements for taxis, passengers and taxi drivers,
  - (c) network rules for taxi service operators and drivers,
  - (d) service requirements for the provision of taxi services by the network, member operators and drivers of taxis,
  - (e) training requirements for taxi drivers,
  - (f) authorising the network to give directions to member operators and drivers of taxis used for the taxi services operated by them, including directions to enable compliance with its obligations under this Act or the regulations,
  - (g) monitoring and supervision obligations of the network,
  - (h) requirements for compliance with reporting and monitoring requirements made by

RMS, including the provision of electronic monitoring facilities.

- (3) This section does not limit the matters that may be included in the taxi network service standards.

### **87 Taxi booking service standards**

- (1) It is a condition of the accreditation of an operator of a taxi booking service that the operator comply with the taxi booking service standards prescribed by the regulations for the purposes of this section.
- (2) The taxi booking service standards may provide for the following:
- (a) service requirements for provision of booking services and the provision of booked taxis,
  - (b) requirements to provide booking services on behalf of taxi service operators and drivers,
  - (c) booking rules for taxi service operators and drivers,
  - (d) training requirements for taxi drivers,
  - (e) authorising the service to give directions to member operators and drivers of taxis used for the taxi services operated by them, including directions to enable compliance with its obligations under this Act or the regulations,
  - (f) monitoring and supervision obligations of the booking service,
  - (g) requirements for compliance with reporting and monitoring requirements made by RMS.
- (3) This section does not limit the matters that may be included in the taxi booking service standards.

## **Division 5 Variation, suspension or cancellation of accreditation**

### **88 Variation, suspension or cancellation of accreditation generally**

- (1) RMS may vary, suspend or cancel the accreditation of an operator of a taxi network or taxi booking service if:
- (a) the operator does not comply with a standard required to be met for accreditation, or
  - (b) the operator fails to comply with a condition of the accreditation, or
  - (c) the operator fails to comply with this Act or the regulations, or
  - (d) for any other reason it thinks fit.

**Note—**

RMS may also vary the conditions of an accreditation at any time (see section 84).

- (2) Without limiting subsection (1), RMS may take action under this section on the ground that an accredited operator of a taxi network or taxi booking service or a director or manager nominated for the purposes of this Part is not a fit and proper person to be responsible for the management of the network or service if RMS is of the opinion that the operator has failed, on written request given to the operator by RMS, to provide RMS with sufficient evidence that the operator, director or manager is a fit and proper person to be responsible for the management of the network or service.
- (3) RMS may take action against an operator or person on the ground referred to in subsection (2) without making a written request referred to in that subsection.

## **89 Automatic suspensions**

- (1) If 2 or more individuals hold a joint accreditation and any one of them dies or ceases to jointly provide the taxi network or taxi booking service:
  - (a) the accreditation is automatically suspended 21 days after the death or cessation if RMS 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 cessation).
- (2) If an accredited operator that is a body corporate ceases to have any directors or managers who are nominated for the purposes of this Part, the accreditation is automatically suspended when the body ceases to have any directors or managers so nominated.

## **Part 6 Taxi and hire car licences**

### **Division 1 Preliminary**

#### **90 Definitions**

In this Part:

**annual taxi licence**—see section 95 (1).

**hire car licence** means a hire car licence in force under this Part.

**licence** means a taxi licence or a hire car licence.

**ordinary hire car licence**—see section 95 (2).

**ordinary taxi licence**—see section 95 (1).

**short term hire car licence**—see section 95 (2).



**short term taxi licence**—see section 95 (1).

**taxi licence** means a taxi licence in force under this Part.

## Division 2 Licensing offences

### 91 Taxis must be licensed

An operator of a taxi service must not use a motor vehicle to provide a taxi service unless the operator is the holder of a taxi licence for the motor vehicle or the motor vehicle is a stand-by taxi used in accordance with this Division.

Maximum penalty: 1,000 penalty units.

#### Note—

A person who has the benefit under a lease or sublease or other arrangement is taken to be the holder of the licence (see section 110).

### 92 Hire cars must be licensed

An operator of a hire car service must not use a motor vehicle to provide a hire car service unless the operator is the holder of a hire car licence for the motor vehicle.

Maximum penalty: 1,000 penalty units.

### 93 Operator of taxi service or hire car service must comply with licence conditions

The holder of a licence must not contravene a condition of the licence.

Maximum penalty: 1,000 penalty units.

### 94 Stand-by taxis

- (1) An accredited operator of a taxi service may use a taxi that is not licensed (a **stand-by taxi**) if a licensed taxi used in the service is out of operation for repair or service, but only if the stand-by taxi complies with this section.
- (2) The stand-by taxi must:
  - (a) display the number-plates of the licensed taxi in addition to the number-plates allocated to the stand-by taxi, and
  - (b) be registered within the meaning of the [Road Transport Act 2013](#), and
  - (c) to the satisfaction of RMS, comply with the standards prescribed for taxis, and
  - (d) except to the extent authorised by RMS, comply with the conditions of the taxi licence of the licensed taxi that it is replacing, and
  - (e) display a sign in accordance with the regulations identifying it as a stand-by taxi,

and

(f) comply with any other requirements prescribed by the regulations for the purposes of this section.

(3) A stand-by taxi while used in accordance with this section is taken, for the purposes of this Act and the regulations, to be a taxi for which a taxi licence is in force.

## Division 3 Applications for licences

### 95 Classes of licences

(1) The classes of taxi licences are as follows:

(a) **annual taxi licence**—a licence for a term of 12 months,

(b) **short term taxi licence**—a licence for a term not exceeding 6 years,

(c) **ordinary taxi licence**—a licence for a term determined by RMS and specified in the licence.

(2) The classes of hire car licences are as follows:

(a) **short term hire car licence**—a licence for a term not exceeding 6 years,

(b) **ordinary hire car licence**—a licence for a term determined by RMS and specified in the licence.

(3) RMS may issue different categories of licence within each licence class.

### 96 Applications for licences

(1) The following persons may apply for a licence:

(a) an individual,

(b) 2 or more individuals who intend to hold the licence jointly under a partnership or other agreement,

(c) a body corporate incorporated under a law of this or any other jurisdiction (including the [Corporations Act 2001](#) of the Commonwealth, the [Associations Incorporation Act 2009](#) and the *Co-operatives National Law (NSW)*).

(2) An application for a licence is to be made to RMS.

(3) An application is:

(a) to be in the form approved by RMS, and

(b) to contain the information that RMS requires to be provided, and

(c) to be accompanied by the fee prescribed by the regulations.

(4) An application for an annual taxi licence or an ordinary taxi licence must be accompanied by a sealed tender for the licence if required by RMS.

**Note—**

The licence fees for ordinary taxi licences or ordinary hire car licences and annual taxi licences (other than wheelchair accessible taxis) are to be determined by public auction or tender (see sections 107 and 109).

(5) RMS may, by written notice given to the applicant, require the applicant to provide further information relevant to the application that is specified in the notice.

**97 Determination of applications for licences generally**

- (1) RMS may determine an application for a licence by granting or refusing the application.
- (2) RMS must not grant an application for a licence unless it is satisfied that the applicant meets any requirements specified by the regulations.
- (3) The following applicants can only be issued with an annual taxi licence:
  - (a) an applicant for a licence for a taxi operated wholly or partly within the Metropolitan transport district established under section 108 of the *Transport Administration Act 1988*,
  - (b) an applicant for a licence, or a licence of a class or of a category within a licence of a class, prescribed by order of TfNSW published in the Gazette.
- (4) Without limiting subsection (3) (b), an order under this section may specify all licences issued after a specified date or licences for taxis operated wholly or partly within a specified area.
- (5) In the case of a joint application for a licence, each individual applying for the joint licence must meet the requirements for the licence.

**98 Determination of applications for annual taxi licences**

- (1) RMS must not grant an application for an annual taxi licence for which a licence fee is determined by auction or by tender unless it is satisfied that the applicant:
  - (a) is the highest ranked bidder or tenderer for the licence under Division 5, and
  - (b) has complied with any requirements for making the bid or tender, and
  - (c) has provided any bond or other security (not exceeding 15% of the amount of the annual licence fee) required by RMS in respect of the payment of the annual licence fee.
- (2) RMS must have regard to any applicable determination of annual taxi licences under

Division 8 before determining an application for an annual taxi licence.

- (3) This section is in addition to any other requirements for the grant of a taxi licence.

### **99 Conditions of licences**

RMS may grant an application for a licence unconditionally or subject to the conditions specified by RMS in the licence.

### **100 Form of licences**

A licence is to be in the form approved by RMS.

### **101 Area of operation of taxis and hire cars**

- (1) A licence may specify the area of operation of a taxi or hire car.
- (2) A taxi or hire car may be used to provide a taxi service or hire car service anywhere in New South Wales if no area of operation is specified in the licence.
- (3) A licence does not confer on any person an exclusive right to use a taxi or hire car in the area of operation specified in the licence.

### **102 Term of licences**

- (1) A short term licence is in force for the period specified in the licence, not being a period exceeding 6 years, unless it is sooner cancelled.
- (2) Any other licence is in force for the period specified by this Act for the class of licence unless it is sooner cancelled.
- (3) A licence does not have effect while suspended and the suspension of a licence does not affect the day on which the term of a licence expires.

### **103 Renewal of licences**

- (1) A licence (other than a short term taxi licence or a short term hire car licence) is to be renewed by RMS on application to RMS made before the expiry of the licence.
- (2) An annual taxi licence must not be renewed more than 9 times (that is, so that a licence is in force for a total period of not more than 10 years).

### **104 Notice of decision**

- (1) RMS must give an applicant for a licence or renewal of a licence written notice of the decision on the application.
- (2) If notice of a decision is not given to an applicant within 90 days of an application being made, the application is taken to have been refused.

- (3) Subsection (2) does not prevent an application from being granted after the period of 90 days has elapsed.

## **Division 4 Conditions of licences**

### **105 Conditions of licences generally**

- (1) A licence is subject to the following conditions:
  - (a) any conditions imposed by RMS and in force from time to time,
  - (b) any conditions specified by this Act or prescribed by the regulations.
- (2) RMS may at any time, by written notice given to the holder of a licence, impose a condition on the licence or vary or revoke a condition of the licence imposed by RMS.
- (3) RMS must not impose a condition on a licence that is inconsistent with this Act or the regulations.
- (4) The regulations may:
  - (a) apply conditions of a taxi licence to an operator who carries on a taxi service using the taxi the subject of the licence, and
  - (b) apply conditions of the licence to any such operator instead of the holder of the licence or to both the operator and the holder, and
  - (c) make it an offence for the operator to fail to comply with an applicable condition.

## **Division 5 Licence fees**

### **106 Licence fees**

- (1) In addition to any application fee, a licence fee is payable to RMS when a licence is first issued (in the case of an ordinary taxi or hire car licence or a short term taxi or hire car licence) or when a licence is first issued or each time it is renewed (in the case of an annual taxi licence).
- (2) The licence fee is payable by the person to whom the licence is issued in the manner determined by RMS.

### **107 Licence fee for ordinary licences**

- (1) The licence fee for an ordinary taxi licence or ordinary hire car 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 another method chosen by TfNSW that will, in TfNSW's opinion, yield as the fee for the licence an amount equivalent to its current value on the open market.

- (2) TfNSW 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.

#### **108 Licence fee for short term licences**

The licence fee for a short term taxi licence or short term hire car licence issued under this Division is an amount determined by TfNSW.

#### **109 Licence fee for annual taxi licences**

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

### **Division 6 Dealings with licences**

#### **110 Leasing or subleasing and other arrangements relating to licences**

- (1) A licence may be leased or subleased, or made the subject of an arrangement under which the benefit of the licence is conferred on a person other than the person otherwise entitled to it, without the approval of RMS.
- (2) The lessee or sublessee of a licence, or other person who has the benefit of a licence under any such arrangement, has the benefit of the authority of the licence to the exclusion of the lessor or sublessor or person otherwise entitled to the benefit of the licence.
- (3) The lessee or sublessee of a licence, or a person who has the benefit of a licence under any such arrangement, is taken, for the purposes of this Act or the regulations, to be the holder of the licence (other than for the purpose of the renewal of a licence).
- (4) This section is subject to any condition imposed on a licence under this Act and to regulations made under this Division.
- (5) Nothing in this section authorises the transfer of a licence.

#### **111 Regulations relating to leasing and subleasing and other arrangements**

The regulations may provide for the following:

- (a) that the lessor or sublessor or other person who has the benefit of a licence under an arrangement referred to in section 110 (1) is subject to specified provisions of this Act or the regulations relating to taxis or licences,
- (b) that the specified provisions do not apply, or apply jointly, to any such lessee, sublessee or person,
- (c) that the lessor or sublessor of a licence, or person who confers the benefit of a licence under an arrangement referred to in section 110 (1), and any lessee or sublessee or person on whom the benefit is conferred are jointly and severally liable under the specified provisions or for any matters arising in connection with them.

### **112 Licence conditions relating to obligations of lessors, lessees and others**

The conditions of a licence may provide for the following:

- (a) that the lessor or sublessor of a licence, or person who confers the benefit of a licence under an arrangement referred to in section 110 (1), is subject to specified provisions and conditions of the licence,
- (b) that the specified provisions do not apply, or apply jointly, to any such lessee, sublessee or person,
- (c) that the lessor or sublessor of a licence, or person who confers the benefit of a licence under an arrangement referred to in section 110 (1), and any lessee or sublessee or person on whom the benefit is conferred are jointly and severally liable under the specified provisions or for any matters arising in connection with them.

### **113 RMS to be notified of lease, sublease or arrangement**

- (1) A person who leases or subleases a taxi licence to, or enters into an arrangement to confer the benefit of a taxi licence on, another person must cause written notice of the lease, sublease or arrangement to be given to RMS, within 7 days of the lease, sublease or arrangement taking effect, in accordance with this section.

Maximum penalty: 10 penalty units.

- (2) The notice must specify the matters prescribed by the regulations for the purpose of this section.

### **114 Transfer of licences**

- (1) RMS must, on application by the holder of an ordinary taxi licence or an ordinary hire car licence, transfer the licence to another person.
- (2) RMS may, on application by the legal personal representative of the holder of any other licence or a trustee of any such holder's estate, transfer the licence to a person specified by the legal personal representative or trustee or to the representative or

trustee.

- (3) RMS may, by written notice given to the transferor or the transferee of a licence, require the transferor or transferee to provide information to calculate the amount of transfer levy payable and to register the transfer.
- (4) This section is subject to any condition imposed on a licence by or under this Act.

### **115 Transfer levy for licences**

- (1) A levy of 2.5% of the current market value of a taxi licence is payable to the Crown by the transferee on the transfer of the taxi licence.
- (2) A levy of \$500 is payable to the Crown by the transferee on the transfer of a hire car licence.
- (3) The levy is to be charged, levied and collected in the manner determined by RMS.
- (4) The levy is not payable on the transfer of a taxi licence if the transferee is a person who is entitled to the licence under the will or on the intestacy of the holder of the licence.
- (5) RMS is not required to transfer a licence if any levy that is payable has not been paid.
- (6) In this section:

**current market value** of a taxi licence means an amount that, in the opinion of RMS, represents the current market value, at the date of the transfer, of the licence.

## **Division 7 Variation, suspension or cancellation of licences**

### **116 Variation, suspension or cancellation of licences generally**

- (1) RMS may vary, suspend or cancel a licence if:
  - (a) the holder fails to comply with a condition of the licence, or
  - (b) the holder, or owing to the default of the holder or any agent or member of staff of the holder, fails to comply with this Act or the regulations, or
  - (c) the taxi service or hire car service for which the licensed taxi or hire car is used has been or is being conducted in a manner that causes danger to the public, or
  - (d) the holder of the licence does not have a third-party property insurance policy that provides cover that, in the opinion of RMS, is sufficient for the taxi or hire car and is issued by a body corporate authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business, or
  - (e) for any other reason it thinks fit.



**Note—**

RMS may also vary the conditions of a licence at any time (see section 105).

- (2) RMS may also vary, suspend or cancel a taxi licence if, owing to the default of the holder or any agent or member of staff of the holder:
  - (a) the taxi contract determination in relation to drivers of the taxi to whom the determination applies has not been complied with, or
  - (b) the taxi is not made available in accordance with a service requirement imposed by the taxi network or taxi booking service of which the operator of the taxi service for which the taxi is used is a member operator and RMS is satisfied that the requirement is reasonable and necessary to enable the operator of the taxi network or taxi booking service to comply with obligations imposed by this Act or the regulations.

## **Division 8 Determination of release of annual taxi licences**

### **117 Application of Division**

This Division applies to annual taxi licences, other than licences for wheelchair accessible taxis.

### **118 Determination of number of annual taxi licences**

- (1) TfNSW must determine, before 31 March in each year, the number of annual taxi licences to be issued during the year commencing on the following 1 July.
- (2) The determination may also do any of the following:
  - (a) determine the number and type of annual taxi licences that are to be issued to persons who hold driver authorities for taxis and who are also accredited as operators of taxi services or who have applied for such an accreditation,
  - (b) limit the number of annual taxi licences that may be granted to the same applicant or related applicants if TfNSW is of the opinion that the limitation is likely to promote competition that will benefit the public.
- (3) TfNSW may seek public submissions before making a determination and may take into account any submissions received for the purposes of making the determination.
- (4) TfNSW may, if it thinks fit, obtain expert advice in relation to any of the matters referred to in section 120 and may consider any recommendation made by IPART under this Part.

### **119 Referral to IPART**

- (1) The Minister may, with the approval of the Minister administering the *Independent*

*Pricing and Regulatory Tribunal Act 1992*, refer to IPART for investigation and report to TfNSW with a recommendation as to the number of annual taxi licences to be issued for the year commencing on the following 1 July.

- (2) The referral may ask IPART to make a separate report on a specified class or classes of annual taxi licence or for annual taxi licences issued for a specified area or areas of operations.
- (3) Divisions 6 and 7 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* apply to an investigation and report by IPART under this section in the same way as they apply to an investigation or report under that Act. The provisions so apply as if a reference in those provisions to the Minister were a reference to the Minister administering this Act.
- (4) A referral may be varied or withdrawn by the Minister, with the approval of the Minister administering the *Independent Pricing and Regulatory Tribunal Act 1992*, at any time before the Minister has received the report on the referral from IPART.

#### **120 Matters to be taken into account for purposes of annual taxi licence determination**

The following matters are to be considered by TfNSW when making a determination as to the number of annual taxi licences:

- (a) likely passenger demand and latent demand for taxi services,
- (b) the performance of existing taxi services,
- (c) the demand for new taxi licences,
- (d) the viability and sustainability of the taxi industry,
- (e) any other matters TfNSW considers relevant, having regard to the objective of ensuring improved taxi services.

## **Part 7 Passenger transport fares, concessions and fees**

### **Division 1 Preliminary**

#### **121 Definition**

In this Part:

**fares order** means an order made by TfNSW under section 125.

### **Division 2 Fares and other related matters**

#### **122 Application of Division**

This Division applies to the following public passenger services:

- (a) a public passenger service operated by a corporation constituted under the *Transport Administration Act 1988* or the regulations under that Act,
- (b) a taxi service or a hire car service,
- (c) a service provided by an operator under a passenger service contract (other than a corporation referred to in paragraph (a)), if the contract so provides,
- (d) any other service prescribed by the regulations for the purposes of this Part.

### **123 Referrals to IPART**

- (1) The Minister may, with the approval of the Minister administering the *Independent Pricing and Regulatory Tribunal Act 1992*, refer all or any of the services provided by one or more public passenger services to IPART for determination of or a recommendation as to the following:
  - (a) appropriate maximum fares for the service or services,
  - (b) appropriate maximum fares for specified fares or classes of fares for the service or services.
- (2) A referral may do any or all of the following:
  - (a) specify a period within which IPART is to report to the Minister on its determination or recommendation,
  - (b) require IPART to consider specified matters when making its investigations for the purposes of its report.
- (3) A matter relating to a service referred to in section 122 (a) or (c) may be referred to IPART under this section for a recommendation or for a determination.
- (4) A matter relating to any other public passenger service may be referred to IPART under this section only for a recommendation.
- (5) IPART may request the Minister to refer a matter to IPART under this section.
- (6) A referral may be varied or withdrawn by the Minister, with the approval of the Minister administering the *Independent Pricing and Regulatory Tribunal Act 1992*. A variation or withdrawal of a referral does not affect the operation of this Act or that Act in respect of a report on the referral, or the subject-matter of the report, if the report was received by the Minister from IPART before the variation or withdrawal.

### **124 IPART investigations and determinations**

- (1) IPART is to conduct investigations and report to the Minister on the appropriate maximum fares if a referral is made under this Part.

- (2) IPART may report to the Minister on any matter it considers relevant that arises from an investigation under this Part.
- (3) IPART is to consider the following matters in making a determination or recommendation under this Part:
  - (a) the cost of providing the services,
  - (b) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers,
  - (c) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standards of service,
  - (d) the social impact of the determination or recommendation,
  - (e) the impact of the determination or recommendation on the use of the public passenger transport network and the need to increase the proportion of travel undertaken by sustainable modes such as public transport,
  - (f) standards of quality, reliability and safety of the services (whether those standards are specified by legislation, agreement or otherwise),
  - (g) the effect of the determination or recommendation on the level of Government funding,
  - (h) any matter specified in the referral to IPART,
  - (i) any other matter IPART considers relevant.
- (4) IPART must indicate what regard it has had to the matters specified in this section in any report of a determination or recommendation under this Part.
- (5) If IPART makes a determination or recommendation to increase the maximum fare for a service provided by a corporation constituted under the *Transport Administration Act 1988* or under a passenger service contract that provides (however expressed) for the payment of fare revenue to TfNSW, IPART is required to assess and report on the likely annual cost to the Consolidated Fund if the fare were not increased to the maximum permitted and compensation were paid to the corporation or TfNSW for the revenue foregone by an appropriation from the Consolidated Fund.
- (6) Sections 13A–14A and Divisions 6 and 7 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* apply to an investigation and report by IPART under this Part in the same way as they apply to a determination, investigation or report under that Act. The provisions so apply as if a reference in those provisions to the Minister were a reference to the Minister administering this Act.

## 125 Fares orders

- (1) TfNSW may, by order published in the Gazette (a **fares order**), determine the following for all or any of the services provided by one or more public passenger services:
  - (a) the maximum fares for the service or services,
  - (b) specified maximum fares or classes of fares for the service or services.
- (2) TfNSW may not determine a fare that exceeds any maximum fare determined by IPART under this Part or that is determined otherwise than in accordance with a methodology determined by IPART under this Part.
- (3) TfNSW may have regard to any recommendation of IPART under this Part when making a fares order.
- (4) A fares order may specify a fare or specify the manner in which a fare is to be calculated.
- (5) A fares order for a service provided by a taxi service or a hire car service may also approve other arrangements for remuneration in connection with the service.
- (6) A person must not demand a fare for the provision of a service that:
  - (a) exceeds the amount of the fare determined for the service under a fares order, or
  - (b) contravenes arrangements for remuneration approved by a fares order.

Maximum penalty: 100 penalty units.
- (7) A fares order prevails to the extent of any inconsistency with an order made under Division 5 of Part 8 of the [Transport Administration Act 1988](#).
- (8) This section does not prevent the operator of a public passenger service from demanding a fare that is, or making contracts or arrangements for the provision of a service for which the fare is, lower than that determined under a fares order, subject to the provisions of any applicable passenger service contract.

## 126 Taxi non-cash payment surcharges

- (1) A fares order may specify the maximum amount payable for a taxi non-cash payment surcharge or surcharges for the same hiring of a taxi.
- (2) In this Division, a **taxi non-cash payment surcharge** means a fee or charge (however calculated):
  - (a) added to the amount otherwise payable by a hirer of a taxi because the amount payable for the hire of the taxi is paid wholly or partly by the use of a debit, credit,

pre-paid or charge card, or

- (b) payable by all or any of the owner or driver of, or holder of a licence for, a taxi or the operator of a taxi service using a taxi because an amount payable for the hire of the taxi is paid wholly or partly by the use of a debit, credit, pre-paid or charge card.
- (3) Without limiting subsection (2), a fee or charge may be a taxi non-cash payment surcharge whether or not it is payable for accepting or processing payment made by the use of a debit, credit, pre-paid or charge card and whether or not the fee or charge is based on the amount payable for a taxi hire.
- (4) A taxi non-cash payment surcharge does not include a fee or charge imposed in respect of the use of a debit, credit, pre-paid or charge card by:
  - (a) a participant in a designated payment system within the meaning of the *Payment Systems (Regulation) Act 1998* of the Commonwealth, or
  - (b) a person consistently with a voluntary undertaking given by the person to, and accepted by, the Reserve Bank of Australia.
- (5) This section does not limit the operation of section 125 (5).

#### **127 Overcharging of taxi non-cash payment surcharges**

- (1) If a taxi non-cash payment surcharge that contravenes a fares order is imposed, the following persons are guilty of an offence:
  - (a) the person who imposed the surcharge,
  - (b) the owner or driver of the taxi and the holder of the licence for the taxi,
  - (c) the operator of the taxi service using the taxi,
  - (d) any person who provided or maintains any equipment installed in the taxi that enabled the surcharge to be imposed,
  - (e) any person who manages or administers the whole or any part of the system under which the amounts due for the hiring concerned may be paid by the use of a debit, credit, pre-paid or charge card.
- (2) A person must not collect in a taxi, or initiate the collection in a taxi of, a taxi non-cash payment surcharge that contravenes a fares order.
- (3) It is a defence to an offence under this section if the defendant establishes that:
  - (a) the taxi non-cash payment surcharge was imposed or collected or its collection was initiated by another person, and

- (b) the defendant did not know, and could not reasonably be expected to know, that the other person had charged or collected, or would initiate the charge or collection of, a taxi non-cash payment surcharge in respect of that hiring.

Maximum penalty:

- (a) in the case of a body corporate—1,000 penalty units, or
- (b) in the case of an individual—100 penalty units.

## **Division 3 Conditions of travel or ticketing**

### **128 Conditions of travel or ticketing**

- (1) Regulations may be made for or with respect to the following matters for a public passenger service (other than a taxi service, hire car service or air transport service):
  - (a) conditions of travel for passengers,
  - (b) conditions for the carriage of freight or other things,
  - (c) conditions for the provision of tickets.
- (2) Without limiting subsection (1), the regulations may:
  - (a) provide for a deemed contract between a passenger and the operator of the public passenger service relating to the provision of transport to a passenger using the service, and
  - (b) specify rights, obligations and liabilities under any such contract, and
  - (c) exculpate TfNSW or the operator of a public passenger service from liability, or otherwise limit the liability of TfNSW or an operator, in connection with the provision of a public passenger service, and
  - (d) exclude TfNSW from being taken to be, or being, the operator of a public passenger service for the purposes of the provision of transport to a passenger.
- (3) A regulation made under this section prevails to the extent of any inconsistency with an order made under Division 5 of Part 8 of the [Transport Administration Act 1988](#).

## **Division 4 Concessions and subsidies**

### **129 Minister to determine subsidy scheme and concessions**

- (1) The Minister may approve, by order published in the Gazette, a scheme for Government subsidised travel on public passenger services or other Government subsidised travel.
- (2) Without limiting subsection (1), an order under this section may:

- (a) determine the classes of persons who are entitled to travel free or to the benefit of a fare concession on a service, or to have the benefit of other Government subsidised travel, and
- (b) specify ancillary matters, including the level of concessions available to specified classes of persons and the services on which and times when free travel or fare concessions are available.

### **130 Administration of subsidy schemes and concessions**

- (1) TfNSW is to administer, or arrange for the administration of, any scheme approved by an order under this Division.
- (2) TfNSW must give effect to the order and may, subject to that order, determine the conditions for the issue, cancellation, replacement and use of passes or vouchers for persons entitled to travel free or to the benefit of a fare concession or entitled to the benefit of other Government subsidised travel.
- (3) A determination by TfNSW may provide for (but is not limited to) the following:
  - (a) procedures for assessing eligibility,
  - (b) notification by recipients of changes in eligibility circumstances,
  - (c) suspension of benefits,
  - (d) fees payable to TfNSW to cover administrative costs relating to the determination of concession or subsidised travel applications and the issue and replacement of passes and other matters related to its functions under this section.
- (4) Despite this Division, the regulations may provide that persons of a specified class are not entitled to a benefit under a scheme approved under this Division. This subsection applies despite any determination or direction of the Minister or an operator of a service or the [Anti-Discrimination Act 1977](#).
- (5) Payments required to be made in accordance with a scheme approved under this Division are to be made from such money as may be provided by Parliament.
- (6) Regulations may be made for or with respect to the following matters:
  - (a) prohibiting the provision of false or misleading information relating to applications for, or dealings with, a concession or other benefit under a scheme approved under this Division,
  - (b) prohibiting or regulating the use of, or other matters relating to, passes or vouchers used in connection with a scheme approved under this Division,
  - (c) imposing penalties for failing to comply with the conditions for free or concession passes for travel or for other Government subsidised travel,



- (d) the recovery of amounts overpaid or wrongly received under a scheme approved under this Division.

## **Part 8 Safety information and investigations**

### **Division 1 Bus safety information**

#### **131 Bus safety reports**

- (1) RMS may require the operator of a bus service to provide to RMS information as to measures taken by the operator to promote safety, or relating to safety, that RMS reasonably requires.
- (2) RMS may, by written notice, require the operator of a bus service to submit a safety report to RMS.
- (3) The operator of a bus service must comply with a requirement under this section to provide information to RMS and must provide the information in the form and manner approved by RMS.

Maximum penalty: 500 penalty units.

- (4) RMS is to make available to the Chief Investigator all information provided to RMS under this section that relates to a transport accident or incident that may affect the safe provision of a bus service.

#### **132 Notifiable occurrences relating to buses**

- (1) The operator of a bus service must report to RMS or any other person prescribed by the regulations, in accordance with the regulations, on any notifiable occurrence that affects the bus service.

Maximum penalty: 100 penalty units.

- (2) The regulations may:
  - (a) prescribe the kinds of occurrences that are notifiable occurrences, and
  - (b) prescribe the time within which and the manner in which a notifiable occurrence or class of occurrences is to be reported, and
  - (c) prescribe matters that are to be reported about notifiable occurrences or classes of notifiable occurrences.

### **Division 2 Transport safety investigations**

#### **133 Chief Investigator may investigate transport accidents or incidents**

- (1) The Chief Investigator may investigate any transport accident or incident that may

affect the safe provision of railway operations, a bus service or a ferry service (a **safety incident**).

- (2) The Minister may require the Chief Investigator to investigate and report to the Minister on a safety incident.
- (3) A transport safety investigation may extend to all relevant events and circumstances preceding the safety incident.
- (4) The Chief Investigator may, at any time, discontinue a transport safety investigation, other than an investigation requested by the Minister.

#### **134 Investigation not affected by other inquiries or proceedings**

A transport safety investigation may be carried out and a report provided on a safety incident under this Division 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 2009*, or
- (d) the matter is or may be the subject of a transport safety inquiry.

#### **135 Conduct of transport safety investigation**

The Chief Investigator is to conduct a transport safety investigation in the manner the Chief Investigator thinks appropriate.

#### **136 Provision of information and production of documents to Chief Investigator**

- (1) The Chief Investigator may, by written notice, require either or both of the following:
  - (a) the attendance of any person at any place to answer questions in relation to a transport safety investigation,
  - (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 a transport safety investigation.
- (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—**

Clause 29 of Schedule 1 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 notice under subsection (1) must be signed by the Chief Investigator and specify the time and place at which the person is required to attend to answer questions or produce the documents or other things.
- (6) The Chief Investigator may require a person who attends to answer questions under this section to answer the questions on oath or affirmation and, for that purpose, the Chief Investigator:
  - (a) may require the person to take an oath or to make an affirmation, and
  - (b) may administer an oath to, or take an affirmation from, the person.

### **137 Reports on transport safety investigations**

- (1) The Chief Investigator must provide to the Minister a written report on a transport safety investigation, including any discontinued investigation.
- (2) The Chief Investigator may provide a copy of a draft report, or proposed recommendations in a report, on a confidential basis, to the Minister or any other person before completing the report:
  - (a) if the Chief Investigator thinks that it is desirable or necessary to do so for the purposes of transport safety, or
  - (b) to allow the making of submissions about the draft report, or
  - (c) to give advance notice of the likely form of the report.
- (3) The Chief Investigator may include in a report on a transport safety investigation any submissions made in response to a draft report or draft recommendations, safety action statements or safety recommendations.
- (4) If the Chief Investigator discontinues an investigation, the Chief Investigator must provide to the Minister, within 28 days, a written report setting out the reasons for discontinuing the investigation and a report on the investigation.
- (5) In this section:

**safety action statement** means a statement:

  - (a) setting out any safety issues identified during the course of an investigation that should be addressed, or
  - (b) setting out any steps taken by persons to remedy safety issues identified during the course of an investigation.

### **138 Obligations of persons who receive draft reports or recommendations**

- (1) A person must not copy, or disclose to a person or a court, the contents of a draft report or draft recommendations provided to the person under this Division, except:
  - (a) as required or authorised by or under this or any other Act, or
  - (b) where necessary to take steps to remedy safety issues identified in the draft report, or
  - (c) where necessary to prepare submissions on the draft report or draft recommendations.

Maximum penalty: 100 penalty units.

- (2) A person who is provided with a draft report under this Division:
  - (a) cannot be required to disclose it to a person or a court, and
  - (b) is not entitled to take any disciplinary action against an employee of the person on the basis of the report.

### **139 Compliance with subpoenas and directions relating to safety incidents**

A person who is or was the Chief Investigator or a transport safety investigator is not obliged to comply with a subpoena or similar direction of a court in relation to civil proceedings to attend and answer questions relating to an accident or incident or other event, occurrence, practice or matter the subject of a transport safety investigation, if the Chief Investigator has issued a certificate stating that the person is or was involved in any such transport safety investigation.

## **Division 3 Transport safety inquiries**

### **140 Minister may constitute Board of Inquiry for transport safety inquiry**

- (1) The Minister may constitute one or more persons as a Board of Inquiry to conduct an inquiry into and report on any transport accident or incident or any other event, occurrence, practice or matter that may affect the safe provision of railway operations, a bus service or a ferry service (a **transport safety inquiry**).
- (2) The Board of Inquiry must, within the period required by the Minister, prepare a report as to the causes of the accident or incident or on the event, occurrence, practice or matter and provide a copy of the report to the Minister.
- (3) The Minister may not terminate a transport safety inquiry.
- (4) 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 2009*.

#### **141 Chief Investigator may request transport safety inquiry**

- (1) The Chief Investigator may, if he or she considers it to be appropriate in the circumstances, by written notice to the Minister, request that a transport safety inquiry be conducted into any transport accident or incident or any other event, occurrence, practice or matter that may affect the safe provision of railway operations, a ferry service or a bus service.
- (2) If the Minister receives a request under this section, 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.

#### **142 Conduct of transport safety inquiry**

- (1) A Board of Inquiry is to determine its own procedure, except as provided by this Act or the regulations.
- (2) A Board of Inquiry may, at a transport safety inquiry, take evidence on oath or affirmation and, for that purpose, the person or persons 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.
- (3) 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.
- (4) If the Board of Inquiry agrees, an agent (including a legal practitioner) may represent a person or body at a transport safety inquiry.

#### **143 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.

#### **144 Witnesses and evidence at transport safety inquiries**

- (1) A Board of Inquiry may summon a person to appear at a transport safety inquiry 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 body corporate, 500 penalty units or, in the case of a second or subsequent offence by a body corporate under this section, 750 penalty units, or
- (b) in the case of an individual, 250 penalty units or, in the case of a second or subsequent offence by an individual under this section, 375 penalty units.

#### **145 Compliance with subpoenas and directions relating to safety incidents**

A person who is or was a member of a Board of Inquiry or an authorised officer is not obliged to comply with a subpoena or similar direction of a court in relation to civil proceedings to attend and answer questions relating to an accident or incident or other event, occurrence, practice or matter the subject of a transport safety inquiry, if the Minister has issued a certificate stating that the person is or was involved in a transport safety inquiry.

## **Division 4 Transport safety investigators**

### **146 Appointment of transport safety investigators**

- (1) 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 a transport safety investigation.

**Note—**

Section 45DA of the *Transport Administration Act 1988* permits the Chief Investigator to delegate any of his or her functions.

- (2) The Chief Investigator must issue a transport safety investigator with an identity card.
- (3) The identity card must:
  - (a) be in the form approved by the Minister, and
  - (b) contain a recent photograph of the person.
- (4) A transport safety investigator must not exercise a function conferred by or under this Act unless an identity card has been issued to the investigator by the Chief Investigator.

### **147 Identity cards**

- (1) This section applies to a transport safety investigator who is exercising, or about to exercise, a function under this Act.
- (2) A transport safety investigator must:
  - (a) carry his or her identity card at all times when exercising a power under this Act to enter premises or a power that is exercisable after entering premises, and
  - (b) produce his or her identity card if requested to do so by a person in relation to whom the investigator is exercising, or about to exercise, the power.
- (3) A person who has ceased to be a transport safety investigator must not, without reasonable excuse, refuse or fail to return to the Chief Investigator, within the period specified by the Chief Investigator in a request for the return of the card, any identity card issued to the person by the Chief Investigator.
- (4) Subsection (2) does not apply to a power conferred by a search warrant.

Maximum penalty: 15 penalty units.

### **148 Functions relating to transport safety investigations**

A transport safety investigator may exercise the functions conferred by Part 1 of Schedule 1 if the investigator believes on reasonable grounds that it is necessary to do so for the

purposes of, or in connection with, a transport safety investigation.

## **Division 5 Miscellaneous**

### **149 Tabling of reports of transport safety investigations and transport safety inquiries**

- (1) The Minister is to lay (or cause to be laid) a report on a transport safety investigation or a transport safety inquiry 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.

### **150 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 or rail safety workers (within the meaning of the *Rail Safety National Law (NSW)*) of matters that may affect the safe provision of railway operations, a ferry service or a bus service.
- (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) In this section:

**regulator** means:

- (a) in relation to a bus service or a ferry service—RMS, or
- (b) in relation to railway operations—the National Rail Safety Regulator under the *Rail Safety National Law (NSW)*, or
- (c) any other person prescribed by the regulations for the purposes of this definition.

### **151 Recommendations arising from investigations**

- (1) The Minister, in consultation with RMS, may, by written notice, direct a person who carries on a ferry service to comply with a recommendation contained in a report on a transport safety investigation or transport safety inquiry provided to the Minister under this Part.
- (2) A person who, without reasonable excuse, fails to comply with a requirement of the Minister under this section is guilty of an offence.

Maximum penalty: 1,000 penalty units.

## **Part 9 Enforcement**

### **Division 1 Authorised officers**

#### **152 Appointment of authorised officers by TfNSW**

- (1) TfNSW may appoint a member of staff of a transport authority, or a person of a class prescribed by the regulations for the purposes of this section, to be an authorised officer for the purposes of this Act.
- (2) An authorised officer appointed by TfNSW may exercise the functions of an authorised officer under this Act for:
  - (a) the enforcement of passenger service contracts, and
  - (b) matters other than matters related to the functions of RMS, and

(c) matters related to the functions of RMS, with the approval of RMS.

- (3) A person appointed by TfNSW to be an authorised officer may be appointed only in relation to rail passenger services and railway premises (a **rail officer**).
- (4) A rail officer may exercise the functions of an authorised officer under this Act only in relation to rail passenger services and railway premises.
- (5) In this section and section 153, **transport authority** means TfNSW, RMS, the State Transit Authority, Sydney Trains and NSW Trains.

### **153 Appointment of authorised officers by RMS**

- (1) RMS may appoint a member of staff of a transport authority, or a person of a class prescribed by the regulations for the purposes of this section, to be an authorised officer for the purposes of this Act.
- (2) An authorised officer appointed by RMS may exercise the functions of an authorised officer under this Act for:
  - (a) matters related to the functions of RMS, and
  - (b) matters related to the functions of TfNSW, with the approval of TfNSW.

### **154 Appointment of Commonwealth officers for specific matters**

TfNSW or RMS 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.

### **155 Limitations on functions**

The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions, and to the cases, specified in the instrument of appointment.

### **156 Identity cards must be issued**

- (1) TfNSW or RMS must issue an authorised officer appointed by TfNSW or RMS with an identity card.
- (2) The identity card must:
  - (a) be in the form approved by the Minister, and
  - (b) contain a recent photograph of the person.
- (3) An authorised officer must not exercise a function conferred by or under this Act unless an identity card has been issued to the authorised officer by TfNSW or RMS.

(4) This section does not apply to an authorised officer who is a police officer.

### **157 Identity cards to be shown**

- (1) This section applies to an authorised officer who is exercising, or about to exercise, a function under this Act.
- (2) An authorised officer must:
  - (a) carry his or her identity card at all times when exercising a power under this Act to enter premises or a vehicle or a power that is exercisable after entering premises or a vehicle, and
  - (b) produce his or her identity card if requested to do so by a person in relation to whom the officer is exercising, or about to exercise, the power.
- (3) A person who has ceased to be an authorised officer must not, without reasonable excuse, refuse or fail to return to TfNSW or RMS, within the period specified by TfNSW or RMS in a request for the return of the card, any identity card issued to the person by TfNSW or RMS.
- (4) Subsection (2) does not apply to a power conferred by a search warrant or to a power exercised by an authorised officer who is a police officer.

Maximum penalty: 15 penalty units.

### **158 Functions of authorised officers**

An authorised officer may exercise the functions conferred by Part 2 of Schedule 1 if the officer believes on reasonable grounds that it is necessary to do so for the purposes of this Act, including the following purposes:

- (a) an inspection, transport safety inquiry or other inquiry under this Act,
- (b) to determine whether there has been a contravention of this Act, the regulations or the terms of an accreditation, driver authority, licence, passenger service contract, requirement or exemption under this Act.

### **159 Inspections**

- (1) RMS may cause inspections to be carried out to ensure that the operator of a public passenger service (other than a service provided by an aircraft) is complying with the terms of the operator's accreditation and the requirements of this Act relating to a safety management system.
- (2) RMS or TfNSW may cause inspections to be carried out to ensure that the operator of a public passenger service is complying with the operator's passenger service contract.

- (3) Inspections under this section may be carried out at such intervals as RMS or TfNSW thinks fit.
- (4) For the purposes of this section, RMS or TfNSW may cause the following to be inspected:
  - (a) the performance of transport safety employees,
  - (b) any vehicle used for the purposes of a public passenger service and any equipment, furnishings or fittings in or about the vehicle,
  - (c) the operation of a public passenger service,
  - (d) any other thing RMS or TfNSW considers to be relevant to the safe carrying on of a public passenger service.

## **Division 2 Offences**

### **160 Offences relating to inspections and investigations**

- (1) A person must not, without reasonable excuse, hinder or obstruct an authorised officer or a transport safety investigator in a manner that interferes with the exercise by the officer or investigator of his or her functions under this Act or the regulations.
- (2) The occupier or person in charge of any place or land entered by an authorised officer or a transport safety investigator under this Act must not, without reasonable excuse, fail to provide the officer or investigator with all reasonable assistance for the effective exercise of the officer's or investigator's functions under this Act or the regulations.
- (3) A person must not, without reasonable excuse, fail to answer questions or provide information when required to do so by an authorised officer or a transport safety investigator in the exercise of the officer's or investigator's functions under this Act or the regulations.
- (4) A person must not, without reasonable excuse, fail to produce for inspection any documents or other things when required to do so by an authorised officer or transport safety investigator in the exercise of the officer's or investigator's functions under this Act or the regulations.

Maximum penalty:

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

### **161 Offences involving credentials**

A person who:

- (a) by any statement or misrepresentation that the person knows to be false, obtains or attempts to obtain any accreditation, driver authority or licence under this Act or procures or attempts to procure a passenger service contract, or
- (b) forges or fraudulently alters or uses any such accreditation, driver authority or licence, or
- (c) fraudulently allows any such accreditation, driver authority or licence to be used by any other person,

is guilty of an offence.

Maximum penalty: 20 penalty units.

### **162 Offenders to state name and address**

- (1) A person may be required to state his or her full name and residential address by an authorised officer if the authorised officer:
  - (a) reasonably suspects the person to be committing or to have committed an offence against this Act or the regulations, or
  - (b) reasonably suspects the person to be committing or to have committed an offence against the *Graffiti Control Act 2008* on railway premises, or
  - (c) finds the person in circumstances that lead, or has information that leads, the officer reasonably to suspect the person has committed such an offence.

(2) A person who:

- (a) without reasonable excuse, fails or refuses to comply with the requirements of an authorised officer made under subsection (1), 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 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 an authorised officer or, in the case of an authorised officer who is a police officer, as a police officer.
- (4) The authorised officer may also request the person to provide evidence of the

correctness of the stated name or required address.

### **163 Prohibited advertisements**

- (1) A person must not cause to be published any advertisement for a service involving the use of a vehicle if:
  - (a) an operator of that kind of service is required to be accredited under this Act and the operator is not so accredited, or
  - (b) that kind of vehicle is required to be licensed under this Act and the vehicle is not so licensed.

Maximum penalty: 50 penalty units.

- (2) In this section:

***publish*** means disseminate or provide access to the public or a section of the public by means of radio, television, the Internet, newspapers, billboards, cinemas or other media.

### **164 Return of accreditations, driver authorities and licences**

- (1) A person to whom an accreditation, driver authority or licence under this Act was granted must immediately return it to RMS if the accreditation, driver authority or licence is suspended or cancelled or otherwise ceases to be in force.
- (2) The holder of a taxi licence or hire car licence under this Act must, if the licence is suspended for a period of more than 28 days or cancelled or otherwise ceases to have effect, return the number-plates allocated to the vehicle under the licence to RMS or the Commissioner of Police within 7 days of the suspension, cancellation or licence otherwise ceasing to have effect.

Maximum penalty: 25 penalty units.

## **Division 3 Proceedings for offences**

### **165 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, 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) Subsection (1) does not apply in respect of a contravention of a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.
- (3) 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.

- (4) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **166 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (10) In this section:

***authorised officer*** means:

- (a) a police officer, or
- (b) another authorised officer authorised in writing by TfNSW or RMS as an authorised officer for the purposes of this section.

### **167 Nature of proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 500 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.
- (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.

### **168 Additional penalties for railway offences affecting safety**

- (1) This section applies to an offence committed on or in relation to railway premises or any station or platform.
- (2) If a court that convicts a person for an offence against the regulations is satisfied that the offence was committed in circumstances of aggravation, the court may impose a penalty for the offence not exceeding 250 penalty units.
- (3) For the purposes of this section, **circumstances of aggravation** are that the actions of the offender that constituted the offence:
  - (a) caused or contributed to appreciable danger or harm to any persons, animals, premises or property, or
  - (b) were reasonably likely to cause or contribute to such danger or harm (whether or not any such danger or harm was actually caused).

## **Part 10 Miscellaneous**

### **169 Review of decisions**

- (1) A person aggrieved by a reviewable decision may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision.
- (2) The following are **reviewable decisions**:
  - (a) a decision to refuse an application for an accreditation, a driver authority or a



licence under this Act,

- (b) a decision to suspend or cancel an accreditation, a driver authority or a licence under this Act,
- (c) a decision to vary a condition of an accreditation, a driver authority or a licence, or to impose or revoke a condition of an accreditation, a driver authority or a licence, under this Act,
- (d) a decision prescribed by the regulations for the purposes of this section.

(3) A reviewable decision has effect from the time notice is given and continues in effect unless it is rescinded by TfNSW or RMS or by the Tribunal when determining a review application.

### **170 Exchange of information**

- (1) RMS and TfNSW may each enter into an arrangement (an **information sharing arrangement**) with the other or a relevant agency for the purposes of sharing or exchanging information held by RMS, TfNSW or 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,
  - (c) information concerning any proceedings commenced against the holder of an accreditation, driver authority or licence for an offence having a maximum penalty of imprisonment for 12 months or more,
  - (d) any other information that may be prescribed by the regulations.
- (3) Under an information sharing arrangement, each party to the arrangement is, 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 RMS or TfNSW 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 RMS, TfNSW 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 139 or 145.

(6) In this section:

**relevant agency** means:

- (a) SafeWork NSW as referred to in clause 1 of Schedule 2 to the *Work Health and Safety Act 2011*, or
- (b) the Commissioner of Police or a person holding an equivalent position in relation to the police force of another State or Territory or the Australian Federal Police, or
- (c) IPART, or
- (d) the Chief Investigator, or
- (e) any other person or body prescribed by the regulations.

#### **171 Disclosure of accreditation and other information**

- (1) RMS or TfNSW may disclose, or permit the disclosure of, information about the following:
  - (a) the accreditation, authorisation or licensing status of, or an application for an accreditation, driver authority or licence by, a person,
  - (b) the compliance of a driver with requirements imposed by the regulations on drivers relating to medical examinations or qualifications.
- (2) A person may disclose information referred to in subsection (1) about a person if permitted to do so by RMS or TfNSW.
- (3) RMS or TfNSW may disclose, or permit the disclosure of, information under this section only if it is satisfied that it is reasonably necessary for the purposes of this Act or the regulations.
- (4) Information may be disclosed under this section whether or not the information also discloses the identity of a person or information from which the identity of the person may be obtained.
- (5) This section does not limit the disclosure of information under any other provision of this Act.

#### **172 Records and evidentiary matters**

- (1) RMS must keep records of the grant, refusal, variation, suspension and cancellation of accreditations, authorities, authorisations and licences under this Act (other than air

transport service accreditations and air route licences).

(2) TfNSW must keep records of the making, variation, suspension and cancellation of passenger service contracts and of the grant, refusal, variation, suspension and cancellation of accreditations to operate air transport services and air route licences.

(3) A certificate purporting to be signed by a person approved by RMS or TfNSW for the purposes of this section (***the approved person***) and certifying that:

(a) on a date specified in the certificate, or

(b) during any period so specified,

the particulars set out 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.

(4) The certificate is admissible in any proceedings:

(a) without proof of the authenticity of the approved person's signature, and

(b) without production of any record or document on which the certificate is founded.

(5) 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.

### **173 Ferry services—drug and alcohol programs and testing**

(1) **Drug and alcohol programs** An operator of a ferry service must:

(a) prepare and implement a drug and alcohol program for its transport safety employees that complies with guidelines approved by TfNSW 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 RMS, if requested by RMS in writing to do so, as to the implementation of the operator's drug and alcohol program.

Maximum penalty: 500 penalty units.

- (2) The drug and alcohol program is to include any matters required to be included by the guidelines approved by TfNSW 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) **Random testing** RMS may at any time arrange with an operator of a ferry service for the random testing of any person about to carry out transport safety work or on duty for the purposes of carrying out transport safety work for the presence of alcohol or any other drug to ensure that the operator is complying with the conditions imposed by this section.
- (5) **Definition** 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.
- (6) **Other Acts not affected** Nothing in this Act or the regulations derogates from the operation of Part 3 of and Schedule 1 to the [Marine Safety Act 1998](#).

**Note—**

Schedule 2 contains regulation-making powers for procedures for testing for alcohol and other drugs.

#### **174 Fees, charges and levies**

- (1) Any fees, charges or levies payable under this Act or the regulations may be recovered by RMS or TfNSW as a debt in any court of competent jurisdiction.
- (2) The amount of a fee for a taxi licence or hire car licence determined or prescribed under this Act may exceed the amount required to cover the administrative or other costs of the matter to which it relates.

#### **175 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be given to any person may be given by:

(a) in the case of a natural person:

- (i) delivering it to the person personally, or
- (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
- (iii) sending it by email to the email address of the person or by facsimile transmission to the facsimile number of the person, or

(b) in the case of a body corporate:

- (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
- (ii) sending it by email to the email address of the body corporate or by facsimile transmission to the facsimile number of the body corporate.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be given to a person in any other manner.

## **176 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 matters set out in Schedule 2.
- (3) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units (in the case of a body corporate) and 50 penalty units (in any other case).
- (4) An offence under a regulation relating to the unauthorised use of a limited access transit corridor may be made punishable by a penalty not exceeding 1,000 penalty units (in the case of a body corporate) and 500 penalty units (in any other case).
- (5) The regulations may exempt or provide for the exemption, unconditionally or subject to conditions, from any or all of the provisions of this Act of persons, vehicles, public passenger services or rail passenger services or any class of persons, vehicles, public passenger services or rail passenger services.
- (6) The regulations may apply, adopt or incorporate (with or without changes) any

publication as in force at a particular time or as in force from time to time.

### **177 Additional matters relating to drug and alcohol testing**

- (1) An offence under a regulation relating to the following matters may, in addition to the penalty provided for by this Act for offences under the regulations, be made punishable by a period of imprisonment not exceeding 9 months:
  - (a) 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,
  - (b) a refusal or failure by a transport safety employee to undergo tests or otherwise comply with test procedures relating to alcohol or other drugs,
  - (c) interference by a transport safety employee with results of such tests.
- (2) Subject to the regulations, section 109 (Measurement of alcohol concentrations) of the *Road Transport Act 2013* 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 that Act.

### **178 Compensation not payable**

- (1) Compensation is not payable by or on behalf of the State:
  - (a) because of the enactment or operation of this Act, or for any consequence of that enactment or operation, or
  - (b) because of any statement or conduct relating to the enactment or operation of this Act.
- (2) In this section:

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

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**operation of this Act** includes the operation of any inquiry, notice or order under this Act and any contract or other agreement entered into under or for the purposes of this Act.

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

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

**the State** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer, employee or agent of the Crown.

## 179 Repeals

The following Acts are repealed:

*Air Transport Act 1964*

*Passenger Transport Act 1990*

## 180 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Investigation and inspection powers

(Sections 148 and 158)

### Part 1 Powers of transport safety investigators

#### 1 Definitions

In this Part:

**accident site** means any of the following sites associated with a transport accident or incident:

- (a) a site containing a bus, ferry or rolling stock or wreckage of a bus, ferry or rolling stock,
- (b) a site where there is an impact point associated with a transport accident or incident,
- (c) a site where a transport accident or incident occurred,
- (d) if the accident or incident involved destruction or serious damage to property (other than a bus, ferry or rolling stock), a site containing that property or its wreckage,
- (e) any area around a site referred to in paragraph (a), (b), (c) or (d) that the Chief Investigator determines is reasonably necessary to facilitate a transport safety investigation and for securing any such site.

**notifiable occurrence:**

- (a) in relation to railway operations—has the same meaning as it has in the *Rail Safety National Law (NSW)*, and
- (b) in relation to a bus—means an occurrence required to be reported under section 132.

**premises** includes any place, vehicle or railway premises.

**rolling stock** has the same meaning as it has in the *Rail Safety National Law (NSW)*.

**special premises** means:

- (a) an accident site, or
- (b) premises that it is necessary to enter to get into an accident site, or
- (c) a vehicle.

**vehicle** includes rolling stock.

**Note—**

Section 148 sets out the circumstances in which transport safety investigators may exercise the powers set out in this Part.

## **2 Power to enter special premises without consent or warrant**

- (1) A transport safety investigator may enter special premises without the occupier's consent and without obtaining a search warrant if:
  - (a) the investigator believes on reasonable grounds that it is necessary to do so for the purposes of an investigation, and
  - (b) the investigation is into a notifiable occurrence.
- (2) Before entering special premises under this clause, the transport safety investigator must take reasonable steps to give to the occupier of the premises a written notice setting out the occupier's rights and obligations under this Act in relation to the powers that may be exercised on entry.

## **3 Power to enter premises with consent**

- (1) A transport safety investigator may enter any premises with the consent of the occupier of the premises.
- (2) Before obtaining the consent of a person to enter premises under this Part, a transport safety investigator must inform the person that the person may refuse consent.

## **4 Power to enter premises with search warrant**

A transport safety investigator may enter any premises under a search warrant.

**Note—**



A transport safety investigator may apply for a search warrant for a transport safety investigation under clause 10.

## 5 Powers after entering premises

- (1) **General powers** A transport safety investigator who enters premises under this Part (including under a search warrant) may do any of the following:
- (a) search and inspect the premises and anything on the premises for anything relevant to a transport safety investigation,
  - (b) take measurements, make surveys and take levels, dig trenches, break up the soil and set up any posts, stakes or markers,
  - (c) take photos and make video recordings, sound recordings or other records of the premises or anything on the premises,
  - (d) make copies of anything relevant to a transport safety investigation found on the premises,
  - (e) examine, take measurements of, conduct tests on, or take samples of, anything relevant to a transport safety investigation found on the premises,
  - (f) operate equipment on the premises in order to access anything relevant to a transport safety investigation found on the premises,
  - (g) remove a thing that is relevant to a transport safety investigation from the premises with the consent of:
    - (i) the owner of the thing, if it is practicable to obtain the consent of the owner, or
    - (ii) the occupier of the premises, if it is not practicable to obtain the owner's consent.
- (2) **Obtaining consent** Before obtaining the consent of a person to remove a thing from premises under subclause (1), the transport safety investigator must inform the person of the purpose for which the thing is required and that the person may refuse consent. A consent of a person is not effective for the purposes of subclause (1) (g) unless the consent is voluntary.
- (3) **Special premises** A transport safety investigator who enters special premises (other than under a search warrant) may also:
- (a) require a person on the premises to answer questions or produce anything relevant to a transport safety investigation, and
  - (b) seize that thing, or any other thing found on the premises, if the thing is directly relevant to the investigation concerned and the investigator believes on reasonable grounds that it is necessary to seize the thing in order to prevent it

being interfered with or to prevent its concealment, loss, deterioration or destruction.

- (4) **Entry under a search warrant** A transport safety investigator who enters premises under a search warrant may also:
- (a) require a person on the premises to answer questions or produce anything to which the warrant relates, and
  - (b) seize that thing, or any other thing found on the premises relevant to the investigation concerned.
- (5) **Offence** A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this clause.

Maximum penalty: 100 penalty units.

## **6 Occupier entitled to be present during search**

- (1) The occupier of premises who is present when a search warrant for the premises is being executed is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the occupier impedes the search.
- (3) This clause does not prevent 2 or more areas of the premises being searched at the same time.

## **7 Securing a site**

- (1) For the purpose of protecting evidence that might be relevant for a transport safety investigation or ensuring safety, a transport safety investigator may secure the perimeter of any site at a place entered under this Part by whatever means the investigator considers appropriate.
- (2) A person must not, without the permission of a transport safety investigator, enter or remain at a site the perimeter of which is secured under this clause.

Maximum penalty: 1,000 penalty units.

- (3) Subclause (2) does not apply if the person enters the site, or remains at the site:
  - (a) to ensure the safety of persons, or
  - (b) to remove deceased persons or animals from the site, or
  - (c) to move a vehicle, or the wreckage of a vehicle, to a safe place, or
  - (d) to protect the environment from significant damage or pollution.

- (4) A transport safety investigator must not unreasonably withhold a permission referred to in subclause (2).

## **8 Power to stop and detain vehicles**

- (1) This clause applies if a transport safety investigator believes on reasonable grounds that:
- (a) information or other material that is relevant to a transport safety investigation is in or on rolling stock, a ferry or a bus, and
  - (b) it is necessary to exercise other functions under this Part in order to prevent the information or material from being removed from this State or from being interfered with or to prevent its concealment, loss, deterioration or destruction.
- (2) The transport safety investigator may stop and detain the rolling stock, bus or ferry for the purpose of exercising those other functions. The transport safety investigator may do so with such assistance, and using such force, as is necessary and reasonable.
- (3) The transport safety investigator must not detain the rolling stock, bus or ferry for longer than is necessary and reasonable to exercise those other functions.

## **9 Retention of documents and other material**

- (1) This clause applies to the following material:
- (a) a document or other thing produced under this Part,
  - (b) a thing seized under this Part.
- (2) The Chief Investigator or a transport safety investigator must provide a receipt for the document or thing.
- (3) The Chief Investigator may make copies of the document or thing.
- (4) The Chief Investigator may examine or test the document or thing, even though that might result in damage or destruction of the document or thing or a reduction in its value.
- (5) The Chief Investigator must return the document or thing when it is no longer needed for the purpose of an investigation. However, if there is no owner or the Chief Investigator cannot, despite making reasonable efforts, locate the owner, the Chief Investigator may dispose of the document or thing in such manner as the Chief Investigator thinks appropriate.
- (6) Despite subclause (5), the Chief Investigator must make the document or thing available to a relevant body on the written request of the body for the purposes of:
- (a) an investigation under a law of the Commonwealth or another State or Territory,

or

(b) a coronial inquest or inquiry.

(7) The Chief Investigator is not required to comply with any such request:

(a) to the extent that the document or thing is or contains restricted information or an on-board recording, or

(b) if the Chief Investigator is of the opinion that making the document or thing available would be likely to interfere with any transport safety investigation to which the document or thing relates.

(8) In this clause:

**on-board recording** means a recording:

(a) that consists of (or consists mainly of) sounds or images, or sounds and images, of persons in the control area of rolling stock, a bus or a ferry, and

(b) that was made in order to comply with a law of this State, and

(c) any part of which was made at the time of the occurrence of an accident or incident that involved the rolling stock, bus or ferry.

**owner** includes an agent of an owner.

**relevant body** means:

(a) a public service agency within the meaning of the [Government Sector Employment Act 2013](#), or

(b) a NSW government agency, or

(c) an agency of the Commonwealth or another State or Territory, or

(d) a State or Territory Government, or

(e) a coroner.

**restricted information** means any of the following:

(a) all statements (whether oral or in writing) obtained from persons by the Chief Investigator or a transport safety investigator in the course of a transport safety investigation (including any record of such a statement),

(b) all information recorded by the Chief Investigator or a transport safety investigator in the course of a transport safety investigation,

(c) all communications with a person involved in the operation of rolling stock, a ferry, a bus or other vehicle that is or was the subject of a transport safety investigation,

- (d) medical or private information regarding persons (including deceased persons) involved in a matter that is being investigated,
- (e) information in relation to rolling stock, a ferry, a bus or other vehicle that is or was the subject of a transport safety investigation, recorded for the purposes of monitoring or directing the progress of the vehicle from one place to another or information recorded in relation to the operation of the vehicle,
- (f) records of the analysis of information or material acquired in the course of a transport safety investigation (including opinions expressed by a person in that analysis),
- (g) information that is contained in a document produced on entry to premises under this Part,
- (h) information contained in a report made under a voluntary reporting scheme,
- (i) information obtained or generated by the Chief Investigator in the course of considering a report made under a voluntary reporting scheme,
- (j) records of the analysis of information contained in a report made under a voluntary reporting scheme (including opinions expressed by a person in that analysis).

## **10 Search warrants**

- (1) A transport safety investigator may apply to an issuing officer for a search warrant if the applicant has reasonable grounds for believing that there is on premises evidence or a thing that is relevant to a transport safety investigation.
- (2) An issuing officer to whom an application for a search warrant is made under this clause may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a transport safety investigator named in the warrant, when accompanied by a police officer, and any other person named in the warrant:
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence or a thing that is relevant to a transport safety investigation.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this clause.
- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer:
  - (a) may accompany a transport safety investigator executing a search warrant issued under this clause, and
  - (b) may take all reasonable steps to assist the transport safety investigator in the

exercise of the investigator's functions under this clause.

(5) In this clause:

**issuing officer** means an authorised officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

## Part 2 Powers of authorised officers

### 11 Definitions

In this Part:

**premises** includes any place, vehicle or railway premises.

**vehicle** includes rolling stock.

**Note—**

Section 158 sets out the circumstances in which authorised officers may exercise the powers set out in this Part.

### 12 Power of entry onto transport premises

- (1) An authorised officer may enter the following premises without the occupier's consent and without obtaining a search warrant:
  - (a) premises the officer reasonably suspects are being used for the purposes of a public passenger service, taxi network service or taxi booking service,
  - (b) railway premises.
- (2) An authorised officer may enter the premises only at the following times:
  - (a) at any reasonable time during the day,
  - (b) at any time at which the service is being operated or a related activity is occurring or is usually carried out on the premises,
  - (c) at any other time the premises are open for entry.
- (3) This clause does not apply to premises or any part of premises used as a residence.

### 13 Power to enter premises with consent

- (1) An authorised officer may enter any premises with the consent of the occupier of the premises.
- (2) Before obtaining the consent of a person to enter premises under this Part, an authorised officer must inform the person that the person may refuse consent.

#### **14 Power to enter residential premises**

An authorised officer may enter premises or any part of premises used as a residence only with the consent of the occupier of the premises or under the authority conferred by a search warrant.

#### **15 Notice of entry**

Before entering premises under this Part without the consent of the occupier, an authorised officer must give the occupier or person reasonable notice of the intention to enter the premises unless:

- (a) notice would defeat the purpose for which entry is required, or
- (b) it is an emergency.

#### **16 Powers after entering premises**

An authorised officer who enters premises under this Part (including under a search warrant) may do any of the following:

- (a) inspect any vehicle that the officer reasonably believes is being used for a public passenger service (a **transport vehicle**),
- (b) inspect or test any meter, communications device or other equipment, or inspect any furnishings or fittings, in, on or about a transport vehicle,
- (c) by written notice given to the owner or person in charge of a transport vehicle or equipment, require the owner or person to have the vehicle or equipment inspected or tested within the period specified in the notice,
- (d) inspect any maintenance facilities, equipment or apparatus used for the purposes of or in connection with a public passenger service,
- (e) take photos and make video recordings, sound recordings or other records of the premises or anything on the premises,
- (f) make copies of anything relevant to an inspection, investigation or inquiry found on the premises and retain any such thing for the period necessary to do so,
- (g) examine, take measurements of, conduct tests on, or take samples of, anything relevant to an inspection or a transport safety investigation,
- (h) search for evidence of any contravention of this Act or the regulations or of the terms of an accreditation, driver authority, licence or passenger service contract, or of the conditions of an accreditation, driver authority or licence,
- (i) search for and inspect relevant documents,

- (j) require any person on the premises to produce to the officer any relevant documents in the person's custody or under the person's control,
- (k) require any person on the premises to answer questions or otherwise give information in relation to the matter the subject of the inspection, investigation or inquiry,
- (l) seize anything that the officer suspects on reasonable grounds is connected with an offence against this Act or the regulations and secure the thing against interference.

#### **17 Power to stop and detain vehicle**

- (1) This clause applies if an authorised officer is authorised to inspect or test a vehicle or equipment on a vehicle.
- (2) The authorised officer may stop and detain a vehicle that is being used on a road or road related area for the purpose of exercising those functions. The authorised officer may do so with such assistance, and using such force, as is necessary and reasonable.
- (3) The authorised officer may require the driver or person in charge of the vehicle to comply with any reasonable direction by the 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 or equipment.
- (4) A direction to stop the vehicle may be given by the authorised officer by displaying a sign or by any other reasonable method.
- (5) If a vehicle has been stopped in compliance with a direction under this clause, any inspection and testing of the vehicle or equipment 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.

#### **18 Notices requiring inspection or testing**

A notice under this Part 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.

#### **19 Powers when inspecting vehicles**

An authorised officer who is authorised to inspect a vehicle may:

- (a) enter and remain in or on the vehicle, and



- (b) enter and remain on any premises where the vehicle is located, and
- (c) operate the vehicle and any operable equipment in, on or about the vehicle.

## **20 Securing a site**

- (1) For the purpose of protecting evidence that might be relevant for an investigation or inquiry or ensuring safety, an authorised officer may secure the perimeter of any site at a place entered under this Part by whatever means the officer or RMS considers appropriate.
- (2) A person must not, without the permission of an authorised officer, enter or remain at a site the perimeter of which is secured under this clause.

Maximum penalty: 1,000 penalty units.

- (3) Subclause (2) does not apply if the person enters the site, or remains at the site:
  - (a) to ensure the safety of persons, or
  - (b) to remove deceased persons or animals from the site, or
  - (c) to move a vehicle, or the wreckage of a vehicle, to a safe place, or
  - (d) to protect the environment from significant damage or pollution.
- (4) An authorised officer must not unreasonably withhold a permission referred to in subclause (2).

## **21 Production of documents**

- (1) An authorised officer may, by written notice, require a person to produce documents or information.
- (2) The notice must specify the manner in which documents or information are required to be produced and a reasonable time by or at which they must be produced.
- (3) If any document required by the notice to be produced is in electronic form or a form other than writing, the notice requires the document to be produced in writing, unless the notice otherwise provides.

## **22 Retention of documents and other material**

- (1) This clause applies to the following material:
  - (a) a document or other thing produced under this Part,
  - (b) a thing seized under this Part.
- (2) An authorised officer must provide a receipt for the document or thing.

- (3) An authorised officer may make copies of the document or thing.
- (4) An authorised officer may examine or test the document or thing, even though that might result in damage or destruction of the document or thing or a reduction in its value.
- (5) An authorised officer must return the document or thing when it is no longer needed for the purpose of an inspection, investigation or inquiry. However, if there is no owner or the authorised officer cannot, despite making reasonable efforts, locate the owner, the authorised officer may dispose of the document or thing in such manner as the authorised officer thinks appropriate.
- (6) Despite subclause (5), an authorised officer must make the document or thing available to a relevant body on the written request of the body for the purposes of:
  - (a) an investigation under a law of the Commonwealth or another State or Territory, or
  - (b) a coronial inquest or inquiry.
- (7) An authorised officer is not required to comply with any such request:
  - (a) to the extent that the document or thing is or contains restricted information or an on-board recording (within the meaning of clause 9), or
  - (b) if the authorised officer is of the opinion that making the document or thing available would be likely to interfere with a transport safety investigation or transport safety inquiry.
- (8) An authorised officer must permit a person who would be entitled to inspect the document or thing were it not in the possession of the authorised officer to inspect the document or thing at any reasonable time and to make copies of the document or thing.
- (9) In this clause:

**owner** includes an agent of an owner.

**relevant body** means:

  - (a) a public sector agency within the meaning of the [Government Sector Employment Act 2013](#), or
  - (b) a NSW government agency, or
  - (c) an agency of the Commonwealth or another State or Territory, or
  - (d) a State or Territory Government, or

(e) a coroner.

**restricted information** means any of the following:

- (a) all statements (whether oral or in writing) obtained from persons by the authorised officer in the course of a transport safety investigation or for the purposes of a transport safety inquiry (including any record of such a statement),
- (b) all information recorded by the authorised officer in the course of a transport safety investigation or for the purposes of a transport safety inquiry,
- (c) all communications with a person involved in the operation of rolling stock, a ferry, a bus or other vehicle that is or was the subject of a transport safety investigation or a transport safety inquiry,
- (d) medical or private information regarding persons (including deceased persons) involved in a matter that is being investigated,
- (e) information in relation to rolling stock, a ferry, a bus or other vehicle that is or was the subject of a transport safety investigation or a transport safety inquiry, recorded for the purposes of monitoring or directing the progress of the vehicle from one place to another or information recorded in relation to the operation of the vehicle,
- (f) records of the analysis of information or material acquired in the course of a transport safety investigation (including opinions expressed by a person in that analysis) or for the purposes of a transport safety inquiry,
- (g) information that is contained in a document produced on entry to premises under this Part.

### **23 Power to require explanation of documents**

- (1) This clause applies to the following documents:
  - (a) a document seized or produced under this Part,
  - (b) a document found on premises or a vehicle inspected under this Part.
- (2) An authorised officer may require a person who was a party to the creation of a document to provide any explanation that the person is able to provide of a matter relating to the creation of the document or to which the document relates.

### **24 Search warrants**

- (1) An authorised officer may apply to an issuing officer for a search warrant if the applicant has reasonable grounds for believing that the provisions of this Act or the regulations or the terms of an accreditation, driver authority, licence, passenger service contract, requirement, authorisation or exemption under this Act have been or

are being contravened on premises.

- (2) An issuing officer to whom an application for a search warrant is made under this clause may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant and any other person named in the warrant:
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act, the regulations or the terms of an accreditation, driver authority, licence, passenger service contract, requirement, authorisation 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 clause.
- (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 clause, and
  - (b) may take all reasonable steps to assist the authorised officer in the exercise of the officer's functions under this clause.
- (5) In this clause:

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

## Part 3 General provisions about investigation powers

### 25 Definitions

In this Part:

**appropriate authority** for an authorised officer means:

- (a) in the case of a function exercised by an authorised officer appointed by TfNSW—TfNSW, or
- (b) in the case of a function exercised by an authorised officer appointed by RMS—RMS.

**investigation officer** means an authorised officer or a transport safety investigator.

### 26 Use of force

An investigation officer must not use any more force than is reasonably necessary to enter premises or a vehicle under this Act or to do anything for which entry is effected.

## 27 Care to be taken

An investigation officer must do as little damage as possible when exercising a function under this Act.

## 28 Compensation

- (1) The appropriate authority for an authorised officer must pay compensation for any damage caused by the authorised officer in the exercise of a power to enter premises or a vehicle under this Act, 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) The Crown must pay compensation for any damage caused by any transport safety investigator in the exercise of a power to enter premises or a vehicle under this Act, other than damage reasonably arising from work done for the purpose of a transport safety investigation.
- (3) Section 178 does not apply to a liability under this clause.

## 29 Provisions relating to requirements to provide documents or information or answer questions

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Act to provide documents or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Act to provide documents or information or to answer a question on the ground that the document, information or answer might incriminate the person or make the person liable to a penalty.
- (3) **Information or answer not admissible if objection made** However, any information provided or answer given by a natural person in compliance with a requirement under this Act is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against section 160) if:
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Documents admissible** Any document provided by a person in compliance with a requirement under this Act is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.

- (5) **Further information** Further information obtained as a result of a document or information provided or an answer given in compliance with a requirement under this Act is not inadmissible on the ground:
- (a) that the document or information had to be provided or the answer had to be given, or
  - (b) that the document or information provided or answer given might incriminate the person.

### **30 Liens not affected**

The seizure or production of a document under this Act does not prejudice the lien of any person on the document.

## **Schedule 2 Regulation-making powers**

(Section 176)

### **1 General regulatory power**

- (1) The regulation and control of vehicles used to provide a public passenger service, their drivers and passengers, railway premises, other public passenger facilities and persons on railway premises or other public passenger services.
- (2) The other provisions of this Schedule do not limit subclause (1).

**Note—**

Vehicles used to provide public passenger services include motor vehicles, vessels, trains and aircraft.

### **2 Conduct**

- (1) Matters relating to the conduct of persons (including drivers) in connection with a public passenger service or a rail passenger service.
- (2) Without limiting subclause (1), the following matters:
  - (a) prohibiting or regulating conduct in or on vehicles used to provide a public passenger service, railway premises, light rail stations, ferry wharves, transport interchanges or other premises used in connection with a public passenger service or public transport infrastructure,
  - (b) trespass on railways,
  - (c) the dress to be worn by drivers of the vehicles, including display of identification or authorisation information,
  - (d) exclusion of persons, animals or freight from railways,
  - (e) authorising drivers of vehicles used to provide a public passenger service, and

authorised persons, to eject persons who contravene the regulations,

- (f) powers and authorities of drivers of vehicles used to provide a public passenger service, and authorised officers, including (but not limited to) requiring the handing over of tickets, vouchers, passes and other authorities to travel for examination,
- (g) the security, safety and order of persons using public passenger services or associated public passenger facilities,
- (h) the protection and preservation of public passenger facilities.

### **3 Public passenger vehicles**

- (1) Matters relating to the use or operation of vehicles used to provide a public passenger service.
- (2) Without limiting subclause (1), the following matters:
  - (a) prohibiting or restricting the use of the vehicles on any specified road, road related area or limited access transit corridor or part of a road, road related area or limited access transit corridor generally or within certain times,
  - (b) requirements for the vehicles, including age, design, equipment and fittings (internal and external),
  - (c) requiring the exhibition of specified public interest notices in or on the vehicles,
  - (d) prohibiting or regulating methods of plying for hire on any or a specified road, road related area or limited access transit corridor.

### **4 Tickets, fares, concessions and subsidised travel**

- (1) Matters relating to the payment of fares for travel on and tickets or authorities for public passenger services.
- (2) Without limiting subclause (1), the following matters:
  - (a) prohibiting persons from travelling on, or attempting to travel on, a vehicle used to provide a public passenger service without holding an appropriate ticket or other form of authority,
  - (b) imposing penalties for failing to pay the appropriate fare or leaving a vehicle or railway premises before paying the appropriate fare,
  - (c) publication of fares or other arrangements for payment for public passenger services,
  - (d) tickets or authorities for travel across services of different kinds and

- apportionment of fares for such travel,
- (e) collection of fares,
- (f) sale of tickets or authorities for travel,
- (g) terms and conditions of tickets, smartcards and other authorities to travel on a public passenger service,
- (h) 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 using a public passenger service.

## **5 Smartcards**

- (1) Matters relating to the use or operation of smartcards and smartcard readers.
- (2) Without limiting subclause (1), the following matters:
  - (a) testing and certification of smartcard readers,
  - (b) admission in legal proceedings as evidence (including conclusive evidence) of:
    - (i) information obtained by smartcard readers, and
    - (ii) certificates as to that information and testing of smartcard readers.

## **6 General operation of services**

- (1) Matters relating to the operation of public passenger services.
- (2) Without limiting subclause (1), the following matters:
  - (a) taking up or setting down passengers,
  - (b) timetables for services,
  - (c) regulating or prohibiting the withdrawal of buses or ferries from ordinary routes for special services,
  - (d) prohibiting any person from touting or calling out or otherwise importuning any person to use a vehicle,
  - (e) signs and notices for the guidance of drivers or passengers,
  - (f) the transport of luggage and other goods, or animals,
  - (g) the declaration of the speed not to be exceeded by buses whether generally or in any specified locality or on any specified road, road related area or limited access transit corridor or any part of a road, road related area or limited access transit corridor.



## **7 Left property**

- (1) Matters relating to property left in vehicles used to provide public passenger services or other railway premises.
- (2) Without limiting subclause (1), the following matters:
  - (a) custody and return of property,
  - (b) disposal and sale for unclaimed property,
  - (c) compensation for such property.

## **8 Accreditations, driver authorities, licences and fees**

- (1) Matters relating to accreditations, driver authorities or licences.
- (2) Without limiting subclause (1), the following matters:
  - (a) fees for processing applications for an accreditation, driver authority or licence or a renewal of an accreditation, driver authority or licence,
  - (b) accreditation, driver authority or licence fees.

## **9 Passenger service contracts**

- (1) Matters relating to passenger service contracts.
- (2) Without limiting subclause (1), the following matters:
  - (a) performance standards,
  - (b) forms and conditions to be observed when submitting applications or tenders,
  - (c) conditions applicable to school bus services or in other special circumstances.

## **10 Advertisements**

- (1) The regulation or prohibition of advertisements relating to public passenger services.
- (2) Without limiting subclause (1), advertisements displayed in or on vehicles used for a service.

## **11 Records**

- (1) Matters relating to the provision of information and keeping of records by operators of public passenger services and owners and drivers of vehicles used for such services.
- (2) Without limiting subclause (1), the following matters:
  - (a) the furnishing of returns by operators, including about financial information,

- (b) the furnishing of returns by owners of vehicles used for public passenger services,
- (c) the inspection of records required to be kept by operators and owners and drivers of vehicles,
- (d) records relating to passenger service contracts.

## **12 Drug and alcohol testing**

Matters relating to drug and alcohol testing of transport safety employees engaged in bus services or ferry services, including the following matters:

- (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.

### **13 Limited access transit corridors**

Matters relating to limited access transit corridors, including the establishment, variation and revocation of limited access transit corridors.

## **Schedule 3 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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

### 2 Definitions

In this Part:

**existing air service licence** means a licence in force under the *Air Transport Act 1964* immediately before the commencement of Part 2 of this Act.

**existing fare determination** means any of the following:

- (a) a determination under section 16AE of the former Act,
- (b) a determination under section 28J of the former Act,
- (c) a determination under section 60A of the former Act,
- (d) a determination under Division 5 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* of pricing for fares and other charges for public passenger services.

**existing service contract** means a contract in force under Part 3 of the former Act immediately before the commencement of Part 3 of this Act.

**former Act** means the *Passenger Transport Act 1990*.

### 3 General savings

- (1) Any act, matter or thing done or omitted to be done under a provision of the former Act and having any force or effect immediately before the commencement of a provision of this Act that replaces that provision is, on that commencement, taken to have been done or omitted to be done under the provision of this Act.
- (2) This clause does not apply:
  - (a) to the extent to which its application is inconsistent with any other provision of this Schedule or a provision of a regulation made under this Schedule, or
  - (b) to the extent that its application would be inappropriate in a particular case.

### 4 Operators of public passenger services

- (1) A person who was, immediately before the commencement of Part 2 of this Act, an accredited service operator for a public passenger service, or an accredited taxi-cab operator for a taxi-cab service, under the former Act is taken to be the holder of an accreditation as an operator for that service under this Act (a **continuing accreditation**).
- (2) A continuing accreditation is subject to any conditions imposed by RMS that applied to the accreditation under the former Act immediately before that commencement and the conditions may be varied or revoked as if they were imposed under this Act.

- (3) The term of a continuing accreditation expires on the day on which it would have expired under the former Act if the former Act had not been repealed, unless it is sooner cancelled under this Act.

## 5 Existing air services

- (1) The holder of an existing air service licence is taken to be the holder of:
  - (a) an air route licence under this Act relating to the route to which the existing air service licence related, and
  - (b) an accreditation to operate an air transport service in relation to that route.
- (2) The air route licence and accreditation are subject to any conditions that applied to the existing air service licence immediately before the commencement of this clause and the conditions may be varied or revoked as if they were imposed under this Act.
- (3) The term of the air route licence and accreditation expire on the day on which the existing air service licence would have expired if the *Air Transport Act 1964* had not been repealed, unless they are sooner cancelled under this Act.
- (4) There is no right to a renewal of an air route licence or accreditation conferred by this clause and no compensation is payable for the loss of any right of renewal available in relation to the existing air service licence.
- (5) An air route to which an existing air service licence applied is taken to be a regulated air route for the purposes of this Act during any period during which the existing air service licence is taken to be an air route licence under this Act.
- (6) A reference in any other Act or instrument to an existing air service licence is taken to be a reference to the air route licence and accreditation conferred in respect of that licence by this clause.

## 6 Drivers

- (1) A person who was, immediately before the commencement of Part 4 of this Act, the holder of an authority to drive a public passenger vehicle, a taxi-cab or a private hire vehicle under the former Act is taken to be the holder of a driver authority as a driver for that vehicle under this Act (a ***continuing authority***).
- (2) A continuing authority is subject to any conditions imposed by RMS that applied to the authority under the former Act immediately before that commencement and the conditions may be varied or revoked as if they were imposed under this Act.
- (3) The term of a continuing authority expires on the day on which it would have expired under the former Act if the former Act had not been repealed, unless it is sooner cancelled under this Act.

- (4) A driver authority card that was in force in relation to the holder of a continuing authority is taken to have been issued under this Act.
- (5) Section 63 of this Act extends to an application for a driver authority if the applicant made an unsuccessful application for a driver authority, or was the holder of the same or a different kind of driver authority that was cancelled, under the former Act within the period referred to in that section.

## **7 Taxi networks**

- (1) A person who was, immediately before the commencement of Part 5 of this Act, an authorised taxi-cab network provider under the former Act is taken to be the holder of an accreditation as an operator for that taxi network and for a taxi booking service under this Act (a **continuing accreditation**).
- (2) A continuing accreditation is subject to any conditions imposed by RMS that applied to the authorisation under the former Act immediately before that commencement and the conditions may be varied or revoked as if they were imposed under this Act.
- (3) The term of a continuing accreditation expires on the day on which it would have expired under the former Act if the former Act had not been repealed, unless it is sooner cancelled under this Act.

## **8 Taxi and hire car licences**

- (1) A person who was, immediately before the commencement of Part 6 of this Act, the holder of a licence for a taxi-cab or a licence for a private hire vehicle under the former Act is taken to be the holder of a taxi licence or a hire car licence in the same terms under this Act (a **continuing licence**).
- (2) A continuing licence is subject to any conditions imposed by RMS that applied to the licence under the former Act immediately before that commencement and the conditions may be varied or revoked as if they were imposed under this Act.
- (3) The term of a continuing licence expires on the day on which the licence would have expired under the former Act if the former Act had not been repealed, unless it is sooner cancelled under this Act.
- (4) To avoid doubt, a continuing licence may be transferred as if it were a licence of the same kind granted under this Act.

### **Note—**

The effect of provisions under Part 12 of Schedule 3 to the former Act relating to certain taxi licences issued before 2009 and, in some cases, before the commencement of the former Act, continue to have effect because of the operation of section 30 of the [Interpretation Act 1987](#).

## **9 Existing applications**

An application made under the former Act or the *Air Transport Act 1964* for a licence, accreditation or authority before the commencement of this clause and not determined before that commencement is taken to be, and is to be determined as if it were, an application for the corresponding licence, accreditation or authority under this Act.

## **10 Close associates**

Section 20 of this Act extends to an application for an accreditation if a close associate of the applicant has previously held an accreditation under the former Act or an existing air service licence for the operation of the same or a different public passenger service that has been cancelled.

## **11 Existing service contracts**

- (1) The repeal of the former Act does not affect an existing service contract.
- (2) The following provisions of the former Act, as in force immediately before the repeal of that Act, continue to apply to or in respect of an existing service contract to which those provisions applied immediately before that repeal:
  - (a) Part 3 (other than Division 1, section 16AE and Subdivisions 3 and 4 of Division 3),
  - (b) Division 2 of Part 5,
  - (c) Part 7 of Schedule 3 (other than clause 38).
- (3) Division 2 of Part 7 of this Act applies to a service provided by an operator under a service contract referred to in section 16AE or 28J of the former Act that is continued in force by this Act in the same way as that Division applies to a passenger service contract and a service provided under a passenger service contract.
- (4) Nothing in this clause affects the operation of section 30 of the *Interpretation Act 1987*.

## **12 Fares and concessions**

- (1) An existing fare determination that applied to a public passenger service immediately before the commencement of Part 7 of this Act continues to apply to the service until a fares order is made applying to the service under that Part.
- (2) An existing fare determination, while so applying, is taken to be a fares order for the purposes of this Act.
- (3) A determination in force under section 88 of the *Transport Administration Act 1988* immediately before the repeal of that section, and any regulations in force under that section before that repeal, continue to have effect until replaced by an order or other provision made under Division 3 or 4 of Part 7 of this Act.

- (4) A scheme for Government subsidised travel, or any scheme for concession fares or free travel for a public passenger service, that was in effect immediately before the commencement of Part 7 of this Act continues to be in effect until replaced by an order or other provision made under Division 4 of Part 7 of this Act.

### **13 Transport safety investigations and inquiries**

- (1) Part 8 of this Act applies to an accident or incident that occurred before, on or after the commencement of that Part.
- (2) A transport safety investigation or transport safety inquiry commenced under the former Act, but not completed before the commencement of Part 8 of this Act, is taken to have been commenced under this Act and this Act applies accordingly.

### **14 Investigation officers**

- (1) An authorised officer who held office under the former Act immediately before the repeal of section 46W of that Act is taken to have been appointed as an authorised officer, on the same terms, under this Act.
- (2) A transport safety investigator who held office under the former Act immediately before the repeal of clause 2 of Schedule 6 to that Act is taken to have been appointed as a transport safety investigator, on the same terms, under this Act.

### **15 Part subject to regulations**

This Part is subject to the regulations under clause 1.

## **Schedule 4 Amendment of Acts**

### **4.1 Civil and Administrative Tribunal Act 2013 No 2**

#### **Schedule 5 Occupational Division**

Omit "*Passenger Transport Act 1990*" from clause 4 (1).

Insert instead "*Passenger Transport Act 2014*".

### **4.2 Fines Act 1996 No 99**

#### **Schedule 1 Statutory provisions under which penalty notices issued**

Omit "*Passenger Transport Act 1990*, section 59".

### **4.3 Government Information (Public Access) Act 2009 No 52**

#### **Schedule 1 Information for which there is conclusive presumption of overriding public**



**interest against disclosure**

Omit “section 46BA or 46BC of the *Passenger Transport Act 1990*” from clause 8 (1).

Insert instead “section 133 or 140 of the *Passenger Transport Act 2014*”.

#### **4.4 Heavy Vehicle (Adoption of National Law) Act 2013 No 42**

**[1] Schedule 1 Modification of Heavy Vehicle National Law as applying in New South Wales**

Omit “private hire vehicle within the meaning of the *Passenger Transport Act 1990*” from Schedule 1.2 [1].

Insert instead “hire car within the meaning of the *Passenger Transport Act 2014*”.

**[2] Schedule 1.2 [1]**

Omit “*Passenger Transport Act 1990*” where secondly occurring.

Insert instead “*Passenger Transport Act 2014*”.

**[3] Schedule 1.2 [4]**

Omit “*Passenger Transport Act 1990*”. Insert instead “*Passenger Transport Act 2014*”.

**[4] Schedule 1.2 [5]**

Omit “accredited service operator” wherever occurring.

Insert instead “accredited operator of a public passenger service”.

**[5] Schedule 1.2 [5]**

Omit “regular bus service under a service contract”.

Insert instead “service conducted according to regular routes and timetables under a passenger service contract”.

**[6] Schedule 1.2 [5]**

Omit “**accredited service operator, regular bus service** and **service contract** have the same meanings as in the *Passenger Transport Act 1990*”.

Insert instead “**accredited operator of a public passenger service** and **passenger service contract** have the same meanings as in the *Passenger Transport Act 2014*”.

**[7] Schedule 1.2 [5]**

Omit “*Passenger Transport Act 1990*” where secondly occurring.

Insert instead “*Passenger Transport Act 2014*”.

**[8] Schedule 1.2 [6]**

Omit “service contract entered into under Part 3 of the *Passenger Transport Act 1990*”.

Insert instead “passenger service contract entered into under the *Passenger Transport Act 2014*”.

## **4.5 Independent Pricing and Regulatory Tribunal Act 1992 No 39**

### **Schedule 1 Government agencies for which Tribunal has standing reference**

Omit the matter relating to Rail Corporation New South Wales, State Transit Authority and Sydney Ferries.

## **4.6 Industrial Relations Act 1996 No 17**

**[1] Section 307 Contract of bailment—meaning**

Omit “private hire vehicle” wherever occurring. Insert instead “hire car”.

**[2] Section 307 (2) (b)**

Omit “*Passenger Transport Act 1990*”. Insert instead “*Passenger Transport Act 2014*”.

**[3] Section 307 (2)**

Omit “private hire car”. Insert instead “hire car”.

**[4] Dictionary**

Omit “taxi-cab or private hire vehicle within the meaning of the *Passenger Transport Act 1990*” from the definition of **public vehicle**.

Insert instead “taxi or hire car within the meaning of the *Passenger Transport Act 2014*”.

## **4.7 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

### **Schedule 2 Search warrants under other Acts**

Omit “*Passenger Transport Act 1990*, section 46V”.

Insert instead “*Passenger Transport Act 2014*, Schedule 1, clauses 10 and 24”.

## **4.8 Marine Safety Act 1998 No 121**

**[1] Section 94 Definitions**

Omit “*Passenger Transport Act 1990*” from the definition of **ferry** in section 94 (1).

Insert instead “*Passenger Transport Act 2014*”.

**[2] Section 94 (1), definition of “public passenger service” and note to section 125A**

Omit “*Passenger Transport Act 1990*” wherever occurring.

Insert instead “*Passenger Transport Act 2014*”.

**[3] Section 103 Ordering of investigation**

Omit “*Passenger Transport Act 1990*” from section 103 (2) (a).

Insert instead “*Passenger Transport Act 2014*”.

## **4.9 Public Health (Tobacco) Act 2008 No 94**

### **Section 30 Smoking of tobacco in motor vehicle prohibited if juvenile present**

Omit “public passenger vehicle within the meaning of the *Passenger Transport Act 1990*” from the definition of **motor vehicle** in section 30 (8).

Insert instead “vehicle used for a public passenger service within the meaning of the *Passenger Transport Act 2014*”.

## **4.10 Road Transport Act 2013 No 18**

### **[1] Section 56 Purposes for which photographs may be kept and used**

Omit “an authority under the *Passenger Transport Act 1990*” from section 56 (1) (a) (v).

Insert instead “a driver authority under the *Passenger Transport Act 2014*”.

### **[2] Section 57 Release of photographs prohibited**

Omit “*Passenger Transport Act 1990*” from section 57 (1) (b).

Insert instead “*Passenger Transport Act 2014*”.

### **[3] Section 107 Definitions**

Omit “public passenger vehicle within the meaning of the *Passenger Transport Act 1990*” from section 107 (2) (c).

Insert instead “vehicle used for a public passenger service within the meaning of the *Passenger Transport Act 2014*”.

### **[4] Section 195 Penalty notices for certain offences**

Omit “*Passenger Transport Act 1990*” from section 195 (1) (e).

Insert instead “*Passenger Transport Act 2014*”.

## 4.11 State Emergency and Rescue Management Act 1989 No 165

### Section 60A Interpretation

Omit “*Passenger Transport Act 1990* and the other person (being engaged in transporting passengers in a private hire vehicle” from section 60A (2) (c).

Insert instead “*Passenger Transport Act 2014* and the other person (being engaged in transporting passengers in a hire car”.

## 4.12 Transport Administration Act 1988 No 109

### [1] Section 3 Definitions

Omit paragraph (b) of the definition of **transport legislation** in section 3 (1). Insert instead:

(b) the *Passenger Transport Act 2014*,

### [2] Section 3 (1), definition of “transport safety inquiry”

Omit “*Passenger Transport Act 1990*”. Insert instead “*Passenger Transport Act 2014*”.

### [3] Section 3H Review by relevant safety regulator of directions relating to transport safety matters

Omit paragraph (a) of the definition of **safety management system** in section 3H (1).

Insert instead:

(a) under section 31 of the *Passenger Transport Act 2014*, or

### [4] Section 6 Railway passenger services

Insert at the end of the section:

**Note—**

Division 1 of Part 3 of the *Passenger Transport Act 2014* provides for passenger service contracts to be entered into between TfNSW and providers of rail passenger services.

### [5] Section 7 Rail infrastructure functions

Insert at the end of the section:

(2) The terms and conditions on which the functions of RailCorp as a rail infrastructure owner are to be carried out are to be set out in a contract entered into between TfNSW (on behalf of the State) and RailCorp.

(3) The regulations may provide for matters to be included in the contract.

**[6] Section 8 Metropolitan rail area access functions**

Insert at the end of the section:

(3) The terms and conditions on which access and network control services are to be provided by RailCorp are to be set out in a contract entered into between TfNSW (on behalf of the State) and RailCorp.

(4) The regulations may provide for matters to be included in the contract.

**[7] Section 21 Bus services**

Insert at the end of the section:

**Note—**

Division 1 of Part 3 of the *Passenger Transport Act 2014* provides for passenger service contracts to be entered into between TfNSW and providers of bus services.

**[8] Section 22 Newcastle ferry services**

Insert at the end of the section:

**Note—**

Division 1 of Part 3 of the *Passenger Transport Act 2014* provides for passenger service contracts to be entered into between TfNSW and providers of ferry services.

**[9] Section 35C Sydney ferry services**

Omit "*Passenger Transport Act 1990*" from section 35C (4).

Insert instead "*Passenger Transport Act 2014*".

**[10] Section 42L Disclosure of information by ITSr**

Omit "section 46E of the *Passenger Transport Act 1990*" from section 42L (4).

Insert instead "section 150 of the *Passenger Transport Act 2014*".

**[11] Section 45A General functions of Chief Investigator**

Omit "*Passenger Transport Act 1990*" from section 45A (2) (a).

Insert instead "*Passenger Transport Act 2014*".

**[12] Section 45AA Limits on functions of Chief Investigator**

Omit "*Passenger Transport Act 1990*" from section 45AA (3).

Insert instead "*Passenger Transport Act 2014*".

**[13] Section 45C Disclosure of information by Chief Investigator**

Omit "section 46E of the *Passenger Transport Act 1990*" from section 45C (5).

Insert instead "section 150 of the *Passenger Transport Act 2014*".

**[14] Section 52D Disclosure of information by RMS**

Omit "section 46E of the *Passenger Transport Act 1990*" from section 52D (4).

Insert instead "section 150 of the *Passenger Transport Act 2014*".

**[15] Section 70 Payments into RailCorp Fund**

Omit "*Passenger Transport Act 1990*" from section 70 (d).

Insert instead "*Passenger Transport Act 2014*".

**[16] Section 74 Payments into State Transit Authority Fund**

Omit "section 63 of the *Passenger Transport Act 1990*" from section 74 (c).

Insert instead "section 176 of the *Passenger Transport Act 2014*".

**[17] Section 80E Payments into Sydney Ferries Fund**

Omit "section 63 of the *Passenger Transport Act 1990*" from section 80E (d).

Insert instead "section 176 of the *Passenger Transport Act 2014*".

**[18] Section 85 General provisions relating to orders**

Omit "*Passenger Transport Act 1990*" from section 85 (5).

Insert instead "*Passenger Transport Act 2014*".

**[19] Section 88 Free or subsidised railway, bus or ferry travel**

Omit the section.

**[20] Section 112 Personal liability of certain persons**

Omit "*Passenger Transport Act 1990*" from the definition of **transport authority** in section 112 (2).

Insert instead "*Passenger Transport Act 2014*".

**[21] Schedule 1 Functions of Transport for NSW**

Insert after clause 1 (j):

**Note—**

TfNSW also has regulatory functions relating to fares under Part 7 of the [Passenger Transport Act 2014](#).

**[22] Schedule 1, clause 8**

Omit the clause. Insert instead:

**8 Fare revenue from public passenger services**

If authorised by, or under arrangements or contracts made under, this Act or the [Passenger Transport Act 2014](#), TfNSW may collect, manage and deal with any fare revenue received in respect of the provision of public passenger services by RailCorp, Sydney Trains, NSW Trains, the State Transit Authority, Sydney Ferries or any other operator of a public passenger service.

**[23] Schedule 1, clause 9 (2)**

Omit "[Passenger Transport Act 1990](#)".

Insert instead "[Passenger Transport Act 2014](#)".

**[24] Schedule 1, clause 14**

Omit the clause.