

# Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34

[2016-34]



New South Wales

## Status Information

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
Cl 2 of Sch 3 to this Act (cl 2 of Sch 3 repeals Sch 3 on a day to be appointed by order)

### Authorisation

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# Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34



New South Wales

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# Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34



New South Wales

An Act with respect to taxi and passenger hire vehicle services and booking services; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) This Part, Parts 9 and 11, clause 1 of Schedule 2 and Schedules 3 and 5 [25] commence on the date of assent to this Act.

### 3 Definitions

- (1) In this Act:

**affiliated provider**—see section 5 (1).

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

**authorised officer** means an authorised officer appointed under Division 1 of Part 7 or a police officer.

**bus** means:

- (a) a motor vehicle that seats more than 12 adults (other than a vehicle prescribed by the regulations), or
- (b) a vehicle of any class prescribed by the regulations for the purposes of this definition.

**close associate**—see section 33.

**Commissioner** means the Point to Point Transport Commissioner appointed under this Act.

**community transport service** means the transport, by a motor vehicle, of specified individuals or specified classes of individuals under a community transport agreement entered into by the provider of the service with TfNSW.

**conviction** for a disqualifying offence—see section 32 (4).

**disqualifying offence**—see section 32 (1).

**facilitate the provision of a taxi service**—see section 5 (3).

**fare** includes any consideration paid or given to use a passenger service (whether or not it is paid or given to the provider of a booking service or the passenger service, a driver or any other person), but does not include a consideration of a kind prescribed by the regulations for the purposes of this definition.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**hire vehicle**—see section 6.

**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.

**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.

**nominated director or manager** of a taxi service or a booking service means a director or manager of the service who is nominated for the time being under Part 3.

**owner** of a taxi or hire vehicle means the person who is the registered operator of the vehicle within the meaning of the [Road Transport Act 2013](#).

**passenger**—see section 4 (1).

**passenger service**—see section 4.

**premises** include a place or vehicle.

**provide a booking service**—see section 7.

**provide a passenger service**—see section 4.

**provide a taxi service**—see section 5 (2).

**provider** of a booking service, passenger service or taxi service means the person

who provides the service.

**RMS** means Roads and Maritime Services constituted under the *Transport Administration Act 1988*.

**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).

**safety duty**—see section 9 (1).

**safety standard**—see section 9 (2).

**taxi**—see section 5 (1).

**taxi licence** means a licence issued under Part 4.

**taxi service**—see section 5 (1).

**TfNSW** means Transport for NSW constituted under the *Transport Administration Act 1988*.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

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

#### **4 Passenger services**

(1) In this Act:

**passenger** does not include a person employed with respect to a passenger service or the provision of a booking service or any person carrying out work for the provider of a passenger service or booking service, or any authorised officer, while carrying out work or on duty in that capacity.

**passenger service** means the transport, by a motor vehicle (other than a bus), of passengers within, or partly within, this State for a fare.

**Note—**

A taxi service is a type of passenger service, as is a service provided using a hire vehicle.

**provide a passenger service** means carry on the business of providing a passenger

service.

**Note—**

This includes providing a taxi service.

- (2) The following services are not passenger services:
  - (a) a community transport 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.
- (3) A service that provides transport by a motor vehicle that is generally conducted on land that is not a road or road related area is not a passenger service.
- (4) 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 passenger service.

## 5 Taxi services and taxis

- (1) In this Act:

**affiliated provider** means a person who provides a taxi service and who, for that purpose, obtains services from another provider who facilitates the provision of that taxi service.

**taxi** means a motor vehicle used to provide a taxi service.

**taxi service** means a passenger service where the transport is by a motor vehicle that:

- (a) plies or stands for hire on a road or road related area, or
- (b) is authorised under this Act 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 passenger service).

- (2) In this Act, **provide a taxi service** means carry on the business of:

- (a) facilitating the provision of a taxi service, or
- (b) providing a taxi service.

- (3) A person **facilitates the provision of a taxi service** if the person carries on the business of providing any one or more of the following services for taxis operating under a common service name and that are marked or painted in a uniform way:

- (a) co-ordination of the provision of taxi services,

(b) provision, co-ordination or monitoring of security facilities for taxis,

(c) setting of fares that may be charged for taxi services,

**Note—**

A fare set by a facilitator of a taxi service cannot contravene a fares order (see section 76).

(d) co-ordination or provision of safety management systems for taxi services.

(4) Subsection (3) does not limit the operation of subsection (2) (a).

(5) The regulations may provide:

(a) that a person who carries on a business prescribed by the regulations for the purposes of this section is or is not the provider of a taxi service, or

(b) that the provision of any transport service prescribed by the regulations for the purposes of this section is or is not the provision of a taxi service.

## **6 Hire vehicles**

In this Act, a **hire vehicle** means a motor vehicle that is used to provide a passenger service that is not a taxi service.

## **7 Booking services**

(1) In this Act, **provide a booking service** means carry on the business of:

(a) taking bookings for taxis or hire vehicles to provide passenger services (whether immediately or at a later time), and

(b) communicating the bookings to drivers for passenger services or providers of passenger services.

(2) To avoid doubt, a person provides a booking service if:

(a) the person contracts with, or arranges for, other persons to provide the passenger service for which a booking service is provided, or

(b) the person provides a passenger service and takes bookings for that service.

(3) For the purpose of determining whether a person provides a booking service, it does not matter:

(a) that a booking is obtained or communicated remotely by means of an electronic device or other means not directly provided by the person who provides the booking service, or

(b) that the provider of the booking service is located outside the State, if the passenger service is provided wholly or partly within this State.

**Note—**

In this Act, a passenger service involves transport of passengers wholly or partly within this State.

(4) The regulations may provide:

- (a) that a person who carries on a business prescribed by the regulations for the purposes of this section does or does not provide a booking service, or
- (b) that the provision of a service or other thing prescribed by the regulations for the purposes of this section is or is not the provision of a booking service.

## **8 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 Safety of services**

### **Division 1 Safety duties—principles**

#### **9 Safety duties and standards**

- (1) In this Act, the **safety duties** for providers of passenger services and booking services, officers of providers and drivers for passenger services, are the duties that they have under Division 2.
- (2) In this Act, the **safety standards** for providers of passenger services and booking services, holders of taxi licences, owners of taxis and hire vehicles and drivers are the standards specified under Division 3.

#### **10 Principles applying to safety duties**

- (1) A safety duty cannot be transferred to another person.
- (2) A person can have more than 1 duty by virtue of being in more than 1 class of duty holder.
- (3) More than 1 person can concurrently have the same safety duty.
- (4) If more than 1 person has a safety duty for the same matter, each person:
  - (a) retains responsibility for the person's duty in relation to the matter, and
  - (b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

#### **11 What is "reasonably practicable" in ensuring safety**

In this Act, **reasonably practicable**, in relation to a safety duty, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and

safety, taking into account and weighing up all relevant matters including:

- (a) the likelihood of the hazard or the risk concerned occurring, and
- (b) the degree of harm that might result from the hazard or the risk, and
- (c) what the person concerned knows, or ought reasonably to know, about:
  - (i) the hazard or the risk, and
  - (ii) ways of eliminating or minimising the risk, and
- (d) the availability and suitability of ways to eliminate or minimise the risk, and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

## **Division 2 Primary duty of care**

### **12 Primary duty of care of passenger service providers**

- (1) The provider of a passenger service must ensure, so far as is reasonably practicable, the health and safety of drivers and other persons while they are engaged in providing the service and of passengers or other persons in connection with the provision of the service.
- (2) Without limiting subsection (1), the provider of a passenger service must:
  - (a) eliminate risks to safety, so far as is reasonably practicable, and
  - (b) if it is not reasonably practicable to eliminate risks to safety, minimise those risks so far as is reasonably practicable.

### **13 Primary duty of care of booking service providers**

- (1) The provider of a booking service must ensure, so far as is reasonably practicable, the health and safety of drivers and other persons while they are engaged in providing a passenger service resulting from the use of the booking service and of passengers and other persons in connection with a passenger service resulting from the use of the booking service.
- (2) Without limiting subsection (1), the provider of a booking service must:
  - (a) eliminate risks to safety, so far as is reasonably practicable, and
  - (b) if it is not reasonably practicable to eliminate risks to safety, minimise those risks so far as is reasonably practicable.



## 14 Duty of officers

- (1) If a provider of a passenger service or booking service has a safety duty under this Act (a **duty holder**), an officer of the duty holder must exercise due diligence to ensure that the duty holder complies with that duty or obligation.
- (2) An officer of a duty holder may be convicted or found guilty of an offence under this Act relating to a duty under this section whether or not the duty holder has been convicted or found guilty of an offence under this Act relating to the duty or obligation.
- (3) In this section:

**due diligence** includes taking reasonable steps:

- (a) to acquire and keep up-to-date knowledge of safety matters relating to passenger services, and
- (b) to gain an understanding of the nature of the operations of the passenger service provided by the duty holder, or for which the duty holder provides a booking service, and generally of the hazards and risks associated with the operation of the passenger service, and
- (c) to ensure that the duty holder has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from the operation of the passenger service, and
- (d) to ensure that the duty holder has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information, and
- (e) to ensure that the duty holder has, and implements, processes for complying with any safety duty of the duty holder, and
- (f) to verify the provision and use of the resources and processes referred to in paragraphs (c)-(e).

**officer:**

- (a) in relation to a body corporate, has the same meaning as officer has in relation to a corporation under section 9 of the [Corporations Act 2001](#) of the Commonwealth, and
- (b) in relation to any other person, means an individual who makes, or participates in making, decisions that affect the whole, or a substantial part, of the passenger service or booking service provided by the person.

## 15 Duty of drivers

The driver of a motor vehicle being used for a passenger service must, while the vehicle is

being used for that purpose:

- (a) take reasonable care for his or her own health or safety, and
- (b) take reasonable care that his or her own acts or omissions do not adversely affect the health and safety of other persons, and
- (c) comply, so far as the driver is reasonably able, with any reasonable instruction that is given by the person providing the passenger service or a booking service to allow the person to comply with this Act, and
- (d) co-operate with any reasonable policy or procedure of the provider of the passenger service or a booking service relating to health or safety in connection with the provision of a passenger service that has been notified to drivers.

**16 Safety duty offence—Category 1**

(1) A person commits a Category 1 offence if:

- (a) the person has a safety duty, and
- (b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness, and
- (c) the person is reckless as to the risk of an individual death or serious injury or illness.

Maximum penalty:

- (a) in the case of an individual—\$300,000 or 2 years imprisonment, or both, or
- (b) in the case of a body corporate—\$3,000,000.

(2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.

**17 Safety duty offence—Category 2**

A person commits a Category 2 offence if:

- (a) the person has a safety duty, and
- (b) the person fails to comply with that duty, and
- (c) the failure exposes an individual to a risk of death or serious injury or illness.

Maximum penalty:

- (a) in the case of an individual—\$150,000, or

(b) in the case of a body corporate—\$1,500,000.

### **18 Safety duty offence—Category 3**

A person commits a Category 3 offence if:

- (a) the person has a safety duty, and
- (b) the person fails to comply with that duty.

Maximum penalty:

- (a) in the case of an individual—\$50,000, or
- (b) in the case of a body corporate—\$500,000.

### **19 Multiple contraventions of safety duty provisions**

- (1) Two or more contraventions of a provision of this Division by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.
- (2) This section does not authorise contraventions of 2 or more provisions of this Division to be charged as a single offence.
- (3) A single penalty only may be imposed in relation to 2 or more contraventions of this Division that are charged as a single offence.

## **Division 3 Safety standards**

### **20 Standards for passenger service providers and booking service providers**

- (1) The regulations may specify safety standards for:
  - (a) the providers of passenger services or booking services in respect of passenger services that are provided or facilitated by them or for which booking services are provided, and
  - (b) the providers of booking services in respect of booking services.
- (2) Safety standards may be specified with respect to any of the following:
  - (a) drivers (including driver licence requirements, competence, qualifications, driving records, criminal records, identification and fitness or medical requirements),
  - (b) safety and registration of vehicles used for a passenger service and other requirements for those vehicles (including maintenance and security requirements),
  - (c) insurance,

- (d) reporting of safety incidents or accidents,
- (e) records relating to vehicles, drivers and bookings,
- (f) provision of information to passengers,
- (g) safety management systems.

(3) Subsection (2) does not limit the matters for which safety standards may be specified.

## **21 Standards for drivers**

- (1) The regulations may specify safety standards for drivers who drive motor vehicles used for passenger services.
- (2) Safety standards may be specified with respect to any of the following:
  - (a) driver licence requirements, competence, qualifications, driving records, criminal records, identification and fitness or medical requirements,
  - (b) reporting of changes in health or other matters,
  - (c) reporting of safety incidents or accidents,
  - (d) compliance with safety requirements established by providers of passenger services or booking services,
  - (e) provision of information to providers of passenger services or booking services.

(3) Subsection (2) does not limit the matters for which safety standards may be specified.

## **22 Standards for owners and taxi licence holders**

- (1) The regulations may specify safety standards in respect of owners of motor vehicles that are hire vehicles or taxis used for passenger services or holders of taxi licences.
- (2) Safety standards may be specified with respect to any of the following:
  - (a) safety and registration of the vehicles and other requirements for the vehicles (including maintenance and security requirements and insurance),
  - (b) drivers of the vehicles when used to provide passenger services (including driver licence requirements, competence, qualifications, driving records, criminal records, identification and fitness or medical requirements),
  - (c) reporting of changes in ownership or other arrangements relating to vehicles or of other matters,
  - (d) records relating to the vehicles,
  - (e) reporting of safety incidents or accidents,

(f) compliance with safety requirements established by providers of passenger services or booking services,

(g) provision of information to providers of passenger services or booking services.

(3) Subsection (2) does not limit the matters for which safety standards may be specified.

**Note—**

Under section 64 a reference to the holder of a taxi licence includes a person to whom the licence is leased or subleased or who has the benefit of the licence under another arrangement.

### **23 Safety standards offences**

(1) The regulations may make it an offence for the provider of a passenger service or a booking service, a driver or owner of a taxi or a hire vehicle or the holder of a taxi licence to contravene or to fail to ensure compliance with a safety standard specified by the regulations.

(2) The regulations may make it an offence for the provider of a passenger service or a booking service, a driver or owner of a taxi or a hire vehicle or the holder of a taxi licence to fail to ensure, so far as is reasonably practicable, that a safety standard (whether or not it is specified for that person) is complied with.

(3) The same safety standard may be specified for more than 1 class of persons.

## **Division 4 Miscellaneous**

### **24 Notifiable occurrences**

(1) The provider of a passenger service or booking service must report to the Commissioner, in accordance with the regulations, on any notifiable occurrence that affects the service (including a notifiable occurrence involving a passenger service for which a booking service provides bookings).

Maximum penalty: 100 penalty units.

(2) In this section, a **notifiable occurrence** means an accident or incident of a kind that is prescribed by the regulations for the purposes of this section.

### **25 Dismissal or other victimisation of worker**

(1) This section applies to:

(a) a person who dismisses a worker, terminates a contract for services or bailment with a worker or alters the position of a worker to the worker's detriment, and

(b) a person who threatens to do any of those things to a worker, and

(c) a person who refuses or fails to offer to engage a prospective worker, or treats a

prospective worker less favourably than another prospective worker would be treated in offering terms of engagement.

- (2) The person is guilty of an offence if the person engaged in that conduct because the worker or prospective worker or other person:
- (a) has assisted or has given any information to a public authority in respect of a breach or alleged breach of this Act or the regulations, or
  - (b) has made a complaint about a breach or alleged breach of this Act or the regulations to the person, a fellow worker, union, public authority or public official, or
  - (c) assists or has assisted, or gives or has given any information to, a public agency in respect of a breach or alleged breach of this Act or the regulations, or
  - (d) has made a complaint about a breach or alleged breach of this Act or the regulations to a former employer or bailor, former fellow worker, union, public authority or public official.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or
  - (b) in the case of a body corporate—500 penalty units.
- (3) A person may be guilty of an offence against subsection (2) only if the reason mentioned in subsection (2) (a), (b), (c) or (d) is the dominant reason why the person engaged in the conduct.
- (4) In proceedings for an offence against subsection (2), if all the facts constituting the offence other than the reason for the defendant's conduct are proved, the defendant bears the onus of proving that the reason alleged in the charge was not the dominant reason why the defendant engaged in the conduct.
- (5) If a person is convicted or found guilty of an offence against this section, the court may (in addition to imposing a penalty) make either or both of the following orders:
- (a) an order that the offender pay (within a specified period) such damages to the worker or prospective worker or other person against whom the offender discriminated as the court considers appropriate to compensate him or her,
  - (b) an order that:
    - (i) the worker be re-engaged in his or her former position or if that position is not available, in a similar position, or on the same terms, or
    - (ii) the prospective worker be engaged in the position for which he or she had applied or a similar position.

(6) In this section:

**public authority** includes the Commissioner, RMS, TfNSW, an authorised officer, a police officer of another jurisdiction, an officer of a government sector agency (within the meaning of the [Government Sector Employment Act 2013](#)), a NSW government agency or an agency of the Commonwealth or another State or Territory.

**worker** includes an employee, an individual who works as a contractor or subcontractor and an individual who is engaged as a bailee.

## **26 Relationship with work, health and safety and heavy vehicle legislation**

- (1) If a provision of this Act and a provision of the [Work Health and Safety Act 2011](#) or the [Heavy Vehicle National Law \(NSW\)](#) (**other applicable law**) deal with the same thing, and it is possible to comply with both provisions, a person must comply with both provisions.
- (2) However, to the extent it is not possible to comply with both provisions, the person must comply with the provision of the other applicable law.
- (3) Evidence of a relevant contravention of this Act is admissible in any proceeding for any offence under another applicable law.
- (4) If an act, omission or circumstance constitutes an offence under this Act and another applicable law, the offender is not liable to be punished twice for the offence.
- (5) Compliance with this Act or the regulations, or with any requirement imposed under this Act or the regulations is not, in itself, evidence that a person has complied with another applicable law or with a common law duty of care.

## **Part 3 Authorisation of providers of taxi services and booking services**

### **Division 1 Authorisation offences**

#### **27 Provider of taxi service or booking service must be authorised**

- (1) A person must not provide a taxi service or booking service unless the person is authorised to provide that service.

Maximum penalty: \$110,000.

- (2) An affiliated provider is not required to be authorised to provide a taxi service if the provision of that service is facilitated by another authorised provider of a taxi service.
- (3) A person who provides a passenger service must ensure that bookings for that service are not taken from the provider of a booking service unless the provider is authorised to provide that service under this Act.

Maximum penalty: \$110,000.

- (4) A driver who drives a motor vehicle used for a passenger service must not take bookings for the passenger service from the provider of a booking service unless the provider is authorised to provide that service under this Act.

Maximum penalty: 100 penalty units.

## **28 Aggravated provision of unauthorised services**

- (1) A person is guilty of the offence of aggravated provision of an unauthorised taxi service or booking service if the person commits an offence under section 27 (1) in circumstances of aggravation.

Maximum penalty (instead of any penalty under section 27 (1)):

- (a) in the case of an individual—\$50,000, or
- (b) in the case of a body corporate:
- (i) if a court determines that one or more persons have obtained benefits that are reasonably attributable to the commission of the offence and can determine the total value of those benefits—3 times that total value or \$10,000,000, whichever is the greater, or
  - (ii) if the court does not determine that one or more persons have obtained any such benefits whose value can be determined—\$500,000.
- (2) For the purposes of this section, an offence under section 27 (1) is committed by a person in circumstances of aggravation in the case of a taxi service if the person:
- (a) commits the offence (wholly or partly) by facilitating the provision of taxi services, and
  - (b) recruits affiliated providers or other persons for the purpose of providing the taxi services facilitated, and
  - (c) has previously been convicted of an offence under section 27 (1) in the circumstances specified in paragraphs (a) and (b).
- (3) For the purposes of this section, an offence under section 27 (1) is committed by a person in circumstances of aggravation in the case of a booking service if the person:
- (a) is not the provider of the passenger service for which the booking service is provided, and
  - (b) recruits other persons for the purpose of providing the passenger service for which the booking service is provided, and
  - (c) has previously been convicted of an offence under section 27 (1) in the circumstances specified in paragraphs (a) and (b).



- (4) If the court is satisfied that a person charged with an offence of aggravated provision of an unauthorised taxi service or booking service is not guilty of that offence but is satisfied on the evidence that the person is guilty of an offence under section 27 (1), the court may find the person guilty of the offence under that section, and the person is liable to punishment accordingly.

### **29 Provider of taxi service or booking service must comply with authorisation conditions**

A provider of a taxi service or booking service must not contravene a condition of the provider's authorisation.

Maximum penalty: \$110,000.

## **Division 2 Applications for authorisation**

### **30 Applications for authorisation**

- (1) The following may apply for authorisation to provide a taxi service or booking service:
- (a) an individual,
  - (b) 2 or more persons who intend to carry on the 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)*),
  - (d) any other entity prescribed by the regulations.
- (2) An application for authorisation is to be made to the Commissioner.
- (3) An application is:
- (a) to be in a form approved by the Commissioner, and
  - (b) to contain the information that the Commissioner requires to be provided, and
  - (c) in the case of a body corporate, to specify 1 or more directors or managers as nominated directors or managers for the purposes of this Act, and
  - (d) to be accompanied by the fee prescribed by the regulations.
- (4) The Commissioner 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 Commissioner 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.

### 31 Determination of applications for authorisation generally

- (1) The Commissioner may determine an application for authorisation to provide a taxi service or booking service by granting or refusing the application.
- (2) The Commissioner must not grant an application for authorisation unless satisfied that the applicant meets the general standards for authorisation or the standards for a current provider.
- (3) The general standards for authorisation are as follows:
  - (a) that the applicant has not been convicted of a disqualifying offence and that there are no current proceedings against the applicant for a disqualifying offence,
  - (b) that a close associate of the applicant has not been convicted of a disqualifying offence and that there are no current proceedings against a close associate of the applicant for any such offence,
  - (c) in the case of a body corporate, that the directors or managers nominated for the purposes of this Part are directly involved in the day-to-day management of the service and that at least one of the directors or managers nominated is a resident of this State,
  - (d) in the case of a body corporate, that none of the directors or managers nominated for the purposes of this Part have been convicted of a disqualifying offence and that there are no current proceedings against any of those directors or managers for a disqualifying offence.
- (4) The standards for a current provider are as follows:
  - (a) that the applicant is the holder of an authorisation under this Act to provide another service of the same or a different kind,
  - (b) that the applicant has demonstrated that the applicant complies with any standards applicable to the authorisation being applied for that are additional to those for the authorisation currently held,
  - (c) that the applicant is not the subject of any action being taken or proposed to be taken by the Commissioner relating to an authorisation held by the applicant.
- (5) In the case of a joint application for an authorisation, each person applying for the joint authorisation must meet the requirements for authorisation.
- (6) The regulations may prescribe additional standards that are required to be met for authorisation, either generally or in a particular case or class of cases.

### 32 Disqualifying offences

- (1) For the purposes of this Act, a **disqualifying offence** is an offence (under the law of

this State or any other jurisdiction) prescribed by the regulations for the purposes of this section.

- (2) The regulations may prescribe:
  - (a) different disqualifying offences for taxi service providers, booking service providers and close associates, and
  - (b) different disqualifying offences for different categories of taxi service providers and booking service providers, and
  - (c) circumstances in which an offence is or is not a disqualifying offence.
- (3) This Act extends to convictions by courts for disqualifying offences whether or not the convictions occurred before the commencement of this Act.
- (4) In this Act, a **conviction** for a disqualifying offence includes a finding that the charge for an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction.

### 33 Close associates

- (1) The Commissioner may refuse to grant an authorisation on the ground that a close associate of the applicant has previously held an authorisation (whether for the operation of the same or a different service) that has been cancelled.
- (2) For the purposes of this Act, a person is a **close associate** of an applicant for authorisation as a provider of a taxi service or booking service, or a provider of a 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 provider that is or will be carried on under the authority of the authorisation, and by virtue of that interest or power is or will be able (in the opinion of the Commissioner) 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 provider that is or will be carried on under the authority of the authorisation, or
  - (c) is or will be engaged as a contractor or employed in the business of the applicant or provider that is or will be carried on under the authority of the authorisation.
- (3) 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.
- (4) 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.

(5) 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.

### **34 Grants of authorisation**

- (1) An authorisation to provide a taxi service or booking service granted by the Commissioner may authorise the provider:
  - (a) to provide 1 or more specified services, or
  - (b) to operate a service having specified characteristics.
- (2) The Commissioner may grant an application for authorisation unconditionally or subject to the conditions specified in the authorisation.

**Note—**

The Commissioner may also vary or revoke the conditions of an authorisation at any time (see section 40).

### **35 Form of authorisation**

An authorisation is to be in the form approved by the Commissioner.

### **36 Term of authorisation**

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

### **37 Renewal of authorisation**

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

### **38 Notice of authorisation decision**

- (1) The Commissioner must give an applicant for authorisation or renewal of an authorisation 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.

### **39 Joint authorisation**

- (1) If 2 or more persons are jointly authorised to provide a taxi service or booking service, each of those persons has the obligations of a provider of that service under this Act and the regulations.
- (2) A person (other than an individual) that is jointly authorised to provide a taxi service or booking service must meet the same standards for authorisation as a body corporate seeking authorisation in its own right.

## **Division 3 Conditions of authorisation**

### **40 Conditions of authorisation generally**

- (1) An authorisation to provide a taxi service or booking service is subject to the following conditions:
  - (a) any conditions imposed by the Commissioner and in force from time to time,
  - (b) any conditions specified by this Act or prescribed by the regulations.
- (2) The Commissioner may at any time, by written notice given to an authorised provider, impose a condition on the authorisation or vary or revoke a condition of the

authorisation imposed by the Commissioner.

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

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

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

**Note—**

An authorisation may be suspended or cancelled if the provider does not meet an authorisation standard, including the requirement that a nominated director or manager be directly involved in the day-to-day management of a taxi or booking service. An authorisation is automatically suspended if there are no nominated directors or managers for a body corporate.

- (2) It is a condition of the authorisation of a body corporate that the body corporate give written notice to the Commissioner, within 21 days, if a director or manager of the body corporate who has been nominated for the purposes of this Part dies or ceases to be a director or manager of the body corporate.

#### **42 Safety standards**

It is a condition of an authorisation to provide a taxi service or booking service that the provider comply with the safety standards for a provider of any such service.

#### **43 Availability of documents**

It is a condition of an authorisation to provide a taxi service or a booking service that the provider keep any records required to be kept by the provider under this Act, or under the [Taxation Administration Act 1996](#) in its application to the passenger service levy, in this State or in a form that may be accessed from, or made available in, this State.

#### **44 Taxi identification**

It is a condition of the authorisation of a provider of a taxi service that each taxi used to provide the service is identified as a taxi and is marked or painted in a uniform way that identifies it as a taxi used by the service.

### **Division 4 Variation, suspension or cancellation of authorisation**

#### **45 Variation, suspension or cancellation of authorisation generally**

The Commissioner may vary, suspend or cancel an authorisation to provide a taxi service or booking service if:

- (a) the provider does not comply with a standard required to be met for authorisation to provide the service to which the authorisation relates, or

- (b) the provider fails to comply with a condition of the authorisation, or
- (c) the provider fails to comply with this Act or the regulations, or
- (d) a close associate of the provider has previously held an authorisation (whether for the operation of the same or a different service) that has been cancelled, or
- (e) in the opinion of the Commissioner, the service has been or is being conducted in a manner that causes danger to the public, or
- (f) for any other reason the Commissioner thinks fit.

**Note—**

The Commissioner may also vary or revoke the conditions of an authorisation at any time (see section 40).

**46 Automatic suspensions**

- (1) If 2 or more persons hold a joint authorisation to provide a taxi service or booking service and any 1 of them dies or ceases to jointly provide the service:
  - (a) the authorisation is automatically suspended 21 days after the death or cessation if the Commissioner has not been notified before that time of the death or cessation, and
  - (b) the authorisation 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 authorised provider that is a body corporate ceases to have any directors or managers who are nominated for the purposes of this Part, the authorisation is automatically suspended when the body corporate ceases to have any directors or managers so nominated until new directors or managers are nominated in accordance with this Part.
- (3) Nothing in this section prevents the Commissioner from cancelling an authorisation that is suspended by this section.

**46A Surrender of authorisation**

- (1) A provider may, at any time, surrender an authorisation to provide a taxi service or booking service by giving the Commissioner a notice of surrender.
- (2) A notice of surrender must be in the form approved by the Commissioner and specify the date for the surrender to take effect.
- (3) The Commissioner must cancel the authorisation:
  - (a) if the date specified for the surrender to take effect is on or before the day on which the Commissioner receives the notice—on receiving the notice, or

- (b) if the date specified for the surrender to take effect is after the day on which the Commissioner receives the notice—on the date specified.

## Part 4 Taxi licences

### Division 1 Licensing offences

#### 47 Taxis must be licensed

A person must not use a motor vehicle to provide a taxi service unless:

- (a) the provider, or an employee, contractor or affiliated provider of that provider, is the holder of a taxi licence for the motor vehicle, or
- (b) the motor vehicle is a stand-by taxi used in accordance with this Act and the regulations.

Maximum penalty:

- (a) \$110,000, or
- (b) for a second or subsequent offence by an individual within 5 years of a previous offence—\$110,000, or 12 months imprisonment, or both.

**Note—**

A person who has the benefit under a lease or sublease or other arrangement is taken to be the holder of the taxi licence (see section 64 (3)).

#### 48 Holder of taxi licence must comply with licence conditions

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

Maximum penalty: \$110,000.

#### 49 Stand-by taxis

- (1) An authorised provider 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 the Commissioner, comply with the standards prescribed for taxis, and



- (d) except to the extent authorised by the Commissioner, 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 2 Applications for licences**

### **50 Categories of taxi licences**

- (1) The Commissioner may issue different categories of taxi licences.
- (2) TfNSW is to determine the categories of taxi licences that may be issued by the Commissioner.

### **51 Applications for taxi licences**

- (1) The following persons may apply for a taxi licence:
  - (a) an individual,
  - (b) 2 or more persons 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 taxi licence is to be made to the Commissioner.
- (3) An application is:
  - (a) to be in the form approved by the Commissioner, and
  - (b) to contain the information that the Commissioner requires to be provided, and
  - (c) to be accompanied by the fee prescribed by the regulations.
- (4) An application for a taxi licence must be accompanied by a sealed tender for the licence if required by the Commissioner.

**Note—**

The licence fees for taxi licences (other than wheelchair accessible taxis) are to be determined by public auction or tender (see section 63).

- (5) The Commissioner 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.

## **52 Determination of applications for taxi licences generally**

- (1) The Commissioner may determine an application for a taxi licence by granting or refusing the application.
- (2) The Commissioner must not grant an application for a taxi licence unless satisfied that the applicant meets any requirements specified by the regulations.
- (3) In the case of a joint application for a taxi licence, each person applying for the joint licence must meet the requirements for the licence.

## **53 Determination of applications for taxi licences**

- (1) The Commissioner must not grant an application for a taxi licence for which a licence fee is determined by auction or by tender unless satisfied that the applicant:
  - (a) is the highest ranked bidder or tenderer for the licence under Division 4, 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 the Commissioner in respect of the payment of the annual licence fee.
- (2) The Commissioner must have regard to any applicable determination of taxi licences under Division 7 before determining an application for a taxi licence.
- (3) This section is in addition to any other requirements for the grant of a taxi licence.

## **54 Conditions of taxi licences**

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

## **55 Form of taxi licences**

A taxi licence is to be in the form approved by the Commissioner.

## **56 Area of operation of taxis**

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

- (4) If a taxi licence specifies the area of operation of a taxi to provide services, the licence is taken to be subject to a condition that the taxi must be used only to provide a taxi service within that area.
- (5) Subsection (4) does not apply to the provision of transport by a taxi that results from a booking.
- (6) The Commissioner may, by notice in writing to the holder of a taxi licence, amend the licence:
  - (a) to revoke a requirement specifying the area of operation of a taxi, or
  - (b) to vary the area of operation of the taxi.
- (7) The Commissioner may, by notice published in the Gazette, amend a class of taxi licences:
  - (a) to revoke a requirement specifying the area of operation of that class of licences, or
  - (b) to vary the area of operation of that class of licences.

#### **57 Term of taxi licences**

- (1) A taxi licence is in force for a period of 12 months unless it is sooner cancelled.
- (2) A taxi 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.

#### **58 Renewal of taxi licences**

- (1) A taxi licence is to be renewed by the Commissioner on application to the Commissioner made before the expiry of the licence.
- (2) A 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).

#### **59 Notice of decision**

- (1) The Commissioner must give an applicant for a taxi 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 3 Conditions of taxi licences**

### **60 Conditions of taxi licences generally**

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

### **61 Safety standards**

It is a condition of a taxi licence that the holder of the licence comply with the safety standards for the holder of any such licence.

## **Division 4 Taxi licence fees**

### **62 Licence fees for taxi licences**

- (1) In addition to any application fee, a licence fee is payable to the Commissioner when a taxi licence is first issued or each time it is renewed.
- (2) The licence fee is payable by the person to whom the licence is issued in the manner determined by the Commissioner.

### **63 Determination of licence fees**

- (1) The licence fee for a 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 a taxi licence without complying with subsection (1).

- (3) The licence fee for a taxi licence determined under subsection (1) or (2) is the licence fee payable on each renewal of the licence.
- (4) The licence fee for a taxi licence for a wheelchair accessible taxi is to be an amount determined by TfNSW.

## **Division 5 Dealings with taxi licences**

### **64 Leasing or subleasing and other arrangements relating to taxi licences**

- (1) A taxi 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 the Commissioner.
- (2) The lessee or sublessee of a taxi 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 taxi licence, or other 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 taxi licence under this Act and to regulations made under this Division.
- (5) Nothing in this section authorises the transfer of a taxi licence.

### **65 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 confers the benefit of a taxi licence under an arrangement referred to in section 64 (1) is subject to specified provisions of this Act or the regulations relating to taxis or licences,
- (b) that specified provisions of this Act or the regulations do not apply to a lessee or sublessee of a taxi licence or a person on whom the benefit of a licence is conferred,
- (c) that the lessor or sublessor of a taxi licence or person who confers the benefit of a licence under an arrangement referred to in section 64 (1), and any lessee or sublessee or person on whom the benefit is conferred, are jointly and severally liable under specified provisions of this Act or the regulations or for any matters arising in connection with them.

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

The conditions of a taxi licence may provide for the following:

- (a) that the lessor or sublessor of a taxi licence, or person who confers the benefit of a licence under an arrangement referred to in section 64 (1), is subject to specified provisions and conditions of the licence,
- (b) that specified provisions and conditions of a taxi licence do not apply to a lessee or sublessee of the taxi licence or a person on whom the benefit of the licence is conferred,
- (c) that the lessor or sublessor of a taxi licence or person who confers the benefit of a licence under an arrangement referred to in section 64 (1), and any lessee or sublessee or person on whom the benefit is conferred, are jointly and severally liable under specified provisions or conditions of the licence or for any matters arising in connection with them.

## **67 Notification 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 the person who facilitates the provision of the taxi service for the taxi licence, 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 (if any) prescribed by the regulations for the purposes of this section.

## **68 Transfer of taxi licences**

- (1) The Commissioner may, on application by the legal personal representative of the holder of a taxi 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.
- (2) The Commissioner may, by written notice given to the transferor or the transferee of a taxi licence, require the transferor or transferee to provide information to enable registration of the transfer.
- (3) This section is subject to any condition imposed on a taxi licence by or under this Act.

## **Division 6 Variation, suspension or cancellation of taxi licences**

### **69 Variation, suspension or cancellation of taxi licences generally**

The Commissioner may vary, suspend or cancel a taxi 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 for which the licensed taxi is used has been or is being conducted in a manner that causes danger to the public, or
- (d) for any other reason the Commissioner thinks fit.

**Note—**

The Commissioner may also change area of operation requirements (see section 56) and vary the conditions of a taxi licence at any time (see section 60).

**69A Surrender of taxi licence**

- (1) A holder of a taxi licence may, at any time, surrender the taxi licence by giving the Commissioner a notice of surrender.
- (2) A notice of surrender must be in the form approved by the Commissioner and specify the date for the surrender to take effect.
- (3) The Commissioner must cancel the taxi licence:
  - (a) if the date specified for the surrender to take effect is on or before the day on which the Commissioner receives the notice—on receiving the notice, or
  - (b) if the date specified for the surrender to take effect is after the day on which the Commissioner receives the notice—on the date specified.

**Division 7 Determination of release of taxi licences**

**70 Application of Division**

This Division does not apply to taxi licences for wheelchair accessible taxis.

**71 Determination of number of taxi licences**

- (1) TfNSW must determine, before 31 March in each year, the number of 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 taxi licences that are to be issued to persons who are also authorised to provide taxi services or who have applied for an authorisation to do so,
  - (b) limit the number of taxi licences that may be granted to the same applicant or related applicants.

- (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 73 and may consider any recommendation made by IPART under this Part.
- (5) TfNSW may make 1 or more determinations for any year commencing on 1 July at any time after the determination for that year is made under subsection (1) and before the end of that year. Subsections (2)–(4) apply to any such determination.

## **72 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 taxi licences to be issued for a specified period.
- (2) The referral may ask IPART to make a separate report on a specified class or classes of taxi licence or for taxi licences issued to providers in a specified area or areas.
- (3) The referral is to specify the period within which the report is to be provided by IPART.
- (4) 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.
- (5) 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.

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

The following matters are to be considered by TfNSW when making a determination as to the number of 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 5 Fares

### 74 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 1 or more passenger services to IPART for 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 recommendation,
  - (b) require IPART to consider specified matters when making its investigations for the purposes of its report.
- (3) IPART may request the Minister to refer a matter to IPART under this section.
- (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*. 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.

### 75 IPART investigations and recommendations

- (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 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 recommendation,

- (e) the impact of the recommendation on the use of passenger transport 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) any matter specified in the referral to IPART,
  - (h) 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 recommendation under this Part.
- (5) 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.

## 76 Fares orders

- (1) TfNSW may, by order published on the NSW legislation website (a **fares order**), determine the following for all or any of the services provided by 1 or more 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 have regard to any recommendation of IPART under this Part when making a fares order.
- (3) A fares order may specify a fare or specify the manner in which a fare is to be calculated.
- (4) A fares order may also approve other arrangements for remuneration in connection with the service.
- (5) 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.
- (6) This section does not prevent the provider of a 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.

### **77 Non-cash payment surcharges**

- (1) A fares order may specify the maximum amount payable for a non-cash payment surcharge or surcharges for the same hiring of a taxi or hire vehicle.
- (2) In this Part, a **non-cash payment surcharge** means a fee or charge (however calculated):
  - (a) added to the amount otherwise payable by a hirer of a taxi or hire vehicle because the amount payable for the hire 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 taxi licence for, a taxi or hire vehicle or the provider of a service using a taxi or hire vehicle because an amount payable for the hire of the taxi or hire vehicle 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 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 hire.
- (4) A 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 76 (5).

### **78 Overcharging for non-cash payment surcharge**

- (1) If a 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 or hire vehicle and the holder of the taxi licence for the taxi,
  - (c) the provider of the service using the taxi or hire vehicle,
  - (d) any person who provided or maintains any equipment installed in the taxi or hire vehicle 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 hire vehicle, or initiate the collection in a taxi or hire vehicle of, a non-cash payment surcharge that contravenes a fares order.
- (3) A person must not collect, for the purposes of or while providing a booking service, a non-cash payment surcharge that contravenes a fares order.
- (4) 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—\$110,000, or
- (b) in the case of an individual—100 penalty units.

#### **79 Estimate of fares to be provided for booked services**

- (1) A person who provides a passenger service to a passenger who obtains the service by using a booking service, and the person who provided the booking service, must before the commencement of the journey ensure that the passenger is provided with an estimate of the fare that complies with this section.
- (2) The fare estimate must:
  - (a) be in writing or in another form approved by the Commissioner, and
  - (b) express the amount of the fare in Australian currency or in any other manner prescribed by the regulations, and
  - (c) indicate any variation in the fare that is likely to occur and the way in which the variation is to be calculated.
- (3) If a person who provides a passenger service or a booking service and the passenger agree on a fare before the commencement of the journey, the person who provides the service must not demand a fare for the service that exceeds the amount agreed with the passenger.
- (4) A person who provides a passenger service or a booking service must not fail to comply with this section.

Maximum penalty:

- (a) in the case of a driver—20 penalty units, or
- (b) in the case of an individual (other than a driver)—100 penalty units, or
- (c) in the case of a body corporate—\$110,000.

- (5) In this section, **person who provides a passenger service** includes the driver who transports the passenger.
- (6) Nothing in this section permits a person to charge a fare of an amount, or in circumstances, that would contravene any other provision of this Act or the regulations.

## **80 Fare setting by providers of services**

- (1) A requirement made by the provider of a passenger service who facilitates the provision of a passenger service, or by the provider of a booking service who provides that service to a provider of a passenger service, that the person who provides the passenger service or the driver charges a specified amount (however determined) for the provision of the transport that is facilitated or booked is 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*.
- (2) Conduct authorised by subsection (1) 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*.
- (3) Nothing in this section permits a person to require another person to charge a fare of an amount, or in circumstances, that would contravene any other provisions of this Act or the regulations.

## **Part 6 Audits, enforcement orders and other remedies**

### **Division 1 Audit notices**

#### **81 Purpose of audit**

An audit under this Division is to be a particular documented evaluation of the operations of the provider of a passenger service or a booking service for any of the following purposes:

- (a) to provide information on compliance with the provider's safety duties or safety standards under this Act,
- (b) to enable a determination of whether the operations are being carried out in a way that manages risks to safety in accordance with the provider's safety duties, including

an evaluation of the safety management systems of the provider.

## **82 Issue of audit notices**

- (1) The Commissioner may issue an audit notice:
  - (a) notifying a provider of a passenger service or booking service that an audit is to be arranged by the Commissioner, or
  - (b) requiring a provider of a passenger service or booking service to arrange an audit by an auditor, or an auditor of a class of auditors, approved by the Commissioner for the purposes of carrying out audits under this Division.
- (2) The Commissioner must give not less than 24 hours notice of a proposed audit arranged by the Commissioner.
- (3) An audit arranged by the Commissioner may be conducted by an authorised officer, or another person appointed by the Commissioner for the purpose of conducting the audit.
- (4) An audit notice that requires a provider to arrange an audit is to specify the period within which the audit is required to be carried out and reported on to the Commissioner.
- (5) The Commissioner may issue guidelines with respect to the carrying out of audits under this Division.

## **Division 2 Improvement notices**

### **83 Issue of improvement notices**

- (1) This section applies if an authorised officer reasonably believes that a person:
  - (a) is contravening a provision of this Act or the regulations, or
  - (b) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The authorised officer may issue an improvement notice requiring the person to:
  - (a) remedy the contravention, or
  - (b) prevent a likely contravention from occurring, or
  - (c) remedy the things or operations causing the contravention or likely contravention.

### **84 Contents of improvement notices**

- (1) An improvement notice must state:

- (a) that the authorised officer believes the person:
    - (i) is contravening a provision of this Act or the regulations, or
    - (ii) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated, and
  - (b) the provision the authorised officer believes is being, or has been, contravened, and
  - (c) briefly, how the provision is being, or has been, contravened, and
  - (d) the day by which the person is required to remedy the contravention or likely contravention.
- (2) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.
- (3) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

#### **85 Compliance with improvement notice**

The person to whom an improvement notice is issued must comply with the notice within the period specified in the notice.

Maximum penalty:

- (a) in the case of an individual—\$50,000, or
- (b) in the case of a body corporate—\$250,000.

#### **86 Extension of time for compliance with improvement notices**

- (1) This section applies if a person has been issued with an improvement notice.
- (2) An authorised officer may, by written notice given to the person, extend the compliance period for the improvement notice.
- (3) However, the authorised officer may extend the compliance period only if the period has not ended.
- (4) In this section:

***compliance period*** means the period ending on the day stated in the improvement notice by which a person is required to remedy a contravention or likely contravention and includes that period as extended under this section.

## Division 3 Prohibition notices

### 87 Power to issue prohibition notice

- (1) This section applies if an authorised officer reasonably believes that:
  - (a) an activity is occurring in relation to the provision of a passenger service or booking service that involves or will involve an immediate and serious risk to the health or safety of a person, or
  - (b) an activity may occur in relation to the provision of a passenger service or booking service that, if it occurs, will involve an immediate and serious risk to the health or safety of a person.
- (2) The authorised officer may give a person who has control over the activity a direction prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until an authorised officer is satisfied that the matters that give or will give rise to the risk have been remedied.
- (3) The direction may be given orally, but must be confirmed by written notice (a **prohibition notice**) issued to the person as soon as practicable.

### 88 Contents of prohibition notice

- (1) A prohibition notice must state:
  - (a) that the authorised officer believes that grounds for the issue of the prohibition notice exist and the basis for that belief, and
  - (b) briefly, the activity that the authorised officer believes involves or will involve the risk and the matters that give or will give rise to the risk, and
  - (c) the provision of this Act that the authorised officer believes is being, or is likely to be, contravened by that activity.
- (2) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention referred to in subsection (1) (c).
- (3) Without limiting section 87, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying 1 or more of the following:
  - (a) a place, or part of a place, at which the activity is not to be carried out,
  - (b) anything that is not to be used in connection with the activity,
  - (c) any procedure that is not to be followed in connection with the activity.



### **89 Compliance with prohibition notice**

The person to whom a direction is given under section 87 (2) or a prohibition notice is issued must comply with the direction or notice.

Maximum penalty:

- (a) in the case of an individual—\$100,000, or
- (b) in the case of a body corporate—\$500,000.

## **Division 4 General requirements applying to notices**

### **90 Application of Division**

In this Division, **notice** means an audit notice, improvement notice or prohibition notice.

### **91 Notice to be in writing**

A notice must be in writing.

### **92 Recommendations in notice**

- (1) An improvement notice or prohibition notice may include recommendations.
- (2) It is not an offence to fail to comply with recommendations in a notice.

### **93 Changes to notice by authorised officer**

- (1) An authorised officer may make minor changes to a notice:
  - (a) for clarification, or
  - (b) to correct errors or references, or
  - (c) to reflect changes of address or other circumstances.
- (2) An authorised officer may also, in accordance with section 86, extend the compliance period for an improvement notice.

### **94 Commissioner may vary or cancel notice**

Except as provided by section 93, a notice issued by an authorised officer may only be varied or cancelled by the Commissioner.

### **95 Formal irregularities or defects in notice**

A notice is not invalid only because of:

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice, or

- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued or given to the person in accordance with section 96.

#### **96 Issue and giving of notice**

The regulations may prescribe:

- (a) the manner of issuing a notice, and
- (b) the steps a person to whom a notice is issued must take to bring it to the attention of other persons.

### **Division 5 Compliance orders**

#### **97 Application of Division**

In this Division, **notice** means an audit notice, improvement notice or prohibition notice.

#### **98 Orders for compliance with notices**

- (1) The Commissioner may apply to the District Court for an order:
  - (a) compelling a person to comply with a notice, or
  - (b) restraining a person from contravening a notice.
- (2) The Commissioner may do so:
  - (a) whether or not proceedings have been brought for an offence against this Act in connection with any matter in relation to which the notice was issued, and
  - (b) whether any period for compliance with the notice has expired.

### **Division 6 Enforceable undertakings**

#### **99 Commissioner may accept undertakings**

- (1) The Commissioner may accept a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act or the regulations.
- (2) An undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence under Part 2 or an offence under section 28.
- (3) The giving of an undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.
- (4) The Commissioner may make a written undertaking publicly available.

### **100 Notice of decision and reasons for decision**

- (1) The Commissioner must give the person seeking to make an undertaking written notice of the Commissioner's decision to accept or reject the undertaking and of the reasons for the decision.
- (2) The Commissioner must publish, on the Commissioner's website, notice of a decision to accept an undertaking and the reasons for that decision.

### **101 When an undertaking is enforceable**

An undertaking takes effect and becomes enforceable when the Commissioner's decision to accept the undertaking is given to the person who made the undertaking or at any later date specified by the Commissioner.

### **102 Compliance with undertaking**

A person must not contravene an undertaking given by that person that is in effect.

Maximum penalty:

- (a) in the case of an individual—\$50,000, or
- (b) in the case of a body corporate—\$250,000.

### **103 Contravention of undertaking**

- (1) The Commissioner may apply to the District Court for an order if a person contravenes an undertaking.
- (2) If the Court is satisfied that the person who made the undertaking has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make 1 or both of the following orders:
  - (a) an order directing the person to comply with the undertaking,
  - (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the Court may make any other order that the Court considers appropriate in the circumstances, including orders directing the person to pay to the State:
  - (a) the costs of the proceedings, and
  - (b) the reasonable costs of the Commissioner in monitoring compliance with the undertaking in the future.
- (4) Nothing in this section prevents proceedings being brought for the contravention or alleged contravention of this Act to which the undertaking relates.

#### **104 Withdrawal or variation of undertaking**

- (1) A person who has made an undertaking may at any time, with the written agreement of the Commissioner:
  - (a) withdraw the undertaking, or
  - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.
- (3) The Commissioner must publish, on the Commissioner's website, notice of the withdrawal or variation of an undertaking.

#### **105 Proceedings for alleged contravention**

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act or the regulations may be brought against a person if an undertaking is in effect in relation to that contravention.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act or the regulations against a person who has made an undertaking in relation to that contravention and has completely discharged the undertaking.
- (3) The Commissioner may accept an undertaking in relation to a contravention or alleged contravention before proceedings in relation to that contravention have been finalised.
- (4) If the Commissioner accepts an undertaking before the proceedings are finalised, the Commissioner must take all reasonable steps to have the proceedings discontinued as soon as possible.

### **Part 7 Authorised officers and inspection powers**

#### **Division 1 Authorised officers**

##### **106 Definition**

In this Part:

**requirement** under this Act includes a requirement imposed under a notice, a direction or an exemption under this Act and a requirement contained in an undertaking or order given under this Act.

##### **107 Appointment of authorised officers by Commissioner**

The Commissioner may appoint 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.

### **108 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.

### **109 Identity cards must be issued**

- (1) The Commissioner must issue an authorised officer with an identity card.
- (2) The identity card must:
  - (a) be in the form approved by the Commissioner, 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 the Commissioner.
- (4) This section does not apply to an authorised officer who is a police officer.

### **110 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 the Commissioner, within the period specified by the Commissioner in a request for the return of the card, any identity card issued to the person by the Commissioner.
- (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.

### **111 Functions of authorised officers**

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

- (a) an inspection, audit or inquiry under this Act,
  - (b) to determine whether there has been a contravention of this Act, the regulations or the terms of an authorisation, taxi licence or requirement under this Act,
  - (c) to determine whether there has been a contravention of the *Taxation Administration Act 1996*, as applied for the purposes of Schedule 4.
- (2) An authorised officer must not use any more force than is reasonably necessary to enter premises under this Act or to do anything for which entry is effected.
- (3) An authorised officer must do as little damage as possible when exercising a function under this Act.

### **112 Inspections**

- (1) The Commissioner may cause inspections to be carried out to ensure that the provider of a passenger service or booking service, the holder of a taxi licence or the owner or driver of a taxi or a hire vehicle is complying with any of the following:
- (a) the terms of any authorisation or taxi licence, or any requirement to be authorised or to have a licence,
  - (b) safety duties, safety standards or any other requirements imposed under this Act.
- (2) Inspections under this section may be carried out at the intervals that the Commissioner thinks fit.
- (3) For the purposes of this section, the Commissioner may cause the following to be inspected:
- (a) the performance of employees or drivers in connection with passenger services or booking services,
  - (b) any vehicle used for the purposes of a passenger service and any equipment, furnishings or fittings in or about the vehicle,
  - (c) the operation of a passenger service or booking service,
  - (d) any other thing the Commissioner considers to be relevant to the safe carrying on of a passenger service or booking service.

## **Division 2 Powers**

### **113 Power of entry onto premises**

- (1) An authorised officer may enter premises the officer reasonably suspects are being used for the purposes of a passenger service or booking service without the occupier's consent and without obtaining a search warrant.

- (2) An authorised officer may enter the premises only at any of the following times:
  - (a) at any reasonable time during the day,
  - (b) at any time at which the service is being provided 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 section does not apply to premises or any part of premises used as a residence.

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

- (1) An authorised officer may enter any premises with the consent of the occupier of the premises.

**Note—**

In this Act, **premises** include a place or vehicle.

- (2) Before obtaining the consent of a person to enter premises, an authorised officer must inform the person that the person may refuse consent.

#### **115 Power to enter premises**

- (1) 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.
- (2) 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.

#### **115A Persons assisting authorised officers**

- (1) A person (the **assistant**), including an interpreter, may accompany an authorised officer entering a premises under this Division to assist the authorised officer if the authorised officer considers the assistance is necessary.
- (2) The assistant:
  - (a) may do the things at the place and in the manner that the authorised officer requires to assist the authorised officer to exercise the officer's functions under this Division, but
  - (b) must not do anything that the authorised officer does not have power to do, except as permitted under a search warrant.

- (3) Anything done lawfully by the assistant is taken for all purposes to have been done by the authorised officer.

### **116 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 motor vehicle that the officer reasonably believes is being used for a passenger service (a ***passenger vehicle***),
- (b) inspect or test any meter, communications device or other equipment, or inspect any furnishings or fittings, in, on or about a passenger vehicle,
- (c) by written notice given to the owner or person in charge of a passenger 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, electronic device or other equipment or apparatus used for the purposes of or in connection with a passenger service,
- (e) take photos and make recordings (including photographs, audio, video, digital or other recordings) 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,
- (h) search for evidence of any contravention of this Act or the regulations, the terms of an authorisation or taxi licence, the conditions of an authorisation or taxi licence or a requirement under this Act,
- (i) search for and inspect relevant documents,
- (j) require any person on the premises to produce to the officer any relevant documents, or provide access to any electronic device, 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.

### **117 Power to stop and detain motor vehicle**

- (1) This section applies if an authorised officer is authorised to inspect or test a motor



vehicle or equipment on a motor vehicle.

- (2) The authorised officer may stop and detain a motor 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 motor 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 motor vehicle may be given by the authorised officer by displaying a sign or by any other reasonable method.
- (5) If a motor vehicle has been stopped in compliance with a direction under this section, 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.

### **118 Notices requiring inspection or testing**

A notice under this Part requiring a motor vehicle or equipment to be inspected or 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.

### **119 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.

### **120 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 the Commissioner 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 section.

Maximum penalty: \$110,000.

- (3) Subsection (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 subsection (2).

### **121 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.
- (4) The notice may relate to a document that is located outside this State or Australia.
- (5) A person is liable to an offence under section 126 of failing to produce a document required by a notice even if the document is not located in this State if the person is reasonably able to bring the document or a copy of the document to this State.

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

- (1) This section 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 to 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 purposes 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 the manner that the authorised officer thinks appropriate.
- (6) Despite subsection (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 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.

- (8) In this section:

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

**relevant body** means:

- (a) a government 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.

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

- (1) This section applies to the following documents:
  - (a) a document seized or produced under this Part,
  - (b) a document found on premises 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.

## **124 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 under section 126 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 126) 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.

## **125 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 authorisation, taxi licence or requirement 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 section 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 authorisation, taxi licence or requirement under this Act.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer:
- (a) may accompany an authorised officer executing a search warrant issued under this section, and
  - (b) may take all reasonable steps to assist the authorised officer in the exercise of the officer's functions under this section.
- (5) In this section:

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

## **Part 8 Offences and penalties**

### **Division 1 Offences**

#### **126 Offences relating to inspections**

- (1) A person must not, without reasonable excuse, hinder or obstruct an authorised officer in a manner that interferes with the exercise by the officer of his or her functions under this Act or the regulations.
- (2) The occupier or person in charge of any premises or land entered by an authorised officer under this Act must not, without reasonable excuse, fail to provide the officer with all reasonable assistance for the effective exercise of the officer'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 in the exercise of the officer'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 in the exercise of the officer's functions under this Act or the regulations.

Maximum penalty:

- (a) in the case of a body corporate—\$110,000, or
- (b) in the case of an individual—500 penalty units.

### **127 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 authorisation or taxi licence under this Act, or
- (b) forges or fraudulently alters or uses any such authorisation or taxi licence, or
- (c) fraudulently allows any such authorisation or taxi licence to be used by any other person,

is guilty of an offence.

Maximum penalty: 20 penalty units.

### **128 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) 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.
- (5) Failure to provide that evidence does not constitute an offence.

### **129 Prohibited advertisements**

- (1) A person must not cause to be published any advertisement for a service involving the use of a motor vehicle or a booking service if:
  - (a) a provider of that kind of service is required to be authorised under this Act and the operator is not so authorised, 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) It is a defence to proceedings against a person who causes an advertisement to be published if the person establishes that the person did not know, and could not reasonably have known, that the provider of a service was not authorised, or a vehicle was not licensed, under this Act.

- (3) 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.

### **130 Return of number-plates**

- (1) (Repealed)
- (2) The holder of a taxi 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 within 7 days of the suspension, cancellation or licence otherwise ceasing to have effect.

Maximum penalty: 25 penalty units.

### **131 Vehicle owner's defence**

It is a defence to proceedings against the owner of a taxi or hire vehicle for an offence under this Act or the regulations applying to or in respect of the taxi or hire vehicle if the owner establishes that the owner did not know, and could not have reasonably known, that the vehicle was used as a taxi or hire vehicle.

## Division 2 Proceedings for offences

### 132 Imputing conduct to bodies corporate

- (1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.
- (2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against a body corporate for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.
- (3) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against a body corporate for that offence if the person referred to in subsection (1) made that mistake of fact.

### 133 Liability of directors etc for offences by body corporate—offences attracting executive liability

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions that is committed by a body corporate:
  - (a) section 27 or 28,
  - (b) section 47 or 48,
  - (c) section 76 (5), 78 or 79 (4),
  - (d) section 85, 89 or 102,
  - (e) section 126.
- (2) A person commits an offence against this section if:
  - (a) a body corporate commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the body corporate, or
    - (ii) an individual who is involved in the management of the body corporate and who is in a position to influence the conduct of the body corporate in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and



- (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the body corporate for the executive liability offence, and applies whether or not the body corporate is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the body corporate) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:

**director** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:

- (i) assessing the body corporate's compliance with the provision creating the executive liability offence, and

- (ii) ensuring that the body corporate arranged regular professional assessments of its compliance with the provision,

- (b) action towards ensuring that the body corporate's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

- (c) action towards ensuring that:

- (i) the plant, equipment and other resources, and

- (ii) the structures, work systems and other processes,

relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,

- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

### **134 Ancillary offences**

(1) A person:

- (a) who causes another person to commit, or
- (b) by whose order or direction another person commits, or
- (c) who aids, abets, counsels or procures the commission of, or
- (d) who conspires to commit,

an offence under another provision of this Act or the regulations is guilty of an offence against this Act or the regulations and liable to a penalty in the same way as the principal offender.

- (2) A person may be proceeded against for an offence against subsection (1) whether or not the principal offender has been prosecuted or convicted.

### **135 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 officer authorised in writing by the Commissioner as an authorised officer for the purposes of this section.

### **136 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) Proceedings for a Category 1 offence under Part 2 committed by an individual are to be taken on indictment.
- (3) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is \$50,000, despite any higher maximum monetary penalty provided in respect of the offence.
- (4) 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 2 years after the offence first comes to the notice of the Commissioner.
- (5) Proceedings for an offence under this Act (other than an offence dealt with on indictment) may be taken by the Commissioner or any other person permitted to do so by section 14 of the [Criminal Procedure Act 1986](#).

## **Part 9 Point to Point Transport Commissioner**

### **137 Point to Point Transport Commissioner**

- (1) The Governor, on the recommendation of the Minister, may appoint a Point to Point Transport Commissioner.
- (2) The Commissioner holds office for the term, not exceeding 5 years, that is specified in the instrument of appointment but is eligible (if otherwise qualified) for re-appointment.
- (3) A person is not eligible to be appointed for more than 2 terms of office as the Commissioner.
- (4) The office of Commissioner is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to that office (except as provided by section 138 of this Act).

### **138 Employment and remuneration**

- (1) The employment of the Commissioner is (subject to this Part) to be governed by a contract of employment between the Commissioner and the Minister.
- (2) The following provisions of or made under the *Government Sector Employment Act 2013* relating to the employment of Public Service senior executives apply to the Commissioner (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister):
  - (a) provisions relating to the band in which an executive is to be employed,
  - (b) provisions relating to the contract of employment of an executive,
  - (c) provisions relating to the remuneration, employment benefits and allowances of an executive.

### **139 Functions of Commissioner**

- (1) The Commissioner has the following functions:
  - (a) to administer the authorisation and licensing schemes established by this Act,
  - (b) to manage the enforcement of this Act and the regulations,
  - (c) to recommend safety and other standards for passenger services or booking services,
  - (d) to assist in the determination of liability for, and enforcement of payment of, the passenger service levy imposed under Schedule 4,
  - (e) to advise the Minister on matters relating to passenger services and booking

services,

(f) any other functions conferred or imposed on the Commissioner by or under this or any other Act.

(2) The Commissioner is not subject to the direction of the Minister in respect of the exercise of the Commissioner's functions in applying this Act to particular persons or providers of services or to particular applications under this Act.

(3) The Commissioner is to determine the Commissioner's service delivery priorities having regard to the Minister's expectations for service delivery established by a Statement of Expectations issued annually to the Commissioner by the Minister.

(4) The Commissioner must provide to the Minister any information required by the Minister relating to the Commissioner's functions and the exercise of those functions, including the exercise of a function referred to in subsection (2).

### **139A Powers of Commissioner to obtain information**

(1) If the Commissioner has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of this Act, or that will assist the Commissioner to monitor or enforce compliance with this Act, the Commissioner may by written notice served on the person, require the person to do one or more of the following:

(a) to give the Commissioner, in writing signed by the person (or in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, that information of which the person has knowledge,

(b) to produce to the Commissioner, in accordance with the notice, those documents,

(c) to appear before a person appointed by the Commissioner on a day, and at a time and place, specified in the notice (being a day, time and place that are reasonable in the circumstances) and give either orally or in writing that evidence and produce those documents.

(2) The notice must:

(a) state that the requirement is made under this section, and

(b) contain a statement to the effect that a failure to comply with a requirement is an offence, and

(c) if the notice requires the person to provide information or documents or answer questions:

(i) contain a statement about the effect of section 124, and

(ii) state that the person may attend with a legal practitioner.

- (3) The Commissioner must not make a requirement under subsection (1) (c) unless the Commissioner has taken all reasonable steps to obtain the information, including steps under subsection (1) (a) and (b), and has been unable to do so.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under this section.

Maximum penalty:

- (a) in the case of an individual—\$10,000, or
- (b) in the case of a body corporate—\$50,000.

- (5) Subsection (4) places an evidential burden on the defendant to show a reasonable excuse.
- (6) Section 124 applies to a requirement under this section.

#### **140 Delegation**

- (1) The Commissioner may delegate the exercise of any function of the Commissioner under this or any other Act (other than this power of delegation) to:
  - (a) any person employed in the government sector under the *Government Sector Employment Act 2013* or any statutory officer, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) The Minister may delegate any function of the Minister under this Part to the Secretary of the Department of Transport or a person prescribed by the regulations for the purposes of this subsection.

#### **141 Acting Commissioner**

- (1) The Minister may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner, and the person, while so acting, has all the functions of the Commissioner and is taken to be the Commissioner.
- (2) The Minister may, at any time, remove any person from an office to which the person was appointed under this section.
- (3) A person while acting in the office of the Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

- (4) For the purposes of this section, a vacancy in the office of the Commissioner is to be regarded as an absence from office of the Commissioner.

#### **142 Vacancy in office**

- (1) The office of Commissioner becomes vacant if the holder:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) is removed from office under section 143.
- (2) If the office of the Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **143 Removal from office**

The Governor may remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.

#### **144 Staff of Commissioner**

- (1) Persons may be employed in the Transport Service under Part 7A of the *Transport Administration Act 1988* or the Public Service to enable the Commissioner to exercise his or her functions.
- (2) The Transport Secretary (within the meaning of that Act) may delegate to the Commissioner any of the Transport Secretary's functions under that Part in respect of a person employed in the Transport Service to enable the Commissioner to exercise his or her functions.

### **Part 10 Reviews and appeals**

#### **145 Reviews by NCAT**

- (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 decisions under this Act are **reviewable decisions**:
- (a) a decision to refuse an application for an authorisation or a taxi licence,
  - (b) a decision to suspend or cancel an authorisation or a taxi licence (but not a decision to cancel a surrendered authorisation or taxi licence),
  - (c) a decision to vary a condition of an authorisation or a taxi licence, or to impose or revoke a condition of an authorisation or a taxi licence.

#### **146 Appeals to the Local Court**

- (1) A person may appeal to the Local Court against an appellable decision made in relation to the person under this Act.
- (2) The following decisions under this Act are **appellable decisions**:
- (a) a decision to issue an audit notice, improvement notice or prohibition notice,
  - (b) a decision not to extend the time for compliance with an audit notice or an improvement notice,
  - (c) a decision to vary or cancel an audit notice, improvement notice or prohibition notice,
  - (d) any other decision prescribed by the regulations for the purposes of this section.

#### **147 Procedures for Local Court appeals**

- (1) An appeal to the Local Court against an appellable decision is to be made by notice of appeal filed with the Local Court:
- (a) no later than 28 days after the person who made the appellable decision notified the person who is entitled to appeal of the decision, or
  - (b) within any other period that may be prescribed by the regulations.
- (2) Subject to the rules of the Local Court, the notice of appeal must specify the grounds of appeal.
- (3) The relevant registrar of the Local Court must give notice of the time and place of the hearing of any appeal under this section, and of the grounds for the appeal, to the Commissioner.
- (4) The time of the hearing of an appeal must not be earlier than 28 days after the date on which the notice under subsection (3) is given.



- (5) The hearing of an appeal may proceed despite any omission or error in a notice under subsection (3), or the failure to give any such notice, if the Local Court is satisfied that the appellant and the person to whom the notice was to be given had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.

#### **148 Determination of appeals**

- (1) The Local Court is to hear and determine an appeal made to the Court under this Part.
- (2) The Local Court may determine an appeal:
- (a) by setting aside the decision, or
  - (b) by varying the decision, or
  - (c) by dismissing the appeal, or
  - (d) by making any other order that to the Court seems just in the circumstances.
- (3) In varying a decision in an appeal, the Local Court may exercise only powers that the person who made the decision appealed against (the **decision-maker**) could have exercised under this Act when making the decision.
- (4) If the decision that is appealed against was based on a disqualifying offence or other offence committed (or alleged to have been committed) by the appellant, the appeal against the decision does not permit review of the guilt or innocence of the appellant for the offence.
- (5) Subject to the regulations, the decision of the Local Court in respect of an appeal is final and binding on the appellant and on the decision-maker.
- (6) Regulations may be made for or with respect to the following matters:
- (a) the matters that the Local Court may or must take into account (or not take into account) when determining an appeal against a specified class or classes of appellable decisions,
  - (b) the notification of appeal rights concerning appellable decisions,
  - (c) the giving of reasons for appellable decisions,
  - (d) the grounds on which the Local Court may (or may not) allow an appeal against a specified appellable decision,
  - (e) the adjournment of appeals,
  - (f) the internal review of specified appellable decisions as a precondition to appeals against the decisions,

- (g) the actions that may be taken by the Local Court, or must be taken by the Commissioner or any other person, after the determination of an appeal,
- (h) the circumstances in which specified appellable decisions are or are not stayed (or may or may not be stayed) by the Local Court pending the determination of an appeal,
- (i) the admission of specified certified documents in evidence in an appeal as prima facie evidence of the matters stated in the document.

## Part 11 Miscellaneous

### 149 Exchange of information

- (1) The Commissioner may enter into an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging information held by the Commissioner 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 passenger service or booking service,
  - (c) information concerning authorisations or licences, or applications for authorisations or licences, under this Act,
  - (d) information concerning notices issued, undertakings or orders made and audits carried out, under this Act,
  - (e) information concerning any proceedings commenced against or conviction of a person for a disqualifying offence,
  - (f) driver licensing and vehicle registration information relating to drivers for passenger services and vehicles used or proposed to be used to provide passenger services,
  - (g) 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 or another relevant agency specified in the arrangement,

but only to the extent that the information is reasonably necessary to assist in the exercise of functions of the Commissioner under this Act (or any other Act administered by the Minister for Transport and Infrastructure, whether solely or jointly with another Minister) or the functions of any relevant agency concerned.

(4) This section does not limit the operation of any Act under which the Commissioner or a relevant agency is authorised or required to disclose information to another person or body.

(5) In this section and section 150:

**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) TfNSW or RMS, or
- (d) IPART, or
- (e) the State Insurance Regulatory Authority constituted under the *State Insurance and Care Governance Act 2015*, or
- (f) an authorised provider of a taxi service or booking service, or
- (g) any other person or body prescribed by the regulations.

#### **150 Notification of offences and other information**

(1) The Commissioner of Police is authorised at any time, in accordance with an information sharing arrangement or at the request of the Point to Point Transport Commissioner, to disclose to the Point to Point Transport Commissioner or any other relevant agency the following information:

- (a) information relating to disqualifying offences, despite anything to the contrary in section 579 of the *Crimes Act 1900*,
- (b) information relating to the criminal history of a person, including (but not limited to) information about disqualifying offences,
- (c) information relating to criminal proceedings, whether or not heard, proven, dismissed, withdrawn or discharged.

(2) Information about a person's criminal history may be disclosed under this Act whether or not the information relates to events that occurred when the person was under the age of 18 years.

### **151 Disclosure of authorisation and other information**

- (1) The Commissioner may disclose, or permit the disclosure of, information about the following:
  - (a) the authorisation or licensing status of, or an application for an authorisation or taxi licence by, a person,
  - (b) the compliance of a person with requirements imposed under this Act.
- (2) A person may disclose information referred to in subsection (1) about a person if permitted to do so by the Commissioner.
- (3) The Commissioner may disclose, or permit the disclosure of, information under this section only if the Commissioner 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.

### **152 Disclosure of information**

A person must not disclose any information obtained in connection with the administration or execution of this Act or the regulations unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act or the regulations, or
- (c) for the purposes of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 100 penalty units.

### **153 Records and evidentiary matters**

- (1) The Commissioner must keep records of the grant, refusal, variation, suspension and cancellation of authorisations and licences under this Act.
- (2) The Commissioner must keep records of the issue, variation and cancellation of notices under this Act.

- (3) A certificate purporting to be signed by a person approved by the Commissioner 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 motor 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 motor 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 motor vehicle in question,
  - (d) the fact that, at any relevant time, any motor vehicle was used for commercial purposes.

#### **154 Extraterritorial application**

- (1) A requirement may be imposed under this Act on a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter affects a matter to which this Act relates.
- (2) Without limiting subsection (1), this Act extends to records in the possession, custody or control of a person even when the records are located outside the State.
- (3) In this section:
- requirement** means:
- (a) a requirement imposed under a notice, a direction, an order or an exemption under this Act, or
  - (b) a requirement contained in an undertaking given under this Act, or

- (c) a requirement imposed by an authorised officer in the exercise of functions under Part 7 or Schedule 4.

**Note—**

Section 31 of the *Interpretation Act 1987* applies to this Act and provides that an Act is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the State. That section also operates to preserve provisions to the extent that they do not exceed legislative power.

**155 Fees, charges and levies**

- (1) Any fees, charges or levies payable under this Act or the regulations may be recovered by the Commissioner as a debt in any court of competent jurisdiction.
- (2) The amount of a fee for a taxi 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.

**156 Service of documents**

- (1) A document (including a notice) 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 an individual:
    - (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 provided by the person for service of a document of that kind 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 provided by the body corporate for service of a document of that kind 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.

### 157 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.

### 158 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 1.
- (3) A regulation may create an offence punishable by a penalty not exceeding 250 penalty units (in the case of a body corporate) and 50 penalty units (in any other case).
- (4) 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, passenger services or booking services or any class of persons, vehicles, passenger services or booking services.
- (5) The regulations may apply, adopt or incorporate (with or without changes) any

publication as in force from time to time.

### **159 Review of taxi and hire vehicle industries impacts**

- (1) The Minister may review the impacts of this Act on the taxi and hire vehicle industries.
- (2) Any review is to be undertaken as soon as possible after the period of 12 months from the commencement of Part 3 of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within the following 12 months.

### **160 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 assent to 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 Regulation-making powers**

(Section 158 (2))

### **1 General regulatory power**

- (1) The regulation and control of vehicles used to provide a passenger service, their drivers and passengers.
- (2) The other provisions of this Schedule do not limit subclause (1).

### **2 Conduct**

- (1) Matters relating to the conduct of persons (including drivers) in connection with a passenger service.
- (2) Without limiting subclause (1), the following matters:
  - (a) prohibiting or regulating conduct in or on vehicles used for a passenger service or premises used in connection with a passenger service,
  - (b) the display of identification information by drivers or of authorisation information,
  - (c) authorising drivers of vehicles used to provide a passenger service, and authorised persons, to eject persons who contravene the regulations,
  - (d) the security, safety and order of persons using passenger services,



- (e) requiring drivers of vehicles used for passenger services to produce driver licences on the request of authorised officers.

### **3 Passenger service vehicles**

- (1) Matters relating to the use or operation of motor vehicles used for a 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 special purpose lane or part of a road, road related area or special purpose lane generally or within certain times,
  - (b) requirements for the vehicles, including age, design, equipment, markings and fittings (internal and external),
  - (c) prohibiting or restricting the use or provision of vehicles for passenger services that do not comply with vehicle requirements or applicable safety standards,
  - (d) requiring the exhibition of specified public interest notices in or on the vehicles,
  - (e) prohibiting or regulating methods of plying for hire on any or a specified road, road related area or special purpose lane,
  - (f) insurance requirements for providers of services and arrangements between providers and drivers and other persons,
  - (g) advertisements in or on vehicles used to provide passenger services.

### **4 Fares**

- (1) Matters relating to the payment of fares for travel on passenger services.
- (2) Without limiting subclause (1), the following matters:
  - (a) imposing penalties for failing to pay the appropriate fare,
  - (b) pre-payment of fares,
  - (c) fare estimates,
  - (d) publication of fares or other arrangements for payment for passenger services,
  - (e) collection of fares.

### **5 General operation of services**

- (1) Matters relating to the provision of passenger services or booking services.
- (2) Without limiting subclause (1), the following matters:

- (a) prohibiting any person from touting or calling out or otherwise importuning any person to use a vehicle,
- (b) signs and notices for the guidance of drivers or passengers,
- (c) drivers,
- (d) the transport of luggage and other goods, or animals.

## **6 Left property**

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

## **7 Authorisations, taxi licences and fees**

- (1) Matters relating to authorisations or taxi licences.
- (2) Without limiting subclause (1), the following matters:
  - (a) fees for processing applications for an authorisation or taxi licence or a renewal of an authorisation or taxi licence,
  - (b) authorisation or taxi licence fees,
  - (c) conditions of authorisations or taxi licences.

## **8 Advertisements**

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

## **9 Information and records**

- (1) Matters relating to the provision of information to or by the Commissioner or TfNSW and the keeping of records by providers of passenger services and booking services, holders of taxi licences and the owners and drivers of vehicles used for passenger services.
- (2) Without limiting subclause (1), the following matters:
  - (a) the furnishing of returns by providers, including about financial information,

- (b) in the case of a booking service, the keeping and furnishing of records about bookings,
- (c) the furnishing of returns by owners of vehicles used for passenger services,
- (d) the inspection of records required to be kept by providers and owners and drivers of vehicles,
- (e) the keeping of records in this State or in a form that can be made available in, or is accessible from, this State.

## **10 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.

## **Schedule 2 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.
- (4) The regulations under this Part have effect despite anything to the contrary in this

Schedule.

- (5) The regulations under this Part may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

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

### **2 Definitions**

In this Part:

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

**2014 Act** means the *Passenger Transport Act 2014*.

**annual taxi licence** means an annual taxi-cab licence in force under the 1990 Act immediately before the commencement of Part 4 of this Act.

**existing fares order** means a fares order, including any existing fare determination (within the meaning of Schedule 3 to the 2014 Act), relating to taxis or hire vehicles that was in force under the 2014 Act immediately before the commencement of Part 5 of this Act.

**ordinary taxi licence** means an ordinary taxi-cab licence in force under the 1990 Act immediately before the commencement of Part 4 of this Act.

**short term taxi licence** means a short-term taxi-cab licence in force under the 1990 Act immediately before the commencement of Part 4 of this Act.

**taxi-cab network authorisation** means an authorisation to operate a taxi-cab network that was in force under the 1990 Act immediately before the commencement of Part 3 of this Act.

### **3 Existing taxi licences**

- (1) An ordinary taxi licence continues in force unless cancelled under this Act.
- (2) A short term taxi licence or annual taxi licence continues in force for the period for which the licence was granted unless sooner cancelled under this Act.
- (3) An annual taxi licence may be renewed in accordance with this Act.
- (4) An ordinary taxi licence, short term taxi licence or annual taxi licence is subject to any conditions or terms imposed by RMS that applied to the licence immediately before the commencement of Part 4 of this Act.
- (5) An ordinary taxi licence, short term taxi licence or annual taxi licence that was a nexus licence or a paired licence (within the meaning of Part 12 of Schedule 3 to the 1990 Act) continues to be subject to any conditions imposed under that Part that

applied to the licence immediately before the commencement of Part 4 of this Act.

- (5A) An ordinary taxi licence, of class TX01A, TX03, TX03WAT, TX13, TX50A, TXC1, TXHAP or TXHAPTR, that is subject to a condition permitting it to be renewed may be renewed in accordance with that condition despite any other provision of this Act.
- (6) Except as provided by this Part or the regulations, this Act applies to an ordinary taxi licence, a short term taxi licence or an annual taxi licence, and the holder of any such licence, in the same way as it applies to a taxi licence issued under this Act.
- (7) Any renewals of an annual taxi-cab licence (including the periods of those renewals) under the 1990 Act are to be counted for the purpose of determining under section 58 (2) of this Act whether the licence may be renewed.
- (8) Despite subclause (3), a taxi that is the subject of a licence that is in force by operation of this Schedule may be used for a taxi service obtained by a booking anywhere in this State.
- (9) A condition of a licence continued by this clause is taken to have been imposed under this Act and may be varied or revoked accordingly.
- (10) The Commissioner may, by notice published in the Gazette, revoke any or all conditions of a licence (other than a condition referred to in subclause (5) or (5A)) that is continued by this clause.
- (11) To avoid doubt, the regulations may revoke or amend a condition continued by this clause and may impose a condition that is inconsistent with a continued condition.
- (12) A continued condition of a taxi licence has no effect to the extent that it is inconsistent with a condition imposed on the licence by the regulations.

#### **4 Nexus and other licences**

- (1) A nexus licence or a paired licence (within the meaning of Part 12 of Schedule 3 to the 1990 Act), and a TX08 restricted taxi-cab licence, in force under the 1990 Act immediately before the commencement of Part 4 of this Act, are taken to be subject to the condition that the holder of the licence must be an authorised provider of a taxi service or an authorised provider of a booking service.
- (2) A condition imposed by this clause may be varied or revoked by the Commissioner.

#### **5 Existing taxi licence applications**

- (1) An application for an ordinary taxi licence made, but not finally determined, before the commencement of Part 4 of this Act is taken to have been refused.
- (2) An application for a short term taxi licence made, but not finally determined, before the commencement of Part 4 of this Act is to be determined under the 1990 Act as if

that Act continued to be in force.

## 6 Transfer of ordinary taxi licences

- (1) The Commissioner must, on application by the holder of an ordinary taxi licence, transfer the licence to another person.
- (2) The Commissioner may, by written notice given to the transferor or 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.
- (3) The Commissioner is not required by this clause to transfer an ordinary taxi licence if the transfer would result in a contravention of a condition or term of the licence or in a transfer to a person who is not eligible to hold a taxi licence.

- (4) In this clause:

**holder** of an ordinary taxi licence means the person to whom the licence was last granted or transferred.

## 7 Transfer levy for ordinary licences

- (1) A levy of 2.5% of the current market value of an ordinary taxi licence is payable to the Crown by the transferee on the transfer of an ordinary taxi licence.
- (2) The levy is to be charged, levied and collected in the manner determined by the Commissioner.
- (3) The levy is not payable 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.
- (4) The Commissioner is not required to transfer a licence if any levy that is payable has not been paid.

- (5) In this clause:

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

## 8 Accredited taxi service operators

- (1) A person who was, immediately before the commencement of Part 3 of this Act, an accredited operator of a taxi service under the 1990 Act is taken to be an authorised provider of the service under this Act and this Act applies accordingly.
- (2) The person may be authorised under this Act even if the person had, before that commencement, been convicted of a disqualifying offence, unless the Commissioner determines that the person should not, because of that conviction, be so authorised.

- (3) The Commissioner must give written notice to the person of a determination under this clause. Any such determination is a reviewable decision for the purposes of section 145.
- (4) Any disciplinary action commenced, but not finally determined under the 1990 Act, against the person is to be dealt with under this Act.
- (5) For the purposes of taking action under this Act in relation to the authorisation of the person as a provider of a taxi service, any contraventions by the person of the 1990 Act or the 2014 Act or the regulations under those Acts may be taken into account.
- (6) This clause does not extend to any offence committed on or after the commencement of Part 3 of this Act.
- (7) This clause does not apply to a person who provides a taxi service as an affiliated provider or in relation to the use of a bus.
- (8) This clause does not apply to a person who is an affiliated provider within the meaning of this Act or who, for any other reason, is exempt from the requirement to hold an authorisation to provide a taxi service or passenger service under this Act.

## **9 Authorised taxi-cab network operators**

- (1) A person who was, immediately before the commencement of Part 3 of this Act, the holder of a taxi-cab network authorisation is taken to be an authorised provider of a taxi service under this Act and this Act applies accordingly.
- (2) If the person also provided a booking service for taxis immediately before that commencement, the person is taken to be an authorised provider of a booking service under this Act and this Act applies accordingly.
- (3) The person may be authorised under this Act even if the person had, before that commencement, been convicted of a disqualifying offence, unless the Commissioner determines that the person should not, because of that conviction, be so authorised.
- (4) Any such determination is a reviewable decision for the purposes of section 145.
- (5) The Commissioner must give written notice to the person of a determination under this clause.
- (6) Any disciplinary action commenced, but not finally determined under the 1990 Act, against the person is to be dealt with under this Act.
- (7) For the purposes of taking action under this Act in relation to the authorisation of the person as a provider of a taxi service, any contraventions by the person of the 1990 Act or the regulations under that Act may be taken into account.
- (8) This clause does not extend to any offence committed on or after the commencement

of Part 3 of this Act or in relation to the use of a bus.

- (9) This clause applies to the following persons as if they were the holders of a taxi-cab network authorisation referred to in subclause (1):
- (a) a person who, immediately before the commencement of Part 3 of this Act, was an accredited operator of a taxi service and exempt from the requirements of section 31G of the 1990 Act,
  - (b) a person who, immediately before the commencement of Part 3 of this Act, was an accredited operator of a taxi service operating outside the Metropolitan, Newcastle or Wollongong transport districts and who operated the service without being affiliated with a taxi-cab network.

#### **10 Accredited hire vehicle operators**

- (1) A person who was, immediately before the commencement of Part 3 of this Act, an accredited operator of a public passenger service by means of a private hire vehicle under the 1990 Act is taken to be an authorised provider of a booking service under this Act and this Act applies accordingly.
- (1A) A person who was, immediately before the commencement of this Act, an accredited operator of a tourist service provided by means of motorcycles or four wheel drive vehicles under the 1990 Act is taken to be an authorised provider of a booking service under this Act and this Act applies accordingly.
- (2) The person may be authorised under this Act even if the person had, before that commencement, been convicted of a disqualifying offence, unless the Commissioner determines that the person should not, because of that conviction, be so authorised.
- (3) The Commissioner must give written notice to the person of a determination under this clause. Any such determination is a reviewable decision for the purposes of section 145.
- (4) Any disciplinary action commenced, but not finally determined under the 1990 Act, against the person is to be dealt with under this Act.
- (5) For the purposes of taking action under this Act in relation to the authorisation of the person as a provider of a booking service, any contraventions by the person of the 1990 Act or the regulations under that Act may be taken into account.
- (6) This clause does not extend to any offence committed on or after the commencement of Part 3 of this Act.

#### **11 Taxi licence determinations**

A determination made under the 1990 Act, and in force under section 32C of that Act immediately before the commencement of Part 4 of this Act, is taken to have been made



under section 71 of this Act.

## **12 Holders of driving authorities**

- (1) This clause applies to a person who was, immediately before the commencement of Part 3 of this Act, the holder of a driver authority under the 1990 Act that authorised the person to drive a taxi-cab or a private hire vehicle.
- (2) The person may drive a vehicle that provides a passenger service under this Act even if the person had, before that commencement, been convicted of an offence that would prevent the person from being eligible to drive a vehicle for that purpose under this Act, unless the Commissioner determines that the person should not, because of that conviction, be a driver for a passenger service.
- (3) Any such determination is a reviewable decision for the purposes of section 145.
- (4) The Commissioner must give written notice to the person, and any provider of a passenger service or booking service for which the person is a driver or that provides services to the person, of a determination under this clause.
- (5) This clause does not extend to any offence committed on or after the commencement of Part 3 of this Act.

## **13 Existing fares orders**

An existing fares order continues to apply to the provision of a taxi service or other passenger service to which it applied immediately before the commencement of Part 5 of this Act but is taken to have been made under this Act. Accordingly, the order may be amended or revoked under this Act.

## **14 Existing bus services**

- (1) This clause applies to a person:
  - (a) who provides a passenger service that uses a motor vehicle seating not more than 12 persons and not less than 8 persons to transport passengers, and
  - (b) who, immediately before the commencement of Part 3 of this Act, held an accreditation under the 2014 Act or 1990 Act to operate a bus service under that Act using the motor vehicle.
- (2) The person is not required to obtain an authorisation under this Act in relation to any booking service provided for bookings for any passenger service, or any taxi service provided by the motor vehicle, for the period of 12 months commencing on the commencement of Part 3 of this Act.
- (3) During that period:
  - (a) the person is taken to be the operator of a public passenger service under the

2014 Act or 1990 Act, as the case requires, and

- (b) the provisions of that Act and any regulations made under that Act that are applicable to the operator of a public passenger service continue to apply to the person, and
  - (c) the requirements of this Act relating to a provider of a booking service or a passenger service do not apply in respect of anything done by the person to or in relation to the service while an accreditation referred to in subclause (1) (b) is in force for the service.
- (4) Subclauses (2) and (3) cease to apply to a person if the person obtains any required authorisation or taxi licence that would, but for this clause, be required by this Act to be obtained by the person in respect of the passenger service or vehicle.

### **15 Transition of accredited operators**

- (1) Despite clauses 8, 9 and 10 of this Part, a person is not taken to be an authorised provider of a taxi service or booking service unless the Commissioner is satisfied that the person, immediately before the commencement of Part 3 of this Act:
- (a) was an accredited operator of a service referred to in any of those clauses, and
  - (b) carried on the business of providing the service concerned.
- (2) The Commissioner must, as soon as practicable after determining whether or not a person satisfies subclause (1), notify the person in writing as to whether or not the person is to be taken to be an authorised provider of a taxi service or booking service.
- (3) The notice must also advise a person who is not taken to be an authorised provider that the person may apply for authorisation under this Act.

### **16 IPART investigations**

Any investigation being carried out by IPART before the commencement of section 72 or 74 of this Act, and relevant to the matters with respect to which IPART may exercise functions under either of those sections, may continue and the functions are taken to be being exercised for the purposes of section 72 or 74, as the case requires.

### **17 Transitional arrangements for taxi licence determinations**

The first taxi licence determination under section 71 of this Act for taxi licences for taxis operating outside the Metropolitan transport district is to be determined before 1 July 2018.

## **Schedule 3 Adjustment assistance for taxi and passenger hire vehicle**

## industries

### Division 1 Preliminary

#### 1 Definitions

In this Schedule:

**additional assistance funds** means moneys for the purposes of additional assistance payments for:

- (a) holders of private hire vehicle licences (other than short-term or annual licences) under the *Passenger Transport Act 1990* immediately before 1 July 2015 and who meet the criteria for eligibility established under this Schedule, or
- (b) persons who are or were involved in or connected with the taxi or hire vehicle industry and who are detrimentally affected by changes made to the regulation of the industries under this Act.

**assistance funds** means transitional assistance funds or additional assistance funds.

**Panel** means the Taxi and Hire Vehicle Industries Assistance Panel established by this Schedule.

**transitional assistance funds** means moneys:

- (a) for the purposes of payments under a transitional assistance package for holders of taxi-cab licences (other than short-term or annual licences) under the *Passenger Transport Act 1990* immediately before 1 July 2015 and who meet the criteria for eligibility established under this Schedule, or
- (b) any other moneys prescribed by the regulations for the purposes of this Schedule.

#### 2 Repeal of Schedule

This Schedule is repealed on a day appointed by an order made by the Governor and published on the NSW legislation website.

### Division 2 Industry adjustment assistance

#### 3 Transitional assistance funds payments scheme

Regulations may be made for or with respect to the scheme for the payment of transitional assistance funds, including (but not limited to) the following matters:

- (a) the persons who are eligible to receive transitional assistance funds,
- (b) the amount payable to eligible applicants,
- (c) proof of eligibility,

- (d) applications for transitional assistance funds,
- (e) the period within which applications may be made,
- (f) determination of applications for transitional assistance funds,
- (g) conditions on payment of transitional assistance funds,
- (h) the provision of additional information or records by applicants,
- (i) reviews of decisions about applications.

#### **4 Additional assistance funds**

- (1) The Minister may, at the Minister's discretion, determine that an amount of additional assistance funds is payable to a person who is or was involved in or connected with the taxi or passenger hire vehicle industry and who is detrimentally affected by changes made to regulation of those industries under this Act.
- (2) The Minister may pay to a person who was the holder of a private hire vehicle licence (other than a short-term or annual licence) under the *Passenger Transport Act 1990* immediately before 1 July 2015, and who meets the criteria for eligibility established under this Division (a **hire car licensee**), additional assistance funds in accordance with the regulations.
- (3) A determination may be unconditional or subject to conditions.
- (4) In determining whether an amount of additional assistance funds referred to in subclause (1) is payable, the Minister may have regard to any applicable criteria recommended by the Panel.
- (5) An amount of assistance funds may be paid to a person in accordance with the determination of the Minister and may be made whether or not the person to whom the amount is payable has applied for or been granted any other assistance funds.
- (6) The Minister may delegate any function of the Minister under this clause (other than this power of delegation) to the Secretary of the Department of Transport or a member of staff of TfNSW.

#### **5 Additional assistance scheme**

Regulations may be made for or with respect to the following matters:

- (a) applications for additional assistance funds,
- (b) the hire car licensees who are eligible to receive additional assistance funds,
- (c) the amount payable to eligible hire car licensees,
- (d) proof of eligibility of hire car licensees,

- (e) the period within which applications may be made,
- (f) the provision of additional information or records by applicants,
- (g) reviews of decisions about applications.

## **6 Provision of assistance funds**

Assistance funds are to be provided from money appropriated by Parliament for the purpose.

## **Division 3 Taxi and Hire Vehicle Industries Assistance Panel**

### **7 Taxi and Hire Vehicle Industries Assistance Panel**

- (1) There is to be a Taxi and Hire Vehicle Industries Assistance Panel.
- (2) The Panel is to consist of 4 members of whom:
  - (a) 1 is to be the Chief Executive of the NSW Taxi Council or the Chief Executive's nominee, and
  - (b) 1 is to be the Secretary of the Department of Transport, or the Secretary's delegate, and
  - (c) 1 is to be the Secretary of the Department of Premier and Cabinet, or the Secretary's delegate, and
  - (d) 1 is to be the Secretary of The Treasury, or the Secretary's delegate.
- (3) The Secretary of the Department of Transport, or the Secretary's delegate, is to be the Chairperson of the Panel.
- (4) If the NSW Taxi Council ceases to trade or is wound up, the Panel is to consist only of the members specified in subclause (2) (b)–(d).
- (5) The Chief Executive of the NSW Taxi Council or the Chief Executive's nominee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of carrying out the functions of a member of the Panel.

### **8 Functions of Panel**

The Panel has the following functions:

- (a) to determine the procedures for applications for assistance funds,
- (b) to recommend criteria for the payment of additional assistance funds referred to in clause 4 (1),

- (c) to advise the Minister with respect to the disbursement and use of assistance funds,
- (d) to report to the Minister on the activities of the Panel, on the Minister's request or at the intervals determined by the Minister,
- (e) at the request of the Minister, to make recommendations as to payments of assistance funds to particular applicants, or classes of applicants,
- (f) without limiting paragraph (e), at the request of the Minister, to make recommendations as to guidelines for the determination of applications for assistance funds where there is a dispute as to who holds a licence,
- (g) any other functions prescribed by the regulations for the purposes of this Schedule.

### **9 Meetings of Panel**

- (1) The procedure for the calling of meetings of the Panel and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Panel.
- (2) The quorum for a meeting of the Panel is a majority of its members for the time being.
- (3) The Minister may call the first meeting of the Panel in the manner that the Minister thinks fit.
- (4) The nominee of the Chief Executive of the NSW Taxi Council is entitled to be present at, and participate in, meetings of the Panel but is not entitled to vote at a meeting.

### **10 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member of the Panel has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Panel, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Panel.
- (2) A disclosure by a member at a meeting of the Panel that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Panel and that record must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Panel.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Panel otherwise determines:
  - (a) be present during any deliberation of the Panel with respect to the matter, or
  - (b) take part in any decision of the Panel with respect to the matter.
- (5) For the purposes of the making of a determination by the Panel under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Panel for the purpose of making the determination, or
  - (b) take part in the making by the Panel of the determination.
- (6) The member of the Panel who is the Chief Executive of the NSW Taxi Council does not have a pecuniary interest in a matter merely because the member holds that position.
- (7) A contravention of this clause does not invalidate any decision of the Panel.

## **11 Failure to agree**

- (1) If the members of the Panel fail to reach a unanimous agreement on a matter relating to the disbursement of additional assistance funds, the Chairperson of the Panel must refer the matter to the Minister for determination.
- (2) A decision of the Minister is final and is taken to be the decision of the Panel.
- (3) In this clause, a ***matter relating to the disbursement of additional assistance funds*** means any of the following matters, but does not include a matter relating to assistance funds payable under clause 4 (2):
  - (a) approval of criteria for the payment of additional assistance funds of particular kinds,
  - (b) a recommendation as to payments of additional assistance funds to particular applicants or classes of applicants.
- (4) In a case where a member of the Panel is prohibited from taking part in a decision by clause 10, a unanimous agreement is taken to be agreement by all members

permitted to take part in the decision.

## 12 Personal liability

- (1) A matter or thing done or omitted to be done by the Panel, a member of the Panel, or a person acting under the direction of the Panel or a member of the Panel does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the member of the Panel or the person so acting personally to any action, liability, claim or demand.
- (2) However, any such liability attaches instead to the Crown.

## Division 4 Improper conduct

### 13 Improper conduct

- (1) For the purposes of this clause, ***improper conduct*** includes the following:
  - (a) making a statement, or giving any information, for the purposes of obtaining or retaining assistance funds knowing that it is false or misleading in a material particular,
  - (b) in, or in relation to, an application for assistance funds making a statement, or giving any information, knowing that it is false or misleading in a material particular,
  - (c) doing or omitting to do any thing for the purpose of misrepresenting eligibility to receive assistance funds,
  - (d) transferring a taxi-cab or private hire vehicle licence, or engaging in or facilitating any other transaction involving a licence granted under the [Passenger Transport Act 1990](#), for the purpose of altering an entitlement to receive assistance funds or gaining assistance funds.
- (2) The Minister may determine that a person who engages in improper conduct in relation to an application for, or payment of, assistance funds is not entitled to be paid assistance funds.
- (3) A person who receives an amount of assistance funds may be required by the Minister by notice in writing to repay the amount if the Minister is of the opinion that the person has engaged in improper conduct (whether in relation to that amount or any other assistance funds paid to the person).
- (4) An amount of assistance funds required to be repaid under this clause may be recovered by the Secretary of the Department of Transport in a court of competent jurisdiction as a debt due to the Crown.
- (5) In any proceedings instituted for the recovery of a debt due to the Crown under this



clause, a certificate of the Minister that a specified amount is the amount of the debt is evidence of that fact.

## Schedule 4 Passenger service levy

### Part 1 Preliminary

#### 1 Interpretation

(1) In this Schedule:

**assessment period** means 1 month or any other period determined by the Point to Point Transport Commissioner for the purposes of this Schedule.

**assessor** means the Point to Point Transport Commissioner or other person assessing the levy payable by a person.

**levy** means the passenger service levy established by this Schedule.

(2) This Schedule, and any regulations made under this Schedule, are to be read together with the [Taxation Administration Act 1996](#) (other than Division 2 of Part 7 of that Act).

### Part 2 Levy

#### 2 Passenger service transactions

(1) The following are **passenger service transactions**:

- (a) taking a booking for a taxi or hire vehicle to provide a passenger service to a person (whether the passenger service is to be provided by the provider who takes the booking or another person),
- (b) the provision of a taxi service (other than as a result of the taking of a booking by the provider of the taxi service).

(2) If a taxi service is provided by a person as an affiliated provider, the provider who facilitates the taxi service is, for the purposes of this Schedule, taken to be the provider of the taxi service.

(3) To avoid doubt, taking a booking for a passenger service, or providing a passenger service, for transport that commences in this State and ends in another State or a Territory is a passenger service transaction.

#### 3 Levy payable

A person who, during any assessment period, was the provider of a taxi service or booking service is liable to pay, on or before the last day of the following assessment period or on such other day as may be specified by the assessor, the levy for the preceding assessment period calculated in accordance with clause 4.

**Note—**

This Schedule is a taxation law for the purposes of the *Taxation Administration Act 1996* and the provisions of that Act applying to assessment and payment of taxes apply to the levy (subject to any modifications made by or under this Schedule).

**4 Calculation of levy**

- (1) The amount of the levy is \$1 for each passenger service transaction by the provider of a passenger service or booking service that occurred in the assessment period for which the levy is payable.
- (2) If it is not reasonably practicable to determine the whole or part of the amount of levy payable based on actual passenger service transactions during an assessment period, the amount payable may be calculated on an estimated basis in accordance with the regulations.
- (3) The assessor is to determine whether or not it is reasonably practicable to determine the whole or part of the amount of levy payable based on actual passenger service transactions during an assessment period and may, for that purpose, issue written guidelines for use by persons who may be liable to pay the levy.

**5 Passenger service transactions for which levy is not payable**

- (1) **Bookings for taxis and hire vehicles** A person is not liable to pay the levy for taking a booking for a taxi or hire vehicle to provide a passenger service if:
  - (a) the passenger service is not provided for any reason, or
  - (b) the transport commences in another State or a Territory, or
  - (c) another provider is already liable to pay the levy for taking a booking to provide the service.
- (2) The taking of a booking for a taxi or hire vehicle to provide a passenger service to transport more than 1 passenger in a taxi or hire vehicle, or that results in the passengers being transported to different destinations, is taken to be 1 passenger service transaction.
- (3) **Provision of taxi services** A person is not liable to pay the levy for providing a taxi service to a person if:
  - (a) the transport commences in another State or a Territory, or
  - (b) the person provides the taxi service as an affiliated provider.

## **Part 3 Miscellaneous**

### **6 Registration of liable persons**

- (1) A provider of a taxi service or booking service who is liable to pay the levy must apply to the Point to Point Transport Commissioner in accordance with this clause to be registered as a taxpayer for the purposes of this Schedule.

Maximum penalty: 100 penalty units.

- (2) An application is to be in the form approved by the Point to Point Transport Commissioner.

### **7 Returns**

A person who, during any assessment period, was the provider of a passenger service or booking service must, on or before the last day of the following assessment period, furnish a return to the Point to Point Transport Commissioner in relation to the passenger service transactions of the provider for the preceding assessment period.

### **8 Information sharing**

- (1) The Point to Point Transport Commissioner may enter into an arrangement with the Chief Commissioner for the purposes of sharing information held by either of them that is relevant to liability for or payment of the levy or is otherwise connected with the levy.
- (2) Under an information sharing arrangement, each party to the arrangement is, despite any other provision of this Act or other law of this 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 or another person specified in the arrangement,

but only to the extent that the information is sought or disclosed to assist the administration and collection of the passenger service levy.

- (3) This clause does not limit the operation of any law under which the Point to Point Transport Commissioner or the Chief Commissioner is authorised or required to disclose information to another person or body.

### **9 Functions of Point to Point Transport Commissioner**

- (1) The Point to Point Transport Commissioner may exercise any functions delegated to the Point to Point Transport Commissioner by the Chief Commissioner under the [Taxation Administration Act 1996](#).

- (2) The Point to Point Transport Commissioner may sub-delegate any functions so delegated to any person to whom the Commissioner may delegate a function under section 140.
- (3) The Point to Point Transport Commissioner may, for the purposes of the levy, exercise any functions of the Chief Commissioner under the *Taxation Administration Act 1996* with respect to assessment or reassessment of tax liability or under Part 10 of that Act with respect to a decision of the Point to Point Transport Commissioner as to an assessment or otherwise in connection with the levy. Division 2 of that Part applies to a decision made by the Point to Point Transport Commissioner in the same way as it applies to a decision made by the Chief Commissioner.

## **10 Powers of authorised officers**

For the purposes of determining liability for the levy and other matters related to payment or collection of the levy an authorised officer may exercise the functions:

- (a) conferred by Division 2 of Part 7 of this Act, and the functions conferred on an authorised officer, and
- (b) conferred on an authorised officer under Division 2 of Part 9 of the *Taxation Administration Act 1996*.

## **11 Regulations**

- (1) Regulations may be made for or with respect to the following matters:
  - (a) the provision of information by providers of passenger services or booking services, owners of taxis or hire vehicles or drivers of taxis and hire vehicles for the purposes of determining the levy payable by the provider of a taxi service or a booking service,
  - (b) assessments and reassessments of taxation liability,
  - (c) passenger service transactions that are or are not liable for the levy,
  - (d) arrangements for the payment of the levy by persons liable to pay the levy,
  - (e) rebates of levy,
  - (f) regulating the collection and payment of levy amounts by, and recovery of amounts so collected from, drivers, affiliated providers or owners of motor vehicles used to provide passenger services who are not liable to pay the levy,
  - (g) the circumstances, arising out of a provider's inability to recover amounts of levy collected by a driver, an affiliated provider or an owner of a motor vehicle used to provide passenger services who is not liable to pay the levy, in which liability to pay the levy may be reduced or waived,

(h) modifying the operation of the *Taxation Administration Act 1996* for the purposes of this Schedule.

- (2) To avoid doubt, a regulation made under this clause that requires a driver or bailee to make a payment to the provider of a passenger service or booking service is in addition to any other payment that the person is required to make under a determination under the *Industrial Relations Act 1996* applying to the person.

## **12 Condition of authorisation**

It is a condition of the authorisation of a provider of a taxi service or booking service who is liable to pay the levy that the provider pays the levy in accordance with this Schedule and the regulations made under this Schedule.

## **13 Reasonable directions by liable persons**

- (1) A person who is liable to pay the levy may give a driver or other person who collects amounts paid for fares for a passenger service transaction in respect of which an amount of levy is payable directions as to the collection or payment of any amount allocated for the levy.
- (2) A person must not fail to comply with any reasonable direction given under subclause (1).

Maximum penalty: 20 penalty units.

## **14 Cessation of levy**

- (1) The levy is not payable for any passenger service provided on or after the levy repeal day.
- (2) The Minister may, by order published in the Gazette, specify the levy repeal day.
- (3) An order under this clause cannot be amended or revoked after the levy repeal day specified in the order.

## **Schedules 5-7 (Repealed)**