

# Passenger Transport Act 1990 No 39

[1990-39]



New South Wales

## Status Information

### Currency of version

Current version for 13 January 2023 to date (accessed 24 April 2024 at 7:33)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Proposed repeal**

The Act is to be repealed on the whole commencement of sec 179 of the [Passenger Transport Act 2014 No 46](#).

### Responsible Minister

- Minister for Roads
- Minister for Transport
- Minister for Regional Transport and Roads

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 13 January 2023

# Passenger Transport Act 1990 No 39



New South Wales

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# Passenger Transport Act 1990 No 39



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Definitions

(1) In this Act—

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

**authorised officer** means an authorised officer appointed under section 46W or a police officer.

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

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

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

- (a) work relating to the driving or other operation of a bus, the loading or disembarking of passengers from a bus or the movement of buses,
- (b) work relating to the repair, maintenance or upgrading of buses, bus terminals or bus maintenance facilities,
- (c) work involving the development, management or monitoring of safe working

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**public passenger service** means the carriage of passengers for a fare or other consideration (other than a passenger service under the [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016](#))—

- (a) by motor vehicle (other than a light rail vehicle) along a road or road related area, or along the whole or part of a transitway route, or
- (b) by vessel within any New South Wales waterway.

**public passenger vehicle** means—

- (a) a bus used to provide a public passenger service, or
- (b) a ferry used to provide a regular passenger service, or
- (c) (Repealed)
- (d) a vehicle declared by a regulation under section 6 to be a public passenger vehicle.

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

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

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

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



**railway premises** has the same meaning as in the Rail Safety National Law set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* of South Australia, but does not include any railway premises to which that Law does not apply.

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

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

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

**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).

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

**service levels** means—

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

**smartcard** means an authority to travel on a passenger transport vehicle or train that is of a type prescribed by the regulations.

**smartcard reader** means a device of a type prescribed by the regulations that is designed to enable the reading of information recorded on a smartcard.

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

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

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

a common origin or a common destination, or both.

**train** has the same meaning as in the Rail Safety National Law set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* of South Australia, but does not include any train to which that Law does not apply.

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

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

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

**transport safety employee** means—

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

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

**transport safety investigation** means an investigation under section 46BA.

**transport safety investigator** means a transport safety investigator appointed under Schedule 6.

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

**vehicle** includes a vessel.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (1A) A reference in this Act to a train or to railway premises includes a reference to any vehicle being used by the operator of a rail passenger service for the carriage of passengers in connection with that service.

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

#### **4 Objects**

The objects of this Act are—

- (a) to require the accreditation or authorisation, by TfNSW, of the operators of and drivers involved in public passenger services (other than ferry services), and
- (b) to dispense with the licensing of ferries and buses used to provide a public passenger service, providing instead for—
  - (i) ferry and bus services to be operated under fixed-term contracts entered into between TfNSW and operators, and
  - (ii) deregulation of long-distance and tourist services, and
  - (iii) regulation of government and non-government buses and ferries on a more equal basis, and
- (c) to encourage the provision of school bus services on a more commercial basis, without disregarding the reasonable expectations of traditional service operators, and
- (d) to provide for rail services contracts between RailCorp, Sydney Metro, Sydney Trains, NSW Trains and TfNSW, and
- (e) to encourage public passenger services that meet the reasonable expectations of the community for safe, reliable and efficient passenger transport services, and
- (f) to encourage co-ordination of public transport services.

#### **5 Crown bound by Act**

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

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

- (1) For the purposes of this Act, the following are eligible to be accredited to carry on a public passenger service—
  - (a) a single individual,
  - (b) two or more individuals carrying or proposing to carry on the service jointly under a partnership or other agreement or arrangement,

- (c) a body incorporated by or under the law of this or any other jurisdiction (including the *Corporations Act 2001* of the Commonwealth, the *Associations Incorporation Act 2009* or the *Co-operatives National Law (NSW)*).
- (2) If 2 or more individuals are jointly accredited and any one of them dies or ceases to jointly carry on the service—
  - (a) the accreditation is automatically suspended on the expiration of 21 days after the death or cessation if TfNSW has not been notified before that time of the death or cessation, and
  - (b) the accreditation may be cancelled, suspended or varied under this Act because of the death or cessation (whether before or after any such notification).
- (3) If 2 or more individuals are jointly accredited to carry on a public passenger service, each of those individuals has the obligations imposed on accredited operators of any such service under this Act.

## **6 Other public passenger vehicles**

- (1) The regulations may declare that any specified class of vehicles, being vehicles used for the carriage of passengers for hire or for any consideration or in the course of any trade or business, are to be taken to be public passenger vehicles for the purposes of this Act.
- (2) The regulations may apply all or any of the provisions of this Act (with or without modification) to any such class of vehicles.

### **6A, 6B (Repealed)**

## **Part 2 Credentials of operators and drivers**

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

#### **7 Accreditation**

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

Maximum penalty—1,000 penalty units.

- (2) The purpose of accreditation under this Division is to attest—
  - (a) that the accredited person is (or, in the case of an accredited corporation, the designated directors and managers of the corporation are) considered to be of good repute and in all other respects fit and proper to be responsible for the operation of a public passenger service, and

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

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

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

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

(a) may be prescribed by the regulations, or

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

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

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

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

## **8 Procedure for accreditation**

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

(2) For the purposes of this section—

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

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

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

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

## **9 Style of accreditation**

(1) Particulars of accreditation are to be given in writing by TfNSW to the accredited

person.

- (2) An accreditation may be given so as to be general or limited, that is to say—
  - (a) appropriate for all public passenger services to which this Part applies, or
  - (b) appropriate only for the service or services designated in the accreditation, or for a service or services having the scope or characteristics so designated.

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

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

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

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

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

- (1) Without limiting section 9B, it is a condition of an accreditation of an accredited service operator that carries on a public passenger service by means of a bus—
  - (a) that the operator prepare and implement a drug and alcohol program for its

transport safety employees that complies with guidelines approved by TfNSW for the purposes of this section and published in the Gazette, and

- (b) that the operator ensure that all transport safety employees employed, or contracted, by the operator to perform transport safety work are not under the influence of alcohol or any other drug when about to carry out, or while on duty for the purposes of carrying out (whether or not carrying out), transport safety work.
- (2) The drug and alcohol program is to include any matters required to be included by the guidelines approved by TfNSW for the purposes of this section.
- (3) Without limiting subsection (1) (a), the guidelines are to include provisions for or with respect to the following—
  - (a) protocols for fair procedures,
  - (b) education and assistance of transport safety employees.
- (4) TfNSW may at any time arrange with accredited service operators for the random testing of any person on duty for the purposes of carrying out transport safety work for the presence of alcohol or any other drug to ensure that the accredited service operators are complying with the conditions imposed by this section.
- (5) Nothing in this Act or the regulations derogates from the operation of Division 4 of Part 2 of Schedule 3 to the *Road Transport Act 2013* or Part 3 of and Schedule 1 to the *Marine Safety Act 1998*.
- (6) Schedule 5 has effect.
- (7) For the purposes of this section, a transport safety employee is to be regarded as being about to carry out transport safety work if the employee—
  - (a) has left home or a temporary residence for work (being transport safety work), and
  - (b) has not commenced work after having so left home or the temporary residence.
- (8) (Repealed)

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

- (1) Without limiting section 9B, it is a condition of an accreditation of an accredited service operator that carries on a public passenger service by means of a bus that the operator has, and implements, a safety management system that complies with the requirements of this section.
- (2) The safety management system must be documented and must—
  - (a) identify any significant risks that have arisen or may arise from providing the

service, including carrying out any associated transport safety work, and

- (b) specify the controls (including audits, expertise, resources and staff) that are to be employed by the operator to manage the risks and to monitor safety outcomes in relation to the provision of the service, and
- (c) comply with any requirements prescribed by the regulations or set out in any guidelines issued by TfNSW under this section and published in the Gazette.

**Editorial note—**

For guidelines under this subsection, see Gazette No 142 of 25.11.2005, p 9811. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

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

Maximum penalty—1,000 penalty units.

- (6) (Repealed)

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

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

**Division 2 Drivers' authorities**

**11 Authorities**

- (1) A person who drives a public passenger vehicle (other than a ferry) is guilty of an offence unless the person is the holder of an appropriate authority under this Division.  
Maximum penalty—100 penalty units.
- (2) The purpose of an authority under this Division is to attest—
  - (a) that the authorised person is considered to be of good repute and in all other respects a fit and proper person to be the driver of a public passenger vehicle, and
  - (b) that the authorised person is considered to have sufficient responsibility and



aptitude to drive the vehicle or vehicles to which the authority relates—

- (i) in accordance with the conditions under which a public passenger service is operated, and
- (ii) in accordance with law and custom.

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

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

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

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

- (1) An authority is subject to—
  - (a) the conditions prescribed by the regulations, and
  - (b) such additional conditions as TfNSW, having regard to the purpose of an authority, may from time to time impose on the authority.
- (2) Conditions in force under subsection (1) (b) may be varied (whether by amendment, addition, revocation or suspension of one or more conditions) by TfNSW from time to time by notice served on the holder of the authority.
- (3) The holder of an authority who contravenes or fails to comply with a condition of the authority is guilty of an offence.  
Maximum penalty—100 penalty units.
- (4) A variation of conditions imposed on an authority by TfNSW under subsection (1) (b) is, for the purposes of Division 3 of Part 5 (Appeals), a variation of the authority.

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

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

### **13 Style of authority**

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

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

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

## **Division 3 Fees**

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

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

**Note—**

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

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

**Editorial note—**

For orders under this section, see Gazette No 69 of 10.6.2005, p 2006. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

## **Division 4**

### **(Repealed)15A (Repealed)**

## **Parts 3-4B**

### **16-46 (Repealed)**

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

### **Division 1 Investigations**

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

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

Maximum penalty—500 penalty units.

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

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

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

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

Maximum penalty—100 penalty units.

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

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

- (1) The Chief Investigator may investigate any transport accident or incident that may affect the safe provision of railway operations or public passenger services carried on by means of buses or ferries.
- (2) (Repealed)
- (3) The Minister may require the Chief Investigator to investigate and report to the Minister on any transport accident or incident that may affect the safe provision of

railway operations or public passenger services carried on by means of buses or ferries.

- (4) The Chief Investigator is to conduct an investigation in the manner the Chief Investigator considers appropriate.
- (4A) An investigation may extend to all relevant events and circumstances preceding the transport accident or incident.
- (5) An investigation under this section may be carried out and a report provided under this section whether or not—
  - (a) an investigation is being, or has been, conducted under any other Act or law (including a law of the Commonwealth) relating to the same matter, or
  - (b) the matter is or may be subject to any criminal or civil proceedings, or
  - (c) the matter is the subject of an inquest or inquiry under the [Coroners Act 2009](#), or
  - (d) the matter is or may be the subject of a transport safety inquiry.
- (6) The Chief Investigator may, at any time, discontinue an investigation under this section, other than an investigation requested by the Minister.
- (7) Schedule 6 contains provisions relating to transport safety investigators.

#### **46BB Chief Investigator's functions**

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

Maximum penalty—100 penalty units.

#### **Note—**

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

- (4) A person attending at a place to answer questions is to be paid expenses of the

amount or at the rate approved by the Minister for the purposes of this section.

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

#### **46BBA Reports on transport safety investigations**

- (1) The Chief Investigator must provide to the Minister a written report on a transport safety investigation, including any discontinued investigation.
- (2) The Chief Investigator may provide a copy of a draft report, or proposed recommendations in a report, on a confidential basis, to the Minister or any other person before completing the report—
  - (a) if the Chief Investigator thinks that it is desirable or necessary to do so for the purposes of transport safety, or
  - (b) to allow the making of submissions about the draft report, or
  - (c) to give advance notice of the likely form of the report.
- (3) The Chief Investigator may include in a report on a transport safety investigation any submissions made in response to a draft report or draft recommendations, safety action statements or safety recommendations.
- (4) A person must not copy, or disclose to a person or a court, the contents of a draft report or draft recommendations provided under this section, except—
  - (a) as required or authorised by or under this or any other Act, or
  - (b) where necessary to take steps to remedy safety issues identified in the draft report, or
  - (c) where necessary to prepare submissions on the draft report or draft recommendations.

Maximum penalty—100 penalty units.

- (5) If the Chief Investigator discontinues an investigation, the Chief Investigator must provide to the Minister, within 28 days, a written report setting out the reasons for

discontinuing the investigation.

(6) A report of a transport safety investigation, a draft report or draft recommendations are not admissible in any legal proceedings.

(7) A person who is provided with a draft report under this section—

(a) cannot be required to disclose it to a court, and

(b) is not entitled to take any disciplinary action against an employee of the person on the basis of the report.

(8) In this section—

**safety action statement** means a statement—

(a) setting out any safety issues identified during the course of an investigation that should be addressed, or

(b) setting out any steps taken by persons to remedy safety issues identified during the course of an investigation.

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

(1) The Minister may constitute one or more persons as a Board of Inquiry to conduct an inquiry (a **transport safety inquiry**) into any transport accident or incident or any other event, occurrence, practice or matter that may affect the safe provision of railway operations or a public passenger service carried on by means of a bus or ferry.

(2) A transport safety inquiry may be carried out and a report provided whether or not—

(a) an investigation is being, or has been, conducted under any other Act or law (including a law of the Commonwealth) relating to the same matter, or

(b) the matter is or may be subject to any criminal or civil proceedings, or

(c) the matter is the subject of an inquest or inquiry under the [Coroners Act 2009](#).

(3) The Minister may not terminate a transport safety inquiry.

(4) A Board of Inquiry may, at a transport safety inquiry conducted by it, take evidence on oath or affirmation and, for that purpose, the person constituting the Board—

(a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding, and

(b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.

(5) In conducting a transport safety inquiry, a Board of Inquiry—

- (a) is not bound to act in a formal manner, and
  - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate.
- (6) If the Board of Inquiry agrees, an agent (including a legal practitioner) may represent a person or body at a transport safety inquiry.
- (7) A Board of Inquiry is to determine its own procedure, except as provided by this Act or the regulations.

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

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

**46BE Assessors**

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

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

- (1) A Board of Inquiry may summon a person to appear at a transport safety inquiry conducted by the Board to give evidence and to produce any documents that are specified in the summons.
- (2) A Board of Inquiry may require a person appearing at a transport safety inquiry to do any one or more of the following—

- (a) be sworn or affirmed,
  - (b) produce a document,
  - (c) answer a question.
- (3) A person attending as a witness before a Board of Inquiry is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.
- (4) A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this section.

Maximum penalty—

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

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

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

#### **46C Compliance with subpoenas and other directions**

- (1) The Chief Investigator or a former Chief Investigator or a person who is or was a transport safety investigator is not obliged to comply with a subpoena or similar direction of a court in relation to civil proceedings to attend and answer questions relating to an accident or incident or other event, occurrence, practice or matter the subject of a transport safety investigation, if the Chief Investigator has issued a certificate under subsection (2) in relation to the transport safety investigation.
- (2) The Chief Investigator may issue a certificate stating that the Chief Investigator, former Chief Investigator or a person who is or was a transport safety investigator is or was involved in a transport safety investigation.
- (3) A member of a Board of Inquiry, a former member of a Board of Inquiry or a person who is or was an authorised officer is not obliged to comply with a subpoena or similar direction of a court in relation to civil proceedings to attend and answer questions relating to an accident or incident or other event, occurrence, practice or matter the subject of a transport safety inquiry, if the Minister has issued a certificate under subsection (4).



- (4) The Minister may issue a certificate stating that a member of a Board of Inquiry, a former member of a Board of Inquiry or a person who is or was an authorised officer is or was involved in a transport safety inquiry.

#### **46D Tabling of reports**

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

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

- (1) The Chief Investigator may establish a system for the voluntary reporting by transport safety employees or rail safety workers (within the meaning of the *Rail Safety National Law (NSW)*) of matters that may affect the safe provision of a public passenger service by means of a bus or ferry or of railway operations.
- (2) The Chief Investigator must not disclose to any other person, or to any court, any information that may identify an employee who provides information under any such voluntary reporting system unless—
  - (a) the employee consents to the disclosure, or
  - (b) the Chief Investigator or a court is of the opinion that it is necessary in the public interest that the information be disclosed.

- (3) Nothing in this section prevents the Chief Investigator from disclosing information obtained under this section to the regulator.
- (4) Regulations may be made for or with respect to the following matters—
  - (a) the form and manner in which reports may be made,
  - (b) the manner in which reports are to be dealt with and the purposes for which information reported under this section may be used,
  - (c) other requirements for a system established under this section.
- (5) In this section—

**regulator** means—

  - (a) in relation to any public passenger service provided by bus—TfNSW, or
  - (b) in relation to any public passenger service provided by ferry—the person or body prescribed by the regulations for the purposes of this definition, or
  - (c) in relation to railway operations—the National Rail Safety Regulator under the [Rail Safety National Law \(NSW\)](#), or
  - (d) any other person prescribed by the regulations for the purposes of this definition.

## Division 2 Inspection powers

### 46F (Repealed)

### 46G Use of powers by authorised officers

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

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

### 46H Inspections by regulator of bus services

- (1) TfNSW may cause inspections to be carried out to ensure that a person who carries on a public passenger service by means of a bus is complying with the terms of the person's accreditation under this Act or with the requirements of this Act relating to a safety management system.
- (1A) TfNSW may cause inspections to be carried out to ensure that a person who carries on a public passenger service by means of a bus is complying with the terms of the

person's service contract under this Act.

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

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

- (1) An authorised officer may enter the following premises—
- (a) any premises (other than any premises, or a part of any premises, that are used as a dwelling) that the officer reasonably suspects are being used for the purposes of a public passenger service or for the keeping of records for any such purposes,
  - (b) railway premises.
- (2) Entry may be made only at the following times—
- (a) any reasonable hour in the daytime,
  - (b) any hour during which a public passenger service or rail passenger service is in operation or other related activity is in progress or is usually carried out in or on the premises,
  - (c) any other hour that the premises are otherwise open for entry.

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

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

- (a) power to inspect any vehicle that the officer reasonably suspects is being used for the purposes of a public passenger service and inspect or test any equipment, or inspect any furnishings or fittings, in or on or about the vehicle,

- (b) power, by notice in writing, to require the owner or person in charge of any such vehicle or equipment specified in the notice to have the vehicle or equipment inspected or tested within a time limit specified by the notice,
- (c) power to inspect any maintenance facilities, equipment or apparatus used for the purposes of or in connection with a public passenger service,
- (d) power to inquire into any transport accident or other incident affecting the safe carrying out of a public passenger service or the personal security of members of the public using a public passenger service or transport safety employees that has happened in or on the premises,
- (e) power to take samples and photographs in connection with any inspection or inquiry,
- (f) power to search for evidence of any contravention of this Act, the regulations or the terms of an accreditation, authority, service contract, requirement or exemption under this Act,
- (g) power to search for and inspect relevant documents and require any person in or on the premises to produce to the authorised officer any relevant documents in the person's custody or under the person's control,
- (h) power to require any person in or on the premises to answer questions or otherwise give information in relation to the matter the subject of the inspection, investigation or inquiry,
- (i) power to exercise functions under section 46L in relation to any relevant documents found in or on the premises or produced to an authorised officer,
- (j) power to seize anything that the authorised officer suspects on reasonable grounds is connected with an offence against this Act or the regulations and to secure any such thing against interference,
- (k) power to secure the perimeter of the site of any transport accident or other incident concerning a public passenger service by whatever means, and for such period, as the authorised officer considers appropriate or TfNSW specifies.

**Note—**

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

**46K Inspection and testing of vehicles**

- (1) An authorised officer may, for the purposes of an inspection of a vehicle that the officer is authorised to inspect under this Act—
  - (a) enter and remain in or on the vehicle, and
  - (b) enter and remain in any workshop or other premises where the vehicle is located,

and

- (c) operate the vehicle and any operable equipment in, on or about the vehicle.
- (2) The driver or person in charge of a vehicle that is being driven or used on a road or road related area or in any other place must, for the purpose of enabling an authorised officer to inspect or test the vehicle or equipment under this Division, comply with any reasonable direction by an authorised officer to stop, stand, park or manoeuvre the vehicle, or to do any other thing, for the purpose of facilitating the inspection or testing of the vehicle.
- (3) A direction to stop the vehicle may be given by the authorised officer by displaying a sign or by any other reasonable method.
- (4) If a vehicle has been stopped in compliance with a direction under this section, any inspection and testing of the vehicle or equipment under this Division must be carried out—
  - (a) at or as near as practicable to the place where the direction to stop the vehicle is given, and
  - (b) as soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction.
- (5) A notice under this Division requiring a vehicle or equipment to be tested may require the vehicle or equipment—
  - (a) to be inspected or tested at a specified place (being a place within 80 kilometres of the owner's or person's place of residence or place of business), or
  - (b) to be tested by or in the presence of an authorised officer.

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

- (1) An authorised officer has the following powers in relation to relevant documents found by an authorised officer in or on premises or a vehicle entered by the authorised officer or produced to the authorised officer pursuant to a requirement made under this Division—
  - (a) power to take possession of the documents or secure them against interference,
  - (b) power to take copies of, or take extracts from, the documents,
  - (c) power to require any person who was party to the creation of the documents to make a statement providing any explanation that the person is able to provide as to any matter relating to the creation of the documents or as to any matter to which the documents relate,
  - (d) power to retain possession of the documents for such period as is necessary to

enable the documents to be inspected, and copies of, or extracts from, the documents to be made or taken.

- (2) While an authorised officer retains possession of a document, the authorised officer must permit a person who would be entitled to inspect the document were it not in the possession of the authorised officer to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.
- (3) If an authorised officer takes possession of or secures against interference any relevant document on which a person has a lien, the authorised officer's actions do not prejudice the lien.

#### **46M Other powers related to documents**

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

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

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

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

### **Division 3 Provisions relating to powers of authorised officers and transport safety investigators**

#### **46NA Meaning of “appropriate authority”**

In this Division—

***appropriate authority*** means—

- (a) in the case of a function exercised by an authorised officer appointed by TfNSW—TfNSW, or
- (b) (Repealed)
- (c) in the case of a function exercised by a transport safety investigator—the Chief Investigator.

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

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

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

In the exercise of a function under this Part or Schedule 6, an authorised officer or transport safety investigator must do as little damage as possible.

#### **46Q Compensation**

- (1) The appropriate authority must pay compensation for any damage caused by any authorised officer in the exercise of a power to enter premises or a vehicle under this Part, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of this Act or any other Act or law.
- (1A) The Crown must pay compensation for any damage caused by any transport safety investigator in the exercise of a power to enter premises or a vehicle under Schedule 6, other than damage reasonably arising from work done for the purpose of a transport safety investigation.
- (2) Section 66 does not apply to a liability under this section.

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

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

- (c) describes the nature of the powers conferred, and
- (d) states the date (if any) on which it expires, and
- (e) describes the premises or vehicles to which it extends, and
- (f) bears the signature of—
  - (i) if TfNSW is the person who appointed the authorised officer—a person approved by TfNSW, or
  - (ii) (Repealed)

(3) This section 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.

#### **46S Assistance to be given to authorised officers and transport safety investigators**

- (1) This section applies for the purpose of enabling an authorised officer or a transport safety investigator to exercise any of the powers of an authorised officer or a transport safety investigator under this Part or Schedule 6.
- (2) The appropriate authority may, by notice in writing served on the occupier of premises referred to in section 46I or entered under Schedule 6, require the person to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) A person who fails to comply with a requirement made by an authorised officer under this section is taken to have obstructed the authorised officer in the exercise of the authorised officer's functions under this Part.
- (4) A person who fails to comply with a requirement made by a transport safety investigator under this section is taken to have obstructed the investigator in the exercise of the investigator's functions under Schedule 6.

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

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

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

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

- (1) A person is not excused from any of the following requirements made under this Act on the ground that the statement might tend to incriminate him or her—
  - (a) a requirement to answer a question or produce a thing,



(b) a requirement to make a statement.

(2) However, the answer to the question, production of the thing, any information obtained as a direct result of the answer or production, or the statement, is not admissible in evidence against the person in criminal proceedings—

(a) if the person claims before giving the answer, producing the thing or making the statement that it might tend to incriminate the person, or

(b) unless the person's entitlement to make a claim of the kind referred to in paragraph (a) was drawn to the person's attention before the answer was given, the thing was produced or the statement was made.

(3) Except as provided by subsection (2), an answer to a question, production of a thing, any information obtained as a direct result of any such answer or production, or a statement made by a person, in compliance with a requirement under this Act, may be used in evidence in any criminal or civil proceedings against the person.

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

(1) An authorised officer may apply to an authorised justice for a search warrant if the authorised officer has reasonable grounds for believing that the provisions of this Act, the regulations or the terms of an accreditation, authority, service contract, requirement or exemption under this Act have been or are being contravened in or on any premises.

(2) An authorised justice to whom such an application is made by an authorised officer may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant—

(a) to enter the premises, and

(b) to search the premises for evidence of a contravention of this Act, the regulations or the terms of an accreditation, authority, service contract, requirement or exemption under this Act.

(2A) A transport safety investigator may apply to an authorised justice for a search warrant if the investigator has reasonable grounds for believing that there is on the premises evidence or a thing that is relevant to a transport safety investigation.

(2B) An authorised justice to whom an application is made by a transport safety investigator may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a transport safety investigator named in the warrant—

(a) to enter the premises, and

(b) to search the premises for evidence or a thing that is relevant to a transport safety investigation.

- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this 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 or a transport safety investigator executing a search warrant issued under this section, and
  - (b) may take all reasonable steps to assist the transport safety investigator or authorised officer in the exercise of the investigator's or officer's functions under this section.
- (5) In this section—

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

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

- (1) TfNSW may appoint a member of staff of TfNSW, or a person of a class prescribed by the regulations, to be an authorised officer for the purposes of this Act.
- (2), (3) (Repealed)
- (4) The authority of an authorised officer appointed under this section may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.
- (5) In addition to other persons who may be appointed as authorised officers under this Act, TfNSW may, for the purposes of a specified bus or ferry accident or incident, appoint as an authorised officer a person exercising powers, or holding office under a Commonwealth Act.
- (6), (7) (Repealed)

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

### **Division 1 Notifications**

#### **47 Effect of notification of decisions of TfNSW**

- (1) If TfNSW makes a decision that is able to be reviewed under this Part, it is the duty of TfNSW to cause any person entitled to request the review, or to lodge the application with the Civil and Administrative Tribunal for an administrative review—
  - (a) in the case of a person entitled to lodge an application with the Tribunal—to be given notice that is in accordance with section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Review Act*

[1997](#) and a statement of reasons setting out the matters specified by section 49 (3) of that Act, or

(b) in other cases—to be notified in writing of the fact of the decision and of the reasons for it.

(2) If TfNSW makes a decision that is able to be reviewed under this Part, any such decision has effect from the time the notice is given and continues in effect unless rescinded by TfNSW or by the Civil and Administrative Tribunal determining an application under Division 3.

(3) A notice given under this section is a sufficient notice for the purposes of section 48 of the [Administrative Decisions Review Act 1997](#).

## Division 2

### 48-51 (Repealed)

## Division 3 Administrative reviews by Civil and Administrative Tribunal

### 52 Applications to Civil and Administrative Tribunal

(1) Any person whose application under Part 2 has been refused, or whose accreditation or authority has been varied, suspended or cancelled may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the refusal, variation, suspension or cancellation.

(2)-(4) (Repealed)

## Part 6 Miscellaneous

### 53 Exchange of information

(1) TfNSW may enter into an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging information held by TfNSW and the agency.

(2) The information to which an information sharing arrangement may relate is limited to the following—

(a) information concerning possible breaches of this Act or the regulations,

(b) information concerning the safe provision of a public passenger service carried on by means of a bus or ferry or a rail passenger service,

(c) any other information that may be prescribed by the regulations.

(3) Under an information sharing arrangement, TfNSW and the relevant agency are, despite any other Act or law of the State, authorised—

(a) to request and receive information held by the other party to the arrangement, and

(b) to disclose information to the other party,

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

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

(5) This section does not permit the disclosure of information in contravention of section 46E.

(6) In this section—

**relevant agency** means—

(a) the WorkCover Authority constituted by the [Workplace Injury Management and Workers Compensation Act 1998](#), or

(b) the Chief Investigator, or

(c) any other person or body prescribed by the regulations.

### **53A Advertising**

(1) A person must not cause to be published any advertisement that advertises a commercial service involving the operation of a vehicle if—

(a) the service is of a kind that requires the operator of the service to be accredited or authorised under this Act and the service is not so accredited or authorised, or

(b) the vehicle is of a kind that is required to be licensed under this Act and the vehicle is not so licensed.

Maximum penalty—50 penalty units.

(2) A reference in this section to an advertisement includes a reference to any form of notice or statement in the nature of an advertisement.

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

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

Maximum penalty—25 penalty units.

(2) (Repealed)

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

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

Maximum penalty—500 penalty units.

- (3) The drug and alcohol program is to include any matters required to be included by the guidelines approved by TfNSW for the purposes of this section.
- (4) Without limiting subsection (2) (a), the guidelines are to include provisions for or with respect to the following—
  - (a) protocols for fair procedures,
  - (b) education and assistance of transport safety employees.
- (5) TfNSW may at any time arrange with an operator for the random testing of any person on duty for the purposes of carrying out transport safety work with respect to services operated by the operators for the presence of alcohol or any other drug to ensure that the operator is complying with this section.
- (6) For the purposes of this section, a transport safety employee is to be regarded as being about to carry out transport safety work if the employee—
  - (a) has left home or a temporary residence for work (being transport safety work), and
  - (b) has not commenced work after having so left home or the temporary residence.
- (7) (Repealed)

**Note—**

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

**Editorial note—**

For guidelines under this section, see Gazette No 58 of 19.3.2004, p 1478. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

**53D (Repealed)**

**53E Recommendations arising from investigations**

- (1) The Minister, in consultation with TfNSW, may, by order in writing, direct a person who carries on a public passenger service by means of a ferry to comply with a recommendation contained in a report provided to the Minister under section 46BBA (1) 46BG.
- (2) A person who, without reasonable excuse, fails to comply with an order of the Minister under this section is guilty of an offence.

Maximum penalty—1,000 penalty units.

**54 Offences involving credentials**

A person who—

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

is guilty of an offence.

Maximum penalty—20 penalty units.

**55 Offenders to state name and address**

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

officer reasonably to suspect the person has committed such an offence.

(2) A person who—

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

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

is guilty of an offence.

Maximum penalty—5 penalty units.

(3) A person is not guilty of an offence under this section unless it is established that the 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 if the authorised officer reasonably suspects the stated name or address is false.

### **55A (Repealed)**

### **56 Obstruction**

A person must not—

(a) hinder or obstruct an authorised officer or a transport safety investigator in a manner that interferes with the performance by the officer or investigator of his or her functions under this Act or the regulations, or

(b) being the occupier or person in charge of any place or land entered by the authorised officer or a transport safety investigator under a power conferred by this Act, fail to provide the officer or investigator with all reasonable facilities and assistance for the effective exercise of the officer's or investigator's functions under this Act, or

(c) fail, without reasonable excuse, to answer questions or provide information when required to do so by an authorised officer or a transport safety investigator in the exercise of his or her functions as an authorised officer or a transport safety investigator, or

(d) fail to produce for inspection any documents or other things when required to do so by an authorised officer or a transport safety investigator in the exercise of his or her

functions as an authorised officer or a transport safety investigator.

Maximum penalty—

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

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

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

### **58 Offences by corporations**

- (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

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

- (1) In this section—

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

***penalty notice offence*** means an offence against this Act or the regulations



declared by the regulations to be a penalty notice offence.

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

## **60 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with in a summary manner before the Local Court or before the Supreme Court in its summary jurisdiction.
- (2) The maximum monetary penalty that may be imposed by the Local Court for an offence under a provision of this Act or the regulations is 500 penalty units or the maximum monetary penalty provided for the offence, whichever is less.
- (3) Despite the [Criminal Procedure Act 1986](#) or any other Act, proceedings for an offence under this Act or the regulations may be commenced not later than one year after the date alleged to be the date on which the offence was committed.

## **60A (Repealed)**

## **61 Recovery of amounts due**

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

## 62 Records and evidentiary matters

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

### 62A Delegation of TfNSW's functions

- (1) TfNSW may delegate to an authorised person any of TfNSW's functions under this Act, other than this power of delegation.
- (2) A delegate may subdelegate to an authorised person any function delegated by TfNSW if the delegate is authorised in writing to do so by TfNSW.
- (3) In this section, ***authorised person*** means—
  - (a) a member of staff of TfNSW, or

- (b) a person of a class prescribed by the regulations.

### **63 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following—
  - (a) the prohibition or restriction of the use of public passenger vehicles on any specified road or road related area or any portion of a road or road related area, or within any specified area, either generally or within certain hours, and
  - (b) the sections, terminal points and stopping-places on bus or ferry routes, and
  - (c) (Repealed)
  - (d) the regulation or prohibition of eating, drinking or smoking in public passenger vehicles and on trains and other railway premises, and
  - (e) (Repealed)
  - (f) the prohibition of any person from touting or calling out or otherwise importuning any person to use a public passenger vehicle, and
  - (g) requirements as to service contracts, and authorities under this Act, including—
    - (i) their form, and the terms, conditions and particulars applying to them, and
    - (ii) forms and conditions to be observed when submitting applications or tenders for them, and
    - (iii) matters relating to their award, refusal, transfer, suspension, cancellation or surrender, and
    - (iv) conditions of service applicable to school bus services or in other special circumstances, and
    - (v) matters relating to the issue of driver authority cards to persons authorised to drive public passenger vehicles, including information to be displayed on the cards and the form and display of the cards, and
  - (h) the adjustment of payments and refunds in connection with contract fees, and
  - (i) the conduct of persons (including drivers) in or on public passenger vehicles, trains and other railway premises, and
  - (ia) prohibiting persons from travelling on, or attempting to travel on, a passenger transport vehicle or train without holding an appropriate ticket or other form of

authority, and

- (j) the powers and duties of drivers of public passenger vehicles or trains and of authorised officers, including (but not limited to) requiring the handing over of tickets and other authorities to travel for examination, and
- (k) the authority of drivers of buses, other public passenger vehicles or trains, and of authorised officers, to eject persons guilty of any contravention of the regulations, and
- (ka) the exclusion of persons, animals or freight from railways, and
- (kb) trespass on railways, and
- (l) the dress to be worn by the drivers of public passenger vehicles, and
- (m) (Repealed)
- (n) the taking up or setting down of passengers or other matters incidental to the transport of passengers on public passenger vehicles or trains, and
- (o) the carriage of passengers' luggage or other goods, and animals, on public passenger vehicles or trains, and
- (p) the regulation or prohibition of the carriage of passengers standing in or on any part of a public passenger vehicle or train, and
- (q) the publication of fares or other arrangements for remuneration payable by passengers on public passenger vehicles, and
- (q1) the issue of tickets or passes to passengers on regular passenger services, including—
  - (i) tickets or passes allowing travel by services or routes of different kinds or descriptions, and
  - (ii) tickets or passes allowing travel on a service provided by another service operator, and the apportionment of fares or other receipts derived from such travel, and
- (r) the collection of fares or other remuneration, and the determination of maximum or minimum fares or rates of remuneration, payable for the carriage of passengers or of passengers' luggage or other goods by public passenger vehicles, and
- (s) the remuneration of persons constituting a review panel, and
- (t) the furnishing by accredited service operators of returns (verified as prescribed) containing information (including particulars of income and expenditure) necessary or convenient to be ascertained to enable any matter concerning a

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

vehicles or trains and the conditions under which tickets and such types of authority must be sold, and

- (ii) the granting of free or concession passes for travel on public passenger vehicles or trains, and
  - (jj) the terms and conditions to which tickets, smartcards and other authorities to travel on public passenger vehicles or trains are subject, and
  - (kk) the use of smartcards and smartcard readers and the testing and certification of smartcard readers, and
  - (ll) without limiting paragraph (kk), the admission of information obtained by smartcard readers, and of certificates relating to that information and to the testing of smartcard readers, as evidence (including conclusive evidence) in legal proceedings relating to an offence against the regulations, and
  - (mm) generally as to the regulation and control of public passenger vehicles and trains, their drivers and passengers, railway premises and persons on railway premises.
- (3) The regulations may exempt, or provide for the exemption (either absolutely or subject to conditions) of, any person, vehicle, train, public passenger service or rail passenger service or any class of persons, vehicles, trains, public passenger services or rail passenger services from all or any of the provisions of this Act.
- (4) The regulations may create offences punishable by a penalty not exceeding 50 penalty units.
- (5) The regulations may apply, adopt or incorporate (with or without changes) any publication as in force at a particular time or as in force from time to time.
- (6) To the extent that this section enables provision to be made by regulation for or with respect to any matter in relation to a road or road related area, the regulations may also make provision for or with respect to that matter in relation to a transitway route that proceeds along thoroughfares that do not, or do not entirely, consist of roads or road related areas.

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

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

## 65 Prevention of proceedings concerning transitways

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

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

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

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

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

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

**the Crown** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes TfNSW and any officer of the Ministry of Transport.

- (6) Nothing in this section affects a right conferred by a service contract for a transitway service.
- (7) This section has effect despite any provision of this or any other Act.

## 66 Exclusion of liability of the State

No act or omission of the Minister, TfNSW, the Chief Investigator, a member of a Board of Inquiry, an assessor appointed in relation to a transport safety inquiry, the Secretary of the Department of Transport, a person employed in the Transport Service or a member of staff of the Chief Investigator in the course of exercising functions under this Act gives rise to any civil liability (including, for example, liability in negligence or for breach of statutory duty) against the State or any authority of the State.

## Schedule 1 (Repealed)

## Schedule 2 Repeals

(Section 64 (1))

*Transport Licensing Act 1931 No 32*

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

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

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

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

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

## Schedule 3 Savings and transitional provisions

(Section 64 (3))

## Part 1 Preliminary

### 1 Definition

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

### 2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.



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

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

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

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

service is to be taken to be the region or route of operation of a service identified in a service contract.

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

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

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

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

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

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

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

#### **7 Definitions**

In this Part of this Schedule—

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

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

**the old contract provisions** means the provisions of section 23, as in force immediately before the repeal of that section by the amending Act.

## **8 Existing accreditations and authorities**

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

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

- (1) A performance assessment regime established under the new contract provisions—
  - (a) applies to a commercial regular passenger service contract entered into after the regime takes effect, and
  - (b) to the extent that it is specified so to apply, applies to a commercial regular passenger service contract that was already in force when the regime took effect (and so applies on and from any specified date in the current term of the contract), except as provided by subclause (3).
- (2) To the extent necessary to give effect to subclause (1) (b), the new contract provisions extend to apply to a contract that was entered into before their commencement.
- (3) Despite their repeal by the amending Act, the old contract provisions are taken to continue to apply (to the exclusion of the new contract provisions) to a commercial regular passenger service contract that was in force at the time their repeal became effective and that had not by then been renewed, but cease to apply on the date of its first renewal.
- (4) The objectives, standards and methods of assessment comprised in a performance assessment regime established under the new contract provisions, to the extent that the regime applies to a commercial regular passenger service contract that is in force at the time the regime takes effect, must be reasonable in view of the fact that the regime has commenced to apply during the currency of the contract and must, in particular, afford the operator reasonable opportunity to make any adjustments necessary to be made in order to meet the requirements of the regime.
- (5) A provision of a commercial regular passenger service contract entered into before or after the enactment of the amending Act, to the extent that it is inconsistent with the provisions of this clause, or with the new contract provisions, is of no effect.
- (6) No compensation is payable to a service operator or any other person as a consequence of the repeal of the old contract provisions and the enactment of the new contract provisions, or of the operation of any provision of this clause, and proceedings for recovery of any such compensation may not be instituted or (even if instituted before the commencement of this clause) maintained.
- (7) Section 28 has effect subject to this clause.

## 10 Network authorities

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

## Part 4 Provisions consequent on enactment of **Passenger Transport Amendment Act 2000**

### 11 Definition

In this Part—

**the amending Act** means the *Passenger Transport Amendment Act 2000*.

### 12 Accredited operators: taxi-cab services

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

### 13 Drivers' authorities: taxi-cabs

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

### 14 Licences: taxi-cabs

- (1) A person who was the holder of a licence under Division 1 of Part 4 immediately before the omission of sections 29–41 (other than section 34A) by the amending Act for a taxi-cab is taken to be a person licensed under Division 4 of Part 4 as inserted by that Act.
- (2) Accordingly, the licence held by that person is taken to be a licence issued under Division 4 of Part 4 as so inserted.
- (3) Section 29 (3) as in force immediately before its repeal by the amending Act, and

section 32 (2) (b) as inserted by that Act, do not apply to references in this clause to the holder of such a licence.

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

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

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

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

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

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

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

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

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

Without limiting any functions of the Director-General, the Director-General may reissue any authorities or licences referred to in this Part, with such alterations as the Director-General considers appropriate having regard to the provisions and operation of the

amending Act.

## **20 Proceedings for offences**

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

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

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

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

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

### **22 Definition**

In this Part—

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

### **23 Safety management systems**

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

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

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

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

Section 46B, as inserted by the amending Act, applies to an accident or incident that occurred before, on or after the commencement of that section.

## 26 Authorised officers

Nothing in the amending Act—

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

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

### 27 Definitions

In this Part—

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

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

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

**existing commercial bus service contract** means—

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

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

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

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

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

**interim contract for the provision of regular bus services** means a bus service contract for the provision of temporary services in place of a regular bus service discontinued because of the expiry of the term, or the termination or variation, of an existing commercial bus service contract or an interim contract replacing any such

contract.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

### 33 Renewal of existing bus service contracts

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

### 34 Review of decisions under Part 5

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

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

Nothing in this Act prevents the Director-General from making such arrangements as the Director-General thinks fit for the provision, by an accredited service operator, of

temporary services in place of any regular bus service that is discontinued because of the expiry of the term, or the termination or variation, of an existing commercial bus service contract or existing non-commercial bus service contract by operation of this Part or otherwise.

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

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

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

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

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

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

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

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

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

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

- (4) This clause applies to or in respect of any act, statement or conduct whether occurring before or after the commencement of this clause.
- (5) The protection against the liability to pay compensation afforded by this clause extends to any person exercising a function or engaging in conduct to which this clause applies at the request or direction of the Crown (whether under contract or otherwise), but does not extend to any of the following—
- (a) the holder or former holder of a service contract (whether entered into before or after the commencement of this clause), and
  - (b) any person providing, or who provided, public passenger services to which such a service contract relates or related on behalf of, or instead of, the holder or former holder (whether under a subcontract or by other arrangement).
- (6) In this clause—
- compensation** includes damages or any other form of compensation (whether or not monetary).
- conduct** includes—
- (a) a representation of any kind—
    - (i) whether made verbally or in writing, and
    - (ii) whether negligent, false, misleading or otherwise, and
  - (b) an omission of any kind.
- the Crown** means the Crown within the meaning of the [Crown Proceedings Act 1988](#) and includes—
- (a) the Director-General, and
  - (b) any member of staff of a government Department.
- (7) This clause has effect despite any provision of this or any other Act or any other law.

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

- (1) Until an order is made by the Director-General under section 15 (as substituted by the amending Act) fixing a fee for such an application or renewal—
- (a) the fee payable under section 11A (1) (as amended by the amending Act) for the renewal of an authority to drive a bus continues to be the fee prescribed by clause 57 (2) of the [Passenger Transport \(Bus Services\) Regulation 2000](#) (as in force immediately before its repeal by the amending Act), and
  - (b) the fee payable under section 11A (1) (as amended by the amending Act) for the

renewal of an authority to drive a tourist service vehicle continues to be the fee prescribed by clause 10 (2) of the *Passenger Transport (General) Regulation 2000* (as in force immediately before its repeal by the amending Act), and

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

(2) In this clause—

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

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

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

(1) In this clause—

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

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

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

**interim contract** means a bus service contract for the provision of temporary

services in place of a regular bus service discontinued because of the expiry of the term or termination or variation of an existing commercial bus service contract or an existing non-commercial bus service contract.

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

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

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

existing service provider.

### **39A Service breaches**

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

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

- (1) The Director-General may, by notice published in the Gazette, implement the step-in



arrangements specified in the notice if of the opinion that it is necessary to do so to maintain regular bus services provided under an existing bus service contract.

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

- (i) payments to the existing service provider of a kind payable under the contract after deduction of the costs of the step-in party and other specified costs from amounts payable to the existing service provider,
  - (ii) the use of staff employed by the existing service provider in connection with the provision of the regular bus services and arrangements for payment for the use of services of those staff,
  - (iii) payments to third parties (such as suppliers, lessors and providers of assets and services) in connection with the provision of the regular bus services under the step-in arrangements,
- (g) specify the period (being a period not exceeding 12 months) for which the step-in arrangements are in force,
- (h) specify any other circumstances in which the step-in arrangements cease to be in force,
- (i) contain any other necessary consequential or ancillary provisions.
- (7) In determining the step-in arrangements, and any terms and conditions on which they are to be implemented, the Director-General is to consider the terms and conditions of the existing bus service contract concerned and any relevant commercial arrangements or security transactions of the existing service provider or other persons, being arrangements or transactions entered into at arms-length, relating to assets affected by the proposed step-in arrangements or the provision of the regular bus services.
- (8) A step-in party may provide bus services in accordance with step-in arrangements in force under this clause despite any other provision of this Act or the regulations or any other law.
- (9) A notice under this clause may be revoked or varied by the Director-General by notice published in the Gazette.
- (10) Nothing in this clause prevents the Director-General from making arrangements of a kind referred to in clause 35 or taking action under any other law to maintain a regular bus service that may be the subject of arrangements under this clause.

**Note—**

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

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

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

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

- (1) A person must not, without reasonable excuse, fail to comply with a requirement imposed on the person under step-in arrangements in force under clause 39B.

Maximum penalty—100 penalty units.

- (2) A person must not enter into an agreement, arrangement or other transaction or take action with the intention of, or with intentions that include, preventing the use of staff or a bus, premises or other assets in accordance with step-in arrangements under clause 39B.

Maximum penalty—100 penalty units.

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

- (1) In determining step-in arrangements, the Director-General must specify terms and conditions relating to the liability or protection from liability (including indemnities or releases to be given) of the existing service provider and the step-in party in

connection with acts or omissions done or omitted for the purposes of implementing step-in arrangements.

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

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

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

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

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

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

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

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

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

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

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

### **40 Definitions**

In this Part—

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

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

***the amending Act*** means the [Transport Legislation Amendment \(Waterfall Rail Inquiry](#)

*Recommendations) Act 2005.*

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

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

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

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

#### **43 Existing inquiries**

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

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

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

#### **45 Authorised officers**

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

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

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

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

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

#### **48 Guidelines**

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

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

Section 66 continues to apply to the ITSRR, the Chairperson and other members of the Independent Transport Safety and Reliability Advisory Board in relation to any act or omission occurring before that section was amended by the amending Act.

### **Part 9 Provisions consequent on enactment of [Passenger Transport Amendment Act 2006](#)**

#### **50 Definition**

In this Part—

***the amending Act*** means the [Passenger Transport Amendment Act 2006](#).

#### **51 Validation of accreditation, contracts and other matters**

(1) This clause applies to—

- (a) any accreditation purportedly issued or renewed under this Act, or
- (b) any service contract purportedly entered into under this Act, or
- (c) any other act or thing purportedly done or omitted under this Act or under any such accreditation or contract,

at any time before the commencement of the amending Act.

(2) Any such accreditation, contract, act or thing that would have been validly issued, renewed, entered into, done or omitted if the amending Act had been in force at that time is taken to be (and always to have been) validly issued, renewed, entered into,



done or omitted.

## **Part 10 Provisions consequent on enactment of [World Youth Day Amendment Act 2007](#)**

### **52 Effect of repeal of [World Youth Day Act 2006](#)**

- (1) The repeal of the [World Youth Day Act 2006](#) does not affect the continued operation in relation to matters arising before the repeal of that Act of—
- (a) section 44H (Protection of exercise of certain functions) of that Act, or
  - (b) section 46E (Bus services for World Youth Day events) of that Act, or
  - (c) any other exemption or immunity from, or limitation of, liability under that Act, as in force before that repeal.

**Note—**

The [World Youth Day Act 2006](#) is to be repealed on 1 January 2009 by section 62 of that Act.

- (2) The provisions of subclause (1) are in addition to, and do not derogate from, section 30 of the [Interpretation Act 1987](#).

**Note—**

Section 30 of the [Interpretation Act 1987](#) provides that the repeal of an Act or statutory rule does not, among other things, affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule.

## **Part 11 Provisions consequent on enactment of [Transport Administration Amendment \(Rail and Ferry Transport Authorities\) Act 2008](#)**

### **Division 1 Preliminary**

#### **53 Definition**

In this Part—

**2008 amending Act** means the [Transport Administration Amendment \(Rail and Ferry Transport Authorities\) Act 2008](#).

### **Division 2 Provisions relating to rail services contracts**

#### **54 Rail services contracts**

- (1) RailCorp may continue to carry on a rail passenger service and provide other rail services (within the meaning of Division 4 of Part 3 of the Act, as inserted by the 2008 amending Act) without a rail services contract until such a contract is entered into.

- (2) This clause ceases to have effect 2 years after the commencement of Division 4 of Part 3 of the Act, as inserted by the 2008 amending Act, or on such later day as may be prescribed by the regulations.

## **Division 3 Provisions relating to ferry service contracts**

### **55 Ferry service contracts**

- (1) Sydney Ferries may continue to carry on a regular ferry service without a ferry service contract until such a contract is entered into.
- (2) This clause ceases to have effect 2 years after the commencement of Division 1A of Part 3 of the Act, as inserted by the 2008 amending Act, or on such later day as may be prescribed by the regulations.

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

### **Division 1 Preliminary**

#### **56 Definitions**

In this Part—

**2009 Act** means the [Passenger Transport Amendment \(Taxi Licensing\) Act 2009](#).

**licence** means a licence for a taxi-cab.

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

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

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

#### **57 Application of Part**

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

## **Division 2 Existing licences and new licensing scheme**

### **58 Application of Division**

This Division is subject to Divisions 3 and 4.

### **59 Continuation of ordinary and short-term licences**

- (1) This clause applies to an ordinary or short-term licence that was in force immediately before the commencement of the 2009 Act.
- (2) Any such licence continues in force for the remainder of its term subject to Division 4 of Part 4 of this Act.
- (3) Any such licence, and any subsequent renewed licence (in the case of an ordinary licence), may be renewed and transferred in accordance with the provisions of Division 4 of Part 4 of this Act that are applicable to the type of licence concerned.

### **60 Effect of application of annual licence scheme**

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

## **Division 3 Licences issued before 1990**

### **61 Application of Division to certain operative licences**

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

- (5) This Division is subject to Division 4.

## **62 Validation of licences and provisions applying to licences**

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

## **63 Provisions applying to operative pre-1990 licences**

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

### **Note—**

If the licence is a nexus licence or a paired licence, the conditions are revoked under Division 4 and new conditions are imposed under clause 66.

- (2) Division 4 of Part 4 of this Act (other than sections 32B (3)–(6), 32D and 32H–32JA) and Part 4B of this Act apply to an operative pre-1990 licence as if the licence were a licence issued under this Act.

## **Division 4 Nexus and paired licences**

### **Note—**

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

## **64 Identification of nexus licences and paired licences**

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

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

**Editorial note—**

For orders under this clause, see Gazette No 31 of 25.3.2011, p 2276. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

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

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

applies accordingly.

**Note—**

Operative pre-1990 licences are validated under clause 62.

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

**Note—**

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

**66 Conditions of nexus licences or paired licences**

- (1) The area of operation, if any, of a taxi-cab for which there is a nexus or paired licence is (subject to section 32F) the same as it was immediately before the commencement of the 2009 Act.
- (2) Any other condition imposed on a nexus licence or a paired licence before the commencement of the 2009 Act, and not revoked before that commencement, is revoked.
- (3) A nexus licence is subject to the following conditions—
- (a) the taxi-cab for the licence must not be operated unless the taxi-cab for the associated paired licence is also operated in accordance with the conditions of the paired licence,
  - (b) the licence may be transferred only to an authorised taxi-cab network that is an accredited taxi-cab operator,
  - (c) the licence may be transferred only in conjunction with the transfer of the associated paired licence,
  - (d) the holder of the licence must ensure that there is a registered taxi-cab for the licence.
- (4) A paired licence is subject to the following conditions—
- (a) the taxi-cab for the licence must be available for hire for not less than 35 hours a week and must meet any other minimum service level conditions for such a taxi-cab set out in the regulations or imposed under section 32F,
  - (b) the licence may be transferred only to an authorised taxi-cab network that is an accredited taxi-cab operator,
  - (c) the licence may be transferred only in conjunction with the transfer of the associated nexus licence,
  - (d) the holder of the licence must ensure that there is a registered taxi-cab for the

licence and that it complies with the measurement standards approved by the Director-General for wheelchair accessible taxi-cabs.

- (5) Section 32F applies to a condition imposed by this clause as if it were a condition imposed under that section.
- (6) Words and expressions used in this clause have the same meaning as they have in Part 4 of this Act.

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

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

**Note—**

An ordinary licence may be renewed (see clause 65 (2) and section 32D).

**68 Issue of new licence documents**

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

## Division 5 Annual licences

### 69 Issue of annual licences before 1 July 2010

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

## Part 13 Provision consequent on enactment of **Passenger Transport Amendment (Ticketing and Passenger Conduct) Act 2012**

### 70 Rail Safety (Offences) Regulation 2008

On and from the repeal of section 131 of the *Rail Safety Act 2008* by the *Passenger Transport Amendment (Ticketing and Passenger Conduct) Act 2012*, the *Rail Safety (Offences) Regulation 2008* is taken to have been made under this Act and may be amended or repealed accordingly.

## Part 14 Provisions consequent on enactment of **Rail Safety (Adoption of National Law) Act 2012**

### 71 Definition

In this Part—

**the amending Act** means the *Rail Safety (Adoption of National Law) Act 2012*.

### 72 Saving of current authorities and other matters

Any act, matter or thing done or omitted by TfNSW, and having any force or effect immediately before the commencement of an amendment to this Act by the amending Act that confers the function to do the act, matter or thing on RMS, is taken to have been done or omitted by RMS and this Act applies accordingly.

### 73 Drug and alcohol guidelines

Any guidelines approved by RMS under section 53C, and in force immediately before the amendment of that section by the amending Act, are taken to have been approved by TfNSW and this Act applies accordingly.

## Schedule 4 Transitways

(Sections 28E and 28F)

Liverpool to Parramatta  
Parramatta to Strathfield  
St Marys to Penrith  
Parramatta to Blacktown



Blacktown to Castle Hill  
Blacktown to Wetherill Park  
Parramatta to Mungerie Park

## **Schedule 5 Transport safety employees—alcohol or other drugs**

(Section 9C (6))

### **1 (Repealed)**

### **2 Application of Schedule**

This Schedule applies to the testing of transport safety employees for the presence of alcohol or drugs.

### **3 Regulations**

- (1) The regulations may make provision for or with respect to the following—
- (a) the authorisation of persons (including authorised officers)—
    - (i) to administer breath tests, breath analyses or other tests for the purpose of detecting the presence of alcohol or drugs, and
    - (ii) to operate equipment for that purpose,
  - (b) the circumstances when tests for detecting the presence of alcohol or drugs may be conducted, including (but not limited to) random testing and testing of employees when about to carry out, or while on duty for the purpose of carrying out, transport safety work,
  - (c) the conduct of testing, which may include the taking of blood or urine samples or other body tissues or fluids,
  - (d) the taking of samples of blood or urine or other body tissues or fluids,
  - (e) the devices used in carrying out breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,
  - (f) the accreditation of persons conducting analyses for the presence of drugs,
  - (g) the procedure for the handling and analysis of samples of blood or urine or other body tissues or fluids,
  - (h) offences relating to the carrying out of transport safety work while under the influence of alcohol or any other drug,
  - (i) offences relating to the carrying out of transport safety work while the prescribed concentration of alcohol is present in the employee's breath or blood,
  - (j) offences relating to the carrying out of transport safety work while a drug (other

than alcohol), or a prescribed concentration or amount of any such drug, is present in the employee's blood or urine or other body tissues or fluids,

- (k) offences relating to refusal or failure to undergo tests or otherwise comply with test procedures or interference with test results,
- (l) offences relating to refusal or failure to administer tests or take samples or to do so in accordance with required procedures,
- (m) evidence in proceedings as to matters relating to drug and alcohol testing,
- (n) without limiting paragraph (m), the use of certificates as to concentration of alcohol or presence of drugs as evidence of the matters stated in the certificate in proceedings for offences,
- (o) confidentiality of test results,
- (p) protection against liability for persons administering tests or taking samples of blood or urine or other body tissues or fluids,
- (q) disciplinary action that may be taken consequent on a breach of regulations made under this clause.

(2) An offence under a regulation made under this clause relating to the carrying out of transport safety work by a transport safety employee while under the influence of alcohol or any other drug or while the prescribed concentration of alcohol or prescribed concentration or amount of another drug is present in the employee's breath, blood or urine, a refusal or failure by a transport safety employee to undergo tests or otherwise comply with test procedures or to interference by a transport safety employee with test results, may, in addition to the penalty provided for by section 63 for offences under the regulations, be punishable by a period of imprisonment not exceeding 9 months.

(3) Subject to the regulations, section 109 (Measurement of alcohol concentrations) of the *Road Transport Act 2013* applies in relation to the measurement of the concentration of alcohol in a person's breath or blood for the purposes of the regulations in the same way as it applies for the purposes of that Act.

## **Schedule 6 Transport safety investigators**

### **1 Definitions**

In this Schedule—

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

- (a) a site containing a bus, ferry, rolling stock or wreckage of a bus, ferry or rolling stock,

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

**notifiable occurrence—**

- (a) in relation to railway operations—has the same meaning as it has in the [Rail Safety National Law \(NSW\)](#), and
- (b) in relation to a bus or ferry—means an occurrence required to be reported under section 46B.

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

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

**special premises** means—

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

**vehicle** includes rolling stock.

## 2 Appointment of transport safety investigators

- (1) The Chief Investigator may appoint an authorised person (within the meaning of section 45DA of the [Transport Administration Act 1988](#)) as a transport safety investigator for the purposes of conducting a transport safety investigation.

**Note—**

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

- (2) The Chief Investigator must issue a transport safety investigator with an identity card.
- (3) The identity card must—
  - (a) be in the form approved by the Minister, and
  - (b) contain a recent photograph of the person.

- (4) A transport safety investigator must not exercise a function conferred by or under this Act unless an identity card has been issued to the investigator by the Chief Investigator.
- (5) A transport safety investigator may exercise the functions conferred by this Schedule if the investigator believes on reasonable grounds that it is necessary to do so for the purposes of, or in connection with, a transport safety investigation.

### **3 Identity cards**

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

Maximum penalty—15 penalty units.

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

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

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

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

consent.

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

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

### **Note—**

A transport safety investigator may apply for a search warrant for a transport safety investigation under section 46V.

## **7 Powers after entering premises**

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

(a) require a person on the premises to answer questions or produce anything relevant to a transport safety investigation, and

(b) seize that thing, or any other thing found on the premises, if the thing is directly relevant to the investigation concerned and the investigator believes on reasonable grounds that it is necessary to seize the thing in order to prevent it being interfered with or to prevent its concealment, loss, deterioration or destruction.

(4) **Entry under a search warrant** A transport safety investigator who enters premises under a search warrant may also—

(a) require a person on the premises to answer questions or produce anything to which the warrant relates, and

(b) seize that thing, or any other thing found on the premises relevant to the investigation concerned.

(5) **Offence** A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this clause.

Maximum penalty—100 penalty units.

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

(1) The occupier of premises who is present when a search warrant for the premises is being executed is entitled to observe the search being conducted.

(2) The right to observe the search being conducted ceases if the occupier impedes the search.

(3) This clause does not prevent 2 or more areas of the premises being searched at the same time.

## **9 Securing a site**

(1) For the purpose of protecting evidence that might be relevant for a transport safety investigation or ensuring safety, a transport safety investigator may secure the perimeter of any site at a place entered under this Schedule by whatever means the investigator considers appropriate.

(2) A person must not, without the permission of a transport safety investigator, enter or remain at a site the perimeter of which is secured under this clause.

Maximum penalty—1,000 penalty units.

(3) Subclause (2) does not apply if the person enters the site, or remains at the site—

(a) to ensure the safety of persons, or

- (b) to remove deceased persons or animals from the site, or
  - (c) to move a motor vehicle, or the wreckage of a motor vehicle, to a safe place, or
  - (d) to protect the environment from significant damage or pollution.
- (4) A transport safety investigator must not unreasonably withhold a permission referred to in subclause (2).

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

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

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

- (1) This clause applies to the following material—
- (a) a document or other thing produced under this Schedule,
  - (b) a thing seized under this Schedule.
- (2) The Chief Investigator or a transport safety investigator must provide a receipt for the document or thing.
- (3) The Chief Investigator may make copies of the document or thing.
- (4) The Chief Investigator may examine or test the document or thing, even though that might result in damage or destruction of the document or thing or a reduction in its value.
- (5) The Chief Investigator must return the document or thing when it is no longer needed for the purpose of an investigation. However, if there is no owner or the Chief Investigator cannot, despite making reasonable efforts, locate the owner, the Chief Investigator may dispose of the document or thing in such manner as the Chief

Investigator thinks appropriate.

- (6) Despite subclause (5), the Chief Investigator must make the document or thing available to a relevant body on the written request of the body for the purposes of—
- (a) an investigation under a law of the Commonwealth or another State or Territory, or
  - (b) a coronial inquest or inquiry.
- (7) The Chief Investigator is not required to comply with any such request—
- (a) to the extent that the document or thing is or contains restricted information or an on-board recording, or
  - (b) if the Chief Investigator is of the opinion that making the document or thing available would be likely to interfere with any transport safety investigation to which the document or thing relates.

(8) In this clause—

**on-board recording** means a recording—

- (a) that consists of (or consists mainly of) sounds or images, or sounds and images, of persons in the control area of rolling stock, a bus or a ferry, and
- (b) that was made in order to comply with a law of this State, and
- (c) any part of which was made at the time of the occurrence of an accident or incident that involved the rolling stock, bus or ferry.

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

**relevant body** means—

- (a) a Government Department, or
- (b) a NSW government agency, or
- (c) an agency of the Commonwealth or another State or Territory, or
- (d) a State or Territory Government, or
- (e) a coroner.

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

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



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