

**2005**

**THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**ROAD TRANSPORT LEGISLATION AMENDMENT  
REGULATION 2005 (No 1)**

**EXPLANATORY STATEMENT**

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# AUSTRALIAN CAPITAL TERRITORY

## ROAD TRANSPORT LEGISLATION AMENDMENT REGULATION 2005 (No 1)

### SUBORDINATE LAW SL2005-39

#### EXPLANATORY STATEMENT

##### OVERVIEW

The *Road Transport Legislation Amendment Regulation 2005 (No 1)* (the Amendment Regulation) amends:

- the *Road Transport (Driver Licensing) Regulation 2000*;
- the *Road Transport (Offences) Regulation 2005*;
- the *Road Transport (Public Passenger Services) Regulation 2002* (the PPS Regulation) and
- the *Road Transport (Vehicle Registration) Regulation 2000*.

The main features of the Amendment Regulation are:

- the introduction of a new regulation for 'stand-by hire cars' to operate under permits while hire cars are being repaired;
- the enhancement of existing provisions requiring taxi networks and public passenger service operators to keep records about drivers;
- the clarification of existing provisions about where taxi and hire car drivers may drop off or pick up passengers with significant disabilities;
- the inclusion of unpaid fees as a ground on which the Road Transport Authority (RTA) may take disciplinary action against a public passenger service accreditation or licence;
- the inclusion of an additional ground on which the RTA may refuse to register public vehicles ie if the applicant is not the accredited operator of the public passenger service;
- the inclusion of additional grounds on which the RTA may suspend or cancel a vehicle registration ie if a vehicle registered as a taxi or hire car is no longer licensed as a taxi or hire car, or if the registered operator of the vehicle is not the accredited operator of the public passenger service; and
- the introduction of a requirement for country NSW authorised taxi drivers to complete training if they wish to drive taxis in the ACT, consistent with ACT taxi drivers.

## **Strict liability offences**

Offences contained in sections 26, 27(2), 27A, 77(2), 77A, 97, 99(2), 133, 177E, 177H, 182(1), 182A & 207 of the PPS Regulation are strict liability offences. These are regulatory offences applied in the interests of public and industry safety.

A fault element is not considered to be necessary for these offences as a defendant could be reasonably expected, because of his or her professional involvement, to know what the requirements of the law are. Public passenger service operators and drivers are expected to be aware of the requirements placed on them by the regulatory regime for their profession.

## **DETAIL**

### **Part 1 Preliminary**

**Section 1** provides the name of the regulation, the *Road Transport Legislation Amendment Regulation 2005 (No 1)*.

**Section 2** specifies that the regulation commences on the day after notification.

### **Part 2 Road Transport (Driver Licensing) Regulation 2000**

**Section 3** notes that this part amends the *Road Transport (Driver Licensing) Regulation 2000*.

**Section 4** inserts a new requirement that a person who drives a taxi in the ACT and is included in the exemption from the requirement to hold a public vehicle licence by virtue of their holding a NSW country taxi driver authorisation, must complete an approved taxi driver training course. Applicants for NSW country taxi driver authorities are not required to complete taxi driver training. This new requirement will bring NSW country drivers into line with ACT requirements for training.

**Section 5** renumbers existing s 94A(3) as new s 94A(4).

**Section 6** provides the new definitions associated with new s 94A(3). The commencement date for Section 4 is delayed due to the need to assess the suitability of any relevant industry training courses in NSW.

### **Part 3 Road Transport (Offences) Regulation 2005**

**Section 7** notes that the part amends the Road Transport (Offences) Regulation 2005.

**Section 8** is consequential to Section 20 of the Amendment Regulation.

**Section 9** inserts the penalty provisions for the new offence of operating a standby hire car without a standby hire car permit label attached to the vehicle, and is consequential to Section 25 of the Amendment Regulation.

**Section 10** is consequential to Section 25 of the Amendment Regulation.

**Section 11** indicates that the item numbers for part 1.11 of the Schedule will be renumbered on re-publishing.

### **Part 4 Road Transport (Public Passenger Services) Regulation 2002**

**Section 12** notes that the part amends the *Road Transport (Public Passenger Services) Regulation 2002*.

**Section 13** inserts new dot points in section 4A, note 1, indicating that the Criminal Code applies to section 26 (Bus drivers to hold appropriate driver licence or authority) and section 97 (Taxi drivers to hold appropriate driver licence or authority). This section is consequential to section 14 and section 19 of the Amendment Regulation.

**Section 14** replaces existing section 26 (Bus drivers to hold appropriate driver licence or authority) with a new section that differs from the existing section in that it makes the existing offence a strict liability offence. This is consistent with the parallel offence in relation to hire car drivers at existing section 181 of the PPS Regulation.

New section 26 also includes new notes referring to provisions in the *Road Transport (Driver Licensing) Regulation 2000* about situations in which a person is no longer authorised to drive public vehicles.

**Section 15** replaces existing section 27 (Records of bus drivers) with an expanded provision. An accredited bus service operator is required to keep records of bus drivers, including any changes in information relating to bus driver authority provided by the RTA. An offence against this section is a strict liability offence.

New section 27(4) requires the operator to make a record of a bus driver's licence suspension or cancellation, and the date of the suspension or cancellation, if the operator knows or ought to know (eg if advised by the Road Transport Authority (RTA)) of the suspension or cancellation.

A parallel provision (s 27(5)) applies in relation to bus operators' records about bus drivers who cease to be exempt from holding a public vehicle licence (by virtue of their interstate driver authority being suspended or cancelled).

New section 27A requires an accredited bus service operator to give the RTA bus driver information including when a driver ceases to drive for the operator. This will allow the RTA to keep up-to-date information linking a bus driver with a particular operator. An offence against this provision is a strict liability offence.

New section 27B allows the RTA to inform the bus operator when a bus driver is no longer licensed to drive a public bus. New section 27A will ensure that the RTA has a record of the relevant operator for the driver. Under existing section 26, the bus operator must then take action if advised by the RTA about a licence suspension or cancellation.

The new provisions formalise existing arrangements and obviate the need for the RTA to seek drivers' consent to the release of driver licence status information to the relevant operators.

**Section 16** introduces new notes referring to provisions in the *Road Transport (Driver Licensing) Regulation 2000* about situations in which a person is no longer authorised to drive public vehicles.

**Section 17** provides a replacement for existing section 77 (Records of taxi drivers to be maintained by accredited network provider). The new section expands on existing section 77. An accredited network provider is required to keep records of taxi drivers, including any changes in information about taxi driver authority provided by the RTA. An offence against this section is a strict liability offence.

New section 77(4) requires the network to make a record of a taxi driver's licence suspension or cancellation, and the date of the suspension or cancellation, if the network knows or ought to know (eg if advised by the Road Transport Authority (RTA)) of the suspension or cancellation.

A parallel provision (s 77(5)) applies in relation to networks' records about taxi drivers who cease to be exempt from holding a public vehicle licence (by virtue of their interstate driver authority being suspended or cancelled).

New section 77A (Accredited network provider to tell RTA about records of drivers) requires the accredited taxi network to give the RTA taxi driver information including when a driver ceases to be affiliated with the taxi network provider. This will allow the RTA to keep up-to-date information linking a taxi driver with a particular network. An offence against this provision is a strict liability provision.

New section 77B (Road Transport Authority to tell accredited network providers about taxi drivers) allows the RTA to inform the taxi network when a

taxi driver is no longer authorised to drive a taxi. New section 77A will ensure that the RTA has a record of the taxi network(s) with whom the driver is affiliated.

The new provisions formalise existing arrangements and obviate the need for the RTA to seek drivers' consent to the release of driver licence status information to the relevant taxi networks.

**Section 18** replaces existing section 97 (Taxi drivers to hold appropriate driver licence or authority) with a new section that differs from the existing section in that it makes the existing offence a strict liability offence. This is consistent with the parallel offence in relation to hire car drivers at existing section 181 of the PPS Regulation.

New section 97 also includes new notes referring to provisions in the *Road Transport (Driver Licensing) Regulation 2000* about situations in which a person is no longer authorised to drive public vehicles.

**Section 19** replaces existing section 99 (Records of taxi drivers to be maintained by accredited operator) with a more expanded provision. An accredited taxi service operator is required to keep records of taxi drivers, including any changes in information relating to taxi driver authority provided by the RTA. An offence against this section is a strict liability offence.

New section 99(4) requires the operator to make a record of a taxi driver's licence suspension or cancellation, and the date of the suspension or cancellation, if the operator knows or ought to know of the suspension or cancellation.

A parallel provision (s 99(5)) applies in relation to taxi operators' records about taxi drivers who cease to be exempt from holding a public vehicle licence (by virtue of their interstate driver authority being suspended or cancelled).

**Section 20** replaces existing section 133 about where taxi drivers may stop for people with significant mobility disabilities. Existing section 133 has been criticised by taxi drivers and parking enforcement officers as being ambiguous about situations where taxi drivers stop in an unlawful place to pick up or drop off a disabled person. The new provision clarifies the conditions under which a taxi driver may stop the taxi in what would otherwise be an unlawful place ie there is no other lawful place nearby and, in the driver's opinion, it is safe to use the preferred place.

An offence against this provision is a strict liability offence.

**Section 21** provides new **Division 5.1.3 Stand-by hire cars**.

Stand-by hire cars are vehicles that may be used to provide hire car services when a licensed hire car is inoperable due to the vehicle's being repaired or serviced. If a hire car has been written off, a stand-by vehicle may be used whilst a new vehicle is being obtained by the licence holder. This will allow

the hire car service operator to meet bookings without additional financial penalties following road crashes or vehicle breakdowns.

New section 177B (Application for a stand-by hire car permit) requires a person wishing to use a vehicle as a stand-by hire car to submit an application for the vehicle to be used instead of the vehicle that is licensed as a hire car. The applicant must provide written authorisation from the registered operator of the proposed stand-by hire car vehicle that the vehicle may be used as a stand-by hire car.

Under new section 177C (Issue of stand-by hire car permit), a stand-by hire car permit may be issued to a hire car licensee for a vehicle that meets the requirements for a hire car under the *Road Transport (Vehicle Registration) Act 1999* (eg the minimum wheelbase requirement) and is covered by a public vehicle insurance policy. The applicant must surrender the usual numberplates of the vehicle to the RTA. Stand-by hire car permits may be issued for a maximum of 60 days and are not transferable or renewable. The permits are intended as a short term option only.

New section 177D (Form of stand-by hire car permit) sets out the items to be included on a stand-by hire car permit, eg the expiry date of the permit, the licensee's name and address, the usual registration number of the stand-by hire car and the hire car licence and registration number.

Under new section 177E (Issue, form and display of stand-by hire car permit label), a stand-by hire car label (containing the expiry date, and registration numbers of the usual and stand-by hire cars) must be attached to the stand-by hire car.

An offence against this provision is a strict liability offence.

New section 177F (Conditions of stand-by hire car permit) provides that a stand-by hire car permit is subject to the stand-by hire car's complying with the requirements under the Act for hire cars, and with any conditions applying to the hire car licence under which it operates.

New section 177G (Stand-by hire cars – replacement of licence label) is a standard provision on the replacement of a label when lost, stolen or destroyed.

New section 177H (Production of permit by hire car driver) requires a hire car driver to produce a stand-by hire car permit when asked to do so by an authorised person, police officer or the RTA.

An offence against this section is a strict liability offence.

**Section 22** introduces new notes in section 181 (Hire car drivers to hold appropriate driver licence or authority) referring to provisions in the *Road Transport (Driver Licensing) Regulation 2000* about situations in which a person is no longer authorised to drive public vehicles.

**Section 23** replaces existing section 182 (Records of hire car drivers to be maintained by accredited operator) with a more expanded provision. An accredited hire car service operator is required to keep records of hire car drivers, including any changes in information about hire car driver authority provided by the RTA. An offence against this section is a strict liability offence.

New section 182(3) requires the operator to make a record of a hire car driver's licence suspension or cancellation, and the date of the suspension or cancellation, if the operator knows or ought to know (eg if advised by the Road Transport Authority (RTA)) of the suspension or cancellation.

A parallel provision (s 182(4)) applies in relation to hire car operators' records about hire car drivers who cease to be exempt from holding a public vehicle licence (by virtue of their interstate driver authority being suspended or cancelled).

New section 182A (Accredited operator to tell RTA about records of hire car drivers) requires the accredited hire car service operator to give the RTA hire car driver information including when a driver ceases to drive for the operator. This will allow the RTA to keep up-to-date information linking a hire car driver with a particular operator.

An offence against this section is a strict liability offence.

New section 182B (Road Transport Authority may tell accredited operator about hire car drivers) allows the RTA to inform the hire car operator when a hire car driver is no longer licensed to drive a hire car. New section 182A will ensure that the RTA has a record of the relevant operator for the hire car driver. Under existing section 181, the hire car operator must then take action in relation to the licence suspension or cancellation.

**Section 24** provides a new note for Division 5.2.3 Hire car drivers. New Note 2 draws attention to new section 177H of the PPS Regulation which is about a hire car driver producing a standby hire car permit when required to do so.

**Section 25** replaces existing section 207 (Where hire cars must stop) with a new provision that mirrors new section 133 (Where taxi drivers must stop). The new section has been included in the amendment regulation to provide consistency with the taxi driver regulation.

An offence against this section is a strict liability offence.

**Section 26** amends section 223 (When authority may take action in relation to licences and accreditations) by adding an additional ground, the non-payment of an accreditation fee, on which disciplinary action may be taken in relation to an accreditation.

**Section 27** also amends section 223 and adds additional grounds on which disciplinary action may be taken in relation to a hire car licence or a taxi licence. The grounds are: the non-payment of a licence fee and, for a person operating a standby hire car, not having obtained a standby hire car permit, the contravention of any other provision of the Act in relation to a standby hire car permit, having made a false or misleading statement in obtaining a standby hire car permit or the non-payment of a fee in relation to a standby hire car permit.

**Section 28** amends section 224 (Action that may be taken in relation to accreditations and licences). New section 224(1)(c) requires that if a fee has not been paid in relation to a hire car licence or a taxi licence the disciplinary action that the RTA may take is to suspend the licence for no more than 3 months and, if the amount remains unpaid after the suspension period, cancel the licence.

**Section 29** renumbers existing section 224(1)(c) to (g) as new section 224(1)(d) to (h) and is consequential to Section 28 of the Amendment Regulation.

**Section 30** inserts the definition of 'prescribed driver authority information' in the Dictionary. The definition was previously included in section 27(3), section 77(3), section 99(3) and section 182(3). It also adds definitions for stand-by hire car, stand-by hire car permit, stand-by hire car permit label, and usual hire car.

## **Part 5 Road Transport (Vehicle Registration) Regulation 2000**

**Section 31** indicates that Part 5 amends the *Road Transport (Vehicle Registration) Regulation 2000*.

**Section 32** provides new section 32AA (Deciding application for registration – public passenger vehicles). The provision allows the RTA to refuse to register a vehicle as a bus, taxi or hire car if the applicant is not the accredited operator of the vehicle. Generally, the accredited operator of a public passenger service would also be the registered operator of a public vehicle. However, this is not always the case eg a taxi licence holder leases the licence to a taxi operator but owns and registers the vehicle him/herself. Applications for registrations would be refused where there is no clear relationship between the accredited operator of the vehicle and the applicant. In such situations it would not be clear as to where responsibility for matters such as vehicle maintenance would fall.

**Section 33** amends section 84 (Suspension or cancellation of registration) by adding new grounds on which a vehicle registration may be suspended or cancelled ie when a vehicle that has been registered as a taxi or hire car is no longer licensed as a taxi or hire car respectively; when the registered operator is not accredited to operate the vehicle as a public passenger vehicle; and when a vehicle is no longer operated as a public passenger vehicle. This will

ensure that only vehicles that are appropriately licensed as taxis or hire cars continue to be registered as taxis and hire cars respectively and that there is always a clearly established relationship between the accredited operator of a vehicle registered as a public vehicle and the registered operator of the vehicle.

**Section 34** deletes a reference to the *Road Transport (Public Passenger Services) Act 2001* in section 1.60A of Schedule 1. This change is consequential to section 35.

**Section 35** inserts a definition of 'public passenger vehicle' in the Dictionary, referring to the dictionary definition in the *Road Transport (Public Passenger Services) Act 2001*.