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

**ROAD TRANSPORT (PUBLIC PASSENGER SERVICES)
AMENDMENT BILL 2005**

EXPLANATORY STATEMENT

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AUSTRALIAN CAPITAL TERRITORY

ROAD TRANSPORT (PUBLIC PASSENGER SERVICES) AMENDMENT BILL 2005

EXPLANATORY STATEMENT

OVERVIEW

The *Road Transport (Public Passenger Services) Amendment Bill 2005* (the Amendment Bill) provides for an Act to amend the *Road Transport (Public Passenger Services) Act 2001*.

The main features of the Amendment Bill are:

- the introduction of a new category of public passenger service, ie demand responsive services;
- a requirement for demand responsive services to be authorised by the Minister;
- a requirement for demand responsive service operators to hold accreditation;
- a requirement for demand responsive service operators to hold a service contract for the service; and
- a requirement for minimum fares for demand responsive services to be determined by the Minister.

The objective of the Amendment Bill is to ensure the effective regulation of flexible, demand responsive, multi-hire public passenger services.

The *Road Transport (Public Passenger Services) Act 2001* provides for Regulations to apply to two kinds of bus services, regular route services, and tour and charter services, as well as taxi and hire car services. Flexible, demand responsive, multi-hire public passenger services do not fall into any of these categories.

The introduction of this new category of public passenger service represents a change from the existing mode-based approach to regulation of the industry to a more service based approach. Unlike bus, hire car and taxi services, demand responsive services may use a range of passenger vehicle types and the main defining feature of the category is the nature of the service provided.

Demand responsive services are usually niche services that meet public transport needs at certain locations or times, or for particular groups of people. Unlike regular route bus services and taxi services, demand responsive services do not attempt to provide a universal service, available to all, throughout the day. However, demand responsive services have some

characteristics in common with regular route buses and taxis. For example, demand responsive service passengers share the vehicle with other passengers, as is the case for regular route bus passengers. On the other hand, a demand responsive service typically uses a booking service, consistent with requirements for taxis. The costs of demand responsive services are generally lower than taxi services but higher than regular route bus services.

Demand responsive services differ from tour and charter bus services and hire car services in that they may be authorised to stand for hire in certain circumstances, and the hirer does not have exclusive use of the vehicle.

Strict Liability Offences

The new offence contained in section 91 (Operating demand responsive services without entitlement) is a strict liability offence. The offence is applied in the interests of public safety. A fault element is not considered to be necessary for this offence as a defendant could be reasonably be expected to know that public passenger services are regulated and may only be provided within the legal framework.

The new offence contained in section 85 (Use of vehicle for demand responsive services) is a strict liability offence. A fault element is not considered to be necessary for this offence as a defendant could reasonably be expected, because of his or her professional involvement, to know the requirements of the law.

The new offences contained in sections 86 (Representing vehicle as demand responsive service vehicle) and 92 (Representing entitlement to operate demand responsive service) contain elements to which strict liability applies. The elements are that the vehicle is not a demand responsive vehicle (section 86(1)(c) and that the person is not entitled to operate the demand responsive service (section 92(1)(c). A defendant could reasonably be expected to know that the vehicle was not a demand responsive vehicle, and, in the case of section 92(1)(c) to know that he/she was not entitled to operate a demand responsive service.

DETAIL

Section 1 is a formal provision that sets out the name of the Act, the *Road Transport (Public Passenger Services) Amendment Act 2005*.

Section 2 specifies that the amendment Act commences on a day fixed by the Minister.

Section 3 notes that the amendment Act amends the *Road Transport (Public Passenger Services) Act 2001*.

Section 4 inserts a new dot point in section 4A, note 1, indicating that the Criminal Code, Ch 2 applies to new s 85 (Use of vehicles for demand

responsive services), s 86 (Representing vehicle as demand responsive service vehicle), s 91 (Operating demand responsive service without entitlement), and s 92 (Representing entitlement to operate demand responsive service).

Section 5 inserts a new section 5 (ba) listing administering demand responsive service authorisations as a new function of the RTA.

Section 6 inserts a new section 5 (ca) requiring the RTA to keep a register of demand responsive services.

Section 7 inserts a requirement in section 5 (d) for the RTA to provide information on authorised demand responsive services.

Section 8 substitutes a new section 6 heading to add demand responsive service authorisations to the heading.

Section 9 inserts new dot points in the note for section 6 (1), adding demand responsive service authorisations and accredited demand responsive service operators registers as registers to which section 6 applies.

Section 10 amends section 7 to refer to registers under the Act, rather than naming each particular register.

Section 11 inserts a new section 9 clarifying that a person can hold any combination of accreditations, authorisations and licences under the Act.

Section 12 amends the meaning of bus service at section 11 to exclude demand responsive services.

Section 13 inserts a new heading to clarify that section 17 refers to service contracts for regular route services.

Section 14 amends the meaning of taxi at section 45 to exclude a vehicle that is being used to operate a demand responsive service.

Section 15 amends the meaning of restricted taxi at section 46 to exclude a vehicle that is being used to operate a demand responsive service.

Section 16 amends the meaning of hire car at section 67 to exclude a vehicle that is being used to operate a demand responsive service.

Section 17 amends the meaning of restricted hire car at section 68 to exclude a vehicle that is being used to operate a demand responsive service.

Section 18 introduces New Part 8 Demand responsive services

Division 8.1 Basic concepts

New Section 80 provides that the meaning of “demand responsive service” is a public passenger service operated under an authorisation by the RTA. This new kind of public passenger service is not a default category for a service that is not a bus, taxi or hire car service. To be a demand responsive service, a public passenger service must be the subject of an authorisation under this Part.

New Section 81 provides that the meaning of “demand responsive service vehicle” is a motor vehicle used in accordance with a demand responsive service authorisation to operate the demand responsive service.

Division 8.2 Authorisation to operate demand responsive services

New Section 82 requires the Minister to take into account the guidelines (at section 83) when assessing applications for authorisation as a demand responsive service.

An authorisation may exempt a person or a vehicle from the requirements of the Act or a provision of the Act. An authorisation is a disallowable instrument. This will ensure that the rules applying to each demand responsive service are contained in one document, accessible to all interested parties.

New Section 83 provides that the Minister may approve the guidelines for granting an authorisation. The guidelines may refer to matters such as the hours of operation of services, the routes or area where services may operate, the kinds of passengers that would use the service, and how passengers may access the services.

The guidelines may also make provision in relation to the types of vehicles that may be used to provide the service.

Section 83 requires that the guidelines specify that the Minister must not authorise a demand responsive service if it would adversely affect the viability of an existing regular route bus service. These services provide low cost, comprehensive services available to all and should not be compromised by demand responsive services.

The guidelines are a disallowable instrument. They will provide assistance to industry in identifying the types of services that may be authorised.

New Section 84 provides for regulations for authorisations to operate demand responsive services and provides examples of the types of provisions that may be included. The examples include the term of the authorisation, conditions that may be attached to the authorisation and the disciplinary

action that the Road Transport Authority (RTA) may take in relation to an authorisation.

A note to the section clarifies that the examples are not exhaustive.

New Section 85 provides an offence provision of using a vehicle for a demand responsive service if that vehicle has not been authorised for the service.

An offence against this section is a strict liability offence.

New Section 86 provides that it is an offence for a person to represent that a vehicle is a demand responsive service vehicle, and be reckless about whether the person represents, by their conduct, that the vehicle is a demand responsive service vehicle, if the vehicle is not a demand responsive service vehicle. Strict liability relates to one element of the offence only, ie that the vehicle is not a demand responsive service vehicle. The other elements of the offence contain fault elements of intention and recklessness.

Parallel existing offences relating to other public passenger services are proposed to be harmonised as part of the Criminal Code harmonisation process.

Division 8.3 Accreditation of demand responsive service operators

New Section 87 provides the purposes of accreditation which include ensuring that a person has the financial capacity to carry out the requirements of the service standards, that the people involved in the service are suitable, that the people involved in the service are capable of meeting passenger safety requirements and the requirements for vehicle maintenance.

New Section 88 provides for regulations for the accreditation system and provides examples of what types of provisions may be included in the regulation. These examples include the kind of accreditation and conditions attached to the accreditation.

The accreditation regulations may also refer to the approval, refusal or surrender of accreditations and what actions can be taken by the RTA, such as suspension or cancellation of an accreditation.

The regulation may also provide criteria for assessing applicants for accreditation including that the applicant and other people concerned with the service are suitable, that the applicant can demonstrate a capacity to comply with the service standards, and that the applicant has the financial capacity to provide the service.

The accreditation regime for demand responsive operators will be consistent with the existing accreditation regimes for the operators of bus, taxi, and hire car services.

Division 8.4 Service contracts for demand responsive services

New Section 89 provides that the RTA may enter into a service contract with the operator of a demand responsive service.

The service contract must state whether the operator is given an exclusive right to operate a service along a certain route or in a particular area.

Section 89 (3) provides examples of the matters that may be included in a service contract for the operation of a demand responsive service and how the contract is administered. The examples include the service requirement details, whether a booking system will be used, and whether the contract may be transferred, suspended, cancelled or surrendered. The contract may also deal with fees and penalties for breaches of the contract and how records are to be made and kept. Other examples include how the fares are collected, how tickets may be sold, and whether there is any free or concessional travel.

Division 8.5 Entitlement to operate demand responsive services

New Section 90 sets out the requirements for a person operating a demand responsive service. The person must hold an authorisation, have a service contract with the RTA, and be accredited as a demand responsive service operator.

New Section 91 provides that a person commits an offence if they operate a demand responsive service and they are not entitled to under section 90.

An offence against this section is a strict liability offence.

Section 91 (3) provides that if a contract is varied or terminated, and the RTA has agreed to a temporary demand responsive service without a service contract, the requirement in section 90 for a service contract does not apply.

New Section 92 provides that it is an offence for a person to represent that they are entitled to operate a demand responsive service and be reckless about whether they, by their conduct, represent that they are entitled to operate a demand responsive service, if they are not entitled to operate a demand responsive service vehicle. Strict liability relates to one element of the offence only, ie that the person is not entitled to operate a demand responsive service vehicle. The other elements of the offence contain fault elements of intention and recklessness.

Division 8.6 Regulation of demand responsive services

New Section 93 requires the Minister to determine minimum fares or ways of calculating minimum fares for demand responsive services.

A determination is a disallowable instrument.

New Section 94 provides for regulations about the operation of demand responsive services and provides examples of the types of provisions that may be included. The examples include the supervision of drivers, the safety of passengers, the qualification and training of the drivers and other people involved in the services, and maximum driving times and minimum rest times. Other examples include requiring insurance, how tickets are issued, and requiring systems to monitor customer complaints and manage lost property.

Other matters that may be included in regulations are: the publication of timetables or other information about the service, the driver's obligations, vehicle equipment, cleaning and service of vehicles, maintenance facilities, record keeping and auditing of records, display of authorisation numbers, and the provision of information and reports.

New Section 95 provides for regulations about the operation of demand responsive service vehicles and provides examples of what types of provisions may be included. These examples include the use of the service by people including the payment of fares, where the services can operate, how passengers are picked up and dropped off, record keeping, the transport of luggage and animals, and passengers not being allowed to stand if the service is a bus. Other examples include, maximum speeds, payment of fares, vehicle equipment, the use of various parking zones, signage on the vehicle, use of decal signs and livery, and drivers dress standards.

New Section 96 provides for regulations about the drivers of demand responsive vehicles and provides examples of what types of provisions may be included. These examples include the conduct and duties of drivers, training requirements and dress codes.

New Section 97 provides for regulations about the conduct of passengers of demand responsive vehicles and provides examples of what types of provisions may be included. These examples include eating and drinking in demand responsive vehicles, and the removal of passengers from a service.

Part 9 Miscellaneous

Existing Part 8 Miscellaneous is moved to New Part 9, to allow for the inserting of the demand responsive provisions under new Part 8.

Section 125 replaces existing section 80, with a minor change in that Note 1 includes a new dot point for s 90 (demand responsive vehicles) in relation to the sections of the Act that refer to entitlement to operate public passenger services.

Section 126 combines and replaces existing sections 81, 82 and 83.

Section 127 replaces existing section 84, and is unchanged.

Section 128 replaces existing section 85, and is unchanged.

Section 129 replaces existing section 86, and is unchanged.

Section 19 inserts new definitions for accredited demand responsive service operator, authorisation, authorised demand responsive service operator, demand responsive service, and demand responsive service vehicle.

Section 20 amends the definition of public passenger vehicle to include demand responsive service vehicle.

Section 21 amends the definition of a service contract to include demand responsive services with a reference to section 89.

Schedule 1 Road Transport (Public Passenger Services) Act 2001 – other amendments

Section (1.1) replaces section 24 (a) (1) to make the example relating to the safety of bus passengers consistent with the corresponding ‘safety of passengers’ example for hire cars and demand responsive services, ie by adding “including, for example, by the use of particular kinds of security devices”.

Section (1.2) amends section 25 (c) by removing “by driver” from the example so it applies to any person keeping records about the service.

Section (1.3) amends section 25 (e) to simplify the language used by replacing “transportation” with “transport”.

Section (1.4) removes from section 56 (c) “operated by an accredited taxi operator” which is superfluous.

Section (1.5) amends section 56 (d) by adding “by the use of” to make the example relating to the safety of taxi passengers consistent with the ‘safety of passengers’ examples for bus, hire car, and demand responsive services.

Section (1.6) removes from section 76 (a) “operated by an accredited hire car service operator” which is superfluous.

Section (1.7) amends section 76 (b) by adding “by the use of” to make the example relating to the safety of hire car passengers consistent with the corresponding examples for bus, taxi, and demand responsive services.

Section (1.8) amends section 77(i) by removing “by driver” from the example so it applies to any person keeping records about the service.

Section (1.9) Other amendments, amends sections 16, 31, 44, 50, 66 and 72 to clarify that the Minister may make regulations. This is consistent with other provisions for making regulations such as sections 24, 25, 26, 27, 35, 36, 56, 57 and 76.