

Australian Capital Territory

Road Transport Legislation (Taxi Licences) Amendment Regulation 2006 (No 1)

Subordinate Law SL2006- 5

made under the

Road Transport (Driver Licensing) Act 1999, the Road Transport (General) Act 1999 and the Road Transport (Public Passenger Services) Act 2001

EXPLANATORY STATEMENT

OVERVIEW

The *Road Transport Legislation (Taxi Licences) Amendment Regulation 2006 (No 1)* (the Amendment Regulation) amends:

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

The main features of the Amendment Regulation are:

- the introduction of a new type of taxi licence – a transferable leased taxi licence;
- the introduction of a ballot process for the allocation of transferable leased taxi licences;
- the application of the ballot process to any future releases of wheelchair accessible taxi licences; and
- the addition of provisions to allow restricted taxi licences to be renewed.

DETAIL

Section 1

Section 1 provides the name of the regulation, the *Road Transport Legislation (Taxi Licences) Amendment Regulation 2006 (No 1)*.

Section 2

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

Section 3

Section 3 notes that the Amendment Regulation amends the *Road Transport (Public Passenger Services) Regulation 2002*.

Section 4

Section 4 amends existing s5 (3)(b) to provide for two types of restricted taxi service accreditation that may be issued – an accreditation to operate a restricted taxi service for a wheelchair-accessible taxi and an accreditation to operate restricted taxi service for a NSW cross-border taxi. This distinction in types of accreditation for restricted taxi services is consistent with the existing distinction between restricted taxi licences for wheelchair accessible taxis and for cross-border taxis.

Section 5

Section 5 provides a new s82. Section 82(2) provides for two types of taxi licence other than a restricted taxi licence. A transferable leased taxi licence is a new type of taxi licence. A taxi licence that is not limited to a term stated in the licence represents the long-standing taxi licence category. Under s82 (3) the road transport authority (the authority) must not issue such licences. There is currently no policy allowing for the release of any additional licences in this category. Should such a policy be agreed in the future, appropriate provisions would be included in the PPS Regulation.

New s82A reflects existing s82 (2). New s82A sets out the two kinds of restricted taxi licences (a wheelchair-accessible taxi licence and a NSW cross-border taxi licence). The term 'restricted cross-border taxi' is simplified as 'a NSW cross-border taxi'.

Section 82A(2) requires licences for wheelchair accessible taxis (WATs) to include a condition about priority being given to people in wheelchairs. This new provision reflects existing conditions on current WAT licences and will add force to this condition when it is applied to any new or renewed WAT licences.

Section 6

Section 6 provides a new **Division 4.2.2, Transferable leased taxi licences - issue**. This division sets out the arrangements for issuing transferable leased taxi licences.

New s83 provides that the holder of a defined right for a transferable leased taxi licence may apply to the authority for a transferable leased taxi licence.

Under new s83A, a person who holds a defined right for a transferable leased taxi licence is entitled to be issued with a transferable leased taxi licence if the person is accredited to operate a taxi service, the vehicle for which the licence is to be used is registrable as a taxi and the person has complied with any

conditions for the defined right. A transferable leased taxi licence may be issued for a maximum of 6 years, and may be issued subject to a condition.

New Division 4.2.3 deals with issuing wheelchair accessible taxi licences. Under new s83D, the holder of a defined right for a WAT licence may apply for a WAT licence.

Under s83E, a person who holds a defined right for a WAT licence is entitled to be issued with a WAT licence if the person is accredited to operate a WAT, the vehicle for which the licence is to be used is registrable as a WAT and the person has complied with any conditions for the defined right. A WAT licence may be issued for a maximum of 6 years, and may be issued subject to conditions.

New subdivision 4.2.4 deals with issuing NSW cross-border taxi licences. Under section 83F, the accredited taxi-cab operator of a NSW cross-border taxi may apply for a NSW cross-border taxi licence.

Under s83G, the accredited taxi-cab operator of a NSW cross-border taxi is entitled to be issued with a NSW cross-border taxi licence if the person is accredited to operate a restricted taxi service for a NSW cross-border taxi. The authority may refuse an application for a NSW cross-border taxi licence if the applicant has a suspended taxi licence or taxi accreditation. A NSW taxi operator against whom suspension action had been taken in the ACT by the RTA is not to be invited to operate the NSW taxi in the ACT. A restricted taxi licence for a NSW cross-border taxi may be issued for a maximum of 6 years and may be issued subject to a condition.

New Division 4.2.5 Renewal of renewable taxi licences sets out the provisions for renewing restricted taxi licences. Restricted taxi licences were previously not renewable. However, to maintain continuity of wheelchair accessible taxi services and allow existing operators to plan for future investments in costly WAT vehicles, it is important that these licences be renewable. Further, it is reasonable that NSW cross-border taxi licences be renewable as it is only Queanbeyan taxis that are eligible to be licensed in the ACT under the cross-border arrangement with the NSW Ministry of Transport.

Section 84 specifies that leased taxi licences are not renewable. Leased licences are short-term licences only, providing Governments with flexibility in determining the supply of taxi licences.

New s84A requires the holder of a restricted taxi licence to apply for the renewal of the licence. Under s84A(2), the licence holder must apply for renewal at least 14 days before the licence expires if continuous licensing is required.

Under s84B, the authority may refuse to renew a renewable taxi licence if:

- the applicant has contravened a condition of the taxi or another taxi licence,

- the applicant has not complied with a renewal application process, or
- the applicant has a suspended taxi licence or taxi accreditation.

A licence renewal application must be refused if the applicant does not hold the relevant accreditation or the vehicle for which the licence is to be used is not registrable as a taxi. The licence may be renewed subject to a condition, and no compensation is payable if a licence is not renewed.

Section 84C provides that the maximum period for renewed licences is 6 years.

New Division 4.2.6 Defined rights for certain taxi licences introduces the concept of defined rights and defined rights ballots. The power to issue defined rights is set out in s84D. Defined rights may be issued for transferable taxi licences and WAT licences. However, they may only be issued to a person who is allocated a defined right in a ballot or is offered and accepts a defined right as a ballot reserve.

Section 84E sets out the arrangements for a ballot of defined rights. A person may only be entered in a ballot if the authority has made a decision to include the person in the ballot under section 84H. The authority may prepare conditions for a ballot and any such conditions would be a notifiable instrument.

Under s84F, the authority must publish a notice about each ballot of defined rights in the newspaper at least 35 days in advance of the ballot date. The notice must include the date and time of the ballot, the number of defined rights to be balloted, the kind of licence to which the defined rights relate, and how and by what date a person may apply to take part in the ballot.

New s84G provides that a person may apply to the authority to take part in a ballot but may make only one application for each ballot, and must use the approved form.

Under s84H, the authority must refuse an application to take part in a ballot if the applicant is a child or has a suspended taxi licence or accreditation of any kind. There will be only limited numbers of licences issued by ballot and taxi operators against whom serious disciplinary action has been taken will be precluded from taking part in ballots. If the application is not refused, the person must be entered in the ballot and notified in writing of the decision to enter the person in the ballot. A person may withdraw from a ballot by written notification (s84I).

Section 84J provides for a ballot reserve list to be established if there are more people entered in a ballot than there are defined rights. The authority may continue with the ballot to create a reserve list of ballot entrants. The reserve list ends one year after the ballot or, if another ballot is held within the one year period, the day before the notice for the new ballot is published.

Section 84K sets out the process for offering defined rights to ballot reserves. If a defined right allocated under a ballot ends before the licence to which it relates is issued, the authority may offer the right to people on the reserve list for the ballot.

A defined right for a transferable taxi licence may also be offered to a person on a reserve list if a transferable taxi licence is cancelled or surrendered. A defined right for a WAT licence may also be offered to a person on a reserve list if a WAT licence is cancelled or surrendered.

Defined rights may be offered to people on the reserve list in the order in which their names were drawn from the ballot. An offer may include conditions such as the period for which the offer remains open.

Under s84L, defined rights end when the earliest of the following happens:

- the defined right is surrendered to the authority,
- the taxi licence for the defined right is issued,
- the defined right ends in accordance with the conditions for the right.

Compensation is not payable if a defined right ends due to its being surrendered to the authority or under the conditions for the right.

Section 84M provides that defined rights are issued subject to defined right conditions determined by the authority. A determination of defined rights conditions is a disallowable instrument.

Under section 84N defined rights are not transferable. Should a person who has been offered a defined right not be able, or not wish, to take up the offer, the offer is to be made to a person from the reserve list.

Section 7

Section 7 provides a new **Division 4.2.7 Taxi licences – other provisions**. Existing s85 is replaced with a new provision dealing with amending taxi licences to impose conditions. (The issue of licences subject to conditions is now provided for in s83A (6), s83E (6) and s83G (6)).

Section 8

Section 8 adds a new ground on which the authority may take disciplinary action under Chapter 6. Disciplinary action may be taken if a restricted taxi is no longer being operated as a restricted taxi. This will allow the authority to suspend or cancel the restricted taxi licence as appropriate.

Section 9

Section 9 renumbers sections 236 to 247, which are transitional provisions, as sections 500 to 511. This amendment reflects a new drafting practice which is to give each transitional provision a unique number that is not likely to be changed by subsequent additions to a legislative scheme. The effect of the change will be to improve the clarity of the amendment history of the

legislation in the endnotes. The renumbering will create a gap for anticipated provisions for demand responsive transport services and avoid the new transitional provisions below having to be renumbered when the demand responsive service provisions are added.

Section 10

Section 10 provides transitional provisions under new Parts 8.4, 8.5 and 8.6.

Under new **Part 8.4 Accreditation for restricted taxi services**, new s512, an accreditation for an person operating a WAT immediately before commencement is, following commencement, taken to be an accreditation to operate a restricted taxi service for a WAT. An accreditation for a person operating a restricted cross-border taxi immediately before commencement is, following commencement, taken to be an accreditation to operate a restricted taxi service for a NSW cross-border taxi. These provisions are consequential to Section 4 of the Amendment Regulation.

New **Part 8.5 Restricted taxi licences for wheelchair-accessible taxis – issue to existing operators**, is included in accordance with a recommendation of the Wheelchair Accessible Taxi Reference Group in September 2005 that existing WAT operators be permitted to take over the licences of other WAT operators who are no longer able to continue in the industry and wish to sell their vehicle to an existing operator. Sections 514 to 517 permit the authority to offer WAT licences with expiry dates prior to 20 July 2007 to another accredited operator of a WAT. All WAT operators must be given the option, in writing, of expressing their interest in being offered the licence. If more than one operator is interested in the licence, one operator will be selected by ballot.

New **Part 8.6 Restricted taxi licences for restricted cross border taxis** is consequential to Section 5 of the Amendment Regulation (providing new s82A). Existing restricted taxi licences for restricted cross border taxis are taken to be NSW cross border taxis.

Section 11

Section 11 inserts new definitions in the Dictionary. An ‘accredited taxi-cab operator’ is as defined in NSW’s *Passenger Transport Act 1990*. A ‘NSW cross-border taxi’ is a taxi licensed under the above NSW Act and included in an arrangement between the road transport authority and the NSW Government. The arrangement allows Queanbeyan Cabs to operate in the ACT, and ACT licensed taxis to operate in Queanbeyan.

A ‘defined right’ is a defined right to the issue of a taxi licence. The definitions for ‘NSW cross-border taxi licence’, ‘transferable leased taxi licence’ and ‘wheelchair accessible taxi licence’ point to s82A(1), s82(2) and s82A(1) respectively.

SCHEDULE 1 OTHER AMENDMENTS

Part 1.1 Road Transport (Driver Licensing) Regulation 2000

1.1

Section 94A(3) of the Road Transport (Driver Licensing) Regulation 2000 is amended to replace 'taxi licence' with the correct terminology 'public vehicle licence that authorises the person to drive a taxi'.

Part 1.2 Road Transport (General) Regulation 2000

1.2

Section 14(3)(e) of the Road Transport (General) Regulation 2000 is amended to include a fee for a transferable leased taxi licence as a fee that must be refunded in part, in accordance with the refund formula in section 15, if the licence is surrendered.

1.3

New items 12 to 15A of Schedule 1, part 1.8 of the Road Transport (General) Regulation 2000 provide the reviewable decisions for the Amendment Regulation. The new reviewable decisions are those for issuing a transferable leased taxi licence subject to a condition, issuing a WAT licence subject to a condition, issuing a NSW cross border taxi subject to a condition, refusing to renew a renewable taxi licence, and renewing a renewable taxi licence subject to a condition. New item 15B combines existing items 14 and 15.

1.4

New item 30 of Schedule 1, part 1.8 of the Road Transport (General) Regulation 2000 combines existing items 30 and 31.

1.5

Item numbers for part 1.8 are to be renumbered when this regulation is next republished.

Part 1.3 Road Transport (Public Passenger Services) Regulation 2002

1.6

The definition of 'regulated service' in Section 6 of the PPS Regulation is amended to replace 'a public passenger service' with 'a bus service', 'a taxi service', and 'a hire car service' to provide a more accurate definition.

1.7

New section 9.2 of the PPS Regulation provides for the discretionary refusal of an application for an accreditation or renewal of an accreditation if another accreditation held by the applicant has been suspended. Previously, such an applicant would be disqualified from applying under previous s227 (b). In situations where an accreditation has been suspended due to the operator's no longer being a suitable person, failing to maintain vehicles in accordance with manufacturers' requirements, or involvement in a similar serious issue, an application for a further accreditation may need to be refused.

1.8

The definition of 'regulated service' in s18B of the PPS Regulation now refers to the definition in s6.

1.9

The heading for Part 4.2 is changed from 'Taxi vehicle licences' to 'Taxi licences', consistent with usage throughout the PPS Regulation.

1.10 & 1.11

Mentions of 'licensee' in s86 (1) and s88 (1) are changed to 'the holder of a taxi licence' to improve clarity.

1.12

New section 167(1A) provides for the discretionary refusal of an application for a hire car licence if another hire car licence or accreditation held by the applicant is suspended. In situations where an accreditation has been suspended due to the operator's no longer being a suitable person, failing to maintain vehicles in accordance with manufacturers' requirements, or involvement in a similar serious issue, an application for another hire car licence may need to be refused.

1.13

A new **Division 5.1.2A Hire car licences – other provisions**, is created to provide a clearer arrangement of the provisions in Part 5.1. This is also consistent with the new arrangements for taxi licence provisions provided in Section 7 of the Amendment Regulation.

1.14 – 1.19

Mentions of 'licensee' in s170 (1), s173 (1), s174 (1), s175 (1), s176 (1), s177 (1), and 177B(1) are changed to 'the holder of a hire car licence' to improve clarity.

1.20

The term 'licensee's' is replaced with 'licence holder's' in s 177D(1)(d).

1.21

In s177G, 'licence label' is replaced with 'permit label' to correct a drafting error.

1.22 & 1.23

Mentions of 'licensee' in s177G (1) and s187 (1) are changed to 'the holder of a hire car licence' and 'the holder of a restricted hire car licence' respectively to improve clarity.

1.24

Section 227 is amended to delete s227 (b) so that if a person's service authority (ie an accreditation or a taxi or hire car licence) is suspended, the person is now not automatically disqualified from applying for a service authority of another kind.

A new discretionary power to refuse to issue or renew an accreditation if another accreditation held by the person is suspended is now provided in new s9.2 (see 1.7 above).

A new discretionary power to refuse to issue or renew a hire car licence if a hire car licence or accreditation held by the applicant is suspended is now provided in new s167 (1A) (see 1.12 above).

Mandatory powers to refuse to issue NSW cross border taxi licences and defined rights for transferable taxi licences and WAT licences (all of which, unlike hire car licences, are limited in number) if a taxi licence or taxi accreditation held by the person is suspended, are provided in new s83G(2) and new s84H(1) respectively.

A discretionary power to refuse to renew a restricted taxi licence if another taxi licence or accreditation held by the applicant is suspended is provided in new s84B(2).

The provision also clarifies that a suspended service authority cannot be renewed.

1.25

The heading for Schedule 1, part 1.3 'Taxi operator services' is replaced with 'Taxi services and restricted taxi services' to clarify that both types of taxi service are dealt with in this part, and to delete 'operator' consistent with the heading for part 1.1 (Bus services).

1.26

The addition of 'or restricted taxi service' is consequential to 1.25 above.

1.27

The headings for Schedule part 1.4 (Hire car operator services (other than restricted hire car operator services) & part 1.5 (Restricted hire car operator services) are amended by deleting the word 'operator', consistent with the heading for part 1.1 (Bus services).

1.28 & 1.29

Further mentions of 'licensee/s' are changed to 'licence-holder/s'.

1.30

Mentions of 'licensee of a hire car' are changed to 'holder of a hire car licence'.