

2010

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

**ROAD TRANSPORT LEGISLATION AMENDMENT
REGULATION 2010 (No 2)**

SL2010—7

EXPLANATORY STATEMENT

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Overview of amendments

The primary purpose of the amending regulation is to—

- introduce new requirements for drivers of public passenger vehicles to display identity cards while driving a public passenger vehicle for hire or reward;
- change the eligibility requirements for the issue of public vehicle licences; and
- change the restrictions on the age a vehicle may be registered as a taxi.

A range of other amendments is also made to road transport regulations to facilitate their effective operation and to update them.

Amendments are made to 5 road transport regulations. To accommodate the interrelated nature of some of the amendments, this explanatory statement is structured on a thematic basis rather than a clause-by-clause basis.

Strict liability offences

Clauses 7 and 16 create the following new strict liability offences in the *Road Transport (Driver Licensing) Regulation 2000*:

- section 64B (Return of public vehicle driver authority card);
- section 88A (Public vehicle licence—licence taken to be cancelled if holder no longer eligible);
- section 88B (Public vehicle licence—licence holder to give information about visa status).

Clause 39 creates the following new strict liability offences in the *Road Transport (Public Passenger Services) Regulation 2002*:

- section 307 (Driver authority card to be displayed or shown);
- section 308 (Production of driver authority card).

Strict liability offences engage the presumption of innocence under the *Human Rights Act 2004*. All strict liability offences are assessed by the Human Rights and Criminal Law Units in the Department of Justice and Community Safety. When assessing whether an offence is suitable to be a strict liability offence, the Department has regard to a number of criteria, including:

- whether the defendant was “put on notice” of a requirement to do an act, and that a failure to do so will result in the commission of an offence;
- whether the defendant can be reasonably expected, because of his or her admission to a particular profession or because the requirements of a regulatory regime to which he or she is subject to, to know of their legal obligations under that regime;
- whether the commission of the conduct constituting the offence is technical in nature, or whether the commission of the conduct is “morally blameworthy” or “repugnant”: see *Wholesale Travel Group Inc v R* [1991] 3 S.C.R. 154;

- whether the burden on the defendant to raise a mistake of fact defence is an evidential or legal one;
- whether requiring the prosecution to prove a subjective mental fault element or higher level of fault would impose a difficult or impossible burden on it, thereby undermining the legitimate regulatory objectives of the state; and
- the severity of the penalty for the offence: a penalty of imprisonment is very serious, and requires exceptional justification.

In *Travel Group Inc* a majority Court drew a distinction between ‘true crimes’ and regulatory offences. The Court observed the earlier distinction it had drawn in *R v City of Sault Ste. Marie* [1978] 2 S.C.R. 1299. In that case Dickson J (as he then was), writing on behalf of a unanimous Court, recognised:

public welfare offences as a distinct class. ... such offences, although enforced as penal laws through the machinery of the criminal law, ‘are in substance of a civil nature and might well be regarded as a branch of administrative law to which traditional principles of criminal law have but limited application.’

Cory J, writing for the majority in *Travel Group Inc*, observed that:

It has always been thought that there is a rational basis for distinguishing between crimes and regulatory offences. Acts or actions are criminal when they constitute conduct that is, in itself, so abhorrent to the basic values of human society that it ought to be prohibited completely. Murder, sexual assault, fraud, robbery and theft are all so repugnant to society that they are universally recognized as crimes. At the same time, some conduct is prohibited, not because it is inherently wrongful, but because unregulated activity would result in dangerous conditions being imposed upon members of society, especially those who are particularly vulnerable.

The objective of regulatory legislation is to protect the public or broad segments of the public (such as employees, consumers and motorists, to name but a few) from the potentially adverse effects of otherwise lawful activity. Regulatory legislation involves a shift of emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of public and societal interests. While criminal offences are usually designed to condemn and punish past, inherently wrongful conduct, regulatory measures are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care.

It follows that regulatory offences and crimes embody different concepts of fault. Since regulatory offences are directed primarily not to conduct itself but to the consequences of conduct, conviction of a regulatory offence may be thought to import a significantly lesser degree of culpability than conviction of a true crime. The concept of fault in regulatory offences is based upon a reasonable care standard and, as such, does not imply moral blameworthiness in the same manner as criminal fault. Conviction for

breach of a regulatory offence suggests nothing more than that the defendant has failed to meet a prescribed standard of care.

The Court recognized that strict liability offences would be more readily justified when applied to regulatory offences which do not imply the same degree of moral blameworthiness as ‘true crimes’.

Having regard to the matters considered above, it is considered that the strict liability offences in the amending regulation impose reasonable and proportionate limitations on the presumption of innocence in section 22 (1) of the of the Human Rights Act. The offences are essentially of a regulatory nature. The defence of mistake of fact is available to a defendant charged with a strict liability offence. The defence only imposes an evidential burden, as opposed to a legal or ‘persuasive’ burden, on the defendant: the defendant need only present or point to evidence which suggests that there is a ‘reasonable possibility’ that he or she acted under a mistake of fact (see the Criminal Code, section 58 (4) and (7)). If the defendant discharges this onus, the burden is then put back on the prosecution to disprove beyond reasonable doubt that the defendant did not act under a mistake of fact (see the Criminal Code, section 56 (2)). The use of strict liability offences will substantially assist in protecting the efficiency and integrity of the regulatory regimes under the regulations being amended.

Formal provisions

Clause 1 provides that the name of the amending regulation is the *Road Transport Legislation Amendment Regulation 2010 (No 2)*.

Clause 2 provides for the commencement of the regulation. The amendments commence on the day after the regulation is notified on the legislation register (see subclause (1)) except for the provisions listed in subclause (2) which commence on 7 April 2010.

The operation of the provisions listed in subclause (2) needs to be underpinned by amendments of the *rego.act* computer system. The delayed commencement will allow the necessary system changes to be completed. The affected provisions are the amendments dealing with public vehicle driver authority cards and clause 4, which relates to the inclusion in the driver licence register of information about the expiry date of a visa held by the holder of a public vehicle licence.

Clause 3, clause 34, clause 37, clause 41 and clause 47 are at the beginning of parts 2 to 6 and name the regulation being amended by each of those parts. For example, clause 3 provides that part 2 of the regulation amends the *Road Transport (Driver Licensing) Regulation 2000* and a note to the clause indicates that that regulation is also amended in schedule 1.

Public vehicle driver authority cards

- **Overview**

A requirement that a public vehicle driver who is driving a public vehicle for hire or reward must display a public vehicle driver authority card is introduced. The change brings the ACT into line with other jurisdictions and will enable passengers to

confirm the identity of the driver of the vehicle and be confident that the driver is licensed to operate the vehicle as a public passenger vehicle.

The amendments insert new provisions that set out the requirements for public vehicle driver authority cards and amend the relevant provisions of the regulation about the surrender, replacement and suspension or cancellation of driver licences to apply them to public vehicle driver authority cards.

- ***Road Transport (Driver Licensing) Regulation 2000***

Clause 7 inserts new sections 64A and 64B which set out the requirements for public vehicle driver authority cards.

New section 64A requires the road transport authority to issue a public vehicle driver authority card to the holder of a public vehicle licence. The card must include, amongst other things, a photograph of the person to whom it is issued, the kind of public vehicle the person is authorised to drive for hire or reward and when the card expires. The expiry date must not be later than the expiry date of the person's public vehicle licence.

New section 64B requires the holder of a public vehicle driver authority card to return the card to the road transport authority if the person ceases to be authorised to drive a kind of public vehicle stated in the card, the person changes the person's name or the authority takes action under section 87 (which is about when the road transport authority may taken action to vary, suspend or cancel a driver licence) because the photograph contained in the licence is no longer a true likeness of the person.

Clauses 8 to 11 amend section 75, which is about the replacement of damaged, stolen, lost or destroyed driver licences, so that it also applies to the replacement of public vehicle driver authority cards.

Clause 12 amends section 76, which provides that the road transport authority may, by notice, require a person whose driver licence has been, is being or about to be suspended or cancelled to return the licence to the authority. The amendment ensures that if the licence concerned is a public vehicle licence, the authority may also require the licence holder to return the person's public vehicle driver authority card.

Clause 13 substitutes a new section 81. The existing section provides a mechanism for a person to surrender a driver licence. The substituted section also applies to public vehicle driver authority cards.

Clause 15 amends section 87 consequent on the insertion of new section 64B by clause 7. Section 87 sets out when the road transport authority may vary, suspend or cancel driver licences. The amendment adds as a ground a failure to comply with a requirement under new section 64B to return the person's public vehicle driver authority card.

Clause 17 consequentially amends the heading to division 5.3 to include a reference to public vehicle driver authority cards.

Clauses 18 to 28 amend section 89, which sets out the procedure for the replacement of a driver licence in certain circumstances. The amendment ensures that section 89 also applies to the replacement of public vehicle driver authority cards. Section 89 applies if a licence holder changes the person's name, the licence holder surrenders a class of licence or a public vehicle licence, if the licence has been damaged, stolen, lost or destroyed or a condition imposed by the road transport authority on a driver licence has expired. Clause 21 adds as a new ground that the person is the holder of a driver licence that includes a public vehicle licence and the person ceases to be eligible to hold the public vehicle licence. The clause also amends section 89 (1) (b) to correct a grammatical error by inserting a comma after 'public vehicle licence'.

Clause 29 substitutes a new section 90. The existing section provides that a driver licence is of no effect if it is damaged in a material respect. The substituted section also applies to public vehicle driver authority cards.

Clause 30 substitutes a new section 138AB. The existing section allows the road transport authority to use a photograph of a person held for the purposes of a driver licence or proof of age card. The substituted section also allows the photograph to be used for the production of a public vehicle driver authority card for the person.

Clause 32 inserts a new definition of 'public vehicle driver authority card' into the dictionary.

Schedule 1, amendment 1.1 consequentially amends section 4 to add to note 1 the offence under new section 64B (see clause 7) as an offence to which the Criminal Code applies.

Schedule 1, amendment 1.11 updates references to the heading of section 89 consequent on an amended heading being substituted by clause 18.

Schedule 1, amendment 1.12 consequentially amends section 88A (4) to include a reference to a public vehicle driver authority card. Section 88A is inserted by clause 16 and relates to a person's eligibility to work as a public vehicle driver. If the person's public vehicle licence is cancelled under the section and the person fails to return the licence to the road transport authority, the person commits an offence. This amendment is necessary because the public vehicle driver authority card provisions have a delayed commencement.

- ***Road Transport (Public Passenger Services) Regulation 2002***

Clause 39 inserts a new chapter 7, comprising sections 306 to 308, and sets out the requirements for the display and production by drivers of what is termed 'driver authority cards' for the purposes of the regulation.

New section 306 defines the term 'driver authority card' as meaning a public vehicle driver authority card issued under the *Road Transport (Driver Licensing) Regulation 2000* or a corresponding card issued under the law of another jurisdiction.

New section 307 requires a person who drives a public passenger vehicle (other than a restricted hire car) for hire or reward to display a driver authority card so that the information on the photo-side of the card can be readily read by a passenger. However, if the vehicle is a motorbike, the card must be shown to the passenger at the start of the hire. Also, a driver authority card may be displayed in accordance with guidelines made by a notifiable instrument or an approval given by the road transport authority.

New section 308 provides that a person who drives a public passenger vehicle for hire or reward commits an offence if the person fails to produce the person's driver authority card for inspection when required to do so by a police officer or authorised person.

Schedule 1, amendment 1.26 consequentially amends section 4A to add to note 1 the offences under new sections 307 and 308 as offences to which the Criminal Code applies.

Schedule 1, amendment 1.47 consequentially amends the dictionary to include a definition of 'driver authority card'.

- ***Road Transport (General) Regulation 2000***

Schedule 1, amendment 1.16 amends schedule 1 to provide for review by the ACT Administrative and Civil Tribunal of a decision by the road transport authority to refuse to approve a way of displaying a driver authority card.

- ***Road Transport (Offences) Regulation 2005***

Schedule 1, amendment 1.21 amends schedule 1 consequent on the new offence in section 64B (2) of the *Road Transport (Driver Licensing) Regulation 2000* (see clause 7) of failing to return a public vehicle driver authority card when required to do so by the road transport authority.

Schedule 1, amendment 1.22 amends schedule 1 consequent on the amendment of the offence under section 75 (1) of the *Road Transport (Driver Licensing) Regulation 2000* (see clauses 8 to 11) to extend the offence so that it covers failing to apply to the road transport authority for the replacement of a damaged, stolen, lost or destroyed public vehicle driver authority card.

Schedule 1, amendment 1.24 amends schedule 1 consequent on the substitution of a new section 88A (4) by amendment 1.12. It should be noted that the item numbering in the first column of the amendment reflects the fact that amendment 1.23, which inserts new item 30A for new section 88A, will commence before the amendment made by amendment 1.24, and that before amendment 1.24 commences, the item number for new section 88A will be editorially renumbered under the *Legislation Act 2001* from 30A to 31.

Schedule 1, amendment 1.25 amends schedule 1 to reflect the new offences in new sections 307 and 308 of the *Road Transport (Public Passenger Services) Regulation 2002* of failing to properly display or to produce a driver authority card.

Eligibility requirements for public vehicle licences

- **Overview**

The eligibility requirements for the issue of public vehicle licences are set out in section 62 of the *Road Transport (Driver Licensing) Regulation 2000* with related provisions about a person's suitability to hold a public vehicle licence in section 70 (3).

The amendments make 2 changes to the eligibility requirements. First, they introduce a requirement that the person must be lawfully able to work in Australia as a public vehicle driver. Second, they amend the requirements for the kind of licence that a person must hold before being eligible for a public vehicle licence.

- **Public vehicle licence eligibility—lawfully able to work**

The change in relation to a requirement that a person must be lawfully able to work in Australia as a public vehicle driver is made to reflect recent changes to the *Migration Act 1958* (Cwlth) which requires employers to verify whether prospective employees may lawfully work in Australia. The changes are intended to reduce the number of temporary visa holders who obtain work in Australia in breach of their visa conditions. The changes to the *Road Transport (Driver Licensing) Regulation 2000* are intended to assist public passenger service operators to comply with their requirements under the Migration Act.

Clause 4 adds a requirement that the driver licence register established under the *Road Transport (Driver Licensing) Act 1999* must include, for the holder of a public vehicle licence who is a temporary resident who holds a visa allowing the holder to work as a public vehicle driver, the date the visa expires. This is relevant to new section 64 (2) (see clause 6) which has the effect that a driver licence must not be issued with an expiry date that is after the visa's expiry date.

Clause 5 substitutes new section 62 (3) (e) to (i) for existing section 62 (3) (e) to (h) of the *Road Transport (Driver Licensing) Regulation 2000*. Section 62 deals with the eligibility requirements for a public vehicle licence. The substituted provisions deal with 2 issues: new section 62 (3) (e), which requires the person to be an Australian citizen, a permanent resident or a temporary resident who holds a visa that allows the person to work as a public vehicle driver; and the remaining provisions, which relate to the driver licence prerequisites for public vehicle licences (see page 9).

Existing section 62 (3) (e), which is about completion of an approved public vehicle driver training course, is remade by clause 5 in substantially the same form as new section 62 (3) (f). The only substantive change to the paragraph is that the course must be for the kind of public vehicle to which the public vehicle licence relates rather than the kind of public vehicle licence to which the course relates.

Clause 6 and schedule 1, amendment 1.9 substitute a new section 64 and a new section 63 (1), respectively. Existing section 64 provides that a driver licence that includes a public vehicle licence must be issued for the remainder of the period of the driver licence that it replaces. Under existing section 63 (1), a driver licence may be varied to include a public vehicle licence. The sections do not contemplate that a

driver licence may be issued to include a public vehicle licence, only that another kind of licence may be varied to include a public vehicle licence. The substituted section provides for a driver licence to be issued or varied to include a public vehicle licence. Substituted section 64 also provides that if a visa expires before the end of the period for which the driver licence would ordinarily be issued, the licence must not be issued for more than the period for which the visa is in force.

Clause 14 amends section 87 consequent on the insertion of new section 88B by clause 16. Section 87 sets out when the road transport authority may vary, suspend or cancel driver licences. The amendment adds as a ground a failure to comply with a request under new section 88B (2) to provide evidence that the person holds a visa that allows the person to work as a public vehicle driver.

Clause 16 inserts new sections 88A and 88B. Both sections apply to a person who was eligible to apply for a public vehicle licence because the person was a temporary resident who held a visa that allowed the person to work as a public vehicle driver.

Under new section 88A the person's public vehicle licence is taken to be cancelled if the visa expires, is revoked or changes so that the person is no longer allowed to work as a public vehicle driver. However, the licence is not taken to be cancelled if the person can otherwise lawfully work as a public vehicle driver, eg the person is issued with a permanent resident visa or a new temporary visa. The person commits an offence if the person's public vehicle licence is taken to be cancelled and the person fails to return the licence to the road transport authority.

Under new section 88B the person commits an offence if the road transport authority asks the person for evidence that the person holds a visa that allows the person to work as a public vehicle driver and the person fails to comply with the request.

Clauses 31 and 33 consequentially insert new definitions of 'Australian citizen', 'permanent resident' and 'temporary resident' into the dictionary.

Schedule 1, amendment 1.2 consequentially amends section 4 to add to note 1 the offences under new sections 88A and 88B (see clause 16) as offences to which the Criminal Code applies.

Schedule 1, amendment 1.10 updates a reference to section 62 (3) (e) in section 67 (4) consequent on it being remade as new section 62 (3) (f) by clause 5.

Schedule 1, amendment 23 amends the *Road Transport (Offences) Regulation 2005* consequent on the new offences under section 88A (Public vehicle licence—licence taken to be cancelled if holder no longer eligible) and section 88B (Public vehicle licence—licence holder to give information about visa status) of the *Road Transport (Driver Licensing) Regulation 2000* which are inserted by clause 16.

- **Public vehicle licence eligibility—driver licence prerequisites**

Clause 5, as noted on page 7, substitutes new section 62 (3) (e) to (i) for existing section 62 (3) (e) to (h) of the *Road Transport (Driver Licensing) Regulation 2000*. Section 62 deals with the eligibility requirements for a public vehicle licence. The substituted provisions deal with 2 issues: a requirement that the person must be

lawfully able to work as a public vehicle driver (see new section 62 (3) (e) and (f) which are dealt with on page 7) and the remaining provisions, section 62 (3) (g) to (i), which relate to the driver licence prerequisites for public vehicle licences.

Existing section 62 (3) (f) to (h) provide that to be eligible for a public vehicle licence, a person must—

- hold a full licence (ie a full ACT licence) to drive the relevant kind of public vehicle or an Australian driver licence (ie a full driver licence of any Australian jurisdiction) of a higher class and to have held, for at least 3 years, either a provisional or full licence or an Australian driver licence of a higher class; or
- have held, in the previous 5 years, an external territory or foreign driver licence that corresponds to a full licence to drive the relevant kind of public vehicle or an Australian driver licence of a higher class and has held a full licence to drive the relevant kind of public vehicle or an Australian driver licence of a higher class for at least 1 year in the previous 5 years.

New section 62 (3) (g) to (i) require the person—

- to hold a full licence of the relevant kind or a full licence of a higher class; and
- to have held the full licence, or a corresponding Australian driver licence, for at least 1 year (or periods totalling 1 year) in the previous 3 years.

The period of 1 year in the previous 3 years is to allow for periods of licence suspension or cancellation (noting that the person must nevertheless be a suitable person to hold a public vehicle licence: see section 62 (3) (c)). Requiring a person to have held a full licence, rather than a full licence or provisional licence, for at least 1 year reflects concerns that drivers from some overseas jurisdictions, despite having held an overseas driver licence equivalent to a full licence, may not have sufficient driving experience or skills to be a public vehicle driver. The changed licence prerequisites will align the Territory's criteria for licensing public vehicle drivers with national transport policy.

Schedule 1, amendments 1.3 and 1.7 amend section 6 and section 62 respectively of the *Road Transport (Driver Licensing) Regulation 2000* consequent on the new requirement that only a full licence may be issued as, or varied to become, a public vehicle licence.

Additional demerit points during holiday periods

Section 22 (4) of the *Road Transport (Offences) Act 2005* defines the term 'public holiday' for the purposes of the provisions of the regulation about additional demerit points applying during holiday periods. The existing definition provides as follows:

public holiday means a public holiday under the *Holidays Act 1958* other than—

- (a) the 2nd Monday in March (Canberra Day); and

- (b) a day, or part of a day, declared under that Act, section 3 (1) (b) to be a public holiday; and
- (c) a day declared under that Act, section 3 (2) not to be a public holiday.

Clauses 35 and 36 make 2 changes in relation to the definition of ‘public holiday’.

The first change moves the exceptions in the existing definition to a new definition of ‘excluded public holiday’ (see clause 36). The purpose of this change is twofold. First, to make it clear that additional demerit points are not automatically applied to all public holidays. Secondly, to clarify the public holidays to which additional demerit points are not automatically applied. Clause 35 consequentially inserts references to ‘except an excluded public holiday’ after each reference to ‘public holiday’ in section 22 (1).

The second change is the inclusion of the Family and Community Day holiday in the list of excluded public holidays. As this day, like Canberra Day, is not a public holiday in NSW, additional demerit points are not automatically applied to these public holidays. As a matter of practice, additional demerit points are applied in the ACT only when additional demerit points also apply in NSW. This ensures that during these holiday periods additional demerit points operate in both jurisdictions to allow road safety authorities to coordinate their safe holiday driving campaigns and to reduce confusion for motorists in the ACT/Queanbeyan region.

Schedule 1, amendment 1.18 updates a note consequent on the insertion of the new definition of ‘excluded public holiday’ by clause 36.

Accreditation of public passenger vehicle operators

Part 2.2 of *Road Transport (Public Passenger Service) Regulation 2002* deals with matters relating to the accreditation of people to operate a public passenger service. One concept is what is termed a ‘relevant person’ for an application for accreditation by a person (‘the applicant’) or an accreditation held by a person (‘the accredited person’).

Existing section 6B defines ‘relevant person’. Paragraph (a) provides that if the applicant or the accredited person is an individual, the applicant or accredited person and any employee of the applicant or accredited person who is concerned with, or takes part in, the management of the public passenger service to which the application relates is a relevant person. Paragraph (b) provides that if the applicant or the accredited person is a corporation, each executive officer of the corporation is a relevant person.

Clause 38 amends paragraph (a) to remove the reference to employee and provide that ‘anyone’ who is concerned with, or takes part in, the management of the regulated service to which the application or accreditation relates is a relevant person. The existing reference to employee is too limiting and does not allow business partners of individuals to be considered in the context of an application for accreditation or an accreditation.

Ending of immediate suspension of public passenger service accreditation, licence or authorisation

Chapter 8 of *Road Transport (Public Passenger Service) Regulation 2002* deals with disciplinary matters in relation to people who are accredited to operate a public passenger service or people who hold a taxi or hire car licence or an authorisation to operate a demand responsive service. Collectively, these are known as service authorities (see section 320). A service authority may be suspended without a show cause process being followed in certain circumstances. Section 324 (5) sets out the circumstances when an immediate suspension ends.

Clause 40 adds as a circumstance that if the road transport authority decides to revoke the immediate suspension notice, the suspension ends when the person whose service authority is suspended is given written notice by the authority of the revocation.

Periodic parking tickets

The definition of ‘correctly displayed’ in section 49A (5) sets out the requirements for the correct display of a parking ticket in a vehicle. The existing requirements in paragraph (b) of the definition include a requirement that the expiry date and time of the ticket are clearly visible from outside the vehicle. Periodic tickets issued by the road transport authority, eg weekly or monthly tickets for all-day parking areas, have an expiry date but not an expiry time.

Clause 42 amends paragraph (b) of the definition of ‘correctly displayed’ in section 49A (5) so that an all-day parking ticket issued by the road transport authority only needs to show an expiry date.

Section 80 of the *Road Transport (Safety and Traffic Management) Regulation 2000* sets out the requirements for parking tickets issued by the road transport authority and private parking authorities.

Clause 43 amends section 80 (1) (b). The existing provision requires a ticket to show the expiry time expressed in days and minutes. However, a periodic ticket issued by the road transport authority, eg weekly or monthly tickets for all-day parking areas, have an expiry date but not an expiry time. The amendment provides that the requirement does not apply to an RTA periodic ticket.

Clause 44 amends section 80 (1) (e). The existing provision requires a periodic ticket to show the fee paid for the issue of the ticket or, for a prepaid ticket, the daily value of the ticket. The amendment provides that the requirement does not apply to an RTA periodic ticket issued at a concessional price.

Clause 45 brings the terminology in example 3 to section 80 (1) into line with the new terminology in the other amendments by omitting ‘a prepaid parking ticket’ and substituting ‘an RTA periodic ticket’.

Clause 46 inserts a new section 80 (3) which defines the term ‘RTA periodic ticket’ to mean a ticket issued by the road transport authority that is valid for not less than 1 week.

Restrictions on registration of vehicles as taxis

- **Overview**

Section 32B of the *Road Transport (Vehicle Registration) Regulation 2000* sets out restrictions on the registration of a vehicle as a taxi. These restrictions relate either to the age of the vehicle or the configuration of the vehicle.

Clause 48 substitutes a new section 32B which changes some of the age restrictions for the registration of a vehicle as a taxi. The vehicle configuration restrictions in existing section 32B are unchanged.

The amendments relax the current age restrictions for the registration of a vehicle as a taxi. The new restrictions seek to maintain a balance between a range of considerations:

- if a vehicle meets appropriate standards of safety, reliability and roadworthiness, it should be able to be registered as a taxi;
- older vehicles are more susceptible to becoming unroadworthy, and can have a greater detrimental environmental impact, than newer vehicles;
- giving taxi operators an incentive to maintain their vehicles and generally improve their viability and to recover their investment in their vehicles over a longer period.

The last point is particularly relevant to dual capacity wheelchair-accessible taxis where the investment in the vehicle is higher than that for a standard taxi or a single wheelchair-accessible taxi.

Taxis undergo an annual vehicle safety inspection and random road-side inspections are also carried out.

- **First registration of vehicles as taxis**

Under existing section 32B, a vehicle that is not to be used as a wheelchair-accessible taxi ('a standard taxi') cannot be registered for the first time as a taxi if it is 4 years old or older and a vehicle cannot be registered for the first time as a wheelchair-accessible taxi if the vehicle is 2 years old or older. New section 32B increases these limits to 6 years (whether the vehicle is a standard taxi or a wheelchair-accessible taxi).

- **Renewal of registration of vehicles as taxis**

Under existing section 32B, a vehicle cannot be registered as a taxi (whether as a standard taxi or wheelchair-accessible taxi) if the vehicle has been used as a taxi for 8 years or more. New section 32B changes the requirements in relation to wheelchair-accessible taxis, but not standard taxis, as follows—

- for a single capacity wheelchair-accessible taxi: the vehicle must not have been used as a taxi for 8 years or more and the vehicle must not be older than 10 years; and

- for a dual capacity wheelchair-accessible taxi: the vehicle must not have been used as a taxi for 10 years or more and the vehicle must not be older than 12 years.

- **Measuring age of taxis**

Existing section 32B (3) provides that the age of a vehicle is measured from 6 months after the day a compliance plate was fitted to the vehicle. As the day on which a compliance plate is fitted not readily ascertainable, new section 32 (5) provides that the age of a vehicle is measured from 6 months after the end of the month shown on the vehicle's compliance plate.

- **Consequential amendments**

New section 32B includes new definitions of single capacity and dual capacity wheelchair-accessible taxi and standard taxi.

Schedule 1, amendments 1.29 to 1.32 update the cross references to particular subsections of section 32B of the *Road Transport (Vehicle Registration) Regulation 1999* in the following provisions of the *Road Transport (Public Passenger Services) Regulation 2000*:

- section 83A (Transferable leased taxi licences—decision on application);
- section 83C (Non-transferable leased taxi licences—decision on application);
- section 83E (Wheelchair-accessible taxi licences—decision on application);
and
- section 84B (Restricted taxi licences—decision on application for renewal).

Legislation repealed

Clause 49 repeals a number of expired notifiable and disallowable instruments made under the road transport legislation.

Miscellaneous amendments

- ***Road Transport (Driver Licensing) Regulation 2000***

Schedule 1, amendment 1.4 corrects minor errors in notes 1 and 2 to section 37A (3). The section deals with provisional car licences but the notes incorrectly refer to 'provisional motorcycle licence'.

Schedule 1, amendments 1.5 and 1.8 insert explanatory notes under section 48 (1) (a) and section 62 (3) (c) which refer to other relevant provisions of the regulation to assist users.

Schedule 1, amendments 1.6 and 1.14 correct references to an 'authorised officer' in sections 59 and 100 to 'authorised person'. Under section 19 of the *Road Transport (General) Act 1999* the road transport authority may appoint a person as an authorised person for the road transport legislation.

Schedule 1, amendment 1.13 omits from section 94A (5) definitions of 2 terms that are no longer used in the section.

- ***Road Transport (General) Regulation 2000***

Section 17 (2) (b) of the regulation, which is about suspension notices for something issued by the road transport authority where the payment for the thing is dishonoured, and section 19 (1) (b), which is about cancellation notices in relation to dishonoured payments, refer to the road transport authority taking action that it considers ‘necessary or desirable’ to give effect to the suspension or cancellation of the relevant thing. Section 18 (b) is about the revocation of a suspension. It refers to the road transport authority taking action that it considers ‘necessary’ to give effect to the revocation of the suspension.

Schedule 1, amendment 1.15 amends section 18 (b) so that its language is consistent with sections 17 (2) (b) and 19 (1) (b) by adding ‘or desirable’ after ‘necessary’.

- ***Road Transport (Offences) Regulation 2000***

Section 8 (1) (e) of the regulation lists the offences under the *Road Transport (Safety and Traffic Management) Regulation 2000* that are administered by the road transport authority. The offences are parking related offences.

Schedule 1, amendment 1.17 consequentially updates section 8 (1) (e) to include new offences for the parking of heavy vehicles on residential land created by the *Road Transport Legislation Amendment Regulation 2008 (No 2)*.

Schedule 1, amendments 1.19 and 1.20 update internal cross references in section 22.

- ***Road Transport (Public Passenger Services) Regulation 2002***

Schedule 1, amendments 1.27, 1.34, 1.38, 1.40, 1.42 to 1.45 and 1.48 and 1.49 update various provisions of the regulation which refer to the legislative provision under which the requirement for public passenger vehicle operators to have public liability insurance for third-party property damage is imposed. Prior to the commencement of the *Road Transport (Third-Party Insurance) Act 2008* the requirement was in the *Road Transport (General) Act 1999*. With the commencement of the third-party insurance legislation the requirement was moved to part 8A of the *Road Transport (Public Passenger Services) Act 2001*.

Schedule 1, amendments 1.28, 1.35 to 1.37, 1.39 and 1.41 update the headings to various sections of the regulation. The sections provide for particular exemptions from provisions of the Act or for the road transport authority to exempt a person from a requirement of the regulation. The section headings refer to section 85 of the Act as being the source of the power. Amendments of the Act have resulted in the power to exempt being moved to section 128 of the Act. The relevant section headings in the regulation are updated to refer to section 128 of the Act.

Schedule 1, amendment 1.1.46 similarly updates a reference to a section heading in the dictionary definition of ‘authorised fixed-fare hiring’.

Schedule 1, amendment 1.33 adds a penalty provision for 10 penalty units to the offence at section 99 (2) to correct an oversight. A penalty provision was not included in the section when an updated section 99 was substituted by the *Road Transport Legislation Amendment Regulation 2005 (No 1)*. The offence under the substituted section is substantively the same as the offence under the former section which had a penalty of 10 penalty units.

- ***Road Transport (Vehicle Registration) Regulation 2000***

Schedule 1, amendments 1.50 and 1.53 update cross references to section 84 consequent on the omission of section 84 (2) by amendment 1.52.

Schedule 1, amendment 1.51 updates section 26 consequent on the compulsory third-party insurance provisions for motor vehicles being omitted from the *Road Transport (General) Act 1999* and enacted in the *Road Transport (Third-Party Insurance) Act 2008*. Section 26 sets out the requirements for the unconditional registration of a motor vehicle.

Schedule 1, amendment 1.52 omits section 84 (2) which relates to the suspension by the road transport authority of the registration of a motor vehicle on a request being made under section 168 of the *Road Transport (General) Act 1999* by a third-party insurer if payment for the insurance is not honoured. There is no equivalent provision in the *Road Transport (Third-Party Insurance) Act 2008* or regulations made under it. However, under part 5 of the *Road Transport (General) Regulation 2000* the road transport authority may suspend or cancel a vehicle's registration if a fee, charge or other amount payable in relation to the issue of a compulsory third-party policy is dishonoured (see section 16 (1) (d)). Accordingly, section 84 (2) is redundant and is omitted.

Schedule 1, amendment 1.54 substitutes a division heading in the vehicle standards which are in schedule 1. The existing heading refers to additional requirements for taxis whereas the requirements relate to all public passenger vehicles. The substituted heading refers to public passenger vehicles.