

2011

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

**ROAD TRANSPORT LEGISLATION AMENDMENT REGULATION 2011 (No. 2)
SUBORDINATE LAW SL2011-32**

EXPLANATORY STATEMENT

Presented by
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OVERVIEW

This Regulation is made under sections 24 and 28 of the *Road Transport (Driver Licensing) Act 1999* and section 44 of the *Road Transport (Public Passenger Services) Act 2001*.

It contains two sets of amendments relating to the provision of taxi services within the ACT.

The first set of amendments will implement the agreement by Ministers, meeting as the Australian Transport Council (ATC)¹ to adopt a National Minimum English Standard for taxi drivers (the NMES). The NMES is based on assessed levels of English language proficiency under the International Second Language Proficiency Ratings. The purpose of the NMES is to ensure that there is consistency in English language competency in the taxi industry across Australia. Basic English competency is essential for taxi drivers who are required to take bookings, listen to directions from passengers, read maps and road signs, prepare receipts, understand the road rules and comply with directions from taxi operators, taxi networks, taxi regulators and police.

This amendment will engage human rights, including the right to recognition and equality before the law (section 8 of the *Human Rights Act 2004*) and the right of members of a linguistic minority to use their language (section 27 of that Act). It also raises issues relating to discrimination on the basis of race, in the context of an attribute (in this instance, language skills) that persons of a particular race are generally presumed to have (see sections 7 (1) and (2) of the *Discrimination Act 1991*). To the extent that human rights are engaged, any limitation of those rights is considered to be reasonable for the purposes of section 28 of the *Human Rights Act 2004*, because the limitation is necessary to ensure that taxi clients are able to communicate effectively with taxi drivers, and that drivers can understand spoken and written English to the extent required to do their work properly. It should be noted that the industry is currently experience difficulty in recruiting drivers. In order to ensure the pool of potential drivers is not unnecessarily restricted, the nationally agreed standard has been set at the lowest level necessary to ensure that clients can communicate with drivers, and that drivers are otherwise able to complete the tasks involved in working safely and efficiently.

The requirement to satisfy the NMES will be applied across Australia to every person seeking to enter the taxi industry as a driver, regardless of the person's country of origin. The person must undertake an assessment by a registered training organisation certifying the person's ability to speak, hear, read and write English to the specified standard, which was set following detailed consultation with national industry bodies and agreed by Ministers at ATC. This requirement is not considered to be unlawful discrimination within the meaning of the *Discrimination Act 1991* because the NMES for taxi drivers is considered to be an inherent job requirement for all taxi drivers.

The second set of amendments removes the current prohibition on renewing leased taxi licences. Leases were introduced in 2006 as an alternative to perpetual licences. Licensees pay an annual licence fee for the lease. At present, the legislation provides that the term of the lease cannot exceed 6 years. The first leases were issued in April 2006 and will expire after 6 years. This means that from April 2012, unless the prohibition on renewing taxi licences is removed, many experienced taxi licence holders will be forced to leave the

¹ Now reconstituted as the Standing Council on Transport and Infrastructure (SCOTI)

industry and may lose their investment in their business and/or their vehicles. This change implements a recommendation from the Taxi Industry Review in 2010. It should be noted that taxi leases cannot easily be replaced, as the right to take up a taxi lease is allocated in the first instance by ballot.

NOTES ON CLAUSES

Part 1 Preliminary

Clause 1 Name of regulation

This is a formal provision that sets out the name of the Regulation.

Clause 2 Commencement

This is a formal provision that provides for the commencement of the Regulation. It provides for the Regulation to commence on a date to be fixed by the Minister by written notice.

Clause 3 Legislation amended

This clause lists the legislation to be amended by the Regulation. This Regulation amends the *Road Transport (Driver Licensing) Regulation 2000* and the *Road Transport (Public Passenger Services) Regulation 2002*.

Part 2 Road Transport (Driver Licensing) Regulation 2000

Clause 4 New section 62 (3) (ha)

This clause inserts a new requirement into the eligibility criteria for a public vehicle licence. Under the new requirement, the person must be certified as meeting the national minimum English standard (NMES) for taxi drivers, by a registered training organisation.

In the ACT, the Canberra Institute of Technology is a registered training organisation that will assess and certify prospective taxi drivers. It is understood that registered training organisations in other jurisdictions are also offering NMES assessments for taxi drivers.

Clause 5 New section 62 (5) and (6)

This section inserts new sections 62 (5) and (6).

New section 62 (5) contains definitions of concepts that are related to new section 62 (3) (ha), including *national minimum English standard* and *registered training organisation*. The levels of English language proficiency that comprise the NMES are specified in the definition, by reference to the International Second Language Proficiency Ratings, General Proficiency Version for English, 2010 Edition. The note to section 62 (5) explains where the Proficiency Ratings may be accessed.

New section 62 (6) makes it clear that section 47 (5) of the *Legislation Act 2001* does not apply to this incorporation by reference. The Proficiency Ratings are a copyright document and the ACT Government does not own that copyright. The Proficiency Ratings are therefore not a notifiable instrument.

Part 3 Road Transport (Public Passenger Services) Regulation 2002

Clause 6 Section 84

This amend omits section 84, which prohibits the renewal of leased taxi licences. The removal of section 84, in combination with the amendments made in clause 7, will enable lease licences to be renewed when they expire.

Clause 7 Sections 84A to 84C

This clause omits every instance of the work ‘restricted’ in these sections. The effect is that sections 84A and 84C, which deal with the renewal of taxi licences, will now apply to all types of taxi licence. Previously, these provisions only permitted the renewal of restricted taxi licences.