

Road Transport (Driver Licensing) Public Vehicle Licence Guidelines 2006 (No 1)

Disallowable instrument DI2006-261

made under the

Road Transport (Driver Licensing) Regulation 2000, section 90A (Public vehicle licence guidelines – relevant offences)

1. Name of instrument

This instrument is the Road Transport (Driver Licensing) Public Vehicle Licence Guidelines 2006 (No 1).

2. Commencement

This instrument commences on the commencement of the *Road Transport Legislation (Accreditation and Licensing) Amendment Regulation 2006*.

3. Guidelines

I approve the following Guidelines for assessing the suitability of a person to hold a public vehicle driver licence, in deciding:

- when applications for the issue and certain variations of driver licences can be refused under section 70(3)(a) of the *Road Transport (Driver Licensing) Regulation 2000*; and
- when driver licences may be varied, suspended or cancelled under section 87(3)(a) of the *Road Transport (Driver Licensing) Regulation 2000*.

John Hargreaves MLA
Minister for Territory and Municipal Services
29 November 2006

Road Transport (Driver Licensing) Public Vehicle Licence Guidelines 2006 (No.1)

The *Road Transport (Driver Licensing) Regulation 2000* provides that the Road Transport Authority may suspend or cancel a person's public vehicle licence or refuse an application for the issue or certain variations of a public vehicle licence because the person is not a suitable person.

The Road Transport Authority may conclude that a person is not suitable to hold a public vehicle licence if the person has been convicted or found guilty of an offence that is relevant to the application.

The Road Transport (Driver Licensing) Public Vehicle Licence Guidelines 2006 (No.1) (the Guidelines) set out the principles to be applied in considering whether a person's disclosable convictions provide reasonable grounds for considering the applicant as being unsuitable to hold a public vehicle licence.

The Guidelines cover a range of relevant conviction categories which must or may be considered in deciding whether a person's application for the issue of public vehicle licence will be approved or not, or whether a person's public vehicle licence should be suspended or cancelled. The conviction categories include:

- sexual offences;
- offences against the person;
- offences of dishonesty;
- driving offences;
- drug offences;
- other offences; and
- multiples of various offences.

PART A Sexual Offences

(i) Sexual offences against children

Under section 126 of the *Crimes (Child Sex Offenders) Act 2005* (the Act), a person who is a registrable offender is prohibited from applying for child-related employment. Section 124(1) of the Act provides that a registrable offender is prohibited from, among other things, providing public or private transport services for the transport of children.

A registrable offender is defined in the Act as a person who has been sentenced by a court for a registrable offence, is the subject of a child sex offender registration order, or is a prescribed corresponding offender. A registrable offence is defined as being any class 1 or class 2 offence, as outlined in table 1 or table 2 of the Act.

If a person is a registrable offender, the person is not a suitable person to hold a public vehicle licence authorising the person to drive a taxi, and any application for the issue or variation of a public vehicle licence to drive a taxi must be refused. Similarly, if a holder of public vehicle licence authorising the person to drive a taxi becomes a registrable offender, the person's public vehicle driver licence must be cancelled.

If a person is registrable offender, the person is not a suitable person to hold a public vehicle licence authorising the person to drive a bus or a hire car unless the person can provide evidence, from the person's employer, of established protocols ensuring the person does not provide public transport services to young persons unaccompanied by an adult and of the effectiveness of such protocols, and otherwise satisfies the suitable person requirements under these guidelines. Without such evidence, an application for the issue or variation of a public vehicle licence to drive a bus or a hire car must be refused.

Similarly, if a holder of public vehicle licence authorising the person to drive a bus or a hire car becomes a registrable offender, the person's public vehicle driver licence must be cancelled unless the person can provide evidence, from the person's employer, of established protocols ensuring the person does not provide public transport services to young persons unaccompanied by an adult and of the effectiveness of such protocols, and the person otherwise satisfies the suitable person requirements under these guidelines.

(ii) Sexual Offences

Sexual offences, such as sexual intercourse without consent, sexual assault and acts of indecency, are relevant to considerations of the safety of passengers travelling in public passenger vehicles.

A conviction for any sexual offence may be sufficient to find an applicant unsuitable. However, in assessing whether a single conviction is grounds to find a person unsuitable, regard should be had to:

- the period of time that has elapsed since the conviction;
- the seriousness of the offence as evidenced by the penalty imposed by the court;
- the nature and circumstances of the offence;
- the age of the applicant when the offence was committed; and
- any other factors which could reasonably be considered relevant.

A conviction for the commission of a sexual offence within the 10 years prior to the date of the application should be regarded as a strong indicator that an applicant is not a suitable person to hold a public vehicle licence. Convictions for such offences that are more than 10 years old should also be taken into consideration when determining an applicant's suitability to hold a public vehicle licence.

A single offence committed when the applicant was a juvenile may be regarded as less serious than an offence committed by an adult.

Sexual offences, such as sexual intercourse without consent, sexual assault and acts of indecency that are committed whilst a person is the holder of a public vehicle licence should be assessed as bearing even greater significance as the person would be aware of the 'suitable person' requirements associated with his/her holding a public vehicle licence.

Where an applicant has multiple convictions for such offences this may be an indication of habitual behaviour and provide grounds for refusal to grant, or cancellation of, a public vehicle licence.

PART B Other Offences Against the Person

Other offences against the person, such as murder, manslaughter, inflicting grievous bodily harm, assaults, kidnapping and stalking are highly relevant to considerations of the safety of passengers travelling in public passenger vehicles.

A conviction for any offence against the person may be sufficient to find an applicant unsuitable. However, in assessing whether a single conviction is grounds to find a person unsuitable, regard should be had to:

- the period of time that has elapsed since the conviction;
- the seriousness of the offence as evidenced by the penalty imposed by the court;
- the nature and circumstances of the offence;
- the age of the applicant when the offence was committed; and
- any other factors which could reasonably be considered relevant.

A conviction for the commission of an offence against the person within the 10 years prior to the date of the application should be regarded as a strong indicator that an applicant is not a suitable person to hold a public vehicle licence. Convictions for such offences that are more than 10 years old should also be taken into consideration when determining an applicant's suitability to hold a public vehicle licence. A single offence committed when the applicant was a juvenile may be regarded a less serious than an offence committed by an adult.

Offences against the person, such as murder, manslaughter, inflicting grievous bodily harm, assaults, kidnapping and stalking that are committed whilst a person holds a public vehicle licence should be assessed as bearing even greater significance as the person would be aware of the 'suitable person' requirements associated with his/her holding a public vehicle licence.

Where an applicant has multiple convictions for such offences this may be an indication of habitual behaviour and provide grounds for the refusal to grant or the cancellation of a public vehicle licence.

PART C Offences of Dishonesty

Convictions for offences of dishonesty such as theft, burglary and robbery are highly relevant to the safety of the public and their property when travelling in public vehicles.

A single conviction for a dishonesty offence such as theft, burglary or robbery may be sufficient to find an applicant unsuitable. However, in assessing whether a single conviction for a dishonesty offence of this type is grounds to find a person unsuitable, regard should be had to:

- the period of time that has elapsed since the conviction;
- the nature and circumstances of the offence – and whether it is likely to be an offence which could be committed in a person's capacity as a public vehicle driver;
- the seriousness of the offence as evidenced by the penalty imposed by the court;
- the age of the applicant when the offence was committed; and
- any other factors which could reasonably be considered relevant.

A conviction for the commission of a dishonesty offence within the 10 years prior to the date of the application should be regarded as a strong indicator that an applicant is not a suitable person to hold a public vehicle licence. Convictions for such offences that are more than 10 years old should also be taken into consideration when determining an applicant's suitability to hold a public vehicle licence.

Offences of dishonesty such as theft, burglary or robbery that are committed whilst a person holds a public vehicle licence should be assessed as bearing greater significance as the person would be aware of the 'suitable person' requirements associated with his/her holding a public vehicle licence. Where an applicant has multiple convictions for such offences this may be an indication of a habitual behaviour and provide grounds for the refusal to issue or cancellation of a public vehicle licence.

Some offences of dishonesty may be less directly relevant to a person's suitability to hold a public vehicle licence than theft, particularly where the opportunity for commission of such offences, as a public vehicle driver, is limited eg offences such as obtaining benefits to which a person is not entitled or similar fraud offences.

PART D Driving Offences

A conviction for culpable driving, reckless, menacing or furious driving may be sufficient to find that an applicant is unsuitable to hold a public vehicle licence.

In assessing whether a conviction for such an offence provides grounds to find an applicant unsuitable regard should be had to:

- the time which has elapsed since the conviction;
- the seriousness of the offence as evidenced by the penalty imposed by the court;
- the applicant's age at the time the offence was committed; and
- any other factors which could reasonably be considered relevant.

A conviction for the commission of a serious driving offence within the 10 years prior to the date of the application should be regarded as a strong indicator that an applicant is not a suitable person to hold a public vehicle licence. Convictions for such offences that are more than 10 years old should also be taken into consideration when determining an applicant's suitability to hold a public vehicle licence. A single offence committed when the applicant was a juvenile may be regarded as less serious than an offence committed by an adult.

A single drink driving offence or a single speeding (or similar traffic) offence will not ordinarily indicate that an applicant is unsuitable to hold a public vehicle licence.

Further, a conviction for a driving or traffic offence (including drink driving and speeding) committed whilst a person holds a public vehicle licence should be assessed as bearing greater significance, as the person would be aware of the 'suitable person' requirements associated with his/her holding a public vehicle licence. Multiple convictions for driving offences may be indicative of habitual behaviour and provide grounds for the refusal to grant, or cancellation of, a public vehicle licence.

PART E Drug Offences

A conviction for a serious drug offence (eg manufacture, sale or supply of a drug of dependence, prohibited substance or cannabis, cultivation of prohibited plants) may provide grounds to be satisfied that an applicant is not a suitable person to hold a public vehicle licence, given the risk that the person may use a public vehicle to conduct dealing or similar illicit activities. Where an applicant has a conviction for such an offence, regard must be had to:

- the period of time which has elapsed since the conviction;
- the seriousness of the offence as evidenced by the penalty imposed by the court;
- the nature and circumstances of the offence;
- the age of the applicant when the offence was committed;
- any other factors which could reasonably be considered relevant.

Where an applicant has a single conviction for possession or self-administration of a drug of dependence or prohibited substance, (which may include cannabis) this would not ordinarily provide grounds to be satisfied that the applicant is not a suitable person to be a public vehicle driver.

More than one conviction for possession or self-administration of a drug of dependence or prohibited substance may provide grounds to be satisfied that the applicant is not a suitable person to be a public vehicle driver, given the possibility/risk that an habitual drug user may represent a safety risk and/or conduct dealing for the acquisition of illicit drugs using a public vehicle.

PART F Other Offences

While convictions for sexual offences, other offences against the person, dishonesty offences, drug offences and driving related offences are directly relevant to considerations of a person's suitability to hold a public vehicle licence, convictions for other offences may also be considered in assessing suitability.

PART G Multiple Various Offences

Where an applicant for, or holder of, a public vehicle licence has convictions for various offences (though not more than one conviction for a particular type of offence), for example one conviction for theft, one conviction for assault and one drink driving conviction, the totality of the applicant's criminal convictions can provide a basis for finding the person unsuitable. A person with multiple convictions for a range of offences could reasonably be regarded as having demonstrated limited capacity to make appropriate choices with regard to the safety and security of others or their property.