

Road Transport Legislation Amendment Bill 2006

EXPLANATORY STATEMENT

Overview

The Road Transport Legislation Amendment Bill 2006 (the Bill) amends the *Road Transport (Public Passenger Services) Act 2001* (the Public Passenger Services Act) and the *Road Transport (Vehicle Registration) Act 1999* (the Vehicle Registration Act).

The main features of the Bill are:

- the introduction of non-transferable taxi licences;
- the simplification of provisions dealing with the accreditation of taxi networks so that there is one kind, rather than several kinds, of accreditation for taxi networks; and
- the transfer from regulation to primary legislation of enter and search powers applied to authorised persons and police officers inspecting the premises of public passenger service operators and approved premises for the purpose of vehicle inspections.

The Scrutiny of Bills Committee, in the Scrutiny of Bills Committee Report No. 6 dated 4 April 2005, raised issues regarding the location, within a regulation, of powers to enter and search premises. The Committee considered that such powers should only be provided in primary legislation.

Strict liability offences

The offences contained in sections 33(1) and 54(2) of the Public Passenger Services Act, and section 17B(5) of the Vehicle Registration Act, are strict liability offences. The offences are applied in the interests of public and industry safety.

A fault element is not considered to be necessary for these offences as a defendant could be reasonably expected, because of his or her professional involvement, to know what the requirements of the law are. Taxi networks, taxi service operators and the proprietors of approved premises for inspecting vehicles are expected to be aware of the requirements placed on them by the regulatory regime for their profession.

The defence of mistake of fact is available where the person considered whether or not facts existed and was under a mistaken but reasonable belief about the facts. Other defences, such as intervening conduct or event are also available.

Detail

Part 1 Preliminary

Section 1

Section 1 provides the name of the Act, the *Road Transport Legislation Amendment Act 2006*.

Section 2

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

Part 2 Road Transport (Public Passenger Services) Act 2001

Section 3

Section 3 notes that the part amends the Public Passenger Services Act.

Section 4

Section 4 amends the note to section 4A, inserting additional offences to which the Criminal Code applies. The offences are those contained in:

- section 33 (Operating taxi network without entitlement)
- section 54 (Taxi service operators to be affiliated with taxi network)
- a provision of pt 9 (Enforcement).

Section 5

Section 5 omits section 31(1)(a), a regulation making power in relation to the accreditation of people to operate taxi networks. The deletion of the reference to 'the kind or kinds of taxi services in relation to which an accredited person is entitled to provided taxi related services' is consequential to section 7 of the Bill.

Section 6

Section 6 renumbers the paragraphs in section 31(1) and is consequential to Section 5 of the Bill.

Section 7

Section 7 amends section 32, about entitlement to operate taxi networks, by deleting 'for a particular kind of taxi service' and 'for that kind of taxi service'. The provision now simply requires a taxi network to be accredited as a taxi network. The Government needs flexibility to release different types of taxi licences in future. If various kinds of network accreditations are maintained, networks could refuse the affiliation of operators of a particular type of licence.

Any particular requirements that may need to be imposed on networks providing services for particular kinds of taxi will be dealt with in regulation, as, for example, provided in section 74 of the *Road Transport (Public Passenger Services) Regulation 2002* (the Public Passenger Services Regulation) which is about special responsibilities of networks providing services for wheelchair accessible taxis.

Similarly, section 33 is amended to remove the offence for a person operating a taxi network for a particular kind of taxi service if the person is not accredited to operate a taxi network for that kind of taxi service. The offence is now simply one for operating a taxi network whilst not being accredited to operate a taxi network. This is a strict liability offence.

Section 8

Section 8 deletes section 34(2) which provides that a person must not pretend to be accredited to operate a taxi network for a particular kind of taxi service. This amendment is consequential to section 7 of the Bill.

Section 9

Section 9 provides for transferable and non-transferable taxi licences (other than restricted taxi licences) in section 41. The transferability of taxi licences allows the licences to be subleased to another person or transferred into another person's name as the licence holder. Both types of transfer can result in higher costs being imposed on a taxi operator, particularly when the number of taxi licences is restricted. Issuing non-transferable taxi licences allows for an increase in the supply of taxis without the associated potential for a market dealing in those licences to increase operators' costs.

The amendment will not affect taxi licences issued prior to the commencement of the amendment Act. Taxi licences, other than restricted taxi licences, issued before commencement of the amendment Act, are to remain transferable. Restricted licences remain non-transferable.

Non-transferable taxi licences issued after commencement of the amendment Act are to be issued subject to a condition that the licence-holder must not transfer the licence to anyone else.

Section 10

Section 10 amends section 44, Regulations about taxi licences. The amendment substitutes, in section 44(1)(b), 'the term (if any) of taxi licences' for the existing wording 'the term of restricted taxi licences'. Taxi licences, whether restricted licences or not, may be issued for a set term.

Section 11

Section 11 amends section 51, Entitlement to operate taxi services. Section 51(c), about taxi services being affiliated with accredited taxi network providers, is amended by deleting the reference to 'that kind of taxi service'. This amendment is consequential to Section 7 of the Bill.

Section 12

Section 12 amends section 54, Taxi service operators to be affiliated with taxi network. It removes the offence for a taxi service operator not being affiliated with an accredited taxi network of a particular kind. This is consequential to Section 7 of the Bill. The requirement is now simply that a taxi service operator must be affiliated with an accredited taxi network provider.

The offence in section 54 is a strict liability offence.

Section 13

Section 13 renumbers Part 9 as Part 10 and is consequential to Section 14 of the Bill.

Section 14

Section 14 provides a new heading for new part 9, 'Part 9 Enforcement'. New part 9 contains the search and enter powers transferred from the Public Passenger Services Regulation and is consequential to Section 31 of the Bill.

Section 15

Section 15 provides the definitions for the transferred search and enter powers and is consequential to Section 31 of the Bill.

Part 3 Road Transport (Public Passenger Services) Regulation 2002

Section 16

Section 16 notes that the part amends the Public Passenger Services Regulation.

Section 17

Section 17 amends section 5, Accreditations that may be approved, to provide, in section 5(2), for one only kind of taxi network accreditation. This amendment is consequential to Section 7 of the Bill.

Section 18

Section 18 omits the heading for Chapter 7 and is consequential to Section 31 of the Bill.

Section 19

Section 19 amends section 229, Purpose of powers under ch 7. It substitutes 'pt 9' for 'ch 7' in the section 229 heading, and is consequential to Section 31 of the Bill.

Section 20

Section 20 substitutes 'part' for 'chapter' in section 229 and is consequential to Section 31 of the Bill.

Section 21

Section 21 amends the wording in section 229(a) to clarify the meaning of the provision.

Section 22

Section 22 amends section 231, Power to inspect maintenance facilities. It substitutes 'part' for 'chapter' in section 231 (1) and is consequential to Section 31 of the Bill.

Sections 23 and 24

Sections 23 and 24 amend the wording in section 231(4) and section 231(5) respectively to provide consistent use of the term 'requiring' across section 231.

Section 25

Section 25 adds 'for inspection' after 'the authorised person does not produce his or her identity card' in section 231(7), consistent with current drafting practice.

Section 26

Section 26 amends section 232, Power to inspect and test vehicles. It substitutes 'get into or onto the vehicle and remain in or on the vehicle' for the current wording 'get into the vehicle and remain in the vehicle' in section 232 (2) (b). The dictionary for the Public Passenger Services Regulation provides that 'in a vehicle includes on a vehicle', however this definition is not provided in the Public Passenger Services Act.

Section 27

Section 27 substitutes 'part' for 'chapter' in section 234(1) and is consequential to Section 31 of the Bill.

Section 28 and 29

Section 28 and 29 substitute 'this Act' for 'this regulation' in section 234 and section 235(1) respectively and are consequential to Section 31 of the Bill.

Section 30

Section 30 inserts a new note to section 235(1) to the effect that a reference to an Act includes a reference to the statutory instruments, including regulations, made under the Act.

Section 31

Section 31 relocates sections 229 to 235, as amended, to the Public Passenger Services Act, part 9, as sections 115 to 121.

Section 32

Section 32 provides the transitional provisions for the Bill. New part 8.7, Taxi network accreditations, provides for the continuation of existing taxi network accreditations until their expiry.

Section 33

Section 33 consequentially omits definitions of 'inspect', 'noncompliance notice' and 'time of effect' as these definitions are now contained in the Public Passenger Services Act.

Part 4 Road Transport (Vehicle Registration) Act 1999

Section 34

Section 34 notes that the part amends the Vehicle Registration Act.

Section 35

Section 35 renumbers sections 3, 4 and 5 as sections 2, 3, and 4.

Section 36

Section 36 inserts new section 5 Offences against Act – application of Criminal Code etc. The provision notes that other legislation applies in relation to offences against this Act. The Criminal Code applies in relation to section 17B(5) (Power to inspect approved premises, records and equipment).

Section 37

Section 37 inserts new sections 17A and 17B.

Section 17A, Purpose of powers under div 2.3, describes the circumstances under which a police officer or authorised person may use certain powers in relation to the inspection of approved premises. The powers may be used in deciding whether:

- there has been a contravention of, or compliance with, the Vehicle Registration Act in relation to the inspection and testing of vehicles, or
- approved premises, and any equipment used for the inspection and testing of vehicles, comply with the Vehicle Registration Act.

Section 17B reflects previous sections 151 and 151A of the *Road Transport (Vehicle Registration) Regulation 2000* (the Vehicle Registration Regulation) in relation to entering premises, inspecting records of vehicle inspections, inspecting premises, inspecting and testing equipment, requiring records to be produced, and making copies of records. Section 151(4) of the Vehicle Registration Regulation, about producing identity cards, is relocated in the Vehicle Registration Act as section 17B(7).

Section 17B(4) is a new provision for the inspection of approved premises. The provision permits a police officer or authorised person to operate any equipment, require the person apparently in charge of the premises to provide further information necessary for the inspection or testing of equipment, and require the person in charge of the premises to do anything else reasonably needed for the inspection or testing of equipment.

An offence provision is included at section 17B(5) for a person who does not take all reasonable steps to comply with a requirement made by a police officer or authorised person under the section. This is a strict liability offence.

Section 38

Section 38 substitutes 'see s3' for previous 'see s4' under the heading Dictionary and is consequential to Section 35 of the Bill.

Section 39

Section 39 provides a definition for 'approved premises' in the Vehicle Registration Act and is consequential to Section 37 of the Bill.

Part 5 Road Transport (Vehicle Registration) Regulation 2000**Section 40**

Section 40 notes that the part amends the Vehicle Registration Regulation.

Sections 41 and 42

Sections 41 and 42 omit sections 151 and 151A respectively which are now provided in the primary legislation (by Section 37 of the Bill).