

Australian Capital Territory

Road Transport Legislation (Taxi Licences) Amendment Regulation 2006 (No 2)

Subordinate Law SL2006-31

made under the

Road Transport (General) Act 1999, the Road Transport (Public Passenger Services) Act 2001.

EXPLANATORY STATEMENT

Overview

The Road Transport (Taxi Licences) Amendment Regulation 2006 (No 2) (the Amendment Regulation) amends the *Road Transport (Public Passenger Services) Regulation 2002* (the Public Passenger Services Regulation), the *Road Transport (General) Regulation 2000* and the *Road Transport (Offences) Regulation 2005*.

The main features of the Amendment Regulation are:

- the introduction of a new type of taxi licence – a non-transferable leased taxi licence; and
- the introduction of a ballot process for the allocation of non-transferable leased taxi licences.

Strict liability offences

The offence applying to taxi networks in Section 4 of the Amendment Regulation is a strict liability offence.

The offence is regulatory in nature and is applied in the interests of public 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 are expected to be aware of the requirements placed on them by the regulatory regime for their profession.

Detail

1 Name of regulation

Clause 1 provides the name of the regulation, the *Road Transport Taxi Licences) Amendment Regulation 2006 (No 2)*.

2 Commencement

Clause 2 specifies that the regulation commences immediately after the commencement of the *Road Transport Legislation Amendment Act 2006*.

3 Legislation amended

Clause 3 notes that the regulation amends the Public Passenger Services Regulation, the *Road Transport (General) Regulation 2000* and the *Road Transport (Offences) Regulation 2005*.

4 Section 71

Clause 4 amends section 71 of the Public Passenger Services Regulation dealing with the affiliation of accredited taxi service operators with taxi networks. The amendment deletes the 'reasonable excuse' defence contained in the current provision on the basis that section 51 of the *Road Transport (Public Passenger Services) Act 2001* requires an accredited taxi service operator to be affiliated with a taxi network. However, section 71(2) provides that the requirement to affiliate an accredited operator does not apply if the accredited operator does not comply with the network's accepted service standards for affiliation.

The amendment also deletes subsection (3) about the network provider being entitled to provide services to 'that kind' of taxi service as a consequence of the Road Transport Legislation Amendment Act 2006.

The offence in section 71(1) is a strict liability offence.

5 Section 82(2)

Clause 5 amends section 82(2) of the Public Passenger Services Regulation. A non-transferable leased taxi licence is included, at subsection (2)(b), as a kind of taxi licence other than a restricted taxi licence.

6 Section 82(3)

Clause 6 consequentially amends section 82(3) which prevents the issue of licences not limited to a term stated in the licence. The reference to subsection (2)(b) is changed to subsection (2)(c) and the reference to the commencement of the subsection is changed to refer to the actual date of commencement of the subsection (ie 7 March 2006).

7 Section 84(4)

Clause 7 amends section 82(4) by changing the reference to the commencement of the subsection to a reference to the actual date of commencement of the subsection (ie 7 March 2006).

8 New division 4.2.3

Clause 9 provides new division 4.2.3 which deals with issuing non-transferable leased taxi licences.

New section 83B provides that the holder of a defined right for a non-transferable leased taxi licence may apply to the Road Transport Authority (the authority) for a non-transferable leased taxi licence.

Under new section 83C, a person who holds a defined right for a non-transferable leased taxi licence is entitled to be issued with a non-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 non-transferable leased taxi licence may be issued for a maximum of 6 years, and may be issued subject to a condition.

9 Divisions 4.2.3 to 4.2.7

Clause 8 consequentially renumbers the divisions in Part 4.2.

10 Section 83G(2)

Clause 10 amends section 83G(2) of the Public Passenger Services Regulation. Section 83G deals with decisions on applications for NSW cross-border taxi licences. The amendment adds 'a disqualification from holding or applying for a restricted taxi licence under chapter 6' as a ground on which the authority may refuse an application for a NSW cross-border taxi licence.

11 Section 84

Clause 11 amends section 84 which provides that leased taxi licences are not renewable. A leased taxi licence is now defined as a non-transferable leased taxi licence or a transferable leased taxi licence. Previously the section referred to transferable taxi licences only.

12 Section 84B(2)

Clause 12 amends section 84B which deals with decisions on applications for renewals of restricted taxi licences. The amendment to subsection (2) adds a disqualification from holding or applying for a restricted taxi licence under chapter 6 as a ground on which the authority may refuse an application for a restricted taxi licence.

13 Section 84D(2)

Clause 13 amends section 84D which deals with issuing defined rights for taxi licences. In subsection (2), a non-transferable leased taxi licence is included as a relevant taxi licence to which the section applies.

14 Section 84F(2)(c)

Clause 14 amends section 84F dealing with the notification of ballots of defined rights. Subsection (2)(c) requires a notice about a ballot of defined rights to indicate the type of taxi licence to which the defined rights relate. A non-transferable leased taxi licence is included as a licence type to which a ballot of defined rights may relate.

15 Section 84H(1)

Clause 15 amends section 84H which deals with decisions on applications for ballots of defined rights. The amendment to subsection (1) adds a disqualification from holding or applying for a taxi licence (if the ballot relates to a taxi licence other than a restricted taxi licence) or a restricted taxi licence (if the ballot relates to a restricted taxi licence) under chapter 6 as a ground on which the authority may refuse an application for entry into a ballot of defined rights.

16 New section 84K(2)

Section 84K deals with offering defined rights to ballot reserves. A new section 84K(2) is inserted providing that the authority may offer a defined right for a non-transferable leased taxi licence to a person on any reserve list for defined rights for non-transferable leased taxi licences that is in force, if a defined right already issued ends or a non-transferable leased taxi licence is cancelled or surrendered.

17 Section 84K(2) and (3)

Clause 17 renumbers s84K(2) and (3) as s84k(3) and (4) , and is consequential upon Section 16 of the Amendment Regulation.

18 Dictionary, new definition of ‘non-transferable leased taxi licence’

The definition of non-transferable leased taxi licence refers to the meaning given in section 82(2).

Schedule 1 Other amendments

Part 1.1 Road Transport (General) Regulation 2000

1.1 Section 14(3)(e)

Section 14 deals with refunds of certain fees and charges. A non-transferable leased taxi licence is included as a fee that must be refunded (on a pro rata basis) if the licence is surrendered.

1.2 Schedule 1, part 1.7, new items 2 and 3

Schedule 1, part 1.7 sets out the decisions under the *Road Transport (Public Passenger Services) Act 2001* (the PPS Act) that are reviewable. The inclusion of the powers in s120(3) of the Act, about refusing to remove non-compliance notices, in part 1.7 of the Schedule is consequential to the Road Transport Legislation Amendment Act 2006 which relocates the enforcement powers from regulation to the primary legislation.

1.3 Schedule 1, part 1.8, new item 12A

A decision to issue a non-transferable leased taxi licence with conditions is included in part 1.8 as a reviewable decision.

1.4 Schedule 1, part 1.8, item 36 and 37

Schedule 1, part 1.8 provides the decisions under the Public Passenger Services Regulation that are reviewable. The omission of the powers previously provided in items 36 and 37 of part 1.8 of the Schedule is consequential to the Road Transport Legislation Amendment Act 2006 which relocates the enforcement powers from regulation to the primary legislation. These items are now located in part 1.7 by amendment 1.2

Part 1.2 Road Transport (Offences) Regulation 2005

1.5 Schedule 1, part 1.10, table, item 5

Part 1.10 sets out the offence descriptions and penalty amounts for offences in the PPS Act. This amendment is consequential to the Road Transport Legislation Amendment Act 2006 which provides that a person is entitled to operate a taxi network if the person is accredited to operate a taxi network – deleting references to ‘for that kind of taxi service’. The short title ‘unaccredited person operate taxi network for particular kind of taxi service’ is changed to ‘unaccredited person operate a taxi network’.

1.6 Schedule 1, part 1.10, table, item 7

The omission of item 7 (‘pretend to be accredited to operate taxi network for particular kind of taxi service’) is consequential to the Road Transport Legislation Amendment Act 2006.

1.7 Schedule 1, part 1.10, table, new items 25 to 30

The insertion of new items 25 to 30 in part 1.10 is consequential to the Road Transport Legislation Amendment Act 2006. The items were previously in part 1.11 of the Schedule.

1.8 Schedule 1, part 1.11, item 91

Part 1.11 provides the offence descriptions and penalty amounts for offences in the Public Passenger Services Regulation. The omission of item 91 (‘taxi network affiliate unaccredited taxi operator’) is consequential to the Road Transport Legislation Amendment Act 2006.

1.9 Schedule 1, part 1.11, items 289 to 294

The omission of items 289 to 294 from part 1.11 is consequential to the Road Transport Legislation Amendment Act 2006.

1.10 Schedule 1, part 1.14, new item 1A

New item 1A in part 1.14 (which provides the offence descriptions for the *Road Transport (Vehicle Registration) Act 1999*) is relocated from part 1.15 as a consequence of the Road Transport Legislation Amendment Act 2006.

1.11 Schedule 1, part 1.15, item 100

Item 100 is omitted from part 1.15 (which provides the offence descriptions for the *Road Transport (Vehicle Registration) Regulation 2000*) as a consequence of the Road Transport Legislation Amendment Act 2006.

Part 1.3 Road Transport (Public Passenger Services) Regulation 2002

1.12 Section 4A, note 1

Note 1 in s4A sets out the offences against the regulation to which the Criminal Code applies. A reference to an offence affected by the Amendment Regulation and to which the Criminal Code applies, section 71, is added to the note.

1.13 Section 4A, note 1

Chapter 7 is relocated from the regulation to the primary legislation by the Road Transport Legislation Amendment Act 2006 and therefore references to chapter 7 offences are deleted from note 1 as offences against the regulation.

1.14 Section 83, note 1

Note 1 in section 83 (previously 'For how a defined right is obtained, see div 4.2.6) is replaced with 'For how a defined right is obtained, see div 4.2.7'. This amendment is a consequence of clause 9 of the Amendment Regulation.

1.15 Section 83A(1)(b)

Section 83A which deals with deciding applications for transferable leased taxi licences is amended by replacing 'authority' with 'road transport authority' to reflect drafting practice.

1.16 Section 83D, note 1

Note 1 in section 83D (previously 'For how a defined right is obtained, see div 4.2.6) is replaced with 'For how a defined right is obtained, see div 4.2.7'. This amendment is a consequence of clause 9 of the Amendment Regulation.

1.17 Section 83E(1)(b)

Section 83E, dealing with deciding applications for wheelchair accessible taxi licences, is amended by replacing 'authority' with 'road transport authority' to reflect drafting practice.

1.18 Section 84A(2)

Section 84A, dealing with applications for renewals of restricted taxi licences, is amended by replacing 'road transport authority' with 'authority' to reflect drafting practice (2nd time mentioned in section).

1.19 Section 515

Section 515 is a transitional provision dealing with issuing wheelchair-accessible taxi licences to accredited operators of wheelchair accessible taxis. The reference to division 4.2.3 is amended to refer to division 4.2.4 as a consequence of clause 9 of the Amendment Regulation.

1.20 Further amendments, references to section 234

References to section 234 in several sections of the Public Passenger Services Regulation are replaced with references to section 120 of the Act, as a consequence of the Road Transport Legislation Amendment Act 2006.

1.21 Further amendments, references to section 234

References to section 234 in several notes throughout the Public Passenger Services Regulation are replaced with references to section 120 of the Act, as a consequence of the Road Transport Legislation Amendment Act 2006.

1.22 Dictionary, note 3, new dot point

Note 3 deals with terms in the regulation having the same meaning as in the Act. The word 'fittings', which is included in the dictionary to the Act under the Road Transport Legislation Amendment Act 2006, is included in note 3 as a term defined in the Act.