

Australian Capital Territory

Road Transport (Public Passenger Service) Taxi Licence Exemption 2019

Disallowable instrument DI2019–193

made under the

Road Transport (Public Passenger Services) Act 2001, s127 (Minister may exempt vehicles and people from Act)

EXPLANATORY STATEMENT

Overview

Section 127 (1) of the *Road Transport (Public Passenger Services) Act 2001* (the Act) provides that the Minister may exempt a vehicle or person from the Act or a stated provision of the Act.

Section 126 of the Act provides for regulations to be made under the Act.

Section 88 of the *Road Transport (Public Passenger Services) Regulation 2002* (the Regulation) provides that a pre-approval for a taxi licence expires two years after the date it is issued. Persons that are pre-approved (pre-approval holders) are placed on a taxi licence waiting list ('waiting list') managed by Access Canberra on behalf of the road transport authority. When a person's pre-approval term ends while they are still on the waiting list, they must make a fresh application for pre-approval.

Under section 84 of the Regulation, the road transport authority must remove a pre-approval holder from the waiting list if the pre-approval term expires.

Section 92 (3) of the Regulation provides that a taxi licensee who surrenders their licence is automatically disqualified from applying for a taxi licence, or a pre-approval for a taxi licence, for 2 years after the day the surrender takes effect.

Background

In 2015, the ACT Government undertook a review of the ACT taxi industry to examine the possible use of new technologies and how to reduce unnecessary regulation in the local taxi industry. The resulting reforms acknowledged the evolving nature of the ACT taxi industry and new business models providing on-demand transport. The 2015 reforms saw the introduction of the waiting list process for issuing taxi licences. Prior to this an ad hoc ballot system existed. The intention was

that the waiting list would increase certainty for applicants by enabling the supply of taxis to be consistent and lower the wait-time.

The ACT Government committed to evaluating the 2015 reforms two years after implementation. This evaluation commenced in 2017 and an Evaluation Report was provided to government in September 2018 with a number of recommendations, including in relation to the operation of the taxi licence waiting list and the allocation of licences through it.

The current waiting list process commenced on 1 August 2016 and operates so that once an eligible applicant is pre-approved for a taxi licence, they are placed on the waiting list in the order that pre-approval is granted. Pre-approvals come into force on the date of issue and expire two years after that date. When a single licence is issued to a person with pre-approval for multiple licences, the pre-approval holder moves to the bottom of the waiting list for further licences. This is to permit opportunities for different parties to obtain licences. When a licence becomes available the road transport authority must offer it to the next person on the waiting list. The person then has 14 days to apply for the available licence. If they apply for a licence and are only approved for one licence, their pre-approval expires. If they are pre-approved for multiple licences, the number of licences for which they are pre-approved is reduced by one and they are moved to the bottom of the waiting list. If they do not apply and are only approved for one licence, their pre-approval expires. If the person does not apply and they are pre-approved for multiple licences then they are moved to the bottom of the waiting list.

There is strong demand for and need for wheelchair-accessible taxis (WATs) and the ACT Government is committed to ensuring there is sufficient supply of these types of taxis for the community. The current legislative requirement that prevents a taxi licence holder who surrenders a taxi licence for apply for a licence or pre-approval for two years from the date of surrender was introduced to mitigate fluctuations in taxi supply from persons entering the industry and taking up licences for short periods. It was intended to promote consistency and availability of taxis to supply the market. However, it has resulted in a situation where WAT licensees who have surrendered their taxi licence for non-commercial reasons are being prevented from re-entering the market. To address this issue, this instrument removes this restriction for WAT licensees. The Evaluation Report noted the importance of ensuring adequate supply of WATs to the community and that a lack of adequate supply would be disadvantageous to the community.

Clause notes

Clause 1 and 2 are formal provisions that deal with the name and commencement of the new instrument.

Clause 3 exempts existing pre-approval holders from the requirement to apply for pre-approval on expiry of the term of their current pre-approval for the term of this exemption. It also exempts the road transport authority from the requirement to remove a pre-approval holder from the waiting list if the pre-approval term expires. This means that a pre-approval holder who is currently on the waiting list will maintain their position on the waiting list. That is any existing pre-approval holders whose approval term expires from commencement of this instrument will not lose

their position on the waiting list. The term of all existing pre-approvals are being extended for the duration of this instrument.

Clause 3 also exempts WAT licensees from the disqualification period contained in subsection 92O (3) of the regulation, to allow WAT licensees to reapply for a WAT licence earlier than the two-year disqualification period they would otherwise be obligated to serve. The intent of this clause is to ensure that WAT services remain available to the community, and it is designed to allow those who have surrendered their WAT licences for non-commercial reasons to re-apply for a WAT licence. It is not designed to encourage “short term” licence holding activity and does not allow a WAT licensee to obtain a standard taxi licence during the two-year disqualification period.

Clause 4 sets out definitions used in the instrument.

Clause 5 revokes *Road Transport (Public Passenger Services) Taxi Licence Waiting List Exemption 2018* (DI2018-216).

Human rights implications

Section 28 of the HRA provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (a) the nature of the right affected
- (b) the importance of the purpose of the limitation
- (c) the nature and extent of the limitation
- (d) the relationship between the limitation and its purpose
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

An assessment of this instrument against section 28 of the HRA is provided below.

Recognition and equality before the law

This instrument could be seen to be limiting a person’s right to recognition and equality before the law under section 8 of the *Human Rights Act 2004* (HRA).

Section 8 of the HRA provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. This means that laws, policies and programs should not be discriminatory and also that public authorities should not apply or enforce laws, policies and programs in a discriminatory way.

Section 8 can be engaged by activities that provide for the delivery of an entitlement or service to some groups but not others or where steps are taken to diminish or eliminate conditions that could have resulted in the specific groups within society being disadvantaged (positive discrimination).

Nature of the right affected

The regulatory settings for taxi licences in the ACT consist of a process where people can apply to be pre-approved for a licence and be placed on the waiting list. When taxi licences become available, they are offered in order to people on the waiting list.

This instrument could be seen to engage this right through taking active steps to ensure that persons currently on the taxi licence waiting list are not disadvantaged by the existing waiting list process.

This instrument could also be seen to engage this right by exempting wheelchair-taxi licensees from the surrender disqualification period of two years and limiting the exemption to wheelchair-accessible taxi licensees who are applying for a wheelchair-accessible taxi licence.

The importance of the purpose of the limitation

In February 2017, the ACT Government lifted its freeze on the release of taxi licences. 85 taxi licences have been made available to the market since the freeze was lifted. There are currently 377 standard licences available to the market and 31 WAT licences. All WAT licences released have been issued.

To ensure that those persons currently on the waiting list are not disadvantaged by any decisions regarding release of taxi licences, the ACT Government has decided to retain the existing waiting list order should additional licences be released.

There is strong demand for WATs and it is essential that there is sufficient supply of these types of taxis for the community.

The nature and extent of the limitation

This instrument has been prepared to ensure that those people currently on the waiting list are not disproportionately impacted by decisions of the Government about availability of taxi licences and that there continues to be an adequate supply of WATs for the community.

The relationship between the limitation and its purpose

There is no limit on the number of people that can be pre-approved and placed on the waiting list and therefore retaining the current list order does not put people who apply for pre-approval now or in the future at a disadvantage.

Allowing people who have surrendered a WAT licence for non-commercial reasons to re-apply for a WAT licence within two years of surrendering the licence does not put those people currently on the list for a WAT licence at a disadvantage. A person who reapplies after surrendering a licence will not take precedence over people already on the list. There are currently less than ten people on the WAT licence waiting list.

Less restrictive means reasonably available to achieve this purpose

It is not considered that there are any less restrictive means to achieve the purpose of maintaining the status of the existing waiting list and ensure supply of WATs. It would impose additional administrative burden on these people, be unequitable and would not achieve the objectives of ensuring adequate supply of taxis to the community if persons who surrender a WAT licence for non-commercial reasons or are currently pre-approved where required to re-apply or serve the regulated disqualification period.

Climate change implications

There are no climate change implications arising from this instrument.