



New South Wales

Passenger Transport Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to provide for the following matters:

- (a) the accreditation of operators of public passenger services,
- (b) the authorisation of drivers of buses, taxis and hire cars used for public passenger services,
- (c) passenger service contracts relating to public passenger services between Transport for NSW (*TfNSW*) and operators of those services,
- (d) licences for the provision of air transport services for regulated air routes,
- (e) the accreditation of operators of taxi networks and taxi booking services,
- (f) licences for taxis and hire cars and processes for the determination of taxi licence numbers,
- (g) maximum fares for public passenger services and schemes for Government subsidised travel, including fare concessions,
- (h) investigations and inquiries into transport accidents and incidents,
- (i) enforcement of the proposed Act,
- (j) drug and alcohol testing of bus and ferry transport safety employees,
- (k) consequential repeals and amendments, savings and transitional provisions and other ancillary matters.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 defines *public passenger service*.

Clause 6 defines *community transport service*.

Clause 7 defines *air transport service*. An air transport service is a regular service provided for a regulated air route declared by the Minister for Transport.

Clause 8 defines *taxi service* and *taxi*.

Clause 9 defines *hire car service* and *hire car*.

Clause 10 provides for the proposed Act to be construed so as not to exceed the legislative power of the State.

Clause 11 specifies that the proposed Act binds the Crown.

Part 2 Accreditation of operators of public passenger services

Division 1 Preliminary

Clause 12 defines certain words and expressions used in the proposed Part. The *accrediting authority* for a public passenger service is to be TfNSW for an air transport service and Roads and Maritime Services (*RMS*) in any other case.

Clause 13 defines *close associate*.

Clause 14 specifies that the proposed Part does not apply to a public passenger service provided by an aircraft (other than an air transport service) or by a vessel or a train.

Division 2 Accreditation offences

Clause 15 makes it an offence to operate a public passenger service without being an accredited operator for that service.

Clause 16 makes it an offence for an operator to contravene any condition of the operator's accreditation.

Division 3 Applications for accreditation

Clause 17 enables an individual, a group of individuals (including a partnership) or a body corporate to apply to the accrediting authority for accreditation as the operator of a public passenger service and provides for the form of the application.

Clause 18 sets out the standards for accreditation by the accrediting authority, including that the proposed operator or any directors and managers nominated by the operator for the purposes of the proposed Part in the application for accreditation are fit and proper persons to be responsible for the management of a public passenger service. The regulations may prescribe standards for an operator for financial viability, passenger and public safety and vehicle maintenance as well as other standards. An applicant to operate a taxi service must also demonstrate the capacity to comply with the taxi service standards to be prescribed by the regulations. An applicant for accreditation as an operator of an air transport service must meet the same standards relating to fit and proper persons and additional standards relating to insurance of and rights to operate aircraft to be used for the service. A person who already holds an accreditation to operate another service

may be granted an accreditation if the applicant can satisfy any additional applicable standards and the applicant is not or has not been subject to any action against the accreditation already held.

Clause 19 enables an accreditation to be refused on the ground that a close associate of the applicant has previously held an accreditation or an air route licence that has been cancelled.

Clause 20 enables an accreditation to be granted unconditionally or subject to conditions.

Clause 21 provides for the form of the accreditation to be that approved by the accrediting authority.

Clause 22 specifies that the accreditation is to be in force for the period determined by the accrediting authority unless it is sooner cancelled.

Clause 23 enables an accreditation to be renewed.

Clause 24 requires notice to be given to the applicant of the decision on the application for accreditation.

Clause 25 provides that jointly accredited operators each have the obligations of an accredited operator of a public passenger service under the proposed Act.

Division 4 Conditions of accreditation

Clause 26 makes an accreditation as the operator of a public passenger service subject to the conditions imposed by the accrediting authority or by the Act or the regulations and enables conditions imposed by the accrediting authority to be varied or revoked at any time by written notice given to the operator.

Clause 27 enables an operator of a public passenger service to change its nominated directors or managers at any time and makes it a condition of the accreditation of the operator of a public passenger service that is a body corporate that notice be given to the accrediting authority within 21 days if a nominated director or manager dies or ceases to be a director or manager.

Clause 28 makes it a condition of the accreditation of the operator of an air transport service that the operator must not operate a regular air service on a regulated air route unless the operator holds an air route licence for the route.

Clause 29 makes it a condition of the accreditation of the operator of a bus service that the operator prepares and implements a drug and alcohol program and ensures that its transport safety employees are not under the influence of alcohol or any drug when about to carry out, or while on duty for the purposes of carrying out, transport safety work. RMS may also arrange for random testing of employees who are about to commence duty or who are on duty. Proposed Schedule 2 contains regulation-making powers relating to drug and alcohol testing procedures and offences.

Clause 30 provides that the proposed Act and regulations do not derogate from other legislation relating to the testing of drivers for alcohol and drugs.

Clause 31 makes it a condition of the accreditation of the operator of a bus service that the operator prepares and implements a safety management system.

Clause 32 makes it a condition of the accreditation of the operator of a taxi service that the operator complies with the taxi service standards prescribed by the regulations.

Division 5 Variation, suspension or cancellation of accreditation

Clause 33 sets out the grounds on which the accrediting authority may vary, suspend or cancel an accreditation of an operator of a public passenger service, including failure to comply with an accreditation standard or a condition of accreditation, failure to comply with the proposed Act or the regulations or having a close associate who has previously held an accreditation that has been cancelled.

Clause 34 sets out additional grounds on which the accrediting authority may vary, suspend or cancel an accreditation of an operator of a taxi service, including failure to comply with a taxi network requirement that is reasonable and necessary for the taxi network to comply with its obligations under the proposed Act. It also enables action to be taken against both taxi service and

hire car service operators if the services are conducted in a manner that causes danger to the public or there is an insufficient third-party insurance policy for any vehicle used for the service.

Clause 35 automatically suspends (after 21 days) the accreditation of an individual who is jointly accredited with another individual if the other individual dies and also enables the accreditation to be cancelled or suspended or varied because of the death. It also automatically suspends the accreditation of an operator that is a body corporate if the operator ceases to have any nominated director or manager.

Part 3 Service procurement

Division 1 Passenger service contracts

Clause 36 enables TfNSW to enter into a passenger service contract for the provision of a public passenger service for a particular area or route with an accredited operator or a person who is not required to be accredited. TfNSW may seek tenders for contracts or invite them by any other means. A contract must provide for performance standards to be met by the operator and specify the term of the contract. It cannot provide for a right to renew the contract but may confer the first right to negotiate a further contract.

Clause 37 enables TfNSW to enter into a further passenger service contract with an operator after the expiry of the term of a contract but makes it clear that there is no right to or expectation of a further contract after the end of the term of a passenger service contract.

Clause 38 requires the performance standards in a passenger service contract to be enforced by civil penalty provisions or in any other manner the contract may provide. Other provisions of a contract may be enforced under civil penalty provisions if so specified in the contract. An amount payable under a civil penalty provision may be recovered as a debt due to the State or, if the contract so provides, by withholding payments under the contract.

Clause 39 makes it an offence to conduct a regular timetabled service other than under the authority of a passenger service contract, unless the service is conducted under a subcontract or other arrangement authorised by such a contract or the service is exempted from the requirement by the Minister for Transport. The proposed offence will not apply to an air transport service, a long distance bus or ferry service, a tourist service or a community transport service.

Clause 40 enables a passenger service contract to confer the exclusive right to operate a regular service in an area or route to which the contract applies. Actions taken under any such provision are specifically authorised to avoid contravention of the *Competition and Consumer Act 2010* of the Commonwealth.

Division 2 Licensing for regulated air routes

Clause 41 makes it an offence to operate an air transport service without being the holder of an air route licence for the regulated air route for which the service is provided.

Clause 42 makes it an offence for the holder of an air route licence to contravene any condition of the licence.

Clause 43 enables an individual, a group of individuals (including a partnership) or a body corporate to apply to TfNSW for an air route licence and provides for the form of the application.

Clause 44 sets out the matters TfNSW must take into account when determining an application for an air route licence.

Clause 45 provides that an air route licence is to specify the regulated air route or routes to which it applies and provides that the licence may be unconditional or subject to conditions.

Clause 46 provides for the form of an air route licence to be that approved by TfNSW.

Clause 47 specifies that an air route licence is to be in force for the period determined by TfNSW unless it is sooner cancelled.

Clause 48 provides that an air route licence cannot be renewed but that the previous holder may apply for a new air route licence for the regulated air route concerned.

Clause 49 requires notice to be given to the applicant of the decision on the application for an air route licence.

Clause 50 provides that jointly licensed holders each have the obligations of the holder of an air route licence under the proposed Act.

Clause 51 makes an air route licence subject to the conditions imposed by TfNSW or by the Act or the regulations and enables conditions imposed by TfNSW to be varied or revoked at any time by written notice given to the holder.

Clause 52 sets out the grounds on which TfNSW may vary, suspend or cancel an air route licence, including ceasing to be accredited to operate an air transport service, ceasing to operate a regular air service for a regulated air route to which the licence relates or failing to operate it to the satisfaction of TfNSW.

Clause 53 enables TfNSW to grant a temporary air route licence for a regulated air route if the current holder's licence is suspended or cancelled, TfNSW is of the opinion that the current holder is not providing the service for the route or is failing to provide a satisfactory service for the route and TfNSW is also of the opinion that the issue of the temporary licence is necessary to maintain an air transport service pending determination or completion of action against the current holder or the granting of a new licence.

Clause 54 automatically suspends (after 21 days) the air route licence of an individual who is jointly accredited with another individual if the other individual dies or ceases to jointly provide the service and also enables the licence to be cancelled or suspended or varied because of the death or cessation.

Part 4 Driver authorities

Division 1 Preliminary

Clause 55 applies the proposed Part to drivers of vehicles used for bus services, taxi services, hire car services, tourist services, certain charter services and other public passenger services prescribed by the regulations.

Clause 56 enables regulations to be made to provide for the types and classes of driver authorities.

Division 2 Driver authority offences

Clause 57 makes it an offence to drive a vehicle used to provide a public passenger service to which the proposed Part applies without being the holder of a driver authority for a vehicle of that kind for a service of that kind.

Clause 58 makes it an offence for a driver to contravene any condition of the driver's driver authority.

Division 3 Applications for driver authorities

Clause 59 enables an individual who is not less than 20 to apply to RMS for a driver authority and provides for the form of the application.

Clause 60 sets out the standards for the grant of a driver authority by RMS, including that the applicant must be of good repute and in all other respects a fit and proper person to be the driver of a vehicle used for a public passenger service, that the applicant has demonstrated sufficient responsibility and aptitude to drive the vehicle, that the applicant holds an unrestricted driver licence to drive a vehicle of the class required and, if the application is for an authority to drive a bus or taxi, that the applicant has completed appropriate training courses or assessment. A person who already holds a driver authority to drive a vehicle may be granted a driver authority if the standards for that authority are substantially similar to those required for the accreditation being

applied for or the applicant meets any additional standards for the driver authority and the applicant is not or has not been subject to any action against the driver authority already held.

Clause 61 requires an applicant for a driver authority to drive a bus used to provide a bus service to complete an approved bus driver training course or for RMS to be satisfied that the applicant has appropriate competence.

Clause 62 requires an applicant for a driver authority to drive a taxi used to provide a taxi service to complete an approved taxi driver training course or for RMS to be satisfied that the applicant has appropriate competence. An applicant must also pass any examinations or assessments prescribed for the purposes of the proposed section by the regulations.

Clause 63 enables RMS to refuse to consider an application for a driver authority if, within the previous 12 months, the applicant has been refused a driver authority or a driver authority held by the applicant has been cancelled. A refusal by RMS to consider an application will not be subject to review by the Civil and Administrative Tribunal.

Clause 64 enables a driver authority to be granted unconditionally or subject to conditions.

Clause 65 provides for the form of a driver authority to be that approved by RMS.

Clause 66 specifies that a driver authority is to be in force for the period determined by RMS unless it is sooner cancelled.

Clause 67 enables a driver authority to be renewed.

Clause 68 requires notice to be given to the applicant of the decision on the application for a driver authority.

Division 4 Conditions of driver authorities

Clause 69 makes a driver authority subject to the conditions imposed by RMS or by the Act or the regulations and enables conditions imposed by RMS to be varied or revoked at any time by written notice given to the holder.

Clause 70 makes it a condition of the driver authority for the driver of a taxi that the driver comply with the directions given by the operator's taxi network or taxi booking service if those directions are authorised to be given under the applicable standards that apply to the taxi network or the taxi booking service.

Division 5 Variation, suspension or cancellation of driver authorities

Clause 71 sets out the grounds on which RMS may vary, suspend or cancel a driver authority, including failure to comply with a standard for granting the authority or a condition of the authority, failure to comply with the proposed Act or the regulations or having action taken against the person's driver licence.

Part 5 Accreditation and membership of taxi network providers and taxi booking services

Division 1 Preliminary

Clause 72 defines certain words and expressions used in the proposed Part. A *member operator* of a taxi service is an operator of a taxi service who is a member of, or who is otherwise affiliated with, the taxi network. A *taxi network* is a facility for the provision of services to member operators relating to the delivery of taxi services by member operators, but does not include a taxi booking service.

Division 2 Accreditation and affiliation offences

Clause 73 makes it an offence to operate a taxi network or a taxi booking service without being an accredited operator for that service.

Clause 74 makes it an offence for an operator of a taxi network or a taxi booking service to contravene any condition of the operator's accreditation.

Clause 75 makes it an offence to operate a taxi service without being a member operator of a taxi network. A member operator is required to ensure that a taxi used in the operator's taxi service is fitted with a working communication device for security and safety purposes that is capable of being activated by the taxi network.

Division 3 Applications for accreditation

Clause 76 enables an individual, a group of individuals (including a partnership) or a body corporate to apply to RMS for accreditation as the operator of a taxi network or taxi booking service and provides for the form of the application.

Clause 77 sets out the standards for accreditation by RMS, including that the proposed operator or any directors or managers nominated by the operator for the purposes of the proposed Part in the application for accreditation are fit and proper persons to be the operator of a taxi network or taxi booking service. The regulations may prescribe standards for an operator for financial viability and the delivery and supervision and monitoring of taxi services. An applicant must also demonstrate the capacity to comply with the standards to be prescribed by the regulations.

Clause 78 enables an accreditation to be granted unconditionally or subject to conditions.

Clause 79 provides for the form of an accreditation to be that approved by RMS.

Clause 80 specifies that the accreditation is to be in force for the period determined by RMS unless it is sooner cancelled.

Clause 81 enables an accreditation to be renewed.

Clause 82 requires notice to be given to the applicant of the decision on the application for accreditation.

Clause 83 provides that jointly accredited operators each have the obligations of an accredited operator of a taxi network or taxi booking service under the proposed Act.

Division 4 Conditions of accreditation

Clause 84 makes an accreditation as the operator of a taxi network or a taxi booking service subject to the conditions imposed by RMS or by the Act or the regulations and enables conditions imposed by RMS to be varied or revoked at any time by written notice given to the operator.

Clause 85 enables an operator of a taxi network or taxi booking service to change its nominated directors or managers at any time and makes it a condition of the accreditation of the operator of a taxi network or a taxi booking service that notice be given to RMS within 21 days if a nominated director or manager dies or ceases to be a director or manager.

Clause 86 makes it a condition of the accreditation of the operator of a taxi network that the operator comply with the taxi network service standards prescribed by the regulations. The standards may relate to safety requirements, network rules, driver training, network monitoring and supervision and other matters.

Clause 87 makes it a condition of the accreditation of the operator of a taxi booking service that the operator comply with the taxi booking service standards prescribed by the regulations. Taxi booking service standards may relate to service requirements for booking and requirements to provide booking services for taxi service operators.

Division 5 Variation, suspension or cancellation of accreditation

Clause 88 sets out the grounds on which RMS may vary, suspend or cancel an accreditation of an operator of a taxi network or a taxi booking service, including failure to comply with accreditation standards or a condition of accreditation, failure to comply with the proposed Act.

Clause 89 automatically suspends (after 21 days) the accreditation of an individual who is jointly accredited with another individual if the other individual dies and also enables the accreditation to

be cancelled, suspended or varied because of the death. It also automatically suspends the accreditation of an operator that is a body corporate if the operator ceases to have any nominated directors or managers.

Part 6 Taxi and hire car licences

Division 1 Preliminary

Clause 90 defines certain words and expressions used in the proposed Part.

Division 2 Licensing offences

Clause 91 makes it an offence for an operator of a taxi service to use a motor vehicle for the service unless the operator is the holder of a taxi licence for that motor vehicle or the motor vehicle is a stand-by taxi.

Clause 92 makes it an offence for an operator of a hire car service to use a motor vehicle for the service unless the operator is the holder of a hire car licence for that motor vehicle.

Clause 93 makes it an offence for the holder of a taxi licence or a hire car licence (a *licence*) to contravene any condition of the licence.

Clause 94 enables an accredited operator of a taxi service to use an unlicensed stand-by taxi if a licensed taxi is out of operation for repair or service and sets out the conditions for the use of the stand-by taxi. The taxi while in use is taken to be a taxi for which a taxi licence is in force.

Division 3 Applications for licences

Clause 95 establishes the classes of licences. An annual taxi licence is for 12 months while a short term taxi licence or hire car licence is for 6 years. An ordinary taxi licence or hire car licence will be for a term determined by RMS.

Clause 96 enables a person to apply to RMS for a licence.

Clause 97 requires an applicant for a licence to meet any requirements specified in the regulations. An applicant for a licence for a taxi to be operated in the Metropolitan transport district, or prescribed by order by TfNSW, may only be issued with an annual taxi licence.

Clause 98 requires RMS not to grant an annual taxi licence to an applicant unless the applicant was the highest ranked bidder or tenderer for the licence, has complied with any requirements for making the bid or tender and has provided any bond or other security required for payment of the annual fee. RMS must also have regard to any determination of the number of annual taxi licences before granting an annual taxi licence.

Clause 99 enables a licence to be granted unconditionally or subject to conditions.

Clause 100 provides for the form of a licence to be that approved by RMS.

Clause 101 provides that a licence may specify the area of operation of a taxi or hire car and that, if no area is specified, the taxi or hire car may be used for a taxi service or hire car service anywhere in New South Wales.

Clause 102 specifies that a short term licence is to be in force for the period specified in the licence (not being more than 6 years), and that any other licence is to be in force for the period specified by the proposed Act for the class of licence, unless it is sooner cancelled.

Clause 103 enables a licence (other than a short term taxi licence or a short term hire car licence) to be renewed and specifies a maximum number of renewals for annual taxi licences.

Clause 104 requires notice to be given to the applicant of the decision on the application for a licence.

Division 4 Conditions of licences

Clause 105 makes a licence subject to the conditions imposed by RMS or by the Act or the regulations and enables conditions imposed by RMS to be varied or revoked at any time by written notice given to the holder.

Division 5 Licence fees

Clause 106 provides for a licence fee to be payable to RMS on issue and, in the case of an annual licence, on renewal. The fee is in addition to any application fee.

Clause 107 provides for the fee for an ordinary taxi licence or hire car licence to be set by bids at public auction or by sealed tenders.

Clause 108 provides for the fee for a short term taxi licence or a short term hire car licence to be the amount determined by TfNSW.

Clause 109 provides for the fee for an annual taxi licence to be set by bids at public auction or by sealed tenders. However, the fee for an annual taxi licence for a wheelchair accessible taxi is to be determined by TfNSW.

Division 6 Dealings with licences

Clause 110 enables a licence to be leased or subleased, or the benefit of a licence to be conferred on another person to the exclusion of the person entitled to the benefit of the licence, without the approval of RMS and provides for the lessee or sublessee of a licence or a person on whom the benefit of a licence is conferred to have the benefit of the authority of the licence to the exclusion of the lessor or sublessor. The lessee or the sublessee or a person having the benefit of the licence is taken to be the holder of the licence for the purposes of the proposed Act or regulations.

Clause 111 enables regulations to be made about the application of provisions of the proposed Act or regulations to lessors, sublessors, lessees and sublessees of licences and persons who confer and receive the benefits of a licence as referred to in proposed section 110.

Clause 112 enables licence conditions to be imposed relating to the application of conditions of licences to lessors, sublessors, lessees and sublessees of licences and persons who confer and receive the benefits of a licence as referred to in proposed section 110.

Clause 113 requires written notice of the lease or sublease, or an arrangement to confer the benefit, of a taxi licence to be given to RMS and makes it an offence to fail to give the notice.

Clause 114 gives RMS power to transfer an ordinary taxi or hire car licence to another person on application by the holder. RMS may transfer any licence on application by the legal personal representative of the holder or a trustee of the holder's estate. A transferee or transferor may be required to provide information necessary to calculate transfer levy or register the transfer.

Clause 115 provides for a transfer levy on a transfer of a taxi licence, at a rate of 2.5% of the current market value of the licence. No levy is payable on a transfer of a taxi licence to a person entitled under a will or on intestacy of a holder of a licence. A transfer levy of \$500 will be payable on the transfer of a hire car licence.

Division 7 Variation, suspension or cancellation of licences

Clause 116 sets out the grounds on which RMS may vary, suspend or cancel a licence, including failure to comply with a condition of the licence, failure to comply with the proposed Act or the regulations, conducting the taxi service or hire car service for which the vehicle is used in a manner that causes danger to the public and having an insufficient third-party insurance policy for the vehicle. A taxi licence may also be varied, suspended or cancelled if the taxi contract determination in relation to drivers of the taxi has not been complied with or the taxi has not been made available in accordance with a taxi network or taxi booking service requirement that is reasonable and necessary for the taxi network or taxi booking service to comply with its obligations under the proposed Act.

Division 8 Determination of release of annual taxi licences

Clause 117 applies the proposed Division to annual taxi licences, other than licences for wheelchair accessible taxis.

Clause 118 requires TfNSW to make a determination about the number of annual taxi licences before 31 March in each year. A determination may limit the number and type of annual taxi licences that are to be issued to accredited drivers of taxis or operators of taxi services and limit the number of annual taxi licences that may be granted to the same or related applicants. TfNSW may seek expert advice about the matters it is required to consider and is to take into account any recommendation of the Independent Pricing and Regulatory Tribunal (*IPART*) when making a determination.

Clause 119 enables the Minister to refer to IPART, for report and recommendation, the number of annual taxi licences to be issued for the year commencing on the following 1 July.

Clause 120 sets out matters to be taken into account by TfNSW when making a determination about annual taxi licence numbers, including likely passenger demand and latent demand for taxi services and the viability and sustainability of the taxi industry.

Part 7 Passenger transport fares, concessions and fees

Division 1 Preliminary

Clause 121 defines an expression used in the proposed Part.

Division 2 Fares and other related matters

Clause 122 applies the proposed Division to public passenger services operated by corporations constituted under the *Transport Administration Act 1988*, taxi services, hire car services and services operated under passenger service contracts that provide for fares to be fixed.

Clause 123 enables the Minister to refer all or any services of a public passenger service to which the proposed Division applies to IPART for determination of or a recommendation as to appropriate maximum fares for the services or specified fares or classes of fares for the services.

Clause 124 sets out the requirements for IPART investigations and determinations or recommendations under the proposed Division and also enables IPART to report to the Minister on relevant matters that arise from an investigation. Provisions of the *Independent Pricing and Regulatory Tribunal Act 1992* containing investigation and reporting powers will apply to the investigations and determinations.

Clause 125 enables TfNSW, by order published in the Gazette (*a fares order*), to determine the maximum fares for a service or specified fares or classes of fares for a service of a public passenger service to which the proposed Division applies. A fares order may also approve other arrangements for remuneration in connection with a taxi service or a hire car service. A fares order may specify fares or the manner of calculating fares.

Clause 126 enables a fares order to specify the maximum amount of a taxi non-cash payment surcharge that may be charged for one hiring of a taxi. The taxi non-cash payment surcharge is a fee or charge that is added to the amount payable to hire a taxi because payment is by a debit, credit, pre-paid or charge card, or an amount payable by an owner, driver or operator of a taxi because an amount for a taxi hire is so paid.

Clause 127 makes certain persons guilty of an offence if a taxi non-cash payment surcharge is imposed in contravention of a fares order, including the person who imposed the charge, the owner or driver of the taxi, the operator of the taxi service, a person who provides or maintains enabling equipment and a person who manages or administers the system under which amounts due for the hiring may be paid by the use of a debit, credit, pre-paid or charge card. It will also be an offence to collect in a taxi, or initiate the collection in a taxi, of a taxi non-cash payment surcharge that contravenes a fares order. A defence to the offence is available to a defendant who did not, and

could not reasonably be expected to, know that another person had acted in contravention of the proposed section.

Division 3 Conditions of travel or ticketing

Clause 128 enables regulations to be made with respect to conditions of travel, conditions for the carriage of freight or other things and conditions for the provision of tickets for a public passenger service, other than a taxi service, hire car service or air transport service. The regulations may deem there to be a contract between a service operator and a passenger, for example, where the fare for a service is collected by using an Opal card.

Division 4 Concessions and subsidies

Clause 129 enables the Minister, by order published in the Gazette, to approve a scheme for Government subsidised travel on public passenger services or for other Government subsidised travel. An order may determine the classes of persons entitled to free travel or fare concessions for regulated services and other ancillary matters.

Clause 130 confers on TfNSW the function of administering or arranging for the administration of a scheme approved by the Minister under the proposed Division. TfNSW may (subject to the order of the Minister) determine conditions for the issue, cancellation and use of passes for free travel or fare concessions. Regulations may be made which provide that classes of persons are not entitled to free travel or fare concessions and have effect despite the Minister's determination or State anti-discrimination legislation.

Part 8 Safety information and investigations

Division 1 Bus safety information

Clause 131 enables RMS to require the operator of a bus service to provide to RMS information about safety measures, or safety, or a safety report and makes it an offence to fail to comply with the requirement. Information is to be given by RMS to the Chief Investigator if it relates to a transport accident or incident that may affect the safe provision of a bus service.

Clause 132 requires the operator of a bus service, or a person prescribed by the regulations, to report a notifiable occurrence that affects the bus service to RMS. The kinds of occurrences that are notifiable occurrences are to be prescribed by the regulations.

Division 2 Transport safety investigations

Clause 133 confers on the Chief Investigator power to investigate any transport accident or incident that may affect the safe provision of railway operations, a bus service or a ferry service. The Minister may also require the Chief Investigator to investigate and report to the Minister on any such accident or incident. The investigation (*a transport safety investigation*) of any such accident or incident may extend to all relevant events and circumstances preceding the accident or incident.

Clause 134 makes it clear that a transport safety investigation may be carried out and reported on whether or not any other investigation is or has been conducted under any other law (including a law of the Commonwealth) or the accident or incident is subject to other proceedings, a coroner's inquest or inquiry or an inquiry under the proposed Part (*a transport safety inquiry*).

Clause 135 enables the Chief Investigator to conduct a transport safety investigation in the manner the Chief Investigator thinks fit.

Clause 136 confers power on the Chief Investigator to require a person to attend to answer questions relating to a transport safety investigation or produce documents or other things relating to a transport safety investigation. A person who is required to answer questions may be required to answer on oath or affirmation.

Clause 137 requires the Chief Investigator to give the Minister a written report on a transport safety investigation, including any investigation discontinued by the Chief Investigator. A draft report may be given to the Minister or any other person before the report is completed if necessary for transport safety or to allow submissions about the form of the report or to give advance notice of its likely form.

Clause 138 makes it an offence to copy or disclose the contents of a draft report or recommendations relating to a transport safety investigation except where authorised by or under any Act or for the purposes of remedying safety issues or preparing a submission on the report or recommendations. A person provided with a draft report cannot be required to disclose it to a court and is not entitled to take any disciplinary action against an employee on the basis of the report.

Clause 139 provides that a current or former Chief Investigator or transport safety investigator is not obliged to comply with a subpoena or similar court direction relating to an accident or incident the subject of a transport safety investigation if the Chief Investigator has issued a certificate stating that the person is or was involved in the transport safety investigation.

Division 3 Transport safety inquiries

Clause 140 enables the Minister to constitute a Board of Inquiry to conduct a transport safety inquiry into a transport accident or incident or other event, occurrence, practice or matter that may affect the safe provision of railway operations, a bus service or a ferry service. The Minister may not terminate an inquiry. A transport safety inquiry may be carried out and reported on whether or not any other investigation is or has been conducted under any other law (including under a law of the Commonwealth) or the matter is subject to other proceedings or a coroner's inquest or inquiry.

Clause 141 enables the Chief Investigator to request the Minister to constitute a Board of Inquiry to conduct a transport safety inquiry. The Minister is to constitute the Board of Inquiry or to provide written reasons to the Chief Investigator for not doing so and table the request and reasons in each House of Parliament.

Clause 142 provides for the procedure of a Board of Inquiry, including conferring power on the Board to take evidence on oath.

Clause 143 provides for the Minister to appoint assessors to sit with a Board of Inquiry to advise the Board on any matter before the Board.

Clause 144 confers power on a Board of Inquiry to summon persons to appear before the Board to give evidence and to produce specified documents. A person so appearing may be required to be sworn or affirmed, produce a document or answer a question. It will be an offence, without reasonable excuse, to fail to comply with a requirement of a Board.

Clause 145 provides that a current or former member of a Board of Inquiry or authorised officer is not obliged to comply with a subpoena or similar court direction relating to a matter the subject of a transport safety inquiry if the Minister has issued a certificate stating that the person is or was involved in a transport safety inquiry.

Division 4 Transport safety investigators

Clause 146 enables the Chief Investigator to appoint an authorised person under the *Transport Administration Act 1988* as a transport safety investigator for the purpose of conducting a transport safety investigation. The investigator is to be issued with an identity card in a form approved by the Minister.

Clause 147 requires a transport safety investigator to carry his or her identity card when exercising a power of entry and to produce it if requested to do so by a person in relation to whom the investigator is exercising, or about to exercise, a power.

Clause 148 enables a transport safety investigator to exercise the investigation powers set out in proposed Part 1 of Schedule 1 if the investigator believes on reasonable grounds that it is necessary to do so for the purposes of, or in connection with, a transport safety investigation.

Division 5 Miscellaneous

Clause 149 requires a report on a transport safety investigation or a transport safety inquiry to be laid before both Houses of Parliament by the Minister within 7 days of receiving it and provides for the procedure if a House is not sitting when the Minister seeks to lay a report before it.

Clause 150 enables the Chief Investigator to establish a voluntary reporting system for transport safety employees or rail safety employees to report matters that may affect the safe provision of railway operations, a ferry service or a bus service. Information provided may not be disclosed without consent or unless the Chief Investigator or a court is of the opinion that it is necessary in the public interest.

Clause 151 enables the Minister, in consultation with RMS, by written order, to direct a person who carries on a ferry service to comply with a recommendation of a report on a transport safety investigation or transport safety inquiry and makes it an offence, without reasonable excuse, to fail to comply with an order.

Part 9 Enforcement

Division 1 Authorised officers

Clause 152 provides for TfNSW to appoint authorised officers to exercise the functions of authorised officers under the proposed Act for matters related to the enforcement of passenger service contracts and other matters.

Clause 153 provides for RMS to appoint authorised officers to exercise the functions of authorised officers under the proposed Act for matters related to the functions of RMS.

Clause 154 enables TfNSW or RMS, for the purposes of a specified bus or ferry accident or incident, to appoint a person exercising powers, or holding office, under a Commonwealth Act as an authorised officer.

Clause 155 specifies that the relevant instrument of appointment of an authorised officer may limit the authority of the officer.

Clause 156 requires TfNSW or RMS to issue an authorised officer with an identity card in a form approved by the Minister.

Clause 157 requires an authorised officer to carry his or her identity card when exercising a power of entry and to produce it if requested to do so by a person in relation to whom the officer is exercising, or about to exercise, a power.

Clause 158 enables an authorised officer to exercise the investigation powers set out in proposed Part 2 of Schedule 1 if the officer believes on reasonable grounds that it is necessary to do so for the purposes of an inspection, transport safety inquiry or other inquiry or to determine whether the Act, regulations, an accreditation, a driver authority, a licence or a passenger service contract or the requirement or exemption under the proposed Act has been contravened.

Clause 159 enables RMS to cause inspections to be carried out to ensure that the operator of a public passenger service (other than a service provided by an aircraft) is complying with the terms of the operator's accreditation and any requirements relating to the safety management system. RMS and TfNSW may also cause inspections to be carried out to ensure that the operator of a public passenger service is complying with a passenger service contract.

Division 2 Offences

Clause 160 makes it an offence to hinder or obstruct an authorised officer or a transport safety investigation officer so as to interfere with the exercise of their functions under the proposed Act, to fail to provide reasonable assistance to any such officer who enters a place or land when exercising those functions, to fail to answer questions or provide information to any such officer exercising those functions or to fail to produce documents or other things for inspection by any such officer when required to do so by any such officer when exercising those functions.

Clause 161 makes it an offence for a person to obtain or attempt to obtain an accreditation, driver authority or licence under the proposed Act by a statement or misrepresentation that the person knows to be false or misleading. It will also be an offence to forge or fraudulently use an accreditation, driver authority or licence under the proposed Act or to fraudulently allow it to be used by another person.

Clause 162 enables an authorised officer to require a person to state his or her full name and address if the authorised officer reasonably suspects the person to be committing or to have committed an offence under the proposed Act or the regulations or an offence against the *Graffiti Control Act 2008* on railway premises or finds the person in circumstances or has information that leads the officer to reasonably suspect that the person has committed such an offence. It will be an offence to refuse to give the information or to state a wrong name or residential address. A person will not be guilty of an offence unless the person is warned that a failure to comply is an offence and the officer has identified himself or herself as an authorised officer.

Clause 163 prohibits the advertisement of a commercial service involving the use of a vehicle if the service is of a kind that is required to be accredited under the proposed Act or the vehicle is of a kind that is required to be licensed under the proposed Act, and there is no accreditation or licence.

Clause 164 makes it an offence for a person to whom an accreditation, driver authority or licence under the proposed Act was granted not to immediately return the accreditation, driver authority or licence to RMS if it is cancelled. It will also be an offence for a person to whom a taxi or hire car licence was granted not to return the number-plates allocated to the vehicle under the licence to RMS or the Commissioner of Police within 7 days of the suspension or cancellation or the licence ceasing to have effect.

Division 3 Proceedings for offences

Clause 165 provides that a director of a corporation or a person concerned in the management of a corporation is taken to have contravened a provision contravened by the corporation if the director or person knowingly authorised or permitted the contravention. The director or person may be proceeded against for the contravention whether or not the corporation has been proceeded against or convicted.

Clause 166 enables penalty notices to be issued for offences that are prescribed by the regulations.

Clause 167 provides for proceedings for offences under the proposed Act or regulations to be dealt with summarily before the Local Court or the Supreme Court and limits the maximum penalty that may be imposed by the Local Court for an offence to 500 penalty units (\$55,000).

Clause 168 enables a court to impose an additional penalty amount, not exceeding 250 penalty units (\$27,500), for an offence committed on or in relation to railway premises, if satisfied that the actions of the offender caused or contributed to appreciable danger or harm or were reasonably likely to cause or contribute to such danger or harm.

Part 10 Miscellaneous

Clause 169 enables an application to be made to the Civil and Administrative Tribunal for an administrative review of a decision to refuse an application for an accreditation, driver authority or licence, to suspend or cancel an accreditation, driver authority or licence, to vary a condition of an accreditation, driver authority or licence or to impose or revoke a condition of an accreditation, driver authority or licence.

Clause 170 enables RMS and TfNSW to enter into information sharing arrangements with each other, WorkCover, the Chief Investigator, the Commissioner of Police and equivalent persons in other jurisdictions, IPART or other bodies prescribed by the regulations to share information about possible breaches of the proposed Act or the safe provision of public passenger services and other matters.

Clause 171 permits RMS or TfNSW to disclose, or permit the disclosure of, information about the accreditation, authorisation or licensing status of an identified person if it is reasonably necessary for the purposes of the proposed Act or regulations.

Clause 172 requires RMS and TfNSW to keep records relating to accreditations, authorities, authorisations or licences granted by them and provides for the issue and use of evidentiary certificates as to particulars of accreditations, authorities, authorisations or licences kept in those records.

Clause 173 requires the operator of a ferry service to prepare and implement a drug and alcohol program and ensure that its transport safety employees are not under the influence of alcohol or any drug when about to carry out, or while on duty for the purposes of carrying out, transport safety work. RMS may also arrange for random testing of employees who are on duty. Proposed Schedule 2 contains regulation-making powers relating to drug and alcohol testing procedures and offences.

Clause 174 enables fees, charges or levies payable under the proposed Act to be recovered by RMS or TfNSW as a debt in a court of competent jurisdiction and makes it clear that the amount of a fee for a taxi licence or hire car licence may exceed the amount required to cover administrative or other costs.

Clause 175 provides for the manner in which documents are to be served under the proposed Act.

Clause 176 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 177 enables a regulation that creates an offence relating to the carrying out of transport safety work under the influence of alcohol or any other drug or to tests given to transport safety employees relating to alcohol or any other drug to be punishable by a period of imprisonment not exceeding 9 months. The proposed section also applies provisions of the *Road Transport Act 2013* to the measurement of the concentration of alcohol in a person's breath or blood for the purposes of regulations under the proposed Act.

Clause 178 provides that compensation is not payable by or on behalf of the State because of the enactment or operation of the proposed Act or any statement or conduct relating to the enactment or operation of the proposed Act.

Clause 179 repeals the *Air Transport Act 1964* and the *Passenger Transport Act 1990*.

Clause 180 provides for the review of the proposed Act in 5 years.

Schedule 1 Investigation and inspection powers

Part 1 Powers of transport safety investigators

Part 1 sets out the powers of transport safety investigators when conducting an investigation, including powers of entry, powers on premises and vehicles, powers to secure a site, powers to stop and detain vehicles, powers relating to documents and other material seized and power to obtain search warrants.

Part 2 Powers of authorised officers

Part 2 sets out the powers of authorised officers when conducting an investigation, inspection or inquiry, including powers of entry, powers in premises and vehicles, powers to secure a site, powers to stop and detain vehicles, powers relating to the production of documents and other material, powers relating to documents and other material seized and power to obtain search warrants.

Part 3 General provisions about investigation powers

Part 3 contains general provisions relating to the exercise of functions by transport safety investigators or authorised officers, including a requirement that no more than reasonable force be

used, that compensation be paid for certain damage caused by transport safety investigators or authorised officers and a provision relating to protections against self-incrimination.

Schedule 2 Regulation-making powers

Schedule 2 sets out the matters about which regulations may be made for the purposes of the proposed Act.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 4 Amendment of Acts

Schedule 4 amends the Acts specified in the Schedule as a consequence of the enactment of the proposed Act.