

TASMANIA

TAXI AND LUXURY HIRE CAR INDUSTRIES AMENDMENT BILL 2011

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TAXI AND LUXURY HIRE CAR INDUSTRIES AMENDMENT BILL 2011

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
22 November 2011

*(Brought in by the Minister for Sustainable Transport, the
Honourable Nicholas James McKim)*

A BILL FOR

An Act to amend the *Taxi and Luxury Hire Car Industries Act 2008*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Taxi and Luxury Hire Car Industries Amendment Act 2011*.

2. Commencement

- (1) Section 1 and this section commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day to be proclaimed.

THIS BILL IS COGNATE WITH THE PASSENGER TRANSPORT SERVICES BILL 2011 AND THE PASSENGER TRANSPORT AND RELATED LEGISLATION (CONSEQUENTIAL AMENDMENTS) BILL 2011

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3. Principal Act

In this Act, the *Taxi and Luxury Hire Car Industries Act 2008** is referred to as the Principal Act.

4. Long title amended

The long title of the Principal Act is amended by omitting “**and luxury hire car**” and substituting “**, luxury hire car and restricted hire vehicle**”.

5. Section 1 amended (Short title)

Section 1 of the Principal Act is amended by omitting “*Luxury Hire Car*” and substituting “*Hire Vehicle*”.

6. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “accredited operator” and substituting the following definitions:

“accreditation” means accreditation, under the *Passenger Transport Services Act 2011*, in respect of a passenger transport service;

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“accredited operator” means a person holding accreditation;

- (b) by omitting the definition of “AS 2942”;
- (c) by inserting the following definition after the definition of “AS 3856”:

“AS/NZS 10542.1:2009” means
AS/NZS 10542.1:2009
“Technical systems and aids for disabled or handicapped persons – Wheelchair tiedown and occupant-restraint systems” issued and published by Standards Australia and Standards New Zealand, as amended or substituted from time to time;

- (d) by inserting the following definition after the definition of “fund”:

“general rhv service” – see section 84C(4);

- (e) by omitting “provide” from the definition of “inactive” and substituting “operate”;
- (f) by inserting the following definition after the definition of “inactive”:

“in advance”, in relation to the hiring of a motor vehicle, means that the hiring and the terms of the hiring are agreed by the parties in advance of, not at or just before,

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the time at which the motor
vehicle is actually used for the
hiring;

- (g) by omitting “or a luxury hire car licence” from the definition of “licence” and substituting “, a luxury hire car licence or a restricted hire vehicle licence”;
- (h) by omitting the definitions of “limited passenger service” and “luxury hire car” and substituting the following definition:

“luxury hire car” means a motor
vehicle that is –

- (a) approved under section 73 for use as a luxury hire car; and
 - (b) operating under the authority of a luxury hire car licence;
- (i) by omitting the definition of “luxury hire car service” and substituting the following definition:

“luxury hire car service” – see
section 67A;

- (j) by inserting the following definition after the definition of “owner-operator taxi licence”:

“passenger transport service” means
a passenger transport service

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within the meaning of the
Passenger Transport Services Act
2011;

- (k) by omitting the definitions of “public passenger service” and “public passenger vehicle”;
- (l) by inserting the following definition after the definition of “regulations”:

“relevant accreditation”, in relation to a taxi service, luxury hire car service or restricted hire vehicle service, means accreditation in respect of a passenger transport service whose operations are in the nature of a taxi service, luxury hire car service or restricted hire vehicle service;

- (m) by omitting the definition of “small passenger vehicle” and substituting the following definitions:

“restricted hire vehicle” means a motor vehicle that is operating under the authority of a restricted hire vehicle licence;

“restricted hire vehicle licence” means a restricted hire vehicle licence referred to in Part 4A;

“restricted hire vehicle service” – see section 84B;

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“small passenger vehicle” has the same meaning as in the *Passenger Transport Services Act 2011*;

“specific rhv service” – see section 84C(4);

- (n) by omitting “taxi” second occurring from the definition of “substitute wheelchair-accessible taxi” and substituting “vehicle”;
- (o) by omitting the definition of “taxi” and substituting the following definition:

“taxi” means a motor vehicle that is operating under the authority of a taxi licence;

- (p) by omitting the definition of “taxi driver”;
- (q) by omitting the definition of “taxi service” and substituting the following definition:

“taxi service” – see section 9A;

- (r) by inserting the following definition after the definition of “temporary taxi licence”:

“tour” – see section 3A;

7. Section 3A inserted

After section 3 of the Principal Act, the following section is inserted in Part 1:

3A. Meaning of “tour”

- (1) For the purposes of this Act, a tour is a passenger transport service operated exclusively for tourists, not commuters, according to a publicly advertised route or itinerary.
- (2) Any question or dispute as to whether a particular passenger transport service is a tour is to be determined by the Commission, and the determination is binding.
- (3) In determining whether a particular passenger transport service is a tour, the Commission may have regard to –
 - (a) whether tourism is a major and regular feature or focus of the service or merely a minor or incidental feature or focus of the service; and
 - (b) whether the service stops at or diverts to points of relevant interest or provides essentially uninterrupted and direct transportation; and
 - (c) whether points of relevant interest appear to be determinative of and

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integral to the route, or merely incidental points of passage en route; and

- (d) the passenger profile including, in particular, whether users of the service appear to be pursuing mainly tourism activities or merely seeking personal transportation; and
 - (e) whether the passengers are taken on to or back to tourist accommodation or a tourism travel connection, or on to or back to a place of no tourism significance; and
 - (f) the scale and nature of any associated promotional activities including, in particular, whether the service is advertised as a tour or merely as passenger transport; and
 - (g) whether the service appears to be regarded as a tour by the tourism industry; and
 - (h) such other factors as the Commission reasonably considers relevant.
- (4) In this section –
- “passenger transport service”**
includes –

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(a) any part of such a service;
and

(b) any group of such
services;

“points of relevant interest” means
points of cultural, historic,
professional, scenic, scientific or
sporting interest;

“tourist” includes sightseer.

8. Section 4 amended (Intent of Act)

Section 4 of the Principal Act is amended by
omitting subsections (1) and (2) and substituting
the following subsections:

- (1) The intent of this Act in respect of taxi
services is to promote a safe, demand-
responsive, taxi transport system that
adequately meets the needs of consumers
and is appropriately licensed.
- (2) The intent of this Act in respect of luxury
hire car services and restricted hire
vehicle services is to ensure that such
services are appropriately licensed.

9. Section 4A inserted

After section 4 of the Principal Act, the
following section is inserted in Part 1:

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4A. Act does not derogate from *Passenger Transport Service Act 2011*

Nothing in this Act derogates from the requirements of the *Passenger Transport Services Act 2011*.

10. Section 7 amended (Commission subject to control of Minister)

Section 7(6) of the Principal Act is amended by omitting “or a luxury hire car licence.” and substituting “, luxury hire car licence or restricted hire vehicle licence.”.

11. Part 3, Division 1 substituted

Division 1 of Part 3 of the Principal Act is repealed and the following Division is substituted:

Division 1 – Preliminary

9. Effect of taxi licence

- (1) A taxi licence authorises the responsible operator of the taxi licence to operate a taxi service under and in accordance with this Act.
- (2) There are 4 kinds of taxi licence as follows:

- (a) a perpetual taxi licence – see Division 2;
- (b) an owner-operator taxi licence – see Division 3;
- (c) a wheelchair-accessible taxi licence – see Division 4;
- (d) a temporary taxi licence – see Division 5.

9A. What is a taxi service?

For the purposes of this Act, a taxi service is a passenger transport service under which the motor vehicle used to operate the service is able to be hired on demand in each of the following ways:

- (a) from a taxi zone;
- (b) by being hailed;
- (c) by being booked or ordered.

9B. Motor vehicle presumed not to be operating as taxi unless licence number plate is affixed

- (1) For the purposes of this Act, a motor vehicle is not taken to be operating under the authority of a taxi licence in any circumstances unless the relevant licence number plate is affixed to the motor vehicle.

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(2) In this section –

“relevant licence number plate”, of a motor vehicle, means the licence number plate issued under section 89 to the holder or, as the case may be, owner of the relevant taxi licence.

12. Section 10 amended (Effect of perpetual taxi licence)

Section 10(2) of the Principal Act is amended by omitting “or assigned”.

13. Section 11 substituted

Section 11 of the Principal Act is repealed and the following section is substituted:

11. Responsible operator of leased perpetual taxi licence

- (1) Subject to this section, the responsible operator of a perpetual taxi licence is –
 - (a) the owner of the licence; or
 - (b) if the owner of the licence has leased it, the person who is leasing the licence.
- (2) A person who is leasing a perpetual taxi licence is not capable of being recorded on the register of licences as the

responsible operator of the licence unless the person holds relevant accreditation.

- (3) An entry purportedly made in the register of licences contrary to subsection (2) is null and void.
- (4) If the owner of a perpetual taxi licence leases it to a person who does not hold relevant accreditation, the owner of the licence is taken to remain the responsible operator of the licence.

14. Section 13 amended (Annual administration fee)

Section 13 of the Principal Act is amended by inserting “the Commission” after “pay”.

15. Section 22 amended (Issue of owner-operator taxi licences)

Section 22 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) On issuing an owner-operator taxi licence, the Commission may impose such conditions on the licence as it considers necessary or expedient.

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16. Section 24 amended (Application for owner-operator taxi licence)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (2) and substituting the following paragraph:
 - (b) the person holds relevant accreditation; and
- (b) by omitting from subsection (2)(c) “that is not being used to provide” and substituting “and is not being used to operate”;
- (c) by omitting from subsection (3) “provided” and substituting “operated”.

17. Sections 27 and 28 substituted

Sections 27 and 28 of the Principal Act are repealed and the following sections are substituted:

27. Prohibition on leasing owner-operator taxi licence

- (1) An owner-operator taxi licence is not capable of being leased and any agreement purporting to do so is, to that extent, void and unenforceable.

- (2) If the Commission is satisfied that the holder of an owner-operator taxi licence has entered into an agreement purporting to lease the licence to another person or an agreement purporting to permit another person to operate a taxi service under the authority of the licence, the Commission is to cancel the licence in accordance with section 36.
- (3) A person who in any capacity enters into an agreement of a kind referred to in subsection (2) is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units.

- (4) In this section –

“**agreement**” means an oral or written agreement.

28. Owner-operator taxi licence conditions

- (1) At any time after an owner-operator taxi licence is issued, the Commission may –
 - (a) impose such conditions on the licence as it considers necessary or expedient; or
 - (b) vary or revoke any conditions of the licence.
- (2) Before exercising its power under subsection (1), the Commission is to –

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- (a) give the holder of the owner-operator taxi licence notice in writing of its intention and a reasonable opportunity to make representations thereon; and
 - (b) take any such representations into account.
- (3) On exercising its power under subsection (1), the Commission may recall the licence and issue the holder of the licence with a free replacement.
- (4) The holder of an owner-operator taxi licence must not contravene the conditions of the licence.

Penalty: Fine not exceeding 50 penalty units.

18. Section 29 amended (Annual administration fee)

Section 29 of the Principal Act is amended by inserting “the Commission” after “pay”.

19. Section 31 amended (Transfer of owner-operator taxi licence to another person)

Section 31 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “If the holder of an owner-operator taxi licence

wishes to transfer the licence to another person, the holder” and substituting “The holder of an owner-operator taxi licence who wishes to transfer it to another person”;

(b) by omitting paragraphs (b) and (c) from subsection (2) and substituting the following paragraphs:

(b) holds relevant accreditation; and

(c) is the registered operator of a vehicle that is suitable for use as a taxi and not being used to operate a taxi service under the authority of another taxi licence; and

(d) has no outstanding fees due to the Commission;

20. Section 34 amended (Inactive owner-operator taxi licence)

Section 34 of the Principal Act is amended as follows:

(a) by omitting paragraph (a) from subsection (3) and substituting the following paragraph:

(a) transfer the licence to a person who holds relevant accreditation; or

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(b) by omitting paragraph (a) from subsection (4) and substituting the following paragraph:

(a) transfer the licence to a person who holds relevant accreditation;
or

21. Section 35 amended (Cancellation of accreditation)

Section 35 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “in accordance with Part 2A of the *Passenger Transport Act 1997*”;

(b) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:

(a) transfer that licence to a person who holds relevant accreditation within the period specified in the notice; or

(c) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:

(a) transfer the licence to a person who holds relevant accreditation;
or

22. Section 36 amended (Suspension or cancellation of owner-operator taxi licence)

Section 36 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) Before exercising its powers under subsection (1), the Commission is to –
 - (a) give the holder of the owner-operator taxi licence notice in writing of its intention and a reasonable opportunity to make representations to the Commission thereon; and
 - (b) take any such representations into account.

23. Section 40 amended (Issue of wheelchair-accessible taxi licences)

Section 40 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) On issuing a wheelchair-accessible taxi licence, the Commission –
 - (a) may impose such conditions on the licence as it considers necessary or expedient; and

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- (b) is to specify, in the licence, the vehicle that may be used under the licence.

24. Section 41 amended (Application for wheelchair-accessible taxi licence)

Section 41 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:
 - (a) the person holds relevant accreditation; and
- (b) by inserting in subsection (3)(a)(i) “approved for use under Schedule 1 as” after “area,”;
- (c) by inserting in subsection (3)(a)(ii) “approved for use under Schedule 1 as” after “area,”.

25. Section 44 substituted

Section 44 of the Principal Act is repealed and the following section is substituted:

44. Prohibition on leasing wheelchair-accessible taxi licence

- (1) A wheelchair-accessible taxi licence is not capable of being leased and any

agreement purporting to do so is, to that extent, void and unenforceable.

- (2) If the Commission is satisfied that the holder of a wheelchair-accessible taxi licence has entered into an agreement purporting to lease the licence to another person or an agreement purporting to permit another person to operate a taxi service under the authority of the licence, the Commission is to cancel the licence in accordance with section 55.
- (3) A person who in any capacity enters into an agreement of a kind referred to in subsection (2) is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units.

- (4) In this section –

“**agreement**” means an oral or written agreement.

26. Section 45 amended (Vehicle to be used under authority of wheelchair-accessible taxi licence)

Section 45 of the Principal Act is amended by omitting “provide” and substituting “operate”.

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27. Section 46 substituted

Section 46 of the Principal Act is repealed and the following section is substituted:

46. Wheelchair-accessible taxi licence conditions

- (1) At any time after a wheelchair-accessible taxi licence is issued, the Commission may –
 - (a) impose such conditions on the licence as it considers necessary or expedient; or
 - (b) vary or revoke any conditions of the licence.
- (2) Before exercising its power under subsection (1), the Commission is to –
 - (a) give the holder of the licence notice in writing of its intention and a reasonable opportunity to make representations thereon; and
 - (b) take any such representations into account.
- (3) On exercising its power under subsection (1), the Commission may recall the licence and issue the holder of the licence with a free replacement.
- (4) The holder of a wheelchair-accessible taxi licence must not contravene the conditions of the licence.

Penalty: Fine not exceeding 50 penalty units.

28. Section 47 amended (Annual administration fee)

Section 47 of the Principal Act is amended by inserting “the Commission” after “pay”.

29. Section 49 amended (Transfer of wheelchair-accessible taxi licence to another person)

Section 49 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “If the holder of a wheelchair-accessible taxi licence wishes to transfer the licence to another person, the holder” and substituting “The holder of a wheelchair-accessible taxi licence who wishes to transfer it to another person”;
- (b) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:
 - (a) holds relevant accreditation; and
- (c) by omitting from subsection (2)(b) “relates.” and substituting “relates; and”;
- (d) by inserting the following paragraph after paragraph (b) in subsection (2):

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- (c) has no outstanding fees due to the Commission.

30. Section 50 amended (Transfer of wheelchair-accessible taxi licence to another vehicle)

Section 50 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “If the holder of a wheelchair-accessible taxi licence wishes to transfer the licence to another vehicle, the holder of the licence” and substituting “The holder of a wheelchair-accessible taxi licence who wishes to transfer it to another vehicle”;
- (b) by inserting in subsection (2)(a) “other” after “the”;
- (c) by inserting in subsection (2)(b) “other” after “of the”.

31. Section 51 amended (Substitute wheelchair-accessible taxis)

Section 51(2) of the Principal Act is amended by inserting “, if any” after “fee”.

32. Section 54 amended (Cancellation of accreditation)

Section 54 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “in accordance with Part 2A of the *Passenger Transport Act 1997*”;
- (b) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:
 - (a) transfer the licence to a person who holds relevant accreditation within the period specified in the notice; or
- (c) by omitting from subsection (1)(b) “that” and substituting “the”;
- (d) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:
 - (a) transfer the licence to a person who holds relevant accreditation; or

33. Section 55 amended (Suspension or cancellation of wheelchair-accessible taxi licence)

Section 55 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) Before exercising its power under subsection (1), the Commission is to –
 - (a) give the holder of the wheelchair-accessible taxi licence notice in

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writing of its intention and a reasonable opportunity to make representations thereon; and

- (b) take any such representations into account.

34. Section 59 amended (Application for temporary taxi licence)

Section 59 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsection:

- (2) The Commission may issue a person with a temporary taxi licence if it is satisfied that the person –

- (a) holds relevant accreditation; and

- (b) has no outstanding fees due to the Commission.

- (b) by inserting in subsection (5) “approved for use as” after “used is”.

35. Section 62 amended (Temporary taxi licence conditions)

Section 62(2) of the Principal Act is amended by omitting “or fail to comply with”.

36. Section 67 substituted

Section 67 of the Principal Act is repealed and the following section is substituted:

67. Effect of luxury hire car licence

- (1) A luxury hire car licence authorises the holder of the licence to operate a luxury hire car service using the motor vehicle specified in the licence.
- (2) Unless the Commission authorises otherwise, a luxury hire car licence does not authorise the motor vehicle operating under the licence to stand for hire in a public street.

37. Section 67A inserted

After section 67 of the Principal Act, the following section is inserted in Part 4:

67A. What is a luxury hire car service?

- (1) A luxury hire car service is a passenger transport service under which –
 - (a) a person (“**service operator**”) hires out a motor vehicle together with a driver; and
 - (b) the motor vehicle so hired out is approved under section 73 for use as a luxury hire car; and

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- (c) unless the Commission authorises otherwise, the hiring is booked and accepted in advance; and
 - (d) the hiring is booked and accepted otherwise than under the authority of a taxi licence or restricted hire vehicle licence.
- (2) To avoid doubt, it is immaterial for the purposes of subsection (1) whether the driver of the motor vehicle is the service operator or an employee or agent of the service operator.

38. Section 68 amended (Issue of luxury hire car licences)

Section 68 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) On issuing a luxury hire car licence, the Commission –
 - (a) may impose such conditions on the licence as it considers necessary or expedient; and
 - (b) is to specify, in the licence, the motor vehicle that may be used under the licence.

39. Section 69 amended (Application for luxury hire car licence)

Section 69 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) The licence fee under subsection (1) is a fixed dollar amount and is not subject to the *Fee Units Act 1997*.

- (b) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:

(a) the person holds relevant accreditation; and

- (c) by omitting from subsection (3) “to be provided” and substituting “proposed to be operated”;
- (d) by omitting from subsection (4) “a luxury hire car.” and substituting “approved, under section 73, for use as a luxury hire car.”.

40. Section 72 substituted

Section 72 of the Principal Act is repealed and the following section is substituted:

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72. Prohibition on leasing luxury hire car licence

- (1) A luxury hire car licence is not capable of being leased and any agreement purporting to do so is, to that extent, void and unenforceable.
- (2) If the Commission is satisfied that the holder of a luxury hire car licence has entered into an agreement purporting to lease the licence to another person or an agreement purporting to permit another person to operate a luxury hire car service under the authority of the licence, the Commission is to cancel the licence in accordance with section 82.
- (3) A person who in any capacity enters into an agreement of a kind referred to in subsection (2) is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units.

- (4) In this section –

“agreement” means an oral or written agreement.

41. Section 74 substituted

Section 74 of the Principal Act is repealed and the following section is substituted:

74. Luxury hire car licence conditions

- (1) At any time after a luxury hire car licence is issued, the Commission may –
 - (a) impose such conditions on the licence as it considers necessary or expedient; or
 - (b) vary or revoke any conditions of the licence.
- (2) Before exercising its power under subsection (1), the Commission is to –
 - (a) give the holder of the licence notice in writing of its intention and a reasonable opportunity to make representations thereon; and
 - (b) take any such representations into account.
- (3) On exercising its power under subsection (1), the Commission may recall the licence and issue the holder of the licence with a free replacement.
- (4) The holder of a luxury hire car licence must not contravene the conditions of the licence.

Penalty: Fine not exceeding 50 penalty units.

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42. Section 75 amended (Annual administration fee)

Section 75 of the Principal Act is amended by inserting “the Commission” after “pay”.

43. Section 77 amended (Transfer of luxury hire car licence to another person)

Section 77 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “If the holder of a luxury hire car licence wishes to transfer the licence to another person, the holder” and substituting “The holder of a luxury hire car licence who wishes to transfer it to another person”;
- (b) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:
 - (a) holds relevant accreditation; and
- (c) by omitting from subsection (2)(b) “relates.” and substituting “relates; and”;
- (d) by inserting the following paragraph after paragraph (b) in subsection (2):
 - (c) has no outstanding fees due to the Commission.

44. Section 78 amended (Transfer of luxury hire car licence to another vehicle)

Section 78 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “If the holder of a luxury hire car licence wishes to transfer the licence to another vehicle, the holder of the licence” and substituting “The holder of a luxury hire car licence who wishes to transfer it to another vehicle”;
- (b) by omitting subsection (2) and substituting the following subsection:
 - (2) The Commission may approve the transfer if –
 - (a) the other vehicle is approved, under section 73, for use as a luxury hire car; and
 - (b) the applicant is the registered operator of the other vehicle.

45. Section 81 amended (Cancellation of accreditation)

Section 81 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:

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(1) If the Commission cancels the accreditation of the holder of a luxury hire car licence, the Commission, by notice in writing given to the holder of the licence, is to require the holder of the licence to –

(a) transfer the licence to a person who holds relevant accreditation within the period specified in the notice; or

(b) surrender the licence to the Commission within the period specified in the notice.

(b) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:

(a) transfer the licence to a person who holds relevant accreditation; or

46. Section 82 amended (Suspension or cancellation of luxury hire car licence)

Section 82 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) Before exercising its power under subsection (1), the Commission is to –
 - (a) give the holder of the luxury hire car licence notice in writing of its intention and a reasonable opportunity to make representations thereon; and
 - (b) take any such representations into account.

47. Section 84 repealed

Section 84 of the Principal Act is repealed.

48. Part 4A inserted

Before the heading to Part 5 of the Principal Act, the following Part is inserted:

PART 4A – RESTRICTED HIRE VEHICLE LICENCES

84A. Effect of restricted hire vehicle licence

- (1) A restricted hire vehicle licence authorises the holder of the licence to operate a restricted hire vehicle service.
- (2) Unless the Commission authorises otherwise, a restricted hire vehicle licence does not authorise a small passenger vehicle operating under the licence to stand for hire in a public street.

84B. What is a restricted hire vehicle service?

- (1) A restricted hire vehicle service is a passenger transport service under which –
 - (a) a person (“**service operator**”) hires out a small passenger vehicle, together with a driver; and
 - (b) unless the Commission authorises otherwise, the hiring is booked and accepted in advance; and
 - (c) the hiring is booked and accepted otherwise than under the authority of a taxi licence or luxury hire car licence.
- (2) To avoid doubt, it is immaterial for the purposes of subsection (1) whether the driver of the small passenger vehicle is the service operator or an employee or agent of the service operator.

84C. Categories of restricted hire vehicle services

- (1) There are 2 categories of restricted hire vehicle services as follows:
 - (a) general rhv services;
 - (b) specific rhv services.

- (2) A small passenger vehicle is not capable of being used to operate a general rhv service under the authority of a restricted hire vehicle licence unless that vehicle –
- (a) has been approved for such use by the Commission under section 84I; and
 - (b) is specified in the licence.
- (3) Any small passenger vehicle may be used to operate a specific rhv service under the authority of a restricted hire vehicle licence, regardless of whether that vehicle –
- (a) has, under section 84I or in any other respect, been approved by the Commission; or
 - (b) is specified in the licence.
- (4) In this section –
- “general rhv service”** means a hiring-out of the kind referred to in section 84B(1) for any purpose;
- “specific rhv service”** means a hiring-out of the kind referred to in section 84B(1), but only if the hiring-out is for the purposes of –
- (a) a wedding; or

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- (b) a school, college or university ball, formal or leaver's function; or
- (c) a funeral; or
- (d) a tour; or
- (e) an occasion or event prescribed by the regulations.

84D. Issue of restricted hire vehicle licence

- (1) The Commission may issue restricted hire vehicle licences.
- (2) On issuing a restricted hire vehicle licence, the Commission –
 - (a) may impose such conditions on the licence as it considers necessary or expedient; and
 - (b) in the case of a licensee proposing to operate general rhv services, is to specify in the licence the small passenger vehicle that may be used under the licence.

84E. Application for restricted hire vehicle licence

- (1) An application for a restricted hire vehicle licence is to be made in a form

approved by the Commission and is to be accompanied by –

- (a) the prescribed application fee;
and
 - (b) a licence fee of 70 fee units.
- (2) The Commission is not to issue a restricted hire vehicle licence to a person unless it is satisfied that –
- (a) the person holds relevant accreditation; and
 - (b) the person has no outstanding fees due to the Commission.
- (3) The Commission is to refuse an application for a restricted hire vehicle licence if the Commission is not satisfied that the applicant would be the operator of the restricted hire vehicle service proposed to be operated under the authority of the licence.

84F. Responsible operator of restricted hire vehicle licence

The holder of a restricted hire vehicle licence is the responsible operator of that licence.

84G. Misrepresentation of person as holder of restricted hire vehicle licence

A person who does not hold a restricted hire vehicle licence must not hold himself or herself out to be the holder of a restricted hire vehicle licence or the operator of a restricted hire vehicle service.

Penalty: Fine not exceeding 100 penalty units.

84H. Prohibition on leasing restricted hire vehicle licence

- (1) A restricted hire vehicle licence is not capable of being leased and any agreement purporting to do so is, to that extent, void and unenforceable.
- (2) If the Commission is satisfied that the holder of a restricted hire vehicle licence has entered into an agreement purporting to lease the licence to another person or an agreement purporting to permit another person to operate a restricted hire vehicle service under the authority of the licence, the Commission is to cancel the licence in accordance with section 84P.
- (3) A person who in any capacity enters into an agreement of a kind referred to in subsection (2) is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units.

(4) In this section –

“agreement” means an oral or written agreement.

84I. Approval of certain restricted hire vehicles

(1) The Commission may approve a motor vehicle for use as a restricted hire vehicle for general rhv services if the Commission is satisfied that the motor vehicle –

(a) is a small passenger vehicle; and

(b) is a suitable vehicle; and

(c) meets the prescribed requirements, if any.

(2) An application for the approval of a vehicle for use as a restricted hire vehicle for general rhv services is to be made in a form approved by the Commission.

(3) A motor vehicle that is used for specific rhv services is not required to be approved by the Commission.

(4) In this section –

“suitable vehicle” means –

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- (a) a motor vehicle that is unique, classic or customised and more than 30 years old; or
- (b) a “street-rod”, being a motor vehicle that has been modified for safe road use and –
 - (i) has a body and frame that were built before 1949; or
 - (ii) is a replica of a motor vehicle whose body and frame were built before 1949; or
- (c) a veteran or vintage motor vehicle; or
- (d) a motor cycle or tricycle; or
- (e) a motor vehicle prescribed by the regulations (whether by reference to a particular motor vehicle or by reference to type, construction, capabilities, use or other criteria).

84J. Restricted hire vehicle licence conditions

- (1) At any time after a restricted hire vehicle licence is issued, the Commission may –

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- (a) impose such conditions on the licence as it considers necessary or expedient; or
 - (b) vary or revoke any conditions of the licence.
- (2) Before exercising its power under subsection (1), the Commission is to –
 - (a) give the holder of the licence notice in writing of its intention to impose, vary or revoke the conditions and a reasonable opportunity to make representations thereon; and
 - (b) take any such representations into account.
- (3) On exercising its power under subsection (1), the Commission may recall the licence and issue the holder of the licence with a free replacement.
- (4) The holder of a restricted hire vehicle licence must not contravene the conditions of the licence.

Penalty: Fine not exceeding 50 penalty units.

84K. Transfer of restricted hire vehicle licence to other person

A restricted hire vehicle licence is not capable of being transferred to another person.

84L. Transfer of certain restricted hire vehicle licences to other vehicles

- (1) This section applies only to restricted hire vehicle licences under which general rhv services may be operated.
- (2) The holder of a licence to which this section applies who wishes to transfer it to another vehicle must, in a form approved by the Commission and on payment of the prescribed fee, apply to the Commission for approval for that transfer before transferring the licence.
- (3) The Commission may approve the transfer if it is satisfied that the other vehicle is –
 - (a) a small passenger vehicle; and
 - (b) a suitable vehicle, within the meaning of section 84I, of the same kind as the motor vehicle specified in the licence.
- (4) The Commission may refuse to approve the transfer if –

- (a) the licence is suspended under section 84P; or
- (b) the licence is subject to a notice of intention to suspend or cancel under section 84P.

84M. Replacement licence

The Commission may, on payment of the prescribed fee, issue the holder of a restricted hire vehicle licence with a replacement of the licence if the Commission is satisfied that it has been lost, destroyed or damaged.

84N. Surrender of restricted hire vehicle licence

The holder of a restricted hire vehicle licence may surrender the licence to the Commission by causing the licence and any licence number plate issued in respect of that licence to be delivered to the Commission during business hours.

84O. Cancellation of accreditation

If the Commission cancels the accreditation of the holder of a restricted hire vehicle licence, the licence is also cancelled.

84P. Suspension or cancellation of restricted hire vehicle licence

- (1) The Commission, in prescribed circumstances, may suspend or cancel a restricted hire vehicle licence.
- (2) Before exercising its power under subsection (1), the Commission is to –
 - (a) give the holder of the restricted hire vehicle licence notice in writing of its intention and a reasonable opportunity to make representations thereon; and
 - (b) take any such representations into account.
- (3) If the Commission is satisfied on reasonable grounds that there is an immediate and serious danger to public safety, the Commission may suspend or cancel a restricted hire vehicle licence.
- (4) Subsection (2) does not apply if the Commission exercises its powers under subsection (3).
- (5) A restricted hire vehicle licence is of no effect during any period of its suspension.
- (6) The holder of a restricted hire vehicle licence that has been suspended under subsection (1) or (3) must not operate a restricted hire vehicle service under the

purported authority of the licence or cause or permit another person to operate a restricted hire vehicle service under the purported authority of the licence.

Penalty: Fine not exceeding 100 penalty units.

84Q. Delivering up restricted hire vehicle licence

The holder of a restricted hire vehicle licence must, if given notice by the Commission to do so, deliver up that licence to the Commission at such time and place as is specified in the notice.

Penalty: Fine not exceeding 20 penalty units.

49. Section 85 amended (Register of licences)

Section 85(2)(g) of the Principal Act is amended by omitting “or a luxury hire car licence” and substituting “, luxury hire car licence or restricted hire vehicle licence”.

50. Sections 91A, 91B, 91C, 91D and 91E inserted

After section 91 of the Principal Act, the following sections are inserted in Part 5:

91A. Hailing small passenger vehicles other than taxis

Except with the prior authorisation of the Commission, a person must not hire out a small passenger vehicle to a person hailing it on a public street if the small passenger vehicle is not a taxi.

Penalty: Fine not exceeding 20 penalty units.

91B. Falsely configuring vehicles as taxis

(1) A person must not do any of the following things with a motor vehicle if it is not a taxi:

- (a) install a taximeter in the vehicle;
- (b) describe, by any means, the vehicle as a taxi, taxi-cab or cab;
- (c) describe, by any means, any service for which the vehicle is used as a taxi service, taxi-cab service or cab service.

Penalty: Fine not exceeding 50 penalty units.

(2) Without limiting their generality, the following acts constitute “description” for the purposes of paragraphs (b) and (c) of subsection (2):

- (a) fitting the vehicle with a top-light sign bearing the term “taxi”, “taxi-cab” or “cab”;
 - (b) displaying the term “taxi”, “taxi-cab” or “cab” on any part of the vehicle;
 - (c) displaying the term “taxi”, “taxi-cab” or “cab” on a sign placed alongside the vehicle.
- (3) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes, in respect of the relevant motor vehicle, that –
 - (a) it was, at the relevant time, suitable for use as a taxi having regard to the applicable prescribed vehicle specifications (including those relating to the age of vehicles); and
 - (b) it was, at any time before the relevant time, used or intended to be used as a taxi; and
 - (c) it was, at the relevant time, not being used as a taxi.
- (4) In this section –
 - “**taximeter**” means an electronic instrument that –

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- (a) calculates the charge for hiring a vehicle; and
- (b) indicates that charge in figures.

91C. Soliciting passenger trade for motor vehicles on public streets

- (1) Except with the prior authorisation of the Commission, a person must not, on a public street, solicit passenger trade for a motor vehicle on that public street.

Penalty: Fine not exceeding 20 penalty units.

- (2) For the purposes of subsection (1), it is immaterial whether, at the relevant time –
 - (a) the person doing the soliciting is inside or outside the relevant motor vehicle; or
 - (b) the relevant motor vehicle –
 - (i) is a taxi, a luxury hire car or restricted hire vehicle; or
 - (ii) is moving or stationary; or
 - (iii) has its engine on or off; or
 - (iv) is a large passenger vehicle or small passenger vehicle.

(3) In this section –

“passenger trade” means the carriage of passengers in a motor vehicle for financial consideration;

“solicit”, passenger trade for a motor vehicle, is, in the case of a taxi, luxury hire car, restricted hire vehicle or large passenger vehicle, taken not to include the placement next to the motor vehicle of a sign advertising a tour in the motor vehicle.

91D. Standing or parking taxis, &c., on public streets

(1) A person must not stand or park a taxi on a public street unless –

- (a) it is standing or parked in a taxi zone; or
- (b) it is picking up passengers or about to pick up passengers; or
- (c) it is dropping off passengers or about to drop off passengers; or
- (d) it is prominently displaying a sign clearly bearing the words “not for hire”; or
- (e) the Commission has authorised it to do so.

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Penalty: Fine not exceeding 20 penalty units.

- (2) A person must not stand or park a small passenger vehicle on a public street if the vehicle is available for hire (but not a taxi) unless –
- (a) it is picking up passengers or about to pick up passengers; or
 - (b) it is dropping off passengers or about to drop off passengers; or
 - (c) it is prominently displaying a sign clearly bearing the words “not for hire”; or
 - (d) it is at the departure point of a tour that may be taken on the vehicle on the same day; or
 - (e) the Commission has authorised it to do so.

Penalty: Fine not exceeding 20 penalty units.

91E. General small passenger vehicle offences

- (1) A person must not use a small passenger vehicle on a public street to carry a passenger for financial consideration unless the small passenger vehicle is –
- (a) operating a taxi service under the authority of a taxi licence; or

- (b) operating a luxury hire car service under the authority of a luxury hire car licence; or
- (c) operating a restricted hire vehicle service under the authority of a restricted hire vehicle licence.

Penalty: Fine not exceeding –

- (a) 100 penalty units for a first offence; or
 - (b) 200 penalty units for a second or subsequent offence.
- (2) Subsection (1) does not apply if, at the relevant time, the relevant small passenger vehicle is not being used to operate a passenger transport service.
- (3) A person must not use a small passenger vehicle to operate a restricted hire vehicle service if the vehicle is at any other time also used as a taxi, unless –
 - (a) the vehicle's top light and any signs indicating that the vehicle is a taxi have been removed from the vehicle; and
 - (b) the vehicle's taximeter has been turned off and covered over; and
 - (c) if the vehicle has a taxi licence number plate, the taxi licence

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number plate has been removed from the vehicle and a restricted hire vehicle licence number plate has been affixed to the vehicle.

Penalty: Fine not exceeding 20 penalty units.

(4) In this section –

“use”, a motor vehicle, includes causing or allowing an employee or other person to use the motor vehicle.

51. Section 93 amended (Use of accessible vehicle with standard taxi licence)

Section 93(3)(d) of the Principal Act is amended by omitting “AS 2942” and substituting “AS/NZS 10542.1:2009”.

52. Section 95 amended (False or misleading statements)

The penalty under section 95 of the Principal Act is amended by omitting “100 penalty units” and substituting “30 penalty units”.

53. Section 96 substituted

Section 96 of the Principal Act is repealed and the following section is substituted:

96. Unauthorised operation of taxi and related services, &c.

- (1) A person must not operate or purport to operate a taxi service unless the person –
- (a) holds, owns or leases a taxi licence; and
 - (b) is the responsible operator of that taxi licence.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person must not operate or purport to operate a luxury hire car service unless the person –
- (a) holds a luxury hire car licence; and
 - (b) is the responsible operator of that luxury hire car licence.

Penalty: Fine not exceeding 100 penalty units.

- (3) A person must not operate or purport to operate a restricted hire vehicle service unless the person –
- (a) holds a restricted hire vehicle licence; and
 - (b) is the responsible operator of that restricted hire vehicle licence.

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Penalty: Fine not exceeding 100 penalty
units.

**54. Section 97 amended (Supply of information to
Commission by licence holders, &c.)**

Section 97(2) of the Principal Act is amended by
inserting after paragraph (e) the following
paragraph:

- (ea) the holder of a restricted hire vehicle
licence;

55. Section 98A inserted

After section 98 of the Principal Act, the
following section is inserted in Part 5:

98A. Waivers and refunds of fees and charges

- (1) The Commission, in its absolute
discretion, may waive or refund the
whole or any part of any fee or charge
payable or paid under Part 4A if, in the
circumstances, it considers it would be
fair to do so.
- (2) Nothing in this section is to be taken as
limiting the general powers of the
Commission under sections 5(1)(d) and
(da) of the *Transport Act 1981*.

56. Section 99 amended (Evidentiary certificates)

Section 99 of the Principal Act is amended as follows:

- (a) by omitting from subsection (7) “was or was not accredited under the *Passenger Transport Act 1997*” and substituting “did or did not hold accreditation”;
- (b) by omitting from subsection (8) “or a luxury hire car” and substituting “, a luxury hire car or a restricted hire vehicle”.

57. Schedule 1 amended (Criteria for Wheelchair-accessible taxis, Remote Area wheelchair-accessible taxis and Substitute Wheelchair-accessible taxis)

Clause 1 of Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subclause (1) and substituting the following paragraph:
 - (a) the vehicle has no more than 12 seats in any configuration; and
- (b) by omitting from subclause (1)(d) “AS 2942” and substituting “AS/NZS 10542.1:2009”;
- (c) by inserting the following subclause after subclause (3):

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(4) In this Schedule –

“seat” of a motor vehicle
includes –

- (a) the driver’s seat; and
- (b) an individual seating position on a bench seat; and
- (c) a demountable seat (being a seat that is so designed and constructed as to be capable of being readily removed from the vehicle without the need to structurally alter the vehicle); and
- (d) a modifiable seat (being a seat that is so designed and constructed as to be capable of being readily retracted, collapsed or folded away when not in use or adapted to another use such as a sofa, bed or storage); and
- (e) a seat that, in order to be used, requires

the temporary
retraction, collapsing
or folding-away of a
moveable console or
armrest; and

- (f) a position within
which an occupied
wheelchair may be
secured.

58. Schedule 2 amended (Remote Taxi Areas)

Clause 1(m) of Schedule 2 to the Principal Act is
amended by omitting “Peninsula”.

**59. Schedule 5 amended (Matters in Respect of Which
Regulations May Be Made)**

Clause 1 of Schedule 5 to the Principal Act is
amended as follows:

- (a) by omitting paragraph (a) and
substituting the following paragraph:
- (a) prescribe fees to be paid for or in
respect of taxi licences, luxury
hire car licences or restricted hire
vehicle licences, including,
without limiting the generality of
this, application fees, annual fees
and licence replacement fees; and

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- (b) by omitting from paragraph (d) “or luxury hire cars” and substituting “, luxury hire cars or restricted hire vehicles”;
- (c) by omitting from paragraph (g) “a taxi driver or luxury hire car driver” and substituting “the driver of a taxi, luxury hire car or restricted hire vehicle”;
- (d) by omitting from paragraph (i) “or luxury hire car” and substituting “, luxury hire car or restricted hire vehicle”;
- (e) by omitting from paragraph (j) “or luxury hire car” and substituting “, luxury hire car or restricted hire vehicle”;
- (f) by omitting from paragraph (k) “or luxury hire cars” and substituting “, luxury hire cars or restricted hire vehicles”;
- (g) by omitting from paragraph (l) “or luxury hire cars” and substituting “, luxury hire cars or restricted hire vehicles”;
- (h) by omitting paragraph (m) and substituting the following paragraph:
 - (m) prohibit the display of certain notices and material in or on taxis, luxury hire cars and restricted hire vehicles or on the drivers thereof; and

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- (i) by omitting from paragraph (n) “and luxury hire car services” and substituting “, luxury hire car services and restricted hire vehicle services”;
- (j) by inserting the following paragraph after paragraph (p):
 - (pa) prescribe procedural requirements and other matters for the purposes of Part 4A and generally provide for the administration and control of restricted hire vehicle licences; and
- (k) by omitting from paragraph (q)(i) “or luxury hire car” and substituting “, luxury hire car or restricted hire vehicle”;
- (l) by omitting from paragraph (s) “and luxury hire car licences” and substituting “, luxury hire car licences or restricted hire vehicle licences”;
- (m) by omitting from paragraph (t) “wheelchair-accessible”;
- (n) by omitting from paragraph (w) “and luxury hire cars” and substituting “, luxury hire cars and restricted hire vehicles”;
- (o) by omitting paragraph (y) and substituting the following paragraph:
 - (y) make provision for or relating to the conduct, behaviour, rights,

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responsibilities and obligations of holders of luxury hire car licences or restricted hire vehicle licences, or of luxury hire car drivers or restricted hire vehicle drivers, in providing luxury hire car services or restricted hire vehicle services; and

- (p) by omitting from paragraph (za) “and luxury hire cars” and substituting “, luxury hire cars and restricted hire vehicles”.

60. Repeal of Act

This Act is repealed on the ninetieth day from the day on which all of the provisions of this Act commence.