

# ***Passenger Transport Services Bill 2011***

## **Clause Notes**

Clause 1            Short title and citation.

Clause 2 (1)        The specified sections of the Act will commence on the day on which this Bill receives the Royal Assent. This enables regulations to be developed to take effect from the date of commencement of the main body of the Act.

Clause 2 (2)        The remaining provisions of the Act will commence on a day to be proclaimed.

Clause 3 (1) This clause defines the meaning of certain words and expressions for the purposes of the Act which apart from the following are largely self explanatory.

“motor vehicle” In the *Vehicle and Traffic Act 1999* a ‘motor vehicle’ means a vehicle that is built to be propelled by a motor that forms part of the vehicle but does not include –

- (a) an aircraft; or
- (b) a motor vehicle that travels only on a railway, tramway or other fixed track; or
- (c) a pedal cycle with an auxiliary motor (or motors) with a power output (or combined power output) of not more than 200 watts; or
- (d) a self-propelled lawn or grass mower constructed and used solely for mowing lawn or grass that is not capable of travelling at a speed of more than 10 kilometres an hour; or
- (e) a self-propelled wheelchair that is not capable of travelling at a speed of more than 10 kilometres an hour; or
- (f) a self-propelled vehicle –
  - (i) not capable of travelling at a speed of more than 10 kilometres an hour; and
  - (ii) designed for off-road work in construction, maintenance or warehouse operation; and
  - (iii) only used on a public street for the purpose of loading or unloading another vehicle, loading or unloading the vehicle onto another vehicle or manoeuvring at a work site; or
- (g) a vehicle of a class excluded by regulation from the ambit of this definition.

- “person” While a “person” includes a body politic it should also be noted that in accordance with section 41 of the *Acts Interpretation Act 1931* a ‘person’ shall also include any body of persons, corporate or unincorporate.
- “public street” In the *Traffic Act 1925* a ‘public street’ means any street, road, lane, thoroughfare, footpath, bridge, or place open to or used by the public, or to which the public have or are permitted to have access, whether on payment of a fee or otherwise.

Clause 3 (2) Specifies that a reference to a service includes a reference to a part of the service.

Clause 4 Requires the Commission to take an action as a result of a decision or another occurrence as soon as practicable.

Clause 5 (1) Specifies that a motor vehicle is taken always to have the number of seats it had when originally manufactured regardless of whether any of those seats has been permanently or temporarily removed or will be used for another purpose.

- Clause 5 (2) Specifies that if a motor vehicle has more seats than it had when originally manufactured as determined in clause 5(1) above then the motor vehicle is taken to have the higher number of seats.
- Clause 5 (3) Specifies that a seat includes a range of different seating types that may not ordinarily be considered by operators in determining the seating capacity of their vehicles, such as demountable, collapsible and foldable seats and wheelchair spaces.
- Clause 6 (1) States that this Act does not restrict, govern or otherwise apply to the personal private use of a motor vehicle.
- Clause 6 (2) Defines 'personal private use' of a motor vehicle.
- Clause 7 (1) States that this Act does not restrict, govern or otherwise apply to a private passenger service.
- Clause 7 (2) Enables the Commission to make a binding determination as to whether a particular passenger service is a private passenger service if there is any question or dispute as to whether it is or isn't.
- Clause 7 (3) Explains that in making a determination as to whether a particular passenger service is a private passenger service the Commission may have regard to –

- (a) any guidelines it approves for the purpose; and
- (b) such other factors the Commission reasonably considers to be relevant.

Clause 7 (4) Defines the terms 'passenger service' and 'private passenger service'.

Clause 8 (1) States that this Act does not restrict, govern or otherwise apply to passenger services that are considered to be incidental to the primary purpose of the Act such as car pooling, motorised buggies that are not taken on public roads and novelty vehicles.

Clause 8 (2) Defines the term 'private car-pooling arrangement'.

Clause 9 The Act will bind the Crown.

Clause 10 Establishes an offence if a person operates a passenger transport service if they are not accredited in respect of that service.

Under section 41 of the *Acts Interpretation Act 1931* a person includes any body of persons, corporate or unincorporate, other than the Crown.

Clause 11 (1) Under this Act a person is taken to operate a passenger transport service if –

- (a) the person operates a manned (with a driver) small passenger vehicle on a public street for the purpose of carrying passengers, where –
  - i. any passenger has to pay a fare; and
  - ii. the passenger service is available to any member of the general public and a transport concern, or

- (b) the person operates a manned (with a driver) large passenger vehicle on a public street for the purpose of carrying passengers.

- Clause 11 (2) To remove any doubt it is immaterial for the purposes of 11(1) whether the driver of the vehicle is the service operator or representative of the service operator, or at any stage of the journey the vehicle is actually carrying any passengers.
- Clause 11 (3) Specifies that for the purposes of 11(1) a passenger service is taken to be a transport concern if it is operated by a business or undertaking as its sole activity, or as one of its main activities, or as an integral and indispensable component of its activities, not merely as an incidental, occasional or dispensable adjunct to that activity.
- Clause 11 (4) Enables the Commission to make a binding determination as to whether a particular passenger service is a transport concern if there is any question or dispute as to whether it is or isn't.
- Clause 11 (5) List the factors the Commission may have regard to in determining whether a particular passenger service is primarily a transport concern.
- Clause 12 Establishes an offence if a person operates a hire and drive passenger service if they are not accredited in respect of that service.
- Clause 13 (1) Under this Act, a person is taken to operate a hire and drive passenger service if the person –
- (a) hires out an unmanned motor vehicle; and
  - (b) the primary purpose of the hiring is to carry passengers rather than for carrying goods or some other purpose.
- Clause 13 (2) States that for 13(1) it is immaterial whether the hirer of the motor vehicle intends to –

- (a) drive the motor vehicle personally, with or without passengers, or have another person drive the vehicle, with or without passengers; or
- (b) use the motor vehicle as a fixed or mobile dwelling to any extent; or
- (c) put the motor vehicle to a use specified in sections 6, 7 or 8 to which this Act doesn't apply.

Clause 13 (3) Requires that where someone else other than the owner, or the person in charge of a motor vehicle, hires it out on behalf of the owner, the other person, known as a hiring agent, is taken to operate the hire and drive passenger service and would therefore be required to be accredited.

Clause 13 (4) Explains that despite what clause 13(1) says where an accredited operator hires an unmanned motor vehicle to operate a service the person who hires out the vehicle is not taken to be operating a hire and drive passenger an by implication does not require hire and drive passenger service accreditation.

Clause 14 Enables a person who provides a passenger service with a small passenger vehicle who is not required to be accredited under this Act to nonetheless voluntarily apply for accreditation.

Clause 15 (1) States that the purpose of mandatory accreditation is to ensure that the operator of a passenger transport service or a hire and drive passenger service –

- (a) is a fit and proper person; and
- (b) implements appropriate safety, security and related systems for the service; and



(c) has the competence and capability to manage the safety, security and related risks; and

(d) is held accountable for any deficiencies in the safety, security or related performance of the service.

Clause 15 (2) States the purpose of voluntary accreditation.

Clause 16 (1) Provides the Commission with the discretion to approve safety, security and related standards for passenger transport services or for hire and drive passenger services either generally, or for different kinds of services, or for specific services.

Clause 16 (2) States that where the Commission considers it necessary or expedient they may liaise with industry bodies, standards bodies, regulatory authorities in approving the standards.

Clause 16 (3) Affirms that the Commission may publish an approval as it considers necessary or expedient.

Clause 17 Explains who may be accredited and it includes both legal and non-legal entities. If a partnership is accredited all members and jointly and severally liable.

Clause 18 (1) Explains that an application for accreditation is to be made to the Commission.

Clause 18 (2) States that an application for accreditation is to be in accordance with section 66.

Clause 18 (3) Specifies what organisation's are required to nominate a natural person to the responsible person for the accreditation.

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- Clause 18 (4) Specifies who is to be the person nominated to be the responsible person depending on the type of organisation involved.
- Clause 18 (5) Specifies the role of the responsible person.
- Clause 19 (1) Explains that on receiving an application for accreditation the Commission is to consider it and then approve or refuse to approve the application.
- Clause 19 (2) Specifies the Commission is to take into account the criteria or other matters, if any, prescribed by the regulations, and may take into account other matters they consider relevant having regard to section 15.
- Clause 19 (3) Requires the Commission to refuse to approve the application if it reasonably determines the applicant is not a fit and proper person to be accredited, or the nominated responsible person is not a fit and proper person or the applicant is not able to meet the safety, security or related standards approved by the Commission under clause 16.
- Clause 19 (4) Provides guidance to the Commission about the matters he may take into account in determining whether a natural person is fit and proper to be accredited or nominated as a responsible person. These matters relate generally to a person's criminal history.
- Clause 20 Specifies what the Commission is required to do if it refuses to approve an application for accreditation.
- Clause 21 (1) States that this clause applies if the Commission approves an application for accreditation.
- Clause 21 (2) Allows the Commission to place conditions on accreditation that it considers necessary or expedient.
- Clause 21 (3) Without limiting what conditions the Commission can place on accreditation this section provides guidance on what matters conditions of accreditation may require operators to do.

- Clause 21 (4) Specifies what the Commission is required to do when an application has been approved.
- Clause 22 (1) States that the accreditation certificate is to be in an approved form and what particulars, conditions or other matters must be specified on the certificate.
- Clause 22 (2) Explains the circumstances under which the Commission must issue an accredited operator with a revised certificate of accreditation.
- Clause 22 (3) Allows for a certificate to be issued by the Commission either on its own initiative or at the request of the accredited operator.
- Clause 23 (1) Requires the Commission to keep an 'Accreditation Register'.
- Clause 23 (2) Specifies the Accreditation Register is to be in an approved form and what it should contain.
- Clause 23 (3) Explains that in any proceedings a document purporting to be a copy or extract from the Accreditation register, and purporting to be signed by the Commission or a delegate, is admissible as evidence of the contents of the Accreditation Register.
- Clause 24 (1) Specifies that accreditation is ongoing, subject to the payment of continuity fees, if any, prescribed in the regulations.
- Clause 24 (2) Explains that if the holder of an accreditation fails to pay a continuity fee the Commission may demand, by notice, payment of the fee and if it remains unpaid accreditation expires at the end of the specified day.
- Clause 25 States that Accreditation is not transferable to another person or organisation. If, for example, a passenger

transport service business was sold the new owner would have to obtain their own accreditation.

- Clause 26 Enables an accredited operator to surrender their accreditation at any time, and makes it clear it applies to the whole of the accreditation and confirms accreditation has no surrender value.
- Clause 27 (1) Provides that where a person holding accreditation dies the person's personal representative may continue it in operation for a period not exceeding 3 months.
- Clause 27 (2) Makes it clear that the accreditation is taken to continue to apply for the period during which the personal representative continues to operate the service and they are taken to have all the rights, obligations and liabilities of the accredited operator.
- Clause 28 (1) Provides for the recognition of external accreditation for interstate operators that occasionally provide passenger transport services originating in that other State and extending to Tasmania.
- Clause 28 (2) Confirms that the external accreditation, held by the interstate operator, has the same force and effect in Tasmania as a Tasmanian accreditation.
- Clause 28 (3) Provides the Commission with a list of factors to take into account when exercising its absolute discretion to decide whether to withdraw recognition of external accreditation for an interstate passenger transport service.
- Clause 28 (4) Requires the Commission to notify the interstate passenger transport operator of a determination about whether to withdraw recognition of external accreditation and provides that the determination takes effect seven days from the notice.
- Clause 28 (5) States that a determination is not an administrative decision or a reviewable decision.

- Clause 28 (6) Defines valid external accreditation.
- Clause 29(1) Prohibits a person holding accreditation from contravening the conditions of accreditation, or cause or allow others to do so.
- Clause 29(2) Prohibits the responsible person of body politic, partnership, incorporated or unincorporated body which holds accreditation, from contravening the conditions of accreditation, or causing or allowing others to do so.
- Clause 30 (1) Allows the Commission, at any time, to place an additional condition on or, vary or revoke a condition of accreditation.
- Clause 30 (2) Explains that the Commission can exercise its power to add, vary or revoke conditions of accreditation by its own initiative or on application of the accredited operator.
- Clause 30 (3) Ensures that the Commission cannot exercise its power to add, vary or revoke conditions of accreditation without giving notice, reasons and an opportunity to be heard to the accredited operator. However, the Commission can act speedily if there is a threat to public safety.
- Clause 30 (4) Provides that if the Commission acts differently than the action sought by the accredited operator, the Commission must notify the operator and provide reason.
- Clause 30 (5) Defines action for the purposes of this section.
- Clause 31 (1) Allows the Commission to cancel, suspend or probate an operator's accreditation if they are satisfied on reasonable grounds that one of the tests described in the clause has been met. :
- Clause 31(2) Ensures that the Commission cannot exercise its power to cancel, suspend or probate an accreditation without giving notice, reasons, and an opportunity to be heard to

the accredited operator. However, the Commission can act speedily if there is a threat to public safety.

- Clause 31 (3) Explains that the Commission must give public safety, not the impact on the accredited operator, its paramount concern when deciding whether to cancel, suspend or probate.
- Clause 31 (4) Requires the Commission to notify and inform an accredited operator of their right of review if it decides to cancel, suspend or probate their accreditation.
- Clause 31 (5) States that, apart from the requirement to pay continuity fees (if any), accreditation is not in force while suspended.
- Clause 31(6) States that while accreditation has probationary status it is still in force but the Commission, in its absolute discretion, may impose special restrictions.
- Clause 31(7) Requires the Commission to record in the Accreditation Register the particulars of an operator's cancellation, suspension or probation.
- Clause 31(8) States the Commission may at any time revoke suspension of an accreditation.
- Clause 31(9) States the Commission may at any time revoke probation of an accreditation and any special restrictions if satisfied the accreditation no longer merits that status.
- Clause 32(1) Allows the Commission to require the accredited operator, or responsible person, to provide information about the accredited service within a period of not less than 14 days.
- Clause 32(2) Requires the accredited operator to comply with the request for information.
- Clause 32(3) Requires the responsible person to comply with the request for information.

- Clause 33(1) Provides that an accredited operator who is a natural person must notify the Commission within 14 days if charged with a serious offence.
- Clause 33(2) Provides that the responsible person must notify the Commission within 14 days if charged with a serious offence.
- Clause 33(3) Requires that if the responsible person changes the accredited operator must notify the Commission within 14 days and nominate an alternate person for that role.
- Clause 34 Prohibits a person from operating a regular passenger service unless authorised to do so by the Transport Commission.
- Clause 35 (1) Defines a regular passenger service as a passenger service that carries fare-paying passengers and operates at regular intervals according to a publicised route and timetable.
- Clause 35 (2)
- (a) Excludes from the definition of a regular passenger service a passenger service forming the whole or part of a tourist activity that takes place on a single day and where the passenger can only pay a fare covering the entire journey.
  - (b) Excludes from the definition of a regular passenger service a passenger service forming the whole or part of a tourist activity that takes place over two or more days and where the passenger can only pay a fare covering the entire journey.
  - (c) Excludes from the definition of a regular passenger service a passenger service where the regulations so provide.
- Clause 35 (3) Provides for any question or dispute over the status of a passenger service to be determined by the Commission, which is a binding determination.

- Clause 35 (4) Defines the terms 'paying passengers' and 'publicised'.
- Clause 36 Requires that an application for authorisation be in accordance with the requirements of clause 66 (*Application Procedure*) of this Bill.
- Clause 37 (1) Establishes that the Transport Commission may approve or refuse an application for authorisation.
- Clause 37 (2) Provides that in making such a decision, the Transport Commission is to have regard to any matters prescribed by the regulations and may have regard to any other matter it considers relevant in the circumstances.
- Clause 37 (3) Describes the types of matters the Commission could have regard to under sub-clause (2)(b). These relate to the anticipated impact of an authorisation on the Government's subsidy of the incumbent operator and the degree to which a similar service is already being provided, or is committed to be provided.
- Clause 37 (4) States that the Commission is not required to consider the application at all if it reasonably determines that the proposed service is not a regular passenger service.
- Clause 38 (1) Confirms that this clause only applies if the Commission refuses to approve an application for the authorisation of a regular passenger service.
- Clause 38 (2) Requires the Commission to notify an applicant in the event of a refusal to approve an application for an authorisation, giving reasons for the refusal and notifying the applicant of their rights of review.
- Clause 38 (3) States that sub-clause (2) applies if, pursuant to clause 37(4), the Commission did not consider the application.



- Clause 39 (1) Confirms that the clause applies if the Commission authorises an application for the authorisation of a regular passenger service.
- Clause 39 (2) Allows the Commission to place any conditions on an authorisation it considers necessary or expedient having regard to the nature of the service.
- Clause 39 (3) Describes some of the types of conditions the Transport Commission may place on the authorisation, without limiting the generality of sub-clause (2).
- Clause 39 (4) Requires the Commission to notify the applicant of the approval and of any conditions placed on the authorisation.
- Clause 40 (1) Confirms that an authorisation, once granted, is ongoing subject to payment of continuity fees (if any).
- Clause 40 (2) Provides that if a service operator fails to pay a continuity fee on the day on which it falls due, the Commission may demand payment of the fee by a specified day, and the authorisation expires at the end of that specified day if the fee remains unpaid.
- Clause 40 (3) Confirms that an authorisation relates to the service itself, and is therefore not affected by changes relating to the business of the operator providing the service (described as related business transactions).
- Clause 40 (4) A related business transaction does not constitute grounds for cancelling or suspending an authorisation but may constitute proper grounds to vary the conditions, if any, of the authorisation.
- Clause 40 (5) Defines a 'related business transaction', which includes, amongst others, the sale or transfer of the service to another person or a change of name or business name.

- Clause 41 Prohibits an operator from contravening the conditions of an authorisation.
- Clause 42 (1) Allows the Commission to add to, vary or revoke the conditions on an authorisation, at any time.
- Clause 42 (2) Allows the Commission to exercise the power under sub-clause (1) on its initiative or on the application of the service operator in accordance with clause 66 (*Application Procedure*).
- Clause 42 (3) Restricts the Commission's exercise of the power under sub-clause (2)(a) by requiring the Commission to give the service operator notice of its intention to add, vary or revoke a condition, together with reason for the intention and a reasonable opportunity to be heard. These requirements do not apply where the Commission apprehends that it needs to act speedily because of a threat to public safety.
- Clause 42 (4) Provides that if Commission decides to take action different to that requested by an applicant under sub-clause (2)(b), it is to notify the applicant of the reasons for taking the different action.
- Clause 42 (5) This sub-clause refers to the reference to 'action is sub-clause (4) which describes what the Commission must do if 'to take an action' different from that sought by the applicant'. This sub-clause provides that sub-clause (4) also applies in circumstances where the Commission omits to do something sought by the applicant.
- Clause 43 (1) Allows the Commission to cancel or suspend an authorisation if satisfied, on reasonable grounds, that one of the tests described in clause 43 have not been met.
- Clause 43 (2) Restricts the Commission's exercise of the power under sub-clause (1) by requiring the Commission to give the service operator notice of its intention, together with reason for the intention and a reasonable opportunity to be heard. These requirements do not apply where the

Commission apprehends that it needs to act speedily because of a threat to public safety.

- Clause 43 (3) Directs the Commission to notify an operator of any such suspension or cancellation and inform the operator of their rights of review, if applicable.
- Clause 43 (4) Provides that an authorisation is not in force while it is suspended, apart from the requirement on the operator to pay continuity fees.
- Clause 43 (5) Allows the Commission to revoke a suspension of an authorisation at any time if it forms the view that the suspension is no longer justified.
- Clause 44 (1) Sets out the circumstances in which the clause applies, which are a regular passenger service for which there is a pressing need is not being operated, or is in imminent danger of being withdrawn or there is a clear need for the service to continue while steps are taken to procure a long-term service contract (Clause 46 - *Operation of unprovided regular passenger service*).
- Clause 44 (2) Allows the Secretary to enter into one or more passenger service contracts to ensure the operation of the service.
- Clause 44 (3) Allows the Secretary to invite any bus operator to contract for, or call for expressions of interest from bus operators for the purposes of sub-clause (2).
- Clause 44 (4) This sub-clause confirms that in an emergency situation, the Secretary's overriding concern is to ensure that a service is provided and therefore Secretary is not obliged to make a decision as to the long-term viability of the service or to consult with any person prior to entering into a contract.
- Clause 45 (1) Confirms that this clause applies if the Secretary is satisfied that there might be a need for a regular passenger service.

- Clause 45 (2) Allows the Secretary to enter into one or more passenger service contracts providing for the service to be operated on a trial basis.
- Clause 45 (3) Allows the Secretary to invite any bus operator to contract, or call for expressions of interest from bus operators, or call tenders from bus operators for the purposes of sub-clause (2).
- Clause 45 (4) Allows the Secretary, in deciding on which of the three options under clause 45(3) to adopt, to have regard to a range of issues likely to determine the relative merits of the three options.
- Clause 45 (5) Provides that a passenger service contract under this clause may give the contracted operator a monopoly over the provision of regular passenger services delivered over the route or area that is the subject of the contract.
- Clause 46 (1) Confirms that the clause applies if the Secretary determines that there is a confirmed need for a regular passenger service that is not currently being provided, there is no prospect of the service being provided without a government subsidy and clause 44 does not apply.
- Clause 46 (2) Allows the Secretary to enter into one or more passenger service contracts to ensure the operation of the service.
- Clause 46 (3) Provides that a passenger service contract under this clause may give the contracted operator a monopoly over the provision of regular passenger services delivered over the route or area that is the subject of the contract.
- Clause 47 (1) Confirms that the clause applies if the Secretary is satisfied that an independently operated regular passenger service needs to be varied, and describes some of the service attributes that may require specific variation.
- Clause 47 (2) Directs the Secretary to notify the service operator of the necessary operational variations and to allow the operator

a period of not less than 60 days in which to implement the changes.

- Clause 47 (3) Allows the Secretary to enter into one or more passenger contracts to secure the required service standard, where the changes are not implemented by the operator of the current service to the satisfaction of the Secretary. The Secretary is not required to consult with the current operator before doing so.
- Clause 47 (4) Defines 'independently operated regular passenger service', which is a service that has an authorisation to operate as a regular passenger service, but does not have a contract in place with the State Government and does not receive any form of Government subsidy.
- Clause 48 (1) Confirms that the clause applies where the Secretary identifies that a change in a contracted passenger service is required and can be achieved by varying one or more existing passenger service contracts.
- Clause 48 (2) Allows the Secretary to invite the relevant service operator or operators to submit an offer or expression of interest to operate the service to a standard that is consistent with the necessary operational variations.
- Clause 48 (3) Where two or more offers are submitted under sub-clause (2), the Secretary may select the most satisfactory offer or expression of interest by reference to criteria developed by the Secretary. As necessary, the Secretary can negotiate and execute a variation to an existing contract or enter into a new contract.
- Clause 48 (4) Provides that if the Secretary does not receive any satisfactory offers, or any offers at all, to provide the desired operational variation, the Secretary may take steps under clause 46 (*Operation of unprovided regular passenger services*) or, if required, clause 44 (*Emergency operation, &c., of regular passenger services.*), in order to secure the desired operational variation.

Clause 48 (5) Defines the term “contractual regular passenger service”, which is a service that, in addition to being authorised to operate as a regular passenger service is wholly or partly funded through a service contract, or other subsidy arrangement, with the Government.

Defines the term ‘criteria’ which are developed for the purposes of selecting the most satisfactory offer or expression of interest and under this clause includes consideration of any service development plans prepared by the service operators.

Clause 49 (1) Fixes the maximum term for a passenger service contract as 2 years, for a contract awarded under clause 44 (*Emergency operation, &c., of regular passenger services*) or clause 45 (*Trial operation of regular passenger services*).

Clause 49 (2) (a) Fixes the maximum term for a passenger service contract as 10 years for contracts awarded under clause 46 (*Operation of unprovided regular passenger services*), or 47 (*Variation of independently operated regular passenger services*); and

(b) allows for the contract term to be split into two or more periods of any length provided the total term does not exceed 10 years; and

(c) allows for the continuation of the contract from one period to the next to be conditional on the operator achieving pre-specified performance standards.

Clause 49 (3) Enables a passenger service contract to set performance standards and to provide for sanctions and provide for other matters as the Secretary considers necessary or expedient in the circumstances.

Clause 50 (1) Confirms that the Secretary’s powers under Division 2 of Part 3 are subject to the availability of funding, the Service Eligibility Guidelines and the Treasurer’s Instructions

issued under clause 23 of the *Financial Management and Audit Act 1990*.

- Clause 50 (2) Confirms that in exercising their procurement powers under this Bill, the Secretary is not required to enter into a contract or accept any proposal they consider to be unsatisfactory.
- Clause 50 (3) Defines the term 'contract which for the purposes of this clause includes any variation to a contract, meaning the same discretion applies to the Secretary for a variation to a contract as for entry into a contract.
- Clause 51 (1) Directs the Secretary to take into account both service eligibility guidelines and any other matters they consider to be appropriate in exercising their procurement powers.
- Clause 51 (2) Directs the Secretary to liaise with such bodies as they consider expedient in developing the Service Eligibility Guidelines.
- Clause 51 (3) Directs the Secretary to publish the service eligibility guidelines as they consider necessary or expedient or as the Minister may from time to time direct.
- Clause 52 Confirms that no compensation is payable to any person in respect of, or as a consequence of, a decision of the Transport Commission with regard to authorisation of services, or the Secretary with regard to entry into, extension or rescission of a passenger service contract.
- Clause 53 This clause defines the meaning of certain words and expressions for the purposes of Part 4 of the Act which are largely self explanatory.
- Clause 54 Allows a person who wants to appeal against an administrative decision to apply to the Commission for an internal review.

- Clause 55            This clause affirms that the decision under review can be made entirely afresh and also allows the reviewer to have regard to any matters that were not known, available or not taken into account in the making of the decision under review.
- Clause 56 (1)       Requires an application for internal review to be made in accordance with section 66 and is to be lodged with the Commission within 30 days after the day the Commission has notified the applicant of the administrative decision.
- Clause 56 (2)       Provides the Commission with the discretion to consider an application that is in the wrong format or is lodged late in certain circumstances.
- Clause 57            Specifies that an application for an internal review does not set aside or stay the operation of the decision.
- Clause 58 (1)       Sets out in some detail how the Commission is to go about undertaking an internal review.
- Clause 58 (2)       Allows the Commission not to take any action on an internal review if the application is found to be frivolous, vexatious or factually mistaken.
- Clause 58 (3)       Requires the Commission on completion of its internal review to make a fresh decision.
- Clause 58 (4)       Specifies that a review determination is to be made within 21 days after the day the application for a review is lodged.
- Clause 58 (5)       Allow the Commission to extend the review period, once, by a period not exceeding 28 days.
- Clause 58 (6)       Specifies that if the review is not determined within the review period, or within the extended period, the Commission is taken to have affirmed the administrative decision under review.



- Clause 58 (7) States the Commission is required to notify an applicant of a review determination as soon as practicable.
- Clause 58 (8) Says that a notice is to give reasons for the finding or determination and advise the applicant about their right to have an external review.
- Clause 59 (1) Allows a person who wants to appeal against an administrative decision to apply to the Magistrates Court (Administrative Appeals Division) for review of that decision.
- Clause 59 (2) Says that a person's entitlement for an external review can be exercised regardless of whether the person has made an application for internal review.
- Clause 59 (3) Clarifies that if a person has applied for an internal review their entitlement to have an external review under section 59(1) is not exercisable until after the internal review has been completed.
- Clause 59 (4) Confirms that a person's entitlement to apply for an external review is not able to be exercised if a provision of this Act specifies that the decision is not reviewable.
- Clause 60 Enables the Minister administering this Act to establish advisory committees, states the matters the Minister may determine in relation to the operation of the committee and allows a committee to regulate its own proceedings.
- Clause 61 Ensures those persons authorised under section 9 of the Traffic Act 1925 are also authorised to administer this Act and be able to similarly exercise any power or right under this Act.
- Clause 62 (1) Specifies that if a body corporate commits an offence against this Act each person concerned with its management is also taken to have committed the offence

unless they didn't know about the act or omission or consent to it, or they made every attempt to prevent the act or omission.

- Clause 62 (2) Makes it clear that a person can be convicted under section 62(1) whether or not the body corporate is charged or convicted of the offence.
- Clause 63 Establishes an offence for providing any false or misleading information.
- Clause 64 (1) Enables the Commission to exempt persons, motor vehicles or passenger services (or classes of these) from the operation of a provision of this Act.
- Clause 64 (2) Clarifies the application of the exemption, without limiting its application, to being able to exempt operators from accreditation or exempt a person from the requirement to having a regular passenger service authorised.
- Clause 64 (3) Limits the application of the exemption to where the Commission is satisfied that the relevant provision is unnecessary, impracticable or unreasonable, and provided the exemption does not compromise public safety.
- Clause 64 (4) Enables the Commission to place conditions on an exemption.
- Clause 64 (5) Allows the Commission to vary or revoke an exemption.
- Clause 64 (6) Establishes an offence if a person doesn't comply with the conditions of an exemption.
- Clause 64 (7) States that an exemption remains in place until a date specified or when the Commission revokes it.
- Clause 64 (8) States that when an exemption is made for a class of persons, motor vehicles or services it must be publicly notified and such notice is taken to be as valid and effectual as if given to the person concerned individually.

- Clause 64 (9) This clause defines the meaning of certain expressions for the purposes of clause 64 of the Act which are largely self explanatory.
- Clause 65 States the circumstances under which a natural person, or any other person, is deemed to have been effectively served with a notice or a document under this Act.
- Clause 66 (1) Sets out what is required to make an application to the Commission under this Act.
- Clause 66 (2) States the Commission is not required to consider or determine an application if it fails to materially comply with clause 66(1) of this Act, or an applicant seeks an outcome previously rejected in the preceding 90 days and provides no new information in support of this.
- Clause 66 (3) Provides the Commission with the power to waive an application fee, or part thereof, if it is considered unreasonable, unfair or would cause hardship to impose the fee.
- Clause 67 (1) Confirms which determinations are considered 'administrative decisions'.
- Clause 67 (2) Makes it clear that administrative decisions are not statutory rules or subordinate legislation.
- Clause 67 (3) Enables the Commission to publish administrative decisions and allows the Commission to rescind or revise any administrative decision.
- Clause 68 (1) Enables the Governor to make regulations for the purposes of this Act.
- Clause 68 (2) Specifies the matters and subject areas for which regulations may be made.

- Clause 68 (3) Enables regulations to be applied differently depending on the factors stipulated in the regulations.
- Clause 68 (4) Confirms the regulations can confer powers on the Minister, Commission or Secretary and enables the regulations to authorise any matter to be from time to time determined, applied or regulated by the Minister, the Commission or Secretary.
- Clause 68 (5) Enables the regulations to specify that a contravention of a regulation is an offence and provide for the imposition of a fine not exceeding 50 penalty units.
- Clause 68 (6) Allows for regulations to contain notes and examples and the ability to stipulate whether such notes and examples form part of the law.
- Clause 68 (7) Enables the regulations to contain savings or transitional provisions and to determine the date on which these provisions take effect.
- Clause 68 (8) Specifies any regulations made under sub clause (7) can take effect on the commencement day or a later day specified in the regulations.
- Clause 69 Assigns administration of this Act to the Minister for Sustainable Transport and specifies the department responsible to the Minister for the administration of this Act is the Department of Infrastructure, Energy and Resources.
- Clause 70 States that the savings and transitional provisions specified in Schedule 1 have effect.

## **SCHEDULE 1 – SAVINGS AND TRANSITIONAL PROVISIONS**

### **CLAUSE 1 - INTERPRETATION**

Clause 1            This clause defines the meaning of certain expressions for the purposes of Schedule 1 of the Act which are largely self explanatory.

## **CLAUSE 2 – ACCREDITATION**

Clause 2 (1)        Confirms that a subsisting accreditation under the old *Passenger Transport Act 1997* continues as an accreditation under the new Act subject to subsisting conditions, any unexpired period of suspension and any subsisting imposition of probationary status.

Clause 2 (2)        Confirms that for the purposes of sub-clause (1) categories of service are taken to be subsisting conditions of accreditation, the subsisting responsible officer is taken to be the responsible person for the accreditation and if a continuing accreditation is subject to a period of accreditation it is ineffective until it is revoked or expires.

Clause 2 (3)        Allows for any application for accreditation not determined under the old Act may be treated as an application under the new Act.

Clause 2 (4)        Allows for any application to vary the conditions of an subsisting accreditation to be treated as an application under the new Act.

Clause 2 (5)        Allows a subsisting accreditation certificate issued under the old Act to continue to serve as an accreditation certificate under the new Act.

Clause 2 (6)        Allows the Accreditation Register kept under the old Act to continue as the Accreditation Register under the new Act.

Clause 2 (7)        Allows any subsisting exemption under section 16V of the old Act to continue in force under the new Act.

Clause 2 (8)        States that any notification required under section 16T of the old Act, but not given by the commencement date of the new Act, must still be given as that section requires despite the repeal of the old Act.

- Clause 2 (9) Specifies that a failure to comply with clause 2 subclause 8 is a relevant matter for clause 31(1)(b) of the new Act.

### **CLAUSE 3 – AUTHORISATIONS**

- Clause 3 (1) Confirms that a subsisting authorisation under the old *Passenger Transport Act 1997* continues in force as an authorisation under the new Act.
- Clause 3 (2) Allows for any application for authorisation not determined under the old Act may be treated as an application under the new Act.
- Clause 3 (3) Specifies that records kept by the Commission under section 21 of the old Act are to be transferred to the Secretary.

### **CLAUSE 4 – SPECIAL AND GENERAL PERMITS**

- Clause 4 (1) Confirms that a subsisting special permit under the old *Passenger Transport Regulations 2000* (regulation 5) continues in effect according to its terms until it was due to expire.
- Clause 4 (2) Confirms that a subsisting general permit under the old *Passenger Transport Regulations 2000* (regulation 6) continues in effect according to its terms until it is revoked by the Commission.