

TASMANIA

PASSENGER TRANSPORT SERVICES BILL 2011

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SCHEDULE 1 – SAVINGS AND TRANSITIONAL PROVISIONS

PASSENGER TRANSPORT SERVICES BILL 2011

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

A BILL FOR

An Act to provide for the oversight, regulation and safety of certain passenger transport services and the operation of regular passenger transport services and for related purposes

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Passenger Transport Services Act 2011*.

2. Commencement

- (1) Sections 1, 3, 68 and 69 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 TAXI AND LUXURY HIRE CAR INDUSTRIES AMENDMENT BILL 2011 AND THE PASSENGER TRANSPORT AND RELATED LEGISLATION (CONSEQUENTIAL AMENDMENTS) BILL 2011

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3. Interpretation

(1) In this Act, unless the contrary intention appears –

“**accredited**” means accredited under Part 2 as the operator of a passenger transport service or hire and drive passenger service, and “**accreditation**” has a corresponding meaning;

“**accredited operator**” means a person holding accreditation;

“**approved**” means approved by the Commission;

“**authorised**” means authorised for the purposes of section 34, and “**authorisation**” has a corresponding meaning;

“**body politic**” includes an agency or instrumentality of the body politic;

“**bus operator**” means a person holding accreditation in respect of a passenger transport service of the kind referred to in section 11(1)(b);

“**Commission**” means the Transport Commission incorporated under section 4 of the *Transport Act 1981*;

“**continuity fees**” means the fees, if any, required to be paid to ensure the continuity of an accreditation or

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authorisation, as referred to in section 24 and section 40(1), respectively;

“conviction” includes a finding of guilt without the recording of a conviction;

“employee” includes a person engaged, either directly or indirectly, under a contract for services;

“external”, accreditation, means accreditation that –

- (a) is issued, granted or conferred by an external regulator; and
- (b) confers on its holder, in that external regulator’s jurisdiction, substantially similar status and entitlements as accreditation under this Act;

“external regulator” means an agency of another State having responsibilities substantially similar to those of the Commission under Part 2;

“fare” includes any form of financial consideration;

“hire and drive passenger service” – see section 13;

“large passenger vehicle” means, subject to any exceptions prescribed by the regulations, a motor vehicle with 10 or more seats;

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“**manned**”, motor vehicle, means a motor vehicle that is furnished with a driver;

“**motor vehicle**” has the same meaning as in the *Vehicle and Traffic Act 1999*;

“**notify**” means give notice in writing;

“**passenger**”, of a motor vehicle, includes the driver of the motor vehicle;

“**passenger service**” means any service that involves the carriage of passengers on a public street by means of a motor vehicle;

“**passenger service contract**” means a contract between the Secretary and an accredited passenger transport service operator for the operation of a regular passenger service;

“**passenger transport service**” – see section 11(1);

“**person**” includes a body politic;

“**public street**” has the same meaning as in the *Traffic Act 1925*;

“**regular passenger service**” – see section 35;

“**regulations**” means regulations made and in force under this Act;

“**relevant responsible person**” means the responsible person for the accredited

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service in respect of which the expression is used;

“responsible person” – see section 18(3), (4) and (5);

“rights of review” means rights of review under Part 4;

“seat”, of a motor vehicle – see section 5(3);

“Secretary” means the Secretary of the Department;

“serious offence” means –

- (a) an offence under sections 124, 125A, 125B, 125C, 125D, 126 and 127 of the *Criminal Code*; or
- (b) an offence under sections 158, 167A, 167B, 170 and 172 of the *Criminal Code*; or
- (c) an offence under Chapter XIX or XX of Part V of the *Criminal Code*; or
- (d) an offence under section 7A, 37B or 37C of the *Police Offences Act 1935*; or
- (e) an offence under section 32 of the *Traffic Act 1925*; or
- (f) an offence under Division 1 of Part 3, Part 4 or section 53 or 64

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of the *Vehicle and Traffic Act 1999*; or

(g) an offence prescribed by the regulations as a serious offence for the purposes of this Act;

“service” means, according to the context, a passenger transport service, hire and drive passenger service or regular passenger service;

“service development plan” means a document prepared by the operator of a regular passenger service setting out the operator’s views regarding its potential for improvement under the operator’s passenger service contract;

“service eligibility guidelines” – see section 51;

“service operator” means the person operating the service in respect of which the expression is used;

“small passenger vehicle” means a motor vehicle with fewer than 10 seats;

“State” includes Territory;

“statutory rule” means a statutory rule for the purposes of the *Rules Publication Act 1953*;

“transport concern” – see section 11;

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“transport costs” includes the cost of fuel, tolls, parking, entry fees and, if applicable, vehicle hire or leasing costs.

- (2) In this Act, a reference to a passenger service, passenger transport service, hire and drive passenger service or regular passenger service is taken to include a reference to a part of the service.

4. Timing of administrative actions of Commission

Where a provision of this Act requires the Commission to take an action consequent on making a decision or another occurrence, then, unless the contrary intention appears, the provision is to be taken as requiring the Commission to take the action as soon as practicable after making the decision or as soon as practicable after the other occurrence.

5. Determination of seating capacity

- (1) For the purposes of this Act, 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 –
- (a) permanently or temporarily removed from the motor vehicle; or
 - (b) permanently or temporarily converted to or adapted to another use.

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- (2) However, if, as a result of a modification, a motor vehicle has more seats than it had when originally manufactured as determined under subsection (1), then, for the purposes of this Act, the motor vehicle is taken to have, after the modification, that higher number of seats.
- (3) For the purposes of this Act –
- “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 motor vehicle without the need to structurally alter the motor 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 of being readily converted or adapted to another use such as a sofa, bed or storage); and
 - (e) a seat that, to be used, requires the temporary retraction, collapsing or folding-away of a moveable console or armrest; and

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- (f) a position or space on the floor of the vehicle that is purposely designed or adapted to accommodate, or is dedicated or reserved for the use of, a wheelchair.

6. Act does not apply to personal private use of motor vehicles

- (1) Nothing in this Act restricts, governs or otherwise applies to the personal private use of a motor vehicle.
- (2) In this section –

“personal private use”, of a motor vehicle, means its use by an individual to carry members of the individual’s family, or friends of the individual’s family (even if any such passenger makes, or offers or is asked to make, some contribution towards the transport costs or does, or offers, or is asked, to do, some of the driving).

7. Act does not apply to private passenger services

- (1) Nothing in this Act restricts, governs or otherwise applies to a private passenger service.
- (2) Any question or dispute as to whether a particular passenger service is a private

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passenger service is to be determined by the Commission, and the determination is binding.

- (3) In determining whether a particular passenger service is a private passenger service, the Commission may have regard to –
- (a) guidelines, if any, it approves for the purpose; and
 - (b) such other factors as the Commission reasonably considers relevant.
- (4) In this section –
- “passenger service”** includes a group of such services;
- “private passenger service”** means a passenger service that is –
- (a) provided by means of a small passenger vehicle; and
 - (b) operated exclusively by persons having a common affiliation; and
 - (c) not available to the general public.

8. Act does not apply to incidental passenger services

- (1) Nothing in this Act restricts, governs or otherwise applies to –
- (a) the carriage of persons under a private car-pooling arrangement; or

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- (b) the carriage of persons in or on a motorised buggy or similar specialised vehicle within the precincts of –
- (i) a golf course, sports ground or other sporting venue; or
 - (ii) a tourist attraction; or
 - (iii) an hotel; or
 - (iv) an industrial complex; or
 - (v) an aerodrome; or
- (c) the carriage of passengers in or on a motor vehicle that is configured as, and being used solely as, a novelty vehicle such as a “toy train” in a public park or a float in a Christmas parade or other community pageant; or
- (d) the carriage of persons in prescribed motor vehicles or by prescribed persons or prescribed passenger services or in prescribed circumstances.

(2) In this section –

“private car-pooling arrangement” means –

- (a) an arrangement whereby several individuals travel together in one small passenger vehicle on a journey, on the basis that they will share the transport costs or driving duties, or both; or

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- (b) an arrangement whereby several individuals agree to transport one another in each other's small passenger vehicle, turn and turn about over a given period, correspondingly apportioning transport costs, for the purpose of commuting to work or to a regular sporting, recreational or other activity of common interest; or
- (c) an arrangement analogous to an arrangement referred to in paragraph (a) or (b).

9. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 – ACCREDITATION

Division 1 – Accreditation policy

10. Operator of passenger transport service must be accredited

A person must not operate a passenger transport service unless the person is accredited in respect of that service.

Penalty: Fine not exceeding –

- (a) 200 penalty units for a body corporate or body politic; or
- (b) 100 penalty units for an individual.

11. What is a passenger transport service operator?

(1) For the purposes of this Act, a person is taken to operate a passenger transport service if –

- (a) the person operates a manned small passenger vehicle on a public street for the purpose of carrying passengers, where –
 - (i) the passengers, or any of them, have to pay a fare; and
 - (ii) the passenger service so provided is available to any member of the

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general public and a transport concern; or

- (b) the person operates a manned large passenger vehicle on a public street for the purpose of carrying passengers, regardless of whether –
 - (i) the passengers, or any of them; have to pay a fare; or
 - (ii) the passenger service so provided is available to any member of the general public or a transport concern.
- (2) To avoid doubt, it is immaterial for the purposes of subsection (1) whether –
 - (a) the driver of the small passenger vehicle or large passenger vehicle is the service operator or an employee or agent of the service operator; or
 - (b) at any particular stage of the journey, the small passenger vehicle or large passenger vehicle is actually carrying any passengers.
- (3) For the purposes of subsection (1), a passenger service is taken to be a transport concern if it is operated by a business or undertaking –
 - (a) as its sole activity; or
 - (b) as one of its main activities; or

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- (c) as an integral and indispensable component of its sole activity or one of its main activities, not merely as an incidental, occasional or dispensable adjunct to that activity.
- (4) Any question or dispute as to whether a particular passenger service is a transport concern is to be determined by the Commission, and the determination is binding.
- (5) In determining whether a particular passenger service is primarily a transport concern, the Commission may have regard to –
 - (a) whether passenger transport is the primary purpose or main focus of the service operator; and
 - (b) whether the service has more of a commercial focus (being operated for profit in its own right) or a goodwill focus (being provided as a courtesy for the patrons or guests of the service operator, and where no charge is made for the service itself); and
 - (c) whether the service operator advertises or presents itself as, or in any other way purports to be, a passenger transport entity; and
 - (d) whether the service operator advertises or presents the service as a dedicated passenger transport service or as a service that is ancillary to another activity; and

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- (e) whether the service operator could still engage in its main or primary activities without operating the service, directly or at all; and
- (f) the scale and value of the resources used for the service relative to those used for other activities, if any, of the service operator; and
- (g) the scale, frequency and nature of the service and the scale and nature of associated materiel, equipment and facilities; and
- (h) relevant motor vehicle ownership and leasing arrangements; and
- (i) the antecedents of the service operator and, if applicable, the nature of any relevant business, or corporate, relationships; and
- (j) such other factors as the Commission reasonably considers relevant.

12. Operator of hire and drive passenger service must be accredited

A person must not operate a hire and drive passenger service unless the person is accredited in respect of that service.

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- (a) 200 penalty units for a body corporate or body politic; or
- (b) 100 penalty units for an individual.

13. What is a hire and drive passenger service operator?

- (1) For the purposes of 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 the carriage of passengers rather than the carriage of goods or some other purpose.
- (2) For the purposes of subsection (1), it is immaterial whether the hirer of the motor vehicle intends to –
 - (a) drive the motor vehicle personally (with or without other passengers) or have another person drive the motor vehicle, (with or without other 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 to which, by virtue of section 6, 7 or 8, this Act does not apply.

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- (3) For the purposes of this section, where a person who owns or is in charge of a motor vehicle (“**owner**”) contracts for another person (“**hiring agent**”) to hire it out on the owner’s behalf, the hiring agent, not the owner, is taken to operate the hire and drive passenger service.
- (4) Notwithstanding subsection (1), where an accredited operator in respect of any service hires an unmanned motor vehicle for the purposes of operating that service, the person who does the hiring out is not, on that account, taken to be operating a hire and drive passenger service for the purposes of this Act.

14. Voluntary accreditation

A person who, by means of a small passenger vehicle, operates a passenger service that is not required to be accredited may nonetheless voluntarily apply for accreditation in respect of that service.

15. Purpose of accreditation

- (1) The purpose of mandatory accreditation is to ensure that the operator of a passenger transport service or hire and drive passenger service –
 - (a) is a fit and proper person to operate the service; and

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- (b) implements, as far as reasonably practicable, appropriate safety, security and related systems for the service; and
 - (c) has the requisite competence and capacity to manage the safety, security and related risks associated with operating the service; and
 - (d) is held accountable for any deficiencies in the safety, security or related performance of the service.
- (2) The purpose of voluntary accreditation is to encourage and assist the operator of the relevant passenger service to –
- (a) implement, as far as reasonably practicable, appropriate safety, security and related systems for the service; and
 - (b) develop and maintain the competence and capacity to manage the safety, security and related risks associated with operating the service; and
 - (c) take responsibility for, and address, any deficiencies in the safety, security or related performance of the service.

16. Safety, security and related operational standards of accredited services

- (1) For accreditation purposes, the Commission may approve safety, security and related standards for –

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- (a) passenger transport services or hire and drive passenger services generally; or
 - (b) different kinds of passenger transport services or hire and drive passenger services; or
 - (c) specific passenger transport services or hire and drive passenger services.
- (2) In approving the standards, the Commission may liaise with such industry bodies, standards bodies, regulatory authorities and other interested parties as it considers necessary or expedient.
- (3) The Commission may publish an approval as it considers necessary or expedient.

17. Who may be accredited?

- (1) Any of the following may be accredited under this Part:
- (a) a person;
 - (b) a partnership;
 - (c) an incorporated body;
 - (d) an unincorporated body.
- (2) If a partnership is accredited, the members of the partnership are jointly and severally liable under this Part in relation to the accreditation.

Division 2 – Application and accreditation procedure

18. Application for accreditation

- (1) An application for accreditation is to be made to the Commission.
- (2) The application is to be in accordance with section 66.
- (3) If the applicant is a body politic, a partnership or an incorporated or unincorporated body it must, by the application, nominate a natural person to be the responsible person for the accreditation.
- (4) The person nominated is to be –
 - (a) in the case of a body politic – a member or senior employee of the body politic; and
 - (b) in the case of a partnership – one of the partners; and
 - (c) in the case of an incorporated body – one of its officers or employees; and
 - (d) in the case of an unincorporated body – one of its members.
- (5) The role of the responsible person is to –
 - (a) act as the Commission’s primary contact regarding the safety, security and related performance of the relevant service; and

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- (b) oversee the day-to-day safety, security and related performance of the relevant service; and
- (c) be responsible for ensuring that the relevant service meets applicable regulatory safety, security and related standards.

19. Determination of application for accreditation

- (1) On receiving an application for accreditation, the Commission is to –
 - (a) consider the application; and
 - (b) approve or refuse to approve the application.
- (2) For the purposes of subsection (1), the Commission –
 - (a) is to take into account the criteria or other matters, if any, prescribed by the regulations; and
 - (b) may take into account any other matters it considers relevant in the circumstances having regard to section 15.
- (3) The Commission must refuse to approve the application if it reasonably determines that –
 - (a) the applicant is not a fit and proper person to be accredited; or

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- (b) if applicable, the nominated responsible person is not a fit and proper person to be so nominated; or
 - (c) the applicant will not be able (or is unlikely to be able) to meet the safety, security and related standards, if any, approved under section 16 for the service that the applicant is proposing to operate.
- (4) Without limiting the matters that may be relevant for subsection (3)(a) and (b), the Commission may determine that a natural person is not a fit and proper person to be accredited, or nominated as a responsible person, if the person –
- (a) has a conviction for a serious offence; or
 - (b) has, in another jurisdiction, a conviction for an offence of a kind that would constitute a serious offence if committed in Tasmania; or
 - (c) has a history of non-compliance regarding any previous accreditation or any external accreditation; or
 - (d) has a history of non-compliance regarding the *Taxi and Hire Vehicle Industries Act 2008*; or
 - (e) is subject to a driving disqualification order under –
 - (i) section 55 of the *Sentencing Act 1997*; or

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(ii) section 37F of the *Police Offences Act 1935*.

20. Refusal of application for accreditation

- (1) This section applies if the Commission refuses to approve an application for accreditation.
- (2) The Commission is to notify the applicant of –
 - (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) the applicant's rights of review.

21. Approval of application for accreditation

- (1) This section applies if the Commission approves an application for accreditation.
- (2) The Commission may place such conditions on the accreditation as it considers necessary or expedient to uphold the purpose of accreditation in respect of the relevant service.
- (3) Without limiting the generality of subsection (2), the Commission may place on the accreditation conditions requiring any or all of the following:
 - (a) that the accredited operator develop and maintain an approved safety and security management plan for the service;

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- (b) that the service undergo approved safety, security and related audits at approved times or intervals;
 - (c) that the vehicles used for the service undergo approved safety, mechanical or other inspections at approved times or intervals;
 - (d) record-keeping and the provision of approved returns or reports on any matter relevant to the safety, security and related performance of the service.
- (4) The Commission is to –
- (a) notify the applicant of the approval; and
 - (b) if applicable, notify the applicant of the conditions of the accreditation and the applicant’s rights of review in respect of those conditions; and
 - (c) issue the applicant with an accreditation certificate.

22. Accreditation certificate

- (1) An accreditation certificate is to be in an approved form and specify –
- (a) particulars of the accredited operator and, if applicable, the relevant responsible person; and
 - (b) particulars of the relevant service; and

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- (c) the conditions, if any, of the accreditation; and
 - (d) any other matters the Commission considers necessary or expedient.
- (2) The Commission is to issue an accredited operator with a revised accreditation certificate if there is a change in –
 - (a) the conditions, if any, of the accreditation; or
 - (b) the name or business address of, or some other significant particular concerning, the accredited operator; or
 - (c) if applicable, the relevant responsible person.
- (3) The revised certificate may be issued on the Commission’s own initiative or at the request of the accredited operator.

23. Accreditation Register

- (1) The Commission is to keep a register (“**Accreditation Register**”) for the purposes of this Part.
- (2) The Accreditation Register is to be in an approved form and contain –
 - (a) such particulars in respect of each accredited operator as the regulations may prescribe; and

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- (b) such other information the Commission considers necessary or expedient.
- (3) In any proceedings, a document purporting to be a copy of or extract from the Accreditation Register in relation to a particular matter at a particular date, and purporting to be signed by the Commission or a delegate of the Commission, is admissible as evidence of the contents of the Accreditation Register relating to that matter at that date.
- (4) The Commission may publish the Accreditation Register or any part or extract thereof as it considers necessary or expedient.

Division 3 – Nature of accreditation

24. Duration of accreditation

- (1) Except as provided by this Part, accreditation is ongoing subject to the payment of the continuity fees, if any, prescribed by the regulations.
- (2) If the holder of an accreditation fails to pay a continuity fee by the day on which it falls due to be paid –
 - (a) the Commission, by notice, may demand that the holder of the accreditation pay the continuity fee by a specified day; and
 - (b) the accreditation expires at the end of that specified day if, at that time, the continuity fee remains unpaid.

25. Accreditation not transferable

Accreditation is not transferable.

26. Surrender of accreditation

- (1) An accredited operator may, by notice to the Commission or other approved means, surrender an accreditation at any time.
- (2) The surrender applies to the whole of the accreditation.
- (3) Accreditation has no surrender value.

27. Death of individual accredited operator

- (1) If a natural person holding accreditation in respect of a passenger transport service or a hire and drive passenger service dies, the person's personal representative may continue it in operation for a period not exceeding 3 months.
- (2) For the purposes of subsection (1) –
 - (a) the accreditation is taken to continue in force under and subject to this Act for the period during which the personal representative continues to operate the service; and
 - (b) the personal representative is taken to be, and to have all the rights, obligations and liabilities of, the accredited operator in respect of the service.

28. External accreditation

- (1) This section applies if a person (“**interstate passenger transport services operator**”) –
- (a) operates a passenger transport service in another State; and
 - (b) has valid external accreditation (in that other State) in respect of that passenger transport service; and
 - (c) operates, by means of vehicles that are registered under the vehicle registration laws of that other State and are authorised to be used for the purposes of that external accreditation, occasional passenger transport services originating in that other State and extending to Tasmania (“**interstate passenger transport services**”).
- (2) For the purposes of section 10, the external accreditation has, in respect of the interstate passenger transport services, the same force and effect in Tasmania, according to its terms, as accreditation under this Part.
- (3) However, the Commission may determine that subsection (2) does not apply to the external accreditation in respect of the interstate passenger transport services if, in its absolute discretion, it is satisfied that –
- (a) the interstate passenger transport operator has moved its base of operations

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- to Tasmania or is conducting operations from Tasmania; or
- (b) the interstate passenger transport operator is operating interstate passenger transport services on more than an occasional basis; or
 - (c) the interstate passenger transport operator is operating, in Tasmania, regular passenger services; or
 - (d) the external accreditation is not substantially similar to Tasmanian accreditation in respect of a comparable passenger transport service; or
 - (e) the requirements for obtaining the external accreditation do not substantially match the corresponding Tasmanian requirements; or
 - (f) the external accreditation has become invalid or inactive; or
 - (g) relevant vehicles or operations have not undergone or passed safety inspections or safety audits required under the external accreditation; or
 - (h) there are other reasonable grounds, not amounting to trade restrictions, for making such a determination.
- (4) If the Commission makes a determination under subsection (3) –

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- (a) it is to notify the interstate passenger transport operator of the determination; and
 - (b) the determination takes effect 7 days after the service of that notification.
- (5) A determination under subsection (3) is not –
- (a) an administrative decision for the purposes of Part 4; or
 - (b) a reviewable decision for the purposes of subsection (1) of section 59.
- (6) In this section –
- “valid external accreditation”** means external accreditation that is not probationary or suspended or subject to a notice of cancellation.

Division 4 – Management of accreditation

29. Contravention of conditions of accreditation

- (1) A person holding accreditation must not –
- (a) contravene the conditions of the accreditation; or
 - (b) cause or allow another person to contravene the conditions of the accreditation.

Penalty: Fine not exceeding –

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- (a) 100 penalty units for a body corporate or body politic; or
 - (b) 50 penalty units for an individual.
- (2) Where a body politic, a partnership or an incorporated or unincorporated body holds accreditation, the relevant responsible person must not –
- (a) contravene the conditions of the accreditation; or
 - (b) cause or allow another person to contravene the conditions of the accreditation.

Penalty: Fine not exceeding 50 penalty units.

30. Variation of conditions of accreditation, &c.

- (1) The Commission may, at any time –
- (a) place an additional condition on an accreditation; or
 - (b) vary or revoke a condition of an accreditation.
- (2) The Commission may exercise its power under subsection (1) –
- (a) on its own initiative; or
 - (b) on the application of the accredited operator in accordance with section 66.

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- (3) Unless it reasonably apprehends that it needs to act speedily because of a threat to public safety, the Commission is not to exercise its power under subsection (2)(a) so as to make the conditions of the accreditation more costly or onerous for the accredited operator without giving the accredited operator notice of its intention, together with reasons, and a reasonable opportunity to be heard.
 - (4) If, in response to an application pursuant to subsection (2), the Commission decides to take an action different from that sought by the applicant, the Commission is to notify the applicant of the reasons for taking the different action.
 - (5) In this section –

“action” includes omission.

31. Cancellation and suspension, &c., of accreditation

- (1) The Commission may cancel or suspend or impose probationary status on an accreditation if –
 - (a) the Commission is satisfied on reasonable grounds that –
 - (i) the accredited operator or, if applicable, relevant responsible person has contravened the conditions of the accreditation in a material way (or caused or

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- allowed other persons to do so);
or
- (ii) the accredited operator or, if applicable, relevant responsible person has contravened relevant safety, security or related standards approved under section 16 (or caused or allowed other persons to do so); or
 - (iii) the accredited operator or, if applicable, relevant responsible person has contravened vehicle safety inspection requirements, if any, prescribed by the regulations (or caused or allowed other persons to do so); or
 - (iv) in the case of accreditation in respect of a passenger transport service, the accredited operator has operated a passenger transport service of a kind not permitted under the accreditation;
or
 - (v) the accredited operator, being required to have a responsible person for the purposes of the accreditation, does not have such responsible person; or
 - (vi) the accredited operator has failed to pay prescribed fees relevant to the accreditation after due

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- demand has been made for their payment; or
- (vii) the accredited operator or, if applicable, relevant responsible person has failed to furnish the Commission with information it reasonably requires in relation to the accreditation after due demand has been made for that information; or
- (b) the Commission, having regard to the same matters as are relevant under section 19(2) and (4), is satisfied that –
- (i) the accredited operator is no longer a fit and proper person to hold the accreditation or, if applicable, the relevant responsible person is no longer a fit and proper person to fill that role; or
- (ii) the accredited operator is employing drivers who are not fit and proper persons to fill that role; or
- (c) the Commission, having regard to section 15, is satisfied that there are other compelling reasons for effecting the cancellation or suspension or, as the case may be, imposing the probationary status.

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- (2) Unless it reasonably apprehends that it needs to act speedily because of a threat to public safety, the Commission is not to exercise its power under subsection (1) without giving the accredited operator notice of its intention, together with reasons, and a reasonable opportunity to be heard.
- (3) In determining whether cancellation or suspension or the imposition of probationary status is the most appropriate course of action in the circumstances, the Commission is to regard public safety as the paramount consideration rather than the impact on the accredited operator.
- (4) If the Commission cancels or suspends or imposes probationary status on an accreditation, it is to notify the accredited operator of the cancellation or suspension or imposition of probationary status and of the accredited operator's rights of review.
- (5) Apart from the requirement to pay continuity fees, if any, an accreditation is not in force while it is suspended.
- (6) While an accreditation has probationary status, it remains in force but the Commission, in its absolute discretion, may impose special restrictions on the accreditation.
- (7) If the Commission cancels or suspends or imposes probationary status on an accreditation, it is to record particulars of the cancellation or suspension or probation in the Accreditation Register.

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- (8) The Commission may at any time revoke the suspension of an accreditation if it is satisfied that the suspension is no longer merited.
 - (9) The Commission may at any time revoke the imposition of probationary status on an accreditation if it is satisfied that it no longer merits that status and, on the revocation, may remove or ameliorate any special restrictions imposed on the accreditation under subsection (6).

32. Information requirements

- (1) The Commission, by notice, may require the accredited operator or, if applicable, relevant responsible person to provide it with such information concerning an accredited service, within such period of not less than 14 days, as the Commission specifies in the notice.
- (2) An accredited operator must comply with a requirement made of the accredited operator under subsection (1).

Penalty: Fine not exceeding –

- (a) 50 penalty units for a body corporate or body politic; or
 - (b) 25 penalty units for an individual.
- (3) The responsible person for an accredited operator must comply with a requirement made of the responsible person under subsection (1).

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Penalty: Fine not exceeding 25 penalty units.

33. Notification requirements, &c.

- (1) An accredited operator who is a natural person must notify the Commission within 14 days if he or she is charged with a serious offence.

Penalty: Fine not exceeding 25 penalty units.

- (2) The responsible person for an accreditation must notify the Commission within 14 days if he or she is charged with a serious offence.

Penalty: Fine not exceeding 25 penalty units.

- (3) If a person ceases for any reason to be the responsible person for an accreditation –

- (a) the accredited operator must notify the Commission of that fact within 14 days; and
- (b) by the same notice, nominate a new responsible person for the accreditation.

Penalty: Fine not exceeding 50 penalty units.

PART 3 – REGULAR PASSENGER SERVICES

Division 1 – Authorisation

34. Regular passenger service must be authorised

A person must not operate a regular passenger service unless it is authorised by the Commission.

Penalty: Fine not exceeding –

- (a) 200 penalty units for a body corporate or body politic; or
- (b) 100 penalty units for an individual.

35. What is a regular passenger service?

- (1) For the purposes of this Act, a regular passenger service is a passenger service that –
 - (a) carries fare-paying passengers by means of a large passenger vehicle; and
 - (b) operates at regular or substantially regular intervals according to a publicised route and publicised timetable.
- (2) However, a passenger service that might otherwise fit the description in subsection (1) is taken not to be a regular passenger service for the purposes of this Act if –

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- (a) the passenger service forms the whole or part of a tourist activity that –
 - (i) is completed in a single day; and
 - (ii) terminates where it began; and
 - (iii) does not charge any passengers who embark or disembark en route lower fares than passengers who take the entire journey; and
 - (iv) charges, if the passenger service is just a part of the tourist activity, passenger fares that cannot be unbundled from any charges relating to that tourist activity; or

- (b) the passenger service forms the whole or part of a tourist activity that –
 - (i) extends over 2 or more consecutive days; and
 - (ii) does not charge any passengers who embark or disembark en route lower fares than passengers who take the entire journey; and
 - (iii) charges, if the passenger service is just a part of the tourist activity, passenger fares that cannot be unbundled from any charges relating to that tourist activity; or

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- (c) the regulations so provide.
- (3) Any question or dispute concerning a passenger service’s status in terms of subsection (1) or (2) is to be determined by the Commission, and the determination is binding.
- (4) In this section –
- “paying passengers”**, of a regular passenger service, includes –
- (a) passengers who pay an on-the-spot fare to use the service; and
 - (b) passengers who purchase a pre-paid ticket or voucher that entitles them to use the service over a certain period or for multiple trips; and
 - (c) passengers who make a pre-paid or post-paid booking to use the service; and
 - (d) passengers (such as schoolchildren or the clients of a charitable body) who do not individually pay to use the service but for whom a collective contractual payment is made by a third party;

“publicised” means publicly advertised or readily ascertainable by members of the general public.

36. Application for authorisation

An application for the authorisation of a regular passenger service is to be in accordance with section 66.

37. Determination of application for authorisation

- (1) After considering an application for the authorisation of a regular passenger service (“**proposed service**”), the Commission may approve or refuse to approve the application.
- (2) For the purposes of subsection (1), the Commission –
 - (a) is to have regard to any matters prescribed by the regulations; and
 - (b) may have regard to any other matters it reasonably considers relevant in the circumstances.
- (3) Without limiting its generality, the matters that the Commission could have regard to under subsection (2)(b) include –
 - (a) the likely impact of the authorisation on the obligations of the State Crown under existing passenger service contracts; and
 - (b) whether any person is already operating the same or substantially the same service as the proposed service; and

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- (c) whether any person is already operating in the same or substantially the same passenger transport market as the applicant, as regards the proposed service; and
 - (d) whether any person has an impending commitment, under a service development plan, to begin operating the same or substantially the same service as the proposed service and, if so –
 - (i) whether the commitment is conditional on a government subsidy; and
 - (ii) the likely impact of the authorisation on the commitment.
- (4) 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.

38. Refusal of application for authorisation

- (1) This section applies if the Commission refuses to approve an application for the authorisation of a regular passenger service.
- (2) The Commission is to notify the applicant of –
 - (a) the refusal; and
 - (b) the reasons for the refusal; and

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- (c) the applicant's rights of review.
- (3) Subsection (2) also applies if, pursuant to section 37(4), the Commission did not consider the application.

39. Approval of application for authorisation

- (1) This section applies if the Commission approves an application for the authorisation of a regular passenger service.
- (2) The Commission may place such conditions on the authorisation as it considers necessary or expedient having regard to the nature of the service.
- (3) Without limiting the generality of subsection (2), the Commission may place on the authorisation conditions about any or all of the following:
 - (a) the kinds of passenger vehicles that may be used;
 - (b) the route to be followed;
 - (c) the timetable, including the frequency of service;
 - (d) passenger stops;
 - (e) fares and fare waivers, rebates and discounts;
 - (f) a minimum period of operation.

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- (4) In a case to which this section applies, the Commission is to notify the applicant of –
- (a) the approval; and
 - (b) if applicable, the conditions placed on the authorisation and the applicant’s rights of review in respect of those conditions.

40. Nature of authorisation

- (1) Except as provided by this Part, an authorisation is ongoing subject to the payment of the continuity fees, if any, prescribed by the regulations.
- (2) If a service operator fails to pay a continuity fee for an authorisation by the day on which it falls due to be paid –
 - (a) the Commission, by notice, may demand that the service operator pay the continuity fee by a specified day; and
 - (b) the authorisation expires at end of that specified day if, at that time, the continuity fee remains unpaid.
- (3) The authorisation of a regular passenger service runs with the service and is unaffected by a related business transaction.
- (4) A related business transaction does not, in itself, constitute grounds for cancelling or suspending the authorisation of a regular passenger service,

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but may constitute proper grounds to vary the conditions, if any, of the authorisation.

(5) In this section –

“related business transaction”, for a regular passenger service, includes –

- (a) the sale or transfer of the service to another person; and
- (b) a restructuring or rearrangement of the business arrangements of the service operator (not involving bankruptcy or external administration under the Corporations Act); and
- (c) a transformation of the legal personality of the service operator (whether by incorporation, the formation of a partnership or otherwise); and
- (d) a change of name or business name; and
- (e) the purchase, sale, leasing or mortgaging of any office, garage, workshop or other premises used by the service.

41. Contravention of conditions of authorisation

The service operator of an authorised regular passenger service must not –

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-
- (a) contravene the conditions of the authorisation; or
 - (b) cause or allow another person to contravene the conditions of the authorisation.

Penalty: Fine not exceeding –

- (a) 100 penalty units for a body corporate or body politic; or
- (b) 50 penalty units for an individual.

42. Variation of conditions of authorisation, &c.

- (1) The Commission may, at any time –
 - (a) place an additional condition on an authorisation; or
 - (b) vary or revoke a condition of an authorisation.
- (2) The Commission may exercise the power under subsection (1) –
 - (a) on its initiative; or
 - (b) on the application of the service operator in accordance with section 66.
- (3) Unless the Commission reasonably apprehends that it needs to act speedily because of a threat to public safety, it is not to exercise its power under subsection (2)(a) without giving the service

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operator notice of its intention, together with reasons, and a reasonable opportunity to be heard.

- (4) If, in response to an application pursuant to subsection (2)(b), the Commission decides to take an action different from that sought by the applicant, it is to notify the applicant of the reasons for taking the different action.
- (5) In this section –
- “action”** includes omission.

43. Cancellation and suspension of authorisation

- (1) The Commission may cancel or suspend the authorisation of a regular passenger service if it is satisfied on reasonable grounds that –
- (a) the service is not being operated in accordance with the authorisation; or
 - (b) the service operator has contravened the conditions of the authorisation, if any, in a material way (or caused or allowed other persons to do so); or
 - (c) the service is being discontinued or has not operated for 3 months; or
 - (d) the service operator has failed to pay prescribed fees relevant to the authorisation after due demand has been made for their payment; or

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- (e) the service operator has failed to furnish the Commission with information it reasonably requires in relation to the authorisation after due demand has been made for that information; or
 - (f) there are other compelling reasons for the cancellation or suspension.
- (2) Unless the Commission reasonably apprehends that it needs to act speedily because of a threat to public safety, it is not to exercise its power under subsection (1) without giving the service operator notice of its intention, together with reasons, and a reasonable opportunity to be heard.
 - (3) If the Commission cancels or suspends an authorisation, it is to notify the service operator of the cancellation or suspension and, in a case to which subsection (1) applies, the service operator's rights of review.
 - (4) Apart from the requirement to pay continuity fees, an authorisation is not in force while it is suspended.
 - (5) The Commission may revoke the suspension of an authorisation at any time if it is satisfied that the suspension is no longer merited.

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Division 2 – Operation of regular passenger services

44. Emergency operation, &c., of regular passenger services

- (1) This section applies if the Secretary is satisfied that –
 - (a) a regular passenger service for which there is a pressing need is not being operated; or
 - (b) a regular passenger service for which there is a continuing and pressing need is in imminent danger of being permanently, temporarily or intermittently withdrawn; or
 - (c) there is a pressing need for a regular passenger service to be operated as an interim measure, pending the execution of a suitable passenger service contract under section 46.
- (2) The Secretary may enter into one or more passenger service contracts to ensure the operation of the service.
- (3) For the purposes of subsection (2), the Secretary may adopt whichever of the following procedures he or she considers more expedient in the circumstances:
 - (a) invite any bus operators to contract;

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- (b) call for expressions of interest from bus operators and select the most suitable expression of interest.
- (4) In contracting under this section, the Secretary is not obliged to –
 - (a) make determinations as to the sustainability of the relevant service; or
 - (b) consult any industry bodies or other persons.

45. Trial operation of regular passenger services

- (1) This section applies if the Secretary is satisfied that there might be a need for a regular passenger service.
- (2) The Secretary may enter into one or more passenger service contracts providing for the service to be operated on a trial basis.
- (3) For the purposes of subsection (2), the Secretary may adopt whichever of the following procedures he or she considers most expedient in the circumstances:
 - (a) invite any bus operators to contract;
 - (b) call for expressions of interest from bus operators and select the most suitable expression of interest;
 - (c) call for tenders from bus operators and select the most suitable tender.

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- (4) In deciding on the most expedient procedure to adopt under subsection (3) the Secretary may have regard to the nature of the service, the urgency of the community need, the likely level of interest in conducting the trial, the capacity of the passenger transport industry and such other matters as he or she reasonably considers relevant to the conduct of the trial.
- (5) A passenger service contract under this section may confer on the service operator an exclusive right to operate the service during the term of the contract.

46. Operation of unprovided regular passenger services

- (1) This section applies if the Secretary is satisfied that –
 - (a) there is a need for a regular passenger service; and
 - (b) the service is not being operated by any person; and
 - (c) there is no prospect of any person operating the service without a government subsidy; and
 - (d) there is no proper basis for intervention under section 44 in respect of the service.
- (2) The Secretary may enter into one or more passenger service contracts to ensure the operation of the service.

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- (3) A passenger service contract under this section may confer on the service operator an exclusive right to operate the service during the term of the contract.

47. Variation of independently operated regular passenger services

- (1) This section applies if the Secretary is satisfied that an independently operated regular passenger service needs to be varied, whether as to the route, the frequency or reliability of service, passenger stops, the vehicles used or in other respects.
- (2) The Secretary is to –
- (a) notify the service operator of the necessary operational variations; and
 - (b) allow the service operator a reasonable period, of not less than 60 days, in which to implement them.
- (3) If, by the end of the reasonable period under subsection (2)(b), the service operator has not implemented the necessary operational variations to the Secretary's satisfaction, or entered into an arrangement with the Secretary to do so –
- (a) the Secretary may enter into one or more passenger service contracts to ensure that the service is operated to a standard that

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is consistent with the necessary operational variations; and

(b) in so contracting, the Secretary is not obliged to consult, or consider the impact on, the service operator.

(4) In this section –

“independently operated regular passenger service” means a regular passenger service being operated without a passenger service contract or any form of government subsidy.

48. Variation of contractually operated regular passenger services

(1) This section applies if the Secretary is satisfied that –

(a) the operation of a contractual regular passenger service needs to be varied, whether as to the route, the frequency or reliability of service, passenger stops, the vehicles used or in other material respects; and

(b) the necessary operational variations are, or might be, capable of being implemented under one or more existing passenger service contracts.

(2) The Secretary may invite the relevant service operator or, if applicable, each relevant service operator to submit –

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-
- (a) an offer to operate the service to a standard that is consistent with the necessary operational variations; or
- (b) an expression of interest in operating the service to a standard that is consistent with the necessary operational variations.
- (3) Where, pursuant to subsection (2), one or more offers or expressions of interest are submitted, the Secretary may –
- (a) select the most satisfactory offer or expression of interest by reference to criteria developed by the Secretary for the purpose, either generally or in the instant case; and
- (b) as the circumstances require, negotiate and execute a variation to an existing passenger service contract or enter into a new passenger service contract.
- (4) Where, pursuant to subsection (2), no offer or expression of interest is submitted, or no offer or expression of interest is satisfactory to the Secretary, the Secretary may proceed under section 46 or, if changing circumstances so require, section 44.
- (5) In this section –
- “contractual regular passenger service”**
means a regular passenger service being operated under a passenger service contract or with any form of government subsidy;

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“criteria” means criteria that take into account the service development plans of relevant service operators.

49. Term of passenger service contracts, &c.

- (1) A passenger service contract under section 44 or 45 is to be for one non-renewable term not exceeding 24 months.
- (2) A passenger service contract under section 46 or 47 –
 - (a) is to be for a term not exceeding 10 years; and
 - (b) may, in the discretion of the parties, provide for the term of the contract to be split into an initial period of any length and one or more further periods of any length (provided those periods do not, in aggregate, exceed 10 years); and
 - (c) may, if the term of the contract is split as mentioned in paragraph (b), provide that the continuation of the contract from one period to the next is conditional on the operator meeting set performance standards.
- (3) A passenger service contract under this Division –
 - (a) may set performance standards and provide for sanctions (which may include

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early termination) if these are not met;
and

- (b) is, in other respects, to be on such conditions as the Secretary considers necessary or expedient in the circumstances.

50. Qualification of Secretary’s contracting power

- (1) The Secretary’s power to enter into passenger service contracts under this Division is, in every case, subject to –
 - (a) the availability of funding; and
 - (b) the service eligibility guidelines; and
 - (c) applicable Treasurer’s Instructions issued under section 23 of the *Financial Management and Audit Act 1990*.
- (2) Nothing in this Division is to be taken as obliging the Secretary to –
 - (a) enter into any passenger service contract;
or
 - (b) accept, in respect of any prospective passenger service contract, any offer, expression of interest or tender that the Secretary adjudges unsatisfactory.
- (3) In this section –
 - “**contract**” includes a contractual variation.

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51. Service eligibility guidelines

- (1) In exercising power under this Division, the Secretary –
 - (a) is to have regard to service eligibility guidelines developed by the Secretary and approved by the Minister for the purpose; and
 - (b) may have regard to such other matters as he or she considers necessary or expedient.
- (2) In developing the service eligibility guidelines, the Secretary is to liaise with such industry bodies, standards bodies, regulatory authorities and other interested parties as he or she considers necessary or expedient.
- (3) The Secretary is to publish the service eligibility guidelines as he or she considers necessary or expedient or as the Minister may from time to time direct.

Division 3 – Compensation

52. Compensation not payable

Except to extent that the conditions of a passenger service contract may otherwise provide, no compensation is payable to any person in respect of or as a consequence of –

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- (a) any decision of the Commission under this Part to authorise, or not authorise, a regular passenger service; or
- (b) any decision of the Secretary under this Part to –
 - (i) enter, or not enter, into a passenger service contract; or
 - (ii) extend or renew, or not extend or renew, a passenger service contract; or
 - (iii) rescind a passenger service contract.

PART 4 – REVIEW OF DECISIONS

53. Interpretation of Part

In this Part –

“administrative decision” means –

- (a) a decision of the Commission under Part 2 or Division 1 of Part 3; or
- (b) a decision that the regulations declare to be an administrative decision;

“application for internal review” means an application under section 54.

54. Right of internal review

A person who is aggrieved by an administrative decision made in respect of that person may apply to the Commission for an internal review of the decision.

55. Nature of internal review

An internal review under this Part is to be one in which the decision under review is remade entirely afresh and, in so doing, the reviewer is entitled, in the reviewer’s discretion, to have regard to any matters that were not known, not

available or not taken into account in the making of the decision under review.

56. Application for internal review

- (1) An application for internal review is to –
 - (a) be in accordance with section 66; and
 - (b) be lodged with the Commission within 30 days after the day on which the Commission notifies the applicant of the relevant administrative decision.
- (2) Despite subsection (1), the Commission may consider an application for internal review that is defective in form or lodged out of time if it is satisfied in the circumstances of a particular case that –
 - (a) it would be fair to do so; and
 - (b) the review would not, on account of practical developments or the passage of time, be futile.

57. Effect of application for internal review

An application for the internal review of an administrative decision does not set aside or stay the operation of the decision.

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Part 4 – Review of Decisions

58. Consideration of application for internal review

- (1) The Commission must consider each application for internal review that is made to it and, in so doing –
 - (a) is to observe the rules of natural justice; and
 - (b) is to ensure that any employee of the Commission engaged in the review process –
 - (i) was not involved in the making of the administrative decision under review; and
 - (ii) is not under the direct control of a person who was involved in the making of the administrative decision under review; and
 - (c) may engage an independent mediator to assist in the review process; and
 - (d) may, if the administrative decision under review relates to matters that are of general importance to a sector of the passenger transport industry or hire and drive passenger service industry and it is possible to do so without prejudice to the applicant, consult with any representatives of that industry sector.
- (2) If an application for internal review is found to be frivolous or vexatious, or factually mistaken in a material way, the Commission is to notify

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the applicant of that finding immediately but is not required to take any further action on the application.

- (3) Once the Commission has completed its internal review, it is to make a fresh decision (“**review determination**”) in place of the decision under review.
- (4) A review determination is to be made within 21 days after the day on which the relevant application for internal review is lodged.
- (5) The 21-day period for making a review determination may, on the Commission giving notice to the applicant before the end of that period, be extended, once, by a period not exceeding 28 days.
- (6) If a review determination is not made within the period provided by subsection (4) or, if applicable, the extended period provided by subsection (5), the Commission is taken to have made a review determination to affirm the administrative decision under review.
- (7) The Commission is to notify an applicant of a review determination as soon as practicable after it has been made or, in a case to which subsection (6) applies, taken to have been made.
- (8) A notice under subsection (2) or (7) is to –
 - (a) give reasons for the finding or determination; and

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- (b) if applicable, inform the applicant of the applicant's right to have the decision externally reviewed and the procedure for applying for external review.

59. External review of decisions

- (1) A person who is aggrieved by a decision made in respect of that person under this Act may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision.
- (2) To avoid doubt, a person's entitlement under subsection (1) may be exercised regardless of whether the person has made an application for internal review in respect of the decision.
- (3) However, if a person has made an application for internal review in respect of the decision, the person's entitlement under subsection (1) is not exercisable until after the internal review is completed.
- (4) Subsection (1) does not apply to a decision if another provision of this Act specifies that it is not a reviewable decision for the purposes of that subsection.

PART 5 – MISCELLANEOUS

60. Ministerial advisory committees

- (1) The Minister may establish committees to advise the Minister on any matter concerning this Act.
- (2) The Minister may –
 - (a) determine the constitution, membership and procedures of a committee; and
 - (b) determine the terms and conditions on which any person is appointed to a committee; and
 - (c) discharge, alter or reconstitute a committee; and
 - (d) give directions to a committee.
- (3) Except as provided by this section, a committee may regulate its own proceedings.

61. Administration and enforcement

This Act is to be administered by the same persons and in the same manner as section 9 of the *Traffic Act 1925* provides for that Act to be administered, and that section of that Act applies to the administration of this Act in all respects as if a reference in that section to the *Traffic Act 1925* were a reference to this Act.

62. Offences by bodies corporate

- (1) If a body corporate commits an offence against this Act, each person concerned in the management of the body corporate is taken to have also committed the offence and may be convicted of the offence unless the person establishes that –
 - (a) the act or omission constituting the offence took place without the person's knowledge or consent; or
 - (b) the person used all due diligence to prevent that act or omission by the body corporate.
- (2) A person referred to in subsection (1) may be convicted of an offence against this Act whether or not the body corporate is charged with or convicted of the offence.

63. False or misleading information

A person must not, in giving any information under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that, without that matter, the statement is false or misleading.

Penalty: Fine not exceeding 100 penalty units.

64. Exemptions

- (1) The Commission, by instrument in writing, may exempt from the operation of a relevant provision of this Act –
 - (a) a person or class of persons; or
 - (b) a motor vehicle or class of motor vehicles; or
 - (c) a passenger service or class of passenger services.
- (2) Without limiting its generality, under subsection (1) –
 - (a) a person operating a passenger transport service or hire and drive passenger service may be exempted from the requirement to be accredited in respect of that service; or
 - (b) a person operating a regular passenger service may be exempted from the requirement to have the service authorised.
- (3) An exemption may be granted only if the Commission is satisfied that –
 - (a) compliance with the relevant provision of this Act in relation to the exempted person, motor vehicle or passenger service (or class thereof) is unnecessary, impracticable or unreasonable; and

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- (b) the exemption will not compromise public safety.
- (4) An exemption may be granted unconditionally or on such conditions as the Commission determines.
- (5) The Commission, by instrument in writing, may vary or revoke an exemption.
- (6) A person who has the benefit of an exemption, either as an individual or a member of a class of persons, must comply with the conditions of the exemption, if any.

Penalty: Fine not exceeding 100 penalty units.
- (7) An exemption remains in force, subject to any notified variation, until –
 - (a) the day specified in the instrument of exemption as the day on which it expires; or
 - (b) the Commission notifies the person or persons having the benefit of the exemption that it has been revoked.
- (8) The granting of an exemption or its revocation may be publicly notified if the exemption is for a class of persons, class of motor vehicles or class of passenger services and such public notification is to be taken to be as valid and effectual as if given to the persons concerned individually.
- (9) In this section –

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“publicly notified” means notified in the *Gazette* or in 2 or more daily newspapers in general circulation in Tasmania, or by both of those means;

“relevant provision”, of this Act, means –

- (a) Part 2 or any Division or section thereof; and
- (b) Division 1 of Part 3 or any section thereof.

65. Service of notices

A notice or other document is effectively served or lodged under this Act if –

- (a) in the case of a natural person, it is –
 - (i) given to the person; or
 - (ii) left at, or sent by post to, the person’s postal or residential address or place or address of business or employment last known to the server of the notice or other document; or
 - (iii) faxed to the person’s fax number; or
 - (iv) emailed to the person’s email address; and
- (b) in the case of any other person, it is –

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- (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
- (ii) faxed to the person's fax number; or
- (iii) emailed to the person's email address.

66. Application procedure

- (1) An application to the Commission in respect of any matter under this Act is to –
 - (a) be in a form provided or approved by the Commission; and
 - (b) be accompanied by the prescribed fee, if any; and
 - (c) be supported by such evidence or information as the Commission requires, either at the time of lodgement or subsequently; and
 - (d) comply with such additional requirements, as relate, under the relevant section of this Act, to the specific application.
- (2) The Commission is not obliged to consider or determine an application in respect of any matter under this Act if it –

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- (a) fails to comply with subsection (1) in a material way; or
 - (b) seeks the same or substantially the same outcome as a rejected application made by the same applicant within the preceding 90 days and, on its face, discloses nothing new.
- (3) The Commission may waive an application fee, wholly or in part, if the Commission considers that it would be unreasonable, unfair or cause hardship to impose the fee or full fee in the circumstances.

67. Status and promulgation of administrative determinations, &c.

- (1) This section applies to determinations under section 7(2), section 11(4), section 28(3) and section 35(3) (“**administrative determinations**”).
- (2) Administrative determinations –
 - (a) are not statutory rules; and
 - (b) are not subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.
- (3) The Commission may –
 - (a) publish administrative determinations as it considers necessary or expedient; and

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- (b) by instrument in writing, rescind or revise any administrative determinations if it reasonably considers that the rescission or revision is justified by changed circumstance.

68. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) require the payment of fees in respect of any matter under or relating to this Act and prescribe those fees; and
 - (b) provide for the waiver, refund or rebate of any prescribed fees; and
 - (c) provide for the safety inspection of motor vehicles used in connection with accreditations or authorisations including, without limiting this, mandatory safety inspection programs; and
 - (d) provide for safety, security and related audits of any services; and
 - (e) provide for the issue and use of distinctive items of identification (such as certificates, labels and plates) for motor vehicles, services or persons in

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- relation to accreditations and authorisations; and
- (f) provide for the conduct, obligations and rights of service operators, responsible persons and personnel (including drivers); and
 - (g) provide for the conduct, obligations and rights of service passengers; and
 - (h) prescribe standards and requirements, additional to those prescribed by or under the *Traffic Act 1925* or *Vehicle and Traffic Act 1999*, for service motor vehicles (including their equipment, fittings and amenities); and
 - (i) provide for the regulation and control of service motor vehicles generally; and
 - (j) provide for the regulation and control of services generally; and
 - (k) provide for the keeping, production and inspection of records in respect of any matter under this Act; and
 - (l) provide for the provision of returns in respect of any matter under this Act.
- (3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (4) The regulations may –

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- (a) confer powers on the Minister, Commission or Secretary; and
 - (b) authorise any matter to be from time to time determined, applied, approved or regulated by the Minister, Commission or Secretary.
- (5) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units.
- (6) The regulations may contain notes and examples and stipulate whether such notes and examples, or any of them, form part of the law (which stipulation is to be taken to be decisive as to their status in that regard).
- (7) The regulations may –
 - (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
 - (b) provide for any of those savings or transitional matters to take effect on the day proclaimed under section 2(2) or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

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69. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Sustainable Transport; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

70. Savings and transitional provisions

The savings and transitional provisions in Schedule 1 have effect.

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**SCHEDULE 1 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 70

1. Interpretation

In this Schedule –

“**commencement day**” means the day proclaimed under section 2(2);

“**new Act**” means the *Passenger Transport Services Act 2011*;

“**old Act**” means the *Passenger Transport Act 1997*;

“**old regulations**” means the *Passenger Transport Regulations 2000*;

“**subsisting**” means subsisting immediately before the commencement day.

2. Accreditations

(1) A subsisting accreditation under Part 2A of the old Act continues as an accreditation under Part 2 of the new Act subject to –

(a) the subsisting conditions, if any, of the accreditation; and

(b) any subsisting, unexpired, period of suspension; and

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- (c) any subsisting imposition of probationary status.
- (2) For the purposes of subclause (1) –
- (a) the categories of service specified in the relevant subsisting accreditation certificate are taken to be subsisting conditions of the accreditation; and
 - (b) the subsisting responsible officer is taken to be the responsible person for the accreditation; and
 - (c) if the continuing accreditation is subject to a subsisting period of suspension, it is ineffective for the purposes of the new Act until the suspension is revoked or the period of suspension expires.
- (3) Any application to the Commission for accreditation under Part 2A of the old Act not determined by the commencement day may be treated and determined by the Commission as an application for accreditation under Part 2 of the new Act.
- (4) Any application to vary the conditions of a subsisting accreditation under Part 2A of the old Act not determined by the commencement day may be treated and determined by the Commission as an application under section 30 of the new Act.
- (5) A subsisting accreditation certificate issued under section 16I of the old Act is taken to be,

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and may continue to serve as, an accreditation certificate under section 22 of the new Act.

- (6) The Accreditation Register kept under section 16J of the old Act continues as the Accreditation Register under section 23 of the new Act.
- (7) Any subsisting exemption under section 16V of the old Act continues in force as an exemption, in the same terms, under section 64 of the new Act.
- (8) Any notification required to be given under section 16T of the old Act, but not given by the commencement day, must still be given as that section requires, despite the repeal of the old Act.
- (9) A failure to comply with subclause (8) is a relevant matter for the purposes of section 31(1)(b) of the new Act.

3. Authorisations

- (1) A subsisting authorisation under section 21(4) of the old Act continues in force as an authorisation under Division 1 of Part 3 of the new Act.
- (2) Any application to the Commission for authorisation under section 21(4) of the old Act not determined by the commencement day may be treated and determined by the Secretary as an application for authorisation under section 36 of the new Act.

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- (3) The records kept by the Commission under section 21 of the old Act are to be transferred to the Secretary.

4. Special and general permits

- (1) A subsisting special permit under regulation 5 of the old regulations continues in effect according to its terms until the time it was originally due to expire.
- (2) A subsisting general permit under regulation 6 of the old regulations continues in effect according to its terms until it is revoked by the Commission.