

# Public Transport Competition Bill

No.

## TABLE OF PROVISIONS

*Clause*

### PART 1—PRELIMINARY

1. Purpose
2. Commencement
3. Definitions
4. Crown to be bound

### PART 2—ACCREDITATION OF ROAD TRANSPORT PASSENGER SERVICES

5. Operator must be accredited
6. Purpose of accreditation
7. Application for accreditation
8. Matters to be considered by Secretary
9. Giving or refusal of accreditation
10. Conditions of accreditation
11. Change of conditions, etc.
12. Duration of accreditation
13. Requirement to notify Secretary about charges, etc.
14. Periodical returns
15. Application for renewal of accreditation
16. Renewal of accreditation
17. Nature of accreditation
18. False or misleading information
19. Secretary not liable for giving accreditation
20. Supervision of accredited persons
21. Procedure and powers
22. Immediate power of suspension
23. Effect of suspension
24. Review by AAT

### PART 3—REGULAR PASSENGER SERVICES

25. Operator must have service contract
26. Service contracts
27. Nature of service contracts
28. Regions or routes of operation
29. New services
30. Assignment of rights under a service contract
31. Variation, suspension or cancellation of service contracts

#### **PART 4—MISCELLANEOUS**

32. Driving prohibition
33. Driver's certificate not required
34. Fees
35. Delegation
36. No compensation payable
37. Supreme Court—limitation of jurisdiction
38. Regulations
39. Transitional provisions

#### **PART 5—AMENDMENT OF TRANSPORT ACT 1983**

40. Department of Transport
41. Public Transport Corporation
42. Delegation
43. Licensing of commercial passenger vehicles
44. Driver's certificate
45. Authorised officers (transport infringements)
46. Authorised officers (section 218B)
47. Authorised persons (section 221)
48. Definition of "carriage"

# LEGISLATIVE ASSEMBLY

---

Read 1° 10 May 1995

*(Brought in by Mr Brown and Mr McGrath (Wimmera))*

## A BILL

to improve the operation of road-based public transport by providing for the accreditation of operators and implementing a system of service contracts for certain types of transport service, to amend the **Transport Act 1983** and for other purposes.

### **Public Transport Competition Act 1995**

**The Parliament of Victoria enacts as follows:**

#### **PART 1—PRELIMINARY**

##### **1. *Purpose***

5

The main purpose of this Act is to improve the operation of road-based public transport by providing for the accreditation of operators and implementing a system of service contracts for certain types of transport service.

---

Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)

**2. Commencement**

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed. 5
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period. 10

**3. Definitions**

- (1) In this Act—
- “**accredited person**” means a person who holds an accreditation under Part 2; 15
- “**bus**” means a public passenger vehicle having more than the prescribed number of seating positions;
- “**disqualifying offence**” means—
- (a) an offence against this Act or the regulations or any other law in force in Victoria that is prescribed for the purposes of this definition; or 20
- (b) an offence which, if committed in Victoria, would have been a disqualifying offence;
- “**public passenger vehicle**” means a vehicle that is used for operating a road transport passenger service; 25
- “**regular passenger service**” means—
- (a) a road transport passenger service operated along a fixed route on a regular basis; or
- (b) any other class of road transport passenger service that is prescribed for the purposes of this definition— 30

but does not include—

(c) a road transport passenger service operated for the carriage of tourists to a common destination; or

5 (d) a road transport passenger service operated for the carriage of a group of persons for hire or reward by being previously booked or ordered by that group and in respect of which the members of that group are not each charged a separate fare; or

10 (e) any other road transport passenger service of a class excluded by the regulations from the ambit of this definition;

15 **“road transport passenger service”** means a service consisting of the carriage of passengers for hire or reward—

(a) by a bus; or

20 (b) by any other class of vehicle that is prescribed for the purposes of this definition—

and includes a regular passenger service but does not include a service of a class excluded by the regulations from the ambit of this definition;

25 **“Secretary”** means Secretary to the Department of Transport;

**“service contract”** means a contract entered into under Part 3;

**“temporary accreditation”** means an accreditation given under section 12 (2);

30 **“vehicle”** has the same meaning as in the **Road Safety Act 1986**;

35 **“working day”**, in relation to the Secretary, means any day on which the principal office of the Department of Transport is open to the public for business.

- (2) Expressions used in this Act and in the **Transport Act 1983** that are not defined in sub-section (1) or elsewhere in this Act have the same meanings as in the **Transport Act 1983** (including Part VI of that Act).
- (3) This Act is to be read and construed as one with the **Transport Act 1983**. 5
- (4) The Governor in Council may, by Order published in the Government Gazette, declare this Act to be relevant legislation for the purposes of the **Office of the Regulator-General Act 1994** and, on the publication of that Order, this Act is relevant legislation for the purposes of that Act. 10

**4. *Crown to be bound***

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities. 15

**PART 2—ACCREDITATION OF ROAD TRANSPORT PASSENGER SERVICES**

**5. *Operator must be accredited*** 20

A person must not operate a road transport passenger service within (or partly within) the State—

- (a) without being accredited in accordance with this Part to operate that service; or
- (b) in breach of any condition of an accreditation given in relation to that service. 25

Penalty: 100 penalty units.

**6. *Purpose of accreditation***

The purpose of accreditation under this Part is—

- (a) to attest— 30
  - (i) that the accredited person (or, in the case of an accredited body corporate, each director,

manager or other person who is in a position to control or influence substantially the affairs of the body corporate) is considered to be a suitable person to operate a road transport passenger service of the kind to which the accreditation relates; and

(ii) that the accredited person is considered to have the capacity to meet any prescribed standards relating to—

(A) the ability to provide road transport passenger services; and

(B) safety of passengers and the public; and

(C) service to passengers; and

(D) vehicles and equipment (including their design, service, maintenance and condition); and

(E) any other prescribed matter—

to the degree and in the manner required in respect of a road transport passenger service of the kind to which the accreditation relates; and

(b) to provide a scheme to facilitate—

(i) the provision of an efficient and effective network of road transport passenger services within the State; and

(ii) the observance of appropriate standards by the operators of road transport passenger services; and

(c) to increase competition between transport operators in the provision of road-based public transport by removing unnecessary regulatory restrictions on the entry of competent transport operators to the public transport sector and to enable competitive tendering of contracts with the Secretary for the provision of regular passenger services and other services provided in the public interest;

(d) to provide for any other prescribed matter.

**7. Application for accreditation**

- (1) A person may apply to the Secretary for accreditation.
- (2) An application—
  - (a) must be made in the manner and form determined by the Secretary; 5
  - (b) in the case of an application by a body corporate, must nominate any number of its managers for the purposes of the application;
  - (c) must be accompanied by— 10
    - (i) the prescribed application fee;
    - (ii) any other things that are prescribed.
- (3) The Secretary may require an applicant for accreditation—
  - (a) to furnish further information specified by the Secretary; or 15
  - (b) to verify, by statutory declaration, information furnished for the purposes of the application.

**8. Matters to be considered by Secretary**

- (1) In determining whether to give an accreditation, the Secretary must consider— 20
  - (a) any matters that are prescribed; and
  - (b) any other matters that the Secretary considers relevant.
- (2) In determining whether to give an accreditation to a person, the Secretary may rely on a corresponding accreditation given to that person by another State or a Territory. 25

**9. Giving or refusal of accreditation**

- (1) The Secretary may give or refuse to give an accreditation. 30
- (2) Without limiting sub-section (1), the Secretary may refuse to give an accreditation if the applicant (or, in



5 the case of an applicant who is a body corporate, the body corporate or any of its directors or a manager nominated under section 7 (2) (b)) has been found guilty of a disqualifying offence or has been charged with a disqualifying offence and the charge has not been finally disposed of.

- 10 (3) If before an application for accreditation is determined, the applicant becomes aware of a finding of guilt or charge that is relevant for the purposes of sub-section (2) and particulars of which have not previously been given by the applicant to the Secretary in, or in relation to, the application, the applicant must immediately notify the Secretary of the particulars of that finding or charge.

15 Penalty applying to this sub-section: 10 penalty units.

- (4) If the Secretary refuses to give an accreditation, the Secretary must notify the applicant in writing of the refusal and the reasons for it.

### 10. *Conditions of accreditation*

- 20 (1) An accreditation is subject to—

(a) the condition that no person who has been found guilty of a disqualifying offence will be employed or engaged as a driver of a vehicle operated for the purposes of the road transport passenger service;

(b) any other prescribed condition;

(c) any other condition imposed by the Secretary.

- 30 (2) Particulars of an accreditation (including the kind of road transport passenger service to which it relates) and of the conditions to which it is subject are to be given in writing by the Secretary to the accredited person.

- 35 (3) The regulations may make provision for or with respect to establishing procedures to enable an accredited person to comply with the condition imposed by sub-section (1) (a) including requiring

the Chief Commissioner of Police or any other specified person or class of person to furnish a specified class of person with information of a specified kind.

- 11. *Change of conditions, etc.*** 5
- (1) The Secretary may at any time—
- (a) vary the kind of road transport passenger service to which an accreditation relates;
- (b) vary or revoke a condition of an accreditation or impose a new condition. 10
- (2) The Secretary may act under sub-section (1)—
- (a) of his or her own initiative; or
- (b) on the written application of the accredited person.
- (3) Particulars of any action taken under sub-section (1) are to be given in writing by the Secretary to the accredited person. 15
- 12. *Duration of accreditation***
- (1) An accreditation remains in force for the prescribed period unless— 20
- (a) the accreditation is sooner cancelled or surrendered; or
- (b) that period is shortened under section 20 (3) (b) (iii).
- (2) The Secretary may give a temporary accreditation for a period of less than 12 months. 25
- 13. *Requirement to notify Secretary about charges, etc.***
- If at any time while an accreditation is in force—
- (a) the accredited person becomes aware that the accredited person (or, in the case of an accredited person who is a body corporate, the body corporate or any of its directors or a manager nominated under section 7 (2) (b)) has 30

been found guilty of a disqualifying offence or has been charged with a disqualifying offence and the charge has not been finally disposed of; and

- 5 (b) particulars of that finding or charge have not previously been given by the accredited person to the Secretary—

the accredited person must immediately notify the Secretary of the particulars of that finding or charge.

10 Penalty: 10 penalty units.

#### **14. Periodical returns**

- 15 (1) A person who holds an accreditation (other than a temporary accreditation) must, for each prescribed period, lodge with the Secretary by the prescribed date a return containing the prescribed information.
- (2) If an accredited person fails to comply with sub-section (1), the Secretary may, by notice in writing served on the accredited person, require that person to make good the default.
- 20 (3) If an accredited person fails to comply with a notice under sub-section (2) within 14 days after service of the notice, the accreditation is, by force of this sub-section, suspended until the accredited person complies with the notice.
- 25 (4) If an accredited person fails to comply with a notice under sub-section (2) within 6 months after service of the notice, the accreditation is, by force of this sub-section, cancelled.

#### **15. Application for renewal of accreditation**

- 30 (1) An accredited person (other than the holder of a temporary accreditation) may apply to the Secretary for renewal of the accreditation.
- (2) The holder of a temporary accreditation may, within the period of two years beginning at the

commencement of this section, apply to the Secretary for renewal of the temporary accreditation.

- (3) A renewal application—
  - (a) must be made in the manner and form determined by the Secretary; 5
  - (b) must be accompanied by—
    - (i) the prescribed renewal application fee;
    - (ii) any other things that are prescribed.
- (4) A renewal application must be made not later the prescribed number of days before the expiry of the accreditation. 10
- (5) Despite sub-section (4), the Secretary may consider a renewal application made later than the time applying under sub-section (4) if the applicant pays the prescribed late renewal application fee. 15
- (6) The Secretary may refuse to consider a renewal application made earlier than the day prescribed for the purposes of this sub-section.

## **16. *Renewal of accreditation***

- (1) The Secretary may renew or refuse to renew an accreditation. 20
- (2) On renewing an accreditation the Secretary may—
  - (a) renew it as then in force; or
  - (b) vary the kind of road transport passenger service to which it relates; or 25
  - (c) vary or revoke any of the conditions to which the accreditation is subject; or
  - (d) impose a new condition on the accreditation.
- (3) Particulars of the renewal of an accreditation (including the kind of road transport passenger service to which it relates) and of the conditions to which it is subject are to be given in writing by the Secretary to the accredited person. 30

- (4) A renewed accreditation remains in force for the prescribed period unless—
- (a) the accreditation is sooner cancelled or surrendered; or
  - (c) that period is shortened under section 18.
- (5) If the Secretary refuses to renew an accreditation, the Secretary must notify the accredited person in writing of the refusal and the reasons for it.

**17. Nature of accreditation**

- (1) An accreditation—
- (a) is personal to the accredited person;
  - (b) is not capable of being transferred or assigned to any other person or, subject to sub-section (3), otherwise dealt with by the accredited person;
  - (c) does not vest by operation of law in any other person.
- (2) A purported transfer, assignment or lease of an accreditation and any other purported dealing by the accredited person with an accreditation (otherwise than under and in accordance with sub-section (3)) is of no effect.
- (3) An accredited person may, with the consent of the Secretary and in accordance with the regulations, surrender an accreditation.
- (4) This section has effect despite anything in any Act or rule of law to the contrary.

**18. False or misleading information**

- (1) A person must not in, or in relation to, an application for accreditation or for the renewal of an accreditation give information that is false or misleading in a material particular.

Penalty: 60 penalty units.

- (2) In a proceeding for an offence against sub-section (1) it is a defence to the charge for the accused to prove

that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds—

- (a) in the case of false information—that the information was true; or 5
- (b) in the case of misleading information—that the information was not misleading.

**19. *Secretary not liable for giving accreditation***

No liability attaches to the Secretary for giving an accreditation to any person under this Act. 10

**20. *Supervision of accredited persons***

- (1) The Secretary may hold an inquiry for the purpose of determining whether proper cause exists for taking action against a person who is, or has been, an accredited person. 15
- (2) There is proper cause for taking action against a person who is, or has been, an accredited person if—
  - (a) the person has acted negligently or fraudulently in the course of operating a road transport passenger service; or 20
  - (b) the person (or, in the case of an accredited person who is or was a body corporate, the body corporate or any of its directors or a manager nominated under section 7 (2) (b)) has been found guilty of a disqualifying offence committed while the accreditation was in force; or 25
  - (c) the person obtained the accreditation improperly.
- (3) If, following an inquiry, the Secretary is satisfied that proper cause for taking action against the person exists, the Secretary has power to do one or more of the following: 30
  - (a) reprimand the person;

- (b) if the person is an accredited person—
- (i) warn the person that should further proper cause for taking action be found to exist, the person may be disqualified from holding an accreditation;
  - (ii) impose one or more new conditions on the accreditation;
  - (iii) shorten the period for which the accreditation is to remain in force;
  - (iv) suspend the accreditation for a specified period or until a specified event or until a further determination made by the Secretary;
  - (v) cancel the accreditation immediately or with effect from a specified later date;
- (c) disqualify the person from holding an accreditation—
- (i) until a specified event; or
  - (ii) until a further determination made by the Secretary.
- (4) The Secretary may exercise the powers conferred by this section in relation to conduct occurring before or after the commencement of this section.

**21. Procedure and powers**

- (1) In exercising his or her powers under section 20, the Secretary—
- (a) must act fairly and according to equity and good conscience without regard to technicalities or legal forms;
  - (b) is not required to conduct himself or herself in a formal manner;
  - (c) is not bound by rules or practice as to evidence but may inform himself or herself in relation to any matter in any manner that he or she thinks fit.

- (2) For the purpose of and in connection with any inquiry under section 18 the Secretary has the powers conferred by sections 14, 15, 16, 20, 20A and 21A of the **Evidence Act 1958** on a board appointed by the Governor in Council and those sections apply as if the Secretary were the sole member of the board. 5
- (3) Subject to this Act and the regulations, the procedure of the Secretary on or in connection with an inquiry under section 20 is in his or her discretion.

## **22. Immediate power of suspension** 10

- (1) The Secretary may, subject to and in accordance with the regulations, without holding an inquiry under section 20 immediately suspend an accreditation given to a person under this Act if the Secretary considers it necessary to do so in the interests of public safety. 15
- (2) A suspension under this section may be for a specified period or until a specified event or until a further determination made by the Secretary.
- (3) A person whose accreditation has been suspended under this section may, by notice served on the Secretary, require the Secretary to hold an inquiry under section 20. 20
- (4) The Secretary must commence an inquiry under section 20 within 7 days after the service on him or her of a notice under sub-section (3). 25
- (5) If an inquiry is held under section 20, a suspension under this section, if then still in effect, ceases to have effect on the completion of that inquiry.
- (6) Nothing in this section limits any power of the Secretary under section 20. 30

## **23. Effect of suspension**

A person whose accreditation is suspended is not an accredited person during the period of suspension.



**24. Review by AAT**

A person may apply to the Administrative Appeals Tribunal for review of a decision by the Secretary under this Part in relation to—

- 5
- (a) an application for accreditation or renewal of an accreditation; or
  - (b) an accreditation; or
  - (c) a person who is, or has been, an accredited person.

10                   **PART 3—REGULAR PASSENGER SERVICES**

**25. Operator must have service contract**

A person must not operate a regular passenger service within (or partly within) the State otherwise than under the authority of a service contract.

15                   Penalty: 100 penalty units.

**26. Service contracts**

- (1) A service contract sets out the terms and conditions on which a regular passenger service may be operated.
- 20                   (2) The Secretary has authority on behalf of the Crown to enter into a service contract with an accredited person.
- (3) The Secretary may invite accredited persons to tender for a service contract.
- 25                   (4) In awarding service contracts the Secretary may apply any principles determined by him or her and made known to interested persons.
- 30                   (5) Nothing in this section limits any authority conferred on the Secretary by section 5 of the **Transport Act 1983**.

**27. Nature of service contracts**

- |   |    |
|---|----|
| (1) A service contract cannot be entered into or renewed for a term exceeding 10 years.   |    |
| (2) A service contract may only be entered into or renewed for a term exceeding 7 years with the approval of the Minister.  | 5  |
| (3) If the Minister gives an approval under sub-section (2), the Secretary must include a report on the matter in the next annual report of the Department of Transport.  | 10 |
| (4) A service contract must make provision for or with respect to—  |    |
| (a) the period for which it operates;   |    |
| (b) the manner in which it may be terminated;   |    |
| (c) standards relating to the provision of services under the contract;   | 15 |
| (d) a scale of minimum service levels (determined according to such things as the periods of time during which services are to be operated, the extent of operation of services and the frequency of operation of services during specified periods); | 20 |
| (e) if fares are to be charged, a scale of maximum fares;   |    |
| (f) the manner in which the holder of the service contract will be remunerated or gain revenue from the provision of services under the contract (including arrangements as to any subsidy);  | 25 |
| (g) any other matters required by this Act or the regulations to be specified in a service contract.  | 30 |
| (5) A service contract may make provision for or with respect to—   |    |
| (a) reviewing or altering any fares or fare system in circumstances specified in the contract;  |    |
| (b) monetary or other penalties for breaches of the contract and the recovery of those penalties;   | 35 |

(c) bonds for the performance of the obligations, or specified obligations, under the contract;

(d) the variation of the contract;

5 (e) any other matter for or with respect to which the Secretary considers that provision should be made in the public interest.

10 (6) A service contract may provide for the periodic review, in the manner and at such periods as the contract may specify, of any matter for the time being determined by or under it.

15 (7) Nothing in sub-section (5) or (6) shall be taken to impose a duty on the Secretary to make provision for or with respect to any matter in a service contract that is enforceable in a court or tribunal by any other person or body.

**28. *Regions or routes of operation***

(1) A service contract must specify a region or route of operation.

20 (2) A service contract operating on a specified route may confer on the holder of the contract the exclusive right, subject to this Part, to operate regular passenger services of the relevant kind on the specified route.

25 (3) Subject to this Part, any right referred to in sub-section (2) conferred on the holder of a contract with respect to a particular route precludes the Secretary from subsequently entering into a service contract with any other person for the operation of a regular passenger service of a similar kind along a route that is in such proximity to that route that it would result in substantial competition with the service operated by that holder.

30 (4) A service contract operating in a specified region may—

35 (a) confer on the holder of the contract the exclusive right, subject to this Part, to operate

*Public Transport Competition*

regular passenger services of the relevant kind in the specified region; or

- (b) confer on the holder of the contract the exclusive right, subject to this Part, to operate regular passenger services of the relevant kind in the specified region except with respect to a specified route or routes. 5

- (5) A service contract may provide for other matters relevant to the operation of passenger transport services within the specified region or on the specified route. 10

- (6) A right conferred on the holder of a service contract—

- (a) cannot affect or limit the ability of another person to operate, during the term of the contract, a service that is not a regular passenger service; and 15

- (b) will be subject to any other qualifications applying generally to service contracts of that kind that may be prescribed by the regulations (or specified in the contract itself) during the term of the contract. 20

**29. *New services***

- (1) If while a service contract operating on a particular route or in a particular region is in force— 25

- (a) the Secretary determines that, in the public interest, additional regular passenger services of a similar kind should be provided on, or in proximity to, that route or in that region; and

- (b) the holder of the contract declines to vary the contract, or enter into a new service contract, for the provision of those additional services on the terms and conditions proposed by the Secretary— 30

the holder must be taken to have waived any exclusive right to operate regular passenger services of the relevant kind on that route or in that region to 35

the extent necessary to enable another person to provide those additional services.

5 (2) Sub-section (1) does not apply if, having regard to the nature and extent of the proposed additional services, the terms and conditions proposed by the Secretary are unreasonable in light of the provisions of this Act and the regulations and the circumstances of the case.

10 (3) If proposed additional services affect exclusive rights of two or more service contract holders, all parties to those contracts must endeavour to agree on a just compromise of their respective rights having regard to the interests of passengers.

15 (4) Failing an agreement referred to in sub-section (3), the exclusive rights of any one of the service contract holders (the first holder) are, to the extent necessary to enable another person to provide the proposed additional services, extinguished by force of this sub-section when—

20 (a) a variation of contract is effected, or a new contract is entered into, for the provision of those additional services with another service contract holder with an exclusive right that is affected by those services if those services are likely to reduce patronage of the service operated by that other holder to a greater extent than that of the first holder; or

25 (b) a new contract is entered into, for the provision of those additional services, jointly with two or more other service contract holders with exclusive rights that are affected by those services if those services are likely to reduce patronage of the services operated by those other holders to a greater extent than that of the first holder.

35 **30. *Assignment of rights under a service contract***

(1) The holder of a service contract must not transfer, assign, subcontract or otherwise deal with a right,

power or duty under the contract except with the consent of the Secretary.

- (2) The Secretary must not consent to the transfer, assignment, subcontracting or other dealing unless he or she is satisfied— 5
- (a) that adequate provision will be made for the operation of the relevant service; and
  - (b) as to any other matter the Secretary considers relevant.
- (3) A person to whom a right, power or duty under a service contract is transferred, assigned or subcontracted must, according to the extent and nature of the particular dealing, perform the obligations of the contract holder under the contract and, unless otherwise determined by the Secretary, will be taken to be a party to the contract. 10 15
- (4) A purported dealing in contravention of sub-section (1) is of no effect.

### **31. *Variation, suspension or cancellation of service contracts***

- (1) A service contract may, in accordance with the regulations, be varied, suspended or cancelled by the Secretary if the Secretary is satisfied that— 20
- (a) there has been a serious or frequent failure on the part of the holder of the contract to observe the terms and conditions of the contract; or 25
  - (b) the holder has been found guilty of an offence against this Act or the regulations committed during the term of the contract.
- (2) Before taking action against a person under sub-section (1) (a), the Secretary must give the person written notice of the intended action and allow the person to make written representations about the intended action within 10 working days. 30
- (3) A service contract is automatically cancelled if the holder of the contract ceases to be an accredited 35

person or ceases to be an accredited person of an appropriate kind.

- 5 (4) Nothing in this Act prevents the Secretary from making such arrangements as the Secretary thinks fit for the provision, by an accredited person, of temporary services (for a period not exceeding 12 months) in place of a regular passenger service for the time being discontinued by a variation, suspension or cancellation of a service contract under this section.

10 **PART 4—MISCELLANEOUS**

**32. *Driving prohibition***

- 15 (1) A person who has been found guilty of a disqualifying offence or who is the subject of a notice served under sub-section (3) must not drive a vehicle operated for the purposes of a road transport passenger service.

Penalty: 20 penalty units.

- 20 (2) The operator of a road transport passenger service may, in writing, request the Secretary to serve a notice under sub-section (3) on a person who is employed or engaged as a driver of a vehicle operated for the purposes of that service and who has been charged with a disqualifying offence.

- 25 (3) After receiving a request under sub-section (1), the Secretary may, by notice in writing served on the person who is the subject of that request, prohibit that person from driving a vehicle operated for the purposes of a road transport passenger service until the charge referred to in that request has been finally disposed of.

- 30 (4) A person who is employed or engaged as a driver of a vehicle operated for the purposes of a road transport passenger service must immediately notify the operator of that service if he or she is charged with a disqualifying offence.

35 Penalty: 10 penalty units.

- (5) A person may apply to the Administrative Appeals Tribunal for review of a decision by the Secretary to serve a notice on a person under sub-section (3).

**33. *Driver’s certificate not required***

Despite anything to the contrary in section 156 of the **Transport Act 1983** or in regulations made under section 162 of that Act, a person who is employed or engaged as a driver of a vehicle operated for the purposes of a road transport passenger service is not required to hold a driver’s certificate granted under section 156 (2) of that Act if an accreditation under Part 2 in relation to that service is in force. 5  
10

**34. *Fees***

- (1) For the purposes of this Act, the Secretary may demand, levy and recover fees in accordance with this section. 15
- (2) If the Secretary supplies any service under this Act, there may be charged a fee determined by the Secretary with the approval of the Minister (not exceeding the prescribed amount, if any). 20
- (3) The Secretary must cause a copy of a determination under sub-section (2) to be published in the Government Gazette.
- (4) The section does not affect the operation of a provision of this Act or the regulations relating to fees to which this section applies. 25
- (5) A fee levied under this section must be paid to the Secretary by the person at whose request the service is supplied.
- (6) A fee due to the Secretary under this section may be recovered as a debt in a court of competent jurisdiction. 30
- (7) If the fee is not paid within 30 days after the date that it was required to be paid, the amount payable includes an additional amount by way of interest on 35



the fee due at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**.

**35. Delegation**

The Secretary may, by instrument, delegate to—

- (a) an officer or other person by name; or
- (b) the holder of an office or position; or
- (c) a body—

any power of the Secretary under this Act other than a power under section 26 (2) and this power of delegation.

**36. No compensation payable**

(1) No compensation is payable to any person in respect of or as a consequence of any decision of the Secretary under this Act—

- (a) to give or refuse to give an accreditation in relation to any kind of road transport passenger service;
- (b) to impose a condition on an accreditation;
- (c) to vary the kind of road transport passenger service to which an accreditation relates;
- (d) to vary or revoke a condition of an accreditation or impose a new condition;
- (e) to give a temporary accreditation;
- (f) to renew or refuse to renew an accreditation;
- (g) to consent or refuse to consent to the surrender of an accreditation;
- (h) to exercise a power under section 20;
- (i) to suspend an accreditation under section 22;
- (j) to enter into or not to enter into a service contract with any person;
- (k) not to renew a service contract;
- (l) to vary, suspend or cancel a service contract;
- (m) to prohibit a person from driving a vehicle.

(2) No compensation is payable to any person in respect of or as a consequence of, and no proceedings of any kind may be brought in respect of, the expiry by force of section 39 (6) of a contract for the provision of transport services or requiring a person who holds a commercial passenger vehicle licence for every vehicle operated by that person for the purposes of a road transport passenger service to be accredited in accordance with Part 2 to operate that service. 5

**37. Supreme Court—limitation of jurisdiction** 10

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court awarding compensation in respect of or as a consequence of any decision referred to in section 36 (1) or any matter referred to in section 36 (2) or entertaining proceedings referred to in section 36 (2). 15

**38. Regulations**

(1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act. 20

(2) A power conferred by this Act to make regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and 25

(b) so as to make, as respects the cases in relation to which the power is exercised— 30

(i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for

the same case or class of case for different purposes; or

(ii) any such provision either unconditionally or subject to any specified condition.

5 (3) Regulations made under this Act may be made—

(a) so as to apply—

(i) at all times or at a specified time; or

(ii) throughout the whole of the State or in a specified part of the State; or

10 (iii) as specified in both sub-paragraphs (i) and (ii); and

(b) so as to require a matter affected by the regulations to be—

15 (i) in accordance with a specified standard or specified requirement; or

(ii) approved by or to the satisfaction of a specified person or a specified class of person; or

20 (iii) as specified in both sub-paragraphs (i) and (ii); and

(c) so as to apply, adopt or incorporate any matter contained in any document whatsoever whether—

(i) wholly or partially or as amended by the regulations; or

25 (ii) as in force at a particular time or as in force from time to time; and

(d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of person; and

30 (e) so as to provide in a specified case or class of case for the exemption of people or things or a class of people or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and  
35 either wholly or to such an extent as is specified; and

(f) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.

**39. Transitional provisions**

- (1) Sub-section (2) applies to a person who— 5
  - (a) immediately before the commencement of this section operated a road transport passenger service within (or partly within) the State and held a commercial passenger vehicle licence granted under Part VI of the **Transport Act 1983** or any corresponding previous enactment or more than one such licence; and 10
  - (b) but for sub-section (2) would be required under Part 2 of this Act to be accredited to operate that road transport passenger service. 15
- (2) Despite anything to the contrary in this Act, a person to whom this sub-section applies is not required to be accredited in accordance with Part 2 to operate the road transport passenger service referred to in sub-section (1) during any period when— 20
  - (a) that person holds a commercial passenger vehicle licence for every vehicle operated by that person for the purposes of the road transport passenger service; and
  - (b) that person, in operating any vehicle referred to in paragraph (a), complies with the conditions attached to the licence and any other requirement imposed by or under Part VI of the **Transport Act 1983** on the operation of the vehicle. 25
- (3) For the purposes only of sub-section (2) a commercial passenger vehicle licence in force immediately before the commencement of this section that is not due to expire on any particular date or that is due to expire on a date that is later than 2 years after that commencement, must be taken to expire at the end of two years after that 30 35

commencement, despite any Act or rule of law to the contrary and despite any provision contained in the licence itself.

(4) Sub-section (5) applies to a person who—

5           (a) immediately before the commencement of this section operated a regular passenger service within (or partly within) the State under a contract with the Public Transport Corporation or the Secretary for the provision of transport services; and

10           (b) but for sub-section (5) would be required under Part 3 of this Act to hold a service contract to operate that regular transport passenger service.

15           (5) Despite anything to the contrary in this Act, a person to whom this sub-section applies is not required to hold a service contract to operate the regular passenger service referred to in sub-section (4) during any period when the contract referred to in sub-section (4) (a) is in force.

20           (6) A contract referred to in sub-section (4) (a) in force immediately before the commencement of this section that is not due to expire on any particular date, expires, by force of this sub-section, at the end of two years after that commencement unless it has been sooner terminated, despite any Act or rule of law to the contrary and despite any provision contained in the contract itself.

25           (7) Despite anything to the contrary in this Act, a person who immediately before the commencement of this section operated a regular passenger service within (or partly within) the State and held a commercial passenger vehicle licence for every vehicle operated by that person for the purposes of that service but who did not operate that service under a contract of a kind referred to in sub-section (4) (a), is not required to hold a service contract to operate that service during the period of two years after that commencement.

## PART 5—AMENDMENT OF TRANSPORT ACT 1983

40. *Department of Transport*

N . 9921.  
R print d to  
N . 121/1994.

- (1) In section 3 (2) of the **Transport Act 1983**—
- (a) in paragraph (b), for “Director-General of Transport” **substitute** “Secretary”; 5
- (b) paragraphs (c) and (d) are **repealed**.
- (2) In section 4 (1) of the **Transport Act 1983**, at the end of paragraph (b) **insert**—
- “; and
- (c) to ensure the achievement of optimum overall transport outcomes by undertaking integrated transport planning and integrated transport system and service development linked to the overall planning strategies and other policies of the Government.”. 10 15
- (3) In section 4 (2) (aa) of the **Transport Act 1983**, after “services” **insert** “(including a service contract within the meaning of the **Public Transport Competition Act 1995**)”.

41. *Public Transport Corporation* 20

- (1) In section 13 (3) of the **Transport Act 1983**, at the end of paragraph (c) **insert**—
- “; and
- (d) not more than 4 other members appointed by the Minister.”. 25
- (2) In clause 3 (1) of Schedule 1 to the **Transport Act 1983**, for “2” **substitute** “one half of the”.
- (3) Despite the alteration made to the constitution of the board of the Public Transport Corporation by sub-section (1)— 30
- (a) the Public Transport Corporation must be taken to be the same body after the commencement of

that sub-section as it was before that commencement; and

- 5 (b) no act, matter or thing is in any way abated or affected by reason of that alteration but may be continued and concluded in all respects as if this Act had not been passed.

#### **42. Delegation**

In section 32 of the **Transport Act 1983**, after sub-section (2) **insert**—

10 “(2A) Without limiting sub-section (2), the Public Transport Corporation may, by instrument under its official seal, delegate to—

- 15 (a) the Board or a member of the Board; or  
(b) a statutory corporation within the meaning of the **State Owned Enterprises Act 1992** or a director of such a corporation; or  
20 (c) an officer of a statutory corporation within the meaning of the **State Owned Enterprises Act 1992** by name or the holder of an office within such a corporation; or  
(d) with the Minister’s consent, any other person—

25 any power of the Corporation under this Act or any other Act, other than—

- (e) this power of delegation; and  
(f) any other power that is prescribed for the purposes of this section.”.

#### **43. Licensing of commercial passenger vehicles**

- 30 (1) In section 139 (1) of the **Transport Act 1983**, for “A” **substitute** “Subject to the regulations and to sub-section (1B), a”.

- (2) In section 139 of the **Transport Act 1983** after sub-section (1) **insert**—

“(1A) The regulations may exempt from sub-section (1) a specified commercial passenger vehicle or a specified class of commercial passenger vehicle operated by a specified person or a specified class of person who is accredited under Part 2 of the **Public Transport Competition Act 1995** to operate a road transport passenger service within the meaning of that Act.”. 5  
10

- (3) Section 147 (3) of the **Transport Act 1983** is **repealed**.

- (4) In section 162 (1) of the **Transport Act 1983**, after paragraph (ga) **insert**— 15

“(gb) exempting from section 139 (1) a specified commercial passenger vehicle or a specified class of commercial passenger vehicle operated by a specified person or a specified class of person of a kind referred to in section 139 (1A);”. 20

#### **44. Driver’s certificate**

In section 156 (4) of the **Transport Act 1983**, for “A” substitute “Subject to section 33 of the **Public Transport Competition Act 1995**, a”. 25

#### **45. Authorised officers (transport infringements)**

In section 211 of the **Transport Act 1983**—

- (a) before “In” **insert** “(1)”;
- (b) after “that Corporation” **insert** “or a person (whether an officer of any such Corporation or not) appointed in writing by the Secretary”; 30
- (c) at the end of the section **insert**—
- “(2) Without limiting sub-section (1), an appointment of a person as an authorised



officer may be made subject to any condition or limitation specified in the instrument of appointment.”.

**46. *Authorised officers (section 218B)***

5 (1) In section 218B (1) of the **Transport Act 1983**, after “218” **insert** “or a person appointed in writing by the Secretary for the purposes of this section”.

(2) In section 218B of the **Transport Act 1983**, after sub-section (1) **insert**—

10 “(1A) Without limiting sub-section (1), an appointment of a person by the Secretary for the purposes of this section may be made subject to any condition or limitation specified in the instrument of appointment.”.

15 **47. *Authorised persons (section 221)***

(1) In section 221 (1) (c) of the **Transport Act 1983**, after “platform tickets” **insert** “or a person (whether employed by the Public Transport Corporation or not) who is authorised in writing by the Secretary for the purposes of this section”.

20 (2) In section 221 (6) of the **Transport Act 1983**, after “Corporation” **insert** “or authorised in writing by the Secretary for the purposes of this section”.

(3) In section 221 (7) of the **Transport Act 1983**—

25 (a) after “for, that Corporation” **insert** “or the Secretary or a person authorised in writing by the Secretary for the purposes of this section”;

30 (b) in paragraph (c), after “Corporation” **insert** “or has ceased to be the Secretary or a person authorised in writing by the Secretary for the purposes of this section”.

**48. Definition of “carriage”**

In section 222 (2) of the **Transport Act 1983**, after “contract to” **insert** “the Secretary or”.



