

# **TAXI AMENDMENT BILL 2016**

## **EXPLANATORY MEMORANDUM**

Western Australia's on-demand transport industry has been faced with a range of challenges in recent years, with changing consumer expectations, technological changes and the emergence of new participants within the industry driving a need for reform.

Historically, taxis and charter vehicles have been regulated as two distinct categories of on-demand transport, with taxis providing short point-to-point journeys, and charter vehicles (regulated as omnibuses under the *Transport Co-ordination Act 1966*) offering a luxury service, generally event-related and involving longer journeys. Government regulation sought to reinforce that distinction through a range of measures (such as requiring charter vehicles to fall within the luxury car category and imposing minimum fares on their operation to prevent direct competition with taxis). As the distinction between taxis and charter vehicles has diminished over time, and there is now a degree of competition between the two sectors, some regulation has become an artificial barrier preventing the sectors from competing on a level playing field.

In July 2015, the Government released the Green Paper 'On-demand Transport: A discussion paper for future innovation' (the Green Paper), which sought comment on proposed reforms to Western Australia's on-demand transport industry. The guiding principles for the reforms set out in the Green Paper are: industry should be free to innovate, the regulatory environment should focus on ensuring that drivers and vehicles are safe and the industry is accountable, and there should be a level playing field.

Following a period of public comment, in December 2015 the Minister for Transport announced plans to reform Western Australia's on-demand transport industry in two stages. The first stage involves a range of interim measures which seek to address a number of issues to the extent possible within the existing legislative framework, ahead of the development and implementation of new legislation to govern the industry in Stage 2.

Stage 1 includes reducing regulatory burden for existing on-demand transport operators, assisting existing taxi plate owners to transition to the new environment, and providing a suitable framework within which new market entrants can participate in the industry. The amendments contained in this Bill form part of the package of changes being progressed in Stage 1, and will benefit existing plate owners by:

- making provision for the payment of adjustment assistance grants to plate owners who acquired their plate prior to 18 December 2015, and authorising use of moneys in the Taxi Industry Development Account for the purposes of making those grants; and
- creating the potential for plate owners who wish to leverage improved economies of scale, to expand their taxi fleet.

## **Removal of the cap on taxi plate ownership**

The *Taxi Act 1994* (the Act) regulates the operation of vehicles as taxis within a prescribed control area. Section 15(1) of the Act provides that a vehicle may not be operated as a taxi within a control area unless that vehicle is operated using taxi plates. The only area currently prescribed for the purpose of the Act is the area colloquially known as the 'Perth metropolitan area'.

As at 13 May 2016 there were a total of 2088 taxi plates in existence. Under the Act, taxi plates can be offered for sale by public tender (owned plates), or offered for lease (leased plates). Of the existing plates, 1035 are owned plates, and 1053 are leased plates. Leased plates give the lessee the right to operate a vehicle using taxi plates for the duration of the lease, and require the lessee to be the owner and principal driver of the vehicle operated as a taxi using the plates. In the case of owned plates, it is open to the plate holder to engage third parties to manage and/or operate the vehicle. In late 2003 amendments to the Act came into force, which enabled taxi plates to be offered for lease, and no plates have been offered for sale by tender by the Government since that time. However, subject to the requirements of section 24 of the Act, existing owned plates are able to be transferred, which generally occurs in the context of private sales between parties.

Subsections 17(4) and 24(3) of the Act prohibit ownership of more than five sets of plates, either solely or in partnership with another person.

The amendments contained in clauses 4 and 5 of this Bill will remove this restriction, which is no longer appropriate in a new competitive market, with an increased number of participants. The amendment will enhance the ability of plate owners to leverage economies of scale, and is consistent with Government's *Plan to Reinvigorate Regulatory Reform*, which seeks to reform regulation and cut red tape to support innovation and productivity improvements. Transport reform is one of the seven priority areas for reform identified in the Plan.

## **Adjustment assistance grants**

As part of Stage 1 of the On-demand Transport reforms, the Government has developed a transition assistance package for those most affected by the reforms. This includes making adjustment assistance grants available in certain circumstances, to assist plate owners to adjust to the new operating environment.

The amendments contained in clauses 6 and 7 of this Bill will insert new Part 3A into the Act, and make related amendments, to provide that a person may apply for an adjustment assistance grant in respect of each set of taxi plates that they own, or have an interest in the ownership of. Under the relevant provisions, a person will be eligible to apply for a grant provided they currently own the plate, and either:

- became the owner, or acquired an interest in the ownership, of the plate before 18 December 2015; or
- if they became the owner on or after 18 December 2015, provided they had applied under section 24 of the Act to be transferred the ownership, or an interest in the ownership, of the plate before that date.

This date coincides with the Minister for Transport's announcement, following public consultation on the Green Paper, of the Government's intention to proceed with reforms to Western Australia's on-demand transport industry.

Successful applicants will receive a grant of either \$20,000 or \$6,000. The \$6,000 grants will be available to owners of plates that are subject to conditions restricting the operation of the taxi to specified areas or times, reflecting the comparatively reduced scope of adjustment required by the owners of these types of plates.

Given the adjustment assistance grant is intended to assist plate owners who have remained in the industry to adjust to the new operating environment, a person who previously owned taxi plates, but no longer owns or has an interest in the ownership of those plates at the time of commencement of Part 3A, will not be eligible for an adjustment assistance grant in respect of those plates.

Adjustment assistance grants will not be available in respect of leased plates. The grants are also limited to owners of taxi plates that were issued under the *Taxi Act 1994*, which regulates the operation of taxis in the Perth metropolitan area, and has been most affected by recent changes in the industry. Holders of country taxi-car licences, issued under the *Transport Co-ordination Act 1966*, are not eligible for the grant.

The amendments will also authorise the use of the Taxi Industry Development Account, established by section 41 of the Act, for the payment of the adjustment assistance grants to plate owners.

## **Part 1 - Preliminary**

### **1. Short title**

This clause will provide that when this Bill is passed by Parliament and receives the Royal Assent, it will be known as the *Taxi Amendment Act 2016*.

### **2. Commencement**

This clause sets out when the provisions of this Bill will commence operation.

Under clause 2(a), clauses 1 (which will give the Bill its short title) and 2 will commence operation on the day on which the Bill receives the Royal Assent and becomes an Act.

Clause 2(b) will provide that the Bill's remaining provisions will commence operation on a day fixed by proclamation. This will ensure that any systems or other administrative arrangements required to give effect to the Bill's provisions are timed to commence in line with the relevant provisions.

## **Part 2 – Taxi Act 1994 amended**

### **3. Act amended**

This clause identifies that the amendments contained in this Bill are to the *Taxi Act 1994*.

### **4. Section 17 amended**

Section 17 makes provision in relation to tenders or applications for taxi plates, including the form they must take, particulars to be included, and supporting documentation that may be required.

Subsection 17(4) relates to plates that are offered for sale by public tender (pursuant to section 16(1) of the Taxi Act), and provides that taxi plates shall not be issued to a tenderer, if that tenderer would thereby become the owner of more than 5 sets of taxi plates.

Clause 4 will delete this subsection, effectively removing this restriction, and enabling holders of owned plates (whether an individual, partnership or corporation) to own more than 5 sets of plates if they wish. Capping the number of plates that may be owned is no longer considered appropriate in a new competitive market. Removal of the restriction will enhance the ability of plate owners to leverage economies of scale, and is consistent with Government's *Plan to Reinvigorate Regulatory Reform*, which seeks to reform regulation and cut red tape to support innovation and productivity improvements.

### **5. Section 24 amended**

This amendment relates to the amendment made by clause 4.

Section 24 applies to taxi plates that are owned by the plate holder (as opposed to leased plates), and governs the transfer of ownership of such plates, with the approval of the Director General of the Department of Transport.

Subsection 24(3) provides that a transfer of the ownership, or an interest in the ownership, of taxi plates shall not be approved if the proposed transferee would thereby become the owner of more than five sets of taxi plates, either solely or in partnership with another person.

Clause 5 will delete this subsection, removing this restriction, and enabling ownership of a taxi plate to be transferred, subject to any other requirements of section 24 being satisfied, where the transferee will own more than 5 sets of plates. Capping the number of plates that may be owned is no longer considered appropriate in a new competitive market. Removal of the restriction will enhance the ability of plate owners to leverage economies of scale, and is consistent with Government's *Plan to Reinvigorate Regulatory Reform*, which seeks to reform regulation and cut red tape to support innovation and productivity improvements.

## 6. Part 3A inserted – Adjustment assistance grants

This clause will insert new Part 3A into the Act, which will provide a framework for the payment of adjustment assistance grants to plate owners in certain circumstances. Part 3A sets out who is eligible to receive a grant, the amount of the grants available, and the process to be followed in order to apply for and be granted an adjustment assistance grant.

Proposed section 30J: this section will define the following terms for the purposes of the Part:

*Eligible owner* – this term is relevant to who may apply for an adjustment assistance grant, as provided for by proposed section 30K. It is defined by paragraph (a) to mean a person who is the owner of the taxi plates (for example, an individual or a corporation), or a person who has an interest in the ownership of the taxi plates (for example, a member of a partnership). To fall within the definition, the person must be the current owner of the taxi plates, *and* must have become the owner, or acquired their interest in the ownership of the plate, either:

- before 18 December 2015 (pursuant to proposed paragraph (b)(i)); or
- on or after 18 December 2015, provided the application under section 24 of the Act for approval of the transfer of the ownership, or the interest in the ownership, of the taxi plates to the person, was made before that day (pursuant to proposed paragraph (b)(ii)) and subsequently approved. This will ensure that a person who did not become the owner of the plates, but who had submitted an application to be transferred ownership (or an interest in the ownership), before 18 December 2015, will still be captured by the definition of eligible owner.

This date coincides with the Minister for Transport’s announcement, following public consultation on the Green Paper, of the Government’s intention to proceed with reforms to Western Australia’s on-demand transport industry.

Given the adjustment assistance grant is intended to assist plate owners who have remained in the industry to adjust to the new operating environment, a person who previously owned taxi plates, but no longer owns those plates at the commencement of Part 3A, will not fall within the definition of ‘eligible owner’, and therefore will not be eligible for an adjustment assistance grant in respect of those plates.

*Restricted taxi plates*: this term is relevant to the amount of an adjustment assistance grant, as provided for in proposed subsection 30M(1). It is defined to mean taxi plates used, or to be used, on a taxi operated subject to conditions restricting the operation of the taxi to specified times or areas. Conditions that include restrictions of these kinds may be imposed on taxi plates by the Director General, pursuant to paragraph 20(1)(a) of the Act.

### Proposed section 30K: Application for adjustment assistance grant

This section sets out the requirements for an application for an adjustment assistance grant.

Subsection 30K(1) provides that an eligible owner may apply for an adjustment assistance grant in respect of a set of taxi plates. 'Eligible owner' is defined in proposed section 30J to mean the a person who currently owns, or has an interest in the ownership of, the taxi plates, provided that person was also the owner of the same set of taxi plates prior to 18 December 2015, or had submitted the application under section 24 of the Act to be transferred the ownership, or an interest in the ownership, of those taxi plates before that date, and was subsequently successful.

A plate owner will be able to apply for an adjustment assistance grant in respect of each set of taxi plates for which the plate owner falls within the proposed definition of 'eligible owner'.

Subsection 30K(2) provides that an application for an adjustment assistance grant must be made to the Director General in the approved form on or before the prescribed day. It is proposed to make regulations prescribing the day on or before which applications must be received. This will ensure the approved form and any associated administrative arrangements can be put in place to facilitate prompt receipt and processing of the applications. It will also ensure that the scheme will be available for a finite period, as its intention is to provide assistance to plate owners due to circumstances currently faced by industry.

Subsection 30K(3) makes specific provision for applications in respect of taxi plates owned by 2 or more eligible owners in partnership.

This is because, in the case of a partnership, each member of the partnership is considered to have an interest in the ownership of the taxi plates.

Pursuant to proposed subsection 30M(3), only one grant may be paid in respect of the same set of taxi plates. Accordingly, paragraph 30K(3)(a) provides that those partners who fall within the definition of 'eligible owner' must apply jointly for the grant. This is intended to ensure that all members of a partnership who are eligible for the grant are aware of the application in respect of the taxi plates, and that they act together in applying for the grant.

As noted above in relation to subsection 30K(1), a plate owner will be able to apply for an adjustment assistance grant in respect of each set of taxi plates for which the plate owner falls within the proposed definition of 'eligible owner'. If the individual members of a partnership who own a set of taxi plates were subject to change on or after 18 December 2015, only those members of the partnership who had an interest in the ownership of the taxi plates prior to that date (or who had made an application for transfer of an interest in the ownership of those

plates, as per paragraph (b)(ii) of the definition of eligible owner in section 30J), will be eligible to apply for an adjustment assistance grant.

Paragraph 30K(3)(b) also provides that applications in respect of taxi plates owned by 2 or more eligible owners in partnership must also specify a particular person who is to receive the grant on behalf of the eligible owners. This is intended to ensure that all the members of a partnership who fall within the definition of 'eligible owner' have agreed, at the time of making the application, as to whom should receive the grant on their behalf. Once the grant has been paid to the person nominated in the application, how it is to be distributed will be a private matter for the eligible owners. This is intended to ensure that administration of the scheme is not overly complex or resource intensive, and that Government is not expected to play a role in private business arrangements.

Subsection 30K(4) provides that the applicant must provide any additional information required by the Director General for the proper consideration of the application for the adjustment assistance grant. This is intended to ensure that the Director General can verify any information provided in an application, if necessary, in order to be satisfied that the application can be granted.

Subsection 30K(5) provides that the Director General may require any information provided with an application to be verified by a statutory declaration. If necessary, a statutory declaration may be required to add further rigour to the administrative processes associated with the processing of applications for adjustment assistance grants, and to deter the provision of false or misleading information in any such applications.

#### Proposed section 30L: Requirement to grant application for adjustment assistance grant

This section provides that the Director General must, by notice in writing, grant an application for an adjustment assistance grant if she or he is satisfied that both:

- the applicant, or each applicant (in the case of a joint application, which is required by proposed paragraph 30K(3)(a) in relation to an application by 2 or more eligible owners in a partnership), is the eligible owner of the taxi plates ('eligible owner' is defined in proposed section 30J to mean the current owner of the taxi plates, provided that person was also the owner of the same set of taxi plates prior to 18 December 2015, or had submitted the application under section 24 of the Act to be transferred the ownership, or an interest in the ownership, of those taxi plates before that date); and
- no other application for an adjustment assistance grant in respect of the same taxi plates has been granted, in line with proposed section 30M(3), which provides that no more than one grant may be paid in respect of the same taxi plates.

If these criteria are met, the application must be granted.

### Proposed section 30M: Amount and payment of adjustment assistance grant

Subsection 30M(1) sets out the amount of an adjustment assistance grant. Paragraph 30M(1)(a) sets the amount of a grant at \$20,000 in respect of taxi plates other than restricted taxi plates.

Paragraph 30M(1)(b) sets the amount of a grant at \$6,000 in respect of restricted taxi plates. 'Restricted taxi plates' are defined in proposed section 30J to mean taxi plates used, or to be used, on a taxi operated subject to conditions restricting the operation of the taxi to specified times or areas. Given that restricted taxi plates are limited in their capacity to be used to generate income, as compared with plates that are not subject to restrictions of this kind, a reduced grant amount has been made available.

Subsection 30M(2) sets out to whom an adjustment assistance grant is to be paid. This is limited to:

- (a) the applicant - pursuant to proposed section 30K(1), this is limited to the eligible owners of the taxi plates in respect of which the application is being made; or
- (b) if the application specifies a person who is to receive the grant on behalf of the eligible owners of the taxi plates, then that person. This allows the eligible owners of the plates to nominate to whom payment is to be made, and follows on from proposed section 30K(3) which makes specific provisions for applications made by two or more eligible owners in a partnership. Once the grant has been paid to the person nominated in the application, how it is to be distributed will be a private matter for the eligible owners. This is intended to ensure that administration of the scheme is not overly complex or resource intensive, and that Government is not expected to play a role in private business arrangements.

Subsection 30M(3) provides that only one grant may be paid in respect of the same set of taxi plates.

Subsection 30M(4) provides that the payment of an adjustment assistance grant is to be charged to the Taxi Industry Development Account, which is established by section 41 of the Act.

### **7. Section 41 amended**

The amendments contained in clause 7 are consequential to the insertion of new Part 3A (to be inserted by clause 6, as outlined above) and proposed paragraph 30M(4), in particular, which provides that the payment of an adjustment assistance grant is to be charged to the Taxi Industry Development Account.

Section 41 of the Act establishes the Taxi Industry Development Account (the Account), as a special purpose account under section 16 of the *Financial Management Act 2006*. It provides that all moneys received from the sale, lease

or issue of taxi plates under the Act, any money appropriated by Parliament to the account, and income derived from moneys in the account, are to be credited to the Account. Section 41 also sets out the circumstances in which moneys standing to the credit of the Account can be used.

Subsection 41(4) provides that, with the approval of and at the direction of the Minister, grants may be made from the Account for certain types of research and development projects intended and designed to benefit the taxi industry. Subclause 7(1) will make a minor amendment to subsection 41(4) to make clear that the subsection does not limit the ability of the Director General to grant applications for adjustment assistance pursuant to proposed new Part 3A.

Subclause 7(2) of the Bill will amend subsection 41(5) of the Act to include adjustment assistance grants in the list of circumstances in which moneys can be paid from the Account. This is achieved by inserting new paragraph 41(5)(ba), and incorporating a consequential reference to this new paragraph in existing paragraph 41(5)(f).