

Taxi Amendment Bill 2005

Explanatory Memorandum

Introduction

Under the present industry structure, the cost of plates and the cost of running a Multi-Purpose Taxi have made it economically tough for operators. The owners of the 56 transferable MPT plates have approached Government asking to have their plates bought back. The repurchase of MPT plates will remove the speculative value from operator costs and provide an opportunity for the MPT industry to be restructured for growth in the future.

Consistent with this Government's policies, the changes proposed in this Bill will provide the owners of transferable MPT plates with an opportunity to reduce their costs by selling their plates to Government. After the buy-back is completed, owner-drivers, who have a direct interest in service delivery and industry viability, will be delivering the MPT service.

The "*Report on Review of the Taxi Industry Regulatory Structure in the Perth Metropolitan Area*", which came from the review conducted by Hon Graham Giffard MLC in 2003, recommended the Government institute a voluntary buyback of taxi plates. The plate owners are to be offered the option of selling their plates at market price based on the average price paid in the preceding 12-month period.

Applying this principle to transferable MPT plates arrives at a market value of \$108,000 per set of plates. To address issues of fairness and equity, plate owners who have paid more than \$108,000 for their plates will receive the purchase price paid. Recognising that the impact of applying the GST to the purchase price reduces the net return to the plate owner, the Government has agreed to pay the GST costs. The buy back of all 56 transferable MPT plates will cost Government \$6.2million.

This Bill also contains three groups of amendments that are of a more technical nature. The first of these amendments enables plate lessees to submit an application to lease plates before their current lease comes to an end or to apply to lease a different type of plate during the term of their current lease. The Bill also provides the Director General of the Department for Planning and Infrastructure the facility to define eligibility criteria in the invitation to apply for lease plates.

The second amendments clarify the distinction between plates leased from Government and taxi plates leased from a plate owner under a private leasing arrangement. This is clarified by inserting a definition of a "plate owner's lease" into the Act.

The third amendment extends the responsibility for ensuring that a taxi operates in accordance with its operating conditions to a driver who does not own the plates or the vehicle. There are a number of taxis that are being driven by shift drivers who fall into this category each day.

Long Title

The long title sets out the purpose of the Bill, which is to amend the *Taxi Act 1994*.

Clause 1 *Short title*

This is a formal clause titling the Bill.

Clause 2 *Commencement*

This clause provides for the various Parts of the legislation to come into effect at different times.

Parts 1 and 3 come into effect on Royal Assent. Part 2 comes into effect upon proclamation.

Further, the Part 2 amendments will be repealed if they are not put into effect within a period of three (3) years from the date of this Bill commencing.

Clause 3 *The Act amended*

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

Clause 4 *Part 3 Division 3 inserted*

Inserts sections 30A to 30H inclusive in relation to the surrender of and payment of compensation for transferable multi-purpose taxi (MPT) plates.

Section 30A. Interpretation and application

This section inserts the interpretation and application provisions of Division 3 as follows:

Introduces a definition of “**buy-back agreement**” as being an agreement in accordance with section 30B.

Introduces a definition of “**eligible operator**” to provide for an operator who operates 10 or more multi-purpose taxis that use transferable MPT plates owned by an MPT investor-owner. An eligible operator does not have an interest in the ownership of the transferable MPT plates but rather manages the operation of the MPT on behalf of the MPT investor-owner.

Inserts a definition of “**MPT investor-owner**” to identify those persons who own transferable MPT plates but who do not drive the multi-purpose taxi using these plates personally.

Inserts a definition of “**MPT owner-driver**” to identify those persons who both own transferable MPT plates and who also drive the multi-purpose taxi using these plates.

Introduces a definition of “**multi-purpose taxi**” or “**MPT**” to the Act. The definition of “**multi-purpose taxi**” is currently contained in regulation 5(1) *Taxi Regulations 1995*. When Part 2 comes into operation, regulation 5(1) will be repealed.

Inserts a definition of “**transferable MPT plates**” as being those MPT plates that are used on a multi-purpose taxi and that are owned by MPT investor-owners or MPT owner-drivers.

Sub-section 2 provides for the operation of Division 3 such that, except as expressly provided, it does not interfere with provisions for offering or leasing of multi-purpose taxi plates in any other part of the Act.

Section 30B. Buy-back agreements

This section makes provision for the Director General (of the Department for Planning and Infrastructure) to enter into an agreement by which transferable MPT plates owned by MPT investor-owners and MPT owner-drivers may be surrendered and cancelled and appropriate compensation may be paid for the surrendering and cancellation.

Section 1 provides for the Minister to approve the terms and conditions of the agreements.

Section 2 provides that a buy-back agreement will only take effect if the Minister is satisfied that a sufficient number of MPT plate owners have accepted an offer relating to their transferable MPT plates.

Section 30C. Operation of sections 30D to 30G to be subject to conditions

Section 1(a) provides that the provisions of sections 30D to 30G only come into effect if a notice is published within the Government Gazette.

Section 1(b) provides for flexibility in determining the date on which sections 30D to 30F inclusive come into effect. This date can be the date on which the notice is published in the Government Gazette or another, later, date prescribed in the notice itself.

In the event that the Minister is satisfied that sufficient MPT investor-owners and MPT owner-drivers have accepted an offer to sell their plates to the Director General, section 2 requires the Minister to publish a notice to this effect in the Government Gazette.

Section 30D. Certain MPT owner-drivers and eligible operators to be offered leases of taxi plates for MPT's

Subsections 1 and 2 make provision for the offer of MPT leases to MPT owner-drivers and eligible operators who accept a buy-back offer. Section 2 limits the number of lease plates offered for lease under these arrangements to correspond to the number of transferable MPT plates purchased under a buy-back agreement.

There are circumstances, for example with partnerships, where an "MPT owner driver" might be more than one person. It is possible that one or more of these persons might not wish to take up a lease when the plate is repurchased. Section 3 allows for the Director General to make an offer to lease an MPT plate to the remaining members of the partnership.

Section 4 allows for offers to owner-drivers and eligible operators to lapse if they are not accepted within the acceptance date specified in the offer. The acceptance date referred to in this section is not the same as the date referred to in section 30C.

Section 5(a) sets the term of the leases offered to owner-drivers to lease MPT plates at 10 years, unless the owner-driver also is eligible to be offered a lease under section 30F. Eligible operators are to be offered leases for a period of between 3 and 5 years in accordance with section 30E.

Subsection 5(b) requires owner-drivers to lease MPT plates for a minimum period of 3 years and to provide a bond or other security approved by the Minister to the Director General for the 3 year period.

Subsection 6 makes provision for the bond or security referred to in subsection 5(b) to be protected from being applied to offset liability to any penalties and costs that may be incurred as a result of contravening the Act.

Subsection 7 provides that sections 16(4), (5) and (6) of the Act apply to leases offered under this buy-back, except for those that are offered under sections 30E and 30F. This section ensures owner-drivers who lease plates under the buy-back are not permitted to hold other taxi plates and must operate the vehicle that is using the lease plates. However, eligible operators and certain owner-drivers who fall within the scope of section 30E are exempted from these limitations.

Subsection 8 ensures that MPT owner-drivers and MPT investor-owners will not be compensated for the buy-back of their taxi plates until a corresponding set of lease plates have been issued. Further, until a corresponding set of leased taxi plates have been issued the MPT owner-drivers and MPT investor-owners continue to have an ownership interest in their transferable MPT plates and are still subject to their obligations under the Act.

Subsection 9 makes provision for the issue of lease plates under section 30D, 30E and 30F to be subject to the provisions set out in sections 16 and 18 as though the plate owners had submitted an application to lease plates pursuant to section 16(2). The lease plates that are issued under the buy-back are then subject to the provisions set out in section 18 as they apply to the lease of taxi plates.

Section 30E. Leases by eligible operators of taxi plates for multi-purpose taxis

Under the terms of the buy-back, eligible operators will lease taxi plates that replace the transferable MPT taxi plates that they manage on behalf of MPT investor-owners. The eligible operators do not have an interest in the ownership of transferable MPT plates but they might have an ownership interest in other taxi plates.

Subsection 1 provides eligible operators with exemption from sections 16(4), (5) and (6). Without this exemption an eligible operator will be limited to leasing only one set of plates and will be required to operate those plates as an owner-driver. Further, the exemption provides for an eligible operator to lease plates under the buy-back if they have an ownership interest in taxi plates other than transferable MPT plates.

Subsection 2 limits the term of the lease of taxi plates offered to eligible operators to a period of between 3 and 5 years.

Section 30F. Leases by certain MPT owner-drivers of taxi plates for multi-purpose taxis

There are certain MPT owner-drivers who own taxi plates other than transferable MPT plates. It is not the intention that these owner-drivers be required to divest their ownership interest in these other plates in order to participate in the buy-back. Subsection 1 provides for these MPT owner-drivers to be permitted to lease plates under the buy-back arrangement if they have an ownership interest in taxi plates other than transferable MPT plates. However, the provisions of sections 16(4), 16(5) and 16(6) in respect of operating the taxi as a principal driver and not leasing other taxi plates still apply.

Subsection 2 provides for the exemption provided for in Subsection 1 to be applied to MPT owner-drivers who accept an offer to lease plates under section 30D(3), where the plates are leased to some, but not all, persons who have an ownership interest in the transferable MPT plates.

Subsection 3 limits the term of the lease of taxi plates offered to MPT owner-drivers who fall within the scope of section 30F to a period of between 3 and 5 years.

Section 30G. Payment of compensation to certain parties to buy-back agreements

This section deals with the payment of compensation to MPT investor-owners and MPT owner-drivers who accept an offer to buy-back their transferable MPT plates. The payments differ depending on the type of agreement that the transferable MPT plate owner is entering into for the buy-back of their plates.

Subsection 1 defines “**member of the pool**” as being those MPT owner-drivers who are a party to a buy-back agreement, but have not accepted an offer to lease plates and MPT investor-owners other than those identified in subsection 3.

Subsection 2 provides for circumstances where an MPT owner-driver accepts a buy-back offer under section 30D(3) rather than 30D(1). When a lease is offered under section 30D(3) not all of the owners of the transferable MPT plate that is being repurchased will be taking up the lease. Subsection 2 ensures that these persons are not eligible to participate in the pool when their transferable MPT plate is cancelled under a buy-back agreement.

Section 3 excludes from the pool those MPT investor-owners whose plates are managed by an eligible operator provided the eligible operator has entered into a lease agreement and the MPT investor-owner has received compensation for the buy-back of their transferable MPT plates.

Subsections 4(a), 4(c) and 4(d) set out the terms under which a member of the pool is to be compensated under a buy-back agreement. In order to buy-back transferable MPT plates in the pool, it is necessary for plates to be leased under section 16(2) and then subsequently issued under section 18. Subsections 4(c) and 4(d) in combination provide for a member of the pool to be selected by ballot on each occasion that a set of MPT lease plates is issued under section 18. When subsections 4(c) and 4(d) have been satisfied the selected member of the pool is then paid compensation under subsections 4(a) and 5. [note that section 16 does not specify who is to do it – I my guess is that this is because 16(3) makes it happen by operation of law rather than because a partiular person has a discretion to offer etc – contrast with s.18]

Subsection 4(b) provides that, until a corresponding set of leased taxi plates have been issued, the MPT owner-drivers and MPT investor-owners continue to have an ownership interest in their transferable MPT plates and are subject to their obligations under the Act.

Section 5 provides that on each occasion that a set of MPT lease plates is issued under section 18 a member of the pool will be selected by ballot. The selected member of the pool will then be paid compensation for the buy-back of their transferable MPT plates.

The objective of the buy-back arrangements is to ensure that a MPT lease plate replaces each transferable MPT plate that is the subject of a buy-back agreement. The MPT lease plates issued under section 30D replace transferable MPT plates that have been bought back. The transferable MPT plates in the pool are to be replaced by additional MPT plates leased under sections 16 and 18. Subsection 6 ensures that plates issued under section 30D are not available to replace plates in the pool.

Subsection 7 provides that the MPT plates that are offered for lease under section 16 to replace the transferable MPT plates in the pool are to be exempt from any limitation on the total number of lease plates in issue set out in section 16(3). MPT lease plates will continue to be offered for lease under section 16(2) until all of the transferable plates in the pool have been repurchased.

Section 30H. Consolidated Fund charged with payment for plates

Section 30H provides for the monies paid to transferable MPT plate owners to buy-back their plates is charged to the Consolidated Fund.

Clause 5 Amendments consequential to Part 3 Division 3

Section 3(1) is amended in the definitions of “**lease**” and “**lessee**” to include reference to taxi plate leases offered under the buy-back arrangements set out in the new Part 3 Division 3 in addition to taxi plate leases offered for lease under section 16.

Section 25(1) is amended by the insertion of section 25(1)(aa) to provide that MPT owner-drivers and MPT investor-owners who enter into an agreement to buy-back their transferable MPT plates return the plates to the Director General within 14 days of the date of the agreement.

Clause 6 Section 3 amended

This clause amends the interpretation provisions of the Act as follows:

Replaces the definition of “**operate**”. The previous definition of “**operate**” only provided for persons who are the:

1. Plate holder and driver of the vehicle used as a taxi; or
2. Owner and driver of the vehicle used as a taxi; or
3. A person who causes another person to drive the vehicle as a taxi.

Item 3 relates to a taxi management company or a plate holder who leases their plate to a driver. The amended definition of “**operate**” extends the scope to include persons who drive the taxi but who are neither plate holders nor the owners of the vehicle used as a taxi. This provides for taxi drivers who fall into this category to be responsible for ensuring that the taxi complies with operating conditions in conjunction with the taxi plate holder and the owner of the vehicle that they are driving.

Inserts a definition of “**plate owner’s lease**”. This definition distinguishes the leasing of taxi plates from a taxi plate owner from the leasing of plates from Government pursuant to sections 16 and 18.

Clause 7 Section 16 amended

The intention of section 16(7) is to provide for persons with an ownership interest in restricted taxi plates to be eligible to lease taxi plates provided they relinquish their ownership interest prior to taking up the lease. It is also intended that persons who are currently leasing taxi plates from Government be allowed to apply for other leases during the term of their current lease, for example to take out a new lease when their current lease is coming to an end. The presence of section 16(7) prevents current plate lessees from leasing a plate while they are currently leasing plates. In order to overcome this limitation section 16(7) is repealed and replaced with section 16(2a).

Section 16(2a) provides that a successful applicant will not be issued with taxi plates under section 18 unless conditions set out in the invitation to apply in relation to sections 16(4)(b) (or (c)), (5)(d) or (6)(d) (or (e)) have been complied with. Conditions may include divesting an ownership interest in taxi plates or terminating an existing lease agreement.

Consequential to the repeal of section 16(7) sections 16(5)(d) and 16(6)(d) and 16(6)(e) are amended to delete reference to section 16(7). Section 16(10) is amended to remove the definitions of “**restricted taxi plates**” and “**unrestricted taxi plates**” as these definitions are only referred to in section 16(7).

Clause 8 Section 18 amended

As a consequence of repealing section 16(7) and replacing it by inserting section 16(2a), it is necessary to amend section 18(1a) to refer to section 16(2a) in respect of the conditions that is to be satisfied before taxi plates are issued to a successful applicant under section 16(2).

Clause 9 Section 36 amended

Section 36(1) is amended in the definition of “**operator**” by clarifying that the provisions set out in this section in relation to bonds held by operators only apply where the person receiving the bond is providing both a vehicle and the taxi plates used on the vehicle to the taxi driver. The clarification arises as a consequence of the amendments to the definition of “**operate**” in section 3(1) as described in clause 6.