

# ***Taxi Amendment Bill 2003***

## **Explanatory Memorandum**

### **Introduction**

Government has committed to “work with the taxi industry to:

- determine how best to restructure the industry to provide fair returns to drivers while offering the public an efficient, economical and safe service; and
- ensure that taxi response times meet reasonable consumer demand.”

In January 2003 the Minister for Planning and Infrastructure commissioned a review of the structure and regulation of the Perth metropolitan taxi industry. The purpose of the review was to make recommendations to the State Government on modifying the structure and regulation of the taxi industry to achieve two objectives:

1. provide fair returns to drivers and owner-drivers while offering the public an efficient, economical and safe service; and
2. address the requirements of the National Competition Council.

Hon. Graham Giffard MLC managed the review process and submitted a report (Report on Review of the Taxi Industry Regulatory Structure in the Perth metropolitan area), with recommendations, to the Minister in June 2003. The report contained 10 recommendations including:

“That non-transferable taxi licences (plates) should be made available for a licence fee from the State Government. The licence fee should be significantly less than the lease rates currently paid by drivers and increased annually based on movements in the Private Motoring Index.”

“That the State Government increase the size of the taxi fleet as soon as possible by issuing licences for the following categories of taxis:

- Conventional Taxis 32
- Multi-Purpose Taxis 4
- Peak Period Taxis 12

The current form of the *Taxi Act 1994* only provides for the issuing of taxi licences for sale by tender. The amendments contained in this Bill are intended to provide for Government to issue future taxi licences for lease in addition to sale by tender.

### **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 that the legislation will come into effect upon proclamation.

## **Clause 3            The Act amended**

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

## **Clause 4            Section 3 amended**

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

Inserts a definition of “**lease**” to clarify what is meant by “lease” in the context of a taxi plate.

Replaces the definition of “**plate owner**” with “**plate holder**” only provided for a person, natural or corporate, to own a taxi plate. The amended definition expands this to include a lessee of taxi plates.

Sub-section 3(a) provides that a reference to a partnership in relation to a tender for taxi plates or an application for registration is a reference to a tender or an application being made jointly by 2 or more persons. This amendment broadens the scope of the subsection to include an application to lease taxi plates.

## **Clause 5            Section 16 amended**

Section 16 currently provides for the sale of plates by public tender. These amendments make provision for taxi plates to be offered for lease.

The proposed subsection (2) empowers taxi plates to be offered for lease by means of an invitation to apply. An invitation must set out the:

- criteria to be met by an applicant to be successful;
- length of the proposed lease;
- payments due under the lease and when those payments fall due; and
- conditions that will attach to the lease.

To ensure lease plates are available to owner / drivers who will be actively engaged in the industry, subsection (3) will require that an applicant for lease plates must be the principal driver of the taxi, and have no other interest in other taxi plates.

To enable drivers to enter into normal commercial arrangements with family members and in line with the policy position outlined above, partnerships will be able to lease plates provided the members of the partnership are natural persons who:-

- are related to one another;
  - do not have an interest in other taxi plates; and
- one of the partners will be the owner and principal driver of the taxi.

Similarly, corporations will be able to lease plates provided the shareholders are natural persons who:-

- are related to one another;
- do not have an interest in other taxi plates; and

one of the directors, person concerned with the management of the corporation or shareholder will be the owner and principal driver of the taxi.

Subsection (6) will provide for a balloting process to be applied in circumstances where the number of applicants exceeds the number of plates available for lease.

**Clause 6                    Section 17 amended**

Section 17 requires a tender to be in the approved form and details those matters that must be disclosed by a tenderer. These amendments expand the ambit of the section to include both tenders and applications for the lease of taxi plates.

**Clause 7                    Section 18 amended**

Section 18 details the procedures to be followed by the Director General in accepting a tender. The amendments contained in paragraphs (a) to (f) expand the ambit of the section to include both tenders and applications for the lease of taxi plates.

A new subsection (1)(ba) has been inserted which will require that the Director General be satisfied that an applicant for the lease of taxi plates meets the criteria set out in clause 5 before the plates are issued.

Paragraph (h) will require that any issue of plates will be subject to the ballot procedures set out in clause 5 where the number of applicants exceeds the number of plates available for lease.

Subsection (2)(a) is amended to ensure that the first periodic payment due for the lease of taxi plates is paid in full prior to the taxi plates being issued to the applicant. This is consistent with the requirement that the tenderer for taxi plates offered for sale pays the tendered amount before being issued with the taxi plates.

**Clause 8                    Section 19 amended**

Subsection (1) is amended to refer to “**plate holders**” rather than “**plate owners**” consistent with the amendment to section 3. The payment of an annual fee for taxi plates will apply to taxi plates that are owned and taxi plates that are leased.

In the event that an annual fee is not paid within 30 days of the due date, subsection (2) makes provision for the rights of each plate holder of those taxi plates to be forfeited to the Director General. The subsection makes provision for the Director General to exercise discretion to offer forfeited taxi plates for sale or lease as the case requires.

**Clause 9                    Section 19A inserted**

Subsection (1) requires the lessee of taxi plates to make periodic payments for the lease as required by the Director General in the terms set out in the invitation to apply..

Subsection (2) provides for the lessee of a taxi plate to forfeit their right to the taxi plate in the event that they do not make a periodic payment on or before the due date. The Director General may then offer taxi plates that are forfeited under the

terms of this subsection for lease in accordance with the provisions set out in section 16 as amended.

**Clause 10            Section 21 amended**

Section 21 requires that the owner of taxi plates use the plates in the manner directed by the Director General. This amendment expands the ambit of the section to include leased plates.

**Clause 11            Section 23 amended**

Where the Director General believes that they are no longer fit to be the owner of taxi plates he or she is empowered by section 23(1) to require the owner of taxi plates to satisfy him or her within 30 days that they are so fit. Subclause (1) extends the scope of this subsection to the leasing of taxi plates.

Subclause (2) preserves the existing requirement of subsection (2) that the Director General give a plate owner 45 days notice to divest themselves of their interest in the ownership of taxi plates, subject to subsection (1). It also inserts a new subsection (2)(b) that makes provision for the Director General to serve notice on the lessee of taxi plates requiring him or her to divest themselves of their interest in the leased taxi plates in accordance with the provisions of subsections (3) and (4).

The proposed subsection (3)(a), taken in conjunction with the provisions set out in subsection (4), preserves the existing provisions set out in subsections (3) and (4) of the current Act with regard to appeals against a divestiture notice served on a taxi plate owner by the Director General. In particular the right of a taxi plate owner to appeal against such a decision by the Director General to a Local Court is preserved. Should an appeal to the Local Court be unsuccessful or the divestiture period expires then the right to the taxi plates is forfeited to the Director General. The forfeited taxi plates may be offered for sale or lease at the discretion of the Director General in accordance with subsection 3(b).

Subsection (3)(a) also provides for the lessee of leased taxi plates to forfeit his or her right to the taxi plates to the Director General following the issuing of a notice under subsection 2(b). Such a notice is subject to a right of appeal to a Local Court provided for in subsection (4). Should the appeal to the Local Court be unsuccessful then the right to the leased taxi plates is forfeited to the Director General. The forfeited taxi plates may be offered for sale or lease at the discretion of the Director General in accordance with subsection 3(b).

Subsection (4) extends the provisions of the subsection 23(4) of the current Act to include a right of appeal on the part of a lessee of taxi plates.

**Clause 12            Section 23A inserted**

This clause provides for the forfeiture of leased taxi plates by an individual who acquires ownership interest in taxi plates. This is consistent with the Government's policy position that leased plates should only be available to owner / drivers who do not have and interest in other taxi plates.

**Clause 13            Section 24 amended**

It is intended that leased taxi plates cannot be transferred, as is the case for owned taxi plates. Subsection (5) has been added to prevent such transfers.

**Clause 14            Section 25 amended**

It is intended that a lessee will lease taxi plates for a specified period of time. Prior to the expiry of this period the lessee will have an opportunity to submit an application to lease the taxi plates for a further period of time. Subsection (1)(a) provides for leased taxi plates to be returned to the Director General if such an application is not lodged in time or the application is not successful.

Subsection (1)(b) provides for the return of taxi plates to the Director General in the event that:

- the annual fee, as prescribed in section 19(1) is not paid within 30 days of the due date and the right to own the taxi plates is forfeited to the Director General under the provisions contained in section 19(2); or
- the periodic payment for leased taxi plates as prescribed in section 19A(1) is not paid on or before the due date and the right to lease the taxi plates is forfeited to the Director General under the provisions contained in section 19A(2); or
- an individual who is hiring taxi plates acquires an ownership interest in taxi plates and subsequently forfeits their right to the leased taxi plates under the provisions contained in section 23A.

Subsection 1(c) provides for the return of taxi plates to the Director General in the event that the right to own or lease taxi plates is forfeited to the Director General under the provisions contained in section 23(3).

**Clause 15            Section 30 amended**

This amendment corrects an anomaly between the time periods for the cancellation of registration that currently exists in section 30(2) and section 30(5). The time period specified in section 30(5) is extended to 14 days to correct the anomaly.

**Clause 16            Section 37 amended**

Subsection 37(1)(d) is amended to include reference to an applicant for leased taxi plates.

Subsection 37(1) is amended to include reference to a lessee of leased taxi plates and to clarify that there are now three matters that may be considered by the Director General:

- matters related to the ownership of taxi plates; or
- matters related to the hiring of taxi plates; or
- registration of a taxi dispatch service.

**Clause 17            Section 41 amended**

Subsection 41(2)(c) is amended to enable monies raised from the sale or lease of taxi plates to be applied to the Taxi Industry Development Fund.

The clause also provides enables monies from the Fund to meet the costs and expenses of administering the Act.

**Clause 18            Various references to “plate owner” amended**

This amendment identifies all sections of the Act that refer to “**plate owner**” that have not had this interpretation replaced by “**plate holder**” by means of an explicit amendment identified in the Bill. In these cases the sections referred to in the Table are amended to replace the definition of “**plate owner**” with “**plate holder**”.