

TASMANIA

**TAXI AND HIRE VEHICLE INDUSTRIES
(REVIEW OF DECISIONS) REGULATIONS 2019**

STATUTORY RULES 2019, No. 73

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**TAXI AND HIRE VEHICLE INDUSTRIES
(REVIEW OF DECISIONS) REGULATIONS 2019**

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Taxi and Hire Vehicle Industries Act 2008*.

Dated 2 December 2019.

C. WARNER
Governor

By Her Excellency's Command,

MICHAEL DARREL JOSEPH FERGUSON
Minister for Infrastructure and Transport

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the *Taxi and Hire Vehicle Industries (Review of Decisions) Regulations 2019*.

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Part 1 – Preliminary

2. Commencement

These regulations take effect on
3 February 2020.

3. Interpretation

In these regulations –

Act means the *Taxi and Hire Vehicle Industries Act 2008*;

administrative decision means a decision specified in column 2 of a table in Schedule 1;

applicant means a person who makes an application;

application means an application under Part 2 for review of an administrative decision;

eligible person, in relation to an administrative decision, means the person specified in column 4 of a table in Schedule 1 as an eligible person in relation to the decision;

notice means notice in writing.

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PART 2 – INTERNAL REVIEW OF DECISIONS

4. Right of review

A person who is aggrieved by an administrative decision may apply to the Commission for a review of the decision in accordance with this Part if the person is an eligible person in relation to the decision.

5. Notice of decisions

- (1) As soon as practicable after making an administrative decision, the Commission must give each eligible person in relation to the decision notice of –
 - (a) the decision; and
 - (b) the person's right to apply for a review of the decision; and
 - (c) the application procedure; and
 - (d) the effect of regulation 9.
- (2) An eligible person in relation to an administrative decision is entitled, on request, to receive from the decision-maker a written statement of the reasons for the decision.

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6. Applications for review

- (1) An application for review of an administrative decision is to be made in writing and lodged with the Commission.
- (2) Despite subregulation (1), the Commission may waive the requirement for an application to be made in writing if it is satisfied that it is an unreasonable or unnecessary requirement in the circumstances of a particular case.
- (3) An application –
 - (a) may be in any form; but
 - (b) must clearly state –
 - (i) the administrative decision to which it relates; and
 - (ii) the applicant's reasons for seeking the review.
- (4) The Commission may, by notice to an applicant, require the applicant to give it any information that it reasonably considers is necessary for a proper consideration of the application.

7. Withdrawal of applications

- (1) An application for review of an administrative decision may be withdrawn at any time.
- (2) An application is taken to have been withdrawn if the applicant fails to comply with a notice

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under regulation 6(4) within 28 days after the applicant was given the notice.

8. Time within which applications to be made

- (1) An application for review of an administrative decision is to be lodged with the Commission within 28 days after the day on which notice of the decision is given to the eligible person under regulation 5.
- (2) The Commission is not required to consider an application that is lodged outside the period referred to in subregulation (1), but it may consider a late application if the Commission is satisfied that it would be fair to do so in the circumstances of a particular case.

9. Effect of applications

An application under regulation 6 for review of an administrative decision does not affect the operation of the administrative decision or prevent the taking of action to implement the decision, unless the Commission, on its own initiative or on the application of the applicant for the review, stays the operation of the decision pending the determination of the review.

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10. Consideration of applications

- (1) The Commission must consider each application that is made to it in accordance with these regulations and, in doing so –
 - (a) must observe the rules of natural justice; and
 - (b) must ensure that any employee engaged in the review process –
 - (i) was not involved in the making of the administrative decision under review; and
 - (ii) is not under the direct control of a person who was involved in the making of the administrative decision under review; and
 - (c) may engage an independent mediator to assist in the review process; and
 - (d) may consult with representatives of, or organisations in, a sector of the taxi industry or luxury hire car industry if –
 - (i) the administrative decision under review relates to matters that are of general importance to that sector; and
 - (ii) it is possible to do so without prejudice to the applicant.

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- (2) If an application is found to be frivolous or vexatious, the Commission must give the applicant immediate notice of that finding but the Commission is not required to take any further action on the application.
- (3) If subregulation (2) does not apply in relation to an application in respect of an administrative decision, the Commission must make a determination to –
- (a) affirm the administrative decision; or
 - (b) vary the administrative decision if the decision is able to be varied and the variation is appropriate in the circumstances; or
 - (c) set aside the administrative decision.
- (4) If subregulation (3)(b) applies in relation to an application in respect of an administrative decision, the administrative decision as varied forms part of the determination in relation to the application for the purposes of these regulations.
- (5) If an administrative decision in relation to an application is set aside under subregulation (3)(c) –
- (a) the Commission must make a new administrative decision in place of the decision that has been set aside; and
 - (b) the new administrative decision forms part of the determination in relation to

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the application for the purposes of these regulations.

- (6) A determination under this regulation in relation to an application is to be made by the end of the later of the following periods:
- (a) 10 working days after the day on which the application is lodged with the Commission;
 - (b) 10 working days after the Commission has received further information requested under regulation 6(4).
- (7) The period in which a determination in relation to an application may be made may be extended, once only, for a period of 20 working days, if the Commission gives notice of the extension to the applicant within –
- (a) the 10-day period specified in subregulation (6)(a); or
 - (b) if notice of an extension has not been given under paragraph (a) and further information has been requested under regulation 6(4), the 10-day period specified in subregulation (6)(b).
- (8) If a determination in relation to an application is not made within the period specified in subregulation (6) or within the period as extended under subregulation (7), the Commission is taken to have made a

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determination that affirms the administrative decision to which the application relates.

- (9) The Commission must give an applicant notice of a determination in relation to an application as soon as practicable after it has been made or, if subregulation (8) applies, is taken to have been made.
- (10) A notice under subregulation (2) or (9) in relation to an application is to –
 - (a) give reasons for the finding or determination; and
 - (b) if applicable, inform the applicant of the applicant's right to have the decision reviewed and the procedure for applying for a review.

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Part 3 – External Review of Decisions

PART 3 – EXTERNAL REVIEW OF DECISIONS

11. Right of appeal

A person who is aggrieved by a finding or determination of the Commission in relation to an application made by that person may, unless the application relates to a decision specified in Schedule 2, apply to the Magistrates Court (Administrative Appeals Division) for a review of the finding or determination.

12. Orders on appeal of applications found frivolous or vexatious

- (1) After hearing an application for a review of a finding of the Commission under regulation 10(2), the Magistrates Court (Administrative Appeals Division) may, by order –
 - (a) affirm the finding; or
 - (b) set aside the finding.
- (2) If subregulation (1)(b) applies, the Magistrates Court (Administrative Appeals Division) may, by order and with or without directions, remit the matter for reconsideration by the Commission in accordance with any directions or recommendations of the Court.

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PART 4 – MISCELLANEOUS

13. Service of documents

- (1) For the purposes of these regulations, an application, notice or other document is effectively lodged with, served on or given to a person if –
- (a) in the case of a natural person, it is –
 - (i) handed to the person; or
 - (ii) left at, or sent by post to, the person’s postal or residential address or place or address of business or employment last known to the lodger, giver or server of the application, notice or document; or
 - (iii) faxed to the person’s fax number; or
 - (iv) emailed to the person’s email address; and
 - (b) in the case of any other person, including the Commission, it is –
 - (i) left at, or sent by post to, the person’s principal or registered office or one of the person’s places of business; or

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- (ii) faxed to the person’s fax number;
or
 - (iii) emailed to the person’s email
address.
- (2) An application, notice or document sent by post is not taken to have been lodged, served or given until the time when it would have been delivered in the ordinary course of post.
- (3) For the purposes of subregulation (1)(b)(i), a police station or Service Tasmania shop is not taken to be an office or place of business of the Commission.

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SCHEDULE 1 – ADMINISTRATIVE DECISIONS

Regulation 3

**PART 1 – ADMINISTRATIVE DECISIONS UNDER
THE ACT**

Column 1	Column 2 – Decision of Commission	Column 3 – Section	Column 4 – Eligible person
1.	To determine that a particular passenger transport service is not a tour	Section 3A(2)	The operator of the passenger transport service
2.	To declare a perpetual taxi licence inactive	Section 20(1)(b)	The licence owner
3.	To refuse an application for an owner-operator taxi licence (when not satisfied that applicant would be the operator of the service)	Section 24(3)	The licence applicant
4.	To cancel an owner-operator taxi licence (when satisfied licence holder has entered into an agreement purporting to lease the licence to another person or purporting to permit another person to operate a taxi service under the licence)	Section 27(2)	The licence holder
5.	To impose conditions on an owner-operator taxi licence	Section 28(1)(a)	The licence holder

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Column 1	Column 2 – Decision of Commission	Column 3 – Section	Column 4 – Eligible person
6.	To vary or revoke conditions of an owner-operator taxi licence	Section 28(1)(b)	The licence holder
7.	To refuse the transfer of an owner-operator taxi licence to another person (when Commission reasonably believes proposed transferee would not be operator of service)	Section 31(3)	The licence holder
8.	To refuse the transfer of an owner-operator taxi licence (when licence lapsed, under a section 36 suspension or subject to a section 36 notice of intention to suspend or cancel)	Section 31(4)	The licence holder
9.	To declare an owner-operator taxi licence inactive	Section 34(2)(b)	The licence holder
10.	To suspend an owner-operator taxi licence (excluding decision to suspend licence in prescribed circumstances set out in regulation 10(c) or (d) of the <i>Taxi Industry Regulations 2018</i>)	Section 36(1)	The licence holder

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Column 1	Column 2 – Decision of Commission	Column 3 – Section	Column 4 – Eligible person
11.	To cancel an owner-operator taxi licence (excluding decision to cancel licence in prescribed circumstance set out in regulation 11(d) of the <i>Taxi Industry Regulations 2018</i>)	Section 36(1)	The licence holder
12.	To suspend or cancel an owner-operator taxi licence (when satisfied there is an immediate and serious danger to public safety)	Section 36(3)	The licence holder
13.	To refuse an application for a wheelchair-accessible taxi licence (when not satisfied that applicant would be operator of service)	Section 41(4)	The licence applicant
14.	To cancel a wheelchair-accessible taxi licence (when satisfied licence holder has entered into an agreement purporting to lease the licence to another person or purporting to permit another person to operate a taxi service under the licence)	Section 44(2)	The licence holder

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Column 1	Column 2 – Decision of Commission	Column 3 – Section	Column 4 – Eligible person
15.	To impose conditions on a wheelchair-accessible taxi licence	Section 46(1)(a)	The licence holder
16.	To vary or revoke conditions imposed on a wheelchair-accessible taxi licence	Section 46(1)(b)	The licence holder
17.	To refuse the transfer of a wheelchair-accessible taxi licence to another person (when reasonably believes proposed transferee would not be operator of service)	Section 49(3)(a)	The licence holder
18.	To refuse the transfer of a wheelchair-accessible taxi licence to another person (when licence lapsed or under a section 55 suspension or subject to a section 55 notice to suspend or cancel)	Section 49(4)	The licence holder
19.	To refuse the transfer of a wheelchair-accessible taxi licence to another vehicle	Section 50(3)	The licence holder
20.	To refuse to transfer a wheelchair-accessible taxi licence to a substitute wheelchair-accessible taxi	Section 51(3)	The licence holder

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Column 1	Column 2 – Decision of Commission	Column 3 – Section	Column 4 – Eligible person
21.	Not to extend the period of time for which a substitute wheelchair-accessible taxi may operate under a wheelchair-accessible taxi licence	Section 51(5)	The licence holder
22.	To suspend a wheelchair-accessible taxi licence (excluding decision to suspend licence in prescribed circumstances set out in regulation 12(c), (d), (e) or (f) of the <i>Taxi Industry Regulations 2018</i>)	Section 55(1)	The licence holder
23.	To cancel a wheelchair-accessible taxi licence (excluding decision to cancel licence in prescribed circumstance set out in regulation 13(i) of the <i>Taxi Industry Regulations 2018</i>)	Section 55(1)	The licence holder
24.	To suspend or cancel a wheelchair-accessible taxi licence (when satisfied there is an immediate and serious danger to public safety)	Section 55(3)	The licence holder

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Column 1	Column 2 – Decision of Commission	Column 3 – Section	Column 4 – Eligible person
25.	To refuse an application for a luxury hire car licence (when not satisfied the applicant would be operator of the service)	Section 69(3)	The licence applicant
26.	To cancel a luxury hire car licence (when satisfied licence holder has entered into an agreement purporting to lease the licence to another person or purporting to permit another person to operate a luxury hire car service under the licence)	Section 72(2)	The licence holder
27.	Not to approve a vehicle for use as a luxury hire car	Section 73(1)	The registered operator of the vehicle
28.	To impose conditions on a luxury hire car licence	Section 74(1)(a)	The licence holder
29.	To vary or revoke conditions imposed on a luxury hire car licence	Section 74(1)(b)	The licence holder
30.	To refuse the transfer of a luxury hire car licence to another person (when reasonably believes proposed transferee would not be operator of the luxury hire car service)	Section 77(3)(a)	The licence holder

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Column 1	Column 2 – Decision of Commission	Column 3 – Section	Column 4 – Eligible person
31.	To refuse the transfer of a luxury hire car licence to another person (when licence lapsed or under a section 82 suspension or subject to a section 82 notice to suspend or cancel)	Section 77(4)	The licence holder
32.	To refuse the transfer of a luxury hire car licence to another vehicle	Section 78(3)	The licence holder
33.	To suspend a luxury hire car licence (excluding decision to suspend a licence in prescribed circumstances set out in regulation 6(c), (d) or (e) of the <i>Luxury Hire Car Industry Regulations 2018</i>)	Section 82(1)	The licence holder
34.	To cancel a luxury hire car licence (excluding decision to cancel licence in prescribed circumstance set out in regulation 7(e) of the <i>Luxury Hire Car Industry Regulations 2018</i>)	Section 82(1)	The licence holder

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Column 1	Column 2 – Decision of Commission	Column 3 – Section	Column 4 – Eligible person
35.	To suspend or cancel a luxury hire car licence (when satisfied there is an immediate and serious danger to public safety)	Section 82(3)	The licence holder
36.	To refuse an application for a restricted hire vehicle licence (when not satisfied applicant would be operator of service proposed to be operated under licence)	Section 84E(3)	The licence applicant
37.	To cancel a restricted hire vehicle licence (when satisfied licence holder has entered into an agreement purporting to lease the licence to another person or purporting to permit another person to operate a restricted hire vehicle service under the licence)	Section 84H(2)	The licence holder
38.	Not to approve a motor vehicle for use as a restricted hire vehicle for general rhv services	Section 84I(1)	The registered operator of the motor vehicle
39.	To impose conditions on a restricted hire vehicle licence	Section 84J(1)(a)	The licence holder

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Column 1	Column 2 – Decision of Commission	Column 3 – Section	Column 4 – Eligible person
40.	To vary or revoke any conditions imposed on a restricted hire vehicle licence	Section 84J(1)(b)	The licence holder
41.	To refuse to transfer a restricted hire vehicle licence for general rhv services to another vehicle	Section 84L(4)	The licence holder
42.	To suspend a restricted hire vehicle licence (excluding decision to suspend licence in prescribed circumstances set out in regulation 6(c), (d), (e) or (f) of the <i>Restricted Hire Vehicle Industry Regulations 2013</i>)	Section 84P(1)	The licence holder
43.	To cancel a restricted hire vehicle licence (excluding decision to cancel licence in prescribed circumstance set out in regulation 7(d) of the <i>Restricted Hire Vehicle Industry Regulations 2013</i>)	Section 84P(1)	The licence holder
44.	To suspend or cancel a restricted hire vehicle licence (when satisfied there is an immediate and serious danger to public safety)	Section 84P(3)	The licence holder

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**PART 2 – ADMINISTRATIVE DECISIONS UNDER
THE TAXI INDUSTRY REGULATIONS 2018**

Column 1	Column 2 – Decision of Commission	Column 3 – Regulation	Column 4 – Eligible person
1.	To refuse an application for appointment as an authorised meter adjuster	Regulation 63(5)	The applicant
2.	To suspend or cancel the appointment of a person as an authorised meter adjuster	Regulation 69(1)	The authorised meter adjuster

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**SCHEDULE 2 – NON-APPEALABLE
ADMINISTRATIVE DECISIONS**

	Decision	Regulation 11 Provision
1.	A decision of the Commission to declare a perpetual taxi licence inactive	Section 20(1)(b) of the Act

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 11 December 2019.

These regulations are administered in the Department of State Growth.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations provide for the review of certain administrative decisions made under the *Taxi and Hire Vehicle Industries Act 2008* and are made consequent on the expiry of the *Taxi and Hire Vehicle Industries (Review of Decisions) Regulations 2010* under section 11 of the *Subordinate Legislation Act 1992*.