

# TRANSPORT LICENSING

## WHO NEEDS A TRANSPORT SERVICE LICENCE?

Operators of transport services are required to be appropriately licensed. In most cases, this will mean holding a transport service licence (TSL) issued by the New Zealand Transport Agency (NZTA). There are five different types of transport service:

### GOODS SERVICE

A goods service is the carriage of goods on any road, whether or not for hire or reward, using a motor vehicle which has a gross laden weight of 6,000 kilograms or more.

It also includes the letting on hire of a vehicle with a gross laden weight of 6,000 kilograms or more by a person who drives the vehicle or provides the driver, where the vehicle is used for the carriage of goods.

### SMALL PASSENGER SERVICE

A small passenger service is the carriage of passengers for hire or reward using vehicles designed or adapted to carry 12 or fewer passengers including the driver.

### LARGE PASSENGER SERVICE

A large passenger service is the carriage of passengers using vehicles designed or adapted to carry more than 12 people, including the driver. Operators of these vehicles require a large passenger service licence even if the vehicles are not being operated for hire or reward.

### VEHICLE RECOVERY SERVICE

A vehicle recovery service is the towing or carrying on any road of a motor vehicle, whether or not the towing or carrying of the vehicle is carried out by a person intending to carry out repairs on the vehicle. There are a number of exempt situations in which a vehicle recovery service licence will not be required, however, such as towing one car with another when this is not done for hire or reward.

### RENTAL SERVICE

A rental service is the letting of a motor vehicle on hire for the carriage of passengers (including the driver) or of goods, or both, to a person who drives the vehicle or provides a driver for the vehicle.

## WHEN IS A LICENCE REQUIRED?

If you are operating in circumstances which meet the definition of a transport service, and are not exempt from the relevant licence requirements, you need a licence, even if the operation is carried out once only, and even if it is being carried out solely for the benefit of the persons carrying it out.

## GRANT OF LICENCE

An application for a transport service licence is made to NZTA. In deciding whether to grant the licence, NZTA must be satisfied that the applicant and any person in control, or likely to have control, of the transport service is a fit and proper person.

"Control" means direct or indirect control of the management of the whole or any part of a transport service that gives a person a significant influence on the organisation of the whole or part of the service. It includes control by ownership of shares or by any position in management of any part of the service.

## CERTIFICATE OF KNOWLEDGE OF LAW AND PRACTICE

It is a requirement of obtaining a goods service licence, a large passenger service licence or a vehicle recovery service licence that the applicant or a person in control of the service holds a certificate of knowledge of law and practice, demonstrating knowledge of the safe and legal operation of the transport service to which the licence relates.

## WHO IS A FIT AND PROPER PERSON?

In deciding whether a person is fit and proper, NZTA is required to consider any matter that it considers should be taken into account:

- in the interests of public safety; or
- to ensure that the public is protected

from serious or organised criminal activity.

NZTA may also consider:

- the person's criminal history;
- any transport-related offending by the person, including infringement offences;
- any history of serious behavioural problems;
- any complaints made concerning any transport service operated by the person, particularly complaints made by the users of the service;
- any history of persistent failure to pay fines incurred by the person in respect of transport related offences; and
- any other matter in the public interest.

NZTA may also consider any conviction, including an overseas conviction, as well as any charge a person is facing, even if they have not been convicted.

## GOODS SERVICE CRITERIA

When considering an application for a Goods Service Licence, NZTA must also consider:

- any criminal activity conducted in the course of any transport service or transport related business; and
- any offending in respect of major transport related offences, particularly offences relating to safety or road user charges.

## REFUSAL TO GRANT A TSL

NZTA must refuse to grant a TSL if the applicant or any person in control or involved in the operation of the service is not a fit and proper person, or if no one in the control of the service holds a certificate of knowledge.

If an application is to be refused, NZTA must notify the applicant, set out the grounds for the refusal and give the applicant an opportunity to make submissions on the proposed refusal.

## REVOCATION OF LICENCE

NZTA may revoke a transport service licence if it is satisfied that the holder of the licence, or any person in control or involved in the transport service, is not a fit and proper person.

Before revoking the licence, NZTA must notify the person affected of the grounds and allow at least 21 days for the licence holder to make submissions on those grounds.

Where a licence is to be revoked because a person involved in the service (other than the licence holder) is not a fit and proper person, NZTA must first notify the licence holder of the steps required to be taken if the licence is not to be revoked, which may include a requirement that the person concerned cease all involvement in the service within a specified period. The licence must not be revoked where these requirements are complied with.

## APPEAL RIGHTS

Where:

- an application for a transport service licence is refused;
- NZTA revokes a licence; or
- NZTA deems a person not to be a fit and proper person;

an appeal may be made to the District Court. The District Court can confirm, modify or reverse NZTA's decision. Appeals must be filed within 28 days of notification of the decision. The decision remains in force pending the outcome of the appeal.

## NOT TRANSFERABLE

Transport service licences may not be transferred, leased or assigned. Where no vehicle has been operated pursuant to the licence for two years, the licence is deemed to have been surrendered.

If you are selling your transport business to a person who does not hold the correct transport service licence, that purchaser must obtain a transport service licence before she or he can begin operating the business.

## DUTIES OF LICENCE HOLDER

The holder of a TSL must within 14 days notify NZTA of any changes in the:

- name of the holder of the licence (which must be supported by documentation);
- person(s) having control of the service; or
- business or residential address of the holder of the licence or person(s) having control of the service.

If the holder of the licence is a company, the persons having control of the service must notify NZTA of changes in the:

- people with control of the company;
- residential addresses of those people;
- business addresses of those people;
- name of the company (which must be supported by documentation); and
- status of the company e.g. merger or dissolution (which must be supported by documentation).

Holders of transport service licences must ensure that their vehicles are maintained in a fit and proper condition.

The operator of a vehicle subject to transport service licensing requirements must display the appropriate transport service licence card.

## PERSONS AFFECTED BY ADVERSE DECISIONS

Any person affected by an adverse decision must be notified by NZTA of the:

- proposed decision;
- grounds for the proposed decision;
- date by which any submissions may be made;
- date upon which the proposed decision will take effect (if relevant); and
- right of appeal.

Where the person affected by an adverse decision is not the licence holder, NZTA is required to also supply a copy of the notice to:

- the person upon whose character the adverse decision is based; and
- any affected licence holder if NZTA considers that the proposed adverse decision is likely to have a significant impact on the operations of that licence holder.

## AUDITS AND COMPLIANCE

NZTA may carry out such inspections and audits of a transport service and the vehicles operated in that service as it reasonably considers necessary in the interests of land transport safety.

For the purposes of any inspection or audit of a licence holder, NZTA may (in writing) require that person to provide such information as NZTA reasonably considers relevant to the inspection or audit.

This summary is intended only as a guide. It is not a full summary of the law relating to transport service licensing.

If you have specific questions, or need legal advice on a particular issue, please contact Cathy Fisher or Shafraz Khan at Fortune Manning Lawyers. Cathy and Shafraz have extensive experience in all areas of the law relating to the transport industry.

**Cathy Fisher**  
[cathy.fisher@fortunemanning.co.nz](mailto:cathy.fisher@fortunemanning.co.nz)

**Shafraz Khan**  
[shafraz.khan@fortunemanning.co.nz](mailto:shafraz.khan@fortunemanning.co.nz)

[www.fortunemanning.co.nz](http://www.fortunemanning.co.nz)

0800 4 FM LAW

**FORTUNE MANNING**  
lawyers