# Managing your Taxi and Minibus business

## Introduction

The Director of Commercial Passenger (Road) Transport (the Director) grants and renews taxi and minibus licences to accredited operators under the *Commercial Passenger (Road) Transport Act* (the Act). A licence enables its holder (the operator) to operate the vehicle endorsed upon the licence (the vehicle) and is subject to any conditions determined by the Director.

During 2017, the Northern Territory Public Accounts Committee conducted an inquiry into the practices of the taxi industry in response to complaints from industry sectors. As a result of this inquiry, Government committed to improving how the industry operated for the benefit of the community. This included clearly identifying the subleasing of licences as unlawful and mandating the use of written bailment agreements for all drivers of taxis and minibuses.

To ensure operational responsibility of the commercial passenger vehicle (CPV) remains with the operator, the Department has developed minimum requirements operators must meet when employing a third party (the agent) to assist with managing their CPV business.

## Overview of Agent Agreements

Some operators may find employing the services of an agent as beneficial to their business and the practice can improve industry’s service deliver to the public.

Operators employing an agent are still solely responsible for the compliance of their CPV operation and will be subject to administrative action and/or prosecution for any act carried out by their agent.

Duties of an agent are limited to carrying out the functions authorised by the operator in writing and which comply with the minimum requirements for agent agreements as specified in this Information Bulletin.

## Effects of Agent Agreements

While conditions of agent agreements may vary, any agreement in place must be of an employer/employee or sub-contractor type arrangement and must not transfer any operational responsibility from the operator to the agent.

An agent agreement is limited to authorising the agent to act on behalf of, or as representative of, the operator and permits the agent to carry out limited duties of the operator. Any act performed by an agent is taken to have been carried out by the operator.

Agents can be employed by the operator as a direct employee under the national wages and awards conditions (a worker), or as a sub-contractor who invoices the operator for work performed on an hourly or per job basis.

Further information on employment conditions can be accessed through the Fair Work Ombudsman’s webpage at: <https://www.fairwork.gov.au/awards-and-agreements>

When authorised by the operator, the agent may procure the services of drivers for the vehicle, effect payment of some regulatory costs on behalf of the operator and provide operational information to the Director as requested.

Where an operator chooses to employ a person as an agent, the Director must first be satisfied that the person is fit and proper and that no operational responsibility will be transferred from the operator to the agent. Where the agent has authority to act as contact point for drivers of the vehicle, the agreement must be attached to each driver bailment agreement to ensure operational transparency.

An agreement in which the agent pays to the operator a sum of money or directly derives income directly from the operation of the licence is considered a subleasing arrangement and is in breach of licence conditions.

The Director will refuse any application made by an operator for the approval of an agent agreement where the content of the arrangement does not meet the minimum requirements. The Director, at his or her discretion, may undertake an audit of any agent agreement in place.

The Director shall keep in place a register of all agent agreements. Relevant operators are obligated to notify the Director where an agent agreement has been terminated or not renewed.

## Limitations to Agent Agreements

While the operator and agent can negotiate conditions of employment, the agreement must not be of a sublessor/sublessee type arrangement. A subleasing arrangement occurs when the agent receives a direct profit from the operation of the licence or has responsibility for its operation – income derived from the operation of the licence should be received by the operator, not the agent.

Where an operator employs an agent to manage day to day business needs of his or her CPV operation, the arrangement must be in writing and shall be first approved by the Director. The Director will not approve any operator/agent arrangement where the person acting as agent is not considered to be of a fit and proper character by the Director.

## Principles of Agent Arrangements

The conditions under which an operator employs an agent are largely negotiated between the two parties, however the contents of the agreement must comply with the ‘Minimum Requirements for Agent Agreements’ as determined by the Director and which are listed in this document.

Each person acting as an agent must first be assessed by the Director as being of a fit and proper character. Further information on fit and proper assessments can be found in the Information Bulletin CPV03 – Guiding Principles for Fit and Proper Assessments which can be accessed online at: <https://nt.gov.au/driving/industry/cpv-information-bulletins-forms>

An operator who employs an agent outside of an approved written agreement is in contravention of licence conditions and is subject to prosecution and administrative actions, such as a suspension or cancellation of that licence and/or operator accreditation. The maximum penalty for failing to comply with the conditions of a licence is 85 penalty units.

To assist with facilitating the authorised functions of an agent under an agreement, the Department has published the form CPVF40 – Authority to Act on Behalf of a Commercial Passenger Vehicle Operator. Where an agent interacts with the Department on behalf of the operator, the agent is required to produce the completed form to demonstrate appropriate authority.

Minimum Standards for Agent Agreements

To ensure the integrity of agent agreements, the Director has determined the below minimum requirements for all agent agreements. While each operator is free to develop their own agreement with their agent, all agreements must meet the below requirements:

1. Be written in plain English and must clearly and succinctly define any exceptional or industry specific words or terminology;
2. Identify the vehicle/s to which the agreement relates by registration number and commercial vehicle licence (CVL) number;
3. Define the period the agreement is in effect, including the start date and end date;
4. Not contravene any law in place in the Northern Territory;
5. Clearly identify each party by name and:
	1. in the case of the agent, the full name, residential address and contact telephone number; and
	2. in the case of an operator, the full name, residential address and the operator accreditation number issued by the Director;
6. Ensure operational responsibility of the vehicle is not transferred from the licence holder (operator) to the agent. Operational responsibilities include, but are not limited to:
	1. All fees and charges applicable to the regulatory costs of the vehicle and operator accreditation are borne by the operator – this includes maintaining financial records in the name of the operator for payments for vehicle registration, licensing fees and network fees where applicable;
	2. the purchase of the vehicle (in the name of the operator as buyer) and the cost of fitting of any in-vehicle equipment necessary to the task of operating for hire or reward in that category e.g. fitment of taximeter, security camera equipment and EFTPOS terminal, schedule of fares;
	3. receiving all monies generated as income from the operation of the vehicle into a financial institution account under the name of the operator, or where generated in cash, to the operator in person;
	4. the costs of maintaining and repairing the vehicle and equipment;
	5. payment of any fines relating to the vehicle (where it is an offence against the operator);
7. Ensure the authority granted to the agent to act on behalf of the operator is clearly defined;
8. Preserve the inherent obligations placed on the operator to ensure that any vehicle endorsed on the licence is operated in compliance with licence conditions and the provisions of the Act, applicable regulation, standards and codes of conduct made from time to time under the Act that apply to operators;
9. Ensure the agent has no interest in the operation of the vehicle other than that of operator agent;
10. Ensure the agent has been assessed as fit and proper by the Director; and
11. Specify the authority terms and conditions of the agreement, including:
	1. conditions under which the agent is employed;
	2. grounds to vary and terminate the agreement;
	3. financial remuneration of the agent by the operator;
	4. the limitations of the agent’s authority to act on the operator’s behalf; and
	5. reporting and notification requirements of each party.

## Resources

Listed below are resources that may provide assistance to you.

Information Bulletins and Forms: [nt.gov.au/driving/industry/cpv-information-bulletins-and-forms](http://www.nt.gov.au/driving/industry/cpv-information-bulletins-and-forms)

Legislation: [www.legislation.nt.gov.au](http://www.legislation.nt.gov.au)