



FOUR-WHEEL DRIVE TOURIST SERVICE OPERATOR ACCREDITATION PACKAGE

SEPTEMBER 2009

Transport Operations Division
Level 4, 16-18 Wentworth Street
(Locked Bag 5085)
Parramatta NSW 2124
Tel: 9689 8888
Fax: 9689 8813
www.transport.nsw.gov.au

CONTENTS

1. Introduction

What is a four-wheel drive tourist service?
Which are the prescribed types of four-wheel drive vehicles?
What is the purpose of accreditation?

2. Standards for Granting Four-Wheel Drive Tourist Service Operator Accreditation

Accreditation standards
How to satisfy the accreditation standards:
 Good repute
 Fit and proper
 Competent to carry on four-wheel drive tourist services
 Financially capable
 Access to maintenance facilities

3. Procedures for applying for Four-Wheel Drive Tourist Service Operator Accreditation

Application procedures
Assessment of applications
Are there any special requirements for corporations?
Important note

4. Conditions of Four-Wheel Drive Tourist Service Operator Accreditation

Accreditation conditions
Other obligations
Special provisions
Miscellaneous

5. Refusal, Variation, Suspension or Cancellation of Four-Wheel Drive Tourist Service Operator Accreditation

6. Other Information

NSWTI Fraud and Corruption Prevention Policy
Obtaining additional information from NSWTI

APPENDICES

- I List of persons who may provide references as to good repute
- II Application Form for Four-Wheel Drive Tourist Service Operator Accreditation

1. INTRODUCTION

Four-wheel drive tourist services in New South Wales are regulated under the *Passenger Transport Act 1990* and the *Passenger Transport Regulation 2007*. However, there are also other laws which affect the way that public transport services, such as four-wheel drive tourist services, can be operated. Some of these include road transport legislation and the *Occupational Health and Safety Act*. An accredited four-wheel drive tourist service operator is essentially a business manager and so should be familiar with all laws relating to the proper management of a four-wheel drive tourist service.

The Act requires that operators of four-wheel drive tourist services must be accredited by NSW Transport and Infrastructure (NSWTI), formerly the Ministry of Transport.

A maximum fine of \$110,000 may be imposed for operating a four-wheel drive tourist service without appropriate accreditation by NSWTI.

This package has been developed by NSWTI as a guide to assist any individual, partnership or corporation (which includes an association and co-operative) who wishes to become an accredited four-wheel drive tourist service operator in understanding the legislation and policy for providing four-wheel drive tourist services in New South Wales.

It is important to note that the information in this package does not replace the provisions in the Act and the Regulation but is merely a guide as to how the legislation is being administered in this context.

1.1 What is a four-wheel drive tourist service?

A four-wheel drive tourist service is a public passenger service provided by a kind of vehicle prescribed by the Regulation, being:

- a) a pre-booked service being designed for the carriage of tourists to destinations listed on a publicly available tour itinerary, or
- b) a service designed for the carriage of tourists where all passenger's journeys have a common origin or a common destination, or both.

Only four-wheel drive vehicles of a type prescribed by the Regulation may be used for this purpose.

1.2 Which are the prescribed types of four-wheel drive vehicles?

Clause 3(1) of the Regulation prescribes that "Four-wheel drive means a motor vehicle that:

- a) complies with the Australian Design Rules under the *Motor Vehicle Standards Act 1989* of the Commonwealth category definition for off-road passenger vehicles (MC vehicles), and
- b) does not have side-facing seats."

1.3 What is the purpose of accreditation?

Accreditation is the system that is used by NSWTI to assess whether a person is of suitable character and fitness and has the competency to operate public passenger transport services in

accordance with the standards and conditions prescribed by the Act and Regulation. These standards and conditions aim to raise the awareness of operators in the areas of safety, service delivery and business acumen, and to ensure operators are held accountable for complying with appropriate standards. In this way accreditation can be seen as a type of quality assurance system for public passenger transport operations.

There are different requirements for operator accreditation for the different types of public passenger transport services. If you need information about requirements and arrangements for bus, hire car or taxi-cab operator accreditation, please contact NSWTI's Transport Operations Division on 9689 8888 or visit NSWTI's web site.

2. STANDARDS FOR GRANTING FOUR-WHEEL DRIVE TOURIST SERVICE OPERATOR ACCREDITATION

The standards for four-wheel drive tourist service operator accreditation are the requirements that applicants must meet before four-wheel drive tourist service operator accreditation can be issued by NSWTI. These standards are set forth in Part 2 of the Regulation.

2.1 Accreditation standards (Part 2)

A person or the partners in a partnership (or, in the case of a corporation, including an association or co-operative, the nominated directors and managers) wishing to be accredited to operate four-wheel drive tourist services:

- (a) must be of good repute;
- (b) must be fit and proper;
- (c) must be able to meet and continue to meet the appropriate requirements in respect of:
 - (i) safety of drivers, passengers and the public (be able to demonstrate knowledge and competence relating to the operation of a four-wheel drive tourist service);
 - (ii) financially capable; and
 - (iii) vehicle maintenance (have access to maintenance facilities for four-wheel drive vehicles).

2.2 How to satisfy the accreditation standards

2.2.1 Good repute

NSWTI does not set specific standards for a person's reputation or whether the person is a fit and proper person, but examines all the circumstances of a particular application to make an assessment about whether it considers a person is of good repute and fit and proper. An applicant is required to provide certain documentation to assist NSWTI to make its assessment.

One of these requirements is that an applicant must provide references declaring his/her good repute from two persons who hold positions listed in **Appendix I** and have known the applicant for at least two years and consider him/her to be of good repute. (An employee of an applicant cannot provide a reference.)

NSWTI will also check to see whether an applicant has a criminal record. The applicant must give NSWTI permission to obtain any relevant criminal information about them held by any Commonwealth, State or Territory law enforcement agency. The information obtained can only

be used for the purpose that it was obtained for. An application will be refused if NSWTI is not permitted to obtain such information by the applicant.

2.2.2 Fit and proper

An applicant for accreditation, whether an individual operator, or a partner or a director or manager nominated by a corporation, is required to declare that he or she is aware of the following:

- (a) that they may be refused accreditation if they fall under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act, from managing corporations.
- (b) that they may be refused accreditation if they are the subject of proceedings under section 592 (Incurring of certain debts, fraudulent conduct) of the Corporations Act.
- (c) that NSWTI may examine any factors which relate to a person's suitability to be an accredited operator if the applicant is the director of a company that has been wound up, or is in the course of being wound up relating to insolvency under Part 5.4 (Winding up in insolvency) of the Corporations Act, or has disclosed any convictions or charges in accordance with (d) below.
- (d) that written notice of any conviction for any offence in the last 5 years, or if there are any charges pending must be provided to the Director-General. Full details of any conviction/s or charge/s pending (in any jurisdiction) must be provided.

The applicant must also declare in writing that there are no convictions or pending proceedings against them, if this is the case.

2.2.3 Competent to carry on four-wheel drive tourist services

The applicant must demonstrate to the satisfaction of the Director-General that they possess the necessary knowledge and level of competency to operate a four-wheel drive tourist service.

In particular, the applicant must be conversant with the relevant provisions of the Act and Regulation, other laws relating to traffic, and relevant sections of the *Occupational Health and Safety Act*.

2.2.4. Financially capable

The applicant must provide a signed statement, on business letterhead, from a qualified accountant who has examined their financial records. This statement must report on the applicant's financial capacity to operate a four-wheel drive tourist service.

The accountant's report should also mention the applicant's ability to meet the requirements of the Regulation and other relevant laws as to:

- (i) vehicle maintenance and roadworthiness, and
- (ii) the safety of drivers, passengers and the public, and
- (iii) the operation of a business.

The statement must also clearly state, in the opinion of the accountant, the number of four-wheel drive tourist service vehicles that can be accommodated by the four-wheel drive tourist service proposed to be carried on by the applicant. The statement cannot be provided by an accountant employed by the applicant.

If the applicant is a corporation, a statement of the accountant's opinion as to the solvency and general financial standing of the corporation is required.

NB For the purposes of this section, 'qualified accountant' means a member of CPA Australia who holds a Public Practice Certificate issued by CPA Australia, or a member of the Institute of Chartered Accountants in Australia, who holds a Certificate of Public Practice issued by that Institute, or a member of the National Institute of Accountants who holds a Public Practice Certificate issued by that Institute.

2.2.5 Access to maintenance facilities for four-wheel drive vehicles

The applicant must have access to adequate maintenance facilities for the four-wheel drive vehicles intended to be used to provide the service.

The applicant must provide NSWTI with full details of the premises at which the four-wheel drive vehicles will normally be kept when not available for service.

Applicants are strongly advised to contact the local council authority concerned to ascertain whether there are any special requirements before such premises can be used to conduct operations relating to a four-wheel drive tourist service.

3. PROCEDURES FOR APPLYING FOR FOUR-WHEEL DRIVE TOURIST SERVICE OPERATOR ACCREDITATION

The procedures in this section have been developed in accordance with sections 7 and 8 of the Act for the purpose of dealing with applications for four-wheel drive tourist service operator accreditation.

In making an application for accreditation as an operator of four-wheel drive tourist services, the applicant must provide answers to all questions in the application form truthfully. If NSWTI finds that the applicant has not been truthful in the application, accreditation may not be forthcoming.

3.1 Application procedures

3.1.1 The applicant must have:

- (a) read and understood the standards, conditions and procedures for accreditation as outlined in this package;
- (b) completed an application form, which is at **Appendix II** of this package (it is also available by printing it from NSWTI's web site www.transport.nsw.gov.au);
- (c) answered all questions truthfully;

- (d) read and understood these procedures, incorporated in the information package, and all the requirements specified in the accreditation standards;
- (e) signed the application form declaring that they have:
 - (i) answered all the questions truthfully,
 - (ii) understood the requirements applying to accredited four-wheel drive tourist service operators,
 - (iii) given permission to NSWTI to obtain any relevant criminal record information about the applicant held by any Commonwealth, State or Territory law enforcement agency for the purpose of considering whether the applicant is a person of good repute and in all other respects a fit and proper person to be responsible for the operation of a four-wheel drive tourist service within the meaning of section 7 of the Act, and
 - (iv) understood and will abide by the conditions for being accredited as a four-wheel drive tourist service operator;
- (f) attached the following documents to the application form:
 - (i) character references from each of the two persons (not being employees of the applicant) who are members of professions listed in **Appendix I** and have known the applicant for at least two years,
 - (ii) financial statement from a qualified accountant (other than an employee of the applicant) on the official letterhead indicating that they have examined the applicant's financial records and are satisfied, in their opinion, that they are financially capable of carrying out four-wheel drive tourist services. The financial statement must also clearly state the number of four-wheel drive vehicles that can be operated,
 - (iii) if the applicant is a corporation, an additional statement from the qualified accountant as to the solvency and general financial standing of the corporation,
 - (iv) a signed statement declaring any bankruptcy, criminal or civil convictions, or charges pending,
 - (v) A signed statement declaring any convictions under relevant companies legislation,
 - (vi) a signed statement giving NSWTI the right to examine matters in relation to the person's suitability to become an accredited operator, and
 - (vii) a cheque or money order for \$100, payable to NSW Transport and Infrastructure, being the fee for application (please do not send cash in the post);
- (g) deliver or post the completed application form, all the documentation and the cheque for payment, to the Transport Operations Division, Level 4, 16-18 Wentworth Street, Parramatta or Locked Bag 5085, Parramatta NSW 2124.

3.2 Assessment of applications

NSWTI will examine all applications to ensure that all the information and documentation are provided.

If more information is needed from an applicant, or if the documentation is not correct, or was not included in the application, NSWTI will contact the applicant on the phone number or at the address included in the application.

3.3 Are there any special requirements for corporations?

Corporations are to nominate one or more directors or managers, who are to be responsible for the day to day operations of the four-wheel drive tourist service to be accredited. An organisation's accreditation is automatically suspended if there is no designated director or manager. This would happen where, for example, the designated persons resign, are dismissed or are on holidays, in hospital or dispose of their interests in the company.

If for any reason it becomes necessary to add someone to the list of designated persons, the new nominees will need to make a fresh application and provide all necessary references and statements.

3.4 Important note

The onus is on applicants to show proof that they comply with the standards for accreditation. An application will be refused by the Director-General if the applicant is not able to demonstrate that they are able to meet all accreditation standards.

All fees associated with the obtaining of financial statements from qualified accountants and evidence of good repute are to be met by the applicant.

A fee (\$100) applies for consideration of an application for accreditation of a four-wheel drive tourist service operator. This application fee is not refundable if the application is refused.

4. CONDITIONS OF FOUR-WHEEL DRIVE TOURIST SERVICE OPERATOR ACCREDITATION

Accreditation conditions are requirements that an accredited four-wheel drive tourist service operator must meet to remain accredited. These conditions are prescribed by the Regulation pursuant to section 9B of the Act. There is a fine of up to \$110,000, if they are breached.

The Act also allows the Director-General to impose additional accreditation conditions and these have equal force with the Regulation and the Act.

The Director-General may also vary the conditions from time to time. An accredited four-wheel drive tourist service operator will be required to meet any new conditions of accreditation, if and when imposed.

NSWTI will notify existing four-wheel drive tourist service operators of any changes in the conditions of accreditation.

4.1 Accreditation Conditions

Conditions of accreditation to carry on four-wheel drive tourist services are:

(a) Safety of drivers, passengers and the public (clause 15)

The operator must ensure that :

- (i) their four-wheel drive vehicles at all times meet legislative requirements as to vehicle registration, safety and roadworthiness, and
- (ii) only licensed and authorised four-wheel drive vehicle drivers are engaged to drive the four-wheel drive vehicle.

(b) Vehicle maintenance (clause 16)

The accredited four-wheel drive tourist service operator must have, and adhere to, a vehicle maintenance plan that:

- (i) is consistent with the maintenance standards of the manufacturer of the four-wheel drive vehicles used to provide the service, and
- (ii) specifies the steps to be taken to ensure that the four-wheel drive vehicles are roadworthy, and
- (iii) specifies the way in which the four-wheel drive vehicles are to be maintained, and
- (iv) specifies the way in which defects are to be recorded and rectified, and
- (v) is capable of being audited.

The operator or any other person who carries out the maintenance or repairs to four-wheel drive tourist vehicles must be licensed under the *Motor Vehicle Repairs Act 1980* to carry out the work concerned, even if they are exempted under section 5 of the *Motor Vehicle Repairs Act 1980* from the operation of all or any of the provisions of that Act.

However, for the purposes of this condition, maintenance and repairs do not include the following:

- (i) adding approved oils or other fluids to engines, transmissions, differentials, power steering reservoirs, windscreen washer reservoirs, master cylinders, radiators or batteries,
 - (ii) changing engine, transmission and differential oils,
 - (iii) changing engine oil filters and fuel filters,
 - (iv) carrying out general lubrication,
 - (v) changing spark plugs,
 - (vi) changing wheels and tyres,
 - (vii) changing light bulbs,
 - (viii) replacing seats and floor coverings,
 - (iv) replacing external rear vision mirrors.
- (c) Condition of four-wheel drive tourist vehicles (clause 17)
- The operator must ensure that, while any four-wheel drive vehicle is being driven for providing tourist services, its fittings are clean and undamaged, securely fitted, in good condition and fully operational.
- The fittings of a vehicle include the following:
- (i) the vehicle body and the door panels,
 - (ii) the wheels and the bumper bars,
 - (iii) the trim
 - (iv) the seats, seat covers and floor cover,
 - (v) the interior lights,
 - (vi) any device or equipment that is fitted to the vehicle (whether or not it is required by or under the Act to be fitted).
- (d) Changes to information provided (clause 18)
- The operator must also notify the Director-General in writing no later than 7 days after a change of the address of the premises from which the four-wheel drive tourist service is operated and/or at which the four-wheel drive vehicles are kept.

4.2 Other obligations

- (a) Records relating to operation of four-wheel drive tourist vehicles (clause 19)
- The person who is or has been an accredited operator must make and keep in the English language any record required to be kept by the person under the Act and the Regulation of their four-wheel drive vehicles for at least 2 years in a form that is capable of being audited.
- The operator must, on demand by an authorised officer, produce the record in written form for inspection and must, if required by the Director-General in writing to do so, deliver the record to the Director-General.
- (b) Records of drivers (clause 21)
- The operator of a four-wheel drive tourist service must keep a written or electronic record of the following particulars for each driver engaged in driving a four-wheel drive tourist vehicle for service:
- (i) the person's full name and residential address,
 - (ii) the dates and times during which the four-wheel drive vehicle was driven by the person,

- (iii) the person's driver authority number (that is, the number allocated by the NSWTI and displayed on the person's driver authority card) and the date of expiry of the person's driver authority card,
 - (iv) the person's driver licence number and the date of expiry of the licence.
- (c) Vehicle insurance (clause 22)
 The operator must ensure that one or more policies of insurance providing cover of at least \$5,000,000 for each four-wheel drive vehicle operated are maintained against liability in respect of damage to property caused by the use of the four-wheel drive vehicle.

 The operator must provide an authorised officer, on request, with evidence that the operator's policies of insurance are current.
- (d) Evidence of accredited operator's continuing financial capacity (clause 23)
 The operator of a four-wheel drive tourist service must provide evidence, on written request by the Director-General and within the time specified in the request of the operator's continuing financial capacity to carry on the relevant service.
- (e) Operators to notify detrimental change in driver's medical condition (clause 24)
 If the operator of a four-wheel drive tourist service becomes aware of any apparent change in the physical or mental condition to a driver of a four-wheel drive vehicle operated by the operator that may detrimentally affect the driver's ability to drive safely, the operator must furnish the Director-General with written details of the apparent change within 48 hours after becoming aware of it.
- (f) Management of four-wheel drive tourist vehicle services (clause 25)
 If the operator is a corporation (including an association or co-operative), management of the day-to-day operations of the four-wheel drive tourist services must be carried out by the designated directors or managers, except where a person is appointed by law to manage the affairs of the corporation.

 If the operator is not a corporation, only appropriately accredited operators can operate, manage and supervise or administer the four-wheel drive tourist service.
- (g) Operator not to permit vehicle subject to non-compliance notice or non-compliance label to be driven (clause 26)
 The operator must not permit a four-wheel drive vehicle used to provide the relevant service to be driven if:
 - (i) the expiry date or expiry time of a non-compliance notice issued to the operator or a non-compliance label affixed to the four-wheel drive vehicle has passed, or
 - (ii) the operator is aware that a non-compliance label has been unlawfully removed from the four-wheel drive vehicle.

4.3 Special provisions

- (a) Tourist services (clause 202)
 A person must only use the type of four-wheel drive vehicle prescribed by the Regulation to provide four-wheel drive tourist services.
- (b) Only tourists to be carried (clause 203)
 The operator must not allow a person who the operator believes is not a tourist to be carried as a passenger on a four-wheel drive vehicle unless that person is carried in

connection with the provision of the relevant tour, such as a relief driver, cook, guide or interpreter.

- (c) Four-wheel drive vehicles not to be used wholly on sealed roads (clause 209)
The operator or the driver of a four-wheel drive tourist service vehicle must ensure that at least part of each tour offered involves the carriage of passengers on a surface other than a sealed road.
- (d) Emergency equipment for four-wheel drive vehicles (clause 210)
The operator must ensure that while the four-wheel drive vehicle is used to provide a tour that involves the carriage of passengers over more than 80 unbroken kilometres on a surface other than a sealed road, it carries adequate and appropriate emergency equipment.

The equipment to be carried includes (but is not limited to) the following:

- (i) a radio transceiver or mobile telephone,
- (ii) spare fuel and drinking water,
- (iii) a fire extinguisher,
- (iv) a first aid kit,
- (v) a tow rope,
- (vi) a winch or recovery strap,
- (vii) a high-lift jack or a long-handled shovel.

4.3 Miscellaneous

- (a) Non-compliance labels and notices (clause 232)
Non-compliance notices are issued by an authorised officer carrying out an inspection specifying the action necessary to be taken in order for the four-wheel drive tourist vehicle to comply with the relevant requirements, and an expiry date or time by which the action must be taken. A non-compliance label is affixed to the vehicle. Such a label should only be removed by an authorised officer if he/she is satisfied that the action specified in the notice/label has been taken.
- (b) No touting or soliciting for passengers or hirings (clause 233)
A person must not tout or solicit for passengers for, or for the hiring of, a four-wheel drive vehicle.
- (c) False advertising (clause 234)
A person must not falsely advertise being an accredited four-wheel drive tourist service operator.
- (d) Change of name or address of operator (clause 235)
An operator who changes his or her name or residential address must, within 7 days after the change, give notice of the change and of the new name or address to the Director-General.
- (e) Fees
The fee for consideration of an application for accreditation to carry on a four-wheel drive tourist service is \$100.

5. REFUSAL, VARIATION, SUSPENSION OR CANCELLATION OF FOUR-WHEEL DRIVE TOURIST SERVICE OPERATOR ACCREDITATION

If NSWTI refuses an application for four-wheel drive tourist service operator accreditation or if it cancels, suspends, or varies the accreditation, or imposes a condition on it, it must advise the applicant/operator of the reasons for the action taken.

NSWTI also has to advise the applicant/operator of any rights they might have to appeal against the decision.

If the applicant is dissatisfied with the decision, they may request a review of the decision by the Director-General. If the applicant is not satisfied with the outcome of the review, then the applicant may appeal to the Administrative Decisions Tribunal to overturn the decision.

The applicant should contact the Administrative Decisions Tribunal if more information about what the rules are for submitting an appeal is needed.

Operator accreditation may be refused, varied, suspended or cancelled under the following situations, but not limited to:

- (i) the operator's criminal or business history is unsuitable;
- (ii) when there is no designated director or manager;
- (iii) the operator has failed to pay a financial sanction imposed by the Director-General or a court;
- (iv) the operator has engaged in conduct that is in violation of the Regulation or the requirements to provide four-wheel drive tourist services.

6. OTHER INFORMATION

6.1 NSWTI Fraud and Corruption Prevention Policy

The NSWTI has a "no tolerance" policy on fraud and corruption.

Staff are not permitted to accept bribes or inducements (no matter how trivial these may be) to act dishonestly or partially as public officials. This includes deceit or an advantage gained by unfair means.

NSWTI will report to the Independent Commission Against Corruption (ICAC) or police any persons who offer inducements or bribes to staff to act dishonestly

6.2 Obtaining additional information from NSWTI

NSWTI publishes its documentation on its website, www.transport.nsw.gov.au, which includes most information about operator and driver requirements. The website also aims to inform people about the types of issues that NSWTI deals with.

If you have any questions about passenger transport services or if you need help in understanding any of the requirements please contact the NSWTI at its primary e-mail address, which is mail@transport.nsw.gov.au. You can also telephone, call in or write to the Transport Operations Division.

APPENDIX I

LIST OF PERSONS WHO MAY PROVIDE REFERENCES AS TO GOOD REPUTE

Judge
Magistrate
Chamber Magistrate
Clerk of a Local Court
Barrister
Solicitor
Member of Parliament
Councillor or General Manager of city, municipal or shire council
Medical Practitioner (registered under the Medical Practice Act 1992)
Dental surgeon
Veterinary surgeon
Full-time TAFE or university lecturer
School Teacher
Police Officer
Manager of a bank or building society
Manager (employed by Australia Post) of a post office
Minister of Religion authorised to celebrate marriages (but not merely a marriage celebrant)
Qualified accountant (not employed by the applicant) who holds a public practice certificate
Commissioned Officer in the Australian Defence Forces
Public Servant with at least 5 years' service as a permanent officer
Justice of the Peace (to show registered number)

NB A qualified public accountant who provides a financial viability statement for a person applying for accreditation as an operator under the *Passenger Transport Act 1990* may not also attest, as a referee, to the good repute of the applicant.