

Heavy Vehicle National Law and Other Legislation Amendment Bill 2016

Report No. 27, 55th Parliament

Transportation and Utilities Committee

November 2016

Transportation and Utilities Committee

| | |
|---------------------------|--|
| Chair | Mr Shane King MP, Member for Kallangur |
| Deputy Chair | Mr Rob Molhoek MP, Member for Southport |
| Members | Mr Matt McEachan MP, Member for Redlands Mr Jason Costigan MP, Member for Whitsunday Mr Linus Power MP, Member for Logan Mr Chris Whiting MP, Member for Murrumba |
| Committee Staff | Ms Kate McGuckin, Research Director Ms Rachelle Stacey, Principal Research Officer Ms Trudy Struber, Inquiry Secretary Ms Mishelle Young, Acting Committee Support Officer (Mon-Wed) Ms Lyn Whelan, Committee Support Officer (Thur-Fri) |
| Technical Scrutiny | Ms Renee Easten, Research Director |
| Secretariat | Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer Ms Lorraine Bowden, Senior Committee Support Officer |
| Contact Details | Transportation and Utilities Committee Parliament House George Street Brisbane Qld 4000 |
| Telephone | +61 7 3553 6633 |
| Fax | +67 7 3553 6639 |
| Email | tuc@parliament.qld.gov.au |
| Web | www.parliament.qld.gov.au/work-of-committees/committees/TUC |

Acknowledgements

The Committee acknowledges the assistance provided by the Department of Transport and Main Roads, the National Transport Commission and the National Heavy Vehicle Regulator.

Contents

| | |
|---|------------|
| Abbreviations | iii |
| Chair’s foreword | iv |
| Recommendations | v |
| 1. Introduction | 1 |
| 1.1 Role of the Committee | 1 |
| 1.2 Inquiry process | 1 |
| 1.3 Policy objectives of the Bill | 2 |
| 1.4 Consultation on the Bill | 2 |
| 1.5 Should the Bill be passed? | 2 |
| 2. Examination of the Bill – proposed amendments to the HVNL Act and HVNL | 3 |
| 2.1 Chain of responsibility amendments | 3 |
| 2.1.1 Standard of care requirements | 3 |
| 2.1.2 Power to require information | 4 |
| 2.1.3 Liability of executive officers | 4 |
| 2.1.4 Enforceable undertakings | 5 |
| 2.2 Maintenance amendments | 6 |
| 2.2.1 Public notification of actions | 6 |
| 2.2.2 Penalties and fees | 6 |
| 2.2.3 Defect notices | 6 |
| 2.2.4 Amendments to statutory instruments | 7 |
| 2.2.5 Delegation of Ministers’ approval powers | 7 |
| 2.3 Other issues raised by submitters | 8 |
| 2.3.1 Definition of packer | 8 |
| 2.3.2 Duties of drivers | 9 |
| 2.3.3 Bus axle limits | 10 |
| 2.3.4 Process for amending the HVNL and ongoing lead agency arrangements | 11 |
| 2.4 Compliance with the <i>Legislative Standards Act 1992</i> – amendments to HVNL Act and HVNL | 12 |
| 2.4.1 Fundamental legislative principles | 12 |
| 2.4.2 Proposed new and amended offence provisions | 14 |
| 2.4.3 Explanatory notes | 21 |
| 3. Examination of the Bill – proposed amendments to TOPTA | 22 |
| 3.1 Background to the reform of the Personalised Transport Industry in Queensland | 22 |
| 3.1.1 Opportunities for Personalised Transport Review | 22 |
| 3.1.2 Queensland Government policy on reform of the personalised transport industry | 23 |
| 3.1.3 Implementation of Queensland’s reform of the personalised transport industry | 26 |
| 3.2 Proposed amendments to enable to payment of financial assistance under the IAAP | 29 |
| 3.2.1 Proposed head of power to make a regulation | 29 |
| 3.2.2 The configuration of the IAAP and the economic modelling on which it was based | 32 |
| 3.3 Funding the IAAP | 40 |
| 3.4 Eligibility criteria and assessment process for the adjustment and hardship payments | 42 |

| | | |
|-----------|--|-----------|
| 3.4.1 | Payments to taxi licence owners under the IAAP | 42 |
| 3.4.2 | Payments to limousine licence owners under the IAAP | 44 |
| 3.4.3 | Eligibility for assistance | 46 |
| 3.5 | Business advisory support | 48 |
| 3.6 | Incentive payments for wheelchair accessible services | 49 |
| 3.7 | Non-cash assistance | 52 |
| 3.7.1 | Fee waivers | 52 |
| 3.7.2 | Taxi licence valuations | 53 |
| 3.7.3 | Taxation on payments made under the IAAP | 58 |
| 3.8 | Consultation and communication on the IAAP | 59 |
| 3.8.1 | Consultation | 59 |
| 3.8.2 | Communication | 60 |
| 3.9 | Levelling the playing field | 62 |
| 3.9.1 | Government reforms – Stage 1 and Stage 2 | 62 |
| 3.9.2 | Licensing booked hire services | 65 |
| 3.9.3 | Taxi insurance, including Compulsory Third Party insurance | 65 |
| 3.9.4 | Vehicle safety standards | 67 |
| 3.9.5 | Driver authorisations and screening | 68 |
| 3.9.6 | Registration costs | 69 |
| 3.9.7 | Penalties for non-compliance – soliciting and touting | 70 |
| 3.10 | Definition of vehicles included in the personalised transport industry | 71 |
| 3.11 | Impact on Government revenue | 72 |
| 3.11.1 | Stamp duty | 72 |
| 3.11.2 | Public transport revenue | 73 |
| 4. | Compliance with the <i>Legislative Standards Act 1992</i> – amendments to TOPTA | 74 |
| 4.1 | Fundamental legislative principles | 74 |
| 4.1.1 | Institution of Parliament | 74 |
| 4.2 | Explanatory notes | 75 |
| | Appendix A – List of Submissions | 76 |
| | Appendix B – Witnesses at the public briefings | 80 |
| | Appendix C – Witnesses at the public hearing – Brisbane | 81 |
| | Appendix D – Witnesses at the public hearing – Gold Coast | 82 |
| | Appendix E – Witnesses at the public hearing – Cairns | 83 |
| | Appendix F – Witnesses at the public hearing – Townsville | 84 |
| | Appendix G – Witnesses at the public hearing – Rockhampton | 85 |
| | Appendix H – Witnesses at the public hearing – Mackay | 86 |
| | Appendix I – Witnesses at the public hearing – Caboolture | 87 |

Abbreviations

| | |
|-----------------|---|
| ALRTRA | Australian Livestock and Rural Transporters Association |
| ALC | Australian Logistics Council |
| ATA | Australian Trucking Association |
| BIC | Bus Industry Confederation |
| Bill | Heavy Vehicle National Law and Other Legislation Amendment Bill 2016 |
| committee | Transportation and Utilities Committee |
| CTP | Compulsory Third Party |
| DTMR | Department of Transport and Main Roads |
| FLPs | fundamental legislative principles |
| HVNL | Heavy Vehicle National Law (schedule to the HVNL Act) |
| HVNL Act | <i>Heavy Vehicle National Law Act 2012</i> |
| IAAP | Industry Adjustment Assistance Package |
| LSA | <i>Legislative Standards Act 1992</i> |
| MAIC | Motor Accident Insurance Commission |
| Minister | Minister for Transport and the Commonwealth Games |
| NHVR | National Heavy Vehicle Regulator |
| NTC | National Transport Commission |
| OPT Review | Opportunities for Personalised Transport Review |
| PWC | PricewaterhouseCoopers |
| Reference Group | Personal Transport Industry Reference Group |
| Strategic Plan | Queensland's Personalised Transport Horizon: Five year Strategic Plan for Personalised Transport Services 2016-2021 |
| TCQ | Taxi Council of Queensland |
| TOPTA | <i>Transport Operations (Passenger Transport) Act 1994</i> |
| WAT | Wheelchair Accessible Taxi |
| White Paper | Opportunities for Personalised Transport: The future of Queensland's personalised transport industry |

Chair's foreword

This Report presents a summary of the Transportation and Utilities Committee's examination of the Heavy Vehicle National Law and Other Legislation Amendment Bill 2016.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on the Bill. I also thank the committee's Secretariat, the Department of Transport and Main Roads, the National Transport Commission and the National Heavy Vehicle Regulator.

Whilst, the Bill proposes to create a head of power to make the taxi and limousine industry assistance regulation to make payments under the Industry Adjustment Assistance Package, we as a committee listened to stakeholder concerns about both the assistance package and the reform of the personalised transport industry. We have made numerous recommendations on both the assistance package and the broader industry reform process.

I was pleased that the committee was able to agree on all the recommendations in this report unanimously.

On a personal note I would like to commend the taxi and limousine industries for their stoic adherence to the laws and regulations relating to their industries during what has been a very difficult time for them. As a committee we listened to many heartfelt admissions of the difficulty the industry has faced since the appearance of ridesharing apps and their pride in their industry came through very clearly to all during this process.

I commend this Report to the House.



Shane King MP

Chair

Recommendations

Recommendation 1 **2**

The committee recommends the Heavy Vehicle National Law and Other Legislation Amendment Bill 2016 be passed.

Recommendation 2 – Heavy Vehicle National Law **9**

The committee recommends that the Minister work with the other 'responsible Ministers' (the relevant Commonwealth and State Ministers) to ask the National Transport Commission to give further consideration within the next twelve months to means by which it can make more transparent, and more easily understood, the applicability of the relevant Chain of Responsibility provisions to pre-transport stock preparation.

Recommendation 3 - Heavy Vehicle National Law **11**

The committee recommends the Minister, in consultation with the National Heavy Vehicle Regulator, responsible Ministers, and stakeholders, consider whether changes to the Heavy Vehicle (Mass, Dimension and Loading) National Regulation would be appropriate to ensure the mass limits reflect operational practice and are nationally consistent as far as reasonably practicable.

Recommendation 4 – Eligibility criteria for the Industry Adjustment and Assistance Package **31**

The committee recommends the Minister consider amending the Bill to include any finalised eligibility criteria, or details on the assessment and review process, which are to be included to the taxi and limousine industry assistance regulation.

Recommendation 5 – Structure of the Industry Adjustment Assistance Package **40**

The committee recommends the Minister consider amalgamating the industry adjustment funding with the hardship funding to provide the framework for a more equitable assistance package that enables the composition of hardship and transition support to be adjusted depending on the needs and impacts of individual licence owners.

Recommendation 6 – Assessment of applications for assistance **40**

The committee recommends the Minister consider engaging the Queensland Rural Adjustment Authority to manage the application, assessment, payment and reporting process for the Industry Adjustment Assistance Package.

Recommendation 7 – Licence fee **42**

The committee recommends the Government consider:

- all possible options for increasing the \$100 million currently allocated to the Industry Adjustment Assistance Package
- urgently introducing the proposed licencing system for booked hire services ensuring it is applied to all individuals and organisations/entities, and
- attaching a substantial fee to this licence which could be applied to the recommended increase in funding for the Industry Adjustment Assistance Package.

Recommendation 8 – Cap on adjustment payments **43**

If recommendation 5 is not accepted, the committee recommends the Minister review the proposed cap of two taxi licences per holder for transitional assistance payments and look at the application of alternative eligibility criteria.

- Recommendation 9 – Eligibility for assistance** **48**
- The committee recommends the Minister review the eligibility of people who own taxi and limousine licences in structures such as trusts, non-commercial superannuation funds and small companies to ensure they are not excluded from assistance under the Industry Adjustment Assistance Package simply on the basis of the ownership structure of their licence.
- Recommendation 10 – Taxi operators** **48**
- The committee recommends the Minister investigate including taxi operators as eligible recipients of hardship assistance under the Industry Adjustment Assistance Package on the basis they have also been negatively impacted by competition from ridesharing services.
- Recommendation 11 – Business advisory support** **48**
- The committee recommends the Minister consider extending the business advisory support program to include legal assistance and advocacy support for those industry participants in negotiations with financial lending institutions regarding loans related to their taxi licences.
- Recommendation 12 – Incentive payments for wheelchair accessible services** **51**
- The committee recommends the Minister consider extending the incentive payments for wheelchair accessible service beyond year one.
- Recommendation 13 – Ongoing support for wheelchair accessible services** **52**
- The committee recommends the Minister consider providing additional financial support directly to wheelchair accessible services to ensure that these services continue to be provided across Queensland and the Minister consider funding this from the licence fee once the hardship support ceases.
- Recommendation 14 – Wheelchair accessible vehicles** **52**
- The committee recommends the Minister investigate financing the vehicle improvements required to provide wheelchair accessible services if it can be demonstrated that financial institutions will not provide the loan funds for the necessary vehicle improvements at a reasonable interest rate.
- Recommendation 15 – Personal Transport Industry Reference Group** **52**
- The committee recommends the Minister ensure the Personal Transport Industry Reference Group, and any other group established to consult on personalised transport industry reforms, has at least one representative from the disability advocacy sector.
- Recommendation 16 – Fees paid in advance** **53**
- The committee recommends the Minister investigate making provision for people who have paid their taxi licence service fees and Operator Accreditation fees in advance to apply for a refund.
- Recommendation 17 – Taxi licence values** **58**
- The committee recommends the Minister urgently investigate reports that lending institutions are foreclosing on taxi licence loans and explore options for securing or assuring lending institutions that taxi licences continue to have a residual value.
- Recommendation 18 – Centrelink eligibility** **58**
- The committee recommends the Minister consider providing urgent advice to the Commonwealth Government/Centrelink on estimated current taxi licence values (based on region) to provide assistance to licence holders who are unable to access social security benefits due to asset test provisions which deem the licence to have a value based on the last sale prices.

- Recommendation 19 – Consultation on the regulation** 61
- The committee recommends the Minister seek input from representatives of each of the sectors involved in the taxi and limousine industry, as well as the Personalised Transport Industry Reference Group, prior to the Industry Adjustment Assistance Package regulation being finalised.
- Recommendation 20 – Implementation of the assistance package** 61
- The committee recommends the Minister, in his second reading speech, outline the consultation process to be undertaken on the proposed regulation, advise the timeline for the finalisation of the regulation, and advise when the first payments are expected to be made under the Industry Adjustment Assistance Package.
- Recommendation 21 – Communication strategy** 61
- The committee recommends the Minister ensure a comprehensive communication strategy is undertaken following the making of the taxi and limousine industry assistance regulation to ensure all taxi industry participants are informed about the eligibility criteria for payments, how to go about making an application and that communication with the industry remain a priority during the implementation of stage 2 of the reform process.
- Recommendation 22 – CTP insurance** 66
- The committee recommends that as an interim measure (while a new approach to Compulsory Third Party insurance is being developed) the Government consider developing, a single Compulsory Third Party insurance category to apply to taxis and rideshare vehicles.
- Recommendation 23 – Payment of registration and CTP insurance** 66
- The committee recommends the Government investigate the possibility of personalised transport operators being able to pay their registration and Compulsory Third Party insurance on a monthly basis.
- Recommendation 24 - Cameras** 68
- The committee recommends the Minister consider urgently introducing an outcome based regulatory requirement that all taxis and ride-booking vehicles have cameras installed and ensure that the camera footage cannot be tampered with and that it be available for a minimum of three months.
- Recommendation 25 – Vehicle safety certificates** 68
- The committee recommends the Minister clarify in his second reading speech why the previous requirement for taxis to have a valid safety certificate issued six-monthly has been amended to an annual requirement for all personalised transport vehicles, given the safety implications.
- Recommendation 26 – Training for drivers providing wheelchair accessible services** 69
- The committee recommends the Minister consider introducing a requirement for all drivers of wheelchair accessible vehicles be suitably trained to provide services for passengers with disabilities.
- Recommendation 27 – Penalties for non-compliance** 71
- The committee recommends the Minister consider significantly increasing the penalty for non-compliance with regulations that protect taxi rank and hail work and illegal operations to a more meaningful level and that the new penalty be introduced urgently.
- Recommendation 28 – Definition of personalised transport vehicle** 72
- The committee recommends the Minister provide clarification in his second reading speech on whether the term ‘personalised transport vehicle’ will be defined in the *Transport Operations (Passenger Transport) Act 1994* or in subordinate legislation.

Recommendation 29 – Impact on public transport sector

73

The committee recommends the Minister, at the second reading stage, provide an analysis of the revenue impact of ride-sharing services on the Queensland public transport sector, detailing:

- annual figures since 1 July 2014
- the impact in different regions
- the impact on both buses and rail, and
- the impact on patronage of already marginal outer suburban evening and week-end services.

Recommendation 30 – Future impact on public transport sector

73

The committee recommends the Minister provide a report to Parliament by 1 September 2017 providing an analysis of the revenue impact of the personalised transport industry reforms on the Queensland public transport sector for the 2016 to 2017 financial year.

1. Introduction

1.1 Role of the Committee

The Transportation and Utilities Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015¹ under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.²

The Committee's primary areas of responsibility are:

- Main Roads, Road Safety, Ports, Energy and Water Supply, and
- Transport and the Commonwealth Games.

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

On 13 September 2016, the Minister for Transport and the Commonwealth Games (the Minister) introduced the Heavy Vehicle National Law and Other Legislation Amendment Bill 2016 (the Bill) and the Bill was referred to the committee. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the committee to report on the Bill by 1 November 2016.

1.2 Inquiry process

On 14 September 2016, the committee wrote to the Department of Transport and Main Roads (DTMR) seeking advice on the Bill, and also invited stakeholders and subscribers to lodge written submissions.

The committee received 88 submissions (see **Appendix A**). On 7 October 2016, the committee received written advice from DTMR in response to matters raised in submissions. The committee also received answers to Questions on Notice between 14 October 2016 and 28 October 2016.

One submitter also provided the committee with copies of a number of petitions which requested the Government release of studies upon which the decision to legalise 'rideshare' were based; fully compensate taxi licence owners, operators and drivers; and reverse the decision to legalise rideshare.

The committee held a public briefing with DTMR, the National Transport Commission (NTC) and the National Heavy Vehicle Regulator (NHVR) on 12 October 2016 (see **Appendix B**). Seven public hearings were held on the Bill as follows:

- Brisbane on 12 October 2016 (see **Appendix C**)
- Gold Coast on 14 October 2016 (see **Appendix D**)
- Cairns on 19 October 2016 (see **Appendix E**)
- Townsville on 19 October 2016 (see **Appendix F**)
- Rockhampton on 20 October 2016 (see **Appendix G**)
- Mackay on 20 October 2016 (see **Appendix H**)
- Caboolture on 21 October 2016 (see **Appendix I**).

¹ Commenced as the Utilities, Science and Innovation Committee on 27 March 2015 with its name and portfolio responsibilities changing on 18 February 2016.

² *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

1.3 Policy objectives of the Bill

The Bill proposes amendments to two Acts:

- the *Heavy Vehicle National Law Act 2012* (HVNL Act) and Schedule – Heavy Vehicle National Law (HVNL) to implement reforms to better align the obligations of chain of responsibility parties and executive officers with national safety laws, improve compliance and simplify enforcements; and make minor amendments to improve administration of the law, and
- the *Transport Operations (Passenger Transport) Act 1994* (TOPTA) to allow a regulation to be made providing for a scheme for the payment of financial assistance to the taxi and limousine industry in order to implement the main elements of the \$100 million Industry Adjustment Assistance Package (IAAP) which includes:
 - transitional assistance payments of \$20,000 per taxi licence capped at 2 licences per holder and \$10,000 per limousine service licence other than special purpose limousine service licences (\$60 million)
 - a hardship fund (\$26.7 million)
 - business advisory support (\$3.7 million)
 - fee waivers (\$4.3 million), and
 - incentive payments for wheelchair accessible services (\$5.6 million).

1.4 Consultation on the Bill

As set out in the explanatory notes, the following consultation was undertaken:

- on the proposed amendments to the HVNL Act and the HVNL consultation was undertaken by the NTC, with officers from each state and territory government transport agency and the NHVR. Consultation was also undertaken with peak transport industry organisation such as the Local Government Association of Queensland, (then) Commercial Vehicle Industry Association of Queensland (effective September 2015 the Heavy Vehicle Industry Australia), Toll Group and Transport Certification Australia. The explanatory notes advised that stakeholders have all indicated support for the proposed amendments, and
- on the proposed amendments to TOPTA extensive community consultation on personalised transport reform has been undertaken as part of the independent Opportunities for Personalised Transport Review (OPT Review) commissioned by the Queensland Government.³

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives that it will achieve and consideration of the information provided by DTMR and from stakeholders, the committee recommends that this Bill be passed.

The committee also makes a number of additional recommendations in relation to the HVNL, the IAAP and further legislative changes that have been foreshadowed in relation to the reform process for the personalised transport industry.

Recommendation 1

The committee recommends the Heavy Vehicle National Law and Other Legislation Amendment Bill 2016 be passed.

³ Explanatory notes, pp 8-9.

2. Examination of the Bill – proposed amendments to the HVNL Act and HVNL

This section discusses issues raised during the committee’s examination of the proposed amendments to the HVNL Act and HVNL in the Bill.

2.1 Chain of responsibility amendments

Chapter 2 of the Bill proposes to reform the chain of responsibility by requiring parties to focus on overall safety outcomes; enabling a more flexible approach to compliance, reducing regulatory burden, and more closely aligning the HVNL with other national safety laws.⁴

2.1.1 Standard of care requirements

Clause 10 proposes to insert a new chapter, Chapter 1A Safety Duties, into the HVNL to reform and consolidate the obligations of chain of responsibility parties. Consequential amendments are also proposed to various provisions of the HVNL to reflect the principles introduced in Chapter 1A Safety Duties.

Primary duty

Under the proposed new chapter the safety of transport activities would be a shared responsibility of each party in the chain, with the level and nature of each party’s responsibility dependent on the functions they perform, the nature of the public risk, and their capacity to control, eliminate or minimise the risk.

Each party in the chain would have a primary duty to ensure, so far as is reasonably practicable, the safety of the party’s activities including by eliminated or minimising public risks and ensuring their conduct does not cause or encourage a contravention of the HVNL or a driver to exceed a speed limit. Executives of corporations or unincorporated bodies would be required to exercise due diligence to ensure their organisation complies with the primary duty.

The Australian Trucking Association (ATA) supported the inclusion of a primary duty:

*It would improve safety, because it would require duty holders to consider their operations as a whole rather than ticking off compliance boxes. The obligations on businesses and staff would be clear instead of hidden in concepts like deemed liability.*⁵

Consequential amendments to duties

The Bill also proposes consequential amendments throughout the HVNL to reframe the relevant provisions as positive ‘must ensure’ obligations with a reasonable excuse defence, rather than a ‘take all reasonable steps’ requirement, consistent with the new Chapter 1A Safety Duties. These consequential amendments would ensure consistency throughout the HVNL in line with the principle that ‘the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying’.⁶

The ATA ‘supports and welcomes’ these changes.⁷

⁴ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill, p 3.

⁵ Submission 63, p 5.

⁶ Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, cls 33-88; Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill, pp 14-23.

⁷ Submission 63, p 6.

Penalties and offences

Three new categories of offences and penalties are proposed under the new chapter for failing to comply with the primary duty. These offences mirror the offence and penalty structure of the *Model Work Health and Safety Act 2011*.⁸

- A category 1 offence applies where a person has a primary duty and, without reasonable excuse, engages in conduct that exposes an individual to a risk of death, serious injury or illness and is reckless to the risk. The maximum penalty is \$300,000 or 5 years imprisonment, or both, for an individual and \$3 million for a corporation.
- A category 2 offence applies where a person has a primary duty and contravenes the duty exposing an individual or group, to a risk of death, serious injury or illness. The maximum penalty is \$150,000 for an individual and \$1.5 million for a corporation.
- A category 3 offence applies where a person has a primary duty and contravenes the duty. The maximum penalty is \$50,000 for an individual and \$500,000 for a corporation.

The ATA supported the introduction of higher penalties as ‘a necessary deterrent to the recalcitrant minority of trucking operators who disregard their safety obligations’.⁹

New offences are also proposed for asking, directing, requiring or entering into a contract with the driver of a heavy vehicle or party in the chain, that would cause the driver to exceed a speed limit, or drive while impaired by fatigue, in breach of the work and rest hours option, or in breach of another law to avoid driving while fatigued or in breach of the work and rest hours option. The maximum penalty for the offences is \$10,000.

2.1.2 Power to require information

Clause 91 proposes to insert a new provision into the HVNL to enable authorised officers to require a person to give them information relating to a possible contravention of the primary duty of care, or that will assist in monitoring or enforcing compliance with the primary duty of care. A person who fails to comply with the requirement, without a reasonable excuse, would be liable for a maximum penalty of \$10,000.

Self-incrimination, in that the information may incriminate them or make them liable to a penalty, is not a reasonable excuse for a person failing to comply with the requirement. However, information given in compliance with the requirement, or derived from information given in compliance with the requirement, may not be used against the person in a civil or criminal proceeding. This evidential immunity only applies to individuals, the information may be used against a corporation in in civil or criminal proceeding.

The ATA ‘considers that the increase in investigative powers is appropriate’.¹⁰

2.1.3 Liability of executive officers

The HVNL currently provides that an executive officer of a corporation commits an offence if they knew or ought reasonably to have known of conduct constituting a contravention of the HVNL or that there was a substantial risk of a contravention. The onus is on the executive officer to prove they exercised reasonable diligence to ensure compliance, or they were not in a position to influence the conduct of the corporation in relation to the contravention.¹¹

⁸ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill, p 13.

⁹ Submission 63, p 7.

¹⁰ Submission 63, p 8.

¹¹ HVNL s 636.

Clause 103 amends section 636 to impose a positive reasonable diligence obligation on executive officers. Under the amended provision executive officers will commit an offence if they did not exercise reasonable diligence to ensure the corporation did not engage in the conduct constituting an offence. The onus is on the prosecution to prove that the officer did not exercise reasonable diligence. In determining whether the officer did exercise reasonable diligence a court must consider whether the officer was in a position to influence the corporation's conduct, and the action the officer took or could reasonably have taken to prevent the conduct.

Clauses 104 and 105 make similar amendments in relation to partners or unincorporated partnerships and management or other unincorporated bodies.

The ATA supports this approach to executive officer liability.¹²

Clause 113 makes consequential amendments to specify the offences under the HVNL for which executive officers have accessorial liability, by either knowingly authorising or permitting the behaviour, or by failing to exercise reasonable diligence to ensure an offence was not committed.¹³

2.1.4 Enforceable undertakings

Clause 96 introduces a new power for the NHVR and authorised officers to enter into an enforceable undertaking with a person who agrees to take specified actions to ensure compliance as an alternative to prosecution. An authorised officer is a police officer or an individual appointed by the NHVR who is an employee or of the NHVR or otherwise engaged by the regulator, an employee of the state government or local government authority or a person prescribed by the national regulations.

If the undertaking is accepted by the NHVR or authorised officer, and the person complies with the undertaking, no prosecutorial action may be taken against the person. However, if the person fails to comply with the undertaking they will be liable for a maximum penalty of \$10,000, and may be required to appear before a court or tribunal. The court or tribunal may order them to comply with the undertaking or may revoke the undertaking, as well as imposing any other penalty.

The Australia New Zealand Policing Advisory Agency expressed concern regarding the proposed new enforceable undertakings provisions, stating:

An agency may put months into an investigation and if they report a person/company, then that person could apply to the NHVR or another authorised officer (who was not necessarily the one who instigated proceedings). An enforceable undertaking accepted by one may seriously impact on work being undertaken by others.¹⁴

DTMR responded to these concerns, advising the committee:

It is expected that no authorised officer would accept an undertaking before consulting other enforcement agencies about investigations and prosecutions underway.

Cooperation between the Regulator and police agencies is essential... and consultation and information exchange mechanisms are already in place between the agencies. These mechanisms will be further enhanced to ensure undertakings are not accepted by one agency when another agency has significantly advanced investigations into the same or similar contraventions.¹⁵

¹² Submission 63, p 6.

¹³ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 26.

¹⁴ Submission 71, p 1.

¹⁵ DTMR, public briefing question on notice no. 2, 12 October 2016, p 1.

2.2 Maintenance amendments

Chapter 3 of the Bill introduces a range of amendments intended to improve roadside enforcement, and reduce the compliance burden for industry and the administrative burden for the NHVR.¹⁶

2.2.1 Public notification of actions

Various provisions of the HVNL Act and HVNL provide that where the NHVR takes action to amend, cancel or immediately suspend an exemption or authority, it must publish a notice of the action in the Commonwealth Gazette, in a newspaper circulating in the jurisdiction, and on the NHVR website.

A number of clauses remove the mandatory requirement for the NHVR to publish the notice in a newspaper, providing that NHVR has the discretion to publish the notice in a newspaper, or elsewhere, if it is considered appropriate. These amendments apply to notices in relation to amending, cancelling or immediately suspending a mass or dimension authority, registration exemption, vehicle standards exemption, work and rest hours exemption, work diary exemption, and fatigue record keeping exemption, and the amendment or cancellation of a mass or dimension exemption.

2.2.2 Penalties and fees

Failing to display accreditation labels

The HVNL currently provides that if an operator is granted maintenance management accreditation or mass management accreditation the NHVR must give the operator an accreditation label for each relevant vehicle. However, there is no requirement for the operator to display the label on the vehicle.

Clause 133 of the Bill introduces requirements for the operator to attach the label to the vehicle in a way that is readable from the outside, and that a person must not drive a vehicle unless the label is attached and clearly visible. Two new offences are created, one for failing to attach the label to the vehicle and another for driving the vehicle when the label is not attached and visible. The maximum penalty for failing to comply with either of the requirements is \$3,000. This penalty is consistent with the penalty currently imposed for failing to carry a basic fatigue management accreditation or advanced fatigue management accreditation.¹⁷

Annual fee increases

The HVNL currently provides that the national regulations may prescribe the fees for applications, work diaries and services provided in connection with the law. Fees are currently prescribed under the Heavy Vehicle (General) National Regulation.

Clause 137 of the Bill introduces a mechanism for the fees to be increased each financial year in accordance with a method prescribed by the national regulations; any method regulated must generally accord with the increase in relevant inflation, or similar, indexes. The new fees, following the increase, must be published by 1 July each year in the Commonwealth Gazette, on the NHVR website, and elsewhere, such as in a newspaper, if appropriate.

2.2.3 Defect notices

The HVNL currently provides that an authorised office may issue a major defect notice if the officer reasonably believes heavy vehicle poses an imminent and serious safety risk, or a minor defect notice if the safety risk is not imminent or serious. If a defect notice is issued the vehicle must not be used on a road, other than as permitted to move it or to undertake action to repair the defect. In order for the

¹⁶ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 4.

¹⁷ HVNL s 468(1).

defect notice to be cleared the vehicle must be presented for inspection by either the NHVR or an authorised officer.

Clause 134 of the Bill introduces a third category of defect notice, a self-clearing defect notice, for issue in circumstance where the defect will not result in the use of the vehicle on a road posing a safety risk, or where the defect relates to the legibility of the number plate. Action to correct the defect must be undertaken as soon as practicable but within 28 days from the date the notice was issued. There is no requirement for the vehicle to be presented for inspection.

Two new offences are created, one for a driver who is not the operator failing to provide the defect notice to the operator within 14 days, and another for using, or permitting the use of, a heavy vehicle in contravention of the defect notice. Both offences carry a maximum penalty of \$3,000.

The penalty for the driver failing to provide the defect notice to the operator is consistent with the equivalent offence for major and minor defect notices. The penalty for using, or permitting the use of, a heavy vehicle in contravention of the defect notice is lower than the equivalent offence for major and minor defect notices, \$6,000, which may be indicative of the less serious nature of the defect and thus the reduced risk the offence.

2.2.4 Amendments to statutory instruments

Minor amendments to mass or dimension authorities

The HVNL currently provides that a mass or dimension authority may be amended if the use of heavy vehicles under the authority has caused or is likely to cause a significant risk to public safety, and the NHVR follows the legislated process of publishing the proposed action and allowing affected persons to make representations regarding the proposed amendment.¹⁸

Clause 125 inserts a new section providing that the NHVR may amend an authority for a formal or clerical reason, or another way that does not adversely affect the interests of a person operating under the authority by publishing notice of the amendment in the Commonwealth Gazette, on the NHVR website, and elsewhere, such as in a newspaper, if appropriate. This power to make minor amendments to an authority without publishing the proposed amendment and allowing representations, mirrors the existing provision allowing the minor amendment of a permit.¹⁹

Advising the relevant road manager of amendments

Clause 126 amends section 176 to provide that if the NHVR grants a mass or dimension authority permit holder's application to amend the permit by changing the vehicle to which the permit applies, then the NHVR must give notice of the amendment to the relevant road manager within 28 days.

Clause 127 amends section 180 to specify that if the NHVR amends a mass or dimension authority permit in a minor way, the NHVR must give notice of the amendment to the relevant road manager within 28 days if the amendment was for a formal or clerical reason or within 7 days if the amendment was for any other reason.

2.2.5 Delegation of Ministers' approval powers

Clause 136 provides that the responsible Ministers may delegate to the NHVR board the power to approve minor amendments to guidelines or approvals in a formal or clerical way, or another way that does not increase a safety risk or risk of damage to road infrastructure, adversely effect a public amenity or make a person liable for a penalty.

¹⁸ HVNL, s 173.

¹⁹ HVNL, s 180; explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 28.

The Board may approve an amendment to a guideline relating to matters such as:

- granting registration, vehicle standards, mass or dimension, work diary, work and rest hours, fatigue record keeping exemptions
- granting heavy vehicle accreditations and class 2 heavy vehicle authorisations
- granting electronic recording system, PBS design and PBS vehicle approvals, and
- granting or issuing an exemption, authorisation, permit or authority, or making a declaration, under the national regulations.

The Board may also approve an amendment to an approval for a standard for sleeper berths, standards and business rules for fatigue management and vehicle maintenance and mass management, and auditors in relation to accreditations.

2.3 Other issues raised by submitters

2.3.1 Definition of packer

The HVNL defines a ‘packer’ as a person who:

- puts the goods in packaging, even if that packaging is already on a vehicle; for example a person who uses a hose to fill the tank of a tank vehicle with petrol packs the petrol for transport
- assembles packaged goods in an outer packaging, even if that packaging is already on a vehicle
- supervises putting the goods in packaging or assembling packaged goods in an outer packaging
- manages or controls putting the goods in packaging, assembling packaged goods in an outer packaging, or the supervision of the activities.²⁰

The ATA and the Australian Livestock and Rural Transporter’s Association (ALRTA) have suggested that an additional example be included in the definition of packer to make specific reference to live animals.²¹ It is suggested that an example specifying that a person who prepares live animals for transport packs the animals would ‘greatly improve clarity’ and ‘promote a change in practices to improve road safety, biosecurity, public amenity and animal welfare outcomes.’²²

The committee sought advice on this issue from DTMR and was advised:

This issue and the proposed amendment was considered by jurisdictions as part of developing the amendments included in this Bill. However there was no consensus amongst jurisdictions that any amendments were warranted.

There are concerns that the inclusion of “the preparation of live animals for transport” within the definition of packer may not satisfy the definition of packer and, therefore, may not be appropriate. Given that the livestock is the goods, there is no ‘packaging’ of the ‘goods’ occurring at the feedlot.²³

DTMR also advised that the issue is being further investigated by the National Transport Commission, in consultation with the jurisdictions, to clarify whether legislative changes are appropriate, and is also being considered as part of the review of the Load Restraint Guide.²⁴

²⁰ HVNL, s 5.

²¹ Submissions 63 and 64.

²² Submission 64, p 1.

²³ DTMR, correspondence dated 7 October 2016, attachment 1, p 9.

²⁴ DTMR, correspondence dated 7 October 2016, attachment 1, p 10.

Committee comment

The committee noted that the definition of packer is an issue of significant concern for the ATA and ALRTA in the interest of improving road safety, biosecurity, public amenity and animal welfare outcomes. The committee also noted DTMR's advice that there has been a lack of jurisdictional consensus regarding amending the HVNL in relation to this issue, and whether persons preparing livestock for transport do in fact fall within the definition of 'packer' and that further investigations are occurring in relation to this issue.

Recommendation 2 – Heavy Vehicle National Law

The committee recommends that the Minister work with the other 'responsible Ministers' (the relevant Commonwealth and State Ministers) to ask the National Transport Commission to give further consideration within the next twelve months to means by which it can make more transparent, and more easily understood, the applicability of the relevant Chain of Responsibility provisions to pre-transport stock preparation.

2.3.2 Duties of drivers

Under the HVNL drivers have a duty to not drive on a road while impaired by fatigue, and to comply with the prescriptive work and rest hours.²⁵ They also have duties under the *Model Work Health and Safety Act 2011* to:

- take reasonable care for his or her own health and safety
- take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons
- comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act;
- co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.²⁶

The ATA suggested that a broader duty on drivers should be included in the HVNL, consistent with the duties under the *Model Work Health and Safety Act 2011*. The ATA suggests that a broad duty would make it clear that:

- *drivers must take reasonable care of their own safety and must not driver while impaired by fatigue, even if that fatigue was caused by events outside work*
- *drivers must take reasonable care not to adversely affect the health and safety of others*
- *drivers must comply with reasonable safety policies, procedures, process and instructions.*²⁷

The committee sought advice from DTMR on this matter and DTMR advised that it was 'of the view that this issue is appropriately addressed under the existing fatigue offences and the WHS legislation, where the general duty already applies to drivers'.²⁸

²⁵ HVNL, s 288 and part 6.3.

²⁶ *Model Work Health and Safety Act 2011*, s 28.

²⁷ Submission 63, p 9.

²⁸ DTMR, correspondence dated 7 October 2016, attachment 1, pp 7-8.

2.3.3 Bus axle limits

The Heavy Vehicle (Mass, Dimension and Loading) National Regulation prescribes the following allowable mass limits for buses:

- for a two axle complying bus – 16 tonnes
- for a three axle complying bus – 20 to 22.5 tonnes, depending on whether dual tyres are fitted to one or both axles of the rear tandem axle group.²⁹

The allowable mass limits for other types of buses, such as articulated or double decker buses, are calculated based on the bus's axles or axle groups and the tyres fitted to the axles.³⁰

Concessions, allowing buses to exceed the mass limits, are permitted through the *Multi-State Class 3 Bus Mass Exemption Notice 2014*, which was introduced to recognise practices in New South Wales and Victoria at the time the HVNL commenced. The Notice adjusts the mass limits for certain buses to avoid accidental loading above the regulated mass limits due to variations in passenger weight.

The Bus Industry Confederation (BIC), Clarks Logan Bus Service and Keolis Downer, made representations that the bus mass limits for all axle combinations should be increased to represent what occurs in practice.³¹ For example, it is suggested that the allowable mass limit for two axle complying buses should be 18 tonne and for three axle complying buses 23 tonne. Further, the submitters noted an 'inconsistency in two axle mass limits across the various states, specifically that the 18 tonne two axle limit only being available in Vic, NSW and WA'.³²

The committee sought advice on the representations regarding bus mass limits, and DTMR advised that Queensland has been included in an amended Notice, gazetted on 24 August 2016, in relation to two axle buses. Consequently, two axle buses of up to 18 tonne may be operated in Queensland; the same mass concession that applies in New South Wales and Victoria.³³

DTMR further advised that there were three avenues for amending bus mass limits, which do not require an amendment to the HVNL:

*Firstly, under section 123 of the HVNL, bus operators are able to pursue increased mass limits for buses through application to the NHVR for an exemption via individual permit. Secondly, the BIC is able to work with the NHVR and road managers to progress changes to the Multi-State Class 3 Bus Mass Exemption Notice 2014. Finally, if considered appropriate for network wide application and unanimously agreed by responsible Ministers, a regulation amendment could be progressed.*³⁴

Committee comment

The committee notes that one of the key issues raised by BIC has been addressed by the recent amendment to the Notice, increasing the two axle mass limit to 18 tonne for Queensland operators in line with New South Wales and Victoria. The committee acknowledges that this does not address the broader concerns raised by BIC regarding the mass limits of buses with other axle configurations, or of national consistency.

²⁹ Sch 1, item 2.

³⁰ Sch 1, items 2, 4 and 5.

³¹ Submissions 6, 67 and 17.

³² See submission 67, p 2. Note that Western Australia is not a party to the HVNL.

³³ DTMR, Advice on issues raised in submissions, Attachment A, 7 October 2016, pp 1-2.

³⁴ DTMR, public briefing question on notice no. 1, 12 October 2016, p 1.

Recommendation 3 - Heavy Vehicle National Law

The committee recommends the Minister, in consultation with the National Heavy Vehicle Regulator, responsible Ministers, and stakeholders, consider whether changes to the Heavy Vehicle (Mass, Dimension and Loading) National Regulation would be appropriate to ensure the mass limits reflect operational practice and are nationally consistent as far as reasonably practicable.

2.3.4 Process for amending the HVNL and ongoing lead agency arrangements

The Australian Logistics Council suggested that a final exposure draft of amending legislation be published by the National Transport Commission prior to the legislation being finalised and tabled in Parliament.³⁵

The committee sought advice on this suggestion from DTMR, which advised that it 'supports thorough consultation with industry on future HVNL amendments, but recognises that provision of exposure drafts of proposed legislation may be impractical under tight timeframes'.³⁶ In relation to the current Bill, DTMR advised:

Transport and infrastructure ministers have identified the chain of responsibility reform as bringing significant safety and efficiency improvements and consider it important to realise the benefits as soon as possible. The timeframes for developing the reform have been correspondingly tight.³⁷

Additionally, the ATA suggested that the NHVR be encouraged to establish stronger lead agency arrangements for investigations by working closely with state transport agencies and work health and safety regulators and enforcement agencies.³⁸

This recommendation was supported by DTMR.³⁹

³⁵ Submission 37, p 3.

³⁶ DTMR, Advice on issues raised in submissions, Attachment A, 7 October 2016, p 6.

³⁷ DTMR, Advice on issues raised in submissions, Attachment A, 7 October 2016, p 8.

³⁸ Submission 63, p 10.

³⁹ DTMR, Advice on issues raised in submissions, Attachment A, 7 October 2016, p 8.

2.4 Compliance with the *Legislative Standards Act 1992* – amendments to HVNL Act and HVNL

2.4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the House.

Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Protection against self-incrimination – clause 91

Clause 91 proposes to insert new section 570A into the HVNL.

Section 570A(1) applies if an authorised officer reasonably believes a person is capable of giving written or oral information:

- (a) in relation to a possible contravention of a duty under section 26C; or
- (b) that will assist the authorised officer to monitor or enforce compliance with the duty under section 26C.

Pursuant to section 570A(2), the authorised officer may, by notice, require the person to give the information to the authorised officer. Section 570A(3) provides that if the authorised officer, despite reasonable diligence, has not been able to obtain the information under subsection (2), the authorised officer may, by notice given to the person, require the person to give the information to a person appointed by the authorised officer.

Pursuant to section 570A(5), a person must comply with a requirement under the section, unless the person has a reasonable excuse.

Section 570A(6) provides that it is not a reasonable excuse for the person to fail to comply with a requirement made under the section on the grounds that complying with the requirement might tend to incriminate the person or make the person liable to a penalty.

Pursuant to section 570A(7) the following information is not admissible as evidence against an individual in a civil or criminal proceeding, other than a proceeding for false or misleading information:

- (a) information that the individual gives in complying with a requirement under the section;
- (b) information that is directly or indirectly derived from information mentioned in paragraph (a).

The explanatory notes advise that the provisions are modelled on section 155 of the *Work Health and Safety Act 2011* and that it ‘contains the same safeguards to ensure the power is exercised for proper purposes’.⁴⁰

Potential FLP issue

Under section 570A(6) claiming privilege against self-incrimination is not a reasonable excuse for a person not to provide written or oral information when requested. There is also no right of review or appeal against a request from an authorised officer for requested information.

⁴⁰ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 6.

This potentially breaches section 4(3)(f) of the LSA which provides that legislation should afford appropriate protection against self-incrimination.⁴¹ The OQPC Notebook states, “this principle has as its source the long established and strong principle of common law that an individual accused of a criminal offence should not be obliged to incriminate himself or herself”.⁴² The SLC commented that denial of the protection afforded by the self-incrimination rule is only potentially justifiable if:

- (a) the questions posed concern matters that are peculiarly within the knowledge of the persons to whom they are directed and that it would be difficult or impossible to establish by any alternative evidential means; and
- (b) the legislation prohibits use of the information obtained in prosecutions against the person; and
- (c) in order to secure this restriction on the use of the information obtained, the person should not be required to fulfill any conditions (such as formally claiming a right).⁴³

The explanatory notes provide the following justification for the section:

The new power is considered necessary for the following reasons:

- *sections 569 and 570 of the HVNL provide that authorised officers may require documents and information from a responsible person for a heavy vehicle as defined in section 5, however, persons other than a responsible person for a heavy vehicle may also have information relevant to a breach of the primary duty, such as a third party maintenance provider, fuel company or tolling company; and*
- *because of the reformulation of many offences in the HVNL as positive obligations, rather than deemed liability or reverse onus offences, the prosecution will bear a greater evidentiary burden and the Regulator and enforcement agencies will need sufficient power to gather evidence to prove relevant breaches beyond reasonable doubt.*

In relation to review of decisions, similar requirements in sections 569 and 570 are not subject to review. Neither is section 155 of the Model WHS Act. Other protections are available if a person does not believe he or she should have to provide information. For example, apart from judicial review, the offence itself provides that the person must comply, unless they have a ‘reasonable excuse’, and the Bill contains a new provision that specifically excludes from the obligation to provide information, information which is subject to legal professional privilege (section 735A).⁴⁴

Committee comment

The committee notes that a person may still provide a reasonable excuse defence under section 570A(5) if they fail to provide information to an authorised officer and any information provided cannot be used as evidence against an individual in a civil or criminal proceeding pursuant to section 570A(7).

The information is also subject to legal professional privilege by way of section 735A and is consistent with the provisions of the Work Health and Safety Act 2011.

In terms of review, the option of judicial review is still available to a person who believes they should not be compelled to provide certain information to an authorised officer.

Given the safeguards in place, and the justification provided in the explanatory notes, the committee considers the section appropriate in the circumstances.

⁴¹ *Legislative Standards Act 1992*, section 4(3)(f).

⁴² Office of the Queensland Parliamentary Counsel, FLPs: *The OQPC Notebook*, p 52.

⁴³ Alert Digest 2000/1, page 7, para 57; Alert Digest 1999/31; and Alert Digest 1999/4, page 9, para. 1.60.

⁴⁴ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 6.

2.4.2 Proposed new and amended offence provisions

| Clause | Offence | Proposed maximum penalty |
|--------|--|--|
| 10 | <p>Insertion of new 26E (1) Prohibited requests and contracts – Heavy Vehicle National Law – Schedule to <i>Heavy Vehicle National Law Act 2012</i></p> <p>(1) A person must not ask, direct or require (directly or indirectly) the driver of a heavy vehicle or a party in the chain of responsibility to do or not do something the person knows, or ought reasonably to know, would have the effect of causing the driver—</p> <p>(a) to exceed a speed limit applying to the driver; or</p> <p>(b) to drive a fatigue-regulated heavy vehicle while impaired by fatigue; or</p> <p>(c) to drive a fatigue-regulated heavy vehicle while in breach of the driver’s work and rest hours option; or</p> <p>(d) to drive a fatigue-regulated heavy vehicle in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver’s work and rest hours option.</p> | \$10,000 |
| 10 | <p>Insertion of new 26E (2) Prohibited requests and contracts</p> <p>(2) A person must not enter into a contract with the driver of a heavy vehicle or a party in the chain of responsibility that the person knows, or ought reasonably to know, would have the effect of causing the driver, or would encourage the driver, or would encourage a party in the chain of responsibility to cause the driver—</p> <p>(a) to exceed a speed limit applying to the driver; or</p> <p>(b) to drive a fatigue-regulated heavy vehicle while impaired by fatigue; or</p> <p>(c) to drive a fatigue-regulated heavy vehicle while in breach of the driver’s work and rest hours option; or</p> <p>(d) to drive a fatigue-regulated heavy vehicle in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver’s work and rest hours option.</p> <p><i>Note—</i> See section 632 for the matters a court may consider when deciding whether a person ought reasonably to have known something.</p> | \$10,000 |
| 10 | <p>Part 1A.3 Failing to comply with duty</p> <p>Insertion of new 26F Category 1 offence</p> <p>(1) A person commits an offence if—</p> <p>(a) the person has a duty under section 26C; and</p> <p>(e) the person, without a reasonable excuse, engages in conduct related to the duty that exposes an individual to a risk of death or serious injury or illness; and</p> <p>(f) the person is reckless as to the risk.</p> <p>(3) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.</p> | <p>(a) if an individual commits the offence—\$300,000 or 5 years imprisonment or both; or</p> <p>(b) if a corporation commits the offence—\$3,000,000.</p> |

| | | |
|------------------|---|---|
| <p>10</p> | <p>Insertion of new 26G Category 2 offence</p> <p>A person commits an offence if—</p> <p>(a) the person has a duty under section 26C; and</p> <p>(b) the person contravenes the duty; and</p> <p>(c) the person’s contravention exposes an individual, or class of individuals, to a risk of death or serious injury or illness.</p> | <p>(a) if an individual commits the offence— \$150,000; or</p> <p>(b) if a corporation commits the offence— \$1,500,000.</p> |
| <p>10</p> | <p>Insertion of new 26H Category 3 offence</p> <p>A person commits an offence if—</p> <p>(a) the person has a duty under section 26C; and</p> <p>(b) the person contravenes the duty.</p> | <p>(a) if an individual commits the offence—\$50,000; or</p> <p>(b) if a corporation commits the offence—\$500,000</p> |
| <p>13</p> | <p>Amendment of s 82 Keeping relevant document while driving under vehicle standards exemption (notice)</p> <p>Section 82(3)</p> <p><i>omit, insert—</i></p> <p>(3) Each relevant party for a driver mentioned in subsection (2) must ensure the driver complies with subsection (2), unless the relevant party has a reasonable excuse.</p> | <p>\$3,000</p> |
| <p>14</p> | <p>Amendment of s 83 Keeping copy of permit while driving under vehicle standards exemption (permit)</p> <p>Section 83(3)</p> <p><i>omit, insert—</i></p> <p>(3) Each relevant party for a driver mentioned in subsection (2) must ensure the driver complies with subsection (2), unless the relevant party has a reasonable excuse.</p> | <p>\$3,000</p> |
| <p>19</p> | <p>Amendment of s 111 - Compliance with loading requirements</p> <p>Section 111(1)—</p> <p><i>omit, insert—</i></p> <p>(1) A person who drives, or permits another person to drive, a heavy vehicle on a road must ensure the vehicle, and the vehicle’s components and load, comply with the loading requirements applying to the vehicle, unless the person has a reasonable excuse.</p> | <p>(a) for a minor risk breach—\$3,000; or</p> <p>(b) for a substantial risk breach— \$5,000; or</p> <p>(c) for a severe risk breach— \$10,000.</p> |
| <p>20</p> | <p>Amendment of s 130 Contravening condition of mass or dimension exemption relating to pilot or escort vehicle</p> <p>Section 130(3)</p> <p><i>omit, insert—</i></p> <p>(3) The operator of the heavy vehicle must ensure, so far as is reasonably practicable, the driver of the pilot vehicle or escort vehicle complies with subsection (2).</p> | <p>\$6,000</p> |

| | | |
|------------------|---|----------------|
| <p>21</p> | <p>Amendment of s 132 - Keeping relevant document while driving under mass or dimension exemption (notice)</p> <p>Section 132(3)</p> <p><i>omit, insert—</i></p> <p>(3) Each relevant party for a driver mentioned in subsection (2) must ensure the driver complies with subsection (2), unless the relevant party has a reasonable excuse.</p> | <p>\$3,000</p> |
| <p>22</p> | <p>Amendment of s 133 Keeping copy of permit while driving under mass or dimension exemption (permit)</p> <p>Section 133(3)</p> <p><i>omit, insert—</i></p> <p>(3) Each relevant party for a driver mentioned in subsection (1) must ensure the driver complies with subsection (1), unless the relevant party has a reasonable excuse.</p> | <p>\$3,000</p> |
| <p>23</p> | <p>Amendment of s 151 Keeping relevant document while driving under class 2 heavy vehicle authorisation (notice)</p> <p>Section 151(3)</p> <p><i>omit, insert—</i></p> <p>(3) Each relevant party for a driver mentioned in subsection (2) must ensure the driver complies with subsection (2), unless the relevant party has a reasonable excuse.</p> | <p>\$3,000</p> |
| <p>24</p> | <p>Amendment of s 152 Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)</p> <p>Section 152(3)</p> <p><i>omit, insert—</i></p> <p>(3) Each relevant party for a driver mentioned in subsection (1) must ensure the driver complies with subsection (1), unless the relevant party has a reasonable excuse.</p> | <p>\$3,000</p> |
| <p>25</p> | <p>Amendment of s 153 Keeping copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation</p> <p>Section 153(2)</p> <p><i>omit, insert—</i></p> <p>(2) Each relevant party for a driver mentioned in subsection (1) must ensure the driver complies with subsection (1), unless the relevant party has a reasonable excuse.</p> | <p>\$3,000</p> |

| | | |
|------------------|--|---|
| <p>27</p> | <p>Amendment of s 186 False or misleading transport documentation for goods</p> <p>Section 186(2)</p> <p><i>omit, insert—</i></p> <p>(2) The consignor of the goods must ensure, so far as is reasonably practicable, the consignment documentation is not false or misleading.</p> <p>(3) If the goods are Australian-packed goods, the packer of the goods must ensure, so far as is reasonably practicable, the consignment documentation is not false or misleading.</p> <p>(4) If the goods are overseas-packed goods, the receiver of the goods must ensure, so far as is reasonably practicable, the consignment documentation is not false or misleading.</p> <p>(5) If the goods are loaded on the heavy vehicle, the loading manager for, or loader of, the goods must ensure, so far as is reasonably practicable, the consignment documentation is not false or misleading.</p> | <p>\$10,000</p> <p>\$10,000</p> <p>\$10,000</p> <p>\$10,000</p> |
| <p>28</p> | <p>Amendment of s 187 False or misleading information in container weight declaration</p> <p>Section 187(2) and (3)—</p> <p><i>omit, insert—</i></p> <p>(2) The responsible entity for the freight container must ensure, so far as is reasonably practicable, the container weight declaration for the container that is given to an operator of the heavy vehicle is not false or misleading.</p> <p>(3) An operator of the heavy vehicle must ensure, so far as is reasonably practicable, the container weight declaration for the container that is given to the vehicle’s driver is not false or misleading.</p> | <p>\$10,000</p> <p>\$10,000</p> |
| <p>29</p> | <p>Amendment of s 190 Duty of responsible entity</p> <p>Section 190(1)—</p> <p><i>omit, insert—</i></p> <p>(1) The responsible entity for the freight container must ensure an operator or driver of a heavy vehicle does not transport the freight container by road using the vehicle without a complying container weight declaration for the freight container containing information in the form required under section 192A, unless the responsible entity has a reasonable excuse.</p> | <p>\$6,000</p> |

| | | |
|------------------|--|-----------------|
| <p>30</p> | <p>Amendment of s 191 Duty of operator Section 191(1)— <i>omit, insert—</i> (1) An operator of a heavy vehicle must ensure the vehicle’s driver does not transport the freight container by road using the vehicle without a complying container weight declaration for the freight container containing information in the form required under section 192A.</p> | <p>\$6,000</p> |
| <p>31</p> | <p>Amendment of s 192 - Duty of driver Section 192(1)— <i>omit, insert—</i> (1) A person must not drive a heavy vehicle loaded with the freight container on a road without a complying weight declaration for the container, unless the person has a reasonable excuse.</p> | <p>\$6,000</p> |
| <p>32</p> | <p>Amendment of s 193 - Weight of freight container exceeding weight stated on container or safety approval plate Section 193(2) <i>omit, insert—</i> (2) Each consignor or packer of the goods must ensure, so far as is reasonably practicable, the weight of the container does not exceed the maximum gross weight marked on— (a) the container; or (b) the container’s safety approval plate.</p> | <p>\$10,000</p> |
| <p>50</p> | <p>Amendment of s 287 Keeping relevant document while operating under work and rest hours exemption (notice) Section 287(3) <i>omit, insert—</i> (3) Each relevant party for a driver mentioned in subsection (2) must ensure the driver complies with subsection (2), unless the relevant party has a reasonable excuse.</p> | <p>\$3,000</p> |
| <p>51</p> | <p>Amendment of s 288 Keeping copy of permit while driving under work and rest hours exemption (permit) Section 288(3) <i>omit, insert—</i> (3) Each relevant party for a driver mentioned in subsection (1) must ensure the driver complies with subsection (1), unless the relevant party has a reasonable excuse.</p> | <p>\$3,000</p> |

| | | |
|------------------|---|----------------|
| <p>55</p> | <p>Replacement of s 315 Liability of employer etc. for driver's contravention of particular requirements of this Division</p> <p>Ensuring driver complies with Sdivs 1–4</p> <p>(1) Each responsible party for the driver of a fatigue-regulated heavy vehicle must ensure, so far as is reasonably practicable, the driver complies with each of Subdivisions 1, 2, 3 and 4 so far as they are applicable.</p> | <p>\$6,000</p> |
| <p>67</p> | <p>Amendment of s 376 - Keeping relevant document while operating under work diary exemption (notice)</p> <p>Section 376(3)</p> <p><i>omit, insert—</i></p> <p>(3) Each relevant party for a driver mentioned in subsection (2) must ensure the driver complies with subsection (2), unless the relevant party has a reasonable excuse.</p> | <p>\$3,000</p> |
| <p>76</p> | <p>Amendment of s 421 - Destroying intelligent access information etc.</p> <p>Section 421(1)—</p> <p><i>omit, insert—</i></p> <p>(1) An intelligent access service provider must ensure, so far as is reasonably practicable—</p> <p>(a) intelligent access information collected by the service provider is destroyed 1 year after the information is collected; and</p> <p>(b) a record that the service provider is required to keep under section 419 is destroyed within 1 year after the service provider is no longer required to keep the record under that section.</p> | <p>\$6,000</p> |
| <p>79</p> | <p>Amendment of s 437 Destroying intelligent access information or removing personal information from it</p> <p>Section 437(1)—</p> <p><i>omit, insert—</i></p> <p>(1) TCA must ensure, so far as is reasonably practicable, intelligent access information collected by TCA is destroyed—</p> <p>(a) generally—1 year after the information is collected; or</p> <p>(b) if, at the end of that 1 year, the information is required for law enforcement purposes—as soon as practicable after the information is no longer required for law enforcement purposes.</p> | <p>\$6,000</p> |
| <p>84</p> | <p>Amendment of s 468 Driver operating under BFM accreditation or AFM accreditation must carry accreditation details</p> <p>Section 468(3)</p> <p><i>omit, insert—</i></p> <p>(3) The operator of the vehicle must ensure the driver complies with subsection (1), unless the operator has a reasonable excuse.</p> | <p>\$3,000</p> |

| | | |
|------------------|---|-----------------|
| <p>91</p> | <p>Insertion of new s 570A - Requiring information</p> <p>(1) This section applies if an authorised officer reasonably believes a person is capable of giving written or oral information—</p> <p>(a) in relation to a possible contravention of a duty under section 26C; or</p> <p>(b) that will assist the authorised officer to monitor or enforce compliance with the duty under section 26C.</p> <p>(2) The authorised officer may, by notice, require the person to give the information to the authorised officer.</p> <p>(3) If the authorised officer, despite reasonable diligence, has not been able to obtain the information under subsection (2), the authorised officer may, by notice given to the person, require the person to give the information to a person appointed by the authorised officer.</p> <p>(4) The notice must state—</p> <p>(a) that—</p> <p>(i) the requirement is made under this section; and</p> <p>(ii) failing to comply with the requirement is an offence; and</p> <p>(b) if the notice requires the person to give written information—the time and way, that is reasonable in the circumstances, in which the person must give the information; and</p> <p>(c) if the notice requires the person to give oral information—</p> <p>(i) the day, time and place, that is reasonable in the circumstances, for the person to appear before the person appointed by the authorised officer; and</p> <p>(ii) that the person may appear with an Australian legal practitioner; and</p> <p>(d) the effect of—</p> <p>(i) subsections (7) and (8); and</p> <p>(ii) section 735A.</p> <p>(5) The person must comply with a requirement under this section, unless the person has a reasonable excuse.</p> | <p>\$10,000</p> |
| <p>96</p> | <p>Insertion of new s 590B (Pt 10.1A) - Effect of undertaking</p> <p>(1) An undertaking takes effect—</p> <p>(a) when the promisee gives notice of the decision to accept the undertaking to the person who made the undertaking; or</p> <p>(b) at a later time stated in the notice.</p> <p>(2) While the undertaking is in effect, the person must comply with the undertaking.</p> | <p>\$10,000</p> |

| | | |
|--------------------|--|-------------------------------|
| <p>133</p> | <p>Amendment of s 466 Accreditation labels for maintenance management accreditation and mass management accreditation</p> <p>Section 466— <i>insert—</i></p> <p>(2A) The operator must attach the accreditation label for a relevant vehicle to the vehicle in a way that the label—</p> <p>(a) is readable from outside the vehicle; and</p> <p>(b) is not wholly or partly obscured, defaced or otherwise not legible.</p> <p>(2B) A person must not drive a relevant vehicle if the vehicle’s accreditation label—</p> <p>(a) is not attached to the vehicle; or</p> <p>(b) is attached to the vehicle in a way that the label is wholly or partly obscured, defaced or otherwise not legible.</p> | <p>\$3,000</p> <p>\$3,000</p> |
| <p>531A</p> | <p>Insertion of new s 531A (Pt 9.3, Div 6) Self-clearing defect notices</p> <p>(1) This section applies if an authorised officer who has inspected a heavy vehicle under this Law reasonably believes—</p> <p>(a) the vehicle is a defective heavy vehicle, but the use of the vehicle on a road does not pose a safety risk; or</p> <p>(b) a number plate of the vehicle is wholly or partly obscured, defaced or otherwise not legible.</p> <p>(2) The authorised officer may issue a notice (a <i>self-clearing defect notice</i>), in the approved form, in relation to the heavy vehicle.</p> <p>(3) The authorised officer may issue the self-clearing defect notice by—</p> <p>(a) if the driver of the heavy vehicle is present—giving the notice to the driver; or</p> <p>(b) if the driver of the heavy vehicle is not present—attaching the notice to the vehicle.</p> <p>(4) If the driver of a heavy vehicle for which a self-clearing defect notice is issued is not the operator of the vehicle, the driver must give the notice to the operator as soon as practicable, but not more than 14 days, after the notice is issued.</p> <p>(5) A person must not use, or permit to be used, on a road a heavy vehicle in contravention of a self-clearing defect notice.</p> | <p>\$3,000</p> <p>\$3,000</p> |

2.4.3 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain. The explanatory notes were tabled with the Bill were fairly detailed and contain the information required by Part 4.

3. Examination of the Bill – proposed amendments to TOPTA

3.1 Background to the reform of the Personalised Transport Industry in Queensland

3.1.1 Opportunities for Personalised Transport Review⁴⁵

The Queensland Government commissioned an independent review of personalised transport services (OPT Review) in October 2015. The review taskforce presented its final report, 'Opportunities for Personalised Transport: The future of Queensland's personalised transport industry' (White Paper) to the Queensland Government in July 2016.

The OPT Review's aim was to 'guide the government through the issues of mapping out a future direction for Queensland's personalised transport industry as well as identifying options and recommendations for its deliberation in order to develop a workable approach to implementation'.

The White Paper reported that extensive consultation was undertaken by the Review taskforce between 20 May 2016 and 12 June 2016 including three face-to-face forums, opened five on-line forums and received 1200 submissions from industry stakeholders and users.

The OPT White Paper noted:

- existing industry participants have been extremely vocal in expressing their concern and frustration about the ongoing operation of ride-sourcing providers in Queensland, and
- large numbers of customers have embraced the competition and choice provided by ride-sourcing services
- the prevailing view that change is inevitable and that industries need to be able to evolve and adapt to change
- industry calls for the removal of existing constraints that are preventing greater innovation and competition
- the need to lower the cost structure so the industry is in a better position to compete with ride-sourcing, and
- the economic analysis undertaken by economic specialist, Professor John Mangan, indicating the status quo is not economically sustainable.

In developing a 'workable approach' the OPT Review considered the broader social and economic environment, particularly balancing the expectations of customers, and the need for government to intervene in matters of public interest such as safety, as well as ensuring the regulatory framework is flexible enough to meet the challenges of the next 5 to 10 years.

The White paper recommended a two-stage approach to reforms, the first stage to be implemented as soon as possible and to include:

- ride-sourcing to be legalised in South-East Queensland only accompanied by a number of reforms aimed at reducing regulation and associated operational costs while at the same time, delivering greater choice to customers

⁴⁵ The information in this section of the report was taken directly from the White Paper 'Opportunities for Personalised Transport: The future of Queensland's personalised transport industry', July 2016.

- a new ride-sourcing licence to be introduced with licence holders needing to be affiliated with a new ride-matching service (RMS) provider and all vehicles to be identified as ride-sourcing vehicles, and
- creation of an independent Personalised Transport Commissioner to oversee the transition process to ensure the reforms are delivered in a managed approach, including ensuring stakeholders can contribute to the development of the reform process and also to oversight stage two of the process.

The second stage of the reforms was designed to follow stage one and follow careful monitoring of the initial reforms.

The White Paper made recommendations with respect to:

- the urgent introduction of shared economy legislation to ensure more effective enforcement and compliance of the regulatory framework
- lowering the cost of insurance to the personalised transport sector
- the use of *go* card and/or any replacement payment system to integrate the personalised transport industry with the public transport system
- considering industry adjustment measures in the context of benchmarks set up by other states and examining more innovative thinking such as Professor Mangan's option of using a form of floor price mechanism
- requesting the proposed Commissioner to consider appropriate measures to ensure fairness and equity in driver pay and conditions
- encouraging standards-based regulations rather than prescriptive ones to allow choice and more competition, and
- lowering fares by aligning payments with the national surcharge standard announced by the RBA.

In conclusion, the White Paper noted that any changes to the current system would require 'a comprehensive communication strategy to be developed to inform all parties of any new arrangements'.

3.1.2 Queensland Government policy on reform of the personalised transport industry

On 11 August 2016, the Minister announced a number of reforms to be made in relation to the personalised transport industry. This announcement followed the release of the OPT Taskforce White Paper in July 2016.

DTMR provided further detail when it released a five year strategic plan for Personalised Transport Services 2016-2021 called [Queensland's Personalised Transport Horizon](#) (Strategic Plan).

DTMR advised:

The Queensland Government is introducing a new framework to deliver certainty to the personalised transport industry and increased choice for customers in Queensland. Queensland's Personalised Transport Horizon: five year strategic plan 2016-2021 introduces a new framework for personalised transport. The new framework will be introduced over three stages. Stage 1 is legalised ride booking whilst also providing the industry with more flexibility to respond to increased competition. Stage 2 will see comprehensive change made to primary legislation to introduce a new licencing regime and chain of responsibility for taxi and booked hire services.⁴⁶

⁴⁶ Public briefing transcript, Brisbane, 12 October 2016, p 2.

Stage 1 of the reform process

Stage 1 of the reform process came into effect on 5 September 2016 with the key elements announced including:

- ride-booking services to be legal for drivers holding a valid driver authorisation and safety inspected vehicle
- taxis to continue to have exclusive access to rank and hail and the Government to provide \$5.6 million to incentivise wheelchair accessible taxis to ensure personalised transport remains accessible for all Queenslanders
- 80 regulations to be cut, and the taxi and limousine industry to benefit from \$4.3 million in waived fees over the next 12 months
- consumers to have more choice and benefit from consistent safety standards, fare estimates and itemised receipts on request, and more affordable travel, and
- establishment of a \$100 million IAAP to help taxi and limousine licence holders adjust to more competition and take advantage of new opportunities – without a fare levy.⁴⁷

DTMR's strategic plan outlined the specific reforms for stage 1 as being:

- a new standardised Driver Authorisation category for drivers of taxi, limousine and ride-booking services to be created
- zero alcohol and drug limit for all drivers
- all drivers must wear a seatbelt at all times
- ride-booking vehicles must display a sign on the rear of the vehicle
- taxis and limousines must be inspected annually (certificate of inspection)
- ride-booking vehicles must be inspected annually (safety certificate)
- the fine for soliciting and touting will increase from \$243 to \$487
- access to the Driver Authorisation database for the whole industry
- taxis retain exclusive access to rank and hail services
- ride-booking services able to operate legally across Queensland
- maximum fares for booked hire services removed, except for wheelchair
- accessible and Taxi Subsidy Scheme services
- fare estimates for booked hire services must be provided to customer prior to the journey or the fare agreed to up front
- itemised receipt must be provided if requested by the customer
- new incentive payment for wheelchair accessible services
- maximum age limits for taxis removed
- limousines which reach their age limit can still be used to provide limousine services
- regulatory requirements relating to customer service removed to allow competition and customer demand to drive service standards, and
- most ride-booking drivers are not be required to hold an Operator Accreditation.

Exempt operators will still be required to meet vehicle maintenance and safety standards.⁴⁸

⁴⁷ Minister for Transport and the Commonwealth Games, Media releases, 5 September 2016.

⁴⁸ DTMR, Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016- 2021, p 4.

Industry participants were given until 1 November 2016 to comply with some aspects of the reforms introduced on 5 September 2016.⁴⁹

DTMR advised the committee at the departmental public briefing:

Taxi and limousine operators will have less red tape, with almost 80 regulations having been removed. Taxis will have protection around rank and hail markets and will continue to be the exclusive providers of services for the Taxi Subsidy Scheme. It has also been determined that ride-booking vehicles must have appropriate identification signage and new ride-booking drivers will be required to obtain taxi driver authorisation which will ultimately transition to the new booked hire taxi driver authorisation category which consists of taxi, limousine and ride bookings, amalgamating all personalised transport drivers.⁵⁰

Stage 2 of the reform process

Stage 2 of the reforms will involve comprehensive changes to primary legislation to introduce a new licencing regime and chain of responsibility for taxi and booked hire services. The Strategic Plan indicates that these changes are expected to be introduced into Parliament in early 2017 and commence by August 2017.⁵¹

Stage 3 of the reform process

Stage 3 of the reforms will involve the ongoing monitoring review and evaluation of the new framework from September 2017 until 2021 to ensure:

- competition provides customers with greater choice and flexibility
- there are no unintended consequences, and
- as the industry moves forward, the best approach to any further changes (if required) are adopted efficiently and effectively.⁵²

Personalised Transport Reform Unit in DTMR

The establishment of a Personalised Transport Reform Unit in DTMR was also announced to:

- oversee the new personalised transport industry framework
- oversee all aspects of implementation, including monitoring the progress and impact of reform across Queensland
- provide timely advice to the Minister for Transport and Commonwealth Games.

The new Personalised Transport Reform Unit will draw on relevant government agencies such as the Queensland Productivity Commission and the Queensland Competition Authority for advice on specific matters such as fare setting, licence numbers and productivity review.⁵³

⁴⁹ DTMR, Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016- 2021, p 4.

⁵⁰ Public briefing transcript, Brisbane, 12 October 2016, pp 2-3.

⁵¹ DTMR, Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016- 2021, p 8.

⁵² DTMR, Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016- 2021, p 8.

⁵³ DTMR, Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016- 2021, p 9.

Industry Adjustment

On 11 August 2016, the Government announced the key elements of a \$100 million IAAP package as being:

- \$60 million via a one-off payment of up to \$40,000 for existing taxi licence holders (\$20,000 per licence, capped at 2 licences) and \$10,000 per licence for existing limousine service licence holders
- \$26.7 million hardship fund
- \$4.3 million in waived fees
- \$5.6 million to incentivise wheelchair accessible taxis, and
- \$3.75 million for business advisory help.⁵⁴

3.1.3 Implementation of Queensland's reform of the personalised transport industry

Amendments made through subordinate legislation No 161 of 2016⁵⁵

On 2 September 2016, Subordinate Legislation no. 161 - Transport and Other Legislation (Hire Services) Amendment Regulation 2016 - was notified and it was tabled in the Legislative Assembly on 13 September 2016.

The explanatory notes to the sub-ordinate legislation stated that the objective the amendments were to implement the first stage of the Government's announced reform program in the regulation of personalised transport service, in particular to:

Strengthen safety requirements

The objective of strengthening safety requirements for hire services will be achieved by:

- disclosing current driver authorisation numbers so that the industry is able to verify whether drivers have a current driver authorisation
- removing the exemption for taxi and limousine drivers from wearing seatbelts
- requiring booked hire vehicles to be identifiable
- imposing requirements about vehicle safety and maintenance on driver operators of booked hire services
- requiring owners of booked hire vehicles to hold a safety certificate that is valid for 1 year
- requiring owners of taxis and limousines to hold a certificate of inspection that is valid for 1 year, and
- increasing the fine for soliciting or touting from 2 to 4 penalty units.

Encourage competition and customer choice

The explanatory notes advised the regulation would encourage competition and increased customer choice in the market of booked hire services by allowing a person to provide a booked hire service in a vehicle that is not a taxi, while preserving exclusively for taxis those hire services provided from taxi

⁵⁴ Minister for Transport and the Commonwealth Games, Media release, 11 August 2016.

⁵⁵ The explanatory notes, Transport and Other Legislation (Hire Services) Amendment Regulation 2016 (SL 161) is the source of information included in this section.

ranks or hailed from a road and that opening up the booked market will create opportunities for both new and existing participants.

Establish minimum consumer protections

The explanatory notes advised the regulation would also establish minimum consumer protections relating to fares by requiring:

- drivers or booking entities of booked hire services to provide hirers a fare estimate before commencing a service and that the fare not exceed the fare estimate, and
- drivers of all hire services to provide hirers with itemised receipts on request.

Establish a more equitable framework

The explanatory notes advised a more equitable regulatory framework for drivers and operators of hire services would be established by:

- removing obligations relating to customer service standards that are imposed on the taxi and limousine industries, including among others:
 - English language proficiency
 - knowledge of common destinations
 - minimum age limit for taxi drivers (noting that a driver must still have held an open or provisional driver licence for a minimum of 3 years)
 - taxi driver training competencies
 - drivers dressing neatly
 - regulation of extra charges
 - accepting electronic payment
 - programming of taximeters
 - driving in an efficient manner
 - maximum age limits for taxis
 - controlling doors in taxis
 - operation of air conditioning
 - vehicle type restrictions, and
 - ensuring vehicles are clean and tidy
- applying the requirements for driver authorisation consistently for all hire services, including:
 - holding an Australian driver licence for at least 1 year, and
 - imposing the same fees for driver authorisation
- exempting drivers of booked hire vehicles from requirements to ensure passengers use seatbelts and child restraints, and
- relieving taxi and limousine operators from the requirement to renew their operator accreditation for one year from commencement.

Disallowance motion on SL 161⁵⁶

Mr Powell, MP put a motion to the House on 14 September 2016 to disallow the following three provisions in the regulation:

- the removal of the maximum age limit on hire vehicles
- the removal of the requirement to remove identifying features from vehicles that are no longer used as taxis, and
- the removal of the extra charges provisions.

During the debate on the disallowance motion the Minister proposed amendments to the disallowance motion which were passed and resulted in the following amendments to the regulation, by reinstating:

- section 63(3) prescribing a maximum soiling charge of up to \$121.90
- section 63(5) prohibiting a driver from driving in a way that involved excessive charging (eg. going the long way)
- section 68 which required a taxi driver to take control over opening and shutting taxi doors if requested by a hirer, and
- section 70(2) which required a taxi operator to remove certain items from a vehicle when it stops being a taxi.

The Minister indicated during the debate he had concerns that by amending the regulation only taxi drivers had some of the provisions applied to them and that ride-booking and limousine services were not subject to the requirements. He foreshadowed that the Government would further review these provisions to consider how they could be applied to ride-booking and ride-sharing services.

Amendments made through subordinate legislation No 173 of 2016⁵⁷

On 23 September 2016, Subordinate Legislation no. 173 - Transport Operations (Passenger Transport) and Other Legislation Amendment Regulation 2016 - was notified and it was tabled in the Legislative Assembly on 11 October 2016.

The explanatory notes to the sub-ordinate legislation stated that the objective the amendments was to clarify the intent of the disallowance motion relating to subordinate legislation No. 161 of 2016 that was passed by the Legislative Assembly on 14 September 2016.

The subordinate legislation inserted an infringement notice fine of 1 penalty unit for new section 68 of the regulation.

Personalised Transport Industry Reference Group

On 13 October 2016, the Minister announced that the second stage of the personalised transport reform is underway with invitations sent on 12 October 2016 for membership of an Industry Reference Group (Reference Group). This Reference Group will be comprised of industry participants, consumer advocates, motorist groups, disability access groups, tourism advocates, social access groups and driver representatives.

The Minister announced the Reference Group will be engaged to:

- help shape the second stage of the Government's reform package which is to include comprehensive changes to the primary legislation covering the industry, as well as the new licencing regime and chain of responsibility for personalised transport services, and

⁵⁶ See Queensland Parliament, Record of Proceedings, 14 September 2016, pp 3503 – 3510.

⁵⁷ The explanatory notes, Transport Operations (Passenger Transport) and Other Legislation amendment Regulation 2016 (SL 173) are the source of information included in this section.

- help deliver the goals the Government has sought to establish a level playing field, a framework to survive future technologies and to ensure the greatest amount of customer choice.

The first meeting of the Reference Group is to be held in November 2016 with one of the topics for discussion to be the nature and requirement of the new Booked Hire/Taxi Driver Authorisation, which covers issues such as language and driver training.⁵⁸

Heavy Vehicle National Law and Other Legislation Amendment Bill 2016

On 13 September 2016, the Minister introduced the Bill which proposed amendments to TOPTA to allow a regulation to be made providing for a scheme for the payment of financial assistance to the taxi and limousine industry in order to implement the main elements of the IAAP. The Bill was referred to the committee for consideration.

3.2 Proposed amendments to enable to payment of financial assistance under the IAAP

As previously noted, the Bill proposes to amend TOPTA to allow a regulation to be made providing for a scheme for the payment of financial assistance to the taxi and limousine industry in order to implement the main elements of the \$100 million IAAP which includes:

- transitional assistance payments of \$20,000 per taxi licence capped at 2 licences per holder and \$10,000 per limousine service licence other than special purpose limousine service licences (\$60 million)
- a hardship fund (\$26.7 million)
- business advisory support (\$3.7 million)
- fee waivers (\$4.3 million), and
- incentive payments for wheelchair accessible services (\$5.6 million).⁵⁹

3.2.1 Proposed head of power to make a regulation

Section 155A(1) of the Bill proposes to amend the TOPTA to allow a regulation to be made providing for a scheme for the payment of financial assistance to certain persons who have held or hold a taxi service licence, or a limousine service licence (other than a special purpose limousine service licence).

The explanatory notes advised that the Bill allows a regulation to be made setting out the details of a scheme for the administration of the main elements of the IAAP, specifically transitional assistance payments, and a hardship fund for eligible taxi licence holders and limousine service licence holders'.⁶⁰

Further, the explanatory notes advised that section 155A(2) of the Bill lists examples of matters that a regulation made under section 155A may prescribe:

*These include criteria for eligibility to receive financial assistance, proof of eligibility, applications for financial assistance and determination of applications, the amount of financial assistance payable and conditions on payment, review of decisions relating to applications for financial assistance, and repayment of financial assistance where it is found that a person was not eligible or did not comply with conditions on payment of the assistance.*⁶¹

⁵⁸ Minister for Transport and the Commonwealth Games, Media release, 13 October 2016.

⁵⁹ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, pp 1-2.

⁶⁰ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 4 and p 30.

⁶¹ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 30.

When introducing the Bill to Parliament the Minister advised the Government ‘had moved quickly to introduce this Bill so that transitional assistance and hardship payments can be made to licence holders as soon as possible’.⁶² With regard to this approach, one witness advised ‘My view overall on this amendment Bill is that it has been rushed through parliament and not enough information has been provided as to how the changes are going to be administered.’⁶³

At the departmental public briefing DTMR advised the committee:

*Payments of the transitional assistance and hardship fund are dependent on the passage of the bill through the Parliament and the specific details of the legibility criteria and procedures for accessing these payments will be set out in regulations following the passage of the bill.*⁶⁴

A number of stakeholders raised concerns that the Bill proposes a head of power to make a regulation without providing any details on the eligibility criteria. For example, Peter Walker submitted:

*By allowing the use of a regulation to facilitate implementation of the scheme of financial assistance as outlined circumvents Parliamentary debate. This then denies justice for those people who consider that the amendments are unfair and unjust. Therefore the amendments may be fundamentally flawed and should not proceed by way of regulation. They should be debated on the floor of the House.*⁶⁵

The lack of detail provided in the draft Bill has been raised by many submitters as exacerbating an already difficult change process. For example, Mr Daryl Bain asked the committee:

*With regard to the package, I am still trying to work it out. Can you explain to me who is administering the package? Who is providing the support? What does the support consist of? Who is eligible for the support? Is it going to a training company that is going to get \$3.4 million?*⁶⁶

Other stakeholders recommended that all the criteria to be included in the Regulation should be included in the Bill.⁶⁷

This issue is discussed further in the [Compliance with the Legislative Standards Act 1992](#) section of the committee’s report.

There is, however an urgency in legislating for the assistance package as the committee received substantial evidence that a number of factors have led to severe financial distress in the taxi industry and that those affected need access to the financial assistance as soon as possible. These factors include:

- ride-sharing competition entering the Queensland market in 2014 unencumbered by the same licensing requirements and regulations applied by the State Government on the taxi and limousine industry has had a significant impact on the profitability of the taxi industry and on the value of licences
- the economic downturn that has occurred in particular in some parts of regional Queensland, and
- financial institutions changing their risk assessments in relation to loans on taxi and limousine licences – possibly based on the above impacts on the asset value and income derived from licences value.

⁶² Queensland Parliament, Record of Proceedings, 13 September 2016, p 3409.

⁶³ Mr Colin Duffield, public hearing transcript, Gold Coast, 14 October 2016, p 5.

⁶⁴ Public briefing transcript, Brisbane, 12 October 2016, p 3.

⁶⁵ Submission 3, p 1.

⁶⁶ Public hearing transcript, Caboolture, 21 October 2016, p 16.

⁶⁷ Confidential submission 30, 2.

At the Mackay public hearing, Mr Trevor Moore, an owner/operator/driver summed up:

*.. I am sure that, along with the other submissions that you have received from the industry, a very clear picture will emerge of the impending uncertainty and hardships that the taxi industry will experience over the next few years.*⁶⁸

Mrs Anne Spain, at the Caboolture public hearing asked that 'hardship payments be made immediately for those suffering and not in 2017'.⁶⁹

DTMR advised the committee that 'the whole purpose of the Bill you are reviewing is to fast-track that and get the assistance out there as quickly as possible'.⁷⁰

Committee Comment

The committee is concerned that the Bill proposes to provide a head of power in Transport Operations (Passenger Transport) Act 1994 to make the taxi limousine and industry assistance regulation without including any of the 'eligibility criteria', 'conditions on payment' or process for 'review of decisions' in the head of power in the primary legislation.

The committee is also concerned that because eligibility criteria was not provided when the Bill was introduced neither the committee, nor stakeholders, have not been able to investigate the appropriateness of the criteria.

The committee noted that the lack of detailed information on the assistance package also appeared to have exacerbated the stress which accompanies any reform process.

Despite these concerns, the committee has recommended the Bill be passed to ensure that hardship payments can be made to the taxi and limousine industry as soon as possible. The committee has made a number of additional recommendations to the Minister in an attempt to address concerns raised by stakeholders and strongly urges that these be taken into consideration when the regulation is being drafted.

The committee appreciates that Members of Parliament have the power to introduce a disallowance motion if they have any concerns about the regulation once it is made, but it is concerned that this avenue of review can only occur after the regulation is made; and that any changes made at the disallowance stage may result in further delays in assistance payments being made to taxi and limousine licence owners.

The committee was therefore strongly of the view that the development of the regulation itself should be developed in close consultation with the industry and should take into account the recommendations made by the committee about the [structure](#) of the package, [funding](#) the package and [eligibility criteria](#).

Recommendation 4 – Eligibility criteria for the Industry Adjustment and Assistance Package

The committee recommends the Minister consider amending the Bill to include any finalised eligibility criteria, or details on the assessment and review process, which are to be included to the taxi and limousine industry assistance regulation.

⁶⁸ Public hearing transcript, Mackay, 20 October 2016, p 12.

⁶⁹ Public hearing transcript, Caboolture, 21 October 2016, p 11.

⁷⁰ Public hearing transcript, Caboolture, 21 October 2016, p 23.

3.2.2 The configuration of the IAAP and the economic modelling on which it was based

Elements of the Queensland IAAP

The IAAP to be implemented through the making of a regulation under the TOPTA principally consists of:

- industry adjustment payments proposed to be made to each taxi licencee (\$20,000 per licence capped at 2 licences) and limousine licencee (\$10,000) other than special purpose limousine service licences (\$60 million), and
- a hardship fund (\$26.7 million).

The package is focussed on transition and hardship assistance, it does not include compensation payments to the taxi or limousine industry. The explanatory notes advised that any regulation made under the amended TOPTA will expire two years from commencement 'when the administration of financial assistance is expected to have been completed'.⁷¹

The committee received evidence from stakeholders that the reform process being undertaken in Queensland, goes further than simply 'encouraging competition' and is in effect deregulation of between 60 per cent and 80 per cent of the taxi industry; and that this evidenced by the fact that the market value of licences have dropped significantly or licences have become unsellable and financial institutions are reported to be foreclosing on loans made with taxi licences as collateral. For example, one stakeholder advised the committee 'In a totally deregulated market, what is happening with ride booking, the presence of these high-cost taxi licences is just an aberration that is unsustainable, which is what we are hearing.'⁷²

Stakeholders raised a concern that the Queensland package was simply based on the New South Wales model and does not take into account differences in each of the jurisdictions having significantly different operating models.⁷³ Mr Shane Smith advised the 'New South Wales government assistance package was a one-off \$20,000 per lease owner to offset the decreased lease income'.⁷⁴

The Taxi Council of Queensland (TCQ) advised the committee that the package that has been announced is largely the New South Wales package and did not take into account any of the detailed characteristics of the Queensland industry as opposed to the New South Wales industry:

... highlighting at the highest level that 65 per cent of bookings of all trips across Queensland are booked versus 80 per cent rank and hail in New South Wales, so we have 35 per cent rank and hail versus 80 per cent rank and hail. They are fundamental differences in the characteristics and the way people actually use taxi transport here in Queensland..... so we are largely a booked market which makes us quite different in terms of the characteristics and it changes the characteristics that underpin the value of the licences.⁷⁵

Further, TCQ advised:

In New South Wales prior to their most recent round of reforms the predominant owner of taxi licences was the New South Wales government and perpetual licences were owned by the government and then leased out on an annual basis. They did not have service contracts with the relevant taxi companies, so there was no established contractual based chain of responsibility that existed within that industry. They had no minimum service levels that enforced

⁷¹ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 30.

⁷² In camera hearing transcript, Brisbane, 12 October 2016, p 1.

⁷³ See for example, Mrs Anne Spain, public hearing transcript, Caboolture, 21 October 2016, p 11.

⁷⁴ Submission 58, p 15.

⁷⁵ Public hearing transcript, Brisbane, 12 October 2016, p 7.

*this level of service that Queenslanders had been receiving and continued to receive in terms of how quickly they were able to engage in services.*⁷⁶

At the Mackay public hearing the committee asked the TCQ about its analysis of assistance packages in other jurisdictions and the different application of transition packages as opposed to straight compensation packages. TCQ advised:

*There is a stark difference between compensation and industry assistance. Compensation takes the nature of getting something back for having suffered loss. What we are saying is, 'If you are not extinguishing the licence, then you are losing the return you could get from the asset over a period of time.' Our research shows that in similar jurisdictions that period of time is somewhere in the vicinity of eight years. A one-off payment of \$20,000, while it might be appropriate for another jurisdiction, simply does not fit the Queensland context and does not take into account how the Queensland taxi market has operated and the sort of services it delivers on behalf of the government as a pseudo public transport mechanism.*⁷⁷

Specifically in relation to the types of packages introduced in other jurisdictions, the committee was advised it ultimately depended on the level of deregulation involved:

Where the reduction in regulations was total—that usually involved removal of fare caps, removal of service areas, removal of supply caps, removal of age limits; removal of pretty much all of the core fundamentals that existed within a regulated environment—the licences were deemed to be extinguished and the adjustment package involved licence buybacks. Historically that has been about 80 per cent of the packages worldwide over the last 40 years—straight licence buybacks when there has been a high level of deregulation.

Where the level of deregulation has been smaller—I use the example of New South Wales. They deregulated, in effect, their booked market. In New South Wales that is 20 per cent of the taxi industry. In that instance, 80 per cent of the value of the licence and 80 per cent of the earning capacity of the licence remained. There is no argument in that instance that the licence was somehow extinguished.

.....

*From our research, the question really came down to: which of those two areas does Queensland sit in? Does Queensland sit in the full deregulation space or in the partial deregulation space? That came back to the core question that we were trying to look at, which is in New South Wales, they deregulated 20 per cent of the market. That is clearly partial regulation. In Queensland, the deregulation reforms affect 65 per cent of the market. If that is the case, it is much further along in the space of a full deregulation licence extinguishment space than a transitional support. In recognising that the licence has not been formally extinguished, that was the basis for the modelling that we put together—that is, if you are not adjusting or supporting based on the value of the licence that has been extinguished, there has to be a recognition of the loss of earning capacity, up to two-thirds of the loss of the earning capacity of the licence. That needs to be figured into the long-term adjustment package that needs to be considered.*⁷⁸

Mr Max McBride, President of the TCQ raised some general concerns about the rationale behind the package, including the perceived disparity between paying \$20,000 for a taxi licence worth up to \$570,000 and \$10,000 for a limousine licence worth up to \$60,000:

How did the government come up with \$10,000 for the limousine industry? That is 20 per cent of the licence value of the limousine. If you use that 20 per cent, you might be looking at, in Brisbane's case, \$120,000 per licence. Is that appropriate?

⁷⁶ TCQ (RPSGroup), Public hearing transcript, Brisbane, 12 October 2016, p 8.

⁷⁷ TCQ (RPSGroup), public hearing transcript, Mackay, 20 October 2016, pp 5-6.

⁷⁸ TCQ (RPSGroup), public hearing transcript – Mackay, 20 October 2016, pp 5-6.

In the New South Wales context, 80 per cent of the work in Sydney—it is different in country New South Wales and we should be clear there—is all rank and hail. In our case, in Mackay, 70 per cent of our work is via some booking mechanism—and we have had apps since before Uber came along.

.....

And we are getting \$20,000—potentially restricted or not restricted, we don't know, but \$20,000 a licence! It is hard to actually see the rationale behind that or the logic behind where we have got to there.⁷⁹

Various submitters and witnesses provided detailed evidence to the committee on the impact of the reform process on the industry as a whole on each of their individual circumstances. One witness advised:

One, the \$20,000 adjustment package is grossly inadequate. I support the QTC submission. That is a good base to start from. This amount must be reviewed by the government immediately. Our industry is no longer viable in Brisbane. We need an orderly exit. Our incomes have now halved and will go down another 50 per cent in January 2017.⁸⁰

The majority of taxi and limousine industry stakeholders who presented evidence to the committee were in agreement that as well as being considered inadequate, the assistance package was 'poorly targeted'.⁸¹ For example, one witness advised:

The industry adjustment package is painfully inadequate, poorly targeted and demonstrates a lack of understanding of the actual issues being faced by the taxi industry.Given the lack of fairness in the industry adjustment package, we strongly support and recommend changes to the package that include access to government backed low interest loans to allow industry to refinance liabilities, allowing registration payments to be made monthly to spread out the cost of this investment, that the industry adjustment package funds be released as soon as possible and that a true level playing field be created.⁸²

One submission pointed out:

Obviously different geographical areas were worth different amounts depending on the revenue stream obtainable in that area...so offering a set \$20000 for ALL areas is discriminatory at best and stupidity at worst. For some Licenses this would be 20000 times MORE than what they paid for a License, for other areas it would be only 1/30th of the pre Uber prices. Compensation should be relative to the license value.⁸³

The Limo Action Group argued that the proposed a one-off payment of \$10,000 for each limousine licence was inequitable:

The current assistance package is \$10,000 per limousine licence. We see a little bit of inequity in that in that there are five different classes of licences—you have the whole of Queensland, rest of Queensland and then regional, which is Capricornia, North Queensland and Far North Queensland. The last sales for a rest of Queensland licence in the market were \$5,000. Essentially, they would be getting an assistance package that is double the value of their licence, where others in the south-east corner who had licences worth up to \$75,000—some have paid up to \$150,000 and \$120,000 for them—would only be getting the \$10,000 package.⁸⁴

⁷⁹ Public hearing transcript – Mackay, 20 October 2016, p 13 and p 14.

⁸⁰ Mr Agron Kello, public hearing transcript – Caboolture, 21 October 2016, p 19.

⁸¹ For example, see Mr Deni Mauro, public hearing transcript, Caboolture, 21 October 2016, p 15.

⁸² Mr Greg Collins, Complete Taxi Management, public hearing transcript, Caboolture, 21 October 2016, p 7.

⁸³ Jason, John and Louise Steele, submission 12, p 1.

⁸⁴ Mr Daryl Huhse, public hearing transcript – Caboolture, 21 October 2016, p 6.

Many submitters and witnesses also proposed a full buy-back of taxi and limousine licences by the Government. For example, Ms Glenda Hawthorne argued 'That we be fully compensated for the last taxi licence that was sold before ride-sharing or Uber came in'.⁸⁵ Other witnesses suggested they would be happy with their licences being bought back at the prices they paid for them originally.⁸⁶ Another suggested that a full buy-back could be transitioned over eight years.⁸⁷

Various proposals were put forward for how this could be funded, for example, one submitter suggested the Government buy-back licences at 2014 prices and lease the plates back out 'using that money to pay back a loan from international markets'.⁸⁸

At the Caboolture public hearing the committee was advised that some stakeholders are also concerned about the Bill's proposal that the regulation administering the scheme expire after 2 years:

Perhaps our greatest concern is that within the HVNLOLA Bill exists a hidden time bomb—an automatic expiry that we can assume will terminate all industry assistance in two years. Given that it has taken 2½ years to get to the current situation, it would seem premature to embed such a definitive end date in the bill. It seems strange to have such a major part of an open ended five-year strategic plan which is attempting to navigate uncharted waters have such a definitive legislative cut-off.

The five-year strategic plan states that the changes will be implemented progressively over the next five years. There is nothing progressive about instantaneous deregulation with no rules on the uncapped competition. There is nothing progressive about an automatic two-year cut-off for the assistance scheme. We implore the committee to recommend the removal of this sunset clause.⁸⁹

DTMR advised the committee at the final public hearing:

We are also aware of the many varying different circumstances of individuals, companies and trusts with regard to their licences at the operator, driver and owner levels. The whole purpose of the industry assistance package is to actually set up terms necessary for a series of gating processes where people can apply for that assistance. The terms of reference associated with how that will be done would be set through the auspices of the reference committee that is to be set up in conjunction and consultation with the industry.

We do not think we are specialists in this particular area. In fact, I can candidly state that we are not. We will be bringing in the organisation QRAA, who are specialists in industry assistance and/or personal assistance, to actually assist us.⁹⁰

⁸⁵ Public hearing transcript, Caboolture, 21 October 2016, p 17.

⁸⁶ Mr Ron Ware, Yeppoon Yellow Cabs, public hearing transcript, Rockhampton, 20 October 2016, p 13.

⁸⁷ Ms Angela Rheeders, Townsville Taxis, public hearing transcript, 19 October 2016, p 9.

⁸⁸ Mr Dennis Julian, submission 22, p 1.

⁸⁹ Ms Liz Hasted, Apollo Taxis, public hearing transcript, Caboolture, 21 October 2016, p 2.

⁹⁰ Public hearing transcript, Caboolture, 21 October 2016, p 23

Economic modelling

OPT Review Recommendations

The OPT Review made recommendations in its final report (White Paper) with respect to considering industry adjustment measures in the context of benchmarks set up by other states and ‘examining more innovative thinking such as Professor Mangan’s option of using a form of floor price mechanism’:

The taskforce has developed recommendations for consideration by the Queensland Government on matters relating to hardship and industry adjustment, including consideration of a floor price scheme for taxi licences which may address any potential fluctuations in the market.⁹¹

In relation to Industry Adjustment, the White paper recommended:

- *That the Queensland Government consider whether or not to establish a hardship fund for licence holders experiencing significant financial hardship as a result of industry reform, with criteria for eligibility to be determined between industry and government. As part of the hardship fund/assistance measures, the government may also consider facilitating access to financial advice/planning professionals for these individuals.*
- *That the Personalised Transport Commissioner work with the Queensland Regional Adjustment Authority (QRAA) on developing any potential programs including hardship and adjustment.*
- *That the Queensland Government consider whether or not to have a one-off adjustment payment to individual taxi licence holders to assist and accelerate the transition for incumbents to a new regulatory environment.*

That the Queensland Government consider whether or not to ask the Personalised Transport Commissioner to work with QRAA to investigate the establishment of any potential floor price scheme for taxi licences to address any potential fluctuations in the market.⁹²

TCQ Asset Return Model

In its submission, TCQ proposes linking assistance payments to licence values and lease returns through an uncapped IAAP based on an Asset Return Model. The model is summarised below:

Package calculation

While the loss in value of Queensland taxi licences represents a capital loss to the property rights of licence holders, the TCQ recognises that this loss will likely recover in the medium term. This has been the experience in other jurisdictions where ridesharing services have been introduced; the immediate fall in licence values has recovered over time in response to improvements in the attractiveness of the licences as an investment asset. Consequently, under the Asset Return Model the value of assistance for licence owners is calculated based on the annual loss in return of the asset.

Licence lease fees have historically provided a return to owners at a standard yield to licence value, such that a significant decrease in the value of licences results in a decrease in the value of leases. It is this reduced earning capacity of licences, and estimated foregone financial return, that forms

⁹¹ Opportunities for Personalised Transport: The future of Queensland’s personalised transport industry (White Paper), July 2016, p 4.

⁹² Opportunities for Personalised Transport: The future of Queensland’s personalised transport industry (White Paper), July 2016, p 16.

the basis for calculating the value of assistance for licence owners. The loss in annual loss in return is calculated by multiplying the loss in capital value of the licence by the average lease yield.

Recognising that the loss in licence value will recover, the Asset Return Model uses a transition period of eight years, to estimate the total loss in returns for licence holders. This is based on the experience of international jurisdictions that have undergone a deregulation of the taxi industry.

While assistance may vary depending on the individual’s circumstance, to ensure equity the total value of the assistance package for each licence holder should be the same, in accordance with their total loss in return.

The Asset Return Model also recognises the time value of money, whereby immediate cash payments have greater value than the same value of in-kind assistance, waivers or rebates in eight years. Consequently the value of short-term cash assistance is discounted, at a rate of seven percent, to reflect the present value of the assistance. This discounting will ensure equity, minimise government budgetary impacts and provide an incentive for licence owners to remain in the taxi industry.

Example calculations

The estimated value of assistance based on total loss in returns per licence, and the discounted value for short-term assistance, in select service areas are outlined below.⁹³

| Service area | Licence value (March 2014) | Licence value (August 2016) | Loss in capital value | Lease Yield | Annual loss in return | Total loss in return (8 years) | Discounted value (short-term) |
|----------------|----------------------------|-----------------------------|-----------------------|-------------|-----------------------|--------------------------------|-------------------------------|
| Brisbane | \$ 525,000 | \$ 175,000 | \$ 350,000 | 7.20% | \$ 25,200 | \$ 201,600 | \$ 150,447 |
| Gold Coast | \$ 580,000 | \$ 230,000 | \$ 350,000 | 7.00% | \$ 24,500 | \$ 196,000 | \$ 146,297 |
| Sunshine Coast | \$ 455,000 | \$ 410,000 | \$ 45,000 | 7.40% | \$ 3,330 | \$ 26,640 | \$ 19,884 |
| Mackay | \$ 400,000 | \$ 280,000 | \$ 120,000 | 7.80% | \$ 9,360 | \$ 74,880 | \$ 55,891 |
| Cairns | \$ 590,000 | \$ 444,700 | \$ 145,300 | 7.00% | \$ 10,171 | \$ 81,368 | \$ 60,734 |

The TCQ recommended the composition of hardship and transition support should be adjusted depending on the needs and impacts of the individual. The TCQ submitted ‘that there needs to be an equity model in that it considers that there are persons who are reliant on the income currently who have a short-term view of their ability to participate in the industry by virtue of their health or circumstance and they have high need or high reliance on the income.’

Equally, there are people who are in the industry who will seek to continue operating in the industry. Their need in terms of assistance may be quite different rather than being a cash component in the short term. There may be a range of other ways that they could be assisted to get through the reform period over time, and that may be through non-cash or rebates.⁹⁴

⁹³ Submission 66, Attachment – ‘Asset Return’ Industry Adjustment Assistance Model.

⁹⁴ Public hearing transcript, Brisbane, 12 October 2016, p 7.

Many witnesses and submitters advised the committee they supported the TCQ proposed assistance model as it recommended a transitional payments model regime assessed on the basis of differing circumstances.⁹⁵

When questioned about whether DTMR could provide advice on whether the modelling supplied by the TCQ was considered and what the issues were in relation to it, DTMR responded:

*The Taxi Council modelling and the modelling that has been provided to us is fundamentally different. The inputs are very different and, therefore, the outcomes indicated are different, as well. That is something I would welcome a discussion with the Taxi Council directly on, to determine what we can do in terms of normalising our economic view versus theirs.*⁹⁶

The TCQ responded to a question from the committee:

*Firstly what I will say is at a high level we would be very happy to look at the difference in the economic modelling that we undertook, which is all a matter of public record, versus that which was undertaken to support these decisions, but none of that modelling has been released. There has been no meaningful dialogue or ability for us to interrogate the assumptions that underpin that.*⁹⁷

Queensland Government economic modelling

DTMR advised that PricewaterhouseCoopers (PWC) were engaged to analyse a range of options for Government consideration and that included in the analysis were licence values and the impacts of broader economic considerations (such as downturn in bookings in areas of the state where no ride-booking services operate).⁹⁸

The committee requested a copy of the PWC analysis at the public departmental briefing. DTMR responded that it did not believe the PWC report had been made public yet and would seek a determination from the Government.⁹⁹ DTMR advised in the Answer to a Question taken on Notice that the document sought is Cabinet-in-Confidence and any release would be at the discretion of the Government.¹⁰⁰

The committee asked DTMR at the public briefing whether it could be provided with a copy of the alternative models/options considered by the Queensland Government prior to deciding on the announced industry assistance package. DTMR took the question on notice and responded that the document sought is Cabinet-in-Confidence and any release would be at the discretion of the Government.¹⁰¹

DTMR advised the committee at the departmental briefing that 'both through the auspices of the OPT Review and through DTMR's work, economic modelling was undertaken on a range of different scenarios'.¹⁰²

At the final public hearing in Caboolture, in response to a question from the committee about what alternative models were considered in preparing for the proposed IAAP, DTMR advised:

... there were a range of different options considered by the OPT and by the department in preparation for the proposed changes and the changes that have occurred. That included a

⁹⁵ See for example, Gordana Blazevic, public hearing transcript, Rockhampton, 20 October 2016, p 16.

⁹⁶ Public briefing transcript, Brisbane, 12 October 2016, p 6.

⁹⁷ Public hearing transcript, Brisbane, 12 October 2016, p 7.

⁹⁸ Departmental Brief, 7 October 2016, p 3.

⁹⁹ Public briefing transcript, Brisbane, 12 October 2016, p 9.

¹⁰⁰ DTMR, Answer to Question Taken on notice on 12 October 2016, No. 4, 14 October 2016.

¹⁰¹ DTMR, Answer to Question Taken on notice on 12 October 2016, No. 5, 14 October 2016.

¹⁰² Public briefing transcript, Brisbane, 12 October 2016, p 6.

complete buyback. I heard someone here earlier—it might have been you, Mr Chair—say that it is a \$1 billion industry. A buyback would be well over \$1 billion in terms of financial cost.

..... There is a range of different factors that come into that. At the end of the day, there are 100 potential variants and options. You have heard many of them from the industry, I am sure, as have we. Coalescing that into what is a reasonable, relevant and appropriate outcome for every single individual operator and owner is nigh on impossible given the varying financial circumstances. The government has chosen to take this particular course of action, as it lines up with both their fiscal responsibility and the views that have been expressed through both the OPT and other jurisdictions.¹⁰³

Committee Comment

The committee was not able to compare the economic modelling undertaken by the Taxi Council of Queensland and the Government, as the PricewaterhouseCoopers analysis used by the Government was not made available to the committee. The committee has however considered the recommendations made in the Options for Personalised Transport Review White Paper, by the Taxi Council of Queensland, and in evidence provided by industry stakeholders.

The committee has noted that the structure of the assistance package appears to have been modelled on the New South Wales assistance package even though the operating models in the two State are very different.

The main issue the committee had with the structure of proposed package is that the assistance does not target those licencees most in need of assistance. This concern particularly related to the one-off transitional payments to be paid to all taxi licencees (\$20,000) and all limousine licencees (\$10,000) regardless of the impact of the reforms on the value of their licence or of their financial need.

The committee has therefore agreed to recommend that the configuration of the Industry Adjustment Assistance Package be changed to amalgamate the transitional funding with the hardship funding. This would provide the framework for a more equitable assistance package that enables the composition of hardship and transition support to be adjusted depending on the needs and impacts of individual licence owners.

To ensure a transparent and equitable assessment of applications, the committee has recommended the Minister consider engaging the Queensland Rural Adjustment Authority to manage the application, assessment, payment and reporting process for the Industry Adjustment Assistance Package.

The committee has noted the concern raised about the expiration of the regulation two years after commencement. However, the committee was of the view that sunset clauses are appropriate for transitional regulations such as this one and notes that section 207 of the Bill provides that the taxi and limousine industry assistance regulation may be extended by a future regulation for certain purposes. The committee also noted, that if it is necessary to extend the regulation for any other purpose than those specified in section 207(2) the primary legislation could be amended.

The committee has made a number further recommendations in relation to the assistance package in the section of the report on [eligibility and the process for applications](#).

¹⁰³ Public hearing transcript, Caboolture, 21 October 2016, p 26.

Recommendation 5 – Structure of the Industry Adjustment Assistance Package

The committee recommends the Minister consider amalgamating the industry adjustment funding with the hardship funding to provide the framework for a more equitable assistance package that enables the composition of hardship and transition support to be adjusted depending on the needs and impacts of individual licence owners.

Recommendation 6 – Assessment of applications for assistance

The committee recommends the Minister consider engaging the Queensland Rural Adjustment Authority to manage the application, assessment, payment and reporting process for the Industry Adjustment Assistance Package.

3.3 Funding the IAAP

The Minister, in announcing the IAAP, stated that the \$100 million would be funded ‘without a \$1 or \$2 fare levy that other states have implemented’.¹⁰⁴ When introducing the Bill, the Minister explained that the Government considered it more appropriate to fund the assistance package from consolidated revenue ‘in terms of having the lowest administration cost and impact on industry and customers and ensuring the timely delivery of service’.

The Minister explained that the design and administration of a levy, as introduced in other states, would be complex and involve significant costs for government and industry and outlined other issues relating to a levy:

The effective administration of the levy is also dependent on the cooperation of industry participants including ride-booking companies and taxi-booking companies. Coverage is also an issue. Imposing the levy on the taxi industry would mean they effectively self-fund their assistance package, whereas limiting the levy to ride-booking services is inequitable and would significantly increase the time it takes to collect the funds. Modelling indicates that this could take up to 15 years depending on the amount of the levy.¹⁰⁵

The explanatory notes further advised:

One-off funding of \$100 million has been allocated for the IAAP. The IAAP will not be funded through the imposition of a levy on personalised transport services. Other costs to government of implementing the IAAP and the broader personalised transport reforms will be met from existing departmental resources.¹⁰⁶

Various stakeholders suggested ways that the assistance package funding could be increased, including overseas companies investing in Queensland government bonds and by attaching a substantial fee to the proposed licensing regime.

Mr Max McBride, President of the TCQ suggested to the committee that there is an opportunity for the Government to introduce a licencing fee for ride-booking services and that this could be used to provide additional assistance to the industry, particularly those in greatest need:

If there is a licence structure being contemplated for Uber, or for rideshare vehicles, or ride booking vehicles, which the minister indicated that there was, you would think that there would be an opportunity there for the government to be able to charge a fee—not a peppercorn fee; a fee per year—from those drivers from that sector. That could be used then to fund a proper and more meaningful transition assistance.

¹⁰⁴ Minister for Transport and the Commonwealth Games, Media release, ‘Personalised transport reforms roll out across the state’, 5 September 2016, p 1.

¹⁰⁵ Queensland Parliament, Record of Proceedings, 13 September 2016, p 3409.

¹⁰⁶ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 5.

Some people might have to be transitioned out of the industry completely. Certainly, there may be real problems for viability in some very small centres where we have cabs. Queensland is a very decentralised state. We have very small towns where the taxi is the only form of public transport. This all could start to fall apart. They are a couple things that I think would need to be done if the government is intent on maintaining rideshare.¹⁰⁷

The TCQ advised the committee that applying a relatively substantial fee to licence has the additional benefit of making participants feel they are buying-in to the industry and are part of a professional service:

We were doing some modelling and found that, if you had a licence value for a rideshare service of, say, \$12,000 a year, paid monthly at \$1,000, that makes the person go, 'I'm buying into this industry. I'm paying something.' We also know that the government is going to be facing a really big bill when it comes to regulating the quality issue, just because the numbers of vehicles are going to go through the roof. You need a funding mechanism to help fund that regulation, that combination of making sure that whatever service that is provided going forward is a professional service—Queenslanders expect that—and one way of doing that in the absence of supply controls is through a licence mechanism that has genuine value built into it.¹⁰⁸

In its submission the TCQ recommended an all-encompassing licensing regime for personalised transport licence fee of between \$1,500 and \$2,500 per annum.¹⁰⁹

Another witness argued that there were alternative sources of funding for the assistance:

.. we feel very strongly that the cost of the industry adjustment compensation package should not be borne by the taxpayers of Queensland but rather it should be funded by the market agitators themselves through licensing fees for booked hire services being implemented, through CTP [Compulsory Third Party] categories being the same for booked hire services and taxi vehicles and through the significant investment in compliance for new market entrants.¹¹⁰

Committee Comment

Stakeholders have been uniform in their advice to the committee that the proposed Industry Adjustment Assistance Package does not go far enough in assisting the taxi and limousine industry transition to the reformed personalised transport industry.

The committee noted that an annual licence is proposed to be introduced for all booked hire services in August 2017 and that the details of the licencing scheme will be the subject of future proposed amendments to come before Parliament.

The committee was of the view that there would be advantages to introducing the licencing system earlier in terms a more equitable playing field and is recommending the Government consider increasing the \$100 million allocation to the Assistance Package through the urgent introduction of a relatively substantial annual licence fee. The committee suggests the amount to be determined by a comparison of other similar small business fees, for example the Real Estate agent licensing fee of \$1,330.¹¹¹ The committee also noted that the Taxi Council of Queensland has recommended a fee of \$1,500 and \$2,500 per annum.

¹⁰⁷ Public hearing transcript – Mackay, 20 October 2016, pp 19-20.

¹⁰⁸ TCQ (RPSGroup), public hearing transcript, Mackay, 20 October 2016, p 8.

¹⁰⁹ Submission 66, p 2.

¹¹⁰ Mr Greg Collins, Complete Taxi Management, public hearing transcript, Caboolture, 21 October 2016, p 7.

¹¹¹ Queensland Government, '[Apply for a Real Estate Agent Licence](#)', accessed 28 October 2016.

Recommendation 7 – Licence fee

The committee recommends the Government consider:

- all possible options for increasing the \$100 million currently allocated to the Industry Adjustment Assistance Package
- urgently introducing the proposed licencing system for booked hire services ensuring it is applied to all individuals and organisations/entities, and
- attaching a substantial fee to this licence which could be applied to the recommended increase in funding for the Industry Adjustment Assistance Package.

3.4 Eligibility criteria and assessment process for the adjustment and hardship payments

The Minister, when introducing the Bill to Parliament advised:

The government values the services that taxis and limousines provide to the Queensland community and recognises that it is important that these services continue to be competitive into the future. The existing taxi and limousine industry is in a strong position to adapt to increased competition. We acknowledge though that some existing taxi and limousine businesses will face challenges in transitioning to the new framework. The government has announced a \$100 million industry adjustment assistance package to provide support to existing industry participants during this transition.¹¹²

3.4.1 Payments to taxi licence owners under the IAAP

The explanatory notes advised that the transitional assistance payments of \$20,000 per taxi licence will be capped at two licences per holder.¹¹³ DTMR advised the committee that there are currently 3,260 taxi licences in Queensland.¹¹⁴

Stakeholders were unanimous in their advice to the committee that the proposed package was insufficient (see the [funding section](#)) and that the proposed cap was not acceptable to the industry. For example, Mrs Anne Spain argued:

The amount of \$20,000 would not even cover the operating costs of a taxi for a year. There must not be a cap on the industry adjustment package as every licence is equally affected, regardless of what name they are in. Every licence operates with the same fees and costs and has the same opportunities so they are all be treated equally. To limit the package to two is unfair, discriminatory and criminal.¹¹⁵

At the Brisbane public hearing, Mrs Michelle Andrews submitted that the assistance package should be available to all owners 'whether the taxi licence is in an individual name, a company name, a trust fund or a superannuation fund name'.¹¹⁶

Mr Les Gist from Supreme Taxi Co. in Townsville advised:

Compensation: capping the licences at two is unfair, as every licence has a mortgage or covenant over that particular licence by the lending institutions. Licence compensation should be per licence and eligibility should be to every licence owner, regardless of ownership structures: trust, superannuation funds, proprietary limited companies, business names or individuals. Why should

¹¹² Queensland Parliament, Record of Proceedings, 13 September 2016, p 3409.

¹¹³ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 2.

¹¹⁴ Correspondence from the Director-General - DTMR, 20 October 2016, p 2.

¹¹⁵ Mrs Anne Spain, public hearing transcript, Caboolture, 21 October 2016, p 11.

¹¹⁶ Public hearing transcript, Brisbane, 12 October 2016, p 18.

*my company be deemed unworthy for any compensation to allow for adjustments or innovation?*¹¹⁷

The TCQ submitted:

We state clearly that industry adjustment must apply equally to all perpetually held licences. There are just over 3,260 in Queensland. We have not been given any rationale or any economic modelling or any kind of solid line of reasoning as to why people who may have invested in more than two licences are somehow less deserving of having their compensation or having their contribution to the Queensland economy recognised. If you have invested in multiple licences, your contribution is, by a multiplier, greater than others, yet there is a definite inequity in it.

*..... you cannot put an arbitrary cap on it without giving a very solid reason. To date, no solid reason has been given*¹¹⁸

In response to a question from the committee at the departmental briefing, DTMR advised:

*The cap is broadly consistent with what has been implemented in other jurisdictions. Obviously, the sectors are broadly similar, notwithstanding that there are operational differences between them. We felt the cap provided an appropriate balance between the majority of the operators and the government's financial affordability. Any further detail associated with that really is a decision of the government. It was a question for the government.*¹¹⁹

Committee Comment

The committee has noted the concerns raised by taxi licence owners about the impacts of the reforms on their industry. As discussed in an earlier section of this report, stakeholders were strong in their view that the \$20,000 adjustment payment is insufficient and inequitable. The committee's recommendations 5 and 7, if accepted, would go some way toward alleviating these concerns.

However, the issue of the cap of two licences for payments under the industry adjustment payments needs to be addressed if recommendation 5 is not accepted. The committee was strongly of the view that, at a minimum, the cap should be removed to ensure a more equitable outcome for licence owners.

The committee has noted the views of stakeholders that the two cap limit is arbitrary and appears to be based on the NSW package even though the operating models in the two states are significantly different; and that DTMR confirmed this was the case when it advised the committee the cap was broadly consistent with other jurisdictions even though there are operational differences between the jurisdictions.

The committee has recommended that the Minister investigate alternative eligibility criteria that may be more appropriately applied to reduce the number of eligible licences for transitional payments, for example large companies that are more likely to be able to absorb the transition costs.

If the committee's recommendation 5 is accepted, recommendation 11 will no longer be relevant.

Recommendation 8 – Cap on adjustment payments

If recommendation 5 is not accepted, the committee recommends the Minister review the proposed cap of two taxi licences per holder for transitional assistance payments and look at the application of alternative eligibility criteria.

¹¹⁷ Public hearing transcript, Townsville, 19 Oct 2016, p 4.

¹¹⁸ Public hearing transcript, Brisbane, 12 October 2016, p 10.

¹¹⁹ Public briefing transcript, Brisbane, 12 October 2016, p 7.

3.4.2 Payments to limousine licence owners under the IAAP

In the DTMR Five-Year Strategic Plan, DTMR advised that prior to the reforms:

- limousine licences are perpetual and allow licence holders to provide a booked hire service in a luxury vehicle where the fare is agreed prior to the journey
- there is no limit on the number of limousine licences available, and
- special purpose limousine licences (restricted to weddings, formals and tourist services) are only issued for one year, although these licences are usually renewed year on year.

In stage 1:

- the existing rights of limousine licence holders will be preserved
- no new limousine or special purpose limousine licences will be issued, and
- limousine service areas will remain and the area where they are able to operate will remain unchanged.

In stage 2 – proposed for August 2017:

- limousine service licences (including special purpose limousine service licences) will be removed
- prescriptive requirements relating to the type of vehicle able to be used (for example, having a minimum wheelbase of 2800mm) will be removed
- an annual licence will be introduced for booked hire services which will include limousine and ride-booking services
- booked hire licences will be issued on-demand and entail the payment of a fee, and
- a cap on the number of booked hire licences may be considered if it becomes necessary to protect the public interest.¹²⁰

A number of limousine operators advised the committee that to qualify as a limousine under the current legislation, all vehicles are required to be of a luxury standard and must exceed the luxury car tax threshold (approximately \$63,400) and that as the price of a Holden Caprice dropped just below the threshold price, this can only be done by buying a metallic.¹²¹

In response to a question from the committee about whether the prescriptive requirements relating to the type of vehicle had already been removed, DTMR advised:

No. The prescriptive requirements relating to the type of vehicle (including the requirement to meet the luxury car tax threshold) remain in the Transport Operations (Passenger Transport) Regulation 2005 (TOPTR) – and it is proposed that these requirements will be removed in Stage Two of the reforms.

To provide flexibility until then, certain vehicles that do not meet vehicle requirements in TOPTR have been approved for use as a limousine through a declaration under section 145 of the Transport Operations (Passenger Transport) Act 1994.¹²²

¹²⁰ DTMR, Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016- 2021, p 11.

¹²¹ See for example, Mr Colin Duffield, public hearing transcript, Gold Coast, 14 October 2016, pp 3-4.

¹²² DTMR, Answer to a question from the committee, 25 October 2016.

In addition, the DTMR Information sheet for limousine operators advised that under Stage 2 of the reforms:

- Operator Accreditation will be removed
- all booking entities must have government approvals
- operators must either agree to a price up front or provide an estimate of the total fare, and
- the requirement for distinct “I” and “SP” registration plates may be removed.¹²³

A limousine licence owner provided the following evidence to the committee:

The \$10,000 is not nearly enough. The limousine owners are hurting now. They were hurting from the start of this month. They have been hurting for the last two years, but now we are getting nothing for this. They were perpetual licences sold by the government. If these licences cease to exist, then a fair price buyback is required or similar compensation in the next reforms. You cannot say to us, ‘These just cease to exist now; we will give you \$10,000.’ They are a perpetual licence sold by the government in good faith.¹²⁴

The committee sought advice from DTMR as to why it is proposed that limousine licencees would only be entitled to \$10,000 as opposed to the \$20,000 payment to be provided to taxi licencees. DTMR advised:

Limousine service licences, unlike taxi licences, were not subject to supply restriction or licence cap. They were available for purchase by any person at any time until the announcement of the personalised transport reforms. A range of contexts in which transitional assistance could be provided informed the Government’s considerations.¹²⁵

DTMR advised there are currently 495 limousine licences on issue, excluding special purpose limousine services licences¹²⁶ and the newly formed Limo Action Group claims to represent about 50 individuals and over 120 limousine licences.¹²⁷

Stakeholders raised numerous concerns with the proposed payments to be made under the IAPP to limousine licence holders, including that limousine licences valued at between \$50,000 to \$60,000 when the reforms were announced¹²⁸ are to be ‘extinguished’ and ‘operators are handing the leases back to the owners as they are no longer required to operate their businesses’.¹²⁹

The Limo Action Group advised the committee that it is of the view that that the current modelling that has been developed for the personalised transport industry has essentially generated an identical business model to the limousine industry, which is slightly different to the taxi industry. For example, limousines have a different CTP class – CTP 4, which is the same class as hire vehicles and currently costs \$660.¹³⁰

The introduction of this parallel model has the consequence of creating a cascade of operators who are leasing licences. They are now handing them back because they can now work in this parallel model. They do not have to pay the monthly service fees or the monthly lease fees of approximately \$400 a month. They are also not having to fork out for their CTP 4. They can go back to CTP 1.

¹²³ DTMR, Information sheet for limousine operators, 11 August 2016, p 2.

¹²⁴ Public hearing transcript, Brisbane, 12 October 2016, p 28.

¹²⁵ Correspondence from the Director-General, DTMR, 20 October 2016, p 2.

¹²⁶ Answer to a question asked by the committee, 28 October 2016.

¹²⁷ Ms Jacqui Fiebig, public hearing transcript, Caboolture, 21 October 2016, p 6.

¹²⁸ Mr Max McBride, Taxi Council of Queensland, public hearing transcript, Mackay, 20 October 2016, p 13.

¹²⁹ Mrs Michelle Andrews, public hearing transcript, Brisbane, 12 October 2016, p 18.

¹³⁰ Mr Daryl Huhse, public hearing transcript, Caboolture, 21 October 2016, p 6.

*Ideally, there are a lot in the industry who would like to keep their licences but, if that is not a possibility with the introduction of stage 2, we would like to see a full industry buyback of the limousine industry. The way that we see that being funded in terms of where the government has missed the boat at the moment is that they could issue a ride-booking licence to all operators. That would incorporate those who are currently working in the limousine industry and those who are currently working in the ride-booking industry. If the government did that, rounding down with some dropping out and increasing the number of ride-booking operators, you are looking at about 600 licences there. At a minimum in the South-East Queensland corner you would be looking at about \$4,800 to \$5,000 a year income per licence. That is an annual licence. The government would own all of those licences and it would generate revenue from those licences directly to help offset the initial outpayment for the buyback.*¹³¹

The Limo Action Group also pointed out that it considers the proposed a one-off payment of \$10,000 for each limousine licence was inequitable as some limousine licences were only purchased for \$5,000 and yet they would be receiving \$10,000 from the assistance package, whereas others have paid up to \$150,000 for their licences.¹³²

The TCQ, on the other hand submitted that the announced regulations have had no tangible effect on limousine licence values 'while the regulations have substantially increased the size of the limousine market (through their participation in the booked market) and reduced their cost base'.¹³³

Committee Comment

The committee has noted the concerns raised by limousine licence holders that they will lose the full value of their licence and has also noted the advice from the Taxi Council of Queensland that the limousine industry may be better placed to take advantage of the reforms in the personalised transport industry than the taxi industry. The committee was not in a position to assess the relative impact of the reforms on the limousine industry compared to the taxi industry.

However, the committee is of the view that if recommendation 5 is accepted by the Government it is likely to resolve many of the issues raised by limousine licence owners (as well as taxi licencees) as there will be an equitable package applied to those most impacted and most in need of support.

3.4.3 Eligibility for assistance

There was a very strong view amongst taxi licence owners that trusts, super funds and companies will be excluded from making applications for transition assistance under the IAAP.

Licence owners put the argument that the structure in which the licence is held should not be used to preclude owners from seeking assistance. The committee was informed that licence owners had been advised by accountants to purchase their licences in trusts and superannuation funds and that this should not be used against them with regards to government assistance.¹³⁴ Another witness advised that the Government had previously only allowed taxi licences to be owned by individuals with a maximum of four licences then the Government 'changed the ownership structure to allow trusts and superannuation funds to own taxi licences'.¹³⁵

¹³¹ Mr Daryl Huhse, public hearing transcript, Caboolture, 21 October 2016, p 6.

¹³² Mr Daryl Huhse, public hearing transcript, Caboolture, 21 October 2016, p 6

¹³³ Submission 66, p 1.

¹³⁴ See for example, Ms Robyn Bakker, public hearing transcript, Cairns, 19 October 2016, p 4.

¹³⁵ Mr Graeme Lawler, public hearing transcript, Cairns, 19 October 2016, p 12.

A number of stakeholders also raised a concern that taxi operators and drivers are not able to access the assistance package.¹³⁶ Mrs Anne Spain advised the committee that taxi operators are suffering as much as licence owners.¹³⁷ Ms Angela Rheeders from Townsville Taxis provided the following argument:

*I would like to put it out there that it does not only affect the license owners, although they are the core business—they are the ones who put up the initial capital to purchase those licences—it does affect everyone. The transitional package should not be purely for the owners; it should also be available to the taxi operators, the taxi drivers, the booking centres and so on. I do believe that some thought needs to be given to that. It should not be only the license owners; it needs to be right across-the-board.*¹³⁸

Mr Shane Holley from Cabs 2000 strongly argued the case for operators to be eligible for assistance:

Today I am here as an operator and as such my focus is not on the \$60 million package of one-off payments to taxi service licence holders, which I agree with and feel it could be more, but rather on the \$35 million adjustment package for hardship and business advisory services including incentives for wheelchair accessible vehicles. It is this money that I feel should be earmarked for taxi operators that have been affected by Uber and the changes within the industry. As I mentioned, since April 2014 it has been operators who have had their revenue heavily diminished because of the entrance of Uber into the market and it has been operators who have had to bear the burden of loss of income for the last two and a half years solely.

The reason I mention operators and not taxi drivers is due to the fact that, unlike taxi drivers who have the ability to walk away and join other industries like trucking, courier, security or manufacturing—which has been another added burden: loss of drivers that has compounded the effect on operators as well as—I have not had the luxury of walking away, nor do other operators we have infrastructure, business loans, vehicle mortgages, employees and a business that we cannot just walk away from. We have had to endure the brunt of the last two and a half years in terms of physical monetary loss of income with no option but to see it out.....

*I believe the survival of operators in our businesses requires an immediate and substantial payment up-front to assist operators to get on our feet, to stop running our businesses on a month-to-month basis and start focusing on our long-term goals and plan for the future.*¹³⁹

Mr Holley suggested that the hardship fund should be allocated to affected taxi operators on a per car operated basis.¹⁴⁰

Mr Shane Smith from First Class Taxis recommended a compensation scheme for taxi drivers based on evidence that they have experienced up to a 25 to 30 per cent reduction in income and turnover due to 'the illegal ride sourcing activity of Uber. First Class Taxis welcomes a driver submitted compensation plan to be considered by TUC as a one off payment'.¹⁴¹

¹³⁶ See for example, Mr David Thomas, public hearing transcript, Caboolture, 21 October 2016, p 2.

¹³⁷ Public hearing transcript, Caboolture, 21 October 2016, p 11.

¹³⁸ Public hearing transcript, Townsville, 19 October 2016, p 2.

¹³⁹ Public hearing transcript, Brisbane, 12 October 2016, pp 13-14.

¹⁴⁰ Public hearing transcript, Brisbane, 12 October 2016, p 14.

¹⁴¹ Submission 58, p 15.

Committee Comment

The committee was particularly concerned by reports that taxi and limousine licences held in structures such as trusts, superannuation funds and companies will not be eligible for the transition payments.

The committee was not in a position to confirm nor deny these reports as it had not been advised of the eligibility criteria, nor details application or review process. Unfortunately, this has resulted in a number of licence owners having what is already a stressful situation exacerbated by not knowing what entities may or may not be eligible.

The committee has also noted the evidence provided in relation to the impact of the reforms on taxi operators and is concerned operators do not appear to be eligible to apply for hardship payments.

Recommendation 9 – Eligibility for assistance

The committee recommends the Minister review the eligibility of people who own taxi and limousine licences in structures such as trusts, non-commercial superannuation funds and small companies to ensure they are not excluded from assistance under the Industry Adjustment Assistance Package simply on the basis of the ownership structure of their licence.

Recommendation 10 – Taxi operators

The committee recommends the Minister investigate including taxi operators as eligible recipients of hardship assistance under the Industry Adjustment Assistance Package on the basis they have also been negatively impacted by competition from ridesharing services.

3.5 Business advisory support

The Government has allocated \$3.7 million for a range of financial, advisory and incentive measures to assist existing taxi and limousine businesses during the period of transition, as part of the industry adjustment assistance package.¹⁴²

Committee Comment

The committee has noted the Government’s allocation of \$3.7 million for business advisory support to provide a range of financial, advisory and incentive measures.

The committee received evidence from stakeholders across Queensland who are currently involved in negotiations with financial lending institutions about loans related to their taxi licences.

The committee was made aware during the inquiry that those industry participants who are dealing with loans related to their taxi licences are more likely to seek legal and advocacy support to assist them in their negotiations.

The committee has therefore made a recommendation that consideration be given to extending the services provided under the business advisory support to include legal assistance and advocacy support for those industry participants.

Recommendation 11 – Business advisory support

The committee recommends the Minister consider extending the business advisory support program to include legal assistance and advocacy support for those industry participants in negotiations with financial lending institutions regarding loans related to their taxi licences.

¹⁴² DTMR, Queensland’s Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016- 2021, p 10.

3.6 Incentive payments for wheelchair accessible services

The IAAP includes \$5.6 million in incentive payments for wheelchair accessible services. In response to a Question Taken on Notice at the Caboolture public hearing DTMR provided the following advice:

Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised transport services 2016-2021 released by the Queensland Government creates a framework that provides protections for persons with disabilities to have affordable access to accessible personalised transport. As such, the Department of Transport and Main Roads has conducted no analysis into the cost of full public delivery of wheelchair accessible personalised transport services as part of the reforms.

To ensure quality wheelchair accessible service continue to be provided, taxis will continue to have exclusive access to the Taxi Subsidy Scheme, a government funded scheme which assists people with the costs associated with taxi services. Taxis are currently equipped with the necessary payment systems and meet disability standards for accessible public transport. As part of stage 2 of the reforms, the Department will investigate what opportunities exist for all personalised transport operators, including ride-booking, to provide services to members of the Taxi Subsidy Scheme.

A new \$20 per fare incentive payment will be introduced to encourage drivers and operators to provide wheelchair accessible services. \$5.6 million has been allocated to fund this payment during the first 12 months of operation. The National Disability Insurance Scheme will also assist to encourage choice and competition in the wheelchair accessible personalised transport market by providing direct payments to service providers, including taxis and ride-booking services.

People with disabilities can still continue to access traditional taxis and new ride-booking services when no government subsidy is provided. The Department will continue to monitor the market to ensure that services continue to be provided to the community and advise Government on any changes necessary to ensure adequate wheelchair accessible services are available.¹⁴³

Many taxi industry stakeholders advised the committee that they are concerned about the impacts of the personalised transport industry reforms on the availability of wheelchair accessible services. For example, Mr Trevor Moore advised the committee that the deregulation process would impact on people in wheelchairs who have no other means of transport:

One of the first casualties of deregulation will be the WAT, which is wheelchair accessible taxis, as they are the most expensive to purchase at about double the cost of a sedan. The operational costs are also significantly higher. The lift fee proposed by the government is but a token gesture that only applies to TSS card customers and I have been led to believe that the TSS system is to be limited to over 65s only and all other TSS card users will be moved over to the NDIS scheme.¹⁴⁴

An industry stakeholder who uses a wheelchair advised the committee that he is very concerned about the Government's attitude to servicing people with disabilities:

From what I have been advised, with a deregulated industry there is no incentive for ride-share operators to fit their vehicles to cater for wheelchair accommodation. That would mean people in wheelchairs would not be picked up by ride-share or any other transport operator that comes into the marketplace. The only information I have seen from ride-share with regard to people with disabilities is that they would promote people with disabilities in the ride-share call centres, which is of little assistance to people who need transport and who have restricted mobility. The current system with taxis works with both normal cabs, which can take collapsible wheelchairs,

¹⁴³ DTMR, Response to Question Taken on Notice asked at the Caboolture public hearing on 21 October 2016, 25 October 2016.

¹⁴⁴ Public hearing transcript, Mackay, 20 October 2016, p 11.

*wheelie walkers and other mobility devices, and wheelchair access taxis, or WATs, where a passenger remains in their wheelchair during the time of their journey.*¹⁴⁵

Another issue raised by the taxi industry was that the Wheelchair Accessible Taxi (WAT) service is cross-subsidised by other services because 'they cannot just stand-alone'. The committee was advised:

*The development of the maxi market was a very big step in the right direction, but just being able to go out on a Friday and Saturday night and make a quid sustains that business. It is a tough gig..... With \$82,000 or \$85,000 for a replacement vehicle, it is tough.*¹⁴⁶

Evidence provided by the President of the TCQ outlined the cost for fitting out a maxi-taxi so that it can provide wheelchair accessible services:

*For a completed maxi taxi at the moment you are looking at somewhere between \$82,000 and \$85,000. That includes a chair lift and they have a false floor in them so that they can put in lockdown points, tie-down points and all of that sort of stuff. Because we use them as maxi taxis, which was actually developed in this town as a concept originally, that improves the whole viability of the business as Mark had pointed out. There are changes to the seat configurations. There are fold-up seats and all of that sort of stuff. You are looking at about \$82,000 all up for a vehicle to be completely fitted out with a meter, a hail light and the whole bit in terms of a maxi taxi. In terms of a sedan, it depends on what you are buying. That does not include the cost of the dispatch equipment or the radio equipment or the transmission equipment....It does not include cameras. For cameras you can add on another \$4,000.*¹⁴⁷

Mr Max McBride also raised a concern that wheelchair accessible services cannot get finance from financial institutions to replace these vehicles - 'I know this because we have got one and we are in that boat. We have a vehicle now we have to spend \$20,000-odd on to try and actually keep it going'.¹⁴⁸

Mr Layne Gardiner provided the committee further evidence of this issue:

*To replace an M50 wheelchair licence now is only \$82,000. Banks will not lend money to replace those vehicles. What will happen now is you will have vehicles that are 10 and 12 years old, with 1.5 million kilometres on them, that are absolute buckets taking around wheelchair passengers because that is all the people can do. They cannot get finance to buy a new car. That is a ridiculous situation that you are going to give wheelchair bound people a lesser service than anyone else in the community. I think that is a travesty that has been allowed to happen. This is what the government has changed, from having six years on a normal car to eight years on a wheelchair taxi to unlimited. That will be the situation—that you will have people coming around in things that should be actually at the wreckers and they are driving around people in wheelchairs.*¹⁴⁹

Mr Shane Smith from First Class Taxis welcomed the proposed incentive payments but was concerned that the package has only been costed for the first year and recommended that the scheme should be permanent and funded by the Queensland Government 'as it is the only subsidies provided to the taxi industry and will ensure timely pick up of wheelchair customers'.¹⁵⁰

Another issue raised by stakeholders was the relationship between the National Disability Insurance Scheme and the Taxi Subsidy Scheme. Ms Rheeders raised the following concern:

¹⁴⁵ Mr Bill Simpson, public hearing transcript, Brisbane, 12 October 2016, p 29.

¹⁴⁶ Mr Max McBride, President TCQ, public hearing transcript, Mackay, 20 October 2016, p 15.

¹⁴⁷ Mr Max McBride, President TCQ, public hearing transcript, Mackay, 20 October 2016, p 9.

¹⁴⁸ Public hearing transcript, Mackay, 20 October 2016, p 13.

¹⁴⁹ Public hearing transcript, Cairns, 19 October 2016, p 12.

¹⁵⁰ Submission 58, p 15.

... with the introduction of NDIS and the Taxi Subsidy Scheme there appears to be something that they seem to have overlooked and that is that the Taxi Subsidy Scheme will eventually be transitioned into the NDIS scheme so the only people who will eventually be valid for the TSS subsidy will be those over 65 and partially disabled. For the NDIS they will need to be under 65, permanently disabled and no longer qualify for the TSS subsidy scheme. The concern here is that where they were given a mobility allowance through Centrelink all it has done is transferred it across, where before they could spend it on groceries et cetera. With the NDIS and the overseeing of the NDIS that mobility allowance will be used for transport. However, it is a fraction of what the subsidy is that they are receiving at the moment. The disabled will certainly be disadvantaged by this. I have brought it up to the minister for disabilities here. I have an appointment with her in a little while to highlight that even more to her. There has not been enough investigation on that. That was federally funded to the state. That money will go back to the federal government and the disabled are definitely going to be disadvantaged by that whole process. It definitely needs to be looked into because once they transition into the NDIS they no longer get subsidised.¹⁵¹

DTMR advised the committee at the Caboolture public hearing:

In relation to disability access, people with disabilities can still continue to access traditional taxi and ride-booking services. Taxis will initially continue exclusively to provide services to Taxi Subsidy Scheme members as they have the necessary payments system and meet the disability standards for accessible public transport. Maximum fares will still apply for Taxi Subsidy Scheme services in other wheelchair accessible services regardless of whether the journey was booked or solicited by rank or hail. In developing the new legislation, the Government will investigate opportunities for all personalised transport operators to provide subsidised services to Taxi Subsidy Scheme members.¹⁵²

Committee Comment

The committee has noted the many issues raised by stakeholders in relation to the provision of wheelchair accessible services under the new personalised transport system.

The committee was particularly concerned that under the new system, for various reasons, wheelchair accessible services may not always be available when people with disabilities require them and that there may not be coverage across the state.

The committee has also noted the concerns of stakeholders that funding has only been allocated for year one for the incentive payments for wheelchair accessible services.

The committee is also concerned about how the transfer to the National Disability Insurance Scheme system may impact on the provision of services to people with disabilities.

The committee has agreed to make a number of recommendations to incentivise the industry to make wheelchair accessible services available in sufficient quantity and across the state.

Recommendation 12 – Incentive payments for wheelchair accessible services

The committee recommends the Minister consider extending the incentive payments for wheelchair accessible service beyond year one.

¹⁵¹ Public hearing transcript, Townsville, 19 October 2016, p 7.

¹⁵² Public hearing transcript, Caboolture, 21 October 2016, p 22.

Recommendation 13 – Ongoing support for wheelchair accessible services

The committee recommends the Minister consider providing additional financial support directly to wheelchair accessible services to ensure that these services continue to be provided across Queensland and the Minister consider funding this from the licence fee once the hardship support ceases.

Recommendation 14 – Wheelchair accessible vehicles

The committee recommends the Minister investigate financing the vehicle improvements required to provide wheelchair accessible services if it can be demonstrated that financial institutions will not provide the loan funds for the necessary vehicle improvements at a reasonable interest rate.

Recommendation 15 – Personal Transport Industry Reference Group

The committee recommends the Minister ensure the Personal Transport Industry Reference Group, and any other group established to consult on personalised transport industry reforms, has at least one representative from the disability advocacy sector.

3.7 Non-cash assistance

3.7.1 Fee waivers

The government has announced that \$4.3 million in immediate financial relief has been provided to taxi and limousine operators, licence holders and drivers through the waiving of the following fees:

- Operator Accreditation renewal fees have been waived for 12 months from the renewal date
- Licence renewal fees have been waived for 12 months from the renewal date
- Taxi industry security levy has been waived for 2016-2017
- Taxi and limousine driver authorisation renewal fees have been waived for 12 months.

The DTMR information sheet on fee waivers explains that if you have already paid your fees the renewal date will be extended by 12 months or if you held a taxi or limousine driver authorisation on 11 August 2016, you will be eligible for a fee waiver or refund of one year’s equivalent renewal fee (\$140.65).¹⁵³

The committee requested a breakdown of non-operational costs (fees, charges etcetera paid to the Government) of holding a taxi licence in Queensland. DTMR provided the following table:

| Requirements | Annual Cost |
|--|-----------------------|
| Taxi Industry Security Levy | \$378.80* |
| Licence Renewal (Exempt) or Licence Renewal (Metered) | \$85.70* \$171.40* |
| Certificate of Inspection | \$78.70 |
| Registration <small>(Taxi 4 cylinder)</small> | \$325.60 |
| + Traffic improvement fee | \$56.80 |
| + Compulsory Third Party | \$6131.80 |
| Operator Accreditation Renewal | \$171.00* |

and in addition, DTMR advised it must be noted that:

- the costs above exclude the cost to purchase a taxi service licence

¹⁵³ DTMR, Information sheet for fee waivers, 11 August 2016, pp 1-2.

- Operator Accreditation and Taxi Licence Renewal fees have been waived and the Taxi Industry Security Levy is not being collected for 2016-17, and
- Operator Accreditation will be removed in Stage Two of the reform process.¹⁵⁴

A number of stakeholders pointed to the fact that the savings to individual operators are minimal amounting to approximately \$630 for the driver authorisation renewal fee, the operator accreditation renewal fee and the security levy.¹⁵⁵

A number of stakeholders also pointed out that annual licence fees have often been paid five years in advance and they cannot claim a rebate on those fees.¹⁵⁶

The committee asked DTMR whether annual licence fees paid up to five years in advance could be refunded. DTMR responded that these fees would not be eligible for a refund:

No. The process put in place to waive Driver Authorisation renewal fees is different to the process to waive Taxi Service Licences and Operator Accreditation renewal fees.

Existing Taxi Service Licence and Operator Accreditation holders who had previously renewed for up to five years will still benefit from the fee waivers through the extension of their renewal date by 12 months. For example, if a person's Taxi Service Licence had a renewal date of 2 November 2018 – it was adjusted in the system to have a renewal date of 2 November 2019.¹⁵⁷

Recommendation 16 – Fees paid in advance

The committee recommends the Minister investigate making provision for people who have paid their taxi licence service fees and Operator Accreditation fees in advance to apply for a refund.

3.7.2 Taxi licence valuations

The committee heard evidence from numerous taxi licence owners that the introduction of ride-sharing services in Queensland has resulted in a significant devaluation of their licence values and that the Government's reform process has exacerbated this trend.¹⁵⁸

Evidence has also been provided that 'the changes have left a great lack of confidence in the industry by all financial institutions'.¹⁵⁹

The reduction in the valuation varies from region to region with Brisbane licences having dropped from about \$570,000¹⁶⁰ to \$200,000¹⁶¹. In Cairns they have reportedly dropped from \$600,000 on 2014 to a bank valuation of \$100,000 in 2016.¹⁶² In Bundaberg they have reported to have dropped 50% from \$290,333 (pre-Uber) to a sale on 21 December 2015 of \$146,000.¹⁶³

DTMR advised the committee that the pattern is broadly similar and consistent across other jurisdictions in Australia where ride-share services are operating.¹⁶⁴ DTMR also clarified:

¹⁵⁴ Answer to Question taken on notice at departmental briefing on 12 October 2016, No. 6, 14 October 2016.

¹⁵⁵ See for example, Ms Doreen Awabdy, public hearing transcript, Brisbane, 12 October 2016, p 26.

¹⁵⁶ Ms Jaqui Fiebig, Public hearing transcript, Brisbane, 12 October 2016, p 27.

¹⁵⁷ DTMR, Correspondence, Responses to questions, QON 1, 25 October 2016.

¹⁵⁸ See for example, Trevor Moore, public hearing transcript, Mackay, 20 October 2016, p 11.

¹⁵⁹ Mrs Anne Spain, public hearing transcript, Caboolture, 21 October 2016, p 11.

¹⁶⁰ Mr Max McBride, Public hearing transcript, Mackay, 20 October 2016, p 13.

¹⁶¹ DTMR, answer to a question from the committee, 20 October 2016.

¹⁶² Ms Robyn Bakker, Public hearing transcript, 19 October 2016, p 3.

¹⁶³ Ms Alison Casey, public hearing transcript, Caboolture, 21 October 2016, p 10.

¹⁶⁴ Public briefing transcript, Brisbane, 12 October 2016, p 9.

*In relation to the entry of Uber into the Queensland personalised transport market in 2014 that also corresponded with a decline in the traded licence values. We are a little unclear as to the specific contribution of that factor due to the flat and declining trends in the macro-economic environment as well. There were some declines in household expenditure on transport services, state demand and gross state product. They all had an influence on those traded values.*¹⁶⁵

Mr Max McBride, President of the TCQ put his point of view to the committee:

*As far as I am concerned the \$20,000 is pathetic. The biggest issue we have is nobody knows where we are going. The licences still exist but only on paper. If I was to try to sell mine today, for one, nobody would buy it. Unless they had the money in the bank, they would not be able to buy it because they would never lend it to them, so who knows what its value is? Even then, going forward, where is the industry going? It is no use spending \$50,000 on a licence or something if someone is prepared to pay that now and then find out two years later that the government has put the pen through it and they do not exist. This is the biggest struggle for the industry. We are just sort of drifting. That is why I made the point there that they legalised Uber and then said, 'I suppose now we better work out some rules.' Everybody is just going round and round in circles for at least the next year until something is actually drawn up and put through parliament and passed. Who knows? Then a year later something else might be changed. There is no security into the future anymore.*¹⁶⁶

There appears to be a strong perception in the taxi industry that licences have no value. For example:

*With the current turmoil in our taxi industry, who would pay for a licence when you really do not need one to drive? The answer is no-one will pay and there is no value, as we have already heard from other witnesses. There is no value left in this licence.*¹⁶⁷

Ms Robyn Bakker from Total Taxi Management Cairns advised the committee there have been no recent sales in Cairns because:

*..... no-one is willing to buy, but if you go to a bank and want to use your plate, it is actually considered more of a liability now than an asset at all. These are assets that were previously being used to underpin retirement incomes, future retirement incomes, free of government pensions, not imposing on taxpayers, and for which the banks were very happy to offer you a 60 to 80 per cent loan, knowing that this was actually the scenario.*¹⁶⁸

In Rockhampton the committee was advised that one licence purchased for \$185,000 had sold for \$65,000 about two years ago as a result of the bank foreclosing on the owner's loan:

*She had her mortgage associated with the loan for it. When the values went down, the time was up and she tried to get another vehicle, because the vehicle was worn out. They would not give her any more money. They ended up wanting her to pay out the loan because there was not enough security in it. They foreclosed on her property and now she has no house, she rents in Brisbane and works in the call centre.*¹⁶⁹

In response to a Question Taken on Notice at the Caboolture public hearing on what the residual value of licences is projected to be, DTMR advised:

The value of a taxi licence at a particular point in time is determined by the market. Licences have historically fluctuated according to general economic conditions, market liquidity, interest rates and the attractiveness of other investment opportunities. Licence values are also dependent on

¹⁶⁵ Public briefing transcript, Brisbane, 12 October 2016, p 9.

¹⁶⁶ Public briefing transcript, Mackay, 28 October 2016, p 14.

¹⁶⁷ Mr Walkay Lau, public hearing transcript, Caboolture, 21 October 2016, p 19.

¹⁶⁸ Public hearing transcript, Cairns, 19 October 2016, p 4.

¹⁶⁹ Public hearing transcript, Rockhampton, 20 October 2016, p 6.

a number of factors including the manner in which the licence is operated, the returns received from the licence and expectations of future capital growth.

Queensland taxi licences are perpetual and hold an exclusive entitlement to rank and hail services. Their perpetual nature encourages value retention by providing certainty and business stability to an operator.

The Department has obtained estimates that indicate that at the end of a 5 year transition period the personalised transport market across Queensland will have grown by 13% as a result of induced demand (new trips) and population growth. It is anticipated that in SEQ the rank and hail market that is retained exclusively for taxis will have grown by 5% while taxis competing in the booked market will retain almost 60% of the current market share. Market adjustments outside of SEQ will see much smaller adjustments to taxi market share.

Under stage 2 of the reforms announced by the Queensland Government, no further perpetual taxi licences will be issued. This restriction of supply will assist in ensuring continued value for existing licences. A restriction on new annual taxi licences until at least 2018 will also provide an opportunity for the existing market to stabilise as a result of the reforms.

The specific modelling sought by the Committee is, however, Cabinet-in-Confidence. Any release of this modelling would be at the discretion of the Government.¹⁷⁰

In response to a request for information on last sale prices for taxi licences, DTMR advised that the last taxi licence transfer notified to the department was on 30 September 2016, for a Brisbane conventional taxi licence at a sale price of \$200,000. DTMR also advised that the last new taxi licence issued by the department was on 16 June 2014 for a wheelchair accessible taxi in the Redland Taxi Service Area at a sale price of \$340,400.¹⁷¹

The committee also heard evidence that financial institutions are reconsidering their lending policies on taxi licences and that some licence holders have been forced to sell their homes due to lenders foreclosing on their loans.¹⁷² This evidence was supported by Mr Max McBride, President of the TCQ who advised the committee:

I deal with people from around the state every day who are losing their homes—principally these are in Brisbane—and who are suicidal. The major companies are dealing with a lot of people in those boats. The damage being done is quite substantial. I am not inventing this. I have to get up every morning. From 6.30 in the morning people start ringing me.

I will relate a story of two Italian guys, one with Black & White and one with Yellow. The younger of the two, 81, rang me today. He had me on speakerphone. His brother did not say much. He is 86. The 81-year-old believed that he would lose his home and believed that he had to go back to work. He indicated to me that neither his brother nor he was on a pension. They had paid their way and the one guy who was talking just kept on saying, 'Why is the government doing this to us? What did we do wrong?'¹⁷³

A number of stakeholders asked the Government to provide assistance in relation to this issue, for example, Ms Kristina McKinnon recommended that the government should be looking at the banks giving some of guarantee to assist the industry:

It is the banks that I am really concerned about. They are the ones who will come in and recall on those loans, and they are looking very closely. They do contact me a lot. I do think that would

¹⁷⁰ Public hearing, Caboolture, 21 October 2016, Answer to Question Taken on notice, No. 5, 25 October 2016.

¹⁷¹ Correspondence from the Director-General, DTMR, 20 October 2016, p 2.

¹⁷² See for example, Ms Alison Casey, public hearing transcript, Caboolture, 21 October 2016, p 10.

¹⁷³ Public briefing transcript, Mackay, 20 October 2016, p 17.

*be a great help if either the government or the banks would guarantee these loans so we could at least not lose everything.*¹⁷⁴

In response to a question from the committee at the Caboolture hearing, DTMR advised:

In terms of residual value, it is strongly believed that there is a residual value associated with licences into perpetuity. What that value is we cannot tell you—both today or tomorrow, for that matter.

*Banking issues are individual requirements with the bank. We have no ability—I repeat, no ability—to talk to any finance lender in terms of any individual case or values of licences as it pertains to any individual, corporation or trust. That is totally outside of our remit and it is not something that the banking sector would allow.*¹⁷⁵

The committee has also heard that it is proving very difficult for people to exit the industry as they cannot sell their licences. Mr Gary Walter advised:

*Now on the eve of my retirement, I am forced to remain at work driving this cab until there is action by the government to either guarantee the loans for the people within the industry and assisting the people wanting to get into the industry by assuring the banks that the government is good for the money as the industry is not broken.*¹⁷⁶

Paradoxically, the committee was advised that applications for Centrelink assistance have been rejected as they are valuing licences on the basis of last sale prices even though the last sale was often prior to 2014 when licences began to go down in value. Mr McBride provided the following examples:

*We have had reports from different people who have taken their fathers or mothers to see if they can register them. They could be in nursing homes. There are a couple of different examples. Social Security want some way of justifying that the cab licence is no longer worth anything before they will do anything. That then becomes a problem. One guy I believe put his cab on the market and could not sell it for any amount of money and then took letters back to Social Security so that his father could get the pension, because he could no longer survive in whatever environment he was in at that time. If you want to have a look at that, there are quite a few people within the industry that have gone into that in some depth. It is very difficult for them to get the pension because the cab licence is considered to be worth considerably more than they are worth at the moment.*¹⁷⁷

A number of witnesses asked for support in this regard, for example the CEO of Townsville Taxis provided the following evidence:

Centrelink or those sorts of places is obviously where the owners, operators and drivers are going to eventually draw their income from if this goes by the wayside. Centrelink would look at the taxi licence value as what we would do, and that would be based on the last three or so licences sold at that value. They would not be able to get assistance in that regard because it will be regarded as the asset still having value. There needs to be some sort of clear understanding as to what the value is. If the government says, 'No, it is only worth \$20,000,' or whatever it may be, there needs to be a clear indication as to the value of that licence. If that is the case, the government needs to consider being guarantor of loans as a transition for us through the next few years. I think the government should consider being a guarantor for the loans because

¹⁷⁴ Public hearing transcript, Gold Coast, 14 October 2016, p 16.

¹⁷⁵ Public hearing transcript, Caboolture, 21 October 2016, p 26.

¹⁷⁶ Submission 8, p 1.

¹⁷⁷ Public briefing transcript, Mackay, 20 October 2016, p 18.

*obviously the banks would consider it high risk. From my perspective, the government have actually created this and they need to step up and assist where they can.*¹⁷⁸

Another witness suggested:

*Centrelink is a federal government department, not a state one, but perhaps the members of this committee could take the time to update Centrelink on licence values, as a lot of self-funded retirees walk in there and they think they are millionaires but these licences are worth zero now.*¹⁷⁹

In response to a question from the committee on why the Government focussed on transition instead of compensation, DTMR advised:

We expect that there will still be a significant retention of value in licences. The perpetual licence market will be capped. If you look at the existing perpetual licences, they still have exclusivity to access the rank and hail market. They have a right to provide booked hire services.

*There are no further perpetual releases of those licences. Due to limited supply and high demand for perpetual licences, it has been projected that existing perpetual licences could potentially improve in value over time.*¹⁸⁰

There was a strong message from stakeholders that they are entitled to compensation on the basis that the Government had such a strong influence on the price of licences in the market and this encourages people to invest in the industry. For example, Mr Walkay Lau stated:

The government issued taxi licences on a regulated and limited basis based on demand and population growth. This was the government's way of appreciating the value of the taxi licences year after year. Why? So they can demonstrate to individuals like my parents and everyone behind me that it is a good investment; an investment that is backed by the state government; an investment that would eventually allow my parents to become self-funded retirees. 'She'll be right, mate.' Guess what? It ain't right....

*The continual capital appreciation of taxi licences was an undertaking my parents took on believing if they supported the government they will be supported in return.*¹⁸¹

Committee Comment

The committee was concerned that the reduction in value of taxi licences since 2014 is causing significant hardship to licence owners, especially those that are more exposed due to highly leveraged loans where the family home has been used as collateral, older people who have purchased licences either in their superannuation fund or in-lieu of superannuation and cannot exit the industry, and people with disabilities whose situation can be unpredictable and may also be unable to sell their licences to pay medical bills.

The committee has proposed that the Minister investigate options for assuring lending institutions that taxi licences have retained some value (evidenced by a recent sale for \$200,000 in Brisbane) and working with the Commonwealth Government to provide assistance to individuals unable to access Centrelink benefits due to the deemed value of their taxi licences.

¹⁷⁸ Public hearing transcript, Townsville, 19 October 2016, p 2.

¹⁷⁹ Mr Agron Kello, public hearing transcript, Caboolture, 21 October 2016, p 19.

¹⁸⁰ Public briefing transcript, 12 October 2016, pp 9-10.

¹⁸¹ Public hearing transcript, Caboolture, 21 October 2016, p 18 and p 19.

Recommendation 17 – Taxi licence values

The committee recommends the Minister urgently investigate reports that lending institutions are foreclosing on taxi licence loans and explore options for securing or assuring lending institutions that taxi licences continue to have a residual value.

Recommendation 18 – Centrelink eligibility

The committee recommends the Minister consider providing urgent advice to the Commonwealth Government/Centrelink on estimated current taxi licence values (based on region) to provide assistance to licence holders who are unable to access social security benefits due to asset test provisions which deem the licence to have a value based on the last sale prices.

3.7.3 Taxation on payments made under the IAAP

Stakeholders raised a concern at the Brisbane public hearing that payments made under the IAAP may be treated as taxable income. Mr Peter Whalan advised:

It was on 4BC on talkback radio a couple of weeks ago that it was taxable. Somebody had contacted the ATO and they said it was taxable because of the wording. It was only because of the way it was worded.¹⁸²

Ms Jacqui Fiebig also raised the fact that she had spoken to her accountant about an asset write-down and they advised ‘the only compensation I can get for this is some time in the future if I make a gain on an asset then that comes off my capital gain as a loss. I would rather it be something that is more beneficial than that; something that I can writedown that can help me out’.¹⁸³

Dennis Julian submitted that the payments from the assistance package should be worded to ensure they are tax free.¹⁸⁴

The committee asked DTMR about options for ensuring payments made under the IAAP are not treated as taxable income. DTMR responded:

Income tax is managed by the Australian Taxation Office and imposed under Commonwealth legislation. The department of Transport and Main Roads has not sought advice from the Australian Taxation Office, but understands that the status of payments made under the Industry Adjustment Assistance Package may be dependent on an individual’s circumstances. The department of Transport and Main Roads is therefore unable to provide general advice as to whether a payment made under the Industry Adjustment Assistance Package is considered taxable income.

Payments made under the Industry Adjustment Assistance Package are not subject to taxation imposed by the Queensland Government.¹⁸⁵

¹⁸² Public hearing transcript, Brisbane, 12 October 2016, p 19.

¹⁸³ Public hearing transcript, Brisbane, 12 October 2016, p 28.

¹⁸⁴ Submission 22, p 1.

¹⁸⁵ Correspondence from the Director-General, DTMR, 20 October 2016, p 2.

3.8 Consultation and communication on the IAAP

3.8.1 Consultation

The explanatory notes advised that extensive consultation on personalised transport reform had been undertaken as part of the independent OPT Review commissioned by the Queensland Government.¹⁸⁶

However, Mr Wash from the TCQ advised the committee:

*Broadly speaking, we are aware of the adjustment package that was announced back in August 2016 by the government and we would like to note that at no point during the OPT review were industry adjustment packages discussed or form part of the scope of that review, so any submission that the Taxi Council made in relation to that review was dealing with the specific scope of that review which excluded this very important point because it was really more about the philosophical meanderings of where the industry may be in the future given emerging technologies and we responded accordingly. Thankfully with this bill going before the House there is an opportunity to present to this committee further detail as far as how we see an industry adjustment package operating.*¹⁸⁷

DTMR provided further advice that since 11 August 2016, personalised transport stakeholders have met with staff from the Office of the Minister and on 12 August 2016, invitations were sent out by DTMR to 17 key stakeholder groups within the personalised transport industry, of which eight accepted. Between 17 and 25 August 2016, eight industry briefings were facilitated by DTMR.¹⁸⁸

Stakeholders advised the committee that there was very limited consultation on the modelling or the criteria for the assistance package. For example, Mr Daryl Bain advised:

*In terms of the regulatory process that was used, for other government regulatory processes they had people put in their submissions and there is an independent regulator and they review. All of the consultant reports and everything are put up and it is transparent. None of this was. The only one I could find was a Deloitte submission and it really did not address anything. The green paper addressed some things, but it did not talk about compensation. There was no opportunity for consultation—none—and the white paper was published after the government made their decision or published their decision. We had no opportunity to even work with anyone to try and come to a palatable solution.*¹⁸⁹

Mrs Kristina McKinnon provided some background information on the frustration felt by the industry in relation to the decision making process:

*We have in some parts lost a lot of trust in the government processes up to date for a couple of reasons. Members of my family have spent an enormous amount of time and energy in gathering information, meeting with representatives of the government, writing submissions, reading lengthy review papers and review outcome papers, attending forums and making public statements at forums for the recent OPT review only to come to the conclusion that the government had made its decision on the intended outcome of the review before it had ended. The government has effectively copied the New South Wales model of personalised transport almost in its entirety, including the intended adjustment package. This supports our theory that no consideration was given to the facts and information that was submitted by ourselves and others. No consideration was given to the fact that Queensland and New South Wales are totally different and an effective review would have identified this*¹⁹⁰.

¹⁸⁶ Public briefing transcript, Brisbane, 12 October 2016, p 8.

¹⁸⁷ Public hearing transcript, Brisbane, 12 October 2016, p 7.

¹⁸⁸ Departmental Brief, 7 October 2016, p 3.

¹⁸⁹ Mr Daryl Bain, public hearing transcript – Caboolture, 20 October 2016, p 16.

¹⁹⁰ Public hearing transcript, Gold Coast, 14 October 2016, p 12.

Other stakeholders advised the committee that they had lost trust in the Government and are therefore very concerned about the lack of consultation on the assistance package, for example, Mr Stephen Lacaze advised:

My understanding of the proposed regulation is that it is to grant powers of discretion to the minister to disburse the arbitrarily decided \$100 million taxi adjustment package. In my view, it says to me, 'Trust me, I'm a politician.' Frankly, we in this industry do not trust you. That is how we feel. In the process that has run up to this, right through the OPT, everyone in this industry feels betrayed and bullied..... As a citizen, I actually find both the concept and the process of this to be disturbing. As a taxi industry stakeholder, I find it insulting and feel like a bullying victim or a betrayed spouse.¹⁹¹

Mr Les Gist from Townsville pointed out that 'Consultation involves more than a mere exchange of information. For consultation to work and to be effective, people should be contributing to the decision-making process, not only in appearance but also in fact.'¹⁹²

3.8.2 Communication

In response to a question from the committee on what communication strategy had been put in place to ensure all licencees understand the purpose of the IAAP and the process by which the eligibility criteria will be developed, DTMR advised:

On the announcement of 5 September, an extensive array of communications was released by the department to most industry stakeholders via both web, a range of letters, a range of pamphlets and a range of supporting communication collateral. That was then followed up by over 30 individual and/or group meetings with key members of the industry. It would be fair to say that we have not probably discussed in detail with every single taxi operator or licence holder and nor do we have the capacity to do so. However, we have attempted wherever possible to put out as much information as possible related to the facts associated with this outcome.

In terms of IAAP, as indicated earlier, the intention of that industry adjustment package and what we have put out since 5 September and have dialogued extensively with key members of the industry is that that package is to be determined in consultation with the industry as both part of the stakeholder reference group and also as part of the dialogue that we are having with the industry. We may not, obviously, have accounted for every single person's wishes or wants in terms what they have read and what they have not read and we have no mechanism to do that.¹⁹³

In response to a question from the committee at the departmental briefing on 12 October 2016, DTMR advised that consultation on the proposed IAAP regulation would be conducted through the auspices of the reference committee – 'the purpose of the committee is to determine the hardship criteria would be, what eligibility would such that it is representative of the of the industry's needs'.¹⁹⁴

However, when the Minister announced the creation of the Reference Group on 13 October 2016 he advised that the Reference Group would be engaged directly to help shape the second stage of the Government's reform package and would comprise industry participants, consumer advocates, motorist groups, disability access groups, tourism advocates, social access groups and driver representatives.¹⁹⁵

¹⁹¹ Public hearing transcript, Gold Coast, 14 October 2016, p 18.

¹⁹² Public hearing transcript, Townsville, 19 October 2016, p 5.

¹⁹³ Public hearing transcript – Caboolture, 21 October 2016, p 25.

¹⁹⁴ Public briefing transcript, Brisbane, 12 October 2016, p 6.

¹⁹⁵ Minister for Transport and the Commonwealth Games, Media release, Personalised Transport Industry Reference Group to start, 13 October 2016, p 1.

Committee Comment

During the course of its inquiry, the committee became aware that of a lack of clarity amongst the taxi industry about what the Government was proposing in relation to the Industry Adjustment Assistance Package. While there was a number of high level briefings provided by the Minister and senior officials to the Taxi Council of Queensland and other stakeholder groups, there appeared to be a great deal of confusion amongst the industry as to who would be eligible for payments and how they might be applied.

The committee is strongly of the view that DTMR and the Minister should closely consult with representatives from the various sectors of the taxi and limousine industry (licence owners, lessors, operators, family businesses and individuals) while developing the eligibility criteria for the IAAP and also while determining the process for assessing hardship applications and reviewing decisions and that this should be undertaken before the regulation is made.

The committee was advised by DTMR that the reference committee will be consulted for this purpose but it appears the Reference Group that is to be established in November has been given a clear direction from the Minister to assist with implementation of Stage 2 of the reform process. In addition, the committee was concerned that this Reference Group may not be the appropriate body for consultation on the assistance package as it comprises a large cross section of personalised transport stakeholders, many of which have little direct interest in the IAAP for the taxi and limousine industry.

The committee also had concerns about communication of the reforms to industry participants. Throughout the inquiry on the Bill, taxi industry stakeholders appeared to be unaware of information that was readily available on the DTMR website. The general lack of understanding about the reform process and regulatory changes that have been made, or are planned to be made, often appeared to exacerbate the distress within the taxi industry. While much of the information is available on DTMR's website, individual operators appeared not to be aware of this or were unable to readily access it.

Recommendation 19 – Consultation on the regulation

The committee recommends the Minister seek input from representatives of each of the sectors involved in the taxi and limousine industry, as well as the Personalised Transport Industry Reference Group, prior to the Industry Adjustment Assistance Package regulation being finalised.

Recommendation 20 – Implementation of the assistance package

The committee recommends the Minister, in his second reading speech, outline the consultation process to be undertaken on the proposed regulation, advise the timeline for the finalisation of the regulation, and advise when the first payments are expected to be made under the Industry Adjustment Assistance Package.

Recommendation 21 – Communication strategy

The committee recommends the Minister ensure a comprehensive communication strategy is undertaken following the making of the taxi and limousine industry assistance regulation to ensure all taxi industry participants are informed about the eligibility criteria for payments, how to go about making an application and that communication with the industry remain a priority during the implementation of stage 2 of the reform process.

3.9 Levelling the playing field

3.9.1 Government reforms – Stage 1 and Stage 2

The Government has announced that reforms in the personalised transport industry are to be implemented progressively and will be delivered in stages.

Stage 1 commenced on 5 September 2016 and included retaining exclusive access to rank and hail services and be exclusive providers of services to Taxi Subsidy Scheme members, while allowing ride-booking services to operate legally across Queensland.¹⁹⁶ Ride-booking services can operate legally without a service licence, while a new licencing framework is developed.¹⁹⁷

The Government has amended numerous regulations to level the playing field between taxis and ride-sharing services, including the removal from 5 September 2016:

- of prescriptive requirements for how taximeters must operate
- maximum fares for booked hire services, and
- some regulations relating to customer service standards including appearance of drivers, minimum age limits for drivers, English proficiency and electronic payments.¹⁹⁸

On the other hand, the Government has decided that because taxis will retain exclusive access to rank and hail services a number of specific requirements will be retained for taxis only, including:

- an approved taxi security camera system will still be required in taxis
- maximum fares will remain for taxis obtained at a rank, hailed off the street or provided by the Taxi Subsidy Scheme or wheelchair accessible services while they have been removed for booked hire services
- drivers and taxi operators will continue to have a signed bailment agreement in place that outlines the terms of use for the taxi and fare sharing arrangements
- taxi booking companies will still be required to ensure all booked taxi services meet minimum service levels, and taxis are available 24 hours a day, within their taxi service area.¹⁹⁹

Taxi service areas will also be retained along with licensing conditions that limit the area of operation. Taxi drivers can still source jobs from booking entities like goCatch and Ingogo as they do now. Taxi drivers will also be required to wear a seatbelt at all times while operating a taxi.²⁰⁰

Stage 2, in 2017 will:

- remove Operator Accreditation and the Motor Accident Insurance Commission
- review Compulsory Third Party Insurance classes for both booked hire services and taxis
- consider whether bailment agreements should be regulated
- consider whether security cameras should be required in all personalised transport vehicles
- consider whether minimum standards for security cameras can be set instead of prescriptive requirements, and
- consider whether all personalised transport operators could provide subsidised services to Taxi Subsidy Scheme members.²⁰¹

¹⁹⁶ DTMR, Information sheet for customers, 11 August 2016, p 1.

¹⁹⁷ DTMR, Information sheet for ride-booking drivers, 11 August 2016, p 1.

¹⁹⁸ DTMR, Information sheet for taxi operators, 11 August 2016, p 1 and Information sheet for taxi drivers, 11 August 2016, p 1.

¹⁹⁹ DTMR, Information sheet for taxi operators, 11 August 2016, pp 1-2.

²⁰⁰ Information sheet for taxi drivers, 11 August 2016, p 1.

²⁰¹ DTMR, Information sheet for taxi operators, 11 August 2016, p 2.

Government has announced that while taxi booking companies will no longer need a service contract with the Government, additional requirements will be imposed on all booking entities to ensure they remain accountable for the safe and accessible provision of services during Stage 2.²⁰²

All ride-booking drivers are required to obtain a Taxi Driver Authorisation from 1 November 2016. They are also required to wear a seatbelt and comply with no alcohol and drug limit when providing a ride-booking service.²⁰³

All ride-booking vehicles must have registered, roadworthy and have CTP insurance. They are also required to have a current safety certificate issued.²⁰⁴

Ride-booking driver operators are exempt from Operator Accreditation.²⁰⁵

Stage 2 reforms will introduce the following requirements in relation to ride-booking services:

- an annual licence for booked hire services which will include limousine and ride-booking services
- ride-booking vehicles will be required to obtain an annual certificate of inspection, and
- electronic payment surcharges will be capped at five per cent.²⁰⁶

Stakeholders advised the committee that while the taxi industry welcomes competition, the phasing in approach to reforms has meant that since stage 1 of the reforms were introduced the taxi industry is being forced to compete on a non-level playing field. For example:

*As a taxi industry we are not against competition and never have been, provided it is done on a level playing field. Currently that playing field is a long way off being level. The taxi industry knows that safe and satisfied customers are the key to building strong businesses and this cannot be achieved with an unlevel playing field.*²⁰⁷

Mr Agron Kello provided a concise summary of the issues relating to implementing a level playing field:

*For CTP fairness, there should be one CTP class for all public transport. Security cameras are a must in all public passenger transport. In terms of vehicle identification, there needs to be a ride-booking equivalent to taxis and limousines. We need numberplate recognition that can identify if the vehicle is registered, has the correct CTP and meets its safety inspection requirements. The TMR Queensland rego app is also available, and you can just touch it and it will show that that car is fine; it is currently licensed, inspected and insured. An annual licence fee for all participants in personal transport would save TMR massive compliance costs. The above would even out the current inequities and allow confidence to return to our industry.*²⁰⁸

Mr Bill Simpson concluded his evidence in Brisbane with:

If the government is seriously considering the deregulation of the personalised transport industry, they should make all participants meet the same legislative requirements being met by the taxi and limousine industries prior to deregulation. By that I mean that they should all meet the same safety requirements, both with vehicle roadworthiness inspections and the provision of personal safety equipment for all their passengers; have appropriate insurances in place to

²⁰² DTMR, Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016- 2021, p 13.

²⁰³ DTMR, Information sheet for ride-booking drivers, 11 August 2016, p 1.

²⁰⁴ DTMR, Information sheet for ride-booking drivers, 11 August 2016, pp 1-2.

²⁰⁵ DTMR, Information sheet for ride-booking drivers, 11 August 2016, p 1.

²⁰⁶ DTMR, Information sheet for ride-booking drivers, 11 August 2016, p 2.

²⁰⁷ Mrs Anne Spain, public hearing transcript, Caboolture, 21 October 2016, p 12.

²⁰⁸ Public hearing transcript – Caboolture, 21 October 2016, p 20.

protect passengers; and be anti-discriminatory in passenger acceptance, that is, cater for people with disabilities.

*I call for your review committee to consider the severe impact deregulation will have on the broader community, as well as the financial implications on owners of licences. This type of deregulation is sending a bad message to all small business owners in this state. As owners and operators, we do not object to the competition in the market. However, rather than lower the entry requirements for new players, the bar should be raised to the high standards that existed prior to the reform that is being introduced.*²⁰⁹

Many stakeholders have argued that stage 2 reforms should be bought in urgently. For example, the TCQ explained:

... the impact on the industry is exacerbated at the moment by the fact that there are not a lot of specifics in the regulations and the fact that it has worsened the playing field in terms of how level it is.....

*The uncertainty of that is important. One of the things that we felt would help the industry and help the services that are delivered to the community is that a number of those stage 2 items need to be done now. I receive calls on a daily basis about this issue and asking me questions, 'If I'm a taxidriver and I work in the booked market and in the rank and hail market, do I have to pick which one I want to work in that day because there are two different sets of regulations?' 'If I have a wheelchair-accessible taxi and I am picking up somebody who is in a wheelchair but that person does not comply with the new TSS rules, is that a booked market fee and does that mean that I can charge whatever I want because the fees are uncapped?' It is not that the answers are right or wrong; there are no answers to those questions at the moment and that is a real issue.*²¹⁰

Taxi industry stakeholders raised a general concern that the level of regulation was being lowered to far to level the playing field and that ride-booking services should be more highly regulated. For example:

*Why change our structure? Why do you not bring theirs up to be like us? Make them pay the higher registration. Make them pay the higher licences instead of changing us. Get them to get cameras to see how many of them can afford their cars. Wait until they start doing their rides. We travel for miles. It is so spread out. We work on about 150,000 kilometres a year and they are going to use their own private car and charge less, although I believe that, when it is busy, they up their rates and charge more. A lot of the people are taking Uber into town and taking our taxis out of town, because they are cheaper. Why change us? Why do you not make them do the same as us?*²¹¹

Another witness stated that through the reforms the 'government has taken away the standards and the regulations that not so long ago it was claiming were important for both drivers and consumers'.²¹²

Committee Comment

The committee has noted the removal of certain prescriptive requirements for taxi operators and drivers has already occurred and that Stage 2 of the reform process will consider ways in which to make a more equitable playing field for the personalised transport industry.

The committee has also noted the additional requirements that will apply to the ride-booking industry from 1 November 2016 as well as the proposed licencing system and vehicle inspection regime to be introduced in August 2017.

²⁰⁹ Public hearing transcript, Brisbane, 12 October 2016, p 30.

²¹⁰ TCQ (RPSGroup), public hearing transcript – Mackay, 20 October 2016, p 7.

²¹¹ Mrs Melita Fowler, public hearing transcript – Mackay, 20 October 2016, p 21.

²¹² Ms Anne Awabdy, public hearing transcript, Brisbane, 12 October 2016, p 23.

However, the committee is concerned that until stage 2 legislative amendments are introduced, and further reforms considered, there remains a significant gap between the requirements placed on the taxi industry and those placed on the ride-sharing industry – creating an uneven playing field.

The committee is particularly concerned about the requirement for significantly higher CTP insurance premiums, vehicle safety requirements and driver authorisation and makes recommendation about these issues below.

The committee has also recommended that the new licensing framework which is due to be introduced in August 2017 be introduced more urgently and that fines be increased for soliciting and touting.

3.9.2 Licensing booked hire services

The Government has announced that Stage 2 reforms will introduce an annual licence for booked hire services which will include limousine and ride-booking services. The conditions to be attached to the licence are yet to be announced.

A number of stakeholders provided evidence to the committee about the need for annual licence, for example:

... from an annual licence perspective, obviously there would be an annual licence fee that is charged. I think this needs to be given with strict conditions where perhaps everybody in the personalised transport sector should have a clearly identifiable number plates that can easily be scanned by the Police Service to determine whether they are ridesharing or who they are in the zoo. Without that, who knows? I could go and get a label off eBay and stick it on the back of my car and the next minute I am a ridesharer. I do believe that the licensing needs to be the same across-the-board and everybody must comply with the same conditions.²¹³

The committee has made recommendations regarding the proposed licence and the benefits of applying an annual licence fee in a [previous section](#) of this report related to funding the IAAP.

3.9.3 Taxi insurance, including Compulsory Third Party insurance

Many submitters and witnesses raised concerns about the disparity between insurances paid by the taxi industry and ride-booking services.²¹⁴ One witness pointed out that CTP is the highest inflexible cost for taxis.²¹⁵

TCQ advised the committee that CTP is one of many types of insurance taxis are required to carry. Others include public liability, and comprehensive personal accident to cover injuries in lieu of WorkCover for drivers 'The total quantum of insurance that you find in this space is somewhere around \$10,000 or \$15,000 a year, which is a substantial burden before you pick up your first customer'.²¹⁶

The committee was further advised that the difference between what taxis and private cars are required to pay for CTP insurance is substantial:

On CTP data, class 3 CTP is in the order of \$6,364 a year. Class 1 CTP is \$360. We are talking about a 2,000 per cent difference in the level of CTP. In terms of total insurance, it is difficult to work out the exact total premiums paid, because some of the fleet, mainly the maxi taxis, come under a bus insurance category. The values I gave you before are for conventional and standard type taxis. It seems to be, from our calculations, in the order of about \$20 million in premiums

²¹³ Mrs Angela Rheeders, Townsville Taxis, Public hearing transcript, Townsville, 19 October 2016, p 3.

²¹⁴ See for example, Ms Liz Hasted, Apollo Taxis, public hearing transcript, Caboolture, 21 October 2016, p 2.

²¹⁵ Ms Liz Hasted, Apollo Taxis, public hearing transcript, Caboolture, 21 October 2016, p 2.

²¹⁶ Public hearing transcript, Mackay, 20 October 2016, p 2.

*paid per year. There are about 90 claims per year. That is down from about 190 about 10 years ago.*²¹⁷

The Government has announced while there will be no change to CTP at Stage 1 and there will be a review of CTP insurance classes at stage 2 for both booked hire services and taxis and that premium levels will be based on the claims history for that specific class.²¹⁸ In the mean-time all ride-booking vehicles are required to be registered, roadworthy and have CTP insurance.²¹⁹

The committee asked a question at the Caboolture public hearing, which was taken by DTMR on notice, about whether DTMR could request information from the Motor Accident Insurance Commission on whether alternative insurers, other than the four current providers, were investigated, and whether any alternative insurance models were considered? DTMR provided the following advice from the Motor Accident Insurance Commission (MAIC):

CTP premiums are determined by MAIC (as Regulator of the Queensland CTP scheme) for each vehicle class based on vehicle type and/or use ie cars/sedans, taxis, buses, motor-bikes etc that are registerable in Queensland. There are 24 vehicle classes in Queensland, with Class 1 cars and sedans being the largest single class. Each quarter, the four licensed CTP insurers file premium rates within the upper and lower limits determined by MAIC for each of these 24 vehicle classes. CTP premiums for each vehicle class reflect the expected frequency and cost of claims for that class.

Class 3 (Taxis) has historically paid higher premiums than other vehicle classes. This is primarily a function of exposure as taxis are on the road for significantly longer periods than most other vehicle types and are therefore more at risk of being involved in a crash resulting in personal injury. MAIC has worked closely with the Taxi Council Queensland over many years and provided statistical information to support them in both understanding their claims experience and in their endeavours to reduce crash rates. The current Class 3 (Taxis) relativity adopted by MAIC is 21 times that of Class 1 (cars and station wagons). It should be noted that taxi relativity will reduce from 21 times to 18 times Class 1 premiums as from 1 Jan 2017 following recent decreases in the number of reported claims involving at fault taxis.

*In June 2016 the government commissioned an external review of Queensland's CTP scheme with an independent committee chaired by Mr Henry Smerdon AM, due to report back to government by early December 2016. The committee is currently considering feedback through public submissions and looking at ways to further improve the scheme to ensure it remains affordable, efficient, fair and flexible for all Queensland motorists.*²²⁰

Recommendation 22 – CTP insurance

The committee recommends that as an interim measure (while a new approach to Compulsory Third Party insurance is being developed) the Government consider developing, a single Compulsory Third Party insurance category to apply to taxis and rideshare vehicles.

Recommendation 23 – Payment of registration and CTP insurance

The committee recommends the Government investigate the possibility of personalised transport operators being able to pay their registration and Compulsory Third Party insurance on a monthly basis.

²¹⁷ TCQ (RPSGroup), Public hearing transcript, Mackay, 20 October 2016, p 2.

²¹⁸ DTMR, Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016- 2021, p 20.

²¹⁹ DTMR, Information sheet for ride-booking drivers, 11 August 2016, p 1.

²²⁰ Public hearing, Caboolture, 21 October 2016, Answer to a Question taken on Notice, 25 October 2016.

3.9.4 Vehicle safety standards

The DTMR Strategic Plan stated that the safety of customers and drivers has always been the top priority and advises ‘The new framework sees safety standards strengthened as all personalised transport providers will be held to the same vehicle standards and driver authorisation requirements’.²²¹

The Strategic Plan advised the Government has introduced a requirement for all ride-booking to vehicles to have a sign on the rear of the vehicle when it is being used to provide booked hire services from 1 November 2016 and has introduced some relaxation of regulations relating to customer service standards including removing requirements for drivers to dress neatly and ensuring vehicles are clean and tidy.²²²

The Government has also announced that stage 2 will introduce annual certified inspections of all personalised transport vehicles; that new security camera requirements will be investigated; and fatigue management will be considered in a new chain of responsibility. The Government will also investigate whether security cameras should be required for all personalised transport vehicles.²²³

DTMR advised in its Information sheet for taxi operators that because of their access to rank and hail services, an approved taxi security camera system will still be required in taxis.²²⁴

Stakeholders raised the following concerns with the proposed reforms in term of vehicle safety:

- camera requirements
- ability to track ride-booking vehicles
- vehicle safety certificates, and
- identification of ride-booking vehicles and drivers.

Many submitters and witnesses raised a concern about the fact that ride-booking services are not required to have cameras in their cars, and in particular high-integrity security cameras. Mr Max McBride, President of the TCQ summed up some these concerns:

*The minister did make the comment in that meeting that there was no need for ride-booking vehicles to have cameras because all things were known. The legislation does not require that anyone joins Uber or GoCatch. They can set up their own service with one of these. I do not even know if they need one of these. The cars are not tracked. In fact, Uber itself basically licences the phone. It does not licence a driver and it does not licence a car. There is no guarantee that the car that Uber has approved is being used and there is no guarantee that the driver who is conducting the service has actually been approved or accredited by Uber.*²²⁵

The committee asked about the costs of installing cameras that comply with the current regulations for the taxi industry. One witness advised that the initial cost for MTData cameras is approximately \$8,000 and then there is an additional \$1,500 for the decals.²²⁶

²²¹ DTMR, Queensland’s Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016-2021, August 2016, p 3.

²²² DTMR, Queensland’s Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016-2021, August 2016.

²²³ DTMR, Queensland’s Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016-2021, August 2016, p 3.

²²⁴ DTMR, Information sheet for taxi operators, 11 August 2016, p 1.

²²⁵ Public hearing transcript, Mackay, 20 October 2016, p 14.

²²⁶ Ms Liz Hasted, Apollo Taxis, public hearing transcript, Caboolture, 21 October 2016, p 3.

A witness at the Caboolture public hearing raised a concern about the reduction in vehicle inspections which will now be carried out 1-monthly instead of 6-monthly and indicated:

.. this is retrograde step in passenger safety and even more so when combined with the unlimited life, subject to inspections, of the vehicles. The saving of \$80 per year should not be a consideration when passenger safety is compromised.²²⁷

Recommendation 24 - Cameras

The committee recommends the Minister consider urgently introducing an outcome based regulatory requirement that all taxis and ride-booking vehicles have cameras installed and ensure that the camera footage cannot be tampered with and that it be available for a minimum of three months.

Recommendation 25 – Vehicle safety certificates

The committee recommends the Minister clarify in his second reading speech why the previous requirement for taxis to have a valid safety certificate issued six-monthly has been amended to an annual requirement for all personalised transport vehicles, given the safety implications.

3.9.5 Driver authorisations and screening

The Government has announced that:

- existing ride-booking drivers must obtain a Taxi Driver Authorisation by 1 November 2016
- new ride-booking drivers must obtain a Taxi Driver Authorisation if applying before 1 November 2016
- new ride-booking drivers must obtain a Booked Hire / Taxi(BHTX) Driver authorisation of applying after 1 November 2016, and
- from 1 November 2016, all ride-booking drivers with Taxi Driver authorisation will be automatically transitioned to a BHTX Driver authorisation.²²⁸

All taxi and limousine driver authorisations will remain in place until their renewal date. On renewal, drivers will be granted the new BHTX Driver Authorisation.²²⁹

DTMR advised the committee that new ride-booking drivers will be required to obtain taxi driver authorisation which will ultimately transition to the new booked hire taxi driver authorisation category which consists of taxi, limousine and ride bookings, amalgamating all personalised transport drivers.²³⁰

The Government has regulated that all Driver Authorisation approvals for personalised transport drivers will be subject to criminal history, driving history and medical checks and all drivers must have held an Australian (or recognized equivalent) open or provisional class drivers for at least 12 months and announced that driver arrangements will be reviewed in stage 2.²³¹

The OPT Review recommended that all drivers of wheelchair accessible vehicles must complete the training module for provision of wheelchair accessible services for passengers with disabilities.²³²

²²⁷ Mr Brian Mitchell, Quicksilver Limousines, Public hearing transcript, Caboolture, 21 October 2016, p 28.

²²⁸ DTMR, Information sheet for ride-booking drivers, 11 August 2016, p 1.

²²⁹ DTMR, Information sheet for taxi drivers, 11 August 2016, p 2.

²³⁰ Public briefing transcript, Brisbane, 12 October 2016, p 3.

²³¹ DTMR, Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016-2021, August 2016, p 16.

²³² OPT Review, White Paper, 2016, recommendation 40, p 17.

While there has never been a legislated requirement for training of drivers of wheelchair accessible vehicles with respect to the transportation of disabled persons.²³³ DTMR advised that prior to 5 September 2016, when the regulatory amendments took effect, new applicants for driver authorisations to drive a taxi had been required to complete mandated training:

Although the scope of required training did not extend to competency training to operate a wheelchair accessible taxi, some Registered Training Organisation (taxi booking companies) included this training within their training packages for new drivers.²³⁴

Recommendation 26 – Training for drivers providing wheelchair accessible services

The committee recommends the Minister consider introducing a requirement for all drivers of wheelchair accessible vehicles be suitably trained to provide services for passengers with disabilities.

3.9.6 Registration costs

The committee asked DTMR about whether it currently costs more to register a taxi than an equivalent personal vehicle and if so, whether this would also apply to ride-sharing vehicles. DTMR provided the following advice:

Registration is calculated on the basis of a vehicle’s purpose of use. There is an existing requirement in the Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010 that a registered operator must advise the Department of Transport and Main Roads of a change to the purpose of use of their vehicle. Currently, the registered operator of a ride-booking vehicle would be able to self-nominate any purpose of use, including private.

Taxis and limousines at present incur slightly higher registration fees than vehicles used exclusively for private use. This is as a result of a previous Government’s decision for a three year family vehicle registration fee freeze, which was applied to light passenger vehicles used exclusively for private purposes. As such, while family vehicle registration fees did not increase, fees for all other vehicles used commercially did.

As at 25 October 2016, registration for private vehicles are charged at the following rates (excluding compulsory third party insurance):

| Vehicle Type | Pay Term | Registration Fee | Traffic Improvement Fee | Renewal Total |
|--|-----------|------------------|-------------------------|---------------|
| 2 rotors or 4 cylinders | 12 months | 300.00 | 52.30 | 352.30 |
| 3 rotors or 5 or 6 cylinders | 12 months | 475.00 | 52.30 | 527.30 |
| 7 or 8 cylinders | 12 months | 665.20 | 52.30 | 717.50 |
| Mini Bus - seated capacity above 8 and up to 4.5t Gross Vehicle Mass | 12 months | 743.15 | 52.30 | 795.45 |

²³³ DTMR, Answer to a question asked by the committee, 28 October 2016.

²³⁴ DTMR, Answer to a question asked by the committee, 28 October 2016.

For non-private vehicles, which includes taxis and limousines, registration is charged at the following rates (excluding compulsory third party insurance):

| Vehicle Type | Pay Term | Registration Fee | Traffic Improvement Fee | Renewal Total |
|--|-----------|------------------|-------------------------|---------------|
| 2 rotors or 4 cylinders | 12 months | 325.60 | 56.80 | 382.40 |
| 3 rotors or 5 or 6 cylinders | 12 months | 515.45 | 56.80 | 572.25 |
| 7 or 8 cylinders | 12 months | 721.80 | 56.80 | 778.60 |
| Mini Bus seated capacity above 8 and up to 4.5t Gross Vehicle Mass | 12 months | 806.35 | 56.80 | 863.15 |

A person may also elect to receive input tax credit entitlements (ITCE) in relation to their compulsory third party insurance for taxation purposes. At 1 July 2016, the current difference between receiving ITCE and not receiving it for a class 1 passenger car is \$ 21.40.

During Stage 2 reforms further consideration will be given to the appropriate registration requirements for ride-booking vehicles which will determine registration costs in future.²³⁵

3.9.7 Penalties for non-compliance – soliciting and touting

The DTMR information sheet for drivers specifies that the fine for soliciting and touting will increase from \$243 to \$487.²³⁶

The TCQ argued:

If you are going to create exclusivity, then legislation has to actually define what the services of, say, rank and hail are—the current legislation does not do that—and it is not enough to simply say that there are additional powers and we will seek to enforce it. There has to be a very clear carve out of the market. If that is considered to be such a substantial point of the market underpinning the value of a licence, then it has to be clearly articulated through legislation how that is intended to be executed otherwise the legislation is quite toothless.²³⁷

Ms Gordana Blazevic pointed out to the committee that ‘The key to successful implementation of new regulations lies with compliance and the government’s ability to impose its own laws’.²³⁸

Mr Shane Smith from First Class Taxis on the Gold Coast raised a serious concern that the regulation and legislation proposed to quarantine and protect taxi rank work will not be able to be enforced; and that local councils can determine to create ‘uber’ ranks if they desire and that ranks could be supplied by airports:

The fact that Uber have already established ranks and Uber drivers already accept street hails mean the Industry Adjustment Assistance Package does not provide adequate compensation for the already lost rank work at airports and private businesses and does not adequately provide for the future loss of rank work as Uber establishes more ranks.²³⁹

²³⁵ DTMR, Answer to question from the committee, 25 October 2016, pp 1-2.

²³⁶ DTMR, Information sheet for taxi drivers, 11 August 2016, p 1.

²³⁷ Public hearing transcript, Brisbane, 12 October 2016, p 7.

²³⁸ Public hearing transcript, Rockhampton, 20 October 2016, p 17.

²³⁹ Submission 58, p 10.

This concern was raised by a number of stakeholders, including Mr Max McBride:

The minister also talked about ring fencing rank-and-hail work. He had indicated that Uber had promised him that they would prevent drivers from doing rank-and-hail work. One week after the announcement Uber applied to the Gold Coast City Council for ranks. A week after that they applied to the Brisbane City Council for ranks and a week after that they announced their rank at Brisbane Airport.²⁴⁰

The Limo Action Group also strongly argued for an increase in the fines for touting and illegal operations pointing out that ‘At the moment, to be fined for touting in Queensland is \$485. If you are fined for touting in New South Wales, it is 5,000’.²⁴¹

Other stakeholders pointed out that experience has shown that ‘if you are prepared to pay a fine, you can operate outside the law’.²⁴²

In NSW a rideshare driver who picks up passengers without a booking or touts for a fare, or parks on a road or at a taxi rank and ply for a fare is liable to be fined up to \$5,000 and repeated infringements of this requirement are likely to see a person’s Driver Authorisation revoked.²⁴³

Recommendation 27 – Penalties for non-compliance

The committee recommends the Minister consider significantly increasing the penalty for non-compliance with regulations that protect taxi rank and hail work and illegal operations to a more meaningful level and that the new penalty be introduced urgently.

3.10 Definition of vehicles included in the personalised transport industry

Mr Max McBride raised a concern with the use of courtesy vehicles provided by resorts and hotels:

There is no charge up-front but it is in the hotel tariff. A number of them run services around—Peppers resort for one. They will say, ‘If you want to go down the street, be at reception at 6 o’clock and I will take you wherever.’ They will go down and drop you off wherever you want to go. It is a de facto service. It is going on all the time.... Courtesy vehicles can now be turned into a ride-share vehicle. The clubs really do have that potential. We have seen it in places like Yeppoon the entry of private operators.²⁴⁴

In response to a question on whether vehicles that transfer people on behalf of commercial enterprises (for example hotel shuttle buses) are captured by the definition of a personalised transport vehicle, DTMR advised:

The term ‘personalised transport vehicle’ is not defined in the Transport Operations (Passenger Transport) Act 1994 or subordinate legislation. Hotel shuttle buses and similar transfer services are classified as ‘public passenger vehicles’ under this legislation, but unlike taxi and ride-booking services, these vehicles are not generally available ‘for hire’. A hire service involves the hire of a motor vehicle and a driver under which the hirer controls the destination and who can use the vehicle. Services provided by taxis as classified by the legislation as ‘taxi services’ and ride-booking services are classified as ‘booked hire services’.²⁴⁵

²⁴⁰ Public hearing transcript – Mackay, 20 October 2016, p 13.

²⁴¹ Mr Daryl Huhse, public hearing transcript – Caboolture, 21 October 2016, p 7.

²⁴² Ms Zara Tengrove, Professional Taxis Gold Coast, public hearing transcript, Gold Coast, 14 October 2016, p 3.

²⁴³ NSW Department of Roads and Maritime Services - Point to Point Transport, Hire car and rideshare drivers factsheet – page 4

²⁴⁴ Public hearing transcript – Mackay, 20 October 2016, pp 14-15.

²⁴⁵ DTMR, Answer to additional question, No. 4, 25 October 2016.

Hotel shuttle services may be provided through a number of different models. For example, where the service is provided without charge, it may be classed as a courtesy transport service. Other services may operate in a manner similar to bus services where a passenger pays a fare or other consideration to use a vehicle with other passengers. Others may be considered charter services. Such services are not classed as ‘booked hire services’ or ‘taxi services’ under the legislation.

Committee Comment

The committee has noted the advice from the department that hotel shuttle services and their relationship to the personalised transport industry.

The committee is, however, concerned by the advice from the department that the term ‘personalised transport vehicle’ is not defined in the Transport Operations (Passenger Transport) Act 1994 or subordinate legislation.

Recommendation 28 – Definition of personalised transport vehicle

The committee recommends the Minister provide clarification in his second reading speech on whether the term ‘personalised transport vehicle’ will be defined in the *Transport Operations (Passenger Transport) Act 1994* or in subordinate legislation.

3.11 Impact on Government revenue

3.11.1 Stamp duty

The committee asked DTMR to provide information on stamp duty revenue in relation to the transfer of taxi licences over the last two years and the estimated future impact of the reforms on stamp duty revenue.²⁴⁶

DTMR responded by advising that the Under Treasurer advised that transfer duty is payable on the transfer, or agreement to transfer, of a Queensland taxi licence or limousine licence with or without a motor vehicle and any relate equipment. The duty rates applicable are as follows:

| Dutiable value | Duty rate |
|----------------------------------|---|
| Not more than \$5,000 | Nil |
| More than \$5,000 up to \$75,000 | \$1.50 for each \$100, or part of \$100, over \$5,000 |
| Between \$75,000 to \$540,000 | \$1,050 plus \$3.50 for each \$100, or part of \$100, over \$75,000 |
| Between \$540,000 to \$1,000,000 | \$17,325 plus \$4.50 for each \$100, or part of \$100, over \$540,000 |
| More than \$1,000,000 | \$38,025 plus \$5.75 for each \$100, or part of \$100, over \$1,000,000 |

and that the Office of State Revenue (OSR) does not use a unique identifier when assessing a taxi licence transfer. A taxi licence transfer is assessed as a transfer of a ‘business asset’:

²⁴⁶ Correspondence to the Director-General, DTMR, 13 October 2016.

*Therefore, OSR is unable to provide revenue data information that can specifically identify the impact on transfer duty revenue in relation to the transfer of taxi licences over the last two years or the estimated future impact on transfer duty revenue.*²⁴⁷

3.11.2 Public transport revenue

At the Caboolture public hearing the committee asked DTMR whether DTMR could provide the modelling work that had been undertaken regarding the impact that the ridesharing industry would have on passenger transport services. DTMR provided the following advice:

As advised in the response to the questions on the PricewaterhouseCoopers report on modelling taken at the hearing on 12 October 2016, that document is Cabinet-in-Confidence and any release would be at the discretion of the Government.

*The Department of Transport and Main Roads is providing Emerging Trends in Passenger Transport (**attached**) which discusses broader trends for the future of public passenger transport, market dynamics and customer expectations, and the role of the Department of Transport and Main Roads in achieving its service delivery objectives. The document does not focus on the role of ride-booking services in particular, although these services play a role in the future provision of transport generally.*

*The document, and the information it contains, was prepared for internal use by the Department of Transport and Main Roads, and does not represent government policy. The document is provided to the Committee for information only to inform its deliberations, and therefore it is requested that the document is not publically released.*²⁴⁸

Recommendation 29 – Impact on public transport sector

The committee recommends the Minister, at the second reading stage, provide an analysis of the revenue impact of ride-sharing services on the Queensland public transport sector, detailing:

- annual figures since 1 July 2014
- the impact in different regions
- the impact on both buses and rail, and
- the impact on patronage of already marginal outer suburban evening and week-end services.

Recommendation 30 – Future impact on public transport sector

The committee recommends the Minister provide a report to Parliament by 1 September 2017 providing an analysis of the revenue impact of the personalised transport industry reforms on the Queensland public transport sector for the 2016 to 2017 financial year.

²⁴⁷ Correspondence from the Director-General - DTMR, 20 October 2016, p 1.

²⁴⁸ Public hearing – Caboolture, 21 October 2016, Answer to a Question on Notice No. 7, 26 October 2016.

4. Compliance with the *Legislative Standards Act 1992* – amendments to TOPTA

4.1 Fundamental legislative principles

Section 4 of the LSA states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the House.

4.1.1 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

Delegation of legislative power – Clause 141

Clause 141 proposes to insert new section 155A – Taxi and limousine industry assistance regulation.

Pursuant to section 155A(1)(a) and (b), a regulation may provide for a scheme for the payment of financial assistance to certain persons who have held or hold a taxi service licence or a limousine service licence, other than a special purpose limousine service licence.

Section 155A(2) provides examples of matters that a regulation may prescribe:

- (a) the criteria for eligibility to receive financial assistance; or
- (b) proof of eligibility;
- (c) applications for financial assistance;
- (d) the period within which applications for financial assistance may be made;
- (e) the provision of additional information or records by applicants;
- (f) the determination of applications for financial assistance;
- (g) conditions on payment of financial assistance;
- (h) the review of decisions relating to applications for financial assistance;
- (i) the amount payable to a person who is eligible for financial assistance;
- (j) the repayment of all or part of financial assistance paid to a person who
 - (i) was not eligible for the assistance; or
 - (ii) did not comply with conditions on payment of the assistance.

Section 155A(3) provides that the section, and any regulation made under the section, will expire two years after the section commences.

In terms of compensation, the explanatory notes advise that transitional assistance payments of \$20,000 per taxi service licence capped at two licences per holder and \$10,000 per limousine service licence other than special purpose limousine service licences, will be made.²⁴⁹

Potential FLP issues

²⁴⁹ Explanatory notes, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, p 2.

Section 155A(2) provides for financial assistance to taxi licence and limousine service licence holders due to the introduction of ride sharing services in Queensland such as Uber. Section 155A(2)(a)-(j) provides examples of several matters which may be subject to regulation in relation to the financial assistance package to be offered to taxi and limousine licence holders.

It is arguable that taxi and limousine licence holders are entitled to know the exact nature of the compensation package available to them including how compensation will be determined and by what method a decision can be reviewed. While the matters contained in the regulation will be subject to disallowance and considered by the Legislative Assembly, given their importance, it is arguable that they would be better placed in the primary Act in terms of transparency and accessibility for affected stakeholders.

This potentially breaches section 4(4)(a) of the *Legislative Standards Act 1992*, which provides that a Bill should allow for the delegation of legislative power only in appropriate cases and to appropriate persons. As noted in the Office of the Queensland Parliamentary Counsel FLP Notebook, this matter is concerned with the level at which delegated legislative power is used.

The former SLC commented adversely on regulation making powers being too generally expressed. The SLC considered that allowing a regulation to 'make provision about a matter for which this Act does not make provision or enough provision' was an inappropriate delegation. It could also be argued that the use of the term 'may' by section 155A makes the section too general and a definitive list should be provided.

The explanatory notes do not comment on section 155A(2) as a potential FLP issue.

Committee comment

The committee notes that section 155A(2) provides examples of matters which may be prescribed by regulation in relation to the financial assistance to be provided to the taxi and limousine industry.

However, given the importance of the financial compensation package to affected licence holders the committee is of the view that it would have been preferable for a definitive list of matters, with provisions, to be placed in the primary Act. The committee has discussed this issue in [section 3.2.1](#) of this report and made recommendations accordingly.

4.2 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. While the notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins, they did not include any discussion on the potential FLP issues discussed above.

Appendix A – List of Submissions

| Sub # | Submitter |
|-------|--|
| 001 | Darryl Fink and Liz Sharp |
| 001 | Darryl Fink and Liz Sharp – supplementary submission |
| 002 | Peter Drought |
| 003 | David Walker |
| 004 | Davina and David Thomas |
| 005 | David Henderson |
| 006 | Bus Industry Confederation (Heavy Vehicle National Law amendments) |
| 007 | Graeme Lawler |
| 008 | Gary Walter |
| 009 | Christine Dore |
| 010 | Name Suppressed |
| 011 | Gareth Hughes |
| 012 | Jason Steel, John Steele and Louise Steel |
| 013 | Total Taxi Management Cairns |
| 014 | Steve Cryer |
| 015 | David Notaras |
| 016 | Jennifer Robinson |
| 017 | Keolis Downer (Heavy Vehicle National Law amendments) |
| 018 | RACQ |
| 019 | Gerry Lucas |
| 020 | MTH Auto Care |
| 021 | Peter and Beryl Whalan |
| 022 | Dennis Julian |
| 023 | Confidential |

| | |
|-----|--|
| 024 | Ross Gibson |
| 025 | Accent Luxury Limousines |
| 026 | Stanley and Dorothy McCallum |
| 027 | Sylvian Fleuriau and Cheryl Plucknett |
| 028 | Confidential |
| 029 | Liz Hasted |
| 030 | Confidential |
| 031 | Cairns Taxis |
| 032 | Jeanette Andrews |
| 033 | Noel Andrews |
| 034 | Peter and Michelle Andrews |
| 035 | Robert Hayles |
| 036 | Name Suppressed |
| 037 | Australian Logistics Council (Heavy Vehicle National Law amendments) |
| 038 | Confidential |
| 039 | Alison Casey |
| 040 | Darren and Kristina McKinnon |
| 041 | Stephen Lacaze |
| 042 | Gympie Golden City Cabs Pty Ltd |
| 043 | John and Dorelle Taylor |
| 044 | Anne Spain |
| 045 | Confidential |
| 046 | Complete Taxi Management |
| 047 | Lindsay and Karen Brown |
| 048 | Stewart Casey |
| 049 | Confidential |
| 050 | Brendan Casey |

| | |
|-----|---|
| 051 | Darcy Grieve |
| 052 | Norman and Carole Casey |
| 053 | David and Lucija Hooke |
| 054 | Darryl Briaes |
| 055 | Peter and Tanya Moessinger |
| 056 | Confidential |
| 057 | Robert and Jann Brant |
| 058 | First Class Taxis Pty Ltd |
| 059 | Stanthorpe Cabs and Limousines |
| 060 | Confidential |
| 061 | Rainbow Beach Taxi |
| 062 | Professional Taxis Gold Coast |
| 063 | Australian Trucking Association (Heavy Vehicle National Law amendments) |
| 064 | Australian Livestock and Rural Transporters Association (Heavy Vehicle National Law amendments) |
| 065 | Rafael Sosa |
| 066 | Taxi Council Queensland |
| 067 | Logan City Bus Service (Heavy Vehicle National Law amendments) |
| 068 | Bill Simpson |
| 069 | Pamela Cole |
| 070 | Gold Coast Cabs |
| 071 | Australia NZ Policing Advisory Agency (Heavy Vehicle National Law amendments) |
| 072 | Shane Holley |
| 073 | Confidential |
| 074 | Geraldine Simson |
| 075 | Anne Awalody |
| 076 | Glenda Hawthorn |
| 077 | Teena Macregeorgos |

| | |
|-----|---|
| 078 | Steve Shepard |
| 079 | Mimi Macquarie |
| 080 | Carole Casey |
| 081 | Wayne Brazel |
| 082 | Angelo Santomauro |
| 083 | Peter Tse and Elita Chan, John and Mary-Rose Tse |
| 084 | Beverley and Errol Davey |
| 085 | Confidential |
| 086 | Limousine Action Group |
| 086 | Limousine Action Group – supplementary submission |
| 087 | Jacqui Fiebig |
| 088 | Geoff Noble |

Appendix B – Witnesses at the public briefings

Proposed amendments to HVNL Act and HVNL

| Public briefing - 12 October 2016 - Brisbane |
|---|
| <p>Department of Transport and Main Roads</p> <ul style="list-style-type: none">• Ray Van Kuyk, Deputy Director-General, Translink Division• Christina Heffner, A/Executive Director (Legislation and Standards) <p>National Transport Commission</p> <ul style="list-style-type: none">• Anna Beesley, Manager (Legislative Policy)• Jeremy Wolter, Manager (National Law) <p>National Heavy Vehicle Regulator</p> <ul style="list-style-type: none">• Ray Hassall, Executive Director, Regulatory and Legal Services (Chain of Responsibility) |

Proposed amendments to TOPTA

| Public briefing - 12 October 2016 - Brisbane |
|---|
| <p>Department of Transport and Main Roads</p> <ul style="list-style-type: none">• Ray Van Kuyk, Deputy Director-General, Translink Division• Peter Milward, General Manager, Passenger Transport Integration, Translink Division• Suzanne Rose, Executive Director, Service Policy, Translink Division |

Appendix C – Witnesses at the public hearing – Brisbane

Proposed amendments to HVNL Act and HVNL

Public hearing - 12 October 2016

- Gary Mahon, CEO, Queensland Trucking Association - Australian Trucking Association
- Mathew Munro, Executive Director, Australian Livestock and Rural Transporters Association
- Graeme Hoare, National Vice President, Australian Livestock and Rural Transporters Association

Proposed amendments to TOPTA

Public hearing - 12 October 2016

- Benjamin Wash, Chief Executive Officer, Taxi Council of Queensland
- Mark Wallace, Director, RSP Group appearing with Taxi Council of Queensland
- Shane Holley, Managing Director, Cabs2000
- Bill Parker, General Manager, Yellow Cabs (Qld)
- Peter Andrews and Michelle Andrews
- David Hooke and Lucy Hooke, Directors, Western Suburbs Taxi Depot
- Peter Whalan
- Doreen Awabdy
- Anne Awabdy
- Jacqui Fiebig
- Bill Simpson

Appendix D – Witnesses at the public hearing – Gold Coast

Proposed amendments to TOPTA

| Public hearing - 14 October 2016 |
|---|
| <ul style="list-style-type: none">• David Henderson, Director, Limobiz Pty Ltd• Colin Duffield, Owner, Accent Luxury Limousines• Sacha Moore, Administration and Leasing, Professional Taxis Gold Coast• Zara Trengrove, Operations and Management, Professional Taxis Gold Coast• Kristina McKinnon, Owner, McKinnon Taxi Pty Ltd• Stephen Lacaze• Darryl Briais• Shane Smith, First Class Taxis• Tom Diluzio and Melanie Diluzio, First Class Taxis• Wayne Brazel• Carole Casey |

Appendix E – Witnesses at the public hearing – Cairns

Proposed amendments to TOPTA

Public hearing - 19 October 2016

- Bob Roberts, General Manager, Cairns Taxis
- Robert Hayles, Cairns Taxis
- Robyn Bakker, Director, Total Taxi Management Cairns
- Graeme Lawler
- Noel Beitzel
- Anthony Russo
- Layne Gardiner

Appendix F – Witnesses at the public hearing – Townsville

Proposed amendments to TOPTA

| Public hearing - 19 October 2016 |
|---|
| <ul style="list-style-type: none">• Angela Rheeders, General Manager, Townsville Taxis• Brett Hoban, Fleet Compliance Officer, Townsville Taxis• Les Gist, CEO, Supreme Taxi Co• Neil Savina, Owner, CABSAV Taxi-Cab Operations• Shane Smith, First Class Taxis• Lillian Doyle, Acacia Limousines Townsville• Phil McNamara |

Appendix G – Witnesses at the public hearing – Rockhampton

Proposed amendments to TOPTA

Public hearing - 20 October 2016

- Donna-Maree Donoghue, Manager, Rockhampton Yellow Cabs
- Peter Anderson, Rockhampton Yellow Cabs
- Colin Liddy, Rockhampton Yellow Cabs
- Ron Ware, Yeppoon Yellow Cabs
- Cecilia Hooper, Manager, Emerald Taxis
- Gordana Blazevic, CEO, Gold Coast Cabs
- Les Williams
- Christine Dore
- Errol Davey
- Wendy Lamb

Appendix H – Witnesses at the public hearing – Mackay

Proposed amendments to TOPTA

| Public hearing - 20 October 2016 |
|--|
| <ul style="list-style-type: none">• Max McBride, President, Taxi Council of Queensland• Benjamin Wash, Chief Executive Officer, Taxi Council of Queensland• Mark Wallace, Director, RSP Group, appearing with Taxi Council of Queensland• Trevor Moore• Melita Fowler• Mervyn George Fisher |

Appendix I – Witnesses at the public hearing – Caboolture

Proposed amendments to TOPTA

Public hearing - 21 October 2016

- Liz Hasted, Apollo Taxis
- David Thomas
- Greg Collins, Managing Director, Complete Taxi Management
- Maria Collins, Manager, Complete Taxi Management
- Jacqui Fiebig, Committee Member, Limo Action Group
- Daryl Huhse, Committee Member, Limo Action Group
- Amandeep Singh, Complete Taxi Management
- Alison Casey
- Noel Spain and Anna Spain
- Darryl Bain
- Glenda Hawthorn
- Deni Mauro
- Agron Kello
- Waikay Lau
- Brian Mitchell, Owner and Operator, Quicksilver Limousines
- Ray Van Kuyk, Deputy Director-General, Translink Division, Department of Transport and Main Roads
- Peter Milward, General Manager, Passenger Transport Integration, Translink Division, Department of Transport and Main Roads
- Suzanne Rose, Executive Director, Service Policy, Translink Division, Department of Transport and Main Roads