

**Transport and Other Legislation  
(Personalised Transport Reform)  
Amendment Bill 2017**

**Report No. 37, 55<sup>th</sup> Parliament  
Public Works and Utilities Committee  
May 2017**



## Public Works and Utilities Committee

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### Acknowledgements

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## Abbreviations

ABN	Australian Business Number
ATO	Australian Tax Office
COI	Certificate of Inspection
CTP insurance	Compulsory Third Party Insurance
DA	Driver Authorisation
DTMR/department	Department of Transport and Main Roads
draft amendment regulation	Draft Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation 2017
FLP	fundamental legislative principle
GST	Goods and Service Tax
IAAP	Industry Adjustment Assistance Package
LSA	<i>Legislative Standards Act 1992</i>
Minister	Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply
MAIC	Motor Accident Insurance Commission
OPT Review	Opportunities for Personalised Transport Review
OQPC	Office of Queensland Parliamentary Counsel
PTIRG	Personalised Transport Industry Reference Group
QCAT	Queensland Civil and Administrative Tribunal
RSDAA	Ride Share Drivers Association of Queensland
SPE Act	<i>State Penalties Enforcement Act 1999</i>
Five Year Strategic Plan	<i>Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016-2021</i>
TCQ	Taxi Council Queensland
the bill	Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017
TO(PT)A	<i>Transport Operations (Passenger Transport) Act 1994</i>
TORUM	<i>Transport Operations (Road Use Management) Act 1995</i>
Passenger Transport Regulation	Transport Operations (Passenger Transport) Regulation 2005
TSS	Taxi Subsidy Scheme

## Chair's foreword

This Report presents a summary of the Public Works and Utilities Committee's examination of the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 and the draft Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation 2017.

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.

The bill proposes amendments to transport and other legislation to implement comprehensive industry reform to the personalised transport industry. The legislation retains exclusive access to rank and hail work for taxis with increased infringement penalties, while ensuring that all booked hire drivers and vehicles are licenced to provide the service, will have appropriate Compulsory Third Party insurance cover and will have a framework for fatigue management.

I am pleased that following detailed consideration of the evidence provided to the committee the recommendations contained in the report were agreed to unanimously. Amongst other things, the committee has recommended that all booked hire vehicle services have public liability insurance cover, there be increased sanctions for rideshare drivers who repeatedly operate outside the regulatory framework, and that vehicles currently used under a special purpose limousine licence retain the right to serve alcohol.

There were a number of issues on which government and non-government members of the committee did not agree. One of these was the proposed requirement for vehicles to have security cameras installed only if they are a taxi or where a passenger pays for the journey in cash or in person by electronic means during the journey. I support this approach and I am of the view that it will provide customers with a choice to book a taxi with a camera or a vehicle without a camera. It will also allow taxis in smaller communities and rural and remote areas, to continue to operate without cameras, and limousine services to continue to provide high profile customers with the required level of personal privacy.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the bill. I also thank the committee's secretariat and the Department of Transport and Main Roads.

I commend this Report to the House.



Mr Shane King MP

Chair

## Recommendations

### **Recommendation 1** **3**

The committee recommends the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 be passed.

### **Recommendation 2** **14**

The committee recommends the Minister:

- continue to explore opportunities to reduce the costs of administering the regulation of the personalised transport industry without compromising compliance, and
- consider developing on-line systems for driver authorisation and booked hire licence applications in line with technological developments.

### **Recommendation 3** **17**

The committee recommends the Minister consider options for ensuring that vehicles currently operating under a special purpose limousine licence can continue to serve alcohol and have access to certain priority lanes, including:

- retaining special purpose limousine licences, or
- changing the criteria for perpetual limousine licences to include the specifications for these vehicles, and revisiting the number of licences to ensure that sufficient perpetual limousine licences are available for purchase or lease.

### **Recommendation 4** **21**

The committee recommends proposed section 72(4)(a) of the bill be amended to clearly indicate that the ability to accept a booking in person only applies to a taxi service.

### **Recommendation 5** **25**

The committee recommends:

- the bill be amended to require booking entities to report to the department when a driver has been disaffiliated on the grounds of serious misconduct
- the department, as part of its driver authorisation processes, maintain a register of disaffiliated drivers and the reason for the disaffiliation
- the register be available for booking entities to check individual drivers if required, and
- an appeals mechanism be put in place to provide drivers with the right to dispute the record.

### **Recommendation 6** **38**

The committee recommends the Minister amend the proposed legislation to ensure:

- all personalised transport industry payment transactions are facilitated through an authorised booking entity
- all transactions undertaken by a holder of booking entity authorisation or under the booked hire service licence must be accompanied by a tax invoice or itemised receipt, and
- each transaction is recorded for auditing purposes.



**Recommendation 7** **45**

The committee recommends the Minister seek to establish industry standards for fatigue management and that these standards include:

- a maximum number of driver hours within a defined period to combat fatigue, and
- a maximum shift length across the personalised transport industry.

**Recommendation 8** **45**

The committee recommends the Minister as soon as practicable, outlines the data requirements for chain of responsibility parties and ensures that the data required:

- at a minimum, is sufficient for the department to monitor fatigue management, and
- includes the time each driver is logged onto the driver platform through the use of developing technology.

**Recommendation 9** **49**

The committee recommends the Minister make a commitment to undertake a review of Compulsory Third Party insurance categories 18 months after commencement of the draft amendment regulation to assess whether the inclusion of limousines in the new class 26 category with ridesharing vehicles is having a detrimental impact on the premiums for limousines.

**Recommendation 10** **51**

The committee recommends the bill be amended to require:

- all parties in the proposed chain of responsibility are appropriately covered by public liability insurance, and
- evidence of public liability coverage (such as a certificate of currency) to be provided before key authorities and licences are issued, for example (but not limited to) before a booking entity authority is issued, or if a driver is a sole operator, before the booked hire service licence is issued.

**Recommendation 11** **59**

The committee recommends:

- the Minister commit to reviewing driver and passenger safety in the personalised passenger industry in the 18 months following commencement of the amended camera requirements and report to Parliament on the findings
- the review include an assessment of whether the risk-based approach to security cameras has been successful, and
- if the review shows there is a higher risk profile in vehicles without cameras, the Minister consider introducing a requirement for security cameras in every vehicle used in the personalised transport industry.

**Recommendation 12** **65**

The committee recommends the Minister:

- facilitate development of an industry standard for driver conditions in the personalised transport industry in consultation with the Personalised Transport Industry Reference Group
- commit to a review of driver working conditions 18 months after the removal of the legislative requirement for bailment agreements to ensure current standards are being maintained, and
- report to Parliament on the review findings in relation to whether the independent contractor and bailment arrangements have upheld appropriate industrial conditions.

**Recommendation 13** **72**

The committee recommends the bill be amended to provide that where a driver has had a driver licence suspension under proposed new section 91ZJ and commits another three offences within the subsequent three year period it will attract a longer driver licence suspension (for example three months) or cancellation of their driver authorisation.

**Recommendation 14** **72**

The committee recommends the drafting of proposed section 91ZK be reviewed to ensure it will achieve its intent of enabling the chief executive:

- to suspend a driver authorisation where the driver does not hold a Queensland driver licence, and
- prevent a driver licence being issued to a driver who meets the suspension criteria under 91ZJ but does not hold a current driver licence.

**Recommendation 15** **77**

The committee recommends the Minister:

- fast track the recruitment of the proposed additional compliance officers
- introduce a legislative requirement for the publication of quarterly/monthly details of compliance activities including the number of vehicles inspected or intercepted and the number and nature of defect notices or Penalty Infringement Notices issued
- consider introducing a legislative requirement for all authorised booking entities to provide digital records of driver activity (available from existing and developing technology) to the Department of Transport and Main Roads to investigate personalised transport related offences, and
- ensure the maximum number of departmental compliance staff are focussed on on-road compliance by exploring opportunities for Department of Transport and Main Roads to authorise Inspection Stations to carry out the proposed annual vehicle safety inspections for personalised transport vehicles.

**Recommendation 16** **81**

The committee recommends that in order to ensure suitable administrative arrangements and independent oversight of the regulation of the personalised transport industry the Minister:

- ensure that an ombudsman, or equivalent entity, is allocated responsibility for dealing with disputes in the industry in a timely manner
- create a senior position within the Department of Transport and Main Roads dedicated solely to the administration of the industry, and
- ensure appropriate mechanisms are in place for referring administrative disputes between parties in the industry to the Queensland Civil and Administrative Tribunal.

## 1 Introduction

### 1.1 Role of the Committee

The Public Works and Utilities Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's primary areas of responsibility are:

- Main Roads, Road Safety, Ports, Energy and Water Supply, and
- Housing, Public Works and Sport.

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 (FLPs), and
- for subordinate legislation – its lawfulness.

### 1.2 Inquiry process

The Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 (bill) was introduced into the House on 21 March 2017 by the Hon. Mark Bailey MP, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply (Minister) and referred to the committee for consideration.

In accordance with the Standing Orders, the Committee of the Legislative Assembly required the committee to report to the Legislative Assembly by 15 May 2017.

The committee resolved to extend the bill inquiry to include consideration of the related proposed draft Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation 2017 (draft amendment regulation) that was tabled on 9 March 2017.<sup>2</sup>

On 22 March 2017, the committee wrote to the Department of Transport and Main Roads (DTMR/department) seeking advice on the bill, and invited stakeholders and subscribers to lodge written submissions.

The committee received 328 submissions (see Appendix A) and received written advice from DTMR in response to matters raised in submissions on 19 April 2017 and 24 April 2017.

The committee held a public briefing with DTMR on 20 April 2017 (see Appendix B) and a public hearing was held on the same day (see Appendix C). The committee received answers to Questions Taken on Notice on 24 April 2017.

Advice received from DTMR has been published on the [committee website](#).

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

<sup>2</sup> Tabled paper no. 5517T377, tabled on 9 March 2017 (see [pages 116 – 150](#)).

### 1.3 Policy objectives of the bill

The purpose of the bill is to give effect to the stage two of the personalised transport reform program. The explanatory notes advised that the bill proposes amendments to the *Transport Operations (Passenger Transport) Act 1994* (TO(PT)A) and other legislation, including the following measures to:

- strengthen safety standards including establishing a general duty relating the management of fatigue, a requirement for zero blood alcohol levels for the drivers of all public passenger vehicles, and providing a specific power to make regulations relating to the use of security cameras in vehicles
- encourage customer choice within a fairer regulatory framework including introducing a new licensing framework for booked hire services and for taxi service licences, preserving existing taxi service licences and existing limousine service licences, and allowing limousines to be used to provide booked hire services, and removing provisions relating to peak demand taxi permits
- reduce red tape and allow industry to innovate and improve their service offerings including replacing the requirement for a person administering taxi services to hold a service contract with a simplified authorisation regime for all booking entities, and removing legislative requirements for taxi service bailment agreements between operators and drivers
- ensure industry accountability including establishing a new chain of responsibility to ensure each party involved in providing taxi and booked hire services takes reasonable steps to prevent the commission of an offence and to minimise safety risks, imposing significant financial sanctions and non-financial sanctions for unauthorised taxi or booked hire services, and establishing audit powers for investigating legislative compliance, and
- make other minor consequential amendments to various Acts.<sup>3</sup>

### 1.4 Consultation on the bill

The explanatory notes specified the following consultation was undertaken:

- the Personalised Transport Industry Reference Group (PTIRG) was established following the announcement of the government's reform program to provide an avenue for stakeholder engagement and input (the PTIRG includes representatives from sectors including the taxi, limousine and ride-booking industries; consumer, driver, motorist and tourism advocacy groups; and social and disability access groups)
- a series of workshops were held in late 2016 and early 2017 to ensure broader stakeholder engagement and consultation – topics included the Industry Adjustment Assistance Package (IAAP), accessibility, accountability and safety with key themes identified:
  - safety
  - the need for an equitable regulatory framework, and
  - financial assistance for existing taxi and limousine industry participants to transition to the new framework
- the Department of Premier and Cabinet, Queensland Treasury, the Department of Justice and Attorney-General, Queensland Health and the Queensland Police Service were consulted on the proposed amendments and were 'broadly supportive', and
- the Queensland Productivity Commission was consulted in relation to the Regulatory Impact Statement System.<sup>4</sup>

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<sup>3</sup> Explanatory notes, pp 1-3.

<sup>4</sup> Explanatory notes, pp 8-9.

### **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 which it will achieve and consideration of the information provided by the department and from stakeholders, the committee is recommending that the bill be passed.

#### **Recommendation 1**

The committee recommends the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 be passed.

## 2 Examination of the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017

### 2.1 Introduction

#### 2.1.1 Background to the bill

The explanatory notes advised that Queensland's taxi and limousine industries are 'heavily regulated' under TO(PT)A which is administered by DTMR and that the market has been transformed in recent years:

*The legislation regulates market entry restrictions, driver authorisation and operator accreditation requirements, vehicle requirements, fares, safety and security measures, customer service standards, accessibility measures and driver conditions.*

*The emergence of new technology based innovations in recent years has transformed the market for personalised transport services, including taxi, limousine and ride-booking services. At a time of significant structural change in this sector, it is important to provide a policy and regulatory framework that acknowledges existing, new and potential industry participants and allows existing businesses to adjust while also accommodating new market entrants.<sup>5</sup>*

The Queensland Government commissioned an independent review of personalised transport services in October 2015. Following completion of the Opportunities for Personalised Transport Review (OPT Review) the government released *Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016-2021* (Five Year Strategic Plan) on 11 August 2016.

The Five Year Strategic Plan outlined the proposed reform of Queensland's personalised transport industry, including introducing a fairer regulatory framework across the personalised transport industry, strengthening safety standards, providing customers with greater choice and flexibility, driving innovation and improved customer service standards through reduced red tape, and ensuring accountability and clearly defined obligations across the industry.<sup>6</sup>

Stage one of the reforms was implemented in 2016 through amendments to the Transport Operations (Passenger Transport) Regulation 2005 (Passenger Transport Regulation) and other subordinate legislation. The explanatory notes advised that the 2016 amendments 'strengthened safety standards and provided customers with greater choice by allowing booked hire services to be provided in vehicles other than taxis'.<sup>7</sup> The Minister advised in the explanatory speech to the bill that the 2016 amendments removed nearly 80 requirements on the existing taxi and limousine industry and the stage one reforms were accompanied by a \$100 million IAAP 'to help the existing taxi and limousine industry through the period of structural adjustment'.<sup>8</sup>

With regard to implementation of the IAAP, DTMR advised:

*Fee waivers have been provided to the existing industry, and incentives for wheelchair accessible services are now in place through a \$20 payment for drivers of these services. More than \$59 million in transitional assistance payments has been made to existing holders of taxi and limousine service licences. Distribution of a \$26.7 million hardship fund to eligible taxi and limousine service licence holders and operators is due to commence this month. Business advisory services will also be implemented in the near future.<sup>9</sup>*

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<sup>5</sup> Explanatory notes, p 1.

<sup>6</sup> Explanatory notes, p 1.

<sup>7</sup> Explanatory notes, p 2.

<sup>8</sup> Minister, Queensland Parliament, Record of Proceedings, 21 March 2017, p 599.

<sup>9</sup> Public briefing transcript, 20 April 2017, p 2.

Submissions from the taxi and limousine industry on the current bill suggested that compensation should be provided to the taxi and limousine industry, in particular that government should 'buy back' taxi and limousine services licences.<sup>10</sup>

In response the department advised:

*The provision of industry adjustment assistance is consistent with the approach to implementing legislative reforms associated with National Competition Policy and generally endorsed by state and federal governments, including in response to similar personalised transport reforms in other jurisdictions. The approach adopted is that there should not be a presumed right to compensation for economic losses due to pro-competitive reform, however, adjustment assistance has been made available but only where there were net social benefits in doing so.*

*While the personalised transport reforms are expected to result in significant consumer benefits, the magnitude of funding required for a licence buy-back would outweigh the expected benefits of reform.<sup>11</sup>*

The Transportation and Utilities Committee's 2016 report on the Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, which included provisions relating to the IAAP for the taxi industry, made several recommendations relating to the proposed reform process.<sup>12</sup>

### **2.1.2 Objectives of the reform process**

The purpose of the current bill is to give effect to the second stage of reform by introducing a new licensing and authorisation framework for booked hire services and a new industry chain of responsibility.

The explanatory notes to the bill stated:

*The amendments contained in this bill are the result of extensive policy analysis and consultation with the personalised transport industry and other stakeholders, both during the OPT Review and since the release of the Strategic Plan. Various policy options have been considered in determining how best to achieve the objectives of personalised transport reform.*

*The amendments contained in this bill are considered the best way of achieving these objectives.<sup>13</sup>*

One of the objectives of the personalised transport reform, which is being implemented in part through this bill, 'is to provide a fairer regulatory framework across the personalised transport industry'.<sup>14</sup> The explanatory notes explained that government regulation will be maintained only to the extent necessary to ensure safety, equitable access and accountability in the provision of personalised transport services:

*Less government regulation will encourage more innovation in the delivery of services leading to improved customer outcomes. Consumer benefits resulting from personalised transport reform are expected to be significant and include more competitive fares, shorter waiting times, higher quality services and greater convenience.<sup>15</sup>*

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<sup>10</sup> See for example, submission 20, pp 30-32 and p 65 and submission 36, p 2.

<sup>11</sup> Correspondence, 24 April 2017, pp 3-4.

<sup>12</sup> The Transportation and Utilities Committee Report can be accessed at <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T1949.pdf>, The Government Response to the Committee Report can be accessed at <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T2228.pdf>

<sup>13</sup> Explanatory notes, pp 3-4.

<sup>14</sup> Explanatory notes, p 1.

<sup>15</sup> Explanatory notes, p 4.

DTMR advised at the public briefing that the bill contains comprehensive changes that will apply to all existing industry participants and will also anticipate new entrants and that the new legislative framework 'attempts to balance the benefits to customers from new market entrants while ensuring the safety of these services. The regulatory settings have been designed to provide consistency and uniformity across the industry wherever possible, but also take into account the difference between services where relevant'.<sup>16</sup>

The Minister, in the explanatory speech, advised the bill 'is the result of a measured, consultative approach and it delivers an agile, modern and simplified regulatory framework':

*This next stage of reform demonstrates that we have listened to the views of stakeholders, including through the Personalised Transport Industry Reference Group and have addressed, as best we can, many of the challenges they face. The reforms in this bill are practical, equitable and enforceable and strive to support a robust and evolving industry into the future. The outcome will be a regulatory framework that promotes safe and accessible services, greater customer choice, innovation and accountability across the industry.*<sup>17</sup>

The explanatory notes stated that the proposed personalised transport reform model 'is broadly consistent with approaches adopted in all other Australian jurisdictions in encouraging greater customer choice in the booked hire services market while maintaining regulation in necessary areas such as safety'.<sup>18</sup>

#### Stakeholder views

Numerous submissions from the taxi and limousine industry contended that the bill does not create a level playing field. For example, one submitter pointed to the bill's 'failure' to mandate 'universal standards for all passenger transport vehicles to have identical minimum standards for in-vehicle cameras, driver duress alarms, hard-wired GPS vehicle tracking and identifying DTMR number plate series'.<sup>19</sup>

#### Department response

DTMR responded that it is an objective of the bill is to provide a fairer regulatory framework across the personalised transport industry and this is achieved through measures such as the introduction of a licensing framework for booked hire services:

*However, it is not possible or appropriate to create an entirely level playing field due to differences in the nature of services being provided. In particular, rank and hail services cannot be regulated in exactly the same way as booked hire services due to the different characteristics of these services. For example, it is appropriate to set maximum fares for rank and hail services while imposing a requirement to provide a fare estimate for booked hire services.*<sup>20</sup>

### **2.1.3 Commencement**

Clause 2 of the bill states that the amendments contained in the bill will commence on a day to be fixed by proclamation. The explanatory notes provided that 'the amendments are proposed to commence in stages from June 2017 to allow sufficient time for industry to prepare for the changes and adjust its business practices to comply with the new framework'.<sup>21</sup>

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<sup>16</sup> Public hearing transcript, 20 April 2017, p 2.

<sup>17</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 600.

<sup>18</sup> Explanatory notes, p 9.

<sup>19</sup> Submission 20, p 9.

<sup>20</sup> Correspondence, 24 April 2017, p 4.

<sup>21</sup> Explanatory notes, p 10.



In the explanatory speech the Minister advised:

*The bill has been delivered over two months ahead of schedule without compromising on quality. The phased commencement of the bill is proposed from mid-2017 to allow time for implementation. This is particularly important to allow industry participants to prepare for the new framework and adjust business models to ensure they comply with the new requirements.*<sup>22</sup>

The committee sought clarification at the public briefing about which sections of the bill would commence on or before 9 June 2017. DTMR advised that it is still working through the sequencing of commencing those provisions but it is intended that some will start prior to 9 June:

*... I cannot tell you which clauses at this stage. In terms of implementation, there is a package of subordinate legislation that needs to go through as well. Some of it has been tabled in parliament and there will be another regulation to follow.*

*The intention is for implementation to be phased in over a period of about six months. Determining the appropriate time for commencement will be based on a number of things. We will be consulting with industry to ensure that they have enough time to mobilise and implement. Then the department has some system changes—some of those back-end system changes—that we need to make sure are ready as well.*<sup>23</sup>

#### **2.1.4 Implementation costs**

The explanatory notes advised that costs associated with the new booked hire service licensing and booking entity authorisation regimes will primarily be recovered through the introduction of associated licence and authorisation fees; some additional funding was secured to provide for enhanced compliance activities, particularly targeted at persons providing booking service; and additional costs of implementation will be met from existing departmental resources.<sup>24</sup>

#### **2.1.5 Draft amendment regulation**

The committee resolved to include consideration of the associated draft amendment regulation in its consideration of the bill. The draft amendment regulation proposes amendments to the Passenger Transport Regulation and the Motor Accident Insurance Regulation 2004.

DTMR advised at the public briefing on the bill:

*... the draft regulation only deals with specific issues that the minister was required to table under section 155B of the Transport Operations (Passenger Transport) Act 1994, or as we know it TO(PT)A. As required by section 155B of TO(PT)A, the draft regulation responds to recommendations of the former Transportation and Utilities Committee in relation to booked hire service licences, compulsory third party insurance, security cameras and training for drivers providing wheelchair accessible services. The draft regulation also addresses signage requirements for vehicles providing booked hire services to ensure signs are sufficiently visible from the front and the rear of the vehicle by meeting specifications relating to size, position and material.*<sup>25</sup>

The department also advised that drafting of other regulation amendments to implement the second stage of the reforms is being finalised, and all regulation amendments will be progressed following passage of the bill.<sup>26</sup>

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<sup>22</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 601.

<sup>23</sup> Public briefing transcript, 20 April 2017, p 15.

<sup>24</sup> Explanatory notes, p 4.

<sup>25</sup> Public briefing transcript, 20 April 2017, p 2.

<sup>26</sup> Public briefing transcript, 20 April 2017, p 2.

### 2.1.6 New and replaced definitions used in the bill

There are a number of terms used in the bill that are either new or have been replaced (see a number of these definitions below). Some of these terms have been used commonly in the past to mean something different, for example, the term *taxi service* will be redefined to only include the service where the taxi *plies or stands for hire* in a public place.

The terms *booked hire service* and *booking service* include what has traditionally been known as ridesharing services as well as taxi services that are booked (not where a taxi *plies or stands for hire*).

Under the proposed legislation a taxi is a motor vehicle stated in a taxi service licence and a taxi service licence allows the holder to provide both a *taxi service* and a *booked hire service*.

A number of stakeholders raised concerns about the terminology used in the bill.<sup>27</sup> For example, the Limousine Association of Queensland pointed out that while limousine licences were being retained, the new licensing framework proposed in chapter 7 of the bill only refers to taxi services and booked hire services:

*... the need to differentiate or to delineate the mediums of service delivery within the personalised transport reforms in three distinct categories—taxis, limousines and rideshare. There needs to be the use of consistent terminology throughout the act, regulations and departmental papers and policy documents. The Queensland’s Personalised Transport Horizon strategy refers to ‘ride booking’. The amendment bill and TMR literature refers to ‘booked hire’. Globally, it is ‘rideshare’. The media refer to it as ‘rideshare’.*<sup>28</sup>

Another stakeholder submitted that the attempt to create mutually exclusive legal definitions for taxi services and booked hire services fails to achieve this aim and suggested the definitions should be reworded ‘to truly create mutually exclusive definitions for taxi services and booked hire services’.<sup>29</sup>

Another illustration of the misunderstanding caused by the terminology relates to stakeholder concern about the ability to make bookings ‘in person’ (proposed new section 72(4)(a)). The drafting of this section of the bill is discussed in the section of this report - [Protecting taxis exclusive access to tank and hail services](#).

#### Proposed definitions

- ***hire on-the-spot***, in relation to a vehicle and its driver, means arranging, in person, the hire of the vehicle and its driver for a journey to start immediately or shortly after the vehicle and its driver are hired (defined in proposed new section 69 of the bill)
- ***taxi service*** is redefined in proposed new section 70 as a public passenger service for a journey that starts in Queensland provided by the hire of a motor vehicle that has not more than 12 seating positions (including the driver’s position) and a person to drive the vehicle; and under which the vehicle *plies or stands for hire* by members of the public in a public place
- ***plies or stands for hire*** is also clarified in proposed new section 70 - the circumstances in which a vehicle *plies or stands for hire* by members of the public in a public place include where the vehicle is made available for *hire on-the-spot* by members of the public, including, for example, a vehicle standing at a taxi rank or other place where members of the public might reasonably expect taxis to be available for *hire on-the-spot*; or the vehicle having a sign, marking, light or other thing on it that might reasonably indicate to members of the public it is a taxi or another vehicle available for *hire on-the-spot*

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<sup>27</sup> See for example, submission 20, pp 34-42.

<sup>28</sup> Public hearing transcript, 20 April 2017, p 3.

<sup>29</sup> Submission 20, p 10 and p 107.

- **booked hire service** is defined in proposed new section 71 as a public passenger service for a journey that starts in Queensland provided by the hire (other than the *hire on-the-spot*) of a motor vehicle that has not more than 12 seating positions (including the driver's position), or is a limousine, and a person to drive the vehicle; and that may be used by the public or a substantial part of the public, regardless of whether there is a condition of using the service
- **booked hire vehicle** definition will be included in schedule 3 of TO(PT)A (see clause 31 of the bill) to mean a motor vehicle stated in a booked hire service licence; or a substitute vehicle for the licence
- **booking service** is defined in proposed new section 72 as a service under which a person arranges a booking for the person or another person to drive a motor vehicle to provide a booked hire service
- proposed new section 73 defines a person who **provides** a taxi service or booked hire service using a motor vehicle to include a person who is the operator of the service; drives the vehicle; or, for a booked hire service, provides a booking service for the service
- an **operator** will be redefined in schedule 3 of TO(PT)A as a person carrying on the business of providing a public passenger service
- **authorised driver** will be defined in schedule 3 of TO(PT)A to mean a person who holds a driver authorisation, including driver authorisation on a provisional basis under section 30.<sup>30</sup>

## 2.2 New licensing framework for booked hire services and taxi services

### Amendments proposed in the legislation

Clauses 17 of the bill proposes chapter 7 (Taxi service licences), 7A (Peak demand taxi permits) and 8 (Limousine licences) be removed. Clause 18 proposes the replacement of chapter 7 to regulate taxi services, booked hire services (including those provided in a limousine) and booking services.<sup>31</sup>

While existing limousine licences will be preserved, no new licences will be issued and the bill will enable limousines to be used to provide booked hire services.<sup>32</sup> It is proposed that special purpose limousine service licences be phased out over three years.<sup>33</sup>

The bill also provides that taxi service licences in force immediately before commencement of the amendments will be preserved (original taxi service licence) and a new licensing framework will be introduced for taxi service licences issued following commencement.<sup>34</sup>

The explanatory notes advised the main purpose of proposed new chapter 7 is to 'regulate taxi services, booked hire services and booking services to ensure safety, accessibility and accountability in relation to the provision of these services':

*The provisions in chapter 7 achieve these objectives by, among other things, requiring a person to hold a licence to provide these services in a motor vehicle and that the vehicle meets other requirements; requiring entities providing booking services for booked hire services to be authorised; introducing a chain of responsibility for taxi and booked hire services under which all persons in the chain are responsible for ensuring the safety of their activities including managing*

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<sup>30</sup> See explanatory notes, pp 12-14.

<sup>31</sup> Explanatory notes, p 12.

<sup>32</sup> Explanatory notes, p 2.

<sup>33</sup> Explanatory notes, p 5.

<sup>34</sup> Explanatory notes, p 2.

*driver fatigue; providing significant penalties to encourage compliance; and ensuring consumer protection for fares and payment surcharges.*<sup>35</sup>

The department advised that ‘taxi, limousine and booked hire service licences will all permit a person to operate in the booked hire service market, providing customers with greater choice and reducing fares and wait times. In contrast, only taxis will be able to provide rank and hail services’.<sup>36</sup>

### **2.2.1 Booked hire service licence (including limousines)**

The Minister advised in the explanatory speech:

*This bill delivers greater choice and flexibility for customers within a fairer playing field by introducing a new licensing framework for booked hire services with an annual licence. The purpose of the new licence is to ensure that the persons providing services are suitable and accountable and that the vehicles used are safe.*<sup>37</sup>

#### Amendments proposed in the legislation

The bill proposes that a person providing a booked hire service be required to hold a booked hire service licence and for the vehicle used to provide the service to meet certain requirements. Sections 91J to 91M of the bill introduce the new licensing framework for booked hire services. There is no limit on the number of booked hire service licences that may be issued.<sup>38</sup>

DTMR advised the booked hire service licence will:

- allow a person to provide booked hire services—that is, the hire of a driver and a vehicle where a prior booking is made
- ensure that only suitable persons provide services and that vehicles used are safe and have the appropriate consumer protections, and
- be introduced alongside other licensing products in the personalised transport market—taxi licences and limousine licences, both of which are being retained.<sup>39</sup>

DTMR also advised that as part of the application process for the licence the department will check that the vehicle is registered appropriately with the correct class of CTP insurance.<sup>40</sup>

Proposed new section 91K allows a regulation to be made to provide for issuing, or refusing to issue, booked hire service licences:

*It is intended that the regulation will require, for example, that the person is a suitable person to hold a licence and has not committed an offence against relevant transport legislation (see new section 69 for the definition of relevant transport legislation) or previously had a licence suspended or cancelled.*<sup>41</sup>

Proposed new section 91L provides:

- the term of a booked hire service licence is the period prescribed by regulation or,
- if no period is prescribed, the period of not more than one year stated in the licence, and

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<sup>35</sup> Explanatory notes, p 12.

<sup>36</sup> Public briefing transcript, 20 April 2017, p 3.

<sup>37</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 600.

<sup>38</sup> Explanatory notes, p 20.

<sup>39</sup> Public briefing transcript, 20 April 2017, p 3.

<sup>40</sup> Public briefing transcript, 20 April 2017, p 12.

<sup>41</sup> Explanatory notes, p 20.

- booked hire service licences are not renewable, but the licence holder may apply for a new licence before the existing licence expires.

The explanatory notes advised that ‘initially, it is intended to issue booked hire service licences for a term of one year’.<sup>42</sup> New section 91M proposes that a booked hire service licence not be transferable.

#### Stakeholder views

The majority of submitters from the ride-booking industry did not consider that a booked hire service licence is necessary.<sup>43</sup> Uber recommended in its submission that the requirement for a booked hire service licence be removed<sup>44</sup> and provided further explanation at the public hearing:

*This proposed licence does not provide any additional safety or customer protection benefits than those already achieved through the driver authority and the vehicle safety measures already in place. We do not agree with the booked hire vehicle licence as it is process for the sake of process. It will add an expensive regulatory barrier to entry for Queenslanders who wish to access a flexible source of income.*<sup>45</sup>

Shebah agreed and stated that the ‘barrier to entry’ is a big issue for the women only drivers using its platform.<sup>46</sup>

Numerous submissions from the taxi industry supported of the booked hire service licence on the basis it would ensure uniformity across the entire personalised transport industry.<sup>47</sup> For example, one submitter stated:

*Service Licence – this is good idea, you need to be able to identify who owns and operates and therefore is ultimately responsible for, what license and car. Standards must apply, no criminals etc. The fee scale is unfair though, ride share should be paying much more, at \$250 a year I would have to operate my taxi for around 2000 years to get back my COMPULSORY investment in the old Taxi Industry, while ride share can now do nearly the same work for a paltry \$250 per year.*<sup>48</sup>

It was also suggested by taxi industry submitters that there should be a cap on the number of booked hire service licences issued in each area.<sup>49</sup> For example, one submitter provided:

*... while an unlimited number of ride share drivers means that each ride share driver goes broke quicker, it also means Taxis/Limos go broke quicker as well. It also means more inexperienced drivers on the road. ... There are also congestion, parking, traffic, ranking and the inevitable violence that comes with too many animals and not enough food issues. Numbers should be capped and it goes without saying criminals must not be allowed licenses.*<sup>50</sup>

#### Department response to issues raised in submissions

The department responded to issues raised in submissions by reiterating that the new booked hire service licence will ensure that the vehicles used to provide booked hire services are safe and persons involved in providing these services are suitable and accountable and:

*In order for a booked hire service licence to be issued, the vehicle to be used must meet certain requirements – for example, the vehicle must have a valid Certificate of Inspection (COI), the*

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<sup>42</sup> Explanatory notes, p 20.

<sup>43</sup> See for example, submission 29, p 10.

<sup>44</sup> Submission 29, p 10.

<sup>45</sup> Public hearing transcript, 20 April 2017, p 22.

<sup>46</sup> Public hearing transcript, 20 April 2017, p 24.

<sup>47</sup> See for example, submission 6, p 4, submission 8, p 4 and submission 26, pp 2-3.

<sup>48</sup> Jason, John and Louise Steele, submission 1, p 2.

<sup>49</sup> See for example, submission 3, p 2 submission 14, p 2, submission 16, p 2 and submission 247, p 1.

<sup>50</sup> Jason, John and Louise Steele, submission 1, p 2.

*correct class of CTP insurance and appropriate registration. A booked hire service licence can also be suspended or cancelled if these vehicle requirements are no longer met.*

*Furthermore, a person may be refused a booked hire service licence if they have previously committed offences related to providing a booked hire service or taxi service including safety related offences or offences of providing unauthorised services. As a result, unsuitable persons can be excluded from providing personalised transport services.*

*Finally, it is not intended that there will be a limit or cap on the number of booked hire service licences but to allow the market to match supply with demand. Opening up the market for booked hire services is likely to bring considerable benefits to consumers predominately from more competitive fares and shorter wait times.<sup>51</sup>*

## **2.2.2 Licence fee for booked hire services (including limousines)**

The annual fee for the booked hire service licence will be \$237.26 and DTMR advised that the fee ‘is set on a cost recovery basis in accordance with the Queensland government’s principles for fees and charges’.<sup>52</sup> The current annual renewable fee for a taxi licence is \$171.40 which is similar to the annual renewal fee currently charged for limousine service licences.<sup>53</sup>

### Stakeholder views

Rideshare industry submissions did not generally support a fee for entry into the market due to concerns that it creates an additional barrier to entry and consequently reduced employment opportunities.<sup>54</sup> Uber explained that the licence fee would impact on the number of vehicles available to provide the service and:

*We know that one in three Queensland drivers were unemployed when they started driving with Uber.... Here in Queensland around half of ridesharing drivers drive for less than 10 hours per week. If the cost and administrative burden of getting on the road goes up it will discourage people from ridesharing on a part-time basis. This would mean that instead of having more drivers on the road when they are needed the most, say on a Friday or Saturday night when the Valley’s population swells, we end up with the same problem the traditional industry had—not enough cars on the road when they are needed and wanted the most.<sup>55</sup>*

The submission from Uber also noted that the proposed fees and approach would make Queensland one of the most expensive states to get on the road as a ridesharing driver.<sup>56</sup>

Shebah advised the committee:

*.... I think pushing the costs up higher will definitely have an impact on our drivers. They are not wealthy people and they are trying very, very hard to make ends meet. They are passionate, committed and incredibly hardworking. We are putting limits on how often they can drive. We are trying to work very much within a framework of WorkSafe driver limits—stop every two hours, take care of yourselves, take care of each other, have regular driver meetups. We are really building a community of women who support one another. We are trying to do something pretty supportive but those costs will have a really big impact.<sup>57</sup>*

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<sup>51</sup> Correspondence, 19 April 2017, p 5.

<sup>52</sup> Public briefing transcript, 20 April 2017, p 3.

<sup>53</sup> DTMR, public briefing transcript, 20 April 2017 p 7.

<sup>54</sup> See for example, submission 11, p 2, submission 37, p 1, submission 74, p 1, submission 259, p 2 and submission no 281, p 1.

<sup>55</sup> Public hearing transcript, 20 April 2017, p 21.

<sup>56</sup> Submission 29, p 13.

<sup>57</sup> Public hearing transcript, 20 April 2017, p 26.

The Ride Share Drivers Association of Queensland (RSDAA) provided evidence that with all the proposed new legislative requirements a driver partner is looking at about \$1,000 in fees up front and, given the low rates paid to driver partners and the increased cost of petrol, the RSDAA does not support any extra charges being imposed on drivers:

*If we believe the figures contained in the submission by Uber that there are 10,000 drivers in Queensland who are offering booked hire services and 50 per cent of those work fewer than 10 hours a week, I would suggest that these extra imposts being put forward would force that 50 per cent out of booked hire work. That is 5,000 people. .... I have heard numerous people here today say that ridesharing has allowed a lot of people to get off welfare. With these extra added burdens, they are most likely going to go back to being on welfare. From the information that I have—and I do not have any actual figures, but the phones are ringing all day, every day; ... there is a large turnover of drivers due to insufficient earnings.<sup>58</sup>*

The RACQ recommended that the government remove the proposed annual licence fee for booked hire services and replace the proposed annual certificate of inspection with the current annual safety certificate requirement for vehicles used in rideshare to reduce the regulatory burden.<sup>59</sup>

On the other hand, submitters from the taxi and limousine industry contended the licence fee should be increased to help fund increased regulatory and enforcement costs or to fund increased financial assistance to the taxi and limousine industry.<sup>60</sup> One submission recommended the fee be set at \$2,500 to recoup some of costs for the IAAP and to ‘guarantee honest and committed industry participants’.<sup>61</sup>

The Taxi Council Queensland (TCQ) recommended the licence fees for booked hire service drivers and authorised entities be increased ‘to help fund the expected increase in regulatory and enforcement costs for government and to better reflect the level of ‘trust’ being placed on licence holders’.<sup>62</sup>

The Limousine Action Group recommended that the annual licence fee be increased as the proposed ‘low’ fee raised questions about fairness to the existing players in the market and that the fee should cover the increased compliance and administrative costs.<sup>63</sup> The submission pointed out that the proposed booked hire service licence fee is less than 10 per cent of the current annual special purpose limousine licence ‘booked hire licence’ fee which is \$2480.80 and is only \$65.86 more than the renewal fee for perpetual limousine licences for which licencees have had to pay up to \$150,000.<sup>64</sup>

#### Department response to issues raised in submissions

In response to issues raised in submissions, DTMR reiterated that the fees that apply to industry participants to operate in the personalised transport market have been adjusted to incorporate a fee category specifically for a booked hire service licence and the inclusion of a fee for booked hire services extends the framework to all providers of personalised transport services:

*The calculation and application of fees and charges must be in accordance with approved whole-of-Government policies – specifically, the Principles for Fees and Charges published by Queensland Treasury. The Principles for Fees and Charges stipulates that in setting fees, agencies must have regard to the full cost of providing goods or services.<sup>65</sup>*

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<sup>58</sup> Public hearing transcript, 20 April 2017, p 32.

<sup>59</sup> Public hearing transcript, 20 April 2017, p 33 and submission 17, p 3.

<sup>60</sup> See for example, submission 235, p 1, submission 27, p 5, submission 209, p 1 and submission 237, 3.

<sup>61</sup> Mr Wayne Brazel, submission 13, p 1.

<sup>62</sup> Submission 10, p 19.

<sup>63</sup> Submission 36, p 4.

<sup>64</sup> Submission 36, p 4.

<sup>65</sup> Correspondence, 19 April 2017, pp 5-6.

The department also advised that it had undertaken an analysis of the cost structure associated with the booked hire service licence to determine the appropriate fee that should be charged and:

*The booked hire service licence fee has accordingly been set at \$237.26. Revenue collected from the booked hire service licence fee is expected to fully offset the cost to the department of administering the licence from an operational, policy and compliance perspective. The largest component of the licence fee (approximately two-thirds) relates to additional costs for compliance officers to undertake compliance and enforcement activities. Other anticipated costs that will also be recovered by the fee include: lodgement, assessment and processing of applications; online and system changes; administration and policy support; product costs and call centre support.*<sup>66</sup>

DTMR acknowledged the licence fee may represent an additional barrier to entry for some, particularly those providing booked hire services part-time, and explained it is considered necessary to ensure the suitability of persons providing services and the safety of vehicles:

*Furthermore, a licensing requirement to provide a booked hire service is not considered unreasonable given a licence is required for entry into a variety of markets.*

*Personalised transport fees will be reviewed 12 months post implementation, after the market has had time to adjust to the reforms and more data is available.*<sup>67</sup>

#### Committee consideration

The committee asked the department to provide it with a breakdown of the cost-recovery figures for the proposed fee and DTMR provided a breakdown of the fee into administration and compliance costs.

#### **Recommendation 2**

The committee recommends the Minister:

- continue to explore opportunities to reduce the costs of administering the regulation of the personalised transport industry without compromising compliance, and
- consider developing on-line systems for driver authorisation and booked hire licence applications in line with technological developments.

### **2.2.3 Limousine licences**

In Queensland, there are currently two types of licences for limousine services:

- a limousine service licence, which provide a limousine service in a specific area of Queensland, and
- a special purpose limousine service licence, which offer a tourist service, or services for wedding and student events (such as proms and formals).

The holder of a limousine licence, including the holder of a special purpose limousine service licence, is exempt from the application of the *Liquor Act 1992* which provides them with the ability to serve alcohol and have access to certain priority lanes such as bus lanes and transit lanes, under the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*.<sup>68</sup>

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<sup>66</sup> Correspondence, 19 April 2017, pp 5-6.

<sup>67</sup> Correspondence, 19 April 2017, pp 5-6.

<sup>68</sup> See *Liquor Act 1992*, section 14B; and TO(PT)A, subsection 82, 86, schedule 3.



In 2016, the stage two reforms (as detailed in the Five Year Strategic Plan) proposed that limousine service licences (including special purpose limousine service licences) be removed and an annual licence be introduced for booked hire services which will include limousine services.<sup>69</sup>

The Limousine Action Group advised that the annual fees for a special purpose limousine licence is currently \$2480.80 and the renewal fee for a perpetual limousine licence is \$171.40.<sup>70</sup>

#### Amendments proposed in the legislation

Following stakeholder consultation, the government is proposing that limousine licences be retained and special purpose limousine licences be phased out over a three year period. The Minister advised in the explanatory speech:

*The retention of limousine licences is a departure from the previously announced government position and is a result of listening to the industry. Limousines will retain their L-plates and their ability to use special purpose lanes and serve alcohol. This policy change will be welcomed—and has been— by the limousine industry. Special-purpose limousines, which are annual licences, will be phased out over the next three years given that the new booked hire service licence will effectively take their place.*<sup>71</sup>

Clause 18 proposes to insert a new section 91H to provide that limousine licences that are in force immediately before commencement of the amendments continue in force as limousine licences and that no new limousine licences be issued.<sup>72</sup> Proposed new section 91I sets out the terms for a limousine licence. It is proposed that limousines retain their L-plates and their ability to use special purpose lanes and serve alcohol.<sup>73</sup>

The explanatory notes stated:

*The concept of a limousine service as a distinct class of public passenger service will not be retained, as booked services in luxury motor vehicles will also be able to be provided using a booked hire service.*<sup>74</sup>

It is also proposed that limousine service areas stated in a limousine licence will no longer have any effect as 'it is intended that limousines, like booked hire vehicles, may be used in any area in Queensland'.<sup>75</sup>

Proposed section 91I provides for special purpose limousine licences to be phased out in the future 'given they are an annual licence that is substantially similar to the new booked hire service licence':

*Special purpose limousine licences may be renewed for further successive terms of one year ... However, a regulation may prescribe a day after which a special purpose limousine licence must not be renewed, to allow for these licences to be phased out over time.*<sup>76</sup>

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<sup>69</sup> DTMR, Five Year Strategic Plan, p 10.

<sup>70</sup> Public hearing transcript, 20 April 2017, p 4.

<sup>71</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 600.

<sup>72</sup> Explanatory notes, p 19.

<sup>73</sup> Minister, Queensland Parliament, Record of Proceedings, 21 March 2017, p 600.

<sup>74</sup> Explanatory notes, p 19.

<sup>75</sup> Explanatory notes, p 19.

<sup>76</sup> Explanatory notes, pp 19-20.

### Stakeholder views

Submissions from the limousine industry generally welcomed the government's decision to retain limousine service licences, the L-numberplates, existing exemptions under the *Liquor Act 1992*, and the right to advertise as limousines.<sup>77</sup> However, concerns were raised about the proposed removal of limousine service areas, boundaries and limousine categories.<sup>78</sup>

The limousine industry generally advocated that only L-plated vehicles should be able to look and act like a limousine.<sup>79</sup> The Limousine Action Group referred to advice it had received that a regulation would be brought in to ensure that only vehicles with a limousine licence can use the term 'limousine' and raised a concern that the explanatory notes state the concept of a limousine service as a distinct class of public passenger service will not be retained, as booked services for luxury motor vehicles will also be able to be provided using a booked hire vehicle.<sup>80</sup>

The Limousine Action Group also raised a concern that while limousine licences have been retained a ride-booking vehicle will be allowed to look and act like a limousine. The Group's submission recommended that amendments be made to help restore the value of limousine licences as otherwise 'limousine licences are in essence obsolete'.<sup>81</sup>

One stakeholder submitted that given limousine licences are being preserved, the wording in the bill needs 'correcting .... to avoid confusion and reliance on the presumption that references to booked hire licences/services are interchangeable with limousine licences/services'.<sup>82</sup>

The Limousine Association of Queensland welcomed the retention of special purpose limousine licences for a period of up to three years 'as it gives the Government and TMR time to assess the impact of the changes and the effect it will have on the limousine industry as a whole'.<sup>83</sup>

### Department response to issues raised in submissions

DTMR responded by explaining that the foundation of the personalised transport reforms is that customers have greater choice in the provision of booked hire services, including in the luxury section of the booked hire market in which limousines operate and:

*Although limousine licences will be retained (except for annual special purpose limousine licences which will be phased out), the concept of a 'limousine service' as a distinct class of public passenger service will not be retained as booked hire services in luxury motor vehicles will also be able to be provided under a booked hire service licence.*

*While limousine services will become booked hire services under the new framework, only licensed limousines will have certain privileges traditionally associated with limousines. Specifically, only the holder of a limousine licence will continue to be exempt from the application of the *Liquor Act 1992* providing them with the ability to serve alcohol, limousines will have a distinguishing number plate, and limousines will continue to have access to certain priority lanes such as bus lanes and transit lanes, under the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*. These privileges will not be available to booked hire service licence holders. Further subordinate legislative changes will also be made so that only licensed limousines will have the right to advertise themselves as limousines.*<sup>84</sup>

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<sup>77</sup> See for example, submission 15, p 3 and public hearing transcript, p 2 and p 3.

<sup>78</sup> Limousine Association of Queensland, public hearing transcript, p 3.

<sup>79</sup> See for example, submission 36, p 5, submission 235, p 1, submission 209, p 1 and submission 246, p 1.

<sup>80</sup> Public hearing transcript, 20 April 2017, p 4.

<sup>81</sup> Submission 36, p 5.

<sup>82</sup> Submission 20, p 81.

<sup>83</sup> Submission 15, p 2.

<sup>84</sup> Correspondence, 24 April 2017, p 1.

### Committee consideration

The committee considered the proposed phasing out of special purpose limousine licences and the impact this might have on licence holders. The explanatory notes recognised that this may affect the perceived rights of these licence holders, and provided the following justification:

*However, these are annual licences similar to the new booked hire service licences, which effectively permit the holder to provide the same services for the same term as the holder of a new booked hire service licence. It is therefore appropriate to phase out special purpose limousine licences by prescribing a date by regulation after which these licences must not be renewed. This is also consistent with the chief executive's existing discretion to renew (or not renew) these licences.*

*The ability of holders of these licences to provide booked hire services will not be materially impacted as they will continue to be able to do so under a booked hire service licence. The proposed period of 3 years to phase out these licences will allow time for licence holders to adjust to this change.<sup>85</sup>*

The committee requested information at the public hearing about the differences between a limousine licence and a special purpose limousine licence. DTMR provided the following advice:

*It is different in that the type of vehicles that are used under a special purpose limousine licence are more vintage or classic type cars that perform limited work in terms of their hours of operation. Those are the types of vehicles that cannot, under the existing framework, be registered as limousines. They are afforded the same privileges as limousines in terms of having special plates, they can access the transit lanes, they can serve liquor et cetera, but they are only on an annual licence whereas other limousines are on a perpetual licence. They have a different fee structure.<sup>86</sup>*

DTMR advised at the public hearing included that while the government is proposing not to issue any more limousine licences there is nothing precluding existing licences from being traded, sold, leased in the market; limousines operating under a booked hire service licence would not be able to serve alcohol in it or have access to special purpose lanes; and there are currently 97 special purpose limousine licences in Queensland.<sup>87</sup>

#### **Recommendation 3**

The committee recommends the Minister consider options for ensuring that vehicles currently operating under a special purpose limousine licence can continue to serve alcohol and have access to certain priority lanes, including:

- retaining special purpose limousine licences, or
- changing the criteria for perpetual limousine licences to include the specifications for these vehicles, and revisiting the number of licences to ensure that sufficient perpetual limousine licences are available for purchase or lease.

<sup>85</sup> Explanatory notes, p 5.

<sup>86</sup> Public hearing transcript, 20 April 2017, p 41.

<sup>87</sup> Public hearing transcript, 20 April 2017, p 42.

## 2.2.4 Taxi service licences

### Amendments proposed in the legislation

The bill proposes that taxi service licences in force immediately before commencement of the amendments be preserved (original taxi service licence) and a new licensing framework be introduced for taxi service licences issued following commencement. The bill proposes a new section 91D which defines a taxi service licence, new section 91E which relates to original taxi service licences, and sections 91F and 91G which relate to taxi service licences issued after commencement.<sup>88</sup>

Taxi service licences will authorise a taxi to provide booked hire services as well as rank and hail services. The Minister advised in the explanatory speech:

*Existing taxi and limousine licences will be preserved and a new licensing framework will be introduced for taxi licences. No new taxi licences will be issued until next year at the earliest to allow time for the market to stabilise. Taxis will retain exclusive access to the rank and hail market.<sup>89</sup>*

### Stakeholder views

One submitter raised an issue with the proposed definition of a *taxi service* in that it divides historical taxi work (rank, hail, telephone booked, website-booked, app-booked, contract-booked, concierge booked etcetera) into two categories:

- *It specifically **removes** exclusive access of taxis to approximately 52-65% of their work*
- *The work that is **taken from taxis** is both the **growth** area of the work, and the portion of work that is obtained via the **lowest costs** to the industry (ie there are higher costs associated with operating a local telephone call centre based in Qld than a mobile phone app)*
- *The Bill seeks to **leave taxis with high costs, low work volumes**, the predominantly **unprofitable work**, and the work that has the **highest underlying costs** (eg waiting times at ranks and call centres manned by Queensland workers earning award wages)*
- *The net effect of this change is to **decrease the number of trips/fares/work undertaken and increase the cost per fare/trip in obtaining/performing that work***
- *This can only result in the **financial decline and potentially ultimately the ruination and death of the Qld taxi industry.**<sup>90</sup>*

This submission commented on the proposed new categories of licences - existing taxi licences being categorised as original licences and new taxi service licences being issued following commencement:

*The proposed amendments create a very complex and messy structure for the passenger transport industry in Qld:*

- *Original TSLs – perpetually renewable, area defined, very high capital cost already paid, but can be changed at any time with no warning*
- *Original Limousine licences – renewable, whole of Qld, moderate capital cost*
- *Booked hire service licences – unclear of purpose, unclear who can own them, annual, minimal annual fee*
- *New TSLs – renewable or non-renewable, area defined, costs uncertain, purpose and conditions uncertain.<sup>91</sup>*

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<sup>88</sup> Explanatory notes, pp 18-19.

<sup>89</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 600.

<sup>90</sup> Submission 20, pp 60-61.

<sup>91</sup> Submission 20, p 64.

Another submitter raised a concern about the criteria the government might use to trigger the issuing of new taxi licences post 2017:

*I suspect, at this stage, it has none. I am suspicious of the government's motives in relation to the statement that no new licences could be expected before 2018. Are we going to see additional taxi licences available for lease prior to next April's Commonwealth Games with no consideration for the viability of the industry? It should be noted that the government has no control over the number of vehicles operating under ride booking services.*

*Having two types of licensing, i.e., perpetual and leased licences, within the industry is not acceptable; this, no doubt, will cause angst within the taxi industry. Incidentally, the industry has not been informed of the reason for the change in policy so one can only speculate.<sup>92</sup>*

### 2.2.5 Protecting taxis exclusive access to rank and hail services

As noted above, the bill proposes that the exclusive rights of taxis to provide rank and hail services be preserved. As noted earlier proposed new section 70 of TO(PT)A will define a *taxi service* as a public passenger service for a journey that starts in Queensland provided by the hire of a motor vehicle that has not more than 12 seating positions (including the driver's position) and a person to drive the vehicle; and under which the vehicle plies or stands for hire by members of the public in a public place.

#### Stakeholder views

A number of submissions from the taxi industry raised concerns with the extent the bill maintains taxis' exclusive access to rank and hail services. Specifically they requested that the definition of what constitutes a 'hail' and 'street hail' should be clearly defined<sup>93</sup>, and that pick up and drop off zones should be expressly prohibited.<sup>94</sup> Another submission recommended that it should be ensured that *hire on-the-spot* does not result in booked hire vehicles being parked near taxi ranks and entertainment precincts 'thus unsafely acting as a default taxi rank'.<sup>95</sup>

Professional Taxis Gold Coast submitted:

*Uber works with local authorities to create "Uber Zones". These zones work with the same operational intent as a taxi rank. A zoned area is built geographically and once an Uber driver enters the "Uber zone" they move into a "ranking queue" with the first arrived taking position 1 and so on. Once a passenger requests the driver then the driver who has waited the longest in the queue, not the closet vehicle, will be assigned the job.<sup>96</sup>*

The Queensland Association of Taxi Owners and Drivers Welfare Association submitted:

*Much emphasis has been made on how in the new bill ridesharing licences cars can only provide pre-booked services, and how it is 'illegal' to either tout for services and especially 'rank and hail' work which has been designated to remain the exclusive preserve of the existing taxi industry. There are several key misconceptions here by those who planned such amendments. For a start with the growing ubiquity of smart phone use by the public and related app-based booking (i.e. 'e-hail') programs, except for exceptional contexts such as airports (which in any case are still hard to prove are being circumvented, and inadequately policed), the traditional distinction between bookings vs. rank and hail work has largely been obliterated in practice. This, together with how many special (e.g. sports such as particular horse racing meetings) events as well as some airports are still allowing alternative pick- up/drop-off 'zones' to undermine conventional*

<sup>92</sup> Ms Valerie Hicks, submission 26, p 2.

<sup>93</sup> See for example, submission 21, p 8 and submission 23, p 7

<sup>94</sup> See for example, TCQ submission 10, p 15.

<sup>95</sup> Mr Wayne Brazel, submission 13, p 1.

<sup>96</sup> Submission 22, p 7.

*taxi rank locations and functions, emphasizes how the proposals to stop or at least fundamentally discourage 'touting' by rideshare cars/drivers (e.g. to increase fines for touting from \$243 to \$487) is often meaningless gesture – which in any case is not being regularly backed up in practice by any substantial new commitments to better police and enforce this.<sup>97</sup>*

Some stakeholders specifically raised concerns with the ability to make bookings in person (proposed new section 72(4)(a) of TO(PT)A) believing that this would effectively enable vehicles, other than taxis, to take bookings to provide services immediately and that this may undermine taxis' exclusive access to rank and hail services.<sup>98</sup>

#### Department response to issues raised in submissions

DTMR provided the following response in relation to exclusive access to rank and hail services:

*The phrase 'plies or stands for hire' is intended to capture the situation where a vehicle and its driver are made available for hire on-the-spot by members of the public; that is, where the hire is arranged in person for the journey to start immediately or shortly after the vehicle and its driver are hired. It is not intended to capture the situation where a driver of a vehicle is waiting in a public place to receive a booking through an app and not for any other purpose. The circumstances in which a vehicle plies or stands for hire set out in new section 70 are examples only and are intended to clarify, rather than narrow, the common law meaning of this phrase. It is not proposed to exhaustively define 'plies or stands for hire' as the risk of doing so in an environment where service models are rapidly changing is that some service models are inadvertently captured and others inadvertently fall outside the definition.*

*The definition of booked hire service in new section 71 of TO(PT)A will exclude a hire-on-the spot in order to clarify that a hire in these circumstances is permitted using a taxi only. This protects the exclusivity of taxi services for taxis.*

*It is not proposed to prohibit the establishment or operation of legitimate booked hire service pick up zones and holding areas, such as those provided at the Brisbane Airport, where these services must be pre-booked.<sup>99</sup>*

In relation to concerns raised about to proposed new section 72(4)(a) of TO(PT)A, DTMR explained:

*The bill provides that a booking may be made in a number of ways including in person, over the phone or electronically through any app. It is necessary for the convenience of customers that they continue to be able to make bookings in person. For example, a person may attend the office of a limousine operator in person, to book a limousine for their wedding several months in advance.*

*A booked hire service licence permits a person to provide a service where a booking is made in advance. Only a taxi is able to 'ply or stand for hire', which includes (but is not limited to) a hire 'on-the-spot' – where the hire of a vehicle and its driver is arranged in person for the journey to start immediately or shortly after that time. A hire arranged 'on-the-spot' would be a taxi service as there is no genuine booking in advance in this situation. The inclusion of the concept of 'hire on-the-spot' in proposed new section 70(2) of TO(PT)A in Clause 18 of the bill is intended to clarify that rank and hail services remain protected for taxis.<sup>100</sup>*

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<sup>97</sup> Submission 30, p 4.

<sup>98</sup> See for example, submission 20, p 37, submission 34, p 6 and submission 22, p 12.

<sup>99</sup> Correspondence, 19 April 2017, p 7.

<sup>100</sup> Correspondence, 24 April 2017, p 1.

### Committee consideration

The committee asked the department for further information on whether DTMR is exploring options for managing rideshare vehicles in the CBD given there are not many places they can legally pick up or drop off. DTMR responded:

*It is a challenging area. Obviously, we are working with local government across Queensland in areas where it is more of an issue—in larger cities. CBD kerbside space is a challenge for buses, it is a challenge for load zones—for light commercial vehicles unloading and reloading—and also for taxis and rideshare. Obviously, we need to be very careful, in creating a rideshare zone, that we are not creating a potential for rideshare operators to operate as taxis should be operating, which have exclusive rights to rank and hail.<sup>101</sup>*

In response to a further question about the policing and monitoring of zones designated as drop off and pick up areas for rideshare vehicles, the department advised:

*The department has been consulted on some of the larger events around the establishment of those zones. I suppose our position is that those vehicles can only be collecting passengers if the service has been pre booked. They certainly cannot have passengers walk up and just hop in a car without any booking. That is illegal.<sup>102</sup>*

In relation to the proposed new section 72(4)(a) in Clause 18, the committee noted that the clause could cause confusion even though the inclusion of the concept of 'hire on-the-spot' in proposed new section 70(2) of TO(PT)A is intended to clarify that rank and hail services remain protected for taxis.<sup>103</sup>

#### **Recommendation 4**

The committee recommends proposed section 72(4)(a) of the bill be amended to clearly indicate that the ability to accept a booking in person only applies to a taxi service.

### **2.3 Driver authorisation and vehicle requirements**

In 2016 the Government introduced a requirement that all drivers in the personalised transport industry require a driver authorisation. There are two key elements to applying for driver authorisation – passing a medical check and passing a criminal history check based on prescribed legislation under TO(PT)A. The fee for the annual renewal of driver authorisations is \$140.65 and there is a one-off criminal history check fee of \$41.05.<sup>104</sup>

DTMR also advised the committee that section 28 of TO(PT)A provides the department with the ability to take action against a driver authorisation if it is relevant in the public interest and that could include conduct that is not criminal but brings the reputation of public passenger services into question.<sup>105</sup>

Shebah advised that Queensland has been the easiest state to on-board drivers in terms of safety and clarity:

*When our drivers come to us, we know that they are healthy, they are police checked, their cars are in excellent working order and they are annually checked as a driver. For us, for our clients, we can run their numbers back through the DA system and that is just terrific.<sup>106</sup>*

<sup>101</sup> Public briefing transcript, 20 April 2017, p 9.

<sup>102</sup> Public briefing transcript, 20 April 2017, p 9.

<sup>103</sup> Correspondence, 24 April 2017, p 1.

<sup>104</sup> Public briefing transcript, p 4.

<sup>105</sup> Public briefing transcript, p 17.

<sup>106</sup> Public hearing transcript, 20 April 2017, p 26.

### Amendments proposed in the legislation

Clause 24 of the bill proposes to replace section 24(1) of TO(PT)A (What is driver authorisation) to clarify that driver authorisation relates to a particular kind of public passenger service with the intention that drivers of taxi and booked hire services must hold a driver authorisation for those particular kinds of services.<sup>107</sup>

Proposed section 24(1) states:

***Driver authorisation** is a qualification a driver of a vehicle used to provide a kind of public passenger service must hold to drive the vehicle to provide a service of that kind.*

Clause 8 of the bill proposes replacement of section 27 (Driver must hold appropriate authorisation) with a new section making it an offence for a person to drive a vehicle to provide a kind of public passenger service for which driver authorisation is required unless the person holds driver authorisation (or provisional driver authorisation) for a service of that kind. Graduated maximum penalties apply to this offence, with repeat offenders facing significantly higher penalties. The driver's driver licence may also be suspended in certain circumstances under new section 91ZJ.<sup>108</sup>

Section 27 also creates an offence for a person to provide a kind of public passenger service for which driver authorisation is required unless the person uses drivers who hold driver authorisation (or provisional driver authorisation) for a service of that kind. This offence applies to an operator of the service and a person providing a booking service for the service.<sup>109</sup>

### Stakeholder views

Supreme Taxi Company submitted that the current driver authorisation process needs reform:

*Across the state, all operators are struggling with a chronic driver shortage. Despite Townsville undergoing a rise in unemployment, it is extremely difficult to recruit and retain drivers. While passengers rightly demand well-trained drivers, the process for an individual to become a driver is expensive and unnecessarily complex.*

*Proposals to improve this for operators, drivers and passengers includes:*

- *Reduce or subsidise the costs for drivers wishing to enter the industry. Many DA applicants have been unemployed or made redundant and the cost to fulfil the initial regulatory requirement is prohibitive.*
- *Enhance the efficiency of processing an application for a DA. Potential drivers should be able to submit an application and receive their DA within moments, especially if they have completed all requirements as specified.*
- *Government subsidisation of DAs in all centres will assist in driver recruitment. This is especially important for ensuring that sufficient drivers are available for wheelchair accessible vehicles.<sup>110</sup>*

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<sup>107</sup> Explanatory notes, p 10.

<sup>108</sup> Explanatory notes, pp 10-11.

<sup>109</sup> Explanatory notes, p 11.

<sup>110</sup> Submission 28, p 2.



### 2.3.1 Police checks

#### Stakeholder views

The TCQ recommended the bill expressly identify the requirements for police checks for all personalised transport drivers as part of the driver authorisation approval process.<sup>111</sup> A large number of submissions from the taxi industry supported this recommendation.<sup>112</sup>

#### Department response

The department responded that requirements that relate to the criminal history check for driver authorisations are already comprehensively addressed in TO(PT)A as section 148 of TO(PT)A provides the chief executive with the power to ask the commissioner of the Queensland Police Service for a written report about a person's criminal history to assist in deciding whether the person is suitable to hold driver authorisation; and schedule 1A lists the categories of disqualifying driver offences for which a driver authorisation can be refused, suspended or cancelled.<sup>113</sup>

### 2.3.2 Register of disaffiliated drivers

#### Stakeholder views

A number of submitters supported the TCQ recommendation that the government should establish and maintain a register of drivers who have been disaffiliated from booking entities to prevent disaffiliated drivers from simply shifting to another platform.<sup>114</sup>

Supreme Taxi Company recommended that drivers be afforded procedural justice:

*Currently some Taxi Booking Companies (TBC) and providers exercise unfettered authority and remove drivers from their system without following any type of due process or procedural justice. Drivers, as the face of the industry must be afforded some basic rights. It is inappropriate for drivers to be punitively excluded from a dispatch system based on hearsay or without negotiation or a fair exploration of events. They must have the opportunity to provide their perspective in relation to alleged breaches.*<sup>115</sup>

#### Department response to issues raised in submissions

The department responded by advising that driver authorisation (DA) is the mechanism by which the department ensures the safety of drivers providing public passenger services

*The department has the ability to refuse to grant, refuse to renew, or to suspend or cancel a person's DA. Grounds for refusal, suspension or cancellation of a DA primarily relate to the person's driving history or their criminal history. The department undertakes daily criminal history checks on all drivers with a DA and can suspend or cancel a person's DA following these checks. The department can also take action against a person's DA in the public interest, for example, for conduct that brings the reputation of public passenger services into question. Therefore, where a serious event has occurred, action is likely to be taken by the department against a person's DA, preventing the person from continuing to drive a public passenger service of any kind.*

*In contrast, drivers may be disaffiliated by booking entities for a variety of reasons. Different companies have their own conditions and standards relating to affiliation. For example, it could be because the rating that the driver is given by customers' falls below a certain level (say below*

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<sup>111</sup> Submission 10, p 10.

<sup>112</sup> See for example, submission 88, p 4, submission 324, p 3 and submission 184, p 3.

<sup>113</sup> Correspondence, 19 April 2017, p 12.

<sup>114</sup> Submission 10, p 10, and see for example, submission 112, p 4, submission 215, p 3 and submission 322, p 6.

<sup>115</sup> Submission 28, p 2.

*four out of five stars) or for a driver failing to start shifts on time. However, as mentioned above, if the reason for disaffiliation is serious then TMR already has the ability to take action against the person's DA. Booking entities will only be able to use drivers that have a current DA and a register of drivers with current DA is made available to booking entities daily for this purpose.*

*Finally, it should be noted that, as with other industries, booking entities are free to undertake a reference check prior to engaging drivers.<sup>116</sup>*

#### Committee consideration

The committee asked the department about the current process for identifying drivers that may have been disaffiliated and whether it would be possible for a disaffiliated driver to apply for a driver authorisation. DTMR advised that disaffiliation:

*... may not have affected their approval to drive with the department. If a taxi booking company right now made a decision to disaffiliate a particular driver due to whatever reason they choose, that does not actually affect their driver authorisation. That is a decision by that booking company to not have that driver drive with them anymore.<sup>117</sup>*

In response to a further question about whether there is any capacity for the department to keep a record of disaffiliated drivers from taxi and non-taxi drivers in the personalised transport industry DTMR responded:

*I think there is value in it, absolutely. It is something that the department could look at under the requirements through data reporting requirements which we are still formalising. That will be in a subsequent regulation. We just need to make sure that we are balancing any privacy issues at the same time.<sup>118</sup>*

DTMR clarified that while the department manages driver authorisations and that they would strike someone off that list if they did not meet the criminal history checks that are conducted regularly:

*In terms of disaffiliation from particular companies, we are not across the framework or the decision-making that is used. It is likely to be quite variable across the industry. Some companies might have different standards to others. That is something that we would need to be quite careful about when engaging in that regulatory activity if we do not understand the frameworks that were working across industry.<sup>119</sup>*

In response to further questioning from the committee the department provided:

*The driver authorisation framework is separate to disaffiliated drivers. Driver authorisation is a very structured framework, rightly so, around ensuring that drivers have the appropriate good character in terms of their public safety. Hence why we manage that very carefully and we update it daily. The disaffiliated drivers is really, as I said earlier, a matter for individual operators who might disaffiliate drivers from time to time for certain reasons. That framework is much less structured and it is sometimes based on matters that operators might consider that are variable between operators. We do not have a role in setting that framework around affiliation or disaffiliation with operators and it would be difficult for us to collect that and then publish it in terms of information privacy, unless we were to enter into creating a new framework around what would constitute disaffiliation, which we don't currently have.<sup>120</sup>*

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<sup>116</sup> Correspondence, 24 April 2017, p 2.

<sup>117</sup> Public briefing transcript, 20 April 2017, p 5.

<sup>118</sup> Public briefing transcript, 20 April 2017, p 5.

<sup>119</sup> Public briefing transcript, 20 April 2017, p 5.

<sup>120</sup> Public briefing transcript, 20 April 2017, p 10.

At the public briefing the department advised that while the criminal history check is something that is undertaken as part of the driver authorisation process, DTMR also accesses a live police data feed which is updated daily:

*If someone is charged with an offence the department then takes appropriate action and may suspend their DA as a result. That is the side of it that we manage, but then a booking entity may decide to disaffiliate because they are a crazy driver.<sup>121</sup>*

The committee also asked whether a driver had any recourse to justice if they lost their driver affiliation through a vexatious or baseless complaint made to a booking entity. DTMR responded:

*Not with the department, no, there is nothing with us. We could refer them to employment options. That is something they would have to take up with the entity themselves. It is really an IR issue, I suppose, as well.<sup>122</sup>*

The committee asked Uber what process it had in place to resolve disputes where a driver felt they had been unfairly disaffiliated. Uber advised that whenever a driver signs up to use the service and become a ridesharing driver with Uber, there is a set of community guidelines that outlines the types of behaviour that can lead to deactivation:

*There is an opportunity for both the rider and the driver to speak to our support team and give their side of the story, and then a decision is made and this decision is based on safety..... The process that takes place can often result in a warning and it allows them another opportunity to get on the platform. We also have three customer support centres in Queensland so any driver is able to come in and speak to one of our 60 customer support representatives to talk about the particular issue.<sup>123</sup>*

Shebah advised that no driver would be dismissed from the platform without an exit interview with the CEO and having the opportunity to explain exactly what has gone on.<sup>124</sup>

#### **Recommendation 5**

The committee recommends:

- the bill be amended to require booking entities to report to the department when a driver has been disaffiliated on the grounds of serious misconduct
- the department, as part of its driver authorisation processes, maintain a register of disaffiliated drivers and the reason for the disaffiliation
- the register be available for booking entities to check individual drivers if required, and
- an appeals mechanism be put in place to provide drivers with the right to dispute the record.

<sup>121</sup> Public briefing transcript, 20 April 2017, p 10.

<sup>122</sup> Public briefing transcript, 20 April 2017, p 11.

<sup>123</sup> Public hearing transcript, 20 April 2017, p 25.

<sup>124</sup> Public hearing transcript, 20 April 2017, p 28.

### 2.3.3 Driver training

#### Amendments proposed in the legislation

Part 7C of the draft amendment regulation provides definitions for 'industry training' and 'required training' and provides (proposed section 117ZI) that the chief executive may publish a notice on the department's website stating for a booked hire service or taxi service of a particular kind-

- (a) The names of training courses that a driver must complete for the kind of service; or
- (b) The training, and the minimum standards for the training, that a driver must complete for the kind of service that may be provided

Proposed section 117ZJ sets the minimum standards of industry training and section 117ZK provides that an authorised booking entity or operator must ensure a driver completes the required training.

The Minister advised during the explanatory speech that all personalised transport drivers will require training, including training in disability awareness and anti-discrimination.<sup>125</sup>

#### Stakeholder views

Uber recommended that proposed part 7C of the draft amendment regulation be amended to limit the requirement of mandatory training to only those drivers who are driving wheelchair accessible vehicles.<sup>126</sup>

Another submission agreed that there should be some standards for training 'but not the previous expensive overly long course which included TAFE courses for non-English speakers. A common sense approach by the operator or BEA holder, some training on the computer systems or app and an exclusion from Anti-Discrimination lawsuits if the guy can't speak English at all that is needed'.<sup>127</sup>

The RACQ noted that the government proposed to prescribe standards for driver training in relation to disability awareness, anti-discrimination (including sexual harassment) and the provision of wheelchair accessible services and advised:

*RACQ has no objection to such training but government should avoid unnecessary administrative requirements on this training that increase cost or inconvenience and prevent some drivers or operators from entering the industry.*<sup>128</sup>

On the other hand, some taxi industry stakeholders supported a more extensive training regime, for example, the Yellow Owners Association submitted:

*Even a cursory examination of the demographic of workers in the personalized transport industry will reveal a predominance of workers who have few employment options because of limited education, language or physical abilities. Imposing a highly punitive Chain Of Responsibility whilst leaving training to the whim of commercial operators will lead to a situation where not only are community expectations not met, but these workers can be actively misled (by commercial operators for gain) to a fatally flawed and inadequate understanding of their responsibilities. I believe that the PWUC is well aware of not only the potential for this but has heard testimony demonstrating past and current reality of this practice.*

*Training provides an important first step in assisting these workers to progress either in the industry or beyond it and as such provides a clearly identifiable Public Benefit in line with stated*

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<sup>125</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 599.

<sup>126</sup> Submission 29, p 16.

<sup>127</sup> Gordon, Marie, Rodney and Cherie Meares, submission 8, p 16.

<sup>128</sup> Submission 17, p 4.

*Social Justice objectives and as such cannot be left to the minimalist efforts of commercial operators and a profit driven market in a marginal (financial return) industry.*<sup>129</sup>

#### Department response to issues raised in submissions

DTMR responded that all drivers will be required to be trained in relation to anti-discrimination (including sexual harassment) and disability awareness (including dealing with passengers with disability) and training will also be required for drivers of wheelchair accessible services:

*The specific training required will be finalised in conjunction with disability advocacy groups that have knowledge and experience of the concerns of people with disabilities. Training will not need to be delivered by a Registered Training Organisation (as has previously been the case); booking entities and operators will have flexibility to determine the most appropriate delivery tool for their business model.*<sup>130</sup>

#### Committee consideration

In response to a question from the committee at the public briefing, DTMR advised that specific training would be provided to booked hire service providers and:

*In terms of what the department will provide, that would be part of those education activities that have not been developed at this stage. .... The reforms include some requirements around proposed driver training requirements such as that all drivers will be required to be trained in relation to anti-discrimination, including sexual harassment, disability awareness, including dealing with passengers with disability, and the provision of wheelchair accessible services.*

*..... In relation to the reforms themselves, there will be obligations on the driver to make sure they have completed that training. There will be obligations on the operators as well as the booking entities to make sure their drivers have completed that training.*<sup>131</sup>

### **2.3.4 Zero blood alcohol concentration**

#### Amendments proposed in the legislation

Clause 34 of the bill proposes to amend section 79 the *Transport Operations (Road Use Management) Act 1995* (TORUM) to extend the requirement for a zero blood alcohol concentration to any person who drives, attempts to put in motion or is in charge of a motor vehicle that is available to be used, about to be used or being used to provide a public passenger service.

The explanatory notes confirmed that the zero blood alcohol concentration requirement for drivers of vehicles used to provide public passenger services is intended to apply regardless of whether passengers are in the vehicle.<sup>132</sup>

The Minister advised in the explanatory speech that the zero blood alcohol concentration 'will apply not only while the passenger is in the vehicle but also, for example, while the driver is logged on to a booking platform waiting for a booking or on the way to pick up the passenger'.<sup>133</sup>

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<sup>129</sup> Submission 23, p 5.

<sup>130</sup> Correspondence, 19 April 2017, p 12.

<sup>131</sup> Public briefing transcript, 20 April 2017, p 16.

<sup>132</sup> Explanatory notes, p 30.

<sup>133</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p. 599.

### Stakeholder views

Most submissions did not refer to this proposed amendment, however some submitters questioned how the zero blood alcohol requirement would be enforced, how ride share vehicles would be identified and how it would be determined that the driver was providing a booked hire service.<sup>134</sup>

### Committee consideration

The committee sought clarification at the public briefing about how this would work in practice, specifically, how a compliance officer or police officer would be able to determine whether a driver was logged onto the booking platform or on the way to pick up a passenger. DTMR advised:

*If they are on their way to collect a passenger they are in the process of providing a service, as the legislation defines it, and the vehicle is required to have signage so that our police would clearly be able to identify that that is a booked hire service.*<sup>135</sup>

### **2.3.5 Vehicle quality standards**

As part of the stage one reforms ride booking vehicles had to have a safety certificate. Under stage two they will move onto the COI regime for consistency across the industry. DTMR advised:

*The reason that was done is that the inspections are not that different, but as a transitional arrangement that was the only way to get the volume of vehicles through the scheme. That was the policy decision that was made by government. It was an interim step, if you like.*<sup>136</sup>

### Amendments proposed in the legislation

The Minister advised in the explanatory speech that regulation changes are proposed to ‘require booked hire vehicles to have an annual certificate of inspection rather than a safety certificate to ensure uniform inspection standards across all personalised transport services’.<sup>137</sup>

### Stakeholder views

Some submissions raised a concern that the legislation does not include a vehicle age limit.<sup>138</sup> Mackay Taxi Holdings which recommended maximum age limits for all personalised transport vehicles of six years for sedans and eight years for wheelchair accessible taxis.<sup>139</sup>

A large number of submissions supported the TCQ recommendation that in the absence of vehicle age restrictions, clear vehicle quality and usage rate standards should be introduced.<sup>140</sup> For example, the Redlands Taxi Management submission noted:

*The age limits that used to apply to taxis were put in place for the reason that vehicles needed to be safe and road worthy for drivers and passengers. I agree that in some cases older vehicles can still be deemed safe, but there needs to be a clear chain of responsibility to enforce this.*<sup>141</sup>

The Yellow Owners Association recommended that the previous longstanding vehicle and inspection regimes be reinstated on the basis:

*Technology provides clearly identifiable primary and secondary safety improvements with updated models and vehicles. By mandating the use of modern vehicles, a clear positive Public*

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<sup>134</sup> See for example, submission 20, p 103 and submission 13, p 2.

<sup>135</sup> Public briefing transcript, 20 April 2017, p 15.

<sup>136</sup> Public hearing transcript, 20 April 2017, p 41.

<sup>137</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 599.

<sup>138</sup> See for example, submission 254, p 3.

<sup>139</sup> Submission 27, p 5.

<sup>140</sup> Submission 10, p 11, and see for example, submission 90, p 4, and submission 237, p 2.

<sup>141</sup> Submission 16, p 4.

*Benefit can be easily seen in terms of primary safety such as impact protection (eg airbags and sophisticated braking and traction control systems)*

*Secondary benefits can be clearly identified when examining the reliable lifespan of the features that a vehicle does have and we would call into question whether due consideration has been given to the deleterious effects of high mileage and extended use on the reliability of those systems.*

*It would seem that little or no empirical research into the anticipated effects of age and escalated use has been considered, including referencing guidelines from manufacturers as to the design life of vehicles and ancillary systems in the envisaged circumstances. As is being demonstrated right now in this and other jurisdictions, market forces are insufficient to produce uniform safe practice across the entire range of service providers and as is occurring right now, obsolete vehicles and equipment are being remobilized without due consideration for Public Safety. Using a basic risk matrix, the probability of catastrophic consequences escalates considerably with age because of the increased likelihood of catastrophic failure.*

*By way of example, a vehicle that just passes an inspection can easily become a Hazard on the road within twelve months, or a 10 year old hoist can suffer metal fatigue leading to stress corrosion cracking, which will not fail until there is a load ( person) upon it leading to a potential catastrophic outcome ( TPI, fatality or >\$1,000,000).<sup>142</sup>*

Uber advised that before a driver can use the Uber app they need to be using a vehicle that is less than 10 years old, have undergone a Queensland accredited vehicle inspection and must have the right insurance.<sup>143</sup>

The RACQ submitted that the proposed amendment to require a current (annual) Vehicle Safety Certificate 'is unnecessary red tape on drivers of rideshare vehicles'.<sup>144</sup>

#### Department response to issues raised in submissions

In response to the issues raised in submissions DTMR advised that annual vehicle safety inspections and year round front-line compliance activities, together with technological advancements in vehicle safety standards and features, remove the need to regulate vehicle quality standards for personalised transport vehicles and:

*Furthermore, in an open market for booked services with new entrants and greater customer choice, it is expected that the market will decide the acceptable vehicle quality standards based on customer expectations.<sup>145</sup>*

#### Committee consideration

At the public hearing the committee asked the department whether the annual certificate of inspection would be provided by DTMR or whether a general mechanic could issue one. DTMR advised 'that at present certificates of inspection are issued by the department, but the department is currently considering options around whether we might be able to outsource that into the future and what that model might look like as the volume of vehicles that have to be inspected increases'.<sup>146</sup>

The committee makes a recommendation in the section of this report on [enforcement](#) about outsourcing the issuing of certificates of inspections to ensure departmental resources are focused on on-road compliance.

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<sup>142</sup> Submission 23, p 4.

<sup>143</sup> Public hearing transcript, 20 April 2016, p 21.

<sup>144</sup> Submission 17, p 4.

<sup>145</sup> Correspondence, 19 April 2017, p 12.

<sup>146</sup> Public hearing transcript, 20 April 2017, p 43.

### 2.3.6 Vehicle signage requirements

All vehicles used to provide personalised transport services are required to be identifiable for safety reasons and for compliance and enforcement purposes. The DTMR Five Year Strategic Plan states that taxis and limousines are currently required to have a distinguishing number plate (commencing with 'T' for taxis and 'L' or 'SL' for limousines) and vehicles used to provide booked hire services must clearly display a compliant booked hire service identification sign at the rear of the vehicle.<sup>147</sup>

#### Amendments proposed in the legislation

The draft amendment regulation proposes replacement of section 117C (Booked hire service signs) in the Passenger Transport Regulation. Proposed new section 117C requires a booked hire service vehicle to display signage on the bottom left-hand side of the front and rear windscreens and in a place that does not obstruct the view of the road or traffic from the driver's seat. It also requires the sign to be clearly visible from at least 20 metres in front and behind the vehicle, a square of at least 146mm by 146 mm, be retroreflective, and comply with any other requirements for a sign approved by the chief executive.

DTMR advised these requirements were refined based on feedback from the Queensland Police Service, departmental compliance officers and customers during stage one of the reforms, and the new requirements would ensure signs are sufficiently visible from both the front and the rear of the vehicle.<sup>148</sup>

#### Stakeholder views

A large number of submitters, particularly those from the taxi industry and limousine industry, supported stronger requirements including that personalised transport vehicles be required to be identified by a dedicated number plate that can be utilised for compliance (rather than signage that can be removed), and that number plates should be issued based on meeting specific requirements (correct CTP and current certificate of Inspection).<sup>149</sup>

At least one submitter also recommended that booked hire service signage should not be illuminated and must not be a dome or a hail light affixed to the roof exterior.<sup>150</sup>

The RACQ submission supported the proposed amendments including the requirement for front and rear retroreflective signage on the basis:

*This reform will enhance passenger safety as passengers booking a service will see the ride booking sign on the vehicle from front and rear, day or night. It will also assist with enforcement activities at hail and ride locations.*<sup>151</sup>

Ride-booking stakeholders expressed concerns about the proposed enhanced signage requirements and would prefer to see less prescriptive signage for the vehicles.<sup>152</sup> For example, the RSDAA suggested that a simple generic sign could do the job of five or six and it should be placed on the front and rear of the vehicle.<sup>153</sup>

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<sup>147</sup> *Five Year Strategic Plan*, p 6.

<sup>148</sup> Correspondence, 19 April 2017, pp 6-7.

<sup>149</sup> See for example, Limousine Association of Queensland, public hearing transcript, 20 April 2017, p 3, submission 12, p 2, submission 13, p 3, submission 187, p 1, submission 309, p 1, and submission 324, p 1.

<sup>150</sup> See for example, submission 24, p 21.

<sup>151</sup> Submission 17, p 3.

<sup>152</sup> See for example, submission 29, p 20.

<sup>153</sup> Public hearing transcript, 20 April 2017, p 32.



### Department response to issues raised in submissions

The department responded to submitters concerns by advising that a removable identification sign for booked hire services, rather than a distinguishing number plate, is considered appropriate given booked hire vehicles are also often used for private purposes and are not dedicated to the provision of personalised transport services, like most taxis or limousines and:

*.... a requirement for a specific booked hire number plate would add significant costs and regulatory burden to both the department and booked hire operators. New plates would be required each time a person chooses to provide booked hire services as the current system does not allow for previously used plates to be reused, unless they have been customised at additional cost to the operator.*

*It should also be noted that the department will be required (by proposed new section 91U of TO(PT)A) to keep a register of all licences including details of licensed vehicles. To obtain a booked hire service licence, certain vehicle requirements (such as CTP and COI) must be met, and a licence may be suspended or cancelled if the vehicle no longer meets these vehicle requirements. It is the department's intention to publish a register of all vehicles that are currently licensed to assist parties involved in the provision of personalised transport services and customers, to identify whether a vehicle is licensed. This is consistent with the current publication of driver authorisation numbers and the use of this register to manage drivers whose driver authorisation is no longer current.<sup>154</sup>*

### Committee consideration

In response to a question from the committee at the public hearing, Professional Taxis Gold Coast provided information on signage requirements in other jurisdictions, including worldwide:

*Things that I personally found through researching in order for our submission was the use of identification plates. It is not necessarily a number plate, although a number plate would be beneficial, but they had basically some type of a permit or a decal on the side of the vehicle acknowledging their licence number in order for anyone engaging that vehicle to actually check to make sure that it was an accredited service provider. It did not have a sticker. I will use an example. In some of our workshops it was identified that there is no requirement under Uber's existing policies for an Uber driver to surrender that sticker if they are removed from the platform. There are quite possibly drivers operating with that sticker still visible in their vehicle, however they are no longer on that platform.<sup>155</sup>*

The committee requested further information about the proposal to publish a register of all vehicles that are currently licenced to operate as booked hire vehicles and, in particular, how the department planned to manage the process. DTMR advised:

*We currently have a register that is available of driver authorisations that are current. That is made available to all providers right now. That is updated daily. We get daily feeds from police in relation to whether there are any changes, there has been charges, and we take action in terms of suspending or cancelling the DA. The onus is then on those entities that are taking the bookings to make sure that they are checking that data regularly and that they are not having suspended or cancelled drivers still operating. That is something that happens right now. We see the vehicle side of it being an expansion of that, making sure that that information is also available to those operators and booking entities.<sup>156</sup>*

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<sup>154</sup> Correspondence, 19 April 2017, pp 6-7.

<sup>155</sup> Public hearing transcript, 20 April 2017, p 15.

<sup>156</sup> Public briefing transcript, 20 April 2017, p 10.

## 2.4 Booking entity authorisation

Chapter 6 of TO(PT)A currently requires a person administering a taxi service to hold a service contract in certain taxi service areas. Section 37 of the TO(PT)A states that the purpose of service contracts is to hold operators accountable for minimum performance levels to ensure the communities served under the contracts receive, at a reasonable cost, quality and innovative public passenger services.

Section 38 of TO(PT)A provides that a service contract is a contract between the chief executive for the State and an operator under which the operator is required to provide a public passenger service for an area or route in a way that meets or exceeds performance stated in the contract.

The explanatory notes advised that 'these contracts do not give taxi booking companies any exclusive right to administer services in a particular taxi service area'.<sup>157</sup>

### Amendments proposed in the legislation

Clause 16 of the bill proposes to omit chapter 6, part 3 of TO(PT)A in relation to service contracts for the administration of taxi services. The explanatory notes advised that existing service contracts for the administration of taxi services will end on commencement of the proposed amendments (see proposed new section 210).<sup>158</sup>

Clause 18, proposed new chapter 7, part 4, division 4 of TO(PT)A proposes that all persons providing a booking service for booked hire services will require a booking entity authorisation.<sup>159</sup> Proposed new part 4, division 5, subdivision 1 establishes the legislative regime for booking entity authorisations generally.

When introducing the bill the Minister advised the reason for the removal of service contracts was to support industry innovation and the reduction of red tape, 'the bill removes the requirements for service contracts with taxi booking companies in recognition that the new booking entity authorisation regime will replace service contracts'.<sup>160</sup>

DTMR advised that anyone who provides a booking service by arranging bookings, either for other people or for services that they themselves provide, will need to hold a booking entity authorisation:

*This will ensure that only suitable persons will be able to provide these services. Booking entity authorisation will essentially take the place of existing service contracts between the Department of Transport and Main Roads and taxi booking companies. Foreign booking entities will be required to appoint a local nominee so that the new laws can be effectively enforced against offshore booking entities. Booking entities will only be able to use vehicles that are licensed and drivers who are authorised to provide these services.*<sup>161</sup>

The explanatory notes advised operators of taxi services and booked hire services would be excluded from the requirement to hold operator accreditation by regulation following passage of the bill:

*Any safety related requirements currently imposed through operator accreditation will continue to be imposed on these operators through the new chain of responsibility and specific requirements in subordinate legislation such as the requirement to comply with a documented vehicle maintenance program.*<sup>162</sup>

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<sup>157</sup> Explanatory notes, p 11.

<sup>158</sup> Explanatory notes, p 12.

<sup>159</sup> Explanatory notes, p 12.

<sup>160</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 600.

<sup>161</sup> Public briefing transcript, 20 April 2017, p 3.

<sup>162</sup> Explanatory notes, p 10.

## 2.4.1 Removal of service contracts

### Stakeholder views

Taxi industry submitters generally supported the TCQ recommendation that the Minister maintain the ability to enter into service contracts with taxi booking companies 'to ensure the government has the capacity to respond quickly, and at the lowest cost, to changing or unique circumstances without the need for regulatory or legislative changes'.<sup>163</sup> The TCQ also raised a concern that there appeared to be a lack of appreciation of the likely fiscal and budget impacts of the removal of service contracts and a shift of enforcement and policing responsibilities to the state government.<sup>164</sup>

Other submitters raised a concern that the removal of service contracts would mean the government would no longer be able to manage affiliates to ensure service levels are adequate.<sup>165</sup> For example, one submission provided:

*Without such specific requirements or Service Contracts, there is no requirement for any service to be provided at all, let alone a timely or affordable service.*

*... Deletion of Service Contracts and maximum fares - abandons the current protections ensuring community access to door to transport at a reasonable cost.*<sup>166</sup>

Professional Taxis Gold Coast raised a concern that without booking service contracts universal service obligations will no longer exist and there will be no minimum service levels and no key performance indicators. For example, there will be no need to provide disability services, to have vehicles available to attend to an actual booking, or to provide a just and fair process with regard to driver disaffiliation.<sup>167</sup>

The McKinnon Taxis submission argued:

*Booking Company Service Contracts are a second line enforcement tool to enhance the legislation, regulation, and standards associated with the delivery of taxi services, DTMR uses Booking Company Service Contracts to ensure all affiliated taxis abide by the legislation. It is a cost-effective method to ensure compliance and as it is well documented that high safety and service standards have been achieved as a result of the co regulatory system, which include service contracts.*

*We do not support the removal of Service Contracts and argue that the shared cost of achieving a safe mode of public transport by the taxi industry and the government will no longer apply. There is agreement that red tape should be reduced within the provision of personalized transport however this is easily achieved without removing the current framework.*<sup>168</sup>

Gold Coast Cabs submitted that the proposed changes would also have the effect of reducing the efficiency of the taxi network and would minimise the ability of booking companies to manage fleets to ensure effective service coverage.<sup>169</sup>

A number of submissions also recommended that service contracts should be required for all authorised booking entities, for example:

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<sup>163</sup> Submission 10, p 3.

<sup>164</sup> Public hearing transcript, 20 April 2017, p 7.

<sup>165</sup> See for example, submission 22, pp 9-10.

<sup>166</sup> Submission 20, p 10.

<sup>167</sup> Public hearing transcript, 20 April 2017, p 16.

<sup>168</sup> Submission 21, p 3.

<sup>169</sup> Submission 34, p 4.

..... there should be an additional chapter to govern Service Contracts and obligations in the booked hire industry to ensure that Public Benefit is actually achieved and universal access to passenger transport services of a high quality at an affordable cost is ensured.<sup>170</sup>

#### Department response to issues raised in submissions

The department confirmed that while it had previously entered into service contracts with taxi booking companies in certain areas across the state for the administration of taxi booking services, these service contracts do not provide taxi booking companies with exclusivity in their area of operation nor do they include any payment for services provided:

*While service contracts have generally been viewed favourably by the industry this, in part, may be due to the perceived benefits the service contracts provide in assisting taxi booking companies to manage their affiliates. In practice however, the removal of service contracts should not affect the ability of a taxi booking company to manage these issues as part of their own standards, codes of practice, by-laws and so on, or to otherwise incentivise driver behaviour.*

*The use of service contracts to hold taxi booking companies accountable for certain responsibilities, such as meeting quarterly targets for waiting times, is therefore not considered necessary in a more competitive personalised transport framework. Furthermore, given the application of contract law, service contracts reduce the ability of the department to respond quickly as market dynamics change and relevant issues emerge. The removal of service contracts will, consistent with one of the primary objectives of the reforms, facilitate innovation by removing red tape.*

*It should be noted that Queensland is the only jurisdiction that regulates the administration of booking services for taxis through service contracts. All other jurisdictions, excluding Tasmania, require taxi booking companies or networks to be authorised or accredited under applicable legislation. The removal of service contracts and the introduction of an authorisation scheme is therefore consistent with other jurisdictions.<sup>171</sup>*

#### **2.4.2 Accountability of foreign booking entities**

When introducing the bill the Minister referred to the proposed requirement that foreign booking entities be required to appoint a local nominee to ensure there is a presence in Australia and that the new laws can be enforced against such entities:

*Significant financial and non-financial penalties will be imposed under the bill for the provision of unauthorised personalised transport services to act as an effective deterrent. This includes significantly higher penalties of up to \$350,000 for repeat offenders and driver licence suspension for drivers of unauthorised services. Audit powers will be established to investigate compliance and relevant parties will be required to provide service related data.<sup>172</sup>*

While the explanatory notes acknowledged the proposal to impose liability on a local nominee of a foreign authorised booking entity for acts or omissions of the booking entity may raise an issue in relation to derivative liability, they provide the following justification:

*... this is considered justified on the grounds that the nominee consents to the nomination, the nominee is likely to be wholly controlled by the authorised booking entity and doing so is broadly consistent with the imposition of penalties under the Corporations Act 2001 (Cth) for local agents.<sup>173</sup>*

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<sup>170</sup> Submission 20, p 96.

<sup>171</sup> Correspondence, 19 April 2017, pp 8-9.

<sup>172</sup> Queensland Parliament, Record of Proceedings, 21 Mar 2017, p 600.

<sup>173</sup> Explanatory notes, p 6.

### Stakeholder views

Some submitters raised concerns with the ability to hold foreign booking entities accountable under the new legislative framework. For example, the TCQ submitted that the bill:

*.. creates a convoluted and potentially exploitable requirement for an overseas-based Booked Hire Entity to have a Local Nominee. This Local Nominee requirement appears to have been proposed in order to provide a legal entity within Queensland for enforcement and auditing purposes. However, it also creates a potential legal structure to enable overseas corporate entities to minimise legal exposure in the State for the delivery of services that negatively impact Queensland.*<sup>174</sup>

The TCQ submission argued that it is critical that the Local Nominee be a substantive legal entity and this should include requirements that any Local Nominee:

- is domiciled in Australia
- has an ABN
- be registered to pay tax, and
- be required to hold in bond or trust over \$1 million as demonstration of their solvency.<sup>175</sup>

One submission recommended that a booking entity authorisation should only be approved if the entity is registered in Australia with a real phone number and staff offering a 24 hour help service in every large town it operates in.<sup>176</sup>

Another stakeholder questioned how it would be ascertained that a specific trip was provided via a booking entity with suspended or cancelled authorisation if drivers are working across multiple booking platforms simultaneously and also made the following observations:

*It would be good if effective enforcement of the legislation for breaches by foreign booking entities is ultimately successful. However, given the experience of the Qld government and many governments around with world with Uber in particular, it is difficult to predict the likelihood of success.*

*Therefore, it is prudent to include enforcement strategies that address the driver and vehicle as well as those that capture the booking entities. In the event that some of these are unsuccessful, the overall net effect is more likely to curtail illegal activities than past efforts have been.*<sup>177</sup>

### Department response to issues raised in submissions

DTMR responded that in addition to financial penalties that may be imposed on booking entities for relevant offences, it is proposed that a booking entity authorisation can be suspended and cancelled, such as where the holder contravenes TO(PT)A or a condition of the authorisation; or where the holder or certain other parties have been charged with, or convicted of, a disqualifying offence. Immediate suspension will also apply in certain circumstances such as where this is in the public interest and:

*The requirement for a local nominee will ensure that authorised booking entities based in foreign jurisdictions have a local presence to assist compliance and enforcement activities in relation to foreign entities. It is not proposed to require the local nominee to hold assets in Australia as the main penalty to be imposed on a foreign authorised booking entity for failure to comply will be to suspend or cancel the entity's authorisation. When that happens, drivers will be prohibited from accepting bookings from that entity. If drivers continue to accept bookings from that entity,*

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<sup>174</sup> Submission 10, p 12.

<sup>175</sup> Submission 10, p 12.

<sup>176</sup> See for example, submission 1, p 2.

<sup>177</sup> Submission 20, pp 49-50.

*their driver licence may be suspended. This will impact the business model of the unauthorised booking entity who might otherwise benefit from a driver's non-compliance. Faced with the loss of their driver licence, drivers are unlikely to continue to provide unauthorised services, thereby disrupting the booking entity's business.*<sup>178</sup>

### 2.4.3 Service-related data

It is proposed that authorised booking entities will be required to provide service-related data about booked hire services (see proposed section 91ZG).

#### Stakeholder views

A number of submissions requested the government establish clear and enforceable requirements in relation to the collection of data from booking entities given the abolition of service contracts, the government would no longer have access to personalised transport performance, quality and service delivery data.<sup>179</sup>

A number of other submissions raised an issue with the inclusion of 91ZG(3)<sup>180</sup> and the fact that there should be higher, and escalating, penalty in order to encourage ride-share operators to comply with the information requirements.<sup>181</sup> For example, one stakeholder submitted:

*While there is an attempt within the bill to have authorised booking entities keep and submit data to the Department, the penalties for failing to comply are relatively minor, and evidence from overseas has shown that some booking entities chose to pay a fine rather than to provide authorities with data. Given this track record, an escalating and ultimately high level penalty for repeated non-compliance is required in order to make this effective as the absence of data hinders the ability of TMR and government to monitor performance (ie assess whether the services are achieving the objectives as stated in TO(PT)A – such as timely access to transport for all Queenslanders) and to plan for future services to meet the needs of the community.*<sup>182</sup>

Uber requested clarity on the data sharing obligations proposed in the legislation:

*It would be beneficial if the Committee sought further clarity from the Government on the data sharing obligations imposed by sections 81 and 91ZG of the Amendment of Transport Operations (Passenger Transport) Act 1994.*

*These sections are very broad and appear arbitrary, and thus far, the Government has not articulated a clear policy rationale around why these data sharing provisions are needed or what they are seeking to achieve.*

*Stipulations around data requests and cooperation around specific inquiries concerning safety and law enforcement need to go towards achieving a policy outcome in relation to safety.*

*However the current regulations are very broad and do not stipulate how they will address factors such as privacy and commercial sensitivities that a general data request would raise - these sensitivities need to be carefully considered and addressed in consultation with the industry before being enshrined in law.*

*We seek further information around the requirements for 'broad-brush' data requests, including the policy rationale and outcomes sought in relation to any potential data sharing.*<sup>183</sup>

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<sup>178</sup> Correspondence, 19 April 2017, pp 7-8.

<sup>179</sup> See for example, TCQ submission 10, p 15, submission 1, p 3.

<sup>180</sup> See for example, submission 20, p78 and submission 13, p 2.

<sup>181</sup> See for example, submission 20, p 78

<sup>182</sup> Submission 20, p 11.

<sup>183</sup> Submission 29, p 25.

### Department response

The department responded that service-related information is critical to the development, operation and funding of public passenger transport and to monitor compliance with TO(PT)A in relation to booked hire services and booking services and the specific data requirements to be imposed on booking entities are being finalised and will be dealt with in subsequent subordinate legislation.<sup>184</sup>

#### **2.4.4 Goods and Services Tax and income tax**

### Stakeholder views

A large number of submitters from the taxi industry suggested that all personalised transport drivers should be registered for the Goods and Services Tax (GST) and have an Australian Business Number (ABN) in order to be eligible for driver authorisation.<sup>185</sup> For example, one stakeholder submitted:

*It is important that all appropriate GST revenue is collected as this provides funding for essential Qld government services to assist with this - All drivers and all booking entities **must** obtain and provide to TMR details of their Australian Business Number and GST registration at the time of their application for authorisation (Driver Authority and Booking Entity Authorisation respectively) and these details **must be included** on their official authority documents issued by TMR.<sup>186</sup>*

### Department response to issues raised in submissions

DTMR advised that the Australian Taxation Office (ATO) has a comprehensive strategy, with considerable associated powers, to ensure compliance with registration, lodgement, correct reporting and payment of taxation obligations for individuals who are ride-booking drivers; and this includes a data matching program which involves matching the data provided by financial institutions against ATO records to identify drivers who may not be meeting their obligations and initiating compliance action based on the data acquired.<sup>187</sup>

### Committee consideration

In response to a question from the committee at the public hearing, Professional Taxis Gold Coast advised that in parts of Canada they have a requirement to have a tax file declaration to inform the tax office as to where their new income stream was coming from:

*As part of their driver authorisation they have to declare that they are registered to be able to take GST payments basically. They are just the clearing house for the GST. It had to be acknowledged that they had an ABN—ABN is obviously Australian.<sup>188</sup>*

Shebah advised that all its fares are inclusive of GST.<sup>189</sup> Shebah also advised:

*We spend a lot of time educating our drivers about their tax obligations and their savings plans and making sure that they are absolutely tickety-boo with the ATO. A big part of our work is making sure that they know where they sit with the ATO. Women tend to want to do the right thing and they get very anxious about being outside regulations. We are getting those things right and helping them to maximise what they can claim, what they cannot claim and making sure it is all fair and reasonable.<sup>190</sup>*

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<sup>184</sup> Correspondence, 19 April 2017, p 11.

<sup>185</sup> See for example, submission 10, p 15, submission 13, p 3 and submission 4, p 2.

<sup>186</sup> Submission 20, p 14.

<sup>187</sup> Correspondence, 19 April 2017, p 12.

<sup>188</sup> Public hearing transcript, 20 April 2017, p 15.

<sup>189</sup> Public hearing transcript, 20 April 2017, p 23.

<sup>190</sup> Public hearing transcript, 20 April 2017, pp 28-29.

### **Recommendation 6**

The committee recommends the Minister amend the proposed legislation to ensure:

- all personalised transport industry payment transactions are facilitated through an authorised booking entity
- all transactions undertaken by a holder of booking entity authorisation or under the booked hire service licence must be accompanied by a tax invoice or itemised receipt, and
- each transaction is recorded for auditing purposes.

#### **2.4.5 Wheelchair accessible services**

##### Amendments proposed in the legislation

Proposed new section 91ZY of the bill proposes to allow a regulation providing a scheme for the payment of subsidies for services (currently the Taxi Subsidy Scheme (TSS)) provided to particular groups to be extended to services using limousines and booked hire services if considered appropriate in the future.<sup>191</sup>

The Minister advised in the explanatory speech:

*The bill will allow for subsidised fares for people with a disability under the taxi subsidy scheme to be extended to booked hire vehicles in the longer term if this is considered appropriate. In the short term, taxis only will continue to provide these subsidised services as taxis are required to comply with Commonwealth disability standards for accessible transport.*<sup>192</sup>

##### Stakeholder views

Some submitters suggested that ride-booking providers should be required to provide wheelchair accessible vehicles. For example, one stakeholder submitted:

*It is essential that there is a process whereby **all providers** of passenger transport services (ie all authorised booking entities) provide approximately 20-25% of their vehicle fleet/services to people with disabilities – including transport of people using large electric wheelchairs – so that ALL Queenslanders receive a suitable and timely transport service at a reasonable cost*

*As it stands at the moment, it appears that there is nothing in the proposed Bill and Regulations to prevent serious exploitation of vulnerable people needing transport. For example, with the abolition of Service Contracts, and no mandatory requirement for either booked hire vehicles or taxis to provide any service, situations may arise where a disabled or elderly person or an intoxicated person (or their friend trying to provide assistance) may make contact to request/book transport, and an unscrupulous transport provider could tell them “there is a \$1000 ‘call out fee’ to pick them up and provide transport – take it or leave it”. It is imperative that ill-considered and hasty government reforms do not permit such scenarios because it is clearly **NOT in the Public Interest.***<sup>193</sup>

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<sup>191</sup> Explanatory notes, p 28.

<sup>192</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 600.

<sup>193</sup> Submission 20, p 14.



Other submitters suggested that taxis should remain the exclusive provider of services to members of the TSS. For example:

*Keep TSS with Taxis, their current drivers have had the training to deal with the elderly and disabled, as you have dropped the training standards, this may not continue. Cabcharge does a lot of paperwork and payments to drivers for the government so it is not advisable to spread this around 50 different operators.*<sup>194</sup>

Spinal Life Australia submitted that people with a disability require a predictable service:

*People with a disability require a predictable service. We fear the erosion of the Maxi Taxi fleet because its diminishment would see Queenslanders having a confined life, i.e. they have NDIS supports to give them independence but are unable to leave home, especially in regional areas, where licenses were boosted by the Queensland government in 2005 in recognition of the lack of transport options.*

*It is unlikely Ride share organisations can offer predictable accessible services. To do so, their vehicles would need to meet the Disability Standards for Accessible Public Transport 2002 (Cth). This requires, as an example, entry/exit vertical heights of 1500mm floor to ceiling for mobility device access. And they must be able to accept all mobility devices with tie downs within the national footprint for mobility devices. It costs over \$80,000 to establish a new Toyota Hi-Ace Maxi Taxi for service. It will be a dilemma for ride share organisations to develop a fleet of compliant vehicles like the current maxi taxi fleet because it does not fit their business model.*<sup>195</sup>

#### Department response to issues raised in submissions

DTMR advised that the new personalised transport framework provides protections to ensure customers with disabilities have affordable and accessible personalised transport options. Booked hire services for TSS members and wheelchair accessible services are subject to maximum fares to provide these customers with protection from overcharging. A \$20 Lift Payment for drivers of wheelchair accessible taxis also incentivises the provision of services to TSS members who use a wheelchair.

*Taxis will remain the exclusive provider of services to members of the TSS. However, in the future, the Queensland Government may consider allowing other personalised transport operators to provide subsidised services to TSS members, subject to operators being able to meet the transportation needs of members and also complying with the Commonwealth Government's Disability Standards for Accessible Public Transport.*

*The department will continue to monitor the provision of services to persons with disability to ensure adequate service levels are maintained.*<sup>196</sup>

#### Committee consideration

In response to a question from the committee at the public hearing Uber advised:

*We actually have a team in Sydney that is dedicated to looking into this. They are currently running a trial for wheelchair accessible vehicles in Newcastle, so it is definitely something we are looking into. We also have a product in the app called UberASSIST. That helps people who need an extra helping hand who do not have a wheelchair to get into a vehicle with a driver who has been put through training with a disability organisation.*<sup>197</sup>

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<sup>194</sup> Submission 8, p 4.

<sup>195</sup> Submission 254, p 3.

<sup>196</sup> Correspondence, 24 April 2017, p 3.

<sup>197</sup> Public hearing transcript, 20 April 2017, p 27.

## 2.5 Chain of responsibility, including fatigue management

### Amendments proposed in the legislation

Proposed new chapter 7, part 3 of the bill introduces a chain of responsibility for taxi and booked hire services to ensure each party involved in providing taxi and booked hire services takes reasonable steps to prevent the commission of an offence and to eliminate or minimise safety risks.<sup>198</sup>

DTMR advised these provisions have been modelled on safety duties under the Queensland work health and safety legislation and Heavy Vehicle National Law and:

*The chain of responsibility includes a range of obligations with a strong focus on improved safety outcomes, such as duties in relation to managing driver fatigue. The new chain of responsibility is applied consistently across the personalised transport industry in relation to all booking entities, operators and drivers. It will ensure that any party in a position of influence is identified and held accountable.*<sup>199</sup>

The department provided further details at the public briefing about the three key elements:

- a booking entity, which is effectively the organisation that connects the customers to the services and they have to have an authorisation with the department
- an operator, which is connected with the vehicle and there has to be a service licence connected to the operation of that vehicle, and
- the driver who has to have driver authorisation.<sup>200</sup>

DTMR advised that it intends to liaise with the National Heavy Vehicle Regulator and Workplace Health and Safety Queensland to make sure it has a good understanding of best practice in implementing and enforcing safety duties under the chain of responsibility and to ensure consistency of approach where appropriate.<sup>201</sup>

### Stakeholder views

The TCQ submitted there is a lack of specificity and legal enforceability of new duties and chain of responsibility, citing for example proposed sections 88, 89 and 91B:

*They are vague duties that likely have very low thresholds to meeting the expressed requirements, thresholds well below what is necessary to ensure Queenslanders have access to a safe and reliable personalised transport sector.*<sup>202</sup>

A number of other submissions raised the issue of clarity and specificity and of enforcement.<sup>203</sup> For example, one stakeholder submitted that in relation to section 87 there was a need to:

*.... consider and legislate a mechanism so that booking entities (& others) cannot effectively force or coerce workers/drivers and passengers/customers to take on risks that rightly belong with the booking entity, or to 'sign' (via tapping 'accept' on a mobile phone screen) away their rights in Australian law or unknowingly or unwittingly agree to arbitration in a foreign country under foreign law.....*

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<sup>198</sup> Explanatory notes, p 3.

<sup>199</sup> Public briefing transcript, 20 April 2017, p 3.

<sup>200</sup> Public briefing transcript, 20 April 2017, p 6.

<sup>201</sup> Public hearing transcript, 20 April 2017, p 38.

<sup>202</sup> Submission 10, p 11.

<sup>203</sup> See for example, submission 1, p 3, submission 6, p 2 submission 8, p 8 and submission 20, pp 53-54.

*There appear to be many avenues by which a large multinational foreign multi-billion dollar corporation (such as Uber) could evade the requirements outlined in this Act and potentially jeopardise the safety of the general public/community.<sup>204</sup>*

At the public hearing RPS Australia advised that modelling it has undertaken to assess the compliance costs of enforcing the chain of responsibility provisions shows a considerable increase in costs to government:

*... we found in overseas jurisdictions: where it has moved away from a relatively onerous or relatively specific regulatory framework to one that is more open, such as a chain of responsibility, the costs of prosecution dramatically increase. If you are determining whether somebody has breached a specific section that is a relatively simple task compared to working out what is the proportional responsibility of 30 different parties within a chain of responsibility within a legal framework and that is effectively what a chain of responsibility does. It is similar to a civil responsibility in a civil case. It apportions responsibility out over all players. That would be the requirement of the court to determine and the cost of doing that—it is one per cent or two per cent or five per cent—can be millions of dollars, but the cost of doing that is substantial. That would fall to the government to prosecute.<sup>205</sup>*

#### Committee consideration

In response to a question from the committee on how the chain of responsibility provisions would be enforced, DTMR advised the chain of responsibility is designed to ensure each party involved in providing taxi and booked hire services, including among others the booking entity licence holder, operator and driver, takes reasonable steps to prevent the commission of an offence and to eliminate or minimise safety risks.<sup>206</sup>

*The two key components of the chain of responsibility are the primary safety duties and fatigue management duties contained in clause 18 of the bill, new chapter 7 part 3 of the Transport Operations (Passenger Transport) Act. Fatigue is currently regulated through a general requirement in the Transport Operations (Passenger Transport) Standard 2010 to take reasonable steps to ensure drivers are not fatigued. The bill will enhance fatigue management by imposing a general fatigue management duty and allowing more specific fatigue management requirements to be prescribed by regulation. The new primary safety duties are modelled on the Heavy Vehicle National Law and the Work Health and Safety Act 2011. The proposed offence and penalty structure for failure to comply with these duties mirrors this legislation. Penalties of up to 3,000 penalty units or five years imprisonment for an individual and 30,000 penalty units for a corporation can be imposed.<sup>207</sup>*

The department confirmed the proposed amendments would also allow DTMR to conduct audits on all parties in the personalised transport chain of responsibility to determine whether they are complying with their obligations under TO(PT)A and other relevant transport legislation and advised:

*This includes compliance with the primary safety and fatigue management duties. Authorised booking entities will also be required to keep and provide to the department prescribed information about their booking services and the booked hire services for which they provide booking services. These provisions will enable the department to monitor compliance by each party in the chain, in particular, to determine whether they have appropriate measures in place to ensure compliance with their safety duties and identify any potential or actual noncompliance. Where the department has concerns regarding noncompliance following an audit, a written*

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<sup>204</sup> Submission 20, p 56.

<sup>205</sup> Public hearing transcript, 20 April 2017, p 16.

<sup>206</sup> Public hearing transcript, 20 April 2017, p 38.

<sup>207</sup> DTMR, public briefing transcript, 20 April 2017, p 40.

*direction to comply can be issued. This gives the person an opportunity to remedy the activities that are causing the noncompliance, to prevent any further contravention. However, the department may also decide to prosecute a person subject to an audit where noncompliance is identified.*<sup>208</sup>

### **2.5.1 Primary safety duty imposed on industry participants**

#### Amendments proposed in the legislation

The proposed chain of responsibility will impose a primary safety duty on industry participants and attach significant penalties for non-compliance.

Proposed new section to 91B imposes duties on persons in the chain of responsibility relating to the management of driver fatigue. For example, subsection (1) of 91B prohibits a person from driving a motor vehicle being used to provide a taxi service or booked hire service while the person's ability to drive safely is fatigued.

Proposed new section 91C allows a regulation to be made to impose other requirements for managing driver fatigue, such as standards about working time spent driving a motor vehicle; requirements relating to monitoring, recording and reporting on these matters; use of particular equipment or technology to manage fatigue; and training of drivers and other persons in the chain of responsibility about managing driver fatigue.<sup>209</sup>

The Minister, in the explanatory speech, advised:

*Safety is always the top priority for the government and the bill focuses on the safety of personalised transport services, creating consistent safety standards across the industry. Specifically, the bill introduces a primary safety duty on all parties involved in providing these services, with significant penalties of up to \$3.5 million, or five years imprisonment, for noncompliance. These provisions have been modelled on safety duties under the Heavy Vehicle National Law and Queensland work health and safety legislation. All parties in the chain will also have a shared responsibility to manage driver fatigue to further enhance safety.*<sup>210</sup>

#### Stakeholder views

A number of submissions recommended that the government establish a process for managing the affiliation of drivers with multiple booking entities in terms of both chain of responsibility and fatigue management.<sup>211</sup> At the public hearing Professional Taxis Gold Coast provided the following example to illustrate this issue:

*In relation to fatigue management, we know about it ourselves when we have had drivers moonlighting for Uber. They turn up and take a cab. Then we watch them jump into their private vehicle and drive out. Then all of a sudden a sticker appears in their rear window—and on some occasions, not. What is our responsibility? Where is our responsibility with that? We have provided adequate training and fatigue programs. We have a 12-hour shutdown of their account so they cannot log in as a cab driver under fatigue management. That driver gets shut down on our platform and then goes and jumps into another or, worse for us, they actually started in the Uber vehicle and then hopped into our vehicle. How do we make sure as an industry we are not allowing drivers to overlap?*<sup>212</sup>

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<sup>208</sup> Public hearing transcript, 20 April 2017, p 38.

<sup>209</sup> Explanatory notes, p 18.

<sup>210</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 599.

<sup>211</sup> See for example, submission 10, p 7, submission 36, p 7, submission 7, p 2, submission 20, p 58-59 and submission 21, p 5.

<sup>212</sup> Public hearing transcript, 20 April 2017, p 8.

The RACQ advised that it supports ‘any action that monitored fatigue in drivers for both the ridesharing and taxi industry. It is one of the fatal five for a reason and it should be managed and monitored. To RACQ it is about safety and that is a key part—that is a good car and a good driver—and that is where our focus has been while also providing competition’.<sup>213</sup>

First Class Taxis recommended ‘that all booked hire services (booking service, operator and driver) maintain a record, implement and monitor driver fatigue and limit driver hours to comply with relevant state and federal legislation’.<sup>214</sup>

#### Department response to issues raised in submissions

The Department advised that each person in the chain of responsibility is accountable in relation to their role in the provision of each personalised transport service, regardless of whether another person performs the same role. For example, if a driver accepts bookings from multiple booking entities, each of those booking entities is responsible and must discharge their duties to the extent they have capacity to influence or control the matter and:

*Fatigue management requirements, apart from the general duty to manage fatigue as part of the chain of responsibility, are still being considered by the department. Potential options include standards about working time spent driving a motor vehicle; requirements relating to monitoring, recording and reporting on these matters; and, the use of particular equipment or technology to manage fatigue. Issues in relation to managing fatigue across multiple booking entities will be considered as part of the development of that policy.*<sup>215</sup>

#### Committee consideration

At the public briefing the committee sought clarification about how the risk of fatigue would be managed. The department reiterated that the level of prescriptiveness around what the fatigue management framework will look like is still being developed by the department and it is intended to sit in subsequent subordinate legislation and further:

*It has certainly been addressed through the chain of responsibility framework; each party in the chain will have responsibilities in relation to ensuring drivers are not fatigued. It is certainly a challenging space, though, when you are talking about people who might be performing a non-driving job. That is why we have to place obligations on the booking entities as well as operators in that space.*<sup>216</sup>

At the public hearing the committee asked the witnesses from Uber and Shebah what systems they have in place to manage fatigue:

#### Shebah advised:

*We have 12 hours as the absolute maximum in a day. Every trip is logged. We cannot tell if they are driving a light aircraft all day and then driving for us at night. We cannot tell what they are doing beyond what is seeable. In terms of logging on with us, we can log how often they are driving, and our maximum driving time is 12 hours. That is what is recommended by WorkSafe. We also insist they take a break every two hours and get out of their car and have a stretch, have a walk, have a glass of water. Again we insist, but now we have 708 drivers. We can put those recommendations up. We put exercises up on our website, we advise, we send text messages like, ‘Don’t forget to get out and have a drink of water.’ It is like driving drunk; we do all of the messages. In the end, these are contract workers. They know they are driving people with children. They know their income depends on them being safe. There is a point where you have*

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<sup>213</sup> Public hearing transcript, 20 April 2017, p 36.

<sup>214</sup> Submission 24, p 10.

<sup>215</sup> Correspondence, 19 April 2017, p 11.

<sup>216</sup> Public briefing transcript, 20 April 2017, p 6.

*to say in as much as your government can say, 'Don't work more than 100 hours a week,' or whatever it is, you have to take care of yourself. We can advise, we can monitor and we can log you and say, 'That's enough. You're working too much. We don't want to have to suspend you from the app, but we will.'*<sup>217</sup>

Uber advised:

*We run them through the requirement of being safe and monitoring their fatigue. The nature of ridesharing is that it is very difficult, as George alluded to, to determine what is working and when you are working. You press a button and you are online; you press a button and you are offline. We may have flower delivery drivers who do a couple of trips in between; some people do trips across the week; some people just do it part-time, so it is very difficult to ascertain. What is more, it is very difficult to ascertain what is happening outside. They may have had a crying baby that has kept them up all night and then they go and drive.*

*I think the core difference between ridesharing versus other forms of driving is that you are not locked into a shift, so if you do feel tired you do not have to push through the 12-hour shift. You can press a button and go home. We feel strongly that no-one understands fatigue better than the person that is subject to fatigue, so it is important for them to monitor that.*<sup>218</sup>

Following a question from the committee about managing fatigue the TCQ stated:

*We need to have central registers and we need to have better collaboration across different platforms. Because of commercial sensitivities, you cannot expect players in the market competing with each other for the same customer base to share information. You have to regulate for that and you have to have a central point that acts as the umpire of that sharing of information. Yes, we all want to make a dollar and, yes, that is important, but it cannot happen at the expense of the consumer. It cannot happen at the expense of Queenslanders. We deserve better than that.*<sup>219</sup>

Following the public briefing the committee sought further advice from the department on the proposed fatigue management framework and in particular, how it would interact with the proposed chain of responsibility. DTMR advised that fatigue management is an important safety mechanism and will be a key component of the new personalised transport framework:

*The development of a fatigue management framework for personalised transport is currently underway. It requires getting the balance right between government regulation and industry self-management and will be subject to further consultation across government and with the personalised transport industry.*

*To ensure the success and viability of Queensland's personalised transport industry, government proposes the following principles for the new fatigue management framework:*

- *an outcomes focused framework that ensures the compliance costs imposed on industry and enforcement and monitoring costs for government are sustainable*
- *a clearly defined framework, which:*
  - *identifies clear obligations for each entity in the chain of responsibility in relation to their fatigue management duties*
  - *establishes clear data capture and reporting requirements for all booking entities on fatigue management, including to support the monitoring of cross-platform work by drivers*

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<sup>217</sup> Public hearing transcript, 20 April 2017, p 30.

<sup>218</sup> Public hearing transcript, 20 April 2017, p 30.

<sup>219</sup> Public hearing transcript, 20 April 2017, p 18.

- a standardised framework that adopts a consistent approach across the personalised transport industry to hours of work requirements and other key framework issues.

*The flexibility personalised transport drivers have to work across platforms, such as where a driver performs work for more than one provider, or hold employment in other fields at the same time as providing personalised transport services will be an important part of the new framework. However, this ability has always existed and has not been created by the proposed personalised transport reforms.*

*During industry workshops undertaken by the Department of Transport and Main Roads (TMR) as part of the development of the Stage 2 reforms, feedback from industry was strongly in favour of not having formal log book requirements placed on drivers.*

*In this regard, TMR will investigate a range of fatigue management options, including data and technology based solutions and the potential for real time fatigue management systems, which better accommodate fatigue management where drivers are working for multiple personalised transport providers.*

*Data and reporting requirements will apply for booking entities and responsibilities for fatigue management will apply to all parties within the chain of responsibility. Framework monitoring and compliance will be delivered through a number of mechanisms, including data capture, auditing and on-road compliance and will be supported by increased compliance resources and powers.<sup>220</sup>*

#### **Recommendation 7**

The committee recommends the Minister seek to establish industry standards for fatigue management and that these standards include:

- a maximum number of driver hours within a defined period to combat fatigue, and
- a maximum shift length across the personalised transport industry.

#### **Recommendation 8**

The committee recommends the Minister as soon as practicable, outlines the data requirements for chain of responsibility parties and ensures that the data required:

- at a minimum, is sufficient for the department to monitor fatigue management, and
- includes the time each driver is logged onto the driver platform through the use of developing technology.

<sup>220</sup> Answers to Question taken on Notice, 24 April 2017, pp 7-8.

## 2.6 Insurance - Compulsory Third Party (CTP) and public liability

### 2.6.1 CTP Insurance categories

In relation to CTP insurance the 2016 Transportation and Utilities Committee Report No. 27 recommended that ‘as an interim measure (while a new approach to CTP insurance is being developed) the government consider developing, a single CTP insurance category to apply to taxis and rideshare vehicles’ (recommendation 22).<sup>221</sup>

The government did not support this recommendation on the basis that the Motor Accident Insurance Commission (MAIC) was reviewing the framework for both booked hire and taxis to ensure each vehicle class in the personalised transport industry is held accountable for contributing the appropriate premium (based on risk) and any changes to the CTP scheme would be introduced as part of stage two of the reforms.<sup>222</sup>

#### Amendments proposed in the legislation

DTMR advised that the draft amendment regulation proposes that a new class of CTP insurance be established (Class 26) for ride-sharing vehicles and limousines, separate to Class 3 for taxis, ‘consistent with the intent and principles of the CTP scheme that each class should reflect the claims and experience of those vehicles.’<sup>223</sup> Currently limousines have their own Class 4 of CTP insurance with a different premium.<sup>224</sup>

It is proposed that every vehicle used in the personalised transport industry will be required to have the correct level of CTP before a service licence is approved.<sup>225</sup>

DTMR also advised that CTP premiums are based on the claims experience of the vehicles in that class and are revised over time and that CTP premiums for each class are not set out in the draft amendment regulation.<sup>226</sup>

#### Stakeholder views

A large number of taxi industry submitters suggested there should be one CTP class with the same premium for all personalised transport service vehicles.<sup>227</sup> For example, the submission from Ms Valerie Hicks raised a concern that the decision to leave taxis in their own class is discriminatory and the CTP for commercial vehicles needs a ‘complete overhaul along with the MAIC’:

*All personalised transport services should be placed in the same Class. Limousines and all ride-booking services have the potential to operate 24/7. In the case of ride-booking services two or more people could easily operate one vehicle around the clock. Also, the public are aware through the media and social media that ride-booking vehicles have already been involved in a number of at-fault accidents.*

*For your information I have to pay \$6,265 pa for CTP insurance (Class 3) while it is proposed that other personalised transport service operators may pay around \$600 pa. Why should I have to pay TEN TIMES MORE? This is far from a level playing field!*<sup>228</sup>

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<sup>221</sup> Report No. 27, 55<sup>th</sup> Parliament, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016.

<sup>222</sup> Government response to the Transportation and Utilities Committee Report No. 27, p 6.

<sup>223</sup> Correspondence, 19 April 2017, p 3.

<sup>224</sup> DTMR, public briefing transcript, 20 April 2017, p 3.

<sup>225</sup> DTMR, public briefing transcript, 20 April 2017, p 12.

<sup>226</sup> Public briefing transcript, 20 April 2017, p 3.

<sup>227</sup> For example, see submission 3, p 3, and submission 8, p 11.

<sup>228</sup> Submission 26, p 1.



The TCQ submitted:

*High CTP insurance premiums have long been identified as a major impediment to the viability of taxi services in Queensland and the recent reforms have entrenched an un-level playing field by not addressing these concerns and failing to place Booked Hire Services in a CTP class appropriate for public passenger services providers. Similarly, the bill fails to deal with how to classify a taxi in CTP if the vast majority of taxi trips in Queensland are in fact in the Booked Hire Market. Immediate clarity is required to address the current inequity and wrong the current bias against taxis in the current CTP regime.*<sup>229</sup>

Another taxi industry stakeholder suggested that rideshare should pay at least two or three times class 1 CTP as a starting point:

*Suggest moving to a km based system with kms recorded at DTMR COI inspection...you pay normal price initially and if your kms are substantially less than average kms for that class then a proportionate percent refund can be issued. This will apply to Taxis/Limos as well; as Uber has decreased the kms we are travelling as there is less work, less driving, and therefore less chance of claims. I should not be paying 24/7 prices if I am not working 24/7.*<sup>230</sup>

Uber advised that it had worked very closely with MAIC over the last six months on its CTP review to make sure it understands how ridesharing differs from traditional services like taxis and limousines.<sup>231</sup> In its submission Uber noted that the ridesharing driver cohort is very diverse with about half of Queensland's ridesharing drivers providing a service for less than 10 hours per week and provided the following option adopted in NSW with regard to CTP insurance:

*The NSW Government has solved for this problem by allowing ridesharing vehicles to remain in Class 1, private vehicle, with a per/km top up fee being paid for km driven for ridesharing purposes. This 'user pays' approach appears a better solution to address this problem than forcing all vehicles - independent of how much they are driven for one specific purpose - into a new Class.*<sup>232</sup>

A number of other submissions from the ride-booking industry supported a variable premium dependent on the extent of time vehicles were used.<sup>233</sup> The RACQ also supported this approach and recommended the government introduce a pay-by-use billing for CTP:

*This would mean that drivers who are working full time would pay more for CTP, but less than those who are using taxis around the clock. It would also mean that those who drive infrequently have an opportunity to supplement their income and offset some of their vehicle ownership costs without subsidising the higher CTP risk for full-time drivers. The government could also set a kilometre limit to distinguish between a casual rideshare driver and a full-time driver. This would allow a low-cost option for those who wish to provide only occasional ridesharing services and a higher cost and regulatory burden for those operating full time.*<sup>234</sup>

The RSDAA referred to the reduction in the number of taxi accident claims and questioned whether there was any data to support the proposed increase in CTP for booked hire work:

*It is a new industry and, as a member of the Ride Share Drivers' Association, I am not aware of any major accidents involving any of our members.*<sup>235</sup>

<sup>229</sup> Submission 10, p 14.

<sup>230</sup> Jason, John and Louise Steele, Submission 1, p 5.

<sup>231</sup> Public hearing transcript, 20 April 2017, p 22.

<sup>232</sup> Submission 29, p 9.

<sup>233</sup> See for example, submission 314, p 1.

<sup>234</sup> Public hearing transcript, 20 April 2017, p 33.

<sup>235</sup> Public hearing transcript, 20 April 2017, p 32.

The limousine industry generally did not support being combined into the same class as other vehicles based on the fact that limousines are generally driven by professional drivers and recommended that limousines remain in class 4 and ride booking vehicles have their own class.<sup>236</sup> QBE Insurance agreed with this position and submitted:

*..... segregating booked hire vehicle risks from limousine and other vehicle risks would provide more granular information about the performance of this new personal transport class. This over time would enable a clearer understanding of the unique characteristics of this sector and a more accurate assessment of the risk and appropriate pricing. Premiums for this new class could be adjusted over time as insurers are able to better identify and price the actual risk.*<sup>237</sup>

The Limousine Action Group was concerned that while there may be a short-term reduction in CTP premiums, the long term implications of ride booking claims might increase the premiums.<sup>238</sup>

#### Department response to issues raised in submissions

DTMR responded that CTP Insurance is regulated by MAIC and that the draft amendment regulation proposes to amend the Motor Accident Insurance Regulation 2004 to create a new class of CTP insurance (Class 26) for booked hire vehicles and limousines and:

*The draft regulation does not set the insurance premiums for each class, as premiums are not set out in legislation. Quarterly, MAIC sets a ceiling and a floor for each vehicle class based on recent claims experience, and licensed insurers set their premium within that band, at a level that the insurer believes appropriately and fairly reflects the risk being underwritten. Relevant levies and administrative fees are subject to regulated processes under the Motor Accident Insurance Act 1994 and will be finalised in conjunction with the making of regulation amendments. It is expected that the new premiums will be determined in the second half of 2017.*

*MAIC advised that, consistent with the current principles and intent of the CTP scheme, CTP premiums for taxis, limousines and booked hire vehicles will reflect the claims experience of the relevant class – that is the expected frequency and cost of claims for that class. MAIC has undertaken an actuarial analysis in order to inform the premiums for vehicles used to provide personalised transport services. Ultimately, insurers will require a premium that they believe reflects the risk being underwritten. CTP premiums for each class will continue to be set quarterly to reflect current claims experience.*<sup>239</sup>

In relation to the concerns raised by the limousine industry, DTMR advised:

*Currently, limousines are in CTP Class 4 with almost 40,000 hire cars (or rental vehicles). This class currently attracts an annual CTP premium of \$636. The MAIC has undertaken high-level actuarial analysis of the experience of limousines. If limousines were to be in their own class their premium would likely be much higher and subject to volatility given there would only be a small number of vehicles in that class. The actuarial analysis indicates that limousines benefit from being grouped with another class of vehicles. Regardless of whether limousines are in Class 4 or Class 26, they are likely to be better off than if their premium was set based on their true risk cost.*<sup>240</sup>

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<sup>236</sup> See for example, public hearing transcript, 20 April 2017, p 5, submission 36, p 6, submission 13, p 3 and submission 235, p 2.

<sup>237</sup> Submission 25, p 2.

<sup>238</sup> Submission 36, p 6.

<sup>239</sup> Correspondence, 19 April 2017, p 9.

<sup>240</sup> Correspondence, 24 April 2017, p 3.

### Committee consideration

The committee sought further advice at the public briefing on the proposed CTP insurance framework for the personalised transport industry. At the public briefing MAIC advised the proposed approach is to create a new vehicle class for rideshare and limousines, which will be known as class 26 and:

*The structure of that in terms of the scheme will be the same in that vehicles in a class are charged a premium and that premium will apply to all vehicles in that class. The premium for a ride-share vehicle is likely to be different from the premium for a vehicle in a taxi class, but it will be based on the claims experience for that particular group of vehicles.....*

*We have had discussions with the department of transport and TransLink around the expected number of vehicles that would come into this class and the process that would be adopted to identify those vehicles, because we need to be able to classify the vehicle through the registration process for the purpose of the insurer charging the correct premium for that particular vehicle. Currently, rideshare vehicles would be in the class 1—car and sedan—category. They would need to come out of that class, be identified at the point of the registration renewal to be put into class 26, and then charged the appropriate premium.* <sup>241</sup>

The committee asked about the likely premiums for each class of insurance and was advised by MAIC that the rideshare premium is anticipated as somewhere between \$500 and \$600 compared to the current taxi premium of about \$5,100; the premiums are being modelled on the assumption there will be about 10,000 ride-share vehicles in Queensland (many operating for less than 20 hours per week) and this is a different category of vehicle with quite a different risk exposure; and over time, if the ride-share vehicle experience looks similar to a taxi, the premiums would draw closer together.<sup>242</sup>

The committee also asked MAIC whether there had been any consideration of a variable premium for class 26 CTP based on the number of hours the vehicle is used as a booked hire vehicle. MAIC advised:

*The Queensland CTP scheme structure is community rated across all vehicle classes. Everyone pays the same premium, so ride-share will be the same as for any other vehicle class, regardless of how much the vehicle is used. That is the single premium that applies. In terms of risk grading, it is something that might be explored going forward, but the current structure is very much based on a community structure of one price for all vehicles in that class.*<sup>243</sup>

#### **Recommendation 9**

The committee recommends the Minister make a commitment to undertake a review of Compulsory Third Party insurance categories 18 months after commencement of the draft amendment regulation to assess whether the inclusion of limousines in the new class 26 category with ridesharing vehicles is having a detrimental impact on the premiums for limousines.

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<sup>241</sup> Public briefing transcript, 20 April 2017, p 7.

<sup>242</sup> Public briefing transcript, 20 April 2017, pp 11-13.

<sup>243</sup> Public briefing transcript, 20 April 2017, p 13.

## 2.6.2 Method of payment for CTP insurance and registration

In relation to CTP insurance payments the 2016 Transportation and Utilities Committee Report No. 27 recommended ‘the Government investigate the possibility of personalised transport operators being able to pay their registration and CTP insurance on a monthly basis’ (recommendation 23).<sup>244</sup>

The Government supported this recommendation in principle on the basis that DTMR had recently expanded three month registration and CTP terms to taxi and limousine operators and further, ‘for those under significant financial stress the department has also implemented for affected taxi and limousine operators a manual two-month period.’<sup>245</sup>

The bill and the draft amendment regulation do not contain amendments relating to the payment of registration and CTP insurance as the government proposes to allow the payment of CTP insurance on a 3 monthly basis and DTMR advised ‘this is able to be achieved administratively without legislative amendment’.<sup>246</sup>

At the public briefing DTMR advised the option currently available to taxi and limousine operators to make registration payments on a three-monthly basis will be extended to ride-booking operators and that ‘this can be done administratively without legislative amendments and, as such, this issue is not dealt with in the draft regulation’.<sup>247</sup>

DTMR also advised that a further reduction in registration payments will be investigated as the reforms are implemented.<sup>248</sup>

## 2.6.3 Public liability insurance

### Stakeholder views

A large number of submitters<sup>249</sup> supported the TCQ recommendation that all personalised transport participants be required to hold public liability insurance ‘to prevent the State Government becoming the default insurer and minimise potential risks to the community’.<sup>250</sup>

### Department response to issues raised in submissions

DTMR advised that it is currently investigating this issue ‘as the complexities of different insurance arrangements, and the appropriateness of imposing insurance requirements on different parties involved in providing personalised transport services, need to be fully explored’.<sup>251</sup>

### Committee consideration

The committee requested clarification at the public briefing about the difference between public liability insurance and CTP insurance. MAIC advised:

*CTP is, as it says, compulsory third party insurance. It covers the owner or operator of a vehicle for unlimited liability for any injury they cause while they are using that vehicle. Public liability is a more broad cover which actually excludes any liability picked up by a CTP policy. An example is for a shopkeeper if someone slips and falls in their premises or a plumber to cover them against any negligence while they are doing work at a property. It is a much broader, different cover.*

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<sup>244</sup> Report No. 27, 55<sup>th</sup> Parliament, Heavy Vehicle National Law and Other Legislation Amendment Bill 2016.

<sup>245</sup> Government response to the Transportation and Utilities Committee Report No. 27, p 6.

<sup>246</sup> Correspondence, 19 April 2017, p 3.

<sup>247</sup> Public briefing transcript, 20 April 2017, p 2.

<sup>248</sup> Public briefing transcript, 20 April 2017, p 2.

<sup>249</sup> See for example, submission 12 p 3, submission 22, p 13, submission 27, p 6 and submission 24 p 19.

<sup>250</sup> Submission 10, p 10.

<sup>251</sup> Correspondence, 19 April 2017, p 13.

*You do not need to buy public liability for vehicle registration purposes. As long as the vehicle is being used as a registered vehicle or a registrable vehicle CTP cover applies. If you should have the vehicle registered and you do not, the nominal defendant provides cover.*<sup>252</sup>

In response to a question from the committee, Professional Taxis Gold Coast advised that CTP is only relevant when the vehicle is moving:

*If the vehicle is not moving, if an incident occurs outside the vehicle, then CTP is not the provider of insurance. It would fall under public liability. For example, if a wheelchair were to fall off the back of a hoist in the cab, that is not CTP; that would be public liability. If a passenger closes the door on their hand and was hurt, that would become public liability. It is an action that occurs outside of the vehicle's operation.*<sup>253</sup>

However, the committee received subsequent advice from MAIC that CTP insurance cover does apply when the vehicle is stationary and also applies if the vehicle is covered by the wrong class.<sup>254</sup>

MAIC also advised the committee that taxi and ride-share operators would not require public liability insurance to cover any injury caused on or through the use of the vehicle (as this is covered by CTP insurance) but may require it for 'other business aspects'.<sup>255</sup>

Uber advised that 'every trip is covered by our \$20 million contingent liability insurance policy. It is a wider business decision that has been made'.<sup>256</sup>

#### **Recommendation 10**

The committee recommends the bill be amended to require:

- all parties in the proposed chain of responsibility are appropriately covered by public liability insurance, and
- evidence of public liability coverage (such as a certificate of currency) to be provided before key authorities and licences are issued, for example (but not limited to) before a booking entity authority is issued, or if a driver is a sole operator, before the booked hire service licence is issued.

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<sup>252</sup> Public briefing transcript, 20 April 2017, p 16.

<sup>253</sup> Public hearing transcript, 20 April 2017, p 8.

<sup>254</sup> DTMR, correspondence, 27 April 2017, p 1.

<sup>255</sup> Public briefing transcript, 20 April 2017, p 16.

<sup>256</sup> Public hearing transcript, 20 April 2017, p 24.

## 2.7 Security in personalised transport vehicles

### 2.7.1 Security cameras

In 2005, the government funded approximately \$8.4 million for the initial supply and installation of taxi security camera systems.<sup>257</sup> The funding was used to install cameras in both mandatory and non-mandatory areas in order to improve the safety of both passengers and drivers, and to provide evidence in the case of acts of crime.<sup>258</sup> Approximately 2,700 vehicles were fitted with cameras in 2005 and 2006.<sup>259</sup> The previous Transportation and Utilities Committee was advised in 2016 that the cost of purchasing and installing an approved camera system was between \$4,000 and \$8,000.<sup>260</sup>

The DTMR publication *Queensland Taxi Security Camera Program* notes that the camera requirements were implemented to make the taxi environment safer in the hope that the taxi industry reputation would improve, and ultimately public perception of taxi services would improve.<sup>261</sup>

Under current legislation cameras are mandatory for Queensland taxis in the relevant taxi service areas listed in schedule 3 of the Passenger Transport Regulation. Taxis that operate in smaller communities, and rural and remote areas of Queensland do not have to have a camera system fitted:

*These exemptions are provided in recognition of the different operating environment in these parts of Queensland and the greater financial viability issues that are generally associated with operating a small business in a regional remote community.*<sup>262</sup>

The prescribed taxi service areas that are required to have a security camera fitted are: Brisbane, Bundaberg, Cairns, Gladstone, Gold Coast, Gympie, Hervey Bay, Innisfail, Ipswich, Mackay, Maryborough, Mt Isa, Redcliffe, Rockhampton, Sunshine Coast, Toowoomba, Townsville Thuringowa, and Yeppoon.<sup>263</sup>

A DTMR publication on the security camera program stated that there were 217 camera downloads as a result of report of alleged assaults in taxis in 2011, and of these, 199 downloads were used for police investigations.<sup>264</sup>

In December 2013, further changes were implemented to camera requirements to strengthen safety measures, including:

- camera systems record images and audio (applicable from 2018)
- camera systems record for a prescribed 72 hours
- an optional camera can be installed by a passenger's door
- optional shutdown of external cameras once the vehicle reaches 15 kph
- camera systems must be capable of recording three images per second, and
- five-minute tagging of recordings prior to duress alarm activation.<sup>265</sup>

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<sup>257</sup> DTMR, Policy paper on proposed amendments to the Taxi Security Camera Program, November 2012, p 3.

<sup>258</sup> DTMR, *Queensland Taxi Security Camera Program*, Frequently Asked Questions no. 1 and 2.

<sup>259</sup> Media release, Minister for Transport and Main Roads, "Taxi cameras catch the crooks", 12 March 2006.

<sup>260</sup> Transport and Utilities Committee, Report No 27, pp 60 and 77.

<sup>261</sup> DTMR, *Queensland Taxi Security Camera Program*, p 3.

<sup>262</sup> DTMR, *Queensland Taxi Security Camera Program*, Frequently asked Questions, no. 30.

<sup>263</sup> Passenger Transport Regulation, schedule 3.

<sup>264</sup> DTMR, Taxi issues paper, <http://images.brisbanetimes.com.au/file/2012/11/23/3822151/taxi-issues-paper.pdf> (accessed 26 April 2017).

<sup>265</sup> DTMR, *Queensland Taxi Security Camera Program*, Frequently Asked Questions, nos 3 and 35.

DTMR is responsible for regular audit and compliance of the camera systems, and to undertake enforcement action if required.<sup>266</sup> The legal responsibility for fitting fully operational cameras and ongoing security safeguards and management of cameras is that of the taxi operators, not the licence holders or drivers. Additionally, legislation provides that it is illegal for drivers to operate a taxi that does not have an approved camera fitted.<sup>267</sup>

The DTMR website provides a list of urban and regional taxi company contacts to make a complaint, and there is also a taxi hotline should complaints not be resolved.<sup>268</sup> Where the complaint is of serious nature such as assault, they are reported to the Queensland Police Service.<sup>269</sup>

Camera systems are required in taxis in other Australian jurisdictions as follows:

*...in every jurisdiction in Australia, except for the Australian Capital Territory, Camera Systems are mandatory in at least part of the fleet. In Victoria, Tasmania and South Australia, Camera Systems are mandatory in more populated areas, whereas in New South Wales, Western Australia and the Northern Territory all taxis must have a Camera System. The legislation and specifications for Camera Systems is specific for each jurisdiction although, given the similar nature of safety and privacy considerations, there are considerable legislative similarities. For example, in each jurisdiction the use of recordings is limited to authorised purposes related to the safety and protection of people and system maintenance.*<sup>270</sup>

DTMR advised that no jurisdiction in Australia, or other country, requires or is proposing to require camera systems for rideshare vehicles except the ACT which introduced a cash transaction element.<sup>271</sup>

#### Amendments proposed in the legislation

Clause 26 of the bill proposes to amend section 155 to provide a specific power to make regulations relating to the use of security cameras and other security devices in vehicles used to provide public passenger services. The draft amendment regulation proposes to amend the Passenger Transport Regulation to remove part 6, division 4 (Taxi security camera systems) and insert new Part 7B and 7C to regulate vehicle security camera systems.

Proposed new section 117V of the draft regulation requires an approved security camera system to be fitted in all booked hire service or taxi service vehicles where a vehicle is authorised to provide a taxi service or where a passenger pays the fare for the journey by cash at any time or in person by electronic funds transfer, credit card transaction or another way during the journey. This section would also require the operator of a booked hire service or taxi service that is provided using the vehicle to ensure the vehicle is fitted with an approved security camera system. The maximum penalty is proposed to be 40 penalty units.

When introducing the Bill to Parliament, the Minister advised:

*The need for cameras in these circumstances has been identified due to the higher risk of assault, theft and fare evasion. Less prescriptive camera requirements will also make camera systems more affordable.*<sup>272</sup>

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<sup>266</sup> DTMR, *Queensland Taxi Security Camera Program*, Frequently Asked Questions no. 1.

<sup>267</sup> DTMR, *Queensland Taxi Security Camera Program guidelines*, Frequently Asked Questions, no 20.

<sup>268</sup> Queensland Government, Taxi contacts, <https://www.qld.gov.au/transport/public/taxi/contacts/index.html> (accessed 24 April 2017).

<sup>269</sup> Queensland Police, safety on public transport, <https://www.police.qld.gov.au/programs/cscp/personalSafety/adults/safetyonpublictransport.htm> (accessed 24 April 2017).

<sup>270</sup> DTMR, *Queensland Taxi Security Camera Program*, Frequently Asked Questions, no 18.

<sup>271</sup> DTMR, public briefing transcript, 20 April 2017, p 11.

<sup>272</sup> Queensland Parliament, Record of Proceedings, 21 March 2017, p 599.

DTMR advised that the draft amendment regulation would require security cameras to be fitted to personalised transport vehicles based on the risk of assault, theft or fare evasion and that these risks are higher where the passengers are anonymous because the journey commenced at a rank or via a street hail and where payment is made in cash in person during the journey:

*Security cameras will therefore remain mandatory in most taxis due to their ability to provide rank and hail services to anonymous passengers. Similarly, limousines and other booked hire services will be required to have security cameras if their service delivery model involves cash or electronic payment in person during the journey. To reduce costs to the industry, the specifications for security cameras will be more flexible and outcome focused.*<sup>273</sup>

#### Stakeholder views

The TCQ recommended that security camera requirements must establish a minimum standard, be consistent and uniform across all personalised transport providers to ensure the safety of all drivers and passengers (regardless of the service chosen) and to meet Queensland Police requirements.<sup>274</sup>

This position was supported by numerous taxi industry submissions.<sup>275</sup> For example, Professional Taxis Gold Coast submitted that ‘a “risk” profile should be set around public safety not based on financial transactions. The data collected from our current on-board security camera system is critical to ensuring safe service and should be mandatory requirement for all public transport providers’.<sup>276</sup>

Ride-booking and limousine submitters generally supported the proposed amendments on the basis that security cameras would not generally be required in their vehicles because of the nature of the services provided.<sup>277</sup> Uber provided the following explanation:

*I think it is important to note that transport policy has always recognised the difference between a pre-booked service and a rank and hail service like a taxi. In a pre-booked service like ourselves, the identity of the rider and the driver is known, every trip is GPS tracked, which you can share with another person, and at the end of the trip there is an electronic record of it as well as an opportunity to give a rating out of five and provide feedback. We have a 24/7 support team that can respond to that feedback. In terms of the difference, it is important to note that other services like taxis do have cash which we do not and Shebah does not. I think that is an important distinction.*<sup>278</sup>

Shebah suggested that women feel safer with a female driver, which is part of the service it provides.<sup>279</sup>

The RSDAA advised that it does not support cameras being required in rideshare vehicle in principle due to the large expense:

*From the information that I have been given, these cameras could be anything from \$2,500 to \$4,000. Once again, without a rather dramatic increase in rates, there are going to be people walking away from the industry left, right and centre. We heard the Uber representative say earlier that about 95 per cent of the vehicles used in ridesharing are privately owned vehicles. They are family vehicles. I personally do not want to spend \$2,500 to \$4,000 putting a camera into my private vehicle. In the time that I have been driving, which is about 18 months, I have not had one issue personally where I have been in any way concerned. We have had instances where*

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<sup>273</sup> Public briefing transcript, 20 April 2017, p 3.

<sup>274</sup> Submission 10, p 2.

<sup>275</sup> See for example, submission 1, p 4, submission 13, p 4, submission 20, p 117, submission 24, p 24, submission 203, p 2 and submission 230, p 1.

<sup>276</sup> Submission 22, p 6.

<sup>277</sup> See for example, submission 36, p 6.

<sup>278</sup> Public hearing transcript, 20 April 2017, p 25.

<sup>279</sup> Public hearing transcript, 20 April 2017, p 25.



*people have had things happen—and I heard before that we have a very robust way of checking things and talking. I know for a fact that there was an incident in New South Wales towards the end of last year where a matter was reported to the police.*<sup>280</sup>

The RACQ supported the proposed amendments on cameras on the basis there is a fundamental difference in safety requirements for services that are completely pre booked, with online identities of both driver and passenger and a financial transaction occurring away from the car, versus other services where there is some anonymity and where the financial transaction may happen in the car:

*Our understanding is that the mandatory camera requirement is only where there is some anonymity or a financial transaction at the car and there is no camera requirement for the completely pre booked services.*<sup>281</sup>

The submission from the Limousine Action Group argued that having cameras and GPS tracking can deter business as ‘many clients request Limousines with no cameras and no tracking. It must be considered that Limousines are used to transport visiting dignitaries, high profile people, and celebrities – their personal security and privacy is of paramount concern’.<sup>282</sup> The Group reiterated this position at the public hearing pointing out that the limousine industry provides a prestigious service, usually to high-end corporate clients:

*Having cameras or GPS tracking can deter business for us. The proposed requirement for cameras is inflexible for a limousine business, where the service is primarily prepaid or invoiced and on a very rare occasion we have clients who pay with cash.*<sup>283</sup>

Uber advised the committee that:

- Uber driver-partners have a reasonable expectation of privacy in their own vehicle
- riders also have an expectation of privacy in a ridesharing vehicle, knowing the alternative technology safety arrangements in place, and
- any video recording presents a potential invasion of privacy in ridesharing drivers’ personal vehicles.<sup>284</sup>

#### Department response to issues raised by stakeholders

In response to these issues, DTMR reiterated that the requirement to install a security camera in a personalised transport vehicle will be determined based on the risk of assault, theft or fare evasion:

*An approved security camera system will be mandatory if the service involves one of the following criteria which raises the risk profile of the service:*

1. *Driver and passenger anonymity – due to the risk associated with assaults;*
2. *Cash transactions – due to the risk of theft; or*
3. *Point of payment during the journey – due to the risk of fare evasion.*

*Cameras will be necessary where the vehicle provides taxi services due to the risks associated with the anonymity of passengers and drivers in the event of an assault. The risks associated with anonymity are reduced for booked hire services as booking entities will be required to make a record of all bookings and produce these records when required.*

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<sup>280</sup> Public hearing transcript, 20 April 2017, p 32.

<sup>281</sup> Public hearing transcript, 20 April 2017, p 35.

<sup>282</sup> Submission 36, p 6.

<sup>283</sup> Public hearing transcript, 20 April 2017, p 5.

<sup>284</sup> Correspondence, 27 April 2017, p 3.

*Security cameras will also be mandatory in all vehicles, including booked hire vehicles and limousines that provide services that accept payment in cash, or payment in person during the journey. These services have a higher risk profile as they are more likely to experience incidents of theft and fare evasion, which may also lead to driver or passenger assault.*

*The proposal to require security cameras based on risk imposes more rigorous requirements than any other Australian jurisdiction at this point in time.*

*This risk based model for security cameras has been adopted given there is not currently a significant evidence base suggesting that security cameras are required for all service delivery models. The appropriateness of a risk-based model will be reviewed in 18 months when further data is available and a more accurate assessment can be undertaken.<sup>285</sup>*

#### Committee consideration

At the public briefing the committee asked DTMR about how accusations of inappropriate behaviour in personalised transport vehicles would be managed given the proposal that the majority of non-taxi vehicles not be required to have security cameras. The department advised that it understands that booking entities will have a responsibility in terms of investigating any complaints and if there is alleged criminal activity then those matters should be referred to the police and then it would be up to the police to investigate.<sup>286</sup> In response to a question about whether any incidents in rideshare vehicles in Queensland had been reported to the department, DTMR advised:

*Not with the department. We are certainly aware of some media activity around this, but there is limited data that is actually available to us on that issue at this point in time.<sup>287</sup>*

DTMR also reiterated that the proposed security camera requirements are the most stringent requirement across Australia – ‘the ACT did introduce a cash transaction element in their industry, but that is the closest to what Queensland is proposing. There is no proposal in any other jurisdiction for ride booking to have cameras’.<sup>288</sup>

Later, at the public hearing, the department added:

*I suppose the key message there is that there is limited evidence at this point to warrant cameras across the entire industry fleet. It is something that government has an intention of monitoring as well as the overall reforms and reviewing 12 or 18 months down the track when more data is available. We have certainly done national and international jurisdictional scans in terms of practices in other jurisdictions. As we mentioned earlier, the approach that we have taken with cameras is over and above any other Australian jurisdiction.<sup>289</sup>*

In response to a question from the committee about whether there had been any formal complaints of sexual harassment made by riders against drivers in the ride-sharing industry and whether, in their opinion, cameras would impact on this, Uber advised:

*With a great volume of trips—and not just across Uber, but all transport providers—I think we could all agree whether it is a bus, a taxi or an Uber, it is impossible to mitigate 100 per cent of these things. What we do have in the app is the fact that every trip is GPS tracked, you are able to share the trip with somebody else, you can instantly provide feedback at the end of the trip and it is monitored by a 24/7 support group. If something does go wrong, action can be taken very quickly whereas with a camera, it may be quite some time until that can be actioned.<sup>290</sup>*

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<sup>285</sup> Correspondence, 19 April 2017, p 8.

<sup>286</sup> Public briefing transcript, 20 April 2017, p 10.

<sup>287</sup> Public briefing transcript, 20 April 2017, p 13.

<sup>288</sup> Public briefing transcript, 20 April 2017, p 11.

<sup>289</sup> Public hearing transcript, 20 April 2017, p 40.

<sup>290</sup> Public hearing transcript, 20 April 2017, p 27.

The RSDAA advised that it considers the level of assault extremely low considering the number of people who are using it:

*Earlier the gentlemen from Uber said that 700,000 people in Queensland are using ridesharing and it is growing by the day. If that is the case, if there was any level of assault—and I think for the amount of taxi journeys that are undertaken as well, the level is extremely low—I do not think it would matter if you had one camera or 10 cameras; if a person in society is going to commit that kind of crime, they are going to do it anyway.<sup>291</sup>*

The RACQ advised it does not necessarily support cameras in booked services, whether they are a taxi or rideshare:

*It just so happens that taxis have the capability to be both; ride-share vehicles do not and we do not think they should. If they are pre-booked by an app through a regulated service, we do not believe they need a camera. It is yet another cost barrier to entry. One of our biggest concerns about this entire regulation and the way that the industry is moving is that we may absolutely destroy the industry that we are hoping will grow into a genuine competitive one and an alternative to the taxi industry, although not replace it—we think taxis will always have an important role—but actually get the best public transport outcome that we can possibly get.*

*At the moment we are concerned that, while we think the proper management of driver safety and car safety is really important, if we provide such a cost barrier to entry through expensive cameras and lots of regulation, we may as well not legalise ride-sharing, because the only ones who will be able to do it will be full-time drivers and they are not the ones that we think actually want the support. We really want those people who want to do it on a casual basis to be able to pick it up and do it, because they provide the need when there is a big concert at the Gabba or when there is a big need for public transport.<sup>292</sup>*

In relation to the use of camera downloads in taxis the department advised:

- the taxi industry encounters incidents of theft and fare evasion assault on a frequent basis and this is evidenced by the number of downloads made from taxi security cameras
- the department is notified each time a security camera download in a taxi takes place and for what reason it is required, however
- the department is not involved or does not collect data in relation to police prosecutions or investigations into these incidents and/or any charges or convictions laid as a result.<sup>293</sup>

Following the public proceedings on 20 April 2017, the committee requested further information from DTMR, Uber and the RSDAA on the number of incidents/assaults that have occurred in ridesharing vehicles and taxis in recent years.

DTMR provided the committee with the following table which summarises data for incidents in which a taxi security download has occurred, categorised by offence type, for the period 2010 to 2016. This information was provided to DTMR by authorised download officers from taxi booking companies and the Queensland Police Service.<sup>294</sup>

In relation to the data provided, DTMR advised that it is important to note that sometimes a taxi security camera download request does not relate to an incident that has happened within the taxi.

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<sup>291</sup> Public hearing transcript, 20 April 2017, p 37.

<sup>292</sup> Public hearing transcript, 20 April 2017, p 37.

<sup>293</sup> Public briefing transcript, 20 April 2017, p 11.

<sup>294</sup> Answer to Questions taken on Notice, 24 April 2017, p 4.

Instead, it may be related to the need to identify a person suspected of committing an offence or in relation to an incident that has happened in the vicinity of the taxi.<sup>295</sup>

### **Taxi Security Camera Downloads<sup>296</sup>**

Reason for Download	2010	2011	2012	2013	2014	2015	2016	TOTAL
Assault (undisclosed)*	80	211	189	196	184	152	17	1029
Passenger Assault**	n/a	n/a	n/a	n/a	n/a	4	24	28
Driver Assault**	n/a	n/a	n/a	n/a	n/a	9	105	114
Complaint	n/a	10	6	16	22	46	64	164
Fare Evasion	151	507	386	549	501	632	491	3217
Police Investigation	88	4	110	95	219	265	345	1126
Theft	32	n/a	100	77	n/a	82	86	377
Vandalism	29	79	69	52	37	46	27	339
Other***	19	60	78	83	74	282	128	724
No Information	14	8	24	87	20	13	5	171
<b>TOTAL</b>	<b>413</b>	<b>879</b>	<b>962</b>	<b>1155</b>	<b>1057</b>	<b>1531</b>	<b>1292</b>	

\* Assault category includes both passenger and driver assault

\*\* Category not introduced until December 2015

\*\*\* 'Other' category includes internal requests of which most are QPS investigations

#### Committee comment

The committee noted the advice from the Minister and the department that less prescriptive specifications for security cameras are to be introduced to reduce costs to the industry and make the specifications more flexible and outcome focussed.

The committee also noted that cameras are not currently required for pre-arranged personalised transport services (other than taxis) where the identity of the passenger and driver is known, including limousine and chauffeur services.

The committee carefully examined the arguments put in support of the proposed approach to the requirement for security cameras in personalised transport vehicles and the arguments put by some stakeholders recommending amendment of the draft amendment regulation to require cameras in all vehicles used to provide a personalised transport service.

Committee members came to different conclusions regarding the proposed approach to cameras in booked hire vehicles.

<sup>295</sup> Answer to Questions taken on Notice, 24 April 2017, p 4.

<sup>296</sup> Answer to Questions taken on Notice, 24 April 2017, p 5.

Non-government members of the committee indicated general support for section 117V of the Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation 2017 but were concerned that this requirement may not go far enough and that the Minister should consider amending the section such that all vehicles operating in known high risk areas, for example, drink safe precincts of the Fortitude Valley and the Gold Coast should also be required to have approved security cameras.

Government members were concerned about driver and passenger safety, however after careful consideration of the evidence provided, the government members concluded the approach proposed in the legislation is appropriate. Government members proposed that the results of the planned 18 month review be reported to Parliament and, if during the review period a body of evidence develops which suggests that cameras be mandated, the Minister immediately review the need for security cameras in booked hire service vehicles.

Government members based this position on the following:

- advice from the department:
  - that the proposed security camera requirements are the most stringent requirement across Australia, and
  - there is limited evidence at this point to warrant cameras across the entire industry fleet
- the absence of cameras in rideshare vehicles provides a choice for consumers to decide whether to travel in a booked hire vehicle with a camera or without
- smaller communities, and rural and remote taxis are excluded from the current camera requirements
- limousines and chauffeur services are excluded from the current camera requirements and the industry has raised a concern about passenger privacy if cameras are required
- the Queensland Government funded \$8.4 million (approximately \$3,000 per taxi) for the initial supply and installation of the security camera system in 2005 and a similar subsidy for ridesharing vehicles is unlikely to be feasible given the number of rideshare vehicles involved.

#### **Recommendation 11**

The committee recommends:

- the Minister commit to reviewing driver and passenger safety in the personalised passenger industry in the 18 months following commencement of the amended camera requirements and report to Parliament on the findings
- the review include an assessment of whether the risk-based approach to security cameras has been successful, and
- if the review shows there is a higher risk profile in vehicles without cameras, the Minister consider introducing a requirement for security cameras in every vehicle used in the personalised transport industry.

## 2.7.2 GPS vehicle tracking and emergency systems for drivers

### Stakeholder views

A number of submitters from the taxi industry suggested that all personalised transport vehicles should be fitted with GPS systems (independent of driver mobile phones) and have emergency systems in place to support driver safety.<sup>297</sup> For example, the TCQ recommended that commercial-grade, anti-tamper GPS units be fixed to all personalised transport vehicles and be remotely accessible to authorised parties and all personalised transport vehicles have emergency systems on place to support driver safety.<sup>298</sup>

Uber advised that all trips undertaken by its drivers are GPS tracked and there is always an electronic record of the trip.<sup>299</sup>

### Department response to issues raised in submissions

The department responded that 'policies relating to GPS vehicle tracking and driver duress alarms are currently being finalised and will be dealt with in subsequent subordinate legislation. These policies will be focused on ensuring the safety of drivers and passengers'.<sup>300</sup>

### Committee consideration

The committee requested further information from the department on whether taxis are required to have a duress alarm installed. DTMR advised the majority of taxis (including exempted vehicles) have a duress alarm installed due to the presence of approved security cameras:

- in accordance with the current security camera requirements approved by DTMR, duress and camera systems are integrated - when a duress button is activated, the camera stores the images recorded for a longer period of time
- as part of the personalised transport reforms, it is proposed that this functionality is retained in any security camera specifications approved by DTMR
- additionally, subsection 2(2)(a) of Schedule 5 of the Passenger Transport Regulation currently requires a taxi vehicle to be fitted with a green distress light and while not prescribed by the DTMR, the department is aware that distress lights are, in many instances, connected to duress alarm systems, and
- there are some exemptions to the distress light requirement, which are provided for under subsection 2(3) of Schedule 5 of the Regulation, including taxis operating in non-service contract areas.<sup>301</sup>

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<sup>297</sup> See for example, submission 24, p 12, submission 20, p 13, submission 27, p 4 and submission 4 p 1.

<sup>298</sup> Submission 10, pp 9-10.

<sup>299</sup> Public hearing transcript, 20 April 2017, p 21.

<sup>300</sup> Correspondence, 19 April 2017, p 9.

<sup>301</sup> DTMR response to Questions on Notice, p. 10

## 2.8 Driver working conditions – removal of taxi service bailment agreements

A taxi service bailment agreement is a written agreement between an accredited operator and an authorised driver for the bailment of a taxi that is signed by both parties and includes information prescribed under a regulation.<sup>302</sup>

The TCQ provided the following advice on the practical application of bailment agreements:

*Bailments are a profit-sharing mechanism where a person who comes in and might be delivering the service as drivers using someone else's asset to do that, negotiates how they split that income. In places such as New South Wales, largely it is just a fixed fee like a car rental fee and everything you make above that is yours. In Queensland, traditionally, as a peak body we have advocated for a percentage split. Generally it is 50-50, where the owner or operator of the vehicle is to carry all of the costs and the person delivering the service gets 50 per cent of whatever the take is, but has no burden of cost sharing in that. It is the most equitable way of doing it. The bailment is where you set out the terms of that negotiation.*<sup>303</sup>

Taxi owners are termed 'bailors' and drivers are 'bailees' - not employees. As bailors, taxi operators are not obliged to withhold Pay As You Go tax, or to make superannuation contributions. As bailees, drivers are not entitled to annual leave, long service leave or recreation leave.<sup>304</sup>

In 1997, Justice Hill in the Federal Court of Australia held that taxi drivers were bailees and not employees or independent contractors see *De Luxe Red and Yellow Cabs Co-operative (Trading) Society Limited & Ors vs Federal Commissioner of Taxation*.<sup>305</sup>

### Amendments proposed in the legislation

Clause 13 of the bill proposes to omit chapter 4A of TO(PT)A to remove the regulation of bailment agreements between taxi operators and drivers. Proposed new section 209 would provide a transitional provision for taxi service bailment agreements that are in force immediately before the commencement of the bill to continue to be enforced despite the repeal of that provision in the Act.<sup>306</sup>

The explanatory notes provided that the regulatory requirement was being removed as 'agreements with drivers are considered a workplace relations matter for the industry to manage subject to any applicable requirements under other legislation'.<sup>307</sup>

### Stakeholder views

Submissions from the taxi industry recommended retaining the requirement for taxi service bailment agreements between taxi operators and drivers, and/or extending bailment agreements to all personalised transport providers.<sup>308</sup>

The TCQ recommended that bailment agreements be maintained, with the minimum work conditions and standards for all personalised transport drivers enshrined in legislation:

<sup>302</sup> Explanatory notes, p 11.

<sup>303</sup> Public Hearing transcript, 20 April 2017, p 18.

<sup>304</sup> Federation of Community Legal Centres, Victoria, Submission to the Independent Inquiry into Insecure Work in Australia, 2012, available at <http://www.actu.org.au/media/349507/federation-of-community-legal-centres-victoria.pdf> (accessed 24 April 2017)

<sup>305</sup> Owen Ratner, 'Taxis – protecting the bailment arrangement,' 8 June 2010, available at <http://www.pigott.com.au/news/taxis-protecting-the-bailment-arrangement/> (accessed 24 April 2017)

<sup>306</sup> DTMR, Public hearing transcript, 20 Apr 2017, p 45.

<sup>307</sup> Explanatory notes, p 11.

<sup>308</sup> See for example, submission 12, p 2, submission 1, p 5, submission 14, p 5, submission 34, p 3 and submission 20, p 10.

*The proposed Bill and Regulations seeks to repeal the worker protections enshrined in Bailment Agreements without establishing a replacement regime that continues to legislate minimum rights and conditions of taxi drivers. Such an outcome would establish a dangerous precedent in Queensland, namely that the rights of workers are disposable and are secondary to the desires of businesses to reduce costs by “slashing red tape”.<sup>309</sup>*

Another taxi industry stakeholder questioned:

*Why remove Bailment? I can only assume it will no longer be compulsory but still allowed. This has worked well for the taxi industry for hundreds of years, I doubt too many people will shift from it. I am not paying a driver \$20 per hour so he can sit under a tree and read the paper. Fares will not be going lower if you now expect Taxi drivers to get sick pay, holiday pay and all the other union benefits of a defined “employee”...and then on the other side you allow uber to pay slave wages to their drivers who have to bring their own tools (car).<sup>310</sup>*

Other stakeholders suggested that taxi and booked hire drivers should be recognised as ‘employees’ and establishing minimum work entitlements i.e. superannuation, workers compensation and paid leave. For example, the RSDAA submitted that it supported contracts for drivers based on Queensland law:

*Drivers’ legal rights are mostly contained in contract law, the Competition and Consumer Act 2010 and separate discrimination laws. These laws do not provide the same level of protections and fairness that would be expected by the community. Self-employed drivers are not able to enter any form of contract negotiation with ride share facilitators – it is a simple take it or leave it scenario.<sup>311</sup>*

And,

*Another factor that needs consideration in these new regulations is the fact that there are no requirements for these companies to provide Superannuation, Workers Compensation, Holiday pay or Sick leave as “driver partners” are treated as Independent Contractors therefore the rates paid for each job should be at a level that the “independent contractor” can make these payments ongoing. Failure to do this will cost Government millions of dollars ongoing as there will be vast shortfalls in Superannuation payments.<sup>312</sup>*

The Queensland Council of Unions’ submission supported the Transport Workers Union argument in favour of taxi drivers being treated as employees for all purposes, while noting that the bailment relationship has been upheld in a number of federal court decisions. However, the Queensland Council of Unions’ submission acknowledged there may be some jurisdictional issues associated with implementing such a policy.<sup>313</sup>

The Transport Workers Union noted the similar problems of the taxi industry are faced by the ridesharing industry generally, that is, ‘poor working conditions including low rates of pay, poor safety standards, operators unilaterally reducing fares with the effect of lowering driver’s income and some drivers being deactivated from the system with no recourse or appeal’.<sup>314</sup>

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<sup>309</sup> Submission 10, p 8.

<sup>310</sup> Gordon, Marie, Rodney and Cherie Meares, submission 8, p 4.

<sup>311</sup> Submission 5, p 7.

<sup>312</sup> Submission 5, p 9.

<sup>313</sup> Submission 18, p 2.

<sup>314</sup> Submission 19, p 12.



The Transport Workers Union's preferred position is that:

*...independent contracting involving drivers be banned by this Bill in the taxi and rideshare sectors. Workers within these sectors can be remunerated under existing awards and legislative standards.*

*As an alternative, this Bill should be amended to incorporate provisions at least identical to Chapter 6 of the Industrial Relations Act 1996 (NSW) into the Industrial Relations Act 2016 (Q.) This would allow regulation to be made ensuring that these workers received "fair and equitable" conditions of engagement, as well as allowing conciliation of disputes.<sup>315</sup>*

The Queensland Council of Unions recommended:

- the powers of the Industrial Relations Commission be applicable to taxi drivers to intervene in unfair contracts established between driver and principal and suggest this extension of jurisdiction could be achieved by broadening the application of section 471 of the *Industrial Relations Act 2016* to bring the work of bailees and Uber drivers under the terms of the Act, and
- that workers compensation premiums and superannuation contributions should be paid on behalf of taxi drivers regardless of their status as bailees.<sup>316</sup>

#### Department response to issues raised in submissions

DTMR responded that TO(PT)A currently imposes a requirement for operators to have a written, signed agreement with their drivers that includes certain information prescribed by a regulation. Specifically, the agreement must include details about the parties (including name, address, driver authorisation number and operator accreditation number) as well as details about payment and personal injury insurance:

*It is important to note that the requirements only dictate that an agreement must be in place, must include certain information, and cannot include a set pay in arrangement unless the driver has held driver authorisation for at least 12 months in the last 5 years. They do not stipulate any other minimum requirements as they relate to income or any other working conditions of taxi drivers, nor is it considered appropriate for a transport agency to regulate such matters.<sup>317</sup>*

DTMR reiterated the view that workplace arrangements and conditions are matters best managed under federal industrial and competition laws, with the relevant legislation dependent on the nature of the agreement and provided the following example:

*For example, bailment agreements to which at least one party employs fewer than 20 persons may be protected under the unfair contract provisions of the Competition and Consumer Act 2010 (CCA). While bailment agreements where one party is a 'constitutional corporation' may be protected through the unfair contract provisions of the Independent Contractors Act 2006 (Cth).<sup>318</sup>*

Further, DTMR pointed to the fact that Queensland and NSW are the only jurisdictions that regulate bailment agreements, and Queensland is the only jurisdiction to do so through transport legislation:

*NSW currently regulates bailment matters (for Sydney only) via their Industrial Relations Act 1996 (IR Act) providing drivers with certain entitlements (takings, shifts, uniforms and so on) based on their level of experience in the industry. Following a recent inquiry into workplace arrangements in the Point to Point transport industry, the NSW Legislative Assembly Committee*

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<sup>315</sup> Submission 19, p 15.

<sup>316</sup> Submission 18, p 3.

<sup>317</sup> Correspondence, 19 April 2017, p 10.

<sup>318</sup> Correspondence, 19 April 2017, pp 8-9.

*on Transport and Infrastructure recommended the NSW Government give consideration to removing the provisions in the IR Act relating to bailment. In summary, the inquiry found that the provisions in the IR Act were easily avoided by bailors, did not achieve the objectives intended, and were inconsistent with other jurisdictions practices. The NSW Government is currently preparing its response to the Inquiry addressing the recommendations and findings.*<sup>319</sup>

#### Committee consideration

In response to a question from the committee the TCQ advised that bailment agreements traditionally are effectively a revenue-sharing arrangement whereby a proportion of the revenue that is earned by the car is split back to the operator to cover the costs of the vehicle and a margin, and the remainder of that agreement's value is earnings for the driver and:

*Bailment agreements do not exist everywhere. Queensland, as a best practice jurisdiction, historically has had bailment agreements. One of the main drivers has been the concern around the exploitation of drivers regarding the proportion withheld by the operator or vehicle owner versus the amount that actually goes to the driver itself. In certain jurisdictions like Ireland and Sweden, which were deregulated in the 2000s, operators' shares reached as high as 95 per cent of earnings. In the absence of any formal bailment agreement requirements an imbalance of power therefore exists, and while that is not universal, it depends entirely on the nature of the operator involved.*<sup>320</sup>

At the public hearing, the committee asked DTMR for further explanation on why the removal of a regulatory requirement for bailment agreements is being proposed. DTMR reiterated:

*Workplace arrangements and conditions are matters that the department feels are best managed under federal industrial and competition laws, with the relevant legislation dependent on the nature of the agreement. For example, bailment agreements to which at least one party employs fewer than 20 persons may be protected under the unfair contract provisions of the Competition and Consumer Act 2010, while bailment agreements where one party is a constitutional corporation may be protected through the unfair contract provisions of the Independent Contractors Act 2006.*<sup>321</sup>

Following a question from the committee, the department confirmed that while it is proposed that bailment agreements will not be regulated in transport law 'there is nothing precluding operators from continuing to have a bailment agreement with their drivers'.<sup>322</sup>

The RSDAA provided evidence that 'for the booked hire industry to survive there needs to be a contract between the operator and the independent driver partner that is based on Queensland law and enforceable through the courts of Queensland':

*Currently, the Uber contract states that any action must be through the courts of the Netherlands. In many jurisdictions this has been found to be illegal, and rulings have been made that driver partners are in fact employees. One case is Aslam, Farrar and Others v. Uber BV, Uber London Ltd and Uber Britannica Ltd in the UK. It is not the intention of the RSDAA to see drivers classified as employees, but it is our intention to see the introduction of contracts based on local law which are enforceable in our court system.*<sup>323</sup>

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<sup>319</sup> Correspondence, 19 April 2017, pp 8-9.

<sup>320</sup> Public hearing transcript, 20 April 2017, pp 11-12.

<sup>321</sup> Public hearing transcript, 20 April 2017, p 39.

<sup>322</sup> Public hearing transcript, 20 April 2017, p 39.

<sup>323</sup> Public hearing transcript, 20 April 2017, p 31.

The RSDAA argued that the current rates paid to driver partners is totally unsustainable going forward and recommended the rates be enshrined in legislation and increased to \$1.70 per kilometre, 50 cents per minute and with a flag fall of \$3:

*The current rates for an Uber are: \$2 flag fall, \$1 per kilometre and 35 cents per minute. If we use a sample trip of 10 kilometres that takes 15 minutes to complete, the fare would be \$17.25 less expenses and commission to Uber of 25 per cent—which is \$4.31—and less GST, which is 10 per cent of the total fare.<sup>324</sup>*

#### Committee comment

Committee members came to different conclusions about the proposed removal of the legislative requirement for bailment agreements.

Non-government members of the committee wanted the legislative requirement for bailment agreements to be retained subject to a review in 18 months.

Government members supported the proposed removal of the legislative requirement for bailment agreements.

#### **Recommendation 12**

The committee recommends the Minister:

- facilitate development of an industry standard for driver conditions in the personalised transport industry in consultation with the Personalised Transport Industry Reference Group
- commit to a review of driver working conditions 18 months after the removal of the legislative requirement for bailment agreements to ensure current standards are being maintained, and
- report to Parliament on the review findings in relation to whether the independent contractor and bailment arrangements have upheld appropriate industrial conditions.

## **2.9 Other tax related amendments**

### **2.9.1 Taxi service areas**

#### Amendments proposed in the legislation

Proposed new section 91ZT allows the chief executive to declare taxi service areas and fix the number of taxi service licences' for a taxi service area by gazette notice – this would retain a cap on the number of taxi service licences that may be issued in each taxi service area.

Proposed new section 91ZV clarifies that compensation is not payable in relation to the making, amendment or declaration of a taxi service areas, or the fixing or amendment of the number of taxi service licences fixed for a taxi service licence area, under section 91ZT. The explanatory notes provided the following example:

*For example, no compensation is payable where taxi service areas are amalgamated regardless of any consequential change to licence values. Also, no compensation is payable where a licence condition authorises a taxi used to provide a public passenger service for a journey starting a taxi service area other than the taxi service areas for the taxi.<sup>325</sup>*

<sup>324</sup> Public hearing transcript, 20 April 2017, p 31.

<sup>325</sup> Explanatory notes, p 27.

Section 36 of TO(PT)A allows a regulation to be made declaring that a booked hire service is to be provided in a stated taxi service area using only a taxi or a limousine where certain public interest criteria are met. Proposed section 75 of the bill provides that if a regulation is made under section 36 a booked hire service can only be provided in the stated taxi service area by a vehicle that is a taxi or limousine and sets the penalties attached to non-compliance. The explanatory notes provided the following justification:

*In order to increase the level of public passenger services available and public access to these services in particular areas, it may be necessary to make a regulation under section 36 restricting the market for booked hire services in specific taxi service areas to taxis and limousines.*<sup>326</sup>

The bill also proposes to insert a new section 36AA clarifying that compensation is not payable in relation to the making, amendment or repeal of a regulation under section 36 of TO(PT)A.

*This clause clarifies that the State is not required to compensate any person as a consequence of a regulation restricting market entry being made, amended or repealed. For example, no compensation is payable where a regulation restricting entry to the booked hire services market to taxis is made or repealed.*<sup>327</sup>

#### Stakeholder views

The RACQ submission stated that ‘it is unclear from this section the circumstances in which a regulation may be used to restrict booked hire service areas in particular taxi service areas’:

*RACQ understands the intention is to enable limitations to ridesharing in small, remote communities where there is only one or a few taxi licences that are also wheelchair accessible. If the limitation is to protect the viability of these taxi services in such areas, then the legislation should incorporate direction outlining these circumstances when such competition limitations can be included. RACQ is concerned that without further direction in the legislation there is potential for misuse of this provision.*<sup>328</sup>

One stakeholder suggested that the making of a regulation under section 36 will not ‘occur in any of the large population centres where ride-booking operates or want to operate’ and that it will not ‘ensure that the public will have access to transport services’ and that the penalties will need to be strengthened.<sup>329</sup>

Uber recommended that the ability to restrict booked hire services in particular taxi service areas be removed on the basis it will limit employment opportunities for regional Queenslanders and limit transport options for regional Queenslanders.<sup>330</sup>

One submission recommended that section 36AA be removed as it ‘denies natural justice’.<sup>331</sup> Another submitter recommended the section be replaced with a clause providing for full compensation or ‘to include specific reference to compensation being payable according to the specific impact on the value and earning potential of the affected asset – the Taxi Service Licence’.<sup>332</sup>

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<sup>326</sup> Explanatory notes, p 14.

<sup>327</sup> Explanatory notes, p 11.

<sup>328</sup> Submission 17, p 4.

<sup>329</sup> Submission 20, pp 45-46.

<sup>330</sup> Submission 29, p 18.

<sup>331</sup> Submission 13, p 2.

<sup>332</sup> Mr Wayne Brazel, submission 13, p 2.

### Committee consideration

In relation to section 36 of TO(PT)A, the committee asked DTMR at the public briefing what criteria would be used to determine whether it would be appropriate to make a regulation to restrict services to taxis and limousine services in certain geographic areas. DTMR advised the 'provision is generally based on protecting markets in very remote and regional areas where, if the market was opened up, you would see market failure' and that there are currently no proposals to actually enforce those restrictions.<sup>333</sup>

At the public hearing the department explained that section 36 of TO(PT)A sets out the criteria for imposing market entry restrictions and the criteria ensures that market entry restrictions can be imposed only where it is in the public interest:

*Specifically, the minister must be of the opinion that the level of services would be greater, access to public passenger transport would be greater, service innovation would be greater or the public passenger services would better meet the government's social justice objectives at a lower cost to the government. The process for imposing market entry restrictions may be triggered where the department has undertaken a review of services in a particular area or by evidence of market failure for a service in a particular area. It should be noted that the same test for market entry restrictions will be imposed across all passenger transport services and has been used on many occasions in the past. For example, market entry restrictions have been imposed on air services and ferry services across the state, and this market entry restriction test would not be unique to personalised transport services.*<sup>334</sup>

### **2.9.2 Peak demand taxi permits**

#### Amendment proposed in the legislation

Clause 17 of the bill proposes to remove section 7A of TO(PT)A which includes provisions relating to peak demand taxi permits. The explanatory notes advised:

*Provisions allowing for the issue of peak demand taxi permits will be removed, as regulations to give effect to these permits have never been made. It is intended that increased demand for services during peak periods will primarily be addressed through increased numbers of booked hire vehicles.*<sup>335</sup>

#### Stakeholder views

The submission from Redlands Taxi Management raised a concern that there had been no allowance provided to them for peak demand usage over the last year:

*This is obviously due to ride-share now being available, the increased demand on taxis is less during peak times as there are (supposedly, but they do not have to have available) plenty of ride-share vehicles available to pick up the slack.*<sup>336</sup>

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<sup>333</sup> Public briefing transcript, 20 April 2017, p 14.

<sup>334</sup> Public hearing transcript, 20 April 2017, p 38.

<sup>335</sup> Explanatory notes, p 12.

<sup>336</sup> Submission 16, p 4.

### 2.9.3 Taxi Industry Security Levy

#### Amendment proposed in the legislation

Section 91ZW proposes to give the chief executive discretion to not charge the Taxi Industry Security Levy for a particular financial year.

#### Stakeholder views

Some submissions recommended the taxi service industry levy should be extended to the entire personalised transport industry.<sup>337</sup> One taxi industry stakeholder also suggested that this section of the bill be redrafted to ensure rideshare operators contribute to security:

*Ride share booking use pick up area near to taxi ranks which are near to entertainment precinct. Alcohol fuelled violence occurs in identifying a ride share booking in similar location near to entertainment precinct club and taxi rank which is used as a pick up reference point by ride share. As such the levy should be paid when attaining a licence to operate as ride share.*<sup>338</sup>

For further discussion of the proposed booked hire service licence fee see the section of this report [booked hire service licence fee](#).

### 2.10 Offences and penalties/sanctions

#### Amendments proposed in the legislation

The explanatory notes advised that the bill proposes to introduce significant financial penalties and non-financial sanctions for the provision of unauthorised taxi or booked hire services.<sup>339</sup> Proposed new section 74 creates offences for providing unlicensed taxi services. Graduated maximum penalties apply to a number of offences, with repeat offences facing significantly higher penalties.<sup>340</sup>

The bill also clarifies that operator accreditation and driver authorisation can be granted for a particular kind of public passenger service and that relevant offences will apply if operator accreditation or driver authorisation is not held in relation to the particular kind of service being provided and proposes to extend the matters for which evidentiary certificates can be provided to facilitate the prosecution of relevant offences.<sup>341</sup>

Proposed new sections 91ZM to 91ZQ would extend audit powers for investigating compliance with relevant transport legislation relating to taxi and booked hire services.

A detailed table of new and amended offences and the associated penalties is provided in the [Compliance with the Legislative Standards Act 1992 section of this report](#).

#### Committee consideration

In response to a question from the committee about the proposed audit powers, DTMR advised there are some existing powers, but they need to be broadened across the whole sector and they need to align with the new provisions, particularly within the chain of responsibility framework.<sup>342</sup>

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<sup>337</sup> See for example, submission 20, p 93, submission 1, p 2 and submission 8, p 8.

<sup>338</sup> Mr Wayne Brazel, submission 13, p 2.

<sup>339</sup> Explanatory notes, p 3.

<sup>340</sup> Explanatory notes, p 15.

<sup>341</sup> Explanatory notes, p 3.

<sup>342</sup> Public briefing transcript, 20 April 2017, p 14.

The department also advised the committee:

*This bill also has a strong focus on encouraging compliance. To deter the provision of unauthorised personalised transport services, financial penalties are graduated, providing higher penalties for repeat offenders. To further deter drivers from persistently disobeying the law, non-financial penalties will apply to drivers of unauthorised services. Specifically, the driver licence of drivers providing unauthorised services will be suspended for one month. This is a necessary sanction, as the usual deterrent effect associated with fines has been lost because financial responsibility for fines has, in some instances, been accepted by another party.<sup>343</sup>*

The explanatory notes acknowledged the proposal to introduce a new, more robust, penalty regime for the provision of unauthorised personalised transport services may raise FLP issues by significantly increasing existing penalties in cases of repeat offenders and offences committed by a corporation rather than an individual and provided the following justification:

*Proposed penalties for the first offence are broadly consistent with the current penalties for unauthorised services and will increase significantly for subsequent offences. It is intended that the maximum penalty for a person who is a body corporate will be five times the maximum penalty for individuals under section 181B of the Penalties and Sentences Act 1992.*

*While the new penalty regime will impose increased penalties of up to ten times the current amount for subsequent offences, this is considered proportionate to the seriousness and repeated nature of these offences. The new penalties will act as a deterrent and assist TMR to effectively enforce the new regulatory framework.<sup>344</sup>*

### **2.10.1 Driver licence suspension**

#### Amendments proposed in the legislation

Proposed new section 91ZJ provides that the chief executive may suspend a person's driver licence for one month if a person has, within a three year period, committed three or more relevant driver offences. DTMR advised there will be no appeals process in relation to the driver licence suspension.<sup>345</sup>

The relevant driver offences are detailed in proposed new section 91ZI (see table below). If more than one relevant driver offence is committed at the same time, it is considered to be the one offence for the purpose of the section.<sup>346</sup>

Proposed new section 150C clarifies when a person 'commits an offence' for section 91ZJ. The explanatory notes advised:

*By applying this penalty to repeated offences, the intent is to provide the driver with an opportunity to correct his or her behaviour before facing more serious consequences.*

*Driver licence suspension is a non-financial sanction intended to deter drivers from non-compliance with TO(PT)A. Further, imposing this sanction on a driver will indirectly impact the business model of a third party (such as booking entity) who might otherwise benefit from a driver's non-compliance. A third party can pay a fine on behalf of another person whereas non-financial sanctions target the drivers directly. Faced with the loss of their drivers licence, drivers are unlikely to continue to provide unauthorised services, thereby disrupting the third party's business model.<sup>347</sup>*

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<sup>343</sup> Public briefing transcript, 20 April 2017, p 3.

<sup>344</sup> Explanatory notes, pp 5-6.

<sup>345</sup> Public briefing transcript, 20 April 2017, p 4.

<sup>346</sup> Explanatory notes, p 24.

<sup>347</sup> Explanatory notes, p 25.

Proposed new section 91ZK clarifies the effect of a driver licence suspension. If the person holds a driver licence, the person's licence (for any other driver licence) is suspended. If the person does not hold a driver licence, the person is disqualified from holding or obtaining a driver licence. The person will not be able to apply for a special hardship order under the TORUM Act, which authorises the person to continue driving in certain circumstances. No show cause process will apply to the suspension and the decision to suspend will not be a reviewable decision under TO(PT)A.<sup>348</sup>

While the explanatory notes acknowledged the proposal to suspend a driver's driver licence if they are convicted of specified personalised transport related offences or the offences are dealt with under the *State Penalties Enforcement Act 1999* on three or more occasions may raise FLP issues as the suspension will not be subject to further review or appeal, they provided the following justification:

*The driver licence suspension will apply to relevant driver offences, including where the driver does not hold driver authorisation or is using a vehicle that is not properly licensed or a booking entity that is not authorised to provide the service. The suspension of driver licences is proposed because historically, drivers committing these types of offences have not been deterred by traditional financial penalties. Research shows that the risk of losing the authority to drive through a driver licence sanction is a very effective deterrent.*

*It is important that the suspension not be subject to any review or appeal, because such processes will effectively delay the operation of any suspension, allowing the person to continue to offend until the reviews and appeals are exhausted. The proposed approach is justified because the licence suspension will not apply until the third offence is committed, and administrative processes will be in place so the driver will be informed after the second offence that any further offence will lead to the licence suspension. This will give the person ample opportunity to adjust their behaviour to avoid the suspension.*<sup>349</sup>

The potential FLP issue regarding review and appeal is discussed in the section of this report on [Compliance with the Legislative Standards Act 2012](#).

#### Stakeholder views

A number of stakeholders submitted that the penalties for the provision of unauthorised services are not a sufficient deterrent.<sup>350</sup> For example, one submitter recommended that a licence should be suspended after three offences in one year<sup>351</sup> and another recommended a driver's authorisation be cancelled following a third or later offence for illegal touting or accepting hails.<sup>352</sup> Another submission suggested the use of demerit points 'to speed this up, if they are bad drivers they would have lost their licence for speeding well before this anyway'.<sup>353</sup>

The RACQ supported the increased fines for rideshare drivers operating outside the regulatory framework and providing rank and hail services, however its submission raised a concern that there is no access to appeal if a person's licence is suspended.<sup>354</sup>

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<sup>348</sup> Explanatory notes, p 25.

<sup>349</sup> Explanatory notes, p 6.

<sup>350</sup> See for example, submission 1, p 3, submission 27, p 8 and submission 8, p 7.

<sup>351</sup> Mr Wayne Brazel, submission 13, p 2.

<sup>352</sup> First Class Taxis, submission 24, p 31.

<sup>353</sup> Gordon, Marie, Rodney and Cherie Meares, submission 8, p 7.

<sup>354</sup> Submission 17, p 2.



### Department response

DTMR provided the following advice in response to issues raised in submissions:

*The Bill introduces a more robust penalty regime that significantly increases existing financial penalties in cases of repeat offenders and offences committed by a corporation rather than an individual. Maximum penalties of up to 3000 penalty units (\$365,000) will apply for the provision of unauthorised services and are intended to have a significant deterrent effect.*

*Financial penalties are proposed to be combined with non-financial sanctions, including driver licence suspension and suspension or cancellation of relevant service licences and authorisations under TO(PT)A, which will act as an additional deterrent and assist to effectively enforce the new regulatory framework.<sup>355</sup>*

### Committee consideration

The committee requested advice from the department on the relevant driver offences to which a driver licence suspension may apply. DTMR provided the following table:<sup>356</sup>

<b>New section</b>	<b>Description</b>
27(1)	Not holding the appropriate driver authorisation
74(1)	Providing a taxi service using a motor vehicle that is not a taxi
74(2)	Engaging in conduct that involves a motor vehicle plying or standing for hire
75(2)	Providing a booked hire service using a motor vehicle that is not a taxi or limousine in a particular taxi service area
76(1)	Providing a booked hire service using a motor vehicle that is not a booked hire vehicle, taxi or limousine
77(1)	Providing a booked hire service requested through a fixed booking device using a motor vehicle that is not a taxi
78(2)	Providing a booked hire service that is arranged by a person who is not an authorised booking entity
82(1)	Failure to carry a booking record while providing a booked hire service
82(3)	Failure to produce a booking record on request of an authorised person while providing a booked hire service

The committee also asked the department whether the licence suspension would be automatic after three offences and whether a one-month driver licence suspension would be a sufficient deterrent, given that a driver would have to breach at least three times before a driver licence suspension could be applied. DTMR advised that the suspension would be automatic and with regard to the deterrence effect responded:

*I suppose it is hard to quantify at this stage. Government's proposal at this stage is to start with one month and to monitor that into the future and see whether it is having enough of a deterrent effect.<sup>357</sup>*

<sup>355</sup> Correspondence, 24 April 2017, p 2.

<sup>356</sup> Response to Questions taken on Notice, 24 April 2017, p 1.

<sup>357</sup> Public briefing transcript, 20 April 2017, p 4.

In considering the proposed penalty the committee examined traffic offences that attract similar penalties. Section 78(3) of TORUM outlines when a court must disqualify a person from holding or obtaining a Queensland driver licence. These include:

- at least one month for driving under the influence and
- one to six months for a repeat unlicensed driver, that is, convicted under section 78 of the Act within the previous five years.

The committee also noted that many traffic offences attract an escalating penalty. For example, the penalty for a low level first time drink driving offence is licence disqualification of between one and nine months, with a repeat drink driving offence attracting licence disqualification of up to two years.<sup>358</sup>

#### **Recommendation 13**

The committee recommends the bill be amended to provide that where a driver has had a driver licence suspension under proposed new section 91ZJ and commits another three offences within the subsequent three year period it will attract a longer driver licence suspension (for example three months) or cancellation of their driver authorisation.

The committee noted a possible drafting issue with proposed section 91ZK. This section clarifies what happens if a driver does not have a licence or does not have a Queensland licence. However 91ZK(1) states that the section applies 'if the chief executive suspends a person's driver licence under section 91ZK'. It is not clear how section 91ZK will be applied in situations where the chief executive cannot suspend the licence because it is not a Queensland licence or because a licence is not held.

#### **Recommendation 14**

The committee recommends the drafting of proposed section 91ZK be reviewed to ensure it will achieve its intent of enabling the chief executive:

- to suspend a driver authorisation where the driver does not hold a Queensland driver licence, and
- prevent a driver licence being issued to a driver who meets the suspension criteria under 91ZJ but does not hold a current driver licence.

### **2.10.2 Maximum fares and surge pricing**

#### Amendment proposed in the legislation

The bill proposes (new section 91ZR) to allow maximum fares to be specified for all taxi services and for booked hire services for certain types of vehicles or in taxi service areas subject to the market entry restriction of using only taxis or limousines. The explanatory notes advised the intention is to only regulate maximum fares where it is necessary to protect consumers and prevent price gouging:

*For example, maximum fares will be retained for taxi services because customers are not usually in a position to compare rates and negotiate the fare when obtaining a taxi at a rank or hailing it off the street. Maximum fares for booked hire services prescribed by regulation may include, for example, fares for services provided using wheelchair accessible vehicles. Without this protection, people with disability may be expected to pay more for these specialised services.*<sup>359</sup>

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<sup>358</sup> DTMR website, <https://www.qld.gov.au/transport/safety/road-safety/drink-driving/penalties/charged/> (accessed 3 May 2017)

<sup>359</sup> Explanatory notes, p 26.

### Stakeholder views

A number of submissions recommended a cap on surge pricing should be imposed to prevent overcharging and some suggested a maximum fare should be set similar to the taxi industry to ensure a level playing field.<sup>360</sup> One submitter raised the following concern:

*It is unclear why the legislation **FAILS to protect** (Explanatory Notes argues/ attempts to justify) vulnerable consumers who may not be in a position to validly compare prices and negotiate a fare (eg intoxicated young people) who may use booked hire services as this indicates that the **government believes that these members of society don't deserve** the same level of consumer protection against price gouging, as those who chose to use taxi services.*

*Leaving fares for booked hire services uncapped is **NOT in the public interest** as it leaves the public open to the possibility of exploitation.*<sup>361</sup>

### Department response

DTMR advised that maximum fares for booked hire services are only intended to apply in limited circumstances where there is the potential for price gouging, such as where the passenger is a person with disability:

*In other circumstances, it is expected that greater customer choice in the booked hire service market will lead to more competitive fares, so that maximum fares in this market do not need to be regulated. It is not proposed to regulate surge pricing or similar models used by booked hire service providers as the requirement to provide a fare estimate to the customer as a dollar amount is considered a sufficient consumer protection.*<sup>362</sup>

### **2.10.3 Maximum payment surcharge**

The OPT Review recommended that the benefits be investigated of personalised transport service providers, particularly taxis, aligning their payment systems with the national surcharging standard announced by the Reserve Bank of Australia, which requires smaller merchants to comply by 1 September 2017.<sup>363</sup>

### Amendment proposed in the legislation

The bill proposes to allow a regulation to prescribe a maximum payment surcharge for fares for taxi and booked hire services (see proposed new section 91ZS). The definition of a 'payment surcharge' is proposed to be 'an amount charged in addition to the fare for processing payment of the fare or for paying the fare using one payment method over another, such as a credit card surcharge'.<sup>364</sup>

The explanatory notes advised:

*As a result of amendments to the Competition and Consumer Act 2010 (Cth) in 2016, a payment surcharge for a fare for a booked hire service provided by a vehicle other than a taxi must comply with the Reserve Bank of Australia's surcharging standard. To ensure appropriate consumer protections apply to services provided by taxis, the maximum payment surcharge for these services will be capped at a percentage of the fare by regulation under section 91ZS.*<sup>365</sup>

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<sup>360</sup> See for example, submission 13, p 1 and submission 13, p 2.

<sup>361</sup> Submission 20, p 84.

<sup>362</sup> Correspondence, 19 April 2017, p 12.

<sup>363</sup> OPT Review, White paper, July 2016, p 14.

<sup>364</sup> Explanatory notes, p 26.

<sup>365</sup> Explanatory notes, pp 26-27.

### Stakeholder views

The proposed amendment was generally supported in submissions.<sup>366</sup> Some taxi industry stakeholders submitted that the cap should also be applied to the operators involved in the ride-booking industry, for example:

*I agree with the cap...so long as uber and BH are capped as well. Uber taking 25% is no different to Cabcharge or another eftpos merchant taking 10% for the processing of the financial transaction. It meets your definition of "processing payment" or "for one payment method over another". (No Cash allowed in most BH models). If uber claim that the 25% is NOT for processing the money but for the "getting" of the vehicle tell them to call it a Booking Fee like Taxis do.<sup>367</sup>*

One submission suggested that section 91ZS be reworded to 'ensure the legislation targets the correct party – who is the actual offender who should receive the penalty'.<sup>368</sup>

#### **2.10.4 Enforcement**

In the explanatory speech the Minister made a commitment that the government would vigorously enforce the legislation:

*..... with compliance and enforcement activity targeted towards ensuring the safe provision of personalised transport services and protecting the rank and hail market for taxis. Those who show blatant disregard for the laws will be met with swift action and harsh penalties. To ensure enforcement is addressed in a fiscally responsible way, it is intended to draw on the experience of existing departmental front-line compliance resources and recruit additional resources to reflect the significant compliance effort that will be required.<sup>369</sup>*

DTMR provided the following explanation regarding the need for additional compliance and enforcement resources:

- the government's compliance and enforcement efforts will need to be boosted considerably to ensure public safety for persons using booked hire services as it is anticipated that the number of vehicles, operators and drivers providing booked hire services will increase under the new legislative framework, and
- additional front-line compliance resources will mainly be dedicated to industry education and ongoing compliance and enforcement including covert and overt activities to protect the rank and hail market for taxis<sup>370</sup>

### Stakeholder views

One submitter maintained that effective enforcement of the law has been an ongoing issue that has not been rectified by amendments to transport legislation.<sup>371</sup> Professional Taxis Gold Coast stated:

*The lack of enforcement of existing legislation and regulations is appalling. The industry has watched in distress and disarray at the once heavily regulated, monitored and network enforced rules falling to the way side. However the department has handled itself to date begs the question can they restore order into an industry which was once fearful of those in power?<sup>372</sup>*

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<sup>366</sup> See for example, submission 1, p 4 and submission 34, p 1.

<sup>367</sup> Gordon, Marie, Rodney and Cherie Meares, submission 8, p 11.

<sup>368</sup> Submission 20, p 85.

<sup>369</sup> Queensland Parliament, Record of Proceedings, 21 Mar 2017, p 600.

<sup>370</sup> Correspondence, 19 April 2017, pp 5-6.

<sup>371</sup> Submission 20, p 8.

<sup>372</sup> Submission 22, p 8.

### Department response

DTMR advised that the department's compliance resources will be significantly enhanced:

- an additional 16 front-line compliance officers will be employed to deal with the anticipated increase in persons and vehicles providing personalised transport services
- 14 of the additional officers will be primarily dedicated to on-road compliance and enforcement activities which will focus on driver compliance as well as covert activities to protect the rank and hail market
- the remaining 2 officers will be primarily dedicated to specialist investigation and enforcement activities related to ensuring compliance within the new chain of responsibility requirements, and
- the new resources will primarily be funded by revenue from the fee for the booked hire service licence and the booking entity authorisation.<sup>373</sup>

### Committee consideration

The committee sought advice from DTMR about what enforcement strategies had been put in place to ensure compliance and how effective they had been. DTMR advised it has been conducting an ongoing operation known as Operation Drop-off:

*That operation incorporates both highly visible and plain clothed activities that target ride-booking operators picking up and dropping off in designated taxi ranks, touting and soliciting, and driving defective vehicles. The increased activity to monitor compliance within the wider personalised transport will be essential given the influx of vehicles and people into the sector.*

*... In terms of those operations and the deployment of those officers, that has been a constant operation, particularly targeting areas where the department receives intelligence where there are repeated breaches of the legislation. It is ongoing and we are adapting as the information comes in.<sup>374</sup>*

The committee also requested details of the quantum of fines that have been issued. DTMR advised that from 5 September 2016, when stage one regulation commenced, through to 23 March 2017:

*5,125 vehicles had been intercepted: 1,662 taxis, 23 limousines 3,434 ride-booking vehicles and six other.*

*In terms of intercepts, there were 368 penalty infringement notices that were issued during that period and 213 defect notices. The breakdown of the penalty infringement notices for that 368: there were 55 taxis, 310 ride-booking vehicles, and three other. They have been issued for a range of offences, such as stopping an unauthorised vehicle in a taxi zone, driving a defective vehicle, failing to carry a driver authorisation and failure to display a sign in a booked hire vehicle.<sup>375</sup>*

Further advice was received from DTMR following the public briefing that, since April 2014 (when some ride-booking organisations commenced operations in Queensland) to 4 September 2016 when ride-booking services were legalised, there were 1702 fines issued to ride-booking drivers that were paid totalling \$2,278,523.<sup>376</sup>

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<sup>373</sup> Public briefing transcript, 20 April 2017, p 3 and p 8.

<sup>374</sup> Public briefing transcript, 20 April 2017, p 8.

<sup>375</sup> Public briefing transcript, 20 April 2017, p 8.

<sup>376</sup> Response to Question on Notice, 24 April 2017, p 3.

In response to a committee question about the regions in which enforcement activity had been undertaken DTMR advised with regard to intercepts there had been:

- 83 intercepts in the central Queensland region
- 100 in the northern region 2,964 in South East Queensland – North
- 1,560 in South East Queensland – South, and
- 418 in the Southern Queensland region.<sup>377</sup>

The committee also asked the department to provide more specific data in relation to compliance activities in the Gold Coast region. DTMR advised:

*During the period 5 September 2016 to 13 April 2017, there were 926 intercepts of taxi, limo, ride-booking and other vehicles on the Gold Coast compared to 4835 across other locations.*

*There were 65 infringements issued to ride-booking and other vehicles on the Gold Coast compared to 354 across other locations.*

*The majority (76%) of infringements issued to ride-booking and other vehicles on the Gold Coast were for:*

- *stopping an unauthorised vehicle in a taxi zone*
- *failure to display a sign on a booked hire vehicle.*<sup>378</sup>

The committee asked whether any consideration had been given to using disruptive technology to actually monitor the activities of disruptive rideshare operators. DTMR responded that while it was a good point to raise, the department had not given consideration to that at this point in time and further:

*That is an enforcement strategy. Obviously, we are open to look at that over time as we implement the new arrangements. There is certainly GPS tracking. We have the seen taxi operation centres as well. It is well established in terms of that technology.....*

*Certainly with the ongoing prevalence of tracking there are opportunities for all sorts of new methods of enforcement—not just in the personalised transport industry but more generally across road safety. They are things that the department continues to look at.*<sup>379</sup>

DTMR also pointed out that the compliance effort is critical and that it ‘is not just about issuing PINs; it is also about that education role and making sure that the industry is aware and doing the right thing’.<sup>380</sup>

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<sup>377</sup> Public briefing transcript, 20 April 2017, p 14.

<sup>378</sup> Response to Question on Notice, 24 April 2017, p 2.

<sup>379</sup> Public hearing transcript, 20 April 2017, p 39.

<sup>380</sup> Public briefing transcript, 20 April 2017, p 8.

**Recommendation 15**

The committee recommends the Minister:

- fast track the recruitment of the proposed additional compliance officers
- introduce a legislative requirement for the publication of quarterly/monthly details of compliance activities including the number of vehicles inspected or intercepted and the number and nature of defect notices or Penalty Infringement Notices issued
- consider introducing a legislative requirement for all authorised booking entities to provide digital records of driver activity (available from existing and developing technology) to the Department of Transport and Main Roads to investigate personalised transport related offences, and
- ensure the maximum number of departmental compliance staff are focussed on on-road compliance by exploring opportunities for Department of Transport and Main Roads to authorise Inspection Stations to carry out the proposed annual vehicle safety inspections for personalised transport vehicles.

**2.10.1 Accessing app based booking platforms while in charge of a vehicle**Stakeholder views

One submission raised a concern about drivers accessing apps while driving:

*Each ABE or app will need its own mobile phone, so these part time fatigued drivers now have to operate the vehicle safely, deal with the public AND monitor several mobile phones at once...when they get a fare they must accept it by pushing a button ON THE PHONE!?!? Wait - isn't using a mobile phone while driving ILLEGAL? Well using several of them at once definitely HAS to be.<sup>381</sup>*

Committee consideration

The committee asked the department for information on how drivers' can legally access app based booking platforms while at the same time complying with legislation relating to the use of mobile phones while in control of a vehicle. DTMR responded that it was unable to provide specific detail on how individual ride-booking applications operate, however it advised that the driver of a ride-booking service must operate under the same rules as all other drivers with respect to mobile phone use:

*The Transport Operations (Road Use Management - Road Rules) Regulation 2009 provides that the driver of a vehicle must not use and hold in their hand, a mobile phone while the vehicle is moving, or is stationary but not parked.*

*In order to use a hand held mobile device a driver may stop on the side of the road to use their mobile phone provided it is safe to do so and that the vehicle is parked legally. "Parked legally" means to stop and stay in an area where there is no prohibition on stopping or parking. There is no requirement to turn off the vehicle's ignition.*

*While there may be circumstances where mobile phones can be legally used 'hands-free' while driving a vehicle, for example in a cradle, this is subject to the requirement that the driver must ensure they maintain proper control of the vehicle at all times.*

<sup>381</sup> Gordon, Marie, Rodney and Cherie Meares, submission 8, p 9.

*Under the Transport Operations (Road Use Management - Driver Licensing) Regulation 2010, drivers must also comply with any restrictions that apply to the type of licence they hold. For example, drivers under 25 who hold either a learner or P1 licence cannot use a mobile phone while driving. However, as an open driver licence is required to obtain Driver Authorisation under the Transport Operations (Passenger Transport) Act 1994, these restrictions would not generally apply to ride-booking drivers.*<sup>382</sup>

### **2.10.2 Industry training and education on the new legislative framework**

In response to a question from the committee on what type of training and education was planned to inform industry participants of the new obligations, DTMR advised that it is ‘certainly the intention to undertake a number of communication activities. We are not at the point where we have refined exactly what that will look like.’ And further – ‘we would target it through different mediums, whether it is through the website or advertising or whether we target booking entities specifically to try to distribute information to their operators’.<sup>383</sup>

### **2.11 Independent Queensland Personalised Transport Commission**

The 2016 OPT Review report recommended the creation of an independent Personalised Transport Commissioner to oversee the personalised transport industry reform process to ensure the reforms were delivered in a managed approach, ensure stakeholders could contribute to the development of the reform process and also to oversight stage two of the process.<sup>384</sup>

Following consideration of the OPT recommendation, the government decided:

- the Implementation of the personalised transport reform should be led by a dedicated Personalised Transport Reform Unit within DTMR, and
- to establish the PTIRG to provide a forum for industry and community stakeholders to inform the policy and legislation for the second stage of the personalised transport reform program (the PTIRG has met four times since it was established in late 2016).<sup>385</sup>

#### Stakeholder views

In its submission the TCQ recommended an independent Queensland Personalised Transport Commission be established in recognition of the increasing complexity and pressures of regulating the personalised transport sector and on the basis this ‘represents best practice, having been implemented in major markets like New York, London, New South Wales and Victoria’.<sup>386</sup> The TCQ submitted the independent commission must have its own enabling legislation and full control of:

- licensing and registration of all personalised transport vehicles and drivers
- the ability to set classes of CTP for personalised transport vehicles
- compliance and enforcement of its own legislation
- litigation of challenges to enforcement orders under its own legislation, and
- policy branch to amend its own legislation if necessary.<sup>387</sup>

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<sup>382</sup> DTMR, Answers to Questions taken on Notice, 24 April 2017, p 9.

<sup>383</sup> Public briefing transcript, 20 April 2017, p 15.

<sup>384</sup> White Paper ‘Opportunities for Personalised Transport: The future of Queensland’s personalised transport industry’, July 2016.

<sup>385</sup> Correspondence, 19 April 2017, p 4.

<sup>386</sup> Submission 10, p 1.

<sup>387</sup> Submission 10, p 2.



At the public hearing the TCQ strongly advocated for the establishment of a commission on the basis:

*The Department of Transport and Main Roads has proven itself incapable of effectively regulating the Queensland personalised transport sector over the past three years. With a regulatory and enforcement burden on the department expected to increase by more than 1,000 per cent over the next five years owing to the expected vehicle growth, vehicle identification challenges and the repeal of service contracts, the Queensland government must establish an independent Queensland personalised transport commission. This approach recognises the increasing complexity and pressures of regulating the personalised transport sector and represents global best practice having been implemented in major markets like New York, London, New South Wales and Victoria. That is my statement for now.*<sup>388</sup>

The TCQ proposal was supported by a large number of submissions from taxi industry stakeholders.<sup>389</sup> For example one submission stated:

*There needs to be a new independent body set up, run by new people, with no current DTMR head bureaucrats as they have proven to be incapable of action. This body should have legislative powers to make and enforce rules and regulations on Personal Transport matters. This will include ALL relevant rules and standards, complying with other intersecting acts, enforcing the same with appropriate penalties, scaled to hurt the offender, demerit points, license suspensions, corporate penalties and jail time for offenders.*<sup>390</sup>

The RSDAA also supported the establishment of a fully independent commissioner to oversee the operation of the taxi, limousine and booked hire industry with the power to make rules and regulations for the ongoing operation of the industry.<sup>391</sup>

The RACQ indicated that while it did not have a strong view it is concerned about overregulation, 'it really depends on what it looks like and whether it adds yet another cost burden or red-tape burden to entry.'<sup>392</sup>

One submitter suggested that the responsibility for personalised transport be moved to local government as they 'have a better understanding of how markets function at a grass roots level and are much more likely to formulate fair work practices within their boundaries'.<sup>393</sup>

#### Department response to issues raised in submissions

DTMR reiterated that the OPT Review recommendation regarding the commission had not been supported by the government and implementation of the personalised transport reforms is being led by a dedicated Personalised Transport Reform Unit within the department, rather than a separate industry commission and advised:

*The proposal to establish an independent commission does not meet the 'threshold test' prescribed by the Department of the Premier and Cabinet in the Public Interest Map Policy which requires there to be a compelling reason why a government department cannot or should not undertake the proposed activities. Furthermore, functions and resources would be duplicated between the department and the commission resulting in confusion for industry and customers as well as creating issues with coordinating an integrated passenger transport network. Government would also incur significant additional costs to establish an independent*

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<sup>388</sup> Public hearing transcript, 20 April 2017, p 7.

<sup>389</sup> See for example, submission 4, p 2, submission 119, p 5 submission 180, p 2 and submission 216, p 4.

<sup>390</sup> Gordon, Marie, Rodney and Cherie Meares, submission 8, p 5.

<sup>391</sup> Public hearing transcript, 20 April 2017, p 31.

<sup>392</sup> Public hearing transcript, 20 April 2017, p 37.

<sup>393</sup> Mr Darryl Fink, submission 14, p 4.

*commission, adding to the total cost of implementing the reforms and these costs would be passed on to industry through higher fees.*<sup>394</sup>

#### Committee consideration

At the public briefing the committee explored the need for an independent commission. In response to a question from the committee DTMR provided the following additional information:

*Government would also incur additional costs in terms of funding if we were to set up an independent commission, adding to the total cost of implementing the industry reforms. Functions and resources would also be duplicated between the department and the commission if a commission were established. This would result in confusion for industry and for customers in terms of managing the coordination of issues and also in coordinating the policy framework for an integrated transport network, which is what we currently do within Transport and Main Roads.*

*Implementation, monitoring and regulation of a personalised transport industry is being led from a dedicated personalised transport reform unit. There is a dedicated unit that has been established to provide the dedicated focus on development and implementation of these reforms. That was our preferred model within Transport and Main Roads rather than moving to establish an independent commission at this stage.*<sup>395</sup>

The committee examined the powers of the Victorian Taxi Service Commission which has recently had its regulatory authority extended to cover all the personalised transport services including rideshare vehicles (included as subset of a hire vehicle). The Taxi Service Commission's main functions are:

- taxi and hire vehicle licensing
- issuing taxi and hire vehicle driver accreditations
- issuing taxi industry accreditations
- issuing driving instructor authorities
- administering the Multi-Purpose Taxi Program and country wheelchair accessible taxi subsidy scheme
- developing policy and reviewing regulations
- monitoring the industries it regulates to ensure compliance with relevant legislation and regulations
- liaising and consulting with these industries and with consumers
- providing business and information technology support to the industries it regulates, and
- implementation of the government supported reforms from the Taxi Industry Inquiry's final report.<sup>396</sup>

The committee also reviewed the Queensland Government threshold test requirements under the Public Interest Map for Queensland Government Bodies.

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<sup>394</sup> Correspondence, 19 April 2017, pp 10-11.

<sup>395</sup> Public hearing transcript, 20 April 2017, p 41.

<sup>396</sup> Victorian Taxi Services Commission <http://taxi.vic.gov.au/about-us/taxi-services-commission> (accessed 24 April 2017).

Committee comment

Committee members came to different conclusions about the TCQ proposal that an independent Personalised Transport Commission be established.

Non-government members of the committee supported the TCQ proposal as a strong independent and impartial representative and advocate on behalf of both the taxi and rideshare industries.

Government members noted DTMR advice that the establishment of a Personalised Transport Commission does not meet threshold test under the Public Interest Map for Queensland Government Bodies. Government members also noted that the Minister and DTMR (through the newly established Personalised Transport Unit) already undertake the proposed functions of the Personalised Transport Commission and that the PTIRG provides an avenue for Government to liaise with the industry.

Given the recent growth in the personalised transport sector, the implementation issues that may arise from recent and proposed legislative changes, and the increase in required compliance activity, the committee makes the following recommendation.

**Recommendation 16**

The committee recommends that in order to ensure suitable administrative arrangements and independent oversight of the regulation of the personalised transport industry the Minister:

- ensure that an ombudsman, or equivalent entity, is allocated responsibility for dealing with disputes in the industry in a timely manner
- create a senior position within the Department of Transport and Main Roads dedicated solely to the administration of the industry, and
- ensure appropriate mechanisms are in place for referring administrative disputes between parties in the industry to the Queensland Civil and Administrative Tribunal.

### 3 Compliance with the *Legislative Standards Act 1992*

#### 3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (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 two potential FLP issues to the attention of the House.

##### 3.1.1 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.

###### Administrative power – clause 18

Section 4(3)(a) of the LSA provides that legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review.

Section 102 of TO(PT)A provides that a person whose interests are affected by a decision listed in schedule 2 (the original decision) may ask the chief executive to review the decision.

Pursuant to section 102(2) a person is entitled to receive a statement of reasons for the original decision whether or not the provision under which the decision is made requires that the person be given a statement of reasons for the decision. Section 102(3) provides that the *Transport Planning and Coordination Act 1994*, part 5, applies which allows a person to make an application to the Queensland Civil and Administrative Tribunal (QCAT) in relation to a decision.

###### *Proposed section 91T(2)(a)*

Clause 18 proposes to insert new section 91T – Suspending and cancelling licence (taxi, limousine or booked hire service).

Section 91T(2)(a) provides that a regulation may authorise the chief executive to suspend or cancel a person’s licence if the person contravenes a condition of the licence; or a provision of relevant transport legislation relating to providing a taxi service or booked hire service; or a motor vehicle used to provide a taxi service or booked hire service.

Section 91T(2)(b) provides that the chief executive may immediately suspend a person’s licence if the vehicle is required to comply with the vehicle requirements prescribed under s.91R(1) and the vehicle does not comply with the requirements or if the chief executive considers it necessary in the public interest.

###### *Section 91ZA*

Clause 18 proposes to insert new section 91ZA-Suspension and cancellation of booking entity authorisation. Pursuant to section 91ZA(1), a regulation may provide for the suspension and cancellation of a booking entity authorisation.

Section 91ZA(2)(b) provides that the chief executive may immediately suspend a person’s booking entity authorisation if:

- (i) *for a person who is a foreign person—the person does not have a local nominee; or*
- (ii) *the person or, for a person who is a foreign person, the person’s local nominee, takes steps to avoid detection of, or prosecution for, an offence committed by the person or another person in relation to providing a booked hire service or booking service for a booked hire service; or*
- (iii) *the chief executive considers it necessary in the public interest.*

*Section 91ZJ*

Clause 18 proposes to insert section 91ZJ whereby the chief executive may suspend a driver licence. Section 91ZJ(1) applies if a person has, within a three year period, committed three or more relevant driver offences.

Pursuant to section 91ZJ(3), the chief executive may suspend a person's driver licence for a period of one month by written notice, by way of section 91ZJ(4). The written notice should state the following:

- (a) *that the person's driver licence is being suspended;*
- (b) *the day the suspension starts, which must be at least 7 days after the day the notice is given;*
- (c) *the day the suspension ends;*
- (d) *the reasons for the suspension;*
- (e) *that the person may not apply to the chief executive for reconsideration of the decision or to QCAT for a review of the decision.*

Potential FLP

Proposed sections 91T(2)(b) and 91ZA(2)(b) do not contain a provision allowing for a right of review upon the suspension of a licence. Section 91ZJ(3)(e) would specifically provide that a person cannot ask for a decision to be reviewed by QCAT. These sections potentially breach section 4(3)(a) of the LSA.

The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states, 'Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review'.<sup>397</sup>

However, the OQPC Notebook also states that the removal of review rights may be justified by the overriding significance of the objectives of the legislation.<sup>398</sup>

In relation to proposed sections 91T(2)(b) and 91ZA(2)(b), the explanatory notes provided the following justification for the lack of a review process after an immediate suspension:

*Both sections 91T and 91ZA also allow for immediate suspension when the chief executive considers it necessary in the public interest. The ground is broadly framed to ensure that the chief executive can take immediate necessary action in a variety of circumstances that may arise and this approach is consistent with other existing provisions in the Act (see for example, sections 32(3) and 79(3) which allow immediate suspension of driver authorisation or taxi service licences in the public interest).*

*It is not intended to allow for review or appeal of an immediate suspension because an immediate suspension is designed to ensure inappropriate conduct ceases immediately. Any review or appeal process has the potential to delay the operation of the suspension and thereby allow the party to continue operating – effectively undermining the intent of the provision.*

*However, any negative consequence for a licence or authority holder is mitigated as an immediate suspension is only a temporary state. If the chief executive decides the licence or authority should be suspended beyond the timeframes or that it should be cancelled, the chief executive will, through the regulation provisions trigger the usual show cause processes. These provisions allow the licensee or authority holder to respond to any allegations, and if the licensee or authority holder does not agree with the final decision on a show cause action, they will be able to appeal to the Queensland Civil and Administrative Tribunal (see Chapter 10 TO(PT)A).<sup>399</sup>*

<sup>397</sup> OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 18.

<sup>398</sup> OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 19.

<sup>399</sup> Explanatory notes, p 8.

The explanatory notes also addressed the removal of appeal rights as provided by section 91ZJ(3)(e):

*It is important that the suspension not be subject to any review or appeal, because such processes will effectively delay the operation of any suspension, allowing the person to continue to offend until the reviews and appeals are exhausted. The proposed approach is justified because the licence suspension will not apply until the third offence is committed, and administrative processes will be in place so the driver will be informed after the second offence that any further offence will lead to the licence suspension. This will give the person ample opportunity to adjust their behaviour to avoid the suspension.<sup>400</sup>*

#### Committee consideration

The committee noted that while no right of review is available with respect to sections 91T(2)(b) and 91ZA(2)(b) after the immediate suspension of a driver's licence, this is consistent with the approach taken in relation to current sections 32 (Amendment, suspension and cancellation of driver authorisations) and 79 (Suspension and cancellation of taxi service licences) and that should the chief executive advise an individual that a licence will be suspended beyond the initial timeframe provided, they may still appeal to the QCAT for a review of the decision.

Section 91ZJ(3)(e) does not allow for an appeal to QCAT after a third offence has been committed. The committee noted the explanatory notes advise that an individual will be informed after a second offence occurs that their licence will be suspended should a third offence be committed and they will therefore be fully advised that the failure to modify their behaviour will result in their licence being suspended.

### **3.1.2 Institution of Parliament**

#### Delegation of legislative power – clause 18

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament. Section 4(4)(a) provides that a bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons.

Several clauses in the bill provide that certain matters may be prescribed by regulation. These include proposed sections 74, 76, 78 and 91.

Clause 18 proposes to insert new chapter 7 into TO(PT)A including new sections 74, 76 and 78:

*Proposed new section 74* makes it an offence to provide a taxi service in a vehicle other than a taxi. Section 74(4) allows a regulation to prescribe when a vehicle other than a taxi may be used to provide the service.

*Proposed new section 76* creates an offence to provide a booked hire service in a vehicle that is not a booked hire vehicle, limousine or taxi. Section 76(2) will allow a regulation to prescribe when another vehicle may be used to provide the service.

*Proposed new section 78* creates an offence to provide booking services for a booked hire service unless the person holds a booking entity authorisation. Section 78(2)(b) will allow a regulation to prescribe circumstances when a person who is a driver can provide booking services without a booking entity authorisation.

*Proposed new section 91P* will allow a regulation to prescribe a general power to amend the conditions of a taxi service licence and section 91T will allow a regulation to outline the grounds for the suspension or cancellation of a licence. Section 91ZA allows for a regulation to provide for the suspension and cancellation of a booking entity authorisation.

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<sup>400</sup> Explanatory notes, p 6.

Potential FLP issues

The information that may be delegated to a regulation by the aforementioned sections is relatively important. Therefore it may be argued that this information should be contained in the primary Act and not a regulation. Clause 18 therefore potentially breaches section 4(4)(a) of the LSA. Further, section 4(5)(c) of LSA provides that subordinate legislation should contain only matters appropriate to that level of legislation.

As noted in the OQPC FLP Notebook, legislation should be delegated only in appropriate cases. The Notebook says that 'Although an Act may legally empower the making of particular subordinate legislation, there remains the issue of whether the making of particular subordinate legislation under the power is appropriate. For example, an Act's empowering provision may be broadly expressed so that not every item of subordinate legislation that could be made under it is necessarily appropriate to subordinate legislation in every circumstance that arises'.<sup>401</sup>

The explanatory notes acknowledged the potential FLP in relation to sections 74, 76, 78, and 91, and provided the following justification:

*Allowing a regulation to provide exceptions from compliance with the Act has previously been accepted as appropriate for the regulation of public passenger services, see for example, sections 70(4) (about taxi services), 12(2)(c) (about operator accreditation) and 24(2)(c) (about driver authorisation). The occasions where the exceptions have been prescribed in a regulation demonstrate the practical nature of how these provisions are used (see, for example, sections 17, s42 and s52A of the Transport Operations (Passenger Transport) Regulation 2005).*

*The proposed approach is further justified because the personalised transport reforms are innovative and allowing a regulation to prescribe exceptions from offences outlined in the Act will assist in facilitating the effective application of this innovative scheme. The proposed approach is designed to promote flexibility and allow for a level of practical detail necessary for efficient operation of the Act provisions in an environment where industry and community expectations are rapidly changing. Any exceptions prescribed by regulation will still be subject to scrutiny and possible disallowance by Parliament through the usual regulation making processes.*<sup>402</sup>

*Allowing subordinate legislation to address these matters is justified because it ensures the legislative scheme is sufficiently flexible and responsive to industry issues and community expectations. Any provisions prescribed to address the matters outlined will be subject to the scrutiny and possible disallowance by Parliament through the usual regulation making processes.*<sup>403</sup>

Committee consideration

The committee noted the comprehensive reasons provided in the explanatory notes for allowing the use of regulations in the sections discussed.

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<sup>401</sup> OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 165.

<sup>402</sup> Explanatory notes, p 7.

<sup>403</sup> Explanatory notes, p 8.

**3.2 Proposed new and amended offence provisions**

Clause	Offence	Proposed maximum penalty
5	<p><b>Amendment of TO(PT)A</b></p> <p><b>Replacement of s 15 (Duties of operators)</b></p> <p>A person must not provide, as an operator, a public passenger service of a kind for which operator accreditation is required under this Act unless the person is an accredited operator for a service of that kind.</p>	160 penalty units
8	<p><b>Replacement of s 27 (Driver must hold appropriate authorisation)</b></p> <p>(1) A person must not drive a vehicle to provide a public passenger service of a kind for which driver authorisation is required under this Act unless the person is an authorised driver for a service of that kind.</p>	(a) for a first offence—100 penalty units; or (b) for a second or later offence—200 penalty units. <i>Note—See sections 150B &amp; 150C for the application of these penalties.</i>
8	<p><b>Replacement of s 27 (Driver must hold appropriate authorisation)</b></p> <p>(2) A person must not provide a public passenger service of a kind for which driver authorisation is required under this Act unless the person uses drivers who are authorised drivers for a service of that kind.</p> <p>(3) For subsection (2), a person provides a public passenger service if the person—</p> <ul style="list-style-type: none"> <li>(a) is an operator of the service; or</li> <li>(b) for a booked hire service—provides a booking service for the service.</li> </ul>	160 penalty units
11	<p><b>Replacement of s 35 (Obligation to notify accredited operator of suspension or cancellation of licence etc.)</b></p> <p>(1) This section applies to a person who is an authorised driver and who drives a vehicle to provide a public passenger service if—</p> <ul style="list-style-type: none"> <li>(a) the person is not the operator of the service; or</li> <li>(b) for a booked hire service—another person provides booking services for the service.</li> </ul> <p>(2) The person must immediately give written notice to the operator or other person if—</p> <ul style="list-style-type: none"> <li>(a) a licence or other authorisation required under another Act to drive a vehicle of a type to which the person’s driver authorisation relates is suspended or cancelled; or</li> <li>(b) if the public passenger service is of a kind for which driver authorisation is required under this Act—the person’s driver authorisation is suspended or cancelled.</li> </ul>	100 penalty units
18	<p><b>Insertion of s 74 Taxi service may only be provided using a taxi</b></p> <p>(1) A person must not provide a taxi service using a motor vehicle that is not a taxi.</p>	(a) if the person is the driver of the motor vehicle— (i) for a first offence—200 penalty units; or (ii) for a second or later offence—400 penalty units; or (b) otherwise— (i) for a first offence—200 penalty units; or (ii) for a second offence—400 penalty units; or (iii) for a third or later offence—3000 penalty units.



<p><b>18</b></p>	<p><b>Insertion of s 74 Taxi service may only be provided using a taxi</b></p> <p>(2) A person in control of a motor vehicle that is not a taxi must not engage in conduct that involves the vehicle plying or standing for hire by members of the public in a public place.</p> <p>(3) Subsection (2) does not apply if the motor vehicle has more than 12 seating positions, including the driver’s position.</p> <p>(4) This section does not apply to a taxi service prescribed under a regulation as a taxi service to which this section does not apply.</p> <p><i>Note—See sections 150B and 150C in relation to the application of the penalty for subsections (1) and (2).</i></p>	<p>(a) for a first offence—200 penalty units; or</p> <p>(b) for a second or later offence—400 penalty units.</p> <p><i>Note—See section 70(2) for particular circumstances in which a vehicle plies or stands for hire.</i></p>
<p><b>18</b></p>	<p><b>Insertion of s75 Restriction on providing booked hire service for particular taxi service area</b></p> <p>(1) This section applies if a regulation under section 36 declares that a booked hire service is to be provided in a stated taxi service area with the market entry restriction of using a motor vehicle that is a taxi or limousine.</p> <p>(2) A person must not provide a booked hire service for a journey that starts in the taxi service area using a motor vehicle that is not a taxi or limousine.</p> <p>(3) For subsection (2), it does not matter where the journey ends or if the journey involves leaving and re-entering the taxi service area</p>	<p>(a) if the person is the driver of the motor vehicle—</p> <p>(i) for a first offence—200 penalty units; or</p> <p>(ii) for a second or later offence—400 penalty units; or</p> <p>(b) otherwise—</p> <p>(i) for a first offence—200 penalty units; or</p> <p>(ii) for a second offence—400 penalty units; or</p> <p>(iii) for a third or later offence—3000 penalty units.</p> <p><i>Note—See sections 150B and 150C in relation to the application of the penalty for this subsection.</i></p>
<p><b>18</b></p>	<p><b>Insertion of s 76 Booked hire service may only be provided using particular motor vehicle</b></p> <p>(1) A person must not provide a booked hire service using a motor vehicle that is not a booked hire vehicle, taxi or limousine.</p> <p>(2) This section does not apply to a booked hire service prescribed by regulation as a booked hire service to which this section does not apply.</p>	<p>(a) if the person is the driver of the motor vehicle—</p> <p>(i) for a first offence—160 penalty units; or</p> <p>(ii) for a second or later offence—320 penalty units; or</p> <p>(b) otherwise—</p> <p>(i) for a first offence—160 penalty units; or</p> <p>(ii) for a second offence—320 penalty units; or</p> <p>(iii) for a third or later offence—2400 penalty units.</p> <p><i>Note—See sections 150B and 150C in relation to the application of the penalty for this subsection.</i></p>
<p><b>18</b></p>	<p><b>Insertion of s 77 Restriction on providing booked hire service requested using fixed booking device</b></p> <p>(1) A person must not provide a booked hire service requested through a fixed booking device using a motor vehicle that is not a taxi.</p> <p>(2) In this section—</p> <p><b>fixed booking device</b> means a device that is fixed at a place and has the primary function or purpose of allowing a person to request a booked hire service to be provided for a journey that starts at the place.</p>	<p>(a) if the person is the driver of the motor vehicle—</p> <p>(i) for a first offence—200 penalty units; or</p> <p>(ii) for a second or later offence—400 penalty units; or</p> <p>(b) otherwise—</p> <p>(i) for a first offence—200 penalty units; or</p> <p>(ii) for a second offence—400 penalty units; or</p> <p>(iii) for a third or later offence—3000 penalty units.</p>

		<i>Note—See sections 150B and 150C in relation to the application of the penalty for this subsection.</i>
<b>18</b>	<b>Insertion of s 78 Booking service must be provided by authorised booking entity</b>  (1) A person must not provide a booking service for another person to drive a motor vehicle to provide a booked hire service unless the person is an authorised booking entity for the booked hire service.	(a) for a first offence—160 penalty units; or (b) for a second offence—320 penalty units; or (c) for a third or later offence—2400 penalty units.
<b>18</b>	(2) A person must not drive a motor vehicle to provide a booked hire service unless—  (a) if the booking to provide the service was arranged by another person—the other person is an authorised booking entity for the service; or  (b) if the booking to provide the service was arranged by the person—the person is an authorised booking entity for the service or is otherwise authorised to arrange the booking under a regulation.	(a) for a first offence—160 penalty units; or (b) for a second or later offence—320 penalty units. <i>Note—See sections 150B and 150C in relation to the application of the penalty for subsections (1) and (2).</i>
<b>18</b>	<b>Insertion of s82 Driver’s obligations</b>  (1) The driver of a motor vehicle used to provide a booked hire service for a journey must, while providing the service, carry a booking record for the service.  (2) For subsection (1), a motor vehicle is used to provide a booked hire service for a journey if the vehicle— (a) is about to be used for the journey; or (b) is being used for the journey; or (c) has just been used for the journey.  (3) If asked by an authorised person, the driver must immediately— (a) produce the booking record for inspection by the authorised person; or (b) allow the authorised person to enter the vehicle to read the booking record displayed on an electronic device if— (i) it is not reasonably practicable for the authorised person to read the display from outside the vehicle; and (ii) the authorised person tells the driver the authorised person needs to enter the vehicle to read the display.  (4) If an authorised person enters a motor vehicle under subsection (3)(b), the authorised person— (a) may remain in the vehicle for only the period of time that is reasonably necessary to read the display; and (b) may inspect the vehicle, and anything in the vehicle, only to the extent that is reasonably necessary to read the display.	80 penalty units

<p><b>18</b></p>	<p><b>Insertion of s82 Driver’s obligations</b></p> <p>(1) The driver of a motor vehicle used to provide a booked hire service for a journey must, while providing the service, carry a booking record for the service.</p> <p>(2) For subsection (1), a motor vehicle is used to provide a booked hire service for a journey if the vehicle—</p> <ul style="list-style-type: none"> <li>(a) is about to be used for the journey; or</li> <li>(b) is being used for the journey; or</li> <li>(c) has just been used for the journey.</li> </ul>	<p>80 penalty units.</p>
<p><b>18</b></p>	<p>(3) If asked by an authorised person, the driver must immediately—</p> <ul style="list-style-type: none"> <li>(a) produce the booking record for inspection by the authorised person; or</li> <li>(b) allow the authorised person to enter the vehicle to read the booking record displayed on an electronic device if—                             <ul style="list-style-type: none"> <li>(i) it is not reasonably practicable for the authorised person to read the display from outside the vehicle; and</li> <li>(ii) the authorised person tells the driver the authorised person needs to enter the vehicle to read the display.</li> </ul> </li> </ul> <p>(4) If an authorised person enters a motor vehicle under subsection (3)(b), the authorised person—</p> <ul style="list-style-type: none"> <li>(a) may remain in the vehicle for only the period of time that is reasonably necessary to read the display; and</li> <li>(b) may inspect the vehicle, and anything in the vehicle, only to the extent that is reasonably necessary to read the display.</li> </ul>	<p>80 penalty units</p>
<p><b>18</b></p>	<p><b>Insertion of s 90 Reckless conduct—category 1</b></p> <p>(1) A person commits an offence if—</p> <ul style="list-style-type: none"> <li>(a) the person has a duty under section 88; and</li> <li>(b) the person, without a reasonable excuse, engages in conduct related to the duty that exposes an individual, or class of individuals, to a risk of death or serious injury or illness; and</li> <li>(c) the person is reckless to the risk.</li> </ul> <p>(2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.</p>	<p>(a) for an individual—3000 penalty units or 5 years imprisonment; or</p> <p>(b) for a corporation—30,000 penalty units</p>
<p><b>18</b></p>	<p><b>Insertion of s 91 Failure to comply with duty—category 2</b></p> <p>A person commits an offence if—</p> <ul style="list-style-type: none"> <li>(a) the person has a duty under section 88; and</li> <li>(b) the person contravenes the duty; and</li> <li>(c) the person’s contravention exposes an individual, or class of individuals, to a risk of death or serious injury or illness.</li> </ul>	<p>(a) for an individual—1500 penalty units; or</p> <p>(b) for a corporation—15,000 penalty units</p>

<p><b>18</b></p>	<p><b>Insertion of s 91A Failure to comply with duty—category 3</b></p> <p>A person commits an offence if—</p> <p>(a) the person has a duty under section 88; and</p> <p>(b) the person contravenes the duty.</p>	<p>(a) for an individual—500 penalty units; or</p> <p>(b) for a corporation—5000 penalty units</p>
<p><b>18</b></p>	<p><b>91B Duties relating to fatigue</b></p> <p>(1) A person must not drive a motor vehicle being used to provide a taxi service or booked hire service while the person’s ability to drive the motor vehicle safely is impaired by fatigue.</p>	<p>160 penalty units</p>
<p><b>18</b></p>	<p>(2) A person in the chain of responsibility for a taxi service or booked hire service must take all reasonable steps to ensure another person does not drive a motor vehicle to provide the service while the other person’s ability to drive the motor vehicle safely is impaired by fatigue.</p>	<p>160 penalty units</p>
<p><b>18</b></p>	<p><b>91O Conditions of licence</b></p> <p>(1) A licence is subject to the conditions stated in it by the chief executive.</p> <p>(2) The holder of a licence and the operator of a taxi service or booked hire service provided using a motor vehicle stated in the licence must not contravene a condition of the licence.</p>	<p>40 penalty units</p>
<p><b>18</b></p>	<p><b>91Y Conditions of booking entity authorisation</b></p> <p>(1) A booking entity authorisation is subject to the conditions stated in the authorising document by the chief executive.</p> <p>(2) An authorised booking entity must not contravene a condition of the entity’s booking entity authorisation.</p>	<p>40 penalty units</p>
<p><b>18</b></p>	<p><b>91ZG Obligation to keep and provide information</b></p> <p>(1) An authorised booking entity must keep the information prescribed by regulation about the following matters, in the way and for the period prescribed by regulation—</p> <p>(a) the booking services provided by the entity;</p> <p>(b) booked hire services for which the entity provides booking services.</p>	<p>150 penalty units</p>
	<p>(2) An authorised booking entity must provide the information the entity must keep under subsection (1) to the chief executive, in the way and at the times prescribed by regulation.</p> <p>(3) Information given to the chief executive under this section is not admissible in a civil, criminal or administrative proceeding other than a proceeding about complying with subsection (1) or (2).</p>	<p>150 penalty units</p>
<p><b>18</b></p>	<p><b>91ZO Failure to comply with audit notice</b></p> <p>A person who is given an audit notice must comply with the notice unless the person has a reasonable excuse.</p>	<p>100 penalty units</p>

<p><b>18</b></p>	<p><b>91ZQ Direction to comply</b></p> <p>(1) This section applies if an audit report identifies that the person whose business activities were audited has not complied with a provision of relevant transport legislation in relation to—</p> <p>(a) providing a taxi service or booked hire service; or</p> <p>(b) a motor vehicle used to provide a taxi service or booked hire service.</p> <p>(2) The chief executive or an authorised person may give the person a written direction to—</p> <p>(a) if the person’s noncompliance mentioned in subsection (1) exposes an individual to a risk of death or serious injury or illness—</p> <p>(i) immediately comply with the provision of relevant transport legislation; and</p> <p>(ii) take the action stated in the direction to remedy the noncompliance; or</p> <p>(b) otherwise—comply with the provision of relevant transport legislation, within the period, of not less than 5 business days, stated in the direction.</p> <p>(3) A direction must—</p> <p>(a) identify the noncompliance; and</p> <p>(b) state that failure to comply with the direction, without a reasonable excuse, is an offence; and</p> <p>(c) state the direction does not relieve the person from the obligation to comply with another provision of relevant transport legislation.</p> <p>(4) The chief executive may, by written notice, extend the period for complying with a provision of relevant transport legislation for a direction given under subsection (2)(b).</p> <p>(5) The person to whom a direction is given under subsection (2) must not contravene the direction unless the person has a reasonable excuse.</p>	<p>(a) for contravention of a direction mentioned in subsection (2)(a)—320 penalty units; or</p> <p>(b) otherwise—160 penalty units</p>
<p><b>18</b></p>	<p><b>91ZR Charging more than maximum fare</b></p> <p>(1) The chief executive may, by gazette notice, decide maximum fares for taxi services.</p> <p>(2) Also, the chief executive may, by gazette notice, decide maximum fares for booked hire services—</p> <p>(a) for members of a personalised transport subsidy scheme under section 91ZY; or</p> <p>(b) provided using a type of vehicle, or for a class of persons, prescribed by regulation; or</p> <p>(c) mentioned in section 75.</p> <p>(3) A person must not charge more than the maximum fare for a taxi service or booked hire service to which a maximum fare under subsection (1) or (2) applies.</p>	<p>40 penalty units</p>

	<p>(4) For subsection (3), a person charges a fare for a taxi service or booked hire service if the person decides or otherwise controls the amount of the fare, including, for example—</p> <p>(a) by administering an electronic system that determines the amount automatically using a computer program or in another way; or</p> <p>(b) by using a device to process payment of an amount that includes the amount of the fare.</p>	
<b>18</b>	<p><b>91ZS Charging more than maximum payment surcharge for fare</b></p> <p>(1) A <b>payment surcharge</b> for a fare for a taxi service or booked hire service is an amount (however described) charged, in addition to the amount of the fare—</p> <p>(a) for processing payment for the fare; or</p> <p>(b) for paying the fare using one payment method rather than another.</p> <p>(2) A regulation may prescribe a maximum payment surcharge for a fare for a taxi service or booked hire service.</p> <p>(3) A person must not charge more than the maximum payment surcharge for a fare for a taxi service or booked hire service to which a maximum payment surcharge under subsection (2) applies.</p> <p>(4) For subsection (3), a person charges a payment surcharge for a fare for a taxi service or booked hire service if the person decides or otherwise controls the amount of the payment surcharge, including, for example—</p> <p>(a) by administering an electronic system that determines the amount automatically using a computer program or in another way; or</p> <p>(b) by using a device to process payment of an amount that includes the amount of the payment surcharge.</p>	40 penalty units
<b>18</b>	<p><b>91ZU Public passenger service starting in taxi service area for a taxi</b></p> <p>(1) A person must not use a taxi to provide a public passenger service for a journey that starts in a taxi service area unless—</p> <p>(a) the taxi service area in which the journey starts is the taxi service area for the taxi; or</p> <p>(b) a condition of the taxi service licence otherwise authorises the taxi to be used to provide a public passenger service for the journey.</p> <p>(2) For subsection (1), it does not matter where the journey ends or if the journey involves leaving and re-entering the taxi service area.</p> <p>(3) This section does not apply to the use of a taxi to provide a public passenger service under a contract with a government entity.</p> <p>(4) In this section— government entity means—</p>	40 penalty units

	<p>(a) any State or the Commonwealth; or</p> <p>(b) a department, service, agency, authority, commission, corporation, instrumentality, board, office or other entity established for a government purpose of any State or the Commonwealth; or</p> <p>(c) a part of an entity mentioned in paragraph (b).</p>	
36	<p><b>Amendment of TORUM</b></p> <p><b>Replacement of s 129A(9) (Effect of suspension of licence under State Penalties Enforcement Act 1999)</b></p> <p>(7) A person who is disqualified from applying for or obtaining a driver licence under either of the following provisions must not apply for or obtain a driver licence while the person is disqualified under that provision—</p> <p>(a) the <i>State Penalties Enforcement Act 1999</i>, section 106(4);</p> <p>(b) the <i>Transport Operations (Passenger Transport) Act 1994</i>, section 91ZK(2)(c).</p>	20 penalty units or 18 months imprisonment

### 3.3 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.

Explanatory notes were tabled with the introduction of the bill. The committee noted the explanatory 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.

## Appendix A – List of submissions

Sub #	Submitter
1	Jason, John and Louise Steele
2	John Moore & Beryl Bacic
3	Davina & David Thomas
4	Cairns Taxis Limited
5	Ride Share Drivers Association of Australia
6	Total Taxi Management Cairns
7	Stanley and Dorothy McCallum
8	Gordon, Marie, Rodney & Cherie Mears
9	Shebah Rideshare Pty Ltd
10	Taxi Council Queensland
11	Patrick O'Brien
12	Glenda & Wayne Hawthorn
13	Wayne Brazel
14	Darryl Fink
15	Limousine Association Queensland
16	Redlands Taxi Management
17	RACQ
18	Queensland Council of Unions
19	Transport Workers' Union of Australia – Queensland Branch
20	Name Suppressed
21	McKinnon Taxis Pty Ltd
22	Professional Taxis Gold Coast
23	Yellow Owners Association
24	First Class Taxis
25	QBE
26	Valerie Hicks
27	Mackay Taxi Holdings Pty Ltd
28	Supreme Taxi Company
29	Uber
30	Queensland Taxi Owners & Drivers Welfare Association
31	Black & White Cabs Pty Ltd
32	Bill Simpson
33	Peter and Michelle Andrews
34	Gold Coast Cabs
35	QUT Guild
36	Limo Action Group Queensland
37	Anthony Boranna
38	Thomas Siddle
39	Robin Morrison
40	Michael Duve
41	Phillip and Genevienne Simes
42	John Johnston
43	Tania Jeffcoat-Altana
44	Fernando Cruz

Sub #	Submitter
45	Yahna Parker
46	Peter-John de kock
47	Jennifer Ghent
48	Adam McLean
49	William Gray
50	Daryle Berry
51	Jane Parker
52	Grant Fawcett
53	Remy Lanz
54	Anthony Fisher
55	Tanya Glade
56	Confidential
57	Werner Sandner
58	Emelita Woodley
59	Subramanian Iyer
60	Fraser Johnson
61	Farid Kazemy
62	Grant Lahring
63	Robert Rodrigues
64	Peter Kline
65	Atif Qayyum
66	Lorraine Krueger
67	Annie Birch
68	Norm and Margaret Powell
69	J.B. Weatherall
70	Joshua Jones
71	Peter Young
72	Sharon and Stephen Lee
73	Roy Wyatt
74	Geoff McGuinness and Mako Morishima
75	Robert Di Felice
76	Michelle Hakfoort
77	Les and Denise Williams
78	Rino and Lisa Parrella
79	Len and Claire White
80	Ron and Maureen Swanbrough
81	Shane Cooper
82	Bhas Nair
83	John B Williams
84	James and Shirley Small
85	Name Suppressed
86	Carl Linklater and Kerry Rigby
87	Lesley Hardy
88	Sanjeev Kumar
89	Roger Bust
90	John and Roslyn Byrne



Sub #	Submitter
91	Kathleen Laverty
92	Les and Annette Hill
93	Andrew McDermid
94	Hannah Maughan
95	Thomas Siddle
96	A and L Taxis Pty Ltd
97	Confidential
98	F and F McAdam
99	Robert Staszewski
100	Alan and Maria Farr
101	Melita Fowler
102	Gerry and Joyce McGrade
103	Sound Management Taxi Group
104	A and V Harrison
105	Judi Coxshall
106	Amir Karimi
107	Name Suppressed
108	R G Allaway
109	Shida Batal
110	Victoriano de Jesus
111	Gabriele Sandona
112	Alberto Figueroa
113	Anne Awabdy
114	Darryl and Susan Bain
115	Yellow Owner's Association
116	David Dall'Alba
117	Mark Kennedy
118	David Knox
119	Ulae Rea
120	Peter Heenan
121	G M Lucas
122	Des and Wendy Smith
123	David Wheeler
124	Name Suppressed
125	George Cook
126	Adrian Bonanno
127	Deep Talwar
128	Salvator
129	Parkash Sandhu
130	Gareth Hughes
131	Shirley Dwyer
132	Allan Taylor
133	Suresh Narayanan
134	Luciano Corrado
135	Evan Mathieson
136	Lesley Den Hertog
137	Michael Price
138	David Crevola
139	Frank Torluccio

Sub #	Submitter
140	Noel and Anne Spain
141	Stefan Przybysz
142	Steve and Ann Logan
143	Kerry Pugh
144	Michael Hutcheon
145	Stan Francis
146	Nilkamal Patel
147	Sunil Khanna
148	Pauline Francis
149	Carmel Sandona
150	Brianna Bell
151	Andrea James
152	David James
153	D and D Habermann
154	Peter and Judy Bolton
155	John and Dorelle Taylor
156	Yeison R
157	Martin Raco
158	Evan and Lyn Mathieson
159	Navneet Sandher
160	Helen Murray and Wolf Vogel
161	Confidential
162	Shirley Battrick
163	Phil Shield
164	Alan McMenamin
165	Rick Percival
166	Oliveros Robles
167	Sandeep Bhardwaj
168	Layne Gardiner
169	Garth Llewellyn
170	Lindsay and Karen Brown
171	Confidential
172	Karen Upton
173	Peter Upton
174	Seb Timberlake
175	Jason McLaren
176	Christopher Green
177	Quicksilver Limousines
178	Paul Scaini
179	Danyon Lamb
180	Graeme Wyer
181	Peter Doran
182	Caroline Przybysz
183	Name Suppressed
184	Kyung Sik Kim and Irene Imsun Jo
185	Name Suppressed
186	Allan Hughes
187	Brisbane Premier Limousine Service
188	Roslyn Skerry

Sub #	Submitter
189	Genevieve Thackwell James
190	Confidential
191	Robert and Barbara Juppenlatz
192	John Bergmans
193	Bruce and Gay Burnham
194	Bereket Berhe Nwatu
195	Kuljit and Lakhvinder Dhillon
196	John Black
197	Noel and Nyleve Morris
198	Kanwaljit Singh
199	Richard Reeve
200	Arthur Wood
201	DrinkWise
202	KG Taxi Management
203	Avtar and Manjit Dhillon
204	StateWide Tyre Wholesalers
205	FSG Australia
206	Rachhpal singh Gill
207	Matthew Mather
208	Confidential
209	Runaway Bay Transfers
210	John and Fleur Gibb
211	Raymond and Kieran Dhillon
212	Parvinder Buttar
213	Peter Vincent
214	Storm Ariho
215	Cheryl Cochrane
216	Peter David Anderson
217	Joanne Roche
218	Jasmin Hoia
219	Stan McCallum
220	Jillaine Duve
221	Brenda Conohan
222	Warren Smith
223	Peter Francis Conohan
224	Townsville Taxis
225	Brian Marshall
226	Sylvia Hoger
227	Kuldip Singh Randhawa
228	Colin Dockery and Tracey Kuit
229	City Beach Constructions Pty Ltd
230	Paula and Tony Fragoudakis
231	Alan George Robinson
232	Brian and Patricia Kelly
233	Jacob Chives
234	Jacqui Fiebig
235	Lintre Pty Ltd
236	Mark Browning
237	Shelley and Tena Lennon

Sub #	Submitter
238	Tony and Jan Coco
239	Name Suppressed
240	Russ Caldwell
241	Marilee Pullen
242	Wade and Helena Juppenlatz
243	Lorraine and Ronnie Woods
244	Multi Fleet Operators
245	Apollo Taxis
246	888 Chauffeur Drive P/L
247	Townsville Taxis
248	James and Elizabeth Marshall
249	Amind
250	Gabriel and Iole Iommarini
251	Caromil Pty Ltd
252	Peter Bonaventura
253	Ted Buchanan
254	Spinal Life Australia
255	Usman Swaray
256	Atul Dighe
257	Ajay Kamboj
258	Alexandros Papagiannopoulos
259	Ben Fraser
260	Carl Watney
261	Debra Parsons
262	Derek Rosborough
263	John Mardesic
264	John & Mary-Rose Tse
265	Ken Kelly
266	Karen Spence
267	Linsey-Jane Nelson
268	Michael Christ
269	Murray Dovey
270	Maureen Farlow
271	Mohammad Ali Mohammadi
272	Malcolm Vane
273	Malcolm & Julie Bond
274	Neil Robson
275	Phil Hudson
276	Patrick McRae
277	Peter Schirmer
278	Philip Sparrowhawk
279	Ray Doubikin
280	Rob Harding
281	Richard Lewkowicz
282	Ray Tyndall
283	Remo & Anna Di Felice
284	Steve Curtis
285	Srida Morris
286	Stan White

Sub #	Submitter
287	Tracy di Felice
288	Tesfaslasie Kidane

289	Terry Uhlmann
290	Andrew Dunning
291	Alan Orr
292	Brenda Conohan
293	Dinesh Krishnan
294	Eric Aubort
295	Edward Rhodes
296	Fraser Hethorn
297	George Kotis
298	Gabrielle Lacaze
299	Gerard Wylie
300	Hamadullah Bhutto
301	Hafeezullah Nazari
302	John Berry
303	J C Worthy
304	Ken Kelly
305	Ken Smith
306	Louise Dwyer
307	Laurie and Olwyn Harding-Smith
308	Leigh Hutton
309	Matthew Dargusch
310	Mandi Markham
311	Michael Mills
312	Mark Roche
313	Peter Francis Conohan
314	Peter Coxshall
315	Paulette Jermanus
316	Robert & Jann Brant
317	Roberto & Glenis Martinez De Antonana
318	Shirley Dwyer
319	Saeed'ali Mwechiwa Macheremo
320	Tony de Jesus
321	Thomas Kolyvas
322	Trevor Campbell Taylor
323	Warren Cavanagh
324	Wendy Jackman
325	Yusuf Peer
326	Kingaroy Taxi Service
327	Cheryl Knox
328	Kristy Mather

## **Appendix B – List of witnesses at public departmental briefing – 20 April 2017**

### **Department of Transport and Main Roads**

- Mr Matt Longland, Deputy Director-General
- Ms Suzanne Rose, Acting General Manager (Passenger Transport Integration)

### **Motor Accident Insurance Commission**

- Mr Neil Singleton, Insurance Commissioner

## **Appendix C - List of witnesses at public hearing – 20 April 2017**

### **Limousine Action Group**

- Ms Michelle Andrews, Secretary
- Ms Jacqui Fiebig

### **Limousine Association of Queensland**

- Mr Frank Bonomo, President
- Mr Colin Duffield, Vice President

### **Professional Taxis Gold Coast**

- Ms Sacha Moore, Administration Manager
- Ms Zara Trengrove, Operations Manager

### **Taxi Council Queensland**

- Mr Benjamin Wash, Chief Executive Officer
- Mr Mark Wallace, Senior Technical Director, RPS Australia

### **Uber**

- Mr Alex Golden, General Manager Queensland

### **Shebah Rideshare Pty Ltd**

- Ms George McEncroe, Chief Executive Officer

### **Ride Share Drivers Association of Australia**

- Mr Les Johnson, Secretary

### **RACQ**

- Mr Michael Roth, Head of Public Policy
- Mr Paul Turner, Chief Communication Officer

### **Department of Transport and Main Roads**

- Mr Matt Longland, Deputy Director-General
- Ms Suzanne Rose, Acting General Manager (Passenger Transport Integration)

## **Statement of Reservation**

# Rob Molhoek MP

MEMBER FOR SOUTHPORT



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## Statement of Reservation – Non-Government Members Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017

The Liberal National Party members of the committee have serious concerns about the Palaszczuk Labor Government's handling of the personalised transport reforms in Queensland.

These concerns have also been reflected in testimony from witnesses appearing before committee hearings, in written submissions and in members' interaction with the community.

The delay in introducing these laws have hurt small businesses and thousands of drivers across the state. While the government has introduced an industry assistance package, these payments have been inadequate in the face of delays and uncertainty.

If it wasn't for the LNP's efforts the Palaszczuk Labor Government would still be dragging their feet on introducing laws for the personalised transport industry.

The government's proposals in this legislation should have been introduced when the government first changed the regulations in respect of ride-sharing and at the time they introduced their inadequate assistance package last year. These delays show the Palaszczuk Government has little regard for the taxi owners, driver and their families. The delayed introduction of these further proposals has left the taxi industry in limbo and further added to the hardship experienced by the industry, frankly it's typical of this do-nothing Labor Government and their love affair with conducting reviews instead of providing certainty and clear guidance and action.

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After listening to passengers, drivers, owners and operators, the LNP believes the government's efforts with the personalised transport industry should be refocused to stand up for the safety of passengers and provide the industry with certainty and stability.

The LNP will listen, plan and act for passengers and the industry, to fix Labor's mess.

The non-government LNP members believe in the need to establish a statutory Personalised Transport Commissioner and consolidate all personalised transport functions within the Department of Transport and Main Roads into a new Office of Personalised Transport.

This is a consistent request by key stakeholders through the process of scrutinising this bill.

A new commissioner should be appointed in consultation with the personalised transport industry and the independent role should be specified in legislation. A Commissioner should be appointed to act as an ombudsman for the industry and a source of independent advice for the Minister.

Another criticism of the Palaszczuk Labor Government's handling of these reforms is that the revolving door of Labor transport ministers – Trad, Hinchliffe, Bailey – has left them in the dark with piecemeal consultation.

To ensure industry voices are always heard by the Government, the non-government LNP members believe their needs to be the appointment of a Personalised Transport Ministerial Council, consisting of the Minister, Commissioner, industry and stakeholders.

This will give industry a regular opportunity to raise issues with the Minister and contribute to future direction of policy.

### ***Safety Cameras***

The non-government LNP members of the committee are concerned about the government's approach to safety cameras in personalised transport vehicles.

While the Palaszczuk Labor Government says, the policy is moving to an outcome based approach, no information has been provided to outline how this will work what these new camera requirements will be.

Consideration should be given to increasing the requirement for cameras in high-risk areas or with high-risk services. Also, provisions should be made for access to travel and customer trip data in the same way that camera vision must be provided to authorities in criminal or illegal activities.

### ***Police access to information and data***

The non-government LNP members of the committee strongly believe processes should be in place to ensure the Queensland Police Service are able to access

relevant evidence in the possession of taxi, rideshare or other personalised transport operators.

The safety of passengers and drivers must be the first priority of the Queensland Government's laws.

### ***Bailment***

The non-government LNP members of the committee believe that the government's proposed approach to bailment laws is deeply flawed.

Rather than removing statutory recognition of bailment agreements in the current legislation, the Minister should consider retaining the existing framework and consider the future of bailment requirements at the conclusion of the 18-month review.

### ***Compulsory Third Party insurance***

A number of stakeholders have raised concerns about the proposed new class for CTP insurance.

There seems to be a significant argument that limousines and ride-booking vehicles should not be contained within the one CTP class.

The government members believe this needs further review and that only a fair and independent personalised transport commissioner can ensure there is a balanced assessment of CTP classes and premiums.

### ***Rank and Hail Enforcement***

The non-government LNP members of the committee are supportive of measures to increase penalties where taxi ranks are used unlawfully or personalised transport vehicles other than taxis are caught undertaking 'hail' jobs.

Consideration should be given to increased enforcement of these zones and the use of technology in monitoring registered personalised transport vehicles.

### ***Fatigue management***

The non-government LNP members of the committee have heard a number of stakeholder express concerns that the proposed fatigue management and chain of responsibility laws do not do enough to address drivers who may be working on different platforms and therefore in breach fatigue management requirements.

The Minister should clarify what the government intends to do about this serious flaw.

### ***Fees and red tape***

The non-government LNP members of the committee are concerned that the licence and registration fees imposed by the Department of Transport and Main Roads. While the government claims that these fees are based on a cost recovery model,



upon question by members of the committee, departmental representatives were unable to corroborate the fees against costs incurred by the department.

A number of stakeholders have also raised concern about the level of red-tape and antiquated processes used by the Department of Transport and Main Roads in the regulation of this industry.

Serious consideration should be given to the modernisation and automation of these processes and the reduction of paper forms and applications.

The non-government LNP members fundamentally support many of the reforms proposed in the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 but remain concerned that the government is still not listening to the industry and that some of the reforms do not go far enough in resolving the concerns of the many thousands of Queenslanders who are paying the price of Labor's botched introduction and overhaul of the personalised transport industry.

Sincerely

A handwritten signature in black ink, appearing to read 'Rob Molhoek', written over a horizontal line.

**Rob Molhoek**  
Member for Southport  
Deputy Chair Public Works and Utilities Committee