



# **Transport Legislation (Taxi Services) Amendment Bill 2015**

**Report No. 21, 55<sup>th</sup> Parliament**

**Infrastructure, Planning and Natural Resources Committee**

**March 2016**



## **Infrastructure, Planning and Natural Resources Committee**

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### **Acknowledgements**

The committee thanks those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of Transport and Main Roads and the Queensland Police Service.



## Contents

<b>Chair's foreword</b>	<b>iii</b>
<b>Acronyms</b>	<b>iv</b>
<b>Recommendations</b>	<b>v</b>
<b>1 Introduction</b>	<b>1</b>
1.1 Role of the committee	1
1.2 The referral	1
1.3 The committee's inquiry process	1
1.4 Policy objectives of the Bill	2
1.5 Consultation on the Bill	2
1.6 Should the Bill be passed?	2
1.6.1 <i>Committee comment</i>	2
1.6.2 <i>Recommendations</i>	3
<b>2 Examination of the Bill</b>	<b>4</b>
2.1 Introduction	4
2.2 Regulation of taxi services in Queensland	4
2.3 Ridesharing services	5
2.4 Examination of issues raised by the taxi industry	6
2.4.1 <i>Cost of compliance with regulations and unfair competitive advantage</i>	6
2.4.2 <i>Loss of income and the declining market value of a taxi licence</i>	9
2.4.3 <i>Concern for the safety and standards of the taxi industry</i>	11
2.4.4 <i>Insurance, including CTP insurance</i>	12
2.4.5 <i>Goods and Services Tax and Income Tax</i>	13
2.5 The legal status of ridesharing services in Queensland	14
2.6 Queensland Government review of taxi, limousine and rideshare services	16
2.7 Enforcement of taxi licensing regulations	19
2.7.1 <i>Legislative framework for enforcement</i>	19
2.7.2 <i>Enforcement action</i>	20
2.8 Proposed demerit point scheme for rideshare services operating without a taxi licence	25
2.8.1 <i>Stakeholder support for the introduction of demerit points</i>	26
2.8.2 <i>Stakeholders opposed to the introduction of demerit points</i>	29
2.8.3 <i>Double demerit points</i>	31
2.8.4 <i>Accumulation of demerit points on a driver's traffic history</i>	32
2.8.5 <i>Committee comment</i>	32
2.9 Stakeholder proposals for additional enhanced enforcement measures	33
2.9.1 <i>Proposal to amend the TORUM Act</i>	33
2.9.2 <i>Other enforcement measures proposed in evidence</i>	34
2.9.3 <i>Committee comment</i>	35

<b>3</b>	<b>Compliance with the Legislative Standards Act 1992</b>	<b>36</b>
3.1	Fundamental legislative principles	36
	3.1.1 <i>Penalties</i>	36
3.2	Explanatory notes	37
	<b>Appendices</b>	<b>38</b>
	Appendix A – List of submitters	38
	Appendix B – List of witnesses at the public hearings	55
	<b>Statement of Reservation</b>	<b>58</b>

## Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the Transport Legislation (Taxi Services) Amendment Bill 2015.

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, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The committee has considered all the issues raised by Mr Rob Katter MP who introduced the Bill into the Queensland Parliament, stakeholders, and the advice received from the Department of Transport and Main Roads. The committee has noted with concern the evidence provided by the taxi industry about the impact the introduction of ridesharing services has had on the industry in this state, including, unfair competitive advantages, loss of income and the market value of a taxi licence.

It is clear to the committee that there are two key issues facing the Queensland Government in relation to personalised transport services in this state. The overarching task is to identify and introduce an efficient and effective regulatory framework for personalised transport services in this state. The more immediate task is to enforce the current regulatory framework to ensure that providers of personalised transport services comply with it.

The committee is of the view that the independent Personalised Transport Services Review, which was established in October 2015 and is due to report to the Queensland Government in August 2016, is the appropriate mechanism for providing the Government with recommendations regarding the implementation of an efficient and effective regulatory framework.

While noting that the independent review may result in changes to the regulatory system, the committee is strongly of the view that providers of personalised transport services should comply with the regulatory requirements currently in place. Evidence was provided to the committee that there are a number of issues affecting the ability of the department to enforce compliance and the department has advised it is currently investigating options within the existing legislative framework, including possible legislative amendments, to ensure compliance can be carried out effectively.

This Bill proposes one option for dealing with non-compliance by applying demerit points for offences in addition to the existing fines. Evidence provided to the committee indicates that other measures, such as substantially increasing the fine and making non-compliance a criminal offence, have been effective in ensuring compliance in a number of countries. The committee is therefore recommending that the Minister for Transport and the Commonwealth Games take immediate action to develop options for ensuring that compliance with the current regulatory system is enforced.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Bill and who provided evidence at public hearings.

I would also like to thank the departmental officials who briefed the committee, the committee's secretariat, and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.



March 2016

## Acronyms

ABN	Australian Business Number
ACT	Australian Capital Territory
ATO	Australian Taxation Office
BAS	Business Activity Statements
The Bill	Transport Legislation (Taxi Services) Amendment Bill 2015
CTP	Compulsory Third Party (insurance)
The department and DTMR	The Department of Transport and Main Roads
FLP	fundamental legislative principle
GST	Goods and Services Tax
LSA	<i>Legislative Standards Act 1992</i>
NRMA	National Roads and Motorists' Association
OA	Operator Accreditation
OQPC	Office of the Queensland Parliamentary Counsel
PINS	Penalty Infringement Notices
PP&R Act	<i>Police Powers and Responsibilities Act 2000</i>
RACQ	Royal Automobile Club of Queensland Limited
TCQ	Taxi Council Queensland
TOPTA	<i>Transport Operations (Passenger Transport) Act 1994</i>
TOPT Regulation	<i>Transport Operations (Passenger Transport) Regulation 2005</i>
TORUM Act	<i>Transport Operations (Road Use Management) Act 1995</i>
USO	Universal Service Obligation

## Recommendations

### Recommendation 1

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The committee recommends the Transport Legislation (Taxi Services) Amendment Bill 2015 not be passed.

### Recommendation 2

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The committee recommends the Minister for Transport and the Commonwealth Games:

- undertake an urgent review of mechanisms for enforcing compliance with the current personalised transport services industry regulatory framework and this review include examination of legislative amendments including those recommended by the Taxi Council Queensland and the demerit point penalties proposed in this Bill
- take immediate action to ensure that compliance with the regulatory system is enforced, and provide a report to the House during the second reading debate on this Bill about the measures being employed by the Department of Transport and Main Roads and the Queensland Police Service to enforce compliance
- consider seeking approval from the House for any legislative amendments emanating from this review to be considered under the urgency provisions provided for in Standing Order 137.



## 1 Introduction

### 1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee was established by the Legislative Assembly on 27 March 2015 and consists of government and non-government members.

Until 18 February 2016, the committee's areas of portfolio responsibility were:<sup>1</sup>

- Transport, Infrastructure, Local Government, Planning and Trade, and
- State Development, Natural Resources and Mines.

On 18 February 2016, the committee's responsibilities were changed to:

- Infrastructure, Local Government, Planning and Trade and Investment
- State Development, Natural Resources and Mines; and
- Housing and Public Works.

### 1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

On 16 September 2015, the Transport Legislation (Taxi Services) Amendment Bill 2015 (the Bill) was referred to the committee for examination and report. In accordance with Standing Order 136(1), the committee is required to report by 16 March 2016.

Notwithstanding the change in the committee's portfolio responsibilities on 18 February 2016, the Legislative Assembly agreed that responsibility for reporting on this Bill remain with this committee.

### 1.3 The committee's inquiry process

On 23 September 2015, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. The closing date for submissions was 22 October 2015. The committee received 559 submissions (see Appendix A).

The committee also acknowledges receipt of 2042 form letters from people opposed to the Bill and in support of ridesharing organisations, including Uber. A copy of a letter can be found [here](#).

On 14 October 2015, the committee held a public briefing with the Department of Transport and Main Roads (the department) and Mr Rob Katter MP (see Appendix B). The committee also held public hearings in Brisbane on 2 December 2015, Gold Coast on 7 December 2015, Cairns on 27 January 2016, Townsville on 28 January 2016 and Mackay on 29 January 2016.

Copies of the submissions and transcripts of the public briefing and public hearings are available from the committee's webpage.<sup>2</sup>

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<sup>1</sup> Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 16 February, effective 18 February 2016).

<sup>2</sup> See [www.parliament.qld.gov.au/ipnrc](http://www.parliament.qld.gov.au/ipnrc).

## **1.4 Policy objectives of the Bill**

The policy objective of the Bill is to increase penalties targeting illegal taxi operators and thereby deter non-compliance with the *Transport Operations (Passenger Transport) Act 1994*.<sup>3</sup>

## **1.5 Consultation on the Bill**

The explanatory notes state that consultation was undertaken with the Queensland taxi industry and 'relevant stakeholders'. The Bill has also taken into consideration a submission from a 'ride sharing service'.<sup>4</sup>

## **1.6 Should the Bill be passed?**

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed.

### **1.6.1 Committee comment**

The committee has considered all the issues raised by stakeholders as well as the advice received from the Department of Transport and Main Roads. The committee has noted with concern the evidence provided by the taxi industry about the significant impact the introduction of ridesharing services has had on the industry in this state.

It is clear to the committee that there are two key issues facing the Queensland Government in relation to personalised transport services in this state. The overarching task is to identify and introduce an efficient and effective regulatory framework for personalised transport services in this state. The more immediate task is to enforce the current regulatory framework to ensure that providers of personalised transport services comply with it.

The committee is of the view that the independent Personalised Transport Services Review, which was established in October 2015 and is due to report to the Queensland Government in August 2016, is the appropriate mechanism for providing the Government with recommendations regarding the implementation of an efficient and effective regulatory framework.

While noting that the independent review may result in changes to the regulatory system, the committee is strongly of the view that all providers of personalised transport services should comply with the regulatory requirements currently in place. Evidence was provided to the committee that there are a number of issues affecting the ability of the department to enforce compliance and the department has advised it is currently investigating options within the existing legislative framework, including possible legislative amendments, to ensure compliance can be carried out effectively.

The committee has been provided with extensive evidence that the lack of compliance by ridesharing services has resulted in an "uneven playing field" in the personal passenger transport industry which has had a significant impact on taxi companies and drivers who have chosen to invest and participate in the industry on the presumption that the State's laws will be upheld.

While the Bill proposes one option for dealing with non-compliance by applying demerit points for offences, some stakeholders including the Taxi Council Queensland acknowledge that, given the issues with locating and charging drivers operating outside the regulatory system, demerit points on their own may not improve the situation. The committee is also cognisant of the fact that the application of demerit points may not result in the immediate outcome sought by the taxi industry as demerit points are not recorded on a person's traffic history until that person is convicted of the offence, pays a fine for the offence or an order is made against the person for a taxi offence under

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<sup>3</sup> Explanatory notes, p 1.

<sup>4</sup> Explanatory notes, p 2.

section 38 of the *State Penalties Enforcement Act 1999*. The committee is concerned that given the reported tactics employed by some ridesharing services in relation to challenging Penalty Infringement Notices (PINS), it is highly unlikely that demerit points would be recorded on a driver's traffic history in the short-term.

Evidence provided to the committee indicates that other measures, such as substantially increasing fines and making non-compliance a criminal offence, have been effective in ensuring compliance in a number of other countries. The Taxi Council Queensland has also suggested that schedule 4 of the TORUM Act be amended to support Queensland Police Service enforcement of the legislation.

The committee is therefore recommending that the Bill not be passed as it believes there is likely to be a better outcome if the demerit point option and the Taxi Council Queensland proposal to amend the TORUM Act are considered as part of an urgent, holistic review of all available options for ensuring that compliance with the current regulatory system is enforced.

The committee is recommending that the Minister for Transport and the Commonwealth Games urgently undertake such a review and that the Minister report back to the House during the second reading on the Bill on action taken to enforce compliance. The committee also recommends that the government consider introducing any legislative measures emanating from this review under the urgency provisions provided for in Standing Order 137.<sup>5</sup>

### 1.6.2 Recommendations

#### Recommendation 1

The committee recommends the Transport Legislation (Taxi Services) Amendment Bill 2015 not be passed.

#### Recommendation 2

The committee recommends the Minister for Transport and the Commonwealth Games:

- undertake an urgent review of mechanisms for enforcing compliance with the current personalised transport services industry regulatory framework and this review include examination of legislative amendments including those recommended by the Taxi Council Queensland and the demerit point penalties proposed in this Bill
- take immediate action to ensure that compliance with the regulatory system is enforced, and provide a report to the House during the second reading debate on this Bill about the measures being employed by the Department of Transport and Main Roads and the Queensland Police Service to enforce compliance
- consider seeking approval from the House for any legislative amendments emanating from this review to be considered under the urgency provisions provided for in Standing Order 137.

<sup>5</sup> Standing Rules and Orders of the Legislative Assembly, effective from 31 August 2004 (amended 16 February, effective 18 February 2016).

## 2 Examination of the Bill

### 2.1 Introduction

In considering the Bill and its proposed introduction of a demerit point scheme, the committee considered the evidence provided by stakeholders and the Department of Transport and Main Roads. The issues considered by the committee include:

- the regulation of taxi services in Queensland
- the impact of ridesharing services on the personalised transport industry in Queensland through an examination of stakeholder evidence on:
  - the cost of compliance with taxi regulations and the concept of a ‘level playing field’
  - loss of income and the declining market value of taxi licences
  - implications for passenger safety and industry standards
  - insurance issues
  - tax issues
- the legal status of ridesharing services in Queensland
- the independent taskforce review of personalised transport services
- enforcement of compliance with taxi industry regulations and ways in which this could be improved, including this bill’s proposed demerit point scheme.

### 2.2 Regulation of taxi services in Queensland

In Queensland, the provision of taxi services is regulated through passenger transport legislation, specifically the *Transport Operations (Passenger Transport) Act 1994* (TOPTA) and its associated subordinate legislation. This legislation aims to ensure the provision of quality and safe passenger transport that is accessible to all members of the public at a reasonable cost to the community and government through the regulation of vehicles licensed as taxis, people authorised to drive taxis and operators accredited to provide taxi services.<sup>6</sup>

*The intent of the Act is to provide the travelling public with a level of confidence in the taxi industry, safe in the knowledge that service providers and their vehicles are appropriately regulated, that checks are in place to ensure applicants into the industry are assessed for suitability, and that drivers are monitored on an ongoing basis if approved. This suitability assessment includes checks of an applicant’s criminal and driving history as well as their medical fitness.<sup>7</sup>*

The taxi industry is highly regulated by the state government in the following ways:

- the operators and owners who operate the taxi service licences have to hold operator accreditation
- the drivers who drive for the operators have to hold a driver authorisation
- the department has a regime of contracts with booking companies (call centres) which require performance under minimum service levels and other key reporting functions under the contracts about how they operate their services

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<sup>6</sup> Department of Transport and Main Roads, correspondence dated 25 Nov 2015, p 1.

<sup>7</sup> Department of Transport and Main Roads, correspondence dated 25 Nov 2015, p 1.

- other matters subject to regulation include the provision of security cameras, calibration of taxi meters, maximum fares, taxi bailment agreements between operators and drivers, transport industry levies for finding secure ranks, maximum age limits for vehicles, fatigue management policies, Compulsory Third Party (CTP) insurance requirements and participation in the taxi subsidy scheme.<sup>8</sup>

The department provided advice that there are 3,261 taxi licensees in Queensland and there are market-entry restrictions in place that look at new entrants into the taxi market in terms of having to meet particular thresholds for triggering the requirement of a taxi contract. There are two ways in which a taxi licence can be purchased in Queensland, either through licence transfer on market or through a Government offer of licences via a public tender process. The department advised that:

- the average price paid for a conventional, unconditional taxi licence in Brisbane is around \$480,000 to \$500,000
- licences in other parts of Queensland attract a much lower price
- the collective value of taxi licences in Queensland is \$1,345,658,054 (as at 27 October 2015).<sup>9</sup>

### 2.3 Ridesharing services

Ridesharing has been identified as an app-based, on-demand service in which a driver uses the spare capacity of a private vehicle to supply transport to a passenger.<sup>10</sup> The model is based on the ideas that by using existing private cars and generating real-time trip request data via an app, the supply of ridesharing vehicles closely tracks demand for rides; ridesharing drivers do not need to drive around searching for a rider, and they have the flexibility to log-on or off the system in response to undersupply or oversupply.<sup>11</sup>

The most well-known ridesharing service across the world is Uber. It was founded in San Francisco in 2009 and now operates in a number of cities in 60 different countries.<sup>12</sup> Uber submits that ridesharing is a new form of point-to-point transport which is fundamentally different to a taxi service.

*No service facilitated by Uber can accept street hails or utilise taxi ranks. Requests are not allocated through a taxi dispatch model; riders need to be pre-registered to be able to request a ride; bookings cannot be made in advance; and ridesharing driver-partners do not facilitate anonymous rides, accept cash transactions or tips, or use a taximeter.*

*Since the Uber platform does not permit street hails and rank work, it does not compete with taxis for these services, which make up the vast majority of the point-to-point transport market.<sup>13</sup>*

The Productivity Commission has described Uber as a new business model involving digital innovation and the sharing of assets or collaborative consumption of assets.<sup>14</sup>

<sup>8</sup> Public briefing transcript, 14 Oct 2015, pp 1-2; Department of Transport and Main Roads, Response to Questions on Notice, 2 Nov 2015, pp 1 and 7; Yellow Cabs Qld, public hearing transcript, 2 December 2015, p 11..

<sup>9</sup> Public briefing transcript, 14 Oct 2015, p 2 and Department of Transport and Main Roads, Response to Questions on Notice, 2 Nov 2015, p 1.

<sup>10</sup> D Gilchrist and R Dennis, Australian Institute, The role of ridesharing in addressing Canberra's transport challenges, July 2015, p 5.

<sup>11</sup> D Gilchrist and R Dennis, Australian Institute, The role of ridesharing in addressing Canberra's transport challenges, July 2015, p 8.

<sup>12</sup> Uber, [About Uber](#) (accessed on 9 October 2015).

<sup>13</sup> Uber, submission 264, pp 3-4.

The first Australian Uber service (UberTaxi) was launched in Sydney in June 2013. Uber now operates in Western Australia, South Australia, New South Wales, Victoria and Queensland.<sup>15</sup>

On 17 December 2015, the New South Wales Cabinet announced that ridesharing would be legalised in that state from 18 December 2015, as part of the Point to Point review. Interim legislative amendments came into force on 18 December 2015 under which ridesharing falls under the definition of 'private hire vehicle services' contained in the *Passenger Transport Act 1990 (NSW)*. Compensation payments of \$20,000 will be paid to owners of taxi licences in perpetuity, with a one-off payment being capped at a maximum of \$40,000 for owners of multiple plates.<sup>16</sup>

Uber has been operating in south-east Queensland since the first half of 2014.<sup>17</sup> During the course of this inquiry a taxi company provided advice that Uber has recently expanded to the Sunshine Coast and has used Facebook to announce they are looking for drivers in Cairns.<sup>18</sup>

Statistics provided by Uber included that in the 18 months to December 2015 more than 300,000 Queenslanders have used Uber and over 4,000 Queenslanders have partnered with Uber as drivers.<sup>19</sup>

## **2.4 Examination of issues raised by the taxi industry**

The majority of submitters to the inquiry were actively involved in the taxi industry as licensed drivers, owners or other related staff. These stakeholders were generally in support of the Bill and its proposed introduction of demerit points. The key reasons for their support of the proposed amendments in the bill are discussed in this section.

### **2.4.1 Cost of compliance with regulations and unfair competitive advantage**

A large number of taxi industry stakeholders provided evidence that the cost of compliance with Queensland's regulations are high and non-compliance provides ridesharing services with a competitive advantage. Many submitters alluded to the fact that they are not against competition in the industry but support competition being on a level playing field where all participants are required to abide by legislated regulations, particularly those relating to safety, insurance, licencing and taxes.<sup>20</sup> The minimum service levels for the taxi industry required by the regulatory framework are outlined in [section 2.2](#) of this report. Non-compliance with the regulatory framework has been estimated to provide a 47% cost advantage over complaint providers.<sup>21</sup>

First Class Taxis Pty Ltd provided advice that the cost of complying with CTP, registration, full comprehensive insurance and protecting drivers under personal accident and injury totals approximately \$12,000 per year in comparison with a ridesharing driver who uses their current registration at a cost of approximately \$550 per year.<sup>22</sup>

CABS 2000 Pty Ltd provided a detailed list of the elements of Universal Service Obligation (USO) whereby the taxi industry is required, through its agreement with the Queensland Government, to

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<sup>14</sup> Productivity Commission, [Draft Report into Business Set-up, Transfer and Closure](#), May 2015, p 177 (accessed on 9 October 2015).

<sup>15</sup> Uber, [Uber cities](#) (accessed on 8 October 2015).

<sup>16</sup> Transport for NSW, *Point to Point Industry*, 18 December 2015.

<sup>17</sup> Uber, submission 264, p 1 and Appendix A, p 3.

<sup>18</sup> First Class Taxis Pty Ltd, public hearing transcript, 2 December 2015, p 3.

<sup>19</sup> Public hearing transcript, 2 December 2015, p. 24.

<sup>20</sup> See for example, Brisbane Maxi Taxis, submission 4, p 2, Cairns Taxis, submission 7, p 1, Taxi Fleet Managers Pty Ltd, submission 209, p 4, Mackay Taxi Holding Ltd, submission 401.

<sup>21</sup> See Taxi Fleet Managers Pty Ltd, submission 209, p 4.

<sup>22</sup> Public hearing transcript, 2 December 2015, p 4.

provide an accessible service to the community all of which add a cost to providing the taxi service. Elements of the USO include:

- *Maintenance of a network of call centres and lost property services*
- *Services specifically for the sick, elderly and disabled*
- *Operating in areas not serviced by traditional public transport*
- *On-demand service 24 hours a day, 365 days a year*
- *Strict safety requirements, including for taxis operating in large service areas, GPS locators, security cameras; payment of a security levy to the State Government*
- *Provision of receipts on request*
- *Age limits on vehicles (currently six years, or eight for wheelchair accessible vehicles)*
- *Regular vehicle inspections*
- *Drivers to pass criminal history checks, meet licence requirements and complete driver training*
- *Methods of dealing with customer complaints*
- *Insurance costs and requirements.*<sup>23</sup>

Submissions also pointed to the fact that taxi companies have a heavy reporting requirement to supply the department with reports on minimum service level requirements as well as peak demand response times for taxis in their fleet.<sup>24</sup>

Uber put the argument that the government already recognises different models operate in different parts of the personalised transport market:

*To approach the debate with a notion that all parts of the market have access to an equal playing field is fundamentally wrong. The government has already recognised that different models with access to different parts of the market and different risks get regulated in different ways. This is why, as I said, they have regulated chauffeur hire cars and taxis in different ways....*

*To simply conflate ridesharing with a taxi service is a poor approach to public policy and is inaccurate. It is also inaccurate to say that the entrance of ridesharing into the point-to-point market will mean the replacement of taxis. We believe, as has been indicated in many markets overseas, that ridesharing and taxis can operate side by side. We are just another part of the suite of transport operations.*<sup>25</sup>

Further evidence was provided by Uber on the different models of point-to-point passenger services and the way they are regulated:

*There is a conflation of these issues that says, 'ridesharing does a little bit of this, therefore it is the same as taxis.' A chauffeur-driven hire car has a pool of drivers. It charges a fare. It picks someone up from somewhere to where they want to go. Why are they not regulated like a taxi then? Why haven't you as a legislator said, 'That is exactly the same as a taxi; we will regulate a chauffeured hire car the same as a taxi'?*

<sup>23</sup> Cabs 2000 Pty Ltd, submission 484, pp 3-4.

<sup>24</sup> See for example, Blue & White Taxi's, submission 62, p 5, Mackay Taxi Holdings Ltd, submission 401.

<sup>25</sup> Public hearing transcript, 2 December 2015, p 24.

*The reason is because they have different access to different markets with a different model and they do things in a different way, so regulators have said that taxis can be regulated like this because they do this kind of work because they have access to this part of the market. Chauffeured hire cars can be regulated in this way. Ridesharing is different. It does not do rank and hail. It has a different model. It mitigates risks in a different way, and so needs a regulatory approach. I am not denying it needs a regulatory approach, but it is a fundamental conflation to continue just to say-and not to recognise-that the parliament has already regulated different forms of point-to-point transport that compete with each other in a different way.<sup>26</sup>*

Provision of services to people with disabilities, the elderly and other vulnerable people

Taxi industry stakeholders were also concerned about the ability of industry to provide services to people with special needs outside of peak times if ridesharing services continue.<sup>27</sup>

The Taxi Council Queensland was one of many stakeholders that raised the cost of compliance with the Commonwealth *Disability Discrimination Act 1992* and Queensland legislation that requires people who offer for-hire vehicles, with the exception of limousines or hire cars, to comply with the disability standards for accessible public transport. They explained that taxis are required to have the capacity to provide the same level of service to people with disabilities which means they have to provide enough wheelchair accessible services to meet this requirement.<sup>28</sup>

Brisbane Maxi Taxis provided the following evidence:

*Uber has no provision for the transport of wheelchair passengers who rely on taxis each year in Queensland. The taxi industry has a mandated percentage of vehicles that it must provide for passengers with a disability; Uber has no requirement to comply with a similar percentage provision for wheelchair bound passengers, allowing Uber operators to refuse these fares effectively discriminating against these passengers.<sup>29</sup>*

Blue & White Taxi's submitted that depending on vehicle requirements it can cost up to \$70,000 for a fully operational Wheelchair Accessible Taxi and they must also have specialist training to ensure their ability to carry out Aged Care and Disability Services. Further, their submission provided that there is no extra charge to the aged care/disability client or the government, nor is there any subsidies extended to the taxi companies to provide this type of service.<sup>30</sup>

Uber advised that the Uber app provides a service called uberASSIST which allows people with a disability and mobility issues to request a vehicle on demand that can accommodate folding wheelchairs, walkers and collapsible scooters, and guarantees that the driver-partner has received special training.<sup>31</sup> The Taxi Council pointed out:

*Notwithstanding what representations they might make about the sort of service that they are, there is actually no obligation to do so and in the event that they do not provide such a service, there is no recourse to any agency or anyone else.<sup>32</sup>*

Mackay Taxi Holdings was particularly concerned about the provision of services to children pointing to the fact that one of its major contract areas is the provision of transport for children with disabilities:

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<sup>26</sup> Public hearing transcript, 2 December 2015, p 29.

<sup>27</sup> See for example, transcripts, submission no. 60 Western Suburbs Taxi Depot, Cabs2000, submission 484, p 3.

<sup>28</sup> Public hearing transcript, 2 December 2015, p 8.

<sup>29</sup> Brisbane Maxi Taxis, submission 4, p 1.

<sup>30</sup> Blue & White Taxi's, submission 62, p 4.

<sup>31</sup> Uber, submission 264, p 11.

<sup>32</sup> Public hearing transcript, 2 December 2015, p 8.

*...their parents are very concerned that an appropriate and authorised taxi driver is the person who picks them up and takes them wherever they want to go... and in addition to that, of course, the children of parents who have to have their children taken to school for them – other ordinary passengers, not children with a disability- quite often will travel unaccompanied. They are relying entirely on the integrity of the taxi driver to provide that service.<sup>33</sup>*

Submitters also raised a concern about the “discriminatory nature of uberX platform” as only people with smart or Android phones can use the platform.<sup>34</sup> Blue & White Taxi’s submitted that a great many of the client base do not, and cannot, use the current technology such as emails, fax, Interactive Voice Response (IVR) and App booking services by major taxi companies:

*They also just want to use a normal phone to secure their bookings. These persons rely heavily on the city taxi services to attend hospitals, doctors, dentists and a myriad of other services as they have no other access to transport services except the local taxi company.<sup>35</sup>*

#### **2.4.2 Loss of income and the declining market value of a taxi licence**

Numerous stakeholders raised concerns about the impact ridesharing services are having on taxi income and on the value of taxi licences.<sup>36</sup> Some examples of this evidence are provided below:

- First Class Taxis Pty Ltd advised the committee that there are over 1,400 Uber drivers on the Gold Coast and since they began operating there had been a 20 per cent to 30 per cent decrease in income per vehicle.<sup>37</sup> This company also advised that major banks are now concerned about the declining value of taxi licences on the Gold Coast and that the value lost in recent years is about \$120,000. “That is the uncertainty and the fact that banks now are coming in and revaluing, asking for market rates. If there are not many sales that have gone through, they go on the last sale so, yes, it is very impacting on that.”<sup>38</sup>
- Ms Alison Casey provided evidence that taxi licence values are being affected across the state and provided figures for the latest sales in Cairns where she had paid \$600,000 for a licence and the latest sale on 30 March 2015 was for \$444,700.<sup>39</sup>
- Professional Taxis Gold Coast advised that the most difficult consequence is the banks not issuing loans using a taxi licence as security and some banks are refusing to finance taxis full stop.<sup>40</sup>
- Black & White Cabs pointed out that rideshare drivers are taking away “the low hanging fruit. They are certainly cherry-picking the business that is easy business – the inner city business, the nightclub business” and taxis despatch data is confirming the number of bookings are declining as well as the number of hail and rank trips. While acknowledging that in some regions the decline can be partially attributed to a downturn in mining industry and previously in the tourism industry, they argue that the large decline in Brisbane cannot be attributed to economic factors.<sup>41</sup>

<sup>33</sup> Public hearing transcript, Mackay, 29 January 2016, p 3.

<sup>34</sup> See for example, Taxi Council Queensland, submission 47.

<sup>35</sup> Blue & White Taxi’s, submission 62, p 1.

<sup>36</sup> See for example, submissions 209, 319 and 484.

<sup>37</sup> Public hearing transcript, 2 December 2015, p 2.

<sup>38</sup> Public hearing transcript, 2 December 2015, pp 3-4.

<sup>39</sup> Public hearing transcript, Cairns, 27 January 2016, p 8.

<sup>40</sup> Public hearing transcript, Gold Coast, 7 December 2015, p 6.

<sup>41</sup> Public hearing transcript, 2 December 2015, p 15 and 16.

- First Class Taxis Pty Ltd advised that they have lost drivers to Uber because they are guaranteed money (\$40 per hour) whether they carry customers or not.<sup>42</sup>
- Yellow Cabs (Qld) Pty Ltd provided evidence about the possible impact if ridesharing operations start up in Queensland's regions:

*It has been said-and I do not know where this came from-that they are not really interested in small country towns. The fact is that in our advertising in Rockhampton they have been for some time looking for Uber operators. I do not think they care where these operators turn up, but there should be a word of warning to government because we are involved in some of these country towns, and I know how difficult it is for those people financially because of the downturn in the mining sector. If there is an Uber operation or a look-alike operation that starts up in those towns they will suffer, and the public rely on them.*<sup>43</sup>

On the other hand, Uber provided the following evidence:

*Data from the Australian Taxi Industry Association and Cabcharge actually indicates that the number of people taking trips in taxis in Australia and in Queensland has increased, despite ridesharing being around for 18 months. This would indicate that ridesharing trips are new trips and that ridesharing is not simply capturing an existing market, it is actually growing the total size of the market.*<sup>44</sup>

One taxi driver provided an alternative view to the majority of the industry stating that "Taxi licences should be valued according to the income they generate, a common manner of determining commercial business values".<sup>45</sup>

#### Compensation

A number of stakeholders referred to the fact that the Government has benefited financially from the taxi licencing system over a long time through the tendering for new licences and stamp duty on licence transfers.<sup>46</sup> RACQ put an argument that the government needs to provide some form of compensation:

*... the government has been milking it for decades. The government has had hundreds of millions of dollars in fees from the taxi industry for decades. We believe that, as part of the regulation, the government needs to be honest about it, go back in, have a look at the industry, and understand that there will probably have to be some sort of buyback scheme or compensation scheme for those who have paid a lot of money for a licence.*

*We are seeing it in other states. This is already happening. It is not like we are in isolation here. This has already occurred in Canberra, it is occurring in New South Wales and Victoria where they are looking into it-annual taxi licences, lifetime taxi licences. Different ways of managing this system are all being developed and are there easily for us all to look at.*<sup>47</sup>

One small taxi operator submitted that "should the Government not take immediate action to prevent further destruction of the taxi industry then the government needs to buy our licences for the value at the time the cease and desist order was given in May 2014."<sup>48</sup>

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<sup>42</sup> Public hearing transcript, 2 December 2015, p 2.

<sup>43</sup> Public hearing transcript, 2 December 2015, p 12.

<sup>44</sup> Public hearing transcript, 2 December 2015, p 24.

<sup>45</sup> Mr Chris Lowe, Paper tabled at the Mackay public hearing, 29 January 2016, p 2.

<sup>46</sup> See for example, Yellow Cabs (Qld) Pty Ltd, public hearing transcript, 2 December 2015, p 12.

<sup>47</sup> Public hearing transcript, 2 December 2015, p 21.

<sup>48</sup> Alison Casey, submission 319, p 2.

### 2.4.3 Concern for the safety and standards of the taxi industry

Taxi industry stakeholders raised concerns that ridesharing and other services offered outside of the regulatory system do not provide the same level of security and safety as the regulated taxi industry. For example, Yellow Cabs (Qld) Pty Ltd provided evidence about the security and safety measures including:

- taxis having three GPS units in the car to protect drivers as the car can be tracked and traced
- taxi companies cross-reference data with the department every 24 hours regarding driver licences still being valid so that if drivers have been charged with a criminal offence, drink driving offence or SPER has identified them for having unpaid fines the company can take action
- driver's hours are recorded so that if they have gone over the hours limit in a 24-hour period they cannot log back in
- the car's fleet number is clearly identified on the windscreen and on the bonnet to ensure passenger safety.<sup>49</sup>

Mackay Taxi Holdings provided the following evidence which characterizes the evidence provided by many industry witnesses:

*We are talking here about safety things: the safety of passengers, the safety of children, the safety of the cars themselves. Our taxis have to be inspected every six months. They undergo a very rigorous inspection by the Department of Transport and Main Roads. We have to replace our cars at a maximum of six years.<sup>50</sup>*

Another concern raised by the taxi industry is that Uber drivers must have a blood alcohol level of 0.05 or less whereas taxi drivers have to have a zero blood alcohol level and are prohibited from being under the influence of any drug.<sup>51</sup>

RACQ agreed that the state's taxi legislation was designed to provide a safe taxi service but that was because passengers are anonymous in the hailing and the rank service and concluded:

*So the rank and the hail service should always be limited only to taxis. That is not something that rideshare should be allowed to do. But new technology offers a safe way of identifying the passenger as well as the driver through their credit cards and their membership of that app and that service. So that gets around the safety issue that the legislation and regulation was designed to address.<sup>52</sup>*

Uber provided evidence that its drivers have undergone background checks and safety checks and that all drivers on the Uber platform are registered:

*100 per cent of those drivers have a driver authorisation from the Department of Transport and Main Roads. This means that the Queensland Government has done the criminal history background checks and the driver history check and also signed off on the medical check-for 100 per cent of Uber drivers.<sup>53</sup>*

<sup>49</sup> Public hearing transcript, 2 December 2015, p 13.

<sup>50</sup> Public hearing transcript, Mackay, p 2.

<sup>51</sup> See for example, Black & White Cabs, submission 454, p 4 and Ms Carole Casey, public hearing transcript, Cairns, 27 January 2016, p 9.

<sup>52</sup> Public hearing transcript, 2 December 2015, p 22.

<sup>53</sup> Public hearing transcript, 2 December 2015, p 24.

Uber also clarified that the drivers' vehicles have a third party inspection every 12 months.<sup>54</sup>

#### **2.4.4 Insurance, including CTP insurance**

Numerous taxi industry stakeholders raised a concern that ridesharing services are not covered by appropriate insurance.

The department explained that vehicles are registered for a certain purpose of use, whether commercial or private:

*When you get an insurance policy for a vehicle it is insured for a certain purpose. I cannot run my little car as a taxi tomorrow. I think my insurance company would be concerned about that. There are issues of disclosure in the insurance contract. There are issues in terms of what they are covered for and what they are not covered for which are realistically commercial and insurance matters...<sup>55</sup>*

The Taxi Council Queensland advised that the Insurance Council of Australia has indicated that if you have a car offering someone a ride and they are paying for that ride, it is a commercial service and there is no insurance company currently that will cover that. A number of submitters did advise that some insurance companies, for example, the NRMA had indicated that they may cover ridesharing operators such as Uber in the future.<sup>56</sup> The Taxi Council clarified that NRMA had indicated that if the person is doing a very small amount of work then they may cover it under their comprehensive.<sup>57</sup>

RACQ advised that its insurance arm has indicated that if a driver is a commercial operator, regardless of how they are operating, and they are not insured as a commercial operator they may not be covered.<sup>58</sup>

Industry stakeholders also raised the cost of CTP insurance as an issue.<sup>59</sup> The department provided the following evidence about the CTP insurance:

*We do have in this state the CTP scheme that would cover at-fault injury and death type claims. If there was a fault somewhere that scheme would kick in, but there are additional matters to do with property and all the rest. Largely you are right: there are challenges in that it is possible that not all vehicles and operators out there may be properly insured. That is not a matter that the department, the commercial insurance front, that we have had to investigate in depth.<sup>60</sup>*

Uber provided evidence that every Uber partner is required to have insurance – third party, property or comprehensive and that this is checked when the person signs up to the platform. Further:

*If that person's individual insurance, for whatever reason, does not cover something when it happens, then we have a \$20 million third party bodily injury and property damage policy which is issued by an Australian insurer, CGU, which covers every ridesharing trip. So it is fundamentally wrong to say that a person can get into a ridesharing vehicle as a passenger and there be an accident and an Australian insurer does not cover them.<sup>61</sup>*

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<sup>54</sup> Public hearing transcript, 2 December 2015, p 25.

<sup>55</sup> Public briefing transcript, 14 October 2015, p 9.

<sup>56</sup> See for example, Blue & White Taxi's, submission 62, p 3.

<sup>57</sup> Public briefing transcript, 14 October 2015, p 17.

<sup>58</sup> Public briefing transcript, 2 December 2015, p 20.

<sup>59</sup> See for example, Black & White Cabs, 2 December 2015, p 17.

<sup>60</sup> Public briefing transcript, 14 October 2015, p 9.

<sup>61</sup> Public hearing transcript, 2 December 2015, p 26.

In relation to the discussion about insurance, the department pointed out that in the end they are more concerned about the safety of the passenger and the regulatory environment than issues like the insurance aspect:

*.... Probably more concerned with the fact that we have some people providing a demand-responsive service that have to have a car that goes through the checks and balances, a driver who goes through the checks and balances, has a taxi service contract, service obligation, certain fees and all the rest and others that do not. That creates an imbalance. That is the main consideration. The safety of passengers is a main consideration. The insurance arrangements are certainly a matter where the department would be right in saying that they should properly investigate those matters because that could be an area of concern, but I think we are going beyond potentially what the transport department may or should do.<sup>62</sup>*

#### **2.4.5 Goods and Services Tax and Income Tax**

Many stakeholders raised the issue of taxation, including GST with the committee during the course of the inquiry. While taxation is a federal issue, a summary of the main points raised in evidence are provided below along with a recent directive made by the Australian Taxation Office (ATO).

The main concern raised by the taxi industry is that while the threshold for GST payments in Australia is \$75,000 this does not apply to the taxi industry which has to pay GST from a zero income base or \$1 income base. For example, Black & White Cabs stated:

*Uber once again have a price advantage where they are not charging the public GST so they are not adding that onto their fare. The government of Australia is not collecting that tax revenue. The state of Queensland benefits from that tax revenue so we are seeing a complete avoidance of the tax laws because they are saying they are not a taxi service.<sup>63</sup>*

The ATO has provided guidance in relation to the GST consequences of providing travel services through ride-sourcing (ridesharing). In providing guidance the ATO stated:

*For GST purposes, the word taxi takes on its broad ordinary meaning of a car (vehicle) made available for public hire that is used to transport passengers for fares.*

*State and territory laws regulating transportation of passengers contain specific definitions of the term 'taxi'. As such, it is possible that a vehicle may be taxi for GST purposes, but not for state and territory regulatory purposes.*

*We express no view about whether ride-sourcing vehicles are taxis within the state and territory specific definitions. More generally, we express no view on the legality of ride-sourcing arrangements.<sup>64</sup>*

The ATO has stated that GST is payable in circumstances where ridesharing is conducted as an enterprise in the form of a business:

*If you provide ride-sourcing services to the public you are likely to be carrying on an enterprise. This is particularly the case if you operate in a business-like manner where, for example, you provide invoices to your customers.*

*If you operate infrequently or your activities are not commercial, you may not be carrying on an enterprise.<sup>65</sup>*

<sup>62</sup> Public briefing transcript, 14 October 2015, p 10.

<sup>63</sup> Public hearing transcript, 2 December 2015, p. 16.

<sup>64</sup> ATO, Providing taxi travel services through ride-sourcing and your tax obligations, 2 December 2015.

Uber has challenged the ATO's GST directive in the Federal Court and has stated:

*... we filed an application with the Federal Court to challenge the ATO's position, which we believe clearly and unfairly targets Uber's driver-partners. In our view, the ATO's guidance should not have been issued when a federal tax review is under way and as the ATO has agreed that this is 'an uncertain point of the law'.*

*To be very clear, we believe all our driver-partners should pay their appropriate share of tax and meet their tax obligations. However, we feel they have been unjustly singled out by the ATO for different tax treatment than truck drivers, bike messengers, Airbnb hosts or any other participant of the sharing economy.<sup>66</sup>*

Uber advised the committee that in Australia, any individual or small business does not have register and get an Australian Business Number (ABN) and do quarterly Business Activity Statements (BAS) statements unless their revenue is greater than \$75,000.

*We believe ride sharing is not a taxi service and it should be treated no differently, for example, than someone who puts their house on Airbnb. If they have a spare room or a holiday house, they can put that on to Airbnb. They can earn \$74,999 a year and not get an ABN and not do quarterly BAS statements. So our drivers are responsible individually for their own tax affairs. If they reach the threshold, like any other small business operator they have to register and then they have to undertake all of the appropriate requirements.<sup>67</sup>*

The Taxi Council Queensland submitted that "As well as deliberately flouting the rule of law, illegal taxi services are also impacting on taxation revenues".<sup>68</sup>

## 2.5 The legal status of ridesharing services in Queensland

There are a number of key issues for the regulation of ridesharing in Australia. At the federal level, there is the issue of taxation and at the state level the issue of licencing.

The central argument for those in support and against the bill is the definition of 'taxi service' and whether ridesharing services can be defined as such. The definition of 'taxi service' under Schedule 3 of TOPTA states:

**taxi service** means a public passenger service, other than an excluded public passenger service, provided by a motor vehicle under which the vehicle—

- (a) is able, when not hired, to be hailed for hire by members of the public; or
- (b) provides a demand responsive service under which members of the public are able to hire the vehicle through electronic communication; or
- (c) plies or stands for hire on a road.<sup>69</sup>

The Taxi Council Queensland argued that (b) in the definition above "applies to vehicles operating using the uberX platform because passengers hire an uberX vehicle through the use of electronic communication in the form of the uber app on their mobile phones".<sup>70</sup>

The department advised that under the *Electronic Transactions (Queensland) Act 2001*, schedule 2:

**electronic communication** means—

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<sup>65</sup> ATO, Providing taxi travel services through ride-sourcing and your tax obligations, 2 December 2015.

<sup>66</sup> M McKenzie-Murray, 'Inside controversial rideshare firm Uber's radical model', Saturday Paper, 15 August 2015.

<sup>67</sup> Public hearing transcript, 2 December 2015, p 27.

<sup>68</sup> Taxi Council Queensland, submission 47, section 10.

<sup>69</sup> Department of Transport and Main Roads, Responses to Questions Taken on Notice, 9 December 2015, p 1.

<sup>70</sup> Taxi Council Queensland, submission 47.

(a) a communication of information in the form of data, text or images by guided or unguided electromagnetic energy; or

(b) a communication of information in the form of sound by guided or unguided electromagnetic energy, if the sound is processed at its destination by an automated voice recognition system.<sup>71</sup>

Further, the Taxi Council Queensland argued that vehicles operating under uberX were operating illegally as they provide a taxi service without holding a taxi service licence or peak demand taxi permit, which is violation of section 70(1) of TOPTA.<sup>72</sup> Section 70(1) provides:

**70 Requirement for taxi service licence or peak demand taxi permit**

(1) A person must not provide a taxi service using a vehicle unless—

(a) The person has a taxi service licence to provide the service with the vehicle; or

(b) The person has a peak demand taxi permit to provide the service with the vehicle.

Maximum penalty—160 penalty units.

(2) Subsection (1) does not apply to a person providing taxi services prescribed under a regulation as a taxi service to which this section does not apply.

On a number of occasions the committee requested advice from the department on whether Uber style ridesharing services are operating illegally in Queensland with the following responses:

- At the public briefing the department advised the committee that ridesharing services operate outside the regulations and that “if they are not following the regulations set down by Queensland, it is illegal”<sup>73</sup>.

*They are operating outside the regulations. They do not follow the fare infrastructure in the regulation, they do not have cameras, they do not have meters. They are not following the legislation and the costs of operating..... They do not have a fare infrastructure that is agreed to.... They do not hold taxi licences.*<sup>74</sup>

- In response to a question taken on notice at the public briefing regarding whether Uber, the company itself, is operating an illegal service, the department advised that:

*Legal advice indicates that services provided through the Uber smart phone app are considered taxi services, and as a result are illegal when provided in a private car that does not have a taxi service licence by either a driver or operator without Operator Accreditation (OA).*

*It is acknowledged that when the existing taxi legislation was developed, an operating model such as Uber was not envisaged. As such, advice to date indicates that it is unclear as to whether or not Uber itself is technically the operator of such services.*<sup>75</sup>

- In its written brief to the committee:

*Having regard to the provisions of the Act, TMR is of the view that the services provided by entities such as Go catch, Lyft and Uber, as well as other merging smart phone platforms, are not contemplated or authorised under the existing transport legislation.*<sup>76</sup>

<sup>71</sup> Department of Transport and Main Roads, Responses to Questions Taken on Notice, 9 December 2015, p 2.

<sup>72</sup> Taxi Council Queensland, submission 47, section 3.2.

<sup>73</sup> Public briefing transcript, 14 October 2015, p 3.

<sup>74</sup> Public briefing transcript, 14 October 2015, pp 2-3.

<sup>75</sup> Department of Transport and Main Roads, Response to Questions on Notice, 2 November 2015, p 1.

<sup>76</sup> Department of Transport and Main Roads, correspondence dated 25 November 2015, p 1.

Uber, on the other hand, submits that ridesharing is not an ‘illegal taxi service’ but rather a new and distinct model that does not fit into the existing definitions and requires new regulations.<sup>77</sup> The Uber submission provides the following example:

*The Australian Capital Territory, in announcing its intention to implement ridesharing regulations has recognised that ridesharing is not a taxi service and has access to a different market, is a different model and has different risks and benefits.*<sup>78</sup>

Further, Uber provided evidence that “.. no Australian court has found ridesharing to be unlawful”:

*The one case that was taken to court by the Department of Transport and Main Roads in Queensland was dismissed by the magistrate. These are not matters for the courts any way. They are matters for the government to make policy decisions on, and the government has instituted a review.*<sup>79</sup>

The department confirmed that while it is the position of the department that the services provided by ridesharing drivers are illegal “this position has yet to be judicially determined in a Queensland court”.<sup>80</sup>

RACQ provided evidence that it has “...come to the position that the best and safest way forward is for the ridesharing industry to be regulated and for us to have a really good hard look at the cost and the barrier to entry for the taxi industry so that it is flexible and can provide genuine competition to ridesharing”.<sup>81</sup>

The Competition Policy Review Final Report in referring to Uber, stated:

*.. such innovative solutions to information problems in markets can pose challenges for regulators. Where regulation is inflexible, it may prevent markets from responding to innovative service offers that do not fit neatly within the existing regulated categories. Regulation must be reviewed regularly to ensure that it is still required and not inhibiting the emergence of new service offerings.*<sup>82</sup>

## **2.6 Queensland Government review of taxi, limousine and rideshare services**

On 7 October 2015, the Queensland government announced it had appointed Mr Jim Varghese AM to head an independent Taskforce to review the taxi, limousine and rideshare services across the state.<sup>83</sup>

A fact sheet on the Personalised Transport Services Review outlines a number of factors that have contributed to the Queensland government’s decision to call for a review:

- the upcoming expiration of the Queensland Taxi Industry Strategic Plan 2010-2015
- the emergence of new technology-based operators that are challenging the current regulatory model
- a visible change in the needs and expectations of consumers using taxi, limousine and rideshare services, and the wider community

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<sup>77</sup> Uber, submission 264, p 5.

<sup>78</sup> Uber, submission 264, p 4.

<sup>79</sup> Public hearing transcript, 2 December 2015, p 25.

<sup>80</sup> Department of Transport and Main Roads, Responses to Questions Taken on Notice, 9 December 2015, p 2.

<sup>81</sup> Public hearing transcript, 2 December 2015, p 20.

<sup>82</sup> I Harper et al, Competition Policy Review Final Report, March 2015, p 26.

<sup>83</sup> The Hon Jackie Trad MP, Media release, [Queensland reviews taxi, limousine and rideshare services](#), 7 Oct 2015 (accessed on 26 Feb 2016)

- recommendations in the Commonwealth's Competitive Policy Review (March 2015) that industry reform is long overdue and the current regulatory framework could be improved.<sup>84</sup>

The Terms of Reference for the Review provide the scope of the Review as being to:

*... investigate opportunities to uphold safety standards, meet customer needs, increase competition and foster innovation in the delivery of personalised transport services to Queenslanders, by considering the current economic, social and regulatory environment.*

*Personalised transport services include taxi and limousine services and other services provided for a fare where the passenger determines the destination.*<sup>85</sup>

The independent Taskforce will undertake the Review by:

- investigating the current taxi, limousine and rideshare market
- identifying what an efficient and effective market should look like
- ensuring the regulatory framework supports the needs and expectations of the community and industry
- outlining recommendations for government consideration.<sup>86</sup>

In its review, the Taskforce will consider:

- the safety of the community and drivers
- the delivery of a flexible legislative framework that supports competition and innovation for all participants
- customer opinions of rideshare services
- steps undertaken by the taxi industry in adapting to changing customer needs and expectations
- supporting a sustainable industry that is forward-focused and fosters innovation
- competition in the sector, including vertical integration, anti-competitive practices and incentives for innovation
- the provision of affordable and customer-focused services
- the on-demand travel needs of the community across Queensland, including those with disabilities or reduced mobility
- the current and potential role of taxis, limousines and rideshare services in an integrated transport system, with a focus on the role of these services to foster social inclusion
- transitional arrangements from the current regulatory and service arrangements to any recommended model
- other models and new approaches to delivering personalised transport services both in Australia and overseas
- potential use of personalised transport services by participants of the National Disability Insurance Scheme

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<sup>84</sup> Department of Transport and Main Roads website, Personalised Transport Services Industry in Queensland fact sheet, p 1 (accessed on 26 Feb 2016).

<sup>85</sup> Personalised Transport Services Review, [Terms of Reference](#), p 2.

<sup>86</sup> Department of Transport and Main Roads website, [Personalised Transport Services Review](#) (accessed 26 Feb 2016).

- operational procedures and practices within the sector
- any other related matters.<sup>87</sup>

The Taskforce will initially work with key stakeholders to develop a set of guiding principles for the Review. A discussion paper about innovation and what it means for the industry and the community is due to be released in early 2016. The Taskforce will then prepare an options paper which will be publicly released in the first half of 2016, followed by a state-wide consultation process. Using feedback gathered during the public consultation, the Taskforce will prepare a final report and recommendations expected to be presented to the Government for consideration in August 2016.<sup>88</sup>

The department advised the committee that the independent review into personalised transport services:

*...provides an opportunity for all views to be appropriately considered and will aim to ensure Queenslanders are provided with safe and efficient personalised transport services and with a suitable industry to deliver the services.<sup>89</sup>*

The majority of stakeholders who provided evidence to the committee support the Taskforce review. For example, Black & White Cabs commended the Queensland government for commissioning the review and reassured the committee that they are co-operating with the review in full:

*Personalised transport services is going to have a very detailed review. I have already met with Jim Varghese, the chair of the review. We have opened our books. We have opened our business to his review process. We have already provided him with some data and financial information and we see this review as very important to the taxi industry and, in fact, to all Queenslanders provided it is done in a very collaborative way. We are seeing that that is Jim's approach to that from the outset.<sup>90</sup>*

RACQ argued strongly that ridesharing services should be considered in a holistic review of the taxi regulations and suggested that the Government review TOPTA to consider whether ridesharing and other transport options can improve the mobility of Queenslanders and the current review of personalised transport services should conclude earlier.<sup>91</sup> RACQ provided the following detailed input regarding the review:

*When asked whether they felt people should have a choice of taxis or ridesharing services, 80% of our survey respondents agreed they should have a choice and 80% agreed that government should set rules to ensure ridesharing is safe.*

*RACQ's position on ridesharing is consistent with the views of the majority of the Queensland public. RACQ has three key objectives of legislative reform on point-to-point transport. These are:*

*Objective 1: RACQ supports reforms that meet the needs of our members and improve the range of options in point-to-point public transport, including for vulnerable groups such as people with disabilities and the frail aged. This reform should allow flexible, innovative and responsive transport models to emerge, rather than protecting entrenched business models.*

*Objective 2: Regulatory reform of point-to-point transport services should provide a safety framework that incorporates vehicle safety, driver safety and passenger safety. This would*

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<sup>87</sup> Department of Transport and Main Roads website, Personalised Transport Services Industry in Queensland fact sheet, p 2 (accessed on 26 Feb 2016).

<sup>88</sup> Department of Transport and Main Roads website, Personalised Transport Services Review (accessed 26 Feb 2016).

<sup>89</sup> Department of Transport and Main Roads, correspondence dated 25 Nov 2015, p 3.

<sup>90</sup> Public hearing transcript, 2 December 2015, p 15.

<sup>91</sup> Public briefing transcript, 2 December 2015, p.18.

*incorporate driver licence and criminal history checks as well as safe driver training and vehicle inspections for taxis, limousines and rideshare providers.*

*Objective 3: Regulation should support industry reform and improve service delivery, while minimising regulatory and capital cost burdens that would increase the price structure of point-to-point services, including rideshare, taxis and limousines. In particular the high government and licencing cost burdens on the taxi industry need to be reviewed. Specific licences, Compulsory Third Party insurance and motor insurance classes for ridesharing services may also need to be considered.<sup>92</sup>*

RACQ concluded “... ridesharing is here to stay. It is currently not regulated in Queensland and therefore we are suffering the worst of both worlds - an operating industry used and desired by the community which has insufficient government oversight. Meanwhile our taxi industry is overburdened with high government imposed costs and very steep financial barriers to entry. Taxis will always be needed, but we must move quickly to reduce their cost burden and regulate ride sharing to provide the best outcome for us, the consumer, and our transport system.”<sup>93</sup>

The department advised the committee that ridesharing services are being established world-wide and that if the taxi industry in the jurisdiction has a simple regulatory framework it is being managed effectively. For example, ACT was able to legalise Uber services in late 2015 as the ACT has a very simple industry – they have annual licences rather than perpetual licences.<sup>94</sup>

## **2.7 Enforcement of taxi licensing regulations**

On the basis of the department’s advice that ride sharing services operating outside of Queensland’s taxi regulations are illegal<sup>95</sup>, the committee examined the powers available to the government to take enforcement action to ensure compliance with the current regulatory regime.

### **2.7.1 Legislative framework for enforcement**

#### TOPTA

Under TOPTA the chief executive may appoint ‘authorised persons’ and ‘authorised persons (transit officer)’ (‘transit officers’) (both defined as ‘authorised persons’). Every police officer is an authorised person for TOPTA and certain other transport legislation.<sup>96</sup>

A transit officer may also exercise a power under Part 4A of TOPTA in relation to a person only if the officer is in uniform.<sup>97</sup>

Under this Act, an authorised person has certain powers including the power, in certain instances, to:

- request information, for example taxi service bailment agreement (section 35R)
- require the production or copy of a record (section 87C, 87D)
- enter places (section 120)
- apply to the magistrate for a warrant for a place (section 121)
- enter or board a vehicle (section 123)

<sup>92</sup> RACQ, submission 313, p 2.

<sup>93</sup> Public hearing transcript, 2 December 2015, p 19.

<sup>94</sup> Public briefing transcript, 14 Oct 2015, p 8.

<sup>95</sup> See public briefing transcript, 14 Oct 2015, pp 2-3.

<sup>96</sup> Transport Operations (Passenger Transport) Act 1994, ss 110, 111, 114.

<sup>97</sup> Transport Operations (Passenger Transport) Act 1994, s 113B.

- undertake certain acts in a place or vehicle (section 124)
- seize evidence and require the person in charge of it to do certain things (sections 125, 126C)
- require name, address and age (section 127)
- require certain information about an offence (section 128)
- require the production of certain documents (section 129).

The Taxi Compliance Unit in the department of is made up of a team of transport inspectors focussing on taxi issues.

#### Police Powers and Responsibilities Act 2000

The Police Powers and Responsibilities Act 2000 (Qld) (PP&R Act) sets out the powers and responsibilities police officers have for investigating offences and enforcing the law. Chapter 3 of the PP&R Act provides for police powers relating to vehicles and traffic.

The PP&R Act gives police officers certain powers with respect to some transport legislation including the TORUM Act, the *Heavy Vehicle National Law Act 2012 (Qld)*, the *Tow Truck Act 1973 (Qld)* and certain provisions of the *Transport Infrastructure Act 1994 (Qld)* and the *Motor Accident Insurance Act 1994 (Qld)*. The powers include stopping vehicles for certain purposes and prohibiting certain persons from driving vehicles.

The PP&R Act does not provide for powers relating to the TOPTA as enforcement of offences against TOPTA are not specifically mentioned in the PP&R Act, which is responsible for setting out the 'responsibilities police officers have for investigating offences and enforcing the law.'<sup>98</sup>

There are certain powers that a police officer has that a transit officer does not have, such as the ability to apply for a civil banning order.<sup>99</sup>

### **2.7.2 Enforcement action**

#### DTMR enforcement

On 25 November 2015, the department provided the following advice in relation to compliance:

- Uber was issued with a cease and desist order by the department in May 2014 and compliance activities to date have centred on departmental "*compliance officers issuing penalties to illegal transport drivers for breaches of the regulatory scheme*"
- penalties issued by compliance officers have primarily been for providing a taxi service without a taxi licence; and driving without the appropriate driver authorisation
- since July 2014, a total of 14,336 hours of compliance effort has been applied to this task and this has resulted on 1,536 PIN's being issued with a value of \$1,732,034. Of those issued, 1,287 PIN's have been paid with a value of \$1,469,561, and
- the PIN's have been issued to 538 drivers, with 440 of these drivers being repeatedly fined. 17 PIN's have been waived following further investigation and 189 PIN's have been elected to be heard and determined in court (as at 25 November 2015, none had yet been heard).<sup>100</sup>

The department also provided the following information regarding the value of current fines:

- \$1,178 for operating a public passenger vehicle without appropriate authorisation, and

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<sup>98</sup> Section 5(a) *Police Powers and Responsibilities Act 2000*.

<sup>99</sup> see sections 129ZH, 129ZK *Transport Operations (Passenger Transport) Act 1994*.

<sup>100</sup> Department of Transport and Main Roads, correspondence dated 25 Nov 2015, p 2.

- \$1,413 for providing a taxi service without a licence.<sup>101</sup>

The committee requested advice from the department on what process was undertaken following Uber's failure to comply with the cease-and-desist order issued in May 2014. The department responded that a letter dated 21 May 2014 was sent from the department following a meeting between the two parties on 2014:

*The letter reiterated information expressed to Uber at the meeting. The letter formally expressed DTMR's view that the services provided by drivers using the Uber app were not being provided in accordance with regulatory requirements and warned that the department would commence compliance action if Uber did not 'cease and desist' the operation of these services. The letter itself was not an enforceable notice or order in its own right.*

*However, in accordance with the notice, compliance action commenced against drivers providing services facilitated through the Uber app, and further compliance activity is forecast over the coming months.<sup>102</sup>*

The department also advised the committee at the Brisbane public hearing that its' compliance officers have dedicated over 14,700 hours on the interception of vehicles and a collation of evidence associated with illegal taxi services:

*These compliance activities are essential for two reasons: firstly, they are crucial in ensuring that the provisions of the act are adhered to. Those who choose not to adhere to the act are dealt with by the enforcement mechanisms available to the department through the act. Secondly, having boots on the ground and officers visible on the street carrying out these activities, compliance officers act as a deterrent to companies who operate unauthorised passenger transport services as well as their drivers. The visual presence of these officers ensures that all parties are aware that the services they are providing are not authorised and, by extension, are discouraged from providing these services.<sup>103</sup>*

#### Enforcement difficulties faced by the department

Taxi industry stakeholders provided abundant evidence to the committee of their frustration that the current laws are not being effectively enforced. For example:

- *.. we are looking for compliance. I think that is what we need. We need to have compliance with the law. We do not want protection. That would be unfair and it would be unreasonable and probably anticompetitive, I would suggest. We are not looking for protection; we are looking for compliance by other operators, that is all.<sup>104</sup>*
- *They will flout the law forever. Even if you put legislation in, if it does not suit them they will circumvent it.<sup>105</sup>*
- *Without proper enforcement, legislation and regulations are not taken seriously and those charged with compliance are perceived to be toothless tigers.<sup>106</sup>*

<sup>101</sup> Department of Transport and Main Roads, correspondence dated 3 Nov 2015.

<sup>102</sup> Department of Transport and Main Roads, Response to Questions on Notice, 9 December 2015, p 2.

<sup>103</sup> Public hearing transcript, 2 December 2015, p 31.

<sup>104</sup> Mackay Taxi Holdings, public hearing transcript, Mackay, 29 January 2016, p 2.

<sup>105</sup> Mr Alan Robinson, public hearing transcript, Mackay, 29 January 2016, p 2.

<sup>106</sup> Gold Coast Cabs, public hearing transcript, Gold Coast, 7 December 2015, p 1.

The department advised that Queensland's taxi legislation was drafted before ridesharing operations such as Uber were contemplated:

*To a certain degree we have – and this has been put out in a public sense, I think, at the forum by the government today – legislation from a number of decades ago that has been written around obligations of parties, with offences that do not quite apply to a modern-day approach with the modern technology used. Offences are wrapped around the action of providing taxi services without a licence, providing a limousine service without a licence or providing an operation without driver authorisation. The offences at the operator level, written two or three decades ago – 1994 or 1995 – did not foresee these sorts of arrangements.<sup>107</sup>*

The Taxi Council Queensland disagrees with the view that when the legislation was drafted it did not effectively anticipate the current technology. The council argues that the issue at hand is that the current penalties and enforcement regimes are proving to be insufficient:

*... nothing has changed as far as the legislation goes. The only thing that appears to have changed is that the department has become overwhelmed in terms of being able to compliance this activity. Previously, financial penalties or the threat of financial penalties were sufficient to modify people's behaviour to not offer those services, even though they might not have been aware that those services were illegal.<sup>108</sup>*

In evidence provided at the public hearing in Brisbane, the Taxi Council clarified that the department up until July 2015 were "doing their job and doing it well" and the issue is more about skill sets and resourcing:

*What the legislation ...could not anticipate was a business model that actively sought to subvert compliance activity... I would not say that the department has been relaxed. I would say that the department has become overwhelmed. I do not think that it has ever had to really contend with this sort of thing before. It really does move into the realm of law enforcement – something that is better placed with the Queensland Police Service to deal with organisations that actively seek to avoid the law. That is a very different skill set. I will give credit where credit is due. I do not think that the department has been relaxed about it and I am not even saying that the government has been relaxed about it, but I certainly do not think that there have been enough resources applied to understanding how it could be better enforced.<sup>109</sup>*

Other stakeholders, including Yellow Cabs (Qld) Pty Ltd, were of the view that the "government does not want to take action. I do not believe it has taken sufficient action.... I think the Queensland transport department tries to figure out ways and means of not doing their job rather than do it... I think there is a distinct lack of will".<sup>110</sup>

The department advised that Uber had impeded efforts by compliance officers to intercept drivers of illegal passenger transport services, with drivers using technology to evade the compliance officers:

*The ability for TMR compliance officers to intercept drivers of illegal passenger transport services has been impeded by Uber, as drivers are actively evading compliance officers through the use of technology and other means. As a result, TMR will continue to pursue compliance activities through the most appropriate means available.<sup>111</sup>*

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<sup>107</sup> Public briefing transcript, 14 October 2015, p 4.

<sup>108</sup> Public hearing transcript, 2 December 2015, p 6.

<sup>109</sup> Public hearing transcript, 2 December 2015, p 8.

<sup>110</sup> Public hearing transcript, 2 December 2015, p 11.

<sup>111</sup> Department of Transport and Main Roads, correspondence dated 25 Nov 2015, p 2.

In response to a Question on Notice taken at the Brisbane public hearing about how many PINs had been issued in the preceding month, the department advised:

*There have been increased challenges in identifying Uber drivers, noting the avoidance strategies by Uber and its drivers already on record. Transport inspectors also need to have sufficient evidence to issue a PIN in any particular circumstance. Transport inspectors do not have the full range of on-road powers available to police officers. Therefore, no PINS have been issued in the last month.*<sup>112</sup>

First Class Taxis Pty Ltd provided further example of enforcement avoidance techniques, the first being where Uber at one stage created ‘ghost cars’ through technology to avoid the identification of real Uber cars by departmental compliance officers. “The ghost cars went on for several months until it became apparent that maybe the Queensland Government might let Uber in, in which case it was switched off.” This stakeholder also advised that Uber can change the time delay on the vehicles so where a compliance officer located a vehicle and could see it on the screen, Uber would delay the on-screen movement away by the vehicle by a couple of minutes to avoid identification of the vehicle by the compliance officer.<sup>113</sup>

There was evidence provided to the committee that the fine penalty regime is being circumvented by Uber through it either paying for the fines directly or providing the money to drivers to pay their fines.<sup>114</sup> For example, RB Lawyers submitted “It is well documented that ride sharing services such as Uber pay these fines on behalf of their ‘partners’ and so the fines act as no deterrent whatsoever to those operating the illegal taxi service.”<sup>115</sup>

The committee was also advised that, based on what has happened in the past and in other jurisdictions, Uber is very good at challenging these cases when they go to court.

*They will challenge the authority of the transport inspector to have made the infringement notice. They will challenge all aspects of the case. Unless everything has its T’s crossed and its I’s dotted, it gets thrown out and delayed. So our prosecutions team is endeavouring to ensure that everything is right before they go to court. They have not taken anything to court yet.*<sup>116</sup>

There was a general consensus amongst taxi industry stakeholders that “Queensland Transport needs to bolster and work out how they can get around the problems that they have had with Uber circumventing the legislation.”<sup>117</sup> The Taxi Council Queensland advised the committee that while the bill will fix part of the problem the department will have to come up with strategies for enforcement:

*The industry has made offers to be able to assist in that way. At this point TMR are not that keen to do that. We are actually looking at that very problem right now. We are looking at legal advice that what we are suggesting is possible and how we should go about it. In the end, we should all be obeying the same laws: we should all be held to the same standard. That is all we are asking.*<sup>118</sup>

<sup>112</sup> Department of Transport and Main Roads, Response to Questions on Notice, 9 December 2015, p 2.

<sup>113</sup> Public hearing transcript, 2 December 2015, p 6.

<sup>114</sup> See for example, Black and White Cabs, public hearing transcript, 2 December 2015, p 15, Taxi Council Queensland, public hearing transcript, Mackay, 29 January 2015, p. 8

<sup>115</sup> RB Lawyers, submission 317, p 1.

<sup>116</sup> Public briefing transcript, 14 October 2015, p 3.

<sup>117</sup> Taxi Council Queensland, public hearing transcript, Mackay, 29 January 2016, p 9.

<sup>118</sup> Taxi Council Queensland, public hearing transcript, Mackay, 29 January 2016, p 11.

The department advised it is currently reviewing strategies and additional mechanisms that could be applied until such time as the Taskforce has reported and the Government has considered its recommendations. Its investigation is looking at various options:

*Are there additional offences that can be set up? Are there extra incentives in terms of demerit points? Are the level of fines sufficient? What extra provisions or legislative changes can we make to give our transport inspectors maybe some additional supporting powers on the road to help? These are matters that are currently subject to advice that is intended to be put to the government.*<sup>119</sup>

In response to a question taken on notice at the public briefing the department confirmed that, notwithstanding the independent Taskforce review of personalised transport services, “...the department is currently investigating options, including possible amendments, within the existing legislative framework to ensure compliance can be carried out effectively”.<sup>120</sup>

At the public briefing in December 2015, the department acknowledged the frustration of the wider taxi industry that unauthorised passenger transport services “are currently operating contrary to the act” and stated that the department is well aware of these frustrations and is taking a number of actions to address those concerns, including:

- evaluation of enforcement techniques for effectiveness
- investigating new methods of enforcement strategies
- options for increasing support for transport inspectors during their on-road compliance effort
- options to enhance the existing legislation to ensure it is contemporary.<sup>121</sup>

The department strongly put the view that the allocation of demerit points in isolation of other supporting measures will not be enough to adequately deal with avoidance strategies and the application of current legislation including corresponding offences.<sup>122</sup>

#### QPS Enforcement

Numerous submitters raised the lack of enforcement by the Queensland Police Service as an issue. For example, Black and White Cabs stated that the Police Commissioner had indicated at a meeting that the police “have no appetite for this”, and that he was referring to the compliance measures against illegal taxis. The taxi company believes that the police themselves may be looking for more empowerment.<sup>123</sup>

Concern was also raised in evidence about the Queensland Police Service view that enforcement of ridesharing related matters is the responsibility of the department. In a letter to the Taxi Council Queensland, dated 17 September 2015, the Acting Assistant Police commissioner advised:

*I wish to advise enforcement of ride sharing related matters are the domain of the Transport Operations (Passenger Transport) Act 1994 and associated regulations, and that the governing agency is the Department of Transport and Main Roads. If police officers, in the course of their duties, identify or suspect an offence against that Act or the regulations,*

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<sup>119</sup> Public briefing transcript, 14 October 2015, p 7.

<sup>120</sup> Department of Transport and Main Roads, Response to Questions on Notice, 2 Nov 2015, p 1.

<sup>121</sup> Public hearing transcript, 2 December 2015, pp 30-31.

<sup>122</sup> Public hearing transcript, 2 December 2015, p 31.

<sup>123</sup> Public hearing transcript, 2 December 2015, p 16.

*the matter would be referred to the department of Transport and Main Roads for consideration of initiation of proceedings.*<sup>124</sup>

At the public briefing on 14 October 2014, the committee questioned the department about why the police were not more involved with enforcing the current regulations in regard to drivers who were not operating within the regulatory scheme. The department provided the following response:

*The core business for police is criminal activity. They do not have any jurisdiction or choose not to work in the transport area. That is why we have our own transport inspectors. Based on the number of police and the policing requirements of Queensland, it is their core activity to stay in the criminal realm of maintaining law.*<sup>125</sup>

When questioned further about why the Police do enforce drink-driving, speeding and other traffic infringements that are not criminal, the department advised:

*I think the police would have a responsibility for road safety issues. The Uber issues are not necessarily road safety issues. They are more a regulatory issue for the transport operation side of things.*<sup>126</sup>

Taxi industry stakeholders were concerned about the lack of enforcement by the police. For example, Yellow Cabs (Qld) Pty Ltd provided:

*It is the rule of law and I think Queensland Police Service should play a role in it. I do not see how they have a right, by the way, to say they are going to pick and choose which laws of this state they are going to uphold.*<sup>127</sup>

Blue & White Taxi's reflected the overwhelming majority position of the taxi industry when it submitted that "all compliance officers, TMR and QPS [should] impose a breach notice on any driver observed breaking regulations in relation to operating a vehicle under those regulations".<sup>128</sup>

The Taxi Council Queensland expressed its concern in its submission that "By failing to provide adequate sanctions for law breakers, the Rule of Law in Queensland is being undermined and others are being encouraged to do as they please".<sup>129</sup> It has recommended an amendment to the TORUM Act to specifically include TOPTA in the definition of 'transport Act' to bring the enforcement of the law against illegal services under the PP&R Act. This proposal is discussed in [section 2.9](#) of this report.

## **2.8 Proposed demerit point scheme for rideshare services operating without a taxi licence**

The Bill proposes to insert a new section 70A into TOPTA, which will allow for the recording of demerit points for persons providing a taxi service without a licence. For a first offence, a person will have three demerit points recorded on their traffic history. For a subsequent offence within a one year period, six demerit points (double demerit points) will be recorded on the person's traffic history (section 70A(3)).

The Bill also proposes to amend the definition of 'traffic history' in Schedule 4 (Dictionary) of the TORUM Act to reflect the amendments to TOPTA in relation to the recording of demerit points under section 70A of that Act. Lastly, the Bill proposes to amend section 31 of the *State Penalties Enforcement Act 1999* to also support the proposed introduction of section 70 in TOPTA.

<sup>124</sup> Taxi Council Queensland, submission 47, Attachment 14, p 19.

<sup>125</sup> Public briefing transcript, 14 October 2015, p 7.

<sup>126</sup> Public briefing transcript, 14 October 2015, p 7.

<sup>127</sup> Public hearing transcript, 2 December 2015, p 13.

<sup>128</sup> Blue & White Taxi's, submission 62, p 6.

<sup>129</sup> Taxi Council Queensland, submission 47, section 12.3.

The explanatory notes state the reason for introducing the Bill and the proposed demerit point scheme is to address the issue of 'illegal taxi services' that 'are circumventing the Queensland taxi industry to the public detriment' and threatening the standards and safety of taxi services in Queensland. Additionally, the explanatory notes state that these 'illegal taxi services' are eroding the 'integrity and viability of the taxi licensing scheme administered by the Queensland Government'.<sup>130</sup>

Specifically, Mr Katter MP, advised the committee:

*The bill represents a serious commitment to upholding the law as it stands in Queensland by providing a disincentive to offer and unlicensed\* taxi service. ... unlicensed\* services have continued, despite current penalties and the efforts of the Queensland Transport Department. Preliminary observations of the submissions have shown there is general consent amongst the community that without this bill or similar provisions, rideshare services will have a significant impact on the livelihoods and possibly the safety of many Australians. While a review into Point-to-point Transport is underway it is imperative the regulations and laws of the day are upheld until the review is complete. The government should not pre-empt the results of the review by actively disenfranchising current legislation.*

*\*Those operating a taxi service defined under TOPTA without an Operator Accreditation for Taxi Services<sup>131</sup>*

At the public briefing Mr Katter MP, voiced his concern that the State Government would be unable to do anything until August 2016 and there had already been a significant drop in the value of taxi licences in metropolitan areas:

*I think the figures that have been released recently show there has already been a substantial drop. People are going to have their loan-to-value ratio smashed and their houses sold up. We already have that economic impact happening now. The damage has already been done. The industry is on very wobbly wheels already.<sup>132</sup>*

In relation to why he had proposed the demerit point proposal as a strategy, Mr Katter MP advised:

*Obviously this has been thought about a lot by people in the industry and ourselves. This was seen as the most discreet or less intrusive way that I guess would be publicly palatable but still effective..... the increases in fines did not work [all through Europe] ...They tried that approach and it did not work. This is not a silver bullet. It by no means fixes the situation, but it goes some way to say, 'Try driving without your licence. If you have deliberately broken the law – you know you are doing it – you not only pay the fine but we will take your right to drive off you if you persist in breaking the law.'<sup>133</sup>*

### **2.8.1 Stakeholder support for the introduction of demerit points**

Stakeholders' concerns about the effectiveness of enforcing compliance within the existing legislative framework were discussed in a [previous section](#) of this report on enforcement. The main concern raised by the taxi industry was that ridesharing operators have not been deterred by the current penalties and that something needs to be done urgently. For example, Black & White Cabs expressed its concern to the committee:

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<sup>130</sup> Explanatory notes, p 1.

<sup>131</sup> Mr Rob Katter, MP, correspondence dated 23 Nov 2015, p 2.

<sup>132</sup> Public briefing transcript, 14 October 2015, p 15.

<sup>133</sup> Public briefing transcript, 14 October 2015, p 13.

*As far as the immediate position, we see that these ride-sharing are operating illegally. We need to stem the damage that they are doing to our industry while the collaborative review is underway. We need to do something now.*<sup>134</sup>

Numerous stakeholders provided evidence in support of the introduction of demerit points on the basis that it would impact on the ability of rideshare drivers to “continue breaking the law without fear of consequence”.<sup>135</sup> Some examples of this evidence are provided below:

- *It is clear that the existing penalty regime of fines no longer act as a disincentive to modify behaviour or discourage illegal activities*<sup>136</sup>
- *it is a very much a safety issue.. the safety of passengers, and particularly the children, is dependent upon the integrity of those particular procedures that are put in place to get those things. Demerit points will affect the unauthorised driver, I will use that term. An unauthorised driver will suffer a penalty. It is important that the demerit points be put against their licence to stop them from operating in this way*<sup>137</sup>
- *Uber’s initial action to circumvent Queensland laws has been to pay the fines and now Uber drivers believe they can break the law with impunity*<sup>138</sup>
- *Financial penalties do not seem to have the same impact as they did in the past and it is imperative that something needs to change so that individuals are made accountable for their actions. The proposed demerit system will target the individual, making them responsible for their actions*<sup>139</sup>
- *There should be a strong message conveyed to law-breakers and there should also be something that will provide confidence to the that taxi industry’s mum and dad business owners and operators in Queensland, who have given their all to unselfishly support and provide point to point infrastructure.*<sup>140</sup>

RB Lawyers, representing 12 taxi industry operators, submitted that the imposition of demerit points would “achieve the end result of eliminating illegal taxi services” for the following reasons:

- *Repeat offenders who flout the laws will accumulate sufficient points such that their licences will be in jeopardy;*
- *If such persons then apply for Special Hardship orders, available under other legislation, there would be a strong argument that such persons would not be fit and proper persons to continue to hold a licence due to their continual flouting of these laws which would remove their ability to drive (and thus perform the illegal taxi service);*
- *The points system would mean enforcement then become matters for the Courts for the reasons stated above and/or for persons who repeatedly drive and then subsequently drive whilst suspended/disqualified;*

<sup>134</sup> Public hearing transcript, 2 December 2015, p 15.

<sup>135</sup> See for example, Taxi Council Queensland, submission 47, section 8.1 and Taxi Fleet Managers Pty Ltd, submission 209, p 4, RB Lawyers, submission 317.

<sup>136</sup> Taxi Council Queensland, submission 47, section 1.3.

<sup>137</sup> Mackay Taxi Holdings, public hearing transcript, Mackay, 29 January 2016, p 3.

<sup>138</sup> Taxi Council Queensland, public hearing transcript, Mackay, 29 January 2016, p 8.

<sup>139</sup> Townsville Cabs, public hearing transcript, Townsville, 28 January 2016, p 1.

<sup>140</sup> Mrs Colleen Babao, public hearing transcript, Townsville, 28 January 2016, p 15.

- *There is also a safety issue because by removing the opportunity for such persons to drive the loophole relating to drink driving laws, ie currently ride sharing drivers can legally drive with a BAC up to 0.5 will be removed;*
- *Similarly in relation to vehicle safety (no requirement in relation to vehicles or in relation to vehicle inspections);*
- *Presently the ride sharing drivers rely upon their mobile phones to receive bookings which they do whilst driving (an obvious safety issue).<sup>141</sup>*

Taxi companies were generally of the view that the public is unlikely to stop using the cheaper ridesharing services which do not have the same compliance costs.<sup>142</sup> First Class Taxis Pty Ltd agreed that the rider is unlikely to stop using Uber services as it is a cheaper alternative and Uber simply claims to be a conduit between the driver and the rider so the driver is the only person that can be held accountable:

*So in my view after I have considered this for 18 months the only way is to actually give demerit points when an Uber driver is caught. ....your job is to deliver effective legislation. The current legislation you have is not effective. If it means you have to change the legislation to bring in a harsher penalty to be effective, then it must be demerit points. There is no other option.<sup>143</sup>*

At the public hearing in Brisbane, the Taxi Council Queensland reiterated its view that the issue before the government is not just about one company:

*It is not about a particular company, it is not about commercially penalising a new business model or however it may be described; it is really simply about the rule of law and ensuring that the outcomes expected by the Queensland community for taxi services remains unchallenged until such time as a review may come back and give the government something to consider as far as reforms.<sup>144</sup>*

Other witnesses also provided evidence that Uber drivers are not the only drivers operating outside of the regulations.<sup>145</sup> For example, Townsville Taxis stated that “Illegal taxi services have been in the industry for many years. They have been flying under the radar. I think what Uber has done has brought it to the fore”.<sup>146</sup> Gold Coast Cabs added that there are “people who are copying the Uber model because they have seen that they can because nobody does anything about it”.<sup>147</sup>

The Taxi Council Queensland explained that the proposed amendments in the Bill would assist with enforcing compliance in regional and rural towns:

*... illegal taxi services have always existed in Queensland that they have been much more prevalent in regional and rural towns... The impact of this bill on regional areas would be to empower enforcement officers and potentially the police through amendments associated with the bill in those country areas to actually crack down on illegal activity. Even if Uber may not come into those towns, it may be that you have someone who turns up at the races on race day in Cunnamulla, they pick someone up, they take them and they do a cash transaction. Whether there is a piece of technology there or not, it is an illegal taxi service  
....*

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<sup>141</sup> RB Lawyers, submission 317.

<sup>142</sup> See for example, Black and White Cabs, public hearing transcript, 2 December 2015, p 15.

<sup>143</sup> Public hearing transcript, 2 December 2015, p 2.

<sup>144</sup> Public hearing transcript, 2 December 2015, p 6.

<sup>145</sup> See for example, Supreme Taxi Company, public hearing transcript, Townsville, 28 January 2016, p 7.

<sup>146</sup> Public hearing transcript, Townsville, 28 January 2015, p 2.

<sup>147</sup> Public hearing transcript, Gold Coast, 7 December 2015, p 2.

*I think it is absolutely fair to say that the wide-ranging impact of this bill imposing demerit points on illegal taxi services is actually going to benefit rural and regional Queensland much more prominently than it will in the city areas.<sup>148</sup>*

While industry stakeholders generally supported the amendments proposed in the bill, a number of them acknowledged that, given the issues with locating and charging drivers operating outside the regulatory system, demerit points on their own may not improve the situation.<sup>149</sup> For example, Mr Graeme Lawler, a taxi driver who provided evidence at the Cairns hearing summed up the frustration felt by the industry with the following statement:

*As to increasing the penalty as proposed by the Katter party, at the moment we know that Queensland transport and the police department are not enforcing the rules. So the Katter party have a good idea. However, if you people are not going to enforce it, what is the good of it? That is where you as parliamentarians come in. You are captains of the ship; it is your department. You are our leaders.<sup>150</sup>*

Similarly, the department advised the committee that while “demerit points may be part of the answer” it was examining whether demerit points could assist, as the issue of transport inspectors working within the existing legislation and Uber using technology to avoid transport inspectors, would remain.<sup>151</sup>

### **2.8.2 Stakeholders opposed to the introduction of demerit points**

While the majority of taxi industry operators support the amendments proposed in the bill, Mr Chris Lowe, a taxi and limousine operator in Mackay, provided the following alternative view to the committee:

*I do not agree with imposing demerit points under the present legislation as demerit points are imposed as a method of enforcing current road rules under the traffic legislation. I foresee a legal minefield if this method is introduced... Bringing in a demerit points system will do nothing to improve or enhance the taxi services now being provided.<sup>152</sup>*

Mr Lowe proposed a number of alternative enforcement approaches including confiscation of registration plates and enforcement of the payment of income tax and GST. He also argued that the taxi system is over-regulated and “needs to adapt to the simplicity and ease of use that Uber have created and thereby cut down on the (perceived ridiculous) over regulation of the government which will then bring both types of public passenger transport service in line with each other and create a level playing field for all stakeholders.”<sup>153</sup>

RACQ is strongly opposed to Bill’s proposed demerit point scheme on the basis that demerit points have been introduced for one reason only and that is to penalise drivers who undertake dangerous acts on the roads.<sup>154</sup> Details of this line of argument are provided below:

*RACQ is opposed to the legislative amendments for two reasons. Firstly, a road safety management tool such as demerit points should not be used by regulators as a commercial penalty. Secondly, RACQ believes ridesharing as a disruptive influence in the point to point*

<sup>148</sup> Public briefing transcript, 14 October 2015, pp 14-15.

<sup>149</sup> See for example, Taxi Council Queensland, public hearing transcript, 2 December 2015, p 10 and Mr Chris Lowe, public hearing transcript, Mackay, 29 January 2016, p 7, Taxis Gold Coast, public hearing transcript, Gold Coast, 7 December 2015, p 5.

<sup>150</sup> Public hearing transcript, Cairns, 27 January 2016, p 10.

<sup>151</sup> Public briefing transcript, 14 October 2015, p 8.

<sup>152</sup> Mr Chris Lowe, Paper tabled at the Mackay public hearing, 29 January 2016, p 1.

<sup>153</sup> Mr Chris Lowe, Paper tabled at the Mackay public hearing, 29 January 2016, p 1.

<sup>154</sup> Public briefing transcript, 2 December 2015, p 18.

*transport system should be considered in a holistic review of the taxi regulations, as recently announced by the Queensland Government.*

*The purpose of our demerit point system is to make our roads safer by encouraging motorists to drive responsibly. The current list of demerit offenses is included in Schedule 3 of the Transport Operations (Road Use Management-Driver Licensing) Regulation 2010. The list only includes road safety related offenses.*

*The proposal to allocate demerit points for drivers who are not violating road rules would be anomalous and would undermine the demerit system as a road safety initiative. It would also create inconsistencies across state and territory borders. It is not appropriate to use this system to prevent rideshare drivers conducting their business.*

*The Australian Capital Territory has announced that ridesharing will be legal from 30 October 2015. A number of State governments are also conducting reviews of their legislation affecting ridesharing. These processes will result in a legal role for ridesharing in at least parts of Australia as a component of point-to-point transport system. If the proposed Queensland legislation is passed, then Queenslanders could be disqualified from driving for offences that are unrelated to road safety and are legal in other states and territories. At the same time, drivers with licences from other jurisdictions where ridesharing is legal, would not lose demerit points if they prosecuted for that offence in Queensland. This anomaly would undermine the road safety national offences system and make future national standardisation of road rules more difficult.<sup>155</sup>*

In response to the department's advice that demerit points are used to ensure the road safety behaviours are achieved and are typically linked to offences with a road safety risk like speeding, mobile phone use or failing to stop at red traffic lights<sup>156</sup>, many stakeholders pointed out that drivers can also lose two demerit points for failing to display clearly legible green and red P-plates and L-Plates.<sup>157</sup> Others pointed out that you can lose demerit points for offences such as wilfully starting or driving a vehicle in a way that makes unnecessary noise or smoke; drive, park or permit use of a vehicle that is defective, but not unsafe.<sup>158</sup>

Further, RACQ advised that that a road safety management tool such as demerit points should not be used by regulators as a commercial penalty and it strongly argued that ridesharing services "should be considered in a holistic review of the taxi regulations".<sup>159</sup>

Uber, opposed the amendments in the bill stating:

*In our view, this bill is simply about punishing Queenslanders who provide a service that is welcomed by Queenslanders, and is intended just to simply protect the turf of an incumbent monopoly. As Choice, the consumer organisation said in its recent report-*

*... the point of regulating should be to protect consumers and encourage competition in the market, not to protect one particular business from its competitors.*

*We submit that this bill does not meet the foundational principle of legislation.<sup>160</sup>*

A young person at the Townsville hearing supported Uber's position. He provided evidence that Uber provides a safe alternative service including driving checks and tracking, concluding:

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<sup>155</sup> RACQ, submission 313, pp 1-2.

<sup>156</sup> Public hearing transcript, 2 December 2015, p 31.

<sup>157</sup> See for example, Mr Rob Katter MP, public hearing transcript, 2 December 2015, p 33.

<sup>158</sup> Professional Taxis Gold Coast, public hearing transcript, 7 December 2015, p 5.

<sup>159</sup> Public briefing transcript, 2 December 2015, p.18.

<sup>160</sup> Public briefing transcript, 2 December 2015, p 25.

*Bringing in reasonable regulations that support both forms of business is important, not saying, 'We must take every single one of the opposition off the road,' not saying 'We want to clear the streets of Uber,' saying 'This is the current situation. How can we change the rules so that they can play to their strengths and we can play ours and we can coexist?'. At the moment the taxi industry does not want to coexist, despite anything they have said. I think that is very clear. There needs to be a way brought in that Uber and taxis can cooperate, just as we have seen in the Australian Capital Territory and other states including New South Wales.*<sup>161</sup>

An ex-serviceman at the Townsville hearing also provided evidence in support of Uber on the basis that the Royal Australian Regiment Association is a partner of UberMILITARY in Australia to assist and facilitate employment opportunities for serving and ex-serving military members who find it difficult to readjust and realign in society after their service.<sup>162</sup>

Ridesharing services were supported by Ms Bronwyn Thomas at the Cairns hearing on the basis that it would provide a stimulus to the local economy as it would provide people with the option to travel further from home when they go out for the evening. She put the view that it would also help deter people from driving home from a restaurant under the influence of alcohol simply because the ride home is too expensive by taxi.<sup>163</sup>

### **2.8.3 Double demerit points**

In relation to the application of double demerit points for a person who commits a taxi offence within 1 year after committing a previous taxi offence the department advised that this would be a "significant shift in public policy and not be appropriate", and provided the following evidence for the consideration of the committee:

*In the existing regulatory environment, double demerit points are restricted to those very high risk driving behaviours where other, more robust sanctions are not available (such as alcohol ignition interlocks for repeat or high range drink driving offences). Offences where double demerit points are currently applied to a person's traffic history are failure to wear an approved motorcycle helmet, speeding in excess of 20 km/h of the posted speed limit, failure to wear a seatbelt, and using any function of a mobile phone that is held in the driver's hand. Applying double demerit points for an offence without a clear road safety link would be a significant shift in public policy and not appropriate for the offence outlined in the Bill.*<sup>164</sup>

At the public hearing in Brisbane the department reiterated that double-demerit points are only currently applied to very high-risk driving behaviours where other harder sanctions are not available and "applying double demerit points for an offence without a clear road safety link would be a significant shift."<sup>165</sup>

Taxi industry stakeholders that made comment on the proposal to apply double demerit points if a driver commits more than one offence in a 12 month period were generally supportive on the basis that strong measures are required to discourage drivers from operating outside the regulatory regime.<sup>166</sup>

<sup>161</sup> Mr Danny Hayes, public hearing transcript, Townsville, 28 January 2016, p 11.

<sup>162</sup> Mr Daniel Angus, public briefing transcript, 28 January 2016, p 18.

<sup>163</sup> Public hearing transcript, Cairns, 27 January 2016, p 11.

<sup>164</sup> Department of Transport and Main Roads, correspondence dated 25 Nov 2015, p 2.

<sup>165</sup> Public hearing transcript, 2 December 2015, p 31.

<sup>166</sup> See for example submission 62, p 6.

This report considers the application of double demerit points as a penalty in [section 3.1](#) on compliance with the *Legislative Standards Act 1992*.

#### **2.8.4 Accumulation of demerit points on a driver's traffic history**

The bill proposes to amend the TOPTA Act to provide for the recording of demerit points for providing a taxi service without a licence if a person is convicted of the offence, pays a fine for the offence or an order is made against the person for a taxi offence under section 38 of the *State Penalties Enforcement Act 1999*.

The Department of Transport and Main Roads website explains that demerit points:

*apply from the date you commit an offence and are recorded once the fine has been paid or referred to the State Penalty Enforcement Registry for non-payment or the offence has been dealt with by a court.*<sup>167</sup>

The department explains the process for applying demerit points:

##### **Accumulation of demerit points – Queensland licence holders**

*If you commit a demerit point offence, you will generally be given an infringement notice for the offence. As soon as you pay the fine or have been dealt with by a court, the number of demerit points that are set for the offence are then recorded against your traffic history. These points are taken to have been allocated on the day the offence was committed. Demerit point offences committed anywhere in Australia may be recorded on your traffic history.*<sup>168</sup>

The website further provides a person issued with fine (traffic infringement notice) has 28 days to dispute the fine in court and this must be done by filling out the Election for Court section on the back of the infringement notice.<sup>169</sup>

*When your request is received, a date to appear in court-known as a complaint or summons-will be mailed to your last known address recorded with the department. The summons may take several months to be received.*<sup>170</sup>

#### **2.8.5 Committee comment**

The committee has noted the view of taxi industry stakeholders that the bill's proposed amendments will address their concerns that ridesharing operators have not been deterred by the current penalties. It is also very conscious of the industry's concern that something needs to be done urgently to address non-compliance.

The committee has also noted:

- the advice from the department that while demerit points may be part of the answer, the issue of transport inspectors working within the existing legislation and Uber using technology to avoid transport inspectors, would remain; and that the application of double demerit points for a person who commits a taxi offence within one year of committing a previous taxi offence, would be a significant shift in public policy and not be an appropriate use of the penalty of double demerit points

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<sup>167</sup> Department of Transport and Main Roads website: [Licence demerit points](#) (accessed 6 March 2016)

<sup>168</sup> Department of Transport and Main Roads, [Your keys to driving in Queensland: offences and penalties](#), p 7 (accessed 6 March 2016)

<sup>169</sup> Department of Transport and Main Roads website: [How to transfer or dispute a fine](#) (accessed 6 March 2016)

<sup>170</sup> Department of Transport and Main Roads website: [Dispute a fine in court](#) (accessed 6 March 2016)

- the submission from the RACQ that demerit points have been introduced for the sole purpose of penalising drivers who undertake dangerous acts on the road and that a road safety management tool such as demerit points should not be used by regulators as a commercial penalty.

The committee is of the view that the application of demerit points may not result in the immediate outcome sought by the taxi industry due to the fact that demerit points are not recorded on a person's traffic history until that person is convicted of the offence, pays a fine for the offence or an order is made against the person for a taxi offence under section 38 of the *State Penalties Enforcement Act 1999*. Given the reported tactics employed by ridesharing services to date in relation to Penalty Infringement Notices, it is highly unlikely that demerit points would be recorded on a driver's traffic history in the short term.

## 2.9 Stakeholder proposals for additional enhanced enforcement measures

While taxi industry stakeholders overwhelmingly support the amendments proposed in the bill many also suggested other measures to increase compliance. These measures included increased fines, introduction of criminal offences, vehicle impoundment, and investigation of non-regulated booking companies.<sup>171</sup> Some of these additional proposals are discussed below:

### 2.9.1 Proposal to amend the TORUM Act

The Taxi Council Queensland acknowledged that, given the issues with locating and charging drivers operating outside the regulatory system, demerit points on their own will not improve the situation and that other legislative amendments would be required to ensure compliance – “any piece of legislation will come down to compliance and an agency's ability to actually enforce the current legislation”.<sup>172</sup>

The Taxi Council has proposed an amendment to the bill to “assist in overcoming the inertia of the QPS with respect to enforcing the law against illegal taxi services” as the enforcement of offences against TOPTA is not specifically mentioned in the PP&R Act which is the act that specifically sets out the “responsibilities police officers have for investigating offences and enforcing the law”.<sup>173</sup>

The proposed amendment is to the definition of ‘transport Act’ in Schedule 4 of the TORUM Act so that it includes TOPTA. The Council believes this would make it explicit in the PP&R Act under section 60 which refers to ‘transport Act’ that QPS could take enforcement action against illegal taxis as defined under TOPTA.<sup>174</sup>

At the public hearing in Brisbane the Taxi Council Queensland explained the reasoning behind its proposed amendment to the TORUM Act:

*The reason is that it is one area where the Queensland Police Service, which we believe should be involved by now, have been able to successfully argue the case that there is no specific legislative pointer that requires them to carry out this work whereas the schedule does refer to the land transport acts, which deal with yellow lines and parking or indicating too close to an intersection and the road rules.*<sup>175</sup>

<sup>171</sup> See for example, Blue & White Taxi's, submission 62, p 7.

<sup>172</sup> See public hearing transcript, 2 December 2015, p 10.

<sup>173</sup> Taxi Council Queensland, submission 47, section 6.

<sup>174</sup> ‘Section 60 of the PPRA gives a police officer the power to stop a vehicle for a prescribed purpose. A prescribed purpose is defined in section 60(3) as enforcing a Transport Act or checking whether a vehicle complies with a Transport Act.’ Taxi Council Queensland, submission 47.

<sup>175</sup> Public hearing transcript, 2 December 2015, p 7.

In Mackay, the President of the Taxi Council added that the amendment would provide a solution to Uber locking the department out of its systems.

*That is why the police involvement is critical because the police can generate a false identity to get false credit cards that can be used then in compliance activities.*<sup>176</sup>

A number of industry witnesses supported the Taxi Council Queensland's proposed amendment to the TORUM.<sup>177</sup>

### **2.9.2 Other enforcement measures proposed in evidence**

While taxi industry stakeholders strongly support the introduction of demerit points, First Class Taxis Pty Ltd also provided evidence that the strategies which effectively shut down Uber in a number of countries (Germany, Belgium and the Netherlands) was to introduce massive fines and threaten them with criminal convictions. They advised the introduction of massive fines "... will probably have the same effect but our compliance then needs to be able to ensure that the driver is caught, they are prosecuted correctly through the courts and then the fine is paid".<sup>178</sup>

The Taxi Council Queensland provided evidence that in January 2016 the French government issued Uber with a A\$1.8 million fine for continually breaching the law and that they have been breached in a lot of European jurisdictions and they have been pushed out.<sup>179</sup>

Suggestions provided to the committee for additional enforcement measures included:

- tougher and higher levies for companies operating outside Queensland Government laws and regulations
- higher fines
- three offences to constitute a serial offender and the driver to lose their licence for a mandatory three months
- impounding of vehicles for repeat offenders
- deregistration of vehicles to remove them from the road
- introducing a criminal offence
- further offences to be added to the legislation pertaining to the usage of a vehicle
- public awareness campaigns
- ensure compliance of booking services to adhere to regulations by issuing a cease and desist order for non-compliance
- additional resources to be dedicated to enforcement activity
- Queensland police to run blitzes in Brisbane over a particular night
- consideration of whether Uber is breaching section 7 of the Criminal Code by deliberately enabling offences to be committed.<sup>180</sup>

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<sup>176</sup> Public hearing transcript, Mackay, 29 January 2016, p 11.

<sup>177</sup> Public hearing transcript, 2 December 2015, p 16.

<sup>178</sup> See public hearing transcripts, for example, 2 December 2015, p 3 and p 35.

<sup>179</sup> Taxi Council Queensland, public hearing transcript, Mackay, 29 January 2016, p 10.

<sup>180</sup> See for example, Blue & White Taxi's, submission 62, p 6, Mr Chris Lowe, public hearing transcript, Mackay, 29 January 2016, p. 7, Taxi Council Queensland, public hearing transcript, Mackay, 29 January 2016, p 11, Supreme Taxi Company, public hearing transcript, Townsville, 28 January 2016, p 7, Mr Michael Thatcher, public hearing transcript, Townsville, 28 January 2016, p 13, Mr Ted Meares, public hearing transcript, Cairns, 27 January 2016, p 4,

The committee also explored whether it would be appropriate for the government to make a complaint to Apple about the Uber app. The department provided the following response:

*The Queensland Government has not made a complaint to Apple, or any other app supporting platform provider, about the Uber app.*

*It is the position of the Department of Transport and Main Roads (DTMR) that the services provided by drivers facilitated through the Uber app are unlawful. However, this position has yet to be judicially determined in a Queensland court. Accordingly, Apple, or any other application platform provider, would not likely positively respond to a complaint where the legal position is only asserted by the complainant.*

*Nevertheless, DTMR has requested legal advice on the feasibility of this option.<sup>181</sup>*

### **2.9.3 Committee comment**

The committee notes the advice provided by the Department of Transport and Main Roads that ridesharing services that operate outside Queensland's taxi service regulations are operating illegally and that enforcement action has been attempted through a cease and desist order and the issuing of penalty infringement notices for providing a taxi service without a taxi licence and for driving without the appropriate driver authorisation.

The committee understands that a number of factors have limited the effectiveness of enforcement measures and notes that the department is currently investigating options, including possible amendments, within the existing legislative framework to ensure compliance can be carried out effectively.

The committee has been provided with substantial evidence that the lack of compliance by ridesharing services has resulted in an "uneven playing field" in the personal passenger transport industry has had a significant impact on taxi companies and drivers who have chosen to invest and participate in the taxi industry on the presumption that the State's laws will be upheld. While the Bill proposes one option for dealing with non-compliance by applying demerit points for offences, some stakeholders including the Taxi Council Queensland acknowledged that, given the issues with locating and charging drivers operating outside the regulatory system, demerit points on their own may not improve the situation.

Evidence provided to the committee indicates that other measures, such as substantially increasing fines and making non-compliance a criminal offence, have been effective in ensuring compliance in a number of other countries. The Taxi Council Queensland has also suggested that schedule 4 of the TORUM Act be amended to support Queensland Police Service enforcement of the legislation.

The committee has therefore made a recommendation that the Minister for Transport and Commonwealth Games undertake an urgent review of enforcement issues and report back to Parliament during the second reading debate on this bill (see [section 1.6](#) of this Report).

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Mrs Helen Murray, public hearing transcript, Gold Coast, 7 December 2015, p 10, GC Maxitaxi Pty Ltd, public hearing transcript, 7 December 2015, p11, Mr Gerald McGrade, public hearing transcript, Gold Coast, 7 December 2015, p 14.

<sup>181</sup> Department of Transport and Main Roads, Responses to Questions on Notice, 9 December 2015, p 2.

### 3 Compliance with the Legislative Standards Act 1992

#### 3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLP) 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 examined the application of FLPs to the Bill and considers that clause 3 raises a potential issue of fundamental legislative principle.

##### 3.1.1 Penalties

###### Clause 3

Currently, an illegal ride sharing operator can be penalised monetary amounts pursuant to the provisions of the TOPTA, the TOPT Regulation and the *Motor Accident Insurance Act 1994*. Clause 3 of this Bill seeks to impose a greater penalty on illegal ride sharing operators such as Uber through the use of demerit points.

Clause 3 proposes to amend TOPTA through the introduction of a new section 70A entitled “Recording of demerit points for providing a taxi service without a licence”. Clause 3(2)(a)-(d) provides that a chief executive may record on a person’s traffic history:

- the particulars of the offence
- the penalty imposed on the person
- three demerit points and
- the day the offence was committed.

Clause 3(3) also proposes that if a person commits a subsequent taxi offence within one year after committing a previous taxi offence they will be penalised a further six demerit points. Clause 3(4) provides that the demerit points recorded under subsection 3(2) are taken to be recorded on the day the offence was committed.

The proposed amendments would result in an Uber driver with a current balance of zero demerit points potentially losing their licence if charged with an offence three times.

The committee considered the issue of whether the proposed penalties are proportionate to the offence. The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states that “legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other”.<sup>182</sup>

At the committee’s Estimates Hearing on 19 August 2015, the Deputy Premier and then Minister for Transport, Minister for Infrastructure, Local Government and Planning and Minister for Trade, confirmed that several Uber drivers had been fined more than once:

*Of those Uber drivers fined, a high percentage have repeatedly received infringements. They are repeat offenders. TMR’s compliance activities up to 12 July 2015 have comprised issuing*

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<sup>182</sup> OQPC, Fundamental Legislative Principles: The OQPC Notebook, p 120.

*over 1,500 infringement notices to Uber drivers with a total value of more than \$1.7 million.<sup>183</sup>*

If the Bill is passed, and Uber drivers continue to provide illegal ride sharing services, then a significant number would lose their driver licences. Alternatively, using demerit points as a penalty may dissuade Uber drivers from continuing their illegal activity.

### **3.2 Explanatory notes**

Part 4 of the LSA 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 notes contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's proposed amendments.

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<sup>183</sup> Committee Estimates Hearing transcript, 19 Aug 2015, p 8.

## Appendices

### Appendix A – List of submitters

Sub #	Name
1	Name Withheld
2	George & Fotini Symons
3	Chris Balsom
4	Brisbane Maxi Taxis
5	Mario Bonanno
6	Nirmaljit Singh Cheema
7	Cairns Taxis Limited
8	Jagdeep Singh
9	Rino and Lisa Parrella
10	Helen Scott
11	Gurminder Sandhu
12	Gary L Walter
13	Greg Reinhardt
14	John Malcolm Scott
15	Haytham Younes
16	Andrew Russo
17	Davina Thomas
18	Richard Percival
19	Lynne Terry
20	Bernard Pentecost
21	Koch Taxi Management
22	Gilbert Layt
23	Avtar Singh
24	Jenne Walter
25	Greg McNally
26	Name Withheld
27	Michael Christ
28	Brenda Malcolm
29	Tyson Christ
30	Navneet Singh
31	Joe Scuderi

<b>Sub #</b>	<b>Name</b>
32	Jatinder Gill
33	Name withheld
34	Glen Sullivan
35	Jennifer Robinson
36	Brian Beitz
37	Noel Thompson
38	Prabjot Paul Singh Majhel
39	Suresh Narayanan
40	Brian & Patricia Kelly
41	Satwinder Thiara
42	Mohammad Arif
43	Confidential
44	Patrick Smyth
45	Don Pickering
46	Richard Percival
47	Taxi Council Queensland
48	Aftab Arif
49	Dominique Layt
50	Michael Hutcheon
51	Vinod Chandra
52	Deborah Kelly & Jen Chandler
53	Norman Long
54	Harry Rigopoulos
55	Sue Saxby
56	Confidential
57	Confidential
58	Name Withheld
59	R T Armstrong
60	Western Suburbs Taxi Depot
61	Michael Longland
62	Blue and White Taxi's
63	Rebecca Malaj
64	David Walker
65	Mark Tarnawski

<b>Sub #</b>	<b>Name</b>
66	Gurjit Singh Kalra
67	Nicholas Aird
68	Susan Layt
69	Veronica Grant
70	Darryl and Susan Bain
71	James Smart
72	Sarah Logan
73	David and Sally Wheeler
74	Neil Wilkinson
75	Nabil Bouhamdan
76	Joginder Kahlon
77	Kiki Loch-Wilkinson
78	John Cullen
79	Mark O'Rourke
80	Philip Twyman
81	Dylan Kay
82	Andrew Troedson
83	Dylan McCane
84	Danielle Horsington
85	Lynne Torrington
86	David Tree
87	Mohammed Kabir
88	Evelyn Douglas
89	Brij raj Prasad
90	Brian Smith
91	Ramanathan Karuppiah
92	Timothy Burns
93	Glenn Gaddes
94	Dave Notaras
95	Robert Mason
96	Julie Dubraya
97	Michael McInnes
98	Glen Paton
99	Barry Edwards

<b>Sub #</b>	<b>Name</b>
100	Peter Horsington
101	Gebreamlak Bahta
102	Ansar Ahamed
103	Hameetha Syed Ali
104	Steve Wilson
105	John Wong
106	Brian Lukin
107	Jason, John and Louise Steele
108	Lorenzo Di Felice
109	Kshish Rana
110	David Thomas
111	Confidential
112	Nicklas & Tina Lakidis
113	Confidential
114	Julian Layt
115	Toakase Layt
116	Michael Stevenson
117	Victorian Taxi Association
118	Confidential
119	Elaine Herold
120	Trevor Taylor
121	Robyn Galvin
122	Cairns Airport
123	Bereket Nwatu
124	Gerry Lucas
125	Stephen Jones
126	James Browne
127	Mick Fitzpatrick
128	Anna Halpin
129	Mark Rodriguez
130	Carol Smith
131	Paul Anderson
132	Confidential
133	Allan and Desley Taylor

<b>Sub #</b>	<b>Name</b>
134	Gary Burr
135	THJ and EM Griffiths
136	Patricia Dixon
137	Tom and Melanie Diluzio
138	James Flaherty
139	Clark Chappel
140	Lauren Webber
141	Beverley Simkus
142	Sripathy Kathiresan
143	Renukadevi Sripathy
144	Diloshan Sripathy
145	Jayanthi Varadarajan
146	David Dall'Alba
147	Yellow Cabs (Queensland) Pty Ltd
148	Fraser Hethorn
149	Lesley Hardy
150	Kevin Jackman
151	Wendy Jackman
152	John Schetrumpf
153	Andy Mahlouzarides
154	Marcia and Neville Broom
155	Sally Damerow
156	Vivian Tucker
157	Name Withheld
158	Name Withheld
159	J. C. Worthy
160	Errol Hansen
161	J Perricelli
162	Name Withheld
163	L. J. Stafford
164	Elizabeth Chopra
165	Russell and Patricia Caldwell
166	Glenis Winifred Martinez de Antonana
167	Brenda Malcolm

<b>Sub #</b>	<b>Name</b>
168	Jennifer and William Collie
169	Marie Holmes
170	Lawrence and Lorraine Daniels
171	John Rahilly
172	Uttam Kapil
173	John Bergmans
174	Max Viles
175	Elizabeth Burton
176	Lawrence & Roslyn Kearley
177	Mohinder Singh, Sukhninder Singh and Gurpal Sohal
178	Brian Alexius Kelly
179	Rachel Fisher
180	Brendan Casey
181	Rocky Cabs
182	Yellow Owners Association
183	Ruth O'Donovan
184	Nick Sotiriou
185	Graham McManus
186	Robert Di Felice
187	Pamela McElhinney
188	Nola Cole
189	George Kaluza
190	Wayne Brooker
191	Patricia Grove
192	Brian and Jane Stanley
193	Name Withheld
194	Des and Wendy Smith
195	Ghayoor Lateef
196	Colin Dockery
197	Mark Satterley
198	Peter Barry Henry & Lee Henry
199	Name Withheld
200	Confidential
201	Les Dench

<b>Sub #</b>	<b>Name</b>
202	Gerald McGrade
203	Kebreab Abraham
204	Ben Bailey
205	Peter McNickle
206	Garnet J Smith
207	John & E Black
208	Confidential
209	Taxi Fleet Managers Pty Ltd
210	Name Withheld
211	Hugh J. Coogan
212	Gordon and Chris Carter
213	Anita Morrison
214	John B Davidson
215	Robert Hopsick
216	Peter Kello
217	G. J. Carsley
218	Rob Morrison
219	Chris and Debbie Harmer
220	Laurence Harmer
221	Rajinder Mohan Kalia
222	Confidential
223	Trevor and Carole Nixon
224	John Lobwein
225	Confidential
226	Confidential
227	Confidential
228	Amandeep Sandhu
229	Confidential
230	William Parker
231	Janice Coco
232	Grant Dever
233	Stuart and Margaret
234	Confidential
235	John and Dorelle Taylor

<b>Sub #</b>	<b>Name</b>
236	Richard Purdy
237	Manjit Boparai
238	Peter Doran
239	Charles Vinci
240	Chris Wang
241	Phillip Simes
242	Michael and Tricia Healy
243	Genevienne Simes
244	Barbara Meli
245	Marina and Bill Redshaw
246	Nick Feltham
247	Tracey Jolley
248	Peter and Roslyn Wilson
249	Ertan Yasar
250	Ipswich Yellow Cabs
251	Delfino and Rosina Rossi
252	Confidential
253	Domenica Zannier
254	Anthony Hunter
255	Giuliano Di Napoli
256	Carole Casey
257	Praveen Shandil
258	Brendan Casey
259	Sam Greco
260	Kristie and Colin Cupid
261	Andrew and Elia Eadie
262	Sterling Taxi Management Pty Ltd
263	Shaun and Daniel Gribbin
264	Uber
265	Christopher Green
266	Edward Rhodes
267	Name Withheld
268	Confidential
269	Lucija Hooke

<b>Sub #</b>	<b>Name</b>
270	Stan McKercher
271	Michael Hopsick
272	Carmel Sandona
273	Alvin Wong
274	Mark Berry
275	Jean Lightbody
276	Cheryl Cochrane
277	Cliff York
278	Professional Taxis Gold Coast
279	Amit Tanwar
280	Parvati Tanwar
281	Satish Tanwar
282	Manju Tanwar
283	Linda Johnston
284	Sylvia Hoger
285	Grant Dwight
286	Confidential
287	Frank Intelisano
288	Les Gist
289	Marie, Ted, Rodney and Cherie Meares
290	David James
291	Andrea James
292	Catherine Murphy
293	Caroline Tsoukalas
294	Tina Summers
295	Gareth Hughes
296	Angela Barlow
297	Confidential
298	Stuart and Cheryl Porter
299	Fare Media
300	Tamara Golobocov
301	Name Withheld
302	Dorothy McCallum
303	Peter and Judy Bolton

<b>Sub #</b>	<b>Name</b>
304	Hem Raj Saini
305	Geoffrey and Robyn McKinnon
306	Cassandra Button
307	Allan and Sharyn Stirling
308	Jason Button
309	Timothy Galvin
310	Danny Intelisano
311	C Paterson
312	Caroline Przybysz
313	RACQ
314	Ron Proberts
315	Maurice Paul Connole
316	John Kallis
317	RB Lawyers
318	Tracy Di Felice
319	Alison Casey
320	Steve Koulouris
321	Celeste Parker
322	Stewart Casey
323	Andreas Korkou
324	Name Withheld
325	Terry Goodwin
326	Roxanne Carruth
327	Ernest Haworth
328	Confidential
329	Alan G. Robinson
330	Glenn Jones
331	Nirmal Singh
332	Derek Wu
333	KG Taxi Management
334	Alister Smith
335	Robert Keith Woodmass
336	Leona Collier
337	Confidential

<b>Sub #</b>	<b>Name</b>
338	Matthew Henshaw
339	Bruce and Gay Burnham
340	Robert Ash
341	Grant James
342	Joanne Hornby
343	Yisak Asfaha
344	Shane and Penney Taylor
345	Donald and Christine Barlow
346	Rodney Smith
347	Allen Morris
348	James R. Marshall
349	Confidential
350	Jeffery Finnigan
351	John Wennerbom
352	Confidential
353	Mavis McFadzen and Shane Coopers
354	Logan City Yellow Cabs
355	David and Vicki Shaw
356	Name Withheld
357	Sarah Bouhamdan
358	John North
359	Cheryl Prescott
360	Talitua Faraimo
361	Mervyn Hay
362	Scott Gist
363	Tracey Gist
364	Nicholas and Dorothy Vlandis
365	Kyung-Sik Kim
366	Confidential
367	John Mulcrone
368	Eden Abraham
369	Paramjit Singh
370	Beverley Oliver
371	John Wilson

<b>Sub #</b>	<b>Name</b>
372	Vivienne Collier-Vickers
373	Epa Sufia
374	A & V Isai
375	Irene Imsun Jo
376	Ross Opperman
377	Mose Faletui
378	John Smallsman
379	Agron Kello
380	Maurie Newell
381	Blair and Caroline Andrew
382	Stephen Lacaze
383	Confidential
384	Beverley Scuderi
385	Per Dinesen
386	Name Withheld
387	Victoria and Clyde Quinlan
388	Catherine Candotti and Rostta DeTina
389	Terry Roe
390	Confidential
391	Frank Higginson
392	Confidential
393	Michael Brosnan
394	Thor and Lorraine Ward
395	Larriecce Evans
396	June and George
397	Name Withheld
398	Hem Raj Saini
399	Renee Stirling Richards
400	Taxi Fleet Managers Pty Ltd
401	Mackay Taxi Holdings Ltd
402	Warren Smith
403	Keith Early
404	Trevor Patrick
405	Murray Elliott

Sub #	Name
406	Brett Doran
407	Name Withheld
408	Confidential
409	Confidential
410	Paula and Andonios Fragoudakis
411	PRM Taxis Pty Ltd <i>per</i> Marino Law
412	Name Withheld
413	Santo Massimino
414	Giordano and Nonie Scaini
415	Paul Masterson
416	Confidential
417	Gurtekbir Singh Randhawa
418	Eelke Frank and Ann Van Der Meer
419	Nick and Nancy Bragagnolo
420	Confidential
421	Confidential
422	Alan Austin
423	Phil McNamara
424	Sandra Gard
425	Confidential
426	Narelle Holley
427	Karen Brown
428	Cairns Taxis Ltd
429	Lindsay Brown
430	Robert Hayles
431	Melake Tesfamicale
432	Giovanni and Maria Leo
433	Capricorn Coast Taxi Service
434	Stefan Przybysz
435	Trevor Moore
436	Peter Coulson
437	John and Maureen Detsikas
438	Carolyn Miller
439	David Wennerbom

<b>Sub #</b>	<b>Name</b>
440	Pranav
441	Name Withheld
442	Steven Pickett
443	Darryl Briaes
444	Joy Dockray
445	Adrian McGinty
446	Russell Hahn
447	David Hughes
448	Kuldip Randhawa
449	Cassandra Hopsick
450	Name Withheld
451	Judy Harper
452	Gary Hahn
453	George Simeonidis
454	Black and White Cabs
455	Deepak Mankoo, Jagmeet Singh, Amandeep Singh, Vivek Saggar and Amanpreet Singh
456	Name Withheld
457	Binil Joseph
458	Prabhdeep Sandhu
459	Julie Macdonald
460	Harpreet Kaur
461	Name Withheld
462	Adrian Dalton
463	Wade Juppenlatz
464	Lubov Volkoff
465	Muhammad Aqeel
466	Mark Holmes
467	John Babao
468	Standard White Cabs Ltd
469	Jesseka Lingenberg
470	Max McBride
471	Derek Robinson
472	Alison Caldwell
473	Hervey Bay Taxi Service

<b>Sub #</b>	<b>Name</b>
474	Confidential
475	Parvinder Singh
476	Confidential
477	AT Auto Repairs
478	Robert John Jenkins
479	Kevin Connolly
480	First Class Taxis Pty Ltd
481	John McRoberts
482	Jacqueline Fay Butler
483	Ranjit Dhillon
484	Cabs 2000
485	Henry Randhawa
486	James Miller
487	Lynette Proberts
488	Mohammad Ramzan Nasir
489	Gold Coast Cabs
490	Paul Stavrou
491	Manuel Carracedo
492	Confidential
493	Birkk
494	Ravinder Kaur
495	Harjot Singh Heera
496	Manmohan Singh Dillon
497	Gympie Golden City Cabs Pty Ltd
498	Kulwinder Singh Sidhu
499	Matt Botha
500	Ann Page
501	Theo and Olga Economides
502	Jenifer McKercher
503	David Casey
504	Inga Moore
505	Joanne Wilson
506	Tesfamariam Brhane
507	Name Withheld

<b>Sub #</b>	<b>Name</b>
508	Nigel Nelson
509	Will Taylor
510	Elisa Fina
511	Allan Cox
512	Our Nightlife Queensland
513	Shahban Ali
514	Carlo Marinucci
515	Rose Marinucci
516	Frank Marinucci
517	Mohammed Shahid
518	Gurpreet Singh
519	Len, Patrick and Tim Martin
520	Azar Awabdy, Saaber Heidari and Karim Alhir
521	Confidential
522	Shane Holley
523	Mark Nadj
524	Mark Bennett
525	Samuel Snape
526	Constantin Iocobuta
527	Keith Herron
528	Gerhard Schulze
529	Brenda Conohan
530	Peter Conohan
531	Antony and Judith Hay
532	Esther Wu Leng
533	John and Thelma Nicolosi
534	Ratinderpal Singh
535	Joel Nicolosi
536	Shelley Lennon
537	Peter Byen
538	Ian Cooper
539	Nicolas Bazzica
540	Elizabeth Hasted
541	David Brotherton

<b>Sub #</b>	<b>Name</b>
542	Ray and Vicki Nicolosi
543	Progas Pty Ltd
544	Scott Hasted
545	D Mitchell
546	Confidential
547	Confidential
548	Confidential
549	Confidential
550	Confidential
551	Em Tran
552	Barbara Jean Basic
553	Col Lawrie
554	Confidential
555	Confidential
556	Confidential
557	Confidential
558	Ramazan Yildirim
559	Edwin and Elaine Zillman

**Appendix B – List of witnesses at the public hearings****14 October 2015, Brisbane**

<b>Witnesses</b>	
1	Mr Lee Baker, Acting Manager, Taxi and Limousine Services, TransLink, Department of Transport and Main Roads
2	Ms Noela Cerutti, Acting Director, Taxi and Limousine Regulations, Department of Transport and Main Roads
3	Mr Nigel Ellis, Acting Executive Director, Transport Access and Use, Department of Transport and Main Roads
4	Mr Scott Notley, Acting Director, Industry Accreditation and Authorisation, Department of Transport and Main Roads
5	Mr Robbie Katter MP, Member for Mount Isa
6	Ms Kirstin Payne, Assistant to Mr Katter
7	Mr Benjamin Wash, Chief Executive Officer, Taxi Council Queensland

**2 December 2015, Brisbane**

<b>Witnesses</b>	
1	Mr Shane Smith, Director, First Class Taxis Pty Ltd
2	Mr Benjamin Wash, Chief Executive Officer Taxi Council Queensland
3	Mr Bill Parker, General Manager, Yellow Cabs (Qld) Pty Ltd
4	Mr Paul Melville, Director, Black & White Cabs
5	Mr Greg Webb, Managing Director, Black & White Cabs
6	Mr Michael Roth, Executive Manager, Public Policy, RACQ
7	Mr Paul Turner, Executive General Manager, Advocacy, RACQ
8	Mr Brad Kitschke, Director Public Policy (Oceania), Uber
9	Mr Peter Milward, Acting Deputy Director-General, TransLink Division, Department of Transport and Main Roads
10	Mr John Wroblewski, Acting General Manager, Transport Regulation, Customer Services, Safety and Regulation Division, Department of Transport and Main Roads
11	Mr Rob Katter, Member for Mount Isa, Queensland Legislative Assembly

**7 December 2015, Gold Coast**

<b>Witnesses</b>	
1	Ms Gordana Blazevic, Chief Executive Officer, Gold Coast Cabs
2	Mr Sacha Moore, Business Manager, Professional Taxis Gold Coast
3	Mr Peter Smith, Director, Professional Taxis Gold Coast
4	Ms Zara Trengrove, Business Manager, Professional Taxis Gold Coast
5	Ms Helen Murray, Private Capacity
6	Mr Glenn Jones, Director, GC Maxitaxi Pty Ltd
7	Mr Trevor Wilson, Chief Executive Officer, Limousines in Paradise
8	Mr Gerald McGrade, Private Capacity
9	Ms Alison Casey, Private Capacity
10	Mr Arthur Wood, Owner/Manager, Taxi Fleet Managers Pty Ltd
11	Mr Bernard Pentecost, Private Capacity
12	Ms Kristina McKinnon, Private Capacity
13	Mr Michael Dwyer, Private Capacity
14	Mr John Scott, Private Capacity
15	Ms Leonie Smith, Director, First Class Taxis Pty Ltd

**27 January 2016, Cairns**

<b>Witnesses</b>	
1	Mr Layne Gardiner, Chairman of Directors, Cairns Taxis Ltd
2	Mr Robert Roberts, General Manager, Cairns Taxis Ltd
3	Mr Robert Hayles, Taxi owner and Fleet Service Manager, Cairns Taxis
4	Mr Gordon (Ted) Meares, Taxi licence owner
5	Mr Rodney Meares, Taxi licence owner
6	Mr Jason Steele, Taxi licence owner
7	Ms Alison Casey, Private Capacity

8	Ms Carole Casey, Private Capacity
9	Mr Graeme Lawler, Taxi driver
10	Ms Bronwyn Thomas, Independent Candidate for Division 9, Cairns Regional Council

**28 January 2016, Townsville**

<b>Witnesses</b>	
1	Ms Angela Rheeders, General Manager, Standard White Cabs Limited trading as Townsville Taxis
2	Mr Les Gist, Chief Executive Officer, Supreme Taxi Company
3	Mr Alister Smith, President, Queensland United Hire Drivers Association and Vice President, Australian Taxi Federation Inc.
4	Mr Danny Hayes, Private Capacity
5	Mr Michael Thatcher, Private Capacity
6	Ms Kim Sistero, Private Capacity
7	Mrs Colleen Babao, Private Capacity
8	Mr Bob Katter, Member for Kennedy, Commonwealth Parliament
9	Mr Daniel Angus, Ex-Serviceman, Royal Australian Regiment Association of Australia

**29 January 2016, Mackay**

<b>Witnesses</b>	
1	Mr Barrie Lee, Director and Company Secretary, Mackay Taxi Holdings
2	Ms Angela Lock, Acting Manager, Mackay Taxi Holdings
3	Mr Alan Robinson, Private Capacity
4	Mr Chris Lowe, Partner, CJ and AJ Lowe
5	Mr Max McBride, President, Taxi Council Queensland

**Statement of Reservation**



Serving Dalrymple

## SHANE KNUTH MP

14 March 2016

### **RE Statement of Reservation on Report No 21. Transport Legislation (Taxi Services) Amendment 2015**

I write to lodge a Statement of Reservation to the Infrastructure, Planning and Natural Resources Committee (IPNRC) on Report no: 21 *Transport Legislation (Taxi Services Amendment Bill 2015)*.

I reject outright the first recommendation adopted by a majority of the committee to not support *Transport Legislation (Taxi Services) amendment Bill*.

I reject the committee's second recommendation to delay any further action on illegal taxi operators by referring the matter to the Minister.

Despite the attempts of the committee to project urgency, encouraging further investigation would simply be counterproductive, as illegal activities would be allowed to continue with little or no consequence. As it has been made abundantly clear by the extensive evidence provided to the committee during this investigation, any further delay on action will ultimately lead to the destruction of the livelihoods of thousands of individuals, small businesses and families across Queensland.

It is simply not good enough for the people of Queensland to have the bill rejected due to the inability of the Department of Transport and Main Roads to enforce current legislation.

Over the past six months the committee has had the opportunity to review multitudes of evidence and legal advice which deem 'ride share' services that operate outside of the legal framework as illegal.

It has been made clear to the committee numerous times that only a person holding a taxi licence may provide taxi service as deemed under the act.

Taxi service as defined in Section 70 of TOPTA as a vehicle which is:

- (a) *Is able, when not hired, to be hailed for hire by members of the public; or*
- (b) *Provides a demand responsive service under which members of the public are able to hire the vehicle through electronic communication; or*
- (c) *Plies or stands for hire on a road*

At the beginning of the committee's investigation, during the Public Briefing October 14 2015, Ms Noela Cerutti, Acting Director, Taxi and Limousine Regulations, Department of Transport and Main Roads confirmed that the department viewed unlicensed taxi service providers as illegal.

## Demerit Points

It is clear based upon the reported experience of authorities in Queensland, the multiple fines totalling \$1.7 million and the cease and desist orders have been insufficient to deter illegal activity in this area. However as noted by the committee in the report (2.8.1) the majority of stakeholders believed the introduction of demerit points would strengthen and uphold current regulations.

The single stakeholder opposed to the introduction of demerit points remained opposed, because they believed demerit points should be in place for safety purposes.

There are extensive regulation and safety provisions that have been implemented to the taxi industry to ensure they work within the safe operating limits identified within the act. These include government regulated GPS technology, fatigue management and driver protections as detailed in evidence heard by the committee. To suggest that operating a taxi service without a taxi licence is not a safety concern is farcical.

Demerit points are currently used within the scope of vehicle registration offences outside of safety – these include:

- *Learner licence holder failing to display L plates clearly legible at front and rear of vehicle. Driver Licensing Reg – section 58 (b): 2 Demerit points*
- *Driving a vehicle in a way that makes unnecessary noise and smoke. Queensland Road Rules – Section 291 (1) (a): 2 Demerit Points*
- *Drive, park or permit use of vehicle that is defective but **not unsafe**. Vehicle standards and Safety Reg- Section 5(1)9b) 1*

**The addition of demerit points as detailed within this bill is an essential and workable measure to deter illegal taxi operators.**

## Enforcement

The committee has also noted that the department had significant trouble enforcing the regulations in their current form. The responsibility of the government to assist the department of Transport and Main Roads to uphold and enforce the law has not adequately been scrutinised as part of this debate. This issue needs to be addressed immediately rather than facing more bureaucratic delays as specified under Recommendation 2. The extensive data and evidence presented to the Committee since the bill was tabled in October last year simply does not justify the case for further investigation. I am not convinced that the department or the government are truly limited in their ability to address this issue swiftly within the timeline specified for the bill.

The KAP would support amendments to the Transport Legislation (Taxi Services Amendment Bill 2015), but will not accept further delays.

While the committee reports state the QPS do have the power to uphold current regulations under TOPTA, it also states they are not specifically responsible for enforcing these regulations. As such we have been unable to use police officers to enforce the laws that are currently in place.

To repair this apparent issue within the legislative framework as detailed on page 19 of the report the Minister might consider making enforcement of offences against TOPTA, a direct police responsibility under the Police Powers and Responsibilities Act 2000 (“PPRA”).

The current civil disobedience in this matter has gone on for far too long and is harming too many people. The fact remains; the addition of demerit points as a penalty have the ability to prevent models operating outside of the current legislation. To wait until the Independent Personalised Transport Services Review established in October 2015 is complete will see the Taxi Industry deplete, while delivering an advantage to an illegal operator.

Without further measures to address this clear issue for the community I am compelled to reject the recommendations put forward by the IPNRC for this bill.

This forms the basis as to why I tender this statement of reservation.

Yours sincerely



**Shane Knuth MP**  
**Member for Dalrymple**

