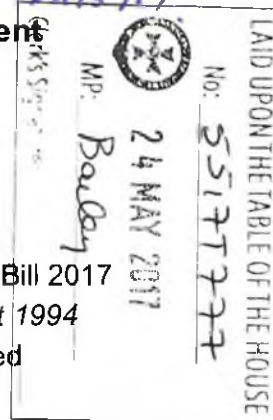


Queensland Government Response to
Public Works and Utilities Committee, Report No. 37, 55th Parliament

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



Introduction

The Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 (Bill) proposes amendments to the *Transport Operations (Passenger Transport) Act 1994* (TOPTA) and other Acts to give effect to the Queensland Government's personalised transport reform program.

The Bill was introduced into the Legislative Assembly on 21 March 2017 and referred to the Public Works and Utilities Committee (the committee). The committee resolved to extend its inquiry to include consideration of the draft Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation 2017 that was tabled in the Legislative Assembly on 9 March 2017. This draft regulation was prepared in accordance with section 155B of TOPTA which required a draft regulation to be tabled in the Legislative Assembly to respond to recommendations of the former Transportation and Utilities Committee in relation to booked hire service licences, compulsory third party (CTP) insurance, security cameras, and training for drivers providing wheelchair accessible services. Drafting of other regulation amendments to implement the reforms is being finalised, and relevant regulation amendments will be progressed following passage of the Bill.

The committee tabled its report on the Bill on Monday 15 May 2017.

The Queensland Government response to the committee's recommendations are provided below.

Recommendation 1

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

Government Response: Noted

The Government thanks the committee for its consideration of the Bill and notes the committee's recommendation that the Bill be passed.

Recommendation 2

The committee recommends the Minister:

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

Government Response: Support

The Government supports this recommendation and the Minister will explore opportunities to reduce the regulatory burden imposed on the industry, whilst ensuring personalised transport services remain safe and parties are held accountable for the services provided.

The Government is also committed to providing customers with simpler, easier options to engage with Government including the ability to undertake online transactions for a variety of products. With respect to the personalised transport reforms, the Department of Transport and Main Roads (the department) is currently considering online solutions for driver authorisation, booked hire service licensing and booking entity authorisation in order to streamline customers' experiences and reduce costs.

Recommendation 3

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

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

Government Response: Support

The Government supports this recommendation and proposes to retain Special Purpose Limousine Licences (SPLs) along with other limousine licences. Existing SPLs will effectively be grandfathered allowing these licence holders to continue to provide the same services that they currently provide.

The Government notes that the Bill already provides that SPLs will continue to be afforded the same rights as other licensed limousines with respect to access to special purpose lanes and an exemption under the *Liquor Act 1992* permitting them to serve alcohol.

Recommendation 4

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

Government Response: Support

The Government supports this recommendation and proposes to amend the Bill during consideration in detail to clarify the intent of new section 72(4)(a) to explain that bookings can be made 'in person' for vehicles other than taxis, but essentially only in limited circumstances where these bookings are made in advance.

Clause 18, new section 72(4)(a) of the Bill simply clarifies that a booking may be made in person. It does not have the effect of permitting any conduct. Clause 18, new section 74 of the Bill would effectively prevent any vehicle, except a taxi, from providing a service where the hire of a motor vehicle and its driver were arranged in person for a journey to start immediately or shortly after the vehicle and its driver are hired (for example, a street hail).

Banning in person bookings for booked hire services in any motor vehicle, other than a taxi, would stop people from booking services in advance in person. For example, a person attending a business premise to book a limousine for a wedding would have to leave the premises to make the booking over the phone or internet.

Given the concerns raised by the committee about the potential confusion this provision may create, an example of an in person booking will be included in the Bill.

Recommendation 5

The committee recommends:

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

Government Response: Support in Principle

The Government supports the introduction of a requirement for booking entities to notify the department when a driver is alleged to have engaged in serious misconduct, specifically related to public safety. This requirement will be imposed by subordinate legislation, rather than requiring an amendment to the Bill.

Amendments to subordinate legislation to complement and strengthen existing powers are considered sufficient to address the committee's central concerns, but prevent privacy and natural justice issues from arising (for example, involving vexatious or unsubstantiated claims about drivers).

In response to reports about driver behaviour, the department already has the ability to take appropriate action against a holder of Driver Authorisation (DA) where a driver is charged or convicted of certain offences (driver disqualifying offences) or if it is in the public interest. Establishing whether it is in the public interest to take action against a person's DA would require supporting material that could be investigated and assessed to ensure the person is afforded natural justice. Any action against a person's DA would only be initiated if there was substantial grounds to consider there was a threat to public safety with the paramount consideration being the protection of children and other vulnerable members of the community.

Persons affected by a decision to suspend or cancel a DA can seek a departmental review of the decision and also a review by the Queensland Civil and Administrative Tribunal (QCAT).

Where action is taken against a DA holder the department records this information through the Passenger Transport Driver Authorisation System (PTDAS) which is a free online service that enables booking entities, operators and others to check the currency of a person's DA. Any DA that is suspended or cancelled will be reported as not current and that driver will not be able to be used to provide services.

Recommendation 6

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

- all personalised transport industry payment transactions are facilitated through an authorised booking entity

- all transactions undertaken by a holder of booking entity authorisation or under the booked hire service licence must be accompanied by a tax invoice or itemised receipt, and
- each transaction is recorded for auditing purposes.

Government Response: Support

The Government supports the intent of this recommendation, noting that the current Bill as drafted and existing legislative framework sufficiently address these matters.

Detailed record-keeping requirements for audit purposes are contained in Commonwealth taxation legislation with substantial penalties for non-compliance. The Bill also includes specific record-keeping requirements for personalised transport services, including an obligation to keep and produce for inspection booking records for all booked hire services (see clause 18, proposed new sections 79-82 of the Bill). In addition, itemised receipts must be provided for all personalised transport services on request by the hirer (see section 137 of the *Transport Operations (Passenger Transport) Regulation 2005*). The Bill also provides for the department to undertake compliance audits on all parties in the chain of responsibility which will allow for inspection of all relevant transaction records and appropriate action to be taken if records are not being kept as required.

Recommendation 7

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

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

Government Response: Support

The Government supports this recommendation and is currently developing a fatigue management framework for personalised transport, with detailed fatigue management requirements to be set out in subsequent subordinate legislation.

The fatigue management framework will include standard hours for drivers in the personalised transport industry. It is proposed that a maximum of 14 hours will be able to be worked by a driver in a 24 hour period. Further detail about the standard hours framework to apply to the personalised transport industry will be developed in consultation with industry participants.

Monitoring and compliance will be delivered through a number of mechanisms, including data capture, auditing and on-road compliance and will be supported by increased compliance resources and powers.

Recommendation 8

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

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

Government Response: Support

The Government supports this recommendation and data and reporting requirements, particularly as they relate to fatigue, will be set out in subsequent subordinate legislation. The department is investigating a range of solutions including the potential for real time fatigue management systems, which better accommodate fatigue management where drivers are working for multiple platforms. Further consultation will occur with the personalised transport industry in finalising the fatigue management framework to ensure workable solutions can be implemented as soon as possible.

Recommendation 9

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

Government Response: Support

The Government supports this recommendation, and the Motor Accident Insurance Commission (MAIC), the agency responsible for regulating Compulsory Third Party (CTP) insurance, will review the new vehicle class – Class 26 Booked Hire (cars and station wagons) and Limousines (cars and station wagons) – 18 months after the commencement of the draft amendment regulation to assess the impact on limousine premiums. This review will be in addition to MAIC's annual review of each vehicle class, relative to Class 1.

Recommendation 10

The committee recommends the bill be amended to require:

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

Government Response: Not Support

The Government encourages all parties in the chain of responsibility to obtain and hold appropriate insurances. The department has, and will continue to, advise all industry participants of the importance of holding appropriate insurances to manage the risk to their business. These insurances include, but are not limited to, public liability insurance, personal injury and accident insurance, and comprehensive vehicle insurance.

The Government believes that insurance matters should continue to be industry led and reflect the individual circumstances of each business, rather than be mandated by Government.

Recommendation 11

The committee recommends:

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

Government Response: Support

The Government supports this recommendation and will actively monitor and review driver and passenger safety in the personalised transport industry following the commencement of the Bill. In addition, the Government commits to undertaking a review of driver and passenger safety 18 months following commencement of the new security camera requirements, to determine whether the risk-based approach to security cameras has been effective and meets the needs of the community as well as industry and law enforcement stakeholders.

Recommendation 12

The committee recommends the Minister:

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

Government Response: Support

The Government supports this recommendation and will work with the personalised transport industry and other stakeholders to develop industry standards for driver conditions in the personalised transport industry.

The Government commits to undertaking a review of driver conditions in the personalised transport industry 18 months after the removal of the legislative requirements for bailment agreements. This review will be undertaken in consultation with industry and other relevant stakeholders, such as the Commonwealth Government.

Recommendation 13

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

Government Response: Support

The Government supports this recommendation and proposes to amend the Bill during consideration in detail to impose a longer subsequent driver licence suspension period following an initial licence suspension under new section 91ZJ. If a further three offences are committed within a subsequent three year period, a three-month licence suspension period would apply.

As a person's Driver Authorisation (DA) is suspended when a person's driver licence is suspended, it is not necessary to take any separate action against a person's DA.

Recommendation 14

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

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

Government Response: Support

The Government supports this recommendation and proposes to amend the Bill during consideration in detail to amend new sections 91ZI to 91ZK. Specifically, it is proposed to make amendments to clarify that if a person does not hold a driver licence at the time the person has, within a three-year period, committed *three or more relevant driver offences*, the person is automatically disqualified from holding or obtaining a driver licence for the same period.

It should be noted that Section 37 of the *Transport Operations (Passenger Transport) Regulation 2005* already provides for the suspension or cancellation of a person's Driver Authorisation (DA) if the person's driver licence is suspended or cancelled. Section 37 also provides that if the person is *disqualified from holding or obtaining a driver licence* for a period, the person is disqualified from holding or obtaining a DA during the period. Therefore the Government does not propose to make any amendments to the Bill in this respect.

Recommendation 15

The committee recommends the Minister:

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

Government Response: Support

The Government supports this recommendation. Recruitment and training of additional compliance resources is a priority, and the department is preparing to commence recruitment before the end of the financial year. Compliance activities in the personalised transport industry continue to be undertaken using existing resources until these additional resources are available.

While the Government supports the regular publication of compliance data, it is not considered necessary to impose any legislative requirement to release such data.

The Government further supports maximising the number of departmental staff that are dedicated to on-road compliance. Departmental staff currently perform vehicle inspections for all public passenger vehicles, including taxis and limousines, which require a Certificate of Inspection (COI). Subsequent subordinate legislation will require booked hire vehicles to obtain a COI to ensure safety standards are applied consistently across the industry.

Due to the expected increase in the number of vehicles requiring COIs, all light passenger transport vehicles (such as booked hire vehicles, taxis and limousines) will be able to be inspected by the department or by an Approved Inspection Station (AIS). An AIS is a third party service provider accredited by the department to perform an inspection checking compliance with the safety standards in the approved Code of Practice – Vehicle Inspection Guidelines.

Where an increase in the capacity of departmental staff is realised due to a decrease in the number of vehicle inspections performed by the department, that capacity would be redirected to higher priority on-road activities and auditing functions that will improve road safety.

Recommendation 16

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

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

Government Response: Support

The Government supports this recommendation and is committed to establishing an ombudsman, or equivalent entity, to provide complaint monitoring, advisory and referral services to parties in the personalised transport industry, including customers and industry participants such as booking entities, licence holders, operators and drivers.

The establishment of this role and associated functions is a significant undertaking which requires comprehensive amendments to primary legislation. Due to the timeframes requiring that provisions of this Bill commence prior to 9 June, it has not been possible to include amendments in the Bill. However, the Government appreciates the importance of such an entity to certain parties in the industry and commits to introducing another Bill by the end of this year.