



Transport
for NSW

Regulatory Impact Statement

Point to Point Transport (Taxis and Hire Vehicles) Regulation
2017



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Date:	April 2017
Version:	1
Division:	Freight Strategy and Planning, Transport Policy

1 Executive Summary

In November 2015 the Point to Point Transport Taskforce presented its report to the Minister for Transport and Infrastructure making recommendations to reform the point to point transport industry. Traditionally point to point transport consisted of taxis and private hire cars but with the arrival of real time ridesharing platforms in Australia, the NSW government decided it needed to consider the impact of technological change on the market. Issues for consideration by the Taskforce included, among other things, the safety and security of customers and drivers, the sustainability of commercial passenger transport, the effective and efficient administration and enforcement of the passenger transport industry and minimising the regulatory burden. The taskforce was also tasked with examining the issue of industry assistance.

The Government accepted 56 of the Taskforce's 57 recommendations. Legislation was prepared to implement the reforms and the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* was passed by Parliament in July 2016. Regulation for point to point transport vehicles (taxis and hire vehicles including ridesharing services) applies to vehicles with 12 seats or less (including the driver); and was separated from public transport regulation generally which remains governed by the *Passenger Transport Act 1990*. The Point to Point Transport Act provides a regulatory regime that gives industry greater flexibility in meeting customer demand while ensuring safety standards are maintained. A Point to Point Transport Commissioner is established as the industry's regulator responsible for authorisation of the two industry entities: taxi service providers and booking service providers.

The Act maintains rank and hail services as the preserve of taxis required to charge no more than the Government regulated maximum fares. On the other hand, the legislation frees up booking service providers to take bookings and provide passenger services throughout the State with deregulated fares. Consumers are to be protected with stricter rules concerning fare estimates for booked services.

The Act also provides adjustment assistance for the existing taxi and hire car industries affected by the regulatory changes, overseen by a Taxi and Hire Vehicles Industries Assistance Panel. The adjustment assistance package is to be funded by a \$1 levy per trip placed on all point to point transport providers for up to five years.

The Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017 (the proposed Regulation) will also be made under the Act. Regulations are required to provide necessary administrative and procedural detail. The proposed Regulation will help to ensure that the objectives of the Act relating to industry reforms will be achieved in an efficient and effective manner. The proposed Regulation makes provision for:

- Safety standards relating to drivers, vehicles, insurance and other matters to be made the responsibility of industry entities such as passenger service providers, booking service providers, taxi licence holders and vehicle owners
- Safety management systems for providers of passenger services (including taxi services) and booking services
- Authorisation of providers of passenger services (including taxi services) and booking services
- Taxi licences
- Fares
- Obligations relating to passenger and booking services

- Passenger service levy

The proposed Regulation is a draft. It has been released with this Regulatory Impact Statement (RIS) so that interested parties can review it and provide comments and suggestions. The RIS sets out the objectives and rationale of the proposed Regulation. It considers two options for achieving those objectives as well as an assessment of the costs and benefits of each option. The making of the Regulation is the best option available to achieve the objectives of the Act.

Submissions are invited on any of the matters raised in the RIS or anything else contained in the proposed Regulation. All submissions will be considered and may result in amendments to the proposed Regulation.

The proposed Regulation will be finalised and published on the NSW Legislation website to enable it to commence later in 2017.

2 Public consultation on the proposed Regulation

A public notice of the proposed Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017 (proposed Regulation) and this RIS will appear in the *Sydney Morning Herald* and the *Daily Telegraph* during the public consultation process.

The proposed Regulation and RIS are available for download at the [Transport for NSW website](#) and the [NSW Government 'Have Your Say' website](#). Fact sheets are also available detailing the impact of the proposed Regulation on industry participants such as drivers, passenger service providers and other parties.

Key stakeholders listed at Appendix 5 have been notified that the proposed Regulation and RIS are available for public consultation.

2.1 How to make a submission

Interested parties including stakeholder groups, other interested organisations and the wider community are invited to submit written comments on the proposed Regulation to Transport for NSW. Comments and suggestions may be provided on individual matters or on the proposed Regulation as a whole. If commenting on a specific matter, please reference the relevant clause number of the proposed Regulation.

By post: Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017
Point to Point Implementation
Freight, Strategy and Planning
Transport for NSW
PO Box K659
Haymarket NSW 1240

By email: pointtopoint@transport.nsw.gov.au

The closing date for submissions is Tuesday 9 May 2017.

2.2 What will happen with the submissions

Transport for NSW will review the submissions received and the proposed Regulation may be amended as needed. Copies of submissions will be provided to the Legislation Review Committee of the NSW Parliament along with the final version of the Regulation. All submissions received will be published. If you wish all or part of your submission to be treated as confidential, please clearly state this in your submission.

3 Background

In July 2015, the Minister for Transport and Infrastructure, the Hon. Andrew Constance, commissioned Professor Gary Sturgess AM, aided by Dr Tom Parry AM, to undertake an examination of the future sustainability of taxis, hire cars and other emerging point to point transport providers with a view to making recommendations about the complex issues facing the industry.¹

The terms of reference of the taskforce also represented the Government's thinking on the whole area of regulation more broadly: its impact on industry and consumers. It foreshadowed the announcement of the Independent Review of the NSW Regulatory Policy Framework in November 2016 (the Review).² The Review acknowledges that 'Technological change, ease of information access and new areas of competition are disrupting the way businesses and consumers operate. This is in turn creating a new paradigm for regulation and competition'. Governments must ensure regulatory policies are fit for purpose. The Review discusses the significance of moving from a rules based or prescriptive model of regulation to an outcomes and risk based model in which the regulated parties don't just ensure they comply with the 'rules' but focus on the most efficient way of achieving the required outcome.

The Point to Point Transport Taskforce released a discussion paper in August 2015 and subsequently held around 140 meetings with different stakeholders and received over 5,600 submissions from industry, emerging players, community transport providers, business groups, government agencies, representatives of people with disability, and members of the public. Responses were varied but many carried similar messages of a need for greater flexibility in regulation and service delivery. The Independent Pricing and Regulatory Tribunal (IPART) suggested that '...there should be fewer distinctions between modes of point to point transport, allowing for competition that can achieve better outcomes for passengers than regulation in many cases'.³

The Taskforce presented its findings in November 2015. The Taskforce was of the view that:

should the NSW Government adopt our recommendations, there will be a diverse range of both booked and rank and hail services available, and industry participants will strive much harder to provide a quality customer service as a means of attracting new customers and ensuring repeat business.⁴

At the top of its reform agenda was the need for a 'new regulatory framework' which should be 'outcome-focused, promote cost-efficient and innovative service delivery, and a diverse range of services and service delivery models' (Taskforce recommendation #1).⁵ Importantly, 'The regulatory framework should be risk based and establish clear accountabilities for safety outcomes'.

The New South Wales Government responded positively to the taskforce's vision to improve and modernise the point to point transport industry and supported 56 of the 57 recommendations. The Government endorsed the aim of freeing the incumbent industry of unnecessary red tape to allow for greater innovation and to improve customer choice, as well as to create more opportunities for industry and to boost the

¹ Point to point transport includes taxis, hire cars, tourist services, ridesharing platforms and community transport.

² Independent Review of the NSW Regulatory Policy Framework, Issues Paper http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0007/185677/Independent_Review_of_the_NSW_Regulatory_Policy_Framework_-_Issues_Paper_-_November_2016.pdf

³ Point to Point Taskforce: *Report to the Minister for Transport and Infrastructure*, November 2015, p.25. <http://www.transport.nsw.gov.au/sites/default/files/b2b/publications/point-to-point-transport-taskforce-report-to-minister.pdf>.

⁴ Taskforce Report, p.19.

⁵ Taskforce Report, p.7.

State economy. In addition, new business models (such as real time ridesharing platforms) were legalised and partly regulated when the first major reforms to the industry were introduced on 18 December 2015. Other initial reforms included the removal of 50 prescriptive taxi and hire car regulations.

A more substantial package of reforms was taken to NSW Parliament in June 2016. The Point to Point Transport (Taxis and Hire Vehicles) Bill 2016 (the Bill) created a new legislative framework by removing point to point transport from the *Passenger Transport Act 1990* (which retained regulation of passenger transport provided by buses and ferries). The Bill proposed two authorised entities: providers of taxi services and providers of booking services. Booking services may be provided anywhere in the State, whether in a taxi or a hire vehicle. Only taxis, however, can undertake rank and hail work. Severe penalties were proposed for providing a taxi service without an appropriate licence. The Bill created a risk-based regulatory scheme with clear accountabilities based on work health and safety legislation. Taxi companies and booking services, including rideshare companies, would have an obligation to ensure that the services provided under their brand are safe. They would have general safety duties, there would be clearly defined safety standards and there is a graduated penalty regime in place for noncompliance. The Bill also proposed the establishment of a dedicated regulator - the Point to Point Transport Commissioner - with significant and wide ranging powers.

To assist the existing taxi and hire car industry to adapt to changed circumstances, the Government approved an industry adjustment package with the funds to be accounted for by way of a temporary passenger service levy. The \$250 million package includes \$98 million for transitional assistance for eligible taxi licence holders; \$142 million in additional assistance for eligible taxi licence holders facing difficulty as a result of the changes and up to \$10 million for an additional assistance scheme for eligible hire car licence holders.

The *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* was passed by the NSW Parliament on 22 June 2016.⁶ In July 2016 the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 commenced. This rolled out the first stage of the industry adjustment assistance package: the regulation created the Taxi and Hire Vehicles Industries Assistance Panel tasked with providing advice and recommendations regarding eligibility for the funds.

Applications for transitional assistance payments closed on 13 January 2017. Taxi licence holders who held a licence before 1 July 2015 - and continued to hold that licence until receipt of payment - were eligible for \$20,000 payments per ordinary transferable licence, for up to two licences.

On 12 October 2016, the first Point to Point Transport Commissioner was appointed. The Commissioner will spend the coming months working with industry to ensure awareness of new responsibilities before the new regime begins later in 2017. Until that time, however, RMS will remain the regulator for taxis and hire vehicles.

⁶ <http://www.legislation.nsw.gov.au/#/view/act/2016/34/full>

4 Assessment of options to achieve objectives

This part of the RIS deals with options for providing the necessary support required to achieve the objectives of the Act. Two options are considered and the costs and benefits of each option are assessed. After careful appraisal, it is considered that the making of the proposed Regulation (Option 2) is the best option for providing the administrative and operational underpinnings to achieve the objectives of the Act.

4.1 Option 1 - Make no regulation under the Act

Option 1 would be to make no regulation under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

Regulations are legislative instruments: they provide matters of detail made by a person or body authorised to do so by the relevant enabling legislation. In this case, section 158 of the Act provides that the Governor may make regulations 'not inconsistent with this Act...on any matter...that is necessary...for carrying out or giving effect to this Act'. Because they provide matters of detail, they 'flesh out' the intention of the legislation.

If no regulation was made under the Act, the program of regulatory reform approved by the Parliament for the point to point transport industry could not be realised.

Costs

The costs of a semi-regulated industry would be considerable: the inability to determine vehicle or driver standards alone could impact upon road safety. The ability to properly regulate new ridesharing organisations would be restricted and this could allow them to have market advantages without compliance costs. There would be few consumer safeguards especially in relation to fare estimates, the operation of unauthorised services and passenger service provider accountability.

Benefits

There are few benefits from this option.

Conclusion

It is considered that without regulation, the objectives of the Act would not be realised. Option 1 is not considered viable.

4.2 Option 2 – Make the proposed Regulation

Costs

There are implementation costs in the establishment of the new Regulator (the Commissioner) and mechanisms for enforcement. Industry will face authorisation fees and costs in the establishment of safety management systems and other arrangements to ensure compliance with the legislation. The passenger service levy will commence with the proposed Regulation but will remain in place only until the cost of the industry assistance package is recovered (a maximum of 5 years).

Benefits

The proposed Regulation gives effect to the intent of the Government's point to point transport reforms, including the decision to maintain traditional rank and hail taxi service models but free up booked services by deregulating fares and removing area restrictions.

Specific safety obligations for taxi service providers and booking service providers, including rideshare booking companies, will be prescribed. Drivers and vehicle owners will still have safety obligations – but for the first time, the companies at the top of the tree will be held accountable.

The proposed Regulation gives effect to the Act by detailing the requirements for authorisation for providers of taxi services and providers of booking services, such as specifying disqualifying offences that exclude certain persons from being a nominated director or manager. The proposed Regulation also provides the mechanism for collection of the passenger service levy which is the equivalent of \$1 per trip on all point to point transport journeys in order to fund the industry adjustment assistance package.

Benefits in the form of reduced costs have already accrued to the taxi industry in the repeal of prescriptive regulations such as a maximum age for vehicles. Other detailed requirements are proposed for removal: overly prescriptive specifications for vehicle security equipment for example. These benefits will be realised with the rolling out of the new regulatory regime which is outcomes based and will allow providers of taxi services to determine the most cost effective way to meet safety standards.

The legalisation of real time ridesharing platforms and other business models for booking services allows for a wider range of innovative service offerings and increased competition and consumer choice within the point to point transport space.

Critically, while the proposed Regulation supports the aim of opening up the market to greater competition, it does so in a way that ensures competitive neutrality for all authorised providers providing the same service. The proposed Regulation will also enable effective consumer safeguards to be put in place.

Conclusion

Making the proposed Regulation is the preferred option.

5 Discussion of the proposed Regulation

The proposed Regulation is made under the *Point to Point (Taxis and Hire Vehicles) Act 2016* (the Act) and will prescribe the requirements for safety standards, authorisation of providers, taxi licences, fares and other matters. The Act and the proposed Regulation will apply to vehicles with 12 seats or less (including the driver) which provide 'passenger services'. Excluded from the definition of passenger services regulated by the Act are the following services provided in vehicles with 12 seats or less:

- community transport services (provided under a contract with Transport for NSW)
- services conducted according to regular routes and timetables or according to regular routes and at regular intervals, and
- services conducted according to one or more regular routes, in which each passenger is transported for a distance of not less than 40 kilometres.

Publicly available bus services provided in vehicles with more than 12 seats (including the driver) will continue to be regulated under the *Passenger Transport Act 1990*. It is anticipated that the *Passenger Transport Act 2014*, in its entirety, will commence later in 2017 and will, among other new provisions, regulate community transport services provided in buses and cars. These services will be given adequate time to comply with any new legal requirements when they take effect. Operators of services with vehicles with 12 seats or less (including the driver) that have obtained accreditation under the *Passenger Transport Act 1990* before Part 3 of the *Point to Point (Taxis and Hire Vehicles) Act 2016* commences, have 12 months to be compliant with point to point transport legislation. During those 12 months, these accredited operators must still comply with the accreditation requirements of the *Passenger Transport Act 1990*.

The proposed Regulation retains some matters relating to taxis and hire vehicles which were found in the *Passenger Transport Act* and the *Passenger Transport Regulation 2007* while other matters, in keeping with the Act, create conditions and modes of operation for passenger service vehicles other than buses in accordance with the establishment of a new regulatory regime.

Accordingly, the proposed Regulation contains new requirements, in particular, relating to safety of services such as safety standards and safety management systems and the persons responsible for them. It creates separate requirements, as necessary, for taxis and hire vehicles according to the safety risk to passengers and drivers. In addition, it provides that hire vehicles cannot operate as taxis by prohibiting use of taxi signs, markings and other measures.

The proposed Regulation elaborates on the provisions in the Act relating to the authorisation of providers of passenger and booking services including authorisation conditions and disqualifying offences for applicants and nominated directors or managers. New provisions relate to fare estimates for booked services alongside the remaking of existing rules for taxi fares. Some regulations relating to driver obligations and passenger conduct are largely unchanged although now extend to drivers of hire vehicles and their passengers.

The Regulation also sets in place mechanisms for the payment of the passenger service levy, a temporary means for the collection of revenue to provide industry adjustment assistance for taxi and hire car licence holders.

5.1 Preliminary

Part 1 of the proposed Regulation contains housekeeping information relating to the name of the Regulation and its commencement date. Importantly, it also contains Definitions (clause 3) which give legal meaning to the terms used in the Regulation. The definitions in the Regulation augment those found in the Act and should be read in conjunction with the Act. For example, **passenger service**, one of the terms recurring in the legislation, is defined in Section 4 of the Act as meaning ‘...the transport, by a motor vehicle (other than a bus) of passengers within or partly within, this State for a fare’.

Taxi services: roles and responsibilities

While the Act provides definitions for **taxi service**, **provide a taxi service** and **affiliated provider**, the proposed Regulation introduces the definition for **facilitator** of an affiliated service. In addition, the proposed Regulation refers to vehicle owners and taxi licence holders and defines **related booked service**. Some discussion of new roles and responsibilities for taxi services is necessary.

A **taxi service** means a passenger service provided in vehicles which are authorised to stand at a rank waiting for passengers or to ply for hire on the streets. The **provider of a taxi service** means a person who carries on the business of providing a taxi service. A provider of a taxi service includes a person who **facilitates the provision of a taxi service** and an **affiliated provider**.

Facilitates the provision of a taxi service means a person who carries on the business of providing one or more of the following services for (affiliated) taxis operating under a common service name and that are marked or painted in the same way:

- coordinating or monitoring security facilities such as security cameras and duress alarm systems
- setting fares that may be charged for services
- coordinating or providing safety management systems for taxi services.

Facilitator of an affiliated service means a person who facilitates the provision of an affiliated service provided by an affiliated provider. In this definition the affiliated service refers to a taxi service provided by a *particular* affiliated provider. An affiliated provider means a person who provides a taxi service and who for that purpose obtains services from a facilitator of an affiliated service.

A facilitator of an affiliated service must be authorised. He or she has significant safety duties under the Act and has a primary duty of care as a passenger service provider to ensure (so far as is reasonably practicable) the safety of drivers and other persons while they are engaged in providing the service. They have responsibility for significant safety standards in the proposed Regulation: for the eligibility of drivers, vehicle roadworthiness and maintenance, security systems and other critical matters (see Appendix 1).

An affiliated provider, on the other hand, is exempt from the requirement to be authorised under the Act so long as the taxi service is facilitated by a facilitator of a taxi service who is authorised. Notwithstanding this exemption from the requirement to be authorised, an affiliated provider is a provider of taxi service and as such has a primary duty of care to ensure (so far as is reasonably practicable) the safety of drivers and other persons while they are engaged in providing the service. The affiliated provider also has a number of safety standards for which they are responsible under the proposed Regulation.

An **owner** of a taxi or hire vehicle (including a motor cycle) is defined in the Act to mean ‘...the person who is the registered operator of the vehicle within the meaning

of the *Road Transport Act 2013*. The vehicle owner has responsibility for certain safety standards under the proposed Regulation.

A note in the Act describes the **holder of a taxi licence** as:

The lessee or sublessee of a taxi licence, or other person *who has the benefit of a licence* under any such arrangement, [who] is taken, for the purposes of this Act or the regulations, to be the holder of the licence [emphasis included].

Lastly, **related booked service** means ‘the transport of a passenger by the provider of a passenger service as a result of a booking taken by the booking service’. It is important to point out that for the purposes of a booked service provided in a taxi, the booking service provider is the entity responsible for the provision of the service and not the provider of a taxi service.

Certain service facilitators and other persons to be booking service providers

Following the definitions at clause 3 of Part 1 Preliminary, clause 4 specifies that an individual or body corporate that carries on the business of providing technology, marketing or other services to facilitate or enable bookings for passenger services is taken to be a provider of a booking service. However, this individual or body corporate is not taken to be a provider of a booking service if another individual or body corporate, constituted or recognised under a law of Australia, to which they provide services, is already authorised.

An individual or body corporate taken to be a provider of a booking service under clause 4 is exempt from safety duties and other requirements that apply to a provider of a booking service under the legislation so long as the prescribed entity to whom they provide the specified services is authorised and complies with the conditions of authorisation. However, the powers of the Point to Point Transport Commissioner under the Act relating to entering premises, demanding documents and inspecting facilities continue to apply to these individuals or bodies corporate taken to be a provider of a booking service.

The purpose of this clause is to ensure that the Commissioner has appropriate powers and oversight of individuals and bodies corporate providing specified services to prescribed partnership entities.

5.2 Safety of Services

The objective of the legislation is to implement the recommendations of the Taskforce in relation to creating a new safety culture for point to point transport based on well-established work, health and safety (WHS) principles and to ‘incentivise entities whose brand is associated with the service to take greater accountability for safety outcomes’. Accordingly, one of the objectives of the proposed Regulation is to provide detailed support for the new regulatory framework for point to point transport.

The Act provides for safety duties for providers of passenger services and booking services and the failure to fulfil those safety duties involves substantial penalties. The Act also provides that the proposed Regulation may specify safety standards for the providers of passenger services and booking services. These safety standards are in relation to vehicle safety, insurance, reporting and other matters.

Safety duties and many of the safety standards in the point to point transport legislation create offences of strict liability. The principles applying to a safety duty are laid out in the Act (section 10): a safety duty cannot be transferred, a person can have more than one safety duty and if more than one person has a safety duty each retains responsibility for discharging the duty.

The Act provides that passenger service providers (including taxi service providers) and booking service providers must ensure ‘so far as is reasonably practicable’ the

health and safety of drivers, passengers and other persons while he or she is engaged in providing a passenger service. That is, the duty requires that risks are eliminated as far as is reasonably practicable.

Section 11 of the Act spells out what 'reasonably practicable' means in terms of ensuring health and safety:

In this Act, reasonably practicable, in relation to a safety duty, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

- (a) the likelihood of the hazard or the risk concerned occurring, and
- (b) the degree of harm that might result from the hazard or the risk, and
- (c) what the person concerned knows, or ought reasonably to know, about:
 - (i) the hazard or the risk, and
 - (ii) ways of eliminating or minimising the risk, and
- (d) the availability and suitability of ways to eliminate or minimise the risk, and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Safety standards

Clause 5 of the proposed Regulation (Specified safety standards) assists in creating clear accountabilities for safety standards for passenger services and booking services. Safety standards either impose an obligation on a duty holder (such as a provider, facilitator or vehicle owner) as the 'responsible person' or are 'specified' for the duty holder.

Clause 6 makes it an offence to contravene or fail to comply with a safety standard. This includes when the safety standard is 'specified for the person' and when the person is 'a responsible person for a safety standard'. Responsible persons include the provider of a passenger service, the provider of a booking service, the facilitator of an affiliated service, the affiliated provider, the holder of a taxi licence, the owner of a vehicle used to provide a passenger service and the driver. More than one responsible person can be held accountable for compliance with a safety duty. There are different penalties depending on whether the responsible person is an individual or a company.

Where a person is the specified person for a safety standard, they must not contravene that safety standard. This means that if the safety standard is breached, even if steps have been taken to prevent that breach, he or she will have committed an offence. However, where a person is the responsible person they must ensure so far as is reasonably practicable that the safety standard is complied with. If the safety standard is breached, but the responsible person can prove that he or she took all reasonable steps to ensure its compliance, the responsible person may not be held liable for the offence. Appendix 1 sets out responsibilities for safety standards under the proposed Regulation while Appendix 2 sets out rights, requirements and obligations for drivers.

It is a feature of the Regulation that particular safety standards are imposed on multiple parties simultaneously. For example, a provider of a passenger service (including a provider of a taxi service, a person who facilitates the provision of a taxi service and a person who is the provider of a taxi service who is an affiliated provider) may have the same safety standards imposed on them at the same time. Where this is the case each person must take steps to ensure the particular safety standard is met. The fact that another person has been allocated, and is meeting, a particular safety standard does not absolve another person who has the same safety standard from the requirement to take steps to meet that safety duty.

Another feature of safety standards is the fact that some safety standards are specified for a person who is performing a particular function, rather than for a particular defined person. For example, the ‘provider of a taxi service (other than an affiliated service) (if the taxi is used to provide the service)’ and the ‘facilitator of an affiliated service’ are functions carried out by particular persons for whom the safety standards are specified. The safety standards are intended to apply to any person as a consequence of performing the specific function. In the example above, these persons are very likely to be providers of a taxi service, but may not necessarily be.

The purpose of specifying safety standards in this way is to ensure that the regulations do not prescribe the particular business models of the point to point transport industry. The intention is that whoever performs that function has a responsibility to ensure the particular safety duties are met, regardless of what other functions they may, or may not, perform.

Safety management system

As part of requirements to create and maintain a safety management system, clause 7 requires that a provider of a passenger service (including the provider of a taxi service, the facilitator of an affiliated service and an affiliated provider) and a provider of a booking service must identify the hazards that could give rise to risks to the health and safety of drivers, passengers and other persons in connection with the provision of the service. This requirement for the establishment of safety management systems is similar to those in place in other areas of the transport industry (such as heavy vehicles) but is new to the point to point transport industry. It contributes to implementing the recommendations of the Taskforce to ensure that entities in the point to point transport industry (passenger service providers including taxi service providers and booking service providers) take greater accountability for safety outcomes.

Clause 7 also requires that these entities ‘regularly consult with other persons who have a safety duty that relates to the service and keep[s] a record of any such consultation’. The requirement to consult, co-operate and co-ordinate activities with other duty holders will help address any gaps in managing safety risks that often occur when:

- there is a lack of understanding of how the activities of each person may add to the hazards and risks to which others may be exposed
- duty holders assume that someone else is taking care of the health and safety matter
- the person who takes action is not the best person to do so.⁷

Vehicle standards

Clauses 8, 9 and 10 apply to all vehicles used to provide a passenger service (taxis and hire vehicles) and prescribe general vehicle roadworthiness requirements, vehicle registration standards and vehicle maintenance. Each clause specifies for whom the standard is specified or the responsible person or persons for the safety standard. The requirement in clause 10 that maintenance and repairs be undertaken by a licensed mechanic maintains that provision from the Passenger Transport Regulation 2007 (clause 16) in accordance with Taskforce Recommendation #24.

Clause 11 outlines the particular vehicle standards that must be met by those who provide services using wheelchair accessible vehicles. These include the minimum amount of space required for each wheelchair to be carried, mandatory wheelchair and child restraints, Australian Standards for hoists and ramps and other relevant

⁷ <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/consultation-cooperation-coordination-cop>

standards and rules. It is proposed that wheelchair accessible vehicles which complied with requirements in place before the commencement of the proposed Regulation have two years to comply with the new minimum space requirements. The standard is specified for various duty holders and carries strict liability offences.

Clause 12 reflects Clause 126 of the Passenger Transport Regulation which prohibits the use of digital displays on taxis but extends its coverage to all vehicles providing a passenger service. This safety standard is specified for the vehicle owner and the responsible persons are the provider of a taxi service, the facilitator of an affiliated service and the affiliated provider, the provider of a booking service and the holder of a taxi licence.

Clause 13 outlines the accommodation standard for taxis. In accordance with the Taskforce Recommendation, the number of seats (4 to 11) and side doors (4) have been maintained from the Passenger Transport Regulation. The standard is specified for the provider of a taxi service, the facilitator of an affiliated service, the affiliated provider, the holder of a taxi licence and the owner of the taxi. It carries an offence of strict liability.

Clause 14 maintains many of the current requirements for signs, lights and markings for taxis to ensure that they can be clearly identifiable as taxis and entitled to undertake rank and hail work. The existing requirement for vehicle registration numbers to be displayed on the doors of the taxi has been removed as these numbers are already displayed on the front and rear number plates and on the inside of the taxi. The provider of a taxi service, the facilitator of an affiliated service and the affiliated provider and the holder of a taxi licence are the responsible persons for this standard.

Clause 15 requires that the provider of a taxi service or the facilitator of an affiliated service must provide a driver of a taxi with an identity document containing a photograph and other information. This is to replace the driver authority card issued by RMS as, in accordance with the Taskforce Recommendation (#9), driver accreditation will be abolished with the passage of the legislation. The provider issued document will allow passengers to continue to be able to identify taxi drivers: this remains an important consideration because of the anonymous nature of rank and hail services. It is an offence of strict liability for the provider of the taxi service or the facilitator of an affiliated service if this safety standard is breached. Driver identification documents are not required for drivers of hire vehicles as identity information is recorded as part of the booking.

Clause 16 replaces the concept of the taxi meter with the more generic 'fare calculation device'. This is in accordance with the thrust of the Taskforce Report which recommended the removal of prescriptive requirements which prevented taxi operators from realising efficiency gains by harnessing new equipment or technology. Rather than detailing meter specifications, the proposed Regulation sets broader requirements around the display of fares and figures, the need for tamper resistance, calculation requirements and other matters. However, the clause does require that the device must be calibrated in order to calculate fares in accordance with authorised taxi fares. In addition, a fare calculation, or auxiliary device must be able to reproduce information about the origin, destination, time, date and fare amount for each journey. Breach of the proper operation, installation and functioning of fare calculation devices as outlined in this clause create offences of strict liability for the provider of a taxi service, the facilitator of an affiliated service, the affiliated provider and the holder of the taxi licence.

Clause 17 concerning the display of information inside a taxi is similar to current requirements in the Passenger Transport Regulation: the vehicle registration number, contact information, fares and charges. The display of similar information in a hire vehicle is not required because that information is available to the hirer at the time of

accepting a booked service from a booking service provider. This clause creates similar duty holders with strict liability offences as clause 16.

Vehicle security – taxis

The Taskforce made a number of recommendations concerning what should be unique about vehicles used as taxis which ply and stand for hire and those things which are required to make drivers and passengers safe. For example, Taskforce recommendation #25 proposed that ‘the specifications for security equipment in taxis be revised as a matter of priority, with a view to making them outcome focused and flexible’. Accordingly, Transport for NSW is undertaking a review of security camera specifications, as well as vehicle tracking devices and duress alarms, to provide outcome-based solutions without compromising safety standards. The Victorian Taxi Services Commission has recently completed a similar review with a focus on required outcomes without being overly prescriptive. It is proposed to adopt similar security system specifications, with minor amendments, in NSW to give effect to the Taskforce’s recommendations. In addition, providing specifications in parallel with other states allows for better business solutions and outcomes for Australian manufacturers and the taxi industry. Transport for NSW is seeking feedback from industry stakeholders on these specifications: they are included as Appendix 3 Draft Security System Specifications for taxis.

The Taskforce did not recommend extending the requirement for security cameras to vehicles used to provide a booked service. This is because booking service providers are required to keep records of the passenger or the person who made the booking, the driver and the journey (see clause 43) which means that any event which occurs in the vehicle can be traced. On the other hand, taxis can be hailed on a street or taken at a rank. In these cases there are no records of the passenger, driver or the journey so the presence of a camera mitigates some of the risk associated with the anonymity of rank and hail services. Accordingly, taxis have for some time been required to have cameras, but also in some urban areas duress alarms and vehicle tracking devices.

Clauses 18 and 19 give effect to the recommendation that duress alarms and vehicle tracking systems continue to be mandated in taxis providing rank and hail services in Sydney, Newcastle, Wollongong and the Central Coast. The Taskforce considered that in country areas the need for these security systems should be determined by the taxi organisation, based on its risk assessment, rather than being mandated by Government. These clauses are similar to the current regulations relating to these safety devices. Clauses 18 and 19 create a strict liability obligation on the provider of a taxi service, the facilitator of an affiliated service, the affiliated provider and the holder of a taxi licence to uphold these safety standards.

Clause 20 is similar in intent to current provisions relating to approved security camera systems for taxis. It contains requirements relating to warnings to customers about the fitting of security cameras, provides that such systems cannot be used for unauthorised purposes and defines **authorised purposes** to put beyond doubt the uses to which such recordings may be put. The duty holders for this safety standard are the holder of a taxi licence and the provider of a taxi service, the facilitator of an affiliated service and the affiliated provider; the clause creates offences of strict liability. Clause 21 makes clear the proper disposal of recordings made by such security cameras.

Hire vehicle signs and markings

Clause 22 is a new provision relating to signs and markings for hire vehicles. With the eventual abolition of hire car ‘HC’ plates and the introduction of a large number of

ridesharing vehicles, NSW Police and authorised officers expressed concern about their ability to identify hire vehicles for enforcement purposes. Accordingly, the proposed Regulation provides that a driver of a hire vehicle (other than a motorcycle) must display a retroreflective sign when the vehicle is being used to provide a passenger service. The sign must make it apparent that the vehicle is a hire vehicle, such as displaying a business logo. Clause 22(1) is specified as a safety standard for the vehicle owner. This subclause prohibits a hire vehicle being painted or marked or having signs or lights resembling a taxi or inferring that the vehicle is plying or standing for hire like a taxi. The provider of a booking service is the responsible person for all aspects of the safety standard in the clause including the requirement for the driver to display a sign indicating that the vehicle is a hire vehicle.

Clause 23 expands on current provisions relating to motor cycles used as hire vehicles. The clause provides a new requirement that wheel guards (including mudguards) must be installed on motorcycles used to provide point to point services. Mudguards are considered an important safety measure as they provide protection for passengers from the impact of rocks and other debris. The provider of a booking service is the responsible person for this safety standard while the requirement that the hire vehicle is compliant with Australian Design Rules is specified for the owner of the motor cycle.

Insurance

The provision of vehicle insurance is important for all road users. Moreover, the Taskforce Report demonstrated that taxis, because of their exposure, had a high level of involvement in crashes in urban areas. On its part, the taxi industry was concerned that hire vehicles – particularly privately registered vehicles used for ridesharing purposes - were not required to pay commensurate insurance rates for providing a passenger service.

Clause 24 expands on current requirements for taxis relating to insurance cover for third-party property damage (personal injury insurance is a mandatory requirement for vehicle registration in this state). All vehicles providing a passenger service must now be covered to the same amount (at least \$5 million for each occurrence). It also maintains the current arrangement to indemnify the driver of a vehicle being used to provide a passenger service in relation to third party property damage but expands it beyond taxi drivers to all drivers. The policy holder may enter into an agreement with a driver which requires that he or she pays the excess on a claim if the claim arises out of the driver's conduct (that is, the incident is the driver's fault). The policy does not need to cover the time when the vehicle is not being used to provide a passenger service. The proposed Regulation creates offences of strict liability for breach of this safety standard on the provider of a passenger service, the provider of a taxi service, the provider of a booking service, the facilitator of an affiliated service, the affiliated provider, the holder of a taxi licence and the owner of the vehicle.

Provision of information

The Taskforce recommended that booking services should be required to keep 'sufficient records to establish the identity of the customer, the origin and destination, and the time and date of travel'. Clause 25 provides that the hirer of a booking service must have made available to him or her information about the taxi or hire vehicle and the driver to enable identification of the vehicle and driver. Hirers of wheelchair accessible vehicles must be notified of the estimated time of arrival within a reasonable time of the vehicle's arrival.

The clause is a safety standard for the provider of a booking service and is an offence of strict liability.

Drivers

There are numerous safety standards that the Act states the Regulation may specify for drivers who drive motor vehicles used for passenger services. Part of the purpose of these detailed safety standards is to replace the authorisation scheme which currently exists for taxi and hire car drivers.

Clause 26 lists the offences which, if the person is found guilty, would disqualify him or her from driving a taxi or hire vehicle. These expand on the current criteria for authorisation to drive a public passenger vehicle for a person to be 'of good repute and in all other respects a fit and proper person to be the driver of the vehicle concerned' and 'have sufficient responsibility to drive the vehicle concerned in accordance with law and custom'. This fulfils the recommendation of the Taskforce that categories of criminal and other offences which disqualify a driver from driving a point to point transport vehicle should be clearly defined in the Regulation. The disqualifying offences include murder, manslaughter, assault, domestic violence, supply of drugs, firearms, fraud and other serious matters. Also included are offences under the Act such as failure to discharge a safety duty or the provision of an unauthorised service. Importantly, major offences under the Road Transport Act 2013 (such as a serious drink driving conviction) would also disqualify a person from driving a taxi or hire vehicle.

Spent convictions are not included in the consideration of disqualifying offences for drivers, applicants for authorisation, their close associates, nominated managers or directors. Where a person is convicted of a relatively minor offence and he or she completes a period of crime-free behaviour, on the completion of the period (usually 10 years), the conviction is to be regarded as spent and will no longer show up on his or her criminal record nor have to be disclosed. Exceptions to convictions that can never be regarded as spent - such as those for sexual offences - are found in section 7 of the *Criminal Records Act 1991*. While disqualifying offences do not include spent convictions, the Act at section 32 prescribes that they do include what is known as 'Section 10s' - where the charge for an offence is proven, or the person is guilty of an offence but the court does not proceed to a conviction. The provider of a taxi service, the facilitator of an affiliated service and the provider of a booking service are the responsible persons for this safety standard.

Clause 27 provides that a person must not drive a taxi or hire vehicle unless they hold an unrestricted driver licence for a period of at least 12 months in the last two years and meet medical standards for commercial vehicle drivers. It also provides that a person whose driver authority was cancelled or whose most recent application was rejected within the previous ten years is ineligible to drive a taxi or hire vehicle. The responsible persons for this safety standard are the provider of a taxi service, the facilitator of an affiliated service and the provider of a booking service.

Clause 28 requires that persons who drive wheelchair accessible vehicles must demonstrate competence in the loading, unloading and restraint of wheelchair passengers equivalent to a specified standard. This reflects the Taskforce recommendation that Government should no longer specify which particular courses should be completed to meet these standards, instead providing industry with flexibility to determine how this obligation is met. This safety standard creates offences of strict liability for the provider of a taxi service, the facilitator of an affiliated service and the provider of a booking service.

In keeping with the recommendation of the Taskforce (#18), clause 29 retains the English language requirement for taxi drivers while placing responsibility for this safety duty with the provider of a taxi service and the facilitator of an affiliated service. Consistent with clause 28, while a standard of competence is described, a taxi service provider has a degree of flexibility in determining how a driver meets the

standard or its equivalent. The Taskforce did not recommend extending this requirement to drivers of booked services.

Clause 30 provides that the driver of a taxi that stands or plies for hire must display in the vehicle his/her taxi driver identity document issued by the taxi service provider. This is to assure customers of the identity of the driver because of the anonymous nature of rank and hail services. The provider of a taxi service and the facilitator of an affiliated service are the responsible persons for this safety standard.

Clause 31 requires the driver of a taxi or hire vehicle to report in writing to the provider of the booking or taxi service for which he or she provides services any change in circumstances which would render him or her ineligible to drive the taxi or hire vehicle (such as the being found guilty of a serious criminal or traffic offence listed under clause 26). Notice must be given within 7 days of the driver 'becoming aware of the change in circumstances'.

Notifiable occurrences

The Act provides that the provider of a passenger service or booking service must report to the Commissioner any 'notifiable occurrence'. A notifiable occurrence includes an accident or incident that has, or could have, caused significant property damage, serious injury or death. Clause 32 of the Regulation prescribes that notifiable occurrences must be reported within 3 days after the provider becomes aware of the accident or incident. If the last day of the three day period falls on a Saturday, Sunday or a public holiday, the last day is the first business day afterwards.

5.3 Authorisation of providers of passenger and booking services

The Act, in accordance with the recommendations of the Taskforce Report, creates two types of entities: providers of passenger services and providers of booking services and states that these entities must be authorised. Taxi networks are no longer authorised.

Applications for authorisation

Clause 33 allows a person to make a combined application to be a provider of a passenger service (including a taxi service) and a provider of a booking service. Clause 34 provides that certain partnership entities (Rasier Pacific V.O.F. and Uber Pacific V.O.F., unlimited partnerships established in the Netherlands) may also apply for authorisation to provide a booking service in accordance with the ability to prescribe such entities in the Act.

Clause 35 gives effect to the section of the Act which provides for the determination of authorisations by creating standards for applicants: an applicant may not reapply for authorisation if that authorisation had been refused or cancelled in the previous 12 months. Similarly, clause 36 creates authorisation standards for entities such as the ones prescribed in section 31 of the Act. Individuals must be identified as nominated managers for the purposes of authorisation and must be involved in the day to day management of the booking service. One nominated manager must be a resident of NSW and be authorised to provide information to the Commissioner and in connection with the payment of the passenger service levy.

Clause 37 determines that a close associate of an applicant cannot have had a previous accreditation or authorisation cancelled or refused. Nominated directors or managers under clause 38 are similarly excluded and in addition must not have been convicted of a disqualifying offence under clause 39.

Clause 39 lists disqualifying offences for applicants and nominated directors or managers. These include many of the same offences which disqualify a person from becoming a driver (drug supply, firearms, fraud, robbery etc) and offences under the Act including breach of a safety duty, provision of an unauthorised taxi or booking service. In addition, operating an unlicensed taxi and other serious matters such as those related to fares and overcharging of passengers as well as failure to comply with an improvement notice or prohibition notice would exclude a potential applicant or nominated manager from authorisation under the Regulation.

Clause 40 lists disqualifying offences for close associates. These include offences under the Act such as category 1 and 2 safety duty offences, repeated provision of an unauthorised service, a second or subsequent unlicensed taxi offence and fare estimate offences. Reckless conduct and failure to comply with safety duty offences under the *Work Health and Safety Act 2011* are also included for disqualification purposes.

Overall, these provisions give effect to the Taskforce recommendation (#8) that criminal history checks of nominated managers and directors form part of the authorisation requirements for providers of a passenger service.

Authorisation conditions

Clause 41 creates conditions of authorisation and clause 42 sets out information that must be provided to the Point to Point Transport Commissioner by the provider of a taxi service or a booking service. These provisions expand on those applying to public passenger services under the current Passenger Transport Regulation. The Commissioner must be notified in writing of changes to nominated directors or managers (including residence in NSW) as well as changes of address of premises and the place where records are kept. In addition, providers of taxi services and providers of booking services must keep records relating to drivers and vehicles. Facilitators of an affiliated service must provide the name and business address of affiliated providers.

Importantly, clause 43 provides that a booking service provider must keep a record of each booking for a passenger service including contact information for the passenger, the person who made the booking or whose account was charged; the date, time and location of journey; the name of the driver, vehicle registration number and other matters. This fulfils Taskforce recommendation #5. Records must be kept for at least two years. Clause 44 provides that prescribed entities that provide a booking service must give written notice to the Commissioner within 21 days if a nominated manager ceases to comply with the requirements for nomination.

Authorisation fees

Clause 45 determines a method of determining authorisation fees for providers of a taxi service and a booking service. As well as a set base fee, which will be subject to regular Consumer Price Index increases, fees rise according to the number of passenger service transactions. The clause creates an offence for noncompliance with a notice from the Commissioner requiring information relating to the number of those transactions. The Taskforce recommended that any government-imposed fees for the authorisation of industry participants be charged on a consistent basis and should reflect the efficient cost of regulating the point to point transport industry.

5.4 Taxi Licences

General matters relating to applications and licences

Clause 46 allows applicants for taxi licences to be exempted from an application fee in certain circumstances. Clause 47 replicates the current provision which gives Transport for NSW the flexibility to reduce or waive taxi licence fees where it would otherwise be uneconomic to sell them or where the issue of a licence might benefit persons with a disability. Clause 47 re-enacts the provision from the current regulations relating to notice of lease or sublease of a taxi licence.

Licence conditions

This Division (clauses 49 to 51) imposes additional conditions on taxi licences relating to the payment of licence fee instalments and the use of peak availability taxis. With reference to the latter, Clause 51 maintains the current licence condition restricting those taxi licences to operating at certain times in line with a Taskforce recommendation (#41). The effect of this clause is to specify that certain annual taxi licences (TX05, TX06, TX06A and TX12) must not be used to provide services between 5 am and 12 pm even if a condition on the licence states otherwise.

5.5 Fares

Taxi fares

The Taskforce recommended that fares for rank and hail taxi services remain regulated while those for booked services (including booked taxi services, traditional hire car and ridesharing platforms) 'be substantially deregulated' (recommendation #29). Transport for NSW is allowed by section 76 of the Act to publish a fares order on its website. The regulated maximum fare components in the current fares order are determined on the basis of flag fall, distance rates, booking fee, peak time charge and waiting time and apply to both rank and hail and booked taxi services. Maximum fares and charges also vary for travel in urban or country areas. The same section of the Act provides a maximum fine of up to 100 penalty units (currently \$11,000) for demanding a fare that 'exceeds the amount of the fare determined for the service under a fares order'. A new fares order, retaining the current fare components, will be published in conjunction with the commencement of the new Act and Regulation and will apply to rank and hail taxi services only. A referral to IPART, permitted under section 74 of the Act, may be made later in 2017 requesting that IPART investigate and report on appropriate maximum fares for taxis services, in relation to the Taskforce recommendations for more flexibility in rank and hail pricing.

Booking service fare estimates and taxi fare structures

The Act and clause 52 of the regulation also give effect to a recommendation of the Taskforce (#30) that 'all booking services be required to offer a potential customer an estimate of the total fare for the customer's journey before a booking is confirmed'. Section 79 of the Act provides that the fare estimate must be in writing, must express amounts in Australian dollars and indicate any variation in the fare that is likely to occur and how that variation is to be calculated. The regulation provides that a fare estimate must include information about when the fare may be varied, the amount of the variation, how the variation might be calculated and any other fees or charges that may be charged. In addition, a service must not be started unless a fare estimate has been accepted. These are important consumer protection measures.

Clauses 53 and 54 of the regulation require taxi service providers to establish fares and charges for their rank and hail services that do not exceed the maximum authorised fares, and make this information available on their website (if they have

one) and provide copies to potential passengers on request. Clause 55 provides that after the termination of a hiring, the hirer must pay the unpaid amount of the authorised fare for the journey while clause 56 provides for a pre-payment scheme for taxi fares.

Clause 57 allows the driver of a taxi to charge a fare that exceeds the authorised fare if a passenger is being conveyed to a place outside the taxi's area of operation and the fare is agreed with the passenger. Area of operation is explained in section 56 of the Act.

Overcharging (other than for authorised fares)

Section 80 of the Act allows passenger and booking service providers to require drivers or other providers providing a service under their brand to charge a specified amount for the provision of the service. If a driver were to charge more, and the passenger believed that he or she was overcharged (i.e. charged more than the fare estimate or the fare established by the taxi or booking service provider), he or she would have recourse to the service provider for restitution in keeping with their rights under Australian consumer law.

5.6 Other obligations relating to passenger and booking services

Driver obligations for passenger services generally

Driver obligations in this Division (clauses 59-71) are similar to some of those in the Passenger Transport Regulation concerning taxi drivers; in this proposed Regulation they are extended to drivers of hire vehicles as well. These include prohibitions on drivers smoking in a vehicle, behaving in an offensive manner, interfering with equipment, touting for passengers and so on. In clause 60 there is a new subclause which makes it an offence to 'intentionally interfere, or intentionally attempt to interfere' with the comfort or safety of other persons. Clause 64 provides that the driver of a passenger vehicle must not refuse to carry an assistance animal in the vehicle. This is important for vision impaired people with guide dogs. Clause 65 similarly extends protection for people with a disability by ensuring that drivers accept a hiring from a person using a wheelchair over a person who is not. The wheelchair must be safety secured throughout the journey.

This Division also remakes rules around the use of designated areas at the Sydney Airport precinct and other airports and the role of authorised officers to give directions. The power for authorised officers to require information about hirings has been extended to all passenger vehicles and to all areas of the state.

Taxi services

Clause 73 introduces a new penalty for causing or permitting a taxi to provide a taxi service outside the area of operation specified in the licence. Clause 74 introduces a provision which prohibits interference with safety devices fitted to taxis such as vehicle tracking devices, fare calculation devices and security cameras. Additional provisions (clauses 75, 76, 77, 79, 80, 82, 83 and 84) provide for offences relating to the operation of taxis such as the use of taxi zones, acceptance of hirings, multiple hirings, termination of hirings, operation of fare calculation devices, wheelchair accessible taxis and stand-by taxis; these are largely carried over from provisions in the existing regulation with some modifications. Clause 78 introduces a new offence by prohibiting the driver of a peak availability taxi from providing a passenger service between 5am and 12pm. Clause 81 provides that a taxi driver or an authorised officer may direct a person not to enter, or to leave, a taxi under certain circumstances.

Hire vehicles

Clause 85, prohibiting hire vehicles from plying or standing for hire or carrying out anything other than a booked hiring, is similar to a regulation concerning private hire vehicles in the Passenger Transport Regulation. Clause 86 introduces a new provision, which is similar to clauses 77 and 81 for taxi drivers, specifies that the driver of a hire vehicle or an authorised officer may direct a person not to enter or to leave a hire vehicle under certain circumstances.

Passenger conduct

Clause 87 contains passenger conduct offences similar to those in the Passenger Transport Regulation regarding offensive behaviour, soiling or damaging vehicles and smoking.

5.7 Miscellaneous

Clause 88 provides for certain classes of persons to be appointed as authorised officers for enforcement purposes. This is similar to an existing provision in the Passenger Transport Regulation.

Clause 89 is a new provision prohibiting the use of a video recording made by a taxi security camera system to be used for other than a purpose 'authorised by the Commissioner by notice in writing published in the Gazette'.

Clauses 90 exempts Government administered assisted school transport providers, patient transport and prison transport services from the requirements which apply to passenger services under the legislation. Clause 91 determines that car pooling is not a passenger service as long as the driver is not paid for his or her time (reimbursement of costs such as fuel is acceptable) and other conditions. Clause 92 provides that travel agents are not booking service providers.

Clause 93 allows the Commissioner to exempt a person or vehicle or class of persons or vehicles from the Act or Regulation and is consistent with clause 237 in the Passenger Transport Regulation while Clause 94 enables the Commissioner to appoint taxi zones, with the approval of the relevant road authority, and the Police to create temporary taxi zones.

Clause 95 requires personal information disclosed by the Commissioner to the provider of a passenger service (including a taxi service) or a booking service to be kept, accessed and disclosed in accordance with requirements approved by the Commissioner.

Clause 96 provides for fees payable for specified matters in Schedule 1. Clause 97 clarifies that a reference in clause 35 to authorisation includes a reference to accreditation under the Passenger Transport Act.

5.8 Schedule 1 Fees

This Schedule lists the fees payable for applications for authorisations and other matters.

5.9 Schedule 2 Penalty notice offences

This Schedule lists penalty notice offences under the Act and Regulation.

5.10 Schedule 3 Passenger Service Levy

This Schedule provides further detail on the arrangements for the collection of the temporary levy on 'passenger service transactions' provided for in Schedule 4 of the Act and *Taxation Administration Act 1996* (other than Division 2 of Part 7 of that Act). Part 2 gives effect to matters relating to the assessment and payment of liability for the levy by taxpayers (providers of taxi services, facilitators of an affiliated service and booking services) including procedures for registration as a taxpayer and payment arrangements. Certain small providers may be exempted from payment (or obtain a rebate) while others (particularly in remote areas) may be exempted from payment of the levy altogether.

Part 3 modifies the periods for objection to assessments of the levy and limits the grounds for objection. Part 4 prohibits a person from demanding an amount for the levy as part of a fare unless it is permitted by a fares order or fares structure and does not exceed the actual levy amount. Part 5 provides arrangements for the service of documents.

5.11 Schedule 4 Amendment of Point to Point Transport (Taxis and Hire Vehicles) Act 2016

This Schedule amends transitional and savings provisions in the Act relating to existing taxi licences, the authorisation of taxi and booking service providers and other matters.

5.12 Consequential amendments

A number of amendments to related regulations – the Road Transport (Driver Licensing) Regulation 2008 and the Road Rules 2014 - will accompany the commencement of the proposed Regulation (see Appendix 4).

6 Appendices

Appendix 1 – Responsibility for safety standards

Appendix 2 – Driver rights, requirements and obligations

Appendix 3 – Draft Security System Specifications for taxis

Appendix 4 – Consequential amendments to related regulations

Appendix 5 – List of stakeholders for consultation purposes

Appendix 1: Responsibility for safety standards

▲ Safety standard specified ○ Responsible person (must ensure compliance with safety standard so far as is reasonably practicable)

Clause	Heading	Provider of a passenger service	Provider of a taxi service	Provider of a booking service	Facilitator of an affiliated service	Affiliated provider	Vehicle Owner	Holder of taxi licence
7	Identification and management of risks to health and safety	▲	▲	▲	▲	▲	-	-
8	General roadworthy requirements	-	○	○	○	○	▲	○
9	Vehicle registration and registration standards	-	○	○	○	○	▲	○
10	Vehicle maintenance	-	○	○	○	○	▲	○
11	Wheelchair accessible vehicles	-	▲	▲	▲	▲	▲	▲
12	Digital displays prohibited	-	○	○	○	○	▲	○
13	Accommodation standard for taxis	-	▲	-	▲	▲	▲	▲
14	Signs, lights and markings – taxis	-	○	-	○	○	-	○
15	Driver identification – taxi drivers	-	▲	-	▲	-	-	-
16	Fare calculation devices – taxis	-	▲	-	▲	▲	-	▲
17	Display of information – taxis	-	▲	-	▲	▲	-	▲
18	Duress alarm systems – taxis	-	▲	-	▲	▲	-	▲
19	Vehicle tracking systems – taxis	-	▲	-	▲	▲	-	▲
20	Approved security camera systems – taxis	-	▲	-	▲	▲	-	▲
22(1)	Signs and markings – hire vehicles	-	-	-	-	-	▲	-
22 (1)(2)	Signs and markings – hire vehicles	-	-	○	-	-	-	-
23(1)	Motor cycles – hire vehicles	-	-	-	-	-	▲	-
23(1) – (5)	Motor cycles – hire vehicles	-	-	○	-	-	-	-
24	Vehicle insurance	▲	▲	▲	▲	▲	▲	▲
25	Information to be made available to hirer by booking service provider	-	-	▲	-	-	-	-
26	Disqualifying offences (for drivers)	-	○	○	○	-	-	-
27	Ineligible drivers	-	○	○	○	-	-	-
28	Driver of a wheelchair accessible vehicle to be competent	-	▲	▲	▲	-	-	-
29	English language requirements – taxi drivers	-	○	-	○	-	-	-
30	Taxi driver identity document to be displayed	-	○	-	○	-	-	-

Appendix 2: Driver rights, requirements and obligations

Clause	Heading	Consequence	Maximum penalty (court imposed)	Penalty notice
22	Signs and markings – hire vehicles	The driver must ensure that a sign is displayed that makes it apparent the vehicle is a hire vehicle etc.		\$150
23(6)	Motor cycles – hire vehicles	A driver must be competent in the operation of the motorcycle while carrying a passenger.		\$1100
26	Disqualifying offences	A person must not drive a taxi or hire vehicle if he or she has been found guilty of a disqualifying offence for a driver (listed).		\$1100
27	Ineligible drivers	A driver of a taxi or hire vehicle must have held an unrestricted Australian driver licence for 12 months in the preceding 2 years; must meet the medical standards for commercial vehicle drivers set out in Assessing Fitness to Drive; and must not have had a driver authority cancelled or application rejected within the previous ten years.		\$1100
28	Driver of wheelchair accessible vehicle to be competent in loading and unloading wheelchair passengers	A driver of a wheelchair accessible taxi or hire vehicle must demonstrate a level of competence...to a standard equivalent to that specified in the regulation.		
29	English language requirements – taxi drivers	A taxi driver in the Metropolitan transport district must have competence in the English language. The level of competence is specified in the regulation.		
30	Taxi driver identity document to be displayed	A taxi driver must display identity document in the vehicle.		\$300
31	Driver must report changes in circumstances	A driver must report any changes in his/her eligibility to drive a taxi or hire vehicle. This must be done in writing to the provider of the taxi service or the provider of a booking service within 7 days.		
56(2)	Pre-payment scheme for taxi fares	A taxi driver may require the hirer to pay a deposit.		
56(3)		A driver who receives a deposit must, on request, give the hirer a receipt.	10 penalty units ⁸	\$300
56(4)		A driver who receives a deposit must, on termination of a hiring, refund the amount the deposit exceeds the authorised fare.	10 penalty units	\$300
57	Fare may exceed authorised fare if out of area service	A taxi driver may negotiate more than the authorised fare for a hiring if the hirer requires to be taken beyond the taxi's area of operation. The hirer must agree to the negotiated fare before the start of the journey.		
59	Driver not to smoke in the vehicle	A taxi driver must not smoke in a taxi at any time. A hire vehicle driver must not smoke while the vehicle is hired or available for hire.	10 penalty units	\$300

⁸ A penalty unit is \$110.

Clause	Heading	Consequence	Maximum penalty (court imposed)	Penalty notice
60	Offensive behaviour by drivers	A driver must not behave in an offensive manner in or near the vehicle when it is being used in connection with a passenger service. A driver must also not intentionally interfere, or attempt to interfere, with the comfort or safety of other people.	20 penalty units	
61(1)(a)	Driver not to interfere with equipment of, or damage, vehicle	A driver must not interfere with any equipment attached to, or forming part of, the vehicle (such as security cameras, fare devices)	20 penalty units	\$550
61(1)(b)	Driver not to interfere with equipment of, or damage, vehicle	A driver must not intentionally damage any part of the vehicle.	20 penalty units	
62	Driver not to drive non-compliant vehicle	A driver must not drive a vehicle knowing that the vehicle does not comply with the Regulation (is not registered, fare calculation device or security camera does not work etc).	20 penalty units	
63	Additional passengers	A driver must not allow anyone to ride in the vehicle without the consent of the hirer.	10 penalty units	\$300
64(1)	Assistance animals	The driver of a passenger vehicle must not refuse to carry an assistance animal.	10 penalty units	\$300
65(1)	Wheelchair accessible vehicles	A driver of a wheelchair accessible vehicle (taxi or hire vehicle) must accept a hiring by a person in a wheelchair in preference to a person not using a wheelchair.	10 penalty units	\$150
65(2)		A driver must ensure the passenger's wheelchair is safely secured.	10 penalty units	\$150
66	No touting or soliciting for passengers	A driver must not tout or solicit for passengers.	50 penalty units in the case of an offence committed in the Sydney Airport precinct, or 5 penalty units, in any other case	\$850, in the case of an offence committed in the Sydney Airport precinct, or \$550, in any other case
67	Driver to be hired only at specific zones – Sydney Airport precinct and other airports	A driver must use specially designated areas at Sydney Airport and other airports for setting down and picking up passengers.	50 penalty units	\$550
68	Drivers to remain with vehicle – Sydney Airport precinct and other airports	A driver in the Sydney Airport Precinct and other airports must not move more than 3 meters from the vehicle unless loading or unloading luggage. There is also an exception for drivers of taxis while the taxi is in a holding bay in the Sydney Airport Precinct.	15 penalty units	\$300
69	Directions to driver by authorised officers	A driver must comply with a direction given by an authorised officer in the Sydney Airport precinct to stop or move the vehicle. Authorised officers include Sydney Airport Corporation employees who provide traffic management services.	10 penalty units	\$550
70	Driver to supply information on hirings	A driver must answer questions from an authorised officer in relation to hirings.	10 penalty units	\$550
71	Driver to hand over driver licence for inspection	A driver must hand over his or her licence to an authorised officer on request.	10 penalty units	\$300

Clause	Heading	Consequence	Maximum penalty (court imposed)	Penalty notice
73	Use of taxi outside area of operation	A person (including a driver) must not cause or permit a taxi to be used outside its area of operation.	5 penalty units (any other case - not a body corporate)	\$300 (any other case - not a body corporate)
74	Interference with safety devices	A person (including a driver) must not interfere with tracking devices, security cameras, duress alarms and fare calculation devices fitted to a taxi.	50 penalty units	
75	Standing otherwise than in a taxi zone	A taxi driver must not allow the taxi to stand other than in a taxi zone except in certain circumstances.	10 penalty units	\$150
76	Use of taxi zones	A taxi driver must not stand a taxi in a taxi zone if the taxi is hired or not available for hire.	10 penalty units	\$150
77	Driver of taxi to accept hiring	A taxi driver must accept a hiring when offered. A hiring, however, may be refused under certain circumstances.	10 penalty units	\$300
78	Peak availability taxis	The driver of a peak availability taxi must not use the taxi for a passenger service between 5am and 12pm.	5 penalty units	\$150 (driver)
79	Multiple hiring of taxis	A taxi driver may accept separate hirings from two or more people under certain circumstances.	10 penalty units	\$300
80	Termination of hiring	A taxi driver may terminate a hiring under certain circumstances including offensive behaviour on the part of a passenger.		
81	Direction to leave taxi vehicle	A taxi driver may direct a person not to enter or to leave a taxi in certain circumstances.		
82	Operation of fare calculation device by driver	A taxi driver must operate a fare calculation device according to certain rules.	10 penalty units	\$300
83	Wheelchair accessible taxis	A driver of a wheelchair accessible taxi must not start the device before the taxi is ready to transport the passenger in a wheelchair.	10 penalty units	\$300
85	No plying or standing for hire	A hire vehicle driver must not ply or stand for hire, queue in a taxi zone or use the hire vehicle for other than a booked hiring.	30 penalty units	\$850
86	Direction to leave hire vehicle	A driver of a hire vehicle may direct a person to leave or not to enter the hire vehicle under certain circumstances.		

Appendix 3: Draft Security System Specifications for taxis

1. Cameras

Camera system construction

1. Camera systems must comply with section 3.7 (Recommended object sizes) of Australian Standard AS 4806.2—2006 for closed circuit television (Part 2 Application guidelines) in relation to the driver and all passengers in the taxi.

System environmental requirements

2. The camera system must be operational over:
 - —a temperature range of -5°C to +60°C; and
 - humidity range of 0 to 85 per cent relative humidity, non-condensing.
3. The camera system must be impact and shock resistant, sufficient to withstand a typical car accident and the vibration experienced during the normal operation of a taxi.
4. The camera system must conform to the following relevant Electromagnetic conformance standards:
 - AS/NZS CISPR 25:2010
 - ISO 10605:2008
 - ISO 7637-2:2011
5. Images must be capable of being recovered following loss of power to the camera system.
6. All camera system connection points and components mounted to the exterior of a taxi must meet or exceed the IP67 rating.

Camera system operation

7. The camera system must be powered and fully operational when the vehicle ignition is on or when the taxi is available for hire (for example at a taxi rank) and the ignition is not otherwise on.
8. The boot time for the camera system from 'power on' to recording images must be less than 30 seconds, and the system must continue to record for a period of 30 minutes after the ignition has been turned off.
9. The camera system must not allow any unauthorised person to turn off or in any way disable the camera system from inside the vehicle.
10. The camera system must have a visual indicator showing when the system is operational and when there is a malfunction. The visual indicator must be visible to the driver when seated in the driver position.
11. When 'powered on' the camera system must employ a self-test methodology to automatically detect and report functional faults, which must include a test for lack of image from any camera head due to external interference or obstruction.
12. A camera (other than a camera fitted to the exterior of a vehicle) must be visible to passengers in the vehicle.
13. A camera (other than a camera fitted to the exterior of a vehicle) must at all times provide a clear view of the front of the taxi driver and the head and shoulders of all passengers.
14. Two externally mounted camera heads shall separately provide a view of any persons approaching between 300 mm and 5 m distant from both the driver's and front passenger's window within an angle of approach of 120° from the centre of the door.

15. The camera system must record continuously and store images for at least 168 hours.
16. The camera system must use non-volatile memory to store all captured images. If the camera system has removable memory then it must only be able to be removed by authorised persons.
17. The recording system must be configured so that the recording medium automatically commences re-recording when the medium has reached its recording capacity. The oldest images must be overwritten first.
18. The camera system must record a minimum of 5 images per second.

Images

19. The stored image from all camera heads must record a minimum of 360 pixels per metre both horizontally and vertically.
20. The camera system must store colour images or images with a minimum of 256 greyscale levels.
21. The images must be in focus at any distance from the lens between 300 mm and 3m for internal camera head(s) and 300 mm to 5m for the external camera heads.
22. The resolution and clarity of the recorded images from a camera must be maintained under all lighting conditions from darkness (0 lux) through to bright sunlight (100,000 lux).
23. All images (either displayed on a computer device or printed) must have imprinted on them the following metadata (without obstructing the view of any occupant in a seated position in the vehicle):
 - a. the vehicle registration number; and
 - b. date and time in UTC within 1 second; and
 - c. location in coordinates of latitude and longitude accurate to within 25 metres 95 per cent of the time.

Accessing images

24. A person who supplies a camera system must provide software to the monitoring facility that enables authorised persons to access and download images from the camera system.
25. The software provided by the supplier must be able to operate on a commercial off-the-shelf computer device or the supplier must provide a download system to the monitoring facility.
26. The download software must be password protected and stored images encrypted to prevent unauthorised viewing, recovery or reproduction of images.
27. If an image is stored on the hard drive of a computer, or in logical pools or across disparate commodity servers located on premises or in a data centre managed by a third-party cloud provider, access to the image must be password protected and stored images encrypted so that it can only be viewed, copied, deleted, printed or otherwise reproduced by an authorised person.

2. Vehicle tracking device

28. Vehicle tracking devices must be fitted in taxis which provide a service in certain NSW transport districts according to the Regulation.
29. The vehicle tracking device system and the alarm must be powered and fully operational when the vehicle ignition is on or when the taxi is available for hire (for example at a taxi rank) and the ignition is not otherwise on.

30. The boot time for the vehicle tracking device system from 'power on' must be less than 30 seconds.
31. The vehicle tracking device system must not allow any person to turn it off or in any way disable the tracking device from inside the vehicle.
32. The vehicle position report must include the vehicle's registration number, its position, speed (in km/h), direction of travel and the time each report is sent.
33. The vehicle tracking device system must be capable of sending a vehicle position report from any taxi, regardless of the taxi duress alarm status.
34. The vehicle position report must use current GPS positioning data each time it is sent.
35. The tracking device system must permit the driver to be able to communicate with the monitoring facility upon activation of the duress alarm.

3. Duress alarm systems

36. Duress alarm systems must be fitted in taxis which provide a service in certain NSW transport districts according to the Regulation.
37. The alarm must be powered and fully operational when the vehicle ignition is on or when the taxi is available for hire (for example at a taxi rank) and the ignition is not otherwise on.
38. The boot time for the alarm from 'power on' must be less than 30 seconds.
39. When the duress alarm is activated, the vehicle position report must be sent immediately to the monitoring facility. The vehicle position report must be re-sent at least every 5 seconds or until the alarm is disarmed.
40. The duress alarm must be able to be readily activated by the driver while seated in the driver's seat.

Definitions

Authorised person: a person authorised by an authorised taxi service provider to access images, a police officer, or an authorised officer (a person appointed by the Point to Point Transport Commissioner to exercise the functions of an authorised officer under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* and the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017).

GPS: Global Positioning System

Monitoring facility: The facility used by the authorised taxi service provider to monitor vehicle tracking devices, duress alarms and/or access images from security camera systems.

The Regulation: the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017.

UTC: The time reference used by GPS receivers (Coordinated Universal Time).

Vehicle position report: data sent from the taxi and received by the monitoring facility that must include the vehicle's registration number, its position, speed (in km/h), direction of travel and the time it provides the report.

Appendix 4: Consequential amendments to related regulations

A number of amendments to related regulations will accompany the commencement of the proposed Regulation.

Amendment of Road Transport (Driver Licensing) Regulation 2008

The consequence of this amendment is to give effect to Taskforce recommendation 21 that 'drivers covered by the proposed regulatory framework who meet other requirements of the professional driver scheme be permitted an extra demerit point'. Taxi and hire car drivers currently accredited under the Passenger Transport Act are classified as professional drivers and accordingly have a demerit points threshold of 14 points. This will be extended to drivers of hire vehicles who meet RMS conditions. See [RMS webpage about Professional Drivers](#).

Proposed amendments to the Road Rules 2014

Consequential amendments are required to the Road Rules because the relevant provisions of the *Passenger Transport Act 1990* are to be repealed as a result of the reforms. These include:

- Access to special purpose lanes and other exemptions for hire vehicles
- Child restraints and seatbelts
- Changes to definitions to ensure consistency with other Acts.

Under the Road Rules, taxis can access special purpose lanes such as bus lanes and are exempted from a number of other road rules. The current definition of 'taxi' in the Road Rules includes a private hire vehicle. Under the Point to Point Act, the definition 'private hire vehicle' will not exist. Instead, the term 'hire vehicle' is used and this includes both traditional private hire vehicles and ridesharing vehicles.

It is proposed that 'transitioned' hire vehicles (for which a private hire vehicle licence was in place in December 2015 and to which is fitted a 'HC' number plate) will retain access to special purpose lanes including bus lanes (Road Rule 158) and transit lanes (Road Rule 156(1)(a)(i)) while the vehicle is being used for the purpose of providing a passenger service until 30 June 2020 to give the existing private hire vehicle industry time to adapt to the new framework.

It is not proposed to capture ridesharing vehicles in these transitional provisions.

It is proposed to remove current hire vehicle exemptions relating to the following road rules:

- Driving up to 50m in a bike lane, Road Rule 153(3);
- Taxis stopping in Central Sydney taxi zone, Road Rule 167-1;
- Stopping in or next to a clearway, Road Rules 176, 176-1
- Stopping in a bicycle lane, bus lane, tram lane, tramway, transit lane, truck lane or on tram tracks, Road Rules 187(1), 187(2)
- Stopping near a fire hydrant, Road Rule 194

It is proposed to remove current hire vehicle exemptions relating to child restraints (Rule 266(5-1)) and seat belts (Road Rule 265) to improve passenger safety.

To ensure consistency of terms in the Road Rules, it is also necessary to amend key definitions including **small bus**, **public bus** and **coach**.

Appendix 5: List of stakeholders for consultation purposes

The following stakeholders have been notified that the proposed Regulation and this RIS is available for public consultation:

- NSW Taxi Council
- NSW Country Taxi Operators Association
- NSW Taxi Owners/Operators and Drivers Association
- Australian Taxi Drivers Association
- Albury Radio Taxis Co-operative Society LTD
- NSW Hire Car Association
- Motor Traders' Association of NSW
- Uber
- Cabcharge
- Accessible Transport Advisory Committee
- Community Transport Organisation
- BusNSW
- New South Wales Council of Social Service Transport Policy Advisory Group
- Disability Council of NSW
- NRMA
- goCatch
- mycountrytaxi
- GoByron
- Ingogo
- iHail
- London Rides
- Hop
- Flash Cab Australia
- Rideshare Drivers Association
- Live Group
- Mum's Taxi/Shebah
- Go Buggy/Go Girl
- Liftango
- Qantas
- Car Next Door/Ride Next Door
- Bubs Taxi
- Eden Visitor Centre
- Inspiring Excellence
- Workability
- Community transport service providers

- Carers NSW
- EcoTransit Sydney
- National Taxi Regulators Group
- Tourism and Transport Forum Australia
- Sydney Airport Corporation
- Sydney Olympic Park Authority

Government agencies consulted include:

- Department of Premier & Cabinet
- Department of Finance, Services and Innovation (including Office of State Revenue)
- NSW Police Force
- NSW Department of Justice
- Roads and Maritime Services
- Department of Family and Community Services (including Ageing, Disability and Home Care)
- NSW Department of Education
- NSW Health (including Ambulance Service of NSW)
- Australian Taxation Office
- Department of Veterans' Affairs
- National Disability Insurance Agency

Regulatory Impact Statement Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017

April 2017

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ISBN 978-1-925582-62-8