



Public consultation themes & outcomes

Summary paper

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1 Introduction

The Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017 (the Regulation) is made under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (the Act). The Regulation underpins the new regulatory framework for the point to point transport industry in NSW and sets out the new arrangements applying to passenger vehicles with 12 seats or less (including the driver), such as taxis and booked services like traditional hire cars and rideshare vehicles.

The Regulation delivers the new regulatory framework for point to point transport recommended in 2015 by the NSW Point to Point Transport Taskforce (the Taskforce), with a view to ensuring the industry's long-term sustainability.

The proposed Regulation was out for public consultation from 11 April 2017 to 9 May 2017, during which time about 215 submissions were received from industry, government agencies and the general public. Transport for NSW also met with a number of industry and government stakeholders during the consultation process.

The final Regulation and the Act will come into effect on 1 November 2017 at the same time as the powers of the new regulator for the industry, the NSW Point to Point Transport Commissioner. One aspect of the new regulatory framework – the temporary \$1 Passenger Service Levy – won't commence until 1 February 2018 in order to give the industry time to initially focus on its new safety obligations and prepare its systems to account for the levy

Several key themes were raised during the consultation process, which are listed in the 'Contents' section on pages 2 and 3 of this document. This paper seeks to expand on those themes and describe how the matters arising were settled during drafting of the final Regulation.

2 Safety of services

2.1 Safety standards

The public consultation confirmed there was broad in-principle support from stakeholders for a new ‘general duties’ safety framework for the point to point transport industry. In short, the general duties outlined within the Regulation focus on the industry’s responsibility to take reasonable steps to eliminate – or minimise – risks associated with the delivery of services. This new safety framework set out by the Regulation represents a pivotal shift away from the previously prescriptive regulatory environment of the industry and instead provides flexibility for point to point transport service providers to determine how they will best meet their new safety obligations.

A key feature of the new regulatory framework is the creation of safety standards for the two categories of point to point transport entities recognised under the new laws: taxi service providers and booking service providers. Under the Act and Regulation, only authorised taxi service providers can provide ‘rank and hail’ services – that is to say, only taxis can pick up passengers from taxi ranks or can be waved down in the street by passengers. Customers must book – by means such as an app or over the phone – a hire vehicle. It is important to note that most taxis fall into the category of a booked service as well as the category of a taxi service as they can be booked as well as caught at a rank or hailed on the street.

In its submission to the Regulation, the Independent Pricing and Regulatory Tribunal (IPART) supported a uniform safety standard across providers, noting that the Regulation ensured the same standards for taxi and booking service providers with respect to safety, safety management systems, insurance, provision of information, driver eligibility and notifiable occurrences.

IPART also favoured the application of additional safety precautions where needed, noting:

“The differences contained in the proposed Regulation between taxis and hire vehicles regarding vehicle standards appear to reflect the additional risks created by rank and hail services. This is consistent with our view that rank and hail services are higher risk. We consider that these safety and security arrangements should be outcome-focused rather than prescriptive.”

Due to the anonymous nature of rank and hail trips, additional safety measures such as security cameras are needed for taxis but not for hire vehicles.

Importantly, in order to secure better safety outcomes, the Regulation sets out to ensure that the companies at the top of the tree have direct accountability for the safety of their services.

Given the scope of the changes, some stakeholders expressed concerns about the need for guidance and support for the industry as it adjusts to a regulatory environment that has fundamentally changed. Ensuring that industry has access to information and is supported during the transition to the new arrangements was also a recommendation of the Taskforce.

Recognising these concerns, a targeted education campaign is being implemented by the Point to Point Transport Commissioner to assist industry in understanding its obligations and taking the right steps to ensure Point to Point Transport legislation is adhered to.

2.2 Identification and management of risks to health and safety

Under the new point to point transport regulatory framework, taxi service providers and booking service providers will have a primary duty of care to ensure 'as far as reasonably practicable', the safety of their services. 'As far as reasonably practicable' means taking actions and precautions that most people would consider reasonable to make sure their services are safe. Service providers will be required to take reasonable steps to put in place systems to identify, mitigate and eliminate risks.

To this end, the Regulation requires providers of passenger services to create and maintain a safety management system. This involves identification of reasonably foreseeable 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.

The provisions in the Regulation relating to safety management systems and the safety of services reflects the Taskforce's recommendation that industry participants take greater accountability for safety outcomes within an outcome-focused and risk-based regulatory framework. The Regulation also aims to regulate services uniformly and assigns clear accountabilities while still promoting competition and a level playing field for all point to point transport service providers.

A service provider will also be required to conduct and record regular consultation with other 'duty holders' (those who have a safety duty that relates to their service). The requirement to consult, co-operate and co-ordinate activities with other duty holders will help identify and address any gaps in managing safety risks.

Record keeping is an important part of the safety management system. Throughout the risk management process, the duty holder must document any hazards identified, risks assessed and the proposed control measures. Maintaining a safety management system will assist providers in managing the risks involved in carrying on a business of providing a taxi service or booking service and ultimately creates better safety outcomes for customers.

Several submissions raised concerns about the prescribed requirements for a safety management system in the proposed Regulation. For example, Uber's public submission states:

"Given the broad drafting of these provisions, it would be beneficial if the Point to Point Transport Commissioner provided further guidance on this provision as part of industry education and consultation."

The Point to Point Transport Commissioner has commenced working with industry to ensure the requirements of the legislation are understood. The Point to Point Transport Commission is implementing an extensive education campaign for the industry, involving a range of activities such as roadshows and workshops. Many of these activities began well in advance of the finalisation of the Regulation.

3 Vehicle standards

3.1 Wheelchair accessible taxi services

During the public consultation, stakeholders raised a number of matters associated with wheelchair accessible services.

Both the NSW Taxi Council and the NSW Country Taxi Operators Association sought clarification on when drivers of Wheelchair Accessible Taxis (WATs) were allowed to start and stop their fare calculation devices when transporting passengers in a wheelchair.

The proposed Regulation originally said that the driver of a wheelchair accessible vehicle must not start the fare calculation device before the taxi is ready to safely transport a passenger in a wheelchair.

As the NSW Taxi Council noted in its submission:

“[T]he current practice is for taxi drivers to first “set up” the vehicle ready to load the passenger and then to start the meter at the commencement of the passenger boarding the vehicle.”

Transport for NSW has now clarified in the final Regulation that a fare calculation device in a WAT may not be started until the passenger is safely loaded. This ensures passengers in wheelchairs are treated the same as other passengers. The Wheelchair Accessible Taxi Driver Incentive Payment which is paid when drivers carry a passenger in a wheelchair was increased from \$7.70 (GST excl) to \$15 (GST excl) on 1 July 2016 as part of the broader point to point transport reforms. This payment is designed to improve reliability and response times for passengers, and covers the time it takes for a WAT driver to ensure a passenger in a wheelchair is safely and securely assisted into the vehicle before the fare begins and assisted out of the vehicle at the end of the journey after the fare ends.

3.2 Digital displays prohibited

The Regulation originally proposed that point to point transport vehicles be prohibited from displaying any ‘digital or other moving image’. This was due to concerns that digital displays fitted to passenger vehicles could be a distraction for other drivers. Transport for NSW received feedback from a number of stakeholders that the provision as initially drafted required clarification. Further, it was suggested that digital displays with static images that can be updated periodically should be permitted on point to point transport vehicles in NSW. It was argued that displays such as these fitted to taxis are common internationally.

In its submission, CabMedia stated:

“We have seen improved advertising technologies such as Static Digital Displays being implemented in the OOH [Out-of-home] advertising industry by replacing traditional Static Print signages.”

According to CabMedia, there is a financial benefit for the point to point industry in allowing static digital displays. It suggested that:

“Injecting revenue into the PTP transport industry by generating additional revenue for operators and drivers of PTP transport services with no additional cost to the operators and drivers. This will be seen as a welcomed change to create financial sustainability particularly in the taxi industry given the proliferation of ridesharing in the past few years has resulted in decreased earning capacities to taxi operators and drivers.”

Other stakeholders also supported permitting digital displays on passenger vehicles including; Fare Media, MOOH, Ad Riders, Non-stop Media, as well as the NSW Taxi Council.

Transport for NSW notes that there are NSW Road Rules and vehicle standards in place that already regulate digital displays fitted to vehicles. According to *NSW Road Rules 2014* rule 299:

(1) A driver must not drive a vehicle that has a television receiver or visual display unit in or on the vehicle operating while the vehicle is moving, or is stationary but not parked, if any part of the image on the screen:

- a) is visible to the driver from the normal driving position, or*
- b) is likely to distract another driver.*

Maximum penalty: 20 penalty units.

The *NSW Road Rules 2014* rule 219 says:

A driver must not use, or allow to be used, any light fitted to or in the driver’s vehicle to dazzle, or in a way that is likely to dazzle, another road user.

Maximum penalty: 20 penalty units.

Furthermore, the vehicle standards outlined in Schedule 2 to the Road Transport (Vehicle Registration) Regulation 2007 prohibit vehicles from being fitted with or displaying certain coloured lights. Clause 124 (2) provides (with the exception of certain vehicles such as emergency vehicles, tow-trucks, oversize vehicles etc) that a vehicle must not display or be fitted with a light that flashes or rotates, shows a red light to the front, shows a white light to the rear, or shows a blue light.

These rules and standards imposing restrictions on the display and operation of digital displays vehicles have been in place for more than 25 years, long before a number of recent technological developments in this space.

In light of recent technological developments, as well as the issues raised by stakeholders, the Centre for Road Safety at Transport for NSW is conducting a review of current NSW laws relating to digital displays on vehicles.

The review is examining whether the current road rules and vehicle standards governing digital displays on vehicles in NSW are appropriate and whether they effectively manage safety and distraction risks to drivers and other road users.

The Centre for Road Safety will be actively seeking feedback from industry once it has finalised its proposed position on how to move forward on these matters.

If regulatory amendments are recommended as a result of this review, these will be progressed in the usual manner.

In the interim, all references to 'Digital Display units' have been removed from the final Point to Point Regulation. This means that while digital display units are not prohibited from being fitted on taxis and hire vehicles, they must still adhere to the relevant rules within *the NSW Road Rules 2014* (219 and 299) and the vehicle standards in the Road Transport (Vehicle Registration) Regulation 2007. Any television receiver or visual display unit which operates when the vehicle is moving or stationary (but not parked) would be prohibited if visible to the driver in the normal driving position or likely to distract other drivers. This requirement applies to television receivers or visual display units either in or on the vehicle and is subject to fines. Similarly, the display of lights which show certain colours or which dazzle other road users would be prohibited and subject to fines.

Transport for NSW will contact relevant stakeholders to provide further information about the review of the regulation of digital displays on vehicles in NSW.

3.3 Driver identification – taxis

Under the new safety framework taxi service providers need to ensure that drivers of a taxi have identification, issued by the authorised taxi service provider which is displayed in a taxi. It is considered important that taxi drivers have some form of identification in the taxi because of the anonymous nature of rank and hail journeys. Identification may be required in the event a passenger needs to make a complaint about the conduct of the driver, or to assist in tracking down belongings left in a taxi.

The proposed Regulation originally prescribed that the driver of a taxi must be provided with a driver identity document in the form of a card or electronic document containing the following:

- (a) a photograph of the driver*
- (b) an identification number provided by the provider of the taxi service*
- (c) the name and logo of the taxi service*

Transport for NSW received submissions from the taxi industry that said this rule was too prescriptive. The NSW Taxi Council supported the requirement for drivers to have identification, but in its submission noted that its:

“...members have expressed a desire for ID provisions to be undertaken across industry to allow portability for drivers between taxi service providers (networks). Many drivers drive for more than one provider and industry is exploring options for taxi industry wide driver identification supplied by the NSW Taxi Council. The requirement to provide the network name and logo of the taxi service on the identification document may mean that either numerous ID documents be produced or if a single document was used, multiple names and logos would be required, which is not practical.”

In response to this feedback, the requirement for the driver identification to include ‘the name and logo of the taxi service’ has been removed from the final Regulation. This allows a driver to use the same identification when driving for different taxi service providers.

The requirement to display identification does not currently apply to private hire car drivers and the Taskforce did not recommend that it be extended to booking service provider drivers, as details of the driver are often provided to customers at the time of booking.

3.4 Fare calculation devices – taxis

A number of taxi service providers expressed concerns that the requirements relating to fare calculation devices were unclear and would require some taxi service providers to install new taximeters in their taxis.

The proposed Regulation originally prescribed that a fare calculation device installed in a taxi must at all times display the fare, including any additional fees and charges or tolls. A number of stakeholders said that some older taximeters are not capable of displaying additional fees and charges. Often taxi drivers will add these fares to the total metered fare at the end of a journey.

In response to these concerns, Transport for NSW has amended the final Regulation to say that a taxi service provider has 12 months after the commencement of the Regulation to comply with the new requirements, as long as the taxi is currently fitted with a taximeter that meets all requirements under the Passenger Transport Regulation 2007.

Transport for NSW has also made changes to the final Regulation to clarify certain record keeping requirements, specifying the precise record keeping requirements for authorised taxi service providers. This makes it clear that it is not necessary for the fare calculation device in a taxi to record and store all necessary information. Rather, the requirement only stipulates what information must be collected and stored, but not the device that needs to collect and store this information. This enables the required information to be collected and stored on taxi dispatch or similar devices.

3.5 Duress alarm systems, vehicle tracking systems, & approved security camera systems and safeguards for taxis

The Regulation provides that all taxis in NSW must be fitted with security cameras. The Regulation also specifies that taxis in the Sydney Metropolitan region, Newcastle, Wollongong and the Central Coast must be fitted with a duress alarm system and a vehicle tracking system. A number of stakeholders expressed the view that the requirement for duress alarms and vehicle tracking systems be mandated for all taxis in NSW. Some stakeholders expressed the view that all hire vehicles should be fitted with security cameras too.

For example the Country Taxi Operators Association questioned why it is only a requirement for a taxi service in the Sydney Metropolitan, Newcastle or Wollongong transport districts or within the Central Coast local government area to have vehicle tracking systems and duress alarm systems. They asked “should rural and regional taxis not have security cameras and tracking devices for the safety of their drivers and passengers?”

The Country Taxi Operators Association also recommended that any passenger vehicle that transports “potentially vulnerable members of the community” should be “transported in a vehicle with a security camera system and tracking device”.

Transport for NSW notes the concerns of stakeholders about additional security systems in passenger vehicles. While the Regulations do not mandate duress alarm systems and vehicle tracking systems for all taxis, it is an implicit aspect of the general safety duty for a service provider to work out how best to meet their safety responsibilities. It is therefore a matter for each taxi service provider out of the mandated areas to determine if, based on the nature, location and history of the particular taxi service, such security systems are required.

As noted above, Transport for NSW considers that the anonymous nature of rank and hail trips means that the risks associated with such services are greater than those for booked services where identifying information for at least one passenger or account holder is required. As such, the cost the costs of installation and maintenance of security cameras, duress alarms and vehicle tracking systems is not justified given the risks. This view is consistent with the recommendations of the Taskforce.

3.6 Signs and markings – hire vehicles

With the phasing out of hire car ‘HC’ registration plates (see ‘Hire cars, including phase out of ‘HC’ plates and access to special purpose lanes’) and the growing number of rideshare vehicles on our roads, some stakeholders have expressed concern about the ability to identify hire vehicles for enforcement purposes.

The Regulation says that a driver of a hire vehicle (other than a motorcycle) must display a retroreflective sign on or near the rear of the driver’s side of vehicle when it is being used to provide a passenger service. The purpose of the sign is to let NSW Police know when a vehicle is providing a passenger service. This is relevant for roadside breath tests as a driver of a passenger service must not drive a vehicle with a blood alcohol concentration of more than 0.02, rather than the 0.05 limit for drivers of private vehicles. The retroreflective sticker therefore distinguishes a rideshare vehicle from a regular private vehicle.

The new rules, however, allow for flexibility in terms of the size, shape and graphic design of the sign, so long as it ‘makes it apparent that the vehicle is a hire vehicle’ and ‘is clearly visible from the outside of the vehicle’. For example, service providers may choose to display the business logo of the booking service for which they drive.

Transport for NSW received submissions suggesting a generic retroreflective sign be required across all hire vehicles instead. The Ride Share Drivers Association of Australia (RSDAA) has suggested in its public submission:

“The RSDAA has no objection to signage being displayed on to vehicles being used for Booked Hire but would recommend that a single generic sign be used.”

The NSW Taxi Council echoed these concerns, submitting that it:

“strongly oppose[s] a non-standardised approach to identifying hire vehicles and proposes identification for hire vehicles be standardised by way of consistent shape, size, colour, location and marking.”

The flexibility of the rules however, is designed to allow service providers to be innovative in how they meet the industry standard, consistent with the outcome-focussed approach of the rest of the new regulatory framework, but at the same time ensure authorities are able to identify a hire vehicle for enforcement purposes.

There were also concerns raised that signage on hire vehicles might lead to potential customers assuming that they could hail a hire vehicle in the street in order to commence a journey. In its public submission GoCatch expressed concerns that:

“This signage will now make it possible for passengers to flag down or intercept a vehicle or at least create the perception that passengers are getting a ride in this way. The visibility of this signage may encourage attempts to intercept vehicles by hailing..... If it looks like a taxi or otherwise available for hail vehicle people are going to try to hail them.”

The Regulation prohibits a hire vehicle from being painted or marked, or having signs or lights that could imply the vehicle is a taxi or a vehicle that is plying or standing for hire. This is a specified safety standard for the vehicle owner and separately there are also significant penalties for drivers of hire vehicles plying or standing for hire.

Transport for NSW notes concerns about signs on hire vehicles being used as a cue for people to hail these services. The reason for the retroreflective sign being displayed on the rear of the vehicle rather than the front is to minimise the potential of passengers hailing the vehicle. This is supported by the Newcastle Taxi Association in its public submission:

“We fully support the safety of Services Division 3 Vehicle Standards sub 22/2 where the location of the reflective sign is to be visible only on the right hand rear of the driver’s side of vehicle for all rideshare vehicles, to eliminate rank and hail issues and to allow adequate identification by law enforcement officers.”

4 Insurance

4.1 Vehicle insurance

The Passenger Transport Regulation 2007 currently requires all taxis and private hire vehicles to be covered by insurance which provides cover of \$5,000,000 against liability in respect of damage to third-party property arising out of the use of the vehicle. This insurance is in addition to Compulsory Third-party Property (CTP) which is a requirement of all vehicles registered in NSW.

In its submission, Uber recommended changes to the proposed rule around requiring third party property insurance. It suggested that the rule as written was “unclear as to which party’s excess is being referred to: the person who caused the damage or the third party”. Uber also suggested that the requirement for the policy to indemnify the driver including the excess payable on a claim arising out of the use of the vehicle may inappropriately limit the structure of compliant insurance policies in respect of excess.

Taking these comments on board, Transport for NSW has simplified this provision in the final Regulation, removing the reference to the policy needing to indemnify the driver in respect of excess. This safety standard has now also been specified for the vehicle owner. This means the vehicle owner is strictly liable to ensure that the correct insurance coverage is in place. The requirement to ensure that a vehicle has the correct insurance policy remains a ‘so far as is reasonably practicable’ obligation of the provider of a passenger service, provider of a booking service, the authorised provider of a taxi service and the holder of the taxi licence (if the vehicle is a taxi). Transport for NSW considers that these changes clarify the intention of the provision and ensure that vehicles have appropriate insurance coverage.

Transport for NSW also received several submissions which expressed concerns about CTP premiums for taxis. For example, Cessnock Radio Cabs highlighted its concern that:

“There is ... a major discrepancy in the price of insurance and CTP for taxi owners versus Uber who can get a CTP and insurance for the same price as an average family car whilst the taxis are paying majorly inflated costs compared to them thereby making it even harder to maintain a competitive place in the market.”

Matters relating to CTP insurance are the responsibility of the State Insurance Regulatory Authority (SIRA). Transport for NSW is referring all public submissions which raised issues related to CTP to SIRA for its information.

SIRA has recently conducted a comprehensive review of CTP insurance. A new CTP scheme will commence in December 2017. More information about the new CTP scheme is available at <http://www.sira.nsw.gov.au/green-slips/ctp-green-slip-reforms>.

5 Drivers

5.1 Disqualifying offences and ineligible drivers

The Regulation sets out the disqualifying offences for drivers. If a person has a disqualifying offence in their criminal history, they will not meet the requirements under the Regulation. Driving a passenger vehicle is considered a position of trust because it puts drivers in close contact with members of the community. It is an obligation of taxi service providers and booking service providers to ensure that all drivers providing passenger services meet requirements in relation to criminal history. There are also requirements in the Regulation in relation to licence tenure, medical standards and rejected and cancelled driver authorities.

Transport for NSW received feedback that the way that the disqualifying offences were outlined was potentially confusing. While all stakeholders understood the need for this requirement, they were confused about how the new arrangements would work and how they would implement the disqualifying offences requirements.

Following this feedback Transport for NSW worked to refine the list of disqualifying offences to capture only those offences that are inherently relevant to the task of driving a passenger vehicle. Transport for NSW considers those offences to be:

- Prescribed concentration of alcohol offences;
- Drug offences (including possession, sale and manufacture offences);
- Negligent driving, dangerous driving, reckless driving;
- Offences against a person (including murder, manslaughter, assault, sexual assault, kidnapping, stalking, harassment);
- Other offences directly related to offences against a person (including child pornography offences, child prostitution offences, child abuse material, animal cruelty, offensive behaviour, voyeurism offences);
- Robbery, stealing, theft; and
- Fraud and dishonesty offences.

Transport for NSW considers that a person whose criminal record includes any of these offences is an unsuitable person to be a passenger vehicle driver. Under this approach approximately 1,000 offences under NSW law are considered to be disqualifying offences.

The prescribed disqualifying offences are considered to be the minimum standard and do not prevent a taxi service provider or booking service provider from setting their own higher standards. If an authorised service provider considers other offences to be directly relevant to the task of driving a passenger vehicle, they are free to add these to the list of offences that would disqualify a driver from joining their service.

Service providers have a duty of care to ensure the safety of passengers and the public. Part of this obligation involves performing periodic criminal history checks and, based on the person's criminal history, making a determination as to whether placing a particular person in a position of close proximity to members of the public is consistent with their duty of care.

Ultimately, it is not feasible to set out in regulation all of the potentially relevant offences for the purpose of the disqualifying offences check. There are thousands of potentially relevant offences across all Australian and foreign jurisdictions. Whether a particular offence (which is not a disqualifying offence) is relevant for a particular service is a determination that must be made by a taxi service provider or booking service provider based on their assessment of how best to meet their primary duty of care.

The Point to Point Transport Commissioner is developing a Driver Vehicle Dashboard located on the new Industry Portal to assist authorised service providers with managing their obligations in relation to drivers and vehicles. While there is no obligation to use the portal, the tool will be available for all authorised service providers.

Spent convictions

Stakeholders also questioned how the disqualifying offences regime will work in relation to the spent convictions regime. In its submission, the Australian Taxi Drivers Association stated that “unless a reasonable and proportionate time limit is placed on each disqualifying offence, this clause is unacceptable in terms of natural justice”.

The Regulation does not alter or effect the operation of the NSW Spent Convictions Scheme. The *Criminal Records Act 1991* (Criminal Records Act) sets out the offences which are capable of becoming spent.

Under the Criminal Records Act, all convictions for individuals are capable of becoming spent, except:

- convictions for which a prison sentence of more than 6 months has been imposed; and
- convictions for sexual offences.

If a conviction of a person is considered to be spent then the person is not required to disclose the offence and the person's criminal history is taken to include only those convictions which are not spent.

This means that spent convictions will not appear on a person's criminal history and will not be relevant for the purpose of determining whether a person has been convicted of a disqualifying offence under the Regulation.

5.2 Driver of wheelchair accessible vehicle to be competent in loading and unloading wheelchair passengers

A number of submissions also raised concerns about the requirement for the driver of a WAT to be competent in the loading and unloading of wheelchair-bound passengers. Carers NSW, NCOSS, and Spinal Cord Injuries Australia all sought clarification on how the new requirements would operate and whether they provide appropriate safeguards for wheelchair-bound passengers.

The Regulation says that a driver of a WAT or Wheelchair Accessible Hire Vehicle (WAV) must be able to demonstrate a 'level of competence' in the safe loading, restraint and unloading of a person in a wheelchair to a standard equivalent to that required to complete Element 3 (*Assist passengers into and out of a taxi in a manner suited to their disability*) and Element 4 (*Drive a taxi used by passengers with disabilities*) of the competency unit TLIC2040 *Provide wheelchair accessible taxi services to passengers with disabilities (Release 1)* issued by the Commonwealth.

This differs from the previous requirement that the driver of a WAT must have had successfully completed a course of training and instruction (approved by Transport for NSW and conducted by a registered training organisation) for the care and transport of persons with physical disabilities.

Ensuring the driver of a WAT or WAV is competent in the safe loading and unloading of wheelchair passengers is an explicit safety duty which forms part of a provider's safety management system. As such a service provider must keep records of the control measures taken to eliminate or minimise the risks associated with the safe loading and unloading of passengers in wheelchairs. As part of the requirements for safety management systems these control measures must be periodically monitored and reviewed. On that basis Transport for NSW considers these safety standards for drivers of wheelchair accessible vehicles offer a higher overall standard of safety than a simple requirement that the driver has completed a particular training course.

The public consultation also saw some submissions speak to the question of additional training requirements, relating to effective communication and the application of ethical behaviour in delivering services to people with a disability. The Regulation is focussed on safety, and while Transport for NSW encourages service providers to train their drivers in customer service, it is seen as a matter for service providers to address rather than for government to mandate.

The Regulation also includes a grandfathered period after which time WATs and WAVs used to provide passenger services will need to be fully compliant with all requirements. This grandfathering arrangement reflects the fact that there is a current grandfathered arrangement in place for WATs. New WAT protocols were implemented in 2011 which exempted vehicles that were already in service. As these vehicles are retired from service, they must be replaced by new compliant vehicles. All non-compliant vehicles need to be replaced or upgraded within two years of the commencement of the new Regulation.

5.3 English language requirements – taxi drivers

The Regulation makes changes to the existing English language requirement for taxi drivers. These changes are consistent with the recommendations of the Taskforce.

The Regulation prescribes that a provider of a taxi service must ensure, ‘so far as is reasonably practicable’, that a person who drives a taxi has sufficient competence in the English language to communicate with passengers about the hiring of the taxi and matters related to the hiring. A person is assumed to have sufficient English language competence if they have completed, or can meet, certain English language tests specified in the Regulation. Taxi service providers are given a large degree of flexibility in determining how drivers meet the standard. They may still require a driver to complete an English language assessment or by some other means.

Various stakeholders view the current rules are too onerous, welcoming the new flexibility around meeting the standard.

In its submission, the NSW Taxi Council said:

“The NSW Taxi Council supports flexibility in determining how a driver meets the standard, and this requirement and flexibility should be applied to all providers equally.”

Stakeholders have also suggested in their public submissions that the English standards should also apply to hire vehicles. The NSW Country Taxi Operators Association (CTOA) has expressed in their public submission:

“The CTOA supports minimum English language requirements and recommends that this regulation be extended to all point to point drivers. It is not understood why this would be limited only to taxi drivers; all point to point drivers need to communicate with passengers, to be able to communicate with emergency services or compliance officers should there be an emergency, accident or notifiable incident.”

The new requirement accounts for the way in which rank and hail services are conducted. As the Taskforce outlined, a customer’s destination would generally be communicated verbally in rank and hail trips, so taxi drivers need to be proficient in understanding and speaking English to transport their passengers.

The Taskforce did not recommend extending this requirement to drivers of booked services, as these service providers are more able to tailor their services to address any potential barriers related to language.

6 Notifiable occurrences

6.1 Notifiable occurrences

The Regulation provides that an authorised taxi service or booking service provider must report to the Point to Point Transport Commissioner certain accidents or incident that are prescribed as notifiable occurrences.

During the public consultation, stakeholders sought clarification on what accidents or incidents should be reported to the NSW Point to Point Transport Commissioner. Following this feedback, Transport for NSW has added further detail to the final Regulation to provide clarification on a range of 'notifiable occurrences'. This Regulation supplements the requirements set out in the Act.

Further, the Point to Point Transport Commissioner will finalise detailed requirements relating to notifiable occurrences in consultation with industry.

7 Authorisation of providers of passenger and booking services

7.1 Authorisation conditions

7.1.1 Booking service for wheelchair accessible taxis

The final version of Regulation adds a new provision for the booking service for wheelchair accessible taxis:

“A taxi service provider who provides services using wheelchair accessible taxis must enter into an arrangement for the provision of booking services for the wheelchair accessible taxis with a booking service approved as a wheelchair accessible taxi booking service by the [NSW Point to Point Transport] Commissioner.”

The new provision is consistent with current licence conditions for Sydney Wheelchair Accessible Taxi (WAT) licences, and builds on the recommendation of a Taskforce that a centralised booking number be maintained for WAT services. Adding this provision is designed to clarify what is required of WAT service providers, and the role of the regulator in the arrangement.

7.1.2 Authorisation fees

The Regulation outlines the authorisation fees that authorised taxi service providers and booking service providers are required to pay. These fees offset some of the operating costs of the NSW Point to Point Transport Commission.

It is common practice for an industry to contribute to the cost of its regulation. For example, local councils and the NSW Food Authority charge fees to restaurants, cafes and food businesses to help fund the food safety inspection regime in NSW.

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.

The Regulation outlines the method of determining authorisation fees for providers of taxi services and booking services. Originally, it was proposed that service providers pay a combination of base fees and per trip fees. An authorised taxi service provider or booking service provider was to pay an annual base fee of \$180, while a combined authorised taxi service provider and booking service provider would have paid an annual base fee of \$240. In addition, all service providers would have been required to pay a transaction fee of \$0.03 per 'passenger service transaction', or trip.

A number of submissions expressed concerns regarding the administrative burden of collecting passenger service transaction data, and the total cost of authorisation fees for individual taxi service providers, particularly small providers and co-operatives. For example, the submission from the NSW Taxi Council stated that:

"The NSW Taxi Council has received significant feedback from the taxi industry in relation to [Authorisation Fees]. The cost imposed of \$0.03 per passenger service transaction is significant for service providers and may well prove to be unaffordable for the majority of networks."

The authorisation fees structure originally proposed was designed to leverage off trip data collected for the levy. This was intended to provide minimal additional administration required to calculate the authorisation fees.

In its submission, Port Macquarie Taxis objected to service providers in regional NSW being asked to collect a \$1 levy per trip:

"Regional Networks average trip value is most likely \$17 compared to Metropolitan fares where the average is most likely \$30. When taken as a percentage rate Regional Networks and their clientele will be remitting a much higher percentage contribution to Point to Point reforms than Metropolitan Networks. This is totally unacceptable to Port Macquarie Taxis."

The submission from Uber expressed some concerns over the accuracy of data being relied upon to calculate the authorisation fees:

"We are concerned that the collection of the \$0.03 authorisation fee on a per trip basis will be problematic to enforce across industry as it relies on accurate and up-to-date reporting by each transport service provider, booking service and/or operator."

Based on the feedback received from industry, Transport for NSW has outlined new arrangements for authorisation fees in the final Regulation.

Fees will now be charged at a tiered, flat rate. Service providers will be charged based on which annual trip range applies to their individual businesses:

Trip Range (per year)		Fees (per year)
0	20,000	\$500
20,001	50,000	\$750
50,001	100,000	\$1,250
100,001	500,000	\$2,500
500,001	1,000,000	\$5,000
1,000,001	2,500,000	\$8,500
2,500,001	5,000,000	\$15,000
5,000,001	10,000,000	\$25,000
10,000,001+		\$50,000

The benefit of this model is that it provides broad trip ranges to make it simple for authorised providers to calculate the number of trips they will make each year. This system also ensures smaller rural and regional service providers pay a fair amount based on the size of their fleet and the number of trips they provide.

To further assist industry during the transition phase, authorisation fees will not be payable until July 2018.

8 Fares

8.1 Fare estimates, taxi fare structures, publication of taxi fares, pre-payment scheme for taxi fares & fare may exceed authorised fare if out of area service

The Regulation makes significant changes to the way that fares for booked services are regulated. In keeping with a recommendation of the Taskforce, fares for all booked services – including booked taxi services – will be effectively deregulated, with maximum fares only applying to rank and hail taxi services.

Maintaining maximum fares for rank and hail recognises that for trips of this nature customers are usually not able to obtain the fare information they need to determine the price or value of the service before choosing the taxi company. With access to technology such as smartphones, booked services customers can more readily shop around to find a service that best suits them.

Rank and hail taxi fares

In submissions and during consultations, stakeholders sought clarification about changes to arrangements for rank and hail taxi fares. Under the Regulation, maximum fares will continue to apply to rank and hail taxi services. Regulated maximum fares will continue to be determined by Transport for NSW under a fares order published in the Gazette. As currently applies, the Minister for Transport and Infrastructure may request that IPART conduct an investigation and make recommendations as to appropriate regulated maximum fares for taxi services.

However, there are some new arrangements that will apply to fares for rank and hail taxi services under the Regulation. For example, when the Regulation commences, taxi service providers will be required to publish a 'taxi fare structure'. The taxi fare structure must set out all the fees and charges that are payable for a rank and hail taxi service by that taxi service provider. The components of the taxi fare structure may not exceed the maximum fare components in the fares order. The fare calculation device fitted to the taxi must be calibrated so that it is consistent with the components of the fare structure.

The purpose of the taxi fare structure is to promote greater competition in the pricing of rank and hail services. The taxi service provider must make copies of the taxi fare structure available to potential passengers on request and must also publish the taxi fare structure on their website (if they have one).

The Regulation also provides that a driver of a taxi may charge a fare that exceeds the authorised fare for a rank and hail trip if a passenger is being conveyed to a place outside the taxi's area of operation. Similarly, the fare must be negotiated and agreed upon by the customer before the start of the journey.

The Regulation originally proposed a cleaning fee for that was not to exceed 'the amount that may be charged where the driver of a taxi waits for 1 hour for a passenger.' Feedback from stakeholders was that this figure was too low. The final Regulation has been amended to allow for a cleaning fee for taxis based on a maximum set fee that will be specified as part of the fares order.

Booked services fares

A booked point to point transport service is one that is arranged by phone, email or smartphone application.

Under the Regulation, fares for all booked services are regulated in the same way. This includes booked services provided in a taxi. The Regulation permits booked taxi services to compete directly with other booked services such as traditional hire cars and rideshare services for the first time, including the freedom to offer discounts or to charge higher rates in peak periods. This is a significant change to the way that the taxi industry has operated previously.

In order to ensure passengers are protected, a fare estimate must be given to the intending passenger before the trip they book starts. This applies to all booked trips, whether they are in a taxi, traditional hire car or rideshare vehicle, and is intended to help passengers make informed decisions before accepting the service.

However, some submissions expressed concerns about this change. For example, in relation to booked fares and fare estimates, the NSW Council of Social Service (NCOSS) said in its submission:

"We have concerns regarding the intention to continue to allow unregulated fares for booked services, and the lack of specificity regarding how fare estimates may be provided."

It should be noted that the Regulation provides that for booked trips where the passenger indicates that they will be paying for the trip via the Taxi Transport Subsidy Scheme the taxi driver is obligated to use the taximeter and the fare must be calculated consistent with the fares order.

In its submission, the Australian Taxi Driver Association suggested greater clarity was needed on the question of whether a metered fare may satisfy the requirements of a fare estimate. Transport for NSW agreed and has made a minor amendment to the final Regulation, clarifying that a fare estimate may be expressed in a rate per hour, a rate per distance or a flat rate 'or a combination of those'. Fare calculation devices use a combination of distance and time to calculate fares. Indeed, Transport for NSW understands that a number of taxi networks intend to use fare calculation devices for all trips including booked trips. Transport for NSW considers that its minor amendment means that it is permissible under the Regulation for a fare calculation device to be used to calculate a fare for a booked trip, provided that other requirements of fare estimates are also met.

Transport for NSW considers that these requirements for providing and accepting fare estimates offer sufficient safeguards for consumers. Similar arrangements for pricing have been in place for private hire vehicles in NSW for many years and virtually all other goods and services are priced in accordance with the market, rather than by a maximum price set by regulation. As with all matters, consumers need to exercise their judgment and may need to obtain fare estimates from multiple service providers to find a service that suits them.

IPART supports the introduction of fare estimates for booked trips. In its submission to the Regulation, it states that:

“Providing estimated fares helps customers make educated decisions. We support the requirement that fare estimates include information on when they may vary and how the variation is calculated. This provides additional customer protection, and helps customers make informed decisions in a competitive market.”

Pre-payment scheme for taxi fares

Under the Regulation, pre-paid taxi fares will apply to all of NSW. The scheme originally began as a trial on the Central Coast and was later extended to a number of secure late-night ranks in Sydney's CBD. Since 1 July 2017, the scheme has applied to all of regional NSW outside of the Sydney metropolitan area. Once the new Regulation commences, pre-paid taxi fares will apply to all of Greater Sydney as well, and therefore all parts of the state.

Under these arrangements, a taxi driver may ask a passenger to pay the estimated taxi fare at the start – or at any point during – the journey. At the end of the journey the taxi driver must give the passenger a refund for any overpaid amount or the taxi driver may ask the passenger to pay any outstanding balance.

9 Other obligations relating to passenger and booking services

9.1 Driver to remain with vehicle – Sydney Airport precinct and other airports

The Regulation originally proposed that a driver of a point to point transport vehicle at the Sydney Airport precinct must not move more than three metres from their vehicle without a 'reasonable excuse', but made allowances for drivers to move beyond the three-metre limit for the purpose of loading or unloading luggage. This drafting was based on a current provision in the Passenger Transport Regulation 2007.

Transport for NSW received feedback from a number of stakeholders that the proposed rule had the unintended consequence of preventing drivers of passenger vehicles from providing assistance to some passengers. Vision Australia and Blind Citizens Australia both provided submissions detailing the difficulties vision impaired persons can have using airports when they are travelling.

Vision Australia noted that:

“One significant reason for this is that taxi and other point to point transport drivers are unwilling or unable to provide the assistance they need in getting from the vehicle to the check-in counter”.

Vision Australia also noted that:

“[L]oading luggage warrants its own exception, but providing assistance to people who are blind or have low vision does not”.

Strict rules apply to the movements of people, goods and vehicles at airports. Sydney Airport is Commonwealth land and is subject to the Airports (Control of On-Airport Activities) Regulations 1997 (Airports Regulation). The Airports Regulation says that:

“The driver of a taxi must not leave the taxi unattended in a taxi zone on the landside of an airport if a traffic control device that indicates that taxi drivers must not leave their taxis unattended applies to that taxi zone”.

An infringement notice for breach of this requirement is \$630. An infringement notice may be issued by Australian Federal Police (AFP), Special Protective Service Officers (of the AFP) or an employee or contractor of an airport-operator company who is authorised for the purpose of issuing such notices.

Ultimately, Transport for NSW cannot implement a regulation that would permit a driver of a passenger vehicle to leave their vehicle unattended so that they may provide assistance to a passenger. Such a regulation would conflict with Commonwealth law.

The final Regulation has been amended to be consistent with the Commonwealth law that vehicles must not be left unattended.

Transport for NSW is providing copies of all public submissions that raised the question of how far point to point transport drivers should be allowed to move from their vehicles to the Sydney Airport Corporation Limited for its information.

10 Miscellaneous

10.1 Bus operators

Transport for NSW notes that accredited bus operators with vehicles with between eight and 12 seats (including the driver) will have 12 months from the commencement of Part 3 of the *Point to Point Transport Act 2016* to be compliant under the new Act. Once this 12-month period ends on 1 November 2018, everyone providing passenger services in vehicles with 12 seats or less (including the driver) will need to be compliant with the *Point to Point Transport Act 2016*.

It is also noted that bus operators providing passenger services in vehicles with more than 12 seats (including the driver) will not be affected by the point to point transport reforms. These services will continue to be regulated under the *Passenger Transport Act 1990* (or the *Passenger Transport Act 2014* when it commences) and are not captured by the operation of the *Point to Point Transport Act 2016*.

10.2 NSW Passenger Service Levy

The NSW Government has made significant changes to the point to point transport industry to ensure its sustainability into the future. In order to support the taxi and traditional hire car industries adjust to the changes, the temporary NSW Passenger Service Levy will be put in place to fund a \$250 million industry adjustment assistance package. The 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 \$1 levy will be payable by authorised taxi service providers and booking service providers and will be applied to each 'passenger service transaction' conducted in NSW by a passenger service provider for no longer than five years, or until the \$250 million needed for the industry adjustment assistance package is raised (whichever comes first). The levy will apply to all point to point transport journeys in NSW, including for trips taken by way of booking a taxi or hire vehicle, and rank and hail trips taken in taxis.

It is up to service providers to decide whether they absorb the cost of the levy or pass it on to customers. If the cost is passed onto the customer, however, GST will apply. If a taxi service provider intends passing the cost on to customers, it must ensure that this cost is included in its taxi fare structure.

Transport for NSW will be conducting a customer awareness campaign in the lead up to the commencement of the new regulatory framework, to explain to customers that they might have to pay the levy (with GST) if service providers choose to add it to their fare.

Some public submissions expressed concerns over the levy having a greater impact on regional companies over metropolitan companies. Port Macquarie Taxis said in its submission:

“When taken as a percentage rate Regional Networks and their clientele will be remitting a much higher percentage contribution to Point to Point reforms than Metropolitan Networks.”

Legion Cabs expressed concerns about the difficulties of collecting the levy where it is paid to taxi drivers, saying:

“[T]he \$1.00 Passenger Service Levy is ... of grave concern to the Industry. Whilst a Ride Share company like Uber can "clip the ticket" before passing the earnings on to the driver, the taxi industry, using the Bailee/Bailor arrangement, as determined by law, simply cannot as the money flows the wrong way. The cost of compliance for Legion Cabs would be extraordinary.”

It should be noted that collection of the passenger services levy from drivers does not alter or affect the industrial arrangements for bailee taxi drivers under the Taxi Driver Contract Determination 1984.

In its public submission, Uber expressed concerns regarding the recording and collection of the levy:

“We are concerned that the collection of the \$1 levy on a per trip basis will be problematic to enforce across industry as it relies on accurate and up-to-date reporting by each transport service provider, booking service and/or operator.”

To legally provide a point to point transport service in NSW under the new regulatory framework, however, all authorised service providers will be required to maintain records, including the number of trips conducted. The NSW Point to Point Transport Commissioner will have the power to audit the records of service providers, and there will be penalties for contravening a condition of authorisation.

Noting the concerns of some in the industry about the impacts of the levy, Transport for NSW has proposed a levy exemption and a levy rebate for some small service providers.

Trips taken in a 'remote' or 'very remote' area of NSW, (as defined in the 'Australian Statistical Geographic Standard' and published by the Australian Bureau of Statistics), are exempt from the levy. This measure aims to ensure that services in the most remote areas are not affected.

In addition, a booking service provider or taxi service provider who conducts fewer than 150 trips annually will be exempt from the levy. This is because the cost of collecting the levy from these service providers would likely outweigh the amounts collected.

Certain levy rebates will also be available for small taxi and booking service providers. A taxi or booking service provider who conducts more than 150 trips but less than 400 trips will pay a flat rate levy amount of \$150. A taxi or booking service provider who provides more than 400 trips but less than 600 trips will pay a flat rate levy amount of \$400. This will simplify arrangements for small service providers and enable them to pay a simple flat rate amount annually.

It is hoped that these measures will go some way to address concerns of the industry about aspects of the levy.

In addition, the Point to Point Transport Commissioner and Revenue NSW are establishing arrangements to assess and collect the levy so as to reduce the costs to industry and make it easy for service providers to comply with this provision of the law. Online returns have been designed to be easy and quick to use; assessments will be undertaken monthly in arrears to assist with cash flow and direct debit arrangements will require no action by industry to make payment. The new regulator is developing an online portal where authorised service providers will register to pay the levy. This portal is being designed with input from industry groups.

Transport for NSW and the Point to Point Transport Commissioner will also continue working with industry on ways to ease the burden on authorised service providers in relation to the collection of the levy.

11 Matters outside the Regulation

11.1 Hire cars, including phase out of 'HC' plates and access to special purpose lanes

The NSW Government has accepted a series of recommendations from the Taskforce in relation to traditional hire cars. The registration processes for hire cars have been streamlined and hire car licence fees – which in Sydney were more than \$8,000 annually – have been removed. It has also been decided to phase out the special 'HC' registration plates. Hire cars that were licenced before 18 December 2015 will keep their existing HC plates – and continue to access special purpose lanes (including bus lanes) – until 30 June 2020.

While the transitional arrangements are not a part of the Regulation, several submissions argued for the ongoing retention of HC plates to allow access to special purpose lanes. In its submission, AAA Limo Service stated:

“It is also essential that our clients receive quick and efficient transport by the beneficial use of bus lane privileges, especially over the Harbour Bridge.”

Under the Act and Regulation, traditional HC-plated hire cars are considered to be a type of hire vehicle providing a booked service. It is not considered feasible to permit all booked services – including rideshare vehicles – to access special purpose lanes. This would significantly increase congestion in these lanes and impact on bus travel times. In order to ensure that booked services are regulated on the same basis, it has been decided that HC-plated vehicles will no longer be able to access special purpose lanes. However, in order to support industry during the transition period, it has been decided that traditional hire cars may continue to access special purpose lanes for a period of four years, to 30 June 2020.

The Government is continuing to work with industry peak bodies on matters relating to traditional hire vehicles.

11.2 Industrial relations and drivers, taxation

A number of matters relating to industrial relations and drivers, taxation were raised during the public consultation. Transport for NSW notes these submissions, but also that the matters are outside the mandate of Transport.

11.3 Accessibility of services, vehicles & booking apps

A number of stakeholders, in particular disability advocates raised questions about accessibility in relation to such matters as services, vehicles and booking apps. Transport for NSW notes the concerns raised, but also that a number of Commonwealth laws and standards cover matters of this nature.

12 Next steps

Transport for NSW appreciates the feedback received during the public consultation on the Regulation.

Where possible, the final Regulation has been adjusted to accommodate the views of stakeholders. The insights provided by stakeholders were invaluable in finalising the Regulation.

The NSW Point to Point Transport Commissioner is meeting with industry stakeholders across NSW, to make sure they understand the new laws, as well as when and how they will apply.

Transport for NSW will soon publish a new taxi fares order and security camera specifications to support the new regulatory requirements for the industry.

Consequential amendments to the Road Transport (Vehicle Registration) Regulation and Road Transport (Driver Licensing) Regulation will also be made to support the new arrangements for annual safety inspections for point to point transport vehicles and to continue the application of an extra demerit point for professional drivers that is currently applied to eligible driver authority holders.

Transport for NSW has also started a review of all subsidies and incentives of services for people with a disability. More information will be published on the Transport for NSW website as the review progresses.