

NSW Hire Car Association

Response to Proposed Point to Point Transport (Taxis and hire Vehicles) Regulation 2017

8 May 2017

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EXECUTIVE SUMMARY

A VALUABLE INDUSTRY

The NSW Hire Car Association continues to support reform in the P2P transport industry which embraces emerging technology, removes unnecessary bureaucracy and creates new opportunities for industry participants to contribute to the larger NSW economy.

The NSW Hire Car industry (identifiable via HC plated vehicles until June 2020) is already an important contributor to the NSW economy. Currently there are 1500 registered HC vehicles (1200 in the Sydney metropolitan area and the remainder in rural NSW). These vehicles (via the small business operators who run them) collectively complete approximately 7,500 passenger trips per day and contribute approximately \$312,000,000 in direct revenue to the NSW economy. Another equivalent \$312,000,000 is estimated to be spent on related goods and services within NSW which support the operation of the industry and the provision of the services.

In addition to the revenue delivered, this industry sector executes two other important primary responsibilities: (1) fulfilling inbound and outbound pre-booked ground transport for the travel and tourism industry; and (2) transporting an important sector of the community which constitutes senior business executives, government officials, overseas dignitaries and distinguished members of the judicial system. The contributions of our customer base to the NSW economy can easily be assessed in the billions.

Members of the NSW HCA and throughout the industry are extremely proud of the contribution we collectively make to the NSW economy and will continue to fight for the right to exist beyond 2020.

For the purposes of this review, we are focussed on providing commentary on the proposed *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* and the related *Regulatory Impact Statement*.

The following document outlines in details our questions and comments.

POSITION SUMMARY

The hire car industry in NSW is comprised primarily of sole and small operators. The proposed Regulations introduce an increased burden on the hire car industry which will drive the majority of the industry out of business. The P2P Regulations in the proposed format are entirely unrealistic and unmanageable for the existing industry and appear to be geared solely to large and multinational corporations.

In addition, it appears to our industry that the NSW government is attempting to transfer the entire burden of governance and safety from the NSW Government and onto the booking service providers. This complete transfer of responsibility is inappropriate and unconscionable.

The only viable and sustainable option for safer P2P transport is the measured and reasonable collaboration between government and the industry. The P2P industry and its providers cannot succeed without the realistic support and participation of key government bodies in the provision of real-time safety information on drivers who are ultimately the end-point providers who fulfil P2P transport services to the public.

Anything short of such a genuine collaborative approach must be viewed as a deliberate ploy by government intended to ensure that traditional hire car operators fail under the new regime and that the industry ceases to exist.

There are 5 major areas of concern in relation to the proposed Regulations:

1. Considerations for HC plated vehicles until 30 Jun 2020

Under the current reforms operators will be allowed to retain HC plates until 30 June 2020. Yet under the new Regulations there is absolutely no consideration given the continued operation of these small businesses. The small business operators who operate and survive off the HC plates will not be able to assimilate the proposed Regulations and will be driven out of business well before 2020. There does not appear to be any sense in this approach and the concession and the realistic outcome are completely contradictory.

2. Booking levy execution and administration

The proposed Regulations do not provide any substantial detail regarding the amount, applicability and administration of the proposed booking levy. This is a major consideration for industry operators and the current details are entirely insufficient. The NSW HCA does not support the Regulations around this important item in their current format and strongly recommend more details be provided in a revised version of the Regulations.

3. Safety standards and responsibilities

The current proposed RMS solution of booking service providers “pulling down” information is unrealistic and unsustainable. In order for booking service providers to meet safety obligations it would require the “pulling down” of driver information every minute in order to ensure that information is real-time and thus able to support accurate decision on the continued suitability of drivers to perform P2P services. The more intelligent and sustainable approach would be to allow booking service providers to register to receive push notifications on drivers.

4. Checks and balances to the role and office of the P2P Commissioner

The proposed Regulations appear to give the new role of the P2P Commissioner absolute and unchecked powers over the hire car industry. While we welcome the creation of this role (and the related organisation) it is imperative that the Regulations provide a clear framework on the terms and conditions which would allow the Commissioner to exercise discretion and allow exemptions. Without a genuine system of checks and balances this position and the related organisation is readily subject to bias.

5. Appeals and objections

The proposed P2P Regulations do not outline a robust process for appeals and objections. This is imperative especially given the substantial powers granted to the office of the P2P Commissioner. The NSW HCA strongly recommends this area be reviewed and an appeals process be outlined in the revised Regulations.

The following pages outline in detail the views and questions arising from the proposed P2P Regulations.

We request an opportunity to meet with relevant TfNSW parties in order to address our concerns and questions prior to the finalisation of the P2P Regulations.

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

RIS Executive Summary p3:

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 Executive Summary cites key issues for consideration and one being 'minimising the regulatory burden'. This is entirely not the case for hire vehicle operators. **The proposed Regulations introduce a burden on the hire car industry which will drive the majority of the industry out of business. The hire car industry in NSW is comprised primarily of sole and small operators. These proposed Point to Point Regulatory burdens are entirely unrealistic and unmanageable for this industry.**

Background p6, paragraph 6 & p7, paragraph 1:

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

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.

Clarification is required on exactly what "prescriptive regulations" have been removed for hire cars.

Overall, the proposed Regulations achieves the complete opposite of this alleged reduction of red tape and in practice will exponentially increase the red tape and burden on booking service providers.

It is very clear to the P2P industry that the NSW government has chosen to transfer the burden of governance and safety from the NSW Government and onto the booking service providers. This complete transfer of responsibility is inappropriate and unconscionable.

The only viable and sustainable option for a safer P2P service delivery is a true collaboration between government and the industry. The P2P industry and its providers cannot succeed without the realistic support and participation of key government bodies in the provision of **real-time safety information on drivers** who ultimately are the end-point providers who fulfil P2P transport services to the public; **and record keeping/data sharing provisions** which take into account the size and nature of industry operators.

Background p7, paragraph 2: Safety standards and obligations

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.

The only practical and sustainable way to enable service providers to carry this extraordinary burden of safety standards is to make available real-time push notification on offenses by drivers that would render them unsafe and unfit for work. The current proposed system by RMS which requires booking service providers to go into the RMS website and “pull down” information on driver offences is entirely unpractical and unsustainable. The NSW HCA has had several discussions with TfNSW and RMS to offer services to interact with the RMS website via an API that would allow our member to get push notification of any potential driver safety issues. This offer has been repeatedly rejected.

The NSW HCA and the industry at large DO NOT SUPPORT the proposed RMS pull mechanism for driver offences and other safety violations. It is not a manageable or sustainable option for booking service providers or for the industry. This is a very serious issue and which poses a huge security risk and danger to booking service providers and the general public.

Background p7, paragraph 6: Industry Seminars - Essential Requirement

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.

The proposed Regulations are too complex and convoluted for the typical booking service provider and driver in the hire car industry to digest or understand the specific impact and obligations of. The hire car industry respectfully requests and expects on behalf of the industry that the P2P Commissioner will appoint resources to conduct state-wide ‘town halls’ to walk through the Regulations and explain in simple English terms what the obligations are and provide easy resources

and references (website and brochures) which allow the typical booking service provider and driver to fully understand their responsibilities under the proposed Regulations and the implications of the changes.

5.1 Preliminary, Service Facilitators?

5.1 Preliminary

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.

More clarity is required on this rhetoric. What does it actually mean? Can concrete examples be provided that give clarity to the meaning of this general statement and the details included in Clause 4. See further questions below in comments related to the Regulations Clause 4.

5.2 CRITICAL - Safety of Services

5.2 Safety of Services

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.

The hire car industry and the NSWCA is fully committed to participating in the increase of the safety and security standards and in reviewing the role every booking service provider plays in ensuring safe P2P transport. We believe is a crucial component and applaud the NSW government for wanting to increase safety, security and accountability for P2P transport.

BUT, the details outlined in this RIS and the Regulations on what is "reasonably practicable" provides **insufficient** detail on achievable obligations and responsibilities. All the listed items "spelling out" what is reasonably practicable contain no real understandable information that booking service providers can act on.

As far as we understand currently, the only recourse a booking service provider has to ensure a driver (within that booking service providers "network" of drivers) is fit to deliver services is the pulling of information from the proposed RMS website which we have not seen or had access to.

This pull mechanism of information is completely impractical, unsustainable and unlikely to provide real-time information on driver offences that would render them unfit to deliver a safe service.

It is imperative that booking service providers be given real-time access to driver offence information. In the absence of that, the only other acceptable option is an agreed timeframe (recommend weekly) for the pull of information from the RMS website.

Any other proposed execution of this area can only be viewed as a deliberate ploy by government intended to ensure that booking service providers fail in this crucial regard.

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

Overall Questions & Comments - Entire Regulations Documentation

1. **Booking Levy:** Given the significant and substantial impact of the proposed **booking levy** on the P2P industry the proposed Regulations are extremely lacking in regards to details on this levy including:
 - a. Exactly who is responsible? There must be no ambiguity on this or room for interpretation by individual providers, the P2P Commissioner or any other party.
 - b. Clear documentation of the actual value of the levy?
 - c. How the levy will be calculated?
 - d. How the levy will be collected?
 - e. What supporting documentation/information which will required (including samples)?
 - f. What is the framework (including reference to a functional website) for appeals and objections to assessments?
 - g. What is the escalation process for appeals to decisions made by the P2P Commissioner?

2. **Keeping of records** in a form approved by the Commissioner.
More detailed information is required in advance of the implementation of the Regulations regarding the “form” of records considered approved by the Commissioner. The NSW HCA strongly recommends that TfNSW considered various forms of records to suits different types and sizes of booking service providers.

For example, larger operators are heavily invested in technology and can easily provide electronic data to satisfy the Commissioner’s needs. It would be impractical for the Commissioner to expect these operators to provide paper based records.

By comparison, small and sole operators/booking service providers have limited technology capability and it would be impossible for them to provide electronic data. In this second case paper-based records would be the only practical option for this type of provider.

Industry operators need to be given choice in the type and format of records that are acceptable to the Commissioner.

3. There is reference to **penalty points** throughout the Regulations document. More information is required on what these penalty points are, what the maximum is, how the penalties will be administered and managed and what the consequences are for both drivers and booking service operators.
4. What recourse does the industry have to **appeal** a decision by the Commissioner?
5. What **checks and balances** are in place to ensure proper carriage of the position/organisation of the P2P Commissioner?

Clause 3,2,b - Driver availability definition?

- (2) For the purposes of this Regulation, a ***vehicle is being used to provide a passenger service*** if:
- (a) the vehicle is being used to transport a passenger for the purposes of providing a passenger service or is travelling to pick up a passenger for that purpose, or
 - (b) the person driving the vehicle or a provider of a passenger service has indicated to the provider of a booking service, by logging into a dispatch or booking system or by other means, that the vehicle is available for hire, or
 - (c) the person driving the vehicle or a provider of a booking service is taking bookings on the basis that the vehicle is available for hire, or
 - (d) the vehicle is a taxi plying or standing for hire on a road or road related area.

Does this mean that a vehicle logged into Booking Service A mobile app (the equivalent of being available to Booking Service A) although on route to do another job for Booking Service B is considered to being used to provide a passenger service to Booking Service A? Please note, drivers (and their vehicles) are commonly logged into multiple booking service platforms to monitor incoming passenger service jobs. In the case of an incident with a pedestrian, who is deemed liable?

Clause 4,1,c & d – Extended definition of Service Provider?

4 Certain service facilitators and other persons to be booking service providers

- (1) For the purposes of section 7 (4) of the Act, an individual or body corporate is taken to be the provider of a booking service if it carries on the business of providing any of the following services:
 - (a) technology services that facilitate or enable bookings for passenger services,
 - (b) marketing services in connection with facilitating or enabling bookings for passenger services,
 - (c) recruitment, assessment, monitoring, disciplinary or other management services relating to drivers used or proposed to be used for related booked services,
 - (d) complaint management services relating to related booked services and fares for related booked services.
- (2) Subclause (1) does not apply to an individual or body corporate if an authorisation is held by another individual or body corporate constituted or recognised under a law of Australia to provide the booking service in connection with which the services are provided.
- (3) An individual that is the nominated manager of an entity prescribed for the purposes of section 30 (1) (d) (a **prescribed entity**) is taken to be the provider of a booking service.
- (4) An individual or body corporate that is the provider of a booking service because of this clause is exempt from Part 3 of the Act in respect of the booking service if:
 - (a) an authorisation to provide the booking service in connection with which a service specified in subclause (1) is provided or for which the person is a nominated manager is held by a prescribed entity, and
 - (b) the authorisation is not suspended.
- (5) An individual or body corporate that is the provider of a booking service because of this clause is exempt from any other provision of the Act or this regulation that applies to or in respect of a provider of a booking service (other than Part 1, Division 2 of Part 7 and Parts 8, 10 and 11 of the Act and this clause and clause 93) if the applicable requirements of that provision are complied with by that entity.

The extended reach of this clause is questionable and unacceptable.

There is a genuinely conceivable model where a supplier will become an expert provider of driver recruitment and training or complaints handling while having nothing to do with the acceptance or allocation of bookings. Such a service provider may receive remuneration for providing a standalone service in such areas without ever being involved in the acceptance or fulfilment of providing a booking service. To view such a supplier as a booking service provider is unacceptable. The NSW HCA does not support the inclusion of these 2 sub-clauses (c) and (d) under Clause 4.1.

Clause 4 – overall meaning and practical application?

It is unclear what the whole of Clause 4 actually means in practical terms. More clarification is required for booking service providers to understand what is required and what their obligations are.

Question - Clause 5: Outline of safety standards details?

Division 1 Safety standards

5 Specified safety standards

- (1) The provisions of this Part (other than this Division and Division 7) are specified as safety standards for the purposes of Division 3 of Part 2 of the Act.
- (2) A safety standard is specified for a provider of a passenger service, affiliated provider, facilitator of an affiliated service, provider of a booking service, owner or driver of a vehicle or the holder of a taxi licence by a provision of this Part if:
 - (a) the provision expressly imposes an obligation on the provider, facilitator, owner, driver or holder, or
 - (b) this Part specifies the safety standard for the provider, facilitator, owner, driver or holder.
- (3) A statement in a clause that specifies a safety standard for any such provider, facilitator, owner, driver or holder, or that any such provider, facilitator, owner, driver or holder is a responsible person for a safety standard, is taken to apply to all of the provisions of the clause for that purpose, unless the clause otherwise provides.

What are the safety standards? Where are they listed in detail in the proposed Regulation?

Clause 7 - Safety management system?

Division 2 Safety management system

7 Identification and management of risks to health and safety

- (1) A provider of a passenger service must identify and keep a record of the following:
 - (a) the reasonably foreseeable hazards that could give rise to risks to health and safety to drivers, passengers and other persons in connection with the provision of the service,
 - (b) the control measures taken to eliminate or minimise those risks,
 - (c) the measures taken to maintain control measures.
- (2) A provider of a booking service must identify and keep a record of the following:
 - (a) the reasonably foreseeable hazards that could give rise to risks to health and safety to drivers, passengers and other persons in connection with the provision of a related booked service,
 - (b) the control measures taken to eliminate or minimise those risks,
 - (c) the measures taken to maintain control measures.
- (3) A provider of a passenger service or booking service must regularly consult with other persons who have a safety duty that relates to the service and keep a record of the consultations.
- (4) A record kept under this clause must also include the following:
 - (a) particulars of measures taken by the provider to comply with safety standards specified for the provider or for which the provider is a responsible person under this Part,
 - (b) particulars of any notifiable occurrences that are required to be reported to the Commissioner.
- (5) A record under this clause is to be kept in the form approved by the Commissioner.

More clarification is required on what records and the format required by the Commissioner. We strongly recommend these records be reasonable and achievable for all bookings services providers and not only large body corporates who are heavily invested in technology and easily able to manipulate and prepare data. Also it is strongly recommended that samples be provided prior to implementation of the Regulations.

Clause 8: Vehicle standards – Booking Service Provider Practical Obligations?

Division 3 Vehicle standards

8 General roadworthy requirements

- (1) A vehicle used to provide a passenger service must at all times meet the requirements of the law as to vehicle safety and roadworthiness.
- (2) This safety standard is specified for the owner of the vehicle.
- (3) The following are responsible persons for this safety standard:
 - (a) the provider of a taxi service (other than an affiliated taxi service), if the vehicle is used to provide the taxi service,
 - (b) the facilitator of an affiliated service and the affiliated provider, if the vehicle is used to provide the affiliated service,
 - (c) the provider of a booking service, if the vehicle is a hire vehicle or taxi used to provide a related booked service,
 - (d) the holder of the taxi licence for the taxi, if the vehicle is a taxi.

9 Vehicle registration and registration standards for vehicles

- (1) A vehicle used to provide a passenger service must at all times meet the requirements of the law for the registration of the vehicle.
Note. For vehicle registration standards, see Part 5 of, and Schedule 2 to, the *Road Transport (Vehicle Registration) Regulation 2007*.
- (2) This safety standard is specified for the owner of the vehicle.
- (3) The following persons are responsible persons for this safety standard:
 - (a) the provider of a taxi service (other than an affiliated service), if the vehicle is used to provide the taxi service,
 - (b) the facilitator of an affiliated service and the affiliated provider, if the vehicle is used to provide the affiliated service,
 - (c) the provider of a booking service, if the vehicle is a hire vehicle or taxi used to provide a related booked service,
 - (d) the holder of the taxi licence for the taxi, if the vehicle is a taxi.

What does this mean in practice for booking service providers? Is a requirement for drivers to provide proof of annual registration sufficient or is more required? If more will be required, please provide full details.

Clause 10,1,c - Vehicle maintenance records format?

10 Vehicle maintenance

- (1) The following standards apply to the maintenance of a vehicle used to provide a passenger service:
 - (a) the vehicle must be regularly and properly maintained so that it meets the requirements referred to in clauses 8 and 9,
 - (b) maintenance of the vehicle, including any maintenance schedule, is to be consistent with the recommendations of the manufacturer of the vehicle,
 - (c) records must be kept, in a form approved by the Commissioner, of the maintenance and inspections carried out on the vehicle.

Clarification is required for the form of records required by the Commissioner. As outlined in the general comments section careful consideration must be given to ensure all types of booking service providers can readily meet the Commissioners requirements and no one group is singled out and disadvantaged.

Clause 10,6 - Vehicle maintenance responsible persons?

- (6) The following are responsible persons for this safety standard:
 - (a) the provider of a taxi service (other than an affiliated service), if the vehicle is used to provide the taxi service,
 - (b) the facilitator of an affiliated service and the affiliated provider, if the vehicle is used to provide the affiliated service,
 - (c) the provider of a booking service, if the vehicle is a hire vehicle or taxi used to provide a related booked service,
 - (d) the holder of the taxi licence for the taxi, if the vehicle is a taxi.

How does a booking service provider practically satisfy this requirement? Detailed clarification is required.

Clause 22,2 & 22,5 – Hire vehicle signs and markings?

22 Signs and markings—hire vehicles

- (1) A hire vehicle that is being used to provide a passenger service must not be painted or marked, or have signs or lights that:
 - (a) indicate it is a taxi or resemble those of a taxi, or
 - (b) could give rise to an inference that the vehicle is a taxi, or
 - (c) indicate or could give rise to an inference that the vehicle is a vehicle that is plying or standing for hire.
- (2) The driver of a hire vehicle (other than a motor cycle) that is being used to provide a passenger service must ensure that a retroflective sign is displayed on or attached to the vehicle that:
 - (a) makes it apparent that the vehicle is a hire vehicle, and
 - (b) is located on or near the rear of the driver's side of the vehicle, and
 - (c) is clearly visible from the outside of the vehicle.
- (3) The sign may be in the form of an identifying logo or other business identification.
- (4) Subclause (1) is specified as a safety standard for the owner of the vehicle.
- (5) The provider of a booking service is a responsible person for this safety standard, if the hire vehicle is used to provide a related booked service.

We do not believe that one sign at the rear of the vehicle is sufficient identification for a hire vehicle. We strongly recommend this be amended to include signage at both the front and back of the driver side of the hire vehicle

How can a booking provider sufficiently satisfy this criteria. Is confirmation from the owner/operator of the hire vehicle and a one-off sighting on registration sufficient? How can a guarantee otherwise be made by a booking service provider who does not own and operate such a vehicle?

Signs are removable and could potentially be removed or fall off without the immediate knowledge of the booking service provider.

Also who will provide such stickers? Will hire vehicle stickers be issued by a government agency or licenced authority?

The NSWCA does not believe this is practical and do not support the responsibility of a booking service provider who does not own/operate a hire vehicle for this item. The most a booking service provider can do is ask if a sticker is fixed to the vehicle and conduct a one off visual check on registration of the driver.

Clause 24,d: Insurance?

Division 4 Insurance

24 Vehicle insurance

- (6) This safety standard is specified for the following:
- (a) the provider of a passenger service (other than a taxi service),
 - (b) the provider of a taxi service (other than an affiliated service), if the vehicle is used to provide the taxi service,
 - (c) the facilitator of an affiliated service and the affiliated provider, if the vehicle is used to provide the affiliated service,
 - (d) the provider of a booking service, if the vehicle is a hire vehicle or taxi used to provide a related booked service,
 - (e) the holder of a taxi licence for the taxi, if the vehicle is a taxi,
 - (f) the owner of the vehicle.

Clarification is required on how this will practically work? For a booking service provider who does not own or operate a hire car, is the provision of insurance paperwork sufficient to meet the obligation of this requirement? Is this insurance documentation required to be kept up to date annually with updated documentation?

How will drivers practically manage this when they are affiliated with multiple booking service providers?

Clause 26, 4: Driver disqualifying offences responsibility?

Division 6 Drivers

26 Disqualifying offences

- (4) The following are responsible persons for the safety standard specified by this clause:
- (a) the provider of a taxi service (other than an affiliated provider), if the driver drives taxis for the service,
 - (b) the facilitator of an affiliated service, if the driver drives taxis for the service,
 - (c) the provider of a booking service, in the case of the driver of a taxi or hire vehicle used to provide a related booked service.

What tools will be made available to booking service providers to ensure real time information on driver disqualifying offence information? The current data “pull” registry poses very serious concerns for the industry. Booking service providers would potentially need to access that

information minute-by-minute in order to be accurately informed of offending driver information. How can booking service providers be held accountable under such circumstances? As stated in the RIS comments:

“The hire car industry and the NSW HCA is fully committed to participating in the increase of the safety and security standards and in reviewing the role every booking service provider plays in ensuring safe P2P transport. We believe is a crucial component and applaud the NSW government for wanting to increase safety, security and accountability for P2P transport.

BUT, the details outlined in this RIS and the Regulations on what is “reasonably practicable” provide **insufficient** detail on achievable obligations and responsibilities. All the listed items “spelling out” what is reasonably practicable contain no real understandable information that booking serviced providers can act on.

As far as we understand currently, the only recourse a booking service provider has to ensure a driver (within that booking service providers “network” of drivers) is fit to deliver services is the pulling of information from the proposed RMS website which we have not seen or had access to.

This pull mechanism of information is completely impractical, unsustainable and unlikely to provide real-time information on driver offences that would render them unfit to deliver a safe service.

It is imperative that booking service providers be given real-time access to driver offence information. In the absence of that, the only other acceptable option is an agreed timeframe (recommend weekly) for the pull of information from the RMS website.

Any other proposed execution of this area is reduced to a deliberate ploy by government intended to ensure that booking service providers fail in this crucial regard.”

Clause 27,3 - Persons responsible for ineligible drivers?

27 Ineligible drivers

- (3) The following are responsible persons for the safety standard specified by this clause:
- (a) the provider of a taxi service (other than an affiliated provider), if the driver drives taxis for the service,
 - (b) the facilitator of an affiliated service, if the driver drives taxis for the service,
 - (c) the provider of a booking service, in the case of the driver of a taxi or hire vehicle used to provide a related booked service.

As indicated for clause 26,4, what tools will be made available to booking service providers to ensure real time accurate information on driver eligibility information? Lack of detail in this area is a serious industry concern. How would a booking service provider be able to determine if a driver has any of the ineligibility criteria outlined in Clause 27. How can booking service providers be held accountable for such criteria where no government authority is overseeing driver eligibility and related criteria? Please refer to comments and position statement made in the RIS comments and repeated in Clause 26,4 above. **This is of critical concern to the industry.**

Clause 31,2 - Driver change in circumstances?

31 Driver must report changes in circumstances

- (1) The driver of a taxi or hire vehicle must give written notice of any change in the person's circumstances that renders the person ineligible under this Regulation to drive the taxi or hire vehicle to the provider of:
 - (a) any taxi service for which the taxi is used, or
 - (b) any booking service for which the taxi or hire vehicle provides related booked services.
- (2) The notice must be given by the driver within 7 days of the driver becoming aware of the change in circumstances.

Who is the driver giving the notice to, regarding change of circumstances?

Clause 32,2 - Exempt from Act Section 24 notifiable occurrences?

Division 7 Notifiable occurrences

32 Notifiable occurrences

- (1) For the purposes of section 24 (1) of the Act, a notifiable occurrence must be reported to the Commissioner:
 - (a) within 3 days after the provider becomes aware of the accident or incident concerned, and
 - (b) in a form approved by the Commissioner.
- (2) The following are exempted from section 24 of the Act:
 - (a) a provider of a passenger service other than a taxi service,
 - (b) an affiliated provider.

Reference: Section 24 Act

Division 4 – Miscellaneous

24 Notifiable occurrences

- (1) The provider of a passenger service or booking service must report to the Commissioner, in accordance with the regulations, on any notifiable occurrence that affects the service (including a notifiable occurrence involving a passenger service for which a booking service provides bookings). Maximum penalty: 100 penalty units.
- (2) In this section, a "**notifiable occurrence**" means:
 - (a) an accident or incident associated with the provision of a passenger service that has, or could have, caused significant property damage, serious injury or death, or
 - (b) an accident or incident of a kind that is prescribed by the regulations for the purposes of this section.

This clause is confusing and unclear. Who exactly is under obligation to report incidents and who is exempt? It appears that this clause is implying that anyone providing a passenger service other than a taxi service **is exempt**?

Clause 40: Close associates definition?

40 Disqualifying offences—close associates

For the purposes of section 32 of the Act, the following offences are prescribed as disqualifying offences for close associates of applicants for an authorisation:

- (a) an offence under section 16 or 17 of the Act,
- (b) an offence under section 28 of the Act,
- (c) a second or subsequent offence under section 47 of the Act,
- (d) an offence under section 79 (4) of the Act,
- (e) an offence under section 31 or 32 of the *Work Health and Safety Act 2011*.

What is the definition of a “close associate”?

Clause 42,4: Authorisation conditions - information to be provided?

42 Information to be provided

- (1) The provider of a taxi service or the provider of a booking service must notify the Commissioner in writing of any of the following changes within 21 days of the change occurring:
 - (a) if a nominated director or manager for the service ceases to reside in this State or to be directly involved in the day-to-day management of the service,
 - (b) a change of address of the premises from which the service is carried on,
 - (c) a change of address of the premises at which records relating to the service are kept.
- (2) The provider of a taxi service (other than an affiliated provider), the facilitator of an affiliated service or the provider of a booking service must keep a record of the following information:
 - (a) the name and driver licence number of drivers who drive vehicles used for the purposes of providing the taxi service, the affiliated service or a related booked service,
 - (b) the registration number of each vehicle used to provide the taxi service, the affiliated service or a related booked service,
 - (c) in the case of a facilitator of an affiliated service, the name and address of the place of business of the affiliated provider.
- (3) The provider must, if requested to do so in writing by the Commissioner, give to the Commissioner copies of any record required to be kept under this clause.
- (4) A record required to be kept under this clause is to be kept in a form approved by the Commissioner.

Please refer to overall comments— form of records approved by Commissioner. The industry needs various approved forms to suit various providers so that no one group is singled out and disadvantaged by a limited view of what constitutes a suitable record format.

Division 3 – Authorisation Fees?

Full clarification and explanation is required regarding Authorisation fees outlined in this section, explanation of the \$0.03 payable per transaction, outline of the method which will be used to determine and collect such proposed fees and how/if this relates to the proposed booking levy which will be collected to pay for the compensation package.

Division 3 Authorisation fees

45 Authorisation fees

- (1) The following authorisation fees, as adjusted under this clause, are payable on or before the end of each financial year by an authorised provider of a taxi service or a booking service:
 - (a) if the person is only authorised to provide a taxi service or a booking service—\$180, or
 - (b) if the person is authorised to provide both a taxi service and a booking service—\$240.
- (2) An additional authorisation fee of \$0.03 is payable by each authorised provider for each passenger service transaction carried out by the provider.
- (3) For the purposes of subclause (1), the adjusted amount is:
 - (a) in the financial year 2017/2018—the fee specified in subclause (1) (a) or (b) (the *base fee*), and
 - (b) in each subsequent financial year—the amount calculated as follows:
$$F \times \frac{A}{B}$$
where:
F is the base fee.
A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.
B is the CPI number for the March quarter of 2017.
- (4) However, if an amount calculated under subclause (3) for any financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.
- (5) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Commissioner is required to publish on the NSW legislation website a notice of the adjusted amounts payable under subclause (1) for

the next financial year. That notice may be published by the addition of an editorial note relating to the amounts of the fees in the in force version of this Regulation published on the NSW legislation website.

- (6) The Commissioner is also required to give public notice on an appropriate government website of the amounts applying in each financial year under subclause (1) resulting from the application of the calculation under this clause.
- (7) This clause operates to change an amount payable under subclause (1) and that change is not dependent on the publication of a notice by the Commissioner under this clause.
- (8) In this clause:
CPI number means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.
financial year means a period of 12 months commencing on 1 July.
- (9) For the purposes of determining the amounts payable under subclause (2), the Commissioner may rely on the returns furnished under Schedule 4 to the Act or may, by written notice given to the provider, require the provider to provide information as to the number of passenger service transactions carried out by the provider during the relevant financial year.
- (10) A person must not fail to comply with a notice given to the person under this clause.
Maximum penalty: 10 penalty units.

This entire clause is complex and ambiguous. Much more clarify is required on the meaning of the clause and sub-clauses and the specific responsibility and obligations for industry service providers.

Clause 68 - Driver leaving vehicle?

68 Driver to remain with vehicle—Sydney Airport precinct and other airports

- (1) The driver of a passenger vehicle in the Sydney Airport precinct or at another airport must not, without reasonable excuse, move more than 3 metres from the vehicle.
Maximum penalty: 15 penalty units.
- (2) This clause does not apply:
 - (a) if the driver of a passenger vehicle moves more than 3 metres from the vehicle for the purpose of loading luggage or goods into, or removing luggage or goods from, the vehicle, or

Does clause mean that a driver can leave a hire vehicle at the designated areas at Sydney Airport in order to personally assist an elderly/disabled/injured passenger or assist with passengers' luggage into and out of the Terminals?

Clause 93 - Commissioners rights to exempt from any/all provisions of the Act?

93 Exemptions

- (1) The Commissioner may, by order in writing, exempt a person or a vehicle, or a class of persons or vehicles, from all or any of the provisions of the Act or any regulation under the Act.
- (2) An exemption under this clause may be conditional or unconditional and, if the exemption is conditional, it ceases to have effect if the conditions are not observed.
- (3) Notice of an exemption given under this clause is to be given by notice published in the Gazette and in any other manner that the Commissioner considers appropriate in the circumstances of the case.

The NSW HCA has strong concerns regarding the authority to provide exemptions under this Clause. What checks or balances will be provided to ensure there is proper carriage of authority and power under the clause. The NSW HCA strongly objects to this clause and views this as a dangerous application of unchecked power to a specific entity in the industry. Exemptions should be subject to clearly outlined concrete conditions which are not subject to interpretation by any one group or individual(s)?

Schedule 1 Fees - Renewability of Authorisations?

Schedule 1 Fees

(Clause 96)

Item	Matter for which fee payable	Fee
1	Application for authorisation to provide taxi service (section 30 (3) (d) of the Act)	\$120
2	Application to renew authorisation to provide taxi service (sections 30 (3) (d) and 37 (2) of the Act)	\$120
3	Application for authorisation to provide booking service (section 30 (3) (d) of the Act)	\$120
4	Application to renew authorisation to provide booking service (sections 30 (3) (d) and 37 (2) of the Act)	\$120
5	Combined application for authorisation to provide a taxi service and to provide a booking service	\$160
6	Application for taxi licence (section 51 (3) (c) of the Act), if annual fee is to be determined by bids at auction or sealed tender	\$200
7	Application to renew taxi licence (section 51 (3) (c) of the Act), if annual fee is to be determined by bids at auction or sealed tender	\$200

How often will authorisations be required to be renewed?

Schedule 3 Passenger Service Levy

There are some very substantial omissions in this section as referenced in the overall comments and as outlined below.

- Exactly who is responsible? There must be no ambiguity on this or room for interpretation by individual providers, the P2P Commissioner or any other party.
- Clear documentation of the actual value of the levy?
- How the levy will be calculated?
- How the levy will be collected?
- What supporting documentation/information which will required (including samples)?
- What is the framework (including reference to a functional website) for appeals and objections to assessments?
- What is the escalation process for appeals to decisions made by the P2P Commissioner?

The NSWCA strongly requests that all details in relation to the Passenger Service levy be included in the final version of the P2P Regulations.

Part 2 Assessment and payment of liability for levy

2 Registrations by taxpayers

- (1) A person who is required to register as a taxpayer under Schedule 4 to the Act must apply to be registered not later than 21 days after first becoming liable to pay the levy.
- (2) A person who is registered as a taxpayer under Schedule 4 to the Act must notify the Point to Point Transport Commissioner of any change to the information provided by the taxpayer in the application for registration as soon as practicable after becoming aware of that change.
- (3) A person who fails to comply with this clause is guilty of an offence.
Maximum penalty: 5 penalty units.

What is the registration process? More detail is required.

4 Reduction or waiver of liability in case of third party collection

- (1) The assessor may, on application by a taxpayer or on the assessor's initiative, waive or reduce the amount of levy payable by a taxpayer, if the assessor is satisfied that:
 - (a) a levy amount was collected by a driver, affiliated provider or other person on behalf of the taxpayer, and
 - (b) the amount was not paid by that person to the taxpayer or otherwise as agreed with the taxpayer, and
 - (c) that person has been affected by a non-payment event, and
 - (d) the taxpayer took all reasonable steps to recover the amount, or to have the amount paid in accordance with the Act and this Schedule.

The NSWHCA does not support this clause and strongly objects to its current format.

We strongly believe this provides an enormous potential for operators within the industry to conduct avoidance measures and to attempt to shift the responsibility of the levy to someone – anyone – else. We strongly believe there should be a clear definition of who is responsible for the levy and **there should be no room for interpretation of that definition.**

5 Exemption and rebate for certain small providers

- (1) A taxpayer who carries out 150 or fewer passenger service transactions in any period of 12 months is exempt from clauses 3, 4, 7 and 12 of Schedule 4 to the Act.
- (2) A taxpayer who carries out more than 150 but fewer than 600 passenger service transactions in any period of 12 months is entitled to a rebate of the levy.
- (3) The amount of the rebate is to be the amount of rebate required so that the amount of levy payable by the taxpayer is as follows:
 - (a) if the number of passenger service transactions carried out is more than 150 but not more than 400—\$150, or
 - (b) if the number of passenger service transactions carried out is more than 400 but not more than 600—\$400.

This section is very ambiguous. What exactly is the Regulation saying here? This entire section needs to be more precise and clear.

6 Exemption from levy for transport in remote or very remote areas

- (1) The provider of a taxi service or booking service is exempt from clauses 3, 4, 7 and 12 of Schedule 4 to the Act in respect of a passenger transaction if the passenger service provided is carried out within, or commences or ends at a place within, a remote or very remote area of this State.
- (2) For the purposes of this clause, a place is within a remote area or very remote area of this State if it is located within an area that is so classified under the *Australian Statistical Geography Standard* (ASGS) published by the Australian Bureau of Statistics, as effective from time to time.

This is a very unrealistic and impractical clause. How do you propose that small booking service providers identify such trips and separate them from all other trips taken?

11 Form of objections and information

An objection to an assessment must contain the following information (in addition to the requirements of section 87 of the Administration Act):

- (a) the assessment and the assessment period the subject of the objection,
- (b) any relevant records supporting the objection, such as trip data, vehicle records, fare calculation device data and financial statements.

What is meant by “fare calculation device data”?

12 Decisions not available for objection

- (1) A taxpayer may not lodge an objection to a decision by the assessor to make or not to make an assessment on an estimated basis.

This clause appears to conflict with clause 10,1,b: *grounds for objection if assessment made on an estimated basis....*

10 Grounds for objection

- (1) The only grounds on which an objection to an assessment may be made by a taxpayer are as follows:
 - (a) that there was a mistake in the return which resulted in a higher assessed liability than would have been assessed if the mistake had not been made,
 - (b) if the assessment was made on an estimated basis by the assessor, that the assessed liability was higher than would have been assessed if the assessment had been determined on the basis of the actual passenger service transactions during the assessment period.

Clarification is required.

13 Excess levy payments by passengers

- (1) A person must not demand for the provision of a passenger service transaction (whether as part of a fare or as an additional amount) the payment of an amount in respect of the levy unless:
 - (a) the amount is permitted to be included in a fare by a fares order or, if there is no applicable fares order, by the fares established by the provider of the passenger service or booking service, and
 - (b) the amount does not exceed the amount of levy payable for the transaction.Maximum penalty:
 - (a) in the case of a body corporate—40 penalty units, or
 - (b) in any other case—20 penalty units.
- (2) This clause does not apply to any component of a fare established under a fares order that compensates for administrative costs arising out of the levy.

What does this clause mean? Is the Regulation suggesting that a booking service provider cannot add the levy to a booking transaction cost? If yes, this clause is completely unsupported and will be rigorously challenged by all booking service providers in the industry. How a booking service provider raises funds to pay for the levy should be at the discretion of every booking service provider and a matter for that service provider's customers to accept or reject as part of the free will of a normal business transaction between that customer and that supplier.

16 Service of documents

- (1) A document authorised or required to be served on, given to or lodged with the assessor, the Point to Point Transport Commissioner or the Chief Commissioner for the purposes of this Schedule, Schedule 4 to the Act or the Administration Act may be served, given or lodged electronically through a website approved by the Point to

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Point Transport Commissioner and maintained for the purpose of facilitating the administration of the assessment, payment and collection of the levy.

- (2) A document authorised or required to be served on or given to a person by the assessor, the Point to Point Transport Commissioner or the Chief Commissioner for the purposes of this Schedule, Schedule 4 to the Act or the Administration Act may be served or given by sending it to an email address provided to the assessor, the Point to Point Transport Commissioner or the Chief Commissioner by the person concerned for the purpose of service of documents.
- (3) The Administration Act is modified to the extent necessary to permit the serving or giving of documents in accordance with this clause but without limiting any other means of doing so specified by that Act.

It is imperative that such website be **fully communicated and published prior to the implementation of the Regulations** to ensure timely administration of the levy and continuity for booking service providers.

There can be no support of an interim period following the implementation of the Regulations where there is no provision of a fully functioning website as referenced here or confusion around collection and administration of the booking levy. The NSW HCA and the hire car industry at large will strongly oppose such action.

In addition, the NSW hire car operators and bookings service providers will not accept administration of the booking levy until clear demonstration is provided that the taxi industry and the ridesharing industry are under the same administration and in full agreement to pay the proposed booking levy.

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