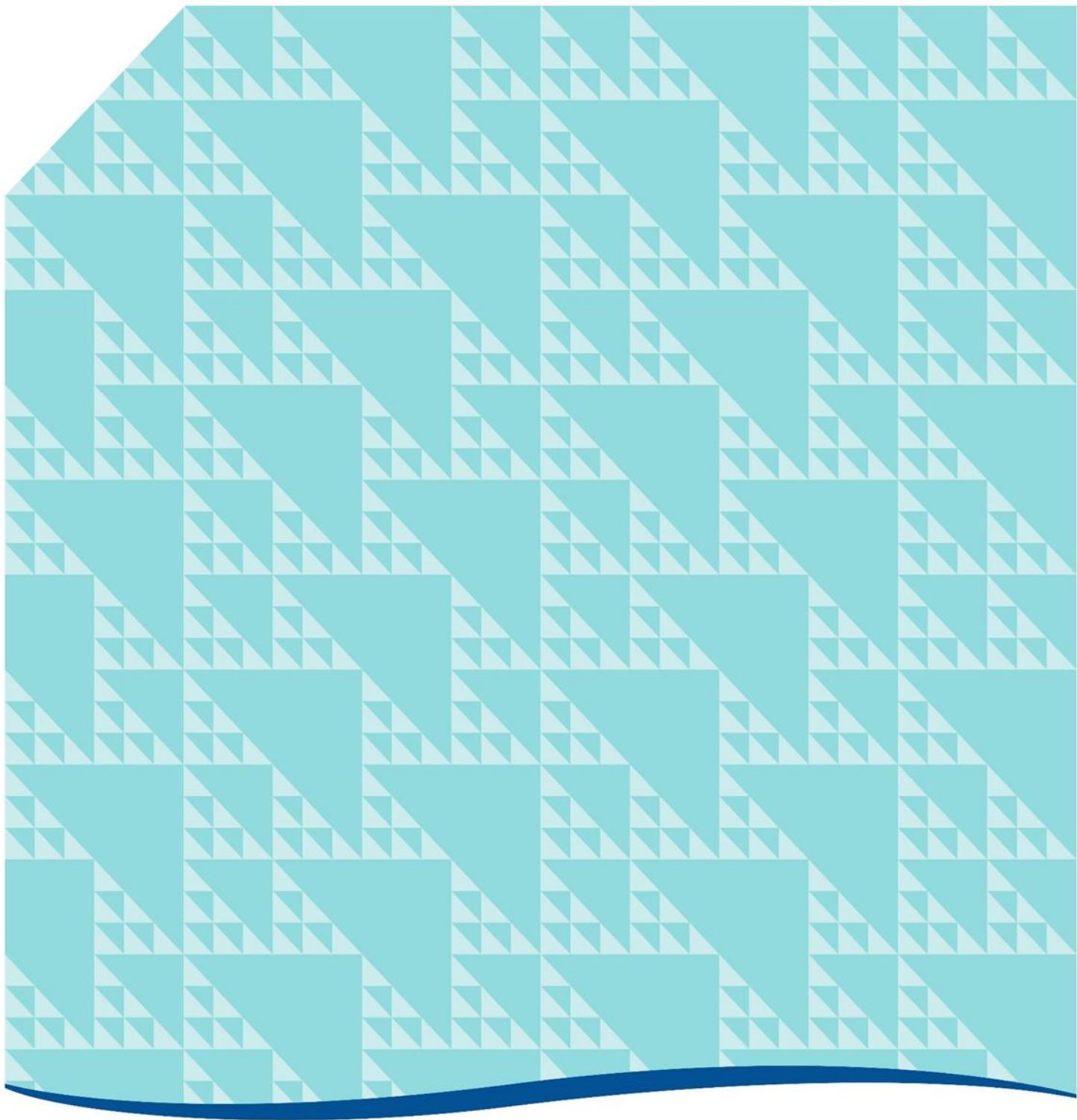


Consultation paper  
December 2016

# Taxi and Hire Vehicle Industries Regulatory Review



## Minister's introduction

The taxi and hire vehicle industries, both in Australia and overseas, are undergoing dramatic change. The past few years in particular have seen the rapid emergence of new small passenger service business models. This trend has been driven by both the advancement and ubiquity of online and mobile telecommunications technologies, and changing customer demands.

The most prominent of these new models has been the so-called 'ride-sourcing' platform providers, including Uber and Lyft, which allow customers to source pre-booked, on-demand transport services via easy-to-use and cashless smart-phone booking systems. There are clear signs that business models and service types will continue to evolve and change, including through the advent of driverless vehicles and other technologies.

The Tasmanian Government is committed to supporting the sharing economy, given the opportunities for enhanced consumer choice, innovation and productivity that it presents. However, it also recognises that operators already in the industry need to be in a position to respond in a competitive way to these new products and services.

The Government's starting position is that regulation of the industries should be risk-based and as efficient as possible so that it encourages new market entry and robust competition. This is consistent with, and reflective of, the Government's guiding principles for embracing the sharing economy, as well as its broader commitment to reducing the overall red-tape burden on business.

The Government's principal role in regulating the delivery of small commercial passenger services must always be to ensure that driver, passenger and public safety are appropriately protected and that Tasmanian consumers and the community's interests are well served. It is not the role of government to decide what services are best for consumers, or to protect incumbent operators from the need to compete and innovate. In any case, attempts to curtail or ban new business models have not proved successful in other jurisdictions, but have resulted in new service offerings entering markets in an unmanaged and unregulated fashion.

The chief objective of this Review, therefore, is to ensure that the Tasmanian industry, consumers and the community more broadly are well positioned to face the challenges and garner opportunities that come about as new services and technologies continue to emerge.

This Consultation Paper provides industry participants, peak bodies, and the broader community with the first of a number of opportunities to be heard on the issues that are important to them. I would encourage you to participate so you can have an active voice in the creation of a new regulatory regime that will deliver better outcomes for industry, for consumers and for the Tasmanian economy.

A handwritten signature in black ink, appearing to read "Rene Hidding".

Hon M.T. (Rene) Hidding MP  
**Minister for Infrastructure**

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# I. Introduction

## I.I Background and context

On 30 October 2015, the Tasmanian Premier, the Hon. Will Hodgman MP, committed to modernising the regulatory framework for the taxi and hire vehicle industries via a two-stage process, which includes:

1. Introducing legislation in 2016 to enable the lawful operation of ride-sourcing services such as UberX in Tasmania; and
2. Undertaking a comprehensive review of the current legislative framework for taxi and hire vehicle services in Tasmania.

Legislation to facilitate the operation of ride-sourcing services, subject to a range of regulatory controls, passed the Tasmanian Parliament in August 2016, delivering on the first part of the Government's commitment. The *Taxi and Hire Vehicle Industries Amendment Act 2016*:

1. clarifies the legal status of ride-sourcing service providers and allows for companies like Uber to enter the Tasmanian market, subject to a range of existing regulatory requirements to protect public safety;
2. allows the Minister for Infrastructure to suspend for 2016, 2017 and/or 2018 the annual release of additional owner-operator taxi licences in response to the potential impact on the industry of ride-sourcing services.

Ride-sourcing drivers are exempted from the requirement to hold operator accreditation and are able to operate without a taxi or hire vehicle licence. However, they are subject to a range of specific regulatory protections, generally consistent with those that apply to other hire vehicles, including that:

- all drivers must hold an ancillary certificate, which requires medical, police and working with vulnerable people checks; and
- all vehicles must comply with applicable vehicle inspection regimes and have appropriate compulsory third party insurance cover.

The broader 'Stage 2' Review will be undertaken over the next year to enable the implementation of a new regulatory framework by early 2018. Allowing for the entry and operation of ride-sourcing services will provide practical insight into the best way to regulate the taxi and hire vehicle industries in the longer-term.

However, the Government also appreciates the challenges that disruptive technologies and business models present for existing market participants. In response, the Minister for Infrastructure has suspended the annual release of new owner-operator taxi licences across the State for three years commencing from 2016.

## 1.2 Consultation paper objectives and structure

The Tasmanian Government wants any reform emanating from this Review to be well-supported, robust and enduring. The objective of this Paper is to generate discussion and provide an initial focal point for consultation with industry stakeholders and the broader Tasmanian community on the future regulatory framework.

This Paper is designed to do two main things:

1. **firstly**, it sets out the context, objectives and underlying principles driving the Review; and
2. **secondly**, it poses a series of high-level policy questions in relation to a range of issues, challenges and opportunities identified in the current and potential future regulatory framework.

Submissions and other feedback received in response to the Consultation Paper will inform the development of a *Draft Policy Position Paper*, which will be released for public comment in the first half of 2017.

## 2. Review objectives, scope and process

### 2.1 Why do we need a review?

The need to reform the regulatory framework for the taxi and hire vehicle industries is being driven by several converging factors:

- I. The emergence of disruptive technologies and business models, which are not adequately catered for under the existing regime.**

Until quite recently, the taxi and hire vehicle industries had been relatively stable, with only incremental changes to business models and service offerings. As a consequence, the current regulatory framework is based on ‘traditional’ taxi and hire vehicle models.

The key elements of the current legislative framework have been in place in their current form since 2008 and 2011. The emergence of ride-sourcing and other services was not predicted when the current framework was put in place and therefore cannot be adequately accommodated by it.

- 2. The need to ensure that incumbent taxi and hire vehicle operators can respond competitively where new operators enter the market, including ride-sourcing operators.**

The Government appreciates the challenges that new, disruptive technologies and business models like Uber may present for existing market participants. A key objective of the Review is to maximise the efficiency and effectiveness of the regulatory regime so that similar services are regulated in a consistent way. The aim is regulatory neutrality.

The initial operation of ride-sourcing – which will be subject to close observation and a range of regulatory protections – will offer important practical evidence to inform future policy and regulatory settings.

- 3. Moves by other jurisdictions to review their regulatory frameworks in response to the above developments and the need to ensure Tasmania’s economic and community interests do not fall behind.**

Other Australian states and territories have already moved to open up their markets to ride-sourcing and modernise regulatory controls on the industry. Tasmania needs to ensure it is not left behind in providing choice, competition, innovation and growth in the small passenger vehicle services sector.

With a growing visitor economy, Tasmania also needs to ensure that it is supporting the operation of services that tourists and other visitors have grown accustomed to in their own towns and cities. A lack of access to these kinds of services could place Tasmania at a competitive disadvantage in attracting high-value, experience-based tourism.

#### **4. The potential to significantly improve productivity, competition and economic efficiency in the industry.**

The regulation of the taxi and hire vehicle industries across Australia is widely described as being overly prescriptive. Successive reviews and reports have recommended governments significantly reform their approach to regulating the sector in order to boost safety, competition, choice, productivity and innovation.

Most recently, the Australian Government's 2015 Review of Competition Policy, the Harper Review, identified the taxi industry as a priority area for de-regulation, noting that "many restrictions remain that limit competition by creating barriers to entry and preventing innovation".<sup>1</sup>

Tasmania, along with other states and territories, is working with the Australian Government to support competition reforms emanating from the Harper Review, where ride-sourcing and the taxi and hire vehicle industries have been identified as a key focus area.

## **2.2 Government policy objectives**

The Review will examine the current regulatory framework that applies to the taxi and hire vehicle industries and recommend to the Minister for Infrastructure appropriate reforms, aimed at supporting the following policy objectives.

- 1. Protecting the safety of passengers and drivers.**
- 2. Promoting greater competition and consumer choice.**
- 3. Providing for the adequate delivery of accessible services, particularly for Tasmanians with certain needs arising from disability or age.**
- 4. Positioning for emerging technologies and service models.**
- 5. Paring back, wherever possible and appropriate, the overall regulatory burden on the industries.**

These objectives are consistent with the Government's broader policy objectives of supporting the sharing economy, growing the Tasmanian economy, reducing red tape and supporting accessible services.

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<sup>1</sup> *Competition Policy Review, Final Report (2015)* Pp. 135

# Tasmanian Government policy objectives for the taxi and hire vehicle industries

## **1. Protecting the safety of passengers and drivers**

While regulators can never guarantee safety or completely eliminate risk, the principal consideration in regulating the on-demand transport industry will be the safety of drivers, passengers and the broader community.

## **2. Promoting greater competition and consumer choice**

It should be consumers who decide what transport services best meet their needs, not the Government. Regulation of the industry will allow for operators to compete for market share by offering different products and services that meet the needs of consumers.

## **3. Providing for the adequate delivery of accessible services, particularly for Tasmanians with certain needs arising from disability or age**

A number of Tasmanians rely on taxi and hire vehicle services for their basic mobility needs and to support their social and economic participation. This is particularly the case for people who cannot drive or who find it difficult or impossible to access public transport services. The regulatory review will therefore take into account potential impacts on the Government's broader accessibility and social inclusion policy goals when developing reform options.

## **4. Positioning for emerging technologies and service models**

The regulatory framework will be flexible and adaptable to changes in the on-demand transport industry. We do not want Tasmania to be left behind as new products and services become available.

## **5. Paring back, wherever possible and appropriate, the overall regulatory burden on the industries**

Regulation can play an important role in supporting the safe and efficient operation of markets that serve the needs of consumers. However, all regulation will be clearly targeted, outcomes focused and efficiently delivered, so as to minimise the cost to industry and consumers and maximise overall economic efficiency.

## 2.3 Review scope

The Review will consider regulation of the **six core elements of the taxi and hire vehicle industries.**

1. Regulation of supply
2. Regulation of fares
3. Regulation of operators
4. Regulation of drivers
5. Regulation of vehicles
6. Compliance and enforcement

### 2.3.1 Matters out of scope

As noted above, the Government recognises that a number of Tasmanians rely on on-demand transport services to get around on a day-to-day basis. The adequate delivery of accessible services to low income or vulnerable Tasmanians will be considered as part of this Review to the extent that this issue could be impacted by regulatory change.

However, it is important to note that the Department of State Growth will be undertaking separate reviews of the Wheelchair Accessible Taxi (WAT) scheme arrangements (including incentives and specifications) and the Transport Access Scheme (TAS). These reviews will occur in parallel to and feed into, where relevant, the Regulatory Review.

Similarly, the appropriate future treatment of commercial ride-sourcing services, including the potential for creating a new premiums class for such vehicles, for compulsory third party insurance purposes, will be examined separately and will not be specifically examined in detail by this Review.

The Review will also not consider the following<sup>2</sup>:

- regulation of services delivered by vehicles with ten or more seats, including buses (other than insofar as vehicles 10-12 seats may be used as taxis);
- self-drive rental cars;
- community transport services;
- congestion issues; and
- technical specifics relating to particular vehicle standards or requirements, for example highly technical aspects of security cameras.

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<sup>2</sup> Where issues are raised during consultation or where reform recommendations could also apply to other passenger transport modes – for example potential changes to operator accreditation processes – these will be identified for the Government’s further consideration.

## 2.4 Review process

The Government recognises that changes to the regulation of the industry have the potential to significantly impact on existing market participants, user groups and the community more broadly.

For this reason, the Review will provide a number of opportunities for meaningful consultation and input from stakeholders and the general public via:

- consultation and briefing sessions, to be held in late 2016 and early 2017;
- the release of a Draft Policy Position Paper in the first half of 2017, which will provide further opportunity for public submissions and stakeholder input before the Government's policy position is finalised.

Implementation of agreed reforms is planned to commence in the first half of 2018, noting that implementation is likely to require a significant legislative drafting task and a range of government systems and process changes.

## 2.5 Consultation questions

Below is a list of questions that the Government would like stakeholders to consider when providing initial submissions and feedback to the Review. Further information and discussion on these questions is provided in **Section 5** of the Paper.

Focus Area	#	Consultation questions
Regulation of the industry as a whole	1.	Do stakeholders support the Government's proposed Policy Objectives and Regulatory Principles for the regulation of the taxi and hire vehicle industries? If not, what changes would you propose?
	2.	How do we ensure our regulatory regime can accommodate emerging technologies and business models and minimise the need for major changes that create uncertainty for industry?
	3.	What opportunities are there to utilise new technologies in a way that more efficiently and effectively manages risks in the industry as a whole? What can we learn from other jurisdictions and other industries?
Regulation of supply	4.	What do stakeholders see as the principal objective of the current licensing regime? Can this objective be met through alternative and less onerous/costly arrangements, such as the safety-based frameworks being rolled out in other jurisdictions?
	5.	Is there evidence that taxi and hire vehicle licensing delivers safety or consumer protection outcomes which could not otherwise be achieved through the regulation of operators, drivers, vehicles and tariffs?

<b>Regulation of prices</b>	6.	Is there a case to de-regulate some services as some other jurisdictions have done, for example pre-booked taxi services? Which services still justify economic regulation and why?
	7.	Is there support from industry or other stakeholders for a less prescriptive approach to regulating taxi fares, for example a weighted average price cap? What might this look like and how could it work?
<b>Regulation of operators</b>	8.	Is the current operator accreditation regime efficient and effective in terms of the current requirements, processes and costs? What improvements could be made?
	9.	Would there be any benefits in exploring changes to the accreditation regime so that it is better able to tailor its requirements to different business models, for example single vehicle owner-operators versus multi-vehicle, multi-driver passenger transport businesses?
	10.	Should the Government require booking and dispatch services, including both taxi radio rooms and ride-sourcing platform providers like Uber, to be accredited? What would be the advantages and disadvantages of booking service accreditation?  Could this pave the way for a relaxation of the regulatory burden on other entities in the industry, such as individual drivers?  If booking services were to be accredited, should membership by drivers be mandatory or optional?
<b>Regulation of drivers</b>	11.	Are the different knowledge and training standards and requirements for different service types, for example taxis versus hire vehicles, still justified?
	12.	Is the current driver authorisation regime efficient and effective in terms of the current requirements, processes and costs? What improvements could be made?
<b>Regulation of vehicles</b>	13.	What changes could be made to reduce the cost and complexity of vehicle standards and requirements without compromising safety?
	14.	Could emerging technologies or approaches such as real-time GPS trip tracking via ride-sourcing applications, and / or mandated pre-payment of fares reduce or replace the need for security cameras or other equipment that is currently required by regulation?
<b>Compliance and enforcement</b>	15.	How can regulators efficiently maximise compliance with regulatory requirements and minimise the prevalence of passenger services operating outside of the law?
	16.	What do stakeholders think about moving to a 'trust and verify' type approach to the regulation of the taxi and hire vehicle industries if it meant greater flexibility and control for those industries over how compliance is maintained and risks are managed?

	17. What changes would be required to support this kind of approach and ensure that safety objectives were not unreasonably compromised? What type of enforcement activity would be required for the success of such a model?
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### 3. Guiding principles

This Review is driven by clear, underlying principles about the way the Tasmanian Government believes the taxi and hire vehicle industries should be regulated.

These principles reflect both contemporary best practice regulatory approaches and the Government's broader policy commitments.

The Government is committed to improving the efficiency and effectiveness of regulation across all Tasmanian industries. The key driver behind this position is the belief that the overall regulatory burden on business and the community should be reduced to the minimum level possible to ensure the delivery of desired social, economic and environmental outcomes.

The Government's foundation principles for embracing the sharing economy are consistent with, and build on, this approach.

#### Tasmanian Government policy principles for the sharing economy

- As a Liberal Government, we believe in free enterprise, competition and consumer choice. We will embrace the sharing economy.
- It should be consumers who decide what services are best for them, not the Government.
- We will not ban these new business models, instead we will encourage them and regulate them only to the extent required to protect consumers and the broader public interest.
- The sharing economy will bring increased competition; we encourage this because it will bring wider benefits to the Tasmanian community.
- We will review and adapt the existing regulatory framework to allow existing business models to respond to the new competition. The aim is regulatory neutrality.
- And we understand that different business models in an industry may require different types of regulation. For instance, what's appropriate for protecting consumers in a major hotel may not be appropriate for an Airbnb property, and vice versa.

The Tasmanian Government's starting position for the Review is that any regulation of the taxi and hire vehicle industries should do the following:

## **1. Support efficiency and competition**

The principal role for government in regulating the industry should be to protect the safety of passengers and drivers and to ensure that consumers' interests are well served. Regulation that has the sole or main effect of limiting the supply and choice of services (for example, by restricting market entry), is likely to encourage inefficient outcomes and should be minimised or removed. Regulation should promote and not stifle innovation.

## **2. Be non-prescriptive, outcomes-focused and risk-based**

The regulatory system should have the inherent flexibility to accommodate new and evolving service models and there should be a move away from detailed prescription of service types (based on current or imminent services). The level of regulation should be 'scaled' so as to reflect risk, and industry should have the ability and flexibility to take greater responsibility for managing its risks.

## **3. Apply uniformly to similar services and only differentiate where the relevant risks clearly justify it**

Regulation should not arbitrarily differentiate between different services based on aspects of that service that do not affect their risks. Assuming agreed minimum safety and consumer protection standards for operators, drivers and vehicles are satisfied, all business entities providing similar services should be managed consistently and impartially.

Intrinsic factors that influence risk in the taxi and hire vehicle industries include whether or not a vehicle accepts rank and hail work, time spent on the road and kilometres travelled.

## **4. Establish clear accountabilities and provide for efficient and effective monitoring, compliance and enforcement**

Accountabilities for risks in an industry should be allocated to those parties that are best placed to manage them. In the taxi and hire vehicle industries, risks will often be shared and jointly managed. For example, the responsibility for maintaining roadworthy vehicles falls to both the driver and the service operator.

However, the regulatory framework should make it clear as to who is ultimately responsible in the event of non-compliance. In a number of industries, 'chain of responsibility' models are put in place to ensure all parties are clear about their legislative and regulatory responsibilities.

An effective regulatory regime also relies on the credible possibility of getting caught for doing the wrong thing and having an effective/appropriate sanction applied. This means that monitoring, compliance and enforcement measures need to be well designed, fit for purpose and adequately resourced.

## **5. Only recover from industry the efficient cost of regulation**

While regulation is often seen as an unwelcome impost on business, so long as regulation is efficient it can actually benefit regulated entities through the establishment of a good reputation and consumer trust in the products and services delivered by that industry. Therefore, it is generally accepted that industries should contribute to the efficient cost of their own regulation.

However, where government fees and charges are set beyond the efficient cost of providing regulatory services, or are not linked to the recovery of any cost by government, this can decrease competition and choice in the market by heightening the barriers to entry.

Where government wishes to deliver community service obligations, then these should be transparently identified, costed and funded by government.

## **6. Be technology-neutral**

Given the rapid pace at which technologies emerge and evolve, it is important that regulation is not predicated on specific technologies in existence today which may be outmoded in years to come. Regulation should be robust to these changes so as to avoid the need to continuously 'catch up' to technological developments.

Technologies may lead to better ways of identifying and managing risk, but it is the outcome of efficient and effective risk management rather than the facilitating technologies themselves that should be at the heart of a modern regulatory regime.

# **4. Taxis and hire vehicles: what, why and how do we regulate?**

## **4.1 What distinguishes the taxi industry from the hire vehicle industry and why is it important?**

When we talk about the taxi and hire vehicle industries or, more accurately, the 'small commercial passenger vehicle services industry', we are really talking about two identifiable but overlapping sub-markets:

1. the 'rank and hail' taxi trade, which is serviced exclusively by taxis; and
2. the 'pre-booked' trade - which is serviced by taxis, but also includes luxury hire cars, restricted hire vehicles and, most recently, ride-sourcing services.

A key distinction between these markets, and one that is critical when considering how they should be regulated into the future, is that the 'rank and hail' trade has a different intrinsic risk profile to pre-booked services.

When we talk about ‘risk’, we are not talking only about the risk of *physical* harm to drivers and passengers, but also risks like vulnerable consumers being taken advantage of by unscrupulous operators.

The differences in risk come about due to a lower level of information flow between the driver and the passenger in a rank or hail situation compared to a pre-booked trip. For example, with rank or hail jobs, the identity of both the driver and passenger, vehicle condition and service price are all potential ‘unknowns’. Taxis that provide rank and hail services are also less likely to benefit from return business, which means the incentive to provide a high level of service is weaker than in the pre-booked market.

Regulation of taxis with respect to signage, regulated tariffs, taximeters, security cameras, taxi plates and the like are all designed to improve information flows and provide greater certainty and confidence to both the driver and passenger.

By their very nature, pre-booked services partially address the information flow issue – and therefore reduce some risks - through the pre-arranged nature of the transaction and the use of intermediary services, such as websites, smartphone applications and the like. Pre-booked services are also more likely than rank and hail services to rely on repeat custom and a strong brand reputation. This increases the incentive to maintain a high level of service.

Assuming there are strong information flows between service providers and consumers, there may be less need for regulation of pre-booked services overall. However, there is still a role for government in setting and enforcing baseline standards relating to the safety of operators, vehicles and drivers, as these will not/cannot be readily assessed by the passenger when booking the service. In Tasmania, requirements for operator accreditation, driver authorisation and vehicle inspections within the luxury and restricted hire vehicle segments of the market are intended to ensure that prescribed minimum standards are being met.

## 4.2 Why does government regulate the taxi and hire vehicle industries?

Governments regulate industries and markets for a number of reasons. Fundamentally, however, regulation should be about managing risk, assisting markets to operate efficiently to the benefit of consumers and minimising social and environmental harm to the community.

In the taxi and hire vehicle industries, government has a clear role in the following areas:

### I. Passenger, driver and public safety

This kind of regulation includes the setting and enforcement of minimum standards to ensure that customers can be confident that operators, drivers and vehicles have been assessed as capable of delivering a safe service. In Tasmania, this includes measures such as passenger service operator accreditation, driver authorisation; such as the ancillary certificate regime, vehicle inspections, vehicle registration (including MAIB premiums) and specialist equipment such as in-car security cameras.

It also includes the setting and enforcement of road rules and blood alcohol restrictions for drivers of public passenger vehicles.

## **2. Customer protection and information**

This kind of regulation includes measures to ensure that where a service provider has ‘market power’, for example where there is only one taxi operator in a small town, that the service provider cannot misuse this power by charging customers unfair prices. In Tasmania the Government determines the maximum tariffs a taxi operator can charge for their services to prevent price gouging. Hire vehicle tariffs are not subject to price regulation.

Another important aspect of customer protection regulation includes those measures which reduce information gaps between service providers and customers. The objective here is to help customers make informed choices about the goods and services they want to purchase. For example, requirements in Tasmania and elsewhere that taxis have certain physical identifiers (e.g. top lights, licence plates) and use approved taximeters give customers confidence – particularly when they are hailing a taxi in the street – that the driver and vehicle comply with certain minimum standards.

## **3. Social equity and community outcomes**

This kind of regulation is principally designed to offer protections and support to vulnerable groups in society, such as the elderly or people with disability. This is particularly important in the taxi and hire vehicle industries, given the reliance of these groups on door-to-door passenger transport services.

Workers’ compensation provisions can also be included under this broad banner. In Tasmania, drivers who are not self-employed are entitled to access workers’ compensation from the service operator that employs or engages them.

In Tasmania, the Government has in place a range of incentives to encourage the supply of wheelchair accessible taxis. Other examples include anti-discrimination provisions and the requirement to carry assistance animals. The Transport Access Scheme, while not strictly regulation, provides significant discounts for eligible customers using taxi services.

The Tasmanian Government’s view (reflected in the principles outlined in Section 3) is that any future regulation of the small passenger vehicle services sector needs to address at least one of these three outcomes, and that any regulation that cannot be shown to be delivering on one or more of these outcomes needs to be reconsidered.

For example, it is not a legitimate role for government to shield market participants from competition, to protect the value of individual investments or to guarantee or underwrite the overall sustainability of the industry. It is legitimate to remove or amend regulatory arrangements that unnecessarily impede market participants from evolving their service offerings to compete.

The industry has already undergone significant changes with respect to market liberalisation. Changes were introduced approximately ten years ago which brought an end to the issuing of new perpetual licences and introduced an annual release process for owner-operator licences, which cannot be leased. Changes to legislation were also made to ensure that it was clear that the purpose of the regulatory framework was not to guarantee the viability of operators.

Where government limits the supply of a service or contributes to the cost of entry to any market, these things should be clearly justified by reference to a broader policy outcome. For example, driver checks and vehicle inspections impose a cost on industry, but these things are broadly

accepted given the important safety benefit they provide. These issues are discussed in more detail further on in this document.

## 4.3 Tasmania's current legislative and regulatory framework

In Tasmania, the taxi and hire vehicle industries are regulated under a complex web of primary and subordinate legislation which includes, but is not limited to, regulations and statutory rules.

The principal Acts of Parliament that govern the operation of the taxi and hire vehicle industries are the:

1. *Taxi and Hire Vehicle Industries Act 2008*;
2. *Passenger Transport Services Act 2011*; and
3. *Vehicle and Traffic Act 1999*.

A suite of detailed regulations set out how the framework established by primary legislation actually operates at a practical, operational level.

The current Tasmanian framework is described in more detail in the companion background paper, *The Tasmanian Taxi and Hire Vehicle Industries: Regulatory Framework Overview*.

## 5. Driving forward: opportunities for reform

The consultation questions and supporting discussion below are designed to focus discussion on a range of high-level policy issues in the sector and seek to challenge stakeholders to think about how we could improve the overall efficiency and effectiveness of the regulatory regime. The discussion is structured around the six key regulatory elements identified in the Review Scope in section 2.3.

The questions are not exhaustive and should not constrain stakeholders from addressing other issues and questions that are not listed below, subject to them being within the overall scope of the Review. They represent a genuine attempt to generate discussion about how we should regulate the on-demand transport industry over the next 10 - 20 years.

## 5.1 Regulation of the industry as a whole

### Consultation questions:

- Do stakeholders support the Government's proposed Policy Objectives and Regulatory Principles for the regulation of the taxi and hire vehicle industries? If not, what changes would you propose?
- How do we ensure our regulatory regime can accommodate emerging technologies and business models and minimise the need for major changes that create uncertainty for industry?
- What opportunities are there to utilise new technologies in a way that more efficiently and effectively manages risks in the industry as a whole? What can we learn from other jurisdictions and other industries?

The emergence of Uber, Lyft and other similar businesses has shown that innovation and change are likely to be the 'new normal' in the industry, and governments need to ensure that their regulatory frameworks are able to accommodate new developments in the market nimbly and effectively.

While the future regulation of ride-sourcing is a key consideration of this Review, new, disruptive service models also provide an opportunity to take a look at the way in which governments regulate more broadly.

This provides an opportunity to respond in a sophisticated and holistic way that meets industry and passengers' needs and expectations, rather than simply making minor changes to existing provisions.

The Government believes that there are likely to be significant opportunities to improve regulatory efficiency and effectiveness for existing market participants to ensure they are in the best position to maximise their opportunities to succeed in a changing market.

Stakeholders are encouraged to think creatively about these opportunities beyond the constraints of the existing regulatory regime.

## 5.2 Regulation of supply

### Consultation questions:

- What do stakeholders see as the principal objective of the current licensing regime? Can this objective be met through alternative and less onerous / costly arrangements, such as the safety-based frameworks being rolled out in other jurisdictions?
- Is there evidence that taxi and hire vehicle licensing delivers safety or consumer protection outcomes which could not otherwise be achieved through the regulation of operators, drivers, vehicles and tariffs?

In Tasmania, the supply of licences allowing the provision of taxi and hire car services is subject to significant regulatory control by government. In simple terms, the licensing regime does three things:

- delineates and differentiates service types based on certain criteria and prescribed standards for example taxis, luxury hire car, restricted hire vehicle;
- limits the supply of standard taxi licences in each of Tasmania's designated 'taxi areas'; and
- sets the price for acquiring certain licence types.

Until operator accreditation was introduced in 2004, owning or leasing a taxi or luxury hire vehicle licence was the only pre-requisite for operating a taxi service. Effectively, there were no safety or fitness-based checks placed on taxi licence holders, although drivers were required to be authorised.

With the introduction of operator accreditation, there is a significant question mark over whether there is any benefit to customers in continuing to license taxis and hire vehicles.

Some other Australian jurisdictions – including Victoria – are considering phasing out their licensing regimes in favour of simpler, safety-based accreditation/registration schemes.

The liberalisation of the taxi market would lower barriers to entry and allow greater flexibility for operators to meet changing demand in different parts of the State without having to worry about having a licence for a specific taxi area.

For example, if demand for taxi services increased in Hobart over the summer festival period, drivers could travel from other parts of the State to meet this demand, instead of being 'locked out' of this trade by the licensing regime (although this type of demand was anticipated to some extent by the availability of temporary taxi licences to accredited taxi operators).

This kind of model already exists to some extent in the pre-booked luxury hire vehicle industry, where licence costs are relatively low, licences can be used state-wide and there are fewer regulatory restrictions in place.

The Government is interested in exploring ways to provide even greater flexibility for businesses to compete based on diversification of their products and wants to hear the industry's views on this

kind of approach.

### 5.3 Regulation of prices

#### Consultation question:

- Is there a case to de-regulate some services as some other jurisdictions have done, such as pre-booked taxi services? Which services still justify economic regulation and why?

The broad rationale for regulating taxi tariffs is to protect the interests of consumers by:

- reflecting the efficient cost of providing the service;
- protecting consumers from the abuse of market power;
- ensuring that there are no cross-subsidies between groups of customers;
- allowing a standard of service, including availability and safety, that consumers are willing to pay for; and
- providing incentives for the industry to improve efficiency.

Regulated tariffs also establish an agreed fare basis for travel for the purposes of government-subsidised programs such as the Transport Access Scheme (TAS), which provides taxi fare concessions to eligible members.

Maximum regulated tariffs are intended to operate as a ‘fall-back’ for customers. In other regulated industries – like electricity retailing – companies will often compete for customers by offering discounts under the regulated maximums. However, in the Tasmanian taxi industry there is currently very little, if any, evidence of price competition between taxi operators.

Currently, taxi tariffs are regulated irrespective of whether or not the particular job is ‘rank and hail’ or pre-booked. However, as noted above, other vehicles that service the pre-booked trade are free to set their own tariffs. This allows these services – at least in principle - to compete both on price and quality to capture particular market segments and serve different customer needs.

The key rationale for regulating taxi fares is because they are available for ‘walk up’ hire. Price regulation allows customers to get into an otherwise anonymous taxi knowing that their fare is subject to pricing control. However, with pre-booked services, customers are in a stronger position to ‘shop around’ and agree a price in advance. This is the case regardless of whether the vehicle used for the trip is licensed as a taxi or another kind of hire vehicle.

New South Wales (NSW) is moving to de-regulate tariffs for *all* pre-booked services, including those delivered by taxis. In principle, this kind of approach could provide additional flexibility to Tasmanian taxi operators to compete in the pre-booked market, including with ride-sourcing operators like Uber.

However, there are practical issues with this concept which would need to be considered to ensure that customers – particularly vulnerable customers - were adequately protected.

A requirement for a pre-booked taxi to provide a maximum fare estimate to the passenger in advance of the journey, similar to ride-sourcing and other non-taxi hire vehicle services, could address issues for the majority of passengers.

It is acknowledged that de-regulating pre-booked fares could have potentially significant implications for TAS customers – many of whom pre-book their taxi services - and these would require further detailed consideration. One option could be to retain the standard regulated fares for all TAS customer trips. However, the TAS review may also consider changes to the scheme which could de-couple the scheme from the taxi industry and provide TAS customers with greater choice and flexibility in the services they use.

**Consultation question:**

- Is there support from industry or other stakeholders for a less prescriptive approach to regulating taxi fares – for example a weighted average price cap? What might this look like and how could it work?

From a customer protection perspective there remains, at least in the immediate term, a strong *prima facie* case for some form of ongoing price control of tariffs in the rank and hail taxi market. Any move away from regulation of rank and hail fares would first require detailed analysis of the level of competition in both metropolitan and regional taxi markets across Tasmania.

However, there may be other less prescriptive regulatory approaches that could be pursued over time. One option, identified by the Tasmanian Economic Regulator in 2012, is for the establishment of a weighted average price cap, rather than prescribed tariffs. Implementation of this kind of approach would require significant data from industry including the number, value, distance, time and revenue of trips.

## 5.4 Regulation of operators

**Consultation questions:**

- Is the current operator accreditation regime efficient and effective in terms of the current requirements, processes and costs? What improvements could be made?
- Would there be any benefits in adapting the accreditation regime so that it is better able to tailor its requirements to different business models e.g. single vehicle owner-operators versus multi-vehicle, multi-driver passenger transport businesses?

Operator accreditation is principally designed to ensure that there is a single person who is responsible for putting in place and maintaining appropriate systems to manage the various driver and vehicle-based risks associated with operating a passenger transport business.

A key benefit of the accreditation framework is that for service operators with multiple drivers and vehicles, evidence of non-compliance can trigger action against the service *as a whole* and provides a central point of accountability for the performance of that business.

However, the Tasmanian operator accreditation regime does not presently distinguish between multiple vehicle/multiple driver operators and single vehicle operators with respect to the requirements and standards that must be met, noting that there is no limit to the number of

vehicles an operator can operate once they are accredited. Further, there is no requirement for the vehicles used to provide such taxi or hire vehicle services to be owned by the operator of the passenger transport service.

Given the arrangement that has been adopted for ride-sourcing, it is timely to consider whether such an approach could be adopted more broadly where operators are providing services on a ‘one vehicle, one driver’ basis; rather than acting as an ‘operator’ in the sense of managing a fleet of vehicles with potential separation of ownership and multiple drivers, where it is important to maintain a central point of responsibility and accountability.

This issue also raises the broader question of whether or not there is currently a level of avoidable duplication between the requirements of the Transport Commission with respect to the accreditation regime, and the requirements of the Registrar of Motor Vehicles with respect to the driver authorisation and vehicle inspection regime.

For example, police and medical checks are required by both the accreditation and ancillary certificate application processes, although in some business models these checks are being applied to different individuals. Similarly, both the Commission and Registrar have their own vehicle inspection regimes. With regard to taxis, the former requires a safety check every 10 000kms or six months, and the latter also requires a six-monthly roadworthiness inspection (conducted to a prescribed standard).

The Government is eager to hear stakeholders’ views on the current accreditation regime and how it could be streamlined, particularly in relation to the parallel requirements of the Commission and the Registrar.

#### **Consultation questions:**

- Should the Government require booking and dispatch services – including both taxi radio rooms and ride-sourcing platform providers like Uber - to be accredited? What would be the advantages and disadvantages of booking service accreditation? Could this pave the way for a relaxation of the regulatory burden on other entities in the industry, such as individual drivers?
- If booking services were to be accredited, should membership by drivers be mandatory or optional?

Unlike many Australian jurisdictions, taxi and hire vehicle booking and dispatch services – including radio rooms and ride-sourcing platform providers - are not regulated in Tasmania and membership of these services is not compulsory for operators or drivers.

Taxi dispatch services are covered by legislation only insofar as they are required to provide information to the Transport Commission on request.

Until recently, Tasmanian dispatch services have tended to distance themselves from the behaviour of their affiliated drivers and operators, taking the view that they are merely providing a booking service and cannot be held accountable for driver behaviour or service standards. This view is reinforced by an operator accreditation regime which places the ‘operator’ at the centre, and is silent on the role of booking and dispatch entities.

Previous reviews of the taxi and hire vehicle regulatory framework have considered the concept of regulating booking and dispatch services, but considered the additional regulatory burden would be too great, in the absence of broader de-regulation of the industry.

The Government believes that the emergence of new booking models like Uber and Lyft - in addition to more recent changes within the ‘traditional’ taxi industry that have seen dispatch services take more ownership and control over branding and service quality - should prompt a re-examination of the place of booking services in the regulatory regime.

For instance, regulatory obligations could potentially be shifted to the booking services and away from operators in certain circumstances. For example, it may not be necessary to accredit a single taxi, hire vehicle or ride-sourcing driver who is affiliated with a branded booking service or platform as an ‘operator’ if that booking service provider is ultimately responsible and accountable for complying with safety and consumer protection requirements.

Some jurisdictions require that drivers are also members of a booking service. However, mandatory membership in Tasmania would require careful consideration given the strong presence of non-affiliated operators, especially in Hobart.

A key consideration would be to support effective competition between booking services to ensure flexibility and choice for both drivers and passengers.

## 5.5 Regulation of drivers

### Consultation question:

- Are the different knowledge and training standards and requirements for different service types – for example taxis versus hire vehicles – still justified?
- Is the current driver authorisation regime efficient and effective in terms of the current requirements, processes and costs? What improvements could be made?

Currently, the requirements for obtaining authorisation to drive a taxi are more stringent than those for obtaining authorisation to drive a luxury, restricted hire or ride sourcing vehicle. The principal difference is the requirement for taxi drivers to complete a driver training course, which typically costs around \$500.

Tasmania is party to national agreements under mutual recognition frameworks relating to taxi training, which would need to be carefully considered as part of any proposed changes.

As noted above, there appear to be some areas of duplication between the operator accreditation and ancillary certificate regimes, particularly for certain business models. For example, where a person intends to be the driver in a single-vehicle passenger transport service, that person must be authorised as both a driver and a service operator by the Registrar and Commission respectively.

Currently, there are two main elements in establishing the fitness and propriety of a person seeking to drive a public passenger service. The first is that they are physically and mentally able to deliver a safe service, given road safety risks are higher for commercial drivers.

A number of jurisdictions are adopting a more flexible approach to implementing this agreement as part of their recent industry reforms. For example, NSW has recently implemented a medical self-declaration, which only requires a full medical check in the event a driver has a relevant condition. Tasmania could consider a similar approach, where the risk / benefit equation justified it.

A further example relates to Working with Children Registration (WWCR), which all ancillary certificate holders must have, in addition to a National Police Check. The WWCR assess the risk to children and will look at a range of relevant prior convictions, however currently checks around road safety and integrity, fraud and dishonesty are not considered as part of WWCR. Therefore, the National Police Check is used to determine a person's suitability to hold an ancillary certificate in terms of road safety and honesty/integrity.

The WWCR process is currently administered by the Department of Justice, and applicants for an ancillary certificate must have WWCR before they can be issued with that certificate.

From late 2017, the WWCR will be expanded to a Working with Vulnerable Person's Registration (WWVPR), which will include checks for integrity, fraud and/or dishonesty. In light of this, it would appear sensible to utilise the WWVPR check as the single process to establish if an ancillary certificate applicant is 'fit and proper' to provide public passenger services. This would likely save all ancillary certificate applicants time, money and confusion.

The Department of State Growth has also internally identified several components of the ancillary certificate application process where it appears there are significant opportunities to reduce cost and administrative burden for applicants, for example in relation to renewals and electronic and online processing.

## 5.6 Regulation of vehicles

### Consultation question:

- What changes could be made to bring down the cost and complexity of vehicle standards and requirements without unreasonably compromising safety?

Current regulated vehicle standards deliberately seek to differentiate according to licence category, primarily in an effort to prevent Luxury Hire Car (LHC) or Restricted Hire Vehicle (RHV) operators undertaking 'taxi-like' services. The rationale for this approach is linked to the higher entry and ongoing compliance costs that taxis face compared to these licence categories. In essence, limitations applied to LHCs and RHVs are intended to protect taxi operators from potential competitors with lower compliance standards and costs.

In the process, however, these standards also potentially constrain the flexibility of operators to offer products and services to consumers and some appear to have no clear safety rationale, which should be the primary (if not singular) focus for regulators.

The objective of the highly prescriptive LHC requirements is that the vehicles being used as such are, as far as possible, of a 'luxury standard'. As this is difficult to define, vehicle purchase cost and size were designated as proxies.

The problem with detailed and prescriptive standards is that they are less flexible to changing markets. An issue has been the fact that manufacturers are increasingly pricing their vehicles below the Luxury Car Tax (LCT) threshold, so that a vehicle that by any ordinary use of the word might

qualify as ‘luxury’ might not be approved for use as an LHC solely because it does not cost enough. Many manufacturers also produce expensive luxury vehicles with wheelbases smaller than 2800 mm, so these vehicles are also excluded.

These are examples of the problems that can emerge when governments attempt to regulate service types and quality using proxy measures for otherwise subjective criteria. An alternative approach might be to eliminate all standards that are not justifiable on the basis of safety and let service providers market and price their products to consumers as they see fit. In a competitive market, a luxury hire car service, for example, that charges a high price for a sub-standard service using a poor quality car is unlikely to stay in business for very long.

From a safety and risk management perspective, a key differentiating factor between taxis and hire vehicles for the purposes of vehicle standards and equipment should be the kind of work they undertake and the nature of the markets they serve. For instance, more prescriptive vehicle and equipment requirements – including security cameras, taximeters and top lights can be justified for taxis because they engage in rank and hail work which involve ‘blind’ pick-ups. However, age of vehicle, where the vehicle meets roadworthiness standards, may be less relevant.

Where vehicles are pre-booked only, there is greater scope to allow for operators to offer diverse products and services with less prescriptive requirements, subject to vehicles meeting prudent minimum safety standards.

Regulated vehicle standards should also be clearly linked to safety outcomes. For example, age limits on vehicles are currently used as a proxy for safety, on the assumption that newer cars are safer than older cars.

#### **Consultation question:**

- Could emerging technologies or approaches like real-time GPS trip tracking via ride-sourcing applications, and/or mandated pre-payment of fares reduce or replace the need for security cameras or other equipment that is currently required by regulation?

However, research<sup>3</sup> has shown that the age of a vehicle is less relevant to its performance than the passive and active safety features of that vehicle (for example electronic stability control, side curtain airbags). A modern regulatory regime should focus as closely as possible on the factors that actually drive risk – for example safety features / Australasian New Car Assessment Program (ANCAP) rating, kilometres travelled, roadworthiness – and set standards accordingly.

Currently, taxis authorised to operate in the Hobart, Launceston, Devonport, Burnie, Ulverstone, Perth and West Tamar taxi areas are required to have security cameras installed. Some of the requirements for the installation, operation and technical capabilities of cameras are prescribed by regulation and others, including the technical specifications for an approved camera system, are set through administrative guidelines. In this regard it is noted that there has been some discussion at a national level of developing a less prescriptive set of minimum standards for taxi security cameras.

Taxis outside the prescribed areas, LHCs, RHVs, and ride – sourcing vehicles are not required to have cameras installed.

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<sup>3</sup> Monash University Accident Research Centre: *Research on the Safety Implications of Taxi and Hire Car Age Limits*, April 2015

Compliance with security camera requirements comes at a significant cost to operators. However, the safety and security rationale is typically viewed as compelling.

The strongest case for security cameras is in urban taxis operating late at night servicing the rank and hail trade and this is reflected in the current arrangements. However, the possibility of extending the roll-out of cameras into pre-booked vehicles – including ride-sourcing vehicles - has also been mooted.

The Government is eager to understand stakeholders' views on security cameras, in particular which vehicles should be required to operate with them and whether there are alternative technologies that might provide an equivalent level of safety for passengers and drivers.

## 5.7 Compliance and enforcement

### Consultation question:

- How can regulators efficiently maximise compliance with regulatory requirements and minimise the prevalence of passenger services operating outside of the law?

Any robust regulatory regime must provide for the successful detection and prosecution for non-compliance. Currently, taxi and hire vehicle drivers and operators are subject to a range of ongoing compliance monitoring and enforcement measures through the operator accreditation, vehicle inspection and driver authorisation regimes, in addition to the 'on-road' detection and prosecution of relevant offences. Enforcement activities are funded, in part, through the annual administration licence fees levied on taxis and luxury vehicles.

Currently, it can be very difficult to determine whether a particular activity constitutes a breach of the current passenger transport legislation, especially when the transport is pre-arranged rather than walk-up in nature. It can also be difficult, given the nature of the activity and the relationships between the providers of services and their clients, to obtain evidence to support a successful prosecution.

Part of the problem stems from the legal test set out in the *Passenger Transport Services Act 2011* for what constitutes a 'passenger transport service'. Specifically, in order to meet the definition the service must be considered what is referred to as a 'transport concern'. This suggests that the passenger service must be more than an adjunct to or incidental to the predominately private use of a vehicle, or use as part of a non-transport related business.

The definition was put in place to ensure that "incidental" transport services provided by enterprises whose core business was not transport-related weren't captured by the legislation and therefore required to be accredited. However, the definition is problematic when it comes to business models like ride-sourcing, where the satisfaction of this test becomes a question of fact related to the amount of time spent carrying passengers relative to a vehicle's private use and the amount of money being earned by the service provider. It requires a case-by-case assessment.

As noted above, the legislation did not anticipate this type of model, so it is less clear-cut whether or not it is an offence to operate this type of service, and if it is, to be able to obtain relevant evidence that would lead to a successful prosecution.

The key to on-road enforcement is the ability to detect that a vehicle is providing a service that is operating as a ‘taxi’ in all but name. Given that this type of service is unlikely to be provided in a marked vehicle, and there would no external or internal identifier of when a service is in progress for example, conveying a friend or family member rather than a paying ‘customer’, it becomes almost impossible to know what the vehicle is being used for.

**Consultation question:**

- What do stakeholders think about the prospect of moving to a ‘trust and verify’ type approach to the regulation of the taxi and hire vehicle industries if it meant greater flexibility and control for those industries over how compliance is maintained and risks are managed?
- What changes would be required to support this kind of approach and ensure that safety objectives were not unreasonably compromised? What type of enforcement activity would be required for the success of such a model?

In some jurisdictions it has been proposed that authorised ride-sourcing vehicles would be issued with an identification sticker to aid enforcement. This would effectively serve the same purpose as a taxi licence number plate.

The current compliance and enforcement regime places a significant emphasis on initial and regular periodic checks for operators, drivers and vehicles. This approach provides a high level of assurance that any non-compliance is detected and addressed within a reasonable time period. The disadvantages of this approach tend to be a lack of flexibility for those being regulated and a relatively high compliance burden for operators.

Increasingly, regulators across a range of industries in other jurisdictions are adopting what is usually referred to as a ‘trust and verify’ approach, which is standards-based and outcome-focused. The ‘trust and verify’ approach shifts the accountability for managing risk and ensuring compliance away from government and back to businesses, the trade-off being that businesses and individuals are given greater flexibility and control over how compliance is maintained.

Under such an approach, compliant behaviour would be rewarded over time with a higher level of trust and therefore lower verification activity and costs, whilst poor performance would be met with increased verification and, in serious cases, significant penalties. With respect to vehicle standards it could, for example, mean fewer regular vehicle inspections, but harsher penalties for operating un-roadworthy vehicles.

To be successful, a trust and verify approach must provide information and education to industry, establish clear legal accountabilities, be supported by sufficient resources to detect offences, and provide the right incentives for compliance.

## Get involved and have your say

Visit [www.stategrowth.tas.gov.au/taxireview](http://www.stategrowth.tas.gov.au/taxireview) to find out more about how to get involved in the Review, including how to make a submission or register for a consultation session.