

Research Director  
Transportation and Utilities Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

10 April 2017

Dear Sir/Madam

**RE: SUBMISSION TO THE TRANSPORT AND OTHER LEGISLATION (PERSONALISED TRANSPORT REFORM)  
AMENDMENT BILL 2017**

Thank you for the opportunity to provide this submission to the Parliamentary Committee investigating the *Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017* and *Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation 2017* tabled in Queensland Parliament on 21 March 2017. This submission examines and comments on elements of the Bill and Regulations that seek to amend the *Transport Operations (Passenger Transport) Act 1994* to implement reforms proposed in *Queensland Personalised Transport Horizon Stage 2*.

**Summary**

The proposed Bill and Regulations are poorly constructed and fatally flawed, do not deliver on the reforms identified by the Government, will substantially and irrevocably increase the regulatory and enforcement costs for the Queensland Budget and have the potential to negatively impact millions of Queenslanders each year.

Principal flaws in the Bill and Regulations include:

- Lack of relevance to the unique personalised transport requirements and preferences of Queenslanders
- Lack of understanding of the nature, characteristics and operations of booked hire services globally and how they will evolve in Queensland in the short-term
- Actively undermines and removes the workplace rights of entire sector of workers, exposing them to exploitation and coercion
- Insufficient protections for passengers and the community from demonstrated exploitation, violence and unethical behaviours of booked hire service providers and drivers
- Lack of specificity and legal enforceability of new “duties” and “chain of responsibility”
- Lack of appreciation of the likely Fiscal and Budget Impacts of removal of Service Contracts and the shift of enforcement and policing responsibilities to the State Government

The Department of Transport and Main Roads (“TMR”) has proven itself incapable of effectively regulating the Queensland personalised transport sector over the past two (2) years. With the regulatory and enforcement burden on the Department expected to increase by up to 1000% over the next five (5) years (owing to expected vehicle growth, vehicle identification challenges and the repeal of Service Contracts), the Queensland Government must establish an independent Queensland Personalised Transport Commission. This approach recognises the increasing complexity and pressures of regulating the personalised transport sector and represents global best practice, having been implemented in major markets like New York, London, New South Wales and Victoria.

The independent Personalised Transport Commission must have its own enabling legislation and full control of:

- Licensing and registration of all personalised transport vehicles and drivers
- The ability to set classes of CTP for personalised transport vehicles
- Compliance and enforcement of its own legislation
- Litigation of challenges to enforcement orders under its own legislation
- Policy branch to amend its own legislation if necessary

If an independent Commission is not established, then the specific details of the proposed Bill and Regulation are irrelevant. A responsive regulatory regime supported by effective enforcement is essential if the failings of the past two (2) years are to be avoided in the future.

The proposed reforms lack clear objectives and this is reflected in the Bill and Regulations. Any personalised transport policy, legislative and regulatory framework in Queensland should guarantee:

- Reliable and safe transport 24/7
- Access to personalised transport services wherever they may be in Queensland, not just metro Brisbane or South East Queensland
- Accountability of service providers to ensure that customers are not exploited in any way
- Fair and equitable treatment of all providers of personalised transport services

The proposed Bill and Regulations do not guarantee these critical policy objectives and potentially risk the welfare of some of Queensland's most vulnerable.

To address the fatal flaws of the Bill and Regulations and ensure all Queenslanders have access to reliable, safe and accountable personalised transport in a level playing field, a number of fundamental changes are required. The following points are of equal importance and in no particular order:

- 1) Establish an independent Personalised Transport Commission with legislative amendment, policing/enforcement, regulatory and policy development capacity.
- 2) Bailment Agreements must be retained, with the minimum work conditions and standards for all personalised transport drivers enshrined in legislation.
- 3) Security Camera requirements must establish a minimum standard, be consistent and uniform across all personalised transport providers to ensure the safety of all drivers and passengers (regardless of the service chosen) and to meet Queensland Police requirements.
- 4) Commercial-grade, anti-tamper GPS units must be fixed to all personalised transport vehicles and be remotely accessible to authorised parties.
- 5) All personalised transport vehicles to have emergency systems in place to support driver safety.
- 6) The Bill and Regulation must be fully consistent with all other relevant legislation including, but not limited to, disability discrimination and work, health and safety.
- 7) All personalised transport vehicles be required to have dedicated number plates (akin to "T" plates), rather than easily removable stickers. Plates to be provided only when evidence of appropriate CTP, public liability and certificate of inspection are provided.

- 8) Immediately define, and establish appropriate and equitable premiums for, the class/classes of Compulsory Third Party insurance for all personalised transport providers to address continued uncertainty.
- 9) All personalised transport providers must hold public liability insurance to prevent the State Government becoming the default insurer and to minimise potential risks to the community.
- 10) In the absence of vehicle age restrictions, establish clear vehicle quality and usage rate standards and hold operators accountable.
- 11) Increase licence fees for Booked Hire Service Drivers and Authorised Entities to help fund expected increase in regulatory and enforcement costs for Government and to better reflect the level of “trust” being placed on licence holders.
- 12) All drivers must have an ABN and be registered for GST before receiving a Drivers Authorisation.
- 13) The Government must establish a process for managing the risks of multiple affiliations by drivers in terms of both “chain of responsibility” and fatigue management. This includes drivers operating across both personalised transport and other transport (i.e. truck, bus) sectors.
- 14) Fully integrate taxis into the GoCard public transport network in the short-term.
- 15) Clearly define what constitutes a “hail” and “touting”.
- 16) Expressly prohibit the establishment and operation of Booked Hire Service pick up/and drop off zones, on public and private land, which represent pseudo taxi ranks.
- 17) Establish and maintain a register of drivers that have been disaffiliated or removed from platforms to prevent drivers from simply shifting to a new platform.
- 18) Establish clear and enforceable requirements for Government access to all data related to the delivery of personalised transport services in Queensland.
- 19) Expressly identify Police Check requirements in the Bill for all personalised transport drivers as part of Driver Authorisation approval.
- 20) Maintain the capacity of the Minister to enter into Service Contracts at their discretion to ensure the Government has the capacity to respond quickly, and at the lowest cost, to changing or unique circumstances without the need for regulatory or legislative changes.

Failure to make these required changes will result in the Queensland Taxi Industry withholding its support for the proposed Bill and Regulations.

## Fatal Flaws

Taxi Council Queensland (“TCQ”) does not support the Bill and Regulations in their current form. A critical review of the proposed legislative and regulatory reforms reveals a number of “fatal flaws” which will render the implementation and enforcement of the reforms ineffective, with the potential to adversely impact Queenslanders with a range of perverse and potentially damaging outcomes.

Principal flaws in the Bill and Regulations include:

- Lack of relevance to the unique personalised transport requirements and preferences of Queenslanders
- Lack of understanding of the nature, characteristics and operations of booked hire services globally and how they will evolve in Queensland in the short-term
- Actively undermines and removes the workplace rights of entire sector of workers, exposing them to exploitation and coercion
- Insufficient protections for passengers and the community from demonstrated exploitation, violence and unethical behaviours of booked hire service providers and drivers
- Lack of specificity and legal enforceability of new “duties” and “chain of responsibility”
- Lack of appreciation of the likely Fiscal and Budget Impacts of removal of Service Contracts and the shift of enforcement and policing responsibilities to the State Government

Any one of these flaws alone makes enacting of the proposed Bill and Regulations in their current form by Queensland Parliament inappropriate, and would likely result in significant implementation and enforcement costs to the Queensland Government and negatively impact to Queenslanders and the wider community.

It is expected that if enacted, the proposed Bill and Regulations will be ineffective, result in a wide range of perverse outcomes and provide “loopholes” for exploitation by service providers. This would represent a continuation of the regulatory uncertainty experienced by the taxi industry over the past three (3) years. Such an outcome is completely unacceptable and would represent further evidence of the continued lack of capacity and capability of the current Government to protect and enforce its own laws as a sovereign state for the protection and betterment of all Queenslanders.

## Minimum Policy Objectives

TCQ believes that any personalised transport policy in Queensland should guarantee Queenslanders:

- Reliable and safe transport 24/7
- Access to personalised transport services wherever they may be in Queensland, not just metropolitan Brisbane
- Accountability of service providers to ensure that customers are not exploited in any way
- Fair and equitable treatment of all providers of personalised transport services

These policy objectives represent the minimum standard that Queenslanders have become accustomed to over the past 20 years and any amendment or reform to personalised transport in the State must ensure these standards are guaranteed and protected. Failure to do so is an acknowledgment by the current Government that Queenslanders will be “worse off” under the proposed legislative and regulatory reforms and that Queenslanders are no longer deserving

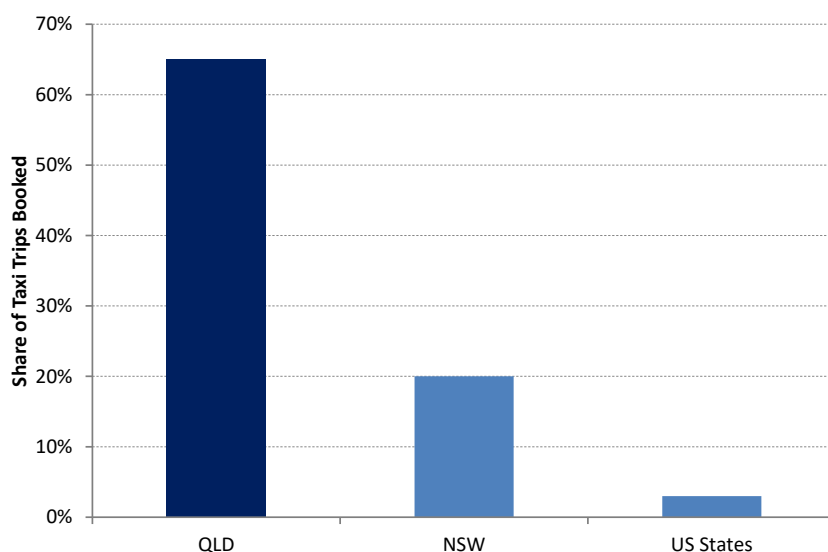
of the protection from exploitation, violence and harm they once had. This seems to be contrary to their views and approach to other important issues such as alcohol-fuelled violence and liquor licensing.

Unfortunately, the provisions of the proposed Bill and Regulation fail to guarantee any these standards for Queenslanders. The proposed reforms actively undermine the capacity of all parts of the personalised transport sector to provide a true 24/7 service across all of Queensland, removes or dilutes established protections for Queenslanders and enshrines an unfair and inequitable structure of the personalised transport sector.

### **Lack of Relevance to the Queenslanders Unique Personalised Transport Requirements**

The principal flaw of the proposed Bill and Regulation is that they seek to implement a policy reform agenda was not tailored to Queensland's unique, global-best-practice, personalised transport sector. The Bill and Regulations proposed broadly follow similar approaches adopted in NSW which itself mirrors regulatory and legislative models implemented in the US.

However, Queensland has long been a more sophisticated, mature and nuanced personalised transport market, reflected in a range of uniquely Queensland characteristics and attributes. For instance, unlike almost all personalised transport markets around the world, two thirds of trips with taxis in Queensland are booked using a combination of app, telephone and online booking technologies<sup>1</sup>. This compares to less than 20% in NSW<sup>2</sup> (pre-reforms) and 3-5% in most US markets<sup>3</sup>.



**Figure: Share of Taxi Trips Booked, Queensland and Select Locations, 2015/16**

US personalised transport markets have long-been segmented, with separate markets for booked and “rank-and-hail” services. The proposed Bill has copied this approach by maintaining for taxis exclusive access to the “rank-and-hail” market. However, while in some US markets this reform represented the maintenance of 95% of existing taxi work (80% in NSW), in Queensland it accounts for approximately one third of trips. Similarly, while allowing taxis to

<sup>1</sup> AITA (2017) Taxi Statistics, ATIA.org

<sup>2</sup> AITA (2017) Taxi Statistics, ATIA.org

<sup>3</sup> Based on data from select US States from desktop research and study tour stakeholder engagement by RPS Group.

undertake booked hire work in NSW represented an overlap with booked hire services of only 20% of taxi work, in Queensland it is the vast majority of taxi business.

The fact the proposed Bill has replicated the “rank-and-hail” policy adopted in NSW and US States demonstrates that the Bill has not been tailored for the Queensland personalised transport sector, or for Queenslanders. Instead the adoption of the “rank-and-hail” exclusivity confirms that the current Government lacks any knowledge, understanding or appreciation of the current expectations and preferences of Queenslanders and instead seeks to implement a lazy policy framework that does not serve or benefit Queenslanders.

Instead of moving Queensland towards global best practice, the Bill and Regulation will see Queensland retreat to the status of a personalised transport “backwater” with a regulatory framework out of touch and at odds with the rapid changes being adopted around the world to this sector. While Queensland seeks to segment its personalised transport market, major markets around the world (such as New York with the Boro Taxis) are seeking to create a hybrid market similar to what Queensland recently had<sup>4</sup>. Passenger protection regulations on booked hire services are becoming more stringent in many markets (including issues such as signage, livery, fixed security cameras and GPS tracking<sup>5</sup>) and driver rights are being established, reinforced and enhanced<sup>6</sup>. Similarly, major markets are investigating the re-introduction of supply caps<sup>7</sup> and price controls<sup>8</sup>, imposed substantive driver accreditation requirements and are substantially increasing booked hire licence fees to help defray up to 25% year-on-year growth in the policy and enforcement of personalised transport regulations<sup>9</sup>.

In short, the current Government has relinquished Queensland’s enviable position as having a world’s best practice personalised transport sector and seeks to adopt, in the proposed Bill and Regulation, an increasingly obsolete regulatory framework that is incompatible with the preferences and expectations of Queenslanders and fails to learn from the lessons of global markets.

This lack of focus on Queensland’s unique characteristics and the move away from global best practice means the proposed Bill and Regulations should not be supported.

### **Lack of Understanding of Booked Hire Services Operations**

In addition to a lack of understanding of the unique characteristics Queensland personalised transport market, the proposed Bill and Regulations appears to reflect only a cursory understanding of how booked hire services actually operate. No consideration appears to have been given to learning from the lessons around the world of how booked hire services are evolving, which risk rendering the proposed regulatory changes obsolete upon adoption.

Firstly, the proposed Bill does not clearly define what constitutes a “booking service”. The definition in s71(1) defines a booking services as:

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<sup>4</sup> NYTLC (2016) Boro Taxis, accessed at [http://www.nyc.gov/html/tlc/html/passenger/shl\\_passenger.shtml](http://www.nyc.gov/html/tlc/html/passenger/shl_passenger.shtml)

<sup>5</sup> Victorian Police have raised security concerns about the lack of security cameras in “ridesharing” vehicles in that State.

<sup>6</sup> In 2015, a US Court found an Uber driver was an employee, rather than a contractor, with associated workplace rights.

<sup>7</sup> In 2015, the NYTLC identified the need to cap ridesharing vehicle numbers due to congestion and driver earnings issues. This was temporarily postponed by the Mayor but remains an active policy position. Transport for London is also currently investigating capping mini-cab (which includes “ridesharing”) licences.

<sup>8</sup> The Philippines Government has regulated ridesharing prices including capping maximum surge price.

<sup>9</sup> Based on project enforcement and compliance budgets for the NYTLC and Transport for London.

*“a service under which a person arranges a booking for a person or another person to drive a motor vehicle to provide a booked hire service”.*

This definition is convoluted and uses the terms booking and booked hire service in the definition. It reveals that the Government does not have a clear understanding of what constitutes a booking service or booked hire service, how it operates and what is involved. This lack of understanding is a conqueringly weak foundation of the proposed wholesale legislative and regulatory reforms to Queensland’s personalised transport sector.

Secondly, the proposed regulatory reforms only consider one model of booked hire service – the owner driver model. In this model, the driver uses their own vehicle to booked hire services. This is the model most commonly promoted to policy makers by ridesharing proponents due to its focus on part-time job creation, latent asset usage however, while this may have been the predominant model of “ridesharing” five (5) years ago, the service model has evolved. Now, traditional hire car companies (such as Avis and Hertz) provide the ex-rental vehicles (i.e. vehicle rotated out of service) to the driver on short-term leases<sup>10</sup>. It is currently unclear under such a model whether the rental car company would be liable under the “chain of responsibility” under the proposed Bill and Regulations.

Thirdly, the proposed Bill makes no consideration for drivers with multiple affiliations – that is drivers that drive for multiple booked hire service platforms or as both taxi drivers and booked hire service drivers. This lack of consideration is evident in multiple places in the proposed Bill and Regulations including:

- Provisions relating to signage only reference the requirements for a single sign that *“reasonably imply that the vehicle is a booked hire vehicle, for example, by displaying a trademark.”* This assumes that the driver is affiliated with only one booked hire entity (i.e. one trademark). However, in overseas markets, drivers regularly affiliate with two (2) or more service providers in order to maximise their access to bookings and their earnings. This can result in up to five (5) different signs being located in the booked hire vehicle window, causing confusion. This has been a motivation for a number of jurisdictions to require dedicated booked hire licence plates or illuminated signs<sup>11</sup>, similar to taxis for all booked hire vehicles.
- The Bill creates a primary duty for driver fatigue, placing a duty on all parties in the “chain of responsibility” to appropriately manage fatigue. However, this duty does not appear to have considered circumstances where a driver may drive as both a taxi driver and for a booked hire service in the same 24 hours. This is an increasingly common occurrence in the US where the introduction of booked hire services has degraded taxi driver earning to the point where they are driving multiple service types to earn a living<sup>12</sup>. As neither the taxi company, operator or the booked hire service provider can exclusively manage driver fatigue in these circumstances, this will result in a break down in the “chain of responsibility”.

**Required Change:** The Government must establish how it will manage and enforce issues of multiple affiliations by drivers in terms of both “chain of responsibility” and fatigue management. This includes drivers operating across both personalised transport and other transport (i.e. truck, bus) sectors.

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<sup>10</sup> In June 2016, Uber signed an agreement with Avis and Hertz to allow the hire car companies to lease cars rotated out of their fleets to ridesharing drivers. This practice is already in place in Queensland.

<sup>11</sup> Illuminated signs for ridesharing vehicles were recent proposed by the Chicago City Council.

<sup>12</sup> Online ridesharing forums regularly share advice to drivers on how to operate on multiple platforms, both legally and by circumventing company rules. One estimate put the share of ridesharing drivers on multiple platforms at over 60% in the US.



A lack of understanding of how the ways booked hire service operators and drivers are delivering the service is clearly evident. The proposed reforms seeks to impose a regulation framework that is obsolete and makes no provision or allowance for new and emerging booked hire service models.

### **Removal of Workplace Rights for Personalised Transport Workers**

The proposed Bill repeals all requirements for drivers and operators in the Queensland taxi industry to have a formal bailment agreement. This repeal represents the removal of minimum work standards and protections for 10,000+ drivers in the Queensland taxi industry by the current Government. This is the equivalent of the Government abolishing the *Fair Work Act 2009* and associated worker rights and protections under the guise of reducing the costs to businesses of industrial relations “red-tape”.

The need for bailment agreements in the Queensland taxi industry originates from the outcome of the case *FC of T v. De Luxe Red and Yellow Cabs Co-operative (Trading) Society Ltd & Ors*<sup>13</sup>. In this case the Federal Court ruled conclusively that taxi drivers are not employees. Given that a further appeal to the High Court was denied to the ATO, this is held to be the strongest evidence that there are no remedial measures under industrial legislation for taxi drivers who may find themselves exploited. In other words, taxi drivers are not covered by State or Federal industrial relations legislation or regulations.

The then Labor Government in Queensland recognised that this ruling opened the possibility for some operators seeking to improve their profitability to use their greater negotiating position (especially in a tough labour market) to exploit vulnerable drivers. As such, it was deemed necessary to enshrine certain minimum requirements in a bailment agreement and force all taxi drivers to hold an appropriate bailment agreement.

The proposed Bill and Regulations seeks to repeal the worker protections enshrined in Bailment Agreements without establishing a replacement regime that continues to legislate minimum rights and conditions of taxi drivers. Such an outcome would establish a dangerous precedent in Queensland, namely that the rights of workers are disposable and are secondary to the desires of businesses to reduce costs by “slashing red tape”.

The exploitation of drivers is already evidenced in the behaviour of the booked hire service sector internationally, with minimum wage<sup>14</sup>, work hours and conditions, arbitrary removal from platforms and a lack of due process proving critical issues. Booked hire service drivers are subject to the terms and conditions of their agreement with the relevant booked hire company, but as they are not employees, it is not clear whether they are subject to the same rights as workers under Queensland and Australian industrial relations legislation.

**Required Change:** Bailment Agreements must be retained, with the minimum work conditions and standards for all personalised transport drivers enshrined in legislation.

Rather than the current Government seeking to remove the basic work rights of Queensland taxi drivers, similar rights and conditions should be extended to include booked hire service drivers. This should include provisions on maximum

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<sup>13</sup> 98 ATC 4466; (1998) 82 FCR 507

<sup>14</sup> In 2015, a case in the UK was brought by an uber driver after he earned less than 5 pounds an hour over the month and was pressured to accept all jobs offered and to work excessive hours to provide a living wage for him. This led to the ruling in the UK that uber must pay the national minimum wage and provide public holiday pay.



booked hire company share of earnings, maximum vehicle age and star rating (to establish a minimum standard workplace conditions) and other basic workplace rights.

### **Insufficient Protections for Drivers, Passengers and the Community**

Jurisdictions globally are also substantially increasing consumer and driver protections in personalised transport and “ridesharing” sectors just as the Queensland Government proposes diluting regulations currently protecting Queensland’s most vulnerable. Providing a “public passenger service” represents a fundamental vesting of trust by Government and the community in the service provider to maintain and protect the welfare of Queensland’s most valuable cargo – its people. This need for the utmost trust in personalised transport providers has long underpinned a rigorous regime of driver accreditation and training, vehicle age and equipment requirements and operator and booking company accreditation, all governed through a detailed and comprehensive contractual relationship between the Government and the taxi booking companies.

However, the proposed reports seek to dilute these protections by not extending tested and proven protections to the booked hire service sector. For example:

- Current GPS and vehicle tracking requirements for taxis are not extended to that of booked hire service in the proposed reforms. Taxis currently have not one but three fixed, anti-tamper GPS trackers in the vehicle that provides remote and real time access to the location of the vehicle at all times by the Booking Company. This capacity is heavily relied upon by Queensland Police as evidence against criminals using taxis while allowing Taxi Booking Companies to provide real time tracking of unaccompanied minors and other vulnerable passengers. The requirement for a fixed-to-vehicle, remotely accessible GPS system that meets Queensland Police’s evidentiary requirements should be extended across the entire Personalised Transport Sector.

**Required Change:** Commercial-grade, anti-tamper GPS units must be fixed to all personalised transport vehicles and be remotely accessible to authorised parties.

- The proposed reforms require only minimal signage and identification for booked hire service vehicles. Taxis are subject to requirements for consistent livery, roof top lights, disability accessible communication (i.e. brail), identifiable taxi numbers and taxi-specific licence plates. These identification requirements are not only in place to support the original role of taxis in the “rank-and-hail” market as many have claimed but also provide critical confidence and assurance to passengers in the booked market by making their booked taxi easily identifiable and therefore their entry into that vehicle more secure. The proposed reforms do not require booked hire vehicles to have such identification characteristics, putting at risk the welfare of passengers (particularly those who are most vulnerable) as well as dramatically constraining the enforcement capabilities of Government.

**Required Change:** All personalised transport vehicles be required to have dedicated number plates (akin to “T” plates), rather than removable stickers. Plates to be provided only when evidence of appropriate CTP, public indemnity insurance and a Certificate of Inspection is provided.

- All Queensland taxis are equipped with emergency alert and notification systems. These systems, including emergency lights and alarms and fleet-wide emergency communication systems, help to protect driver safety<sup>15</sup>. Additionally taxi drivers are trained in how to deal with different emergency situations including passenger violence and robbery. Currently, the requirement for these emergency safety and support devices and plans are governed

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<sup>15</sup> Workplace Health and Safety Queensland (2012), Work Health and Safety for Taxi Drivers and Operators, accessed at [https://www.worksafe.qld.gov.au/\\_\\_data/assets/pdf\\_file/0009/82944/whs-taxi-drivers.pdf](https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0009/82944/whs-taxi-drivers.pdf)

by duties of care between taxi operators and drivers outlined by Workplace Health and Safety Queensland. This duty should extend to all personalised transport service providers to ensure all drivers are safe

**Required Change:** All personalised transport vehicles to have emergency systems in place to support driver safety.

- Currently a taxi driver must be affiliated with only one Taxi Booking Company. However, the proposed reform does not appear to extend this restriction to the Booked Hire sector, allowing drivers to affiliate with multiple booked hire service providers or even with both Taxi and Booked Hire Companies. This potential for multiple-affiliation, which is becoming the standard approach of drivers in other jurisdictions<sup>16</sup>, renders proposed requirements around fatigue management, driver quality/training and the overall “chain of responsibility” unenforceable. This responsibility must ultimately fall to Government, but the proposed reform does not seek to establish a driver register that is actively monitored to manage conflicts from multiple affiliations (including platform shifting by de-affiliated drivers).

**Required Change:** Government must establish and maintain a register of drivers that have been disaffiliated or removed from platforms to prevent drivers from simply shifting to a new platform.

- It is unclear whether there is a requirement for police checks for approval of Driver Authorisation applications for Booked Hire Service drivers. Evidence overseas is that current internal checks by Booked Hire Companies have been inadequate to prevent individuals convicted of rape and murder from being included on their platforms<sup>17</sup>. Attempts to enhance this requirement in several US States (such as Texas) have been met with strong opposition<sup>18</sup> and threats of service withdrawal. The proposed reform establishes that Booked Hire Companies have a duty for the safety of the passengers using their service. One effective mechanism of facilitating this would be to enhance the Police Check requirements of Driver Authorisations.

**Required Change:** Expressly identify Police Check requirements in the Bill for all personalised transport drivers as part of Driver Authorisation approval.

- Queensland businesses that interact with customers or members of the public and thereby bare a risk of liability for damages caused to other parties from their goods and services. This includes personalised transport vehicles, which are particularly at risk of public liabilities through the operation of motor vehicles and the carrying of members of the public. In Queensland, the taxi industry addresses this risk by holding public liability insurance. This insurance helps to meet legal costs as well as potential damages costs to the impacted party. This insurance is also critical for the Queensland Government to have a fully insured personalised transport sector as it removes the risk to the community and to the Government of financially supporting individuals harmed by uninsured businesses. The Bill and Regulations should therefore establish and extend to all personalised transport providers the requirement to hold public liability insurance.

**Required Change:** All personalised transport providers must hold public liability insurance to prevent the State Government becoming the default insurer and to minimise potential risks to the community.

- Queensland has the highest standard of taxis in the world. This was partly owed to the comparative young age of the taxi fleet, with the Queensland taxi industry one of the few in the world that actively purchases new (rather

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<sup>16</sup> Refer to note 12.

<sup>17</sup> Latest data has indicated that in the globally, there have been 23 Deaths, 57 Alleged Assaults, 217 Alleged Sexual Assaults, 10 Alleged Kidnappings, 17 convicted and disqualified felons operating on a ridesharing platform and 46 imposters pretending to be on a ridesharing platform in order to commit a crime.

<sup>18</sup> In 2016, voters in Austin Texas upheld an ordinance requiring FBI background checks for ridesharing drivers, in line with established requirements for taxis. This was rejected by uber and Lyft which withdrew service.

than used) vehicles. A driver of this practice and the high quality of vehicles available for passengers was the young maximum age of a traditional taxi vehicle at six (6) years. This vehicle age limit provided a range of benefits, including ensuring all vehicles had the latest safety and fuel efficiency technologies and utilised new and less carbon intensive fuel types (including LPG and hybrids). Despite these benefits, the current Government has removed vehicle age restrictions for taxis and has not established in the proposed Bill or Regulations any vehicle quality and usage levels that would have a similar (albeit it lesser) effect as age restrictions. This failure mirrors similar changes in other jurisdictions around the world that has resulted in the dramatic ageing of the personalised transport fleets in those countries, reducing vehicle quality and placing passengers at risk.

**Required Change:** In the absence of vehicle age restrictions, establish clear vehicle quality and usage rate standards and hold operators accountable.

The sum of these flaws in the proposed reform will be the stark degradation of the safety and welfare of Queenslanders. However, of greater concern is the fact they will enshrine in legislation a two-tier society, in which those people that choose taxis (rank-and-hail or booked) would be subject to a high set of protections, while those people that select a booked hire service, will be effectively unprotected. This approach represents a return to the old days of “buyer beware” which places the onus on the individual consumer, not the service provider, for managing the potentially devastating impacts of inadequate, exploitative, or even violent conduct against them. The potential harm that can be brought to a Queensland as a passenger of a public passenger service can be substantial and often cannot be avoided or mitigated. No Queensland should be subject to second-tier protections because of their choice. Doing so would constitute the passenger “signing away” their rights and protections, to save, in most cases, less than \$2.00.

### **Lack of Specificity and Enforceability of New “Duties” and “Chain of Responsibility”**

The proposed Bill sets out a framework of “chain of responsibility” and core “duties” that seeks to replace the contractual, co-regulatory model which operates under the current regulations through Service Contracts between the Government and the Taxi Booking Companies. Unfortunately, Chapter 7 Part 3 – Safety Duties fails to establish a legible and transparent framework for all parties in the “chain of responsibility” and will likely prove to be unenforceable in Queensland Courts.

For example:

- Section 86 establishes that all parties in the “chain of responsibility” share responsibility for safety duties including primary duties of care and fatigue management. Unfortunately, the concept of “shared responsibility” makes enforcement of breaches of expressed duties to be extremely difficult, as the section does not specifically apportion responsibilities or allocate responsibilities across the chain. Instead, it establishes that the level and nature of a person’s responsibility is dependent on their function, the risks their function carries and their capacity to mitigate these risks. This formula is extremely vague and provides opportunities for parties to create sufficient doubt in whether a responsibility is exclusive or shared, permanent or temporary and their capacity to mitigate the risk. Overall, this framework is lazy and will prove ineffective in holding persons in the “chain of responsibility” to account for their actions.
- The primary duty of care (s88), duties of the executive officer of a corporation (s89) and duties relating to fatigue (s91B) are equally vague and lack sufficient legal specificity to be enforceable. They are vague duties that likely have very low thresholds to meeting the expressed requirements, thresholds well below what is necessary to ensure Queenslanders have access to a safe and reliable personalised transport sector. For example, it is likely that

a Booked Hire Company could be found liable under s88 (2)(b) if a driver commits an offence against a passenger out of financial desperation if the Booked Hire Company fails to provide an “environment” for drivers to earn enough to sustain themselves. This could include signing up too many drivers in an area (diluting demand and earnings), increasing the company’s share of driver earnings or even insisting that drivers pay GST out of their earnings rather than providing a framework for GST to be charged to passengers.

The Bill also creates a convoluted and potentially exploitable requirement for an overseas-based Booked Hire Entity to have a Local Nominee. This Local Nominee requirement appears to have been proposed in order to provide a legal entity within Queensland for enforcement and auditing purposes. However, it also creates a potential legal structure to enable overseas corporate entities to minimise legal exposure in the State for the delivery of services that negatively impact Queenslanders. It is also unnecessary - *ACCC v Valve Corporation (no 3) [2016] FCA 196* confirmed that overseas-based corporations providing digital goods and services in Australia are subject to Australian laws. That includes consumer protections. Instead, the requirement for a Local Nominee appears to demonstrate the weakness and unwillingness of the Queensland Government to pursue overseas corporations that breach the law and harm Queenslanders.

If the Government lacks the will to pursue overseas corporations that break the laws of the State and protect Queenslanders, then it is critical the Local Nominee is a substantive legal entity. This should include requirements that any Local Nominee:

- Is Domiciled in Australia
- Has an ABN
- Be registered to pay tax
- Be required to hold in bond or trust over \$1 million as demonstration of their local solvency

This approach will ensure that Local Nominees are not simply “liability shells” as permitted under the proposed Bill but instead will be capable of being meaningfully pursued by the regulator in the event of a breach of the law.

The risks to life and of injury to passengers in the personalised transport sector is very real and requires a more explicit, defined and transparent approach that lists specific responsibilities under a general duty of care and the level of responsibility for each party in the chain. Instead, Chapter 7 Part C has been written as a vague “catch-all” section without specificity and enforceability and therefore is redundant and irrelevant in its current reading.

Instead, the Bill should be amended to allow the Minister the right to establish Service Contracts with authorised entities in the personalised transport sector. The Service Contract has proven to be the lowest cost mechanism for Government to manage the “chain of responsibility” through the contractual relationship with Taxi Booking Companies and removing the capacity of the Minister to enter into such contracts severely constrains the Minister’s authority and capacity to respond to changing circumstances.

**Required Change:** Maintain the capacity of the Minister to enter into Service Contracts at their discretion to ensure the Government has the capacity to respond, and at the lowest cost, to changing or unique circumstances without the need for regulatory or legislative changes.

The issue of enforceability of the proposed reforms extends beyond the wording of the Bill and Regulations. Over the past three (3) years, the Queensland Government, through the Department of Transport and Main Roads, has

demonstrated itself to be wholly incapable of enforcing the sovereign laws of the State and preventing a foreign corporation from circumventing and blatantly disregarding those laws. The faith of the Queensland Taxi Industry in the Department as the regulator, and in the current Government as ultimate legislative authority has forever been extinguished and TCQ does not believe the Department has the basic capabilities necessary to effectively regulate and enforce the proposed reforms. This reality renders the entirety of Chapter 7 Part 3 as irrelevant and easily exploitable by parties in the so called “chain of responsibility”.

Instead, the Queensland Government must move away from a degraded and ultimately impotent departmental model of regulation in the personalised transport sector and instead adopt a best practice commission model. The Commission Model of personalised transport regulation has been in place in major international markets such as New York and London for many years and was implemented in Victoria in 2013<sup>19</sup> as part of that Government’s response to the Fels Review.

**Required Change:** Establish an independent Personalised Transport Commission with legislative amendment, policing/enforcement, regulatory and policy development capacity.

The Commission Model is broadly characterised by the creation of an independent Commission, with its own enabling legislation that has full control of:

- Licensing and registration of all personalised transport vehicles and drivers
- The ability to set classes of CTP for personalised transport vehicles
- Compliance and enforcement of its own legislation
- Litigation of challenges to enforcement orders under its own legislation
- Policy branch to amend its own legislation if necessary

This approach recognises that the personalised transport sector is complex, multi-faceted and requires continuous monitoring to ensure provider sustainability and community services and expectations are maintained. This complexity renders the departmental model as increasingly obsolete as Government departments’ lack of capability to take the necessary policy, enforcement and legislative changes to respond to sudden shifts in service delivery models and the impact of new technologies.

Arguments that a Personalised Transport Commission in Queensland would represent an unnecessary and additional level of bureaucracy are fundamentally flawed due to one, critical and evidently false assumption – that the Department of Transport and Main Roads is an effective regulatory. It is not. Instead, the past three (3) years have demonstrated the Department is incapable of fulfilling its responsibilities as the regulatory of the personalised transport sector. And these responsibilities are expected to increase dramatically.

Firstly, the number of vehicles and drivers in the personalised transport sector has the potential to reach over 17,500 in the next five (5) years, in line with international average growth rates<sup>20</sup>. This will mean that the regulatory burden

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<sup>19</sup> The Victorian Taxi Services Commission. In NSW, the Government also recently created the Point-to-Point Transport Commission as part of reforms

<sup>20</sup> Based on the growth of ridesharing vehicles, relative to taxis in markets of New York, London, Singapore, San Francisco, Las Vegas and Austin and Houston Texas.

on the Queensland Government of the personalised transport sector will likely increase by up to 2,300% from 2014/15 levels, based on vehicle and driver growth alone.

Secondly, enforcement activities will become increasingly challenging and resource-consuming to undertake as the visual distinction between personalised transport and personal vehicles is blurred. The enforcement impact of this lack of distinct and obvious identification has been a major motivator for overseas jurisdictions seeking to impose consistent vehicle colours, roof top lights, vehicle number plates and other identifying features.

Finally, over the past 20 years, the Queensland Government has been a major beneficiary of the collaborative, co-regulatory model of taxi regulation underpinned by Service Contracts. These Service Contracts placed significant responsibility on Taxi Booking Companies to regulate the actions and behaviours of all parts of the taxi industry. The repeal of Service Contracts by the proposed Bills will result in the entire regulatory burden of the Queensland taxi industry shift back to Government.

The Department has already been shown to be incapable of effectively regulating a complex and rapidly changing personalised transport sector. TCQ has no faith in the future capacity of the Department to act as regulator when faced with the increased burdens outlined above. The move to an independent Personalised Transport Commission is the only genuine option available to the Queensland Government and must be implemented immediately.

## Other Issues

In addition to the fundamental and fatal flaws to the Bill and Regulations, a range of other issues:

- The proposed Regulations fail to provide much needed clarity and certainty on changes to Compulsory Third Party insurance and premiums. High CTP insurance premiums have long been identified as a major impediment to the viability of taxi services in Queensland and the recent reforms have entrenched an un-level playing field by not addressing these concerns and failing to place Booked Hire Services in a CTP class appropriate for public passenger service providers. Similarly, the Bill fails to deal with how to classify a taxi in CTP if the vast majority of taxi trips in Queensland are in fact in the Booked Hire market. Immediate clarity is required to address the current inequity and wrong the current bias against taxis in the current CTP regime.

**Required Change:** Immediately define, and establish appropriate and equitable premiums for, the class/classes of Compulsory Third Party insurance for all personalised transport providers to address continued uncertainty.

- Personalised transport providers are not only subject to transport-related legislation. This includes business registration, workplace health and safety, disability discrimination and access and racial discrimination legislation at a State and Federal level. The Bill must confirm the applicability and relevance of this legislation for all personalised transport providers, as Queensland based businesses.

**Required Change:** The Bill and Regulation must be fully consistent with all other relevant legislation including, but not limited to, disability discrimination and work, health and safety.

- In February 2017, the ATO was successful in their Federal Court Case against Uber NV, confirming that Booked Hire services are “taxi services” for the purposes of GST, payable from the first dollar earned<sup>21</sup>. To date, Uber has

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<sup>21</sup> Uber B.V. v Commissioner of Taxation [2017] FCA 110



required that GST be paid by the driver from earnings, rather than including GST in the payment by the passenger. Regardless of how GST is paid, it is essential that all personalised transport drivers have an ABN and be registered for GST in order to be authorised to driver in Queensland.

**Required Change:** All drivers must have an ABN and be registered for GST before receiving a Drivers Authorisation.

- The Opportunities for Personalised Transport Review and The Personalised Transport Horizons policy identified significant benefits from integrating taxis into Queensland's public transport system, namely through the incorporation of GoCard technologies into taxis. This approach has yielded significant benefits in other countries (including Singapore) by address "first mile/last mile" challenges of the public transport system. The integration of taxis into the GoCard system should therefore be progressed immediately in order to maximise the benefits to the Queensland economy and community and provide taxis with new business opportunities to offset the impact of the illegal operation of "ridesharing" and the unjustified de-regulation of the personalised transport sector by the current Government.

**Required Change:** Fully integrate taxis into the GoCard public transport network in the short-term.

- Significantly greater detail is required in the Bill and Regulations around key terms. This includes what constitutes a hail and also what is classified as "touting". The maintenance of taxi exclusivity for "rank-and-hail" work means that defining what constitutes a hail is incredibly important. In overseas jurisdiction, on-the-spot bookings and the creation of pseudo-taxi ranks in the form of Booked Hire Pick Up/Drop Off zones in CBDs and airports are increasingly common. Both of these trends have undermined the claimed exclusivity of taxis to "rank-and-hail" work and encouraged some of the worst behavioural characteristics of personalised transport around the world. This includes "touting" for fares, which represents a form of driver harassment of the public and arises in markets in which regulations (or the lack there of) have undermined driver earnings and the viability of the industry. If these common characteristics of overseas markets are to be avoided in the newly de-regulated Queensland personalised transport sector, then clear definitions of these concepts are required and, where appropriate, their illegality in Queensland must be expressly established.

**Required Change:** Clearly define what constitutes a "hail" and "touting".

**Required Change:** Expressly prohibit the establishment and operation of Booked Hire Service pick up/and drop off zones, on public and private land, which represent pseudo taxi ranks.

With the abolition of Service Contracts, the Queensland Government will no longer have access to personalised transport performance, quality and service delivery data. This "big" data is critical to informing transport policy and to help hold service providers to account for their performance in meeting the needs of Queenslanders. This "big" data is incredibly valuable as a commodity for sale for larger international corporations, which routinely use the excuse of "privacy" to justify their failure to provide critical service performance data to regulators and authorities. In the absence of a clear right of Government in the Bill and Regulations to access all pertinent public passenger service performance and quality data from personalised transport service providers, this trend international will be replicated in Queensland. This will hamper the efforts of Government to plan for the future, to make informed and evidence-based policy and to ensure Queenslanders are best served by the personalised transport sector.

**Required Change:** Establish clear and enforceable requirements for Government access to all data related to the delivery of personalised transport services in Queensland by authorised providers.



## Fiscal and Budget Impacts

Estimates from RPS is that the number of *legal* personalised transport vehicles in Queensland will increase from approximately 3,500 prior to September 2016 to 17,500 by 2020, over the four (4) year budget cycle. Unfortunately the current Government has failed to make public a Budget Impact Statement of the proposed regulations. It is unclear whether this is because an assessment was not undertaken or whether one was undertaken but has not been released due to unfavourable outcomes for Queensland taxpayers.

Data provided by the Department to the Opportunities for Personalised Transport Review and captured in the White Paper<sup>22</sup> indicates that the TMR budget for taxi and limousine regulation and enforcement was typically between \$750,000 and \$1 million a year. This increased to almost \$1.5 million 2014 and 2015 as some ineffective attempts at enforcing the sovereign laws of Queensland was made by the Department. Estimates by RPS is that this represents the activity of between 8 and 13 FTEs of Departmental staff over this period, based on average Department officer salaries and assumed overheads.

Assuming 8 FTEs of compliance and regulatory enforcement officers in June 2016 were linked to the legal elements of the personalised transport sector in the State at that time (i.e. taxis and limousines), analysis by RPS estimates that the de-regulation of the personalised transport industry will see compliance officer numbers need to increase to 105 in 2018 and 184 in 2020. This will see the average annual Budget for compliance and enforcement activities increase from \$1.1 million over the five (5) years to 2015 to \$28.9 million a year in 2020. This represents a cost burden to the Government of \$75.9 million over the four (4) year Budget Cycle.

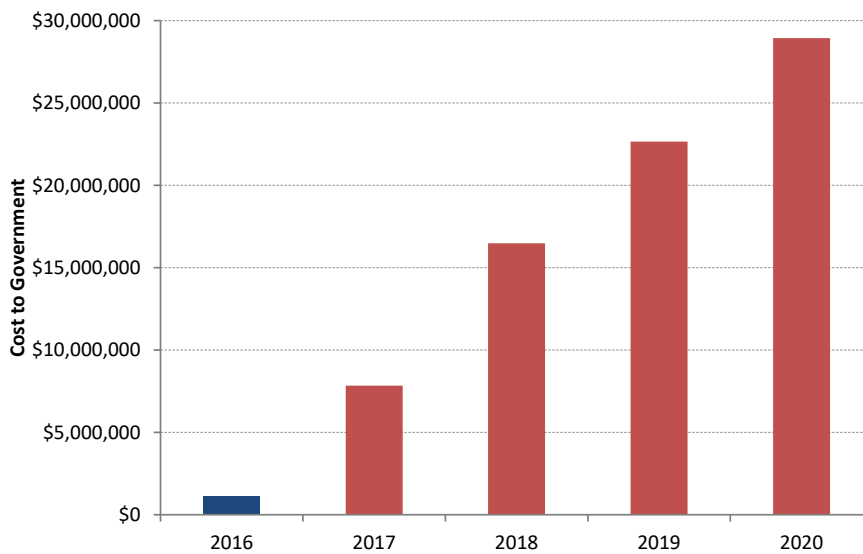
This rapid growth in compliance costs for Government is the result of a number of factors.

- the sheer size of the growth in the number of vehicles providing personalised transport will drive an increase in compliance officer numbers. In 2015, there was one compliance officer for every 437 taxi vehicles. With the expansion of Booked Hire vehicles expected to be rapid, this growth will see officer numbers increase to 40 and the annual budget increase to \$5.6 million.
- The decision to abolish Service Contracts by the current Government will prove costly for the Budget and taxpayers. The Service Contract model was widely recognised as the lowest cost method for regulating a personalised transport sector, due to strong co-regulatory and self-regulatory element. By shifting Taxi Booking Companies from a position of partners in regulation by contract to the subject of regulation activities by Government, all responsibilities of booking companies shift back to Government. Comparing per vehicle regulatory costs in Queensland, with other jurisdictions without Service Contracts, this change will result in a burden increase of at least 80% above current workload levels per vehicle, requiring an additional \$4.5 million annually by 2020.
- However, the largest increase will come from the lack of clear identification, distinct livery, remotely accessible GPS and other enforcement assistance tools for the Booked Hire market. Like all international jurisdictions that have allowed “ridesharing” to operate in the absence of these compliance and enforcement characteristics, the Queensland Government will be challenged and constrained in their compliance activities against this segment of the personalised transport sector. RPS estimates that this will require the largest and increase in compliance and enforcement officers and Budget, requiring an addition \$18.5 million and 103 additional compliance officers across

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<sup>22</sup> OPT Review (2016) Opportunities for Personalised Transport Review – White Paper, Brisbane

the State by 2020.



**Figure: Estimated Cost of Compliance and Regulatory Enforcement Activity, Queensland Department of Transport and Main Roads, 2017 to 2020.**

This increase in enforcement and compliance impacts on the Queensland Budget will need to be increasingly funded by taxpayers, rather than through industry fees. Firstly, the shift in the licence regime from perpetual to temporary with no secondary market will significantly impact revenue from licence sales and transfer duties. Additionally, the Queensland Government also received between \$2.1 million and \$2.8 million each year in revenue from driver authorisations, operator accreditation and licence renewals. Overall, the Queensland Government received approximately \$3 million per year on average in recent from taxis and limousines<sup>23</sup>. This made the personalised transport sector in Queensland prior to 2016 one of the few (if only) fully self-funding regulated sectors of the State economy, providing a net positive benefit to the Queensland Budget each year.

The level of growth in compliance and enforcement costs has not been considered in the licencing and recurring fees and charges for the Booked Hire market. Despite the fact this market is expected to drive the vast majority in the growth of the costs, the Government has set annual vehicle licence costs so low (at only \$237.26), it will only raise an additional \$3.3 million in revenue by 2020. This will result in a shortfall of over \$20 million per year by 2020 – costs that will need to be covered by the taxpayer.

**Required Change:** Increase licence fees for Booked Hire Service Drivers and Authorised Entities to help fund expected increase in regulatory and enforcement costs for Government and to better reflect the level of “trust” being placed on licence holders.

The low level of the licence fee for Booked Hire Vehicles does not simply impact the Budget. It drastically devalues the right to carry Queensland’s most valuable cargo – its people. Previously, the Queensland Government sold taxi licences on the market for hundreds of thousands of dollars. This high price reflected the fact that carrying Queenslanders

<sup>23</sup> OPT Review (2016) Opportunities for Personalised Transport Review – White Paper, Brisbane

placed the licence holder in a special position of trust in the community. It reflected how we as a society placed value on what taxis do and the high level of trust we place in taxi service providers.

But the proposed Bill and Regulations devalues Queenslanders. It prioritises making it as easy as possible for anyone to provide personalised transport services in Queensland communities and extinguishes any sense of trust, responsibility or community service inherent in the role.

## **Conclusions**

The proposed Bill and Regulations fail to deliver the proposed policy reforms of the current Government, demonstrate a lack of appreciation and understanding of the personalised transport sector globally, are inconsistent and lack the necessary detail and specificity to be implemented and legally enforceable. The Bill in its current form is redundant and irrelevant and will not address the fundamental inequities in the personalised transport sector since the haphazard announcement of reforms in September 2016. This failure will not only harm the taxi industry, but will see implementation and enforcement costs for Government rise rapidly and service quality and provider performance fall. This Bill and Regulations fail to achieve the basic requirements of sound and positive transport policy and fails to provide a benefit to the Queensland public.

## **Summary of Required Changes**

- Establish an independent Personalised Transport Commission with legislative amendment, policing/enforcement, regulatory and policy development capacity.
- Bailment Agreements must be retained, with the minimum work conditions and standards for all personalised transport drivers enshrined in legislation.
- Security Camera requirements must establish a minimum standard, be consistent and uniform across all personalised transport providers to ensure the safety of all drivers and passengers (regardless of the service chosen) and to meet Queensland Police requirements.
- Commercial-grade, anti-tamper GPS units must be fixed to all personalised transport vehicles and be remotely accessible to authorised parties.
- All personalised transport vehicles to have emergency systems in place to support driver safety.
- The Bill and Regulation must be fully consistent with all other relevant legislation including, but not limited to, disability discrimination and work, health and safety.
- All personalised transport vehicles be required to have dedicated number plates (akin to “T” plates), rather than easily removable stickers. Plates to be provided only when evidence of appropriate CTP, public liability and certificate of inspection are provided.
- Immediately define, and establish appropriate and equitable premiums for, the class/classes of Compulsory Third Party insurance for all personalised transport providers to address continued uncertainty.
- All personalised transport providers must hold public liability insurance to prevent the State Government becoming the default insurer and to minimise potential risks to the community.
- In the absence of vehicle age restrictions, establish clear vehicle quality and usage rate standards and hold operators accountable.
- Increase licence fees for Booked Hire Service Drivers and Authorised Entities to help fund expected increase in

regulatory and enforcement costs for Government and to better reflect the level of “trust” being placed on licence holders.

- All drivers must have an ABN and be registered for GST before receiving a Drivers Authorisation.
- The Government must establish a process for managing the risks of multiple affiliations by drivers in terms of both “chain of responsibility” and fatigue management. This includes drivers operating across both personalised transport and other transport (i.e. truck, bus) sectors.
- Fully integrate taxis into the GoCard public transport network in the short-term.
- Clearly define what constitutes a “hail” and “touting”.
- Expressly prohibit the establishment and operation of Booked Hire Service pick up/and drop off zones, on public and private land, which represent pseudo taxi ranks.
- Establish and maintain a register of drivers that have been disaffiliated or removed from platforms to prevent drivers from simply shifting to a new platform.
- Establish clear and enforceable requirements for Government access to all data related to the delivery of personalised transport services in Queensland.
- Expressly identify Police Check requirements in the Bill for all personalised transport drivers as part of Driver Authorisation approval.
- Maintain the capacity of the Minister to enter into Service Contracts at their discretion to ensure the Government has the capacity to respond quickly, and at the lowest cost, to changing or unique circumstances without the need for regulatory or legislative changes.

Should you have any questions, or wish to arrange a time to meet, please do not hesitate to contact me at

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Yours faithfully,

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Benjamin Wash CPA  
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Taxi Council Queensland