

PRIVATE SUBMISSION

RE: Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017

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Executive Summary:

The proposed Bill and Regulations are **poorly drafted and fatally flawed** - consequently the proposed amendments would often result in a **FAILURE of the amended Act to deliver the Objectives of the Act**.

The six broad areas of concern are:

1. The Bill **FAILS** to **ensure** that **ALL** Queenslanders **will have access** to timely affordable high quality on demand passenger transport – something that is particularly important for elderly, disabled, or vulnerable passengers; and those living in rural and remote areas – ie the Bill **FAILS** to achieve its own purpose as stated (Section 68 (b))
2. The Bill **FAILS** to ensure that Qld laws can be effectively **enforced** - despite the Explanatory Notes identifying that “compliance with the laws of Queensland is critical to upholding the rule of law.”
3. The Bill **FAILS** to ensure the **safety** of ALL vulnerable passengers using on demand passenger transport – regardless of the choice of service made
4. The Bill **FAILS** to ensure the **rights** of Queenslanders working in the transport industry regarding minimum wages and a safe work environment
5. The Bill **FAILS** to adhere to **Fundamental Legislative Principles** in a wide range of areas – most notably the post hoc change of Taxi Service Licences marketed and sold by the government - from a perpetually renewable exclusive licence to provide ALL on demand passenger transport in a given geographic locale (regardless of the modality of hiring), to a non-exclusive licence with a significantly lower value. Further, the Bill enables the potential to use subordinate legislation to make ANY unspecified future amendments to Taxi Service Licences without the need for justification, or further amendments to the Act under which the government sold the licences
6. The Bill **FAILS to prevent** development of a **monopoly** market, and **instead** actually **provides** an **ideal set of conditions** for a single company (such as Cabcharge) **to emerge with a complete monopoly** of the Qld on demand passenger transport market

There is a **very high political risk** associated with passing legislation that **fails** in **any** of the above areas, let alone **all** of these areas.

It is imperative to that legislation be written with a view to how it will be interpreted and enforced by the courts. It is clear that Acts are to be interpreted in a way “**that will best achieve the purpose of the Act**”¹. Therefore, the Bill needs to ensure that **all** proposed amendments will achieve the stated purpose/objectives of the Act – currently it **Fails to achieve this**.

Therefore, the Bill and Regulations should **NOT be passed** and should be sent back for re-drafting so that they achieve the Aims of TOPTA, the transport needs of all Queenslanders, and the purpose of the government’s Transport Reform Agenda.

In addition to the broad comments in the first portion of this submission, the detailed specific clause-by-clause feedback, comments and suggestions outlined in the Appendices of this submission should be considered as further detailed feedback and analysis, and during re-drafting of the proposed Bill and associated subordinate legislation.

¹ Acts Interpretation Act 1954

“14A Interpretation best achieving Act’s purpose

(1) In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.”

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Introduction:

- The objectives of Transport Operations (Passenger Transport) Act 1994 (TOPTA), as currently stated in the Act, are quite clear and remain unamended.
 - These objectives revolve around **ensuring** that *the community has access to high standard, safe, efficient integrated public passenger transport, with low environmental, economic and social costs to ensure that the public have community access and mobility (supporting the government's social justice objectives) at a reasonable cost to the community and government.*
 - Many of the amendments proposed in the Bill fail to achieve these stated objectives, and fail to achieve even the much softer purpose of the proposed replacement Chapter 7 (Personalised transport services) as stated in the Bill.
- Because the purpose of the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 is at odds with the Objectives of the existing Act, there are **numerous problems associated with the Bill and Regulations** which:
 - **Do not ensure** delivery of the reforms identified and sought by the Government
 - Will **substantially increase** the regulatory and enforcement **costs** for Queensland taxpayers without necessarily actually achieving effective enforcement of the legislation
 - Have the potential to **negatively impact** many **Queenslanders** each year – particularly the **elderly** and the **disabled**
 - Are **at odds with** the principles of both Common Law and Natural Justice regarding both **Fundamental Legislative Principles** and **Contracted sales**

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Background:

- TOPTA was introduced and has been in force since 1994
- 96.5% of all Queensland Taxi Service Licences (TSLs) have been purchased since 1996²
- “The collective value of taxi licences in Queensland is \$1,345,658,054 (as at 27 October 2015)”³
- Arrival of uber in Queensland in May 2014
- A Cease & Desist order was issued by the Queensland Government May 2014, but was not effective
- Efforts for enforcement of existing laws proved ineffective as the Qld Department of Transport & Main Roads & the Qld government found it difficult to effectively enforce Qld laws ⁴
- Transport Legislation (Taxi Services) Amendment Act 2016 Act No. 13 of 2016 passed
- The Qld government funded the OPT Review
- The Qld passenger transport industry was effectively ‘deregulated’ on 11/8/2016 via a Facebook announcement from Premier (Deregulation evidenced by unlimited vehicles, no geographic/area boundaries, no entry barriers, no requirement for licences)
- Transport and Other Legislation (Hire Services) Amendment Regulation 2016 implemented without going through the Committee process with subsequent minor modifications via a Disallowance motion from the Opposition
- Taxi and Limousine Industry Assistance Scheme Regulation 2016 Subordinate Legislation 2016 No. 245 implemented
- Heavy Vehicle National Law and Other Legislation Amendment Bill 2016 passed
- In February 2017, the Federal Court of Australia ruled⁵ that uber provides a taxi service in Australia.
- Uber admits to the use of ‘Greyball’ software program to deliberately thwart regulators via the use of multiple strategies including geo-fencing, blocking, installation of ‘shadow’ versions of software, & ghost imagery,⁶ and admits denying service to people (including enforcement officers) who “use the platform outside of the terms of service”⁷. It is feasible that these actions

² The future of Queensland’s personalised transport industry A Green Paper for consultation OPPORTUNITIES FOR PERSONALISED TRANSPORT MAY 2016 - page 15

³ Report No. 21, 55th Parliament Infrastructure, Planning and Natural Resources Committee March 2016 Transport Legislation (Taxi Services) Amendment Bill 2015

⁴ INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE PUBLIC BRIEFING—TRANSPORT LEGISLATION (TAXI SERVICES) AMENDMENT BILL 2015 TRANSCRIPT OF PROCEEDINGS WEDNESDAY, 14 OCTOBER 2015 Brisbane

Testimony provided by TMR staff in response to question from committee member

“Mr KNUTH: Can you confirm that Uber recently blocked compliance officers from conducting compliance and enforcement work by blocking their telephones?

Ms Cerutti: That is what I have just said. Yes, definitely.

⁵ Uber B.V. v Commissioner of Taxation [2017] FCA 110 - 17 February 2017

<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2017/2017fca0110>

⁶ “How Uber Deceives the Authorities Worldwide” https://www.nytimes.com/2017/03/03/technology/uber-greyball-program-evade-authorities.html?_r=0 & “Uber admits its ghost driver ‘Greyball’ tool was used to thwart regulators” <http://www.usatoday.com/story/tech/talkingtech/2017/03/08/uber-stop-using-greyball-target-regulators/98930282/>

⁷ INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE PUBLIC HEARING—EXAMINATION OF THE TRANSPORT LEGISLATION (TAXI SERVICES) AMENDMENT BILL 2015 TRANSCRIPT OF PROCEEDINGS WEDNESDAY, 2 DECEMBER 2015

Mrs LAUGA: Is Uber actively blocking compliance investigations by the Department of Transport and Main Roads in Queensland?

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would constitute Cybercrime as defined by the Australian Federal Police⁸ - namely "The use of technology to commit or facilitate the commission of traditional crimes" – including "offences [under TOPTA] which are punishable by law".

- TMR provided a Response to Questions on Notice to the IPNRC 9/12/2015 outlining the definition of taxi services under Transport Operations (Passenger Transport) Act 1994 (TOPTA)⁹

Fraser.
9th December/15.



Responses to Questions on Notice
Infrastructure, Planning and Natural Resources Committee

Review of the Transport Legislation (Taxi Services) Amendment Bill 2015

1. What is the definition of 'taxi services'? During the discussion the Department said there were a number of elements required to be proven to determine an operation is providing a taxi service and that they would be provided to the committee.

The *Transport Operations (Passenger Transport) Act 1994* (the Act) provides a definition for 'taxi service'. The definition of 'taxi service' and the further terms that make up that definition are set out in the following table, and demonstrates the numerous elements that need to be satisfied/proven for a prosecution. Each underlined term in the definition of a taxi service has an additional defined meaning under the Act.

Definitions under the Act
taxi service means a public passenger service, other than an excluded public passenger service, provided by a motor vehicle under which the vehicle— (a) is able, when not hired, to be hailed for hire by members of the public; or (b) provides a demand responsive service under which members of the public are able to hire the vehicle through electronic communication; or (c) plies or stands for hire on a road.
public passenger service means a service for the carriage of passengers if— (a) the service is provided for fare or other consideration; or (b) the service is provided in the course of a trade or business (but not if it is provided by an employer solely for employees); or (c) the service is a courtesy or community transport service; and includes a driver service and a service for the administration of taxi services but does not include a service excluded from this Act by a regulation.
excluded public passenger service means any of the following— (a) a community transport service; (b) a courtesy transport service; (c) a limousine service; (d) an unscheduled long distance passenger service.
demand responsive service includes a service that is— (a) held out as being able to respond to requests for service immediately or within a period of time appropriate to a taxi or within a similar period; or (b) held out as being a service providing taxis or a service similar to a service providing taxis; or (c) conducted in a way that may reasonably be expected to give prospective customers or the public the impression that the service is, or operates in a way similar to, a service providing taxis.

Definitions under the Act
electronic communication see the <i>Electronic Transactions (Queensland) Act 2001</i> , schedule 2 (which provides the following) electronic communication means— (a) a communication of information in the form of data, text or images by guided or unguided electromagnetic energy; or (b) a communication of information in the form of sound by guided or unguided electromagnetic energy, if the sound is processed at its destination by an automated voice recognition system.

Mrs LAUGA: Are you blocking compliance investigations by the department?

Mr Kitschke Director Public Policy (Oceania), Uber: There have been some incidents of people using the platform outside of the terms of service. When someone uses the platform outside of the terms of service, they are not allowed to use the platform any more.

Mr Kitschke: What I said was that if somebody uses the app outside of the terms of service, then they are removed from being able to use the app.

⁸ <https://www.afp.gov.au/what-we-do/crime-types/cybercrime>

⁹ Response to Questions on Notice INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE PUBLIC BRIEFING—TRANSPORT LEGISLATION (TAXI SERVICES) AMENDMENT BILL 2015 9/12/2015

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In light of this, it is clear that:

1. *uber has been seeking to operate and operating taxi (& limousine) services in Queensland*
 - a. *As per Federal Court of Australia ruling 2017*
 - b. *As per existing Qld Transport Operations (Passenger Transport) Act 1994 (TOPTA) and subordinate legislation (until the exemption granted by Minister Hinchliffe via the Transport and Other Legislation (Hire Services) Amendment Regulation 2016 September 2016)*
 2. *Uber has admitted to deliberate use of software to evade and block law enforcement in Qld*
- The driver for the earlier and the proposed current legislative change has been a foreign corporation (uber) providing highly subsidised¹⁰ passenger transport services in Queensland since 2014
 - Perspectives have been skewed by an aggressive marketing and lobbying campaign to garner public support, while both drivers and passengers have been presented with a generous perspective on transport which has been funded by Venture Capitalists rather than long-term a viable business model
 - The stated purpose of the current Bill is to:
 - “strengthen safety standards
 - “encourage customer choice
 - “reduce red tape
 - “ensure industry accountability”¹¹
 - The **current Bill** does **not have** any **purpose** that focuses on **ensuring** the **availability or affordability** of on demand passenger **transport for Queenslanders** – rather it presumes or hopes that a service will be available and that consumers and workers won’t suffer exploitation

¹⁰ Uber is losing more than \$2 billion a year, new report says, with passengers paying for only 41% of each ride <http://www.bizjournals.com/sanfrancisco/news/2016/12/02/uber-losses.html> "Uber passengers were paying only 41 percent of the actual cost of their trips; Uber was using these massive subsidies to undercut the fares and provide more capacity than the competitors who had to cover 100 percent of their costs out of passenger fares."

¹¹ <https://www.parliament.qld.gov.au/work-of-committees/committees/TUC/inquiries/current-inquiries/I36PersonalisedTransport>

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Key issues:

1. New legislation **IS NOT** specifically **required** to legalise mobile phone-application-requested on demand passenger transport services in Qld as this is clearly available under the pre-existing 1994 TOPTA Act
 - a. Organisations such as uber, could have
 - i. purchased or leased Qld limousine licences to operate a fleet of ‘un-marked’ app-ordered limousine type vehicles
 - ii. purchased or leased Qld taxi licences to operate a fleet of ‘marked’ app-ordered taxi type vehicles
 - b. TOPTA 1994 already provides a mechanism for the potential increase in number of taxi and limousine licences and for the issuance of peak demand taxi service licences
 - c. Attempts within the Bill to create ‘mutually exclusive’ legal definitions for taxi services versus booked hire services fail to achieve the stated goal
2. Effective **enforcement of the law** is an ongoing problematic issue that has **not** been **rectified** by the Transport Legislation (Taxi Services) Amendment Act 2016 Act No. 13 of 2016
3. The existing Act and Regulations include numerous requirements to ensure **safety of passengers and drivers** in the passenger transport sector and, while a uniform minimum standard could be set for all vehicle/licence types, these simply **should not be abolished, diluted, or divided**
4. The existing Act and Regulations provide safeguards to protect the **rights of transport workers/drivers**
5. Statutes should not breach **Fundamental Legislative Principles**
 - “4 Meaning of fundamental legislative principles
 - (3) Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation—
 - (b) is consistent with principles of **natural justice**
 - (g) **does not adversely affect rights** and liberties, or impose obligations, **retrospectively**”¹²
6. Legislation should not favour the establishment of a **market monopoly**.

For example, Cabcharge have announced the purchase of Yellow Cabs Qld which operates a an established booking system for passenger transport, has commercial contract work, operates a fleet of approximately 1000 taxis in Brisbane, has a substantial pool of drivers, and operates the payment processing system currently present in all Qld taxis. Under the changes implemented in September 2016, and as proposed in the Bill, 65% of taxi work will transfer to booked hire vehicles. Therefore, Cabcharge could cancel leases on 700 TSLs and replace the vehicles with vehicles operating under booked hire service licences. This would further decimate the value of TSLs which could be purchased for a negligible price and used to operate 300 vehicles for the ‘rank and hail’ work if required. Companies such as uber may ultimately fail under the weight of sustained financial losses and increasing legal challenges, thus leaving Cabcharge with a highly profitable booking company taking a percentage of all booked hire and taxi work. As a monopoly, there is then an opportunity to exploit their market position with high prices for consumers and low wages/return to workers/drivers.

¹² Legislative Standards Act 1992

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7. Alignment of policy and legislation to Objectives and Public Benefit:

- The Bill proposes a replacement of Chapter 7 in TOPTA
 - Within the Bill this includes a statement of purpose:

“Chapter 7 Personalised transport services

Part 1 Preliminary

68 Main purpose of chapter

The main purpose of this chapter is to regulate taxi services, booked hire services and booking services to **ensure**—

- (a) taxi services and booked hire services are **provided safely** using vehicles that are safe; and
- (b) taxi services, booked hire services and booking services are **accessible** to members of the public generally and to particular classes of people, including, for example, people with disability, older people and people in regional and remote areas of Queensland; and
- (c) **all** persons who are involved in providing taxi services, booked hire services and booking services **are suitable** to provide the services and are accountable”

Issues:

- Many of the changes effected by the Bill actually **FAIL** to deliver these stated purposes. For example:
 - **Failure to deliver 68 (a)** by not mandating **universal standards** for **all** passenger transport vehicles to have **identical minimum standards** for
 - In-vehicle cameras,
 - Driver duress alarms,
 - Hard-wired GPS vehicle tracking, and
 - Identifying TMR number plate series (eg T-plates, BH-plates)
 - **Failure to deliver 68 (b)** due to:
 - TSLs no longer have a legislated purpose
 - Abolition of legislated requirement for transport services to exceed minimum service levels
 - Abolition of Service Contracts
 - Owners of TSLs having the option to provide services or not to provide services
 - No legislated requirement for any transport licence holders to provide any service at all
 - No requirement for booking services to have telephone, internet, and mobile phone booking capabilities
 - No requirement for services to be provided to the disabled – especially those using large electric wheelchairs
 - No requirement to cap surge prices
 - Failure to allocate all booked hire service licences to Transport Service Areas encourages vehicles to gravitate to areas of high demand/high profitability but **doesn’t ensure universal access** to areas of low demand or unprofitable work
 - **Failure to deliver 68 (c)**
 - There is nothing in the Bill that specifically clarifies that either people or corporations are suitable (eg character test, financially viable, the will to provide measurable community benefit) that will deliver this purpose
 - There is nothing in the Bill that deals with (such as being precluded from ever being considered to be of suitable character to be part of the industry) circumstances where booking entities have publicly admitted (but not been charged or convicted of) taking steps to block law enforcement

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Broad perspective on specific issues with the Bill and associated documents:

The numerous problems with the **Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 and associated documents** can be broadly categorised into four main areas with some examples. Detailed analysis of the Bill and associated legislation (on a clause by clause basis) extends to almost 100 pages and is attached as Appendices to this submission. The size of these appendices reflects the magnitude of problematic areas within the proposed legislation.

1. There are existing sections of TOPTA that the Bill proposes to delete that need to remain and actually need to be broadened to cover booked hire services

- An example that demonstrates the Objectives of the Act includes specific statements that the purpose of licencing passenger transport services (Sections 68 & 69 of TOPTA) is "to **ensure that the communities served by taxis receive quality and innovative taxi services at a reasonable cost**" and "the holder is required to provide a taxi service in an area in a way that **meets or exceeds specified performance levels**"
- Clearly these legislated statements of purpose (& other aspects of the existing legislation and Regulations) demonstrate the Public Interest/Benefit in having a regulated licensed passenger transport system.
 - As such, it is **not in the Public Interest**, nor consistent with Fundamental Legislative Principles, for these to be deleted. Without such specific requirements or Service Contracts, there is no requirement for any service to be provided at all, let alone a timely or affordable service
 - Rather these, and clauses/sections like them, need to be expanded so that the Public Interest in creating new licence categories is clearly outlined in the Act, and the Objectives of the Act are preserved, in order to justify the proposed amendments.
- Examples are provided throughout the submission - including Appendix A Comment 7 regarding Clause 13, Comment 38 regarding Section 91D, Comment 74 regarding Section 91ZT, Comment 99 regarding definition and purpose of taxi service licence & elsewhere.

2. There are many aspects of the Bill and proposed Regulations that are confusing and conflicting. Further, there are other elements that are unlikely to, or will fail to, achieve the purpose of the Bill or the Objectives of TOPTA

- Deletion of Service Contracts and maximum fares - abandons the current protections ensuring community access to door to transport at a reasonable cost
 - Should be expanded to include booked hire services rather than deleted
 - The naïve belief that a deregulated electricity and gas market in Australia has delivered higher prices and unreliable supply to Australian consumers - in spite of a larger number of market participants
- Deletion of Bailment agreement - abandons the current protection of transport worker rights
 - Should be expanded to protect booked hire drivers rather than deleted
- Attempts to create mutually exclusive legal definitions for taxi services and booked hire services fail to achieve this aim
 - See suggested alternative definition that uses the objective and measurable evidence of a fixed time period between the booking request and commencement of the journey
 - See Appendix A Comments 11 – 17 regarding Sections 69-72 & Comment 107 (& elsewhere) for more details

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- While there is an attempt within the Bill to have authorised booking entities keep and submit data to the Department, the penalties for failing to comply are relatively minor, and evidence from overseas has shown that some booking entities chose to pay a fine rather than to provide authorities with data. Given this track record, an escalating and ultimately high level penalty for repeated non-compliance is required in order to make this effective as the absence of data hinders the ability of TMR and government to monitor performance (ie assess whether the services are achieving the objectives as stated in TOPTA – such as timely access to transport for all Queenslanders) and to plan for future services to meet the needs of the community
 - See Appendix A Comment62 regarding Section 91ZG for more details
- There is widespread inconsistency of penalties across clauses
 - Consequently, parties may simply opt to choose the path with the lowest penalty – eg failing to provide a booking record (that is the only objective proof that a service is not a taxi service) is a much lower penalty than providing a taxi service in a non-taxi vehicle/without a taxi service licence. Further, some Sections do not allow for cases that have already occurred in Qld – eg where a party publicly admits guilt (eg Greyball software to block enforcement) but hasn't been charged or convicted of an offence - eg Section 150C
- The Bill seeks to deregulate the passenger transport market by opening it up to competition. However, in moving from a Restricted Market, the government has skewed the market in such a way that **it is at odds with the Objectives of the Act** and in a way that is **not in the Public Interest** and in a way that will **fail to meet the government's social justice agenda**
 - The Bill seeks to entrench major inconsistencies between government-imposed market restrictions on Taxi Service Licences and unrestricted Booked Hire Service Licences
 - Capped vehicle/licence numbers versus unlimited licence numbers
 - Restricted geographic areas of service versus unrestricted service areas
 - (Previous) initial high capital entry cost versus no capital entry cost
 - Mandatory public liability insurance versus no requirement for public liability insurance
 - Mandatory safety requirements (camera, driver duress alarms, fixed vehicle GPS tracking) vs no mandatory safety requirements
- Market restriction for public benefit:
 - Section 91ZT allows Taxi Service Areas and fixed numbers of taxis (market Restriction) for Public Benefit
 - Clause 75 suggests that this may be used to restrict booked hire work to taxis only – This seems to be a very complex approach to simply return to what **already exists and that TMR couldn't enforce**
 - **The combination of Section 91ZT (2) & (3), together with Section 75, is what Qld had when uber arrived in 2014 – fixed numbers of TSLs in each TSA and where booked hire services could only be provided by Taxis**
 - If this is what is needed, then there is no need for most of the Bill
 - TMR and Qld govt were unable to effectively enforce this 2014-2017, so how will it be enforceable now?
 - There is no evidence that enforcement will be more successful under this Bill – see later comments about issues with enforcement and inconsistent penalties etc

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- Enforcement elements of the Bill need to be broadened and strengthened
 - Suggest restrict/allocate **all categories of licences to Transport Service Areas** with **capped numbers** for all vehicle/licence types as this optimises vehicle availability & **Public Benefit** – even for the unprofitable work (community access to transport - public benefit) and reduces unnecessary traffic congestion and pollution (also public benefit)
 - See Comments page 16 of this submission, & Appendix A - Comment 41 regarding Section 91G, Comment 74 regarding Section 91ZT, & comment 99 regarding definition of TSL & Public Benefit for more details
- There is no ability to allow Operators and Owners of Taxi Service Licences to exit an industry undergoing rapid structural transformation due to changes in government policy
 - Other industries have used a government buy-back scheme – eg the fisheries licences (Qld government)^{13 14} or the water licences (Murray Darling Basin Management Plan)^{15 16} to allow a **dignified exit of participants at a fair price** in order to **achieve government objectives**
 - Should these major devaluing structural changes to taxi service licences proceed, capping the number of booked hire vehicles in specific Transport Service Areas and a buy back scheme should be implemented with a view to also reducing the total number of taxi service licences available **in order to stabilise the market** and **provide long term sustainability** is essential.
 - See comments page 23 of this submission, & Appendix A Comment 74 regarding Section 91ZT
- There are many areas where it is uncertain that the amended Act will truly have enforceability – particularly against foreign entities, despite the concept of a ‘local nominee’. The people and assets that are ‘on the ground’ in Queensland are the drivers and the vehicles. Therefore, in addition to some of the proposed amendments, the Bill needs **strengthening** so that **enforcement** activities target **both of these areas** (which will be achievable and are consistent with other existing Qld legislation) in the event that efforts to enforce the laws against foreign entities proves challenging and/or unsuccessful
 - See Appendix A Comments 20-25 regarding Sections 74-78, Comment 30 regarding Section 84, Comment 54 regarding Section 91W, Comment 58 regarding Section 91ZA, Comment 61 regarding Section 91ZD, Comment 63 regarding Section 91ZH, Appendix B Comment 117 regarding Section 117F & elsewhere/throughout for more details

¹³ http://www.qraa.qld.gov.au/_data/assets/pdf_file/0011/3710/2016-Net-Fishing-Buyback-QandAs-FINAL-AMENDED-25-08-16.pdf

¹⁴ <https://publications.qld.gov.au/dataset/6bd3e74d-dba9-4b63-a357-f80c6d217d6d/resource/5926a92f-2db8-442b-85cd-7df4f6ed8197/download/fisheries-queensland-east-coast-net-buyback-program-report.pdf>

¹⁵

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/Briefing_Book44p/MurryDarlingBasin

¹⁶ https://www.mdba.gov.au/sites/default/files/pubs/FS_water_resources.pdf

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- Safety is a key component of the objectives of TOPTA. All currently legislated elements have a **proven track record** delivering **better outcomes for drivers and passengers** – and therefore for the community at large – ie these are **all essential for the Public Benefit**
 - Cameras
 - Need a single identical minimum standard across ALL licenced passenger transport vehicles for mandatory cameras in all transport vehicles
 - Cameras/data storage need to be securely fixed to vehicle so can't be removed and discarded in the event of an offence
 - Cameras/data storage need to be fire-resistant – protects evidence in the event of attempts for it to be destroyed
 - Fixed/hard-wired and instantly remotely trackable vehicle GPS tracking
 - Essential as mandatory equipment for the safety/security of passengers, drivers and industry assets
 - Duress alarms for drivers
 - Essential as mandatory equipment for the safety/security of drivers and industry assets
 - Should be hard-wired into vehicle, have constant real-time remote monitoring, and deliver an essentially instantaneous local (ie in the immediate vicinity of the driver) response to activation/a call for help
 - Dedicated vehicle number plate series for Booked Hire Services (eg BH prefix)
 - Consistent with approach to T-plates for Taxis and L-plates for Limousines
 - Has benefits for both enforcement and community safety/Public Benefit
 - Dedicated booked hire vehicle number plates should be combined with stickers on the rear of the vehicle that are commonplace for other public passenger transport vehicles such as buses and taxis or on commercial vehicles such as trucks
 - Example of a suitable sticker:
 - “My behaviour as a professional driver is on display, if you have any comments or feedback this can be provided to phone number 123456789 (a TMR phone number) referencing the vehicle registration plate number”
 - The telephone number will have to be a TMR phone number (just another one of the newly added compliance costs – see below) as the public has no other way to provide feedback regarding passenger transport driver behaviour to an authorised booking entity that may only be contactable by an email address that is not publicly available to people in the community
 - In the absence of such a mechanism, the public might see poor driving behaviour in a booked hire vehicle, see the brand of the booked hire entity logo on the sticker, but have no mechanism to make a complaint
- A key Aim of TOPTA is transport and community access for the public – including all groups (eg the elderly, the disabled etc)
 - Therefore it isn't feasible or acceptable for transport service providers to be granted exemption from the Disability Discrimination Act 1992 as this defeats a key Aim/Objective of TOPTA and conflicts with the Public Interest, the United Nations Declaration on the Rights of Disabled Persons (1975)¹⁷, and the Social Justice agenda of governments
 - It is essential that there is a process whereby **all providers** of passenger transport services (ie all authorised booking entities) provide approximately 20-25% of their

¹⁷ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightsOfDisabledPersons.aspx>

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vehicle fleet/services to people with disabilities – including transport of people using large electric wheelchairs – so that ALL Queenslanders receive a suitable and timely transport service at a reasonable cost

- As it stands at the moment, it appears that there is nothing in the proposed Bill and Regulations to prevent serious exploitation of vulnerable people needing transport. For example, with the abolition of Service Contracts, and no mandatory requirement for either booked hire vehicles or taxis to provide any service, situations may arise where a disabled or elderly person or an intoxicated person (or their friend trying to provide assistance) may make contact to request/book transport, and an unscrupulous transport provider could tell them “there is a \$1000 ‘call out fee’ to pick them up and provide transport – take it or leave it”. It is imperative that ill-considered and hasty government reforms do not permit such scenarios because it is clearly **NOT in the Public Interest**
- The co-regulatory approach to compliance and enforcement of legislation/regulations regarding passenger transport that has existed in Queensland for the past 20+ years has delivered low compliance costs to government
 - A major change from this approach (which is the new government policy outlined in the Reforms) will require a significant workforce to perform the necessary compliance duties.
 - This will require a dedicated team of staff, vehicles, monitoring/surveillance equipment, high level IT skills, and a substantial recurrent budget
 - Details regarding this (eg function, duties, scope etc) have not been outlined in the Bill, the Regulations, the Parliamentary speech, or the Explanatory Notes to the Bill, but are an essential component of the implementation strategy if the reforms that have been suggested are to have any hope of success. It is likely that people outside of the industry could easily underestimate the workload and costs of such a one-sided approach to industry regulation and compliance.
- Taxation issues: It is important that all appropriate GST revenue is collected as this provides funding for essential Qld government services
 - To assist with this - All drivers and all booking entities **must** obtain and provide to TMR details of their Australian Business Number and GST registration at the time of their application for authorisation (Driver Authority and Booking Entity Authorisation respectively) and these details **must be included** on their official authority documents issued by TMR
- Clarity and definitions around purposes, roles/duties, responsibilities, and relationships of all parties is lacking and needs to be developed and included in the legislation/regulations. Key areas include:
 - Booking Entity
 - Licence owner/ownership structure/location (eg in Australia, off-shore)
 - Licence leasing/subleasing/management
 - Licence conditions – eg vehicle size, maximum allowable emissions, wheelchair transport capabilities, Transport Service Areas
 - Vehicle owner – and relationship/interactions with transport service licence owner
 - Vehicle leasing/subleasing
 - Service Operator
 - Driver
 - Bailment arrangement
 - Employment

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- Direct
 - Via employment/Labour hire services entity
 - Contract/subcontract arrangement
 - Set pay in arrangement
- Transport “efficiency” and “integration of transport services” are key elements of both TOPTA and the current Draft Queensland Tourism and Transport Strategy¹⁸
 - The proposed Bill and Regulations **lack any provisions** to deliver **either** of these and is another example whereby the documents **fail** to deliver either the Aims/Objectives of TOPTA or the Public Benefit
 - See comments on pages 8, 11-19 of this submission, and Appendix A Comment 7 regarding Clause 13, Comment 9 regarding Clause 15 – Section 39, Comment 36 regarding Section 89, Comment 47 regarding Section 91P, Comment 62 regarding Section 91ZG, Comment 72 regarding Section 91ZR, Comment 74 regarding Section 91ZT, Comment 99 regarding definition & purpose of taxi service licence & elsewhere through the submission for more details

3. Changes to Property Rights - Attempts to legislate away obligations to pay fair compensation are inappropriate and likely breach Fundamental Legislative Principles, Natural Justice, and Common Law

The Qld govt sold¹⁹ all original taxi service licences and allowed them to be freely traded on the open market. Under the definitions and provisions/sections/clauses of TOPTA, the full scope of services that were able to be provided under these licenses is clearly defined and documented²⁰, as are harsh penalties for parties attempting to provide taxi services without using a taxi/licence²¹. Further, TOPTA clearly provides for Market Restriction with capped vehicle/licence numbers and restricted geographic locations for individual licences. TOPTA has been operational and essentially unchanged for more than 20 years.

This, and the economic impact and effects of this, are only partially acknowledged in the Explanatory Notes for the Bill.

This recognition of differential asset prices relating to geographic location, and TSLs as ‘tradeable assets/commodities’ is further confirmed by the government’s own documents (eg the Redcliffe WAT taxi licence tender 2014²²) where a tendered amount to purchase a new Taxi Service Licence from the government could include the “transfer [of a licence] from an area with an identified excess of taxi service licences and have a financial incentive of 15 per cent (15%) applied to each eligible tenderer’s bid as a price mark up”

¹⁸ Queensland Tourism and Transport Strategy—draft for consultation & Advancing Tourism 2016-20: Growing Queensland Jobs <https://www.getinvolved.qld.gov.au/gi/consultation/3159/view.html>

¹⁹ Evidence of the specific contracted sale of Taxi Service Licences is outlined in the Qld gov’t document “Tender Conditions for one (1) Wheelchair Accessible Taxi Service Licence Redcliffe Taxi Service Area QPT001/14” which clearly states “4. Each Taxi Service Licence will be issued subject to the provisions of the Transport Operations (Passenger Transport) Act 1994 and the Transport Operations (Passenger Transport) Regulation 2005”, about the 9 (a) “....the licence offered for sale....” And that should the licence purchaser not commence operations under the licence within a required time period, the “Director-General may”¹⁵ (c) sue the applicant for damages for breach of contract”

²⁰ Transport Operations (Passenger Transport) Act 1994 - Sections 68, 69, Schedule 3

²¹ Transport Operations (Passenger Transport) Act 1994 – Section 70

²² Tender Conditions for one (1) Wheelchair Accessible Taxi Service Licence Redcliffe Taxi Service Area QPT001/14 Annexures E & F

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This also demonstrates that the Qld government has a **long-standing** recognised **process** for **managing** circumstances where there are deemed to be an **excess, or shortage, of TSLs** in specific areas.

Numerous Sections/Clauses of the Bill and Regulations remove the perpetually renewable **exclusive** right of taxis to provide **ALL** booked on demand passenger transport services – regardless of the modality of hiring – ie the proposed legislation removes approximately 52%²³ - 65%²⁴ of historical taxi work (work booked via telephone, computer, app, or other (including electronic) means), and re-allocates this previously exclusive taxi work across taxis, limousine and booked hire fleets

- See Comment 6 on page 23 of this submission regarding a “fair and dignified exit from the industry”, and Appendix A Comment 38 regarding Section 91D, Comment 41 regarding Section 91G, and Comment 99 regarding definitions & purpose of taxi service licence and public benefit for more details

This clearly is an “**injurious consequence, resulting from the exercise of a statutory power**, which depreciates the value” of taxi service licences in Queensland.

Further, these changes serve to **retrospectively** change the very nature of the “Goods” sold by the government **after** the government had received payment. Such changes adversely affect the rights of taxi licence owners and render the “Goods” purchased less valuable than the price that had been paid or that would have been paid had those changes been in place prior to the government’s sale of the asset/licence/rights – ie the proposed Bill is not consistent with “Section 4(3)(g) of the Legislative Standards Act 1992 [which] provides that **legislation should not adversely affect rights** and liberties, or impose obligations, **retrospectively**.”²⁵

Further, such actions under common and consumer law would entitle the purchaser to a full or partial refund because the flaw in the “Goods” is ‘major’, **a person would not have purchased the item** (the perpetually renewable exclusive rights to provide all on demand passenger transport – regardless of the modality of hiring) **if the defect/problem** (non-exclusivity for 52-65% of the work) **had been known**. Consequently, as the item doesn’t do what the seller said it did – as defined in TOPTA for more than 20 years, the purchaser would be entitled to a full refund, or the item could be kept, but the purchaser could “receive a partial refund to take into account that it is worth less because there is something wrong with it.”

This proposed change for Qld Taxi Service Licences is similar to the effect that re-zoning would have on real property rights.

Even though the Constitution of Australia provides for acquisition of property by the Commonwealth government “on just terms”, this does not apply to State governments and Taxi Service Licences are not being acquired by the government.

²³ Source: The future of Queensland’s personalised transport industry A Green Paper for consultation

OPPORTUNITIES FOR PERSONALISED TRANSPORT May 2016 – p 17 – figures for South-East Qld taxi services

²⁴ Taxi Council Qld SUBMISSION TO Transport & Utilities Committee RE: THE HEAVY VEHICLE NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL 2016

²⁵ Principles of good legislation: OQPC guide to FLPs Retrospectivity Office of the Queensland Parliamentary Counsel Version 1—19 June 2013 Fundamental Legislative Principles Notebook

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However, in Qld, the principles of **Injurious Affection**²⁶ are well recognised in law and, **under Qld law**,²⁷ **compensation is payable when property rights are adversely affected by amendments to government legislation**. From the Queensland Planning Act 2016 Act No. 25 of 2016:

“31 Claiming compensation (1) This section is about when a person (an affected owner) with an interest in premises, at the time an adverse planning change starts to have effect for the premises, **may claim compensation because of the adverse planning change.**”

“33 **Amount of compensation payable** (1) The amount of compensation payable to the affected owner is the **difference** between the **market value** of the owner’s interest in premises **immediately before**, and **immediately after**, the adverse planning change.”

Regarding **the Bill**, Sections 36AA, 91ZV & 216 (plus other areas) **seek to deny** just (or any) **compensation for Injurious Affection** and are **at odds with Common Law and Natural Justice** pertaining to contracts - where **an inferior and less valuable item is substituted BY THE SELLER for the item that was purchased/sold AFTER the contracted purchase transaction has been completed**.

Further, these Sections create an **internal conflict within the Act** as they seek to mandate that compensation is not payable when changes are made to services or service areas for taxis, despite providing clear mechanisms for handling changed government requirements for services & service areas or routes serviced by buses and mass transit (Sections 60 & 62, 62AAG, 62AACA) and where the Act specifically states that compensation is payable – either by the new service provider, or by the State (Sections 61 & 62AAH).

The Explanatory Notes fail to address all of the breaches of Fundamental legislative Principles, and make an inadequate and unsatisfactory attempt to justify one breach of Fundamental Legislative Principles pertaining to the possible merging of Taxi Service Areas (TSAs) on the grounds of Public Benefit - despite failing to state the Public Benefit test used.

- The statement in the Explanatory Notes regarding TSAs “for example where efficiencies will be gained or it is necessary to meet public demand for cross-area services” is not supported by objective and measurable criteria, or by analysis
- It isn’t efficient or in the Public Interest to have unlimited empty passenger transport vehicles clogging the streets and polluting the air
- It isn’t in the Public Interest to have uncapped fares – allowing exploitation of passengers
- Given that limousines and booked hire cars have no geographic restriction, there will never be an instance where public demand crosses service areas – except for the unprofitable work which may cause taxis to cease operating & won’t be solved by merging TSAs (Australian history and human nature shows what happens in a ‘Gold Rush’ – everybody gravitates to where they think they will achieve the biggest return – they don’t disperse evenly across the entire state).

²⁶ Marshall v The Director General, Department of Transport (2001) 205 CLR 603

<http://statedevelopment.qld.gov.au/compulsory-land-acquisition/frequently-asked-questions.html> - accessed March 12, 2017

²⁷ Queensland Planning Act 2016 Act No. 25 of 2016

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4. Public Benefit Test

The Bill and associated documents refer to the Public Benefit Test without defining it. A useful guide has been published by the Queensland Government²⁸ and the Bill and Regulations can be assessed using the criteria and methodology specific by Qld Treasury. This guideline clearly states “the following matters **must**, where relevant, be considered in the assessment—

- Government legislation and policies relating to ecologically sustainable development.
- Social welfare and equity considerations, including community service obligations.
- Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity.
- Economic and regional development, including employment and investment growth.
- The interests of consumers generally or a class of consumers.
- The competitiveness of Australian businesses.
- The efficient allocation of resources.”

Importantly, this guide also specifically states that “review of legislation does not imply a need to introduce or ensure competition for its own sake nor imply that competition objectives should take precedence over other important public policy objectives.”

Many of the priority areas for the current Palaszczuk government are closely aligned with those at the time the Guidelines were published. Therefore these guidelines remain relevant today and could form the basis of assessment of the proposed Bill and associated documents:

“The Government’s Priority Outcomes for Queensland are—

- More jobs for Queenslanders.
- Building Queensland’s regions.
- Skilling Queensland.
- Safer and more supportive communities.
- Better quality of life.
- Valuing the environment.
- Strong government leadership.”

According to the Guideline, the Qld taxi industry would meet the criteria for a ‘Major Public Benefit Test’ where there is a clear statement of the approach to be taken: “PBT assessments in Queensland **will not be restricted to issues of economic efficiency**. Assessments will also outline the likely distribution of impacts among individuals and groups of individuals within society. This approach requires the identification and measurement of the **impacts of a change** (positive or negative) on **any affected individual or group**, in addition to the determination of the net change in society’s economic welfare, defined as the Net Impact of the change.” In addition to assessment of the Net Impact of Change, “a **Social Impact Assessment** using the attached methodology (Appendix 4) and an **Employment Impact Statement** (using Appendix 5) must also be prepared at this point in a major review.”

²⁸ Qld Treasury Public Benefit Test Guidelines – Approach to undertaking Public Benefit Test Assessments for Legislative Reviews under National Competition Policy

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5. There are sections of TOPTA that are not included for amendment but that have relevance and warrant expansion to cover booked hire services and/or require amendment because some passenger services will be provided by booked hire services and exemption is not intended nor warranted

Examples include:

- **Section 148 Inquiries about person's suitability to hold accreditation or authorisation**
 - Has not been amended to include Booking entity authorisation
- **Section 149 Offences of dishonesty**
 - Low level penalties for dishonestly obtaining authorisation etc are inconsistent with high level penalties for providing a taxi service without a taxi licence as proposed in the Bill
- **Section 143AD Obtaining hire or use of vehicle by fraud or misrepresentation**
 - As written, this Section would see parents who book and pay for a booked hire (eg uber) trip for their children, or friends who book and pay for a booked hire (eg uber) trip to ensure their intoxicated friend has transport home being guilty of 'misrepresentation'

Further examples and greater detail regarding these areas are provided in Appendix C

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Other significant issues and areas that need to be considered and/or addressed in order to achieve the legislated objectives of TOPTA. Many of these are a combination of policy (eg settings to ensure access and Public Benefit) and the legislation to deliver that policy:

1) Market manipulation

- a) Academic papers indicate that corporations such as uber use information asymmetry and market manipulation to take advantage of both passengers and drivers (excerpts from the cited reference are included as Appendix D)²⁹
- b) Further reports regarding the lop-side market, Market failure, & Information asymmetry³⁰
- c) Policy settings and legislation **must ensure** that consumers and workers are protected so that the Public Benefit and objectives of TOPTA **are demonstrably and sustainably delivered** over the long-term with universal community has access to affordable safe transport services and workers are not exploited

2) The use of Microtransactions and the effect on the Chain of Responsibility

- **Information about Chain of Responsibility and Uber Engineering Stack and distributed microtransaction arrangements:**
 - The Qld government is working to align State legislation regarding transport with national legislation. Within this approach is the principle of a “Chain of Responsibility and Accountability”. The premise behind such an approach is dependent upon real/actual accountable people in senior positions in organisations who are ultimately responsible for corporate actions/decisions.
 - This issue becomes far more challenging when decisions are not made by people, when decisions are made in off-shore locations where Australian laws may have no authority, and when seemingly simply transactions are divided into a myriad of separate microtransactions

“Structure of entities and transactions – potentially arranged in such a way as to avoid compliance with relevant legislation:

Need to note that some organisations/entities use very complex structures and allegedly deconstruct/break, what appears to the consumer as a single transaction, into multiple (eg 10-20) different steps - with each step/micro-step performed by a different legal entity and where each separate legal entity could be based in a different country – some of which may not recognize Australian law or in which Australian law may be unenforceable.

²⁹ Calo, Ryan and Rosenblat, Alex, The Taking Economy: Uber, Information, and Power (March 9, 2017). Columbia Law Review, Vol. 117, 2017; University of Washington School of Law Research Paper No. 2017-08. Available at SSRN: <https://ssrn.com/abstract=2929643>

³⁰ “When a rider uses Uber's app to hail a ride, the fare the app immediately shows to the passenger is based on a slower and longer route compared to the one displayed to the driver. The software displays a quicker, shorter route for the driver. But the rider pays the higher fee, and the driver's commission is paid from the cheaper, faster route” <https://arstechnica.com/tech-policy/2017/04/uber-said-to-use-sophisticated-software-to-defraud-drivers-passengers/>

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It has been alleged that this is a strategy that is used/adopted by Uber: The apparently simple task of a passenger requesting a ride, is allegedly separated, behind the scenes and electronically (via computer programming and algorithms), into multiple elements.

For example:

Component of transaction	Undertaken by Entity/Company	Based in jurisdiction/country
1. rider request	B1	BBC
2. check on driver/car availability	C1	CCD
3. fare estimate	D1	DDE
4. surge pricing algorithm	E1	EEF
5. request sent to driver	F1	FFG
6. driver acceptance of request	G1	GGH
7. confirmation sent to passenger	H1	HHI
8. pick up/ commencement of trip	I1	IJJ
9. trip virtual taximeter calculations	J1	JKK
10. trip mapping	K1	KKL
11. additional charges	L1	LLM
12. trip completion	M1	MMN
13. fare/bill payment	N1	NNO
14. receipt email	O1	OOP
15. rating for driver	P1	PPQ
16. rating for passenger	Q1	QQR

- *Allegedly there is also the subsequent ‘behind the scenes’ generation of artificial internal invoices and receipts for services that include:*
 - *An alleged set of invoices and receipts from the “independent” driver to the passenger for the full fare amount*
 - *An alleged set of invoices and receipts from Uber to the ‘independent’ driver for a ‘matching fee’ – ie commission of 25% to be paid from the driver’s full fare amount allegedly received directly from the passenger*
 - *However, it has been alleged that, in reality, Uber deducts the full fare from the passenger’s credit card held on Uber’s computer database/file and passes forward a net amount into the bank account of the driver after having already deducted their commission*
 - *Therefore, in this alleged scenario, the electronic records/paper trail generated by the large organisation and able to be produced as a ‘business record’ do not reflect the true situation as to which party actually invoices and receipts which amounts from which party.*
- *Again, it has been alleged that many or all of these steps are performed by separate legal entities with many or all of these entities based in separate countries – making*

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access to records difficult (see Section 81 & 82 – comments 27-28 regarding inconsistent penalties for failing to produce records).

- *The **proposed legislation** and amendments need to be broad and far-reaching enough to enable this type of **scenario to be captured** in order to protect both the consumer and also to protect the small Australian businesses that are the victims of competition from such large foreign (often multi-billion dollar) businesses that use complex structures and bases in low tax jurisdictions in order to obtain an unfair competitive advantage – that, while in the short term appear to be pro-competition, actually in the long term have the purpose to harm existing businesses using inappropriate strategies in order to gain competitive advantage and ultimately seeking to destroy existing businesses and therefore reduce competition over the medium to long term.”*
- **Information about Uber Engineering Stack and distributed microtransaction arrangements:**
- “The company’s backend is built on **hundreds of microservices** that process different data, codes and algorithms, packaging and **transferring them across various global data centers**, creating the apparatus for Uber’s mapping, routing and delivery. The front end is teamed by engineers who pull this data and funnel it into the app, where it can be used by drivers and customers.
- “Our business **runs on a hybrid cloud model, using a mix of cloud providers and multiple active data centers**,” writes Uber. “Marketplace, the frontmost end of the Uber engine, funnels the realworld, realtime requests and locations into the engineering chutes and ladders of Uber. The persistence layer, matching system, and realtime transaction pieces live here.””
- The concept of a Chain of Responsibility and Accountability becomes far more challenging when the ‘decision-makers’ are computer algorithms based on computer servers, data centres and cloud computing scattered across the globe and each seemingly simple single transaction actually comprises hundreds of microtransactions

Sources:

<https://eng.uber.com/tech-stack-part-one/>

<https://eng.uber.com/tech-stack-part-two/>

<http://www.forbes.com/sites/scottbeyer/2016/10/28/uberhasrevolutionizedtransitmorein7years thanthegovernmenthasin7decades/print/>

- Again, it is possible to learn from documented examples of failures regarding Chain of Responsibility (particularly relating to off-shore entities) in other industries³¹

³¹ “Europe’s medicines regulator has recommended the suspension of more than 300 generic drug approvals and drug applications due to “unreliable” tests conducted by Indian contract research firm Micro Therapeutic Research Labs.” ““The inspections identified several concerns at the company’s sites regarding misrepresentation of study data and deficiencies in documentation and data handling,” the agency said.” <http://www.cnn.com/2017/03/26/eu-recommends-suspending-hundreds-of-drugs-tested-by-indian-firm.html>

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3) Approaches to safety – lessons from other high-profile industries

- a) A “Reasonably practicable” approach to safety (Section 83 of the Bill) for rare events doesn’t actually help or comfort the person harmed. Some events are “never events”. These include, a surgeon amputating the wrong limb, the total loss of an aircraft etc. In the taxi industry, “never events” would include the assault and death of a driver or passenger, the rape of a passenger etc.
- b) **The level of safety precautions that the community expects to be maintained in any industry in order to prevent “never events” from occurring is far higher than just what is “reasonably practicable”.**

4) Never Events:

- a) ‘Never Events’ is a term used in healthcare safety that is closely related to the Public Interest³²
 - i) “Most Never Events are very rare”
 - ii) “However, when Never Events occur, they are devastating to patients”
 - iii) “Because Never Events are devastating and preventable, health care organizations are under increasing pressure to eliminate them completely”
- b) **It is easy to see a close correlation to community expectations and the Public Interest if this same list is applied to the personalised transport industry for Qld:**
- c) **The list of Never Events in the personalised transport industry would include:**
 - i) Any instance of personalised transport provided by someone impersonating an authorised and licensed provider of personalised passenger transport (eg driver, booking company etc)
 - ii) Abduction of a passenger or driver of any age
 - iii) Sexual abuse/assault on a passenger or driver within the setting of personalised transport
 - iv) Death or significant injury of a passenger or driver resulting from a physical assault (i.e., battery) that occurs within the setting of personalised transport
- d) Even though Never Events may be rare, because they **are foreseeable, preventable, and result in devastating consequences for the victims** then, just as within healthcare settings, it is in the **Public Interest** and community expectation that the personalised transport industry should **take all possible steps to ‘eliminate them completely’**.
 - i) The Bill needs to be strengthened to ensure Public and driver safety across the entire public transport industry
 - ii) Given the imminent release of the **review into safety in Qld bus transport**, all recommendations from that review should be considered for **incorporation into this Bill** and be applied to the personalised transport sector as well

³² “The term “Never Event” was first introduced in 2001 by Ken Kizer, MD, former CEO of the National Quality Forum (NQF), in reference to particularly shocking medical errors (such as wrong-site surgery) that should never occur. Over time, the list has been expanded to signify adverse events that are unambiguous (clearly identifiable and measurable), serious (resulting in death or significant disability), and usually preventable. The NQF initially defined 27 such events in 2002. The list has been revised since then, most recently in 2011, and now consists of 29 events grouped into 6 categories: surgical, product or device, patient protection, care management, environmental, radiologic, and criminal.” The US Department of Health and Human Services <https://psnet.ahrq.gov/primers/primer/3/never-events>

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5) The location of financial transactions

- a) Personalised transport is an inherently local transaction
 - i) A passenger is physically located in Queensland and wants to purchase transport services for a journey that will provide a driver and a vehicle to take them from one physical location in Qld to another physical location in Qld
- b) It is not in the Public Interest for such a transaction to be unrecorded or to be outside the taxation system that will document full details of the transaction for income and GST tax purposes
- c) Similarly, it is not in the Public Interest for a significant portion of that transaction to be immediately and completely removed from the Qld economy as that will lead to shrinkage of the economy rather than economic growth that will help deliver more jobs and increased wages for workers
- d) It has been widely publicised that 25% of fares paid through the uber booked hire services platform are paid directly to a bank account in the Netherlands, and that 75% of the fare is subsequently returned to drivers as gross income
 - i) However, some drivers have claimed that they have established foreign bank accounts so that payments for local transport in Qld result in 100% of the fare being paid into offshore bank accounts:
 - (1) 100% of fare paid from local passenger to booking entity off-shore account
 - (2) 25% of fare kept in off-shore account of booking entity
 - (3) 75% of fare transferred to off-shore bank account of driver who provided local services in Qld, and then potentially spent off-shore or via off-shore e-commerce transactions
 - ii) All of these mean that there are no records in any Australian bank accounts available for audit by the ATO to ensure compliance with income tax and GST legislation
- e) **Clearly such arrangement are NOT in the Public Interest**

6) A fair and dignified exit from the Industry

- a) Regardless of all of the recent and the proposed legislative changes, there has been no attempt to identify and legislate a process by which people can make a dignified and fair exit from the taxi and limousine industry
- b) Lease returns on Taxis Service Licences have fallen by more than 70%
- c) The capital value of TSLs have fallen by at least 70% and are effectively unsellable
- d) Many people feel trapped in an industry with no possible way to escape or exit
- e) While there are some people who are happy to continue a long term involvement in the industry, there are a number of people for whom industry exit might be appropriate. This would also help consolidation and stabilisation. The categories of people who may take up such an option include
 - i) Widows of deceased taxi driver/licence owners
 - ii) Estates that hold taxi service licences where beneficiaries have no involvement and no interest in the taxi industry
 - iii) People who are solely investors who purchased a taxi service licence on the basis of financial return
 - iv) People for whom the stress of industry de-regulation has been too great and whose health has suffered as a consequence
- f) There are precedents for this:

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- i) Other industries have used a government buy-back scheme – eg the fisheries licences (Qld government)^{33 34} or the water licences (Murray Darling Basin Management Plan)^{35 36} to allow a dignified exit of participants at a fair price in order to achieve government objectives
- ii) A scheme could be designed for the taxi industry such as:
 - (1) Establish a policy decision regarding a specified percentage reduction in the number of TSLs (to offset the increased licence numbers in each TSA due to creation of booked hire service licences – eg 30% reduction
 - (2) Hold a ballot for a certain percentage (eg 30%) of licences to be bought back at the 2014 market prices
 - (3) Everyone is only allowed to put one licence into the ballot in the first instance
 - (4) If insufficient licences are submitted in the first round, then a second round draw can be held for people wanting to submit more than one licence for buy back
 - (5) Licences in multiple names/entities still count as one – if there is the same or a related real person as director/trustee/partner etc behind the scenes in the ownership structure
- iii) See further options and commentary under Appendix A Comment 38 regarding Section 91D

³³ http://www.qraa.qld.gov.au/_data/assets/pdf_file/0011/3710/2016-Net-Fishing-Buyback-QandAs-FINAL-AMENDED-25-08-16.pdf

³⁴ <https://publications.qld.gov.au/dataset/6bd3e74d-dba9-4b63-a357-f80c6d217d6d/resource/5926a92f-2db8-442b-85cd-7df4f6ed8197/download/fisheries-queensland-east-coast-net-buyback-program-report.pdf>

³⁵

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/Briefing_Book44p/MurrayDarlingBasin

³⁶ https://www.mdba.gov.au/sites/default/files/pubs/FS_water_resources.pdf

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APPENDIX A:

Clause by clause analysis of the proposed Bill with comments, questions, and suggestions

1. As Proposed:

“Clause 7 Amendment of s 26 (Driver authorisation standards)

Section 26(a), ‘operate’ —

omit, insert—

drive”

(Also links with Clause **31 Amendment of sch 3 (Dictionary)**

drive, a vehicle, includes operate or otherwise be in charge of the vehicle.)

Comment:

- Change is unnecessary (& may be inappropriate) as the task of providing passenger transport services involves more than simply driving – also includes accepting bookings for trips, interacting with passengers, providing assistance to passengers – eg loading luggage, accepting payments, possibly rating passenger behaviour, interacting with other road users – particularly in relation to passenger pick-up & drop off

Suggestion:

- Leave TOPTA as “operate” – ie DO NOT amend, or consider other wording to encompass xxx
- See also comment 5 below

2. As Proposed:

“Clause 8 Replacement of s 27 (Driver must hold appropriate authorisation)

Section 27—

omit, insert—

27 Driver must hold appropriate authorisation

(2) A person must not provide a public passenger service of a kind for which driver authorisation is required under this Act unless the person uses drivers who are authorised drivers for a service of that kind.

Maximum penalty—160 penalty units”

Comment:

- Authorised Booking entities must have systems in place to ensure that people approved as drivers on their platform/ in their employment hold correct licencing/authority

Suggestion:

- Need escalating penalty system as per suggestions for Section 74 (see comment 20 below) because repeat offences demonstrate failure to have robust systems and such failures compromise passenger and community safety
- This would also be consistent with other parts of the proposed legislations eg Section 90 (& others)

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3. As Proposed:

“(3) For subsection (2), a person provides a public passenger service if the person—
(a) is an operator of the service; or
(b) for a booked hire service—provides a booking service for the service”

Comment:

- ‘Person’ providing a booking service doesn’t appear to be defined in the Bill

Suggestion:

- Need to broaden the definition to include processes that are beyond human – eg automated/electronic processes such as a computer algorithm based on a rented computer server in a foreign location outside of Qld law jurisdiction

Possible/Suggested specific wording:

- Consider replacing “person” with “an entity or person which may, for example, include any remote, automated and/or electronic processes used by them”

4. As Proposed:

“Clause 9 Amendment of s 29 (Granting, renewing or refusing driver authorisation)

Section 29(4)(a), from ‘about’—

omit, insert—

about—“

Comment:

- An ABN is required for drivers to provide on demand passenger transport services so that GST can be collected by the Commonwealth government and distributed to the Qld State government to fund essential services

Suggestion:

- In the interests of assisting compliance and the collection of appropriate GST revenue from passenger transport drivers, suggest that the Driver’s ABN is provided to TMR at the time of application for Driver Authority AND that the driver’s ABN (for transport services) is recorded on the Driver Authority issued by TMR
- See also comments on page 14, 23, Appendix A Comment 4 regarding Clause 9 Section 29, Comment 63 regarding Section 91ZH

Possible/Suggested specific wording:

- “4 (c) Further, that the driver’s Australian Business Number (ABN) specifically related to the provision of passenger transport services in Queensland is provided to the Department of Transport and Main Roads at the time of application, AND that this ABN is recorded on the issued Driver Authority”

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5. As Proposed:

“Clause 10 Amendment of s 29A (Restricted driver authorisation)

Section 29A(1), ‘person to operate’—

omit, insert—

person to drive”

Comment:

- It is appreciated that there is an attempt to separate out the ‘Operator’ of a service (such as a ride-booking service company operating a service) from a vehicle driver. However, unlike a train or tram driver, it is routinely expected that a driver of point to point passenger transport vehicles undertakes additional duties – such as assisting people with luggage or shopping, or possibly assisting them to their door or into/out of the vehicle, and, for wheelchair taxis, actually loads and secures the wheelchair & passenger – Therefore people undertaking this role have direct responsibilities & a duty of care that goes far beyond simply the safely driving a car.
- It is probably reasonable to draw an analogy to workers providing early childhood and outside of school hours care have greater accountabilities and responsibilities than simply being a neighbour who does some ‘baby-sitting’
- See also Comment 1 above
- NOTE also
“(5) Schedule 3, definition operator, from ‘, and includes’ to ‘taxi service licence’—
omit.”
- See also -the modified definition of “operator” Appendix A Comment 91

Suggestion:

- Consider leaving TOPTA as ‘operate’ or alternatively separate out two distinct definitions to clearly identify the Operators of the Service (like taxi booking companies, ride-booking entities/corporations etc) and people who drive the vehicle but provide additional direct personal assistance and caring type duties to people who may be vulnerable (eg the elderly, children, the disabled, intoxicated etc)

6. As Proposed:

“Clause 11 Replacement of s 35 (Obligation to notify accredited operator of suspension or cancellation of licence etc.)

Section 35—

omit, insert—

35 Driver’s obligation to notify of suspension or cancellation of licence etc.”

Comment:

- This puts an obligation on a driver to notify an Operator
- Is there any obligation on the Operator to take action?
- and Is this enforceable if the ‘operator’ is a computer algorithm based on a rented computer server in a foreign country where Qld has no jurisdiction and no extradition treaties?

Suggestion:

- Need to strengthen ability to achieve effective and meaningful enforcement and action - not just notification

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7. As Proposed:

"Clause 13 Omission of ch 4A (Taxi service bailment agreements)

Chapter 4A—
omit."

Comment:

- Historical evidence across a broad range of industries demonstrates that workers may be exploited by unscrupulous employers.
- Basic minimum standards and conditions (whether they be Award-based or Enterprise Agreements) have evolved over the past 100 years in the interest of Public Good, the community, and workers.
- It is inappropriate and not in the public interest (fails the Public Benefit Test) for minimum employment standards to be removed
- It is particularly incongruous for a sitting Labor Qld government to be arguing against any diminution in penalty rates of pay for workers, while simultaneously proposing a Bill that specifically removes worker rights and protections in the personalised transport sector

Suggestion:

- Delete Clause 13 so that requirements for legally enforceable minimum working conditions for transport workers in the personal transport sector are preserved
- Further, suggest adding an additional section so that transport workers employed under 'contract' arrangements are also afforded protections in line with community expectations that workers are not to be exploited and that governments should set minimum standards that organisations/companies cannot go below.
- Further, the existing Clause 35N requires amendment so that drivers can enter into "set pay in" agreements without the need to have held a Driver Authority for a minimum of 12 months. Clauses can be included to ensure that inexperienced drivers are protected from exploitation

8. As Proposed:

"Clause 14 Insertion of new s 36AA

Chapter 5—
insert—

36AA No compensation for changes to market entry restrictions

- (1) Compensation is not payable if a regulation under section 36(1) is made, amended or repealed.
- (2) Also, compensation is not payable if, because of a regulation mentioned in subsection (1)—
 - (a) anything previously permitted is prohibited or regulated; or
 - (b) anything previously prohibited is permitted or regulated; or
 - (c) anything previously regulated is no longer regulated or regulated in a different way.
- (3) This section does not prevent a regulation providing for payment of compensation"

Comment:

- Clause 14 (as with the other clauses (s 91ZV & s 216) seeking to deny compensation for what are post hoc (and effectively retrospective) changes to an asset sold by the government) is

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simply grossly inappropriate and must be deleted as it is unjust, not in-keeping with Community Standards, and it breaches Fundamental Legislative Principles

- Further, it is inconsistent with other legislation passed by the current government/parliament in 2016 pertaining to Injurious Affection of property rights (Queensland Planning Act 2016 Act No. 25 of 2016).

Reasoning/Logic:

- Details regarding ownership of Taxi Service Licences in Queensland were specifically published by the OPT Review: "Around 115 Queensland taxi licences (3.5 per cent) have been held by the same owner for over 20 years" (ie since 1996)³⁷. This means that **96.5% of ALL Qld taxi licences were purchased** (either directly from the Qld government via tender or on the secondary market as approved by the Qld government with Stamp Duty paid) since 1996 – ie **while the existing TOPTA 1994 was in place**. Therefore, all purchasers undertaking due diligence regarding this purchase would have referred to TOPTA regarding potential for future random changes that might adversely affect the value of the asset being purchased.
- The rigid definitions around taxi services, taxi service licences, the purpose of taxi service licences and all other matters in TOPTA and the subordinate legislation are Terms implied in fact for the Qld government tender documents for the sale of newly created taxi service licences and for purchase contracts pertaining to licences bought on the secondary market.
- It is not reasonable for the general public to have envisaged that the Qld government would discard complete sections of a 20 year old Act (TOPTA) that governs the asset being purchased, nor that the Qld government would ruthlessly try to legislate their way out of just compensation for legislative changes that adversely impact on the value of assets controlled by, and sold by the Qld government.

Fundamental Legislative Principles:

- The Bill clearly seeks to fundamentally change the property rights associated with Taxi Service Licences from a perpetually renewable **exclusive** licence to supply **ALL** on demand passenger transport (regardless of the modality of hiring) in a specified geographic area in which there are capped vehicle numbers, to a perpetually renewable **non-exclusive** licence - where potentially 65% or more of the work has been given to an uncapped number of unrestricted low cost competing vehicles & drivers.
- This is similar to the effect that re-zoning would have on real property rights. Even though the Constitution of Australia provides for acquisition of property by the Commonwealth government "on just terms" this does not apply to State governments.
- However, in Queensland, the principles of Injurious Affection³⁸ are well recognised in law: "In the case of *Marshall v The Director General, Department of Transport* (2001) 205 CLR 603, the High Court considered the meaning of 'injurious affection' for the purposes of s20(1)(a)(ii) of the Acquisition of Land Act 1967 (at the time of the High Court's decision, that section was numbered 20(1)(b)). In this case the High Court found that:
Damage for the purpose of s 20(1)(b) is not confined to physical damage to the remaining land. Injurious affection does not include damage resulting from the act

³⁷ The future of Queensland's personalised transport industry A Green Paper for consultation OPPORTUNITIES FOR PERSONALISED TRANSPORT MAY 2016 - page 15

³⁸ <http://statedevelopment.qld.gov.au/compulsory-land-acquisition/frequently-asked-questions.html> - accessed March 12,

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of severing the land. That is a separate head of damage. But it includes any other injurious consequence, resulting from the exercise of a statutory power, which depreciates the value of or increases the cost of using the "other land". If the exercise of the power limits the activities on or the use of that land, interferes with the amenity or character of the land, deters purchasers from buying the land or makes it more expensive to use the land, the claimant is entitled to compensation for injurious affection."

- Under Qld law,³⁹ **compensation is payable when property rights are adversely affected by amendments to government legislation:**
 - "31 Claiming compensation (1) This section is about when a person (an affected owner) with an interest in premises, at the time an adverse planning change starts to have effect for the premises, **may claim compensation because of the adverse planning change.**"
 - "33 Amount of compensation payable (1) **The amount of compensation payable to the affected owner is the difference between the market value of the owner's interest in premises immediately before, and immediately after, the adverse planning change.**"
- Guidelines⁴⁰ & Minister's Rules⁴¹ exist regarding Ministerial responsibility and the Planning Act 2016
 - Even though these are still currently in draft and consultation phase, these include specific requirements regarding planning changes that reduce the value in property and the compensation that is payable
 - These include the specific preparation of a report assessing feasible alternatives to the proposed legislative/re-zoning changes for reducing the risk that compensation will be payable – **NOT that legislation is to be passed in order to avoid a need to pay fair compensation**
 - The Queensland government Ministerial Rules contain extensive lists of specific requirements that are relevant to the proposed Bill regarding amendments to TOPTA
- Clearly the proposed legislation, which removes approximately 52%⁴² (and, according to the Taxi Council of Qld, up to 65% of taxi work which is booked work) of historical taxi work (work booked via telephone, computer, app, or other (including electronic means) and re-allocating this exclusive taxi work across taxis, limousines and ride-booking fleets is an **"injurious consequence, resulting from the exercise of a statutory power, which depreciates the value"**
- Given that the Federal Court of Australia has already ruled that uber is simply providing taxi services and, bringing this back to the Qld taxi industry and consideration of alternatives (and impacts) that do not involve making the legislative changes that are proposed:

³⁹ Queensland Planning Act 2016 Act No. 25 of 2016

⁴⁰ Department of Infrastructure, Local Government and Planning Draft guidance for the Minister's Guidelines and Rules Draft for consultation – March 2017 <http://www.dilgp.qld.gov.au/resources/planning/better-planning/mgr/guidance.pdf>

⁴¹ Department of Infrastructure, Local Government and Planning Minister's Guidelines and Rules Under the Planning Act 2016 Draft for Consultation – March 2017 <http://www.dilgp.qld.gov.au/resources/planning/better-planning/mgr/draft-ministers-guidelines-rules.pdf>

⁴² Source: The future of Queensland's personalised transport industry A Green Paper for consultation OPPORTUNITIES FOR PERSONALISED TRANSPORT May 2016 – p 17 – figures for South-East Qld taxi services

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*'Just because it would result in greater expense and/or reduced profit for companies such as uber to purchase or lease taxi or limousine licences which could be operated and booked via their mobile phone app, **is not sufficient to determine that the alternative** (ie keeping all current definitions of taxi services and taxi licence numbers, but strengthening enforcement provisions so that legislation could be effectively enforced and illegal activities could curtailed) **is not feasible.**'⁴³*

- Clause 36AA (no compensation payable) is inconsistent with other Sections of TOPTA as it at odds with Sections 61 & s 62AAH in TOPTA which outline where compensation is payable – ie this Bill seeks to inject internal inconsistencies into TOPTA.
- This is also at odds with other government policies and programs - where changes to government licensing arrangements/value have been made via legislation – such as Commercial Fishing Licences – where the government undertook multiple rounds of voluntary licence buy-backs⁴⁴

Suggestion:

- Delete Clause 14

Alternatively

“36AA Compensation for changes to market entry restrictions

(1) Full Compensation is payable if a regulation under section 36(1) is made, amended or repealed.

(2) Also, full compensation is payable if, because of a regulation mentioned in subsection (1)—

- (a) anything previously permitted is prohibited or regulated; or
- (b) anything previously prohibited is permitted or regulated; or
- (c) anything previously regulated is no longer regulated or regulated in a different way.

(3) This section does not prevent a regulation providing for payment of full compensation”

Reasoning

- Clauses stating that compensation is payable for amendments to taxi service licences and areas is fully consistent with both the Qld Land Act and other Sections of TOPTA (61 & 62AAH)
- An alternative would be to include specific reference to compensation being payable according to the specific impact on the value and earning potential of the affected asset – the Taxi Service Licence or a formal licence buy-back scheme, or an industry adjustment scheme that “tops-up” lost earnings from taxi service licences – along the lines of that proposed by Taxi Council Qld in their submission to the OPT Review

iv) See also further options and commentary regarding a dignified and fair exit from the industry under Appendix A Comment 38 regarding Section 91D

⁴³ Adapted from: Department of Infrastructure, Local Government and Planning Minister’s Guidelines and Rules Under the Planning Act 2016 Draft for Consultation – March 2017

⁴⁴ <http://www.qraa.qld.gov.au/news-and-events/Media-releases/new-round-of-commercial-licence-buybacks-for-net-free-zones>

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9. As Proposed:

"Clause 15 Amendment of s 39 (Scope of service contracts)

- (1) Section 39(b)—
omit.
- (2) Section 39(c) and (d)—
renumber as section 39(b) and (c)."

Comment:

- **Section 37 of TOPTA specifically states:**
"Purpose of service contracts
The purpose of service contracts is to hold operators **accountable for minimum performance levels to ensure the communities** served under the contracts receive, at **a reasonable cost, quality and innovative public passenger services"**
- It is in the **Public/Community Interest for this to remain** and to continue to apply to taxi services and to be made applicable to ride-booking services should these be introduced in Qld despite the Federal Court ruling that uber is only providing taxi services (not anything different)
- Further, within the Bill, Clause 18 insertion of new "Chapter 7 Personalised transport services, Part 1 Preliminary, Section 68 Main purpose of chapter" specifically states:
"The main purpose of this chapter is to regulate taxi services, booked hire services and booking services to ensure—
(b) taxi services, booked hire services and booking services are accessible to members of the public generally and to particular classes of people, including, for example, people with disability, older people and people in regional and remote areas of Queensland..."
- In the absence of any written or binding agreements (such as the Service Contracts), it is **impossible to ensure** that on demand **transport services are "accessible"** to ALL Queenslanders, let alone that such services are affordable, innovative, or of high quality.
- This is another example whereby the proposed amendments to the Act change the Act from something that passes a Public Benefit Test, to one that **FAILS the Public Benefit Test**

Suggestion:

Either:

- Change Clause 15 to:
"Amendment of s 39 (Scope of service contracts)
(1) Section 39(b) 'taxi services' —
Omit, insert —
Taxi services, booked hire services, limousine services"

With identical Service Contract parameters, response times, transport of people with disabilities maximum fares etc for all licence categories – taxis, limousines doing booked hire work, and booked hire services

OR

- Delete Clause 15 (if no changes are made to the definition of taxi services in TOPTA and entities such as uber are simply made to comply with all existing taxi and limousine legislation with strengthening of enforcement clauses to improve compliance)

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10. As Proposed:

"Clause 16 Omission of ch 6, pt 3 (Administration of taxi services)

Chapter 6, part 3—
omit."

Comment:

- The wording in Chapter 6, part 3 of TOPTA reaffirms Federal Court of Australia ruling that uber is only providing taxi services
 - It was further noted, in the Federal Court ruling, that having different categories of drivers and vehicles providing taxi services/travel contributes to 'mischief' that may result in exploitation of consumers and a reduction in government revenue and that the broad interpretation of 'taxi travel/services' was the purpose behind the wording of relevant legislation.
 - This same argument is relevant to the specific wording and definitions within TOPTA – where the services uber is providing clearly fall under the definition of taxi services (a demand responsive service hired through electronic communication) and were in the purpose behind such a definition
- Therefore, this Chapter also reaffirms that the Bill seeks to change existing taxi service licences from an **exclusive** licence to a **non-exclusive** licence
- Again this breaches Fundamental legislative Principles and has numerous other issues
- See Comment 8 above and comments on pages 13-16 about Property Rights

Possible suggestion:

- Given that the Federal Court of Australia has ruled that uber is only providing taxi services, it may still be politically palatable to make entities such as uber comply with existing taxi and limousine legislation as that would simply reflect the Qld Parliament acting in accordance with the Federal Court.

11. As Proposed:

"69 Definitions for chapter

In this chapter—

hire on-the-spot, in relation to a vehicle and its driver, means arranging, in person, the hire of the vehicle and its driver for a journey to start immediately or shortly after the vehicle and its driver are hired"

Comments:

- a) Use of the words "in person" in this definition actually prevents a taxi being requested via the taxi booking app –
 - potentially takes even more work away from taxis
 - stops taxis using their innovative technology
- b) "Shortly after" is not a specific, agreed, or defined term – it is very difficult to enforce laws that are not definitive
- c) The time frame of the definition "for a journey to start **immediately or shortly after** the vehicle and its driver are hired" is NOT robust and is open to interpretation – ie the

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proposed Bill **fails to achieve the stated objectives of the Bill** – namely that the definition of taxi travel **must be mutually exclusive**⁴⁵ to the definition of booked hire

- d) The issue of arranging the trip “in person” is not clear and also **fails to achieve the stated objectives of the Bill** – namely that the definition of taxi travel needs to be **mutually exclusive** to the definition of booked hire

- Also see Comment 12 below regarding Section 70, and Comments 13-17 regarding Section 72 4 (a) “a booking may be accepted by, or assigned to, a person in any way, including, for example—
(a) in person; ...”
- Vagueness of definitions in the legislation will cause confusion and make enforcement challenging, costly and ineffective

Suggestions:

- To separate out Booked Hire work – need to specifically state that the booking **MUST** be in place for a **minimum fixed period of time** (eg 20 minutes) **prior to commencement of the journey**
- Both of these issues are resolved by deleting the concept of “in person” AND replacing it with the inclusion of specific time-frames in the Bill to separate out on-the-spot and hail work for taxis – ie journey starts immediately or within 20 minutes of the ride request vs booked hire work - where the journey starts more than 20 minutes after the ride is booked

Possible/Suggested specific wording:

- **“hire on-the-spot**, in relation to a vehicle and its driver, means **arranging the hire of the vehicle and its driver** for a journey to start immediately, **or within a minimum period of twenty minutes, of the vehicle and its driver being hired or booked”**

12. As Proposed:

“70 What is a taxi service

(2) For this chapter, the circumstances in which a vehicle plies or stands for hire by members of the public in a public place include the circumstances in which the vehicle and its driver are made available for hire on-the-spot by members of the public, including, for example, by—

- (a) the vehicle standing at a taxi rank or other place where members of the public might reasonably expect taxis to be available for hire on-the-spot; or
- (b) the vehicle having a sign, marking, light or other thing on it that might reasonably indicate to members of the public it is a taxi or another vehicle available for hire on-the-spot

Comment:

- The proposed definition of “plies for hire” and “on the spot” **fails to achieve the stated objectives of the Bill** – namely that the definition of taxi travel must be **mutually exclusive** to the definition of booked hire
- For example, a ride-book vehicle with a driver in the driver’s seat, the engine running (& no other occupants), a booked hire sticker on the front & rear windscreen, a mobile phone

⁴⁵ The Explanatory Notes (tabled in Parliament 9/3/2017) to the Bill clearly state “The definitions of taxi service and booked hire service are intended to be mutually exclusive. Under new section 76, booked hire services may only be provided using a booked hire vehicle, limousine or taxi.”

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attached to the vehicle windscreen or dash sitting at the curbside of a street ‘around the corner’ or ‘within two/a couple of blocks’ (ie “in the vicinity”) of a nightclub, hotel, shopping centre, hospital, airport, mass transit terminal or station, or concert venue – would be a situation where the vehicle is located at an “other place where members of the public might reasonably expect taxis to be available for hire on-the-spot” and the circumstances would “reasonably indicate to members of the public that it is a vehicle available for hire ‘on-the-spot’ – ie “for a journey to start immediately or shortly after the vehicle and its driver are hired”

- Further, the definition of the term ‘ply for hire’ has been examined⁴⁶

“The Courts have considered what plying for hire means and what follows is a digest: An unhired taxi passing along a street is not legally bound to stop when hailed as it is not legally plying for hire when it is in motion. It is deemed to be in motion for these purposes even when actually stationary, providing it becomes stationary due to prevailing traffic conditions or, for example, to comply with traffic signs or signals, or the directions of a traffic warden or constable. If a taxi driver stops his vehicle in response to a signal from an intending hirer and speaks with him he is then technically ‘found standing in the street’ and must accept a lawful hiring or he commits the above offence. The ‘for hire’ sign does not legally affect this position whatever it indicates.”

- Applying this court definition to the amendments proposed in the Bill, a booked hire driver who stops their vehicle in response to a signal (including an electronic signal sent either directly, or indirectly via some booking software or a third party) from an intending hirer and speaks with him (eg asks “Are you John Smith?, Are you my booked hire driver/passenger?”) is then technically ‘found standing in the street’ – and meets the English Court’s definition of plying for hire.
- Again, this demonstrates how the Bill **FAILS to meet its purpose** of trying to establish mutually exclusive legal definitions of taxi services versus booked hire services

Suggestion:

- The issue is resolved by adopting the suggestion changes outlined for Section 69 (See comment 11 above) and Section 70 (see below) – ie changing the definition of “hire on-the-spot” by deleting the concept of “in person” AND replacing it with the inclusion of specific time-frames in the Bill to separate out ‘on-the-spot’ and ‘hail’ work for taxis – ie journey starts immediately or within 20 minutes of the ride request vs booked hire work - where the journey starts more than 20 minutes after the ride is booked

Possible/Suggested specific wording:

- The issue is resolved by tightening the definition of “hire on-the-spot” in Clause 69 to remove the ill-defined and difficult to enforce concept of “in person” and by the inclusion of the 20 minute/a specific timeframe between hiring/booking and the commencement of the journey

⁴⁶ S 34. Duty of taxi driver to accept a fare - Abstract of Laws General guidance on hackney carriage law for London’s licensed taxi drivers. Transport for London January 2013 <http://content.tfl.gov.uk/taxi-drivers-abstract-of-laws.pdf>

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- Section 69
 - ***“hire on-the-spot***, in relation to a vehicle and its driver, means **arranging the hire of the vehicle and its driver** for a journey to start immediately, **or within a minimum period of twenty minutes, of the vehicle and its driver being hired or booked**”

Additionally, in order to provide clarity and certainty, changes should also be made to Section 71 (see comment 13 below) and to Section 70:

“70 What is a taxi service

- (1) A ***taxi service*** is a public passenger service for a journey that starts in Queensland—
- (a) provided by the hire of—
 - (i) a motor vehicle that has not more than 12 seating positions, including the driver’s position; and
 - (ii) a person to drive the vehicle; and
 - (b) where the journey commences within 20 minutes of the journey request being made – regardless of the mechanism by which the request for transport services is made”

Specific related areas/issues requiring clarification, concrete definitions and details enshrined in legislation:

- Is there a difference between a person standing on a footpath and signalling to a nearby (ie right in front of them at the curbside) available driver/vehicle for a ride if:
 - The person signals by putting their finger in the air?
 - The person signals by putting their finger on their phone?
 - In both cases, the passenger is standing right in front of the vehicle when making the request
- What is the difference between -
 - A street hail?
 - An e-hail?
 - An electronic request for a car immediately in front of a passenger for an immediate trip request?
 - Is this a ‘booking’ or a ‘hail’?
- What is the difference between walking up to a car/driver and asking the driver (particularly in the context of proposed Section 72 4 (a)) where a booking can be accepted “in person”:
 - Can I book you to drive me to the City?
 - Are you free to drive me to the City?
 - Can you drive me to the City
 - Please drive me to the City?
- What is the difference between a ‘rank’ vs a dedicated (or even a non-dedicated) passenger pick up and drop off area/zone? – For example – as defined in the Tobacco and Other Smoking Products Act 1998 Section 26ZKB “public transport waiting point”
- With an understanding that claims have been made that ‘booked’ trips involve ‘known’ passengers, do any of the above scenarios change if the journey involves more than one passenger? – ie there are occupants in the vehicle that are not recorded via either the mobile phone/app of the booking passenger or the booked driver.

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- In this scenario, what happens if the passenger who made the booking exits the vehicle at their destination, but leaves the other (unknown) passengers in the vehicle with the driver?
 - What safeguards are in place to ensure safety for the driver or passengers?
 - What safeguards should be in place to ensure safety for the driver or passengers?
 - What safeguards are there in place to ensure that the driver is paid for transporting the remaining passengers to their final destination?
 - What safeguards should be in place to ensure that the driver is paid for transporting the remaining passengers to their final destination?

13. As Proposed:

"71 What is a *booked hire service*

(1) A ***booked hire service*** is a public passenger service for a journey that starts in Queensland—

(a) provided by the hire, other than the hire on-the-spot, of—

- (i) a motor vehicle that has not more than 12 seating positions, including the driver's position, or is a limousine; and
- (ii) a person to drive the vehicle; and

(b) that may be used by the public, or a substantial part of the public, whether or not use of the service is subject to compliance with a condition.

Example of a condition for using a public passenger service—holding an account or membership to use the service

Comment:

- The proposed definition of "booked hire service" is inadequate – consequently, the Bill **fails to achieve the stated objectives of the Bill** – namely that the definition of taxi travel is mutually exclusive to the definition of booked hire services/travel

Suggestion:

- For the sake of clarity and the avoidance of any confusion and/or possible legal challenge/contest, suggest amending the definitions for Sections 69, 70 and 71 to include the respective identical time reference

Possible/Suggested specific wording:

"(1) A ***booked hire service*** is a public passenger service for a journey that starts in Queensland—

(a) provided by the hire, other than the hire on-the-spot, of—

- (i) a motor vehicle that has not more than 12 seating positions, including the driver's position, or is a limousine; and
- (ii) a person to drive the vehicle; and

(iii) where the journey MUST commence at least 20 minutes AFTER the booking is made

(b) that may be used by the public, or a substantial part of the public, whether or not use of"

Further Relevant Comments for consideration:

- If the intention of the legislation is to legalise the model of booked hire services promoted by uber, then further elements could be added to this definition. Areas for consideration include:

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- The Booked hire service must be a complete owner-operator-driver model – ie the vehicle MUST be personally owned by the driver (ie they are using their own personal asset – not rented, leased, or any other arrangement AND they must be the registered owner of the vehicle)
 - The booked hire service licence is for a single unique combination of one driver linked to one single, personally owned and registered vehicle
 - The booked hire service licences must not be capable of being, owned, operated, or leased by any party other than the individual driver who is the owner of the licence and vehicle
 - These Owner-Driver-Operator-Licence holders simply use the services of an authorised booking entity to source work
- The inclusion of conditions such as these could help reduce the risks of large corporations, entities, or Operators seizing market power which could result in the exploitation of both consumers and workers

14. As Proposed:

“72 What is a *booking service*

(1) A ***booking service*** is a service under which a person arranges a booking for the person or another person to drive a motor vehicle to provide a booked hire service.”

Comment:

- Overall comment: The term “person” is not defined and the same word is used multiple times where different meanings are inferred
- Clause (1) is vague and confusing:
 - The first use of “person” looks like it refers to a booking company/entity – eg a ride-booking company
 - The second use of “person” looks like it refers to an owner driver/operator of the vehicle providing the ride-booking service
 - The third use of “person” looks like it refers to a third party/employee driver working for a ride-booking company

Suggestion:

- Re-word Clause (1) to improve clarity and to reduce possibility of legal loopholes or challenges
- The whole of section 72 should be re-worded to improve clarity – see further comments (15-18) below

15. As Proposed:

“72 What is a *booking service*

(2) A person arranges a booking for the person to drive a motor vehicle to provide a booked hire service by accepting the booking.”

Comment:

- Clause (2) is also vague and confusing: As read, this states that the person who accepts the booking is the person who arranges the booking
- It is unclear whether it refers to the ride-booking company accepting the request for a trip to be provided (as the ‘booking’) or the vehicle driver/operator who is accepting the offer to provide transport services as the ‘booking’

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- If it is when the driver ‘accepts the booking’ then (as per Comment 17 – Clause 72 (4) below & Comment 11 – Section 69 & Comment 12 – Section 70 above) where the driver can accept the booking ‘in person’ then this equates to walking up to a vehicle and asking the driver to provide transport/a ride immediately – which equates to plying for hire/street rank/hail work – which is supposed to be preserved as exclusive work for vehicles operating under taxi service licences. This is also inconsistent with that stated intent of Section 70 – where the definition of a taxi service is intended (albeit unsuccessfully) to be unique and mutually exclusive to the definition of booked hire services.
- Separately, what if it is a computer algorithm that ‘accepts the booking’ – ie takes the customer request for a ride – this is automated and may be run on rented computer servers based off-shore – it is not a person

Suggestion:

- Re-word Clause (2) to improve clarity and to reduce possibility of legal loopholes or challenges

16. As Proposed:

“72 What is a *booking service*

(3) A person arranges a booking for another person to drive a motor vehicle to provide a booked hire service—

- (a) if the person uses a booking system that requires the other person to accept the booking—by arranging for the booking to be accepted by the other person; or
- (b) otherwise—by assigning the booking to the other person.

Comment:

- Clause (3) is also vague and confusing and **fails to achieve the stated objectives of the Bill**
- Ride-booking entities such as uber, could easily argue that they simply “offer” a ride request to a driver – who has the option to accept the offer, decline the offer, or let the offer lapse after a short time period (eg seconds). While subclause (4) appears to cover this scenario, the wording of subclause (4) changes from “arranging” bookings to “accepting” or “assigning” bookings
- Therefore, it is possible that uber would not fulfil the definition of a “booking service” under Clause (3) and could remain outside of Queensland legislation despite the efforts of the Qld Parliament over the past three years.
- The community would see this as a failure of government to effectively govern

Suggestion:

- Re-word Clause (3) to improve clarity and to reduce possibility of legal loopholes or challenges

17. As Proposed:

“72 What is a *booking service*

(4) For this section, a booking may be accepted by, or assigned to, a person in any way, including, for example—

- (a) in person; or
- (b) by telephone or other telecommunication device; or
- (c) by using an electronic booking system.

Example of an electronic booking system—

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an electronic system that offers bookings to drivers and allows drivers to use an app on an electronic device to accept bookings”

Comment:

- It is useful that Clause (4) outlines that ride-booking entities may assign work to drivers rather than just being a case of work being accepted.
- The breadth of this definition needs to be reflected in other parts of both this section, and the Bill overall
- It is noted that the wording of subclause (4) changes from “arranging” bookings in the earlier subclauses to “accepting” or “assigning” bookings. There is a potential for this to jeopardise the robustness of the Act.
- The inclusion of subclause (a) (See Example above listed under Comment 12 – Section 70 of the Bill) – where a driver can accept a booking in person, means that the Bill **fails to achieve the stated objectives of the Bill** – namely that the definition of taxi travel/services must be mutually exclusive to the definition of booked hire services

Suggestion:

- Change the wording of Clause 72 (4) to avoid bookings being made in person (which amounts to a street hail – which is the exclusive domain of taxi services)
- Possible wording could be that the booking or allocation is made “via a signalling system or electronically” which could be separate to subclause (c)
- Alternatively, it may be feasible to delete Clause 72 (4) (a) to improve clarity and to reduce possibility of legal loopholes or challenges and then re-number subclauses 72 (4) (b) & (c) as 72 (4) (a) & (b)
- Some of these issues may also be resolved by changing the definitions in Section 69, 70 & 71 as outlined in comments 11-13 above:
 - A taxi service is all transport services where the journey commences within 20 minutes of the trip request being made
 - Booked hire services are all transport services where the journey commences more than 20 minutes after the trip request has been made

18. As Proposed:

“72 What is a *booking service*

(5) Also, for this section, it does not matter if the person who arranges a booking is in another State or a place that is outside Australia”

Comment:

- Ongoing problems with use of the word “person” – see earlier comments about use of computer algorithms on rented computer servers in foreign locations

Possible/Suggested specific wording:

Overall comment: The term “person” is not defined and the same word is used multiple times where different meanings are inferred

The whole of section 72 should be re-worded to improve clarity using clearly unique and distinct defined terms to refer to specific groups to which the legislation applies

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For example 72 could be re-worded as follows:

“72 What is a *booking service*

(1) A ***booking service*** is a service under which an **authorised booking entity** arranges a booking for the **booking service owner-driver-operator or a booking service employee driver-operator or a subcontracted booking service driver-operator** to drive a motor vehicle to provide a booked hire service.”

(2) An **authorised booking entity** arranges a booking for the **booking service owner-driver-operator or a booking service employee driver-operator or a subcontracted booking service driver-operator** to drive a motor vehicle to provide a booked hire service by accepting **the request from the passenger for transport services to be provided.**”

(3) An **authorised booking entity** arranges a booking for the **booking service owner-driver-operator or a booking service employee driver-operator or a subcontracted booking service driver-operator** to drive a motor vehicle to provide a booked hire service—

(a) if the **authorised booking entity** uses a booking system that requires **or expects** the **booking service owner-driver-operator or a booking service employee driver-operator or a subcontracted booking service driver-operator** to accept the booking—by **encouraging or** arranging for the booking to be accepted by the **booking service owner-driver-operator or a booking service employee driver-operator or a subcontracted booking service driver-operator**; or

(b) otherwise—by assigning, **allocating, or delegating** the booking to the **booking service owner-driver-operator or a booking service employee driver-operator or a subcontracted booking service driver-operator.**

(4) For this section, a booking **is arranged and/or may be** accepted by, or assigned to, a person **via a signalling system or electronically only**, including, for example—

(a) by telephone or other telecommunication device; or

(b) by using an electronic booking system.

Example of an electronic booking system—

an electronic system that offers bookings to drivers and allows drivers to use an app on an electronic device to accept bookings

(5) Also, for this section, it does not matter if the **authorised booking entity that** arranges a booking is in another State or a place that is outside Australia”

19. As Proposed:

“73 When a person *provides* a taxi service or booked hire service

For this chapter, a person ***provides*** a taxi service or booked hire service using a motor vehicle if the person—

(a) is an operator of the service; or

(b) drives the vehicle; or

(c) for a booked hire service—provides a booking service for the service.”

Comment:

- Ongoing problems with use of the word “person”

Suggestion:

- The entire document would benefit from an improved set of definitions and consistent single purpose use of titles/names for each category/group

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20. As Proposed:

"74 Taxi service may only be provided using a taxi

- (1) A person must not provide a taxi service using a motor vehicle that is not a taxi
- (b) otherwise—
- (i) for a first offence—200 penalty units;
 - or
 - (ii) for a second offence—400 penalty units; or
 - (iii) for a third or later offence—3000 penalty units."

Comments/Issues:

- It is good to see the escalating and significant level of penalties for breaches of the legislation.
- However, there are significant issues that may hinder enforcement:
 - Who or what (entity/company etc) is actually providing the taxi service?
 - Where are they located – eg overseas, out of reach of Qld law enforcement
 - Any local "nominee company may simply be a shell company with a minimal (eg \$2) paid up capital – which effectively makes the legislation unenforceable. The Explanatory Notes specifically state that "It is not proposed to require the local nominee to hold assets in Australia as the main penalty to be imposed on a foreign authorised booking entity for failure of the local nominee to comply will be to suspend or cancel the entity's authorisation. However, there are no sections or clauses in the Bill or Regulations that outline how suspension or cancellation of a foreign booking entity's authorisation will actually be effected (ie effectively enforced) when both **passengers and drivers will be able to continue to download and use the software from off-shore computer servers even if authorisation is suspended or cancelled**
 - What happens when ride-booking entities such as uber, use sophisticated software, such as their admitted use of the Greyball program, to interfere with and deceive government enforcement officers – this is neither charged or convicted of an offence –
 - See comment 24 regarding Section 78 & other comments regarding consistency of penalties throughout the Bill
- The only real things that are physically located in Qld at the time of the offence are:
 - The driver
 - – who can face escalating financial penalties, loss of licence, incarceration
 - The physical vehicle in which the offence was committed
 - – which can be impounded for escalating periods of time, and ultimately, if necessary, sold with proceeds forfeited to the State to help pay for enforcement and compliance
- While it is unlikely to be harmful to leave Clause 74 (1) (b) for non-driver offenders, it is important to appreciate that, effective enforcement of Clause 74 can really only be guaranteed by the 74 (1) (a) penalty escalation to the **drivers AND** by introducing a similar escalating series of penalties that can be applied to the vehicle/vehicle owner
- An example of vehicle-related penalties can be found in the Police Powers and Responsibilities Act 2000
- Vehicles being used to provide taxi services in vehicles that are not registered taxi vehicles in Queensland and/or that do not fully comply with all mandated government requirements/legislation would progress through an escalating penalty system that includes

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vehicle impoundment and ultimately confiscation of the vehicle (similar to existing penalties for drivers committing repeat offences – eg ‘hooning’)⁴⁷

- 1st offence immediate vehicle impoundment for 90 days
- 2nd offence - vehicle confiscation (either crushed or sold for government revenue)

Possible/Suggested specific wording:

“74 Taxi service may only be provided using a taxi

(1) A person must not provide a taxi service using a motor vehicle that is not a taxi. Maximum penalty—

(a) if the person is the driver of the motor vehicle—

(i) for a first offence—200 penalty units; **and**

(ii) impoundment of the motor vehicle in which the offence was committed/detected - 90 days

or

(iii) for a second or later offence—400 penalty units; **and**

(iv) impoundment of the motor vehicle in which the offence was committed/detected

- **having committed a taxi service vehicle related offence on 1previous occasion within the relevant period and the charge has not been decided; or**
- **the driver of the motor vehicle has previously been found guilty of a taxi vehicle related offence committed on 1 previous occasion within the relevant period.**
- **A motor vehicle impounded under subsection (ii) may be impounded until the end of proceedings for all charges under this section**
- **Forfeiture of motor vehicles if driver found guilty of second or subsequent taxi vehicle related offence,**
 - **On the driver being found guilty—**
 - (a) the motor vehicle becomes the property of the State; and**
 - (b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished, or**

(b) otherwise—

(i) for a first offence—200 penalty units; **and**

(ii) impoundment of the motor vehicle in which the offence was committed/detected - 90 days, or

(iii) for a second offence—400 penalty units; **and**

(iv) impoundment of the motor vehicle in which the offence was committed/detected

- **The vehicle having been used to commit a taxi service vehicle related offence on 1previous occasion within the relevant period and the charge has not been decided; or**
- **the driver, or authorised booking entity, or vehicle owner, or vehicle operator, or vehicle leasee or sub-leasee of the motor vehicle has previously been found guilty of a taxi vehicle related offence committed on 1 previous occasion within the relevant period.**
- **A motor vehicle impounded under subsection (ii) may be impounded until the end of proceedings for all charges under this section**
- **Forfeiture of motor vehicles if driver, or booking service entity, or vehicle owner, or vehicle operator, or vehicle leasee or sub-leasee of the motor vehicle is found guilty of second or subsequent taxi vehicle related offence,**

⁴⁷ Police Powers and Responsibilities Act 2000

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- On the driver being found guilty—
 - (a) the motor vehicle becomes the property of the State; and
 - (b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished, or
- (iii) for a third or later offence—3000 penalty units, and
 - . Forfeiture of motor vehicles if driver, or booking service entity, or vehicle owner, or vehicle operator, or vehicle leasee or sub-leasee of the motor vehicle is found guilty of second or subsequent taxi vehicle related offence

(2) A person in control of a motor vehicle that is not a taxi must not engage in conduct that involves the vehicle plying or standing for hire by members of the public in a public place.

Maximum penalty—

- (a) for a first offence—
 - (i) 200 penalty units; and
 - (ii) **impoundment of the motor vehicle in which the offence was committed/detected - 90 days**
- (b) for a second or later offence—400 penalty units and
 - (i) **impoundment of the motor vehicle in which the offence was committed/detected**
 - **having committed a taxi service vehicle related offence on 1 previous occasion within the relevant period and the charge has not been decided; or**
 - **the driver of the motor vehicle has previously been found guilty of a taxi vehicle related offence committed on 1 previous occasion within the relevant period.**
 - **A motor vehicle impounded under subsection (ii) may be impounded until the end of proceedings for all charges under this section**
 - **Forfeiture of motor vehicles if driver found guilty of second or subsequent taxi vehicle related offence⁴⁸**
 - On the driver being found guilty—**
 - (a) the motor vehicle becomes the property of the State; and**
 - (b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished.**

Note—

See section 70(2) for particular circumstances in which a vehicle plies or stands for hire.”

NOTE: See comment 12 above RE: Plying for hire

21. As Proposed:

“75 Restriction on providing booked hire service for particular taxi service area

Comment:

- One problem is that this won’t occur in any of the large population centres where ride-booking operates or wants to operate
- Joined with the lack of a need for TSLs to provide any service or a timely service, - this doesn’t ensure that the public will have access to transport services and doesn’t solve the problems that this Bill creates

⁴⁸ Suggested wording sourced from the current Qld Police Powers and Responsibilities Act 2000 with adjustments related to taxi service-related offences

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Suggestion:

- Penalties detailed for Section 75 will need to be amended to include the strengthened (vehicle-related penalties) suggested under Comment 20 – Section 74 above
- Separate to the penalties component, Section 75 needs to be re-considered in light of the overall Objectives of TOPTA to ensure transport access for all and how the entire Bill will either ensure that outcome or **Fail to deliver transport for Queenslanders**

22. As Proposed:

“76 Booked hire service may only be provided using particular motor vehicle”

Suggestion:

- Penalties detailed under Section 76 will need to be amended so that they are identical to the penalties listed under Section 74 – ie will need to include the strengthened (vehicle-related penalties) suggested under Comment 20 – Section 74 above AND will need to be increased so that first and second offences for providing ride-book services in an incorrect vehicle incur identical penalties as offences of providing taxi services in non-taxi vehicles

23. As Proposed:

“77 Restriction on providing booked hire service requested using fixed booking device

(1) A person must not provide a booked hire service requested through a fixed booking device using a motor vehicle that is not a taxi.”

(2) In this section—

fixed booking device means a device that is fixed at a place and has the primary function or purpose of allowing a person to request a booked hire service to be provided for a journey that starts at the place.”

Comments:

- The intent of this Clause is that passengers wishing to use booked hire services must request these from their own personal mobile device and that fixed devices (eg dedicated telephones, computer terminals etc) are for the sole purpose of requesting taxi services
- There are two problems with this:
 1. Facilities may have roaming tablet-style devices and/or dedicated wi-fi connections that may be used to request booked hire services
 - a. These may not be either dedicated, nor physically ‘fixed’ – eg a waiter may bring the device to the restaurant table and it may be used to order drinks, meals/menu items, and to request/book a booked hire service
 - b. As such, this scenario is not captured in the proposed Bill
 2. Taxis have had booking ‘apps’ for many years (including prior to entities such as uber)
 - a. If taxis are allowed to undertake booked hire work, then they must be able to be ordered by methods which have been used in Qld (including dedicated and non-dedicated electronic mechanisms) to request taxi services rather than just booked hire services
 - b. See comment 11 above
- Clause (2) is problematic for the reasons listed above under 1 a) and because it requires “a booked hire service to be provided for a journey that starts at the place.”

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- What happens if the journey starts outside, or around the corner, or in the vicinity, or nearby?
- If the suggestion listed below is adopted, it is most likely possible to delete Clause (2) as the definition of a “fixed booking device” is no longer relevant if passengers are required to book their ride using their personally owned personal mobile electronic device – although **detection and enforcement of this could prove challenging and needs serious consideration at this time.**

Suggestion:

- This Section 77, and the broader issue of removing approximately 65% of Qld taxi work from taxis and re-distributing it across taxi vehicles, booked hire vehicles, and limousines needs significant work and consideration of the consequences to the government, the community, and the industry

Possible/Suggested specific wording:

“(1) A person or **authorised booking entity** must not provide a booked hire service using a motor vehicle that is not a taxi that has been requested **via anything other than the individual passenger’s personally owned personal mobile electronic device.**”

- Amend maximum penalties as per Comments 20-22 above for Clauses 74 – 76 to include impoundment of motor vehicles in which the offence was committed

24. As Proposed:

“78 Booking service must be provided by authorised booking entity

(1) A person must not provide a booking service for another person to drive a motor vehicle to provide a booked hire service unless the person is an authorised booking entity for the booked hire service”

Comment/Suggestion:

- This is reasonable, but there are uncertainties about enforceability against foreign corporations – a shell company located in Australia with minimal assets and minimal capital & a single ‘token’ employee will not be able to be effectively held accountable
- See comment 20 above regarding Section 74 and effective enforcement of a suspended or cancelled booking entity’s authorisation
- Penalties should be consistent within the Bill⁴⁹ – ie penalty unit levels and escalation should be the same as those suggested for Section 74 (1) (b) under comment 20 above

Possible/Suggested specific wording:

78 Booking service must be provided by authorised booking entity

(1) A person must not provide a booking service for another person to drive a motor vehicle to provide a booked hire service unless the person is an authorised booking entity for the booked hire service
Maximum penalty—

⁴⁹ “If the legislation is to create offences, the penalties for the offences need to be included in the instructions. The penalties must be internally consistent and consistent with government policy and other legislation.”
Office of the Queensland Parliamentary Counsel Working with OQPC on Queensland legislation Handbook

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- (a) for a first offence—200 penalty units; and
 - (b) impoundment of the motor vehicle in which the offence was committed/detected - 90 days, or
 - (c) for a second offence—400 penalty units; and
 - (d) impoundment of the motor vehicle in which the offence was committed/detected
 - The vehicle having been used to commit a ride booking service related offence on 1 previous occasion within the relevant period and the charge has not been decided; or
 - the driver, or booking service entity, or vehicle owner, or vehicle operator, or vehicle leasee or sub-leasee of the motor vehicle has previously been found guilty of a booked hire service related offence committed on 1 previous occasion within the relevant period.
 - A motor vehicle impounded under subsection (d) may be impounded until the end of proceedings for all charges under this section
 - Forfeiture of motor vehicles if driver, or booking service entity, or vehicle owner, or vehicle operator, or vehicle leasee or sub-leasee of the motor vehicle is found guilty of second or subsequent ride booking service related offence
- On the person/entity being found guilty—
- (a) the motor vehicle becomes the property of the State; and
 - (b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished, or
- (e) for a third or later offence—3000 penalty units, and
 - Forfeiture of motor vehicles if driver, or booking service entity, or vehicle owner, or vehicle operator, or vehicle leasee or sub-leasee of the motor vehicle is found guilty of second or subsequent ride booking service related offence

On the person/entity being found guilty—

 - (a) the motor vehicle becomes the property of the State; and
 - (b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished.

25. As Proposed:

“78 Booking service must be provided by authorised booking entity

- (2) A person must not drive a motor vehicle to provide a booked hire service unless—
- (a) if the booking to provide the service was arranged by another person—the other person is an authorised booking entity for the service; or
 - (b) if the booking to provide the service was arranged by the person—the person is an authorised booking entity for the service or is otherwise authorised to arrange the booking under a regulation.

Maximum penalty—

- (a) for a first offence—160 penalty units; or
- (b) for a second or later offence—320 penalty units.

Note—

See sections 150B and 150C in relation to the application of the penalty for subsections (1) and (2).”

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Comments:

As outlined above under Comment 20 regarding Section 74, the only real things that are physically located in Qld at the time of the offence are:

- The driver
 - – who can face escalating financial penalties, loss of licence, incarceration
- The physical vehicle in which the offence was committed
 - – which can be impounded for escalating periods of time, and ultimately, if necessary, sold with proceeds forfeited to the State to help pay for enforcement and compliance

Questions/Major Practical enforcement issues:

- How can enforcement of booking entity authorisation suspension or cancellation be effectively enforced against foreign booking entities when the 'app' will still operate from foreign computer servers?
- If drivers are working across multiple booking platforms simultaneously, how will it be possible to ascertain that a specific trip was provided via a booking entity with suspended or cancelled authorisation?
- If a driver or authorised booking entity simply claims to be unable to produce the booking record, the penalty is lower under Sections 81 & 82 than under Section 78; and much much lower than the penalty under Section 74 – see Comments 20, 24 & elsewhere regarding consistency of penalties across the entire Act (including amended and unamended sections)

Possible/Suggested specific wording:

78 Booking service must be provided by authorised booking entity

(2) A person must not drive a motor vehicle to provide a booked hire service unless—

- (a) if the booking to provide the service was arranged by another person—the other person is an authorised booking entity for the service; or
- (b) if the booking to provide the service was arranged by the person—the person is an authorised booking entity for the service or is otherwise authorised to arrange the booking under a regulation

Maximum penalty—

- (a) if the person is the driver of the motor vehicle—
 - (i) for a first offence—200 penalty units; **and**
 - (ii) impoundment of the motor vehicle in which the offence was committed/detected - 90 days**
 - or
 - (iii) for a second or later offence—400 penalty units; **and**
 - (iv) impoundment of the motor vehicle in which the offence was committed/detected**
 - **having committed ride-booking service related offence on 1 previous occasion within the relevant period and the charge has not been decided; or**
 - **the driver of the motor vehicle has previously been found guilty of a ride booking service related offence committed on 1 previous occasion within the relevant period.**
 - **A motor vehicle impounded under subsection (ii) may be impounded until the end of proceedings for all charges under this section**
 - **Forfeiture of motor vehicles if driver found guilty of second or subsequent ride booking service related offence**
 - **On the driver being found guilty—**

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(a) the motor vehicle becomes the property of the State; and
(b) any right of a person to enforce a security interest under the
Personal Property Securities Act 2009 (Cwlth) against a person other
than the State by taking possession of the vehicle is extinguished, or

(b) otherwise—

(i) for a first offence—200 penalty units; and

(ii) impoundment of the motor vehicle in which the offence was
committed/detected - 90 days

or

(ii) for a second offence—400 penalty units; and

(iv) impoundment of the motor vehicle in which the offence was
committed/detected

- The vehicle having been used to commit a taxi service vehicle related offence on 1 previous occasion within the relevant period and the charge has not been decided; or

- the driver, or booking service entity, or vehicle owner, or vehicle operator, or vehicle leasee or sub-leasee of the motor vehicle has previously been found guilty of a taxi vehicle related offence committed on 1 previous occasion within the relevant period.

- A motor vehicle impounded under subsection (ii) may be impounded until the end of proceedings for all charges under this section

- Forfeiture of motor vehicles if driver, or booking service entity, or vehicle owner, or vehicle operator, or vehicle leasee or sub-leasee of the motor vehicle is found guilty of second or subsequent taxi vehicle related offence

- On the driver being found guilty—

- (a) the motor vehicle becomes the property of the State; and

- (b) any right of a person to enforce a security interest under the
Personal Property Securities Act 2009 (Cwlth) against a person other
than the State by taking possession of the vehicle is extinguished, or

(iii) for a third or later offence—3000 penalty units, and

- . Forfeiture of motor vehicles if driver, or booking service entity, or vehicle owner, or vehicle operator, or vehicle leasee or sub-leasee of the motor vehicle is found guilty of second or subsequent taxi vehicle related offence

Overall comment about suggestions to broaden and strengthen the enforcement provisions in the Bill:

- It would be good if effective enforcement of the legislation for breaches by foreign booking entities is ultimately successful. However, given the experience of the Qld government and many governments around with world with uber in particular, it is difficult to predict the likelihood of success.
- Therefore, it is prudent to include enforcement strategies that address the driver and vehicle as well as those that capture the booking entities. In the event that some of these are unsuccessful, the overall net effect is more likely to curtail illegal activities than past efforts have been.

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Division 2 Booking records for booked hire services

26. As Proposed:

“79 Application of division

This division does not apply to a booked hire service provided using a taxi.”

Comment:

- Why are taxis exempt?
- Section 79 makes a presumption that taxi booking companies will continue to exist and will continue to do what they have been doing in a highly co-regulated environment
- This may not be the case

Suggestion:

- Determine whether the same rules about records for bookings should apply to all booked hire services – if so, Section 79 can be deleted

27. As Proposed:

“81 Booking entity’s obligations

.... Maximum penalty—80 penalty units.”

Comments:

- In the absence of a booking record being produced, there is **NO evidence** that the service provided was not a taxi service (eg street hail/rank work)
- A comparatively trivial penalty for a lack of booking record is at odds with the penalties outlined in the Bill under Section 74 for the provision of taxi services in non-taxi vehicles – the only enforceable distinction between a taxi service and a booked hire service is the booking record
- According to the Office of the Queensland Parliamentary Counsel “penalties must be internally consistent”. Therefore the maximum penalties under Section 81 **MUST** be identical to those proposed under Section 74 “Providing a taxi service in vehicle other than a taxi” - see comment 20 above.

Possible/Suggested specific wording:

- See Comment 20 above regarding Section 74
- Impose and enforce penalties against the booking entity, driver, and vehicle in which the offence was committed
- Also **need to mandate that a booking record is an electronic record** – otherwise, a driver could have a notebook and pen in their vehicle, accept a street hail and, when a passenger gets into the vehicle and asks to be driven to a destination, the driver simply writes in their notebook that they were “booked” to provide the trip. This would avoid being penalised for providing a taxi service in a non-taxi vehicle and providing booked hire services without a booking record – **even though it is clearly a street hail and taxi work**

28. As Proposed:

“82 Driver’s obligations

(1) The driver of a motor vehicle used to provide a booked hire service for a journey must, while providing the service, carry a booking record for the service.
Maximum penalty—80 penalty units”

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Comments:

- In the absence of a booking record being produced, there is **NO evidence** that the service provided was not a taxi service (eg street hail/rank work)
- A comparatively trivial penalty for a lack of booking record is at odds with the penalties outlined in the Bill under Section 74 for the provision of taxi services in non-taxi vehicles – the only enforceable distinction between a taxi service and a booked hire service is the booking record
- According to the Office of the Queensland Parliamentary Counsel “penalties must be internally consistent”. Therefore the maximum penalties under Section 81 **MUST** be identical to those proposed under Section 74 “Providing a taxi service in vehicle other than a taxi” - see comment 20 above.
- Need safeguards to aid enforcement:
 - If a vehicle is stopped for compliance, a driver could get their passenger to immediately start the trip
 - Therefore, this Section needs expansion and more details here to truly stop cash jobs/fraud - eg the record must show trip has been going for > 5 minutes
 - Penalties under Section 81 and 82 would provide an opportunity for innovative app developers to develop an app to create an image of a booking between two mobile phones (driver and passenger) using blue tooth or near field (or other) connectivity to produce a ‘booking record’ with pre-inserted date and retro-active time commencing 5 minutes prior to tapping the app
 - Given uber’s history with greyball this is potentially something they could incorporate into their own app as well in order to evade law enforcement
- As the Department of TMR is aware, the taxi industry has a long history of people finding ways to avoid and evade laws and enforcement – it is unrealistic to imagine that ride-booking will be different and uber has proven this to be the case

Possible/Suggested specific wording:

- See Comment 20 above regarding Clause 74
- Impose and enforce penalties against the booking entity, driver, and vehicle in which the offence was committed
- Also **need to mandate that a booking record is an electronic record** – otherwise, a driver could have a notebook and pen in their vehicle, accept a street hail and, when a passenger gets into the vehicle and asks to be driven to a destination, the driver simply writes in their notebook that they were “booked” to provide the trip. This would avoid being penalised for providing a taxi service in a non-taxi vehicle and providing booked hire services without a booking record – **even though it is clearly a street hail and taxi work**

Suggested specific wording:

Insert **additional Section/Clause**

“82A

For the purposes of Sections 81 & 82, if a booking record is unable to be produced for inspection by an authorised person on request, the booking entity and the driver will be deemed to have provided a taxi service.

If this service was not provided using a registered taxi vehicle, then the offence will be assessed under Section 74 of this Act and all relevant applicable penalties will be applied”

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Part 3 Safety duties

29. As Proposed:

"83 Definitions for part

reasonably practicable, in relation to a duty to

- (a) the likelihood of a safety risk, or damage to property, happening; and
- (b) the harm that could result from the risk or damage; and"

Comments:

- The recently enacted Rail Safety National Law (Queensland) Bill 2016 introduced random drug/alcohol testing by the regulator
 - It did not rely on rail companies doing what was "reasonably practicable" or "cost-effective"
- A passenger transport driver should **never** fall asleep at wheel with passenger on board – This is not a cost issue – it is a public safety issue
- See comments on page 22 above regarding safety and Never Events

30. As Proposed:

"84 Persons in chain of responsibility

(1) Each of the following persons is a *person in the chain of responsibility* for a taxi service or booked hire service—

- (a) an operator of the service;
- (b) the holder of a taxi service licence, limousine licence or booked hire service licence for a motor vehicle used to provide the service;
- (c) the driver of a motor vehicle used to provide the service;
- (d) a registered operator of a motor vehicle used to provide the service;
- (e) a holder of a booking entity authorisation under which a person provides booking services for the service
- (f) another person who provides booking services for the service;
- (g) if an authorised booking entity who provides booking services for the service is a foreign person—the entity's local nominee."

Comment:

- The definitions for each category listed in the Chain of responsibility **are unclear**
- Needs more clarity and specificity for each defined group – eg the "operator of the service (a)" seems to be the taxi booking company or ride booking entity, yet there is a separate category (e) for the "holder of the booking entity authorisation"

Questions:

(a) an operator of the service;

- The new definition of Operator is broad: "**operator** means a person carrying on the business of providing a public passenger service"
- In the context of Section 84, is this meant to represent the taxi or ride-booking entity/company, or is this the existing large taxi Operators/bases, or is it someone else?

(b) the holder of a taxi service licence, limousine licence or booked hire service licence for a motor vehicle used to provide the service;

- The licences are for a vehicle "to be used to provide" a service and not necessarily for the vehicle "being used" – eg Taxi licences can be leased and Operators assign

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interchangeable approved vehicles to operate under the licence without the knowledge or specific approval of the licence owners

- The licence owner for taxis and limousines may not be the registered owner of the vehicle used to provide the service
- The licensed booked hire driver may not be the registered owner of the vehicle used to provide the service
- There is a booked hire service licence that is not for a driver (Driver Authority) and not the booking entity authorisation? So it is very unclear, what the purpose of the booked hire service is, and who is it for?

(c) the driver of a motor vehicle used to provide the service;

(d) a registered operator of a motor vehicle used to provide the service;

- Definition from Transport Operations (Road Used Management) Act 1995 says it is the registered owner of the vehicle
- What happens if the vehicle is leased or sub-leased?
- What happens if drivers are using a vehicle on a set pay in type of basis – particularly if it is a pay by the hour type of system?
- What happens if the registered owner of the vehicle is a foreign entity with no local office, employees, or assets – eg a vehicle leasing entity based in the Cayman islands where drivers pay via a mobile phone app to lease a vehicle on a per hour basis and where the vehicle leasing company has no assets and all vehicles are subject to financial agreements and debt to a web of foreign shelf companies in different countries?

(e) a holder of a booking entity authorisation under which a person provides booking services for the service

(f) another person who provides booking services for the service;

- Who or what is a person who provides booking services that is does not hold booking entity authorisation?
- Is it their employee, worker or subcontractor?
- What happens if it is a person in a foreign call centre?
- What happens if it is a computer algorithm on a rented computer server based in a foreign country where Qld laws are not applicable?

(g) if an authorised booking entity who provides booking services for the service is a foreign person—the entity’s local nominee.

- What happens if, for example, a foreign criminal organisation establishes a shelf company in Australia with no assets and no income and appoints a token local employee/director as an expendable ‘fall guy’ who could spend time in gaol – it doesn’t look like this provides a high level of real accountability or that any penalties would have meaningful enforcement

Suggestion:

- Whole section needs much tighter definitions for clarity for there to be any prospect of the Bill achieving the stated aims of safety and accountability (ie the stated purpose of the Chapter – Section 68 (a), (b) & (c))
- It would be prudent to re-instate mandatory Operator Accreditation as a means of strengthening the Chain of Responsibility

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31. As Proposed:

“85 Relationship with other safety laws

(2) However, to the extent it is not possible for the person to comply with a provision of this part and a provision of another safety law dealing with the same thing, the person must comply with—

- (a) the provision of the other safety law; or
- (b) if, under the other safety law, the person is required to comply with a provision of another safety law—the provision of the other safety law”

Comment/Question:

- Unsure why safety of passenger transport services (driver, passenger, general public) is subservient rather than taking precedence

Division 2 Principles

32. As Proposed:

“86 Principle of shared responsibility

(1) The safety of activities associated with providing a taxi service or booked hire service is the shared responsibility of each person in the chain of responsibility for the service”

Comment:

- This is why it is essential that each party and their role and responsibilities are clearly defined under the Act
- Should there be both shared and vicarious liability?

Suggestion:

See Comment 30 regarding Clause 84 above

33. As Proposed:

“87 Principles applying to duties

(4) If more than 1 person has a duty for the same matter, each person—

(b) must discharge the person’s duty to the extent to which the person—

- (i) has the capacity to influence and control the matter; or
- (ii) would have the capacity but for an agreement or arrangement purporting to limit or remove that capacity.

(5) A person’s duty can not be transferred to another person.”

Comments:

Major Issues arise here:

- Section 87 (4) (b) (ii) allows an agreement to limit or remove duty – eg a taxi licence owner who leases use of the licence to an Accredited taxi Operator cannot exert influence over the vehicles, drivers etc and, via the lease arrangement, removes that duty from themselves, and makes it a condition of the contract
- However, the uber terms and conditions force both the drivers and the passengers to accept all of the responsibility and liability for duty and uber uses forced (unreadable on a small mobile phone screen) Terms & Conditions to remove themselves from the chain of responsibility. Section 87 (4) (b) (ii) doesn’t stop that from happening and therefore doesn’t

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provide either protection for drivers or passengers, or the Chain of Responsibility in the service

- Clause 87 (5) seems to conflict with Clause 81 (4) (b) (ii)

Suggestion:

- Need to consider and legislate a mechanism so that booking entities (& others) cannot effectively force or coerce workers/drivers and passengers/customers to take on risks that rightly belong with the booking entity, or to 'sign' (via tapping 'accept' on a mobile phone screen) away their rights in Australian law or unknowingly or unwittingly agree to arbitration in a foreign country under foreign law

34. As Proposed:

"89 Duty of executive officer of corporation

(2) The executive officer may be convicted of an offence against subsection (1) even if the corporation has not been proceeded against for, or convicted of, an offence relating to the duty"

Comments/Questions:

- Does this set the scene for a "fall guy" when the responsible foreign corporation has placed itself outside of the reach of Qld/Australian law?
- Are there better alternatives?

35. As Proposed:

"89 Duty of executive officer of corporation

(3) In this section—

due diligence includes taking reasonable steps to—

- (a) acquire, and keep up to date, knowledge about the safe conduct of activities relating to providing taxi services or booked hire services; and
- (b) gain an understanding of—
 - (i) the nature of the corporation's activities relating to providing taxi services or booked hire services; and
 - (ii) the safety hazards and risks associated with those activities; and ..."

Comments/Questions:

- What happens if the corporation deems that the nature of the corporation's activities relating to providing taxi services or booked hire services are:
 - A trade secret?
 - Held in Confidential Files in the corporation's foreign office and in a foreign language?
 - Embedded in complex computer software and algorithms running on rented computer servers in a foreign country?
- **There appear to be many avenues by which a large multinational foreign multi-billion dollar corporation (such as uber) could evade the requirements outlined in this Act and potentially jeopardise the safety of the general public/community**

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36. As Proposed:

89 Duty of executive officer of corporation

(3) In this section—

due diligence includes taking reasonable steps to—

(d) ensure the corporation has, and implements, processes—

(i) to eliminate or minimise those hazards and risks; and

(ii) for receiving, considering, and responding in a timely way to, information about those hazards and risks and any incidents; and

(iii) for complying with the corporation's duty under section 88; and

(e) verify the resources and processes mentioned in paragraphs (c) and (d) are being provided, implemented and used.

Comment:

- The wording of the Bill does not differentiate between **preventative actions** to minimise harm versus **reactive actions/processes** to minimise recurrence of harm
- **This is a critical issue that must be addressed to help the Bill achieve the stated aim of community safety**

An example highlights the difference and the issues:

Two scenarios where a builder hires or subcontracts people to do electrical work and repairs

Scenario A

The builder only employs licensed electricians, puts them through a detailed initial induction/training program in the business, and still takes customer feedback and reacts to negative feedback or adverse problems as they arise

The use of qualified skilled workers would comply with efforts to minimise hazards and the risks associated with poor electrical work/repairs - such as

- *electrical fires,*
- *electric shock,*
- *electrocution/death*

Reacting to adverse events (by re-training or sacking poor workers) further reduces the possibility of a recurrence of problems

Scenario B

The builder employs people with some knowledge of electrical work but does not exclusively use licensed electricians, and an induction program on commencement consists of asking new staff to watch a video (without any checks that it was either watched, or that information/knowledge was acquired by the worker)

The builder relies on customer feedback to comply with the safety elements of the proposed Act – as written

In the event of complaints from customers or major adverse events occurring after work has been performed by subcontracted workers – such as

- *electrical fires,*

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- *electric shock,*
- *electrocution/death*

The builder then sacks the workers/subcontractors (without giving them an opportunity to provide any information or explanation and without access to Natural Justice) – thus complying with the legislated requirement of “making efforts to minimise hazards and risks” associated with poor electrical work/repairs

- Clearly, even though both scenarios fully comply with the proposed legislated requirements, Scenario B puts the community and general public at risk of harm despite legislation suggesting they should be safe
- It is clear that Scenario A provides “**systemic**” and **preventative** approach to address the issue of safety/harm minimisation – ie uses a system to minimise harm to all (like making all road users wear seatbelts, or bicycle users wear helmets)
- Conversely, Scenario B **reacts** to individual events after each adverse event occurs, but doesn’t improve the system for all and doesn’t prevent another new unqualified or inexperienced worker causing an identical problem at a different worksite (perhaps like making only people who have had a car crash & been injured wear a seat belt in the future or only people who have fallen off their bicycle and sustained a head injury, wear a helmet on future rides)

Analysis:

- Systemic preventative approaches to risk management and harm minimisation have proven to work well in healthcare, the airline industry, and road safety
- The evidence to date in booked hire services/ride-booking is that a systemic preventative approach has been considered unnecessary.
- It is important that **governments regulate for the good of the community and the safety of the public and workers** in an industry, rather than leave it to the discretion of corporations or individuals who may place business objective above community benefit

Suggestion:

- Suggest **mandating** a broad range of preventive safety initiatives for the Public Benefit/Community Good

37. As Proposed:

“91B Duties relating to fatigue

(2) A person in the chain of responsibility for a taxi service or booked hire service must take all reasonable steps to ensure another person does not drive a motor vehicle to provide the service while the other person’s ability to drive the motor vehicle safely is impaired by fatigue.

Maximum penalty—160 penalty units.”

Comments/Questions:

- Unsure how this is to be monitored or enforced and the Regulations mentioned in Section 91C are unavailable for review or comment
- Specific areas with challenges:
 - Workers who work for multiple employers/organisations/platforms/booking entities

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- Either concurrently or consecutively
- Workers with no direct personal contact with supervisors
- Workers who only interact via electronic or online processes
- Workers who are managed by staff located off-shore
- Workers who are managed by computer algorithms rather than human beings
 - NOTE: While theoretically this could be more robust, the use of multiple platforms/employers and/or multiple devices or multiple vehicles make it relatively easy to circumvent

Suggestion:

- In the interests of both driver/worker safety, and safety of the community/general public - Consider tightening and strengthening legislation to reduce risks
- May be covered under 91C – depending upon wording of the relevant Regulation, but presently unavailable for review or comment

Part 4 Licences and authorisation for personalised transport services

Division 1 Taxi service licences

38. As Proposed:

“91D What is a *taxi service licence*

A ***taxi service licence*** is a licence for a taxi service area issued by the chief executive under which the holder may provide taxi services and booked hire services using the motor vehicle stated in the licence.”

Comments:

- This is a MAJOR change from TOPTA and is a stark contrast to reassurances that were provided in Ministerial correspondence stating that “I wish to confirm that there are no current plans to deregulate the taxi industry.”⁵⁰
- Currently TOPTA⁵¹ is very clear:
 - “68 Purpose of taxi service licences**
The purpose of taxi service licences is to ensure that the communities served by taxis receive quality and innovative taxi services at a reasonable cost.
 - 69 What are taxi service licences**
A ***taxi service licence*** is a licence issued by the chief executive under which the holder is required to provide a taxi service in an area in a way that meets or exceeds specified performance levels.”
The current definition of taxi service
“*taxi service* means a public passenger service, other than an excluded public passenger service, provided by a motor vehicle under which the vehicle—
(a) is able, when not hired, to be hailed for hire by members of the public; or
(b) provides a demand responsive service under which members of the public are able to hire the vehicle through electronic communication; or
(c) plies or stands for hire on a road.”

⁵⁰ Ministerial correspondence from Mr Neil Scales, Director General TMR on behalf of the Hon Scott Emerson MP Minister for Transport and Main Roads 16/12/2014

⁵¹ Transport Operations (Passenger Transport) Act 1994

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- In February 2017, the Federal Court of Australia ruled⁵² that uber provides a taxi service in Australia.
 - It was further noted, in the Federal Court ruling, that having different categories of drivers and vehicles providing taxi services/travel contributes to ‘mischief’ that may result in exploitation of consumers and a reduction in government revenue and that the broad interpretation of ‘taxi travel/services’ was the purpose behind the wording of relevant legislation.
 - This same argument is relevant to the specific wording and definitions within TOPTA – where the services uber is providing clearly fall under the definition of taxi services (a demand responsive service hired through electronic communication) and earlier versions of taxi-type services that were ordered electronically were in the purpose behind such a definition. **Hardware and software updates do not change the fundamental principle of the law.**

This proposed change has a number of **major adverse effects**:

- 1) It could easily see a reduction in access to transport services
 - a) This change means that a taxi service licence provides the owner **an option** to provide services – service provision is **not a mandatory requirement**
 - b) It is difficult to see how the provision of service (any or timely) to the community (particularly to disadvantaged groups – elderly, disabled, rural/remote) will be achieved by deleting Service Contracts and by allowing owners of TSLs the option of providing no service to the community, or an adhoc service that has a poor response time for journey requests
 - c) This (and many other) proposed amendments demonstrate how the Bill **FAILS to achieve its purpose** as stated under Section 68
 - d) **The end result could easily be that taxis will only undertake profitable work – ie the nominated groups will be left without services and the government will have failed the community and will have to intervene in the market – incurring costs to the taxpayers/government/community**
 - e) Amendments to the Bill (and any reform reform to passenger transport in Qld) need to **ensure service provision to the community AND long term commercial viability of the industry AND a liveable wage to the workers in the industry**

Major elements of this Bill FAIL to achieve the stated goals of the Bill and the legislated Objectives of TOPTA

- **See comments and details under Key Issue 7 - page 9 of this submission**
- 2) Separately, regarding this change in the definition of taxi services:
 - This divides historical taxi work (rank, hail, telephone booked, website-booked, app-booked, contract-booked, concierge-booked etc) into two categories
 - It specifically **removes** exclusive access of taxis to approximately 52-65% of their work
 - The work that is **taken from taxis** is both the **growth** area of the work, and the portion of work that is obtained via the **lowest costs** to the industry (ie there are higher costs associated with operating a local telephone call centre based in Qld than a mobile phone app)
 - The Bill seeks to **leave taxis with high costs, low work volumes**, the predominantly **unprofitable work**, and the work that has the **highest underlying costs** (eg waiting times at ranks and call centres manned by Queensland workers earning award wages)

⁵² Uber B.V. v Commissioner of Taxation [2017] FCA 110 - 17 February 2017
<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2017/2017fca0110>

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- The net effect of this change is to decrease the number of trips/fares/work undertaken and increase the cost per fare/trip in obtaining/performing that work
- This can only result in the financial decline and potentially ultimately the ruination and death of the Qld taxi industry
- See Comments pages 15-18 of this submission, and other comments throughout the submission including Appendix A Comment 8 regarding Section 36AA, Comments 11-20 regarding Section 69-74, Comment 74 regarding Section 91ZT, Comment 99 regarding definition and purpose of taxi service licence and public benefit.
- It is imperative to note a number of key elements in TOPTA that remain unamended:
 - “2 Objectives of Act**
 - (1) This Act is intended to **achieve the provision of the best possible public passenger transport at reasonable cost to the community and government**, keeping government regulation to a minimum.
 - (2) However, this Act recognises that **market entry restrictions may be needed in the public interest**.
 - (3) The overall objectives of this Act are, consistent with the objectives of the *Transport Planning and Coordination Act 1994*, to—
 - (a) enable the effective planning and efficient management of public passenger transport in the State; and
 - (b) provide a system of public passenger transport in the State that—
 - (i) is responsive to community needs; and
 - (ii) offers an attractive alternative to private transport in a way that **reduces the overall environmental, economic and social costs** of passenger transport; and
 - (iii) addresses the challenges of future growth; and
 - (iv) provides a high level of accountability; and
 - (v) provides public passenger services at a reasonable cost to the community and government; and
 - (c) promote the personal safety of persons using public passenger transport; and
 - (d) **provide a reasonable level of community access and mobility in support of the Government’s social justice objectives**; and
 - (e) provide an adequate framework for coordinating the different forms of public passenger transport to form a comprehensive, integrated and **efficient system**.”

“Chapter 5 Market entry restrictions

36 Market entry restrictions

- (1) A regulation may declare that a public passenger service is to be provided with market entry restrictions.
- (2) Before a regulation is made under subsection (1), the Minister must be of the opinion that the following criteria are met, or can be met or substantially met—
 - (a) the level of services would be greater than the level that would otherwise be provided;
 - (b) access to public passenger transport would be greater than would otherwise be achieved;
 - (c) service innovation would be greater than would otherwise be achieved;
 - (d) the particular public passenger services would better meet the Government’s social justice objectives at a lower cost to the Government than would otherwise be achieved.”

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- Under the proposed amendments in the Bill:
 - TSLs **no longer have a purpose &**
 - TSLs **no longer have to achieve** any level of **service**
- Given these obvious problems, it is **impossible** to see how the amended Act will achieve the legislated objectives of the Act

Analysis:

- In terms of a way forward, there are many challenges from the current position
- The taxi industry was actually working well and was providing a high level of universal service across the state, including to all the disadvantaged groups, at a reasonable cost to the community and to the government – ie it was fulfilling the objectives required by TOPTA
- The government response to uber has caused much damage and jeopardised the industry and potentially the future availability of universal access to transport services at a reasonable cost.

Options:

- 1) Unwind the decision to de-regulate the taxi industry, strengthen and enforce TOPTA
 - a) Politically difficult and embarrassing for government
 - b) Significant political benefit from Federal Court ruling – ie decision made by the court – not by a political party – affirms separation of powers
 - c) Ultimately most likely the lowest cost that is most likely to deliver the best Public Benefit – best long term service to the community at the lowest cost
- 2) Persevere with de-regulation of the taxi industry
 - a) Gives the illusion of benefit while booked hire fares are subsidised by venture capital funding. However, this is NOT a long term strategy that will deliver Public benefit or long term access to universal services at a reasonable cost
 - b) Need to develop a concrete plan on what the passenger transport industry will look like, how it will meet the Objectives of TOPTA (ie a specific destination)
 - c) Need to develop a plan to transition from current situation to end goal (ie a road map)
 - d) Need a **major re-draft of the Bill** and subordinate legislation so that legislation underpins 2) b) and 2) c).
 - e) Need to deal with the **consequences**
 - i) Destruction of the \$1.5 billion taxi industry –ie injurious affection
 - People who purchased an exclusive licence for \$500,000 are unlikely to have been interested in purchasing a non-exclusive licence that has minimal value if that is what the government had been selling (compare buyers and prices for an original painting vs buyers and prices for one of an unlimited number of ‘prints’)
 - ii) Potential increased incidence of harm to passengers
 - iii) Potential increased incidence of harm to drivers
 - iv) Significant reduction in worker’s rights, worker’s income
 - v) Potential loss of universal access to transport (analogy to gas & electricity)
 - vi) Potential for significant increase in fares and costs to consumers (analogy to gas & electricity)
 - f) Need to develop and implement a **pathway** for people **to exit** the taxi and limousine industry with dignity and without incurring enormous financial losses. Options:
 - i) Full licence buy-back – probably cost-prohibitive
 - ii) Buy-back of a percentage (probably 30-50%) of licences via a ballot to try to create new stable equilibrium – may be a politically and financially acceptable middle path, although some would say it still isn’t a fair and equal approach

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- iii) Govt top up support for lost TSL income – ie make up difference between current lease payments and 2014-15 lease payments – restored income would partially improve the capital value of licences, but values will still suffer because of the very high level of sovereign risk created by govt actions over past three years and because there could easily be a large number of people desperately trying to sell their licence
- iv) Give licence holders something that might have value in the future – probably difficult to get support from all/any groups – eg like the people who bought their original painting either want to keep the original or want what it was worth – they don't want lots of worthless substitutes. Going beyond that, an unusual **option worth exploring**:
 - Autonomous Vehicle Licences (AVLs)
 - Create two new categories of licences for autonomous vehicles for Qld
 - Category 1 'Commercial' AVLs (CAVL) for vehicles being used for commercial purposes (transport of people or goods in exchange for a fare/payment (ie not for privately purchased vehicles being used for personal use only to transport the vehicle owner)
 - Category 2 'Experimental' AVLs (EAVL) for autonomous vehicle experimentation/trials
 - Make EAVLs available to companies developing autonomous vehicle technology for a nominal charge to encourage development and innovation in Qld – but with a clear understanding that they can never be used for any commercial purposes – ie they can never receive any form of payment for any travel the vehicles make
 - Give every existing TSL owner ten (10) Commercial autonomous vehicles licences (CAVLs) for every one TSL owned (not capped, not dependent on licence ownership structure)
 - At some time in the future (likely to be within the next decade, commercial autonomous vehicles will be operating on Qld roads to transport either goods or passengers or both
 - If ALL of these commercial AVLs are required to operate under a CAVL and the only CAVLs available are owned by the TSL owners, then large corporations –such as Ford, Volvo, Apple, Google etc will need to either buy or lease their required CAVLs from the TSL owners.
 - This is a mechanism whereby the value lost because of government changes to TSLs could possibly be partially recouped from corporations (rather than from taxpayers/government) to fund compensation for destruction of the value of TSLs by the government
- v) It may be possible to use a combination approach

39. As Proposed:

"91E Original taxi service licence

(1) A taxi service licence that was in force immediately before the commencement (an **original taxi service licence**) continues in force as a taxi service licence under section 91D for the taxi service area stated in the licence."

Comment:

- The definition states "continues in force for the taxi service area stated in the licence"
- This then has some conflict with Clause 91G – see below

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40. As Proposed:

"91F Issue of a taxi service licence

- (5) For a taxi service licence issued on a renewable basis—
- ... (c) the sum of the terms of the licence must be not more than 5 years.
- (6) A taxi service licence issued on a non-renewable basis must not be renewed.
- (7) A taxi service licence issued under this section is not transferable to another person."

Comments:

- Any new taxi licences can only be issued for a maximum of 5 yrs and are non-transferable
- The proposed amendments create a very complex and messy structure for the passenger transport industry in Qld:
 - Original TSLs – perpetually renewable, area defined, very high capital cost already paid, but can be changed at any time with no warning
 - Original Limousine licences – renewable, whole of Qld, moderate capital cost
 - Booked hire service licences – unclear of purpose, unclear who can own them, annual, minimal annual fee
 - New TSLs – renewable or non-renewable, area defined, costs uncertain, purpose and conditions uncertain
- Overall summary is that there is much disruption, enormous loss of assets and income from law-abiding Queenslanders who have been faithfully providing an essential public service, and the end result appears to be something that is disorganised and that **fails to ensure Queenslanders will have access to a safe, affordable transport, or indeed any transport at all.**
- **This is a huge political risk**

41. As Proposed:

"91G Transfer of taxi service licence between taxi service areas

- (1) The chief executive may amend a taxi service licence to change the taxi service area for the licence to another taxi service area if—
 - (a) the holder of the licence successfully offers for a transfer to the other taxi service area following the calling of offers by public notice; or
 - (b) the taxi service areas are amalgamated; or
 - (c) the holder of the licence applies to transfer the licence to the other taxi service area.
- (2) Subsection (3) applies if, in the chief executive's opinion, the value of a taxi service licence increases because the licence is transferred to another taxi service area under subsection (1)(a) or (c).
- (3) The chief executive may require, as a condition of a transfer mentioned in subsection (1)(a) or (c), the holder of the taxi service licence to pay to the chief executive an amount representing the increase in value.
- (4) This section does not limit the power to make regulations about amending taxi service licences."

Comments:

- Section 91G (4) means provides authority to use subordinate legislation to amend powers that are invested in the Act as it effectively means that Taxi Service Licences can legally be

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changed in any way, at any time. This oversteps the power of subordinate legislation and is a breach of Fundamental Legislative Principles

- Separately, Section 91G reinforces the concept that Taxi Service Licences are a tradeable asset with specific property rights dedicated to specific geographic areas/locations AND that different locations have different values (analogous to real property where different suburbs, or different zoning classifications affect the commercial value of property and that property is tradeable on commercial grounds)
- This is further confirmed by the Redcliffe WAT taxi licence tender 2014⁵³

“Annexure E

Taxi service areas with excess taxi service licences

The following taxi Service areas have been identified as having an excess of conventional taxi service licences:		
Taxi service area	Number of excess licences	Value of licences
Mission Beach	1	\$140,000
Cloncurry	1	\$97,000
Charleville	1	\$30,000
Roma	1	\$100,000
Innisfail	1	\$199,400

Annexure F

Use of financial incentive of 15 per cent (15%)

A financial incentive of 15 per cent (15%) may be given to a conforming taxi service licence tender that uses, as part of its offer, the transfer from an area with an identified excess of taxi service licences. The financial incentive of 15 per cent (15%) will be applied to each eligible tenderer's bid as a price mark up.

An example of how this financial incentive works is as follows:

Cash deposit:	\$ 5 000
Cash balance payable:	\$150 000
Total cash offered:	\$155 000
Value of declared excess licence:	\$150 000
Total cash and licence:	\$305 000
15 per cent (15%) preference:	\$ 45 750
Gross tender amount:	\$350 750”

- Section 91G also highlights that the government expects changes to taxi service areas that result in an increase in the value of the asset (TSL) to be accompanied by additional payment to the government reflecting that change in capital value of the owned asset.
- It then is manifestly inappropriate that in the same Bill, the government is seeking to cement in legislation changes that have already resulted in a marked decrease in the capital value of the assets sold by the government and further specifically includes Sections and Clauses that seek to preclude compensation ever being payable
- See also, comment 8 regarding Section 36 AA above & other relevant comments throughout the submission

⁵³ Tender Conditions for one (1) Wheelchair Accessible Taxi Service Licence Redcliffe Taxi Service Area QPT001/14

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42. As Proposed:

Division 2 Limousine licences

“91H What is a *limousine licence*

(1) A *limousine licence* is a licence issued by the chief executive under which the holder may provide booked hire services using the motor vehicle stated in the licence.”

Comment:

- The definition of limousine licence is identical to the definition of booked hire service licence
- It is incongruous to have two different things with the same definition

Division 3 Booked hire service licences

43. As Proposed:

“91J What is a *booked hire service licence*

A *booked hire service licence* is a licence issued by the chief executive under which the holder may provide booked hire services using the motor vehicle stated in the licence.”

Comments:

- There are numerous problems with this definition:
 - It is unclear whether the licence is to person, or whether it could be obtained/purchased by individuals, partnerships, a company, trust, superannuation fund etc
 - It is not attached to a specific geographic area – this is in stark contrast to all other parts of TOPTA where taxi service licences and bus/mass transit licences/contracts are aligned to specific geographic locations
 - It states that it is for the vehicle stated in the licence – does this mean that the booked hire licence is a substitute for vehicle registration – ie vehicle is registered as a booked hire vehicle with dedicated number plates?
 - The licence appears to be specific to the vehicle - not to the driver or to the driver/vehicle combination
 - It DOES NOT state that a driver providing booked hire services is required to have a booked hire licence – clearly they have to hold the correct Driver Authority
 - It is clear that there is provision for booked hire licences to be leased via Regulation (see Comment 50 regarding Section 91S, but uncertain whether they can be managed, or subleased
- A comparison to the historical way taxi service licences have worked is that
 - A TSL is for a TS Area and is a licence to operate a service with exclusivity – limited vehicle numbers in a defined geographic location providing ALL on demand passenger transport services – regardless of the modality of hiring
 - The TSL can be owned by individuals, partnerships, companies, trusts, superannuation funds
 - While a vehicle is nominated in the TSL, the specific make, model and registration number are listed in a separate Schedule and can be changed/substituted – ie the vehicle DOES NOT form the licence number and is a variable factor that changes over time rather than a fixed permanent unique part of the licence
 - The licence contains specific government requirements about the vehicle type – eg sedan, wheelchair accessible vehicle, people mover vehicle green/hybrid vehicle etc

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- All of these serve to ensure that there is net Community Benefit, the industry is viable, workers can earn a fair wage

Suggestion:

- It is imperative that more work is done to clearly define the structure of the passenger transport industry for all licence types, and the roles and responsibilities of all parties in every capacity
- See numerous comments throughout the submission including comments on page 14, Appendix A Comment 40, Comment 46, Comment 48, Comment 49, Comment 74 regarding Section 91ZT, Comment 38 regarding Section 91D, Comment 99 regarding the definition and purpose of taxi service licence, Appendix B Comment 117 for more detail

44. As Proposed:

“91L Term of booked hire service licence

(3) However, before a booked hire service licence expires, the holder of the licence may apply for another booked hire service licence to replace the expiring licence.”

Comment:

- Booked hire service licences are perpetually replaceable instead of being renewable
- Uncertain of potential legal reasons for, or significance of, subtleties in this

45. As Proposed:

“91M Booked hire service licence not transferable

A booked hire service licence is not transferable to another person.”

Comment:

- This lacks clarity which is related to the absence of a clear structure for the personalised transport industry
- The Booked hire service licence is not transferable to another person, but the licence is for the vehicle
- While the licence is non-transferable, Section 91S (b) says the licence can be leased (via Regulations) and there is no mention to say that it can't be subleased or managed etc

Suggestion:

- If the intent that this is an owner-driver licence model, then more detail and clarity needs to be included in the Bill
- See comment 48 regarding Section 91Q for more details regarding a suggestion mandating that Booked hire service licences are **a unique combination** that is the registered vehicle owner-driver-operator-booked hire service licence

Division 4 General provisions for licences

46. As Proposed:

“91O Conditions of licence

(2) The holder of a licence and the operator of a taxi service or booked hire service provided using a motor vehicle stated in the licence must not contravene a condition of the licence. Maximum penalty for subsection (2)—40 penalty units.”

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Comments:

- Operator of a taxi service is re-defined in Schedule 3 as an Operator/provider of any service, but the roles and responsibilities of the Operator and the relationship between the licence holder, the booking entity, the driver, the vehicle owner, or a lease of a licence or vehicle are unclear and not defined. This needs far greater clarity and definition
- The penalty listed in Section 91O is relatively trivial compared to other penalties listed in the Bill
 - Operating a taxi service using booked hire service vehicles/licences would no doubt contravene “a condition of the booked hire service licence”
 - Because the penalties are inconsistent, Section 91O is inconsistent with Section 74 of the Bill
- May require different penalties for Operators of taxi services contravening conditions of licence from Operators of booked hire service licences or limousines contravening conditions of licence - depending on the ultimate desired (but not yet defined) structure of the passenger transport sector

Suggestion:

- The roles and responsibilities of the Operator and the relationship between the licence holder, the booking entity, the driver, the vehicle owner, or a lease of a licence or vehicle needs far greater clarity

47. As Proposed:

“91P Amendment of licence

- (1) A regulation may authorise the chief executive to amend the conditions of a licence if the chief executive is satisfied the amendment is necessary for improving public passenger services in the public interest.
- (2) A regulation may also authorise the amendment of a licence in other circumstances and make other provision about amending a licence.”

Comment:

- Section 91P (1) is the public interest test – see Comments on pages 17-19 of this submission regarding the published Qld govt documented approach to application of the Public Benefit Test. This objective methodology **MUST** be applied to the Bill and associated documents **BEFORE** the Bill is returned to the parliament.
- However, Section 91P (2) means that the Bill seeks to give the government and the Department the power/authority to power to change the effects of an Act using subordinate legislation – ie Regulations
- Subclause (2) means in future, it will be possible to do anything to TSLs in any way at any time without the need to go back through the Parliamentary Committee and full legislative process - eg Under subclause (2) the government could make a Regulation that says TSLs are to be used as confetti and have no other purpose
- This is a huge issue – the government sold something (an exclusive licence) for \$500,000 & now provide no certainty as to what people have bought from them. It is a post hoc change that effectively give the Bill Retrospectivity
- The justification of flexibility and responsiveness is along the same lines as the TCQ argument that a Taxi Commission should have similar powers, but there must be a balance

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between powers to make changes that must pass an objective public benefit test, versus unfettered power with no controls

- This is recognised as FLP issue in the Explanatory Notes

Suggestion:

- Section 91P subclause (2) oversteps the boundaries of reasonableness regarding parliamentary power
- Inappropriate – suggest delete clause as oversteps authority

48. As Proposed:

“91Q Notice to driver about licence

(1) The operator of a taxi service or booked hire service provided using a motor vehicle must give each driver of the vehicle a written notice stating the following information for the licence for the vehicle—

- (a) the details of the vehicle stated in the licence;
- (b) any conditions of the licence;
- (c) for a taxi service licence—the taxi service area for the licence.

Maximum penalty—40 penalty units.”

Comment - Multiple issues:

- Operator of booked hire service licence and relationship with booked hire service licence and registered vehicle owner is not defined – see Comment 46 regarding Section 91O above
- Why are booked hire service licences not allocated to the same defined areas with capped licence numbers – which is the method by which TOPTA achieves its legislated objectives and is the method by which Section 36 applies to taxi licences
- When assessed against the unamended Objectives of TOPTA, it FAILS the Public Benefit Test for all booked hire vehicles be excluded from all controls – for example – all licensed booked hire vehicles could be in the city or Gold Coast nightclub precincts rather than being available to transport the elderly or disabled in outer suburbs to enable social inclusion of isolated people without transport

Suggestion:

- Needs much more work, definitions, clarity – particularly to define industry structure
- Would be much simpler if suggestions under Comment xxxxx is adopted
 - Mandate that Booked hire service licences are **a unique combination** that is the registered vehicle owner-driver-operator-booked hire service licence
 - ie the **only person** who can **purchase a booked hire service licence** is the **registered owner** of the **vehicle identified in the licence** and who will **personally driver that one specific vehicle to provide/operate booked hire services under that licence**
 - This is also the model promoted by booking entities such as uber – where a driver uses the spare capacity in their personal vehicle to earn a few extra dollars by providing booked hire services
- ie specifically:
 - **Prohibit** leasing and subleasing of booked hire service licences
 - **Prohibit** leasing, subleasing, renting booked hire service vehicles
 - **Prohibit** non-registered owners of the booked hire vehicle being able to obtain a booked hire service licence for that vehicle
 - **Prohibit** non-registered owners of the booked hire vehicle driving or operating that vehicle to provide booked hire services

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49. As Proposed:

91R Vehicle stated in licence

(3) A regulation may allow—

- (a) the holder of a licence to apply to the chief executive to change the motor vehicle stated in the licence to another vehicle that complies with the vehicle requirements; and
- (b) a vehicle that complies with the vehicle requirements, other than the vehicle stated in a licence, to be used under the licence in stated circumstances and on stated conditions.

Comment:

- It appears that the holder of any licence is not the vehicle owner, nor the Operator, nor the driver. This needs clarification and resolution. See comment 48 above regarding Section 91Q
-
- What happens if the driver is driving a vehicle that is not the one listed on the licence? (if it can be legally defined as to who has a licence to do what – eg vehicle owner, booking corp/entity, driver etc)
- See comments 48 above regarding Section 91Q

Suggestion:

- Need clarification and resolution regarding licence structures and functions of all defined parties. See comment 48 above regarding Section 91Q
- Need more definition, clarity and specific details about substituting a vehicle, and separation of a long term change from an old licenced vehicle to a replacement new vehicle, versus swapping vehicles operating under the licence on a day a by day or hour by hour basis

50. As Proposed:

91S Transfer, lease or surrender of licence

(1) A regulation may provide for—

- (a) an original taxi service licence or limousine licence (other than a special purpose limousine licence) to be transferred to another person; or
- (b) a licence to be leased or surrendered.

Comment:

- Clause 91S (b) allows for all four categories of licences to be leased
- The four new licence categories that can be leased are:
 - Original taxi service licences – transferable, perpetual
 - New taxi service licences – non-transferable, maximum term 5 yrs
 - Original limousine licences - transferable, perpetual
 - Booked hire service licences – non-transferable, term 1 yr but automatically replaceable
- This Clause means that **none** of the licences are an Owner-driver-operator-vehicle owner model – which was one of the reasons that legalisation of uber was allowed
- Why is licence surrender being legislated?
 - Does this mean TMR feels that licences have no value and can't be sold?
 - If there was ANY residual value – the licence would be sold (eg like a bank doing a 'mortgagee in possession' sale, or a local council selling property for unpaid rates – nowhere are any other assets simply surrendered)

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- This is another area where the legislation breaches FLPs

51. As Proposed:

91T Suspending and cancelling licence

- (1) A regulation may provide for suspending and cancelling a licence.
- (2) Without limiting subsection (1), a regulation may authorise the chief executive to—
 - (a) suspend or cancel a person's licence if the person contravenes—
 - (i) a condition of the licence; or
 - (ii) a provision of relevant transport legislation relating to providing a taxi service or booked hire service or a motor vehicle used to provide a taxi service or booked hire service; or
 - (b) immediately suspend a person's licence if—
 - (i) the vehicle is required to comply with the vehicle requirements prescribed under section 91R(1) and the vehicle does not comply with the requirements; or
 - (ii) the chief executive considers it necessary in the public interest.

Comment:

- Why are limousine licences not included in this list?
- The breadth of the list in Section 91T (2) (a) (ii) reflects the lack of clarity as to who holds/owns the licence – booking entity, Operator, driver, other etc?
- Given the many challenges associated with enforcement against a foreign booking entity, it may be prudent to consider adding a further clause or subclause to Section 91T such as “91 T (2) (b) (iii) the authorisation of any booking service entity under which the booked hire service licence operates is suspended or cancelled”

52. As Proposed:

“91U Register of licences

- (2) The register must contain at least the following particulars for each licence—
 - (a) the holder's name and contact details;
 - (b) the number of the licence;
 - (c) the day the licence takes effect and expires;
 - (d) details of the vehicle stated in the licence;
 - (e) for a taxi service licence—the taxi service area for the licence;
 - (f) any conditions of the licence.
- (4) The chief executive may publish information from the register on the department's website including, for example—
 - (a) the number of a licence; and
 - (b) details of the vehicle stated in a licence.
- (5) However, the chief executive must not publish information from the register about an individual.”

Comment:

- Why are taxi licences restricted to taxi service areas when other licenses and vehicles are not?
- It would NOT be in the public interest if one entity was the holder of say 50,000 licenses –

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Suggestions:

- For Clause 91U (2) – add in (g) whether licence is leased, subleased or managed and to whom
- For Clause 91U (5) - should allow for information to be published by Regulation if it is deemed in the public interest or, if any one entity holds more than 20 licences

Division 5 Booking entity authorisations

53. As Proposed:

“91V What is a *booking entity authorisation* and an *authorised booking entity*

- (1) A ***booking entity authorisation*** is an authority under which a person may provide booking services for a booked hire service.
- (2) A person is an ***authorised booking entity*** for a booked hire service if the person holds a booking entity authorisation for the booked hire service.”

Comment:

- To be a booking entity, they only have to hold authorisation – they don’t actually have to be providing booking services?
- Unsure whether that is the intent?

Suggestions:

- Again, the dilemma raised here reflects the need to establish and define the roles and responsibilities of each defined group in the Chain of Responsibility and clarify the functions of each group
- See numerous comments throughout the submission including comments on page 14, Appendix A Comment 40, Comment 46, Comment 48, Comment 49, Comment 74 regarding Section 91ZT, Comment 38 regarding Section 91D, Comment 99 regarding the definition and purpose of taxi service licence, Appendix B Comment 117 for more detail

54. As Proposed:

“91W Granting or refusing booking entity authorisation

- (1) A regulation may provide for granting, or refusing to grant, a booking entity authorisation.
- (2) If an applicant for a booking entity authorisation is a foreign person, the application for the booking entity authorisation must include—
 - (a) the applicant’s nomination of its representative under section 91ZD; and
 - (b) any other information required by the chief executive.
- (3) Without limiting subsection (1), a regulation may—
 - (a) state the circumstances in which the chief executive may refuse to grant a person a booking entity authorisation, including, for example, that the person or another relevant person has been charged with, or convicted of, a disqualifying offence; and
 - (b) provide for an authorising document; and
 - (c) provide for the form and contents of an authorising document.”

Comments:

- The Regulation defining who is suitable (esp local nominee) is not yet available

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Suggested specific wording:

- Section 91W (3) (a) needs to include cases where entities have admitted liability/guilt for a suspension/disqualifying offence – even if they have not been charged or convicted

91W (3) (a) “ for example, that the person or another relevant person has **admitted to, or** been charged with, or convicted of, a **suspension or** disqualifying offence ... “

Reasoning:

- For example, uber has publicly admitted to using their Greyball software program to avoid detection and law enforcement. This has also been confirmed by both TMR staff and uber at public hearings of Qld Parliamentary committees (See Comments on pages 5-6, 11 and Appendix A comments 27 – 28 regarding Sections 81 & 82, Comment 58 regarding Section 91ZA, Comment 82 regarding Section 150C, Appendix B Comment 120 regarding Section 117K)
- Uber has already potentially avoided the risks associated with suspension under this Section by simply openly admitting guilt – potentially obviating the need to either be charged or convicted
- The Explanatory Notes clearly state:
*“Another ground for immediate suspension in section 91ZA is that the person or the person’s local nominee takes steps to avoid detection of, or prosecution for, an offence committed by the person or another person relating to booked hire services or booking services for booked hire services. This ground is justified because the ability of the State to ensure compliance with the laws of Queensland is critical to upholding the rule of law. If a person takes steps to avoid detection of, or prosecution for, an offence, for example, by giving another person information about how to avoid detection, the ability of the State to effectively enforce its laws is compromised. **Any person who acts in this way is not suitable to provide booking services in Queensland.**”*
- If actions such as those described indicate that a person is “not suitable to provide booking services in Qld” and consequently that their booking authorisation is immediately suspended, then surely these same grounds would justify never issuing a booking authorisation to an entity that has already admitted or been convicted of these offences
- Therefore, even though not charged, found guilty, and convicted, these are clearly listed as reasons for authorisation to be suspended – hence authorisation must not be granted in the first instance

55. As Proposed:

“91X Term of booking entity authorisation”

Comments:

- The Bill specifies a maximum term of 5 years, but automatically entitled to apply for replacement
- Why not start with 12 months in the first instance? See suggestion below.
- Again the Bill uses the concept of a perpetually replaceable authority/licence vs a renewable licence – unsure of reasons why

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Suggestion:

- Suggest using a scheme similar to that for standard driver's licences: For example a Provisional Booking Entity Authorisation for the first 12 months and, if satisfactory performance over first 12 months, then entities can apply for Full/Open Booking Entity Authorisation for a period up to 4 more years

56. As Proposed:

91Y Conditions of booking entity authorisation

- (1) A booking entity authorisation is subject to the conditions stated in the authorising document by the chief executive.
- (2) An authorised booking entity must not contravene a condition of the entity's booking entity authorisation.
Maximum penalty—40 penalty units.

Comment:

- Minimal and inconsistent penalty for contravening conditions of authorisation

Suggestion:

- Need to apply consistent penalties within the Act – eg apply same penalties as suggested for Section 74 (see Comment 20 above)
 - Examples of breaching conditions of the authority obviously includes activities such as - illegal activities such as blocking enforcement officers using Greyball type software, or providing taxi services under booking entity authorisation

57. As Proposed:

91Z Amendment of booking entity authorisation

- (1) A regulation may authorise the chief executive to amend the conditions of a booking entity authorisation if the chief executive is satisfied the amendment is necessary for improving booking services for booked hire services in the public interest.

Comment:

- The Bill proposes that there will be no Service Contracts to ensure service
 - (See Comment 9 regarding Clause 9 and Comment 86 regarding Section 210)
- Section 91Z demonstrates that the Bill attempts to enshrine a reactive approach to regulation after failure – ie watch the service be bad and vulnerable members of the community fail to receive access to transport services due to failed government policy and legislation, and then react, and then take time to fix it
- This approach has a very high political risk and could easily see an outcome similar to the current the rail debacle

Suggestion:

- It is imperative that the PWUC and the parliament remember the addage –
 - “Proper Planning Prevents Poor Performance”
- Undertake a major re-work of the entire Bill focusing on the desired outcome for the community – the public need access to affordable safe transport
- Write legislation that will ensure the desired outcome is deliverable and achieved

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58. As Proposed:

91ZA Suspension and cancellation of booking entity authorisation

- (2) Without limiting subsection (1), a regulation may authorise the chief executive to—
- (a) suspend or cancel a person's booking entity authorisation if—
 - (b) immediately suspend a person's booking entity authorisation if—
 - (i) for a person who is a foreign person—the person does not have a local nominee; or
 - (ii) the person or, for a person who is a foreign person, the person's local nominee takes steps to avoid detection of, or prosecution for, an offence committed by the person or another person in relation to providing a booked hire service or booking service for a booked hire service; or
 - (iii) the chief executive considers it necessary in the public interest.

Comments:

- Looks like this should mean that uber would be ineligible to get authorisation. However, the wording looks like a legal loophole for uber
- It is the Greyball software on a rented computer server in a foreign country that uses computer algorithms to decide to uninstall the real uber app and replace it with a shadow version of the app in order to avoid detection by enforcement officers
- This may not be covered by Clause 91ZA as the wording in 91ZA (2) (b) (ii) says
“for a person who is a foreign person, the person's **local nominee takes steps to avoid** detection of,”
- Uber would be able to demonstrate that it wasn't their local nominee who uninstalled the real app and installed shadow software on the mobile phones of enforcement officers
- This demonstrates how the Bill FAILS to actually achieve effective enforcement of the relevant laws – despite both the intention, and the statement that this is an essential issue

Major Issues:

- As enforcement is no more achievable with new legislation than the old legislation, and the amendments FAIL to ensure that Queenslanders have access to transport services, the Bill needs to be re-drafted in order to achieve the Objectives of TOPTA and the stated purpose of the Bill (Section 68). Otherwise Queensland is going through major upheaval for nothing
- Separately, what actually happens when a booking entity's authorisation is suspended?
 - How is that enforced if they don't comply – eg uber just keeps taking bookings and despatching drivers/cars
 - How could the app be blocked – as it is not run on computer servers in Australia?
 - How can Qld enforce suspended or cancelled authorisation if a local nominee corporation is issued with a 30,000 penalty point fine, but just declares bankruptcy? There may be no assets, no capital, no direct ownership link to the foreign booking entity & the app still runs on the mobile phones of customers and drivers. Driver may have multiple booked hire logo stickers on their windcreens – how will enforcement officers know that drivers are accepting bookings from a suspended booking entity vs a non-suspended entity?

Suggestion:

- The Bill needs major work and re-drafting
- Enforcement areas need to be strengthened in order to aim for effective enforcement – many of the Sections of the Bill currently FAIL to achieve that

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59. As Proposed:

91ZB Transfer, lease or surrender

Comment:

- The Bill is poorly worded:
 - Section “91ZB Transfer, lease or surrender (2) A **regulation may provide for a booking entity authorisation to be surrendered.**”
is simply a subset of
 - Section “91ZA Suspension and cancellation of booking entity authorisation (1) A **regulation may provide for suspending and cancelling a booking entity authorisation.**”
... without the clarifying subclauses

Suggestion:

- Needs tightening and strengthening
- Needs specific clauses that, based on evidence and admissions (ie past track record), that some organisations, entities, persons, are ineligible (ie not of suitable character) to be granted authorisation as a booking entity

Subdivision 2 Local nominee

60. As Proposed:

“91ZC Application of subdivision

This subdivision applies if an authorised booking entity is a foreign person.”

Comment:

- What happens if it is a computer algorithm on a foreign leased server rather than a “person”?

61. As Proposed:

“91ZD Requirement for local nominee

- (1) The authorised booking entity must nominate 1 person to be its representative for the purposes of this Act (the entity’s **local nominee**).
- (2) The nominated person must be—
 - (a) an individual who usually lives in Australia;
 - or
 - (b) a corporation incorporated in Australia.”

Comment:

- While the idea behind this seems reasonable, it is unsure that it will actually deliver effective enforcement against foreign authorised booking entities.
 - For example – the local nominee could be a corporation incorporated in Australia with a minimal (eg \$2) paid up capital and no assets.
 - This corporation could have a sole director who is a foreign national who normally resides on foreign shores, but who rents a notional ‘place of residence’ in Australia for the purposes of ASIC and company records

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- It is difficult to envisage how corporate penalties of up to 30,000 penalty points (as outlined under Section 90) could effectively be enforced (as per Clause 91ZE) against this nominee local corporation

Suggestion:

- Needs tightening
- See comment 58 above regarding enforceability of failure of foreign entity to comply and local nominee corporation declares bankruptcy and mobile phone apps keep running from foreign computer servers
- The ONLY assets and people available for true enforcement are local people and assets (located in Qld)
- In the absence of compliance by both the local nominee AND the foreign entity, need to deem that all drivers and vehicle are guilty of providing taxi services not using a taxi & Section 74 penalties apply to each and every driver and each and every vehicle

Suggested specific wording:

"If the booking entity or their local nominee has their booking entity authorisation suspended and/or cancelled, but fails to cease booking services, then every booked hire service licence linked to that authorised booking entity is also immediately suspended and/or cancelled AND any driver that undertakes a booked hire service via that suspended or cancelled booking entity's mechanisms/processes/systems will be deemed to be guilty of providing a taxi service using a non-taxi vehicle & Section 74 penalties apply AND every vehicle linked to the suspended or cancelled booking entity will have its vehicle registration cancelled and, any vehicle in which a service is provided/ in which the offence occurs is awarded the same penalties as if the driver is guilty of a taxi service vehicle offence - using a non-taxi vehicle & Section 74 penalties apply"

- Also see comment 25 regarding penalties under Section 78

Subdivision 3 General provisions

62. As Proposed:

"91ZG Obligation to keep and provide information

(1) An authorised booking entity must keep the information prescribed by regulation about the following matters, in the way and for the period prescribed by regulation—

- (a) the booking services provided by the entity;
- (b) booked hire services for which the entity provides booking services.

Maximum penalty—150 penalty units.

(2) An authorised booking entity must provide the information the entity must keep under subsection (1) to the chief executive, in the way and at the times prescribed by regulation.

Maximum penalty—150 penalty units.

(3) Information given to the chief executive under this section is not admissible in a civil, criminal or administrative proceeding other than a proceeding about complying with subsection (1) or (2).

Comments:

- This is a low penalty level and is inconsistent with other penalties within the Bill
- The records of the booking entities are the ONLY evidence that proves that the services that were provided were booked hire services rather than taxi services

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- Therefore, the penalty for Clause 91ZG **MUST be IDENTICAL** to the penalties outlined/suggested under Section 74 – providing a taxi service in a non-taxi vehicle
- In off-shore markets, uber has chosen to pay a fine for failing to provide data to authorities⁵⁴, rather than to provide the data. Given this documented track record, the Bill needs to provide an escalating and ultimately high level penalty for repeated non-compliance – which would also make the penalties in this Section align with similar escalating penalties for repeat offences in other Sections of the Bill
- Again, this Section allows a Regulation to be made, but no Regulation is currently available for review
- For Section 91ZG (3) regarding data/evidence being inadmissible in other proceedings – it is unclear why a booking entity's own data would be inadmissible as evidence?

Suggestion:

- Need escalating and high level penalties to ensure booking entities supply essential data to the government for both compliance and future planning (essential for the Public Benefit) and to make this Section consistent with other parts of the Bill (eg Section 74)
- Consider deleting Section 91ZG (3) as legitimate data must be valid and correct and if it reveals activities that breach relevant legislation then it is only appropriate that the data be capable of being admissible as evidence
- Any amendments proposed here should be consistent with the types of data, records and disclosures that exist in other Qld transport Acts and Regulations. For example:

Motor Accident Insurance Regulation 2004

"Part 5 Public disclosure of information

14 Information may be publicly disclosed

The commission may publish information the commission considers should be disclosed in the public interest about—

(a) a licensed insurer's financial position; or

(b) a licensed insurer's management of claims, provision of rehabilitation services, or compliance with other obligations under the statutory insurance scheme; or

(c) other matters about the conduct of CTP insurance business."

- Section 14 (c) of the Motor Accident Insurance Regulation 2004 demonstrates a precedent and clearly indicates that it is in the Public Interest and reasonable to publicly disclose any information about "matters about the conduct of the business" – which, in this case, would be the booked hire, taxi and limousine, or personalised transport business
- Data such as this is essential for government planning - eg roads, traffic lights, traffic flow
- Data such as this is essential is also in order to ascertain whether more or fewer passenger transport licences are needed to ensure universal access to services that the public need

⁵⁴ "Uber has been fined \$7.6 million by the California Public Utilities Commission (CPUC) for a failure to report data on its drivers but will pay the fine in the meantime to avoid having its license suspended."

<http://www.theverge.com/2016/1/14/10772412/uber-fine-california-utility-driver-data>

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63. As Proposed:

“91ZH Register of booking entity authorisations

- (1) The chief executive must keep a register of booking entity authorisations.
- (2) The register must contain at least the following particulars for each booking entity authorisation—
 - (a) the authorised booking entity’s name, business name (if any) and contact details;
 - (b) the number of the authorisation;
 - (c) the day the authorisation takes effect and expires;
 - (d) if the entity is a foreign person—the name, business name (if any) and contact details of the entity’s local nominee;
 - (e) any conditions of the authorisation.
- (4) The chief executive may publish information from the register on the department’s website, including, for example, the following—
 - (a) an authorised booking entity’s name and business name (if any);
 - (b) if an authorised booking entity is a foreign person—the name and business name (if any) of the entity’s local nominee;
 - (c) the identifying number of a booking entity authorisation.
- (5) However, the chief executive must not publish information from the register about an individual other than the information mentioned in subsection (4)(a) and (b).”

Suggestion:

- In the interests of assisting compliance and the collection of appropriate GST from all authorised booking entities, suggest that
 - All authorised booking entities (and/or their local nominee) be registered for GST, AND
 - the authorised booking entity’s ABN is provided to TMR and recorded on the Register of booking entity authorisations at the time of application for booking entity authorisation
 - For Clauses 91ZH (4) & (5) – suggest including details about GST status and ABN – also – for foreign booking entities – need both local nominee AND foreign entity (for public interest/transparency)

Part 5 Enforcement

64. As Proposed:

“91ZI What is a *relevant driver offence*

An offence committed by the driver of a motor vehicle against any of the following provisions is a ***relevant driver offence***—

- (a) section 27(1);
- (b) section 74(1) or (2);
- (c) section 75(2);
- (d) section 76(1);
- (e) section 77(1);
- (f) section 78(2);
- (g) section 82(1) or (3).”

Comment:

- These are reasonable

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Suggestion:

- Need to add a section pertaining to vehicle offences See Comment 20 regarding Section 74) so that the vehicle in which the relevant driver offence was committed is impounded and/or forfeited at the same time as the driver is issued with the offence notice)
- See also Appendix C Comment 135 regarding the need to define Booking Entity Disqualifying Offences and related clauses

65. As Proposed:

"91ZJ Chief executive may suspend driver licence

(4) The chief executive suspends a person's driver licence under subsection (3) by giving the person a written notice stating the following—

- (a) the person's driver licence is being suspended;
- (b) the day the suspension starts, which must be at least 7 days after the day the notice is given;"

Comment:

- It is unclear why suspension doesn't commence immediately
- Issues regarding non-compliance with FLPs regarding Clause 91ZJ (4) (e) - No right to appeal – are noted in the Explanatory Notes

Suggestion:

- Need to add full details regarding vehicle impoundment as well - see Comment 20 regarding Section 74 above
 - ie, if a relevant offence is committed, the immediate suspension of a driver's licence plus the immediate impounding of the vehicle will have a significant deterrent effect that will help curb illegal activity and that will aid overall enforcement – even if the authorised booking entity manages to position itself out of the reach of Qld enforcement officers
 - This will help contain the potentially very high costs associated with enforcement and compliance

66. As Proposed:

91ZK General effect of suspension of driver licence

(2) While the person's driver licence is suspended—

- (c) if the person does not hold a driver licence—the person is disqualified from holding or obtaining a driver licence; and

Comment:

- Transport Operation (Road Use Management Act suggests that a Licence can be suspended for period from 1 (minimum) to 6 (maximum) months
- Transport Operation (Road Use Management Act suggests that a person cannot re-apply for a licence while their licence is suspended
- However, Section 91ZK does not make it clear regarding the period of disqualification "from holding or obtaining a driver licence"
 - If the disqualification is indefinite (ie a life sentence), it would likely breach FLPs

Suggestion:

- Strengthen wording for clarification

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67. As Proposed:

“91ZL Effect of suspension of driver licence on vehicle insurance

- (1) The suspension of a person’s driver licence under this Act does not terminate a vehicle insurance policy.
- (2) Also, a claim under a vehicle insurance policy can not be refused only because a person’s driver licence is suspended under this Act.
- (3) This section applies despite anything to the contrary in a vehicle insurance policy or any other agreement.
- (4) In this section— **vehicle insurance policy**—
 - (a) means a policy of insurance for damage or loss caused by, or arising from, the use or operation of a vehicle; but
 - (b) does not include a CTP insurance policy under the *Motor Accident Insurance Act 1994*.”

Comments:

- The Bill is poorly worded, lacks clarity, and contains inconsistencies
- It is inconsistent (& therefore probably fails FLPs) to try to legislate that CTP claims are not payable if a driver’s licence is suspended under Section 91ZJ, but that general motor vehicle insurance claims ARE payable despite a driver’s licence being suspended under Clause 91ZJ
- Further, it is unclear whether this is meant to apply to (and only to) the vehicle in which the offence was committed, or to each, every, and any vehicle that the driver may drive during their period of driver licence suspension
- Logic simply suggests that, in the letter advising the driver that their licence has been suspended, it includes a specific caution advising the potential consequences should they drive any vehicle during that time - & the consequence includes that the insurance (general and CTP) of ANY vehicle they drive will be invalidated by such actions

Suggestion:

- Amend Section to state that all insurances (general and CTP) are invalidated for each and every vehicle a suspended driver drives.
- Further amend 91ZJ above to include information about this in the letter/notice provided/sent to the driver

Division 2 Audits

68. As Proposed:

“91ZM Purpose of division

The purpose of this division is to allow the chief executive or an authorised person to carry out an audit of a person in the chain of responsibility for a taxi service or booked hire service for either or both of the following purposes— ...”

Comment:

- Given that limousines can do booked hire work, why are they not included in the audit legislation

Suggestion:

- Given that Limousine licence are now preserved, needs correcting (here and throughout the entire Bill) to avoid confusion and reliance on presumption that references to booked hire licences/services are interchangeable with limousine licences/services

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Suggested specific wording:

“The purpose of this division is to allow the chief executive or an authorised person to carry out an audit of a person in the chain of responsibility for a taxi service, **limousine service**, or booked hire service for either or both of the following purposes— ...”

69. As Proposed:

“91ZO Failure to comply with audit notice

A person who is given an audit notice must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.”

Comment:

- Penalties listed here are very low and are inconsistent with penalties listed elsewhere
- It is inappropriate to incentivise failing to produce records OVER failing to comply with legislation/regulations/requirements
- There is nothing to require that records must be provided in English in a legible and understandable format – ie it is necessary to mandate that the record cannot be provided in a foreign language, coded format, or formatted in such a way as to not be readily understandable to an average person/enforcement officer

Suggestion:

- Needs correcting & strengthening
- Penalties need to be the same as those suggested for Section 74 and/or those outlined under Section 90

70. As Proposed:

“91ZP Audit report

(1) As soon as practicable after an audit is carried out, the chief executive must give the person whose business activities were audited a report about the audit.

(2) An audit report must include the matters prescribed by regulation.”

Comment:

- There is a lack of clarity as Section 91ZM (Purpose of division) states that : “The purpose of this division is to allow the chief executive or an authorised person to carry out an audit of a person in the chain of responsibility for a taxi service or booked hire service for either or both of the following purposes—
(a) to assess the person’s **compliance with relevant transport legislation** in relation to—”

Suggestion:

“(2) An audit report must include the **assessment of compliance with relevant transport legislation, and/or** matters prescribed by regulation.”

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71. As Proposed:

“91ZQ Direction to comply

(2) The chief executive or an authorised person may give the person a written direction to—
(a) if the person’s noncompliance mentioned in subsection (1) exposes an individual to a risk of death or serious injury or illness—

- (i) immediately comply with the provision of relevant transport legislation; and
- (ii) take the action stated in the direction to remedy the noncompliance; or

(5) The person to whom a direction is given under subsection (2) must not contravene the direction unless the person has a reasonable excuse.

Maximum penalty—

- (a) for contravention of a direction mentioned in subsection (2)(a)—**320** penalty units; or ...”

Comment:

- The Bill has inconsistent penalties
- The penalty for contravening a direction after an audit has identified a non-compliance that **“exposes an individual to a risk of death or serious injury or illness”** (Section 91ZQ (2) (a)) is **inconsistent** with and **much lower than** the penalty under Section 90 where **“(b) the person, without a reasonable excuse, engages in conduct related to the duty that exposes an individual, or class of individuals, to a risk of death or serious injury or illness; and**
Maximum penalty—
(a) for an individual—3000 penalty units or 5 years imprisonment; or
(b) for a corporation—30,000 penalty units”

Suggestion:

- The Bill needs to have internal consistency regarding penalties (and for all areas/sections of the Act)
- ALL instances where omissions or non-compliances expose people to a risk of death or serious injury or illness **MUST** have an IDENTICAL (high level) penalty regime

Division 3 Other offences

72. As Proposed:

“91ZR Charging more than maximum fare

(1) The chief executive may, by gazette notice, decide maximum fares for taxi services.

(2) Also, the chief executive may, by gazette notice, decide maximum fares for booked hire services—

- (a) for members of a personalised transport subsidy scheme under section 91ZY; or
- (b) provided using a type of vehicle, or for a class of persons, prescribed by regulation; or
- (c) mentioned in section 75.”

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Comments:

- The Public Benefit Test must be applied here - as the highest objective of the Act being amended is the provision of transport “at reasonable cost”⁵⁵
- Now that the Act will include the addition of booked hire services, it is imperative that these new services will also be provided “at reasonable cost to the community and government”
- To this end – ALL on demand passenger transport services must have identical capped fares, with competition between service providers available by allowing for fares to be charged which are lower than the legislated maximum.
- It is unclear why the legislation **FAILS to protect** (Explanatory Notes argues/attempts to justify) vulnerable consumers who may not be in a position to validly compare prices and negotiate a fare (eg intoxicated young people) who may use booked hire services as this indicates that the **government believes that these members of society don’t deserve** the same level of consumer protection against price gouging, as those who chose to use taxi services
- Leaving fares for booked hire services uncapped is **NOT in the public interest** as it leaves the public open to the possibility of exploitation
- Indeed uber has openly admitted they have data showing that people are more likely to accept surge pricing if the phone battery is low⁵⁶

Suggestion:

- For the Public benefit, mandate that all licence categories are treated identically with regard to maximum fare caps
- All maximum fares should be gazetted for taxi services and booked hire services regardless of the type of licence under which they are operated – not just some possible subset of booked hire services

Suggested specific wording:

“(1) The chief executive may, by gazette notice, decide **identical** maximum fares for taxi services, **and all booked hire services.**”

- Caution is needed with specific wording as there is always a possibility that a booking entity (such as uber) could try to claim that they aren’t charging a 'fare', but rather they are charging a 'matching fee' or some other claim?
- It would be prudent to keep subclause (2) but broaden it so that specific categories of passenger who deserve special consideration regarding fares as part of a Public Benefit Test – receive the same capped fares regardless of which service provider (taxi or booked hire) they choose – anything less would be seen as (& probably would be) discriminatory

⁵⁵ “2 Objectives of Act

(1) This Act is intended to achieve the provision of the best possible public passenger transport at reasonable cost to the community and government, keeping government regulation to a minimum.” Transport Operations (Passenger Transport) Act 1994

⁵⁶ “Uber, the taxi hailing app, monitors its users’ smartphone batteries to see when they are running low and has figured out that customers are willing to pay more when they fear their phones are going to die.”

<http://www.theaustralian.com.au/news/world/uber-monitors-phone-batteries-says-customers-pay-more-when-running-low/news-story/5442fe2ac8db127255c4489a74824a9a>

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“(2) Also, the chief executive may, by gazette notice, decide identical maximum fares for taxi services and all booked hire services—

- (a) for members of a personalised transport subsidy scheme under section 91ZY; or
- (b) provided using a type of vehicle, or for a class of persons, prescribed by regulation; or
- (c) mentioned in section 75.”

73. As Proposed:

“91ZS Charging more than maximum payment surcharge for fare

(4) For subsection (3), a person charges a payment surcharge for a fare for a taxi service or booked hire service if the person decides or otherwise controls the amount of the payment surcharge, including, for example—

- (a) by administering an electronic system that determines the amount automatically using a computer program or in another way; or
- (b) by using a device to process payment of an amount that includes the amount of the payment surcharge.”

Comment:

- Section 91ZS (4) (b) seems to incorrectly target a passenger transport (eg taxi) driver who may have no ability to choose or control the payment method.
 - For example
 - The only EFTPOS terminal in the vehicle (taxi) is a Cabcharge terminal (as mandated by Qld government to accept TSS payments).
 - If a passenger seeks to make an electronic card payment, the only option is for the driver to process the payment via the Cabcharge terminal.
 - The driver has NO ability to control or influence whatever payment surcharge Cabcharge may choose to impose on a transaction made via its terminal
 - In this case, the taxi driver who uses the Cabcharge terminal in the taxi is neither “deciding” nor “controlling” to charge the Cabcharge surcharge - if it is set above the mandated minimum

Suggestion:

- Reword to ensure the legislation targets the correct party - who is the actual offender who should receive the penalty

Part 6 General provisions

Division 1 Taxi service areas

74. As Proposed:

“91ZT Taxi service areas

(1) This section applies to a taxi service to which a regulation under section 36 applies.

Note—

Section 36 allows a regulation to declare that a public passenger service is to be provided with market entry restrictions.

(2) The chief executive may, by gazette notice, declare a taxi service area.

(3) The chief executive may, by gazette notice, fix the number of taxi service licences for a taxi service area.

(4) In fixing the number of taxi service licences for a taxi service area, the chief executive—

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- (a) must consider whether there are enough taxi service licences for the area to meet public demand; and
- (b) may take into account—
 - (i) the views of users of taxi services in the area; and
 - (ii) recent changes in travel patterns in the area; and
 - (iii) the types of taxi services or booked hire services available in the area; and
 - (iv) the performance of the existing taxi fleet in the area; and
 - (v) the productivity of the fleet.”

Comment:

- The wording of Section 91ZT essentially reflects the content of the old Clause 71 from the existing TOPTA and reflects many important factors that must be considered in order to formulate sound policy to achieve the stated aims of TOPTA (that remain unaltered by this Bill) – namely:
 - “2 Objectives of Act**
 - (1) *This Act is intended to **achieve the provision of the best possible public passenger transport at reasonable cost to the community and government**, keeping government regulation to a minimum.*
 - (2) *However, this Act recognises that **market entry restrictions may be needed in the public interest**.*
 - (3) *The overall objectives of this Act are, consistent with the objectives of the Transport Planning and Coordination Act 1994, to—*
 - (a) *enable the effective planning and efficient management of public passenger transport in the State; and*
 - (b) *provide a system of public passenger transport in the State that—*
 - (i) *is responsive to community needs; and*
 - (ii) *offers an attractive alternative to private transport in a way that **reduces the overall environmental, economic and social costs** of passenger transport; and*
 - (iii) *addresses the challenges of future growth; and*
 - (iv) *provides a high level of accountability; and*
 - (v) *provides public passenger services at a reasonable cost to the community and government; and*
 - (c) *promote the personal safety of persons using public passenger transport; and*
 - (d) ***provide a reasonable level of community access and mobility in support of the Government’s social justice objectives; and***
 - (e) *provide an adequate framework for coordinating the different forms of public passenger transport to form a comprehensive, integrated and **efficient system**.”*
 - Further, the concept of Market Entry restriction is also outlined well, & remains unaltered in TOPTA:
 - “Chapter 5 Market entry restrictions**
 - 36 Market entry restrictions**
 - (1) *A regulation may declare that a public passenger service is to be provided with market entry restrictions.*
 - (2) *Before a regulation is made under subsection (1), the Minister must be of the opinion that the following criteria are met, or can be met or substantially met—*
 - (a) *the level of services would be greater than the level that would otherwise be provided;*

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(b) access to public passenger transport would be greater than would otherwise be achieved;
(c) service innovation would be greater than would otherwise be achieved;
(d) the particular public passenger services would better meet the Government's social justice objectives at a lower cost to the Government than would otherwise be achieved."

Numerous major issues:

- Unlike the effective way this has operated for most of the past 20+ years in Queensland, there are **fundamental flaws** to the practical operation of this - as written:
- 1) Section 91ZT (3) **is what Qld had** when uber arrived in 2014 – fixed numbers of TSLs in each TSA and where booked hire services could only be provided by Taxis
 - a) The problem was that the Qld govt and TMR were **unable to effectively enforce the laws** that underpinned this (ie TOPTA & associated subordinate legislation)
 - b) As TMR and Qld govt couldn't enforce this during 2014-2017, and this current Bill is poorly worded and unlikely to provide a greater ability to enforce the amended Act, there is **little confidence** that this Section & Section 75 will be **enforceable** now
 - c) **If this is what is needed** to meet the Public Benefit Test to ensure that the objectives of TOPTA are met and TSAs are required, there is **no need for most of the proposed amendments** in this Bill, Section 75 needs to apply state-wide in all Taxi Service Areas, non-taxi booked hire services remain illegal and the **focus** needs to be on **strengthening enforcement and compliance**
 - 2) There are **now two different scenarios** covered by this Bill (either of which could be changed at a moment's notice via Regulation – so the **Bill provides no certainty for any business planning or worker security**)
 - a) One where Section 91ZT operates with a regulation under Section 36 (but without a regulation under Section 75) and there are fixed numbers of TSLs in each TSA intermingled with an unlimited number of low cost booked hire service vehicles operating without constraint of service areas, service performance, or price controls competing for at least 65% of all on demand passenger transport work, and
 - b) One where Section 91ZT operates with a regulation under Section 36 and a separate regulation under Section 75 where there are fixed numbers of TSLs in each TSA and where booked hire services can only be provided by Taxis
 - 3) However, under both scenarios 2 a) and 2 b) this Bill seeks to legalise an unlimited number of booked hire service vehicles/licences - statewide
 - a) Therefore, the principles outlined in Section 91ZT (4) (b) are relevant to the **total vehicle fleet providing passenger transport services** – not just the size of the taxi vehicle fleet, or the taxi fleet productivity
 - b) However, as written, Section 36 & Section 91ZT **DO NOT ALLOW** the Chief Executive to **take into account the total vehicle fleet** providing passenger transport services for the purposes of making a regulation under Section 36
 - c) Given that the Bill also seeks to abolish Service Contracts and changes TSLs from be **required** to provide a service exceeding minimum performance criteria to simply having the **option of providing service with no performance criteria**, it is conceivable that the Bill (due to ill-considered government policy and poor implementation) **will result** in the **FAILURE** of the **public** being able **to access transport services**

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- d) Consequently, it could result in an unlimited number of **booked hire** service vehicles, **drivers**, licences (with financial commitments dependent upon their expected ability to work in the booked hire industry), **suddenly** being deemed **unable to work**/provide booked hire service work if a regulation is made under Section 75 that changes the scenario from 2 a) to 2 b).
 - e) Simultaneously, the Chief Executive, in response to public outcry that no transport services are available, could flood the market with **numerous new taxi service licences** (with **no certainty** that a new regulation would not be issued at **any moment again rescinding** the gazetted **exclusivity** (under Section 75) of booked hire service work for taxis)
 - f) Assuming these new TSLs can be sold, as there is **no longer any requirement** for a taxi **service to be provided** under a TSL, and there are **no longer any Service Contracts** to ensure a high level of performance, it is **feasible** that the new TSLs **remain unsold**, or that they are sold, but **not used to provide any services**, or they are sold and **used to provide a very poor level of service**, or they are sold and **used to extract exorbitant fares** from members of the public desperate to get access to transport services
 - g) All of these demonstrate a **market FAILURE as a direct consequence of this Bill**
 - h) All of these demonstrate that, as a result of ill-considered government policy, poor implementation, **market Failure** and **public outcry at the loss of essential transport services** (particularly to the vulnerable members of the community) the **government would have to intervene**
 - i) This has a **very high political risk** and **significant measures should be taken** to ensure that this scenario is **avoided**
- 4) Section 75 and Section 91ZT appear to be attempts to have the ability to respond in the event of market failure
- a) However, this demonstrates a **fundamental lack of understanding about the industry**, the people who work in it, the infrastructure, assets and capital that are required for it to operate, and the workers who make commitments and financial commitments expecting & relying upon stability of government policy and enforcement of legislation
 - b) Like many industries, it could be compared to a large ship travelling at speed at sea – it takes a long time and significant effort to change direction, or to stop it, or to start it
 - c) The consequence of getting it wrong can devastate large numbers of people – both the people involved in the industry and those who depend upon it
- 5) If Regulations are made under Section 36 and Section 75
- a) Then Section 91ZT will apply in the amended Act
 - b) It will be because both taxis and booked hire services have failed to provide a service that meets the needs of the public
 - c) As outlined in point 3) above, it isn't possible to instantly restore the taxi industry that has been devastated by the tolerance and legalisation of booked hire services.
 - d) Simply making a regulation to instantly ban booked hire services again is unlikely to be enforceable (no evidence of success in the past 3 years)
 - e) Simply making a regulation to instantly ban booked hire services again is unlikely to deliver an instantaneously restored functioning taxi industry that will provide the services required by the public
 - f) It is fairly easy to see the potential for similarities to the problems that are currently being faced by Qld Rail
 - g) This has **very high political risk**

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Analysis of contributing factors and issues:

- Since the Transport Reforms were announced on August 10, 2016, there has been a rapid increase in the number of vehicles undertaking booked hire work and recently it was suggested that there were 9,000 cars working for uber in South east Qld alone prior to the end of 2016
- This is in addition to the 2,200 taxis in South East Qld as well.
- The end result of this is that, despite the booked hire fares being heavily (approximately 59% of total fare is a subsidy and passengers pay 41% of true fare costs) subsidised by the uber Venture capitalists, there is **insufficient work** (trips per day) to provide a **liveable minimum wage** for **either** taxi driver or uber/booked hire **drivers**
- In the event that uber's **VC funding was no longer available to subsidise** trips/fares, the direct **cost** of booked hire trips to passenger would **increase significantly** – indeed if the reported figures are correct, just to break even, **booked hire fares** would need to increase by approximately **144%** if Venture Capitalist funding did not contribute 59% of the fare
- If uber corporation sought to make a profit and/or sought to recoup past losses (reportedly \$3 Billion in 2016 alone) the increase in booked hire fares would need to be far greater than the 144% increase outlined above
- The net effect has been that **taxi driver income** has dropped from approximately \$27.50 per hour (each of 2200 SEQ taxis doing 60 trips per day across 2 x 12 hr shift with driver earning 50% of fares) pre-uber to the current situation where **both** taxi and uber drivers are **earning** approximately **\$4.95** per hour (each of 2200 SEQ taxis plus 9000 uber cars plus 350 limousines doing 13 trips per car per day (a 15% increase in total trips per day) with a slightly lower average fare per trip)
- Average transport worker (taxi) driver income/hour **pre-uber/Stage 1 reforms** **\$27.50/hr**
- Average transport worker (taxi) driver income/hour **post-uber/Stage 1 reforms** **\$4.95/hr**
- As can be seen, this has seen
 - a **525% increase in vehicle numbers** = **increased traffic congestion, direct pollution** from the passenger transport vehicles PLUS increased **indirect pollution** from other road users caught up in the congestion
 - **decreased productivity** – as more people spend more time stuck in traffic – both commuting to and from work, and as part of their work duties
 - an **82% reduction in transport worker/driver income** to a level **well below the minimum wage** in Australia
- Further, as taxis struggle to remain viable, there is a risk that **wheelchair accessible taxis will simply cease to operate** due to financial non-viability AND, there is no longer any requirement for them to provide services
 - If wheelchair taxis exit the market due to financial losses
 - the **government would be forced to enter the market – either as a provider or as a funder**, in order to replace the lost services
 - this ultimately would be a significant **increase in cost to government** and to taxpayers
 - this would result in political damage leading up to the election
- Therefore, it can be seen from all of the information and analysis provided under this comment/Section heading, while there may be a short term impression that this will give/has

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given the public greater choice and greater access, the reality is that it, in the long term, it **FAILS** to “**achieve the provision of the best possible public passenger transport at reasonable cost to the community and government**”

- It also **FAILS** to provide a system of public passenger transport in the State that—
 - “(i) is responsive to **meet future community needs**” with an increasing aged and disability population; and
 - “(ii) offers an attractive alternative to private transport in a way that **reduces the overall environmental, economic and social costs** of passenger transport; and”
 - “(iii) addresses the challenges of future growth; and” ...
 - “(d) **provides a reasonable level of community access and mobility in support of the Government’s social justice objectives**; and”
 - “(e) provides an adequate framework for coordinating the different forms of public passenger transport to form a comprehensive, integrated and **efficient system**.”⁵⁷
- Given that, even after such a short period of “experimentation” with this new system of uncapped booked hire vehicle numbers, it can already be seen that it is failing to
 - **reduce the overall environmental, economic and social costs of passenger transport**
 - **support of the Government’s social justice objectives**
 - **be efficient**
- It is not valid to draw conclusions about service for the long term needs of the Qld community based upon short term unsustainable fare subsidies from foreign venture capitalists – therefore this factor must be excluded
- It is not reasonable to impose excess traffic congestion and pollution on the community and to do so would conflict with the government’s policy aim of a 50% renewable energy target
- It is not in the public interest for transport workers to be paid significantly less than the minimum wage for very long work hours
- It is not in the public interest for the previously viable wheelchair taxi fleet to exit the industry with the need for government to step in to solve the problems of market failure
- For all of these reasons, it is reasonable to consider continuing market entry restrictions statewide, for all licence types

Suggestions:

- **All passenger transport vehicles** should be allocated/licences to **specific geographic areas** – potentially rename them from Taxi Service Areas to **Transport Service Areas**
- In each Transport Service Areas the total number of vehicle undertaking taxi work and booked hire work must be capped using criteria that have stood the test of time in the existing TOPTA
- Suggest modification of **current TOPTA Section 71**
 - “Transport service areas**
 - (1) This section applies to passenger transport services to which a regulation under section 36 (Market entry restrictions) applies.
 - (2) The chief executive may, by public notice, declare a transport service area.

⁵⁷ From TOPTA: Section 2: Objectives of the Act

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- (3) The chief executive may, by public notice, fix the number of taxi service licences, limousine licences and booked hire service licences for a transport service area.
- (4) In fixing the number of licences for a transport service area, the chief executive must—
 - (a) ensure there are enough passenger transport service licences for the area to meet public demand; and
 - (b) take into account—
 - (i) the views of users of passenger transport services in the area; and
 - (ii) recent changes in travel patterns in the area; and
 - (iii) the types of passenger transport services available in the area; and
 - (iv) the performance of the entire existing passenger transport vehicle fleet in the area; and
 - (v) the productivity of the fleet.”
- All of these factors are relevant to
 - long term fleet productivity and viability,
 - a liveable wage for all transport workers,
 - a high level of service provision across entire geographic areas throughout the state
 - not just in areas of peak transport demand (eg inner city South East Qld) and
 - not just at times of peak demand (eg Friday and Saturday nights)

75. As Proposed:

“91ZU Public passenger service starting in taxi service area for a taxi

(1) A person must not use a taxi to provide a public passenger service for a journey that starts in a taxi service area unless— ...”

Comment:

- Should this condition also apply to booked hire services/vehicles if they are allocated to Transport Service Areas?
- See comment 74 above regarding Section 91ZT

76. As Proposed:

“91ZV No compensation for changes to taxi service areas

- (1) Compensation is not payable if the chief executive—
 - (a) does any of the following things under section 91ZT—
 - (i) declares a taxi service area;
 - (ii) amends or repeals the declaration of a taxi service area;
 - (iii) fixes the number of taxi service licences for a taxi service area;
 - (iv) amends the number of taxi service licences fixed for a taxi service area;
 - or
 - (b) imposes or amends a condition of a taxi service licence to authorise the taxi to be used to provide a public passenger service for a journey under section 91ZU(1)(b).
- (2) Also, compensation is not payable if, because of a matter mentioned in subsection (1)—
 - (a) anything previously permitted is prohibited or regulated; or
 - (b) anything previously prohibited is permitted or regulated; or
 - (c) anything previously regulated is no longer regulated or regulated in a different way; or
 - (d) the value of a taxi service licence changes.
- (3) This section does not prevent a regulation providing for payment of compensation.

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Comment:

- The amendments proposed by the Bill FAIL to provide a Public Benefit – as assessed by the crietriar and methodology published by Qld Treasury
- It is very difficult/impossible to justify the Public Interest/Public Benefit test when the Bill has no method to ensure provision of universal access to passenger transport services with social justice obligations – including transport for people with disabilities, safety of passengers and workers, or worker’s rights & fair pay
- Therefore, the changes that are proposed are not based on objective evidence of a Public Benefit
- Therefore, legislation that seeks to adversely affect rights sold by the government would be consistent with Injurious Affection and compensation should be paid
- It breaches Fundamental Legislative Principles, and the principle of Common Law and natural Justie for the Bill to seek to specifically exclude compensation being paid

Suggestions:

- This Section breaches FLPs
- This (& the other Sections seeking to exempt the government from paying just compensation) is inconsistent with other (unamended) Sections within TOPTA
- Needs major re-work
- Need to work out the purpose of the clause and what is trying to be achieved, whether that is reasonable (FLPs) and what would be consistent with both the purpose of TOPTA and the other compensation Sections within TOPTA that are unamended

Suggestion/Specific wording:

“91ZV Compensation for changes to taxi service areas

- (1) Full Compensation is payable if the chief executive—
 - (a) does any of the following things under section 91ZT—
 - (i) declares a taxi service area;
 - (ii) amends or repeals the declaration of a taxi service area;
 - (iii) fixes the number of taxi service licences for a taxi service area;
 - (iv) amends the number of taxi service licences fixed for a taxi service area;or
 - (b) imposes or amends a condition of a taxi service licence to authorise the taxi to be used to provide a public passenger service for a journey under section 91ZU(1)(b).
- (2) Also, full compensation is payable if, because of a matter mentioned in subsection (1)—
 - (a) anything previously permitted is prohibited or regulated; or
 - (b) anything previously prohibited is permitted or regulated; or
 - (c) anything previously regulated is no longer regulated or regulated in a different way; or
 - (d) the value of a taxi service licence changes.
- (3) This section does not prevent a regulation providing for payment of full compensation.

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77. As Proposed:

“Division 2 Taxi industry security levy and fund”

Comment:

Why is this not a “Personalised Transport security levy and compliance and enforcement fund”?

Suggestions:

Should apply to all passenger transport licences/licence types

78. As Proposed:

“91ZW Annual taxi industry security levy payable

- (1) The chief executive may impose a taxi industry security levy (the **security levy**) for a financial year on holders of taxi service licences for a prescribed taxi service area.
- (2) The purpose of the security levy is to contribute to the costs of improving the security of taxi services in the prescribed taxi service area.”

Comment:

Why is this not a “Personalised Transport security levy and compliance and enforcement fund”?

Suggestions:

- “(1) The chief executive may impose a **compliance and security levy** (the **security levy**) for a financial year on holders of **booked hire and** taxi service licences for a prescribed **transport** service area.
- (2) The purpose of the levy is to contribute to the costs of improving the security of **transport** services in the prescribed **transport** service area.”

Division 3 Other provision

79. As Proposed:

“91ZY Personalised transport subsidy scheme

A regulation may provide a scheme under which the State, for public passenger services provided to particular groups using taxis, limousines or booked hire vehicles, pays—

- (a) the whole or a part of fares for the services;
- or
- (b) another amount for the provision of the services.”

Comment:

- It is inappropriate to pre-empt providing a transport subsidy scheme to all transport providers without having fully equalised all groups – eg Transport Service Areas, identical security requirements (cameras/real time monitored duress alarms with instantaneous response etc), identical insurances and premiums, capped numbers etc
- Section 91ZY is not consistent with FLPs

Suggestions:

Amend or delete Section 91ZY

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80. As Proposed:

"Clause 19 Amendment of s 100 (Direction to comply with standards)

Section 100(3)(a), 'or operate' —
Omit"

Suggestion:

- Delete this Section as door to door passenger transport 'drivers' have a broader range of functions than just driving
- See Comment 1 & Comment 5 above

81. As Proposed:

22 Omission of s 145 (Chief executive may declare particular motor vehicles)

Section 145—
omit.

Comment:

- Not sure that it is necessary to omit this Section 145 of TOPTA about vehicle types – eg luxury vehicles

82. As Proposed:

"150C When a person has committed an offence

(1) This section applies for working out, for the following provisions, whether a person has committed an offence against a provision of an Act—

- (a) section 91ZJ;
- (b) section 150B;
- (c) a provision of a regulation prescribed by regulation to be a provision to which this section applies.

(2) A person has committed an offence if the person—

- (a) has been convicted of the offence; or
- (b) has been served with an infringement notice for the offence and the infringement notice has been dealt with under the *State Penalties Enforcement Act 1999*.

(3) For subsection (2) (b), an infringement notice for an offence served on a person has been dealt with under the *State Penalties Enforcement Act 1999* if 1 of the following has happened under that Act—

- (a) the fine for the infringement notice has been paid in full;
- (b) the person has applied for approval to pay the fine for the infringement notice by instalments;
- (c) an enforcement order has been made against the person for the offence under section 38 of that Act."

Suggestion/Comment:

- Also need to include when the person/entity has publicly admitted to the offence – even if no charges have been laid – eg uber's Greyball program to block enforcement officers
- Otherwise – simply get criminals boasting about fooling enforcement officers, but still allowed to hold key positions in public safety-related industries

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- After they have boasted about their exploits – need to Reverse the Onus/Burden of Proof – ie entities must prove that they are no longer doing wrong thing – eg blocking enforcement officers using Greyball software etc
- Does admission of guilt (regardless of charges/convicted and/or any of the criteria set out in Section 150C result in a lifetime ban (ie preclude them from ever) obtaining booking entity authorisation?
- If so, is this consistent with FLPs?

83. As Proposed:

Clause 26 Amendment of s 155 (Regulation-making power)

(2) Section 155(3)(c), after ‘services’ —
insert—
or payment surcharges for fares

Suggestion/specific wording:

insert—
or payment surcharges for fares, and/or maximum allowable fares

84. As Proposed:

Clause 26 Amendment of s 155 (Regulation-making power)

(3) Section 155(3)(e), ‘or driver’ —
omit, insert—
, driver authorisation or booking entity

Suggestion:

- Leave in (ie do not omit) Operator Accreditation
- Operator Accreditation serves a useful purpose - so need to apply it to booked hire services and use it

85. As Proposed:

Clause 28 Insertion of new ch 13, pt 18

After section 207 —
insert—

Part 18 Transitional provisions for Transport and Other Legislation (Personalised Transport Reform) Amendment Act 2017

“209 Existing taxi service bailment agreements

(1) A taxi service bailment agreement in force immediately before the commencement continues in force despite the repeal of chapter 4A of the Act by the amending Act.
(2) However, previous chapter 4A does not continue to apply to the taxi service bailment agreement.”

Suggestion/Comment:

- Delete Section 209 as earlier suggestion not to delete 4A – ie Bailment Agreements should remain in place and
- There should be an additional chapter to govern worker’s rights in the booked hire industry

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86. As Proposed:

"210 Existing taxi administration service contracts

- (1) This section applies to a service contract for the administration of taxi services that is in force immediately before the commencement.
- (2) The service contract ends on the commencement."

Suggestion/Comment:

- Delete Clause 210 as earlier suggestion to maintain service contracts – and
- Service Contracts should be required for ALL authorised booking entities - ie there should be an additional chapter to govern Service Contracts and obligations in the booked hire industry to ensure that Public Benefit is actually achieved and universal access to passenger transport services of a high quality at an affordable cost is ensured

87. As Proposed:

"211 Existing taxi service areas

- (1) This section applies to a taxi service area declared by the chief executive under previous section 71 if the declaration was in force immediately before the commencement.
- (2) The taxi service area is taken to be a taxi service area declared under section 91ZT."

Comment:

- Given that existing Taxi Service Areas continue to apply statewide – that means that, as defined by Section 91ZT:
 - "91ZT Taxi service areas**
 - (1) This section applies to a taxi service to which a regulation under section 36 applies.
 - Note—*
 - Section 36 allows a regulation to declare that a public passenger service is to be provided with market entry restrictions."
 - a Regulation must exist under Section 36 that stipulates the need for statewide Taxi Service Areas with fixed TSL numbers in each area
- There is no point using Section 91ZT to fix the number of taxis in a TSA under Clause 91ZT when there are unlimited numbers of booked hire services – not confined to the same TSAs
- The Bill is inconsistent and illogical
- It makes no sense to ensure there are enough taxis to 'meet public demand' – ie do the unprofitable work, but not consider the uncapped booked hire cars that take all the profitable work, and not actually requiring taxis to provide any services, and abolishing the Service Contracts that help ensure high quality service are provided
- It is important to note, it is not commercially viable to mandate that high quality services are provided at a loss – if this is the intention, the government simply needs to take all taxi service inboard and a full government enterprise – like passenger rail services

Suggestion:

- It would help if the Bill had a purpose and/or abided by the original purpose in TOPTA
- Need to undelete Sections about the purpose of TSLs (Sections 68 & 69 of unamended TOPTA that this Bill seeks to delete) and add in specific clauses about purpose of booked hire vehicles/services
- Sections 91ZT, 36AA, 211 – ALL Need major work

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88. As Proposed:

214 Reviews of decisions related to taxi service administration contracts

Suggestion/Comment:

- Need to look at this whole section if don't delete taxi/transport service contracts

89. As Proposed:

"216 No compensation

Compensation is not payable by the State because of the amendment of this Act by the amending Act."

Comments:

- This is completely inappropriate and a breach of FLPs
- The Government sold TSLs for \$500,000 – they had a legislated purpose, legislated performance criteria and legislated market restriction/exclusivity to provide ALL on demand passenger transport services – regardless of the modality of hiring
- Removing their purpose, removing the need for them to be used at all – ie to actually provide ANY service, and – keeping them restricted to Taxi Service Areas, while simultaneously opening the market to uncapped competition for 65% of the work is predictably having a devastating consequence
- If this proceeds – compensation is justified (like other parts of TOPTA and the Land Act 1992)
- Trying to legislate out of paying just compensation is morally deplorable

Suggestions:

- Delete Section 216

Alternatively

"Full Compensation is payable by the State because of the amendment of this Act by the amending Act."

90. As Proposed:

Clause 30 Amendment of sch 2 (Reviewable decisions)

(1) Schedule 2, entries for sections 75(1), 77(2), 79, 80J(1), 80L, 88(1) and 91—
omit
(2) Schedule 2—
insert— "

Comment:

- Almost all decisions established or imposed by the Bill are now Reviewable
- This provides an even greater reason to get all conditions right PRIOR to new legislation taking effect
- This is NOT the case as the Bill is written

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Clause 31 Amendment of sch 3 (Dictionary)

91. As Proposed:

“insert—

accredited operator means a person who holds an operator accreditation, including operator accreditation granted on a provisional basis under section 18.”

Comment:

Is Operator Accreditation still required?

Modified/amended definition:

“operator means a person carrying on the business of providing a public passenger service”

Comment:

- The roles and relationship between authorised booking entity, licence owner, registered vehicle owner, operator, and driver are unclear and are not specified or defined in any of the legislation

Suggestion:

- This needs to be fixed
- Consider re-instating requirement for mandatory Operator Accreditation to strengthen the Chain of Responsibility

92. As Proposed:

“booked hire service see section 71.”

Comment/question:

- Definition in Section 71 – could this include ComCar, RSL and community buses with < 12 seat etc?

93. As Proposed:

“booked hire vehicle means—

- (a) a motor vehicle stated in a booked hire service licence; or
- (b) a substitute vehicle for the licence.”

Comment:

- See suggestions regarding definition of booked hire service under Comments 11-20 regarding Sections 69-74, Comment xxx regarding Section 91D & Comment 74 regarding Section 91ZT

“substitute vehicle means a motor vehicle allowed to be used under a taxi service licence, a limousine licence or a booked hire service licence under a regulation under section 91R(3)(b).”

Questions:

- What are the rules/requirements around substituting a vehicle (vs replacement of a vehicle – which is a one-off infrequent occurrence, whereas a substitute could be for any minute of any day)

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- Who administers substitute vehicles
 - Do they require any particular qualifications – eg a booked hire service licence, operator accreditation etc
- Does the substitute vehicle have to look the same as the primary vehicle?
- What records demonstrate that the booked hire licence is being operated with a vehicle that is not the vehicle listed on the licence?
 - Who keeps those records and for how long?
- How will a passenger know that a substitute vehicle is a legally approved vehicle to be operated under the licence
 - Will it have to have an appropriate designated registration number plate (eg T-plate for taxi, L-plate for limousine, BH-plate for Booked hire)
 - How will a passenger know at the time of booking a journey that a particular substitute vehicle is the one for their booking – particularly for the small solo authorised booking entities that use a notebook and paper and take bookings in person?
 - How will a passenger know that the substitute (or any vehicle being operated under a licence as a passenger transport vehicle) has full and correct insurances?
- Where is the clearly defined chain of responsibility for substitute vehicles?
- Will an autonomous or semi-autonomous vehicle be allowed to be sued as a substitute vehicle for a passenger transport licence?
- The regulation referred to under Section 91R (3) (b) is not available for review
- See further questions and issues under Comment 49 above regarding Section 91R

94. As Proposed:

“(3) Schedule 3, definitions *community transport service* and *courtesy transport service*, ‘public passenger service’ —
omit, insert—
service for the carriage of passengers”

Comment:

- Given that (currently under TOPTA) the definition is:
“**community transport service** means a public passenger service funded or subsidised out of public money or by a charity and provided for the benefit of a particular group.”
- So the new (proposed under this Bill) definition would be:
“**community transport service** means a service for the carriage of passengers funded or subsidised out of public money or by a charity and provided for the benefit of a particular group.”

Major issue:

- Given that Taxis (& possibly booked hire services in the future via Regulation) receive TSS payments (ie are “subsidised out of public money for the benefit of a particular group” – people with disabilities), this definition means that taxis (possibly all taxis – but certainly all WAT taxis) would be defined as “Community Transport Service”

Suggestion:

- This needs to be fixed

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95. As Proposed:

“(4) Schedule 3, definition *disqualifying offence*, from ‘accreditation,’ to ‘limousine service licence,’—
omit, insert—
accreditation or booking entity authorisation,”

Comment/question:

- Why do disqualifying offences not relate to TSLs or Booked Hire Licences (BHLs) ?

96. As Proposed:

“(7) Schedule 3, definition *public passenger service*, ‘and a service for the administration of taxi services’—
omit.”

Comment:

- Error/incorrect

Suggestion:

- Looks like it should be:
“(7) Schedule 3, definition *public passenger service*, **paragraph (c)**, ‘and a service for the administration of taxi services’—
omit.”
- Needs to be fixed

97. NOT Proposed – but an issue:

“(10) Schedule 3, definition *public transport infrastructure*”

Issue:

- The definition of public transport infrastructure currently includes:
“(e) a bus **or other motor vehicle being used for a general route service;**”

Comment/question:

- This definition covers taxis (especially maxi-taxis) that might be used to replace large buses on low patronage routes and/or uber pool type services
 - ie a booked hire vehicle (eg an uber pool vehicle) or taxi being used to provide a general route service is “public transport infrastructure” under the current definition

Suggestion:

- This needs to be fixed by being included/amended during this amendment of the Act

98. As Proposed:

(11) Schedule 3, definition *service contract area or route*, ‘or 66’—
omit.

Comment/suggestion:

- See comments above about maintaining Service Contracts and adding Service Contracts for all Authorised Booked Hire entities
- See comment 9 regarding Clause 15 & Comment 86 regarding Section 210

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99. As Proposed:

(12) Schedule 3, definition *taxi service licence*, ‘section 69’—
omit, insert—
section 91D

Comment:

Section 91D is a very poor definition of a TSL

Suggestion/specific wording:

- **Re-instate purpose and definition** clause 68 & 69 of existing TOPTA regarding TSLs
 “68 Purpose of taxi service licences
 The purpose of taxi service licences is to ensure that the communities served by taxis receive quality and innovative taxi services at a reasonable cost.”
 “69 What are taxi service licences
 A ***taxi service licence*** is a licence issued by the chief executive under which the holder is required to provide a taxi service in an area in a way that meets or exceeds specified performance levels.”

Comments:

- These definitions **are essential** as they reflect the stated Objectives of TOPTA (Section 2 - which is unamended) and **demonstrate the public benefit test** as to why passenger transport services are licensed
- They also demonstrate why market entry restriction is essential - **& that is equally important for booked hire services**

Suggestion/specific wording:

- Add similar clauses **for booked hire services**
 “68a Purpose of booked hire service licences
 The purpose of booked hire service licences is to ensure that the communities served by booked hire vehicles receive quality and innovative transport services at a reasonable cost.”
 “69a What are booked hire licences
 A ***booked hire licence*** is a licence issued by the chief executive under which the holder is required to provide a booked hire services in an area in a way that meets or exceeds specified performance levels.”
- Without these definitions:
 - There is **no** public benefit test to justify any licencing of passenger transport vehicles
 - Anybody can do anything
 - There is no requirement for any service to be provided at all
 - There are no protections for the public to be able to access any type of transport
- As it stands, the Bill seems to have lost sight of the purpose/objectives of TOPTA, and seems to be only about legalising booked hire services, and provide authority for subordinate legislation to have unfettered power to effectively modify areas that are more correctly done by amending the Act.
- Surely the real purpose of any legislation here **MUST** be to **ensure** that “the communities served by passenger transport services (taxis and booked hire) receive quality and innovative

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transport services at a reasonable cost in ALL areas in a way that meets or exceeds specified performance levels”

- This Bill needs to be sent back for major re-drafting in order to ensure that the amended TOPTA Act actually delivers this goal

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Part 3 Amendment of Transport Operations (Road Use Management) Act 1995

NOTE: This Act provides that Licence suspension under TOPTA is for a period of 1-6 months if the offence has been for driving while disqualified

100. As Proposed:

“Clause 34 Amendment of s 79 (Vehicle offences involving liquor or other drugs)

Section 79(2C)(e)—

omit, insert—

(e) a taxi or limousine under the *Transport Operations (Passenger Transport) Act 1994*;

(ea) a vehicle that is not a taxi or limousine under the *Transport Operations (Passenger Transport) Act 1994* that is available to be used, about to be used or being used to provide a public passenger service under the *Transport Operations (Passenger Transport) Act 1994*;

Example of a vehicle available to be used to provide a public passenger service—

a driver of the vehicle is on duty to accept bookings for a booked hire service, including, for example, by being connected to a booking service or app to accept bookings”

Comments:

- This might seem alright in theory, but it seems that it would pose many challenges for detection and enforcement
- For example, a booked hire driver is sitting at home having drunk a beer or glass of wine and has the ‘app’ on waiting for a possible job – presumes it will be a slow night, blood alcohol will be low positive – above zero but not above normal driving low threshold if not providing booked hire services. Driver intends to not accept jobs on the app if sees a request prior to when they think their Blood Alcohol level will have returned to zero
 - This is an offence under the Act, but how will enforcement officers know the person has the app turned on
 - Enforcement officers would need real time access to the app without Greyball software and shadow app on phone
 - How can there be any confidence that the app on an enforcement officer’s phone is the real one – could be Greyball version 2.0 - that shows some cars some of the time rather than none

Suggestion:

- Consider re-wording so that the intent of the legislation is able to be achieved through both detection of offences and enforcement to ensure compliance

101. As Proposed:

“35 Amendment of s 87 (Issue of restricted licence to disqualified person)

Section 87(5B)(c), after ‘1999’—

insert—

or Transport Operations (Passenger Transport) Act 1994”

Comments/questions:

- Unsure why a suspension under TOPTA doesn’t count as a reason to stop people getting a restricted licence?
- Is this in the best interest of the public?
- Should this clause be left out/deleted so that a TOPTA suspension within 5 yrs DOES stop a person getting a restricted licence?

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102. As Proposed:

"Liquor Act 1992

1 Section 14B(2), definition *limousine licensee*, 'service'—
Omit"

Comment/question:

Does this mean that limousines will no longer be able to serve alcohol?

103. As Proposed:

"Tobacco and Other Smoking Products Act 1998

1 Section 26ZKB(7), definition *public passenger vehicle*—
insert—
(f) a booked hire vehicle"

Comments:

From the Tobacco and Other Smoking Products Act 1998:

"26ZKB Person must not smoke at or near public transport waiting point

- (1) A person must not smoke at a public transport waiting point
Maximum penalty—20 penalty units.
- (2) A person must not smoke on land within 5m beyond a public transport waiting point (the buffer zone), unless the person has a reasonable excuse.
Maximum penalty—20 penalty units.
- (3) For subsection (2), a person outside the buffer zone is taken to be within the buffer zone if the person is in a queue that starts at the public transport waiting point or in the buffer zone.
- (4) Subsections (1) and (2) do not apply to a person at a place where smoking is prohibited under the Transport Infrastructure (Rail) Regulation 2006 or the Transport Operations (Passenger Transport) Regulation 2005.
- (5) Subsection (2) does not apply to a person—
 - (a) in the buffer zone at residential premises or on land on which residential premises may lawfully be built; or
 - (b) in the buffer zone at business premises; or
 - (c) travelling through the buffer zone in a motor vehicle.
- (6) It is a reasonable excuse for subsection (2) that the person was not remaining in the buffer zone but was merely passing through the buffer zone.
- (7) In this section—
 - public passenger vehicle*** means any of the following, as defined in the Transport Operations (Passenger Transport) Act 1994, used to transport members of the public—
 - (a) a fixed track vehicle;
 - (b) a bus;
 - (c) a ferry;
 - (d) a taxi;
 - (e) a limousine.
 - public transport waiting point*** means any of the following—
 - (a) a sign indicating that it is a drop-off or collection point for a public passenger vehicle;
 - (b) shelter or seating provided for persons waiting at a drop-off or collection point for a public passenger vehicle;

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(c) a terminal, jetty, pontoon, platform or landing for the arrival and departure of a public passenger vehicle.”

Comments:

- A “public transport waiting point” looks and sounds like a “Rank” - which booked hire vehicles aren’t allowed to do under government policy

Suggestion/specific wording:

- If booked hire will include a “public transport waiting point” (as implied by the inclusion of the amendment 27ZKB (f)), then the definition of a public transport waiting point needs to be widened to include some of the types of areas that have already been used by entities providing booked hire services:
 “**public transport waiting point** means any of the following—
 (d) an area that has been designated or outlined as a drop-off, collection point, meeting area, or any other specific geographic area that has been ‘sign-posted’ by any means – either a physical sign, or, for example, via electronic means – including messaging, internet, or in-app notifications etc”

104. As Proposed:

Transport Infrastructure Act 1994

1 Section 335A, definition *busway service provider*,
paragraph (a)(i), ‘limousine’—
omit, insert—
booked hire

Comment/suggestion:

- Taxis and booked hire vehicles can’t use busways, but uncertain why limousines are now left out – is it confusion about limousines being in or out, or just a presumption that limousines are classified as booked hire vehicles even though they maintain their own separate limousine licence?
- This is an issue throughout the Bill and is not consistent
- Needs a complete and thorough check

105. As Proposed:

Transport Planning and Coordination Act 1994

1 Schedule 1, definition *public passenger transport infrastructure*, paragraph (f), ‘, limousine rank or limousine standing area’—
omit

Comments:

- It looks like this means that limousines have nowhere to stand or rank ie nowhere to drop off or wait for their passengers
- This is likely to be a problem for them, but as they are now classified as booked hire vehicles, ranking is the attempted separation from taxi services – this is one of the reasons why the definitions proposed in this Bill **fails** to achieve the intended outcome

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- Deletion of references to places for limousines to drop off and pick up passengers in this Act is at odds with the Tobacco Act (as noted above) where there is reference to a “public transport waiting point”
- If any type of vehicle other than a taxi is allowed to ‘rank’ or ‘stand’ (which equates to plying for hire) then this is at odds with the definition of taxi services in the Bill

Suggestions:

- The suggested alternate definitions to separate out taxi services from booked hire services using a mandated time separation between the booking being made and the journey commencing might resolve this issue
- This needs fixing and consistency throughout the Bill and all Acts and all subordinate legislation

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Appendix B:

Assessment of Regulation Amendments:

Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation 2017

Motor Accident Insurance Act 1994

Motor Accident Insurance

Regulation 2004

106. As Proposed:

7 Amendment of sch 1 (Motor vehicle classes)

(2) Schedule 1—

insert—

26 booked hire vehicles (cars and station wagons) and
limousines (cars and station wagons)

Comment/question:

- Does this include “people movers” and/or WAT type vehicles?

107. As Proposed:

10 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

booked hire vehicle see the *Transport Operations*
(*Passenger Transport*) Act 1994, schedule 3.

limousine see the *Transport Operations*
(*Passenger Transport*) Act 1994, schedule 3.

taxi see the *Transport Operations (Passenger*
Transport) Act 1994, schedule 3.

Comments:

- Problems with definitions – see details in Appendix A above

Suggestions:

- Reword definitions to truly create mutually exclusive definitions for taxi services and booked hire services
- See suggested wording under comments 11-20 regarding Sections 69-74, Comment 38 regarding Section 91D, Comment 74 regarding Section 91ZT

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Part 3 Amendment of Transport Operations (Passenger Transport) Regulation 2005

108. NOT Proposed – but an issue:

“52 Purpose of pt 6

The purpose of this part is to provide for matters in relation to taxi service licences as required by, or otherwise for, chapter 7 of the Act.

Note—

Section 68 of the Act sets out the purpose of taxi service licences.”

Comments:

- Section 68 of the existing/current Act sets out the purpose of taxi service licences.
- This has NOT been amended in the Regulations even though the Bill seeks to delete it
- However, Section 68 – Purpose of TSLs should remain and should be expanded to include purpose of Booked Hire Licences as well
- See comment 38 regarding Section 91D, Comment 74 regarding Section 91ZT, Comment 99 regarding definitions and purpose of licences

Suggestion:

- This needs to be fixed

109. NOT Proposed – but an issue:

“55 Amendment, suspension and cancellation of taxi service licences—Act, ss 75(1) and 79

(1) The chief executive may amend the conditions of a taxi service licence if the chief executive considers the amendment will result in a higher quality of service or will better meet the needs of users.”

Comments:

- The regulation allows amendment of the conditions of a TSL is for the specific purpose so that it “will result in a higher quality of service or will better meet the needs of users.”
- The Regulation **does not permit** amendment of TSLs for purpose of flooding market, damaging income of drivers etc
- See also - Comment 47 regarding Section 91P

Process to be undertaken if the conditions of a TSL are to be amended under Section 55:

“56 Notice about amendment, suspension and cancellation of taxi service licences

(1) This section applies if the chief executive considers a ground exists, under section 55, to amend the conditions of, or to suspend or cancel, a person’s taxi service licence.

(2) Before taking the action mentioned in subsection (1) (the **proposed action**), the chief executive must give the person a written notice—

- (a) stating the proposed action; and
- (b) stating the grounds for the proposed action; and
- (c) outlining the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is amendment of the conditions of the taxi service licence—stating the proposed amendment; and
- (e) if the proposed action is suspension of the taxi service licence—stating the proposed suspension period; and
- (f) inviting the person to show, within a stated time of at least 28 days, why the proposed action should not be taken.

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(3) If, after considering all written representations made within the stated time, the chief executive is satisfied a ground exists to take the proposed action, the chief executive may, by giving a regulation notice to the person—

(a) if the proposed action was to amend the conditions of the taxi service licence—

(i) amend the licence in the way stated in the regulation notice; or

(ii) amend the licence in another way having regard to the representations; or”

“60 Other amendments of taxi service licences

(1) This section applies only if the chief executive proposes to amend a person’s taxi service licence—

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect the person’s interests; or

(c) if the person asks.

(2) The chief executive may make amendments of a type mentioned in subsection

(1) by written notice given to the person.”

Comments:

- Existing Regulations have a process by which conditions of TSL can be changed
- Section 60 (1) (b) specifically states that the amendment “does not adversely affect the person’s interests”
- Therefore, between Section 55 (1) and Section 60 (1) (b), it is clear that **TSLs can only be amended by regulation** if it will demonstrably “result in a **higher quality of service** or will better meet the needs of users” and/or it “does **not adversely affect the person’s interests**”
- The Bill proposed by the Govt hasn’t followed this process or abided by these limitations and seeks to use the Bill to amend the conditions of TSLs (change them from an exclusive licence to a non-exclusive licence) in ways that do not reliably deliver a higher quality of service and that specifically will adversely affect the rights of TSL owners. Further there is also an attempt to use the Bill to authorise the use of regulations to amend any aspect of taxi service licences in any way, at any time
- This clearly is inappropriate, it breaches FLPs, and is an attempt to overstep the authority that rightly sits with the Parliament, the parliamentary process, and the Act

110. NOT Proposed – but an issue:

“Division 2 Operation of taxi services and taxis generally”

(Whole section)

Comments:

- The Section/Division is broadly relevant to many aspects that are in the Public Interest or are of Public Benefit
- For example:
 - hiring,
 - access to a booking service,
 - fares and charges,
 - mechanism/process of calculating the fare,
 - multiple hiring,
 - vehicle not to masquerade as a taxi or booked hire vehicle

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Suggestion:

- Most of this section/Division needs to be developed with relevant wording and clauses for application to booked hire services
- Vehicle age limits and other safety measures (including a return to 6 monthly Certificates of Inspection, need to be re-instated

111. NOT Proposed – but an issue:

“Division 3 Substitute taxis” (Whole section)

Comments:

- The Section/Division is broadly relevant to many aspects that are in the Public Interest or are of Public Benefit

Suggestion:

- Most of this section/Division needs to be developed with relevant wording and clauses for application to booked hire services
- For example, develop and specify all of the details regarding substitute vehicles that are permitted to operate under any/all of the licence categories/types
- See issues and questions – Comment 93 above

112. NOT Proposed – but an issue:

“117A Fare estimates for booked hire services

(1) A relevant entity must give a hirer of a booked hire service a fare estimate under this section before the service begins, unless the relevant entity has a reasonable excuse”

Comments:

- Clearly this earlier amendment was written before the concept of an authorised booking entity was developed
- Section 117A now needs to be amended as an update to reflect other changes proposed by the Bill and Regulations – including the need to state specifics such as:
- authorised booking entity
- The hirer of the vehicle for the trip (ie not some random hirer)

Suggestion/specific wording:

“(1) The authorised booking entity must give the hirer”

113. NOT Proposed – but an issue:

“117A Fare estimates for booked hire services

(4) In this section—

relevant entity, for a booked hire service, means—

(a) if an entity, other than the driver of the motor vehicle used to provide the service, arranges the service—the entity; or

Example for paragraph (a)—

an entity that receives a request for a service from a hirer through an app and communicates the booking for the service to the driver

(b) otherwise—the driver of the motor vehicle used to provide the service.”

Comment/Suggestion:

- This section needs re-wording to align with the changes proposed in the Bill

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114. As Proposed:

"117C Booked hire service signs

- (2) A person must not drive a motor vehicle to provide a booked hire service unless a booked hire service identification sign that complies with subsection (3) is—
- (b) clearly visible from at least 20m in front of and behind the vehicle."

Comments/questions:

- What happens if the sign is on the inside of very darkly tinted windscreen glass
- What is the definition of "clearly visible from 20 m?
- Could someone challenge this in court?
- Are there alternative definitions to add clarity/certainty?
- What happens if a vehicle/driver is providing services for ten different authorised booking entities simultaneously?
 - It is unlikely that there will be enough windscreen 'real estate'/space to safely display all of the required signs without obstructing the driver's view

Suggestion:

- Regardless of whether the booked hire vehicles have a sign, it is essential that the vehicle have a specific dedicated TMR issued coded number plate to designate that it is a booked hire vehicle with the correct registration, insurance and CTP insurance

Suggestion/specific wording:

Insert additional subclause:

"117C Booked hire service identification

- (3) A person must not drive a motor vehicle to provide a booked hire service unless a booked hire service has dedicated BH-series TMR issued official number plates affixed to the vehicle that complies with subsection (4) is—"

115. NOT Proposed – but an issue:

"117D Safety certificate requirement for particular booked hire vehicles"

- (1) An owner of a motor vehicle must not allow the vehicle to be used to provide a booked hire service unless a safety certificate for the vehicle has been issued within the last 12 months."

Comments:

- It is unclear whether a booked hire vehicle requires an annual safety certificate as per – this section 117D – which remains unamended, or
- Whether booked hire vehicles require a TMR issued Certificate of Inspection – see comments re: Section 117E below

116. As Proposed:

"117E Vehicle requirements for booked hire service licence

- (1) The vehicle requirements for a motor vehicle stated in a booked hire service licence are that the vehicle must—
- (a) be a passenger vehicle; and
- (b) have no more than 12 seating positions, including the driver's position; and
- (c) be registered in Queensland under the *Transport Operations (Road Use Management) Act 1995*; and

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(d) if the owner of the vehicle is required to possess a current certificate of inspection for the vehicle—be the subject of a current certificate of inspection; and”

Comments:

- Section 117E (1) (d) seems to conflict with Section 117D (1) – only needs annual safety certificate
- 117E doesn’t define when “the owner of the vehicle is required to possess a current certificate of inspection”

Suggestion:

- Review wording and references for both Sections 117D & 117E – strengthen if required

117. As Proposed:

“117F Application for booked hire service licence

(1) A person may apply to the chief executive for a booked hire service licence.

(2) The application must—

- (a) be in the approved form; and
- (b) include the details of the motor vehicle to be stated in the licence; and
- (c) be accompanied by the fee stated in schedule 9.”

Comments:

- This is unclear
 - Who is “the person”
 - Is it the:
 - Vehicle owner?
 - Driver?
 - Authorised booking entity?
 - Booked hire Operator?
 - Do they have to be an Australian citizen?
 - Do they have to be resident in Qld?
 - Do they need a 24/7 local (Qld) phone number?
 - Is it aligned to the vehicle registration and not to a person?
 - What happens if both the vehicle owner and the Booked Hire Service Licence owner are foreign corps? (nothing about local nominee for Booked Hire Service Licences – only for authorised booking entities)
 - What are the responsibilities of the Booked Hire Service Licence holder?
- Bill already says that the Booked Hire Service Licence can be leased – to whom, for how much?
- Who profits from leasing Booked Hire Service Licences?
- What is the value in leasing an asset that only costs \$237?
- Who owns responsibilities – ie where is a flow chart/diagram demonstrating the proposed structure of the industry, where all parties and licences fit in, and all roles and responsibilities – ie a complete picture of the formal chain of responsibility?
- See comments throughout the submission regarding the need to define the proposed structure of the industry and develop clear and robust legislation to govern/administer it

Suggestion:

- This needs major work and re-drafting for clarity and for public safety

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118. As Proposed:

117I Issuing booked hire service licence

- (1) If the chief executive decides to grant the application, the chief executive must issue a booked hire service licence to the applicant.
- (2) A booked hire service licence must state the following—
 - (a) the licence holder's name;
 - (b) details of the vehicle for which the licence is in force;
 - (c) the day the licence takes effect and expires;
 - (d) any conditions of the licence

Comments:

- Suggest aligning all passenger transport licences to Transport Service Areas and capping licence numbers in order to deliver the objectives of the Act and satisfy the Public Benefit Test
- See comment 74 regarding Section 91ZT

Suggestion:

- Add extra subclause:
 "117I Issuing booked hire service licence
 (2) A booked hire service licence must state the following—
 (e) the Transport Service Area for which the booked hire service licence (BHSL) is valid"

119. As Proposed:

"117K Amendment, suspension and cancellation of booked hire service licences

- (1) The chief executive may amend the conditions of a booked hire service licence if satisfied the amendment will better meet the needs of users of booked hire services"

Comments:

- Section 117K specifies that the Chief Executive can only amend a Booked Hire Service Licence to improve needs of users – ie not to ensure drivers earn fair wage, nor to manage traffic congestion, nor to address financially ruined taxis that may no longer be available to service people with disabilities etc
- NOTE: The users of the booked hire service ARE NOT the disabled people in wheelchairs who can no longer get wheelchair taxis and who aren't serviced by Booked Hire Service Licence

Suggestion:

- Apply the Public Interest/Benefit test to ensure that the Act delivers the objectives of the Act AND specifically include the Public Benefit test for the entire community in the regulation
- See comment xxx above

Suggestion/specific wording:

- "(1) The chief executive may amend the conditions of a booked hire service licence if satisfied the **amendment will be in the Public Interest and better meet the needs of the entire community**"

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120. As Proposed:

"117K Amendment, suspension and cancellation of booked hire service licences

(2) The chief executive may suspend or cancel a person's booked hire service licence if satisfied—

(c) the person contravenes, or encourages or permits someone else to contravene, a condition of—

(i) the licence; or

(ii) a taxi service licence, limousine licence or another booked hire service licence the person holds; or

(d) a taxi service licence, limousine licence or another booked hire service licence held by the person is suspended or cancelled; or

(e) it is necessary in the public interest.

Note—

Schedule 2 of the Act provides an amendment of a booked hire service licence, or suspension or cancellation of a booked hire service licence, is a reviewable decision."

Comments:

- Section 117K (2) (c) doesn't appear to cover something like uber's Greyball software program that blocked enforcement officers from performing their duties
 - This was outside of control of the driver but, because Section 117F is vague, it still could encompass one of uber's arms
 - It still could be something done by a computer algorithm on a rented foreign computer server
 - Therefore it isn't "the person" who contravenes, or encourages or permits"

Suggestion:

- Needs more work/refinement/improvement for clarity and to ensure that effective enforcement can be achieved and that Public Safety/Benefit etc can be ensured for the entire Qld community

121. As Proposed:

"117L Notice about amendment, suspension and cancellation of booked hire service licences

(1) This section applies if the chief executive considers a ground exists under section 117K to amend the conditions of, or to suspend or cancel, a person's booked hire service licence.

(2) Before taking the action mentioned in subsection (1) (the **proposed action**), the chief executive must give the person a written notice"

Comments:

- This is **not** effectively happening with the government's bulldozing of changes to the conditions of TSLs that adversely affect the TSL owner's interests
- These Draft regulations are proposing privileges to Booked Hire Service Licence owners that **haven't been afforded to TSL owners** who bought TSLs sold by the government

Suggestion:

- Need to develop and legislate for a better strategy to deal with the loss of \$1-1.5 Billion capital asset that has occurred as a direct result of the change of TSLs from an exclusive licence to provide all on demand passenger transport to a non-exclusive licence
- See further options and commentary under Appendix A Comment 38 regarding Section 91D

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122. As Proposed:

“117M Immediate suspension of booked hire service licence

(1) The chief executive may immediately suspend a person’s booked hire service licence, by giving a regulation notice to the person, if the chief executive considers—

- (a) the vehicle stated in the licence does not comply with the vehicle requirements under section 117E; or
- (b) it is necessary in the public interest.

Example of the public interest—

The chief executive considers the person is behaving in a way that is damaging to the reputation of public passenger transport.”

Comments:

- What about if they are jeopardising the safety of passengers/the public?
- How does this work -
 - if the Booked Hire Service Licence owner is a foreign corp?
 - if the Booked Hire Service Licence owner is the vehicle owner – but the car is still registered?
 - If the Booked Hire Service Licence is leased?

Suggestion:

- Needs more work/refinement/improvement for clarity and Public Safety/Benefit etc

123. As Proposed:

“117O Return of booked hire service licence if amended, suspended or cancelled

(2) As soon as practicable after the person is given the regulation notice (but within 14 days), the person must return the booked hire service licence to the chief executive, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units”

Comments:

- Very low level penalty which is not consistent with penalties in the Bill/Act
- What happens if they don’t return the licence and still keep providing booked hire services in that vehicle?
 - How will that be detected or enforced?
 - This is one of the potential benefits of requiring specific dedicated TMR-issued Booked Hire (BH-) number plates
 - Easily detected by standard number plate recognition equipment in use by Qld police
 - If booked hire service licence is suspended or cancelled, then licence-specific BH number plates must be removed from vehicle and surrendered to TMR
 - Failure to return number plate leads to vehicle impoundment along the lines suggested for Section 74

124. As Proposed:

“117P Other amendments of booked hire service licences

(1) The chief executive may amend a person’s booked hire service licence—

- (a) for a formal or clerical reason; or
- (b) in another way that does not adversely affect the person’s interests; or
- (c) if the person asks”

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Comments:

- This is not effectively happening with the government's bulldozing of changes to the conditions of TSLs that adversely affect the TSL owner's interests
- These Draft regulations are proposing privileges to booked hire service licence owners that haven't been afforded to TSL owners who bought TSLs sold by the government
- Regulations indicate a government policy position that it is unreasonable to just change conditions of a licence if they "adversely impact the person's interest" – yet this is exactly what the government is doing to TSL owners

Suggestion:

- Need to develop and legislate for a better strategy to deal with the loss of \$1-1.5 Billion capital asset that has occurred as a direct result of the change of TSLs from an exclusive licence to provide all on demand passenger transport to a non-exclusive licence
- See further options and commentary under Appendix A Comment 38 regarding Section 91D

Part 7B Vehicle security camera systems

125. As Proposed:

"117Q Definitions for part

relevant area means the geographic area that corresponds with a taxi service area mentioned in schedule 3"

Comments/questions:

- How does it work for booked hire vehicles that don't have designated Taxis Service Areas?
- Reflects the need for booked hire service licence to also have designated Transport Service Areas – identical maps/areas as taxis
 - This will provide administrative simplicity which will help minimise administrative costs
 - It will also help when assessing whether more or fewer licences are needed in order to ensure Public Benefit and access to transport services when determining the need for regulations under Sections 36, 75, and 91ZT

Suggestion/specific wording:

"relevant area means the geographic area that corresponds with all taxi service areas as mentioned in schedule 3 that existed immediately prior to enactment of this Bill that will be called Transport Service Areas and will be applicable to all passenger transport licences – including taxi service licences, limousine licences, and booked hire service licences"

Division 2 Chief executive functions

126. As Proposed:

"117R Chief executive may approve specifications for vehicle security camera system

- (1) The chief executive may, by notice published on the department's website, approve specifications for a vehicle security camera system.
- (2) Without limiting subsection (1), the notice must include the following specifications for the vehicle security camera system—
 - (a) whether the camera system may be turned off by a person;

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- (b) when the camera system must operate, including a period (if any) when the vehicle in which it is fitted is not providing a booked hire service or taxi service;
- (c) that the camera system must ensure that a security recording made by the camera system is deleted, destroyed or overwritten within a period stated in the notice;
- (d) that the camera system must make a record of when a security recording made by the camera system is downloaded.”

Comments:

- Risks associated with public passenger transport services are well documented and both passengers and drivers can be either perpetrators or victims
- More detail and some example scenarios and real current reported incidents are provided under below comment 127 regarding Section 117V

Suggestion:

- The specifications for an approved vehicle security camera system must mandate a **minimum** standard that must be **identical** for all vehicles operating under **all licence types** – taxi service licences, limousine licences, and booked hire service licences

127. As Proposed:

“117V Obligation on operator of service

(1) This section applies if a vehicle is, or is to be, used to provide a booked hire service or taxi service for a journey that starts in a relevant area and—

- (a) the vehicle is authorised to provide a taxi service; or
- (b) a passenger pays the fare for the journey—
 - (i) by cash at any time; or
 - (ii) in person by electronic funds transfer, credit card transaction or another way during the journey.

(2) The operator of a booked hire service or taxi service that is provided using the vehicle must ensure the vehicle is fitted with an approved security camera system.
Maximum penalty—40 penalty units”

Comments/questions/issues:

- The principle that underpins this Section is flawed and makes an assumption that all passengers and all drivers are always ‘known’ and will never exhibit poor behaviour
- Clearly such a strategy will **fail** and therefore, the Regulations **fail the public benefit test of ensuring safety**
- There are a number of scenarios that are common:
 - For example - the situation where there are multiple passengers in the booked hire vehicle and the person who booked the trip leaves first and asks the driver to continue to take the other passengers to a different destination
 - The driver complies with an expectation that the entire trip will be paid in full via the credit card in the app of the first person (the person who made the booking)
 - However, shortly after exiting the vehicle, the trip is ‘ended’
 - The driver is now left with 1-3 unknown passengers in the vehicle who may have no intention of paying, and may have an intention to assault the driver and steal the vehicle
 - Equally, the driver could assault an intoxicated young female passenger if they are the ones still in the car

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- There is no safety –
- The illusion that booked trips are traceable is not the complete picture
- The impression that booked trips paid by an in-app credit card are trouble-free is not the complete picture
- Situations like the one outlined above do occur and happen on a regular basis

- **Two recent examples exemplify the problem**
- Both occurred in uber vehicles (ie booked hire service vehicle under the proposed Bill) where both drivers and passengers were identified/known and paying via an in-app credit card transaction
 - 1) An uber passenger threatens to make a false allegation of “rape” against her uber driver – in car camera footage provided objective evidence of the facts⁵⁸. The outcome could have been very different for the driver had no camera footage been available to ascertain the truth
 - 2) An uber pool multi-hire trip where one uber passenger slashed the face of another uber passenger with a knife/blade⁵⁹

- Physical or sexual assault or death of a passenger or driver is a Never Event – ie it should Never happen

Suggestion:

- **Safety imperative**
 - It is in the Public Interest and imperative that legislation helps to minimise the risks to all parties
 - In addition to in vehicle cameras, it is imperative that standard safety equipment that has been required to be fitted to passenger transport vehicles in Qld for many years are mandated as standard equipment for all categories of licence governed by this Bill – ie taxi service licences, limousine licences, and booked hire service licences
 - Mandatory in-vehicle security camera system with identical minimum standard for all licence/vehicle types
 - Mandatory hard-wired real time fire-resistant vehicle GPS tracking devices with identical minimum standard for all licence/vehicle types with mandatory requirement that the authorised booking entity and Qld enforcement officers can gain immediate access to live data to track the vehicle in event of an emergency or life-threatening situation
 - Mandatory hard-wired real-time continuously monitored in-vehicle driver duress alarm with identical minimum standard for all licence/vehicle types that can be activated by a driver without the need to use their hands/fingers that, when activated, results in a real time on the ground physical response to the GPS tracked

⁵⁸ “SHOCKING footage shows an enraged woman threaten to falsely accuse an Uber driver of rape and assault — after he told her he didn’t have a charger for her phone

“I’m going to start screaming out the window that you’re raping me, that you raped me,” the female passenger can be heard saying in a dash-cam video” <http://www.news.com.au/lifestyle/real-life/wtf/passenger-from-hell-threatens-to-accuse-uber-driver-of-rape/news-story/1c8d38e119feead53f0f29a47fa64e1c>

⁵⁹ “A woman who was attacked with a knife in an Uber car is suing the ride-sharing company. But Uber said the “altercation” did not involve the company and its insurance provider has refused to compensate Ms Camacho because the assault was not considered accidental.” <http://www.bbc.com/news/technology-39502326>

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vehicle location with escalation if necessary, that can help save the life of a driver who has been assaulted

- Therefore mandatory in vehicle security cameras and fixed vehicle GPS tracking devices, and driver duress alarms are essential for all taxis, booked hire vehicles and limousines

128. As Proposed:

"117X Operation of camera systems

A person must not drive a vehicle to provide a booked hire service or taxi service while a vehicle security camera system, other than the following, is operating—

- (a) an approved security camera system;
- (b) a device operated by a passenger.

Maximum penalty—40 penalty units."

Comments:

- Section 117X won't allow for a:
"front and rear camera system" means a device or system that—
 - (a) records images, or images and audible sounds, in front of or behind a vehicle but not of any person inside the vehicle; and
 - (b) stores, or transmits and stores, the images, or images and audible sounds, recorded by the device or system."

129. As Proposed:

"19 Amendment of sch 9 (Fees and levy)

Schedule 9—

insert—

4A Booked hire service licence	237.26
4B Booking entity authorisation for each year of the authorisation—	
(a) 1 to 5 vehicles	250.00
(b) 6 to 20 vehicles	700.00
(c) 21 to 50 vehicles	2000.00
(d) more than 50 vehicles	5000.00"

Comments:

- An owner-driver booked hire service (where the driver of the vehicle holds the booking entity authorisation for the services they provide themselves) will have to pay \$250 for their single vehicle Booking Entity Authorisation – ie \$250 per vehicle, whereas a multi-billion dollar global corporation (such as uber) only has to pay \$5000 potentially for 100,000 vehicles across all of Qld – ie 5 cents per vehicle
- This is not reasonable and doesn't pass the 'pub test'

Suggestion:

- All other fees pertaining to vehicle ownership and passenger transport licences (including vehicle registration etc) are a single uniform fee per item
- If organisations own or use more items, there is a linear increase in costs that is identical for all – ie the single item fee is simply multiplied by the number of items owned or used

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- This should apply in this instance – eg All fees for authorisation for all booking entities should be charged at a fixed cost per vehicle (eg \$100 per vehicle) – regardless of whether the entity uses one or 100,000 vehicles – all entities are treated in an identical way and no one is disadvantaged

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Appendix C:

Sections currently within TOPTA that have not been flagged for amendment by the Bill, but that have relevance and amendments need to be considered in order to achieve the objectives of TOPTA and government policy

130. NOT Proposed – but an issue:

“111K Guidelines for dealing with relevant information

- (1) The chief executive must make guidelines, consistent with this subdivision, for dealing with relevant information obtained by the chief executive under this subdivision.
- (2) The purpose of the guidelines is to ensure—
 - (a) natural justice is afforded to the persons about whom the information is obtained; and
 - (b) only relevant information is used in assessing the persons’ suitability to be, or continue to be, a transit officer; and
 - (c) decisions about the suitability of persons, based on the information, are made in a consistent way.”

Comments/questions:

- This demonstrates that the Act seeks to ensure that parties are treated using the principles of fairness and natural justice
- How does the Bill ensure that this fairness is afforded by authorised booking entities to their drivers – example of uber driver deactivation without right to procedural fairness and natural justice
- How can TMR obtain information from uber about the driver to confirm/ensure that the driver has received Natural Justice?

Suggestion:

- These are principles of basic worker’s rights that must be protected and be included as an essential part of the Act/Regulations

131. NOT Proposed – but an issue:

The Bill has NOT amended Section 148 of TOPTA – but needs to in order to reflect other amendments proposed in the Bill

Suggestion:

“148 Inquiries about person’s suitability to hold accreditation or authorisation

- (1) The chief executive may make inquiries about a person to help in deciding whether—
 - (a) the person is a suitable person to hold, or continue to hold, **booking entity authorisation**, operator accreditation or driver authorisation; or
 - (b) the person or another person of whom the person is a partner is a suitable person to hold, or continue to hold, **booking entity authorisation**, operator accreditation; or
 - (c) a corporation of which the person is an executive officer is a suitable person to hold, or continue to hold, **booking entity authorisation**, operator accreditation.
- (2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a written report about a person’s criminal history or whether the person is or has been subject to a relevant order for an offence mentioned in schedule 1A, part 1.
- (3) For subsection (2), the chief executive’s request may include the following information—

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- (a) the person's name and any other name the chief executive believes the person may use or may have used;
 - (b) the person's gender and date and place of birth;
 - (c) details of the person's driver licence under the *Transport Operations (Road Use Management) Act 1995*;
 - (d) details of the person's **booking entity authorisation**, operator accreditation, driver authorisation or application for operator accreditation or driver authorisation.
- (4) If asked by the chief executive, the commissioner of the police service must give the chief executive a written report about the person's criminal history.
- (5) Subsection (4) applies to the criminal history in the commissioner's possession or to which the commissioner has access.
- (6) If the police commissioner gives the chief executive information under subsection (2) about a person who is or has been subject to a relevant order for an offence mentioned in schedule 1A, part 1, the information must include the following information about the person—
- (a) that the person is or has been subject to a relevant order for an offence mentioned in schedule 1A, part 1;
 - (b) if the person is or has been subject to a relevant order that is a disqualification order under the *Working with Children (Risk Management and Screening) Act 2000*—the duration and details of the disqualification order;
 - (c) if the person is or has been subject to an offender prohibition order—
 - (i) a brief description of the conduct that gave rise to the order; and
 - (ii) the duration and details of the order, including whether it is or was a temporary offender prohibition order or a final offender prohibition order."

132. NOT Proposed – but an issue:

"148C Confidentiality

- (1) A person must not disclose, record or use information the person gained—
 - (a) through involvement in the administration of this Act; or
 - (b) because of an opportunity provided by the involvement.
- Maximum penalty—200 penalty units."

Comment/suggestion:

While some aspects of this may be covered under the proposed elements of the Regulations pertaining to camera images, and by Section 148C (1) (b), consider whether this needs to be strengthened to cover other elements pertaining to modern technology – for example, live streaming of video or audio to cloud-based computer servers etc

133. NOT Proposed – but an issue:

"149 Offences of dishonesty

- (1) A person must not apply for or obtain an accreditation, authorisation, contract or licence under this Act by intentionally or recklessly making a false representation.
Maximum penalty—60 penalty units.
- (2) A person must not forge an accreditation, authorisation, contract or licence under this Act.
Maximum penalty—60 penalty units.
- (3) A person must not intentionally or recklessly obtain, or help someone else obtain, a financial benefit under this Act to which the person is not entitled.

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Maximum penalty—60 penalty units.

(4) A person must not—

- (a) use an accreditation, authorisation, contract or licence under this Act fraudulently; or
- (b) permit the fraudulent use by someone else of an accreditation, authorisation, contract or licence under this Act.

Maximum penalty—60 penalty units.

Comment:

- The penalties in this unamended Section of TOPTA for dishonestly are way too low in light of other penalties in the amended sections under this Bill

Suggestion:

- Review the entire Bill and all of TOPTA to ensure that penalties (& all other elements of the Bill) are consistent across the entire Bill

134. NOT Proposed – but an issue:

“143AD Obtaining hire or use of vehicle by fraud or misrepresentation

A person must not obtain, or attempt to obtain, the use or hire of a public passenger vehicle by fraud or misrepresentation.

Maximum penalty—40 penalty units or 6 months imprisonment.”

Comments/questions:

- What about passengers in uber/booked hire service cars who are not the person that booked the ride?
- What about children/spouses, friends riding in uber/booked hire service cars booked by someone else – eg parents?
- How will this be detected?
- How will this be enforced?
- How do these penalties compare to other Sections of TOPTA and other Acts (both amended and unamended elements)
 - Is there a mismatch between the severity of 40 penalty points and 6 months imprisonment?

Suggestion:

- Review the entire Bill and all of TOPTA to ensure that legislation is practical and enforceable and covers all real life scenarios
- Review the entire Bill and all of TOPTA to ensure that penalties (& all other elements of the Bill) are consistent across the entire Bill

135. NOT Proposed – but an issue:

“Division 3 Driver disqualifying offences

162 Driver disqualifying offences

(1) For the purposes of a reference in this Act to a category A driver disqualifying offence, category B driver disqualifying offence or category C driver disqualifying offence, it is declared that—

- (a) the reference includes a reference to the offence whether the offence was or is committed before or after the commencement of this section; and

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(b) a reference to a conviction of the offence includes a conviction of the offence whether the conviction happened before or after the commencement of this section.

(2) If the person has been convicted of a category A disqualifying offence before the commencement of this section—

(a) if the person holds driver authorisation on the commencement—the driver authorisation is

immediately cancelled on the commencement; and

(b) if the person has applied for the grant or renewal of driver authorisation before the commencement that has not been finalised—the application is terminated on the commencement; and

(c) if the person immediately before the commencement has an entitlement to have driver authorisation granted or renewed under a decision of a court on appeal from the decision of the chief executive—the entitlement is extinguished on the commencement.”

Comments/questions:

- It is clear from this that TOPTA seeks to take into consideration offences committed prior to commencement of the Section

Suggestion:

- While this unamended Section relates to drivers, there is a need for a similar section to cover booking entity authorisation (ie Booking Entity Disqualifying Offences) relating to offences prior to commencement of the section (which hasn't been drafted)
- This will also need to include cases where parties have admitted to offences – even if charges have not been laid and a conviction has not been recorded
- Including this element in the Bill helps to achieve the purpose of the Bill as stated under Section 68 (c) – ie ensuring that all persons are suitable to be involved in the industry

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Appendix D

Excerpts from:

Calo, Ryan and Rosenblat, Alex, The Taking Economy: Uber, Information, and Power (March 9, 2017). Columbia Law Review, Vol. 117, 2017; University of Washington School of Law Research Paper No. 2017-08. Available at SSRN: <https://ssrn.com/abstract=2929643>

“While Uber drivers use the system, they may be offered a plethora of temporary contracts around price and other factors, and they are perennially forced to agree to new terms of service such as new commission structures when they log in to work. As contract scholars explore in other contexts, Uber stands to profit from the inability of the driver to keep up both with the dizzying complexity of such documents and their high rate of change.”

“While the sharing economy presents new factual challenges, we are not necessarily in uncharted legal territory. The law of consumer protection has long concerned itself with information and power asymmetries among market participants”

“sharing economy firms can influence not only the perceptions and behaviors of consumers of goods and services, but also the suppliers. Control of this “two sided” marketplace creates additional channels for digital market manipulation, including inter-participant interaction.”

“sharing economy firms can and do leverage their access to consumers and other participants in order to influence important stakeholders such as potential regulators. As Pollman and Barry explain, this strategy is at the very heart of regulatory entrepreneurship: tell a good story, become indispensable to consumers, and then ask forgiveness instead of permission. We would add that sharing economy firms, as digital platforms, are especially well positioned to identify, encourage, and coordinate participants willing to contact regulators on the firm’s behalf. Imagine, for example, the sudden emergence of a button on an app the consumer can press to call the specific legislator taking aim at the sharing economy firm.

In short, the sharing economy presents at least as many opportunities for digital market manipulation as any previous or constituent market modality.”

“the visual vocabulary of Uber’s app is inconsistent. Upon hailing an Uber, a consumer sees an icon of her driver’s actual location in real time. Nothing in the interface distinguishes between the manufactured display of phantom cars and the actual representation of a hailed vehicle. In Woodrow Hartzog’s parlance, Uber is engaging in “abusive design” by suggesting visually that cars are nearby when they are not, presumably to entice the consumer to commit to hailing Uber instead of Lyft or a taxi. Further, they are using the consumer’s location on a map to lend verisimilitude to the illusion.”

“Uber’s own data scientists have revealed that the firm makes a close study of exactly when consumers might be willing to pay more. For example, Uber researchers found that individuals are more willing to pay surge pricing when the batteries on their phones are low. This makes sense, of course, because the alternative is for the consumer to be stranded without access to a means of communication.”

“Uber also appears to be charging different prices to similarly situated consumers—a practice known as dynamic price discrimination, which some consumers and commentators find alarming.”

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.... *"They found a discrepancy, with users in the same surge zone at the same time received different prices"*

"Sharing economy firms try to avoid characterizing themselves as traditional employers. Rather, they claim to provide a technology-based service to different categories of user. Contractually, Uber tends to refer to drivers as independent contractors because this helps limit their obligations at labor law and liability in tort."

"Heat maps thus function as a behavioral engagement tool, but can effectively operate as a bait and switch mechanism similar to the use of phantom cars to entice ride-hailers. These constraints on drivers' freedom to make fully informed and independent choices reflect the broad information and power asymmetries that characterize the relationship between Uber and its drivers, and illustrate how the Uber platform narrows the choices that drivers are free to make."

"drivers report that they accept every ride request they see, yet upon receiving their pay stubs, discover they were not paid the guaranteed rate. When they inquire with Uber Support, they are told that they did not meet the ride acceptance rate. For example, while a driver may perceive that they accepted 100% of ride requests, Uber Support may say they only accepted 78% of ride requests according to Uber's internal data. Drivers have no way of monitoring app activities to provide an objective account, and perceive they would be in violation of their terms of service were they to try to reverse-engineer the app in an effort to hold the system accountable for their pay."

Conclusion:

"the contemporary regulator must first understand and then find a way to address the prospect of abuse. This is no easy set of tasks, but it is a crucial one."