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Transport and other Legislation (Personalised Transport Reform) Amendment Bill 2017

Research Director
Transportation and Utilities Committee
Parliament House
George St
Brisbane QLD 4000
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We thank the committee for the opportunity to provide this submission regarding the Transport and other Legislation Personalised Transport Reform Amendment Bill 2017. Our submission outlines our view on the bill, however we have not addressed all of our concerns as we feel that The Taxi Council of Queensland's submission covers all issues that are not highlighted in this document.

We have personally been affected by the inability of the government to address the issues that have been created as a result of allowing any private vehicle to provide a transport service without proper rules and regulations in place. We believe there are at least three thousand UBER drivers on the Gold Coast and this number grows. We watch the private vehicles cruising the streets of the Gold Coast as they tout for passengers. Unmarked vehicles, when registration details are checked, have no registered Safety Certificate, are registered as private vehicles which shows a lack of appropriate insurance and in most cases, are either UBER drivers who have removed the identification sticker from the back windscreen or are pirate taxis with no affiliation. We watch as intoxicated females hail these cars and seem completely ignorant of their own safety. We have watched as females jump into vehicles that are not UBERs only because the vehicle has slowed at an intersection and being told to get out of the car, which is lucky for these females, as hitchhiking is the most dangerous thing a woman could do. We watch UBER vehicles slide onto taxi ranks as soon as they are clear of taxis. We watch as taxis sit on ranks idle, as the many unmarked private vehicles cruise past them and illegally tout for passengers. The taxi drivers are watching all this as well and it seems like a slap in the face to them by the government. What we don't see is TMR. We don't see anybody else watching the private cars running pirate taxi services. On the many occasions, we go out to the busy areas of Surfers Paradise and surrounding areas, never once have we seen a compliance officer.

We are concerned about the message the government has effectively sent out to the public, that any private car is a taxi, any private car is safe even if you cannot see any evidence of this, any private car driver is accredited and safe, even if there is no evidence, any private car is insured and will cover you in an accident and it is perfectly okay to assume you will get home safely because all private vehicle and their drivers can be completely trusted. UBER and the government have led you to believe this. If anything, bad happens to you, well if you are still alive you can always give the driver a low rating in the hope that it will sort itself out and the driver will be sacked. Hopefully he doesn't turn up in some other ride share company.

However, all taxis may not be safe, may not be appropriately accredited and just by charging you a rate that ensures your safety as well as the minimum wage for the driver, is obviously too expensive,

because the government had to change the law and let any vehicle provide this service because the taxis were just not doing a good enough job and obviously, the drivers cannot be trusted to keep you safe because they have mandatory tamperproof cameras and all the other cars do not. This is the message every person in the state has received from our Government and this bill in its current form sends the same message.

As operators of taxis for over 30 years we know safety and standards cost money. If you provide a service to the community you must adhere to laws that are meant to protect the community. We understand that there is a place for competition but we believe that after everyone has achieved a minimum safety requirement then go for your life - compete!

In previous submissions, we sought to highlight the benefits of the existing regime in which a co regulatory partnership existed between the taxi industry and State Government. In which the focus on universal service obligations resulted in a cost effective, successful transport industry that was self funded and achieved high levels of service and standards. However, this model which does not suit the business models of large corporations who have effectively managed to engage the public and politicians with a free market ideology, has been thrown out at the expense of the high levels of safety and service to the public. We continue to put in submissions, including this one and hope to encourage some sort of sensible outcome that puts the safety of public at the forefront of legislative changes instead of the profits of those that not only operate share ride businesses but also those that invest in the outcome of their success.

The aims of the personalised transport reform program and our response

- **strengthen safety standards for the whole personalised transport industry;**
Removal of the service contracts do not strengthen safety standards and the introduction of a licencing authority looks to replicate parts of the original service contracts however lacks a consistent approach to safety across all personalized transport
- **provide customers with greater choice and flexibility;**
Similar deregulation events have resulted in the rationalization of market players with larger companies better placed to offer services and their brand to drivers and operators. The result ultimately will be less choice/competition
- **drive innovation and improved customer service standards through reduced red tape;**
There is agreement that red tape should be reduced within the provision of personalized transport however this could be achieved by simply removing clauses of the service contract that apply.
- **ensure accountability and clearly define obligations across the industry.**
This bill fails to address the issue of foreign entities not being effectively captured within the chain of responsibility
- **provide a more equitable regulatory framework across the personalised transport industry.** Public transport will be subject to a buyer beware system that looks to remove both Government and foreign entities from responsibility and sets up a chain of responsibility that is vague at best. This bill does not achieve a fair level playing field for all providers of transport and looks to protect the business model of UBER.

Service Contracts

Service Contracts underpin the universal service obligations that exist today. In the best interest of the consumer this bill should maintain the capacity of the Minister to enter into Service Contracts to provide a framework for accountability to be managed at lowest cost to Government.

Policy Objective –

*Removing provisions relating to service contracts for the administering of taxi services, including the requirement for a person administering taxi services to hold a service contract and replacing Service contracts with a simplified booking entity authorisation regime. **Removal of these contracts will reduce red tape for taxi booking companies and administration costs for TMR.***

Booking Company Service Contracts are a second line enforcement tool to enhance the legislation, regulation, and standards associated with the delivery of taxi services, DTMR uses Booking Company Service Contracts to ensure all affiliated taxis abide by the legislation. It is a cost-effective method to ensure compliance and as it is well documented that high safety and service standards have been achieved as a result of the co regulatory system, which include service contracts.

We do not support the removal of Service Contracts and argue that the shared cost of achieving a safe mode of public transport by the taxi industry and the government will no longer apply. There is agreement that red tape should be reduced within the provision of personalized transport however this is easily achieved without removing the current framework.

The removal of the service contracts and the introduction of an authorization regime fail to address the outcomes and unintended consequences, some of which are listed below;

- Existing drivers, owners and operators will act in their own best interest to mitigate losses incurred, with little ability of booking companies to protect passengers
- Without an effective service contract in place, there will be less ability for DTMR to manage an effective, cost effective compliance regime. Passengers will be left to negotiate their way through price gauging and other practices with no protections in place.
- Competition may come as a result of government subsidized not for profit entities to provide transportation to low profitable customers. This will come at enormous cost to Government, which would mitigate arguments on savings.
- In the longer term, similar deregulation events have resulted in the rationalization of market players with larger companies better placed to offer services and their brand to drivers and operators resulting in a consolidation of market participants rather than an increase in customer choice/competition
- The introduction of an authorization regime looks to replace the service contracts. The creation of a new contract that outlines the requirement of the licencing regime replaces the existing service contracts and therefore costs are replicated.
- The costs in audits and on going benefits tests to the new regime mitigating the perceived savings.
- Public transport will be subject to a buyer beware system that looks to remove both Government and foreign entities from responsibility and sets up a chain of responsibility that is vague at best.

Bailment Agreements

Bailment Agreements must be maintained within the Personalized Transport Legislation. Further to retaining the existing requirement for drivers of taxis to enter into a bailment agreement, all drivers of personalized transport should be required to enter into a bailment agreement with minimum work conditions and standards.

*Policy Objective; **Removing provisions relating to taxi service bailment agreements between operators and drivers given this is a workplace relations matter and protections are provided for in other legislation.***

The removal of the bailment agreement is one of the most concerning aspects of the bill. The protection of the driver must be maintained. The existing issues for ride share drivers who are not protected by the legislation is well documented

The Bailment agreement was introduced as an outcome of past taxi reviews which highlighted incidences of unfair treatment of drivers. Agreements between operators and drivers were inconsistent, it was found in some cases drivers were not protected under the existing legislative regime. Notwithstanding Industrial relations had existing protections, it was found that there were instances of abuse of driver's rights. The use of a regulated bailment agreement ensured minimum insurance and accident cover, minimum income and safety working environment and also a clear interpretation of the driver's contractual position. To remove the existing bailment agreements would cause

- 1 Unnecessary cost and burden to drivers in having to engage consultants and or legal advisors to ensure their rights.
- 2 Drivers being forced to sign unfair contracts which leave them unprotected and put at risk
- 3 An example of agreements that are used by the largest share riding company (UBER) should be identified as an example of what most drivers of vehicles will agree to in the future. Drivers are forced to agree to terms and conditions that they do not understand and are not vetted by Government. There are reported cases where drivers have been disaffiliated as a result of rating systems that fail to provide a right of reply. In some cases, driver partners have signed into costly vehicle purchase or hire arrangements before being removed from the platform. This scenario exists regardless of current Industrial Relations legislations that this amendment bill claims will replace the regime of Bailment agreement that exist today within current legislation. Below are some examples of lack of protection that is happening today.

An Uber driver says he is on the brink of financial ruin after being dumped from the company late last year without a full explanation.

<http://www.theage.com.au/business/consumer-affairs/dumped-uber-driver-pleads-for-explanation-20160519-goz0dl>

Uber's contract with drivers has been at the centre of recent criticism of the \$80 billion US company, with legal experts saying it leaves workers with few rights and little room for resolving disputes.

<http://www.theage.com.au/business/workplace-relations/the-uber-contract-explained-i-would-be-loathe-to-sign-it-20160523-gp25vc>

A Perth-based Uber driver is suing the Silicon Valley giant for terminating him without notice, leaving him with \$80,000 worth of car loans - one of which he says was spruiked by Uber.

<http://www.theage.com.au/business/the-economy/driver-sues-uber-for-deactivating-account-20160517-gowsd5>

Fatigue Management

The government must ensure a legislative policy that addresses fatigue management. The bill lacks clarity in how this will be managed through the chain of responsibility.

There is no ability under a regime that allows multiple affiliations with booking services to manage fatigue. Taxi companies manage fatigue by exclusion from the entity after a number of hours have been logged into the system. As taxi operators, we are aware of the avenues drivers use to circumvent fatigue management policies and we work to address these. Under a system where there are multiple booking companies and affiliations, no service contracts which support a co regulatory system between booking companies and DTMR, no sharing of driver's data between the many booking entities, an increasing number of private transport providers that are likely to appear and a vague legislative policy, we see no ability for ourselves or any person within the chain of responsibility to effectively manage fatigue.

Unless the government can construct a clear policy and how this could be enforced, fatigue management within the chain of responsibility can not be achieved; The introduction of the private booking licence has resulted in hundreds if not thousands of drivers who may affiliate with many different booking companies. There is no collaboration of data that ensures compliance of fatigue management and the introduction of different spheres of personalized transport has resulted in passengers being put at risk.

Security Cameras

Tamper Proof Security Cameras must be legislated, identifying outcomes. All providers of personalized transport must have installed tamper proof security cameras regardless of type of booking.

The need for security cameras is not exclusive to a rank and hail fare. There is a requirement for security to protect the driver and passenger.

There are incidences of passengers who have been charged with offences against drivers who have booked the car through the dispatch system, as there have been incidences of drivers who have been charged for offences against passengers as a result of a booked fare. There are a number of risks in providing public transport and to identify a pre-booked fare as a lesser risk than a rank and hail fare is a major flaw within this bill. In cases where a female has accused a driver of a sexual offense is not exclusive to rank and hail fares and a driver's ability to have security camera evidence for protection should be legislated as it has been in the past for taxis. Driver offences against passengers are also not exclusive to rank and hail fares and all passengers of personalized transport have a right to be protected. The prohibitive cost argument has not been effective for the taxi industry due to the importance of safe and secure cameras in the eyes of the public. Therefore, should not be used as reasoning against ensuring all vehicles are required to have consistent, tamper proof security camera that adheres to policy on chain of evidence for court proceedings.

Booked Hire Services

Booked hire service providers and Limousine service providers should have attached a number plate that identifies the vehicle as a provider of personalized transport. Plates to be provided only when evidence of a safety certificate, appropriate CTP and inspection certificate is produced.

The amendment bill does not go far enough to identify a booked hire service. It is not an effective argument suggesting costs associated with registration plates are an impost to operators of personalized transport. All limousine licenses have effectively had appropriate number plates attached that identify the provider. All Special Purpose Licenses have also effectively been identified as a transport provider. A process of reporting disaffiliated drivers with a mandatory return of the number plates would ensure protection and safety of the consumer.

At the present time, there is no effective system in place that identifies a provider of a ride share vehicle. We constantly witness many private vehicles without the current required sticker identification picking up UBER passengers within the Gold Coast Area. The ability of the current stickers to be attached and removed at will, is not an effective legislative fix to combat the issue of pirate taxi services being provided.

The likelihood of an increase in multiple booking service providers is extremely high and the resultant multiple stickers attached to ride share vehicles is also a likelihood. A regulation that requires all booked services to attach a number plate that identifies the service will eliminate the issue of multiple compliance stickers that are removed when vehicles are trying to hide from compliance officers.

Licence Fees. There is little or no buy in by share ride operators. The turnover of drivers within the share ride economy is at a level that will result in a future of transient drivers who have no responsibility or interest in a regular safe transport system. Special purpose limousines were issued on an annual basis and were an effective licencing regime for drivers and vehicles that were used on an occasional basis. The fee for special purpose limousines was set at \$2,000 per annum. Considering the increase in hours that are provided by ride share vehicles it is appropriate that the fee of around \$250 does not align with the principles that were considered when allocating Special Purpose Limousines. The cost of compliance and a required buy in by transport services should be reflected in the licencing fee.

Addressing Hire Car businesses

The bill must incorporate all providers of vehicles used for personalised transport within the chain of responsibility

The largest growth within the provision of share ride services is car rental to drivers who do not own their own vehicle. The effect is a growth of taxi like depots and a proliferation of deals trying to entice drivers into agreements that can result in bankruptcies and loss of income to drivers. There is little in the amendment bill that addresses the issues and impacts this has on drivers and passengers. The hire car contract between the driver and the company should be highlighted. The chain of responsibility is unclear within the bill and this is a by-product of the lack of interest by TMR to engage in compliance in Qld because these issues are complicated and are businesses that operate outside of the legislation. The hire car companies operate within a grey area of the legislation and as a result the growth has been so gigantic that governments may struggle to contain companies under any new legislation, such as has been the case with UBER.

Rideshare drivers united association - Drivers have zero job security

"Uber drivers can get deactivated by Uber (Uber's language for "fired") without a reason or explanation, at any given time with no fair work entitlements whatsoever. Drivers who took car leases or car loans can find themselves overnight without a job while having to continue servicing expensive car obligations which may lead many of them into bankruptcy. It may take one disgruntled passenger making a complaint for Uber to immediately deactivate the said driver indefinitely. There is no phone number the driver can call to even discuss the matter."

<http://ridesharedriversunited.com/why-are-uber-drivers-in-melbourne-unhappy/>

The 62-year-old says he is still without a job and is struggling to repay a mortgage and a car loan he got for the purpose of becoming an Uber driver.

<http://www.smh.com.au/business/consumer-affairs/dumped-uber-driver-pleads-for-explanation-20160519-goz0dl.html>

Advertisements for car rentals for share ride drivers

Car Hire add for UBER drivers

<http://www.drivemycar.com.au/uber-marketplace>

Car hire add for UBER drivers

<https://www.splend.com.au>

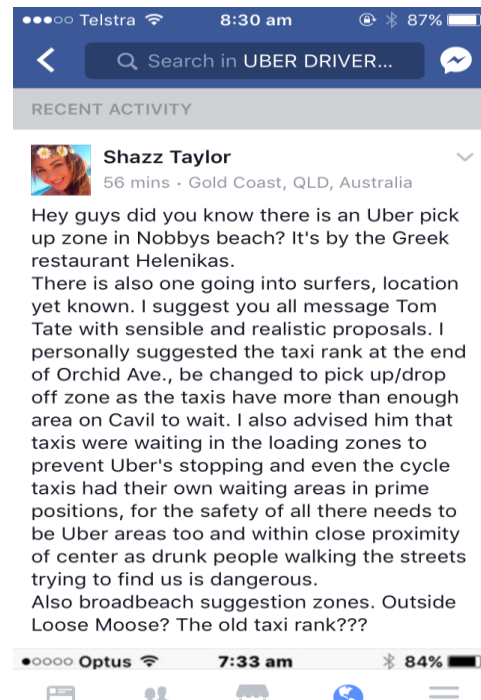
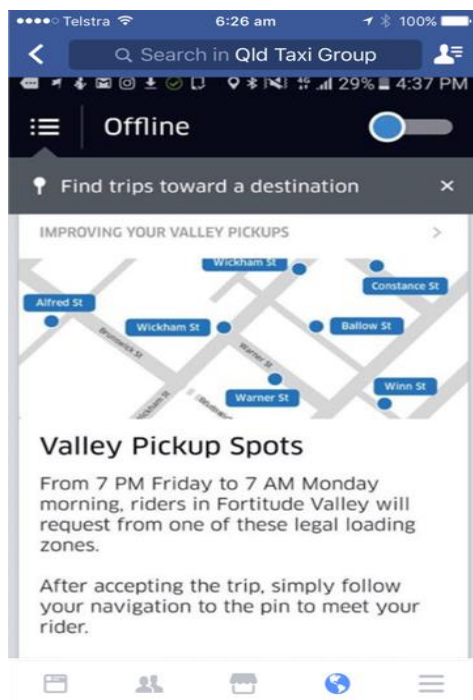
UBER car for rent \$350 per week

<https://www.gumtree.com.au/s-ad/perth/cars-vans-utes/uber-car-for-rent/1142710180>

Rank and Hail

The bill should clearly define the difference between booked fares and rank and hail. The public including other government entities should be more effectively educated on the illegalities of private vehicles proving rank and hail services

A quick Google search identifies many hits that promote UBER zones. These are areas that are designated for UBER drivers to park while waiting for a passenger. In most cases drivers do not have a booked job. These zones are pirated versions of ranks and the bill ignores the current behavior of share ride vehicles ranking and fails to address the practice of share ride companies or their business partners providing areas, and instruction to their drivers to effectively rank. Councils and businesses are liaising with share ride companies who choose to ignore the laws and we are seeing proliferation of ranks appearing throughout the Gold Coast. The safety of passengers is compromised by the lack of clear legislative description within the amendment bill that will result in a continuation of this practice. The behavior of TMR ignoring the deliberate illegal practices of UBER who provide clear instructions to drivers to operate under a rank and hail system is apparent to all personalized transport Drivers, operators and passengers. There needs to be clear legislative differential between rank and hail and booked fares.



UBER ZONES ADVERTISED

<https://www.ausbt.com.au/sydney-airport-uberx-passengers-to-be-charged-4-pickup-fee>

<http://www.brisbaneheat.com.au/news/brisbane-heat-partner-with-uber/2016-12-28>

Mr Bool also today revealed the company was in talks with Cairns Airport to secure an exclusive Uber pick-up zone, in line with a similar recent move at Brisbane Airport.

<https://www.tropicnow.com.au/2017/february/16/uber-riders-ready-to-roll-in-cairns.html>

https://www.bne.com.au/sites/all/files/content/files/FAQ-PreBooked_and_Ride_Booking_Pick_Up_Zone.pdf

Chain of Responsibility

Foreign Entities should be more effectively incorporated into the chain of responsibility

84 Persons in the Chain of Responsibility (1) (g) If an authorized booking entity who provides booking services for the service is a foreign person-the entity's local nominee

The above-tabled amendment allows foreign entities to hide from prosecution.

Over the past three years the Queensland Government has failed to prosecute foreign entity's through inaction and ignoring illegal and unlawful acts done. As a result of this, UBER has operated illegally in all states whilst they lobbied governments to have the laws changed to accommodate their business model. The inability to pursue foreign entities has left Queenslanders with little confidence in the legislative powers of government. There has been an expectation of an intention to rectify this problem by introducing legislation that would close the loopholes that were deemed to exist in the current act. However, the bill has failed to introduce new legislation that would effectively encompass foreign entities and furthermore appears to make it easier for large corporations to create structures that would enable it to avoid prosecution.

Further to this the bill looks to protect certain entities from responsibilities under the following amendment;

87 (4) (b) (ii) would have the capacity but for an agreement or arrangement purporting to limit or remove that capacity

In the removal of the Bailment Agreement there is a lack of protection for drivers of personalized

transport. The terms and conditions of UBER app that drivers are required to sign before being allowed to receive fares, are indicative of the ability of booking companies to limit or remove responsibility to the driver and this bill looks to facilitate this practice.

Allowing for TSS to be extended to booked hire vehicles and limousines in the future

For the protection of those in the community who are most vulnerable and are least able to distinguish between reputable transport services and pirated versions, the Taxi Subsidy Scheme must be provided by accredited taxis only.

TSS customers are not exclusive to booked services. A lot of these customers use rank and hail.


Most TSS users are elderly or disabled, special needs customers and economically disadvantaged. Taxis have the following safety mechanisms, which are not consistent with all other personalized transport.

- ❖ **Tamper proof GPS tracking**
- ❖ **One point of contact via a personalized booking system**
- ❖ **Security of transparent driver licensing that protects against pirate services**
- ❖ **Security Cameras in all cars**
- ❖ **Mandatory minimum training of all drivers**
- ❖ **Clear registration plate signage that cannot be removed**
- ❖ **Protection from surge pricing and fare gauging**
- ❖ **Immediate Complaints and lost property contact by telephone**
- ❖ **Trained Drivers who have local knowledge**

A consistent and transparent provision of a Government contracted scheme would allow for a consistent provision of transport to those in the community who have less ability to distinguish between accredited services and pirated versions. These passengers can't always use advance technology and smart phones. Taxis are the only service provider that uses telephone booked services and a personalized service. All other booked services are mostly dependent on smart phone technology and market themselves as utilizers of future technology. The intention of this bill to merge all providers of personalized transport, other than taxis makes this legislation unachievable. The inability of TSS customers to distinguish between a service provider who uses transient drivers, does not conform to the same exacting standards that are required by taxis could put our most vulnerable passengers at risk

To summaries we support the Taxi Council of Queensland on all points they have raised in their submission to this bill and below are the points we feel strongly should be addressed to ensure a fair playing field across all personalized transport and a priority of safety and standards for the community.

- 1 Service Contracts underpin the universal service obligations that exist today. In the best interest of the consumer this bill should maintain the capacity of the Minister to enter into Service Contracts to provide a framework for accountability to be managed at lowest cost to Government.
- 2 Bailment Agreements must be maintained within the Personalized Transport Legislation. Further to retaining the existing requirement for drivers of taxis to enter into a bailment agreement, all drivers of personalized transport should be required to enter into a bailment agreement with minimum work conditions and standards.
- 3 The government must ensure a legislative policy that addresses fatigue management. The bill lacks clarity in how this will be managed through the chain of responsibility
- 4 Tamper Proof Security Cameras must be legislated, identifying outcomes. All providers of personalized transport must have installed tamper proof security cameras regardless of type of booking.
- 5 Booked hire service providers and Limousine service providers should have attached a number plate that identifies the vehicle as a provider of personalized transport. Plates to be provided only when evidence of a safety certificate, appropriate CTP and inspection certificate is produced.
- 6 The bill must incorporate all providers of vehicles used for personalised transport within the chain of responsibility.
- 7 The bill should clearly define the difference between booked fares and rank and hail. The public including other government entities should be more effectively educated on the illegalities of private vehicles proving rank and hail services
- 8 Foreign Entities should be more effectively incorporated into the chain of responsibility
- 9 For the protection of those in the community who are most vulnerable and are least able to distinguish between reputable transport services and pirated versions, the Taxi Subsidy Scheme must be provided by accredited taxis only.



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Darren and Kris McKinnon