

Committee Secretary,

Public Works and Utilities Committee

Parliament House

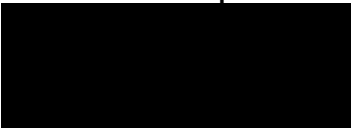
George St , Brisbane Qld 4000

10 April 2017

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

A submission by and on behalf of : THE YELLOW OWNERS ASSOCIATION

Author : Stephen Lacaze (Chair of YOA Executive Committee)



Signed: Stephen Lacaze 10 April 2017

Summary of the submission :

- **Reference to Public Benefit Test Guidelines**
- **Establishment of Priority of Public Safety**
- **Analysis of some key examples fatal flaws in the Bill**
- **Conclusion and statement of direction**

TRANSPORT OPERATIONS (Passenger Transport) Act 1994 (Act 43 Of 1994) cites and remains unplanned to amend : Chap 1, 3.(1)

“ This Act is intended to achieve the provision of the best possible public passenger transport at a reasonable cost to the community and government, keeping government regulation to a minimum.”

Chap 1, (3) (b) (ii) offers an attractive alternative to private transport in a way that reduces the overall environmental, economic and social costs of passenger transport.

Chap 1, (3) (c) “provide a reasonable level of community access and mobility in support of the Government’s social justice objectives”

From Transport and Other Legislation (Personalised Transport) Amendment Bill 2017

Part 2 Amendment of Transport Operations (Passenger Transport) Act 1994

Chap. 7 Part 1. 68

“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. “

The **Yellow Cab Owners Association**, in conjunction with **Yellow Cabs (Queensland) Pty Ltd** represents the largest taxi fleet in Brisbane , as well as a regional presence from Warwick and the Gold Coast in the South, through Ipswich, Logan, Redlands, Moreton Bay, Toowoomba, Bundaberg, Yeppoon, Rockhampton , Townsville (Magnetic Island) and Tully in the Far North.

Red Tape is an idiom that refers to excessive regulation and rigid conformity to rules that is considered redundant or bureaucratic by nature hindering action and decision making.

Regulation on the other hand is a concept of management of complex systems according to a set of rules.

In Government regulation typically means a piece of delegated legislation to enforce a statutory instrument.

In 1999, the Premier of Queensland Peter Beattie produced a paper,

“PUBLIC BENEFIT TEST GUIDELINES” (1)

stating the guidelines necessary to form a framework for legislative review.

Queensland Treasury Public benefit Guidelines Approach to undertaking Public Benefit Test Assessment for Legislation Reviews Under National Competition Policy

In the foreword of that document it is wisely stated that the review program is an important exercise which has the potential to have significant impacts on both those directly affected by the range of legislation under review, and the broader community.

“Governments have a responsibility to ensure NCP and other reforms are only implemented where it is demonstrated that such reforms are clearly in the Public Interest, that is, there is a clear demonstration that competitive reform will yield a net benefit, and no significant detriment, to the community.”

The document also strongly advocates on page 11 that those evaluating public benefit should not be in any way responsible for implementing the legislative changes. Key review principles are clearly identified as -

“ Objectivity and Independence; Transparency; and Timeliness” P3.

Reports from external consultants engaged by those driving the process need to be public in order to meet these principles.

There is a distinct parallel between the National Competition Policy review and the Harper Review, neither of which suggests that public safety should be compromised.

It would seem that an appropriate Public Benefit Test was not conducted according to the guidelines as part of the review process for the proposed legislation. Searching for such a document produces a finding of, “ A Review of Rail Safety Legislation”, which I was tempted to use as a template for a thorough and overarching submission. Out of respect for the time demands of the PWUC and a suspicion that resources do not exist to respectfully analyse multiple lengthy documents in depth, I have chosen, instead, to focus on clearly fatal flaws in meeting the stated objectives of both existing and proposed legislation. The one key document that may be “assumed” to examine Public Benefit, the PWC Economic Benefit Report, has been withheld from public access. If this report informs any in the legislative change process, it should be noted that this investigative consultancy was commissioned by those proposing the legislative changes and as such would seem to be in clear breach of the policy guidelines.

We believe that public Safety is compromised with the proposed amendment bill for the Transport Operations (Passenger Transport) act 1994.

This bias clearly indicates that Government has a pre-determined position and is going through the motions of inviting submissions to appease public scrutiny.

No pun is really intended (maybe it was) but it appears to be prepared to throw the public under the bus to get it's required result

Key issues that are inadequately dealt with for Public and Worker Safety

Item 1 Vehicle age limits and inspection regime

Item 2 Driver training

Item 3 High integrity on board safety systems

Item 4 Booking Entity, Vehicle and Driver Licensing, and Enforcement

Item 5 Registration and vehicle identification

Item 1 : Vehicle Age Limits and reduced frequency of Government supervised safety inspections.

Technology provides clearly identifiable primary and secondary safety improvements with updated models and vehicles. By mandating the use of modern vehicles, a clear positive Public Benefit can be easily seen in terms of primary safety such as impact protection (eg airbags and sophisticated braking and traction control systems) Secondary benefits can be clearly identified when examining the reliable lifespan of the features that a vehicle does have and we would call into question whether due consideration has been given to the deleterious effects of high mileage and extended use on the reliability of those systems.

It would seem that little or no empirical research into the anticipated effects of age and escalated use has been considered, including referencing guidelines from manufacturers as to the design life of vehicles and ancillary systems in the envisaged circumstances. As is being demonstrated right now in this and other jurisdictions, market forces are insufficient to produce uniform safe practice across the entire range of service providers and as is occurring right now, obsolete vehicles and equipment are being remobilized without due consideration for Public Safety. Using a basic risk matrix, the probability of catastrophic consequences escalates considerably with age because of the increased likelihood of catastrophic failure. By way of example, a vehicle that just passes an inspection can easily become a Hazard on the road within twelve months, or a 10 year old hoist can suffer metal fatigue leading to stress corrosion cracking, which will not fail until there is a load (person) upon it leading to a potential catastrophic outcome (TPI, fatality or >\$1,000,000)

Conclusion : *Simple logic dictates that extending allowable vehicle age whilst reducing the inspection regime cannot possibly lead to improved Public Safety Outcomes. It is our contention that failing to impose long standing standards in this regard, especially in the absence of situation specific information from manufacturers, is in fact a HIGH RISK strategy that cannot possibly pass the PUBLIC BENEFIT TEST.*

Previously long standing vehicle age and inspection regimes to be reinstated

Item 2 : Industry training

Although “ Division 3 section 91C (d)” allows for a regulation to mandate training regarding Fatigue Management, it would seem to be a big stretch to invoke the discriminatory clauses found in “ 91ZR (2) (b)” to define specific areas of operation that can be singled out for mandated training. Where that targeting now occurs via qualification to access TSS fares, removal of the TSS will also remove that avenue. What the bill essentially does is to remove the necessity for any driver training and leave it to the market to determine whether any training occurs at all.

This is at odds with virtually every other industry, especially in transport and customer service where there are clear duty of care and risk factors associated with the work.

When dealing with vulnerable people in elevated risk situations, such as a wheelchair bound passenger in a maxi taxi (which I can cite as an example but the law cannot single out for special attention) the training of those with a duty of care is a key component of not only the Chain of Responsibility, but essential in reducing the risks to Public Safety.

Even a cursory examination of the demographic of workers in the personalized transport industry will reveal a predominance of workers who have few employment options because of limited education, language or physical abilities. Imposing a highly punitive Chain Of Responsibility whilst leaving training to the whim of commercial operators will lead to a situation where not only are community expectations not met, but these workers can be actively misled (by commercial operators for gain) to a fatally flawed and inadequate understanding of their responsibilities. I believe that the PWUC is well aware of not only the potential for this but has heard testimony demonstrating past and current reality of this practice.

Training provides an important first step in assisting these workers to progress either in the industry or beyond it and as such provides a clearly identifiable Public Benefit in line with stated Social Justice objectives and as such cannot be left to the minimalist efforts of commercial operators and a profit driven market in a marginal (financial return) industry.

Conclusion: *Training of service delivery workers has benefit above and beyond immediate competence in the actual execution of tasks. A recognized benefit of training is the ability to identify and neutralize hazardous situations not only in the workplace but in the general community. For example, a Maxi Taxi driver who understands the urgency of evacuating people from a burning bus.*

Reinstate mandatory training standards for all personalised transport providers.

Item 3 : In Car Safety Monitoring Systems

All modern public transport systems either have or are actively moving towards the installation of safety cameras, GPS monitoring and driver duress alarms. It is inconceivable that a new passenger transport industry is not being mandated to have these ubiquitous Public and Worker safety systems. A key component of the reliable functionality of such systems is that equipment is of high integrity and fixed in the vehicle with active real time monitoring, response and privacy protections as required. This response has evolved in response to actual incidents affecting public and worker safety. Whilst this bill seems only to target a corporatized model, it also facilitates the sole trader with a phone and a notepad and no real time connection to support or safety monitoring for the benefit of passenger or worker.

Of interest, the “Bus Safety Review” does not even rate a mention in the entire process of developing a legislative, regulatory or standards response to what is a very fundamental issue to ALL passenger transport. The general public and worker perception of trust has been abused by commercial operators and betrayed by government in exemptions from mandatory use of these systems and devices. All of these systems are quite modern and indeed there are workers and general public associated with the industry who have the clear and unfavourable memory of operating without them.

There is also a raft of unintended consequences that can and will arise as a result of leaving administration outside the prescription of LAW. These include jurisprudence and chain of evidence ambiguity, privacy and general efficacy.

Simple logic informs us that any supposed Public Benefit is not served by unwinding these current Taxi and community standards. Personalised transport is obviously a higher risk situation than public transport, so to have fewer protections must surely fail the interests of safety and the Public Benefit Test.

Conclusion: *The installation of high integrity, actively monitored devices such as security cameras, gps tracking and duress alarms have clearly established benefits for passengers and workers in the personalized transport industry and as such should be mandated.*

All provider vehicles to have high integrity real time, monitoring, recording and support systems

Item 4 : Booking Entity, Licensing , and Enforcement

The attempt by the drafters of the bill to deal with these matters reveals perhaps one of the greatest shortcomings of the bill. Given that clear succinct definitions in TOPTA (Chap 7 Clauses 68, 69, 70) are being replaced with vague and poorly worded definitions that clearly fail to distinguish between a “street hail” and a booking “ made in person” Chapter 7 Part 1 72 (4)(a) (b), it is difficult to accept that they have applied the Public Benefit Test to their Bill.

Although some effort is made to drive home liability to the driver for breaches of the act, through what will be potentially such harsh penalties that imposition is unlikely to ever actually occur, little consistency exists in either the penalties or enforceability targeting the booking entity or vehicle owner.

A foreign, or any booking entity is in fact specifically enabled to engage a hollow shell as its nominee, Part 4, Division 5, Subdivision 2 91ZD (2) (a) and (b) and in the absence of willing compliance is effectively beyond the reach of law.

As has been witnessed over the last 3 years, the demonstrated by inability of government to enforce the law gives rise to a situation where all compliance becomes problematic. This bill does little to change that, apart from talk about it.

The Public Benefit may be, via some perverse interpretation, served by a foreign corporation with a brand to protect, however no such distinction is possible to exclude a deliberately criminal operation from operating similarly. Regardless of the legal status of the booking entity, evidence from the last 3 years makes it clear that any operation in this realm can easily position themselves outside the reach of the law and indeed utilize measures to evade and misdirect legal enforcement methods.

Booking records in their entirety need to be held on shore in Qld, accessible in that form in real time, if the stated objectives of the bill are to have any chance of being met. Aggregated anonymised data is of no use in meeting public safety requirements for passengers, workers or driver fatigue monitoring.

Added to this, the sole trader can legally have a handwritten note pad as his booking record which is clearly not in keeping with community expectation or long established industry practices.

In short, the bill fails to address any of the known shortcomings and in fact establishes pathways to actively avoid compliance effectively truncating the Chain of Responsibility. The provision to rebuild the system by regulation as required seems to force the community to relive past problems to ultimately end up where it already was.

Conclusion: The problems of addressing a new level of license and authorized dispatch entity are only partially and ineffectively dealt with, producing unintended consequences and poorly capturing known problems.

Redrafting of this section is necessary to achieve the objectives of the Act and Purposes of the Bill.

Item 5 : Vehicle Registration and Identification

In regard to vehicle licensing, leasing and sub assignment, which is referred to in the bill, Chapter 7 Part 3 Division 1 Clause 84, , division 3 91J , 91 O and 91Q but not expanded upon, there are clear failures in Public Benefit to be dealt with. These include, certainty that the vehicle is appropriately registered and insured. As the vehicle is providing, “for hire services “, rather than car pooling, public benefit would be well served by mandating public liability insurance as a minimum add on. Given that the vehicle and the driver are the only clearly identifiable parties at an enforcement event, both need to be the subject of the proposed penalty regime. For offences in excess of 50 penalty units it would seem to have clear public benefit for all licenses and authorities, including the driver license to be suspended for 72 hours along with impoundment of the vehicle. This would provide not only a deterrent but allow sufficient time for appropriate legal processes to occur to ensure natural justice. Given that similar penalties are in place for those who would use a vehicle to create a public nuisance, this is not a big leap when the possible hazards and risk are accounted for.

It would seem that Division 3 91J implies that a specific motor vehicle is attached to the license. Another mention of the vehicle attached to the license appears in 91O, and 91Q. Given that no permanent livery will interfere with the easy and unlawful substitution of this vehicle, and that significant and far reaching insurance ambiguities arise, a simple extension of the already entrenched practice of issuance of a specific number plate would well serve the Public Benefit in respect of vehicle identification and enforcement

Conclusion : *The sections of the bill that deal with vehicle standards, vehicle licensing and booking records seem incomplete and require further drafting to have any meaning let alone enforceability. A simple solution would be to stipulate that only the registered owner of a vehicle can use it for ride booking services.*

Because the Government itself has invoked the application of the Public Benefit Test, even just applying it to these few topics seems to reveal fatal flaws with this Bill, to such an extent that considerable reworking of it would seem justified.

Many in our Association have actually provided taxi services to the public under the primitive conditions that are being proposed in this bill and remained stunned and amazed that a Labor Government would so readily abandon Public Benefit and their own stated core values whilst presiding over the establishment of an industry wide sweatshop.

Finally, we do not believe that we should have to be the conscience of Government, but stand ready to do so, because it is inevitable that more innocent blood will be spilt. Our research shows that those most vulnerable who use services such as UBER believe them to be as safe as a cab because the Government allows them to operate.

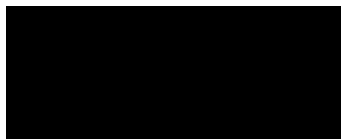
There are many other reasons why these poorly construed changes to legislation should be completely redrafted which we are prepared to allow others to enunciate, but Public Safety needs serious, top priority consideration and who better to know than the Taxi industry who have actually experienced in the past, the largely market driven shambles and resultant hazards that seems to be being proposed.

Overall Conclusion

The “Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017” fails to meet existing expectations in the delivery of safety for workers and consumers and as such requires extensive redrafting to meet the stated objectives and purposes, let alone the delivery of Public Benefit and Public and Worker Safety.

This is a Bad Bill that should not be allowed to become Bad Law

Appended ... Scan 1761 and Queensland Treasury Public Benefit Test Guidelines



Signed for and on behalf of the Yellow Owners Association, Stephen Lacaze (Chairman)