

# **MACKAY TAXI HOLDINGS LTD**

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

Research Director  
Transportation and Utilities Committee  
Parliament House  
George Street  
BRISBANE QLD 4000  
6 April 2017

Dear Sir/Madam

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

Mackay Taxi Holdings Ltd (MTH) has grave concerns regarding the changes made to the Transport Operations (Passenger) Act, 1994. This legislation has been recognised as “world’s best practice”. So much so that London and New York regulators are now examining the now redundant legislation in attempts to derive some control over ride booking companies, who continually refuse to abide by the law in any jurisdiction in which they operate. So while the Queensland government is intent on moving in the direction of these countries in terms of regulatory reform, these same countries are looking to the success of the Transport Operations (Passenger) Act, 1994 to solve the substantial problems being created by ride booking. To quote regulators from London and New York, “Queensland taxi regulation is twenty-five (25) years ahead” of anything in their own jurisdictions.

MTH is perplexed by the Queensland government’s willingness to tear down all the regulatory protection for the public and for the appropriate regulation of an important public transport sector. In fact the MTH is very disappointed that the Opportunities for Personal Transport Inquiry did not conduct an independent or evidence based review, as was promised by the Queensland government, and that the current government is now totally committed to delivering for all legislative and regulatory changes promoted by uber whilst ignoring anything that the Queensland taxi industry has submitted, despite the fact that the industry’s submissions have been evidence based, being supported by independent analysis conducted by a highly reputable organisation (RPS Australia), all to satisfy the demands of a huge foreign corporation. Despite urging by TCQ and all other parts of the taxi industry, the government has refused to investigate uber’s behaviour or performance in any international jurisdiction. MTH urges the Transportation and Utilities Committee to examine the vast number of separate litigations either underway or determined (incurring uber huge fines) in countries where uber has been operating for considerably longer than in Queensland. The ethics and conduct of uber has found wanting in so many successfully litigated cases against it in many countries, particularly the United States of America.


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MTH has grave concerns that the government has promised to “level the playing field” and to “ring fence” rank and hail work for taxis in their rhetoric associated with the announcement of the proposed changes. It is clear with the changes proposed in the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 that the government is once again seeking to deliver for uber and to ignore its own promises to the Queensland taxi industry.

It would also be remiss for MTH not to raise the fact that in 2012 the Queensland government issued three (3) new wheelchair accessible taxi licences in Queensland with tender prices around \$350,000.00. MTH considers it unconscionable that the Queensland government has effectively deregulated the Queensland taxi industry, compensating these successful tenders only a maximum of \$29,000.00.

Below MTH has set out the legislative changes that need to be made to the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017.

Yours faithfully



Gerry Lucas  
Managing Director

## **Customer and Driver Safety Requirements**

### **Legislative Requirements**

- All personalised transport must be equipped with a high integrity security camera system.
- All personalised transport must be equipped with a tamper proof GPS unit which is hard wired into each vehicle.
- All personalised transport vehicles to be equipped with emergency systems to support driver safety. The system must be monitored on a 24hour/7day basis so that drivers can be provided assistance in the case of an emergency.

## **Compulsory Third Party Insurance (CTP) and Other Insurances Requirements**

### **Legislative Requirements**

- If the government is intent in having ride booking in a separate class to that of taxis, then the government must ensure that the difference between class 3 (taxi) CTP is not significant as this represents a substantial unfair competitive advantage in favour of ride booking when compared to taxis. Failing this, all personalised transport vehicles should be in the same class of CTP insurance.
- All personalised transport vehicles must have gap insurance.
- All personal transport operators (that is any entity that operates a vehicle) and companies need to provide evidence annually to ensure ongoing coverage.

## **Accountability, Chain of Responsibility and Enforcement Requirements**

### **Legislative Requirements**

- The Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 must support other relevant legislation and regulation. This includes Queensland and Australian law pertaining to Disability Discrimination legislation, Workplace, Health and Safety legislation, Competition legislation, Industrial law, Transport legislation and ensures that the tenets of vicarious liability and natural justice apply equally to all market participants.
- All personalised transport vehicles must be required to have dedicated number plates, as do taxis and limousines. The issue of plates should only be provided with evidence of appropriate CTP, public liability and a certificate of inspection for the vehicle.
- Queensland transport legislation should require that a condition of becoming an approved dispatch platform in Queensland is that all financial transactions must occur within Australia, involving Australian financial institutions.
- All personalised transport drivers must provide evidence that they are registered for GST and tax by having an ABN before receiving a Drivers Authorisation.



- All personalised transport drivers should only be affiliated with one (1) approved dispatch platform, creating an appropriate chain of responsibility and enable proper fatigue management processes to be put in place.

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- Maximum age limits for all personalise transport vehicles should be six (6) years for sedans and eight years for wheelchair accessible, maxi taxis.
- Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 should prohibit the establishment and operation of ride booking pick up and drop off zones, on public and private land.
- Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 needs to substantially increase the levels of fines associated with breaches pertaining to ride booking drivers picking up off taxi ranks, plying for hire in several locations and touting for custom.
- Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 should require compliance activities to substantially increase.
- Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 should increase licence fees for ride booking services to help fund expected increases in regulatory and enforcement costs for Government and to provide some evidence that the government will keep its publicly stated promises.
- Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 should establish clear and enforceable requirements for all dispatch platforms to enable government access to all data related to the delivery of personalised transport services in Queensland. Fines for approved platforms found in breach of data reporting requirements

### **Customer and Driver Safety**

High integrity security cameras (that is security cameras that will produce secure images such that Queensland courts will accept the images as evidence) must be installed in all personalised transport vehicles. The suggestion that ride booking involves cashless transaction, so therefore negates the need for such technology presupposes that assaults associated with taxi drivers involve theft. This is not the case. MTH historical data demonstrating that more than 93% of taxi driver assaults in Mackay not involving theft. Further, MTH is aware that ride booking vehicles accept work off taxi ranks, accept hails and conduct off-platform transfers, often accepting cash. The proposed personalised transport reform legislation intends that any ride booking driver who provides travel for cash transaction must have a high integrity security camera installed. MTH does not believe that such legislation is enforceable. Further, MTH believes that as all ride booking drivers will conduct cash transfers, all ride booking vehicles must be equipped with a high integrity security camera system.

In addition to this, high integrity security cameras have proven to be a significant protection for passengers, as well as taxi drivers. On 14 February 2017 a Sydney uber driver was found guilty of raping a passenger

(<http://www.abc.net.au/news/2017-02-15/sydney-uber-driver-found-guilty-of-rape-of-passenger/8274082>).

The driver claimed in his defence that the passenger had agreed to sexual intercourse. Clearly having images produced from a high integrity security camera would have been a substantial assistance to the NSW Police and to the NSW Courts in determining this case and in fact may have

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prevented the assault occurring. Further, evidence provided during the trial indicated that the driver had turned off his uber app and in so doing avoided GPS tracking of his smart phone by uber. Taxis are equipped with three (3) GPS units that are hard wired to each vehicle that are tamper proof. Taxis are therefore tracked on a 24/7 basis. Ride booking does not provide customers or drivers with GPS tracked vehicles. Ride booking tracks smart phones and by simply removing the phone from the vehicle or turning the uber app off renders the system redundant.

A further example of the ability of ride booking drivers to avoid vehicle tracking was the alleged sexual assault of an 18 year old Brisbane woman, where it is again alleged that the driver turned off the uber app, thereby avoiding GPS vehicle tracking by uber.

(<http://www.mamamia.com.au/uber-australia-sexual-assault/>)

Another point that needs to be considered in terms of driver safety is that in the event that a taxi driver is in a dangerous or threatening situation, taxis have additional safety alarm systems which are monitored by taxi company staff on a 24 hour/7day basis. This infrastructure ensures that the driver is provided assistance within minutes of the alarm activation, creating the potential of preventing a serious assault, theft or worse. No such system exists with ride booking as ride booking companies do not monitor driver activity in any way, let alone on a 24 hour/7day basis. Ride booking companies cannot intervene and lend a driver in threatening or dangerous situation any assistance.

A phenomenon that has emerged around the world is the stealing of uber vehicles. In the case highlighted below a Sydney uber driver was removed from his vehicle and assaulted, with his vehicle being stolen. Several other similar events have occurred in Queensland. In these cases the uber's much promoted tracking of the driver's smart phone proved to be useless. Without GPS tracking or a camera system or an alarm system ride booking drivers are being placed in a dangerous situation.

<http://www.abc.net.au/news/2017-01-29/sydney-uber-newcastle-driver-assaulted-by-teens-nsw-police-say/8220990>

### **Legislative Requirements**

- All personalised transport must be equipped with a high integrity security camera system.
- All personalised transport must be equipped with a tamper proof GPS unit which is hard wired into each vehicle.
- All personalised transport vehicles to be equipped with emergency systems to support driver safety. The system must be monitored on a 24hour/7day basis so that drivers can be provided assistance in the case of an emergency.

### **Compulsory Third Party Insurance (CTP) and Other Insurances**



Taxis and ride booking services compete in the same market, with drivers often driving for both platforms. Further, ride booking vehicle hire companies are now renting (or bailing) vehicles in a similar way to taxi operators bailing taxis to taxi drivers. Taxi CTP (class 3) is currently around nine (9) times private CTP (class 1). All ride booking vehicles currently operate with class one (1) CTP.

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Given that uber claims that in Queensland 83% of its drivers are full time, it is difficult to sustain any arguments the risk profile of ride booking drivers differs from that of a taxi drivers.

In 2000 the Taxi Council of Queensland (TCQ) implemented an award winning program to reduce accident rates in taxis. As a result, by 2003 accidents involving third party injury claims in Queensland taxis had reduced from an average of around 220 CTP claims each year to an average of around 120 CTP claims per year. Given that ride booking companies conduct no such accident reduction programs and that taxi operators continuously monitor taxi driver speeding via the MTData dispatch systems, MTH believes that ride booking should attract higher CTP premiums than do taxis.

Each taxi vehicle in Queensland is covered by a requirement to have \$20 million public liability insurance. Separate to this each taxi company needs to hold \$20 million in public liability cover. Further, each taxi in the Mackay taxi fleet is covered by gap insurance to cover the gap between CTP and public liability insurances. This affords customers complete insurance protection.

Currently no ride booking vehicle is covered for public liability or gap insurance. This is despite claims by uber that the company have public liability coverage for their drivers. MTH urges the Transportation and Utilities Committee to properly investigate this claim by uber, given the experience for other countries, where such coverage is insufficient to cover the full gambit of potential incidents.

### **Legislative Requirements**

- If the government is intent in having ride booking in a separate class to that of taxis, then the government must ensure that the difference between class 3 (taxi) CTP is not significant as this represents a substantial unfair competitive advantage in favour of ride booking when compared to taxis. Failing this, all personalised transport vehicles should be in the same class of CTP insurance.
- All personalised transport vehicles must have gap insurance.
- All personal transport operators (that is any entity that operates a vehicle) and companies need to provide evidence annually to ensure ongoing coverage.

### **Accountability, Chain of Responsibility and Enforcement**

The Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 must support other relevant legislation and regulation. This includes Queensland and Australian law pertaining to Disability Discrimination legislation, Workplace, Health and Safety legislation, Competition legislation, Industrial law, Transport legislation and ensures that the tenets of vicarious liability and natural justice apply equally to all market participants.

At present taxi companies and Australian base ride booking companies are all subject to Queensland and Australian law and incur costs by insuring that their staff and drivers are properly trained. International corporations, such as uber use their registration in other countries to protect themselves from compliance with Queensland and Australian law. This is despite the fact that they have an Australian registered operating company (to protect the parent entity from easily be held

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accountable at law), which have few assets contained within the operating entity. As such, companies like uber limit their exposure to vicarious liability actions by aggrieved customers and deny their driver natural justice in terms of a dispute with a customer or with uber. So issues like training become irrelevant to a company such as uber. Conversely, taxi companies appropriately training to improve service quality and to limit the potential of litigation resulting from the actions of third parties. Currently uber provides no training for its drivers apart from instruction on how to use the uber app, claiming that they have "a new business model" and point to their driver rating system which, they claim obviates the need for comprehensive training. A question the Transportation and Utilities Committee needs to have an answer to how does an uber driver, after receiving a poor customer rating and losing their accreditation to drive for uber receive natural justice? In essence, uber derive substantial unfair market advantages by not training drivers and deliberately usurping consumer protections such as vicarious liability. This is borne out by uber's driver and customer agreements. It is incumbent on the Transportation and Utilities Committee to properly review these agreements and to ensure that such sham contracts do not obviate any company's or corporation's responsibilities at law.

To assist the enforcement effort by the regulator all personalised transport vehicles must be required to have dedicated number plates, as do taxis and limousines. The issue of plates should only be provided with evidence of appropriate CTP, public liability and a certificate of inspection for the vehicle. This will help regulators limit the need for enforcement.

The recent win by the Australian Tax Office (ATO) against uber in the Federal Court regarding uber's claim that their drivers are exempt from GST is being circumvented with some drivers from international jurisdictions being paid directly into non-Australian bank accounts in foreign countries. Further, uber pays no tax or GST in Australia. To counter this and to support the taxation law, Queensland transport legislation should require that a condition of becoming an approved dispatch platform in Queensland is that all financial transactions must occur within Australia, involving Australian financial institutions. Further, all personalised transport drivers must provide evidence that they are registered for GST and tax by having an ABN before receiving a Drivers Authorisation.

The taxi industry has appropriate fatigue management systems in place. The Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 does not deal with fatigue management, with the government clearly not understanding the propensity for drivers to drive for excessive lengths of time, creating a potentially dangerous situation for customers and other road users. Consequently, MTH believes that all personalised transport drivers should only be affiliated with one (1) approved dispatch platform. This will help ensure that there is an appropriate chain of responsibility and enable proper fatigue management processes to be put in place.



The taxi industry in Queensland has an average vehicle age of 2.3 years (based on the study conducted by RPS Australia, which was presented in TCQ's submission to the Opportunity for Personalised Transport Inquiry conducted by Jim Varghese). While maximum age limits for taxis prior to 2016 were set at six (6) years, commercial reality demands that vehicles needed to be replaced every four (4) years. Maintaining vehicles for working lives greater than six (6) years creates significant risks associated with public safety. It makes little sense to tear down regulations that have proved to be effective for a whole industry, just because of one new entrant and the

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possibility that a handful of ride booking drivers may be part time. MTH therefore believe that the maximum age limits for all personalise transport vehicles previously enforced should be readopted.

In the Labour government's announcement of changes to Queensland transport legislation by former Transport Minister, Stirling Hinchliffe the government committed to "ring fence" rank and hail transfers for the taxi industry. In so doing the government argued that substantial compensation for taxi licence holders was unnecessary. Since that time ride booking services have been granted pickup and drop off zones, can be witnessed picking up off taxi ranks, plying for hire in several locations throughout centres in which they operate and touting for custom. This is consistent with the behaviour of ride booking services all over the world. The reality is that the taxi industry has seen little to suggest that the government is intent on "ring fencing" rank and hail transfers for the taxis. To achieve the government's publicly stated policy Transport legislation needs to substantially increase the levels of fines associated with breaches pertaining to ride booking drivers picking up off taxi ranks, plying for hire in several locations and touting for custom. In addition the legislation should require compliance activities to substantially increase, as is being done in jurisdictions around the world.

Nothing in the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 deals with increased compliance and enforcement activities by the Queensland government or creates a substantial revenue stream to help fund such activities. MTH believes that increased licence fees for ride booking services will help fund expected increases in regulatory and enforcement costs for Government and will provide licence holders some confidence that the government is intent on keeping its promise to the industry. Further, the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 should prohibit the establishment and operation of ride booking pick up and drop off zones, on public and private land.

The Queensland taxi industry has produced (over twenty-three (23) years) the most detailed performance data of any taxi service in any jurisdiction in the world. The data produced is not based on a sample of transfers, but rather is measured on every transfer undertaken. MTH believes that the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 should establish clear and enforceable requirements for all dispatch platforms to enable government access to all data related to the delivery of personalised transport services in Queensland. Fines for approved platforms found in breach of data reporting requirements need to be substantial increased, given the experience of regulators in internationally jurisdictions, where uber refuses to comply with such legislation.

Taxi Service Contracts are a tool which has placed the responsibility for compliance of regulation on the industry, with government's role limited to essentially an audit program to ensure contract terms are being satisfied. This system has substantially reduced the cost to government of compliance and resulted in dispatch platforms striving for higher levels of service within their taxi fleets. MTH believe that all dispatch platforms should be required to have Service Contracts requiring all platforms to meet societal outcomes and minimum fleet performance outcomes.

It is clear from international experience over the past 50 years that deregulation of taxi services results in substantial increases in the need compliance activities by government institutions. In

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addition to this for many years DTMR had more than 85% of staff in acting positions. The reality is there are few personnel within DTMR with the experience or knowledge or depth of understanding required to administer Transport legislation concerning the personal transport sector. It is therefore critical that an independent Personalised Transport Commission is established with legislative amendment, policing/enforcement, regulatory and policy development capacity. Given that such a commission will take time to be established to more time to become effective it is critical that the Queensland Parliament intervene and amend the proposed Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 to include the changes MTH has advocated in this submission.

#### **Legislative Requirements**

- The Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 must support other relevant legislation and regulation. This includes Queensland and Australian law pertaining to Disability Discrimination legislation, Workplace, Health and Safety legislation, Competition legislation, Industrial law, Transport legislation and ensures that the tenets of vicarious liability and natural justice apply equally to all market participants.
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- All dispatch platforms must have a Service Contract with government requiring all platforms to meet societal outcomes and minimum fleet performance outcomes.
- Establish an independent Personalised Transport Commission with legislative amendment, policing/enforcement, regulatory and policy development capacity.
- Given that such a commission will take time to be established and more time to become effective, it is critical that the Queensland Parliament intervene and amend the proposed Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 to include the changes MTH has advocated in this submission.