



New South Wales

Point to Point Transport (Taxis and Hire Vehicles) Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to provide for the following matters:

- (a) the safety duties and safety standards for providers of taxi services and of booking services for taxi and hire vehicle services, as well as for taxi and hire vehicle owners and drivers and taxi licence holders,
- (b) the authorisation of providers of taxi services and of booking services for taxi and hire vehicle services,
- (c) licences for taxis and processes for the determination of taxi licence numbers,
- (d) maximum fares for passenger services and schemes for Government subsidised travel, including fare concessions,
- (e) enforcement of safety and other requirements, including through improvement and prohibition orders, enforceable undertakings and auditing of providers,
- (f) the functions of the Point to Point Transport Commissioner (the **Commissioner**) and enforcement powers of authorised officers,
- (g) to establish a Taxis and Hire Vehicles Industries Assistance Panel to determine procedures and criteria for disbursement of assistance funds for existing holders of indefinite taxi and hire vehicle licences, as well as arrangements for an industry assistance package,
- (h) to impose a passenger service levy on particular transactions that is to be paid by providers of booking services and taxi services,
- (i) consequential repeals and amendments, savings and transitional provisions and other ancillary matters.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, except for preliminary provisions, provisions establishing the Point to Point Transport Commissioner and the industry assistance package and other ancillary provisions, which will commence on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 defines *passenger service* as the transport, by a motor vehicle (other than a bus), of passengers within, or partly within, this State for a fare.

Clause 5 defines *taxi service* and *taxi* and other related taxi terms, including *facilitate the provision of a taxi service*, *affiliated provider* and *provide a taxi service*. A taxi service is a passenger service where the transport is provided by a motor vehicle that plies or stands for hire on a road or road related area or is a vehicle that is authorised to do so.

Clause 6 defines *hire vehicle* as a motor vehicle that provides transport for a passenger service and that is not a taxi.

Clause 7 defines *provide a booking service*.

Clause 8 specifies that the proposed Act binds the Crown.

Part 2 Safety of services

Division 1 Safety duties—principles

Clause 9 defines *safety duties* (the duties imposed under proposed Division 2) and *safety standards* (the standards specified under proposed Division 3).

Clause 10 provides for principles that apply to safety duties, including that they cannot be transferred to another person, can reside in more than 1 person and that 1 person can have different duties in different capacities.

Clause 11 defines the requirements for doing all that is *reasonably practicable* for the purposes of complying with a safety duty.

Division 2 Primary duty of care

Clause 12 specifies that the provider of a passenger service must, so far as is reasonably practicable, ensure the health and safety of drivers and other persons while they are engaged in providing the service and also of passengers and other persons in connection with providing the service. This duty includes eliminating risks to safety and, if that is not reasonably practicable, minimising them so far as is reasonably practicable.

Clause 13 specifies that the provider of a booking service must, so far as is reasonably practicable, ensure the health and safety of drivers and other persons while they are engaged in providing a passenger service resulting from the use of the booking service and also of passengers and other persons in connection with providing that passenger service. This duty includes eliminating risks to safety and, if that is not reasonably practicable, minimising them so far as is reasonably practicable.

Clause 14 imposes a duty on an officer of a body corporate, or other person who makes or participates in decisions that affect the business or undertaking of a person who has a safety duty to exercise due diligence to ensure that the safety duty is complied with. Due diligence includes having an up-to-date knowledge of safety matters relating to passenger services, ensuring appropriate resources and processes to eliminate or minimise safety risks and enabling appropriate information to be gathered about incidents, hazards and risks to safety.

Clause 15 imposes a duty on the driver of a motor vehicle being used to provide a passenger service to take reasonable care for his or her own safety and that of other persons and to comply with the directions of and to co-operate with the provider of the service or a provider of a booking service.

Clause 16 makes it a category 1 offence (with a maximum penalty of \$300,000, or 2 years imprisonment, or both, for an individual or \$3,000,000 for a body corporate) for a person who has a safety duty to engage in conduct, without a reasonable excuse, that exposes an individual to whom the duty is owed to a risk of death or serious injury or illness if the person is reckless as to the risk.

Clause 17 makes it a category 2 offence (with a maximum penalty of \$150,000 for an individual or \$1,500,000 for a body corporate) for a person who has a safety duty to fail to comply with the duty so that an individual is exposed to a risk of death or serious injury or illness.

Clause 18 makes it a category 3 offence (with a maximum penalty of \$50,000 for an individual or \$500,000 for a body corporate) for a person who has a safety duty to fail to comply with the duty.

Clause 19 provides that 2 or more contraventions of a provision of the proposed Division that arise out of the same factual circumstances may be charged as a single offence or separate offences and that, if charged as a single offence, only a single penalty may be imposed.

Division 3 Safety standards

Clause 20 enables regulations to be made to specify safety standards for the providers of passenger services or booking services, including standards relating to drivers, safety and registration of vehicles, insurance, reporting of safety incidents or accidents, provision of information to passengers and safety management systems.

Clause 21 enables regulations to be made to specify safety standards for drivers who drive motor vehicles used for passenger services.

Clause 22 enables regulations to be made to specify safety standards for owners of hire vehicles or taxis used to provide passenger services or holders of taxi licences.

Clause 23 enables regulations to be made to make it an offence for a person to whom a safety standard applies to contravene or fail to ensure compliance with a safety standard. The regulations may also make it an offence for the provider of a passenger service or a booking service to fail to ensure, so far as is reasonably practicable, that a safety standard is complied with (whether or not the standard is specified for that person). The same safety standards may apply to more than 1 class of persons.

Division 4 Miscellaneous

Clause 24 requires the provider of a passenger service to report to the Commissioner any accident or incident associated with the provision of a passenger service that has, or could have, caused significant property damage, serious injury or death. The obligation also extends to a booking service in respect of a passenger service for which a booking service is provided.

Clause 25 makes it an offence for an employer to dismiss a worker, detrimentally affect a worker's employment or threaten to do any such thing, or to refuse or fail to offer employment to a prospective worker or treat a prospective worker less favourably, because of action taken by the worker or prospective worker in respect of a breach or possible breach of the proposed Act or regulations under the proposed Act. A person found guilty of the offence may be ordered to pay compensation to the affected worker or prospective worker or be ordered to reinstate or employ the person.

Clause 26 sets out the relationship between obligations under the proposed Act and under the *Work Health and Safety Act 2011* and the *Heavy Vehicle National Law (NSW)*. If possible a person must comply with all the obligations but if it is not possible must comply with the other laws.

Part 3 Authorisation of providers of taxi services and booking services

Division 1 Authorisation offences

Clause 27 makes it an offence to provide a taxi service or booking service without being authorised to provide that service. However, an affiliated provider of a taxi service is not required to be authorised if the taxi service is facilitated by another authorised provider. It will also be an offence for a provider or driver to use an unauthorised booking service.

Clause 28 provides for an offence of aggravated provision of an unauthorised taxi service or booking service if the offence is committed in specified circumstances of aggravation. For a taxi service the circumstances are that the offence involves facilitating the provision of taxi services, recruiting affiliated providers or other persons to provide the service and having a previous conviction for providing an unauthorised service. For a booking service the circumstances are that the person is not the provider of the passenger service for which the booking service is provided, recruiting other persons to provide that passenger service and having a previous conviction for providing an unauthorised service. The maximum penalty for the offence will be \$50,000 for an individual or the lesser of 3 times the value of the benefits attributable to the commission of the offence or \$10 million if the offender is a body corporate. If the value of the benefits is not ascertainable, the maximum penalty for a body corporate will be \$500,000.

Clause 29 makes it an offence for the provider of a taxi service or booking service to contravene any condition of the provider's authorisation.

Division 2 Applications for authorisation

Clause 30 enables an individual, a group of persons (including a partnership) or a body corporate to apply to the Commissioner for authorisation to provide a taxi service or booking service and provides for the form of the application.

Clause 31 sets out the standards for authorisation by the Commissioner, including that the proposed provider or any directors and managers nominated by the provider for the purposes of the proposed Part in the application for authorisation have not been convicted of a disqualifying offence and that there are no current proceedings against them for such an offence. A person who already holds an authorisation to operate another service may be granted an authorisation if the applicant can satisfy any additional applicable standards and the applicant is not or has not been subject to any action against the authorisation already held. At least 1 nominated director or manager must reside in this State.

Clause 32 provides for the regulations to prescribe the offences (including offences under the law of other jurisdictions) that are to be disqualifying offences.

Clause 33 enables an authorisation to be refused on the ground that a close associate of the applicant has previously held an authorisation that has been cancelled.

Clause 34 enables an authorisation to authorise a provider to provide 1 or more specified services or to operate a service having specified characteristics. An authorisation may be granted unconditionally or subject to conditions.

Clause 35 provides for the authorisation to be in a form approved by the Commissioner.

Clause 36 specifies that the authorisation is to be in force for the period determined by the Commissioner unless it is sooner cancelled.

Clause 37 enables an authorisation to be renewed.

Clause 38 requires notice to be given to the applicant of the decision on the application for authorisation.

Clause 39 provides that jointly authorised providers each have the obligations of an authorised provider of the service under the proposed Act.

Division 3 Conditions of authorisation

Clause 40 makes an authorisation as the provider of a taxi service or booking service subject to the conditions imposed by the Commissioner or by the proposed Act or the regulations and enables conditions imposed by the Commissioner to be varied or revoked at any time by written notice given to the provider.

Clause 41 enables a provider of a taxi service or booking service to change its nominated directors or managers at any time and makes it a condition of the authorisation of a provider that is a body corporate that notice be given to the Commissioner within 21 days if a nominated director or manager dies or ceases to be a director or manager.

Clause 42 makes it a condition of the authorisation to provide a taxi service or booking service that the provider comply with the safety standards for a provider of the service.

Clause 43 makes it a condition of the authorisation to provide a taxi service or booking service that records required to be kept under the proposed Act or for the purposes of the passenger service levy be kept in this State or in a form that may be accessed from, or made available in, this State.

Clause 44 makes it a condition of the authorisation to provide a taxi service that each taxi used to provide the service is identified as a taxi and is marked or painted in a uniform way.

Division 4 Variation, suspension or cancellation of authorisation

Clause 45 sets out the grounds on which the Commissioner may vary, suspend or cancel an authorisation to provide a taxi service or booking service, including failure to comply with an authorisation standard or a condition of authorisation, failure to comply with the proposed Act or the regulations, having a close associate who has previously held an authorisation that has been cancelled or conducting the service in a manner that causes danger to the public.

Clause 46 automatically suspends (after 21 days) the authorisation of an individual who is jointly authorised with another individual if the other individual dies and also enables the authorisation to be cancelled or suspended or varied because of the death. It also automatically suspends the authorisation of a provider that is a body corporate if the provider ceases to have any nominated director or manager.

Part 4 Taxi licences

Division 1 Licensing offences

Clause 47 makes it an offence for a provider of a taxi service to use a motor vehicle for the service unless the operator is the holder of a taxi licence for that motor vehicle or the motor vehicle is a stand-by taxi.

Clause 48 makes it an offence for the holder of a taxi licence to contravene any condition of the licence.

Clause 49 enables an authorised provider of a taxi service to use an unlicensed stand-by taxi if a licensed taxi is out of operation for repair or service and sets out the conditions for the use of the stand-by taxi. The stand-by taxi while in use is taken to be a taxi for which a taxi licence is in force.

Division 2 Applications for licences

Clause 50 enables the Commissioner to issue different categories of taxi licences and provides that Transport for NSW (*TfNSW*) is to determine the categories that may be issued.

Clause 51 provides for applications for taxi licences to be made to the Commissioner and for an application to be accompanied by a sealed tender, if the Commissioner requires.

Clause 52 enables the Commissioner to grant or refuse an application for a taxi licence and requires that an applicant, and each joint applicant, must meet any requirements prescribed by regulations under the proposed Act.

Clause 53 prohibits an application from being granted in the case of a taxi licence for which the fee is determined by auction or tender, unless the applicant is the highest bidder or tenderer, has complied with any bid or tender requirements and provided any required bond or other security.

Clause 54 enables a licence to be granted unconditionally or subject to conditions.

Clause 55 provides for a taxi licence to be in the form approved by the Commissioner.

Clause 56 provides that a taxi licence may specify the area of operation of a taxi and that, if no area is specified, the taxi may be used for a taxi service anywhere in New South Wales. The area restriction will not apply to booked services and is taken to be a taxi licence condition.

Clause 57 specifies that a taxi licence is to be in force for 12 months, unless it is sooner cancelled.

Clause 58 enables a taxi licence to be renewed and specifies the maximum number of renewals for taxi licences (up to 9).

Clause 59 requires notice to be given to the applicant of the decision on the application for a taxi licence or of a renewal.

Division 3 Conditions of taxi licences

Clause 60 makes a licence subject to the conditions imposed by the Commissioner or by the proposed Act or the regulations and enables conditions imposed by the Commissioner to be varied or revoked at any time by written notice given to the holder.

Clause 61 makes it a condition of a taxi licence that the holder of the licence comply with the safety standards.

Division 4 Taxi licence fees

Clause 62 provides for a licence fee to be payable to the Commissioner on issue and on renewal of a taxi licence. The fee is in addition to any application fee.

Clause 63 provides for the fee for a taxi licence to be set by bids at public auction or by sealed tenders. However, the fee for a taxi licence for a wheelchair accessible taxi is to be determined by TfNSW.

Division 5 Dealings with taxi licences

Clause 64 enables a taxi licence to be leased or subleased, or the benefit of a licence to be conferred on another person to the exclusion of the person entitled to the benefit of the licence, without the approval of the Commissioner and provides for the lessee or sublessee of a licence or a person on whom the benefit of a licence is conferred to have the benefit of the authority of the licence to the exclusion of the lessor or sublessor. The lessee or the sublessee or a person having the benefit of the licence is taken to be the holder of the licence for the purposes of the proposed Act or regulations.

Clause 65 enables regulations to be made about the application of provisions of the proposed Act or regulations to lessors, sublessors, lessees and sublessees of licences and persons who confer and receive the benefits of a licence as referred to in proposed section 64.

Clause 66 enables licence conditions to be imposed relating to the application of conditions of licences to lessors, sublessors, lessees and sublessees of licences and persons who confer and receive the benefits of a licence as referred to in proposed section 64.

Clause 67 requires written notice of the lease or sublease, or an arrangement to confer the benefit, of a taxi licence to be given to the Commissioner and makes it an offence to fail to give the notice.

Clause 68 provides for the transfer of taxi licences on application by the legal personal representative of the holder of a taxi licence.

Division 6 Variation, suspension or cancellation of taxi licences

Clause 69 sets out the grounds on which the Commissioner may vary, suspend or cancel a taxi licence, including failure to comply with a condition of the licence, failure to comply with the

proposed Act or the regulations, conducting the taxi service for which the vehicle is used in a manner that causes danger to the public and for any other reason the Commissioner thinks fit.

Division 7 Determination of release of taxi licences

Clause 70 applies the proposed Division to taxi licences, other than licences for wheelchair accessible taxis.

Clause 71 requires TfNSW to make a determination about the number of taxi licences before 31 March in each year. A determination may limit the number and type of taxi licences that are to be issued to providers and limit the number of taxi licences that may be granted to the same or related applicants. TfNSW may seek expert advice about the matters it is required to consider and is to take into account any recommendation of the Independent Pricing and Regulatory Tribunal (*IPART*) when making a determination.

Clause 72 enables the Minister to refer to IPART, for report and recommendation, the number of taxi licences to be issued for a specified period.

Clause 73 sets out matters to be taken into account by TfNSW when making a determination about annual taxi licence numbers, including likely passenger demand and latent demand for taxi services and the viability and sustainability of the taxi industry.

Part 5 Fares

Clause 74 enables the Minister, with the approval of the Minister administering the *Independent Pricing and Regulatory Tribunal Act 1992*, to refer all or any services of 1 or more passenger services to IPART for determination of or a recommendation as to appropriate maximum fares for the services or specified fares or classes of fares for the services.

Clause 75 sets out the requirements for IPART investigations and determinations or recommendations under the proposed Part and also enables IPART to report to the Minister on relevant matters that arise from an investigation. Provisions of the *Independent Pricing and Regulatory Tribunal Act 1992* containing investigation and reporting powers will apply to the investigations and determinations.

Clause 76 enables TfNSW, by order published on the NSW legislation website (a *fares order*), to determine the maximum fares for a service or specified fares or classes of fares for a service of a passenger service. A fares order may also approve other arrangements for remuneration. A fares order may specify fares or the manner of calculating fares.

Clause 77 enables a fares order to specify the maximum amount of a non-cash payment surcharge that may be charged for one hiring of a taxi or hire vehicle. The non-cash payment surcharge is a fee or charge that is added to the amount payable to hire a taxi or hire vehicle because payment is by a debit, credit, pre-paid or charge card, or an amount payable by an owner, driver or operator of a taxi or hire vehicle because an amount for a hire is so paid.

Clause 78 makes certain persons guilty of an offence if a non-cash payment surcharge is imposed in contravention of a fares order, including the person who imposed the charge, the owner or driver of the vehicle, the provider of the service, a person who provides or maintains enabling equipment and a person who manages or administers the system under which amounts due for the hiring may be paid by the use of a debit, credit or charge card. It will also be an offence to collect in a taxi or hire vehicle, or initiate the collection in a taxi or hire vehicle of, a non-cash payment surcharge that contravenes a fares order. A defence to the offence is available to a defendant who did not, and could not reasonably be expected to, know that another person had acted in contravention of the proposed section.

Clause 79 requires a provider of a passenger service or a booking service or a driver to ensure that a passenger is provided with a fare estimate before the journey starts. If a provider or a driver and a passenger agree on a fare at the start of a journey, the fare demanded must not exceed the agreed fare.

Clause 80 prevents a requirement by the provider of a passenger service or booking service that the fare charged for the service be a specified amount from contravening the *Competition and Consumer Act 2010* of the Commonwealth or the *Competition Code of New South Wales*.

Part 6 Audits, enforcement orders and other remedies

Division 1 Audit notices

Clause 81 sets out the purposes of audits under the proposed Division, which are to provide information about compliance with safety duties and safety standards and to enable evaluation of whether operations are being carried out in accordance with those duties.

Clause 82 enables the Commissioner to issue audit notices to providers of passenger services and booking services notifying a proposed audit or requiring that an auditor be appointed for the purposes of an audit under the proposed Division. The Commissioner may appoint a person to carry out an audit and may issue guidelines about audits.

Division 2 Improvement notices

Clause 83 enables an improvement notice to be issued by an authorised officer requiring a person to remedy a contravention of the proposed Act or regulations, to prevent a likely contravention from occurring or to remedy the things or operations causing the contravention or likely contravention.

Clause 84 sets out the matters to be included in an improvement notice, including the day by which the person must take the required action.

Clause 85 makes it an offence to fail to comply with an improvement notice within the required period.

Clause 86 enables the period for compliance with an improvement notice to be extended, but only before the initial period for compliance ends.

Division 3 Prohibition notices

Clause 87 enables an authorised officer to give a direction prohibiting a person from carrying on an activity or carrying on an activity in a specified way, if the authorised officer reasonably believes that an activity or a future activity involves or will involve an immediate and serious risk to the health or safety of a person.

Clause 88 sets out the matters to be included in a prohibition notice confirming a direction prohibiting an activity, including the day by which the person must take the required action.

Clause 89 makes it an offence to fail to comply with a prohibition notice within the required period.

Division 4 General requirements applying to notices

Clause 90 defines *notice* for the purposes of the proposed Division, to include an audit notice, improvement notice or prohibition notice.

Clause 91 requires a notice to be in writing.

Clause 92 enables notices to include non-mandatory recommendations.

Clause 93 enables authorised officers to make minor changes to a notice.

Clause 94 requires any change (other than a minor change) or cancellation of a notice to be done by the Commissioner.

Clause 95 provides that a notice is not invalid because of any formal defect or irregularity (other than one that might cause substantial injustice) or the failure to use the correct name of the person to whom the notice is given if that person is sufficiently identified.

Clause 96 provides that the regulations may prescribe the manner of issuing a notice and the steps that must be taken by a person to whom the notice is given to bring it to the attention of other persons.

Division 5 Compliance orders

Clause 97 defines *notice* for the purposes of the proposed Division, to include an audit notice, improvement notice or prohibition notice.

Clause 98 enables the Commissioner to apply to the District Court for an order to compel a person to comply with a notice or to restrain a person from contravening a notice.

Division 6 Enforceable undertakings

Clause 99 enables the Commissioner to accept a written undertaking by a person in connection with a contravention or alleged contravention by the person of the proposed Act or regulations under the proposed Act. An undertaking cannot be accepted in relation to a category 1 safety duty offence or the offence of aggravated unauthorised provision of a taxi service. The giving of an undertaking does not constitute an admission of guilt in relation to a contravention or alleged contravention.

Clause 100 requires the Commissioner to give written notice of the decision to accept or reject an undertaking and of the reasons for the decision and to publish a decision to accept an undertaking and the reasons for the decision.

Clause 101 makes an undertaking effective and enforceable when the person making the undertaking is notified of the decision or at a later date specified by the Commissioner.

Clause 102 makes it an offence to contravene an undertaking.

Clause 103 enables the District Court, on application by the Commissioner, to make an order directing a person to comply with an undertaking if the person contravenes an undertaking. The Court may also make orders discharging an undertaking or directing the person to pay the costs of the proceedings and the reasonable costs of the Commissioner in monitoring future compliance with the undertaking.

Clause 104 provides for the withdrawal or variation of an undertaking by agreement between the person who makes the undertaking and the Commissioner.

Clause 105 prevents proceedings for a contravention or alleged contravention of the proposed Act or regulations under the proposed Act from being brought against a person who has made an undertaking that is in force or who has completely discharged the undertaking. Proceedings for any such contravention must be discontinued if the Commissioner accepts an undertaking before the proceedings have been finalised.

Part 7 Authorised officers and inspection powers

Division 1 Authorised officers

Clause 106 defines a *requirement* for the purposes of the proposed Part to include a requirement imposed under a notice or an exemption under the proposed Act and a requirement contained in an undertaking under the proposed Act.

Clause 107 provides for the Commissioner to appoint authorised officers to exercise the functions of authorised officers under the proposed Act.

Clause 108 specifies that the relevant instrument of appointment of an authorised officer may limit the authority of the officer.

Clause 109 requires an authorised officer to be issued with an identity card in a form approved by the Commissioner.

Clause 110 requires an authorised officer to carry his or her identity card when exercising a power of entry and to produce it if requested to do so by a person in relation to whom the officer is exercising, or about to exercise, a power.

Clause 111 enables an authorised officer to exercise the investigation powers set out in proposed Division 2 if the officer believes on reasonable grounds that it is necessary to do so for the purposes of the Act, including for the purposes of an inspection or inquiry or to determine whether there has been a contravention of the proposed Act or the regulations under the proposed Act or of the terms of an authorisation, taxi licence or requirement. The provision may also be used to determine whether there has been a contravention of the *Taxation Administration Act 1996* insofar as it applies to the passenger service levy.

Clause 112 enables the Commissioner to cause inspections to be carried out to ensure that the provider of a passenger service or booking service, the holder of a taxi licence or the owner or driver of a taxi or hire vehicle is complying with the terms of the provider's authorisation or licence and any applicable safety duties and safety standards or other requirements under the proposed Act.

Division 2 Powers

Clause 113 confers on an authorised officer a power of entry onto premises (other than a residence or part being used as a residence) that the officer reasonably suspects are being used for the purposes of a passenger service or booking service, without consent and without obtaining a search warrant. Entry must be at a reasonable time of day, when a service or related activity is being carried out or when the premises are open for entry.

Clause 114 provides for a power of entry onto any premises for an authorised officer with the consent of the owner or occupier of the premises.

Clause 115 prohibits entry by an authorised officer onto residential premises, or any part of premises used as a residence, except with the consent of the owner or occupier or under the authority of a search warrant. The provision also requires reasonable notice to be given by an authorised officer of entry onto premises unless the notice would defeat the purposes of the entry or in an emergency.

Clause 116 confers powers on an authorised officer who exercises a power of entry, including power to inspect and test a motor vehicle used for a passenger service or equipment on the vehicle, to inspect maintenance and other facilities, to search for and inspect relevant documents and to require a person on the premises to answer questions or otherwise give information that might be relevant to the particular reason for the search.

Clause 117 confers on an authorised officer power to stop and detain a motor vehicle if the officer is authorised to inspect or test the vehicle or equipment on the vehicle. The driver may also be required to comply with reasonable directions.

Clause 118 provides that a notice under the proposed Part requiring a motor vehicle or equipment to be inspected or tested may require the test or inspection at a specified place (within 80 kilometres of the owner's or person's place of residence or business) or to be tested by or in the presence of an authorised officer.

Clause 119 enables an authorised officer who is authorised to inspect a vehicle to enter and remain on the vehicle or premises on which the vehicle is located and to operate the vehicle and any of its operable equipment.

Clause 120 enables an authorised officer to secure a site relevant to an investigation or to ensure safety and makes it an offence to enter or remain on a secured site.

Clause 121 enables an authorised officer, by written notice, to require a person to produce documents or information.

Clause 122 sets out procedures relating to documents or things that are produced or seized under the proposed Part, including requirements to give receipts, permitting things to be made available to law enforcement agencies and permitting inspection of the document or thing.

Clause 123 confers on an authorised officer the power to require a person who was a party to a seized or produced document to explain a matter relating to the content or creation of the document.

Clause 124 provides for a person to be warned that a failure to answer a question or provide documents or information is an offence and makes other provision with respect to removing the right to claim self-incrimination as an excuse not to comply with a requirement.

Clause 125 provides for the application for and issue of search warrants for the purpose of investigating contraventions of the proposed Act, regulations under the proposed Act or the terms of an authorisation, taxi licence or requirement under the proposed Act.

Part 8 Offences and penalties

Division 1 Offences

Clause 126 makes it an offence to hinder or obstruct an authorised officer so as to interfere with the exercise of the officer's functions under the proposed Act, to fail to provide reasonable assistance to any authorised officer who enters a place or land when exercising those functions, to fail to answer questions or provide information to any authorised officer exercising those functions or to fail to produce documents or other things for inspection by any authorised officer when required to do so by any such officer when exercising those functions.

Clause 127 makes it an offence for a person to obtain or attempt to obtain an authorisation or taxi licence under the proposed Act by a statement or misrepresentation that the person knows to be false or misleading. It will also be an offence to forge or fraudulently use an authorisation or taxi licence under the proposed Act or to fraudulently allow it to be used by another person.

Clause 128 enables an authorised officer to require a person to state his or her full name and address if the authorised officer reasonably suspects the person to be committing or to have committed an offence under the proposed Act or the regulations or finds the person in circumstances or has information that leads the officer to reasonably suspect that the person has committed such an offence. It will be an offence to refuse to give the information or to state a wrong name or residential address. A person will not be guilty of an offence unless the person is warned that a failure to comply is an offence and the officer has identified himself or herself as an authorised officer. An authorised officer may also ask the person to provide evidence of the correctness of the stated name or address, but failure to do so will not be an offence.

Clause 129 prohibits the advertisement of a commercial service involving the use of a vehicle if the service is of a kind that is required to be authorised under the proposed Act or the vehicle is of a kind that is required to be licensed under the proposed Act, and there is no authorisation or licence.

Clause 130 makes it an offence for a person to whom an authorisation or taxi licence under the proposed Act was granted not to immediately return the authorisation or taxi licence to the Commissioner if it is cancelled. It will also be an offence for a person to whom a taxi licence was granted not to return the number-plates allocated to the vehicle under the licence to the Point to Point Transport Commissioner or the Commissioner of Police within 7 days of the suspension or cancellation or the licence ceasing to have effect.

Clause 131 makes it a defence to proceedings against the owner of a taxi or hire vehicle for an offence against the proposed Act if the owner establishes that the owner did not know, and could not reasonably have known, that the vehicle was used as a taxi or hire vehicle.

Division 2 Proceedings for offences

Clause 132 imputes conduct of an employee, agent or officer of a body corporate (acting within the actual or apparent scope of employment or authority) to the body corporate for the purposes of offences under the proposed Act, including offences that require knowledge, intention or recklessness.

Clause 133 provides that a director of a body corporate or a person concerned in the management of a body corporate is guilty of an offence if the director or person knows or ought reasonably to know that an executive liability offence would be or is being committed and fails to take all reasonable steps to prevent or stop the commission of the offence. The director or person may be proceeded against for the contravention whether or not the body corporate has been proceeded against or convicted. Executive liability offences include safety duty offences and unauthorised provision of taxi services or booking services.

Clause 134 makes a person who causes or orders or directs the commission of, or who aids, abets, counsels or procures or conspires in the commission of, an offence against the proposed Act or regulations under the proposed Act guilty of an offence and liable to the same penalty as the principal offender.

Clause 135 enables penalty notices to be issued for offences that are prescribed by the regulations.

Clause 136 provides for proceedings for offences under the proposed Act or regulations to be dealt with summarily before the Local Court or the Supreme Court and limits the maximum penalty that may be imposed by the Local Court for an offence to \$50,000. Proceedings for a category 1 safety duty offence committed by an individual are to be taken on indictment.

Part 9 Point to Point Transport Commissioner

Clause 137 provides for the Governor to appoint the Point to Point Transport Commissioner for a term of office not exceeding 5 years and applies government sector employment provisions to the Commissioner's employment.

Clause 138 provides for the contract of employment of the Commissioner.

Clause 139 sets out the functions of the Commissioner, including administering the authorisation and licensing schemes under the proposed Act, managing the enforcement of the proposed Act and regulations, recommending safety and other standards for passenger services and assisting with the passenger service levy.

Clause 140 enables the Commissioner to delegate the Commissioner's functions.

Clause 141 enables the appointment of an acting Commissioner.

Clause 142 sets out the circumstances when the Commissioner's office is vacated.

Clause 143 enables the Governor to remove the Commissioner from office for incompetence, incapacity or misbehaviour.

Clause 144 provides for the Commissioner's staff.

Part 10 Reviews and appeals

Clause 145 enables an application to be made to the Civil and Administrative Tribunal for a review of a decision to refuse an application for an authorisation or taxi licence, to suspend or cancel an authorisation or taxi licence, to vary a condition of an authorisation or taxi licence or to impose or revoke a condition of an authorisation or licence.

Clause 146 enables an appeal to be made to the Local Court against a decision to issue, vary or cancel an audit, improvement or prohibition notice or to extend the time for compliance with a notice.

Clause 147 requires an appeal to the Local Court to be made within 28 days after the person is notified of the appellable decision and provides for other appeal procedures.

Clause 148 confers jurisdiction on the Local Court to determine an appeal by setting aside or varying the decision appealed against or dismissing the appeal and, for that purpose, gives the Court the powers of the original decision-maker. Regulations may be made about appeal procedures.

Part 11 Miscellaneous

Clause 149 enables the Commissioner to enter into information sharing arrangements with relevant agencies (that is, SafeWork NSW, the Commissioner of Police and equivalent persons in other jurisdictions, TfNSW, RMS, IPART, the State Insurance Regulatory Authority, an authorised provider of a taxi service or booking service or other persons or bodies prescribed by the regulations) to share information about possible breaches of the proposed Act or the safe provision of passenger services and other matters.

Clause 150 authorises the Commissioner of Police to disclose to the Point to Point Transport Commissioner or any other relevant agency information about disqualifying offences and the criminal history of a person.

Clause 151 permits the Commissioner to disclose, or permit the disclosure of, information about the authorisation or licensing status of an identified person, or the person's compliance with requirements imposed under the proposed Act, if the Commissioner is satisfied that the disclosure is reasonably necessary for the purposes of the proposed Act or regulations.

Clause 152 makes it an offence to disclose information obtained in connection with the administration or execution of the proposed Act, subject to specified exceptions.

Clause 153 requires the Commissioner to keep records relating to authorisations or taxi licences and notices issued under the proposed Act and provides for the issue and use of evidentiary certificates as to particulars of authorisations, taxi licences and notices kept in those records. The proposed section also removes the requirement for proof of certain matters in legal proceedings (such as the fact that a motor vehicle is subject to a provision) until evidence is given to the contrary.

Clause 154 provides for the extraterritorial application of requirements imposed under the proposed Act.

Clause 155 enables fees, charges or levies payable under the proposed Act to be recovered by the Commissioner as a debt in a court of competent jurisdiction and makes it clear that the amount of a fee for a taxi licence may exceed the amount required to cover administrative or other costs.

Clause 156 provides for the manner in which documents are to be served under the proposed Act.

Clause 157 provides that compensation is not payable by or on behalf of the State because of the enactment or operation of the proposed Act or any statement or conduct relating to the enactment or operation of the proposed Act.

Clause 158 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 159 gives the Minister power to review the impact of the proposed Act on the taxi and hire vehicle industries not later than 12 months after the commencement of Part 3 of the proposed Act.

Clause 160 provides for the review of the proposed Act in 5 years from the date of assent to the proposed Act.

Schedule 1 Regulation-making powers

Schedule 1 sets out the matters about which regulations may be made for the purposes of the proposed Act.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, the Schedule contains provisions relating to existing ordinary and short-term taxi-cab licences which are to continue in force (though new licences of those kinds will not be issued) and applies relevant provisions of the proposed Act to those licences.

Schedule 3 Adjustment assistance for taxi and hire vehicle industries

Schedule 3 does the following:

- (a) defines certain words and expressions used in the proposed Schedule. ***Additional assistance funds*** are moneys for the purposes of additional assistance payments for the holders of certain private hire vehicle licences and other persons who are or were involved in or connected with the taxi or hire vehicle industry and who are detrimentally affected by changes to the regulation of the industry. ***Transitional assistance funds*** are moneys for the purposes of payments under a transitional assistance package for the holders of certain taxi-cab licences. ***Assistance funds*** means additional assistance funds or transitional assistance funds,
- (b) enables regulations to be made establishing the scheme for payment of the transitional assistance funds,
- (c) enables the Minister to determine that an amount of additional assistance funds is payable to certain private hire vehicle licence holders or to a person who is or was involved in or connected with the taxi or passenger hire vehicle industry and who is detrimentally affected by regulatory changes to the industries made by the proposed Act,
- (d) enables regulations to be made with respect to applications for additional assistance funds and other matters related to the payment of additional assistance funds,
- (e) provides that assistance funds are to be provided from moneys appropriated by Parliament,
- (f) establishes the Taxi and Hire Vehicle Industries Assistance Panel (the ***Panel***), which is to consist of the Chief Executive of the NSW Taxi Council (or his or her nominee) and the Secretaries of the Department of Premier and Cabinet, the Department of Transport and The Treasury (or their delegates). The Chairperson of the Panel is to be the Secretary of the Department of Transport (or his or her delegate),
- (g) confers functions on the Panel, including determining procedures for applications for assistance funds, recommending criteria for payment of certain additional assistance funds, advising the Minister, reporting to the Minister and making recommendations as to payments to particular applicants or classes of applicants,
- (h) provides for the Panel's procedures and related matters,
- (i) provides that the Minister may determine that a person who engages in improper conduct in relation to an application for, or payment of, assistance funds is not entitled to be paid assistance funds or must repay them. Improper conduct includes making or giving a statement to obtain assistance funds or in an application knowing that it is false or misleading in a material particular, doing or omitting to do any thing for the purpose of misrepresenting eligibility to receive funds or transferring a taxi-cab or private hire vehicle licence for the purpose of altering an entitlement to receive funds,
- (j) provides for the repeal of the proposed Schedule on a day appointed by an order made by the Governor.

Schedule 4 Passenger service levy

Schedule 4 imposes a passenger service levy on providers of taxi services and booking services and does the following:

- (a) specifies the passenger service transactions that are to be the subject of the levy, that is, taking a booking for a passenger service or providing a taxi service (other than after a booking or as an affiliated provider),
- (b) makes the levy payable on a monthly (or other specified assessment period) basis for passenger service transactions for the previous assessment period, at the rate of \$1 for each transaction, and provides for a methodology to be prescribed for calculating the levy where

the passenger service transactions are not reasonably ascertainable for an assessment period,

- (c) excludes transactions involving interstate journeys that start in another State or Territory or where a booking does not lead to the provision of a passenger service,
- (d) requires a return for each assessment period to be furnished to the Commissioner,
- (e) requires a person liable to pay the levy to register with the Commissioner,
- (f) provides for information sharing between the Chief Commissioner of State Revenue and the Commissioner,
- (g) confers power on the Commissioner to exercise any functions delegated by the Chief Commissioner and also power to sub-delegate any of those functions, as well as powers to deal with assessments and objections,
- (h) confers power on authorised officers to exercise their powers in connection with determining liability for the levy and payment or collection of the levy and to exercise other investigation powers under the *Taxation Administration Act 1996*,
- (i) confers power to make regulations for matters related to the levy, including the provision of information by providers, assessments and reassessments of liability, rebates and other levy reductions, arrangements for the payment of the levy and payments by third parties who collect levy amounts,
- (j) makes payment of the levy a condition of authorisation of providers of taxi services or booking services,
- (k) makes it an offence for a third party who collects an amount of levy to fail to comply with a reasonable direction given by the person liable to pay the levy,
- (l) provides for the termination of the levy on a day specified by order of the Minister published in the Gazette.

Schedule 7 amends the *Taxation Administration Act 1996* to apply that Act to the levy as if it were a taxation law and by doing so applies provisions relating to collection and payment of tax, as well as other machinery and offence provisions applying to State taxation law.

Schedule 5 Amendment of Passenger Transport Act 2014 No 46

Schedule 5 removes provisions relating to taxis and hire cars from the *Passenger Transport Act 2014* and makes other consequential amendments. The Schedule also enables passenger service contracts to be entered into with TfNSW with respect to vehicles to which the proposed Act applies.

Schedule 6 Amendment of Passenger Transport Act 1990 No 39

Schedule 6 removes provisions relating to taxis and private hire vehicles from the *Passenger Transport Act 1990* and makes other consequential amendments.

Schedule 7 Amendment of other Acts

Schedule 7 amends the Acts specified in the Schedule as a consequence of the enactment of the proposed Act. The proposed Schedule also amends the *Motor Accidents Compensation Act 1999* to allow the collection of information from owners for the purpose of re-determining guidelines for the determination of premiums for third-party policies for taxis and hire vehicles.