

INQUIRY INTO OPERATION OF THE POINT TO POINT TRANSPORT (TAXIS AND HIRE VEHICLES) ACT 2016

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Inquiry into the operation of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*

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1 Introduction

The NSW Government welcomes the Legislative Council Transport and Customer Service Committee's inquiry into the operation of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (the Act). Transport for NSW (TfNSW) has prepared this submission on behalf of the NSW Government.

Part 1 of this submission provides background to the Point to Point Transport Taskforce and the point to point transport reforms which followed, as well as information on the legislative and policy framework underpinning point to point transport. It includes contributions from the following government agencies with responsibilities related to point to point transport:

- the Department of Premier and Cabinet (NSW Employee Relations),
- the Treasury cluster (Industry, Jobs and Innovation and the Small Business Commission), and
- Customer Service cluster (State Insurance Regulatory Authority (SIRA), Revenue NSW and Service NSW).

Part 2 of this submission has been prepared by the Point to Point Transport Commissioner (the Commissioner). It sets out detailed information about the Commissioner's role and functions as well as information about the Commissioner's approach to managing compliance and enforcement.

This submission covers the Terms of Reference (ToR) of the inquiry as follows:

- a) the operation of the regulatory system applying to the taxi industry (sections 2-3),
- b) specifically, the system of bailment that operates in relation to the taxi industry, any changes pursued by the NSW Government to the system of bailment since enactment of the legislation, and any changes that should be made (section 4),
- c) the implementation of the industry assistance package for the taxi industry (section 5),
- d) the impact of the legislation on the value of taxi plates (section 6),
- e) the role and function of the Point to Point Transport Commissioner (section 3.8 and Part 2), and
- f) any other related matter (section 7).

1.1 Point to Point Independent review 2020

On 28 October 2019, the Minister for Transport and Roads, The Hon. Andrew Constance MP, (the Minister) announced a review of the point to point transport industry. The review is being led by Sue Baker-Finch.

The review will:

1. consider whether there is a case for further assistance in view of:
 - a) the objectives and nature of the point to point transport reforms; and
 - b) the Government's announced commitment to assist traditional industry members through those reforms.
2. in the context of the Government's commitment to a ten year plan for the industry and taking account of the differing circumstances in metropolitan and regional transport markets, examine the impact of the point to point reforms to date and advise if further structural adjustments are needed to ensure the long term viability of the sector and to realise positive customer outcomes.
3. consider if there are regional locations at risk of losing point to point transport services, and identify:
 - a) appropriate interventions to address local transport needs,
 - b) any measures, including any changes to industry structure specific to the regions, that may be needed to support the continued participation of point to point transport service providers in the local transport market, especially for those providing wheelchair accessible services and other services to vulnerable communities, and
 - c) any further support needed for wheelchair services.

Further details about the review can be found at:

<https://www.transport.nsw.gov.au/projects/programs/point-to-point-transport/point-to-point-independent-review-2020>

Part 1 – Point to point transport reforms and development of the current laws

2 Background to the point to point transport reforms

2.1 Point to Point Transport Taskforce 2015

The advent of the technology-enabled ridesharing model and the growing ease of booking point to point transport services presented a major challenge to traditional rank and hail taxi services, as well as to the hire car industry. This occurred in NSW in 2014 with the entry of Uber to the Sydney market. The regulatory framework at the time did not accommodate the shifts that were occurring in technology, social attitudes and changing customer expectations of point to point transport.

In response to these developments on 1 July 2015 the then Minister for Transport and Infrastructure announced the establishment of an independent taskforce to examine the future sustainability of taxis, hire cars and other emerging point to point transport providers in NSW, including ridesharing services. The Point to Point Transport Taskforce (the Taskforce) was headed by Professor Gary Sturgess AM, assisted by Dr Tom Parry AM.

During July and August 2015, the Taskforce met with hundreds of stakeholders representing more than 140 organisations across NSW. This informed a discussion paper which was released in late August 2015. More than 5,600 individuals, organisations and businesses made submissions. The feedback helped the Taskforce form its recommendations to the Minister as part of its final report in December 2015.

In forming its recommendations for the NSW Government, the Taskforce distinguished between the two types of point to point transport services:

- those that are hailed in the street or taken from a taxi rank, where the experience is anonymous and there is no record of the customer or their trip.
- services that are booked, where there is a record of the customer and their journey.

The Taskforce findings and key recommendations are outlined below. They provide important background to understanding the arrangements now in place to regulate the safety of these point to point transport services.

2.2 Safety and security

The Taskforce recommended that the existing requirements relating to point to point driver licensing and history, medical fitness, criminal history and competency in the safe use of equipment for wheelchair accessible vehicles be retained. It found, however, that the prescriptive framework provided a narrow view of how to achieve safety outcomes and gave no opportunity for industry participants to 'own' any of the standards or processes for meeting them. Rather than retain the need for driver authorisation, which the Taskforce found to be subject to delays and prevented some prospective drivers from entering the industry, it recommended that taxi organisations and booking services, whose brands are associated with the service, should have greater flexibility about how minimum standards are met, as well as greater responsibility for safety outcomes. To achieve this, a duties-based framework was proposed where all entities in a chain of responsibility would be required to identify and mitigate risks.

The Taskforce considered the security requirements applying to rank and hail taxi services were appropriate given there is no record of the trip, the driver or the passenger. The Taskforce did not recommend any reduction in the security standards, but did recommend that some be less prescriptive to enable service providers to find cost-effective ways of meeting security outcomes, with the potential to also better meet their branding needs. The Taskforce also recommended a number of other taxi vehicle standards be retained including the requirement for four side doors (so the customer can choose a seat in the taxi where they feel safe), being readily identifiable as a taxi (so customers know the trip is covered by higher security standards), vehicle tracking and duress alarms. The Taskforce also found that the requirement to affiliate with a taxi network for the provision of certain security functions was hampering the ability of service providers to keep costs down.

On vehicle safety, the Taskforce found many taxi owners relied on mandated inspections to find faults rather than implementing proactive maintenance schedules. Despite the

requirement for a twice annual vehicle inspection, in 2014 NSW Police found half of taxis audited had roadworthiness defects. It was recommended that the vehicle inspection regime be aligned to that for other NSW light vehicles (one per year) and that service providers take greater accountability for the maintenance and safety of their vehicles through a duties-based safety framework. For security equipment, the testing and inspection regime was found to be inadequate. The Taskforce recommended responsibility for mitigating or eliminating risks relating to security equipment rest with those entities with management, control, influence and information to achieve the desired outcomes, under a safety duties framework.

2.3 Consumer protection – insurance and regulated fares

Effective insurance cover is essential for drivers, passengers, vehicle owners and the general community to recover costs associated with personal injury or property damage in the event of an accident. The Taskforce reviewed arrangements for CTP insurance, third party property damage insurance and workers compensation and income protection insurance. In particular, the Taskforce considered the classifications used to determine CTP premiums at the time would not be suitable under a changed regulatory framework, where usage and risk profiles of private vehicles used to offer passenger services would likely change. At the time, owners of private vehicles being used to provide rideshare services were paying the same CTP premiums as other private vehicle owners because a separate classification did not exist, with their premiums likely to be cross-subsidised by private vehicle owners. A review of the CTP framework was recommended, supported by government and undertaken by the State Insurance Regulatory Authority (SIRA) (see Section 3.10).

Customers who book a point to point transport service are able to negotiate with the provider on the fee and can shop around for a better price. For this reason, the Government did not regulate fares for booked services (hire cars, tourist services), other than to require that the fare be agreed before the hiring. The Taskforce concluded that this level of fare regulation would also be appropriate for newer point to point transport models such as rideshare, and for taxis offering booked services.

Customers who hail a taxi or take one from a rank, on the other hand, are not in a position to easily negotiate a fare before starting their journey, or to seek out an alternative service. These customers often do not have access to the information needed to choose a service based on its price or value. For this reason, government has traditionally regulated the maximum fare that could be charged for taxi services, and required that a taxi meter be installed and running during a hiring. Taxi service providers were free to charge fares below the regulated maximum. This regulation applied to all taxi services, booked or otherwise.

The Taskforce considered that regulation of maximum fares for booked taxi services was not necessary, for the same reason other booked fares were not regulated, but that maximum fare regulation for rank and hail taxi services should continue to protect vulnerable consumers. The Taskforce also concluded that the requirement for a fare calculation device in taxis be retained, but that prescriptive requirements about the type of equipment that must be used should be reviewed to provide greater flexibility for operators to adopt new technologies.

2.4 Service quality and innovation

The Taskforce found that a range of prescriptive service standards and requirements unnecessarily hindered innovation, suppressed diversity and increased the cost of service delivery. For example, drivers were regulated for presentation (uniform, shoes, neat and tidy appearance), conduct (not eating in vehicle), training (a course focusing mostly on customer service) and had to pass a test on geographic knowledge and understanding of the regulation. Vehicles were regulated for wheelbase length, seating depth, condition of fixtures and fittings and could not be more than six years old. Vehicles were also subject to very detailed rules about where and how advertisements could be placed.

Taxi networks in Sydney, Newcastle, the Central Coast and Wollongong were required to meet and report on key performance indicators (KPIs) on dispatch times for booked services, to implement systems for lost property and customer complaints and to provide services 24 hours a day, seven days a week through universal service obligations. Despite these measures, submissions to the Taskforce and surveys indicated customer expectations were not being met for wait times, customer service or taxi availability.

The Taskforce considered that these requirements added unnecessary costs to the delivery of services and prevented point to point transport businesses from developing more diversified and innovative responses to customer demand. For those aspects of the service that do not concern the safety or security of passengers, the Taskforce considered that the service provider was in a better position to set a level of service that would make them competitive and attract and retain customers.

2.5 Supply

Since the 1930s, supply of taxi services has been managed by placing restrictions on new taxi licences. This limited supply and, when combined with the relaxation of controls over licence ownership, gave rise to the trading of licences by passive investors and to high licence values. The value of licences was a barrier to entry into the taxi industry for many, compounded by the costs of compliance with prescriptive regulatory requirements. The high value of taxi licences was found to be adding 20 per cent to the cost of operating a taxi.¹ In 2009, changes were made to taxi licensing. This meant that transferable licences could no longer be issued in Sydney, with annual licences (renewable up to nine times) being issued to respond to growth in customer demand. The Taskforce recommended that only annual taxi licences continue to be issued, with an annual fee determined through tender, and that ordinary licences be converted to annual licences (this recommendation was not accepted by government).

In Sydney, managing the supply of taxis is a balancing act requiring sufficient ubiquity of service to meet customer demand for rank and hail services, alongside the need for services to be financially viable to continue to be offered.

The Taskforce received submissions from stakeholders with strongly contrasting views. Some claimed there were insufficient taxis to meet demand; other claimed an oversupply was reducing earnings for drivers, operators and owners. The Taskforce concluded that the nature of the Sydney taxi market would support an ongoing role for rank and hail services,

¹ CIE, 2014 survey of taxi drivers and operators, February 2015

but that government should exercise caution in issuing new licences to avoid an oversupply, noting the increased supply of booked services was likely to affect demand.

Outside the Metropolitan Transport District, particularly in regional areas, submissions to the Taskforce indicated that the supply of taxi services exceeded customer demand due to competition from other transport services: community transport, courtesy buses and hire cars. However the Taskforce noted that community transport is often contracted out to taxi service providers, as much as a quarter of services in some regional areas, and clubs often form partnerships with taxi service providers.

Generally taxi licences (and hire car licences) specified an operating area, with services (rank and hail as well as booked) unable to be provided for trips commencing outside the operating area. Submissions to the Taskforce indicated that operating areas created unnecessary barriers for responding to customer demand, although some acknowledged that restrictions safeguarded services for areas of lower demand. The Taskforce recommended a review of operating area restrictions, combined with the release of a small number of licences able to operate anywhere outside Sydney to address demand and limit the loss of services from smaller towns.

The Taskforce reported that controls on the supply of booked-only services were inconsistent, with a licence required to operate unrestricted hire cars, but not restricted-use hire cars or tourist services, and different price-setting approaches for Sydney and regional licences.

For booked-only services the Taskforce recommended the removal of the requirement for a licence and no limits on supply. The Taskforce also recommended that that fees for authorisation of services applied consistently across all booked-only services. It was considered this would also assist taxi operators to potentially expand their services to offer booked services in hire vehicles.

2.6 Compliance and enforcement

The Taskforce concluded that industry participants needed to accept greater responsibility and to be held accountable for compliance with their responsibilities. The Taskforce recommended a regulatory framework whereby obligations for safety and consumer

protection would rest with the entity that had the management, control, influence and information to fulfil them, in a chain of responsibility where multiple entities could have obligations. Guidance would be available for industry participants to establish systems and processes enabling them to comply with their obligations, as well as ongoing education and advice. The regulator would be able to audit taxi organisations, booking services and vehicle owners, and these entities would be obliged to retain relevant records and make them available on request. The regulator would have access to a range of compliance and enforcement measures and penalties to enable a response proportional to the risk presented by the instance of non-compliance.

2.7 Transport disadvantage

The Taskforce considered the range of programs, incentives and subsidies which, combined, ensure the mobility of transport-disadvantaged customers unable to access mainstream public transport. These included government contracting directly with point to point transport providers through the Commonwealth Home Support Program, the Community Transport Program, the Assisted School Travel program, programs for transport under the *Veterans Entitlement Act 1986*, universal service obligations (USOs) imposed on all taxi services, specific operating requirements and subsidies for Wheelchair Accessible Taxi (WAT) services providers and subsidised fares under the Taxi Transport Subsidy Scheme (TTSS).

Submissions from taxi industry stakeholders expressed dissatisfaction with the opportunities to tender for government work, a proportion of which is sub-contracted to taxis. The experience of service providers using taxis to provide services under other programs was reportedly variable, in large part because of the specialised nature of the service. Clients depend on a high level of service reliability to attend appointments and often require additional care. Examples of taxi service providers introducing training and certification programs in support of these needs were provided to the Taskforce, but other submissions indicated that taxi service providers were struggling to adjust.

USOs for taxis in place in 2015 restricted circumstances when taxi drivers could refuse service to passengers, required taxi networks to provide a booking service at all times and

required 10 per cent of taxis to be fitted with a child restraint. The Taskforce found that these obligations, which did not apply to other point to point service providers, were not being universally met and were not achieving the customer outcomes intended. The Taskforce concluded that the obligations added to the costs for service providers, and in so doing contributed to an uneven playing field for point to point transport, favoured large networks rather than diversification and competition, harmed the viability of taxi services in regional and rural areas and restricted the ability of service providers to set their own levels of service and adjust to customer demand. It was recommended that the USOs be removed.

The Taskforce found that subsidies offered through the TTSS had not kept pace with fare increases and that the shift to individual funding models through the National Disability Insurance Scheme, while at that time uncertain, would strengthen the case for making available a broader range of point to point transport services for people with disabilities. Further, incentives for putting WATs on the road and for drivers prioritising WAT trips were found by the Taskforce to be inadequate to ensure the ongoing viability of WATs compared to regular taxis and therefore their availability. It was recommended that the government move to a provider-neutral transport subsidy scheme and, in so doing, examine the viability of wheelchair accessible services and the effectiveness and adequacy of passenger subsidies and other incentives for the provision of services to all people with disabilities.

In December 2015, alongside the reforms, the government announced an additional \$15.5 million a year to support wheelchair-accessible services and transport disadvantage. Licences for WATs were made available free of charge, on application. The WAT incentive payment was increased from \$7.70 to \$15 per trip. The interest-free loan scheme to assist with the establishment of a new WAT or retrofit of existing vehicles was expanded from \$1 million to \$5 million, with a longer loan term and the maximum loan amount increasing from \$30,000 to \$100,000. The central booking service for WATs has been subsidised, saving service providers \$2,130 in annual fees. The maximum subsidy provided to transport disadvantaged members of the community through the TTSS was doubled from \$30 to \$60.

2.8 Transition

The Taskforce acknowledged that adoption of its recommendations would involve significant change to how the industry was structured, the way it was managed, the manner in which Government interfaced with the point to point transport sector and, that for some, this would be a difficult period of adjustment.

The Taskforce believed that government had a role to play in facilitating this change and recommended a range of industry support measures and education including about its obligations under the new regulatory framework, and a public education campaign about how the changes would affect customers.

The Taskforce recommended an industry assistance package be developed for owners of taxi licences. The Taskforce identified licence holders who are at or near retirement with few other assets or sources of income as being particularly vulnerable to the impacts of the reforms. The Taskforce also recommended that a panel be established to assess applications for assistance to the hardship fund and make determinations about any assistance to be given to applicants.

3 Legislative and policy framework

In December 2015, the NSW Government accepted all but one of the Taskforce's 57 recommendations.² The government's response was to legalise rideshare services and modernise regulation for point to point services to provide more opportunities for all drivers along with stronger safety mechanisms, better competition and choice for customers.

The response also included assistance for parts of the industry, which needed to adjust to the new regulatory and market changes (Section 5).

Change was immediate. A range of regulatory requirements were removed and rideshare services were legalised, with effect from December 2015. Substantive changes imposing obligations on industry to ensure safety came with the commencement on 1 November 2017 of the Act and related regulations (in particular, the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* (the Regulation)).

The point to point transport regulatory framework focuses on customer and driver safety and facilitates new and innovative services that better meet the needs of individual customers. The aim is to ensure that the industry remains adaptive, innovative and competitive, while maintaining strong safety standards.

While a large amount of prescriptive non-safety red tape was removed, safety laws were strengthened. In particular, for the first time the companies at the top of the tree (the taxi networks and rideshare companies) were held accountable for safety of their services. This brings the point to point transport sector into line with modern chain of accountability laws and requirements for safety management systems in other transport sectors such as heavy vehicles and passenger buses and workplace health and safety law.

In recognition of their different risk profiles, the law distinguishes between booked services, where customers are able to choose their service provider and the booking system enables identification of all participants, and anonymous rank and hail services, where no record of the trip is available and which can only be provided by licenced taxis. Reflecting the higher

² The only recommendation not accepted related to the conversion of ordinary licences to annually renewable licences.

risk profile of the latter, additional safety standards apply to taxis. These additional safety such as security cameras, and the numbers of taxi licences are controlled through annual determinations by TfNSW. TfNSW also determines the maximum fare for rank and hail services.

The independent regulator, the Commissioner was established to administer and enforce the law. Further information about the Commissioner's functions and activities is set out in Part 2 of this submission.

3.1 Scope of regulatory framework

The Act applies to both 'passenger services' and 'booking services'.

A 'passenger service' provider carries on the business of providing a passenger service, which means the transport, by motor vehicle (other than a bus), or passengers within or partly within the State for a fare (Act s4). Services provided using a taxi (a vehicle that stands or plies for hire or is authorised to stand or ply for hire) (Act s.5) and services provided using a hire vehicle (that is a vehicle that does not provide taxi services) (Act s.6) are two types of passenger service.

Providing a 'booking service' means carrying on the business of taking booking for taxis or hire vehicles and communicating the bookings to drivers for passenger services or providers of passenger services (Act s.7).

It is important to understand that, like hire vehicles, taxis are able to be used to provide booked services. They differ from hire vehicles in that they are also able to 'stand or ply for hire' (in other words, offer and provide rank and hail services), and it is this anonymous aspect of their operations that underpins the need for additional controls on safety and supply and consumer protection. For example, some of the vehicle safety standards set out at 3.2.2 below, only apply to taxis when they are being used to ply or stand for hire.

3.2 Safety

The framework promotes an improved safety culture in the point to point transport industry by introducing safety duties, a range of safety standards and safety management systems. Service providers have flexibility in how they ensure their safety obligations are met, as they

are best placed to identify, manage and mitigate risks associated with their services. Given the increased risk profile of rank and hail taxi services, certain additional safety standards continue to apply to those services, as well as regulation of fares and supply of taxis.

3.2.1 Safety duties

The Act establishes safety duties for providers of passenger services and booking services, as well as officers of such providers, and for drivers for passenger services.

The primary duty of care of a passenger service provider is the requirement to ensure, so far as is reasonably practicable, the health and safety of drivers and other persons while they are providing the service, and of passengers or other persons in connection with the provision of the services. The duty is to eliminate the risk so far as is reasonably practicable or, if the risk cannot be eliminated, to minimise it so far as is reasonable practicable (Act s.12).³

For a booking service provider the primary duty of care is to ensure, so far as is reasonably practicable, 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 of passengers and other persons in connection with a passenger service that has been booked. As with the duty of the passenger service provider, the aim is to eliminate the risk or to minimise it, so far as is reasonable practicable (Act s. 13).⁴

Officers of a service provider that has a safety duty must exercise due diligence to ensure that the duty holder complies with its safety duties. Due diligence includes keeping up to date with safety matters relating to passenger services, gaining an understanding of the nature of the operations provided and the hazards and risks associated with those operations, ensuring the duty holder has appropriate resources and processes to eliminate or minimise risks, ensuring the duty holder has appropriate processes for considering and

³ Note section 11 deals with what is 'reasonably practicable' in ensuring safety.

⁴ Note section 11 deals with what is 'reasonably practicable' in ensuring safety.

responding to information about incidents, hazards and risks, and ensuring the duty holder implements processes for complying with its safety duties (Act s. 14).

Drivers of vehicles being used to provide passenger services also have safety duties: to take reasonable care for their own health or safety; to take care not to adversely affect the health and safety of other persons; to comply with reasonable instructions given by the provider of the passenger service or booking service to allow that person to comply with the Act; and to cooperate with any reasonable health and safety policy or procedure of the provider of the passenger service or booking service (Act s.15).

Sections 16 – 19 of the Act deal with offences relating to breach of safety duties, with the most serious offences punishable by a maximum penalty of \$300,000 and or 2 years imprisonment for an individual, or \$3 million for a body corporate.

3.2.2 Safety standards

The safety duties set out at 3.2.1 are general and require duty holders to establish their own policies and procedures to manage the risks and hazards of their operations. The Act also provides for the establishment of specific safety standards under the regulations. The regulations may specify safety standards for passenger service providers, for booking service providers, for drivers, for owners of motor vehicles that are taxis or hire vehicles or holders of taxi licences.

The key safety standard set out in the Regulation is the need for passenger service providers and booking service providers to have a safety management system. This is further dealt with at 3.2.3.

Specific safety standards for vehicles include:

- Vehicles used for passenger services must be registered under the *Road Transport (Vehicle Registration) Regulation 2007*, or be registered in another jurisdiction, vehicles must be regularly maintained; and maintenance and repairs must be carried out by a person licensed under the *Motor Dealers and Repairers Act 2013*, or with equivalent authorisation from another jurisdiction (Regulation cl. 8 and 9),

- Wheelchair accessible vehicles must meet certain specifications to ensure wheelchairs can fit in the vehicle and comply with a range of disability specific Australian Standards, as well as the Disability Standards for Accessible Public Transport issued under the *Disability Discrimination Act 1992* (Cth), and carry both wheelchair restraints and approved child restraints (Regulation cl. 10),
- Taxis must have seating accommodation for the driver and at least 4 and not more than 11 other adult persons, and must have at least 4 side doors (Regulation cl. 11),
- Taxis that ply or stand for hire must have roof signs displaying the word 'TAXI' in black lettering and a roof light clearly visible in daylight that is lit when the taxi is available for hire (but not at any other time); must be painted or marked so as to be clearly identifiable as a taxi, with the name or other identifying logos or colours of the taxi service provider and their contact details displayed prominently (Regulation cl. 12); and must be fitted with a fare calculation device that is clearly visible to everyone in the taxi and securely fixed to the vehicle; the device must display the fare including any additional fees, charges or tolls, be capable of calculating the fare when the vehicle is being used as a taxi, and be calibrated to determine the fare in accordance with the authorised fares (Regulation cl. 14),
- Taxi drivers must be provided with a driver identity document that is displayed in the taxi so it is clearly visible to passengers (Regulation cl. 13),
- Taxis that ply or stand for hire must clearly display the following information inside the taxi: the vehicle registration number, contact information for the taxi service provider, and the fare for journey and any additional tolls, fees or charges that may be payable and any differences arising because of the time when a journey is undertaken (Regulation cl. 15),
- Taxis that ply or stand for hire in the Metropolitan, Newcastle or Wollongong transport district or within the Central coast local government area must be fitted with a duress alarm system which is monitored by and responded to by the provider of the taxi service (Regulation cl. 16), and also with a vehicle tracking system (Regulation cl. 17),
- Taxis that ply or stand for hire must be fitted with an approved security camera system, have conspicuous signage advising persons that they may be under video

surveillance, and keep recordings of the security camera footage (Regulation cl. 18 and 19),

- Hire vehicles must not be painted or marked to look like a taxi, but must have a retro-reflective sign displayed or attached at the rear end of the driver's side of the vehicle that makes it apparent that it is a hire vehicle – this may be in the form of a logo or other business identification (Regulation cl. 20),
- Motor cycles used as hire vehicles must comply with certain specifications set out in clause 21 of the Regulation. In particular, passengers must be provided with protective clothing, including a helmet, gloves, jacket and boots or gaiters (Regulation cl. 21), and
- All vehicles used to provide a passenger service must be insured to provide cover of at least \$5 million against third party property damage (Regulation cl. 22).

Safety standards for drivers of passenger service vehicles include the following (noting that it is the taxi service provider or booking service provider for whom the driver drives or provides the booked service that is responsible for ensuring adherence with these standards):

- A person must not drive a taxi or hire vehicle being used to provide a passenger service if the person has been found guilty of a disqualifying offence for a driver (Regulation cl. 24 – subclause (2) lists the disqualifying offences),
- A person must not drive a taxi or hire vehicle unless they have held an unrestricted Australian driver licence for a total of at least 12 months in the preceding 2 years and meet the medical standards for commercial vehicle drivers set out in Assessing Fitness to Drive, published by Austroads and the National Transport Commission; or if they held a driver authority under previous regimes that was cancelled or their most recent application for a driver authority was rejected (Regulation cl. 25),
- A driver of a wheelchair accessible taxi or hire vehicle must be competent in the safe loading, restraint and unloading of a person in a wheelchair (Regulation cl. 26),
- A taxi driver in the Metropolitan transport district that plies or stands for hire must be competent in English (Regulation cl. 27).

A driver is obliged under clause 29 to give written notice of any change in circumstances that would make the person ineligible to drive under the Regulation.

3.2.3 Safety management systems

A safety management system is a way of identifying, recording and managing risks associated with providing services. People who are involved in making decisions affecting all or a substantial part of the services (e.g. booking services, taxi services or related security services) need to take part in developing and maintaining the safety management system. These people are referred to as officers under the Act.

A safety management system involves identifying and keeping records of:

- Reasonably foreseeable hazards that could give rise to risks to health and safety to drivers, passengers, and other people in connection with the provision of the service
- The control measures taken to eliminate or minimise the risks
- What is done to maintain those control measures (Regulation cl. 7).

In developing and maintaining a safety management system, service providers (and officers within those service providers) also have to consult with other people, such as drivers, vehicle owners, affiliated providers, licence holders, as appropriate, and keep records of those consultations.

Other records that need to be kept for the safety management system to be compliant with the law include details of how they comply with safety standards, and details of any notifiable occurrences (Regulation cl. 30); service providers must report notifiable occurrences to the regulator.

3.3 Authorisation

Providers of taxi services and providers of booking services must be authorised under the Act (s. 27, with offences and penalties set out in s. 28) and must comply with the conditions of any authorisation (Act s. 29). Penalties of up to \$110,000 apply for anyone providing an unauthorised taxi or booking service, while drivers face penalties if they take bookings or carry out passenger services from unauthorised service providers.

Most if not all taxi service providers provide booked services as well as rank and hail services, so they require both types of authorisation. It is possible to apply for both authorisations in a combined application (Regulation cl. 32).

Generally, applications for authorisation may only be made by an individual, 2 or more persons who intend to carry on the service jointly, or a body corporate incorporated under NSW or Australian law (Act s. 30). Clause 32 of the Regulation makes specific provision for Uber, which is an unlimited partnership established in the Netherlands, to be able to apply for authorisation to provide a booking service.

The Commissioner may grant or refuse an application. An application must not be granted if the applicant (or a close associate, or a director or manager of a body corporate) has been convicted of a disqualifying offence that is set out in the regulations (Act s. 31, Regulation cl. 37 and 38). Where the applicant is already the holder of an authorisation under the Act, the applicant must be able to demonstrate that it complies with any standards applicable to the authorisation being applied for that are additional to those for the authorisation currently held, and it must not be the subject of any action taken or proposed to be taken by the Commissioner in respect of its current authorisation (Act s. 31(4)).

The Commissioner may impose any conditions on an authorisation, and the regulations may prescribe conditions (Act s. 40, Regulation cl. 39 to 44). Prescribed conditions include various record keeping requirements:

- A taxi service provider must keep a record of the name and driver licence number of every driver, the registration number of every vehicle, and the name and address of any affiliated provider,
- A booking service provider must keep a record of each booking for at least 2 years after the booking is taken, including the date and time of the booking, the date and time of the journey, the start and finish locations of the journey, the full name of the driver, the registration number of the vehicle, contact information of the person who made the booking, and, if the booking request was referred by another booking service provider, the name of that provider,

- A taxi service provider must also keep a record of each hire that results from a taxi plying or standing for hire, including the date and time of the journey, the start and finish locations of the journey, the name of the driver and the driver's identification number, the registration number of the taxi and the amount of the fare.

It is a condition of any authorisation that the provider complies with the safety standards for providers of the relevant type of service (Act, s. 42).

Failure to comply with a standard or condition of authorisation or any other requirement of the Act can result in the variation, suspension or cancellation of authorisation (Act s. 45).

Annual authorisation fees are payable by service providers and are calculated based on the total number of passenger service transactions carried out in a financial year. For those authorised as both a taxi service provider and a booking service provider, the annual fee is calculated by combining the number of transactions carried out by each entity.

3.4 Licensing

As recommended by the Taskforce, a special licence like a hire car licence is no longer required for any booked service. This has cut costs for existing hire car operators and made it easier for the point to point transport industry to provide new services. Booked services are able to accept bookings for journeys anywhere in NSW. There is no numerical cap on the number of hire vehicles able to operate in NSW.

3.4.1 Taxi licences – controls on supply

For taxis, the NSW Government accepted the Taskforce's recommendation to stop the release of further ordinary licences (which are mostly perpetual and transferable, that is, able to be traded on the open market). However, it did not accept the recommendation to remove existing ordinary taxi licences and convert them into annual licences, renewable up to nine times, as this would significantly affect the rights of taxi licence owners. These licences continue to exist and continue to be traded (see Section 3.4.4).

The only way taxi licence numbers can increase under the Act is through the issue of new annual licences, which are renewable up to nine times. Under s71 and 73 of the Act, TfNSW

must determine, by 31 March each year, the number of taxi licences to be issued from 1 July the following year and, in doing so, must consider:

- a) likely passenger demand and latent demand for taxi services,
- b) the performance of existing taxi services,
- c) the demand for new taxi licences,
- d) the viability and sustainability of the taxi industry,
- e) any other matters TfNSW considers relevant, having regard to the objective of ensuring improved taxi services.

The Act also provides that the Minister may refer the question of the number of licences to be issued to the Independent Pricing and Regulatory Tribunal (IPART) for recommendations (Act s. 72). TfNSW can take account of any such recommendations when making its determination, and also take account of any submissions received through its own public consultations (Act s. 71).

After the number of licences that can be issued is determined by TfNSW, the Point to Point Commissioner conducts a public tender and licences are issued to the highest bidders. Licences are valid for one year, and are renewable up to nine times. The annual fee payable for a licence is the amount of the successful tender bid (Act s. 51(4), 53(1), 58, 63).

As recommended by the Taskforce, the Government did not issue any additional annual taxi licences in Sydney for four years to help the industry adjust. During this time, only replacement licences were issued, and in this way 2015 numbers were maintained. The four year period expired in December 2019.

For other areas of the state, the Act allows the issue of annual licences, similar to arrangements that have been in place in Sydney since 2009. Before the Act, non-Sydney licences were available on application. However, zero licences have been determined for areas of the state outside Sydney since the Act began, due to limited or no demand.

TfNSW made the taxi licence determination for 2020/2021 on 30 March 2020. TfNSW determined to issue no additional taxi licences in Sydney or elsewhere in NSW due to

the significant economic impacts of COVID-19 travel restrictions and social distancing measures, and the uncertainty of further impacts as the situation evolves.

3.4.2 Wheelchair accessible taxi licences

The provisions in the Act about determining the number of licences that can be issued do not apply to WAT licences. A taxi licence is still required to provide taxi services in a WAT, and WAT licences are available on application, without a fee.

3.4.3 Other provisions regarding taxi licences

It is an offence to use a motor vehicle to provide a taxi service if the provider (or an employee, contractor or affiliated provider) does not hold a taxi licence for the vehicle (Act s. 47). The holder of the licence must comply with all conditions of the licence (Act s. 48).

Under section 52 of the Act, three categories of taxi licence may be issued by the Commissioner: metropolitan, non-metropolitan and wheelchair accessible.

When granting a licence, the Commissioner may specify conditions (Act s. 54). However, in accordance with the recommendations of the Taskforce, the trend in recent years has been to apply very few conditions to taxi licences.

The Act continues to provide explicitly for conditions to be applied concerning a taxi's area of operation (s. 56). While it is possible for no area of operation to be specified, in which case the taxi may be used to provide taxi services anywhere in NSW, in accordance with the categories of licence determined by TfNSW, any new licences issued by the Commissioner must be for either metropolitan Sydney or areas outside metropolitan Sydney. Any new WAT licences that are issued are not subject to area based restrictions (other than the Sydney/non-Sydney distinction).

An important feature of the taxi licence market in NSW is the ability to lease or sublease a taxi licence, or make other arrangements whereby the benefit of the licence is conferred on a person other than the holder of the licence. The Act permits leasing and subleasing of licences issued under the Act, without the need for any approval from the Commissioner (s. 64).

While no approval is necessary for a lease or sublease, the Act does require notification to be given to the person who facilitates the provision of the taxi service for the taxi licence (s. 67).

It is also possible for a licence holder to sell or otherwise transfer its licences to another person. Where this happens, the Commissioner must be informed, so that the licence can be officially transferred to the new owner (Act s. 68).

3.4.4 Ordinary licences

As described in previous sections, the Act requires a taxi licence for a vehicle to be used to provide taxi services, and provides a framework for the issue of licences by the Commissioner, with such licences able to be renewed up to nine times, and able to be leased and transferred.

The Act does not provide for the creation or issue of other types of licences. However, in accordance with the Government's response to the Taskforce recommendations, the savings and transitional provisions in Schedule 2 of the Act recognise the continued force of taxi licences that were in force under the previous regulatory framework, the *Passenger Transport Act 1990* (the PT Act 1990). These are referred to as 'ordinary taxi licences'.⁵

Ordinary licences are perpetual, and may be bought and sold on the open market, may be inherited, and may be leased or sub-leased. A transfer levy of 2.5 per cent of the current market value of an ordinary taxi licence is payable to the Crown by the transferee (other than where the transfer occurs through inheritance) (Act Sch. 3 Cl. 6 and 7).

Ordinary licences specify areas of operation. The Government supported the Taskforce recommendation that area based restrictions on rank and hail services should be reviewed, but this review has not been undertaken to date.

Section 6.1 covers the impact of the changes to the regulatory framework on ordinary licence values.

⁵ Annual and short term licences issued under that Act were also preserved, although most of these have now expired (some short term licences remain in operation in regional areas).

3.5 Fares

In accordance with the recommendations of the Taskforce, booked trips are no longer subject to a maximum regulated fare. This means that all booking service providers, including providers that provide booking services for taxis, traditional hire car, rideshare and similar services are able to set their own fares.

Customers are protected by the requirement that the booking service provider provides a fare estimate to an intending customer, and the customer accepts the estimate before the trip commences (Act s. 79). A fare estimate may be based on:

- Rate per distance,
- Rate per time,
- Flat rate, or
- A combination of these.

The estimate must be in Australian dollars and must include information about how the fare may vary and how the variation may be calculated.

Maximum fares for rank and hail taxi services remain regulated by way of fares orders made by TfNSW (Act s. 76). It is an offence to demand a fare that exceeds the amount determined under the fares order, but it is open to a provider to charge less than the maximum (Act s. 76(5) and (6)).

In making a fares order, TfNSW may have regard to any recommendations of IPART. It is a matter for the Minister whether to refer to IPART the question of maximum fares for one or more passenger services (Act s. 74). Where a referral is made, section 75 of the Act requires IPART to consider the following matters:

- (a) The cost of providing the services,
- (b) The need for greater efficiency in the supply of the services so as to reduce costs for the benefit of consumers and taxpayers,
- (c) The protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standards of service,
- (d) The social impact of the recommendations,

- (e) The impact of the recommendation on the use of passenger transport and the need to increase the proportion of travel undertaken by sustainable modes such as public transport,
- (f) Standards of quality, reliability and safety of the services (whether those standards are specified by legislation, agreement or otherwise),
- (g) Any matter specified in the referral to IPART, and
- (h) Any other matter IPART considers relevant.

Booked fares for TTSS customers remain regulated. The fare calculation device must be used for TTSS journeys, and the fare charged cannot exceed the regulated maximum set by TfNSW (set by the fares order).

While the maximum fare able to be demanded is set by the fares order, taxi service providers must still determine and publish their fare structure (Regulation cl. 53 and 54).

A driver of a taxi may charge a fare that exceeds the authorised fare only if a passenger is being conveyed to a place outside the taxi's area of operation and the fare is agreed with the passenger (Regulation cl.57).

The provision that requires a taxi that plies or stands for hire to be fitted with a fare calculation device also requires that device to be calibrated so that it determines the fare in accordance with the authorised fare – that is, in accordance with the fares order (Regulation cl. 14(6)).

The current fares order was made on 1 February 2018. It includes changes to fares made in the first fares order under the new Act (1 November 2017), including removal of a booking fee, setting a maximum cleaning fee of \$120, and removal of the return toll for Sydney Harbour Bridge and Tunnel northbound trips. The current fares order includes provision for taxi service providers to pass on the cost of the temporary \$1 Passenger Service Levy plus 10 cents GST (totalling \$1.10) to their passengers. The levy is discussed at 3.7.

Nominal maximum fares have not increased since 1 July 2014.

3.6 Industry assistance package

In order to assist the existing taxi and hire car industry adjust to the reforms, the NSW Government established an industry assistance package valued at up to \$250 million.

The industry assistance package included \$98 million for transitional assistance to taxi licence holders, up to \$10 million for a buyback scheme for perpetual hire car licensees and up to \$142 million for individuals facing hardship as a result of the point to point reforms..

The Act established the Taxi and Hire Vehicle Industry Assistance Panel (the Panel) to oversee the distribution of the funds.

Further details about the industry assistance package are set out in section 5.

3.6.1 Business Connect (formerly Small Biz Connect)

The NSW Government recognised that small businesses in the point to point industry faced a number of challenges due to new entities entering the market.

In January 2016, TfNSW and the NSW Taxi Council worked with the NSW Department of Industry to upskill advisors delivering services under the Business Connect program to ensure they were well placed to support those small businesses in the industry that were impacted.

Business Connect is a dedicated and personalised NSW Government program that provides trusted advice to help people start or grow their small business.

Business advisors also support small businesses to manage disruption caused by natural disasters such as bushfires or the current COVID-19 pandemic, and by regulatory changes such as those experienced by the disability sector following the implementation of the National Disability Insurance Scheme, and the point to point transport industry as noted above.

From 1 May 2016, TfNSW provided funding to the NSW Department of Industry to deliver business advice, targeted workshops, and other engagement activities to support businesses impacted by the regulatory changes to the point to point transport industry. The initial

support package included \$3 million to deliver services from 1 May 2016 to 30 June 2018, with an additional \$1 million provided for a further 12 months to 30 June 2019.

3.7 Passenger service levy

To fund the industry assistance package, the NSW Government established a short-term passenger service levy of \$1 on all point to point transport trips. The levy, which commenced on 1 February 2018, is payable by the provider of the taxi service or booking service.

It was left to the service provider's discretion whether or how to pass the charge on to customers; they can choose to absorb the cost themselves. As noted at 3.4, the current fares order permits the levy to be charged to taxi customers, if the taxi service provider chooses to do so. Where the levy is passed on to customers, a total of \$1.10 including GST, may be charged.

The levy is a tax and is collected with the authority of the Chief Commissioner of State Revenue (Chief Commissioner) under the *Taxation Administration Act 1996*. The Commissioner has powers to assist the Chief Commissioner with the collection of the levy, including the ability to take compliance and enforcement action in certain circumstances.

As the purpose of the levy is to fund the industry assistance package, it is not intended to operate indefinitely. The Minister may, by order published in the Gazette, specify a day on which the levy is repealed. The Second Reading Speech introducing the Act indicated the Government's intention that the levy would not continue for more than five years.

Several measures were introduced to reduce the administrative burden of complying with the levy in response to concerns expressed by some stakeholders about its administration and operation. The levy commenced three months after all other provisions of the Regulation, to ensure service providers had sufficient lead time to put in place appropriate arrangements.

The Commissioner established administrative procedures to make it easier to comply, including on-line levy returns, monthly assessments to assist with cash flow, and direct debit of the amounts assessed as owing by Revenue NSW (which collects the levy). The

Commissioner supports service providers with the levy through a dedicated call centre and detailed fact sheets. Information sessions were also conducted across NSW in 2017 and 2018.

Further amendments were made to the Regulation after the levy commenced, expanding the grounds on which a service provider may seek to have the levy waived to include circumstances where the third party fails to collect the levy amount where it has been directed to do so by the service provider, and after the service provider has taken all reasonable steps to recover that amount. Service providers in remote areas of the state and those providing 150 or fewer passenger service transactions in any 12 month period are exempt from the levy. Service providers undertaking between 150 and 600 trips in a twelve month period are entitled to a rebate. Approximately one third of all taxpayers receive an exemption or rebate.

3.8 Compliance and enforcement

While the Taskforce did not specifically recommend an independent regulator, the NSW Government established the Commissioner as an independent statutory officer (under Part 9 of the Act) to signal a new approach to regulation of the industry⁶.

The Act contains a range of powers to support compliance and enforcement. These include audits (a documented evaluation of the provider's compliance with safety duties or safety standards or of their safety management system), improvement notices (requiring a contravention to be remedied or prevented), prohibition notices (prohibiting the carrying on of an activity that involves an immediate and serious risk to health or safety), compliance orders (made by the District Court on application by the Commissioner) and enforceable undertakings (which may be accepted by the Commissioner in relation to a contravention or alleged contravention, but are not taken to be an admission of guilt) (Part 6).

⁶ Note: NSW Employee Relations as a regulator has the jurisdiction and authority to monitor the compliance and enforcement of taxi industry bailment agreements which fall under a contract determination under Chapter 6 of the *Industrial Relations Act 1996*. For information on these compliance activities see Section 4 of this submission.

Part 2 of this submission details the Commissioner's approach to exercising his functions and administering and enforcing the law.

3.9 Wheelchair accessible taxis

A wheelchair accessible taxi is a vehicle that has been modified to safely accommodate at least one and up to three wheelchairs.

Providers of WAT services have a primary duty of care to ensure the safety of their services. They also have an obligation to ensure all WAT drivers are competent in the safe loading, restraint, carriage and unloading of a customer in a wheelchair.

Residents of NSW who rely on WATs because of a severe and permanent disability may qualify for the TTSS.

TTSS subsidises the travel cost of participants, allowing them to travel by taxi at half fare. The current maximum subsidy that can be claimed is \$60. WAT services are considered an essential service where there are limited alternative transport options. Under the current coronavirus social distancing guidelines wheelchair accessible taxis are being taken out of service as demand for them has also reduced.

There are currently 1,016 registered WATs in NSW (730 in Sydney and 286 outside Sydney).

In response to the changes in the way people are travelling during the Covid-19 pandemic and in recognition of the role wheelchair accessible taxis play in delivering essential transport services for vulnerable members of the community, Transport for NSW is deferring payments on all Wheelchair accessible taxi interest free loans. For loan recipients, payments will be \$0 for April, May and June 2020.

3.10 Reforms to compulsory third party insurance

SIRAs reforms to CTP insurance have resulted in significantly cheaper premiums for taxis in particular. The commencement of the *Motor Accident Injuries Act 2017* (MAI Act) on 1 December 2017 reduced premiums for all motorists including owners of taxis, hire cars and ride sharing vehicles, while increasing support to people who are injured in a motor vehicle accident.

From 1 April 2018, taxis were also able to access premiums calculated on distance travelled, reducing premiums further for taxis that use the roads less. At the same time, larger more established rideshare companies who carry out more than 10,000 trips annually pay additional premiums on behalf of their drivers for when they are providing a passenger service.

As at April 2020, the average metropolitan taxi premium has reduced from \$7,881 pre-reform to \$3,730 which is a saving of \$4,151. In addition, the country taxi premium has reduced from \$4,176 to \$2,502, a saving of \$1,674. These figures reflect the positive outcomes from the changes to CTP premiums since in introduction of the new CTP scheme in December 2017.

The data collection mechanism that the CTP insurers use to calculate the payable distance based premiums is different between ridesharing vehicles and taxis because the industry was technologically very different at the time this was implemented.

This has resulted in insurers having to implement and manage dual systems, which is costly and in some cases has resulted in increased late payment of premiums and barriers to some vehicles owners being able to access cheaper premiums. SIRA is working with the industry and the insurers to try to resolve these problems.

The purpose of CTP insurance is to protect injured people by insuring a vehicle's owner or driver against liability if they cause the injury or death of other road users. It is required in all Australian states and territories.

Taxi premiums are higher than other passenger vehicles because they are more likely to have an accident in which they are at fault. For comparison, as at April 2020, the average premium for a metropolitan class 1 passenger vehicle is \$514 compared to \$3,730 for a metropolitan taxi. This is largely because metropolitan taxis have 12 times the claims frequency of metropolitan passenger vehicles.

Early data for rideshare vehicles is that they are likely to be around 3 times the claims frequency of passenger vehicles, but it is too early to know what the average claims costs are likely to be and whether the claims frequency will evolve as more data is gathered.

4 Chapter 6 of the Industrial Relations Act 1996 and Bailment arrangements

4.1 Chapter 6 of the Industrial Relations Act 1996

Since 1979, NSW industrial relations legislation has provided a discrete regulatory regime for certain transport workers, who at law are not employees. The current provisions are found at Chapter 6 of the *Industrial Relations Act 1996* (IR Act) and apply to contracts of bailment and contracts of carriage, which are, generally those applying to taxi/hire car operators and drivers, and to drivers involved in the transportation of goods who own their own vehicle.

The Chapter 6 scheme is based on the premise that the drivers involved are, in terms of bargaining power, in an analogous position to employees. For the purposes of the submission to the Committee this section generally focuses on those provisions applying to contracts of bailment.

4.1.1 Background to Chapter 6

The current Chapter 6 provisions have their origins in various attempts since at least the Second World War to create employee-like industrial rights for bailee drivers.

Perhaps the most significant change for taxi operators and drivers first occurred when the *Industrial Arbitration Act 1940* was amended in the late 1950s to introduce a new s88E. The amendments meant that certain groups of workers who were not normally regarded at common law as employees could be 'deemed' to be employees for the purposes of the Industrial Arbitration, Annual Holidays and Long Service Leave Acts.⁷

Following numerous legal challenges and industrial disputes about the operation of the legislation, the Government of the day asked the Industrial Relations Commission of NSW (IRC) to conduct an inquiry (the Beattie inquiry) into the operation of section 88E of the *Industrial Arbitration Act 1940*. The IRC considered whether s88E should be continued in force or amended.

⁷ Professor Mark Bray et al *NCP Review of Chapter 6 of the Industrial Relations Act 1996* Employment Studies Centre, University of Newcastle, July 2002 p8

It reported in 1970, following a two year inquiry and recommended an end to the deeming provisions noting that it rejected them as a satisfactory basis for regulating taxi and private hire car drivers under the industrial law – and instead recommended creating specific provisions that deal with drivers as what they are – ‘bailees’. However, it took until 1979⁸ for the relevant provisions to be enacted as part of the *Industrial Arbitration Act 1940* under the Wran Government. These provisions, with some variations, were carried forward as Chapter 6 of the *Industrial Relations Act 1991* and Chapter 6 of the current IR Act.

4.1.2 How does Chapter 6 operate?

Section 307(1) of the IR Act provides that a contract of bailment is a contract under which:

- a) a public vehicle⁹ that is a taxi is bailed to a person to enable the person to ply for hire, or
- b) a public vehicle that is a hire vehicle is bailed to a person to transport passengers.

Under the Chapter, the IRC is given the power to make contract determinations (similar to awards) in respect of contracts of bailment, and to approve contract agreements (similar to enterprise agreements) between parties in relation to such contracts. A contract determination can be made in respect of driver remuneration, annual, sick and long service leave, the minimum and maximum number of bailment hours and other matters it considers necessary.

Chapter 6 also empowers the IRC to resolve disputes, provides for the registration of associations of contract drivers and associations of employing contractors. Reinstatement determinations may also be made by the IRC but only on the application of a registered association.

Rideshare drivers are unlikely to be covered by Chapter 6 of the IR Act (unless they are bailing the vehicle).

⁸ See the *Industrial Arbitration (Amendment) Act 1979*

⁹ The Dictionary of the IR Act provides that a public vehicle means a taxi or hire vehicle within the meaning of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

4.1.3 Chapter 6 and its coverage for country operators/drivers

Chapter 6 applies to contracts of bailment throughout NSW, however, this was not always the case. The IR Act, as made, limited the contract of bailment provisions to the Metropolitan, Newcastle and Wollongong transport districts as defined under the *Transport Administration Act 1988*. Following amendments in 2003 these restrictions were removed to ensure that Chapter 6 applied to contracts of bailment regardless of where the bailee plies for hire or transports passengers.

However, despite the above amendments to the IR Act, there are no contract determinations operating in the passenger transport sector outside the Sydney metropolitan area.

4.2 Taxi Industry (Contract Drivers) Contract Determination, 1984

The *Taxi Industry (Contract Drivers) Contract Determination, 1984* (the Determination) is the only contract determination operating in the passenger transport sector. The Determination applies to contracts of bailment between a bailor (taxi operator) and a bailee (driver) in the Sydney metropolitan area.¹⁰

Essentially, a bailee driver bails a taxi from the taxi operator for the duration of one shift. There is a payment required by the bailee to the bailor as a fee for the arrangement and the amount and method of this payment is regulated by the Determination.

4.2.1 Payment methods

A driver may elect to pay under 'Method 1' or 'Method 2' as per clause 3 of the Determination. Under Method 1, a driver must pay the operator 50% of their fare earnings (55% in the first year) and the operator pays for fuel. In regional and rural areas of NSW, it is understood that bailee conditions are similar to the Method 1 arrangements under the Determination.¹¹

¹⁰ The Contract Determination applies to contracts of bailment in the Metropolitan Transport District (within the meaning of the *Transport Act 1930*).

¹¹ Legislative Council Inquiry into the NSW Taxi Industry Report, June 2010, p.197

The overwhelming majority of drivers are remunerated under Method 2 where a driver retains from the fares received, the balance left after deducting a set daily pay-in amount. The driver is also liable to pay for fuel and car wash under this Method. The current maximum pay-in amounts range from \$175.01 for a day shift, to \$266.55 for a Friday or Saturday night shift. The maximum pay-in amounts have not changed since July 2012.

Clause 3(iii)(b) of the Determination makes it clear that while the bailor and bailee may agree to a lower pay-in amount, when they do so, any annual, sick or long service leave entitlement shall still be payable. In effect, the Determination prevents the parties from making an agreement whereby the bailee waives their right to an entitlement.

A driver can elect to choose which payment method they wish to operate under without being victimised or terminated because of the choice they make. A taxi operator must give an election form to the driver regarding the preferred method of payment prior to starting their first shift.

4.2.2 Types of bailment

There are two types of bailments available under the Determination, a driver can either be a permanent bailee or a casual bailee.

A permanent bailee is a driver who regularly takes a taxi cab on bailment from the same taxi owner/operator for five shifts per week; or at least 220 night shifts or 230 day shifts per year. A shift means the usage of a taxi cab by a driver for a period agreed between the owner/operator and the driver of at least nine hours. Depending upon whether the shift is categorised as a day or night shift, 75 per cent of the hours worked must be between 3 am and 3 pm or 3 pm and 3 am respectively.

A casual bailee is a driver who does not meet the criteria to be defined as a permanent bailee and is not entitled to any sick or annual leave.

4.2.3 Driver entitlements

Annual leave

As noted above, almost all drivers are remunerated by Method 2. A permanent driver who has completed the requisite number of shifts remunerated under that method shall be entitled to five weeks' annual leave at the rate set out in Item 2 of Table 2 of the Determination (\$833.28). A permanent driver who has taken taxi cabs on bailment for a period of at least three months, but less than twelve months is entitled to a pro rata payment set out at Item 3 of Table 2 using the following calculation ($\$833.28 \times 4/48 \times$ number of weeks).

Sick leave

Permanent drivers are also entitled to five days' sick leave during the first year of bailment. This is subject to credits of such leave not being available until the completion of 55 shifts in a three-month period, and that subsequent credits be made available on a pro rata basis. During the second and subsequent years, a permanent driver shall be entitled to eight days' sick leave. Sick leave for permanent drivers is paid at the rate set out at Item 4 of Table 2 (\$167.22).

Long service leave

If a permanent driver has served continuously with the one taxi owner/operator for a period of not less than five years, they shall be entitled to long service leave. The conditions of eligibility for leave, shall be by reference to the *Long Service Leave Act 1955* (NSW), as it would have applied if the driver was an employee during the period of service. The rate per week of such leave is equivalent to the rate set down for annual leave payments.

Driver obligations

The Determination also imposes several obligations on drivers. These include permitting the taxi owner/operator to inspect the 'log' and the condition of the taxi, not to permit another driver to use the taxi without the written permission of the owner/operator, not to use the taxi for any purpose other than to transport passengers and luggage, to clean, prepare or

drive the taxi for 'Department of Transport' inspections and to deposit a bond to a taxi owner/operator if required (currently set at \$139.79).

4.3 Compliance in the taxi industry

NSW Employee Relations (NSW ER) as a regulator has the jurisdiction and authority to monitor the compliance and enforcement of taxi industry bailment agreements which fall under a contract determination. These agreements are made under the IR Act and specifically the Determination.

NSW ER has been successful in prosecuting a number of taxi owner/operators predominantly for non-payment of annual leave due under the Determination. Investigation outcomes indicate that some owner/operators and drivers are agreeing to a lesser rate than the maximum pay-in prescribed. While this practice is permissible under the Determination, some owner/operators are using the lesser 'pay-in rate' as an offset against the owner paying annual leave to a driver.

Since 2015, there have been thirteen industrial complaints received by the NSW ER Compliance Branch. These complaints overwhelmingly relate to allegations of non-payment of annual leave under clause 19 of the Determination.

Of the total number of complaints received by NSW ER, three or approximately 25 per cent, concluded with prosecution action being taken by the Department. Since 2015, NSW ER has recovered a total of approximately \$81,500 owed to taxi drivers; of this figure approximately \$21,000 was recovered via prosecution action, along with a further \$5,200 recovered in legal costs and fines.

NSW ER also pursues several strategies to educate taxi owner/operators about their legal entitlements and obligations. These include education campaigns which involves direct engagement with peak industry stakeholders, facilitating information workshops, delivering webinars, and publishing fact sheets and other resource material on the NSW ER website.¹²

¹² Since November 2016 NSW ER has conducted five face-to-face workshops; there has also been approximately 650 views of the taxi industry recorded webinar; 8,000 views on the taxi industry page and 2,300 views of the taxi industry fact sheets on the NSW ER website.

Further information provided by NSW ER to taxi owner/operators and drivers can be found on its website here <https://www.industrialrelations.nsw.gov.au/industries/key-industries-in-nsw/taxi/>

5 Implementation of the industry assistance schemes

5.1 Overview

The NSW Government established an industry assistance package of up to \$250 million to help the taxi and hire vehicle industries adjust to the changes to the regulation of the point to point transport industry.

The adjustment assistance was made available across three streams:

- Up to \$98 million under the Transitional Assistance Payment (TAP) Scheme for transitional assistance for eligible taxi licence holders,
- Up to \$10 million under the Additional Assistance Hire Vehicles Payment (AAHVPS) Scheme for an additional assistance scheme for eligible hire car licence holders,
- Up to \$142 million under the Additional Assistance Payment (AAPS) in for industry participants who have been detrimentally impacted as a result of the changes to the regulation of point to point transport.

In response to the COVID-19 pandemic, on 22 May 2020, the NSW Government announced an additional \$12.6 million support package to provide financial relief and keep taxis operating across NSW.

Further information about each of the point to point industry assistance schemes is set out below.

5.1.1 Support for industry

As part of the implementation of the industry assistance schemes the NSW Government provided \$4 million for support through Business Connect for business advice, targeted workshops and other engagement activities to support businesses impacted by the regulatory changes to the point to point transport industry.

Over the course of the program from 1 May 2016 to 30 June 2019, 2,166 businesses received 10,785 hours of one to one advisory support and/or attended Business Connect events.

Despite formal funding completing on 30 June 2019, Business Connect services remain available to all eligible NSW businesses, including taxi and hire car businesses until the end of the Business Connect program, currently 30 June 2021.

On 3 July 2019 clients who have received support under the project were contacted (via email) to notify them that advice and services remain available. Given the current COVID-19 situation, Business Connect is working with stakeholders to develop targeted support to the point to point industry to assist businesses adjust to the disruption.

5.2 Taxi and Hire Vehicles Industry Assistance Panel

The Taxi and Hire Vehicles Industry Assistance Panel (the Panel) is established under clause 7 of schedule 3 the Act.

In accordance with the Act, the membership of the Panel includes a nominee of:

- The Secretary of TfNSW (TfNSW),
- The Secretary of NSW Department of Premier and Cabinet,
- The Secretary of NSW Treasury, and
- the Chief Executive Officer of the NSW Taxi Council.

The purpose of having a representative of the NSW Taxi Council on the Panel was to ensure the views of industry were represented and taken into account.

The Panel meet on 25 occasions from 1 July 2016 to 27 June 2019. In addition the Panel also conducted business out of session on at least 8 occasions.

5.2.1 Functions of the Panel

Under the Act, the Panel had the following functions:

- (a) To determine the procedures for applications for assistance funds (including for the TAPS and AAHVPS),
- (b) To recommend criteria for the payment of additional assistance funds (under the AAPS),
- (c) To advise the Minister with respect to the disbursement and use of assistance funds,
- (d) To report to the Minister on the activities of the Panel,

- (e) To make recommendations as to payments of assistance funds to particular applicants, or classes of applicants, at the request of the Minister,
- (f) At the request of the Minister, make recommendations as to guidelines for the determination of applications for assistance funds where there is a dispute as to who holds a licence, and
- (g) Any other functions prescribed by the regulations for the purposes of schedule 3 of the Act.

The Panel met regularly, as required, in order to carry out its functions.

A key function of the Panel was to recommend to the Minister guidelines for the assessment of AAPS applications. More information about the Panel Guidelines for the AAPS is set out below at 5.5.5.

5.3 Transitional Assistance Payment Scheme

Under the TAP scheme holders of eligible taxi-cab licences could apply for TAP of \$20,000 for each eligible ordinary licence held in the same name or names up to a maximum of two eligible ordinary licences held in the same name or names.

These payments were intended to assist taxi licence holders to adjust to changes to the regulation of the point to point transport industry.

The TAP Scheme successfully distributed over \$94.2 million to more than 4000 eligible taxi licence holders. This represents 99 per cent of possible applicants.

5.3.1 TAP Applications

TfNSW wrote to all holders of eligible taxi-cab licences advising them they may be eligible for the TAP scheme, and provided information about how they may apply. The NSW Taxi Council also provided communications to its members to promote the scheme.

TAP scheme applications were made manually or via a dedicated online portal.

The NSW Taxi Council and Business Connect advisors provided assistance to some applicants to prepare and submit their application.

5.3.2 TAP scheme eligibility

To be eligible for the TAP scheme a person must be a holder of an eligible taxi licence.

Eligible taxi licences were set out at clause 4 of schedule 1 of the *Point to Point Transport (Taxis and Hire Vehicles)(Industry Adjustment) Regulation 2016* (Industry Adjustment Regulation). Eligible licences included 'ordinary' taxi licences. This refers to taxi licences that were transferable (or tradeable) but did not include short term or annual licences (which may not be traded).

To be eligible for the TAP scheme the taxi licence holder must have acquired their eligible licence prior to 1 July 2015 and continued to hold that licence up to the date of the TAP scheme payment.

A small number of TAP scheme applications were declined because the taxi licence was not an eligible licence holder or the person did not hold the licence during the eligibility period.

5.3.3 TAP phases 1 and 2

The TAP Scheme was conducted in two phases. The first phase took place from July 2016 – July 2017. More than \$92.4 million in payments were made in phase 1. Phase 2 took place from July 2018 to March 2019.

The main purpose of the second phase was to allow persons who were eligible under phase 1 (but who did not lodge an application and were not paid under phase 1) to apply.

Phase 2 also provided an opportunity for persons from the following groups to apply for a transitional assistance payment:

- Eligible persons who did receive a transitional assistance payment for one eligible ordinary taxi licence but were entitled to make an application for a second eligible ordinary taxi licence, and who could establish to the satisfaction of TfNSW they have held the additional eligible taxi licence continuously during the period immediately before 1 July 2015 up to 13 January 2017.
- Persons who were the beneficiary of an eligible ordinary taxi licence under a will or probate or were granted ownership of an eligible ordinary taxi licence as a result of a

property settlement in the period 1 July 2015 to 13 January 2017 and they continued to hold the licence up to 13 January 2017.

As part of phase 2 the Minister also approved payments of transitional assistance to be made to certain eligible taxi training schools that provided training courses to the taxi industry.

5.3.4 Taxi training schools

To be eligible for a transitional assistance payment a taxi training school must have been a registered training organisation (as defined in the National Vocational Education and Training Regulator Act 2011) and, immediately before 18 December 2015, be carrying on the business of providing training courses approved by TfNSW to taxi drivers and/or taxi operators. In addition the taxi training school must have been able to demonstrate that they were detrimentally affected by the changes made to the regulation of the taxi industry.

The amount of transitional assistance funds paid to each eligible taxi training school was determined by TfNSW in accordance with guidelines issued by the Panel.

5.3.5 Taxation and pension implications

TfNSW was successful in obtaining a ruling from the Department of Social Services (DSS) that payments under the TAP scheme are an exempt lump sum payment for the purposes of the social security income test.

In accordance with long standing policy, the Australian Taxation Office (ATO) deemed TAP scheme payments as income support and as such they are treated as income for tax purposes.

5.4 Additional Assistance Hire Vehicles Payment Scheme

Up to \$10 million was allocated to the AAHVP Scheme for eligible hire car licence holders. These payments were made in recognition of the fact that changes to the regulation of hire vehicles meant that hire car licences were no longer required. As a consequence of these changes holders of 150 transferable hire car licence lost their transferable interest in that licence.

The AAHVP Scheme successfully distributed \$8.3 million to eligible hire car licence holders. There were 99 successful applications for 150 eligible hire vehicle licences.

5.4.1 AAHVP Eligibility

To be eligible for the AAHVP a person must be a holder of an eligible hire vehicle licence. Eligible hire vehicles licences were set out at cl. 1 of sch. 1 of the Industry Adjustment Regulation.

Eligible licences included transferable hire vehicle licences. This refers to hire vehicle licences that were transferable (or tradeable) but did not include short term or annual licences (which may not be transferred).

Four applications for nine licences were declined as they were not eligible for the AAHVP Scheme.

5.4.2 Taxation and pension implications

TfNSW was successful in obtaining a ruling from the Department of Social Services that payments under the AAHVP were to be treated as an exempt lump sum payment for the purposes of the social security income test. (Social Security (Exempt Lump Sum – New South Wales Additional Assistance Hire Vehicle Payment) Determination

In accordance with long standing policy, the ATO deemed TAP payments as income support and as such they are treated as income for tax purposes.

5.5 Additional Assistance Payment Scheme

The AAPS was created by the NSW Government to provide financial assistance to persons who were involved in or connected to the taxi and hire car industry and were detrimentally impacted directly by the point to point transport reforms. Additional assistance payments are directed towards eligible applicants who are most likely to be vulnerable to financial hardship.

The AAPS was not intended as a compensation scheme.

Payments of AAPS were determined by the delegate of the Minister (the Delegate), on the basis of the information provided by the applicant in their application. The Delegate also had regard to the eligibility criteria recommended by the Panel.

5.5.1 AAPS eligibility and applications

Under clause 4 of schedule 3 of the Act, the Minister may, at the Minister's discretion, determine that an amount of additional assistance funds is payable 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 changes made to regulation of those industries under this Act.

Therefore, in order to make a payment to a person under clause 4(1) of the Act, the Minister (or the Delegate), must be satisfied of the following two matters:

1. The person is or was involved in or connected with the taxi or passenger hire vehicle industry, and
2. The person is detrimentally affected by changes made to regulation of those industries under the Act.

Once satisfied of these matters, decisions regarding AAPS payments were a matter for the decision maker.

In accordance with a determination of the Panel, published by notice in the NSW Government Gazette on 3 July 2018, applications for the AAPS opened on 2 July 2018 and closed on 1 October 2018.

Promotion of the AAPS

TfNSW wrote to all holders of ordinary NSW taxi licences in early July 2018 to advise them that the AAPS was open to applications and to invite them to apply. These letters were sent to more than 4,100 holders of ordinary NSW taxi licences.

TfNSW worked with the NSW Taxi Council to promote the AAPS with their members. The NSW Taxi Council issued a media release on 3 July 2018 to highlight the opening of the scheme. The media release was also published on the NSW Taxi Council website and on its Facebook page.

TfNSW also engaged Business Connect to provide assistance to persons seeking to submit an application for AAPS. As part of this, Business Connect conducted seminars and other outreach to help promote the scheme and to support small business owners to navigate the application process. Business Connect, in conjunction with the NSW Taxi Council, also developed a YouTube video to encourage applications for the AAPS.

Late applications

In accordance with a determination of the Panel, late applications were able to be accepted where a person could satisfy the Scheme Manager that they had special circumstances that prevented them from completing an application during the application period.

For example, the person had a medical condition, were traveling overseas and did not receive communications from TfNSW or others about the scheme, or had other extenuating circumstances that prevented them from completing the application form. The applicant was required to provide certified documentation to support the reasons for late application.

Late applications closed on 15 May 2019. No further AAPS applications were able to be accepted after this date.

Assistance for applicants

In order to assist applicants to submit and complete applications TfNSW established the Industry Assistance Contact Centre (Contact Centre). The Contact Centre was available to provide assistance to applications throughout the application process.

The Contact Centre contacted applicants where they identified that a particular document (or documents) was missing from their application.

The TfNSW website provided detailed information about the AAPS including facts sheets providing guidance on how to apply. Fact sheets were also available in Greek, Cantonese, Mandarin and Arabic.

Detailed information about the guidelines recommended by the Panel were also set out on the TfNSW website.

Prior to the end of the AAPS, the Contact Centre received approximately 3,500 phone calls, 3,600 emails and responded to 420 voicemails. Almost 95 per cent of these interactions were related to the application itself (for example, application status, clarification of information, timeframes, preferred payment options, etc.), whereas less than 5 per cent were regarding the overall industry assistance package.

More than 6,000 emails were issued from the portal to applicants on the different stages of their application or reminders about requests for further information. Applicants were contacted a minimum of three times and up to an average of six times from scheme commencement.

Business Connect support

TfNSW engaged Business Connect to provide support and advisory services to AAPS applicants. There was significant demand for these advisory services over the AAPS application period, particularly in the Sydney metro and Hunter/Central Coast areas.

An expected spike in enquiries late during the application opening period resulted in additional advisors being engaged to support Sydney advisors. This resulted in all clients being able to access support via either an in person one to one advisory session or a session by phone even if the enquiry was within the final week of the application period.

Working with this cohort presented some engagement challenges as many were older, had low digital literacy and had a first language other than English. Many required support to find, read and complete the application form. In Sydney, an experienced advisor with a Greek background was engaged to work in the program during this time which was found to be beneficial to many businesses.

5.5.2 Panel Guidelines

In accordance with its prescribed functions, the Panel identified four key groups it considered most likely to be detrimentally impacted by the point to point reforms. These were:

- Taxi licence holders who are dependent on the income from their taxi licence lease to meet their day to day living expenses,

- Taxi licence holders who hold a high level of debt directly associated with their licence, possibly secured by a mortgage on their property and who may not be able to service their debt from income from their licence or other income sources,
- Taxi licence holders and operators at or near retirement age with few other assets or sources of income,
- Applicants who demonstrated the greatest financial hardship.

The Panel recommended to the Minister that payments of AAPS should be directed at these groups and this was accepted.

The Panel’s view was informed by the Taskforce recommendation that the fund of up to \$142 million should be targeted at “taxi licensees facing hardship as a result of the changes”, and “those who are especially adversely affected, such as those at or near retirement with few other assets or sources of income”.

The Panel recommended that, when determining whether a person is suffering financial hardship the income and assets test for eligibility for the aged pension (as set by the Commonwealth Department of Social Services) should be used as a guide – this is persons with a total annual family gross income of no more than \$79,050 (or no more than \$52,000 for an individual) with net assets of less than \$561,250 (where the applicant owns their own home) or net assets of \$768,250 (where the applicant does not own their own home).

The Panel’s view was that individuals and households who have income and net assets below the eligible thresholds for the age pension would be the most likely to be vulnerable to financial hardship as a result of the reforms.

These thresholds were recommended by the Panel as a guide only, with additional assistance payments prioritised for those eligible applicants with the lowest incomes and the lowest net value assets who have been detrimentally impacted by the changes.

The table below shows the thresholds recommended by the Panel.

Category of person	Gross income	Net assets
Couple (combined) who is a homeowner	\$79,050	\$848,000
Couple (combined) who is a non-homeowner	\$79,050	\$1,055,000

Individual who is a homeowner	\$51,667	\$564,000
Individual who is a non-homeowner	\$51,667	\$771,000

Note: Figures published by DSS as at 1 July 2018 were used for the AAPS

While the AAPS was targeted at those persons and corporations that demonstrate the greatest financial hardship, each application was considered on its merits as each person's circumstances and how they have been impacted by the reforms will be different. The applicant was asked to demonstrate in their application how they have been detrimentally impacted by the changes

5.5.3 Calculating net wealth

A person's net wealth is calculated by adding up all the person's assets then subtracting any liabilities.

For the purpose of the AAPS an applicant's net wealth was calculated based on their household. This means that if an applicant was a member of a couple then their partner's assets and liabilities were included in their assessment of net wealth.

Assets includes any property or items of value that a person owns or has an interest in, including assets held outside Australia. Examples of assets include property, savings and investment accounts, superannuation, vehicles, caravans and boats as well as notable items of value as artwork, furniture, fine jewellery, or collectibles.

5.5.4 Liabilities

An applicant's total liabilities are the sum total of any debts they owe. Examples of liabilities include mortgages, credit card debts, personal loans, vehicle loans, family loans, student loans, as well as any liens or judgments against the person.

In order to assist applicants to calculate their net wealth the TfNSW website including links to useful resources such as the ASIC Moneysmart website which includes comprehensive information about how to calculate your net wealth as well as a net worth calculator.

A sample of a net wealth calculator was provided in the AAPS applications form. That example is included below.

Assets	\$ Value	Liabilities	\$ Value
Principal Residence	\$1,500,000	Principal Residence Mortgage	\$500,000
Rental Property	\$700,000	Mortgage on rental property	\$400,000
Land	\$100,000	Mortgage	Nil
Vehicles	\$45,000	Vehicle Loan	\$10,000
Taxi Licence	\$185,000	Loan	\$175,000
Savings Accounts	\$25,000	Credit Card Debt	\$5,000
Superannuation	\$250,000	Back taxes due	\$5,000
House Contents	\$25,000		
Total Assets	\$2,830,000	Total Liabilities	\$1,095,000
(Minus Principal Residence)	\$1,500,000	(Minus Principal Residence Mortgage)	\$500,000
Net Wealth Assets	\$1,330,000	Net Wealth Liabilities	\$595,000

In this example, the applicant's net wealth is estimated at \$735,000 which equals net wealth assets (\$1,330,000) minus net wealth liabilities (\$595,000).

5.5.5 Determinations of applications

Determinations under the AAPS were made after careful consideration of the information provided in each application, the particular circumstances of the applicant and any other relevant evidence or information received.

When making a determination the Delegate also had regard to the eligibility criteria recommended by the Panel which was approved by the Minister.

As a result, each determination under the AAPS was unique to the particular circumstances of, and information provided by, the applicant.

5.5.6 How payments were determined

Amounts of additional assistance payments were determined based on the information and evidence provided in the application and the individual circumstances of the applicant.

Factors that may have influenced the amount of an AAPS payment include:

- The gross income, assets and debts of the applicant's household (this included the income, assets and debts of the applicant's partner),

- The age of the applicant (whether the applicant was at or near the age of retirement),
- Whether the applicant had a high level of debt directly associated with the purchase of a taxi licence, and
- Whether the applicant had dependent children.

5.5.7 AAPS Payment amounts

TfNSW received 1258 applications of which 531 received an additional assistance payment.

5.5.8 Fringe payments

The Panel also recommended (and the Minister accepted) that applicants whose income was above the approved income thresholds by less than 15% (i.e. up to \$92,000 for a couple and \$60,000 for an individual) and whose assets were above the approved thresholds by less than 30% be considered (depending on their other circumstances) for a possible fringe payment of \$26,000.

The Panel considered that fringe payments would allow a tolerance for determining an applicant's exact income or net wealth (particularly where the valuation of real estate assets was concerned).

91 applicants received a fringe payment of \$26,000.

5.5.9 Nil payments

The Delegate determined that 731 applications did not meet criteria established by the Panel and, after taking into account all of the evidence and the applicant's circumstances, that they were not eligible to receive a payment.

There were three common reasons why a person may have received a nil payment:

- 1) The applicant did not submit a completed application form.
Each applicant received at least three and up to six requests to complete their application form.

For applicant's lodging an electronic application in the AAPS portal email reminders were sent asking for any missing information or additional documentation to be provided.

If, after consideration of the evidence and information in the application the applicant's financial circumstances were unable to be verified, an applicant's claim of detriment resulting from the reforms could not be supported.

- 2) An application was missing key information that was necessary to verify an applicant's financial circumstances.

In some instances completed application forms were received but were missing key information or evidence that meant that an assessment as to the financial circumstances of the applicant could not be made and therefore a determination could not be made.

For example some applicants declared that they owned or operated a business but did not provide further details about that business such as gross income or asset value. In this and other cases the financial circumstances of the applicant were unable to be verified.

- 3) The applicant didn't receive a payment because of their reported assets and income were above the thresholds approved by the Panel.

In some instances the person's income and or assets were above the thresholds for hardship determined by the Panel. After consideration of this and the other information provided in their application, their particular circumstances and taking into account the evidence regarding their gross income and net wealth their claim of detriment resulting from the reforms could not be supported.

These are examples only and do not apply to all applications.

5.5.10 Instalment payments

TfNSW recognised that AAPS payments may have impacts for an applicant's social security payments or income tax. In order to provide greater flexibility applicant were given the

choice to receive AAPS payments in a lump sum or in three equal instalments over three financial years.

Approximately 63% of applicants who received an AAPS payment elected to receive their payment in instalments.

5.5.11 AAPS and social security payments

TfNSW wrote to the DSS in September 2018 seeking an exemption for the AAPS from Centrelink's social security income test.

DSS replied in October 2018 to say that an exemption of an additional assistance payment for the purposes of the social security income test would not be granted.

This meant that an additional assistance payment would be treated as income and therefore could potentially impact on pension entitlements and allowances.

Minister Constance and Minister Toole wrote to Senator Ann Ruston (Minister for Families and Social Services) in August 2019 again seeking to have AAPS payments exempt under the social security income test.

Senator Ruston replied on 5 September 2019 to reaffirm the original decision of the department.

Noting that AAPS payments can have impacts for a person's social security eligibility (and may have other consequences in terms of taxation) applicants for the AAPS were encouraged to seek advice from an accountant, legal representative, or other specialist to determine what impacts the payment of additional assistance may have for them.

5.6 COVID-19 industry support package

COVID-19 restrictions and a related reduction of passenger trips has resulted in pressure on the taxi industry. An additional \$12.6 million support package was announced the NSW Government on 22 May 2020 to support industry during the pandemic.

Owners of taxis and Wheelchair Accessible Taxis (WATs) operating as of 1 May 2020, were eligible for \$2,900 for each vehicle, which equates to a six-month subsidy of CTP insurance, registration and other on-road costs. Taxis will need to be registered by 30 June 2020 and applications will be managed via the Service NSW website. This will support around 3,500 taxis to stay on the road during the six month period.

An additional \$1.55 million has been reserved to support holders of annual renewable taxi license, covering up to six months of the licensing fee, by providing \$7,000 of assistance for each license holder.

The NSW Government has also provided a waiver for the first \$500 payable of the 2018/2019 authorisation fees for all authorised taxi and booking service providers.

6 Value of taxi licences

6.1 Ordinary (perpetual) licences

Licence transfer values in Sydney have been stable above \$70,000 since April 2019 (nine months) and up to \$105,000, compared to \$333,000 in July 2015 (when the Taskforce was announced).

Outside Sydney transfer values have ranged from \$9,500 to \$190,000 in August 2019. Where there have been multiple licence values the trend over time is not consistent.

In both the Newcastle and Wollongong transport districts, values have fallen from approximately \$220,000 in 2013 to around \$30,000 in 2019.

In Bathurst and Armidale, licence transfer values were steady at the time of the reforms but have undergone a decrease and rebound in more recent years (Bathurst: \$44,393 in May 2019, \$41,394 in August 2019, \$145,352 in September 2019 and \$125,392 in October 2019;

Armidale: \$84,764 in March 2018, \$170,619 in June 2018, \$150,000 in November 2018 and \$140,000 in May 2019).

In Orange and Lismore licence transfer values have remained steady up to the present day, whereas Tamworth has seen a sudden reduction followed by stabilisation since 2016, and Grafton has seen gradual but steady declines in value.

6.2 Leases and taxi licence tenders

Lease values in Sydney in July 2015 were around \$27,000. TfNSW does not have information about annual lease values currently earned for ordinary taxi licences on the open market. A proxy for this are the successful taxi licence tender bids which, since 2016 across four separate tender processes, averaged between \$13,000 and \$15,000 per year. While this may be due licence numbers being capped at 2015 levels over this period it is worth noting that all four tenders were over-subscribed and the value of many unsuccessful bids indicate that at the time of these tenders there was demand for additional taxi licences and that these values were resilient to a small increase in supply.

A reliable data source or proxy for lease values outside Sydney do not exist.

Advice to TfNSW is that more recently lease earnings have been significantly impacted by COVID-19 measures and restrictions

7 Statistical trends: demand, customer satisfaction and crime

Since the Act commenced, clear trends have emerged relating to increasing demand for services and customer satisfaction, and a decline in criminal offences relating to taxis. This analysis is based on sources including IPART's annual survey, TfNSW's customer satisfaction survey and NSW Bureau of Crime Statistics and Research (BOCSAR) data.

7.1 Customer satisfaction with point to point transport

The TfNSW Point to Point Customer Satisfaction Index (CSI) is conducted annually. The most recent survey was released in May 2019 and was based on responses from over 3,000 customers. Overall satisfaction with taxis was 86%, the same as for May 2018 and the highest it has been over the life of the CSI (since 2013). Overall satisfaction with rideshare has been stable at 91-92% since November 2017, while satisfaction with traditional hire cars was down to 86% compared to a high of 91% a year earlier in May 2018.

For the CSI, overall satisfaction is based on an aggregate of satisfaction ratings for 33 different attributes of the service. For taxis, customers were most satisfied with aspects relating to safety, ease of payment, booking, finding a taxi at a rank and cleanliness and comfort of the vehicle. Over ten per cent of respondents expressed dissatisfaction with fares and surcharges and availability of information on fares and at ranks. Customers of rideshare services were most satisfied with the ease of booking and payment, safety of driving and presentation, cleanliness and comfort of the vehicle. Just under six per cent of respondents were dissatisfied with some aspect of their rideshare services. For traditional hire cars, satisfaction was greatest with vehicle comfort, knowledge and presentation of the driver and safety of driving, while dissatisfaction was at less than seven per cent.

Each year, IPART also commissions a Point to Point Transport Survey and publishes the report on its website. In the 2018 survey by Orima Research, customers were surveyed from Sydney (2,174), other urban areas (Newcastle, Wollongong, Gosford and Wyong - 533) and the rest of NSW (478). Overall satisfaction with taxi services in Sydney was between 83 and 84 per cent across the state, while satisfaction with rideshare was higher at 94 per cent in Sydney, 92 per cent in other urban and 89 per cent in the rest of NSW. Traditional hire

vehicles had the highest overall satisfaction at 95 per cent in Sydney and the rest of NSW, and 91 per cent in other urban.

Orima also reported on perceived strengths and weaknesses of taxis and rideshare and noted that taxis are perceived as convenient (though only half as much as rideshare in Sydney, and on par outside Sydney), safe and superior in navigation, driving skills and route knowledge. Waiting times, value for money (particularly in comparison to rideshare) and customer service were weaknesses. Both rideshare and hire vehicles far outstripped taxis on most aspects of service quality.

7.2 Point to point transport usage

Since 2012 IPART has surveyed NSW residents annually about their use and perceptions of taxis and other forms of point to point transport.¹³

IPART's most recent survey, undertaken in November 2019 and released in February 2020, indicates that use of rideshare services in NSW in 2019 grew compared to 2018 but the growth in rideshare appears to be levelling off, following rapid growth since the first services were introduced in NSW.

Demand for traditional taxi services remains strong, with 49% of Sydneysiders saying they had caught a taxi at least once in the 6 months prior to being surveyed.

Taxi use remains more widespread than rideshare use outside of Sydney and the use of rideshare in urban areas outside Sydney (Newcastle, Wollongong, Gosford and Wyong) stayed stable at just under 30% between 2018 and 2019.

The IPART survey also found perceptions of taxis generally improved in 2019 compared to 2018. Perceptions of safety, navigation and driver skills are more positive for taxis than rideshare, but perceptions of rideshare continue to be more positive than taxis in terms of value for money, waiting times and availability.

¹³ *Independent Pricing and Regulatory Tribunal (IPART) Annual Survey of Point to Point Transport Use 2019.*

7.3 Declining taxi crime

BOCSAR data¹⁴ indicates a clear downward trend in criminal offences recorded by the NSW Police Force for taxis since the Act commenced.

In the six months of April to September 2017 (prior to commencement of the Act) 608 incidents were recorded. In the same period for 2018 there were 385 and 279 in 2019 – a 54% reduction.

When viewed on a monthly basis, the total number of recorded incidents correlating to criminal offences for taxis indicates a clear downward trend since November 2017. In October 2017 there were 105 incidents recorded. By September 2019 this figure was down to 29 for the month, an overall 72% decrease in offences. This is displayed in the chart below:



¹⁴ NSW Bureau of Crime Statistics and Research (BOCSAR). All base data is publically available on the BOCSAR website.

Offences include assault, sexual offences, robbery, intimidation stalking and harassment, theft, property damage, drug and weapons offences, disorderly conduct, against justice procedures, transport regulatory offences and other offences.

Part 2 - Point to Point Transport Commissioner

Industry snapshot



302

taxi service providers



7014

taxi licences



1985

booking service providers



122,791

drivers with a passenger transport licence code



\$145,721,511

passenger service levy collected



5,027 (issued by NSW Police Force and the Commissioner)

penalty notices



34

prohibition notices



580

improvement notices

8 Point to Point Transport Commissioner

8.1 Role and functions

The Commissioner is appointed by the Governor on recommendation from the Minister.

The Act and Regulation set out the Commissioner's functions and powers as follows:

- to administer the authorisation and licencing schemes established by the Act,
- to manage the enforcement of the Act and the Regulation,
- to recommend safety and other standards for passenger and booking services,
- to assist in the determination of liability for and enforcement of payment of the passenger service levy,
- to advise the Minister on passenger services and booking services matters,
- any other functions imposed on the Commissioner by the Act or any other legislation

8.2 Service delivery priorities

The Commissioner determines service delivery priorities having regard to the Statement of Expectations, which is delivered by the Minister for Transport and Roads and the Minister for Regional Transport and Roads. The Statement of Expectations for 2020/21 set out service delivery priorities as follows:

- educating and enforcing safety standards,
- effective and consistent regulation,
- reducing duplication and streamlining government services,
- advising on future transport implications for regulatory frameworks.

8.3 Government partnerships

The Commissioner works in partnership across government agencies to deliver effective and consistent regulation of the point to point transport industry. In particular, the Commissioner works closely with TfNSW, Service NSW, NSW Police, Revenue NSW and SIRA.

Transport for NSW

As noted above, TfNSW is responsible for advising the Minister for Transport and Roads and the Minister for Regional Transport and Roads on point to point policy matters. TfNSW is

also responsible for the annual taxi licence determination. Once TfNSW has determined the number and type of taxi licences to be released in a particular period, the Commissioner conducts a taxi licence tender in accordance with the Act.

Revenue NSW

Revenue NSW is responsible for collecting the passenger service levy, penalty infringement notices and recovering unpaid taxi licence and annual authorisation fees on the Commissioner's behalf. The Commissioner performs an administrative role in relation to the passenger service levy by ensuring service providers keep the necessary records to allow the correct payment of the passenger service levy to Revenue NSW.

State Insurance Regulatory Authority

SIRA oversees the CTP insurance for point to point transport vehicles in NSW.

NSW Police Force

The Commissioner works closely with NSW Police Force by sharing information, conducting joint operations and keeping police up-to-date on point to point transport law. Ongoing training and development of the Commissioner's Authorised Officers also ensures that any enforcement action taken is effective and applied consistently.

NSW Cross Border Commissioner

The Commissioner works with the NSW Cross Border Commissioner and the State governments of Victoria, Queensland and the Australian Capital Territory to improve point to point transport across these borders.

Regional relationships - local councils, police and regional transport representatives

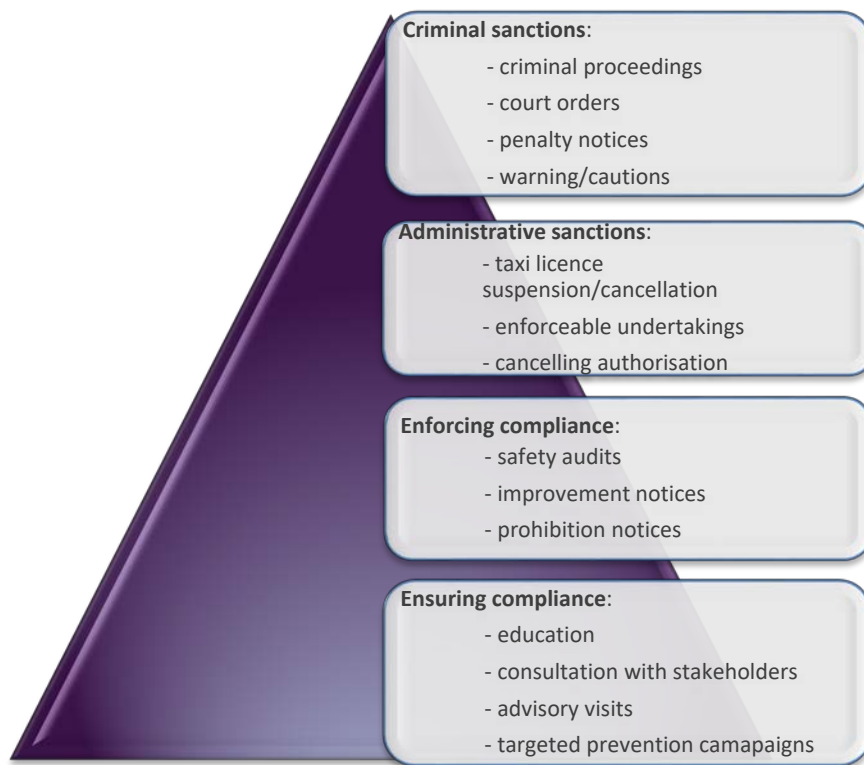
The Commissioner works with local councils, police and regional transport offices as part of the Regional Relationships program, which aims to identify and prevent potential loss of regional point to point transport. These partnerships also inform the Commissioner's compliance and engagement activities through local knowledge and data on emerging issues.

On-Demand Transport Regulators Group

The Commissioner's representative sits on the On-Demand Transport Regulators Group (ONTRG). The ONTRG brings together taxi and hire vehicle regulators from all Australian states and territories to exchange information, share ideas and identify best practice in regulating the point to point transport industry.

9 Safer point to point transport in NSW

The Commissioner promotes a culture of industry accountability for safety. The Commissioner ensures industry is complying with their safety obligations and wider requirements of the Act and Regulation through an appropriate mix of education and compliance activity, including safety auditing, advisory visits, targeted campaigns, on street compliance, investigations, administrative sanctions and criminal proceedings.



9.1 Safety audits and advisory visits

Under the Act and Regulations, taxi and booking services must, so far as is reasonably practicable, ensure the health and safety of drivers, other people involved in providing the service, passengers and any other people the service may impact such as other road users or pedestrians. Taxi and booking service providers eliminate risks to the provision of safe services by:

- Ensuring drivers are eligible to drive a taxi or hire vehicle, do not have a criminal offence which would prohibit them from driving and are medically fit,

- Ensuring vehicles used to provide taxi or hire vehicle services are roadworthy, maintained, registered and insured appropriately and if a taxi, licenced,
- Have in place a safety management system which details their risk assessment and all other safety aspects of their operations, including a risk assessment of their operations and ensure that risks are properly managed or eliminated altogether,
- Keeping appropriate records which can be audited.

The Commissioner regularly undertakes safety audits to ensure service providers are complying with point to point transport law. The Commissioner’s in-house audit team offers advisory visits prior to audits and follows up with service providers on their audit results. Compliance actions are taken as appropriate, including issuing improvement notices.

Since the Act and Regulation commenced on 1 November 2017 until the 31 March 2020, 770 advisory visits have been undertaken and 232 safety audits conducted on service providers.

Case study: Driver fatigue

Taxi and booking service providers have a duty of care to ensure, so far as is reasonably practicable, the health and safety of drivers, passengers and others in connection with the provision of their services. All service providers need to develop a safety management system to identify, assess and control any safety risks and must be documented so the Commissioner may undertake safety audits.

A safety audit of a multinational booking service provider found they had no system in place to monitor their drivers’ working hours to ensure drivers were taking adequate rest breaks and not exceeding safe driving hour limits.

This service provider was issued with a prohibition notice prohibiting drivers from exceeding safe driving hours. In addition, an improvement notice was issued which required the company to have in place systems and processes to monitor driving hours and that drivers are taking appropriate rest breaks.

A follow up audit found the company had complied with both notices through the introduction of an automated solution which logs drivers out of their system as soon as they reach their safe driving hours limit.

9.2 On street compliance

The Commissioner uses a risk based approach to identify the high risk locations where on street compliance activities should be focused to ensure compliance with safety standards.

This includes major events across NSW, such as the recent Fire Fight Australia Benefit at Sydney Olympic Park, Splendour in the Grass in Byron Bay, Spring Racing Carnival at Randwick, the State of Origin in Sydney and Newcastle Supercars.

Compliance in action: targeted activity at Olympic Park

Point to Point Transport compliance officers conducted targeted activities during high profile events at Sydney Olympic Park in February 2020, including Queen and Adam Lambert, Alice Cooper and the Fire Fight Australia Benefit Concerts.

Officers carried out approximately 150 inspections on taxis and hire vehicles that were providing passenger transport services in Sydney Olympic Park, to ensure drivers were operating within point to point transport law.

As a result of the targeted compliance activities officers identified non-compliance as follows:

A total of 39 penalty notices issued

Non-display of taxi driver ID: eight drivers failed to display their driver ID. The display of taxi driver IDs is required under point to point transport law because of the anonymous nature of rank and hail services

Non-display of retroreflective signs: 20 penalty notices were issued to hire vehicle drivers for failing to display retroreflective signs, which is required at all times under point to point transport law

Wheelchair accessible taxi vehicle defects: compliance officers detected a wheelchair accessible taxi with major safety defects and issued a prohibition notice preventing the vehicle from providing passenger services. Following a full safety inspection the vehicle was issued with a major grounded defect notice and was required to be towed for repairs. As a follow up, the Commissioner inspected all other vehicles operated by the affiliated service provider, along with sampling of the authorised service provider's fleet to establish whether the vehicle defect was an anomaly or a wider issue.

9.3 Partnership with NSW Police Force

The Commissioner continues to work in partnership with the NSW Police Force by sharing information, conducting joint operations and updating police officers on point to point transport law. Ongoing training and development of the Commissioner's authorised officers ensures that any enforcement action taken is effective and applied consistently.

Joint police operation targeting light rail activity

In December 2019, the on street compliance team conducted a joint compliance activity with the NSW Police Force targeting taxis and hire vehicles (including rideshare) entering the pedestrian zone and light rail corridor in Sydney's central business district.

The joint operation was coordinated to coincide with the testing of Sydney's light rail corridor and commuter services, which brought about changes to the lane markings and areas in which taxis and hire vehicles were permitted to stop, set down or pick up passengers.

The joint operation relied on the presence of NSW Police Officers as a deterrent and the Commissioner's Authorised Officers taking action against any offenders caught.

Drivers of hire vehicles are not permitted to stop in taxi ranks and NSW Road Rules apply to these drivers. This also extends to including finding a safe and legal place to drop off or pick up passengers.

The joint operation was deemed a success with a total of 87 penalty infringement notices being issued to drivers and service providers under point to point transport law, including for picking up a passenger on the light rail (tram) tracks and standing for hire not inside a taxi zone.

9.4 Investigations and prosecutions

Investigations and prosecutions can originate from a number of sources. As a result of the safety audits and on street compliance activities described above the Commissioner is able to identify matters that warrant further investigation.

In addition, service providers are required to notify the Commissioner of certain incidents occurring in connection with passenger services, known as "notifiable occurrences". The Commissioner also receives complaints from industry and members of the public regarding passenger services.

The Commissioner's compliance team triages available intelligence including notifiable occurrences, compliance activities and complaints and undertakes further investigative actions where appropriate, including the exercise of powers under Part 7 of the Act to:

- Conduct inspections of the performance of employees or drivers in connection with passenger services or booking services,
- Enter premises and ask questions of service providers, affiliated providers, vehicle owners and drivers,

- Require inspection or testing of any vehicle used for the purposes of a passenger service and any equipment, furnishings or fittings in or about the vehicle,
- Request documentation and information relating to the operation of a passenger service or booking service.

Depending on the outcome of the investigation, appropriate action is taken to close out the matter with the relevant service provider and the complainant, where relevant.

Warnings, improvement notices and penalty notices may be issued or suspension or cancellation of a service provider's authorisation may be considered.

Proceedings for an offence under the Act (other than an offence dealt with on indictment) may also be taken by the Commissioner. To date, five individuals have been prosecuted for offences under the Regulation as described below.

Enforcement in action: touting at Sydney airport

The Commissioner prosecuted five individuals at the Downing Centre Local Court 11 February 2020. The five people were charged for allegedly touting and soliciting for passenger services at Sydney Airport on separate occasions in November 2019.

Three offenders pleaded guilty and were convicted and fined \$1,000 each. Two of these three offenders were also ordered to pay an additional \$300 in professional legal costs. The remaining two individuals pleaded not guilty and will proceed to hearing.

The offences were detected as part of ongoing compliance activity by the Commissioner's Authorised Officers at the Sydney Airport precinct - a high traffic area where people are particularly vulnerable to being touted.

Touting and soliciting at the airport and in any area of NSW is not only an offence under point to point transport law, it is unsafe for passengers and a form of harassment.

9.5 Safety campaigns

The Commissioner conducts public safety campaigns for high risk safety issues. These campaigns combine education, advice and enforcement to improve the safety of point to point transport.

The Commissioner launched the *Every ride should be a safe ride* campaign over the 2019-2020 holiday period to improve passenger safety awareness.

Christmas and New Year is a busy period for industry, seeing an increase in the number of passenger services by taxi and booking service providers. In that environment it is important

that safety is not compromised and passengers are aware of what they can do to ensure their personal safety.

The campaign provided safety tips for passengers, such as matching vehicle details provided in app with the vehicle carrying out the passenger service, and that the driver is the same person in the image displayed on their profile. The campaign ran across social media and the Commissioner's website.

9.6 Using technology to improve safety

Since commencing in 2017, the Commissioner has used technology to deliver effective and consistent regulation. The Commissioner's online services make it easy to do business and help industry comply with the law. The majority of routine regulatory transactions are available on the Commissioner's industry portal, and in time all transactions will be available online.

9.6.1 Driver Vehicle Dashboard

With the point to point transport reforms, the point to point industry needed a way to make informed decisions about whether their potential drivers and vehicles were safe and appropriate. The Driver Vehicle Dashboard (DVD) is a world first online tool that runs real-time safety checks from multiple external databases and displays results using an easy to understand traffic light system.

Industry is now able to check driver licensing, serious driving offences, medical fitness, disqualifying criminal charges, previous public passenger driver matters and other serious safety offences in NSW. The DVD is also used to check if vehicle registration and safety checks are current, consolidating multiple lengthy checks into one easy search.

The DVD has transformed the way service providers on-board and run checks on their drivers and vehicles, improving safety outcomes for passengers.

The DVD has become integral to industry by creating a reliable solution to meet safety obligations. Service providers have praised the DVD, stating they couldn't run their business efficiently without it.

Since 1 November 2017, there have been more than 34 million driver checks and more than 7 million vehicle checks conducted via the DVD (as at end March 2020). Industry use of the DVD has doubled when comparing March 2020 where there was more than 3.1 million driver and vehicle checks completed by industry, to March 2019 when there were around 1,518,235 checks. These statistics demonstrate the success of the DVD and how well it has been received by industry.

By ensuring dangerous drivers and vehicles are quickly removed from our roads, the DVD has delivered significant safety improvements for point to point passengers and the public of NSW.

Before the DVD, manually processing driver checks occupied significant staff time and business resources, and undertaking the current number of checks would have been impossible. After the introduction of the DVD these resources and staff are better utilised to meet other transport goals.

The Commissioner continues to collaborate with the industry to ensure the DVD meets their needs and constantly educates and seeks feedback to drive further improvements. Further enhancements were introduced in August 2019, including a new safety check feature showing when a taxi or hire vehicle last had a safety check inspection.

10 Authorisation and Taxi Licensing

10.1 Authorisation of providers of taxi services and booking services

Under the Act and Regulations, a person must not provide a taxi service or booking service unless authorised to provide that service. It is possible to be authorised as both under the new regulatory framework. If a service provider only takes bookings for passenger services then they are only required to be authorised as a booking service provider. Taxi service providers that take bookings also need to become authorised as a booking service provider.

Once granted, an authorisation lasts for five years, unless surrendered or cancelled earlier.

Individuals, partnerships and bodies corporate can apply for authorisation to the Commissioner, who can grant an application, refuse an application, or vary, suspend or cancel an authorisation.

All service providers have a duty of care and must comply with the safety standards they are responsible for and any conditions of authorisation.

Penalties of up to \$110,000 apply for anyone providing an unauthorised taxi or booking service, while drivers face penalties if they take bookings or carry out passenger services from unauthorised service providers. Penalties are much higher for second or subsequent offences.

10.2 Service providers

When the Act commenced there were 1,344 authorised service providers. As at 30 March 2020 there are 1,985 service providers. There are now 302 taxi service providers authorised by the Commissioner, compared with the 58 taxi networks that operated in 2015.

While new industry participants, including multinational companies Didi and Ola, have entered the market the largest growth has been amongst smaller operators. These figures indicate greater competition and increased choice for customers since the Act commenced.

Dubbo Regional Cabs expands with 'Silver Service' option

Point to point transport laws have opened the market to new booking technologies, and make it easier for industry to meet the changing expectations of their customers.

Dubbo Regional Cabs, a taxi service provider operating in Dubbo and its surrounding towns, is now offering additional point to point transport services through their booking-only 'Silver Service' offering.

The additional offering from Dubbo Silver Service demonstrates that reforms have enabled existing service providers to innovate and provide additional services, allowing them to meet greater customer demand in the area.

The service provides a more flexible transport option for customers and improves the availability of taxis during peak times as they can be freed up to do more rank and hail work when needed. The additional service also means more jobs for Dubbo, due to the need for more point to point transport drivers.

Before the point to point transport reforms, it would have cost a company \$3,000 a year per vehicle in hire vehicle licensing fees to put on an additional service in regional NSW in the way Dubbo Radio Cabs have done. Today, annual authorisation fees for taxi and booking service providers is as little as \$500, depending on the number of passenger service transactions they carry out.

10.3 Taxi licences

The Commissioner regulates taxi licences (including taxi licences issued under prior legislation) and TfNSW determines the number of taxi licences released each year across the state. Once TfNSW determines the number and type of taxi licences to be released in a particular period, the Commissioner conducts a taxi licence tender in accordance with the Act.

A taxi licence allows a taxi to provide rank and hail services for passengers. Some of the safety standards specific to taxis, include the requirement to have:

- A roof light and sign displaying the word 'TAXI, CAB or CABS
- A duress alarms and vehicle tracking systems in taxis operating in Sydney, Wollongong, the Central Coast and Newcastle
- A Fare calculation device (meter) and security cameras

In July 2019, tenders were opened for replacement taxi licences in the Sydney Metropolitan area. This tender was for a total of 78 licences released in the 2019-20 financial year, as determined by TfNSW.

10.4 Wheelchair accessible taxis

Under point to point transport law, drivers of WATs must give preference to customers in wheelchairs. WATs are regularly monitored for compliance and the Commissioner may cancel or suspend the WAT licence if the terms and conditions are not met.

In February 2020, the Commissioner cancelled two WAT licences for not meeting the requirement of giving preference to customers in wheelchairs, bringing the total number of WAT licences cancelled by the Commissioner to seven.

11 Working with industry

11.1 Industry reference group

The Industry reference group (IRG) allows the Commissioner to work directly with industry to improve compliance with point to point transport law.

The group comprises key stakeholders from the point to point transport industry and government agencies to discuss a range of key issues for the industry, share information and data of relevance to the regulation of the industry, and provide guidance to industry on compliance with point to point transport law.

While the IRG is not a decision making body, the group provides a mechanism for industry representatives to advise the Commissioner on areas of concern faced by industry, and work together to develop solutions to achieve compliance with the Act and Regulation.

Working with industry: Security camera systems in taxis

In July 2019, the NSW Taxi Council requested a 12-month exemption from the requirement to install approved security camera systems in taxis that ply or stand for hire as their members are unable to "...source and install the volume of cameras required to ensure full compliance". The new camera specifications were due to come into force on 1 November 2019, following a transition period.

The Commissioner acknowledged there was a limited supply of security cameras that met the new security camera standards.

In August 2019 the Commissioner published a notice in the Gazette exempting taxis from the need to comply with the new specifications until 1 February 2021 (consistent with the introduction of new security camera specifications in Victoria).

The exemption was granted as it will not compromise safety and on condition that if the camera system in the taxi ceases to be in working order it must be replaced and if the taxi is replaced, a camera system that meets the new specifications must be installed.

11.2 Regional relationships

The Commissioner through the existing advisory visit program is strengthening relationships with industry and stakeholders across regional NSW to ensure point to point transport services in regional NSW continue to meet community needs.

The Commissioner is partnering with local councils, police and regional offices of other TfNSW divisions to build awareness of the Commissioner's role, function and vision for the point to point transport industry. Our partners are able to inform us of any potential loss or regional point to point transport services particularly in areas with limited transport options.

These partnerships also inform the Commissioner's compliance and engagement activities through local knowledge and data on emerging issues.

11.3 Educating industry on their obligations

The Commissioner advises and informs the industry of their legal obligations and works to ensure participants have the knowledge, capability and confidence to meet those requirements. Services are designed to make it easy for the taxi and booking service providers to comply with the law and run their businesses in NSW.

Educating industry on their obligations and what they must do to comply with the law is an important part of the Commission's efforts. This includes a program of webinars to address identified knowledge gaps in areas of high need, such as creating a safety management system and identifying risks, as well as more general information for service providers. The Commissioner works continuously with industry and seeks feedback to target educational programs to areas requiring improvement.

Through the Commissioner's online presence industry can access information, utilise the compliance tools available through the Industry Portal and seek assistance through the Industry Contact Centre. Demonstration and information videos are designed to help people using the industry portal and DVD. This includes improving information about driver eligibility and vehicle inspections. Information about the Commissioner's policies and procedures, compliance activity and key industry statistics are uploaded to the website regularly.

The Commissioner continues to roll out educational tools to help service providers understand their obligations and equip them with knowledge to ensure they have the appropriate safety policies, procedures and systems in place.

On such tool is self-assessment guides. These guides focus on a particular safety aspect and allows service providers to conduct a self-assessment on their operations and determine any changes that need to be made to their safety policies, procedures and systems.

11.4 Business disruptions from natural disasters and the pandemic

The Commissioner has been working with stakeholders to support industry through disruptions to their business and to ensure point to point transport services continue to be safe.

Bushfire season 2019/2020

The Commissioner was mindful during the devastating bushfire season of 2019/2020 of the difficulties industry faced, particularly those service providers in areas directly affected. The Commissioner's messaging throughout this period was clear in urging everyone in the industry to put their health first and stay safe.

The Commissioner supported industry during this time by temporarily allowing service providers impacted by the bushfires more time to pay their Passenger Service Levy. The Commissioner worked with industry to identify those who may be affected and need more time to submit assessments and make payments.

In addition, the Commissioner kept industry informed of the support being offered by other government agencies, including:

- Service NSW deployment of mobile service centres and their offer of free replacement identity documents, and special arrangements for number plates, registration and licensing concessions.
- TfNSW providing customer assistance for natural disasters and emergencies.
- Communities & Justice assistance grants of up to \$15,000 for small businesses in Southern NSW.
- NSW Health providing a range of support measures in relation to medications, vaccinations and mental health services.

Ensuring safety of services during COVID-19

The Commissioner has informed industry that testing of drivers and service provider staff for COVID-19 (regardless of the test results) should be reported through the Industry portal using the Notifiable occurrence platform.

Vehicle sanitisation

During the COVID-19 pandemic additional safety measures designed to enhance driver and passenger safety were rolled out in partnership with the point to point transport industry, including the trial of free vehicle sanitisation stations in Metropolitan Sydney and Dubbo.

Vehicle sanitisation includes disinfecting high-touch areas like outside and inside door handles, window controls, headrests and payment terminals. Drivers are also encouraged to do spot cleans in between sanitisation as they continue to deliver their essential service to the community.

Other support provided to help the industry manage COVID-19 risk includes advice, fact sheets, infographics and an instructional video to show point to point drivers how to sanitise their vehicle effectively. This video has been used by a number of stakeholders within and beyond NSW, including Uber across Australia and New Zealand, SafeWork Australia and Transport for NSW. This has also been requested by and supplied to Transport for London.

These initiatives aim to improve safety and maintain public confidence in point to point services used for essential travel like going to the shops or medical appointments, including taxis and community transport services.