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**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**ROAD TRANSPORT (TAXI INDUSTRY INNOVATION)
LEGISLATION AMENDMENT REGULATION 2016 (No 1)**

SL2016-20

EXPLANATORY STATEMENT

**Circulated by authority of
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ROAD TRANSPORT (TAXI INDUSTRY INNOVATION) LEGISLATION AMENDMENT REGULATION 2016 (No 1)

OVERVIEW

New technologies and processes for providing on-demand transport have presented additional and compelling consumer choices to Australians. The ACT Government has responded by developing regulated frameworks through which travel modes such as rideshare – one of the new forms of on-demand travel – may serve Canberrans within the context of community safety, sustained consumer choice and competition, and long-term industry viability and equity.

Commencing on 30 October 2015 regulatory reform of the industry was undertaken with two planned phases. Interim arrangements are in force across Phase 1, until legislative reforms are in place, for Phase 2.

Phase 1

This phase allowed the entry of new business models into the on-demand industry (specifically ridesharing and its associated participants), subject to strong baseline safety requirements, such as driver and vehicle accreditation, and specific insurance coverage. Certain elements of rideshare fares were restricted during extraordinary events.

This phase also introduced the transport booking service (**TBS**), an entity that can provide booking services of one or more travel modes, including rideshare, taxi and hire car service. The responsibilities and behaviour of the TBS are established through service agreements between the road transport authority and TBS.

Regulation amendments providing conditional exemptions enabled the commencement of Phase 1, see the *Road Transport (Public Passenger Services) (Exemptions) Amendment Regulation 2015* (ACT). To promote competition, key fees for the taxi and hire car industry were lowered through relevant instruments.

Phase 2

This phase introduces an amended regulatory framework for the on-demand public transport industry that builds on structural, operational, competition and safety themes from Phase 1.

The framework sees several important themes:

- The Transport Booking Service (TBS) forms a central and flexible regulated entity through which important aspects of booking activity are regulated and monitored.
- A hierarchy of roles and obligations of operators, drivers and transport booking services. This is a reflection of potential industry risks, but it also enables potentially more streamlined processes for becoming and remaining accredited and licensed for participation in one or several service delivery modes.
- The consumer experience is essential, and this is supported through encouragement of new market choices, sustainable competition, and prescribed means of consumer feedback.

- Competition remains a central focus of the reforms, as operators and drivers have regulated choices on modes of service to provide, with risk-based regulatory requirements.
- Safety remains a primary objective of the reforms, as expressed through well developed and defined accreditation, licensing and reporting requirements.

Market composition

The regulation framework for the market is provided by the *Road Transport (Public Passenger Services) (Taxi Industry Innovation) Amendment Act 2015*. This regulation and related instruments distinguishes between booked services and off-street solicited services (that is, ‘rank and hail’). Booked services can be provided by taxis, hire cars and rideshare, with information available in the booking process supporting consumer outcomes and safety. Whereas, taxis retain sole access to rank and hail services, with services, vehicles and drivers subject to additional requirements to support public safety and accessibility.

Within the booked services component of the market, the legislative framework distinguishes between those operators, drivers and vehicles permitted to operate independently and those that must be affiliated with a TBS.

New elements of the regulation

Phase 2 of the reforms also introduces new features to the on-demand industry.

The responsibilities and associated offences of the TBS are specified further through regulation as they relate to accreditation, licensing, record-keeping, contracting of affiliated parties and fare setting.

Rideshare is recognised through accreditation and licensing requirements of rideshare vehicles and rideshare drivers. Rideshare is subject to operation only via a TBS, which provides booking and potentially record-keeping functions to rideshare drivers and operators.

Regulation of fares involves maintaining current arrangements of maximum regulated fares for taxis, while restricting components of the negotiated fares of hire cars and rideshare in specific circumstances (for example, in formally declared emergencies).

With Phase 2, the Independent Taxi Service Operators become a permanent form of taxi service, with the ability to operate without a third-party booking service. Regulation affords independent taxi operators and drivers commercial flexibility to pursue affiliation with a TBS, or to generate income from rank-and-hail or direct bookings.

Phase 2 sees the introduction of a ‘waiting list’ process for issuing taxi operator licences (as compared to the current ad hoc ballot system). Its aim is to increase the certainty of, and lower the wait-time for, receiving an operator’s license, thereby enabling the supply of taxis to be more consistent (subject to certain regulatory settings on taxi supply).

The ACT Government will also regulate a five per cent cap on electronic payment surcharges in taxis. Similar payments for hire cars and taxis will be regulated by the

Reserve Bank of Australia and enforced by the Australian Competition and Consumer Commission.

Removing unnecessary regulation and duplication

A number of prescriptive regulations, for example those governing driver dress and cleanliness, are removed and left as commercial decisions for operators to make in a market with greater opportunity for competition. This supports the emphasis on a regulatory framework focusing on public safety, accessibility and market outcomes.

Discrete requirements that do remain for the industry will be found in minimum service standards and driver skill and knowledge requirements that apply across taxi, hire car and rideshare services. These requirements have been amended to focus on accessibility and outcomes rather than process to allow for innovation and reduce unnecessary regulatory costs.

Other matters will be addressed outside of this regulation through compliance with existing regulatory requirements at various levels of government. For example, information privacy, work health and safety, and driver road behaviour.

Continued arrangements for wheelchair accessible taxis

The Wheelchair accessible taxi (**WAT**) service, including the booking process, is deemed to have made a sound contribution to the transport of ACT citizens living with disabilities. WAT vehicle service and associated booking services therefore remain fundamentally unchanged, with the exception that the requirements and performance of WAT transport booking service (**WTBS**) which will be delivered and governed through the more effective use of a service contract with the road transport authority.

HUMAN RIGHTS

Offences related to amendments in this Regulation include new strict liability offences for TBSs, bookable vehicle operators and drivers engaged in public passenger services:

- providing services when persons or vehicles are unlicensed or unaccredited;
- persons pretending they (or vehicles used) are licensed, accredited or affiliated;
- non-compliance with conditions, requirements or directions;
- improper or incomplete reporting and record keeping;
- operation and interference with equipment, including security camera;
- incorrect fares or payment processes for services;
- offensive behaviour or actions by service providers and passengers.

These may be seen as engaging rights under the *Human Rights Act 2004* (the HRA) in relation to criminal proceedings (presumption of innocence until proven guilty). Section 22(1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for the physical elements of the offence to which strict liability

applies. Essentially, this means that conduct alone is sufficient to make the defendant culpable.

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the relationship between the limitation and its purpose; and
- e) any less restrictive means reasonable available to achieve the purpose the limitation seeks to achieve.

a) Nature of the rights affected

The strict liability offences arise in the regulatory context where the sanction of criminal penalties is justified by outcomes such as public safety, consumer confidence and ensuring that regulatory schemes are observed. The offences also arise in a context where defendants can reasonably be expected, because of their business operations and regulated nature of their work, to know the requirements of the law. It is incumbent on this industry, which provides a direct service to the public, including vulnerable people and people living with a disability, for drivers and operators to know and understand their regulatory requirements under the law. This is in the interests of everybody's safety and the integrity of the on-demand public passenger industry.

The rationale is that persons who carry out a business of public passenger transport can be expected to be aware of their duties and obligations to the wider public. While the operation of rideshare services may involve persons using private vehicles to provide services, there is a clear decision to conduct a business and enter into arrangements with a transport booking service to derive income.

b) Importance of the purpose of the limitation

The use of strict liability offences for parties under the Regulation can be justified on the basis that offences will apply to people who choose to engage in regulated activity involving members of the public, undertaken on public roads and are on notice that they are operating in a regulated context. Further, members of the public would also be engaging in transactions that require the effective identification of persons and vehicles to support their safety, health and for some members of the public to access vital services and the broader community.

This Regulation sits within a regulatory context and people and companies who undertake activities under an authority will be aware of their responsibilities and obligations in relation to the permit or licence. Compliance with the provisions of the Regulation is important to ensure the safety and access to the community of public passenger transport and the integrity of licensing and accreditation requirements. Further, under the legislative framework, industry participants, and in particular drivers, are required to have minimum skills and knowledge including work, health and safety laws, disability awareness and the requirements of the *Discrimination Act*

1991. Additional guidance to drivers is provided by government and the regulator in terms of compliance and expectations.

c) Nature and extent of the limitation

Applying strict liability to provisions within the Bill can be considered a reasonable limit set by law that will assist in achieving the policy objectives. An individual's rights and freedoms have, in some cases, been slightly fettered on the basis that it is in the wider public interest that the businesses be properly regulated. Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve the policy objective.

The penalties for offences are within the normal range for strict liability offences. Where similar offences already exist in the *Road Transport (Public Passenger Services) Regulation 2002* (for example, section 210 – Offensive behaviour or language in hire cars) the penalties for the new offences are comparable.

The inclusion of strict liability clauses for lesser offences in the Regulation will support the application of an infringement notice scheme. Infringement notice schemes minimise the cost of litigation for the Territory while offering registrants a choice concerning whether to accept a lesser penalty without admitting the offence or to remain liable to prosecution.

Under the Criminal Code, all strict liability offences have a specific defence of mistake of fact. Subclause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offence cases. The general common law defences of insanity and automatism still apply, as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

d) Relationship between the limitation and its purpose

The reforms within the Regulation aim to support measures in the *Road Transport (Public Passenger Services) Amendment Act 2015* to reduce regulatory barriers to a competitive and level playing field for market participants while supporting protection of the community standards. The Government considers that the strict liability offences contained in this Bill are relevant to the policy objectives of minimising the risk of harm to the community, which is demonstrably justifiable and reasonable. The community expects that, regardless of what types of business people engage themselves in, they must operate to a community-acceptable standard.

e) Less restrictive means

It is not considered that there are any less restrictive means to achieve the purpose of the reforms. Similar provisions already exist in the *Road Transport (Public Passenger Services) Regulation 2002*.

REGULATORY IMPACT

The regulatory impact of the reforms is described in the following publicly available materials:

- *Modelling of policy scenarios for the ACT on-demand transport sector, Final Report* (August 2015)
- *Taxi Industry Innovation Review – Supporting Analysis* (September 2015).

CLAUSE NOTES

Clause 1 Name of regulation

This regulation is the *Road Transport (Taxi Industry Innovation) Legislation Amendment Regulation 2016 (No 1)*.

Clause 2 Commencement

The regulation commences with the *Road Transport (Public Passenger Services) (Taxi Industry Innovation) Amendment Act 2015* on 1 August 2016.

Clause 3 Legislation amended

This regulation amends the *Road Transport (Public Passenger Services) Regulation 2002* and other relevant legislation.

Clause 4 Section 4A, note 1

The note for offences against regulation is updated to account for changes to offences under the *Criminal Code 2002* from the amendments provided in the regulation.

Clause 5 Chapter 2 heading

Chapter 2 Regulated services

Clause 6 Part 2.1 heading

Part 2.1 Meaning of regulated service

These clauses insert the definition of *regulated service* to include the updated forms of public passenger services for the operation of the Regulation, thereby replacing the definition under the previous section 6.

Clause 7 New part 2.1A heading

Part 2.1A Accreditation

Clause 8 Section 5 (2) and (3)

Clause 9 Part 2.2 heading

Section 5 is amended to account for the introduction of TBS and ridesharing.

The kinds of taxi services are amended to exclude reference to the redundant category of a restricted taxi service. While WAT services continue to be defined, the arrangements for NSW cross-border taxis are to be undertaken by means of a conditional regulatory exemption (refer to new Division 3A.5.3).

Related technical amendments are made to chapter and part headings in the Regulation.

Clause 10 Sections 6 and 6A

These sections are omitted as definitions are relocated for drafting purposes.

Clause 11 Section 6B heading

Clause 12 Section 6B

The meaning of relevant person retained and extended from operating for part of the regulation to operate for the entire regulation.

Clause 13 Section 7 (1), note

This clause provides a technical amendment outlining the requirements for approved forms and inserting a section reference to a note on fee determinations.

Clause 14 Section 7 (2)

Clause 15 Section 7 (5)

Clause 16 Section 7 (6), new definition of *police certificate*

Clause 17 Section 8 (1)

Clause 18 Section 8 (2) (c)

Clause 19 Section 9 (1) (b)

Clause 20 Section 12 (1)

Clause 22 Sections 13 and 13A

Clause 23 Section 14 (1) (c)

Clause 24 Section 14 (1), new example 6

Clause 25 Part 2.3 heading

Clause 26 Section 18B

Clause 29 New Part 2.3

Part 2.3 Service standards

Clause 31 Section 33

Accreditation processes for regulated services have been amended to replace previous arrangements involving accepted service standards with the administratively more straightforward ability for the Road Transport Authority (**the Authority**) to set (minimum) service standards (section 20B). Failure to comply with the service standards is subject to strict liability offence provisions with a maximum penalty of 20 penalty units (section 20C).

Sections 20B and 20C provide for the Authority to determine (minimum) service standards in disallowable instruments, through which safety and service standards are (more uniformly) prescribed by the regulator across all modes of on-demand travel; and the removal of accepted service standards to reduce steps in the regulatory process and focus on key prescribed outcomes. Refer to Schedule 1, Service Standards.

Application requirements for accreditation are to include details of applicant, addresses for service and contact details. The provision of information regarding an applicant's criminal history are redrafted to update references to police certificates (sections 7(2)(d) and 7(6)). Applicants must still be suitable persons but may now also include individuals who are temporary residents with appropriate visa conditions (section 8(1)).

The Authority will no longer have to determine the financial capacity of applicant to provide the regulated service. Financial arrangements at a point in time may not be reflective of a person's capacity to successfully operate a viable business. These changes also recognise the actions toward promoting competitive forces in the on-demand public transport market.

Section 33 is omitted as its operation duplicated offences for compliance with service standards under section 20C.

Clause 21 Section 12(4)

This clause affirms a consistent period (up to six years) for accreditations to operate regulated services under the Regulation. In doing so, the period for accreditation of bus services is increased (from three years) and the period of accreditation applies to ridesharing services.

Clause 27 Section 19 (1)

This clause defines approved educational qualifications for accreditation purposes under the Regulation.

Clause 28 Section 20

A range of clauses perform technical changes to provisions to account for:

- the introduction of ‘transport booking services’ and ‘ridesharing services’;
- the removal of the ‘restricted taxis’ as a kind of taxi – see section 5 of the regulation as amended.

Clause 30 Section 28 (1) (a)

Reporting requirements for bus are revised with the need to keep records reduced from 4 years to 2 years consistent with requirements for other public passenger services under the regulations.

Clause 32 Section 46 (2), note

The meaning of *bus ticket* has been included in the Dictionary to improve readability of provisions.

Clause 33 New Chapter 3A

Chapter 3A Bookable vehicles

This chapter reflects the introduction of the TBS to the on-demand transport framework, and its similar roles across the operation of affiliated taxis, hire car and rideshare services.

The chapter describes requirements of the TBS, and affiliation requirements to the TBS. It also describes regulated aspects of fares, information to be provided to passengers, and defines obligations regarding record-keeping.

Chapter 3A defines the activities of WTBS to reflect the change in terminology with the Act. Requirements remain generally unchanged with the exception of some further recognition of the service contract mechanism by which they operate.

Part 3A.1 Transport booking services

Division 3A.1.1 Transport booking services—generally

Section 70A Meaning of *affiliated driver*, *affiliated hire car driver* and *affiliated taxi driver*

This section defines the ways in which a driver (of various services) can be affiliated to a TBS, recognising both the direct and indirect affiliations which are operating in the market.

Section 70B Transport booking service—must ensure affiliated drivers have required knowledge and skills

This section requires that a TBS ensure that each affiliated driver has the required skills and knowledge to provide services as determined by the Authority (under section 221U). A strict liability offence applies for a TBS failing to taking reasonable steps to do so.

This represents a transfer of responsibility to industry as skills and knowledge requirements are moved from the Authority's public passenger licensing process. This change will permit industry greater opportunity to develop and implement training to meet market demands.

Section 70C Transport booking service—must ensure bookable vehicle is licensed

This section requires that a TBS ensure that each affiliated taxi, rideshare and hire car driver and vehicle is appropriately licensed (and hence, accredited and insured). The TBS, as intermediary to a hiring, must act to ensure the bona fides of parties to transaction, and that supporting public safety aspects are met.

There are no longer obligations on a taxi network to affiliate with a licensed operator, as was the case with taxi networks, leaving businesses to better decide their day-to-day operations.

Section 70D Transport booking service—must be available to take bookings

New section 70A provides that a TBS must take reasonable steps to ensure their booking service is available at all times to accept taxi and/or rideshare bookings and communicate these to affiliated drivers. This is consistent with prior arrangements which had operated for taxi networks. Failure to reasonably ensure availability is subject to a strict liability offence reflecting the Territory's need to access on-demand transport services.

TBS are not, however, required to ensure that affiliated vehicles and drivers individually or collectively have similar availability. It is intended that commercial arrangements and competitive pressures will act to adjust service supply to meet demand across different times of day and the year.

Section 70E Transport booking service—must give fare estimate and vehicle identifier

When a TBS communicates a booking from a prospective passenger, they must provide that an estimate of the fare is made available where a regulated maximum fare does not apply. A TBS must also provide sufficient information for the person to

identify the bookable vehicle and driver for the hiring. (Taxis are not included in the identification requirement because they operate with signs and livery.)

This information helps support effective price competition and public safety outcomes by assisting the hirer to make an informed choice about the booked journey. Failure to provide this information is subject to a strict liability offence reflecting the consumer and public safety.

Division 3A.1.2 Transport booking services—records

Section 70F Meaning of *affiliated driver record* and *affiliated operator record*—div 3A.1.2

Section 70G Transport booking service—affiliated driver records

Section 70H Transport booking service—affiliated operator records

Section 70I Transport booking service—bookable vehicle records

Section 70J Transport booking service—booking records

Section 70K Road Transport Authority to share information

This division outlines the record-keeping requirements for a TBS. This includes keeping, maintaining and providing to the Authority, a police officer or a member of an emergency service (upon request), information relating to affiliated drivers, affiliated operators and bookable vehicles. This information includes details that support public safety and consumer confidence by promoting the ability to identify parties, and that their accreditation and insurance arrangements are appropriate and maintained.

Where a TBS has provided an affiliated driver or affiliated operator record to the Authority, the Authority must in turn provide certain further information about the driver or operator to the TBS (for example, the suspension or cancellation of a driver's public vehicle licence).

This division also requires a TBS to create and maintain records of its booking activities and keep these for at least two years after the date the booking was carried out. The TBS must provide a booking record to the Authority, a police officer or a member of an emergency service upon request. This information supports public safety by allowing authorities to investigate matters in the event of an incident or accident.

Offence provisions apply for breaches of these requirements commensurate with the need to be able to effectively enforce public safety and consumer interests through the availability of information to the regulator.

Division 3A.1.3 Transport booking services—wheelchair accessible taxis

Reforms to on-demand transportation see booking service obligations of WTBS remain mostly unchanged. This arrangement accords with the policy objective of

retaining WAT service as a critical service to those living with disabilities, and retaining its current performance standards.

To support more efficient regulation of this service, the regulations recognise the mechanism through which a WTBS is best regulated is through a service contract.

Section 70L Meaning of *wheelchair accessible taxi booking service (WTBS)*

The meaning of the ‘wheelchair accessible taxi booking service’ updates the prior definition of the ‘wheelchair centralised booking service’ (previous section 154I) to account for the new definition of TBS within the regulation.

Section 154J is omitted as the need for WTBS service standards duplicates requirements specified through service contracts (section 70P refers).

Section 70M Transport booking service—must direct wheelchair accessible taxi booking to WTBS

This section continues the requirement for booking services (previously taxi networks) to direct requests for a WAT vehicle through a centralised booking service.

Section 70N Transport booking service—must direct driver to accept wheelchair accessible taxi hiring

This section continues the offence for booking services (previously taxi networks) failing to direct requests to a WAT (where available) and in circumstances where there is no centralised booking service (WTBS).

Section 70O Transport booking service—must give estimated arrival time for wheelchair accessible taxis

Estimates of arrival times must be provided for WAT bookings to assist with convenience of person with mobility difficulties. The offence for not doing so is amended to account for the introduction of transport booking services.

Section 70P WTBS—service contracts

Section 70Q WTBS—entitlement to operate

**Section 70R WTBS—exemption for WTBS operators—
Act, s 128 (1) (b)**

The ability for the Authority to enter into service contracts with a centralised booking service for WAT services and the related entitlement for the booking service to operate has been amended to account for the introduction of transport booking services. This includes the continuation of an offence for operating the booking service without entitlement.

The Authority also maintains its ability to exempt a centralised booking service for WAT services from provisions of the Act but the regulation has been updated to account for transport booking services.

Section 70S WTBS—approval of procedures and rules

The Authority may approve the procedures and rules for the WTBS which operators and drivers will be required to comply via a notifiable instrument. This is consistent with previous arrangements for taxi networks providing WAT centralised booking services.

Section 70T WTBS—must direct driver to accept wheelchair accessible taxi hiring

The offence for failure of a WAT centralised booking service is redrafted to account for the introduction of transport booking services.

Clause 34 Chapter 4 heading

Part 3A.2 Taxis

Clause 35 Parts 4.1, 4.1A and 4.2

The substitution of parts 4.1, 4.1A and 4.2 reflect the replacement of the regulation of taxi networks and the exemption of independent taxi booking services with TBS under the new part 3A.1, for revised arrangements for taxi licensing under the new Division 3A.2.2.

Division 3A.2.1 Independent taxi service operators

This division provides for independent taxi services operators (ITSO), which is based on a previous pilot program that operated via a conditional exemption under the Act.

This provides taxi operators (and their affiliated drivers) the opportunity to provide rank and hail or receive direct booking services, without a need to affiliate with one or more TBS.

Section 71 ITSO approval—application

Section 72 ITSO approval—eligibility criteria

Section 73 ITSO approval—decision on application

Accredited taxi service operators may apply to operate on an independent basis. Eligibility requirements are specified in a notifiable instrument by the Authority. Based on the earlier trial arrangements such criteria may involve a minimum period of accreditation through which an operator has demonstrated a consistent record of providing a good customer service and compliance with the vehicle standards for operating a taxi.

Timeframes for decision making are consistent with other Authority decisions through the Regulation.

Section 74 ITSO approval—conditions

Additional conditions may be placed on ITSOs including specific service standards. These would be expected to account for some of the roles performed by a TBS, such as the keeping of specific records.

Section 75 ITSO approval—term

Section 76 ITSO approval—not transferable

Section 77 ITSO approval—application for renewal

Section 78 ITSO approval—decision on application for renewal

As with other accreditations under the Regulation, the term of an ITSO approval is limited to six years. An ITSO is not transferable and so cannot be traded or subleased. An ITSO may apply for renewal of accreditation.

Section 79 ITSO approval—replacing when lost, stolen or destroyed

Section 81 ITSO approval—surrender

These clauses provide for the further administration of ITSO accreditation by allowing parties to obtain an accreditation document in the event it is lost, stolen or destroyed, or to cease their accreditation status.

Section 80 ITSO approval—must update name and address

To maintain the currency of contact details for approved ITSO holders and support compliance and enforcement activity by the road transport authority, failure to advise changes will be an offence. The offence arrangements are consistent with those for other accreditations throughout the regulation.

Division 3A.2.2 Taxi Licences

These amendments in this division see the introduction of a new process for obtaining standard and WAT taxi licences.

A policy objective of the reforms is to improve the means by which taxi licences are obtained in order to improve overall entry and exit of taxi operators and casual drivers from the industry. Accordingly, the process of periodic releases of standard and wheelchair accessible taxi licences through a ‘ballot’ process is replaced by a continual application and granting process, known as a ‘waiting list’ process.

Subdivision 3A.2.2.1 Kinds of taxi licenses

Section 82 Kinds of taxi licences

This section revises the terminology to account for the removal of definitions for restricted taxis and restricted taxi licences. Perpetual and transferable leased taxi licences are also retained and defined consistently with prior definitions.

Subdivision 3A.2.2.2 Standard and wheelchair-accessible taxi licences

Section 83 Meaning of *pre-approval* for standard or wheelchair-accessible taxi licence—pt 4.2

Section 84 Taxi licence waiting list

Section 85 Pre-approval—application

Section 86 Pre-approval—decision on application

Section 87 Pre-approval—form

Section 88 Pre-approval—term

Section 89 Pre-approval—not transferable

Section 90 Pre-approval—surrender

Section 91 Pre-approval register

These provisions prescribe how an applicant may obtain a taxi licence through the new ‘waiting list’ process.

Specifically, the Authority may grant eligible applicants pre-approval for a taxi licence/s (standard or wheelchair accessible), and place them on a waiting list in the order that the pre-approval was granted. Pre-approvals come into force on the date of issue and will operate for two years.

When a (single) licence is issued to a person with pre-approval for multiple licences, the pre-approval holder moves to the bottom of the waiting list for further licences. This is to distribute the opportunities for different parties to obtain licences.

Eligibility for pre-approval mirrors certain requirements for the holding of a taxi licence, including residency and for a WAT vehicle's suitability to provide services to people with disabilities.

As with government-owned taxi licences pre-approvals would not be transferrable. The Authority would maintain a waiting list in order to support the effective allocation of licences, while also maintaining a register of pre-approvals.

Section 92 Standard and wheelchair accessible taxi licences—availability

Section 92A Standard and wheelchair taxi licences—notice of availability

The availability of taxi licences for the waiting list under the regulated maximum number of taxi licences may be subject to determination by the administering Minister via a notifiable instrument. This is intended to allow for circumstances where the regulated maximum number of licences remains appropriate for the market overall but a mechanism is required to place unallocated taxi licences into the market in a way that does not unduly disrupt the market. For example, there may be a need to adjust the release of unallocated taxi licences in the transition to the list system or if there is a determination to change the maximum number of taxi licences.

At the time a licence becomes available, the first ranked holder of a pre-approval on the waiting list may apply for the government-owned taxi licence.

The Authority must provide timely notice of the availability of a licence to the appropriate person on the waiting list. The person may then make an application for the taxi licence.

Section 92B Standard and wheelchair taxi licence—application

Section 92C Standard and wheelchair taxi licence—decision on application

Section 92D Standard and wheelchair taxi licence—time for decision on application

Section 92E Standard and wheelchair taxi licences—conditions

Section 92F Standard and wheelchair taxi licences—term

Section 92G Standard and wheelchair taxi licences—form

Section 92H Standard and wheelchair taxi licences—transferability—Act, s 41

The further application for a standard and wheelchair taxi licence at the time they become licensed focuses on any matters that may have been changed from that advised under the pre-approval.

In making a decision on the application, the Authority must be satisfied that the applicant is an Australian citizen or holds an appropriate immigration status (as applicable), is accredited to operate the relevant taxi service, is not subject to disqualification and has an appropriate vehicle. For WAT licences there is also an experience criterion. The Authority may determine additional eligibility criteria, and seek additional information necessary for a decision. For example, additional

eligibility criteria may include limits on the number of licence holdings to support the operation of the market.

The Authority must, not later than in a required time, provide a decision on the application, tell the applicant of the decision, and issue the license. The required time is 60 days for a standard license and 120 days for a WAT license. The Authority may determine guidelines for any delay in deciding an application by notifiable instrument.

While pre-approvals may operate for multiple licences, only one licence may be issued to an applicant at a time. After obtaining a licence the applicant will return to the waiting list queue for further licences. This is intended to support a diversity of ownership and support the actions to prevent potential hoarding or market capture by an applicant (and their associates).

Standard and WAT licences are subject to conditions requiring the taxis to be available for regular hire and priority hiring to wheelchair-dependent person for a wheelchair accessible taxi. The Authority may impose further conditions on licences.

Persons failing to comply with licence conditions will commit an offence and may be subject to disciplinary action under Chapter 8 of the regulation, including suspension, disqualification or cancellation.

Matching accreditations in the Regulations, the term of taxi licences is up to six years. The form of licence is specified in the regulations to include details of the licensee and licence identifiers and expiry.

Standard and WAT licences are not transferable.

Subdivision 3A.2.2.3 Taxi licences generally

Section 92I Taxi licences—amendment initiated by authority

Section 92J Taxi licences—amendment initiated by licensee

Section 92K Taxi licences—application for renewal

Section 92L Taxi licences—decision on application for renewal

Section 92M Taxi licences—replacing when lost, stolen or destroyed

Section 92N Taxi licences—must be produced for inspection

Section 92O Taxi licences—surrender

Section 92P Taxi licences—must update name and address

The mechanical arrangements for the operation of the taxi licensing are consistent with previous arrangements, including prescribed timeframes for decisions, forms and arrangements for amendment, replacement, renewal.

In the event of surrender of a taxi licence there is the addition of an automatic disqualification from applying for a taxi licence for a period of two years. This provision is to mitigate fluctuations in taxi supply from persons entering the industry and taking up licences for short periods. Combined with operating conditions on licences (section 92E) these measures are to promote consistency and availability of taxis to supply the market.

Offences continue to operate to support compliance and enforcement, such as for the production of licences on request by a police officer, and maintaining current details. When the Authority receives notice of any change in details, they must be included on the licence.

Clause 36 Part 4.3 heading

Division 3A.2.3 Taxi services

Clause 37 Division 4.3.1 heading

Subdivision 3A.2.3.1 Taxi operators

Clause 38 Sections 93 and 94

Section 94 Taxi service operator—must tell authority about affiliation

Maintenance of taxi requirements and responsibility for the condition of a taxi previously under sections 93 and 94 of the Regulation are now provided for under taxi service standards. Aspects relating to customer service which can be delivered through competition – such as cleanliness of a vehicle – are no longer regulated and should be addressed as commercial matters.

Only standard and wheelchair taxi operators that hold ITSO approval (Division 3A.2.1) are not required to be affiliated.

To reflect the new framework that includes the TBS and the ability to have multiple affiliations, taxi operators must report their affiliations to support identification of possible parties to a hiring and compliance activity in the market. ITSO operators may also need to report affiliations, as while they may operate without a TBS they are not prevented from affiliating where desired.

Offence against this section is subject to a strict liability offence of five penalty units.

Clause 39 Section 97 Taxi service-operator—drivers to be licenced and skilled

Clause 40 New section 99 (1) (ba)

These sections provide a strict liability offence if a taxi service operator does not take reasonable steps to ensure that each affiliated driver is either licensed or exempt from licensing.

Consistent with requirements for TBS (section 70B), taxi service operators that are holders of ITSO approvals must also ensure the skills and knowledge of drivers to provide services as determined by the Authority (under section 221U). A strict liability offence applies for failing to taking reasonable steps to do so.

Clause 41 Section 99 (4) and (5)

Offences for failure to keep records of changes in a driver's licence or exemption status by an operator are removed in favour of an offence for the act of providing a vehicle to a driver who is not licensed or exempted (section 97 of the Regulation refers).

Clause 42 Section 100 (1) (a)

Clause 43 Section 100 (4), note

Regulatory costs associated with record keeping requirements are reduced by reducing holding times from four to two years, in line with similar requirements in New South Wales.

A technical amendment is made to the note to subsection 100(4).

Clause 44 Section 101

Requirements for taxi operators to be affiliated with booking services (previously under 101(1)) are now provided by section 71 of the amended Regulation.

To reflect changes in technology generally and the different types of technology used by various booking business models, taxi operators will no longer be required to use specific and prescribed equipment for communicating with a TBS reflecting a technology neutral approach to the framing of the regulatory requirements. There exists a commercial incentive for all parties (TBS, operator and drivers) for drivers to be able to receive bookings effectively and efficiently.

Clause 45 Section 101A

Clause 46 Section 101A (1), note

These clauses are a technical amendments to reflect the new definition for TBS.

Clause 47 New section 101B

Section 101B Wheelchair accessible taxi operator—WTBS's approved procedures and rules

This section carries over a previous offence (previously section 125) for operators not complying with WAT booking service procedures and rules for booking and hiring WAT.

The maximum penalty is increased to 20 penalty units to align with the potential harms to consumers from any failure to meet requirements.

Clause 48 Sections 103 to 108

Section 107 Taxis must have identifying signs and livery

In lowering the prescriptive level of regulation, taxi operators will not have requirements in relation to air conditioning systems in their vehicles (other than for WAT vehicles via prescribed service standards). The intention is that increased competition will remove the need for government intervention into how businesses address basic aspects of customer service.

Child restraint anchorage provisions revert to general Australian Design Rule requirements for such anchorage points.

Under the new section 107, requirements to have livery and other signage identifying vehicles as taxis individually approved by the Authority are omitted. The Authority may now determine a common set of requirements.

Failure to meet those requirements is a strict liability offence.

Offences relating to offensive material and advertising on taxis previously under section 108 are now incorporated in common requirements for bookable vehicles (section 221R refers).

Clause 49 Section 109 (1) (c)

Clause 50 Section 109 (3), example 1

Clause 51 Section 109 (4)

These clauses provide technical amendments to section 109 reflecting the introduction of TBS and changes to livery requirements (under the new section 107).

Clause 52 Section 110 to 112

Requirements for taxi uniforms are removed in line with reductions to prescriptive regulatory requirements and to recognise the potential for drivers to have multiple TBS affiliations.

Provisions for lost property procedures are to be incorporated in service standards for the respective bookable vehicles services. Non-compliance notices are now incorporated in common requirements for bookable vehicles, see section 221S.

Clause 53 Division 4.3.2 heading

Subdivision 3A.2.3.2 Taxi drivers

Clause 54 Sections 113 to 121

Section 114 Wheelchair accessible taxi driver—special responsibilities

Section 115 Wheelchair accessible taxi driver—connection to WTBS

Section 116 Wheelchair accessible taxi driver—WTBS's procedures and rules

Requirements for clean and tidy vehicles are no longer regulated, as these are considered commercial matters for industry participants. Consumers are encouraged to take the opportunity to reject taxis and other bookable vehicles that do not meet basic service expectations, and lodge complaints or feedback as appropriate.

Clause 55 Sections 125 to 126

Provisions relating to WAT driver responsibilities have been co-located and updated to reflect the introduction of TBS.

Previous section 125A relating to the approval of WCBS procedures is now located at section 70S of the amended Regulation. It has been simplified and reference to TBS incorporated.

Use by a driver of a taxi subject to a non-compliance notice is now incorporated in common provisions for bookable vehicle drivers, see section 224 of the amended Regulation.

Clause 56 Division 4.3.3 heading

Subdivision 3A.2.3.3 Taxi hirings

Clause 57 Section 127A (1) (c) to (e)

Section 127A(1)(c) to (e) is subject to technical amendments related to movement or renaming of related sections.

Clause 58 New section 127B

Section 27B Meaning of *fare*—ch3A

The meaning of fare for the hiring a taxi has been relocated from the dictionary to under Chapter 3A 'Bookable vehicles' and revised to account for the introduction of transport booking services and revised arrangements to permit cross-border bookable vehicle services between the ACT and New South Wales, see new Division 3A.5.3.

Clause 59 Section 128

The offence for the soliciting of taxi passengers is now incorporated in a common provision for bookable vehicle drivers not to tout for passengers, see section 222.

Clause 60 Section 129 heading

Section 129 Wheelchair accessible taxi driver—must preferentially accept hirings for wheelchair-dependent people

Clause 61 Section 129 (1)

Clause 62 Section 129 (2)

Clause 63 Section 129 (3)

Clause 64 Section 129 (4) to (6)

Prompt acceptance of hirings is no longer a regulated requirement but a commercial matter of customer service. Other changes to section 129 reflect technical amendments reflecting changes to referenced provisions.

Clause 65 Section 130

Directions by police officers or authorised persons to taxi drivers are now included under common provisions for bookable vehicle drivers at section 225 of the amended Regulation.

Clause 66 Section 131 (1)

The prompt carrying out of hirings is no longer a regulated requirement but a commercial matter of customer service subject to competitive forces in the market.

Clause 67 Section 131 (2)

Clause 68 Section 131 (2), new note

Clause 69 Section 131 (3)

Clause 73 Section 140 (3) (b) and note

Clause 76 Section 142A (1) (a)

Clause 77 Section 142A (1) (a) (ii), new note

References to ACT taxi region are revised to ACT region (as defined under section 221N) to recognise the potential application of cross-border public passenger transport arrangements to bookable vehicles beyond taxis.

Clause 70 Sections 133 to 135

Regulation of where taxi drivers must stop is now provided under common provisions for bookable vehicle drivers at section 221Y. Similarly, requirements regarding the carriage of goods are now specified at section 221V.

The previous offence relating to the operation of a taxi roof sign is removed and is now a matter of commercial practice.

Clause 71 **Section 136 (2)**
Clause 72 **Section 138 (1) (a)**
Clause 74 **New section 140A**
 Section 140A Meaning of *multiple hiring* of a taxi—
 subdiv 3A.2.3.3

Clause 75 **Section 141**

These amendments are technical changes for section references or titles, and drafting clarity to sections relating to multiple hirings of taxis.

Clause 78 **Section 143A (3) (b)**

Clause 79 **Section 143A (4) (b)**

Clause 80 **Section 144B**

Section 144B Payment under taxi subsidy scheme

These provisions update references to the taxi subsidy scheme to refer generally to statements rather than the specific forms of payment, that is 'vouchers' which are no longer used. The reference to statements also is reflective of section 337 of the Criminal Code 2002.

Clause 81 **Division 4.3.4 heading**

Subdivision 3A.2.3.4 Conduct of taxi passengers

Clause 82 **Sections 146 and 149 to 154**

Conduct of taxi passengers under omitted sections 146 to 154 is provided under common provisions for bookable vehicle passengers at Division 3A.5.6.

Clause 83 **Division 4.3.4B**

Provisions previously relating to WAT centralised booking services (now WAT Transport Booking Services or WTBS) are relocated under Division 3A.1.3 of the amended Regulation.

Clause 84 **Division 4.3.5 heading**

Subdivision 3A.2.3.5 Other matters relating to taxi services

Clause 85 **Sections 155 to 157**

The approach to regulating NSW taxis under cross border arrangements is now provided at Division 3A.5.3 'NSW bookable vehicles in the ACT'.

The omitted sections 156 and 157 regarding the operation of security cameras in taxis are provided under common provisions for bookable vehicles at Division 3A.5.1 'Bookable vehicles—security devices, etc'.

Clause 86 **Section 158 (2) (c)**

Clause 88 **Section 162 (1)**

Clause 89 **Section 163 (1) (b)**

Clause 90 **Section 164**

These clauses provide technical amendments for the omission of restricted taxi terminology and definition of other terms.

Clause 87 **Section 159**

The offence for the interference with taximeters is now incorporated within a offence for interfering with a security device, electronic device or anything else related to such devices, see section 221E.

Clause 91 Chapter 4A

Part 3A.3 Ridesharing

This new part allows for the regulation of ridesharing activity, a new mode on-demand public transport, under a risk-based approach.

Division 3A.3.1 Ridesharing vehicle licences

This division regulates the vehicles used in rideshare activity, and encompasses licensing of vehicles, vehicle identification and certain vehicle fittings and display requirements.

Section 164 Rideshare vehicle licence—application

Section 164A Rideshare vehicle licence—further information

Section 164B Rideshare vehicle licence—decision on application

The application process for a rideshare vehicle licence is prescribed by these sections, including the eligibility requirements such as registration and roadworthiness of the vehicle and suitability, and residency requirements for the licensee. The Authority may request additional information as part of the decision-making process. The elements required for licensing are consistent with other bookable vehicles.

Reasons for refusing an application can relate to the eligibility of the vehicle, the licensee or accreditation status of the applicant or other disqualifications. Licence application arrangements are consistent with those for other bookable vehicles.

Some vehicles are excluded from ridesharing activity, such as ambulances and motorcycles, as the nature of the vehicles listed is not consistent with practical provision of rideshare services. The licensing arrangements for rideshare vehicles are subject to separate licensing (from registration) due to the dual nature of the use of the vehicles – comprising both private and commercial activities.

Section 164D Rideshare vehicle licence—conditions
Section 164E Rideshare vehicle licence—term
Section 164F Rideshare vehicle licence—form
Section 164G Rideshare vehicle licence—not transferable
Section 164H Rideshare vehicle licence—amendment initiated by authority
Section 164I Rideshare vehicle licence—amendment initiated by licensee
Section 164J Rideshare vehicle licence—application for renewal
Section 164K Rideshare vehicle licence—decision on application for renewal
Section 164L Rideshare vehicle licence—must update name and address
Section 164M Rideshare vehicle licence—surrender
Section 164N Rideshare vehicle licence and label—replacing when lost, stolen or destroyed

Rideshare vehicle licences may be subject to conditions imposed by the Authority. It is an offence if a rideshare vehicle licensee does not comply with the condition(s) of the licence.

As with hire car and taxi licences, a rideshare vehicle license may have a term of up to six (6) years with opportunity for renewal. A rideshare vehicle licence is not transferable. The conditions and processes of rideshare vehicle license renewal, amendment or replacement are also similar to those for hire cars.

These provisions also provide for the inspection of vehicle licences, their surrender, and updating of address-change details, both by the licensee and the Authority to support compliance and enforcement activity.

Section 164C Rideshare vehicle licence—licence labels
Section 164O Rideshare vehicle licensee—must make label available to rideshare driver
Section 164P Rideshare vehicle licensee—must not advertise ridesharing

Rideshare vehicles may undertake both private and commercial activity. It is necessary to identify a vehicle is being used for rideshare purposes to support compliance and enforcement activity as there are additional obligations and requirements on the driver operating the vehicles. For example, a rideshare driver will be operating with the blood alcohol concentration required of a public vehicle driver (BA 0.0), and a rideshare vehicle may also access loading zones for pick up or drop off.

The means of identification of a rideshare vehicle may be agreed by the Authority (and for example, with a TBS); which the driver must then comply with (see sections 164S and 164T as amended).

Otherwise a default position is provided with a rideshare vehicle licensee to be issued with a label by the Authority for vehicle identification purposes. The label must be provided to the driver for display on the vehicle when ridesharing activity is underway. The label is intended to be removable for when the vehicle is in private use, but allow for identification of the vehicle for regulatory purposes when in service. Failure by a

licensee to provide the label to a rideshare driver who is to use the vehicle is an offence.

It is intended that the label will be sufficiently to mitigate potential hailing of the rideshare vehicles. This is further supported by an offence for advertising the vehicle for rideshare services. Only rideshare hirings conducted through an affiliated transport booking service afford the desired level of safety through knowledge of parties to the transaction.

Division 3A.3.2 Rideshare drivers

This division provides for the responsibilities of a rideshare driver, including: licensing; bookings through transport booking services; vehicle identification; and advertising.

Section 164Q Rideshare driver—must hold appropriate driver licence

A rideshare driver must be appropriately licensed or subject to a relevant driver licensing exemption. Failure to be appropriately licensed is subject to a strict liability offence.

Section 164R Rideshare driver—must only accept bookings from accredited transport booking service

This section provides a strict liability offence for a rideshare driver who accepts booking hirings from parties other than an accredited TBS.

As discussed in relation to the identification of rideshare vehicles (see sections 164C, 164O and 164P), this arrangement is a key safety element supporting provision of the service.

Only taxis are permitted to provide rank and hail services off the street, due to their extra safety features such as livery and security cameras.

Section 164S Rideshare driver—must display rideshare vehicle licence label

Section 164T Rideshare driver—must produce rideshare vehicle licence and label for inspection

Section 164U Rideshare driver—advertising

Consistent with obligations for rideshare vehicle licensees, rideshare drivers must display a rideshare vehicle licence label when providing rideshare services and not otherwise advertise services.

Drivers must be able to produce licences and labels when required for regulatory compliance and enforcement purposes.

Strict liability offences apply for breaches of these requirements.

- Clause 92** Chapter 5 heading
Part 3A.4 Hire cars
- Clause 93** Part 5.1 heading
Division 3A.4.1 Hire car licences
- Clause 94** Divisions 5.1.1 and 5.1.2 headings
Subdivision 3A.4.1.1 Kinds of hire car licences
Subdivision 3A.4.1.2 Hire car licensing
- Clause 95** Division 5.1.2A heading
Clause 101 Division 5.1.3 heading
Subdivision 3A.4.1.3 Stand-by hire cars
- Clause 102** Section 177A heading
177A Definitions—subdiv 3A.4.1.3
- Clause 103** Section 177A
Clause 104 Part 5.2 heading
Division 3A.4.2 Hire car services
- Clause 105** Divisions 5.2.1 and 5.2.2 headings
Clause 109 Division heading

The clauses provide technical drafting amendments to headings within the part of the Regulation.

- Clause 96** Section 172 (3) and note
Clause 97 Section 173 (1) (b) and penalty
Clause 98 Section 173 (2)
Clause 99 Section 176 (1) note
Clause 100 Section 177 (4)

These clauses are technical drafting amendments to remove the concept of the duplicate form of the restricted hire car licence. The regulation will instead rely on reference to restricted hire car licences and the amendment will not impact on compliance and enforcement activity.

- Clause 106** Sections 179 and 180
Section 180 Hire car service operator—must tell authority about affiliation

Requirements for the maintenance and condition of hire vehicles are now attended to through service standards for hire cars.

A hire car service must declare an affiliation with a TBS. This will assist with effective compliance and enforcement, and is consistent with similar requirements for taxis and rideshare services. Failure to declare is a strict liability offence.

- Clause 107** Section 181 Hire car service operator—drivers to be licensed and skilled
Clause 108 New section 182 (1) (ba)
Clause 109 Section 182 (3) and (4)

Offences for failure to keep records by a hire car operator on the status of a driver's licence or exemption to provide hire car services are removed in favour of the

reliance on the principal requirement for drivers to be appropriately licensed or exempted (see section 181 of the Regulation).

Clause 110 Section 183 (2) (a)

To reduce regulatory costs, the period for records to be kept is reduced from four years to two years consistent with other provisions of the Regulation.

Clause 111 Section 183 (4), note

Clause 112 Sections 185 and 188 to 196

Clause 113 Division 5.2.3 to 5.2.5

Clause 114 Division 5.2.6 heading

Clause 115 Sections 219 and 220

Requirements to display accreditation numbers are removed to align with similar amendments to reduce unnecessary regulatory costs in the *Red Tape Reduction Legislation Amendment Act 2014*.

Matters for security equipment, offensive materials, lost property, non-compliance notices, carriage of goods and animals are now dealt under a common provision for bookable vehicles, see Part 3A.5.

Requirements in relation to hire car hirings and the conduct of hire car passengers are now dealt with under common provisions for bookable vehicles, see Division 3A.5.5.

Offences relating to safe driving behaviour (such as under the section 202(1)(a) and (b)) are now to be provided in service standards.

Customer service matters for hire car driver relating to cleanliness of a vehicle (section 197), behaviour (section 202(1)(c)) and dress (section 203) are no longer regulated, as they are matters of commercial practice.

There is a corresponding minor technical amendment to omit the Division 5.2.3 heading.

Clause 116 Section 221 (2) and (3)

These are technical drafting amendments to improve clarity as to the operation of the section.

Clause 117 Section 221 (6) and note

The Authority's authorisation of vehicles for particular events and periods of time is no longer required to be a notifiable instrument. This amendment supports the privacy and security arrangements for events, such as visiting international or diplomatic delegations. The amendment also reduces administration actions without affecting the suitability of vehicles used for hire car purposes.

Clause 118 New parts 3A.5 and 3A.6

Part 3A.5 Bookable vehicles generally

This part provides consolidated regulatory provisions for all bookable vehicle services and covers matters relating to security equipment, fares, fees (including surcharges),

and other operational requirements. Bookable vehicles as defined in section 29 of the Act include taxi, hire car and rideshare vehicles.

Division 3A.5.1 Bookable vehicles—security devices, etc

This division outlines arrangements for security devices in bookable vehicles which to support public and driver safety.

Section 221A Definitions—div 3A.5.2

This clause inserts definitions for security devices in bookable vehicles by recognising current practices involving the use of Global Positioning System (GPS) tracking, duress alarms and security camera equipment.

Noting the availability of security features through the use of smartphones, the regulation changes identify arrangements for when such devices are considered to be fitted for regulatory purposes. Australian Road Rules also apply in relation to the operation of smartphones within vehicles.

Section 221B Duress alarms in taxis

Section 221D Security cameras in taxis

These sections provide for offences if a security camera is not fitted to a taxi or a duress alarm is not accessible to the driver of a taxi. These are strict liability offences with maximum penalties of 20 penalty units. These arrangements again match and support current industry practice for driver safety, given the potential risks associated with anonymity associated with rank and hail hirings.

Previously, requirements for security cameras in taxis arose through the requirements of the taxi networks, with the regulation only specifying the standards required for security cameras in the event they were fitted.

Section 221C GPS tracking devices in bookable vehicles

This section inserts offences for the various participants involved in the hiring of bookable vehicles services to ensure that GPS tracking is available during the hiring as a public and driver safety measure. This is consistent with current industry practice for taxis and other bookable vehicles undertaking hirings through transport booking services.

Section 221E Interfere with security device, etc

This section provides a strict liability offence for a person who interferes with the operation of equipment supporting the safe operation of a bookable vehicle service and payment for services.

Section 221F Security device standards

Consistent with existing regulatory practice, the Authority may determine appropriate standards for the type and operation of security devices used in bookable vehicles. For example, requirements may need to be specified to support evidential standards and privacy.

Division 3A.5.2 Bookable vehicles—fees and surcharges

Section 221G Jump-the-queue fees prohibited for taxis

Jump-the-queue fees are additional fees offered by a transport booking service that allow prospective passengers to obtain a bookable vehicle hiring within a reduced wait time.

Offences apply for the offering or acceptance of such fees by taxis as they are inconsistent with the operation of a regulated fare structure that is designed in part to support equity and accessibility.

This is not intended to interfere with the ability of a taxi driver to request a fare deposit (under section 142 of the Regulation).

Section 221H Upfront tipping is a prohibited for taxis and rideshare

This section provides offences for transport booking services, rideshare drivers or taxi drivers offering or accepting an up-front tip.

Upfront tipping involves the solicitation of a gratuity to promote customer service (including reduced wait time) with the amount determined by the prospective hirer/passenger.

Upfront tipping is not supported by the availability market-supply information for a consumer decision as to the amount of gratuity that should be provided. Upfront tipping may also reduce access to transport services for those less able to offer upfront reward.

Upfront tipping is also considered to be inconsistent with the operation of regulated fares for taxi services.

There is no restriction on passengers providing unsolicited tips for good service at the end of a hiring.

Section 221I Bookable vehicle pricing during emergencies

Bookable vehicles service providers should not unduly benefit from the application of surge pricing and jump-the-queue fees during a declared state of alert or declared state of emergency when there may abnormal demand for services and limitations on supply. Offences will apply for transport booking services and drivers acting to apply such charges in emergency circumstances.

Section 221J Meaning of *payment surcharge*—div 3A.5.2
Section 221K Methods of payment and maximum payment surcharges
Section 221L Imposing more than the maximum payment surcharge
Section 221M Collecting more than the maximum payment surcharge

These changes will permit the Minister to determine arrangements for electronic payment surcharges in bookable vehicles. As announced with the Government's Taxi Industry Innovation Reforms, electronic payment surcharges are to be capped at five per cent (including GST) for taxis.

These actions are to support consumer outcomes by improving transparency and reducing the apparent inconsistent cross-subsidisation of operators arising from current market practices.

While concerned with the potential to negatively impact the development of competition, the regulation of electronic payment processing charges will be consistent with regulation of such surcharges in New South Wales. As New South Wales-based taxis are able to operate in the ACT, the regulated lower charge provides a competitive price advantage to those taxis.

These provisions make it an offence for defined persons to impose or collect more than the maximum allowable payment surcharge. The defences to the offence relate to the actions of another person, the knowledge of a defined person or the ability of the person to not impose the payments above the declared maximum surcharge.

Regulation of similar payments for hire cars and taxis are regulated by the Reserve Bank of Australia.

Division 3A.5.3 NSW bookable vehicles in the ACT

This division supports the arrangements for operators of cross-border bookable vehicle services between the ACT and New South Wales.

TBS providing booking services for hirings in the ACT will be subject to licensing requirements in the Territory.

Section 221N Declaration of ACT region
Section 221P Exemption for NSW bookable vehicles—ACT pick up, ACT region drop off—Act, s128(1)(a)

Section 216 permits the Authority to declare a stated area to be the 'ACT Region' for the purposes of the regulation which will be used to support the cross-border operation of public passenger services.

This is similar to the previous ability of the Authority to define an 'ACT Taxi Region'. Section 218 is to enable a more integrated approach to cross-border public passenger services by bookable vehicles within the defined ACT region.

As has previously operated for taxis under the now superseded ACT Taxi Region and restricted taxi licensing, a conditional exemption will permit NSW bookable vehicles to provide services wholly within the Territory subject to certain criteria.

Parties will be required to be authorised under NSW law to be able to provide an equivalent service and notify their operation under these arrangements to support compliance and enforcement activity. For bookable vehicle services, the persons providing services must be resident within the ACT region to support the integrity of the defined regional market. The Authority may determine additional criteria.

Access arrangements for existing NSW cross-border taxis (previously licensed as restricted taxis) will immediately continue under the new arrangements via underlying instruments. However, the operation of further reciprocal arrangements (including for other NSW-based and new Queanbeyan-based taxis, hire cars and ridesharing) is subject to negotiations with the New South Wales Government.

Section 221O Exemption for NSW bookable vehicles—ACT pick up, NSW drop off—Act, s128(1)(a)

Exemptions are provided under the Act for the operation of bookable vehicles authorised in other jurisdictions to drop off a passenger in the Territory when a hiring has begun in the other jurisdiction – see sections 52 (taxi), 60E (rideshare) and 74 (hire cars).

This section enables bookable vehicles authorised in New South Wales (NSW) to provide a booked service where the hiring begins in the Territory and finishes outside the ACT region (further arrangements may apply within the ACT region – see section 221P). This is to promote the financial viability of services into the Territory by enabling a bookable vehicle service provider to obtain a hiring for the return to NSW.

The exemption is matched by existing reciprocal arrangements with NSW that date back to 1999.

Division 3A.5.4 Bookable vehicle licensees

Section 221Q Meaning of *bookable vehicle licensee*—pt3A.5

This section defines bookable vehicle licensees to include those licensed to provide taxi, hire car and rideshare services.

Section 221R Bookable vehicle licensee—offensive material in vehicle

Bookable vehicle licensees may be liable to strict liability offences for offensive material within vehicles and any failure to comply with a direction to remove said materials. In conjunction with the changes to livery arrangements (refer to section 107), these provisions provide for authorised parties to address any inappropriate behaviour.

The new section draws together previous separate provisions relating to taxis and hire cars, and includes ridesharing.

See also related offences for bookable vehicle drivers, section 221X.

Section 221S Bookable vehicle licensee—non-compliance notice

This section provides an offence for use of bookable vehicle by a licensee when a noncompliance notice is in force for that vehicle.

The new section draws together previous provisions relating to taxis and hire cars, and includes ridesharing.

Division 3A.5.5 Bookable vehicle drivers

This new division draws together a range of previous provisions relating to taxi and hire car drivers, and includes ridesharing, ensuring a clear message of consistency in regulatory approach to certain actions by drivers across all modes of service.

Section 221T Bookable vehicle driver—must have knowledge and skills

Section 221U Knowledge and skills to be a bookable vehicle driver

The Authority may determine the (minimum) knowledge and skills of a bookable vehicle driver via a notifiable instrument. Under the Regulation the responsibility for ensuring skills, knowledge and training of service providers will now rest with industry. (Refer also to sections 70B, 70F, 97, 99, 181 and 182.)

If drivers do not meet the requirements and retain documentary evidence of their capabilities to support compliance and enforcement activity, they may be liable to strict liability offences.

Section 221V Bookable vehicle driver—carrying goods in vehicle

Section 221W Bookable vehicle driver—carrying animals in vehicle

These sections provide offences for the non-safe carriage of goods and animals in bookable vehicles. These are limited to the extent that they relate to the transport of people with disabilities including the transport of guide dogs and other assistance animals.

Section 221X Bookable vehicle driver—offensive material in vehicle

Bookable vehicle drivers may be liable to strict liability offences for offensive material within vehicles and any failure to comply with a direction to remove said materials. In conjunction with the changes to livery arrangements (refer to section 107) these provisions provide the ability for authorised parties to address any inappropriate behaviour.

The new section draws together previously separate provisions relating to taxis and hire cars, and includes ridesharing.

See also related offences for bookable vehicle licensees, section 221R.

Section 221Y Bookable vehicle driver—dropping off and picking up passengers

While bookable vehicle drivers would be generally expected to serve their passengers by providing services as directed, this section makes clear that the service is limited by safety and other lawful requirements. The passenger's mobility may also be considered by the driver in making their determination of preferred place for pick up or drop off.

The new section draws together previously separate provisions relating to taxis and hire cars, and includes ridesharing.

Section 222 Bookable vehicle driver—must not tout for passengers

This section provides an offence for bookable vehicle drivers who tout for passengers. This section is to support public amenity and safety and replace previous offences for soliciting by taxi and hire car drivers.

Section 223 Bookable vehicle driver—notifiable accidents

This section supports compliance and enforcement activity related to the licensing of bookable vehicle drivers by creating an offence if information is not provided to the Authority about accidents involving death or bodily injury within required timeframes.

Section 224 Bookable vehicle drivers—noncompliance notices

This section provides an offence for the use of a bookable vehicle by a licensee when a non-compliance notice is in force for that vehicle.

The new section draws together previous provisions relating to taxis and hire cars, and includes ridesharing.

Section 225 Bookable vehicle driver—directions by police officers or authorised people

This section provides the ability for police officers or authorised people to direct a driver to accept a hiring and how it is carried. A driver's failure to comply with a direction is an offence.

A driver is exempt from any other provision of the regulation that may otherwise prevent the directed hiring. The Territory must pay compensation to the driver for any damage, loss, injury or harm incurred in complying with the direction.

The new section draws together previously separate provisions relating to taxis and hire cars, and includes ridesharing.

Division 3A.5.6 Bookable vehicle passengers

This new division draws together a range of previous provisions relating to taxi and hire car passengers, and includes ridesharing, ensuring a clear message of consistency in the regulatory approach to certain actions by passengers.

Section 226 Bookable vehicle passenger—offensive behaviour or language

Bookable vehicle passengers will commit an offence where their behaviour is offensive or aggressive. Such actions by a passenger raise concerns for driver and public safety for example, through distraction of the driver or other vehicles on the road.

Section 227 Bookable vehicle passenger—carrying animals in vehicle

The section provides an offence by a passenger for the non-safe carriage of animals in a bookable vehicle. The offence excludes the transport of assistance animals. Due

to the training of assistance animals the risks of distraction from an animal within the vehicle are reduced. This provides an appropriate balance between public safety and community accessibility.

Section 228 Bookable vehicle passenger—lost property

The section makes clear the obligation on bookable vehicle passengers to notify an appropriate person of any property found in a bookable vehicle. Failure to do so is an offence.

Section 229 Bookable vehicle passenger—direction to get out of vehicle

This section permits a bookable vehicle driver, police officer or other authorised person to direct a person to not get in to a bookable vehicle, or get out of a bookable vehicle, in circumstances where there are risks of harm to the driver, the vehicle or the public. The risks provided include soiled clothing or goods, goods because of their size or shape (excluding those to alleviate the effect of a person's disability), and persons under the influence of alcohol or a drug.

The failure by a passenger to comply with a direction is an offence.

Any physical action to remove a person who does not comply is limited to police officers, who have appropriate training to respond to such situations. There is a greater and unacceptable risk of harm to other parties who may attempt to remove a non-compliant passenger.

Clause 119 Section 238 (1), penalty

The amendment is a technical change to align penalties across the Regulation for failure to maintain contact details.

Demand responsive services

Clause 120 Section 254 (2) (a)

This clause aligns reporting periods for Demand Responsive Vehicles with those for other services under the Regulation.

Clause 121 New section 279A

Section 279A Meaning of *DRS ticket*—div 6.2.4

Clause 122 Section 280(2), note

These clauses provide technical drafting amendments related to the relocation of the definition of DRS ticket within the division.

Clause 123 Section 320, definition of *service authority*, paragraphs (b) and(c)

Clause 124 Section 321 heading

Clause 125 Section 321 (1) (a), new note

Clause 126 Section 321 (1) (b)

Clause 127 Section 321 (2)

Clause 128 Section 321 (2) (a) to (d)

Clause 129 Section 321 (2) (e) to (g)

Clause 130 Section 321 (3)

Clause 131 Section 322 heading

Clause 132 Section 322 (1) (c)

- Clause 133** New section 322 (3)
Clause 134 Sections 324 to 326 headings
Clause 135 Section 326 (1) (a)
Clause 136 Section 326 (1) (b)
Clause 137 Section 326 (3)

These clauses provide drafting amendments to account for:

- the introduction of TBS, ridesharing and independent taxi service operators;
- definitions of relevant person through the regulation;
- replacing accepted service standards with service standards;
- allowing for approvals under the regulation in addition to licences, for example ITSO approvals; and
- moving to a waiting list and pre-approval system for the issue of taxi licences, see Division 3A.2.2.

Clause 138 New chapter 11

Chapter 11 Transitional—Road Transport (Taxi Industry Innovation) Amendment Regulation 2016 (No 1)

With significant reforms being undertaken in this amendment regulation, this chapter provides for the transitional arrangements to a new regulatory framework.

Part 11.1 Accreditation

Section 523 Application for accreditation to operate taxi network to be application for accreditation to operate transport booking service

This section enables an application for accreditation as a taxi network that has not been decided when the amendment commences to automatically be considered as an application to be a TBS.

Section 524 Accreditation to operate a taxi network to be accreditation to operate transport booking service

This section permits existing accreditations to operate taxi networks to carry over as accreditations to operate a TBS, subject to the maintenance of any existing terms and conditions and expiry of accreditation for a limited period. This will provide three months for existing taxi networks to transition to the new regulatory regime for transport booking services.

Section 525 Independent taxi operators taken to be accredited

This section provides three months for ITSO to transition to the new regulatory arrangements.

Section 526 Accepted service standards

This section allows for the transition of regulated service providers to new service standard arrangements with the commencement of the new regulatory framework.

Part 11.2 Transport booking services

Section 527 Exemption for interim rideshare booking services— Act, s 128 (1) (a)

This section provides interim rideshare booking services with a three month period in which to transition to the new regulatory arrangements which will directly capture their operation for the first time.

Part 11.3 Taxis

Section 528 Defined right reserve list to be taxi licence waiting list

In moving from the issue of taxi licences via ballot to waiting list, parties on the existing ballot reserve list will be automatically taken to hold a pre-approval for the waiting list, so as not to diminish any existing interests.

Section 529 Non-transferable leased taxi licences to be standard taxi licences

Section 530 Wheelchair-accessible taxi licences

These section permits existing non-transferable leased taxi licences and WAT licences to carry over as new licences (subject to the maintenance of any existing terms and conditions and expiry of accreditation).

Section 531 NSW cross-border taxi licences to expire

With ACT-NSW cross-border arrangements moving from a restricted licence to a conditional exemption approach, those NSW cross-border taxi licences held are taken to expire under the operation of this section. Prior NSW cross-border taxis are to be recognised for the purposes of the conditional exemption.

Section 532 Taxi drivers—knowledge and skills

The training qualifications of existing taxi drivers are recognised, with no additional requirements imposed in the transition to the new regulatory regime under the operation of this provision.

Section 533 Standards about security cameras in taxis

The existing specification for standards for security cameras in taxis is automatically transitioned to standards under the new section 221F.

Part 11.4 Ridesharing

Section 534 Exemption for interim rideshare drivers—Act s128(1)(a)

Section 535 Exemption for registered operators of interim rideshare vehicles—Act s128(1)(a)

These sections provide the transitional arrangements for rideshare service providers operating under a conditional exemption prior to 1 August 2016 to have sufficient time to transition to full licensing and accreditation arrangements.

Interim rideshare booking services will have up to three months to move to the new regulatory framework. The transitional period for rideshare drivers and vehicle licensee is up to six months.

Part 11.5 Hire cars

Section 536 Hire car drivers—knowledge and skills

The training qualifications of existing hire car drivers are recognised, with no additional requirements imposed in the transition to the new regulatory regime under the operation of this provision.

Part 11.6 Demand responsive services

Section 537 Applications for DRS authorisations

This section enables an application for authorisation as a demand responsive service that has not been decided when the amendments commence to be considered as an application.

Part 11.7 Expiry

Section 538 Expiry—ch 11

The transitional arrangements under the operation of this chapter will cease after two years.

Clause 139 Schedule 1 heading

Schedule 1 Service standards

Clause 140 Schedule 1, part 1.2

Part 1.2 Transport Booking Services

Clause 141 Schedule 1, part 1.3 heading

Part 1.3 Taxi services

Clause 142 Schedule 1, part 1.3, section 3 (a) and (b)

Clause 143 Schedule 1, part 1.3, section 3 (f)

Clause 144 Schedule 1, new part 1.3A

Part 1.3A Rideshare services

Clause 145 Schedule 1 Part 1.4, heading

Part 1.4 Hire car services

Clause 146 Schedule 1, part 1.4, section 4 (a) and (b)

Clause 147 Schedule 1, part 1.5

These provisions provide for the matters that may be considered in the making of service standards by the Authority under section 20C as amended. Principally, they substitute taxi network requirements for TBS requirements, consolidate hire car services and introduce rideshare.

The previous ability to specify service standards regarding the cleaning of vehicles is

removed.

References to the defunct restricted taxi service category are also removed.

Clause 148 Dictionary

This clause amends the dictionary to provide supporting definitions for items related to the amendments to the regulation, including matters such as new service standard arrangements, independent taxi service operators, the regulation of payment surcharges for bookable vehicle hirings and the recognition of new security devices.

Clause 149 Further amendments, mentions of *Minister*

Clause 150 Further amendments, mentions of *Minister*

Clause 151 Further amendments, mentions of *Minister's*

These clauses amend the delegation for authorisation of demand responsive services from the Minister to the Authority to be consistent with similar authorisations for other public passenger services under the Regulation.

Clause 152 Legislation repealed

This clause lists those disallowable and notifiable instruments that have been negated by reforms undertaken in the amendment regulation. Repeals of other instruments which are to be revised and updated for the reforms will be included in the new instruments as relevant.

Schedule 1 Other amendments

The amendments related to consequential changes result from amendments within the regulation. These are subject to further drafting.

Part 1.1 Road Transport (Driver Licensing) Regulation 2000

[1.1] Section 11, table 11, item 2

[1.13] Dictionary, new definition of *rideshare vehicle*

These amendments provide a new identifier for the condition of a driver's licence to denote the ability to drive a rideshare vehicle and define a rideshare vehicle by reference to the *Road Transport (Public Passenger Services) Act 2001*.

[1.2] Section 62

[1.3] Section 65 Public vehicle driver training courses and requirements

[1.4] Section 67 (1) (e)

[1.5] Section 67 (4)

[1.6] Section 79 Authority may require public vehicle driver to undertake training

[1.7] New section 88AB

Section 88AB Public vehicle licence—suspension—knowledge or skills

[1.8] Section 88A (1) (b)

[1.9] Section 88B (1) (b)

[1.10] Section 94A (3) and (5)

The age requirement for a public passenger vehicle licensee (of 20 years) is removed for bookable vehicle drivers, noting that driving skills are determined through licensing processes.

Knowledge and skill requirements for bookable vehicle drivers will generally be a matter for industry. The Authority will be able to determine such requirements through a notifiable instrument (sections 221U).

The Authority however will also retain the ability to approve training courses and require persons to undertake further training, as necessary.

The Authority may also suspend drivers who the Authority remains unsatisfied of their skills, consistent with the procedures under section 88AA of the Road Transport (Driver Licensing) Regulation.

English language requirements for taxi drivers will continue to be specified as part of the licensing process, however, consistent with other professions (such as teachers) and Australian migration law, recognition is given to the language skills of citizens and passport holders from certain countries.

Currently, only testing specified in the national minimum English language standards is recognised. It is intended that the Authority also will have the ability to recognise comparable tests of English language tests, such as certain internationally recognised tests used for migration purposes. This will remove unnecessary duplication of English language testing.

Additional requirements for bookable vehicle drivers to hold a full driver's licence for certain periods are removed, noting that driving skills are determined through licensing processes.

[1.10] Section 94A(3) and (5)

These subsections are omitted due to ACT-NSW cross border arrangements being implemented via a conditional exemption.

[1.11] Dictionary, new definition of *determined training requirements*

[1.12] Dictionary, definition of *restricted taxi*

[1.13] Dictionary, new definition of *rideshare vehicle*

These subsections are provide technical amendments to dictionary terms.

Part 1.2 Road Transport (General) Regulation 2000

[1.14] Section 16(1)(i)

This clause includes rideshare vehicle licences under the dishonour notice provisions for fees, charges and other amounts payable.

[1.15] Schedule 1, part 1.8

[1.16] Schedule 1, part 1.11, item 9

These clauses provide the consequential changes to reference internally reviewable decisions for the changes under the *Road Transport (Public Passenger Services) Regulation 2002* and those related for vehicle registration.

[1.17] Schedule 3, part 3.1, item 12

[1.18] Schedule 3, part 3.2, item 3

These clauses provide consequential amendments related to fees, charges and other amounts payable and refundable for relevant licences.

Part 1.3 Road Transport (Offences) Regulation 2005

- [1.19] Schedule 1, part 1.10, items 5 and 6
- [1.20] Schedule 1, part 1.10, item 14 and 15
- [1.21] Schedule 1, part 1.11, item 1
- [1.22] Schedule 1, part 1.11, items 5A and 5B
- [1.23] Schedule 1, part 1.11, item 33
- [1.24] Schedule 1, part 1.11, item 100 to 125
- [1.25] Schedule 1, part 1.11, items 128 and 132
- [1.26] Schedule 1, part 1.11, items 134 to 137
- [1.27] Schedule 1, part 1.11, items 139 to 146
- [1.28] Schedule 1, part 1.11, items 148 to 167
- [1.29] Schedule 1, part 1.11, items 174 to 182, 185, 186, 193 to 200
- [1.30] Schedule 1, part 1.11, item 205
- [1.31] Schedule 1, part 1.11, items 224 and 225
- [1.32] Schedule 1, part 1.11, items 228 and 229
- [1.33] Schedule 1, part 1.11, items 232 to 242
- [1.34] Schedule 1, part 1.11, items 250 to 256
- [1.35] Schedule 1, part 1.11, items 259, 260 and 265
- [1.36] Schedule 1, part 1.11, items 270 to 309
- [1.37] Schedule 1, part 1.11, item 314
- [1.38] Schedule 1, part 1.11, item 416

These clauses amend the lists of offences to incorporate those new offences arising from the amendment regulations, omission of those no longer relevant or superseded and revise terms and references as needed.

The described penalties including infringements are measured and consistent with the range of existing penalties.

Part 1.4 Road Transport (Safety and Traffic Management) Regulation 2000

- [1.39] New section 11A
- [1.40] New section 12A
- [1.41] Section 13A
- [1.42] Dictionary, new definition of *rideshare vehicle*

These clauses provide access for pick up and drop off of passengers for rideshare vehicles and hire cars consistent with that for taxis – including bicycle lanes, clearways and loading zones. This should afford greater opportunity for safe passenger entry and egress. These vehicles are all required to be identifiable for regulatory purposes.

Part 1.5 Road Transport (Third-Party Insurance) Regulation 2008

- [1.43] Section 13
- [1.44] Schedule 1, section 1.1, definition of *rideshare vehicle*

These clause remove interim insurance arrangements that had been provided for rideshare services and defines rideshare vehicles by reference to the *Road Transport (Public Passenger Services) Act 2001*.

Part 1.6 *Road Transport (Vehicle Registration) Regulation 2000*

**[1.45] Section 32AA
Section 32AA Deciding applications for registration—public passenger vehicles**

This clause removes the ability for the Authority to decide on a (defined) public passenger vehicle registration based on the cleanliness of the vehicle. Rideshare vehicles are not included in those defined vehicles due to their operation also for private purposes.

[1.46] Section 84 (1) (g)

The registration of a rideshare vehicle is excluded from the suspension and cancellation in association with the operation of a public passenger vehicle due to their operation also for private purposes. This will not affect the ability of the Authority to suspend or cancel accreditation of the rideshare vehicle licence under the *Road Transport (Public Passenger Services) Act 2001*.

[1.47] Schedule 1, part 1.5 division 1.5.3

This clause removes the requirement for public passenger light vehicles to have to carry a fire extinguisher.

[1.48] Dictionary, definition of *bus*

This clause amends the definition of bus by reference to the *Road Transport (Public Passenger Services) Act 2001*.

Part 1.7 *Workers Compensation Regulation 2002*

[1.49] New section 4A

Section 4A Regular contractors and casuals—Act, s 11 (2) (c)

This clause provides for access to workers compensation for bookable vehicle drivers in instances involving restricted TBS affiliation agreements and contracts of bailment.

Restrictions on TBS affiliation remove the ability for a contracted driver to be considered fully independent.

The application of workers compensation arrangements to contracts of bailment aligns the Territory with the majority of other Australian jurisdictions.