

CLAUSE NOTES

On-demand Passenger Transport Services Industry (Miscellaneous Amendments) Bill 2020

Long title This Bill seeks to amend three pieces of legislation to implement the new on-demand passenger transport framework. The Acts being amended are: *Passenger Transport Services Act 2011*, the *Taxi and Hire Vehicle Industries Act 2008*, and the *Economic Regulator Act 2009*.

Part 1 – Preliminary

Clause 1 Short title

This clause provides that, once passed, the Bill will be cited as the *On-Demand Passenger Transport Services (Miscellaneous Amendments) Act 2020*.

Clause 2 Commencement

This clause provides for the provisions of the Bill to commence on the day or days it is proclaimed. It is anticipated this will occur in stages.

Part 2 – Economic Regulator Act 2009 Amended

Clause 3 Principal Act

In this part, the *Economic Regulator Act 2009* is referred to as the Principal Act to which the amendments apply.

Clause 4 Section 45A inserted

This clause sets out a range of matters for the Regulator to consider when conducting an inquiry into the methodology used for setting taxi fares. These include: efficiency in the supply of taxi services, the protection of consumers regarding taxi fares and service standards, and the quality, reliability and safety standards.

Part 3 – Passenger Transport Services Act 2011 Amended

Clause 5 Principal Act

In this part, the *Passenger Transport Services Act 2011* is referred to as the Principal Act to which the amendments apply.

Clause 6 Section 3 amended (Interpretation)

This clause amends the section of the Principal Act which defines terms used throughout that Act by adding or amending the following definitions:

- **affiliated operator** – an operator who holds their own accreditation but (by agreement) uses the systems of a booking service provider (such as a taxi booking service);
- **annual fee** – this refers to the setting of a prescribed fee for accredited operators and relates to clause 12 of this Bill;
- **authorised officer** – provides that an officer who is an authorised officer under the *Traffic Act 1925* in relation either to that Act or the *Vehicle and Traffic Act 1999* is also an authorised officer under the Principal Act. Authorised officers have various powers, including the issuance of infringement notices or the inspection of vehicles. Further detail on these powers are set out in clause 22 of this Bill;
- **booking service provider** – this Bill introduces a booking service provider function. This is set out in clause 7;
- **improvement notice** – this relates to the new mechanism to provide for the issue of improvement notices where a person has, is or is likely to contravene certain requirements. The scope through which improvement notices can be issued is set out in clause 22;
- **on-demand passenger transport service** – this provides a general term which encompasses taxis, restricted hire vehicles, luxury hire cars, ride-sourcing services and any other paid, small passenger transport service which is deemed to be a transport concern. Transport concerns exclude, for example, community transport services – refer to section 11(5) of the Principal Act;
- **registered operator** – has the same meaning as in the *Vehicle and Traffic Act 1999*. It refers to the person who either currently is or, if cancelled or expired, most recently was, the registered operator of a vehicle;
- **ride-sourcing driver, ride-sourcing software, and ride-sourcing vehicle.** Currently ride-sourcing is authorised through an exemption made by the Transport Commission. This Bill formalises that interim arrangement, including the associated safety systems, such as electronic payment, satisfaction ratings and the recording of trip details.

- **small passenger vehicle** – the existing definition is amended to include all vehicles which are approved as wheelchair-accessible taxis. The current definition only includes vehicles with fewer than 10 seats, however, wheelchair-accessible taxis can have up to 12 seats.

Clause 7 Section 8A inserted

This clause sets out the meaning of a booking service provider to broaden the scope of the regulation of such providers. It captures both ride-sourcing providers and taxi booking services.

Clause 8 Section 10 amended

This clause amends section 10, which provides that a person must not operate a passenger transport service unless they are appropriately accredited, and specifies penalties for breaches of that requirement.

The amendments clarify that the same penalties apply for operating a passenger transport service for which the accreditation is suspended. It also provides that the penalties do not apply to ride-sourcing drivers who have an arrangement with a booking service provider.

Clause 9 Section 11 amended (What is a passenger transport service operator?)

Section 11(1) provides the definition of a passenger transport service operator, which informs whether or not they must be accredited. This clause amends that section to include a booking service provider in that definition,

Clause 10 Section 21 amended (Approval of application for accreditation)

Section 21(3) sets out a list of the conditions the Commission may place on accreditation. This clause adds *'that the accredited operator develop and maintain a system for managing risks to safety and security relating to the performance of the service'* to that list.

Clause 11 Section 23 amended (Accreditation Register)

Section 23 establishes a requirement for the Commission to maintain an accreditation register. This clause amends that section by enabling the Commission to gather information and evidence from accredited operators to ensure the completeness of that register. It also provides that there is a penalty for failing to comply with the requirement to provide requested information or evidence.

Penalties apply for contravening this section.

Clause 12 Section 24 substituted

This clause relates to **continuity fees** and **annual administration fees**.

Section 24 as set out in the Principal Act currently provides that accreditation is ongoing subject to the payment of continuity fees, which can be prescribed in regulations. Failure to pay the continuity fee can cause an accreditation to expire. This clause repeals and replaces that section with two sections:

Section 24

The replacement section 24 retains the same power to set continuity fees in regulations. However, instead of expiring on a failure to pay the continuity fee, the accreditation would instead become suspended.

Continuity fees may apply to any or all classes of accreditation.

Section 24A

The annual fee set out in this new section replaces the annual licence administration fee in the *Taxi and Hire Vehicle Industries Act 2008*, which is repealed in Part 4 of this Bill. The annual fees apply to accreditations for on-demand passenger transport services only and are payable based on the number of vehicles used to provide the service.

As with continuity fees, failure to pay an annual fee causes the accreditation to become suspended.

Section 24A also provides that the annual fee is not payable by affiliated operators, unless the booking service provider to which they are affiliated has not paid the annual fee and its accreditation suspended or cancelled.

Annual fee can be set in regulations.

Clause 13 Section 31 amended (Cancellation and suspension, &c., of accreditation)

This clause amends section 31 of the Principal Act to provide that the Commission has the right to cancel or suspend an accreditation, or make it probationary, if the operator, or the relevant responsible person, has failed to comply with an improvement notice.

The clause also provides that section 31(3), which provides that the Commission's primary concern in considering cancelling, suspending or making probationary an accreditation must be public safety, does not apply where the suspension or cancellation relates to a failure to pay a fee. This is to ensure that the clause is consistent with the automatic suspension or cancellation provisions for failure to pay a fee. Automatic suspension or cancellation occurs under several sections depending on licence type - refer, for example, to section 35.

The clause also amends section 31(5) to clarify that all fees imposed by the Principal Act (not just continuity fees) are payable even when an accreditation is suspended.

Clause 14 Section 33 amended (Notification requirements, &c.)

This clause amends section 33 to use gender neutral language.

Clause 15 Part 2, Division 5 inserted

This clause inserts Division 5 into the Principal Act, which relates to booking service providers. It comprises two sections:

Section 33A – Duty of booking service providers in relation to ride-sourcing drivers

This section provides that booking service providers must notify the Commission if they become aware that a ride-sourcing driver using their system also operates a passenger transport service not through their system, without being accredited to do so.

An example of a notifiable situation might be a ride-sourcing driver picking up customers 'off-app'.

In these circumstances the Commission would also be able to require the booking service provider to prevent the driver from using its service.

Penalties are prescribed.

Section 33B – Notification of Commission when vehicle first used for on-demand passenger transport service

This section requires operators accredited for an on-demand passenger transport service (for example, taxis and ride-sourcing services) to notify the Commission within 14 days after a vehicle begins to be used for that service.

Penalties are prescribed.

Clause 16 Part 2A Safety Requirements inserted

This clause inserts Part 2A, which contains a number of new sections that relate to safety requirements for on-demand passenger transport services. Part 2A adopts a 'chain of responsibility' model, which provides that each person who is a party in the chain of responsibility shares responsibility for safety.

Section 33C – Interpretation of Part 2A

This section provides definitions for terms used in Part 2A. The key definition is for **party in the chain of responsibility**, which is defined as including each of the following parties as they relate to a service (where applicable):

- the accredited operator;
- a relevant responsible person for the accredited operator;
- an affiliated operator to a booking service who is accredited;
- the driver of the vehicle; and
- the registered operator of the vehicle.

Section 33D – Reasonably practicable

This section provides a definition for the term 'reasonably practicable'. The term is used throughout Part 2A.

The section provides that, in determining what is 'reasonably practicable', consideration must be given to what is (or was, at the time), reasonably able to be done by the person, factoring in all relevant matters. Factors to be considered include:

- the likelihood of the specific hazard or risk occurring;
- the degree of harm that might result from that hazard or risk;
- what the person knows, or reasonably ought to know, about the hazard or risk, or about eliminating or minimising that hazard or risk;
- the availability and suitability of ways to eliminate or minimise the risk; and
- the cost associated with eliminating or minimising the risk (considering the above factors), including whether it is grossly disproportionate to the risk.

Section 33E – Principles of shared responsibility

This section provides that safety is the shared responsibility of each person who is a party in the chain or responsibility. The level and nature of responsibility depends on:

- the person's functions;
- the nature of the risks; and
- the person's capacity to control, eliminate or minimise the risks.

Section 33F – Principles applying to safety duties

This section provides the principles which relate to safety duties. These include that:

- a safety duty may not be transferred to another person;
- a person may have more than one safety duty if more than one provision of Part 2A applies to them; and
- more than one person can have the same safety duty at the same time, and all must comply with it to the extent that they have the capacity to influence and control the matter.

Section 33G – Safety duties of accredited operators and relevant responsible persons

This section provides the safety duties of accredited operators (and relevant responsible persons), other than affiliated operators, for on-demand passenger transport services. The duties include:

- to ensure, as far as reasonably practicable, the safety of:
 - drivers providing the service;
 - other road users; and
 - passengers.
- to eliminate risks to safety, as far as reasonably practicable;
- if elimination is not reasonably practicable, to minimise risks to safety as much as reasonably practicable;

- to not directly or indirectly cause or encourage another person to breach a safety duty;
- to comply, and ensure compliance by others involved with the provision of the service (to the extent that they can control or influence compliance), with:
 - laws relating to the safe use of a vehicle, including under the Principal Act; and
 - any safety, security and related standards approved by the Commission under section 16 of the Principal Act.

Section 33H – Safety duty of affiliated operators and relevant responsible persons

This section provides the safety duties of affiliated operators (and relevant responsible persons) for on-demand passenger transport services. The duties include:

- to take reasonable care that their acts or omissions do not adversely affect the safety of others;
- to comply, so far as reasonably able, with any reasonable instructions given by the booking service provide to ensure compliance with:
 - laws relating to the safe use of a vehicle, including under the Principal Act; and
 - any safety, security and related standards approved by the Commission under section 16 of the Principal Act.
- to co-operate with any reasonable policy or procedure of the booking service provider relating to the safe and secure provision of the service; and
- to not directly or indirectly cause or encourage another person to breach a safety duty.

Section 33I – Safety duty of driver

This section provides the safety duties for drivers in relation to the provision of on-demand passenger transport services, which includes:

- to take reasonable care for their own safety;
- to take reasonable care that their acts or omissions do not adversely affect the safety of other persons;
- to comply, so far as they are reasonably able, with reasonable instructions given by the accredited operator to ensure compliance with:
 - laws relating to the safe use of a vehicle, including under the Principal Act; and
 - any safety, security and related standards approved by the Commission under section 16 of the Principal Act.
- to co-operate with any reasonable policy or procedure of accredited operator relating to the safe and secure provision of the service; and

- to not directly or indirectly cause or encourage another person to breach a safety duty.

Section 33J - Safety duty of registered operator of vehicle

This section provides the safety duties for the registered operator of a vehicle used for the provision of on-demand passenger transport services. The duties include:

- to take reasonable care that their acts or omissions do not adversely affect the safety of other persons;
- to comply, so far as they are reasonably able, with reasonable instructions given by the accredited operator to ensure compliance with:
 - laws relating to the safe use of a vehicle, including under the Principal Act; and
 - any safety, security and related standards approved by the Commission under section 16 of the Principal Act.
- to co-operate with any reasonable policy or procedure of accredited operator relating to the safe and secure provision of the service; and
- to not directly or indirectly cause or encourage another person to breach a safety duty.

Section 33K – Offences

This section provides the offences which relate to safety duties. Penalties vary based on whether the offender is an individual, or a body corporate or body politic (for example, a company, association or government agency).

Three offences apply to a person on whom a safety duty is imposed, and are, in order of severity:

- recklessly engaging in conduct, or failing to engage in conduct, relating to the operation of on-demand passenger transport services, which exposes a person to a risk of death, serious injury or serious illness;
- failing to comply with a safety duty and thereby exposing a person to a risk of death, serious injury or serious illness; and
- failure to comply with a safety duty.

The first offence (Section 33k(1)(b)) can attract a term of imprisonment. The other offences attract significant fines only.

Section 33L – Relationship with certain safety legislation

This section relates to how the provisions of the Principal Act, as amended, interact with the *Work Health and Safety Act 2012*. It provides that:

- if both acts contain provisions that deal with the same matter, and it is possible to comply with both, both provisions apply;
- if both Acts contain provisions that deal with the same matter, and it is *not* possible to comply with both, the relevant provision of the *Work Health and Safety Act 2012* applies;

- evidence of a contravention of the Principal Act is admissible as evidence for an offence under the *Work Health and Safety Act 2012*;
- if an act, omission or circumstance is an offence under both Acts, the offender is not liable to be punished twice for the same offence; and
- compliance with the Principal Act or the regulations is not evidence of compliance with the *Work Health and Safety Act 2012* or the common law duty of care.

Section 33M – Duty to advise Commission of accidents, incidents and notifiable findings

This section provides that accredited operators must notify the Commission of accidents, incidents and findings that are prescribed in regulations. It also requires that operators notify the Commission of steps taken to prevent a recurrence of that accident, incident or, in the case of a notifiable finding, the failure that lead to that finding.

Unlike the other sections in Part 2A, this section applies to all accredited operators – not just those accredited for the provision of on-demand passenger transport services. This includes, for example, bus operators.

Failure to notify under this section attracts a fine.

Clause 17 Section 44 amended (Emergency operator, &c., of regular passenger services)

This clause amends section 44 to use gender neutral language.

Clause 18 Section 45 amended (Trial operation of regular passenger services)

This clause amends section 45 to use gender neutral language.

Clause 19 Section 51 amended (Service eligibility guidelines)

This clause amends section 51 to use gender neutral language.

Clause 20 Section 60AA inserted

This clause establishes an administration fund consisting of the annual fees payable under the Principal Act as amended (refer clause 12). It replaces the administration fund which was created under the *Taxi and Hire Vehicle Industries Act 2008*, which is repealed by this Bill – refer to Part 4, clause 28.

Clause 21 Section 60A inserted

This clause inserts section 60A, which contains provisions relating to affiliated operators. These include:

- A requirement to notify the Commission within 14 days of ceasing to be an affiliated operator. Failure to do so attracts a fine.
- A power for the Commission to require, by notice, affiliated operators or relevant booking service providers to keep records (specified in that notice). Failure to keep such records by affiliated operators or booking service providers attracts a fine.

- A power for the Commission to provide information about booking service providers to affiliated operators, and the same in reverse.

Clause 22 Sections 61A, 61B, 61C, 61D and 61E inserted

This clause inserts various sections which relate to compliance functions. These include new powers for the Commission to issue certain compliance notices. This would allow for an early intervention on issues of compliance before more punitive action such as probation, suspension or cancellation are necessary.

Section 61A – Improvement notices

Section 61A provides that the Commission can issue improvement notices where it is of the opinion that a person has contravened, is contravening, or is likely to contravene a provision of the Principal Act or the regulations made under it. The section:

- specifies the details which must be included in improvement notices;
- provides that a failure to comply with a notice is an offence which attracts a fine;
- provides defences to the offence of failing to comply with a notice; and
- allows the Commission to cancel or amend an improvement notice;

Section 61B – Infringement notices

Section 61B provides that certain offences under the Principal Act or associated regulations may be deemed to be 'infringement offences' in the regulations. It also provides that the Commission or an authorised officer can issue and serve infringement notices if they reasonably believe an infringement offence has been committed. The section:

- prevents infringement notices from being served on individuals under the age of 16;
- specifies that infringement notices must be made in accordance with the *Monetary Penalties Enforcement Act 2005*, which contains general requirements for the form of infringement notices; and
- provides that infringement notices cannot relate to more than 4 offences;
- allows the penalties to be set in regulations.

Section 61C – Formal warnings

Section 61C provides that the Commission may give a written formal warning to a person who contravenes a provision of the Principal Act. This is limited to circumstances where:

- the person had taken reasonable steps to prevent the contravention;
- the person was unaware of the contravention; and
- it is appropriate to deal with the contravention with a formal warning.

The section also provides the Commission with the power to withdraw a formal warning within 21 days. Finally, it states that the Commission cannot take proceedings, including by giving an infringement notice, in relation to a

contravention where a formal warning has been made unless it first withdraws that formal warning.

Section 61D – Powers of police officers and authorised officers

Section 61D provides various powers to police officers and authorised officers.

Powers relating to vehicles

The section includes the power to require a driver of a vehicle the officer suspects to be used to provide a passenger transport service to:

- stop the vehicle;
- park the vehicle;
- permit the inspection of the vehicle by the officer;
- provide proof of a driver licence;
- provide proof of authority to perform the service being performed (for example, a relevant ancillary certificate and/or evidence of accreditation);
- operate a mobile phone or other electronic device which is in the vehicle or possessed by the person in accordance with the instructions of the officer;
- permit the officer to operate a mobile phone or other electronic device which is in the vehicle or possessed by the person in accordance with the instructions of the officer; or
- answer questions which relate to compliance with the Principal Act

Failure to do any of the above is an offence which attracts a fine.

Powers relating to premises

The section also includes the power for police officers, authorised officers, the Commission, or persons authorised by the Commission by a written instrument, to enter and remain on premises in order to:

- inspect any vehicles at the premises;
- inspect documents which:
 - have been issued by the Commission under the Principal Act;
 - are required to be kept at the premises for the purposes of the Principal Act; or
 - are relevant to the enforcement of the Principal Act.
- inspect any mobile phone or other electronic device kept at the premises which is believed to contain relevant records; or
- inspect a business which is conducted at the premises and which relates to the provision of passenger transport services.

In conducting such an inspection, the officer or the Commission may also:

- direct a person to answer reasonable questions relating to the inspection; and
- make copies of, or take extracts from, documents which are required to be kept by, or are relevant to the enforcement of, the Principal Act (including electronic records).

Failure to comply with an above direction without reasonable excuse is an offence which attracts a fine.

The above powers of entry are limited by subsection 6. They can only be exercised at a reasonable time. If they relate to a residential premises, entry is only permissible with the consent of the owner or with a warrant under the *Search Warrants Act 1997*.

Section 61E – Hindering

Section 61E makes it an offence for a person to hinder or obstruct functions or the use of powers under the Principal Act. Committing the offence attracts a fine.

Clause 23 Section 63A inserted

This clause provides that a person must not provide information required through the Principal Act that is either:

- prepared by another person, and which the provider knows to contain false or misleading statements; or
- likely to mislead the person it is provided to if it is provided without other information.

Penalties apply for failure to comply with this section. These include fines or, for individuals, potential terms of imprisonment, each of varying levels depending on whether it is a first or second offence.

Clause 24 Section 71 inserted

This clause authorises the transitional provisions in Schedule 2 to take effect as set out in clause 25.

Clause 25 Schedule 2 inserted

This clause inserts Schedule 2, which allows a transitional period for existing booking service providers to meet the new requirements in the Principal Act as amended by this Bill.

In effect, it gives existing booking service providers a 6-month period from the commencement of section 71 (as inserted by clause 24) to apply for accreditation.

Part 4 – Taxi and Hire Vehicle Industries Act 2008 Amended

Clause 26 Principal Act

In this part, the *Taxi and Hire Vehicle Industries Act 2008* is referred to as the Principal Act to which the amendments apply.

Clause 27 Section 3 amended (Interpretation)

This clause amends the section of the Principal Act which defines terms used throughout that Act by adding or amending definitions for various terms

- **authorised officer** – the definition is amended to clarify that persons authorised under the *Vehicle and Traffic Act 1999* are also authorised for the purposes of the Principal Act. Authorised officers have the power to seize licence number plates where the licence holder fails to pay the applicable annual administration fee;
- **investigation** – provides that the term ‘investigation’ refers to investigations by the Tasmanian Economic Regulator into reserve prices for new owner-operator taxi licences;
- **Regulator** – provides that the term ‘Regulator’ refers to the Tasmanian Economic Regulator;
- **remote taxi area** – provides that an area which is identified as a remote taxi area on the electronic map (refer to section 90A as inserted by clause 58) is a remote taxi area for the purposes of the Principal Act.
- **reserve price** – the definition is amended to provide for the setting of the reserve price by the Tasmanian Economic Regulator, rather than a static price set in legislation as is currently the case;
- **taxi area** – defines the area in, to or from which a taxi service may operate – the areas are set out in regulations, and greater detail will be available electronically under section 90A (refer to clause 58); and
- **taxi dispatch service** – this term is to be deleted as the concept of a ‘taxi dispatch service’ has been replaced by booking service providers as defined in the *Passenger Transport Services Act 2011*.

Clause 28 Section 8 repealed

This clause repeals the creation of the fund into which administration fees for licences are currently paid. Administration fees will instead be payable under the *Passenger Transport Services Act 2011*, so the Bill moves the creation of the fund to that Act instead – refer to part 3, clause 20.

Clause 29 Section 13 and 14 repealed

This clause repeals the following sections of the Principal Act:

- section 13, which requires the payment of an annual administration fee by holders of perpetual taxi licences; and

- section 14, which outlines the consequences of a failure to pay that administration fee.

Administration fees have instead been moved to the *Passenger Transport Services Act 2011* – refer to part 3, clause 12.

Clause 30 Section 15 amended (Transfer of ownership of perpetual taxi licence)

Section 14 of the Principal Act currently states that, where the holder of a perpetual taxi licence fails to pay the administration fee, their licence lapses. Section 15(2) further provides that where a lapsed licence is transferred, the fees due are payable by the new licence holder.

As section 14 has been repealed (see part 4, clause 29 above), section 15(2) is no longer relevant and is repealed by clause 26 of the Bill.

Under this Bill, instead of a licence lapsing on failure to pay an administration fee, the accreditation of the operator would be suspended (refer to part 3, clause 12 – insertion of 24A(2)(b)) and the operator would be unable to operate a passenger transport service.

Clause 31 Section 18 amended (New owner-operator taxi licence to be made available in place of surrendered perpetual taxi licence)

Section 18 of the Principal Act requires that the Commission makes a new licence available for sale by tender when a perpetual licence is surrendered. Subsection 3 requires that the tendered price cannot be less than the reserve price.

This clause clarifies subsection 3 by specifying that the tendered price cannot be less than the reserve price *for the relevant year*, as the reserve price would no longer be a static legislated price – refer to part 4, clause 41.

Clause 32 Section 18A inserted

This section causes a perpetual taxi licence to become suspended if the accreditation of the responsible operator is suspended. The licence suspension lifts either on the accreditation being unsuspended, or when another person becomes the responsible operator.

The section also causes the licence to become suspended on the cancellation of the responsible operator's accreditation. That suspension ends when another person becomes the responsible operator.

The concept of a licence becoming suspended replaces that of a licence lapsing, which is repealed by this Bill – refer to clause 29. Operating a taxi under the purported authority of a suspended licence attracts a fine.

Clause 33 Section 20 amended (New owner-operator taxi licence to be made available in place of inactive perpetual taxi licence)

Section 20 of the Principal Act requires that the Commission makes a new licence available for sale by tender when a perpetual licence is declared inactive. Subsection 4 requires that the tendered price cannot be less than the reserve price.

This clause clarifies subsection 4 by specifying that the tendered price cannot be less than the reserve price *for the relevant year*, as the reserve price would no longer be a static legislated price – refer to part 4, clause 46.

Clause 34 Section 23 amended (Number of owner-operator taxi licences to be made available)

Section 23 of the Principal Act states that the Commission must make new owner operator licences available in each taxi area before 30 September every year, equivalent to five per cent of the total number of perpetual and owner-operator licences available in that area, or one, whichever is greater. This clause amends that section by:

- omitting the existing subsections 1A, 1B and 1C, which allowed the Minister to prevent the issue of new licences but only in the years 2016 to 2018;
- replacing those subsections with new ones, which:
 - remove the requirement to issue new licences in the years 2020 to 2024 (inclusive); and
 - gives the Commission the power to issue new licences where there are insufficient taxis to meet demand, and to develop guidelines for making such a determination.
- changing the reference to the reserve price in subsections 3, 4 and 5 so that they specify the reserve price *for that year*, to reflect the change from a static, legislated reserve price to one set by the Tasmanian Economic Regulator;
- changing references to “this section” to “subsection (1)” – this is a drafting improvement only, not a substantive change;

Clause 35 Section 24 amended (Application for owner-operator taxi licence)

This clause amends the section of the Principal Act which establishes the application process for an owner-operator taxi licence (OOTL), to clarify that only individuals (not partnerships) can apply for an OOTL.

Clause 36 Sections 29 and 30 repealed

This clause repeals the following sections of the Principal Act:

- section 29, which requires the payment of an annual administration fee by holders of owner-operator taxi licences; and
- section 30, which outlines the consequences of a failure to pay that administration fee.

Administration fees have instead been moved to the *Passenger Transport Services Act 2011* – refer to part 3, clause 12.

Clause 37 Section 31 amended (Transfer of owner-operator taxi licence to another person)

This clause amends the section of the Principal Act which relates to transfer of owner-operator taxi licences by:

- amending section 31(3) to clarify that OOTLs can only be transferred to individuals (not partnerships); and
- replacing section 31(4). This currently provides the Commission with the power to refuse a transfer where a licence is lapsed, suspended or subject to a notice of intention to suspend or cancel. The replacement provides that the Commission may refuse a transfer if:
 - the licence is suspended as a result of section 35 (see below – automatic licence suspension where accreditation is suspended);
 - a notice of intention to suspend or cancel has been issued under section 36 (which provides for suspension or cancellation in circumstances prescribed in the regulations); or
 - a notice of intention to suspend or cancel accreditation has been given under the *Passenger Transport Services Act 2011* and a determination has not yet been made about that suspension or cancellation.

Clause 38 Section 35 substituted

This clause replaces section 35 of the Principal Act, which currently states that where the accreditation of an owner-operator taxi licence holder is cancelled, that operator must either transfer or surrender their licence.

The new section provides that, where accreditation is suspended or cancelled (through the amendments to the *Passenger Transport Services Act 2011*, as set out in this Bill – see clause 12), the licence is automatically suspended or cancelled. In the case of an accreditation suspension, the licence suspension would be for the same period.

Penalties apply for operating a taxi during a period of suspension.

Clause 39 Section 37 amended (New owner-operator taxi licence to be made available in place of surrendered or cancelled owner-operator taxi licence)

Section 37 of the Principal Act requires that the Commission makes a new licence available for sale by tender when an owner-operator taxi licence is surrendered or cancelled. Subsection 3 requires that the tendered price cannot be less than the reserve price.

This clause clarifies subsection 3 by specifying that the tendered price cannot be less than the reserve price *for the relevant year*, as the reserve price would no longer be a static legislated price – refer to part 4, clause 46.

Clause 40 Section 41 amended (Application for wheelchair-accessible taxi licence)

This clause amends the section of the Principal Act which establishes the application process for a wheelchair-accessible taxi licence (WAT), by:

- removing the age requirements for vehicles, which are in Schedule I to the Principal Act and to be consistent between remote and non-remote taxi areas – refer part 4, clause 66; and
- clarifying that only individuals (not partnerships) can apply for a WAT.

Clause 41 Sections 47 and 48 repealed

This clause repeals the following sections of the Principal Act:

- section 47, which requires the payment of an annual administration fee by holders of wheelchair-accessible taxi licences; and
- section 48, which outlines the consequences of a failure to pay that administration fee.

Administration fees have instead been moved to the *Passenger Transport Services Act 2011* – refer to part 3, clause 12.

Clause 42 Section 49 amended (Transfer of wheelchair-accessible taxi licence to another person)

This clause amends the section of the Principal Act which relates to transfer of wheelchair-accessible taxi licences to another *person* by:

- amending section 49(3) to clarify that WATs can only be transferred to individuals (not partnerships); and
- replacing section 49(4). This currently provides the Commission with the power to refuse a transfer where a licence is lapsed, suspended or subject to a notice of intention to suspend or cancel. The replacement provides that the Commission may refuse a transfer if:
 - o the licence is suspended as a result of section 54 (see below – automatic licence suspension where accreditation is suspended);

- o a notice of intention to suspend or cancel has been issued under section 55 (which provides for suspension or cancellation in circumstances prescribed in the regulations); or
- o a notice of intention to suspend or cancel accreditation has been given under the *Passenger Transport Services Act 2011* and a determination has not yet been made about that suspension or cancellation.

Clause 43 Section 50 amended (Transfer of wheelchair-accessible taxi licence to another vehicle)

This clause amends the section of the Principal Act which relates to transfer of wheelchair-accessible taxi licences to another vehicle by replacing section 50(3). This currently provides the Commission with the power to refuse a transfer where a licence is lapsed, suspended or subject to a notice of intention to suspend or cancel.

The replacement provides that the Commission may refuse a transfer if:

- the licence is suspended as a result of section 54 (see below – automatic licence suspension where accreditation is suspended);
- a notice of intention to suspend or cancel has been issued under section 55 (which provides for suspension or cancellation in circumstances prescribed in the regulations); or
- a notice of intention to suspend or cancel accreditation has been given under the *Passenger Transport Services Act 2011* and a determination has not yet been made about that suspension or cancellation.

Clause 44 Section 54 substituted

This clause replaces section 54 of the Principal Act, which currently states that where the accreditation of a wheelchair-accessible taxi licence holder is cancelled, that operator must either transfer or surrender their licence.

The new section will instead provide that, where accreditation is suspended or cancelled (see the *Passenger Transport Services Act 2011*, as amended by this Bill), the licence is automatically suspended or cancelled. In the case of an accreditation suspension, the licence suspension would be for the same period.

Penalties apply for operating a taxi during a period of suspension.

Clause 45 Sections 66A and 66B inserted

This clause inserts two new sections.

Section 66A, which states that the Commission can make “taxi fare orders”.
Taxi fare orders:

- o establish maximum fares, tariffs, and other amounts that may be charged by taxis relating to their service;
- o replace the power to make regulations on the calculations of fares and charges, and the operation of fare schedules, which is repealed by this Bill – refer to part 4, clause 68;
- o must be made with regard to any recommendations made by the Tasmanian Economic Regulator under the *Economic Regulator Act 2009*;
- o may provide a method to calculate annual increases to maximum fares, tariffs or other amounts; and
- o may provide for different amounts in different circumstances.

Section 66B, which provides for multiple hirers. This would allow for 2 or more persons, not known to one another, to hire a vehicle under separate hiring arrangements. The clause provides the following conditions under which such an arrangement could occur:

- all of the hirers must agree;
- all of the hirers must be travelling in the same locality and the same general direction;
- each hirer cannot be required to pay more than 75 per cent of the fare at the end of the portion of route where they cease to be a passenger, and is informed of the amount of the fare they will be required to pay before the service begins; and
- the taxi service is not being provided under a timetable.

Drivers can be fined for failure to comply with the above conditions.

Clause 46 **Part 3, Division 6 inserted**

This clause inserts Division 6 into the Principal Act, which relates to the determination of reserve prices for owner-operator taxi licences.

Currently the reserve price is a static, legislated amount which varies based on the taxi area and is held in Schedule 3 of the Principal Act. Clause 46 instead provides that the reserve price is set by the Tasmanian Economic Regulator (the Regulator).

66C. Reserve price determinations

This section provides for the making of reserve price determinations by the Regulator.

Subsection 1 states that, once this part of the Bill commences, the reserve price will remain at the current price until the first determination is made. After the first determination is made, the reserve price will be set out in the determination.

Subsection 2 requires the Regulator to:

- make a determination before 1 December after this section of the Bill commences (refer to section 66D for the effect of this determination);
- make a determination before 1 December in the last year to which the most recent determination applies (i.e. before the last one 'expires'), *unless* the previous determination was to set the reserve price to zero. Refer to subsection 7 for the effect of this determination.

Subsection 3 requires that each determination must set out the reserve price for each taxi area to which it relates, and include a statement explaining the reasons for each of those reserve prices.

Subsection 4 provides the object of reserve price declarations, which is to:

- assist in the development of efficient pricing and competition; and
- promote a safe taxi transport system that responds adequately to consumer demand.

Subsection 5 clarifies that reserve prices can differ between taxi areas and by calendar year.

Subsection 6 provides that reserve price determinations are each to be made in relation to four calendar years *except* for the first determination (refer subsection (2)(a)) or a 'replacement' determination (refer subsection (2)(c)).

Subsection 7 (read in conjunction with subsection 2 above) requires that the Regulator make a determination prior to 1 December in the last year of the previous four year period. This new determination must relate to the following four calendar years.

Subsections 8 and 9 provides a process for 'replacing' a prior determination, which requires notifying the Minister and the Treasurer so that they can provide terms of reference – refer to section 66E(3) as inserted by this Bill.

Subsection 10 states that the Regulator does not need to make a reserve price determination for taxi areas where the reserve price was previously determined to be zero.

Subsections 11 and 12 establish the requirements for publishing of reserve price determinations – both in the *Gazette* and on the Regulator's website.

66D. First determination of reserve price

Subsection 1 (read in conjunction with subsection 2 above) requires that the Regulator make a determination before the first day of the first December after this section of the Bill commences. This determination must relate to the remaining period of that year, and the 4 years that follow.

Subsections 2 and 3 prevents the Regulator reducing the reserve price for any given taxi area by more than 10 per cent per year (for the part-year and subsequent 4 years to which that determination relates).

66E. Investigation into reserve prices

This section requires the Regulator to conduct investigations prior to making reserve price determinations, subject to certain terms of reference.

The terms of reference for the first investigation are the 10 per cent rule – refer to section 66D subsections 2 and 3 above.

The terms of reference for all other investigations are those matters provided in section 66F, and any additional matters given to the Regulator by the Minister and Treasurer, which:

- must be given at least 11 months before the existing determination 'expires', *unless* for a 'replacement' determination (see section 66C, subsections 8 and 9);
- can give additional terms of reference, and/or specify which matters are to be considered most important.

Subsections 5 and 6 require the Regulator to give notice of an investigation to taxi licence holders, and sets out the requirements for that notice.

Subsections 7 to 9 set out the manner in which an investigation is conducted. This includes a broad power for the Regulator to conduct investigations in a manner it considers appropriate. Investigations paid for by the Commission.

66F. Matters to be considered in investigation

This section establishes the terms of reference for investigations by the Regulator other than the first investigation – refer to section 66E as inserted by this Bill. The matters to be considered are:

- the impact on existing licence holders;
- market trends relating to the amount paid for taxi licence transfers;
- the number of licences transferred in a period (to be determined by the Regulator) before the investigation; and
- any other matter the Regulator considers relevant.

66G. Hearings in relation to investigations

This section establishes the rules and requirements for hearings conducted as part of an investigation under section 66E as inserted by this Bill. Note that the Regulator would not be *required* to conduct hearings, but would be empowered to do so.

The rules and requirements are that:

- notice of the hearings be given, and the nature of the notice is to articulate the purpose, time and place of that hearing;
- hearings be held in public, unless the Regulator directs that they be private (in part or whole) for reasons of public interest, confidentiality, or commercial sensitivity; and
- where the Regulator makes the above direction, it also directs that publishing evidence or documents from the hearing be restricted or prohibited.

66H. Requiring person to give evidence or provide documents

This section provides for the Regulator to require a person to:

- attend before the Regulator to answer questions;
- provide documents; and/or
- provide other information

which are relevant to the investigation.

There is also provision to pay allowances for persons required to attend before the Regulator, set by the Minister by notice in the *Gazette* unless prescribed in the regulations. Subsection 5 provides that such notices are not statutory rules for the purposes of the *Rules Publication Act 1953*.

The section also allows the Regulator to require the Commission to provide information that the Commission is empowered to collect under Section 97 of the Principal Act, as amended by this Bill – refer to part 4, clause 63.

The Regulator cannot require the provision of Cabinet records.

66I. Use of documents or other information

This section empowers the Regulator to examine, take possession of, or take copies of documents, information or submissions relating to the investigation.

Subsection 1(b) and (c)

These subsections provide that the Regulator may:

- retain documents or information (including information provided by the Commission) for as long as it needs them for the investigation;
- retain written submissions indefinitely; and
- allow inspection, copying or extracting of documents in the possession of the Regulator by persons who would normally be entitled to inspect those documents.

Subsection 2

This subsection allows the Regulator to prohibit or restrict the publication, in whole or in part, answers, documents, information or submissions made in the course of an investigation.

Subsections 3 and 4

These subsections allow the Regulator to make answers, documents, information or written submissions provided in the course of an investigation to any person it considers appropriate, *except* where:

- it has prohibited or restricted publication under subsection 2;
- it is exempt under the *Freedom of Information Act 1991* or the *Right to Information Act 2009*;
- it is commercially sensitive; or
- it is information provided by the Commission.

66J. Offences

This section provides the offences under Division 6 which can attract a penalty. The offences are:

- failure to attend before the Regulator, or to provide documents or information;
- contravening a direction to make a hearing private;
- contravening a direction not to publish documents, answers, information or written submissions;
- providing false or misleading information to the Regulator;
- hindering or interfering with an investigation; and
- taking action, or threatening to take action, against the employment or engagement of a person for assisting an investigation.

Penalties apply for committing an offence under this section.

Subsection 2 provides that a person is not required to incriminate themselves.

66K. Independence of Regulator

This section provides that the Regulator is independent and not required to follow directions from the Minister.

Clause 47 Section 69 amended (Application for luxury hire car licence)

This clause amends the section of the Principal Act which establishes the application process for a luxury hire car licence (LHC), to:

- reduce the application fee, which is currently \$5,000, by \$1,000 per year from the year in which the section commences until it reaches \$0 after four years; and
- clarify that only individuals (not partnerships) can apply for an LHC.

Clause 48 Sections 75 and 76 repealed

This clause repeals the following sections of the Principal Act:

- section 75, which requires the payment of an annual administration fee by holders of luxury hire car licences; and
- section 76, which outlines the consequences of a failure to pay that administration fee.

Administration fees have instead been moved to the *Passenger Transport Services Act 2011* – refer to part 3, clause 12.

Clause 49 Section 77 amended (Transfer of luxury hire car licence to another person)

This clause amends the section of the Principal Act which relates to transfer of luxury hire car licences to another person by:

- amending section 77(3) to clarify that LHCs can only be transferred to individuals (not partnerships); and
- replacing section 77(4). This currently provides the Commission with the power to refuse a transfer where a licence is lapsed, suspended or subject to a notice of intention to suspend or cancel. The replacement provides that the Commission may refuse a transfer if:
 - the licence is suspended as a result of section 81 (see below – automatic licence suspension where accreditation is suspended);
 - a notice of intention to suspend or cancel has been issued under section 82 (which provides for suspension or cancellation in circumstances prescribed in the regulations); or
 - a notice of intention to suspend or cancel accreditation has been given under the *Passenger Transport Services Act 2011* and a determination has not yet been made about that suspension or cancellation.

Clause 50 Section 78 amended (Transfer of luxury hire car licence to another vehicle)

This clause amends the section of the Principal Act which relates to transfer of luxury hire car licences to another vehicle by replacing section 78(3). This currently provides the Commission with the power to refuse a transfer where a licence is lapsed, suspended or subject to a notice of intention to suspend or cancel.

The replacement provides that the Commission may refuse a transfer if:

- the licence is suspended as a result of section 81 (see below – automatic licence suspension where accreditation is suspended);
- a notice of intention to suspend or cancel has been issued under section 82 (which provides for suspension or cancellation in circumstances prescribed in the regulations); or
- a notice of intention to suspend or cancel accreditation has been given under the *Passenger Transport Services Act 2011* and a determination has not yet been made about that suspension or cancellation.

Clause 51 Section 81 substituted

This clause replaces section 81 of the Principal Act, which currently states that where the accreditation of a luxury hire car licence holder is cancelled, that operator must either transfer or surrender their licence.

The new section would instead provide that, where accreditation is suspended or cancelled (through the amendments to the *Passenger Transport Services Act 2011*, as set out in this Bill – see clause 12), the licence is automatically suspended or cancelled. In the case of an accreditation suspension, the licence suspension would be for the same period.

Penalties apply for operating a luxury hire car during a period of suspension.

Clause 52 Section 84E amended (Application for restricted hire vehicle licence)

This clause amends the section of the Principal Act which establishes the application process for a restricted hire vehicle licence (RHV), to clarify that only individuals (not partnerships) can apply for an RHV.

Clause 53 Section 84L amended (Transfer of certain restricted hire vehicle licences to other vehicles)

This clause amends the section of the Principal Act which relates to the transfer of RHV licences to another vehicle by replacing section 84L(4). This currently provides the Commission with the power to refuse a transfer where a licence is lapsed, suspended or subject to a notice of intention to suspend or cancel.

The replacement provides that the Commission may refuse a transfer if:

- the licence is suspended as a result of section 84O (see below – automatic licence suspension where accreditation is suspended);
- a notice of intention to suspend or cancel has been issued under section 84P (which provides for suspension or cancellation in circumstances prescribed in the regulations); or
- a notice of intention to suspend or cancel accreditation has been given under the *Passenger Transport Services Act 2011* and a determination has not yet been made about that suspension or cancellation.

Clause 54 Section 84O substituted

This clause replaces section 81 of the Principal Act, which currently states that where the accreditation of a restricted hire vehicle licence holder is cancelled, that operator must either transfer or surrender their licence.

The new section would instead provide that, where accreditation is suspended or cancelled (through the amendments to the *Passenger Transport Services Act 2011*, as set out in this Bill – see clause 12), the licence is automatically suspended or cancelled. In the case of an accreditation suspension, the licence suspension would be for the same period.

Penalties apply for operating a restricted hire vehicle during a period of suspension.

Clause 55 Section 85 amended (Register of licences)

This clause allows the Commission to publish online the details of licences, including the licence number plate, which have been suspended or cancelled, and of licence number plates that are cancelled or void.

Clause 56 Section 86 amended (Effect of licence being suspended)

This clause removes references to licences lapsing, as there is no longer any concept of licences lapsing in the Principal Act. Licences can instead be suspended. Suspension of a licence can occur either automatically (as a result of an accreditation being suspended), or by a decision of the Commission for other circumstances prescribed in regulations – for example, if the holder of the licence fails to comply with a condition of the licence.

Clause 57 Section 89A inserted

Section 89A allows an authorised officer to seize a licence number plate which relates to a licence that has been suspended or cancelled. This replaces a similar power to seize a licence number plate which related to a lapsed licence, as suspension effectively replaces lapse as the result of a failure to pay an annual administration fee.

The section requires the Commission to issue a new licence number plate if the license ceases to be suspended.

Clause 58 Section 90A inserted

This clause requires taxi areas to be described by way of a map rather than descriptive text, as currently captured in Schedule 2 of the Principal Act. Maps or descriptive text will be included in the regulations to prescribe the taxi areas. In addition, this clause would also require the Commission to make an electronic map available to the public to provide greater detail and clarity on the boundaries of taxi areas. Schedule 2 will be repealed through clause 67 of this Bill.

Section 90A also provides that the Commission is to notify affected licence holders and publish a notice in the *Gazette* where there is a change to the electronic map which affects the boundaries of a taxi area.

Subsection 8 provides certainty to licence holders that where one or more licences are in effect, changes cannot be made that have the effect of making the taxi areas no longer exist by a change to the regulations.

Subsection 9 provides that a certificate, signed by the Secretary of the responsible Department, can be used in legal proceedings as evidence of the boundaries of a taxi area at a specific time if required.

Clause 59 Section 91B amended (Falsely configuring vehicles as taxis)

The Principal Act currently prohibits a person from making a vehicle, which is not a taxi, appear to be a taxi by a number of means (for example, by installing a taximeter). This clause extends that definition to specifically prohibit the same actions for maxi-taxis.

Clause 60 Section 91E amended (General small passenger vehicle offences)

Section 91E of the Principal Act states that a person who uses a small passenger vehicle on a public street to carry a passenger for money is committing an offence, unless they are operating a taxi, luxury hire car or restricted hire vehicle. This does not apply if the vehicle is not being used to operate a passenger transport service (as defined) or the person or class of persons is exempt from requiring operator accreditation under the *Passenger Transport Services Act 2011* (which is currently the case for ride-sourcing services).

In keeping with the revised framework, this clause amends that section, primarily to also specify that it is not an offence under this section for ride-sourcing services, or where the person is accredited to operate an on-demand passenger transport service by means of the vehicle.

Clause 61 Section 93 amended (Use of accessible vehicle with standard taxi licence)

Section 93 of the Principal Act allows the Commission to authorise vehicles, operating in accordance with a perpetual taxi licence or owner-operator taxi licence, to operate a service equivalent to a wheelchair-accessible taxi in taxi

areas where there is no wheelchair-accessible taxi licence in force subject to certain conditions.

This clause amends those conditions to update the requirement for fitting a wheelchair restraint, so that the restraint would need to be compliant with the latest Australian/New Zealand Standard – AS/NZS 10542.1:2015.

Clause 62 Section 94 amended (Security cameras)

Section 94 of the Principal Act allows the Commission to approve a type or make of security camera by *Gazette*.

This clause would update that provision to allow the Commission to instead approve the requirements to be satisfied by a security camera. This has the potential to provide for greater flexibility for licence holders without significantly increasing the administrative burden for the Commission.

Clause 63 Section 97 substituted

Section 97 of the Principal Act allows to Commission to require licence owners, holders or responsible operators to provide information relating to the operation of the service provided under the licence.

This clause amends that section. There will still a broad requirement to provide information relating to the operation of the service, but there will also be a specific requirement to provide information about the price paid on transferring or leasing a licence. This data would be used by the Regulator in making reserve price determinations – refer to Part 3, Division 6 as inserted by clause 46 of this Bill.

Penalties will apply for failing to provide this information.

Clause 64 Section 98 amended (Booking service provider)

Section 98 of the Principal Act requires taxi dispatch services to provide information relating to the operation of those services where requested by the Commission. This clause amends that section to change 'taxi dispatch service' to 'booking service provider', consistent with the changes made to the *Passenger Transport Services Act 2011* by part 3 of this Bill.

Clause 65 Section 103 amended (Savings and transitional provisions)

This clause requires that any money in the general administration fund created by section 8 of the Principal Act, which is abolished by this Bill, be transferred to the new fund established by this Bill under the *Passenger Transport Services Act 2011* – refer to part 3, clause 20.

Clause 66 Schedule I amended (Criteria for Wheelchair-accessible taxis, Remote Area wheelchair-accessible taxis and Substitute Wheelchair-accessible taxis)

Schedule 1 to the Principal Act provides criteria for wheelchair-accessible taxis. This clause amends that criteria by:

- updating the requirements for fitting a wheelchair restraint, so that the restraint would need to be compliant with the latest Australian/New Zealand Standard – AS/NZS 10542.1:2015;
- changing the age requirements for approval so that vehicles in all taxi areas, remote or otherwise, must be no more than 7 years old when approved. This is consistent with the existing requirements for remote area taxis, but is a change for taxis operating in other areas which currently have to be less than 12 months old with an odometer reading of less than 1,000 kilometres. The maximum age would remain in the regulations, and is currently 10 years old but is proposed to change to 12 years old; and
- removing the discretion for the Commission to approve vehicles which are older than the maximum age.

Clause 67 Schedules 2, 3 and 4 amended

The Bill moves taxi areas from the descriptive text included in Schedule 2 of the current Act to regulations.

This will support the presentation of information spatially and will provide a more dynamic mechanism to manage taxi areas boundary to make adjustment as needed, such as to capture new subdivisions and similar developments in regions that are not currently part of existing taxi areas.

This clause repeals the following schedules to the Principal Act:

- Schedule 2, which defines the remote taxi areas. These are to instead be set in regulations – refer to clause 58.
- Schedule 3, which sets the reserve prices for owner-operator taxi licences. These will instead be set by the Regulator - refer to part 4, clause 41; and
- Schedule 4, which sets the taxi areas by describing them in text. These will instead be contained in regulations, and electronically in greater detail – refer part 4, clause 58.

Clause 68 Schedule 5 amended (Matters in Respect of Which Regulations May Be Made)

Schedule 5 to the Principal Act provides a list of matters to which regulations may be made. This clause amends that list to remove the calculation of fares and charges, and the operation of fare schedules, from that list.

These matters would now be covered by taxi fare orders, as allowed for by section 66A which is inserted by this Bill – refer to part 4, clause 45.

Clause 69 Repeal of Act

As an amendment Bill, this clause clarifies that the Bill will be repealed a year after the last provision comes into effect.