

Review of the  
*Taxi and Luxury Hire Car Industries Act 1995*

**Paper 10 – Technical Issues,  
Administration and Enforcement**

Department of Infrastructure, Energy and Resources

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*This is the tenth in a series of discussion papers to be produced by the Department of Infrastructure, Energy and Resources about the taxi industry.*

*These papers will address issues that were identified during the work of the Taxi Industry Review Group established in 1999 to review Tasmania's taxi legislation, as well as issues of ongoing interest.*

*The purpose of these papers is to seek input on these issues from members of the taxi industry, through the Taxi Industry Reference Group, and other interested stakeholders.*

*The issues in this paper are presented for discussion and do not represent Government policy.*

*The work of the Reference Group and the input from stakeholders will contribute to a process of rewriting the Taxi and Luxury Hire Car Industries Act 1995 and making new regulations to replace the Taxi Industry Regulations 1996 and the Taxi Industry (Taxi Areas) Regulations 1996, proposed for 2007.*

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## 1. Introduction

This paper is one of a series of discussion papers addressing issues that were identified during the work of the Taxi Industry Review Group, which was established in 1999 to review Tasmania's taxi legislation, and other issues of ongoing interest.

Recommendations from the Review Group resulted in the development of the *Taxi and Luxury Hire Car Industries Amendment Act 2003*, which was enacted in December 2003. The major features of the legislation included the requirement for new taxi licences to be made available every year, and the introduction of wheelchair accessible taxis (WATs). During the review, several issues were identified that were outside the scope of the Review Group's Terms of Reference. These issues were to be addressed after the commencement of the new Act.

The Department of Infrastructure, Energy and Resources (DIER) has established a Taxi Industry Reference Group to provide advice on a range of issues affecting the industry, including the issues identified by the Review Group. The Review Group recommended that a Working Party be established to consider the issues that required further work outside the Review<sup>1</sup>. The Reference Group will fulfil this role.

Initially the issues considered by the Reference Group will be those which will inform a process of rewriting the *Taxi and Luxury Hire Car Industries Act 1995* (the Act), the *Taxi Industry Regulations 1996* (the Taxi Regulations) and the *Taxi Industry (Taxi Areas) Regulations 1996* (the Taxi Areas Regulations) proposed to be completed in 2007. Further information on the Reference Group's work can be found in [Section 8](#).

This discussion paper considers a range of issues related to the operation of the Act and the Regulations that have been identified as requiring attention in this review. For example, the Act includes a number of provisions that set out the transition process from the previous legislation to the 1995 Act. Some of these provisions were removed through the 2003 Amendment Act, but other transitional provisions remain. As the transition process is complete, the relevant sections of the Act are now redundant. There are also a number of technical provisions in both the Act and the Taxi Regulations that have been identified as problematic, for example, because they are difficult to enforce or because they are impractical to implement. This paper seeks to reconsider such provisions and offer alternatives.

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<sup>1</sup> Taxi Industry Review Group: *Taxi Industry Act 1995 and luxury hire car legislation* Regulatory Impact Statement, April 2000, page 12.

It should be noted that this paper does not present a review of every provision of the legislation. Rather, the discussion is limited to those provisions which have been identified as involving an administrative or enforcement issue where an amendment appears to be necessary.

This paper differs from other papers in this Review in that it covers a large range of very specific issues, rather than identifying general issues that require the development of industry and government policy positions. The number of significant policy issues covered in this paper is relatively small, and the focus is heavily on the detail of each provision.

Unlike other papers, this paper does not provide an overview of relevant regulations from other jurisdictions, unless it has been considered necessary to canvas alternative approaches to matters of technical regulation. An overview of regulations from other jurisdictions on all issues would be a prohibitively large undertaking and is unlikely to provide any benefit in most instances. Likewise, the paper does not include a 'background' section, as the background relevant to the issues is covered in the body of the paper. Background discussions on various parts of the Act are detailed in the earlier discussion papers produced during this Review.

## 2. Issues

The *Taxi and Luxury Hire Car Industries Act 1995* regulates the provision of taxi, luxury hire car (LHC) and wheelchair accessible taxi services. Despite regulation under the one Act, some administrative issues are not managed consistently across the three service types. While separate regulation is necessary of those matters which are distinguishing features of the services, there is no reason for minor administrative issues to be handled differently and serves only to add to administrative cost and create confusion for those operators who seek to provide multiple services.

This issue also exists with the *Taxi Industry Regulations 1996*, which provide for inconsistent administrative handling of the taxi and WAT services. The Luxury Hire Car Industry Regulations are closely aligned with the provisions relating to WAT services in most instances, however there are some minor administrative inconsistencies here as well.

The inconsistencies in the existing regulation of the services are most apparent when considering fees and penalties. For example, a taxi driver is subject to a fine of up to 10 Penalty Units for failure to travel to the destination by the route nominated by the passenger or the most direct route,<sup>2</sup> however no equivalent provision applies to the driver of a WAT. Consequently a review of all fees and penalties has been undertaken to consider any discrepancies and whether there is justification for retention of the differences.

Also considered are the administrative provisions relating to management of licences for the purposes of consistency and efficiency.

Over time, various schemes have been introduced to the administration of the industry to enhance the licensing regime. These are usually applicable for a short period with a particular aim. Consequently once the scheme or process is complete, the provisions do not need to remain in the legislation. The necessity to maintain such arrangements in the current Act and Regulations has been investigated for the purposes of this Paper.

As the purpose of the wider review is to inform the rewriting of the Act, the Taxi Regulations and the the Taxi Areas Regulations, many provisions in the legislation will be subject to change. This paper will not attempt to revisit those issues. Rather, the reader will be referred to the relevant paper in the series which deals with the issue in depth.

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<sup>2</sup> *Taxi Industry Regulations 1996*, Subregulation 22(3).

### 3. Minor Administrative Matters

#### 3.1. Application of the Act

The Act in relation to taxis applies only to taxi areas. This means that in those areas of the State which have not been defined as taxi areas, the Act has no effect. Nevertheless, the *Passenger Transport Act 1997*, which does have effect throughout the State, would prevent the operation of a vehicle as a taxi exclusively within those areas. In order to improve the coverage of the Act in relation to taxis, it has been suggested that the areas of the State that are not currently defined as taxi areas, be specified as such under the Taxi Area Regulations (as discussed in Paper 7- Radio Rooms).

The Act applies to the whole of the State in the case of LHCs.

##### 3.1.1. Questions

1. Should coverage of the Act in relation to taxis be extended to include the whole of the State by defining the remaining areas of the State to be taxi areas?

#### 3.2. Control of the Minister

Section 8 of the Act provides that the Commission is subject to the control of the Minister and allows the Minister to give a direction to the Commission in the exercise of its powers under the Act. However, one exception to this direction giving power is provided, in that the Minister may not give a direction regarding the issue of a perpetual taxi licence or a temporary taxi licence.

The rationale for this exception is not evident from Parliamentary proceedings when the legislation was first made. However, it is considered that a power to direct the Commission regarding licence issue would undermine the process established in the Act for issue of new licences. In the case of perpetual licences a tender process is adopted under which all parties who make a valid application should have equal standing. In the case of temporary licences, the Commission is required to assess whether an applicant meets the criteria, such as holding appropriate accreditation in order to ensure the public interest.

Given this, it is considered that the Minister should be also be prevented from directing the Commission regarding the issue of any licence, as the issue of WAT and LHC licences also involves a formal process and requires the Commission to determine whether applicants meet minimum criteria.

**3.2.1. Questions**

2. Should the power of the Minister to direct the Commission be limited in relation to the issuing of all types of licences, rather than just perpetual taxi licences and temporary taxi licences?

**3.3. Funds for taxi areas**

Section 13 of the Act provides for a separate fund to be created for each taxi area for buy back of licences, promotion and development of the industry and the administration of the Act. Revenue for the funds is to be derived from conversion fees, fees from the grant of temporary licences, borrowings and money provided by Parliament.

Given that:

- conversion fees are no longer payable with the conclusion of the scheme;
- few temporary licences, if any, have been issued in recent times; and
- it is unlikely that additional money from the other sources would be directed to the funds without a legislated program for its expenditure,

there is likely to be little incoming revenue. Furthermore, a major reason for retaining the funds no longer exists as the period for buy back of licences is now expired. For so few transactions, the requirement to maintain nineteen separate area funds is administratively complex and inefficient. A further complexity with this provision is the requirement for either an agreement, or a direction from the Minister, before funds can be utilised.

It is proposed that, for administrative efficiency, the area funds be collapsed into a single fund with accounting separation to identify the balances as they pertain to particular taxi areas with the purpose of the fund being to continue the promotion and development of the taxi industry. It is suggested that the Commission with the support of the taxi industry, should have authority to expend funds rather than requiring approval of the Minister.

Section 15 of the Act also requires that a separate administration fund be established and maintained for the collection of annual fees payable for perpetual taxi licences. These monies are to be used for the administration of the Act. It is not clear why annual fees payable for other licence categories are not also included in this fund.

Annual fees payable in respect of all licences should also be directed to that fund so as to ensure that all licence holders contribute to the cost of administering legislation which governs all the service types.

**3.3.1. Questions**

3. Should the taxi area funds be consolidated into a single fund with accounting separation only to record the amounts relating to each area?
4. Should the Commission, with the support of industry, be given authority to expend funds for taxi areas rather than requiring approval from the Minister?
5. Should annual licence fees for all licence categories be directed to the administration of the Act, rather than only fees for perpetual taxi licences?

**3.4. Accredited Taxi Groups**

Sections 24 and 25 of the Act provide for groups of perpetual taxi licence holders to organise together to provide taxi services in the whole or a part of a taxi area under an agreement with the Commission. Such agreement may include the provision of a particular service or standard of service with some level of reporting to the Commission. An agreement may allow a group to adopt a range of initiatives, including setting its own fares, charging different fares or sealing its own meters.

To date the provision has been little used and it is considered that there are several reasons for this. The first is that there may be some confusion in calling such groups 'accredited taxi groups', given the separate introduction of operator accreditation under the Passenger Transport Act. To overcome this, it is proposed to avoid the words 'accredited' or 'accreditation' to describe groups established under sections 24 and 25 of the Act. An acceptable alternative might be 'authorised' or 'approved'.

The second reason that operators may choose not to pursue forming such a group is the list of requirements that the Commission may impose in order to strike an agreement with a group. These include requiring presentation of annual business plans and maintaining records of response times. It is proposed to clarify the Act to provide that the Commission may require any one or a combination of such matters to the extent that it is necessary to verify that the proposed service that the group intends to deliver is being provided to the benefit of its customers.

Another reason for limited use of the provision is that it is currently limited to holders of perpetual taxi licences. It is not clear what benefit arises from excluding WAT licence holders from participating in these taxi groups.

To improve the relevance of grouping, it is also suggested that a complementary change is required to subregulation 19(3), which provides that an agreement must be in the public interest

for the benefit of all persons using taxis in the area to which it relates. Given that the intent of the grouping provision is to allow operators to seek to provide a particular service or standard of service, this will be undermined if it must be to the benefit of all users. Such a requirement would not allow operators to target a specific user group, for example, those on low incomes requiring discount services.

It is hoped that these types of amendments will make the provisions more attractive to those sectors of the industry interested in taking an innovative approach to customer service and marketing, and facilitate new and different approaches. To ensure that the Commission is well placed to oversee such arrangements and ensure the public interest, some amendment to regulation 20 is proposed to enable the Commission to revoke an agreement where the outcomes are unsatisfactory for passengers. The Act currently permits cancellation or variation by the Commission only where the group fails to discharge its responsibilities under the agreement. Any additional powers to revoke or cancel an agreement should require the same notice provisions with opportunity for representations from the group as are currently afforded under the existing provisions.

A further change would be required to the definition of 'fare agreement' at regulation 3 and regulations 11(2)(i) and 23(2)(c) to reflect any change to the naming of accredited taxi groups.

#### **3.4.1. Questions**

6. Should the term 'accredited taxi groups' be changed to 'authorised taxi groups' or 'approved taxi groups' or some other term which avoids the use of the word 'accredited'?
7. Should WAT operators be permitted to participate in and form taxi groups rather than only perpetual taxi operators?
8. Should taxi groups be required to provide services that benefit all taxi users in a taxi area in order to be permitted to form a group, or should it be sufficient to show a benefit to a target group of customers?
9. Should the Commission have an additional power to revoke or cancel an agreement with a taxi group in the event that the outcomes are unsatisfactory for passengers?

#### **3.5. Reporting requirements**

Regulation 28T requires WAT licensees to report to the Commission each month on the total number of wheelchair passengers transported by that operator for that month. In practice, the Commission has not required WAT licensees to present a report under this provision.

Regulation 28V provides that a WAT licensee is entitled to a trip subsidy for each trip on which a wheelchair passenger is carried. Payment of the subsidy is made on the basis of Transport Access Scheme (TAS) vouchers presented by the licensee. To date, presentation of vouchers has been deemed to be sufficient for meeting the requirements of both regulations.

While the Commission does not intend to duplicate the reporting obligations on licensees, the overlap between the provisions is not addressed here. Reporting requirements for WAT licensees is addressed more fully in Paper 4 – Wheelchair Accessible Taxis.

### **3.6. Trip Subsidy**

Regulation 28V provides for the payment of a trip subsidy to a WAT licensee for each trip on which a wheelchair passenger is carried. The purpose of the subsidy is to take account of the higher cost of vehicles and their fit out for use as wheelchair-accessible taxis. This issue is more fully described in Paper 4 – Wheelchair Accessible Taxis.

Under the TAS, it has become apparent that there is a need to define 'wheelchair passenger', as some users of the scheme present as wheelchair-reliant but have only standard vouchers, while yet other passengers present using wheelchairs or other wheeled mobility devices as a matter of preference or due to short term medical necessity. These passengers are ineligible for the TAS scheme.

Determining who is a wheelchair passenger is also a relevant issue for payment of the trip subsidy. If a definition of 'wheelchair passenger' is developed for the TAS, the same definition should be used for payment of the trip subsidy for the avoidance of confusion.

DIER pays the trip subsidy and honours TAS vouchers without having reliable means of ensuring that the passenger concerned is a wheelchair passenger. For the sake of objectivity in determining who is to be eligible for both the TAS scheme and the trip subsidy the following definition is suggested:

A wheelchair passenger is a passenger who presents in a wheelchair and is a member of the TAS administered by the Department of Infrastructure, Energy and Resources evidenced by means of presenting to the driver a valid TAS membership card issued by the Department at the completion of the journey.

#### **3.6.1. Questions**

10. Should a definition of the term 'wheelchair passenger' be developed?

### 3.7. Lost property

Regulation 31 requires a driver or responsible operator to deliver found items to the nearest police station if they remain unclaimed for 7 days. It is unclear from this provision what 'nearest police station' means. It could mean the police station nearest to which the taxi is located at a point in time, or nearest the location at which the business or driver is ordinarily located.

To avoid confusion, it is suggested that the item need only be delivered to 'a' police station, allowing the driver to elect to use a police station of his or her own convenience.

#### 3.7.1. Questions

11. Should the requirement to deliver lost property to the 'nearest' police station be retained or should delivery to any police station be adequate?
12. Is seven days an appropriate period of time for delivery of lost items to a police station? Should a shorter or longer period be allowed?

### 3.8. Advertising material in or on taxis

Regulation 32 provides that a taxi must not be driven or used if it contains any advertising matter that is unsafe to other drivers or interferes with passenger comfort.

The use of the word 'contains' is considered problematic, as it does not make it immediately clear that the provision is intended to apply to advertising on both the exterior and the interior of the taxi, as the heading in the legislation suggests. In order to clarify the provision it is recommended that alternative terminology be adopted. For example the provision might state 'if it bears any advertising material'.

Furthermore, it is considered that the safety of passengers should also be a relevant determining factor as to whether the taxi is fit to be used. Therefore advertising material which impacts on passenger safety should be included in the provision.

An alternative position has been suggested, in that advertising on vehicles is largely covered under vehicle registration provisions. As such, regulation 32 is a duplication and may be unnecessary.

#### 3.8.1. Questions

13. Should advertising on taxis be regulated under the Taxi Regulations?

14.	If advertising provisions are retained in the Taxi Regulations, should the term 'contains' be changed in order make it clear that any advertising material whether in, or on a taxi must not interfere with safety of drivers and passenger comfort?
15.	Should there be a prohibition on use of a taxi where advertising material in or on that taxi interferes with passenger safety?

### 3.9. Redundant provisions

Identified in the table below are a number of provisions in the Act and the Taxi Regulations which were intended to have only a limited life. Many of the provisions relate to a particular process which was to occur within a defined period.

Each provision is identified, described and a brief background to the process is outlined. Where the process has been completed, this is noted.

<i>Taxi and Luxury Hire Car Industries Act 1995</i>		
Section	Description	Comment
3	Interpretation	
	'application date'	The Act provided for a buy back of licences and a complementary scheme to convert existing cab licences and prescribed licences to perpetual taxi licences by application from licence holders. Licence holders were entitled to make an application for conversion from the application date until expiry. The conversion scheme continued until the expiry date of 2 August 1997. The buy back scheme continued until 2 April 1997. Both processes are now out of time.
	'buy back'	As above.
	'existing cab licence'	As above.
	'expiry date'	As above.
	'Hobart taxi area'	This area was specified in relation to a fund created for a now-exhausted scheme for refunds of transfer payments under previous legislation. This term is not used elsewhere in the legislation and need not be separately defined.
	'market price'	Definition provides that market price is the amount determined under section 19(2)(a). It is noted that section 19(2)(a) does not determine an amount. Rather, this subsection is part of the specification of the number of perpetual taxi licences to be issued in any one year. The term 'market price' is not used in the Act or the Regulations.

<i>Taxi and Luxury Hire Car Industries Act 1995</i>		
<b>Section</b>	<b>Description</b>	<b>Comment</b>
13	Funds for taxi areas	Provision was made for establishment of a fund for each taxi area deriving fees from conversions, temporary licence fees and funds from borrowings or provided by Parliament. These funds were to be used for buy back, promotion and development of industry or as directed by the Minister. Insofar as the fund related to the conversion and buyback process, this is now out of time. A small amount of money remains in the fund for the Hobart Taxi Area.
14A	Refunds from special fund for Hobart taxi area	Provided for refund of monies generated from a levy on the transfer of licences in Hobart. While late claims may be forthcoming, these may be handled on an ad hoc basis. It is not necessary to maintain the legislated process for claims which were due to have been made on or before 30 April 1996.
16	Transitional arrangements	This provision enabled a licence holder to continue to operate the licence while the process of buy back and conversion was effected. The transitional arrangements are also out of time.
17	Administration of funds for buy back of licences	The Act provided for administration of the buy back of licences to be by tender. The process is out of time.
18	Time limit for conversion and buy back	Provides for restricted cab licences which were not converted to cease to be of effect. These licences are now null and void.
23N(1)	Number of WAT licences to be made available	Subsection provides for initial number of WAT licences to be issued in the first two (three) years to be set out in Schedule 7. Note that some WAT licences were not taken up in the North West, such that the schedule must remain for the centres concerned to enable the Commission to reissue those licences.
23N(3)	Number of WAT licences to be made available	Subsection provides process for licences which were not taken up in the first two (three) issues to be made available again. Note that some WAT licences were not taken up in the North West, such that the schedule must remain for the centres concerned to enable the Commission to reissue those licences.
27(8)	Regulations	Subsection (8) provides for regulations of a savings or transitional nature regarding conversion of licences. This process is out of time.

<i>Taxi and Luxury Hire Car Industries Act 1995</i>		
<b>Section</b>	<b>Description</b>	<b>Comment</b>
Schedule 7	Number of Wheelchair Accessible Taxi Licences	Provides the number of WAT licences to be issued in the first two years. But note that some WAT licences were not taken up in the North West such that the schedule must remain for the centres concerned to enable the Commission to reissue those licences.
<i>Taxi Industry Regulations 1996</i>		
<b>Section</b>	<b>Description</b>	<b>Comment</b>
18	Ballot for buy backs	Provides the process for conducting a ballot under buy back scheme. This process is out of time.
28U(b)	Procedure for issuing WAT licences	The process for issuing WAT licences provided for preference to be given to persons who were operating vehicles fitted with a wheelchair lift (commonly known as SPC Vehicles) as at 1 January 2004. The purpose was to ensure that existing service providers had opportunity to continue to provide services under the new WAT scheme and were not unduly disadvantaged by the introduction of that scheme. There were few such operators and they have now had more than two and half years to make a decision to seek a WAT licence. Therefore the provision is arguably redundant.

### 3.9.1. Questions

16. Is it necessary to retain the provisions related to conversion and buy back of licences in the table above?
17. Does the definition of the term 'market price' need to be retained?
18. Is it necessary to retain the provisions related to the initial issue of WAT licences (other than those relating to the North West)?
19. Is it necessary to retain the provisions relating to refunds from the special fund for the Hobart taxi area?
20. Should the provision providing preferential WAT licence issue to SPC vehicle operators be retained?

## 4. Administration of Licences

### 4.1. Issue of perpetual taxi licences

Under section 20 of the Act, the Commission must not issue a new perpetual taxi licence unless the applicant has been given information on the operation of a taxi business. In particular, section 26 requires the Commission to provide information as to viability, operations and requirements of the industry. This places a significant burden on DIER in the administration of the Act and unreasonably absorbs resources that may be better directed to administering the Act to the benefit of existing industry players.

It is highly unusual that a regulatory body would be made responsible for undertaking due diligence on behalf of potential industry entrants. Section 26 expands the requirement and allows any person to request such information from the Commission.

Section 20 also distinguishes between the services in that issue of LHC and WAT licences are not subject to the same requirement. It is unclear why potential purchasers of perpetual licences must be provided with this information prior to issue of a licence, while LHC and WAT licence applicants are not entitled to the same information.

The cost of producing documentation and other materials for distribution could be substantial, especially prior to a ballot. In order to fully discharge this duty, the Commission would be required to investigate viability issues in each taxi area, as viability will vary between areas due to the different costs of a perpetual licence and availability of services such as radio room affiliation and meter and camera services. Additionally, this information would require frequent updating as operating costs affecting viability are subject to rapid change, such as fuel prices.

It is suggested that as accreditation is a precondition to licensing, potential purchasers are already in possession of sufficient information to make an informed decision regarding entry to the industry. Furthermore, where a potential entrant has obtained third party finance, they will have undertaken sufficient research as to satisfy lending requirements. The Commission is no better placed to assess the viability of the industry than is a financier.

Given the above, it is suggested that it is unreasonable to maintain sections 20 and 26.

#### 4.1.1. Questions

21. Should the Commission continue to be required to provide information on the taxi industry to applicants for perpetual taxi licences?

- |   |
|---|
| 22. Should the Commission continue to be required to provide information on viability, operations and requirements of the industry to any person who so requests? |
|---|

#### **4.2. Effect of perpetual taxi licences**

Section 21 provides that a perpetual taxi licence affords a right to carry passengers in the specific vehicle to which a licence relates. That is, the rights granted under the licence are limited to an identified vehicle.

This requirement creates an administrative burden for both the Commission and operators, as whenever a vehicle is unavailable, in order to continue to operate the licence, substitution must be sought in accordance with section 22. It is considered that, where an alternative vehicle that meets the required standard (including a current certificate of inspection), is available to an operator, it should be a business decision for that operator to make a substitution. Hence, it is proposed to de-link vehicles from licences in the register maintained by the Commission.

Under this proposal, section 21 should be adjusted to remove the reference to the specific vehicle. Further, section 22 of the Act would be redundant, as would regulations 11(2)(e), 11(2)(h), 13, 13A and 17A(5). The fee applied for a transfer of a licence in Schedule 1 of the Taxi Regulations would also become redundant. Regulations 9(3) and 10(c) would also be affected, as a specific vehicle would not need to be identified as the subject of a licence.

The de-linking of WAT and LHC vehicles from licences has not been considered here, as the requirements for these vehicles are particular to the services they provide and these have been canvassed in the relevant discussion paper (Papers 4 and 6 respectively).

<h4><b>4.2.1. Questions</b></h4>
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| 23. Should perpetual taxi licences continue to be linked to the use of a specific vehicle with inclusion of details of the vehicle on the register of licences? |
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#### **4.3. Temporary taxi licences**

Section 23 provides that the Commission may issue a temporary taxi licence to an accredited taxi group for a limited period. Such a licence may be subject to conditions and has the same effect as a perpetual licence while in force.

This provision was developed in order to allow the Commission to respond to requests from industry to manage peak demand around particular occasions or events. It was anticipated that operators would seek to use surplus vehicles during periods of high activity such as New Year's Eve to reduce response times. This has not occurred.

No temporary taxi licences have been issued since the Act commenced. DIER considers that limiting availability of temporary licences to accredited taxi groups may be too restricting. To overcome this, an alternative may be to allow any existing industry member who meets the criteria to hold a standard or WAT licence and has a suitable vehicle, to apply for a temporary licence. Accreditation as a taxi operator under the Passenger Transport Act is considered to be a better determinant of who is suitable to hold a temporary taxi licence than is accredited taxi group status.

To accommodate such a proposal, regulation 9(2) would also require amendment to reflect that the application need not be limited to an accredited taxi group.

Under this proposal, an operator could apply for a temporary licence by identifying the period for which the licence is sought and the source of demand warranting additional taxis. Importantly, the provision would not extend to allowing new participants to gain entry to the industry and avoid the usual requirements for holding a licence, such as being an accredited operator.

#### **4.3.1. Questions**

24. Should only accredited taxi groups be entitled to apply for temporary taxi licences?
25. Should temporary WAT licences be made available?

#### **4.4. Licence conditions**

Licences are fundamental to the regulatory scheme for standard taxis, WATs and LHCs in Tasmania. Each licence is equally subject to the relevant provisions of the Act and the Regulations and each licence holder has the same obligation to comply as any other licence holder. In addition, an individual licence will be subject to any conditions that are specifically attached to that licence.

##### **4.4.1. Imposing licence conditions**

The power to attach conditions to a licence and to vary those conditions from time to time is vested in the Commission as shown in the table below:

<b>Licence Type</b>	<b>Specification of Conditions</b>	<b>Reference</b>	<b>Variation</b>
Temporary taxi	may be subject to any conditions that the Commission thinks fit.	Taxi Act 23(2)(a)	NA

Licence Type	Specification of Conditions	Reference	Variation
Luxury hire car	<p>may be issued on such conditions as the Commission determines having regard to the objects of the Act in respect of luxury hire car services, including conditions relating to –</p> <ul style="list-style-type: none"> <li>a) the areas in which the vehicle may operate as a luxury hire car; and</li> <li>b) the condition or standard of the vehicle.</li> </ul>	Taxi Act 23D(2)	s23E – written notice required and representations permitted
Wheelchair accessible taxi	<p>may be issued on such conditions as the Commission determines having regard to the objects of the Act in respect of wheelchair-accessible taxi services, including conditions relating to –</p> <ul style="list-style-type: none"> <li>a) the areas in which the vehicle may operate as a wheelchair-accessible taxi; and</li> <li>b) the availability of the vehicle to wheelchair-reliant persons; and</li> <li>c) the condition or standard of the vehicle.</li> </ul>	Taxi Act 23P(2)	S23Q – written notice required and representations permitted
	<p>may impose such conditions on a WAT licence, in respect of the minimum number of wheelchair-reliant passengers carried under that licence, as the Commission considers necessary or desirable to improve the response times for wheelchair-accessible taxis.</p>	Taxi Act 23R	NA
Perpetual taxi	<p>regulations may provide for the matters specified in Schedule 3. That is, the regulations may prescribe conditions which may be imposed on the holder of a perpetual taxi licence relating to –</p> <ul style="list-style-type: none"> <li>i) areas; and</li> <li>ii) fare schedules; and</li> <li>iii) qualifications for drivers; and</li> <li>iv) standards for determining whether the drivers are fit and proper persons; and</li> <li>v) insurance requirements; and</li> <li>vi) the keeping and production of records; and</li> <li>vii) the control of property lost in taxis; and</li> <li>viii) service standards for customers including compliance with human rights legislation; and</li> <li>ix) administration and standards for taxis; and</li> <li>x) the conduct, behaviour, rights and obligations of taxi drivers in providing taxi services; and</li> </ul>	Taxi Act 27(2) and Schedule 3(e)	Requires change to regulations. Consultation process as for making regulations, but no right to individual notification.

Licence Type	Specification of Conditions	Reference	Variation
	xi) the conduct, behaviour, rights and obligations of passengers in taxis		

As can be seen above, the power to apply conditions is not consistent across all the categories of licences. Only WATs and LHCs are subject to the same provisions and the reason for the differences among other licence types is not clear. Furthermore, the matters that may be the subject of conditions vary from the very prescriptive in the case of perpetual licences, to the very broad for a temporary taxi licence. The process for varying licence conditions is equally inconsistent, again with the exception of WATs and LHCs.

To make a licence subject to conditions is to increase the regulatory burden. Clearly some capacity to apply conditions is necessary. However, the power should rightly be limited and will always be subject to the requirements of Natural Justice. For example, the Commission could not impose a condition which is beyond its powers under the Act. Furthermore, a condition could not be imposed which was contrary to the Act or if it bound the actions of a licence holder in a manner that was contrary to other legislation.

Regulatory theory suggests that good regulatory practice should limit the use of licence conditions. Where an issue affects an entire industry, regulation should be undertaken via primary legislation or regulations to ensure that it is imposed:

- with the imprimatur of Parliament;
- equally on all participants in an industry; and
- with full transparency.

Only where a matter concerns an individual operator, or a subsection of the industry, should regulatory restrictions be imposed via a licence condition. For example, to denote the area in which a taxi licence is permitted to operate. Additionally, licence conditions should not be used to avoid assessment of the impact of regulatory restrictions, such as would occur under the Subordinate Legislation Act. Nor should licence conditions be used to make the licence holder responsible for that which is beyond their control. For example, it is probably not reasonable to suggest that the holder of a perpetual taxi licence should be responsible for the conduct and behaviour of passengers in taxis, as provided for in Schedule 3 of the Act.

Many of the issues included in Schedule 3 of the Act duplicate matters that are the subject of accreditation. Where this is the case, a licence condition may not be necessary. Furthermore,

the requirement to make licence conditions for perpetual licences as regulations severely limits the power of the Commission and is at odds with the notion that licence conditions are specific to an individual licence.

Where a power to vary licence conditions exists, it would seem reasonable that each licence holder is entitled to individual notification and has the opportunity to make representations to the Commission before that such a change is made.

Where the Commission has a power to impose or vary licence conditions it would also seem reasonable that such conditions should be specified in the licence instrument. To effect this proposal, regulation 10 would need to be revised. Should licence conditions be changed, it would be necessary for the Commission to issue a new, updated copy of that licence. This is consistent with subregulation 28L(e) for WAT licences and subregulation 4(e) of the Luxury Hire Car Industry Regulations.

#### **4.4.2. Questions**

26. Should the Commission have consistent powers to impose licence conditions for all types of licences?
27. Should licence conditions be specified in the licence instrument?
28. Should a licence holder be entitled to individual notification by the Commission of intent to vary a licence condition and have the opportunity to make representations?

#### **4.4.3. Compliance with conditions**

In addition to the different types of conditions which may be imposed on licences according to the Act, it is apparent that compliance requirements are not the same across the licence categories.

Subsection 23J(1) requires a person to comply with a LHC licence condition or be subject to a fine. The same requirement is made of the holder of a WAT licence at subsection 23V(1). There is no equivalent provision for perpetual taxi licences, which makes the imposition of conditions on these licences ineffective.

#### **4.4.4. Questions**

29. Should all categories of licence have the same requirements for compliance with licence conditions?

#### 4.5. Transfer of licences

Subsection 23F(1)(a) of the Act entitles a LHC licence holder to apply to the Commission to have their licence transferred to another person. The Commission is to approve the application for transfer if it is satisfied that the vehicle meets certain requirements. The Act does not provide for the Commission to consider whether the transferee holds appropriate accreditation.

Similarly, in the case of WATs, application may be made for transfer of a licence to another person either temporarily or for the remaining life of the licence<sup>3</sup>. The Commission is to approve transfer if it is satisfied that the vehicle meets certain requirements. However, there is no power for the Commission to consider whether the transferee holds appropriate accreditation.

As leasing of WAT licences is prohibited under the Act, the licence holder will be the responsible operator. In this case, accreditation should be required as a precondition of the transfer.

In the case of perpetual taxi licences, the licence is personal property and transfer of ownership occurs on the open market by agreement between the parties. There is no role for the Commission in determining transfer.

There is no power in the Act for the Commission to refuse transfer where there are outstanding fees owing in relation to that licence. It is considered that where fees are unpaid, transfer of that licence should not be available as of right.

##### 4.5.1. Questions

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|-----|---|
| 30. | Should accreditation be a precondition of transfer of LHC and WAT licences?   |
| 31. | Should the Commission have the power to refuse transfer of a licence if fees are outstanding in relation to that licence? |

#### 4.6. Register of licences

##### 4.6.1. Obligation to keep a register

Regulation 11 requires the Commission to keep a register of all persons holding a perpetual taxi licence or temporary licence. The register is to include information to enable identification of the licence holder and the licence.

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<sup>3</sup> *Taxi Industry Regulations 1996*, Regulation 23S.

Regulation 28M requires the Commission to also keep a register of WAT licences. Again, the register must contain such information as to enable the licensee and the licence to be identified.

The WAT register is also to contain information regarding any conditions that may attach to a WAT licence. The register of perpetual and temporary taxi licences requires the inclusion of any conditions which may attach to a temporary licence but does not provide for conditions on perpetual licences. This would appear to be an oversight.

Under regulation 28M there is also a requirement for the Commission to include particulars of transfer, suspension or cancellation on the register of WAT licences. A similar provision could be included for the register of perpetual licences.

Similarly, the WAT register provides for the Commission to include any other matters which it thinks fit. No equivalent provision exists for the perpetual and temporary taxi licence register and DIER proposes that this would be a useful addition to the regulation.

#### **4.6.2. Questions**

32. Should the Commission be required to include details of any licence conditions that apply to perpetual licences on the register?
33. Should the register contain information in regard to transfer, suspension or cancellation of perpetual licences?
34. Should the Commission have the power to include other matters which it thinks fit on the perpetual and temporary taxi licence register?

#### **4.6.3. Registration of interests**

Regulation 11 provides that the Commission must maintain a register of any person with a contingent interest in a perpetual taxi licence. In addition, regulation 14 provides that the holder of a security interest in a perpetual taxi licence may apply to register that interest against the licence.

Inclusion of this information on the register would not enable a person interested in purchasing a licence to determine whether it is unencumbered, as there is no obligation to register a security interest. Checking of the register would only reveal an interest if the holder of that interest had chosen to have it included. Furthermore, there is no provision to protect the holder of a security interest, as the Commission is not entitled to take such a matter into account when considering an application for transfer of a licence. Nor is there a power for the Commission to notify the holder of a security interest in a licence that the licence is subject to a penalty such as cancellation.

Given this, the registration of an interest would seem to serve no effective purpose. The updating of the register is a time consuming exercise and to include such matters imposes a highly questionable administrative burden on DIER.

#### **4.6.4. Questions**

35. Should the Commission be required to continue to include information regarding contingent or security interests on the register of licences?

#### **4.6.5. Public access to the register**

The Regulations do not specify whether the register of perpetual and temporary taxi licences is to be available for public scrutiny. Where a government-held register is to be accessible by the public, legislation would ordinarily provide a process for searching the register, usually upon payment of a fee. No such provision is included in the Act and it is not clear that the register of licences is intended to be a public register. To date, DIER has regarded the register as being inaccessible to the public.

The information held in the register enables identification of the licensee and the responsible operator. This includes address details. In some cases, the nominated address is also the home address of the relevant party.

A licence provides the holder or operator with a right to provide a service to the public in exchange for reward. A member of the public is entitled to rely on that person to execute the service in a safe and reliable manner in exchange for payment.

Should a passenger or other member of the public have a concern about the way in which the service is provided, they should rightly be able to identify the service provider in order to make a complaint. While vehicles are required to contain driver identification, if the complaint relates to the driver, the complainant may rightly wish to take the complaint to another party. Identification of the operator or owner is the next reasonable step. As not all taxis in Tasmania are affiliated with radio rooms, identification of the operator may be difficult especially in the case of taxis that bear no external identifiers other than a toplight. In this instance, it may be reasonable for a person to have access to the register.

The Privacy Act requires that governments, among others, are obliged to keep information that they gather about people private unless the giver of the information has given express written permission for the use of the information gathered for a particular purpose. To date, the Commission has not advised licence holders and operators that the information they provide for the register is to be publicly available. If a decision were taken to make the register public, it would be necessary to have every licence holder and operator sign an authorisation to make

the existing information public and every notification for update of the register would have to include an acknowledgement that the information would be publicly available.

In the case of the WAT licence register, the Regulations provide at 28M(2) that the register is not public. This is consistent with the LHC licence register<sup>4</sup>. If the perpetual and temporary taxi licence registers are to be public, it should be considered whether these registers should also become public.

#### **4.6.6. Questions**

36. Should the perpetual and temporary taxi licence register be a public register?

37. Should the WAT licence and LHC licence registers be public registers?

#### **4.6.7. The register as evidence**

One purpose of maintaining a register of licences is to enable proper enforcement of the regulatory scheme. As such, certain offences will be the responsibility of the person listed in the register at the time of the offence occurred. As most offences under the Act and Regulations must be proven in a Court, it is necessary to present information from the register as evidence.

To simplify this process, most registers maintained by a regulatory body will be accorded standing in a Court such that an extract of information from the register is taken to be proof of a fact, rather than requiring the prosecution to prove the matter in question. Such a provision has not been included in the Taxi Regulations in relation to the licence registers held by the Commission.

To overcome this, it is suggested that a change be made to the Act to allow the Commission to make an extract from the register and present it as an evidentiary certificate as proof of a fact in the absence of evidence to the contrary. That is, it will be possible to challenge the information from the register but unless challenged, the information will be taken to be proven. Such a provision would also be in the interests of a defendant to a prosecution as, where no challenge is made, it will speed up prosecutions, reducing legal fees and court costs whether or not a conviction is obtained.

#### **4.6.8. Questions**

38. Should provision be made for an extract of the various registers held by the Commission to be presented as an evidentiary certificate in Court?

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<sup>4</sup> *Luxury Hire Car Industry Regulations 2000*, Subregulation 5(2).

#### **4.6.9. Taxi leasing arrangements**

It is a common practice for the owners of perpetual taxi licences to lease or assign their licences to third party operators. Regulation 15 provides for this by requiring the owner of the licence to notify the Commission of a lease and provide details of the lessee who becomes the responsible operator of the licence. This information is then to be entered onto the register of licences. While the responsibility for notification of a lease is with the owner, the notification is to be signed by both parties, and on termination, both parties are required to notify the Commission.

The regulations anticipate that the owner of a licence and the lessee will negotiate a lease and reflect the terms in a legally binding agreement. In practice this does not always occur. It has become apparent that, in some instances, informal leasing is undertaken by the industry. It places the Commission in a difficult position where it has information as to the existence of a lessee on the register yet no documentary evidence of the lease itself exists. It also undermines the ability of the Commission to prove information from the register in a Court.

Furthermore, when a dispute occurs between owner and lessee, regardless of the existence of a binding lease, usually only the owner of a lease provides notification of termination to the Commission. Despite this, the Commission will update the register to reflect that the lease has been terminated, as any dispute over the lease is outside the Commission's jurisdiction.

Another difficulty with leasing is that the legislation only anticipates that a licence will be leased to one individual. In practice, some licences are operated by more than one person. For example, one operator may be responsible for a licence during weekdays and a second operator will take over on weekends. Neither the register, nor the legislation was developed to anticipate such an eventuality.

The administrative burden of updating the register is high, yet in many cases the information on the register will not accurately reflect the lease deals that have been struck.

Nevertheless, DIER has continued to keep the register and to overcome some of the issues, such as where termination is notified by only one party, DIER has engaged in correspondence to confirm changes to the register with all involved. This has increased the administrative burden on the Commission. In addition, DIER has attempted to assist parties to resolve disputes over leases and handles a large number of inquiries from parties in dispute.

It is not the role of the regulator to require businesses to adopt good business practice. Nor is it the role of a regulator to interfere in what is a private agreement between the parties. For these reasons, it is proposed that, while DIER will continue to maintain the register, it would no longer play any part in the resolution of lease disputes or respond to enquires regarding existing lease arrangements. Nor will DIER follow up with parties who lodge notices for a change to the

register that are incorrect or incomplete. The onus will be on the owner of a licence to ensure that any changes are correctly notified.

To accommodate such a change, where the Act or the Regulations attributes responsibility for an action to a responsible operator, it will be necessary to amend the legislation to place the burden on the licence holder. This burden would remain with the licence holder subject to the register indicating that the obligation has been transferred to a third party operator in accordance with a private agreement between them.

DIER also proposes to amend the regulations to permit either party to submit a notice of termination of a lease.

#### 4.6.10. Questions

39. Should all obligations rest with the licence holder unless a lessee has been identified in the register?
40. Should notification of termination of a lease by either party be permitted, in order to allow updating of the register?

## 5. Fees

### 5.1. Current situation

Under the Act, fees are applied for the completion of various administrative processes in relation to taxis, WATs and LHCs. While many of the processes are the same or similar for each service type, the fees applied are not always consistent. The underlying reason for the differences is not apparent and in some cases inequity exists.

A table of existing fees in the Act and the Taxi Regulations is set out below. Note that a fee unit is currently at the rate of \$1.21.

Issue	Perpetual Taxi Licence	Reference	WAT	Reference	Luxury Hire Car	Reference
Application for a licence	100 Fee Units	Taxi Regulations Schedule 1	100 Fee Units	Taxi Regulations Schedule 1	Nil	NA

Issue	Perpetual Taxi Licence	Reference	WAT	Reference	Luxury Hire Car	Reference
Issue of licence	Assessed market value or higher tender	Taxi Regulations Schedule 1	30 Units Fee	Taxi Regulations Schedule 1	\$5000	Taxi Act subsection 23C(2)(c)
Annual administration fee	100 Fee Units	Taxi Regulations Schedule 1	Nil	NA	30 Fee Units (renewal)	Luxury Hire Car Regulations Schedule 1
Application for temporary licence	100 Fee Units	Taxi Regulations Schedule 1	NA		NA	
Notification of transfer of licence ownership	10 Fee Units	Taxi Regulations Schedule 1	10 Fee Units	Taxi Regulations Schedule 1	10 Fee Units	Luxury Hire Car Regulations Schedule 1
Application to transfer licence to another vehicle	10 Fee Units	Taxi Regulations Schedule 1	10 Fee Units	Taxi Regulations Schedule 1	NA	
Testing of taximeter	10 Fee Units	Taxi Regulations Schedule 1	10 Fee Units	Taxi Regulations Schedule 1	NA	
Issue of replacement licence plate or label	10 Fee Units	Taxi Regulations Schedule 1	10 Fee Units	Taxi Regulations Schedule 1	10 Fee Units	Luxury Hire Car Regulations Schedule 1

Clearly there are discrepancies in the current fee structure. One way to address this would be to introduce a number of new fees. These are:

- an application fee for LHCs;
- an annual administration fee for WATs;
- an application fee for a temporary WAT licence (if adopted) and
- a fee for transfer of a LHC licence to another vehicle.

Note that fees for transfer of a LHC licence to another vehicle would be required to bring LHCs into line with WATS. The proposal to remove the linkage between licences and specific vehicles is limited to perpetual taxi licences.

It is also noted that the level of fees is not consistent across the various categories of licence. The most significant discrepancy in the current schedule of fees is the annual licence renewal fee payable by each of standard taxis, WATs and LHCs. At present the fees are 100 fee units, nil and 30 fee units respectively. As all licence holders receive the same services from the DIER in return for this fee, it is proposed that all licence holders be subject to the same annual licence renewal fee of 100 fee units.

#### **5.1.1. Questions**

41. Should new fees be introduced to create an equitable situation for each category of licence?
42. Should all categories of licence be subject to the same level of annual licence renewal fee?

#### **5.2. Fee units**

The fee for issue of a Luxury Hire Car licence is expressed as a monetary amount at subsection 23C(2)(c) of the Taxi Act. In order to comply with the *Fee Units Act 1997* this fee should be converted to fee units, or an exemption sought to enable the fee to be fixed as a monetary amount. Furthermore, this is the only fee provided for in the primary legislation. For consistency it should be transferred to the relevant regulations being the *Luxury Hire Car Industry Regulations 2000*.

#### **5.2.1. Questions**

43. Should the licence issue fee for LHC licences be moved out of the Act and into the Luxury Hire Car Industry Regulations?

#### **5.3. Fees to fund increased enforcement activity**

Transport Compliance is managed by the Land Transport Safety Division of DIER. In recent years, the on-road activities of transport inspectors have focussed more heavily on tasks directly related to vehicle safety. As a direct consequence on-road enforcement of taxi industry regulations is no longer one of the key objectives of transport inspectors.

The recent major operation in Hobart and Launceston on 18 August 2006 has identified a level of non-compliance which would suggest that more resources are required to be directed to this aspect of the industry. Nevertheless, within the existing inspection budget, the taxi and luxury hire car industries are unlikely to be accorded a higher priority and certainly the key priority of inspectors must remain on safety. In meetings with the Reference Group throughout this Review process, DIER has been very frank with the industry as to the capacity to focus on taxis and luxury hire cars compliance.

Notwithstanding the above, DIER remains interested in dedicating more enforcement attention to the taxi industry. In addition, it is understood from the taxi industry that it would like to see more enforcement efforts in order to protect the interests of those in the industry who abide by the law. This is clearly demonstrated by the frequency of informal complaints received by DIER from the industry in regard to alleged illegal behaviour committed by others in the industry.

DIER proposes that, if a greater inspection focus on the industry is considered necessary by industry, then it could be funded directly through an increase in the annual licence fee for all taxis and luxury hire cars.

DIER has undertaken some analysis to determine the additional inspection funding required and how this could be raised through a new licence fee structure applied across the industry.

### **5.3.1. Costs**

Agencies are required to review fees and charges at least annually or more often if required by changes in market or cost parameters<sup>5</sup>. The revenue to Government from the existing licence fee regime makes a large contribution towards the costs of administrating taxi-related operational issues. Nevertheless, there is a shortfall of more than \$20,000 per annum.

In order to fund this shortfall and an increase in taxi-related on-road enforcement, it would be necessary to raise additional funds of approximately \$162,000.

### **5.3.2. New licence fee structure**

The table below lists the total number of WAT, standard taxi and LHC licences, grouped into three distinct zones – “major metro”, “other metro” and “regional”.

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<sup>5</sup> Department of Treasury and Finance, Costing of Fees and Charges Guidelines for Use by Agencies, Third Edition, May 2003, p7.

	<b>Major Metro<sup>6</sup></b>	<b>Other Metro<sup>7</sup></b>	<b>Regional</b>	<b>Total</b>
<b>Taxi</b>	298	72	36	406
<b>LHC</b>	41	5	0	46
<b>WAT</b>	25	2	0	27
<b>Total</b>	<b>364</b>	<b>79</b>	<b>36</b>	<b>479</b>

This grouping has been used because the level of additional enforcement activity is likely to be prioritised according to the number of taxis in each area, with the largest areas which generate the most complaints from within the industry, receiving the greatest attention. Accordingly, it is proposed that the increase in fees be varied across the three groups; licence owners in smaller taxi areas should not be asked to pay for additional enforcement to the same degree as those with plates in the larger areas.

Specifically, it is suggested that licences in the “Regional” group would pay no increase, while licences in “Other Metro” would pay an increase equating to half that payable in respect of licences in the “Major Metro” areas. If these rules are applied, the following fees would be payable:

	<b>Major Metro</b>	<b>Other Metro</b>	<b>Regional</b>	<b>Total</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	
Revised fee	510	300	121 (no change)	
Anticipated additional revenue	141,596	14,141	0	155,737

Given that industry has sought the increase in enforcement to address issues not directly related to vehicle safety, it is not proposed to allow an adjustment of fares to cover the cost to licence holders of the new fees. It is considered that the benefit of the enforcement would flow to industry rather than passengers and hence the industry should bear the cost.

### 5.3.3. Questions

44. Should the annual licence renew fee for perpetual taxis, WATs, and LHCs be increased to fund additional activity by the Commission?

<sup>6</sup> Hobart and Launceston.

<sup>7</sup> Burnie, Devonport, Ulverstone, New Norfolk, Perth and Georgetown.

45. Should any fee increases be applied unequally across Regional, Other Metro and Major Metro areas?

#### **5.4. Non-payment of fees**

The application of fees and the quantum of fees are moot in the event that there is widespread non-payment. This continues to be an issue of concern for the Commission and needs to be addressed to ensure equity for those industry members that pay fees as and when they fall due.

Subregulation 7(2) provides that failure to pay any fee constitutes a debt to the Commission and is recoverable in a court of competent jurisdiction. This creates a right to recover the debt, however the process is unwieldy, time consuming and requires significant resources.

Two courses are available to encourage payment of fees. The first is to provide penalties for late payment in the form of extra charges. While this approach is routinely adopted in the private sector, it is considered that those who persistently avoid paying fees are just as likely to avoid paying additional charges and therefore this will be no disincentive.

The second approach is to remove the right to which the fee relates. For example, non-payment of an annual renewal fee should cause the licence to be invalid until such time as the fee is paid. Should non-payment continue for more than a set period, (three months is suggested), the right would be revoked causing the licence to be cancelled with a subsequent request to deliver up the licence and associated plates to the Commission.

To enforce such a provision, operation of a licence while invalid should be the subject of a significant penalty. Power should also be provided for the Commission to seize plates from a vehicle that is operating under an invalid licence in the event that the operator fails to deliver them to the Commission in a specified time.

This approach is similar to vehicle registration where non-payment of the annual registration charge causes registration to automatically lapse, preventing use of the vehicle on a public street. In the event of continued non-payment for a specified period, renewal is no longer possible on payment of the fee. Rather the owner must seek new registration requiring the vehicle to pass inspection. In the case of a taxi, WAT or LHC licence, either application for a new licence would have to be made to the Commission or participation in the next licence issue process would be required.

To implement a similar requirement for LHCs, changes would also be required to the *Luxury Hire Car Industry Regulations 2000*.

A further incentive for the timely payment of fees can be created by preventing transfer of licences while monies remain outstanding. See [Section 4.5](#).

#### **5.4.1. Questions**

46. Should late payment charges be introduced for failure to pay fees as and when they fall due?
47. Should the right to operate a licence automatically lapse when a fee in respect of that licence is not paid by the due date?
48. Should non-payment of a fee for a prolonged period give rise to cancellation of the licence to which that fee relates?

## **6. Enforcement**

### **6.1. Penalties**

#### **6.1.1. Monetary penalties**

Another area of inconsistency between the services is that of penalties for the same or similar offences. The rationale for differences in the level of penalty is not apparent, as the significance of the failure that gives rise to the penalty would appear to be the same regardless of whether it involves a standard taxi, WAT or LHC.

A table is attached at [Appendix 2](#) setting out the current level of penalty for each category of offence where different penalties apply or offences are inconsistent across the services. A complete list of penalties has not been included as there are a very large number. Note that a Penalty Unit is currently at the rate of \$100.

Clearly there are discrepancies in the current penalty structure. For example, it is an offence to solicit a person to hire a taxi, attracting a penalty of 10 Penalty Units for a first offence and 20 Penalty Units for a second or subsequent offence. However, in the case of a luxury hire car, soliciting a person to use that service will attract a fine of only 10 Penalty Units in every case.

In some cases, penalties exist for some offences when committed in relation to a particular service with no equivalent penalty for other services. For example, a person who does not own a WAT or LHC licence must not represent himself or herself as having such a licence. However, no equivalent penalty exists in the case of a perpetual taxi licence and arguably the offence is more serious in this case.

One way to address this would be to introduce new penalties in instances where one category of service has no equivalent penalty to the other services. Further, where the quantum of a penalty for the same or equivalent offence differs across the service types, penalties should be adjusted upward to equal that which is the greatest penalty.

#### **6.1.2. Questions**

49. Where a penalty exists for one licence category for a particular act, but not for another, should new equivalent penalties be created?
50. Should the quantum of penalties be the same for similar offences across each category of licence?

#### **6.1.3. Other penalties**

A number of sections of the Act make provision for the most serious penalties a regulator can impose. These are suspension and cancellation of licences. While the sanctions are severe and would prevent an operator from deriving an income, these are appropriate responses to the most serious breaches of the regulatory scheme, or wilful and persistent breach of lesser requirements.

Without the ability to revoke the privilege that a licence provides, the Commission lacks the authority to regulate effectively and the industry is not able to be sure that all individual participants will observe regulation to the same degree.

Section 23G of the Act provides a power for the Commission to cancel or suspend a LHC licence in prescribed circumstances. Similarly, section 23T provides a power to cancel or suspend WAT licences in prescribed circumstances. In each case, the circumstances are set out in regulations<sup>8</sup>.

Suspension may occur where:

- a licensee has failed to comply with a licence condition; or
- the vehicle ceases to be registered; or
- the vehicle ceases to meet the requirements for that category of licence.

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<sup>8</sup> *Taxi Industry Regulations 1996*, Regulations 28R and 28S and *Luxury Hire Car Regulations 2000*, Regulations 9 and 10.

Cancellation may occur:

- for breach of a fundamental licence condition; or
- where the vehicle ceases to be registered and is likely remain unregistered for a prolonged period; or
- where the vehicle ceases to meet the requirements for that category of licence and in the case of a LHC licence, it continues to be offered as a luxury hire car; or
- in the case of a WAT licence, upon surrender of that licence.

It is noted that the power to suspend or cancel a licence does not exist for breach of the Act or the relevant regulations. Nor is there power to suspend or cancel where an operator allows the vehicle to be used for the commission of a crime. This is considered an oversight in the legislation<sup>9</sup>.

Presently, there are no provisions to allow the Commission to suspend or cancel a perpetual taxi licence. In this case, suspension would deprive the operator of the ability to derive an income and cancellation would deprive the owner of the value of a significant asset. Nevertheless, for serious or wilfully persistent breaches, there is strong argument that these are appropriate penalties.

Furthermore, it is in the interests of all industry participants for the Commission to have the power to cancel a licence that has been obtained by deceptive means. While subsection 23J(3) makes it an offence to make a false or misleading statement to the Commission or produce a false or misleading document in connection with an application for a LHC licence, punishable by a fine, the Commission does not have the power to revoke a licence that has been issued as a result of misleading behaviour.

The same offence, punishable by a fine, exists in relation to WAT licences in subsection 23V(3). Again, the Commission should have the power to revoke a licence obtained by fraud. No similar offence exists regarding applications for perpetual taxi licences. It is suggested that it should be an offence to use false or misleading information to obtain a perpetual taxi licence, with the Commission empowered to revoke the licence if the industry is to have confidence that all prospective participants compete for licences on equal terms.

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<sup>9</sup> Note that DIER is currently in the process of amending Regulation 28S to impose additional reasons for cancellation of a WAT licence. Under these changes, the Commission would have the power to cancel a licence in the event of bankruptcy of the licensee, if the licensee were to lose effective control of the vehicle specified in the licence, or if the vehicle is not operated as a WAT for more than 28 days consecutively.

In the case of a suspended licence, the legislation should specify that the holder retains the capacity to renew the licence, however, renewal would not change the fact of suspension. This provision is required to remove doubt as to the ongoing status of the licence.

**6.1.4. Questions**

51. Should the Commission have the power to suspend or cancel perpetual licences?
52. Should a breach of the Act or Regulations be a reason to warrant suspension or cancellation?
53. Should the Commission have the power to cancel a licence obtained as a result of providing false or misleading information or documents in the application process?
54. Should a licence holder have the right to renew a licence while that licence is suspended?

**6.2. Offences****6.2.1. Describing vehicle as a taxi**

The Taxi Act and the Passenger Transport Act combine to create a number of offences, the effect of which is to prohibit small passenger vehicles and public passenger vehicles from being used as luxury hire cars or taxis unless an appropriate authority to operate that category of vehicle is held.

Nevertheless, the two Acts would not prevent the use of a vehicle which is not a public passenger vehicle from being described as a taxi. This is clearly an unintended outcome and any vehicle which is not a taxi should not be permitted to be described as such.

**6.2.2. Questions**

55. Should a vehicle which is not a public passenger vehicle be prevented from being described as a taxi?

**6.2.3. Holding a licence**

Subsection 23J(2) of the Act makes it an offence for a person who is not the holder of a LHC licence to hold himself or herself out to be the holder of such a licence. The same offence is created under subsection 23V(2) in relation to WAT licences.

While these provisions are not likely to be breached on a routine basis, they form an important part of the regulatory scheme, in that a person, be they a prospective customer, operator or

driver, should be able to rely on the representations of licence holders to ensure orderly operation of the industry.

There is no similar provision in relation to perpetual taxi licences. This is a potentially serious inconsistency, as leasing of such licences occurs on a wide scale and licences may be used as security for financial transactions. The industry has a significant interest in ensuring that a claim of being a licence holder is not held in question and the value of holding a licence is not undermined.

#### **6.2.4. Questions**

56. Should a person who does not hold a perpetual taxi licence be prohibited from representing himself or herself as being the holder of such a licence?

## **7. Technical Issues**

### **7.1. Taxi standards: vehicles suitable to be licensed as taxis**

To date, the Regulations have not specified the requirements for vehicles to be used as taxis in great detail. It has instead been the practice of the Commission to refer to the Australian Design Rules (ADRs) as published by the Federal Office of Road Safety. In particular, ADR44/02 specifies the requirements for taxis.

The Commonwealth has recently proposed to abandon the ADRs and will cease to update the requirements for vehicles. In order to enable the Commission to continue to rely on the requirements for the ADRs, it is proposed to incorporate the relevant provisions in relation to special purpose vehicles into the Regulations. To enforce the requirements, a penalty should be included for operating a non-compliant vehicle as a taxi.

It should be noted that ADR 44/02, if incorporated into regulations, would not be adopted in its entirety. It would only be necessary to incorporate those parts of the Rule that specifically relate to taxis. Further, it would not be necessary to include any definitions as these are already provided in the Act and the Regulations.

A copy of ADR 44/02 is attached at [Appendix 3](#).

#### **7.1.1. Questions**

57. Should the vehicle specifications for taxis contained in the Australia Design Rules be incorporated into the Regulations?

## 7.2. Inspection requirements for WATs

### 7.2.1. Restraints and hoists

Regulation 29 provides that a taxi must be presented for inspection by an authorised officer at least every 6 months or as required by the Commission. Inspections are undertaken in accordance with the Inspection Procedure Manual for Light Vehicles<sup>10</sup>.

Section 13 of that manual requires that a WAT may be rejected if it is not fitted with a wheelchair restraint system that displays a label that states compliance with either of the Society of Automotive Engineers J2249 or Australian Standard 2942-1994. Additionally, in the case of a WAT fitted with a wheelchair hoist, the hoist must comply with Australian Standard 3856. These requirements are not included in the Act or Regulations, nor are they part of the ADRs for taxis.

It is suggested that for consistency, these requirements should be included in Regulations alongside the ADRs to ensure enforceability.

### 7.2.2. Questions

58. Should inspections standards for WAT wheelchair restraints and hoists be incorporated into the Regulations for consistency with other taxi inspection requirements?

### 7.2.3. Age of vehicles

The Act currently provides that the age of WAT is to be determined by reference to the first day on which the vehicle was registered<sup>11</sup>. This is different from the means of determining the age of other vehicles. The age of a standard taxi is determined by reference to its compliance plate<sup>12</sup>.

While the age of vehicles suitable to be used as WATs is covered in Paper 4 – Wheelchair Accessible Taxis, it is relevant to consider how age is determined in this paper as it is a technical matter.

In 2007 it is proposed to outsource the process of taxi inspections. It would be difficult for an external inspector to determine the first date of registration of a vehicle. To prevent delay in the issue of inspection labels and a time consuming administrative workload for DIER, it is

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<sup>10</sup>Department of Infrastructure, Energy and Resources, Inspection Procedure Manual for Light Vehicles, Issue 2, November 2004.

<sup>11</sup> *Taxi and Luxury Hire Car Industries Act 1995*, Schedule 6(1)(d).

<sup>12</sup> *Taxi Industry Regulations 1996*, Subregulation 16(1).

suggested that the alternative method of determining age of a vehicle be adopted. It has the added advantage of delivering a consistent assessment method for all categories of taxi.

Registration was adopted as the means of determining vehicle age of WATs so as not to deprive an operator of time in which a vehicle could be used and to more closely align the operational life of a vehicle to the term of the licence. To overcome any discrepancy which might ensue, it is suggested that a discretion be maintained to allow a WAT to pass inspection for a nominated period (perhaps 3 months) beyond the 10 year lifespan, or until the relevant WAT licence expires, whichever is the lesser period.

#### **7.2.4. Questions**

59. Should age of a WAT be determined on the basis of the compliance plate rather than from the first date of registration?
60. Should the Commission have discretion to allow a WAT to pass inspection so as to align the end of the operational life of the vehicle with the term of the relevant licence?

### **7.3. Obligation to display plates and labels**

The Regulations currently provide separate obligations to display plates and labels for standard taxis and WATs. Regulations 17A and 17B makes provision for display on standard taxis, while regulation 28N sets out the requirements for WATs. The provisions are similar, however there are additional requirements for WATs and a higher penalty applies. As discussed in [Section 6.1](#), alignment of such provisions is recommended for equity between the services.

A single regulation applicable to all forms of taxis would ensure equity.

#### **7.3.1. Questions**

61. Should the obligation to display plates and labels be consistent for perpetual licences and WATs?

### **7.4. Charging of fares**

#### **7.4.1. Prohibition on charging**

Regulation 21A provides for the charging of regulated fares. At subregulation 4, a driver is prohibited from charging a passenger during certain events including mechanical breakdown and traffic accidents involving the taxi.

It is suggested that a further item be added to this list to prevent a driver from charging a passenger where the driver has failed to engage the meter. It is understood that a driver will on occasion, fail to engage the meter without notice to, or prior agreement with a passenger and, upon arrival at the destination will nominate a sum that they will accept as payment.

When a potential passenger hires a taxi by entering the vehicle, unless another agreement is struck, it is accepted that the meter will be the means of determining the fare and this is the most common scenario. This enables efficient operation of the industry as it ensures public confidence in a service at a regulated price, especially when an individual is not in a position to determine how much a journey should reasonably cost.

A driver may fail to engage the meter for any number of reasons. It is possible that the driver may genuinely forget to do so. However, it is alleged that more often, a driver will not engage the meter so as not to record a fare. In this case, a cash payment by a passenger of a nominated sum will not be reported through the meter to the taxi operator and so may be held back by the driver.

By providing customers with the right to refuse to pay an amount other than the metered fare unless another arrangement has been struck, the customer is protected from being overcharged. Operators are also protected, as drivers will have additional incentive to engage the meter for every trip.

#### **7.4.2. Questions**

62. Should drivers be prohibited from charging passengers where the driver has failed to engage the meter and no other agreement has been struck between the parties regarding price?

#### **7.4.3. Defining the hire period**

Subregulation 24(2) provides that a driver must start the taximeter as soon as the taxi is hired and not before and must stop the meter immediately at the end of the hiring.

It is considered that this provision is deficient as there is no definition of what constitutes the hire of a taxi. This is particularly important as, other than the period of actual travel, a journey necessarily includes the embarkation of any passengers with their goods or loading of unaccompanied parcels, disembarkation or unloading and payment of the fare, all of which require time when the vehicle is stationary.

This becomes a significant issue in the case of wheelchair-reliant passengers as the time taken for loading and unloading will inevitably be substantially longer than for other passengers. While this issue is more fully described in Paper 4 – Wheelchair Accessible Taxis, it is

considered that some more specific definition of hiring is necessary for the benefit of all taxi users.

In other jurisdictions the period of hire is specifically defined and a review of provisions is included below.

### **Australian Capital Territory**

#### ***Road Transport (Public Passenger Services) Regulation 2002:***

Regulation 127 When a taxi hiring begins

- (1) If a person asks for a taxi to be at a place (the pick-up point) at a particular time (the booked time) to carry a person or the person's goods from the pick-up point to another place, the hiring of the taxi begins—
  - (a) for a taxi that arrives at the pick-up point before the booked time—at the earlier of the following:
    - (i) the booked time;
    - (ii) the time when the person or the person's goods are in the taxi;
  - (b) for a taxi that arrives at the pick-up point on or after the booked time—at the time when the person is notified of the taxi's arrival at the pick-up point.
- (2) If a person asks for a taxi that does not require the taxi to be at the pick-up point at a particular time, the hiring begins at the time when the person is notified of the taxi's arrival at the pick-up point.
- (3) If subsections (1) or (2) do not apply to a hiring, the hiring begins—
  - (a) on the acceptance of the hiring by the taxi driver; or
  - (b) if the intending passenger and the taxi driver agree that the hiring is to begin at a particular time—at that time.

127A When a taxi hiring ends

- (1) The hiring of a taxi ends when—
  - (a) if the hiring is ended under section 137 (Ending of taxi hiring by hirer)—the hirer ends the hiring; or

- (b) if the hiring is ended under section 138 (Ending of taxi hiring by driver)—the driver ends the hiring; or
  - (c) if the driver of a wheelchair-accessible taxi accepts a hiring in accordance with section 129 (3) (Requirements about acceptance of taxi hirings) from a person using a wheelchair— the driver accepts the hiring offered by the person using a wheelchair; or
  - (d) if the hirer leaves the taxi in accordance with a direction under section 152 (Offender to get out of taxi when directed)—the hirer leaves the taxi; or
  - (e) if the hirer is removed under section 153 (Removal of people from taxis)—the hirer is removed from the taxi; or
  - (f) in any other case—the taxi stops at the destination of the hire.
- (2) To remove any doubt, the hiring of a taxi does not include any period during which—
- (a) a hirer is paying the fare and getting out of the taxi; and
  - (b) the driver is unloading goods from the taxi or is carrying goods to a door or entrance of a house, station or other place where the hiring of the taxi ends; and
  - (c) for a wheelchair-accessible taxi—a wheelchair is being released from its attachment to the taxi, unloaded from the taxi or moved (with or without the assistance of the driver) away from the taxi.

## **New South Wales**

### ***Passenger Transport (Taxi-cab Services) Regulation 2001***

#### Regulation 69 Operation of meter by taxi-cab driver

- (1) The driver of a taxi-cab to which a taxi-meter is fitted:
- (a) must not set the taxi-meter in motion before the taxi-cab is hired, and
  - (b) as soon as the taxi-cab is hired, must set the taxi-meter in motion, and
  - (c) during any hiring, must keep the taxi-meter in motion, and
  - (d) during any hiring, must stop the taxi-meter for as long as may be necessary to prevent it from registering a charge during any period during which:

- (i) a hirer in a multiple hire is paying the authorised fare for his or her hire and getting out of the taxi-cab, or
  - (ii) the taxi-cab is delayed for a reason mentioned in clause 70 (5), and
- (e) on the termination of any hiring (other than a hiring that is not the last hiring in a multiple hiring), must operate the taxi-meter so that the fare indicators return to zero.
- (2) For the purposes of this clause, the hiring of a wheelchair accessible taxi-cab by a person using a wheelchair terminates (unless it is sooner terminated) when the taxi-cab stops at the hirer's destination. The driver of the taxi-cab must not demand payment in respect of any period during which the wheelchair:
- (a) is being released from its attachments in the taxi-cab, or
  - (b) is being manoeuvred (with or without the assistance of the driver of the taxi-cab) from the taxi-cab to a place at the hirer's destination such as a bus stop, railway station or wharf or the ground level entrance or door to a residence, hotel, surgery, hospital, office, factory or the like.
- (3) Before receiving payment in respect of any hiring, the driver of a taxi-cab to which a taxi-meter is fitted:
- (a) must cause the amount recorded on the taxi-meter to be displayed so that it may be easily read by the hirer (and, if necessary for that purpose, must cause the face of the taxi-meter to be illuminated), and
  - (b) must state the amount of any extra charge for luggage, goods, tolls or charges.

## Queensland

### ***Transport Operations (Passenger Transport) Regulation 2005***

#### Regulation 65 Operation of taximeter by taxi driver

- (2) The driver of the taxi must only activate the taximeter—
- (a) for a hail or rank hiring—when the hirer enters the taxi; or
  - (b) for a booking—when the hirer is notified of the taxi's arrival; or
  - (c) for a booking for a specific time—at that time or the time when the hirer enters the taxi, whichever is earlier.

- (3) During a hiring, the driver of the taxi must stop the taximeter from registering a charge for any period during which the vehicle is unable to continue the hiring.
- (4) The driver of the taxi must deactivate the taximeter before asking for, or receiving, payment or a voucher—
  - (a) for a hiring other than a hiring under section 66—on arrival at the destination for the hiring; or
  - (b) otherwise—on arrival at the last destination of the multiple hirings.

## South Australia

### ***Passenger Transport (General) Regulations 1994***

- 5) For the purposes of these regulations, a hiring of a taxi commences—
  - (a) subject to paragraph (b), in the case of a hiring by hail or a pre-arranged hiring—when the passenger is seated in the taxi and an instruction or direction is given to the driver by the hirer or passenger;
  - (b) in the case of a pre-arranged hiring—from a time arranged with the hirer provided that, before that time, the taxi has arrived at the place arranged for pick up and the driver has there made personal contact with the hirer or passenger.

The approach adopted in the ACT regulation is considered to be quite thorough. However, even this provision does not specifically address when hiring begins for wheelchair-reliant passengers. Also, there is some inconsistency in that in some cases the hiring commences after embarkation, while in others it commences upon notification of the passenger of the taxi's arrival. A simpler approach may be to specify that hiring commences when the driver sets the vehicle in motion, which implicitly excludes loading time for any and all passengers and their goods.

#### **7.4.4. Questions**

- 63. Should a definition of the hire period be included in the regulations to clarify the issue regarding loading and unloading time?
- 64. Should the hire period be the same for all, regardless of the status of the passenger?

## 7.5. Taxi signs

Regulation 23 provides that a taxi must be fitted with a taxi top-light that complies with Schedule 2. That schedule specifies minimum requirements for taxi top-lights but does not require a particular size or shape.

It is suggested that the schedule should be changed to require a 'Napoleon Sign' top-light with its distinctive shape to enable the public to easily distinguish taxis from other vehicles. Furthermore, it is suggested that a vehicle that is not a taxi should be prohibited from bearing this type of top-light.

### 7.5.1. Questions

- |     |   |
|-----|---|
| 65. | Should all taxis be required to bear a 'Napoleon Sign' top-light for clearer identification of taxis? |
| 66. | Should other vehicles be prohibited from installing a 'Napoleon Sign' top-light?                      |

## 7.6. Taxi meters

### 7.6.1. Meter technology

Regulation 23 provides that a taxi must be fitted with a taximeter that complies with all of the requirements of Part 5 of the Regulations. These include provisions as to the type of meter, installation, testing, and sealing among other things.

Over time, new technology has been developed and introduced into the industry in other parts of the world and elsewhere in Australia. Recent developments make it clear that the current legislation is not capable of accommodating the next generation of meters which have the capacity for remote or 'over the air' fare adjustment without returning to base or breaking the seal. These developments mean that it may no longer be possible to determine whether a meter has been tampered with by checking to ensure that the seal is in place. This has potential consequences for public confidence in the regulated fare structure.

Meters of this type are in use in Victoria, where Cabcharge undertook 'over the air' rate changes after the latest fare increase. The use of such meters has led to some controversy among meter manufacturers and there is some concern that error and equipment failure rates are high.

While it is not possible to accurately forecast exactly how the industry will progress, it is suggested that the legislation should acknowledge the existence of such meter technology and allow the Commission to assess and approve such technology and ensure the bona fides of the user on application from operators. Such a provision allows innovation to continue without

unnecessary barriers, but also enables the Commission to seek a level of assurance on behalf of passengers that such a technology would not be used to manipulate tariffs in a way that could not be readily discerned without undertaking expensive and time-consuming audits.

Other small advances are also being made with meter technology and design such that newer models do not have buttons for the purpose of switching between the tariffs. Rather, the relevant tariff can be established by other means such as via a clock in an onboard computer. At present, regulation 25(3) refers to 'positions' on the meter. It may be necessary to update these provisions in relation to meters to ensure that the registration of the correct tariff is better described.

**7.6.2. Questions**

67. Should the Commission have the power to approve new types of meters that have operational parameters, (such as 'over the air' fare setting) which are not accommodated by the provisions of the existing regulations?
68. Should the Commission have the power to regulate the use of new technology for fare changes to meters and to authorise persons to undertake such changes?
69. Should provisions relating to 'positions' on the meter be updated to reflect new meter technology and design?

## 8. Further information

The *Taxi and Luxury Hire Car Industries Act 1995* Review Project is being conducted by the Passenger Transport Policy Branch of the Department of Infrastructure, Energy and Resources (DIER).

The Taxi Industry Reference Group is meeting over the course of 2006 to consider a range of issues that will inform the rewriting of the *Taxi and Luxury Hire Car Industries Act 1995*, the *Taxi Industry Regulations 1996* and the *Taxi Industry (Taxi Areas) Regulations 1996*. The issues being considered are:

- Fare setting mechanisms and driver pay & conditions
- Taxis in rural areas, including links to community transport
- Wheelchair accessible taxis
- Taxi and luxury hire car accreditation under the Passenger Transport Act/ Industry code of conduct
- Interaction between taxis and luxury hire cars
- Role of radio rooms
- Taxi areas
- Review of National Competition Policy changes to the *Taxi and Luxury Hire Car Industries Act 1995*
- Administrative and enforcement provisions of the *Taxi and Luxury Hire Car Industries Act 1995* and the *Taxi Industry Regulations 1996*.

The discussion papers are available on DIER's website at [www.transport.tas.gov.au/miscellaneous/taxi\\_review.html](http://www.transport.tas.gov.au/miscellaneous/taxi_review.html). Members of the taxi industry wishing to contribute their views to the project should contact one of the industry representatives on the Reference Group, or can provide written submissions to DIER. Members of the public who wish to contribute can email their submissions to [taxi.review@dier.tas.gov.au](mailto:taxi.review@dier.tas.gov.au) or mail hard copies to the address below.

Further information on the project can be obtained from:

Taxi Industry Legislation Review  
Passenger Transport Policy Branch  
Department of Infrastructure, Energy and Resources  
GPO Box 936  
HOBART TAS 7001  
Phone: (03) 6233 2865  
Email: [taxi.review@dier.tas.gov.au](mailto:taxi.review@dier.tas.gov.au)

Review of the  
*Taxi and Luxury Hire Car Industries Act 1995*

Technical Issues, Administration and Enforcement

**Appendices**

## Appendix 1: Glossary of Terms

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### Legislation

Disability Discrimination Act	<i>Disability Discrimination Act 1992 (Commonwealth)</i>
Disability Standards	<i>Disability Standards for Accessible Public Transport 2002</i>
Fee Units Act	<i>Fee Units Act 1997</i>
Luxury Hire Car Industry Regulations	<i>Luxury Hire Car Industry Regulations 2000</i>
Passenger Transport Act	<i>Passenger Transport Act 1997</i>
Subordinate Legislation Act	<i>Subordinate Legislation Act 1992</i>
The Act	<i>Taxi and Luxury Hire Car Industries Act 1995</i>
The Amendment Act	<i>Taxi and Luxury Hire Car Industries Amendment Act 2003</i>
Taxi Areas Regulations	<i>Taxi Industry (Taxi Areas) Regulations 1996</i>
Taxi Regulations The Regulations	<i>Taxi Industry Regulations 1996</i>
Vehicle and Traffic Act	<i>Vehicle and Traffic Act 1999</i>

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### Acronyms

ACT	Australian Capital Territory
ADRs	Australian Design Rules
DIER	Department of Infrastructure, Energy and Resources
LHC	Luxury hire car
NSW	New South Wales
SA	South Australia
TAS	Transport Access Scheme
WAT	Wheelchair-accessible taxi

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## Appendix 2: Penalties

Issue	Perpetual Licence	Taxi Reference	WAT	Reference	Luxury Hire Car	Reference
Failure to deliver up licence to Commission			10 Penalty Units	Taxi Act s23U	10 Penalty Units	Taxi Act s23H
Failure to comply with conditions of licence	NA		20 Penalty Units	Taxi Act s23V(1)	20 Penalty Units	Taxi Act s23J(1)
Person without a particular licence type must not hold themselves out to have that licence	NA		20 Penalty Units	Taxi Act s23V(2)	20 Penalty Units	Taxi Act s23J(2)
Making a false or misleading statement to the Commission or producing a false or misleading document			20 Penalty Units	Taxi Act 223V(3)	20 Penalty Units	Taxi Act s23J(3)
Leasing a licence to another person	NA		10 Penalty Units	Taxi Act s23M(4)	NA	
Failure to return licence number plate on request of Commission	10 Penalty Units	Taxi Regulations r17(5)	10 Penalty Units	Taxi Regulations r28N(9)		
Failure to ensure licence number plate is affixed correctly to vehicle	5 Penalty Units	Taxi Regulations r17A(2)	10 Penalty Units	Taxi Regulations r28N(6)	10 Penalty Units	Luxury Hire Car Regulations r6A(1)
Failure to affix label in accordance with instructions and to keep label affixed	5 Penalty Units	Taxi Regulations r17B(2)	10 Penalty Units	Taxi Regulations r28N(6)	10 Penalty Units	Luxury Hire Car Regulations r6(6)
Failure to cover licence number plate or label while licence is suspended	NA		10 Penalty Units	Taxi Regulations r28N(6)	10 Penalty Units	Luxury Hire Car Regulations r6(6)
Failure to remove licence number plate or label within 14 days of licence expiry, surrender or cancellation			10 Penalty Units	Taxi Regulations r28N(6)	10 Penalty Units	Luxury Hire Car Regulations r6(6)

Issue	Perpetual Licence	Taxi Reference	WAT	Reference	Luxury Hire Car	Reference
Failure to return licence number plate to Commission within 30 days of licence expiry, surrender or cancellation			10 Penalty Units	Taxi Regulations r28N(6)	10 Penalty Units	Luxury Hire Car Regulations r6(6)
Failure to affix inspection label in accordance with instructions and keep affixed	5 Penalty Units	Taxi Regulations r17C(3)				
Failure to notify Commission of change of name or postal address of licensee			10 Penalty Units	Taxi Regulations r28Q	10 Penalty Units	Luxury Hire Car Regulations r8
Failure to comply with reporting arrangements to the Commission	5 Penalty Units	Taxi Regulations r33	10 Penalty Units	Taxi Regulations r28T		

## Appendix 3: Australian Design Rule 44/02



MOTOR VEHICLE STANDARDS ACT  
A national standard determined under section 7 of the Act  
**AUSTRALIAN DESIGN RULE 44/02**  
**SPECIFIC PURPOSE VEHICLE REQUIREMENTS**

### COVER SHEET

This Australian Design Rule (ADR) is a national standard under section 7 of the Motor Vehicle Standards Act 1989 and is part of the Australian motor vehicle standards system.

This rule was approved by the Minister for Land Transport in May 1992 and was notified in Road Vehicle (National Standards) Determination No. 2 of 1992, published in the Government Notices issue of the Commonwealth Gazette No. GN 20 of Wed 20 May 1992.

This rule was first issued in "ADR Package 17".

At the time of its initial gazettal, this Rule differed from the /01 Rule in that it included requirements for Emergency Exits for Omnibuses.

Details of any subsequent changes to this rule are shown on page (ii).

Vehicle category definitions are given in Subpart 2 of Part B, "Definitions and Vehicle Categories".

Definitions for '*Defined Terms*' are given in Subpart 3 of Part B, "Definitions and Vehicle Categories". '*Defined Terms*' are identified in the text of this Rule (other than in the title and major headings) by being in italics, single quotation marks and by having the first letter of each main word capitalised.

Reference should also be made to relevant Subparts of Part A, "Information for Users" with respect to units and abbreviations used in the ADR system.

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## **Appendix 4: Extract of the Inspection Procedure Manual for Light Vehicles**

### **CHAPTER 10**

#### **Section 13 : Light Vehicle Standards – Specific to Taxis**

##### **13.1 VISUALLY INSPECT THE VEHICLES COMPLIANCE PLATE TO DETERMINE VEHICLE SUITABILITY.**

###### **Reason for rejection.**

- a) The vehicle is more than 5 years old, has never been licensed as a taxi and is intended to be licensed for use in a metropolitan taxi area; or
- b) The vehicle is more than 7 years old, has never been licensed as a taxi and is intended to be licensed for use in a taxi area other than a metropolitan taxi area; or
- c) The vehicle is more than 8 years old and is licensed to be used in a metropolitan taxi area; or.
- d) The vehicle is more than 10 years old and is licensed to be used in a taxi area other than a metropolitan taxi area.
- e) The vehicle is not new, and it has never been licensed as a Wheelchair Accessible Taxi (WAT) in Tasmania.
- f) The vehicle is more than 10 years old and is licensed to be used as a WAT.

###### **Note;**

- The age of a vehicle is determined by the month and year recorded on the vehicle compliance plate.
- The age of a WAT is determined by the first day of registration.
- A Metropolitan taxi area is defined in the *Taxi Industry Regulations 1996* as the Hobart, Launceston, Devonport and Burnie taxi areas.

### **13.2 VISUALLY INSPECT TAXI METER, 2 WAY RADIO, (INCLUDING RADIO DISPATCH VISUAL DISPLAY UNITS) AND INTERNAL INDICATORS**

#### **Reason for rejection.**

- a) The taximeter is not installed so that the centre line of the taximeters hiring charges display is within 200 mm of the longitudinal vertical plane through the centre line of the taxi; or
- b) The face of the taximeter is not mounted so as to be clearly visible to all passengers; or
- c) The taximeter is not capable of displaying the figures relating to the tariff on which the meter is operating and hiring charges; or
- d) The taximeter is not capable of being switched to a position so that the figure relating to the charge for the hire of that taxi is held constant; or
- e) The sealing wire of the taximeter does not seal the taximeter to prevent access to the taximeter; or
- f) The taximeter and or tariff indicator lights are not operating; or
- g) The taximeter does not accurately record flag fall, time or distance as set in schedule 4 of the *Taxi Industry Regulations 1996*; or
- h) The taximeter and its supporting bracket or panels have sharp or protruding edges and or encroaches upon the occupant space of the taxi; or
- i) There are switches fitted in the wiring between the taximeter and tariff indicator lights; or
- j) There is not displayed in a prominent place in the taxi a notice of the standard fares and charges or any alternate fares approved in respect of the taxi; or
- k) The vehicle does not have a visual indicating device visible to the driver in his normal seating position to indicate whether or not the roof sign is illuminated; or
- l) There is a part of the 2-way radio (including "radio dispatch visual display units") extending below the lower boundary of the instrument panel directly in front of an occupant seating position (ADR 44/02); or.
- m) There is a part of the taximeter installation that extends below the lower boundary of the instrument panel as originally installed or as supplied by the vehicle manufacturer for taxi use (ADR 44/02); or.
- n) The taximeter, 2-way radio (including "radio dispatch visual display units") encroach upon occupant space and or degrades the energy absorption requirement of instrument panels designed to meet the requirements of ADR 21 (Instruments Panels); or.

- o) The controls for the taximeter or 2-way radio (including "radio dispatch visual display units") are not accessible to the driver when seated in the normal driving position (ADR 44/02); or.
- p) The controls are located in a position that causes annoyance to passengers (ADR 44/02); or.
- r) A taxi meter or 2-way radio (including a "radio dispatch visual display units") is fitted to the upper windscreen area (increasing the risk of head injuries) or
- s) Any equipment or accessories (including taximeter and 2-way radios (including "radio despatch visual display units") are fitted in such a manner to obscure the driver's field of view.

### **13.3 VISUALLY INSPECT EXTERNAL INDICATORS**

#### **Reason for rejection.**

- a) Taxi roof sign is not showing a white light to the front; or
- b) The word "taxi" or similar words to indicate that it is a taxi, are not displayed to the front of the taxi; or
- c) There is no capability of displaying a "Not for Hire" sign in a clearly visible and prominent position; or
- d) Does not have a yellow or amber tariff indicator light mounted on each side of the roof sign and if the vehicle is a WAT does not have an additional tariff indicator light mounted centrally on top of the taxi sign; or
- e) The tariff indicator lights are fitted with a globe less than 4 watts or greater than 6 watts; or
- f) The external traffic indicator lights are fitted with reflectors; or
- g) The tariff indicator lights are not wired so that when the taximeter is operating on the first tariff, only the external tariff indicator light on the left or near side of the taxi is illuminated.
- h) The tariff indicator lights are not wired so that when the taximeter is operating on the second tariff, both external tariff indicator lights are illuminated.
- i) In the case of a WAT the tariff indicator lights are not wired so that when the taximeter is operating on the third tariff only the central light and the light on the left or nearside are illuminated.
- j) In the case of a WAT the tariff indicator lights are not wired so that when the taximeter is operating on the fourth tariff all the lights are illuminated.

#### **13.4 VISUALLY INSPECT SECURITY CAMERA SYSTEM**

**Reason for rejection.**

- a) An operating taxi, on or after 5 July 2004, that is licensed to operate in a metropolitan taxi area or the Ulverstone taxi area is not fitted with any one of the following approved "taxi security camera systems";
- The Arkive as manufactured by AMSD P/L – Briton Video Australia.
  - The Cabcam Dv as manufactured by Martin meters.
  - The RDC 3020 as manufactured by Raywood Communications P/L.
  - The Sigtec Verifeye camera – Mk2 as manufactured by Sigtec P/L.
  - The Cabcam DVR 300 as manufactured by Cabcam P/L.
- b) An operating taxi is licensed to operate outside a metropolitan taxi area or the Ulverstone taxi is fitted with a "taxi security camera system" other than one approved above.

#### **13.5 VISUALLY INSPECT THE OUTSIDE DOORS**

**Reason for rejection.**

- a) Is not fitted with the approved "Security Camera Operating" signs permanently displayed above and adjacent to each external door handle or, adjacent to each external door handle including the external rear-door handle if the vehicle has rear access for wheelchairs, if the taxi is a van.
- b) Is not clearly visible to persons entering the vehicle.

#### **13.6 VISUALLY INSPECT INSIDE THE VEHICLES**

**Reason for rejection.**

- a) The security camera indicates that it is not fully operational.
- b) An approved "Security Camera Test Label" isn't affixed to the upper left-hand side of the inside of the front windscreen.
- c) An approved "Security Camera Test Label" indicating that the camera hasn't been tested within the preceding 12 months.
- d) The security camera's lens is obstructed.
- e) The internal security camera/s are not readily visible to all vehicle occupants.

- f) The internal security rear-vision camera is not positioned above the rear-vision mirror.
- g) The internal rear-vision security camera does not capture all occupants of the vehicle in any image taken by the camera.
- h) The installation of the security camera system doesn't comply with the Vehicle and Traffic Act, 1999 or an ADR requirement.
- i) The installation of the security camera system doesn't easily allow for testing of the device to ensure all features are operating and that the images are being recorded.
- j) All other internal components of the security camera system aside from the internal camera aren't concealed.

### **13.7 ADDITIONAL SECURITY CAMERAS INSTALLED (OPTIONAL)**

#### **Reason for rejection.**

- a) Additional cameras either externally or internally aren't the same standard in all aspects as the rear-vision camera or fitted in accordance with the legislation and manufacturer's instructions.
- b) The first external camera if fitted isn't positioned to provide a view of any person standing at the window of the driver's door.

### **13.8 WHEEL CHAIR ACCESSIBLE TAXIS (WAT) – DETERMINE VEHICLE SUITABILITY.**

#### **Reason for rejection.**

- a) Modifications have been made to the vehicle that has significantly alters the original external appearance of the vehicle.
- b) The vehicle is not fitted with an external boarding ramp with a width less than 800mm.
- c) The external boarding ramp exceeds a 1 in 4 slope for assisted access (AS3856.1(1991) Clause 2.1.8 (e)).
- d) The external boarding ramp does not have a slip resistant surface.
- e) The external boarding ramp does not have a maximum load label (200kg) affixed to the ramp and next to the accessible entrance on the outside of the vehicle.
- f) The vehicle does not have a clear floor or ground space for a stationary wheelchair 800mm by 1300mm (AS1428.2 (1992) Clause 6.1).
- g) The headroom in the clear floor or ground space is less than 1410mm.

- h) The vehicle has a wheel chair entry doorway with an unobstructed vertical height less than 1400mm.
- i) The vehicle is not fitted with a wheelchair restraint system that displays a label that states compliance with SAE J2249.
- j) Restraint anchorage points are not on a rigid frame member.
- k) The restraint system has been modified or repaired.
- l) The restraint system webbing is damaged, frayed or contaminated.
- m) There is evidence that the restraint system has been worn during a severe impact, even if damage to the assembly is not obvious.

## Appendix 5 Resources

Deighton-Smith, Rex: *Reforming the Taxi Industry in Australia*, National Competition Council, Staff Discussion Paper, November 2000.

Department of Infrastructure, Energy and Resources, Inspection Procedure Manual for Light Vehicles, Issue 2, November 2004.

Department of Infrastructure, Energy and Resources, Passenger Transport Operator Accreditation Scheme: *Accreditation Guidelines for Operators of Taxis and Luxury Hire Cars*, Version 1.0, August 2005.

Department of Infrastructure, Energy and Resources, Review of the *Taxi and Luxury Hire Car Industries Act 1995*, Paper 4 – Wheelchair Accessible Taxis, Discussion Paper, February 2006.

Department of Infrastructure, Energy and Resources, Review of the *Taxi and Luxury Hire Car Industries Act 1995*, Paper 5 – Operator Accreditation, Discussion Paper, March 2006.

Department of Infrastructure, Energy and Resources, Review of the *Taxi and Luxury Hire Car Industries Act 1995*, Paper 6 – Luxury Hire Cars, Discussion Paper, May 2006.

Department of Infrastructure, Energy and Resources, Review of the *Taxi and Luxury Hire Car Industries Act 1995*, Paper 7 – Radio Rooms, Discussion Paper, June 2006.

Department of Treasury and Finance, Costing of Fees and Charges – Guidelines for Use by Agencies, Third Edition, May 2003.

Federal Office of Road Safety, Australian Design Rule 44/02 Specific Purpose Vehicle Requirements, ADR Package 20, first issued May 1992, amended June 1993.

National Competition Council: *Assessment of governments' progress in implementing the National Competition Policy and related reforms*, Melbourne, 2005.

National Competition Council: *Assessment of governments' progress in implementing the National Competition Policy and related reforms: Volume 1: Assessment*, Melbourne 2004.

National Competition Council: *Assessment of governments' progress in implementing the National Competition Policy and related reforms: Volume two – Legislation review and reform*, Ausinfo, Canberra, 2003.

Northern Territory Government Motor Vehicle Registry Information Bulletin CPV09 Taxi Licence, effective 23 March 2006, (sourced from [www.ipe.nt.gov.au/whatwedo/taxis/information-bulletins.html](http://www.ipe.nt.gov.au/whatwedo/taxis/information-bulletins.html) accessed 1 June 2006).

Productivity Commission: *Regulation of the Taxi Industry*, AusInfo, Canberra, 1999.

Taxi Industry Review Group: Review of Taxi and Luxury Hire Car Legislation in Tasmania, Discussion Paper, July 1999.

Victorian Country Taxi Industry Review Working Group, *Country Taxi Review Final Report*, May 2006 (sourced from [www.doi.vic.gov.au/DOI/Internet/vehicles.nsf/AllDocs/B8CD9A295CA266E5CA257068001BD987?OpenDocument](http://www.doi.vic.gov.au/DOI/Internet/vehicles.nsf/AllDocs/B8CD9A295CA266E5CA257068001BD987?OpenDocument) accessed 2 June 2006).