

Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017.

Policy objectives and the reasons for them

Queensland's taxi and limousine industries are heavily regulated under the *Transport Operations (Passenger Transport) Act 1994 (TOPTA)*, which is administered by the Department of Transport and Main Roads (TMR). The legislation regulates market entry restrictions, driver authorisation and operator accreditation requirements, vehicle requirements, fares, safety and security measures, customer service standards, accessibility measures and driver conditions.

The emergence of new technology based innovations in recent years has transformed the market for personalised transport services, including taxi, limousine and ride-booking services. At a time of significant structural change in this sector, it is important to provide a policy and regulatory framework that acknowledges existing, new and potential industry participants and allows existing businesses to adjust while also accommodating new market entrants.

In October 2015, the Queensland Government commissioned the independent Opportunities for Personalised Transport Review (**OPT Review**) to ensure that government regulation supports delivery of personalised transport services that meet the needs and expectations of the Queensland community. Following completion of the OPT Review, the Queensland Government released *Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016-2021 (Strategic Plan)* on 11 August 2016. The Strategic Plan includes measures to comprehensively reform Queensland's personalised transport industry.

The main aims of the personalised transport reform program are to:

- strengthen safety standards for the whole personalised transport industry;
- provide customers with greater choice and flexibility;
- drive innovation and improved customer service standards through reduced red tape; and
- ensure accountability and clearly define obligations across the industry.

An additional objective of reform is to provide a fairer regulatory framework across the personalised transport industry.

The first stage of the government's reform program was implemented through amendments to the *Transport Operations (Passenger Transport) Regulation 2005* and other subordinate legislation. These amendments strengthened safety standards and provided customers with greater choice by allowing booked hire services to be provided in vehicles other than taxis.

The second stage of the reform program involves amendments to TOPTA and other legislation to implement comprehensive industry reform, including the introduction of a new licensing and authorisation framework for booked hire services and a new industry chain of responsibility. The purpose of this Bill is to give effect to the second stage of reform.

Achievement of policy objectives

Strengthen safety standards

Measures in the Bill to strengthen safety standards across the personalised transport industry include:

- imposing a primary safety duty on industry participants as part of a new chain of responsibility with significant penalties attached for non-compliance;
- imposing a general duty relating to the management of driver fatigue and a power to make regulations imposing other requirements for managing driver fatigue;
- extending the requirement for a zero blood alcohol concentration to any person who drives, attempts to put in motion or is in charge of a motor vehicle that is available to be used, about to be used or being used to provide a public passenger service; and
- providing a specific power to make regulations relating to the use of security cameras and other recording devices in vehicles used to provide public passenger services.

Provide greater customer choice and flexibility

Measures in the Bill to encourage customer choice within a fairer regulatory framework include:

- introducing a new licensing framework for booked hire services;
- preserving existing taxi service licences and introducing a new licensing framework for taxi service licences;
- preserving existing limousine service licences and allowing limousines to be used to provide booked hire services;
- removing provisions relating to peak demand taxi permits; and
- allowing a regulation providing a scheme for the payment of subsidies for services provided to particular groups to be extended to services provided using limousines and booked hire vehicles if considered appropriate in the future.

Drive innovation and improved customer service standards

Measures in the Bill to reduce red tape and allow industry to innovate and improve their service offerings include:

- replacing the requirement for a person administering taxi services to hold a service contract in certain areas with a simplified authorisation regime for all booking entities;
- removing requirements for taxi service bailment agreements between operators and drivers;

- giving the chief executive discretion to not charge the Taxi Industry Security Levy for a particular financial year; and
- allowing maximum fares to be specified for all taxi services, and for booked hire services for certain persons or types of vehicles or in taxi service areas subject to the market entry restriction of using only taxis or limousines.

Ensure accountability and clearly defined obligations

Measures in the Bill to ensure industry accountability include:

- establishing a new chain of responsibility to ensure each party involved in providing taxi and booked hire services takes reasonable steps to prevent the commission of an offence and to eliminate or minimise safety risks;
- introducing a new booking entity authorisation regime for booking entities;
- imposing significant financial penalties and non-financial sanctions for the provision of unauthorised taxi or booked hire services; and
- establishing audit powers for investigating compliance with relevant transport legislation relating to taxi and booked hire services.

Other amendments

Other amendments in the Bill relating to personalised transport reform include:

- requiring authorised booking entities to provide service-related data about booked hire services;
- allowing a regulation to prescribe a maximum payment surcharge for fares for taxi and booked hire services;
- clarifying that operator accreditation and driver authorisation can be granted for a particular kind of public passenger service and that relevant offences will apply if operator accreditation or driver authorisation is not held in relation to the particular kind of service being provided;
- providing that compensation is not payable in relation to the enactment of the Bill, or in relation to certain changes to market entry restrictions or taxi service areas under TOPTA;
- extending the matters for which evidentiary certificates can be provided to facilitate the prosecution of relevant offences;
- amendments to various definitions under TOPTA to support the new regulatory framework, including key definitions of *booked hire service*, *booking service* and *taxi service*; and
- minor consequential amendments to various Acts, including the *Liquor Act 1992*, *Tobacco and Other Smoking Products Act 1998*, *Transport Planning and Coordination Act 1994* and *Transport Infrastructure Act 1994*.

Alternative ways of achieving policy objectives

The amendments contained in this Bill are the result of extensive policy analysis and consultation with the personalised transport industry and other stakeholders, both during the OPT Review and since the release of the Strategic Plan. Various policy options have been considered in determining how best to achieve the objectives of personalised transport reform.

The amendments contained in this Bill are considered the best way of achieving these objectives.

Government regulation will be maintained only to the extent necessary to ensure safety, equitable access and accountability in the provision of personalised transport services. Less government regulation will encourage more innovation in the delivery of services leading to improved customer outcomes. Consumer benefits resulting from personalised transport reform are expected to be significant and include more competitive fares, shorter waiting times, higher quality services and greater convenience.

Estimated cost for government implementation

As part of the personalised transport reform program, a \$100 million Industry Adjustment Assistance Package (**IAAP**) is being provided to assist the existing taxi and limousine industry to adjust to structural change in the market and relieve industry's financial hardship resulting from this change. The IAAP includes transitional assistance payments, an industry hardship fund, business advisory services, fee waivers, and a \$20 Lift Payment for drivers of wheelchair accessible services provided to Taxi Subsidy Scheme members.

This Bill does not include provisions relating to the IAAP. TOPTA was amended in December 2016 to include a power to make regulations providing a scheme for administration of the main elements of the IAAP (see section 155A). The *Taxi and Limousine Industry Assistance Scheme Regulation 2016* provides a scheme for administration of transitional assistance payments. It is intended to make a further regulation providing a scheme for administration of the industry hardship fund.

Costs associated with the new booked hire service licensing and booking entity authorisation regimes will primarily be recovered through the introduction of associated licence and authorisation fees. Some additional funding was secured to provide for enhanced compliance activities, particularly targeted at persons providing booking services.

Additional costs of implementation will be met from existing departmental resources.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles (FLPs). However, where an amendment raises an FLP issue, the justifications are outlined below.

Taxi administration service contracts (clause 16 – Omission of ch 6, pt 3 (Administration of taxi services))

The proposal to remove taxi administration service contracts may raise FLP issues in ending existing contractual rights of taxi booking companies. This is justified on the basis that these are non-financial contracts that impose minimum service levels and other obligations on taxi booking companies. Further, the contracts do not provide any exclusivity to provide taxi booking services; that is, TMR can enter into a service contract with anyone who wishes to operate such a service. Removal of these contracts will reduce red tape for taxi booking companies and administration costs for TMR.

Taxi and limousine service areas (clause 14 – Insertion of new s36AA and clause 18 – Insertion of new ch 7 - section 91H(4))

Taxi service areas may be reviewed in future to determine whether adjacent taxi service areas should be merged in the public interest. Further, the Bill will remove limousine service areas so that limousines can operate anywhere in Queensland. As the value of taxi and limousine service licences differs depending on the service area to which the licence relates, licence values may be affected by changes to service areas. The Bill will provide that compensation is not payable in relation to these changes.

While this may be considered to raise FLP issues relating to perceived rights under existing taxi and limousine service licences, this is justified on the basis that changes to service areas will occur where it is in the public interest, for example where efficiencies will be gained or it is necessary to meet public demand for cross-area services. Further, retention of limousine service areas would create inequity and be unnecessarily restrictive on limousines given booked hire services provided under a booked hire service licence will not be subject to geographical restrictions.

Special purpose limousine licences (clause 18 – Insertion of new ch 7 – section 91I(4))

The ability to prescribe a date after which special purpose limousine licences must not be renewed may affect the perceived rights of these licence holders. However, these are annual licences similar to the new booked hire service licences, which effectively permit the holder to provide the same services for the same term as the holder of a new booked hire service licence. It is therefore appropriate to phase out special purpose limousine licences by prescribing a date by regulation after which these licences must not be renewed. This is also consistent with the chief executive's existing discretion to renew (or not renew) these licences.

The ability of holders of these licences to provide booked hire services will not be materially impacted as they will continue to be able to do so under a booked hire service licence. The proposed period of 3 years to phase out these licences will allow time for licence holders to adjust to this change.

New penalty regime for provision of unauthorised services (clause 8 – section 27 and clause 18 – Insertion of new ch 7 – sections 74, 75, 76, 77 and 78)

The proposal to introduce a new, more robust, penalty regime for the provision of unauthorised personalised transport services may raise FLP issues by significantly increasing existing penalties in cases of repeat offenders and offences committed by a corporation rather than an individual.

Proposed penalties for the first offence are broadly consistent with the current penalties for unauthorised services and will increase significantly for subsequent offences. It is intended that the maximum penalty for a person who is a body corporate will be five times the maximum penalty for individuals under section 181B of the *Penalties and Sentences Act 1992*.

While the new penalty regime will impose increased penalties of up to ten times the current amount for subsequent offences, this is considered proportionate to the seriousness and

repeated nature of these offences. The new penalties will act as a deterrent and assist TMR to effectively enforce the new regulatory framework.

Driver licence suspension (clause 18 – Insertion of new ch 7 – part 5, division 1)

The proposal to suspend a driver's driver licence if they are convicted of specified personalised transport related offences or the offences are dealt with under the *State Penalties Enforcement Act 1999 (SPE Act)* on three or more occasions may raise FLP issues as the suspension will not be subject to further review or appeal.

The driver licence suspension will apply to relevant driver offences, including where the driver does not hold driver authorisation or is using a vehicle that is not properly licensed or a booking entity that is not authorised to provide the service. The suspension of driver licences is proposed because historically, drivers committing these types of offences have not been deterred by traditional financial penalties. Research shows that the risk of losing the authority to drive through a driver licence sanction is a very effective deterrent.

It is important that the suspension not be subject to any review or appeal, because such processes will effectively delay the operation of any suspension, allowing the person to continue to offend until the reviews and appeals are exhausted. The proposed approach is justified because the licence suspension will not apply until the third offence is committed, and administrative processes will be in place so the driver will be informed after the second offence that any further offence will lead to the licence suspension. This will give the person ample opportunity to adjust their behaviour to avoid the suspension.

Booking entity authorisation – local nominee (clause 18 – Insertion of new ch 7 – part 4, division 5, subdivision 2)

The proposal to impose liability on a local nominee of a foreign authorised booking entity for acts or omissions of the booking entity may raise FLP issues in relation to derivative liability. However, this is considered justified on the grounds that the nominee consents to the nomination, the nominee is likely to be wholly controlled by the authorised booking entity and doing so is broadly consistent with the imposition of penalties under the *Corporations Act 2001 (Cth)* for local agents.

Provisions that allow a regulation to prescribe circumstances where an offence in the Act will not apply (Henry VIII clauses) (clause 18 – Insertion of new ch 7 – new sections 74(4), 76(2), 78(2)(b))

There are clauses in the Bill that allow a regulation to prescribe circumstances where the offence outlined in the Bill will not apply. This may raise an FLP issue as, in effect, it may impliedly amend the operation of the Act provision. The particular provisions in this Bill are as follows:

- New section 74 makes it an offence to provide a taxi service in a vehicle other than a taxi. However, section 74(4) will allow a regulation to prescribe when a vehicle other than a taxi may be used to provide the service.
- New section 76 makes it an offence to provide a booked hire service in a vehicle that is not a booked hire vehicle, limousine or taxi. However, section 76(2) will allow a regulation to prescribe when another vehicle may be used to provide the service.

- New section 78 makes it an offence to provide booking services for a booked hire service unless the person holds a booking entity authorisation. However, section 78(2)(b) will allow a regulation to prescribe circumstances when a person who is the driver can provide booking services without a booking entity authorisation.

Allowing a regulation to provide exceptions from compliance with the Act has previously been accepted as appropriate for the regulation of public passenger services, see for example, sections 70(4) (about taxi services), 12(2)(c) (about operator accreditation) and 24(2)(c) (about driver authorisation). The occasions where the exceptions have been prescribed in a regulation demonstrate the practical nature of how these provisions are used (see, for example, sections 17, s42 and s52A of the *Transport Operations (Passenger Transport) Regulation 2005*).

The proposed approach is further justified because the personalised transport reforms are innovative and allowing a regulation to prescribe exceptions from offences outlined in the Act will assist in facilitating the effective application of this innovative scheme. The proposed approach is designed to promote flexibility and allow for a level of practical detail necessary for efficient operation of the Act provisions in an environment where industry and community expectations are rapidly changing. Any exceptions prescribed by regulation will still be subject to scrutiny and possible disallowance by Parliament through the usual regulation making processes.

Immediate suspension of licences and booking entity authorisations without review or appeal (Clause 18 – sections 91T(2)(b) and 91ZA(2)(b))

Under new sections 91T(2)(b) and 91ZA(2)(b), a regulation will be able to provide for immediate suspension of a booked hire service licence, taxi service licence or limousine licence or booking entity authorisation including on grounds that the chief executive believes it is necessary in the public interest. It is not intended the immediate suspension will be subject to any review or appeal. This may raise FLP issues relating to whether the Bill has sufficient regard to ensuring the rights of holders of licences and booking entity authorisations subject to administrative power are sufficiently defined and subject to appropriate review.

One of the grounds for immediate suspension in section 91T is non-compliance with vehicle requirements (section 91T(2)(b)(i)). In the context of the provision of public passenger services, non-compliance with vehicle requirements is justified as a ground for immediate suspension of the licence related to the vehicle on the grounds of safety.

One of the grounds for immediate suspension in section 91ZA is if an authorised booking entity who is a foreign person does not have a local nominee (see section 91ZA(2)(b)(i)). This is justified as a ground for immediate suspension as the appointment of a local nominee is critical to ensuring foreign authorised booking entities can be held accountable for their conduct including safety obligations.

Another ground for immediate suspension in section 91ZA is that the person or the person's local nominee takes steps to avoid detection of, or prosecution for, an offence committed by the person or another person relating to booked hire services or booking services for booked hire services. This ground is justified because the ability of the State to ensure compliance with the laws of Queensland is critical to upholding the rule of law. If a person takes steps to avoid detection of, or prosecution for, an offence, for example, by giving another person information

about how to avoid detection, the ability of the State to effectively enforce its laws is compromised. Any person who acts in this way is not suitable to provide booking services in Queensland.

Both sections 91T and 91ZA also allow for immediate suspension when the chief executive considers it necessary in the public interest. The ground is broadly framed to ensure that the chief executive can take immediate necessary action in a variety of circumstances that may arise and this approach is consistent with other existing provisions in the Act (see for example, sections 32(3) and 79(3) which allow immediate suspension of driver authorisation or taxi service licences in the public interest).

It is not intended to allow for review or appeal of an immediate suspension because an immediate suspension is designed to ensure inappropriate conduct ceases immediately. Any review or appeal process has the potential to delay the operation of the suspension and thereby allow the party to continue operating – effectively undermining the intent of the provision.

However, any negative consequence for a licence or authority holder is mitigated as an immediate suspension is only a temporary state. If the chief executive decides the licence or authority should be suspended beyond the timeframes or that it should be cancelled, the chief executive will, through the regulation provisions trigger the usual show cause processes. These provisions allow the licensee or authority holder to respond to any allegations, and if the licensee or authority holder does not agree with the final decision on a show cause action, they will be able to appeal to the Queensland Civil and Administrative Tribunal (see Chapter 10 TOPTA).

Provisions that allow regulations to prescribe matters such as grounds for amending, suspending or cancelling licences and booking entity authorisations (Clause 18 – new Chapter 7 – Part 4)

Proposed Chapter 7, Part 4 will allow regulations to prescribe a general power to amend a taxi service licence (section 91P) and, as mentioned above, to outline grounds for suspension or cancellation of licences (section 91T) and booking entity authorisations (section 91ZA). This may raise FLP issues as to whether these types of matters are appropriate for subordinate legislation.

As mentioned above, the personalised transport environment is rapidly changing. Allowing subordinate legislation to address these matters is justified because it ensures the legislative scheme is sufficiently flexible and responsive to industry issues and community expectations. Any provisions prescribed to address the matters outlined will be subject to the scrutiny and possible disallowance by Parliament through the usual regulation making processes.

Consultation

Extensive community consultation on personalised transport reform was undertaken as part of the OPT Review.

Following announcement of the government's reform program, the Personalised Transport Industry Reference Group (PTIRG) was established to provide an avenue for stakeholder engagement and input. PTIRG membership includes representatives from sectors including the

taxi, limousine and ride-booking industries; consumer, driver, motorist and tourism advocacy groups; and social and disability access groups.

Broad public consultation on personalised transport reform was also undertaken during the Transportation and Utilities Committee's consideration of the Heavy Vehicle National Law and Other Legislation Amendment Bill 2016 in late 2016, which included provisions relating to the IAAP.

A series of workshops was also held in late 2016/early 2017 to ensure broader stakeholder engagement and consultation. Workshop topics included the IAAP, accessibility, accountability and safety.

Key themes identified through consultation include safety, the need for an equitable regulatory framework and financial assistance for existing taxi and limousine industry participants to transition to the new framework.

The Department of the Premier and Cabinet, Queensland Treasury, the Department of Justice and Attorney-General, Queensland Health and the Queensland Police Service were consulted on the proposed amendments and are broadly supportive.

The Queensland Productivity Commission was also consulted in relation to the Regulatory Impact Statement System.

Consistency with legislation of other jurisdictions

The personalised transport reform model is broadly consistent with approaches adopted in all other Australian jurisdictions in encouraging greater customer choice in the booked hire services market while maintaining regulation in necessary areas such as safety.

Notes on provisions

Part 1 Preliminary

Clause 1 states that the Bill, when enacted, may be cited as the *Transport and Other Legislation (Personalised Transport Reform) Amendment Act 2017*.

Clause 2 states that the amendments contained in the Bill will commence on a day to be fixed by proclamation. The amendments are proposed to commence in stages from June 2017 to allow sufficient time for industry to prepare for the changes and adjust its business practices to comply with the new framework.

Part 2 Amendment of the Transport Operations (Passenger Transport) Act 1994

Clause 3 states that part 2 of the Bill amends TOPTA.

Clause 4 amends section 12 to clarify that operator accreditation is for a particular kind of public passenger service. Operator accreditation is a qualification an operator of a public passenger service of a particular kind must hold to provide a service of that kind, subject to limited exceptions.

Clause 5 replaces section 15 with a new section providing an offence for an operator of a kind of public passenger service for which operator accreditation is required to provide the service unless the operator holds operator accreditation (or provisional operator accreditation) for a service of that kind.

It is proposed to exclude operators of taxi services and booked hire services from the requirement to hold operator accreditation by regulation under section 12(2) of TOPTA following passage of the Bill. Any safety related requirements currently imposed through operator accreditation will continue to be imposed on these operators through the new chain of responsibility and specific requirements in subordinate legislation such as the requirement to comply with a documented vehicle maintenance program.

Clause 6 replaces section 24 with a new section to clarify that driver authorisation relates to a particular kind of public passenger service. Driver authorisation is a qualification a driver of a vehicle used to provide a kind of public passenger service must hold to drive the vehicle to provide a service of that kind. The intention is that drivers of taxi and booked hire services must hold a driver authorisation for those particular kinds of services.

Clause 7 makes a minor amendment to section 26 relating to driver authorisation standards to refer to 'drive' instead of 'operate' as a result of the new definition of *drive*.

Clause 8 replaces section 27 with a new section making it an offence for a person to drive a vehicle to provide a kind of public passenger service for which driver authorisation is required unless the person holds driver authorisation (or provisional driver authorisation) for a service of that kind. Graduated maximum penalties apply to this offence, with repeat offenders facing

significantly higher penalties. The driver's driver licence may also be suspended in certain circumstances under new section 91ZJ.

Section 27 also creates an offence for a person to provide a kind of public passenger service for which driver authorisation is required unless the person uses drivers who hold driver authorisation (or provisional driver authorisation) for a service of that kind. This offence applies to an operator of the service and a person providing a booking service for the service.

Clause 9 amends section 29 to clarify that authorising documents may include information about the kinds of public passenger services for which the holder of the authorisation is an authorised driver.

Clause 10 makes a minor amendment to section 29A relating to restricted driver authorisation to refer to a person being authorised to 'drive' instead of 'operate' a public passenger vehicle as a result of the new definition of *drive*.

Clause 11 replaces section 35 with a new section requiring drivers to immediately notify the operator or, for a booked hire service, the person providing a booking service for the service if the driver's driver authorisation or a related licence or authorisation under another Act is suspended or cancelled.

Clause 12 amends section 35H to replace the words 'by electronic communication' with the word 'electronically', as a consequence of the removal of the definition of *electronic communication* from schedule 3 of TOPTA.

Clause 13 omits chapter 4A in relation to taxi service bailment agreements. A taxi service bailment agreement is a written agreement between an accredited operator and an authorised driver for the bailment of a taxi that is signed by both parties and includes information prescribed under a regulation. These agreements will no longer be regulated under TOPTA. Agreements with drivers are considered a workplace relations matter for the industry to manage subject to any applicable requirements under other legislation.

Clause 14 inserts a new section 36AA clarifying that compensation is not payable in relation to the making, amendment or repeal of a regulation under section 36 of TOPTA. Section 36 allows for a regulation to declare that a public passenger service is to be provided with market entry restrictions where certain public interest criteria are met. This clause clarifies that the State is not required to compensate any person as a consequence of a regulation restricting market entry being made, amended or repealed. For example, no compensation is payable where a regulation restricting entry to the booked hire services market to taxis and limousines is made or repealed (see also clause 18, new section 75).

Clause 15 amends section 39 as a consequence of the omission of chapter 6, part 3 of TOPTA in relation to service contracts for the administration of taxi services (see clause 16).

Clause 16 omits chapter 6, part 3 in relation to service contracts for the administration of taxi services. The chief executive enters into these service contracts with taxi booking companies for certain taxi service areas in Queensland. These contracts do not give the taxi booking companies any exclusive right to administer services in a particular taxi service area. As part of the reforms, taxi booking companies will no longer require a service contract with the chief

executive to administer taxi services in Queensland. Instead, all persons providing booking services for booked hire services will require booking entity authorisation (see clause 18, new chapter 7, part 4, division 5 of TOPTA). Existing service contracts for the administration of taxi services will end on commencement of these amendments (see new section 210).

Clause 17 omits chapters 7 (Taxi service licences), 7A (Peak demand taxi permits) and 8 (Limousine service licences), which will be replaced by a new chapter 7. New chapter 7 regulates taxi services, booked hire services (including those provided in a limousine) and booking services. Provisions allowing for the issue of peak demand taxi permits will be removed, as regulations to give effect to these permits have never been made. It is intended that increased demand for services during peak periods will primarily be addressed through increased numbers of booked hire vehicles.

Clause 18 inserts a new chapter 7 of TOPTA to establish a new regulatory framework for the provision of taxi services, booked hire services and booking services in Queensland.

Chapter 7 Personalised transport services

Part 1 Preliminary

New section 68 outlines the main purpose of chapter 7, which is to regulate taxi services, booked hire services and booking services to ensure safety, accessibility and accountability in relation to the provision of these services. This purpose aligns with the objectives of personalised transport reform set out in the Strategic Plan.

The provisions in chapter 7 achieve these objectives by, among other things, requiring a person to hold a licence to provide these services in a motor vehicle and that the vehicle meets other requirements; requiring entities providing booking services for booked hire services to be authorised; introducing a chain of responsibility for taxi and booked hire services under which all persons in the chain are responsible for ensuring the safety of their activities including managing driver fatigue; providing significant penalties to encourage compliance; and ensuring consumer protection for fares and payment surcharges.

New section 69 defines *hire on-the-spot* and *relevant transport legislation* for chapter 7.

Hire on-the-spot, for a vehicle and its driver, means arranging, in person, the hire of the vehicle and its driver for a journey to start immediately or shortly after the vehicle and its driver are hired. The act of hiring on-the-spot would include, for example, a person walking up to another person on the side of a road to arrange in person the hire of a vehicle and its driver for the journey to start with little or no delay (usually within 5 or 10 minutes). The other person may or may not be the person who drives the vehicle and the vehicle may be at or in the vicinity of the place where the vehicle and its driver were hired.

Relevant transport legislation is defined to include TOPTA, the *Transport Operations (Road Use Management) Act 1995 (TORUM Act)* and the *Motor Accident Insurance Act 1994 (MAI Act)*.

New section 70 defines a *taxi service* as a public passenger service for a journey that starts in Queensland provided by the hire of a motor vehicle that has not more than 12 seating positions

(including the driver's position) and a person to drive the vehicle; and under which the vehicle plies or stands for hire by members of the public in a public place. This replaces the current definition of *taxi service* in schedule 3 of TOPTA, which encompasses both 'rank and hail services' (currently defined in schedule 11 of the *Transport Operations (Passenger Transport) Regulation 2005*) as well as hire services that are booked in advance. A *public passenger service* is defined in schedule 3 of TOPTA.

The phrase 'plies or stands for hire' is also clarified in this section. The circumstances in which a vehicle plies or stands for hire by members of the public in a public place include where the vehicle is made available for *hire on-the-spot* by members of the public. Plying or standing for hire is intended to include, for example, a vehicle standing at a taxi rank or other place where members of the public might reasonably expect taxis to be available for *hire on-the-spot*; or the vehicle having a sign, marking, light or other thing on it that might reasonably indicate to members of the public it is a taxi or another vehicle available for *hire on-the-spot*.

New chapter 7 of TOPTA does not regulate services provided by the hire of a driver and a motor vehicle that has more than 12 seats as these services may instead be considered charter bus services.

New section 71 defines a *booked hire service* as a public passenger service for a journey that starts in Queensland:

- provided by the hire (other than the *hire on-the-spot*) of a motor vehicle that has not more than 12 seating positions (including the driver's position), or is a limousine, and a person to drive the vehicle; and
- that may be used by the public or a substantial part of the public, regardless of whether there is a condition of using the service.

The express inclusion of licensed limousines is to ensure the existing limousine fleet, which includes stretch motor vehicles with more than 12 seats, are included as vehicles providing booked hire services.

A substantial part of the public would include, for example, a part of the public of real importance or value or a large part of the public. A condition of using a booked hire service would include, for example, holding an account or membership to use the service.

New section 72 defines a *booking service* as a service under which a person arranges a booking for the person or another person to drive a motor vehicle to provide a booked hire service.

Subsections (2) and (3) clarify when a person 'arranges' a booking for a booked hire service. A person arranges a booking for himself or herself to drive the vehicle to provide the service by accepting the booking. This will apply where an individual takes bookings directly from the customer and is the only driver who provides the service. A person arranges a booking for another person to drive a motor vehicle to provide a booked hire service by arranging for the other person to accept the booking (if a booking system requires the driver to accept the booking); or by assigning the booking to the other person. The effect of these provisions is that any person arranging a booking will require booking entity authorisation, even if the person is also the driver (see new section 91V for meaning of *booking entity authorisation*).

Subsection (4) states that a booking may be accepted by or assigned to a driver in any way, for example in person, by telephone, or by using an electronic booking system. This would include a system that allows the driver to use an app on the driver's smartphone to accept bookings. Subsection (5) clarifies that it does not matter whether a person arranging the bookings is in another State or outside Australia.

New section 73 defines a person who *provides* a taxi service or booked hire service using a motor vehicle to include a person who is the operator of the service; drives the vehicle; or, for a booked hire service, provides a booking service for the service. An *operator* will be redefined in schedule 3 of TOPTA as a person carrying on the business of providing a public passenger service. The definition of *provides* is used in chapter 7 to regulate the provision of taxi and booked hire services by operators, drivers and booking entities, particularly in relation to the offences set out in part 2, division 1 (new sections 74 to 78).

Part 2 Taxi services and booked hire services

Division 1 Providing services

New section 74 creates offences for providing unlicensed taxi services. The intention of these offences is to retain exclusive access to the 'rank and hail' market for taxis. Graduated maximum penalties apply to these offences, with repeat offenders facing significantly higher penalties. A driver's driver licence may also be suspended for offences under section 74 in certain circumstances under new section 91ZJ.

Subsection (1) prohibits a person from providing a taxi service using a motor vehicle that is not a taxi.

Subsection (2) prohibits a person in control of a motor vehicle that is not a taxi from engaging in conduct that involves the vehicle plying or standing for hire by members of the public in a public place (new section 70(2) provides examples of when a vehicle plies or stands for hire). However, subsection (3) clarifies that subsection (2) does not apply if the motor vehicle has more than 12 seating positions including the driver. A *person in control* is currently defined in schedule 3 of TOPTA.

Subsection (4) provides for a regulation to prescribe certain taxi services to which the offences in section 74 do not apply. It is proposed to prescribe a *cross-border taxi service* by regulation under this provision so these services will not require a taxi service licence under TOPTA to provide for passenger travel across the Queensland border. Cross-border taxi services are currently defined in schedule 3 of TOPTA as certain taxi services provided using a taxi licensed in New South Wales.

New section 75 applies where a regulation is made under section 36 of TOPTA declaring that a booked hire service is to be provided in a stated taxi service area using only a taxi or a limousine. In order to increase the level of public passenger services available and public access to these services in particular geographical areas, it may be necessary to make a regulation under section 36 restricting the market for booked hire services in specific taxi service areas to taxis and limousines. Under section 75 it will be an offence for a person to provide a booked hire service for a journey starting in the stated taxi service area using a vehicle other than a taxi or limousine. Graduated maximum penalties apply to this offence, with repeat offenders facing

significantly higher penalties. A driver's driver licence may also be suspended in certain circumstances under new section 91ZJ.

New section 76 creates an offence for providing unlicensed booked hire services. It prohibits a person from providing a booked hire service using a motor vehicle that is not a booked hire vehicle, taxi or limousine, unless the service is excluded by regulation. Graduated maximum penalties apply to this offence, with repeat offenders facing significantly higher penalties. A driver's driver licence may also be suspended in certain circumstances under new section 91ZJ. It is not currently proposed to exclude any booked hire services from this offence by regulation.

New section 77 creates an offence for a person to provide a booked hire service requested through a fixed booking device, unless it is provided using a taxi. A *fixed booking device* is defined in this section as a device that is fixed at a place and has the primary function or purpose of allowing a person to request a booked hire service where the journey starts at the same place. This provision is intended to apply to an electronic booking device fixed at a place (for example, at a taxi rank, hotel or club) that has the primary function or purpose of allowing a person to book a booked hire service for a journey that starts at the place by, for example, pushing a button to request the service. These devices operate as electronic pick-up zones (effectively operating in a very similar way to a taxi rank) without a vehicle plying or standing for hire even though the vehicle to be used to provide the booked hire service may be parked beside, or in the vicinity of, the device.

Graduated maximum penalties apply to this offence, with repeat offenders facing significantly higher penalties. A driver's driver licence may also be suspended in certain circumstances under new section 91ZJ.

New section 78 creates offences for providing unauthorised booking services for booked hire services.

Subsection (1) prohibits a person from providing a booking service for another person to drive a vehicle to provide a booked hire service unless the person is an authorised booking entity.

Subsection (2) prohibits a person from driving a motor vehicle to provide a booked hire service unless the booking for the service was arranged by an authorised booking entity. If the driver arranges bookings for himself or herself, the driver must hold booking entity authorisation. However, paragraph (b) allows a regulation to prescribe circumstances when a person who is the driver can provide booking services without a booking entity authorisation.

Graduated maximum penalties apply to offences under section 78, with repeat offenders facing significantly higher penalties. A driver's driver licence may also be suspended for the offence under section 78(2) in certain circumstances under new section 91ZJ.

Division 2 Booking records for booked hire services

New section 79 states that the requirements in division 2 do not apply to a booked hire service provided using a taxi. Persons providing booked hire services (other than in taxis) must demonstrate that they have a booking record for the service in order to ensure that taxis remain the exclusive provider of taxi services.

New section 80 defines *booking record* for the purposes of division 2.

New section 81 requires a person providing a booking service for a booked hire service to make a booking record; give a copy to the driver before the relevant journey starts; keep the record for at least 2 years after it is made; and produce it to an authorised person on request.

New section 82 requires a driver of a vehicle used to provide a booked hire service to carry the booking record while providing the service, including just before, during and just after the journey. The driver must also immediately produce the record for inspection by an authorised person on request or allow the authorised person to enter the vehicle in certain circumstances where the record is displayed electronically. The driver's driver licence may also be suspended for this offence in certain circumstances under new section 91ZJ.

Part 3 Safety duties

Division 1 Preliminary

The provisions of part 3 are modelled on, and intended to complement, chain of responsibility provisions contained in the Heavy Vehicle National Law (Queensland) (HVNL) and the *Work Health and Safety Act 2011* (WHS Act).

New section 83 provides definitions of *business practices*, *fatigue*, *reasonably practicable*, *safety law* and *safety risk* for part 3.

New section 84 defines who is a *person in the chain of responsibility* for a taxi service or a booked hire service. This includes an operator of the service; the holder of a taxi service licence, limousine licence or booked hire service licence for a motor vehicle used to provide the service; the driver of a motor vehicle used to provide the service; a registered operator of a motor vehicle used to provide the service; a holder of booking entity authorisation under which a person provides booking services for the service (and the booking entity's local nominee, if the entity is a foreign person); and any other person who provides booking services for the service.

New section 85 clarifies that the safety duties under part 3 are complementary to the safety duties under the WHS Act and the HVNL (both a *safety law*) but focus on the safety of taxi and booked hire services. The duties under a safety law apply in addition to part 3 of TOPTA and, to the extent of any inconsistency between a provision of part 3 and a provision of a safety law, the provision of a safety law prevails. Where an act, omission or circumstances constitutes an offence under both part 3 of TOPTA and a safety law, an offender is not liable to be punished more than once for the act, omission or circumstances.

Division 2 Principles

New section 86 states that the safety of activities associated with providing a taxi service or booked hire service is the shared responsibility of each person in the chain of responsibility for the service, and that the level and nature of a person's responsibility depends on the person's functions, the nature of the safety risks and the person's capacity to control, eliminate or minimise the risks.

New section 87 clarifies that a person may have more than one duty because of their functions; more than one person can concurrently have the same duty; each person must comply with the duty even if another person has the same duty; if more than one person has a duty for the same matter, each person is responsible and must discharge the duty to the extent the person has capacity to influence or control the matter; and a duty cannot be transferred. This section also clarifies that compliance with relevant transport legislation (see new section 69 for the definition of relevant transport legislation) or a safety law is not of itself evidence that a person has discharged a duty under part 3.

Division 3 Nature of primary duties

New section 88 creates a primary duty of care imposed on each person in the chain of responsibility for a taxi service or booked hire service to ensure, so far as is reasonably practicable, the safety of the person's activities relating to providing the service. Without limiting this general requirement, each person must eliminate safety risks, or minimise those risks to the extent it is not reasonably practicable to eliminate them; and ensure the person's conduct does not encourage another person in the chain of responsibility to contravene the provisions of relevant transport legislation relating to providing taxi and booked hire services or motor vehicles used to provide those services. Examples of activities that may be consistent with the primary duty include providing training to staff and other persons in the chain of responsibility on safe business practices and conducting regular maintenance of vehicles to ensure they remain compliant with vehicle standards and are safe to use on the road.

New section 89 creates an offence for an executive officer of a corporation with a primary duty under section 88 to fail to exercise due diligence to ensure the corporation complies with the duty. An *executive officer* of a corporation is defined in schedule 3 of TOPTA as a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

The executive officer may be convicted of this offence even if the corporation has not been proceeded against for, or convicted of, an offence relating to the primary duty. The maximum penalty is the penalty for a contravention of the primary duty by an individual. *Due diligence* is defined in this section and includes, for example, ensuring the corporation has appropriate resources and processes to eliminate or minimise safety hazards or risks.

Division 4 Failing to comply with primary duties

Division 4 (new sections 90, 91 and 91A) sets out the offence and penalty structure for failing to comply with the primary duty under section 88, which mirrors the HVNL and WHS Act.

A category 1 offence (section 90) applies where a person has a primary duty and without a reasonable excuse, engages in conduct that exposes an individual, or class of individuals, to a risk of death or serious injury or illness, and is reckless to the risk. The maximum penalty is 3000 penalty units or 5 years imprisonment for an individual and 30,000 penalty units for a corporation.

A category 2 offence (section 91) applies where a person has a primary duty, contravenes the duty and thereby exposes an individual, or class of individuals, to a risk of death or serious

injury or illness. The maximum penalty is 1500 penalty units for an individual and 15,000 penalty units for a corporation.

A category 3 offence (section 91A) applies where a person has a primary duty and contravenes that duty. The maximum penalty is 500 penalty units for an individual and 5000 penalty units for a corporation.

Division 5 Duties relating to fatigue management

New section 91B imposes duties on persons in the chain of responsibility relating to driver fatigue. Managing fatigue levels is necessary to ensure the safety of taxi and booked hire services and achieve the objectives of TOPTA.

Subsection (1) prohibits a person from driving a motor vehicle being used to provide a taxi service or booked hire service while the person's ability to drive safely is impaired by fatigue.

Subsection (2) requires a person in the chain of responsibility to take all reasonable steps to ensure another person does not drive a motor vehicle to provide the service while the other person's ability to drive safely is impaired by fatigue.

New section 91C allows a regulation to impose other duties or requirements relating to driver fatigue on a person in the chain of responsibility, such as standards about working time spent driving a motor vehicle; requirements relating to monitoring, recording and reporting on these matters; use of particular equipment or technology to manage fatigue; and training of drivers and other persons in the chain of responsibility about managing driver fatigue.

Part 4 Licences and authorisation for personalised transport services

Division 1 Taxi service licences

New section 91D defines a *taxi service licence* as a licence for a taxi service area issued by the chief executive under which the holder may provide taxi services and booked hire services using the motor vehicle stated in the licence.

New section 91E relates only to *original taxi service licences*, which are taxi service licences that were in force immediately before the commencement. The section clarifies that original taxi service licences continue in force and preserves the existing term and renewal provisions in TOPTA for these licences. An original taxi service licence is for a term of not more than 5 years stated in the licence; must, at the licence holder's request, be renewed for further successive terms of 5 years if its conditions are complied with; or may be renewed for a shorter term if requested by the applicant for renewal.

New section 91F relates to taxi service licences issued after the commencement. This section allows the chief executive to issue a taxi service licence for a taxi service area on a renewable or non-renewable basis. Before doing so, the chief executive must, by public notice, invite offers to purchase the taxi service licence. The chief executive is not obliged to accept any offer for a taxi service licence. The number of taxi service licences will be fixed for each taxi service area (see new section 91ZT).

Section 91F also sets out the term of taxi service licences issued after the commencement. They will be for a term of not more than 5 years stated in the licence; and may only be renewed for 1 or more successive terms if the sum of the licence terms does not exceed 5 years. If the licence is issued on a non-renewable basis, it must not be renewed.

Under section 91F, a taxi service licence issued after the commencement is not transferable.

New section 91G allows the chief executive to amend a taxi service licence to change the taxi service area for the licence to another taxi service area in certain circumstances, for example if the licence holder successfully offers for a transfer to the other taxi service area following a calling of public offers. If the chief executive considers that the value of a taxi service licence increases as a result of a licence being transferred to another taxi service area under this provision, the chief executive may require the licence holder to pay the amount of the increase as a condition of the transfer.

The existing limitation in section 78 of TOPTA on the number of taxi service licences that can be held, leased or managed by a single operator in a taxi service area will be removed as this restriction is no longer necessary with greater choice in the booked hire market. However, should any operator engage in anti-competitive conduct in the provision of taxi or booked hire services, then the chief executive is able to suspend or cancel the licence in the public interest under new section 91T.

Division 2 Limousine licences

New section 91H defines a *limousine licence* as a licence issued by the chief executive under which the holder may provide booked hire services using the motor vehicle stated in the licence. The section clarifies that limousine service licences in force immediately before the commencement continue in force as limousine licences; and that the chief executive must not issue any new limousine licences. The concept of a limousine service as a distinct class of public passenger service will not be retained as booked services in luxury motor vehicles will also be able to be provided using a booked hire vehicle.

The section also clarifies that a limousine service area stated in a limousine licence has no effect. It is intended that limousines, like booked hire vehicles, may be used in any area in Queensland. As such, the concept of limousine service areas will be removed from TOPTA in order to remove the restriction this places on limousine operations.

Section 91I sets out the term of limousine licences. This section preserves the current term and renewal provisions in TOPTA for limousine service licences but also provides for special purpose limousine licences to be phased out in the future given they are an annual licence that is substantially similar to the new booked hire service licence. Special purpose limousine licences authorise the provision of services for weddings, student events and tourist services only.

Under this section, a limousine licence is for a term of not more than 5 years stated in the licence. Special purpose limousine licences may be renewed for further successive terms of one year, and other limousine licences may be renewed for successive terms of 5 years; or for a shorter term if requested by the applicant for renewal. However, a regulation may prescribe

a day after which a special purpose limousine licence must not be renewed, to allow for these licences to be phased out over time.

The holder of a limousine licence will continue to be exempt from the application of the *Liquor Act 1992* and limousines will continue to have access to certain priority lanes or areas, including bus lanes and transit lanes, under the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*.

Division 3 Booked hire service licences

New section 91J defines a *booked hire service licence* as a licence issued by the chief executive under which the holder may provide booked hire services using the motor vehicle stated in the licence. There is no limit on the number of booked hire service licences that may be issued.

New section 91K allows a regulation to be made to provide for issuing, or refusing to issue, booked hire service licences. It is intended that the regulation will require, for example, that the person is a suitable person to hold a licence and has not committed an offence against relevant transport legislation (see new section 69 for the definition of relevant transport legislation) or previously had a licence suspended or cancelled.

New section 91L states that the term of a booked hire service licence is the period prescribed by regulation or, if no period is prescribed, the period of not more than one year stated in the licence. Booked hire service licences are not renewable, but the licence holder may apply for a new licence before the existing licence expires. Initially, it is intended to issue booked hire service licences for a term of one year.

New section 91M states that a booked hire service licence is not transferable.

Division 4 General provisions for licences

New section 91N states that division 4 applies to a taxi service licence, limousine licence and booked hire service licence.

New section 91O allows the chief executive to impose conditions on a licence and prohibits the licence holder and operator of the service provided under the licence from contravening a licence condition.

New section 91P allows a regulation to authorise the chief executive to amend licence conditions in the public interest and to authorise amendment of licences in other circumstances such as to correct clerical errors.

New section 91Q requires the operator of the service provided under the licence to give written notice to each driver of a vehicle being used to provide the service detailing the licensed vehicle, any licence conditions and the relevant taxi service area (for a taxi service licence). This section also requires the driver to produce this notice at the request of an authorised person.

New section 91R relates to the vehicle stated in the licence.

Subsection (1) requires a motor vehicle stated in a licence to comply with requirements for the vehicle prescribed by regulation. It is intended that the regulation will require, as a minimum, vehicles stated in licences have a current certificate of inspection under the TORUM Act and the correct compulsory third party insurance class under the MAI Act. The vehicles must also be registered in Queensland. Restrictions on the type of vehicle that can be used under the licence may also be prescribed.

However, subsection (2) clarifies that any vehicle requirements about the type of vehicle do not apply to a motor vehicle stated in a limousine licence immediately before the commencement. This is intended to exempt existing motor vehicles under limousine licences from vehicle type restrictions. However, if a licence holder proposes to change the motor vehicle operating under a limousine licence in the future, restrictions on the type of vehicle to be used under a limousine licence will apply.

Subsection (3) allows a regulation to provide for a licence holder to apply to change the motor vehicle stated in the licence if it is proposed to permanently change the licensed vehicle to a different vehicle. This subsection also allows a regulation to authorise another vehicle (a *substitute vehicle*) to be used under the licence instead of the licensed vehicle in stated circumstances and on stated conditions, such as where the licensed vehicle cannot be used temporarily due to major mechanical failure.

New section 91S allows a regulation to provide for the transfer of original taxi service licences or limousine licences (other than special purpose limousine licences). These licences are currently able to be transferred under TOPTA and these arrangements will continue. However, taxi service licences issued after the commencement, special purpose limousine licences and booked hire service licences are not transferable to another person (see also new sections 91F and 91M). Under this section, a regulation may also provide for taxi service licences, limousine licences and booked hire service licences to be leased or surrendered.

New section 91T allows a regulation to provide for suspending and cancelling a licence, including for example where the licence holder contravenes relevant transport legislation or a condition of the licence; and to immediately suspend a licence if the licensed vehicle does not comply with relevant vehicle requirements or the chief executive considers immediate suspension is necessary in the public interest.

New section 91U requires the chief executive to keep a register of licences containing certain details about the licence, including the holder's name and contact details; licence number; licence period; licensed vehicle; taxi service area for a taxi service licence; and any licence conditions. The chief executive may publish information contained in the register such as the licence number and the licensed vehicle, but must not publish information about an individual for privacy reasons. The purpose of publishing licence details is to assist parties involved in providing taxi and booked hire services, and customers, to identify whether a vehicle is licensed or unlicensed.

Division 5 Booking entity authorisations

Subdivision 1 Booking entity authorisations generally

New section 91V defines *booking entity authorisation* as an authority under which a person may provide booking services for a booked hire service (see new section 72 for the definition of *booking service*); and also defines *authorised booking entity* for a booked hire service as a person who holds booking entity authorisation for the service. An authorised booking entity will not also need to hold operator accreditation under TOPTA as it is proposed to exclude operators of taxi services and booked hire services from the requirement to hold operator accreditation by regulation under section 12 of TOPTA.

New section 91W allows a regulation to provide for granting, or refusing to grant, booking entity authorisation. For example, it is intended that the regulation will provide for criminal history checks on relevant parties related to the application for a booking entity authorisation (such as executive officers and local nominees), and allow an application to be refused if a person has been charged with, or convicted of, a disqualifying offence. A *disqualifying offence* is defined in schedule 3 of TOPTA to include, for example, an offence against TOPTA and certain provisions of the Criminal Code.

Under this section, an applicant for booking entity authorisation who is a foreign person must nominate its local nominee under new section 91ZD and give any other information required by the chief executive. Local nominees are dealt with in subdivision 2.

New section 91X states that a booking entity authorisation is for a term of not more than 5 years stated in the authorising document. The authorisation may be renewed for 1 or more successive terms if the sum of the terms does not exceed 5 years. If the authorisation is issued on a non-renewable basis, it must not be renewed, although the holder can apply for another booking entity authorisation before the existing authorisation expires.

New section 91Y allows the chief executive to impose conditions on a booking entity authorisation and prohibits the authorised booking entity from contravening a condition.

New section 91Z allows a regulation to authorise the chief executive to amend conditions of a booking entity authorisation if the chief executive is satisfied this is necessary to improve booking services for booked hire services in the public interest; and to authorise amendments of booking entity authorisation in other circumstances such as to correct a clerical error.

New section 91ZA allows a regulation to provide for suspending and cancelling a booking entity authorisation, including for example where the holder contravenes TOPTA or a condition of the authorisation; or the holder or certain other parties have been charged with, or convicted of, a disqualifying offence. This section allows a regulation to authorise the chief executive to immediately suspend the authorisation if the holder is a foreign person and does not have a local nominee or on public interest grounds. The regulation may also authorise the chief executive to immediately suspend a booking entity authorisation if a holder of the authorisation, or the local nominee of a holder who is a foreign person, takes steps to avoid detection of, or prosecution for, an offence committed by the person or another person relating to booked hire services. This may include, for example, giving information to another person

about how to avoid detection of, or prosecution for, an offence or using technology to evade compliance and enforcement activities.

New section 91ZB states that a booking entity authorisation cannot be transferred or leased, but a regulation may provide for it to be surrendered.

Subdivision 2 Local nominee

New section 91ZC states that subdivision 2 applies if an authorised booking entity is a foreign person. A *foreign person* is to be defined in schedule 3 of TOPTA as an individual who usually lives in a foreign country, or a corporation incorporated in a foreign country.

New section 91ZD requires the authorised booking entity to nominate one person to be its representative for TOPTA (the person's *local nominee*). The local nominee must be an individual who usually lives in Australia or a corporation incorporated in Australia. The nomination must be given to the chief executive in the approved form and include the nominated person's signed written consent.

The requirement for a local nominee ensures that authorised booking entities based in foreign jurisdictions have a local presence. These provisions will assist compliance and enforcement activities in relation to authorised booking entities that are foreign persons. Without a local nominee, effective compliance and enforcement may be difficult, and in some cases cost-prohibitive. It is not proposed to require the local nominee to hold assets in Australia as the main penalty to be imposed on a foreign authorised booking entity for failure of the local nominee to comply will be to suspend or cancel the entity's authorisation. After a person's booking entity authorisation has been suspended or cancelled, drivers will be prohibited from accepting bookings from the person (see new section 78(2)).

New section 91ZE states that if an authorised booking entity commits an offence against TOPTA, the entity's local nominee is taken to have also committed the offence. If the authorised booking entity is a corporation, the local nominee will be liable to the penalty that applies to a corporation if convicted of the offence. This section also clarifies that the local nominee may be proceeded against for, and convicted of, an offence regardless of whether the authorised booking entity has been proceeded against for, or convicted of, the offence. This section applies regardless of whether the local nominee has contributed to, or influenced, the commission of the offence.

New section 91ZF provides for notices, directions, reports and other documents to be given to an authorised booking entity by giving it to the entity's local nominee; and for notices and information given by the local nominee (except the nomination of a new local nominee) to be taken to have been given by the authorised booking entity. Further, for chapter 11, a place of business of an authorised booking entity's local nominee is taken to be a place of business of the entity.

Subdivision 3 General provisions

New section 91ZG requires an authorised booking entity to keep and provide to the chief executive information prescribed by regulation about booking services and booked hire services. The purpose of this provision is to assist the chief executive to comply with

obligations under section 10 of TOPTA relating to the development, operation and funding of public passenger transport; or to monitor compliance with TOPTA in relation to booked hire services and booking services. Service-related information is critical to allow TMR to monitor service performance and changes in the personalised transport industry, and contributes to improving TMR's ability to undertake objective evidence-based analysis of industry performance and sustainability. Data is also critical for ensuring the safety of services, including for example ensuring drivers are not driving excessive hours with multiple authorised booking entities contributing to driver fatigue.

It is intended that service-related information prescribed by regulation may include, for example, details about the number of drivers and licensed vehicles affiliated with the authorised booking entity; number of bookings by period, locality and vehicle type; waiting times for bookings; and pick up and drop off locations. It is also intended to require this information on a regular basis, rather than making specific, ad hoc data requests.

Section 91ZG also provides that information given to the chief executive under this section is generally not admissible in a civil, criminal or administrative proceeding. The purpose of this provision is to give authorised booking entities confidence that TMR does not intend to use information obtained under this provision against them in a relevant proceeding. However, this provision does not affect the admissibility of information or evidence obtained under any other provision of TOPTA or other legislation, for example under the audit provisions contained in new part 5, division 2 of chapter 7 of TOPTA.

New section 91ZH requires the chief executive to keep a register of booking entity authorisations containing certain details about the authorisation, including the holder's name and contact details; authorisation number and period; local nominee if the authorised booking entity is a foreign person; and authorisation conditions. The chief executive may publish information contained in the register such as the authorised booking entity's name, business name (if any) and authorisation number, but must not publish any other information about an individual for privacy reasons. The purpose of publishing booking entity authorisation details is to assist parties involved in providing taxi and booked hire services, and customers, to identify authorised and unauthorised services. In particular, drivers will be able to check whether an entity arranging bookings for the driver holds a current booking entity authorisation, in order to ensure the driver does not commit an offence in accepting bookings from an unauthorised entity under new section 78(2).

Part 5 Enforcement

Division 1 Suspension of driver licences for driver offences

New section 91ZI defines a *relevant driver offence* for the purposes of division 1. This includes an offence against section 27(1), which is the requirement to hold driver authorisation; and sections 74(1), 74(2), 75(2), 76(1), 77(1), 78(2), 82(1) and 82(3), which are the driver offences in chapter 7, part 2 relating to the unauthorised provision of taxi and booked hire services.

New section 91ZJ allows the chief executive to suspend a person's driver licence for one month if the person has, within a 3-year period, committed 3 or more relevant driver offences. If more than one relevant driver offence is committed at the same time, it is considered to be the one offence for the purposes of this section.

The licence is suspended by written notice stating the matters prescribed in subsection (4), including the reasons for the suspension and rights to a review of the decision. New section 150C clarifies when a person *commits an offence* for this section. By applying this penalty to repeated offences, the intent is to provide the driver with an opportunity to correct his or her behaviour before facing more serious consequences.

Driver licence suspension is a non-financial sanction intended to deter drivers from non-compliance with TOPTA. Further, imposing this sanction on a driver will indirectly impact the business model of a third party (such as a booking entity) who might otherwise benefit from a driver's non-compliance. A third party can pay a fine on behalf of another person whereas non-financial sanctions target the drivers directly. Faced with the loss of their driver licence, drivers are unlikely to continue to provide unauthorised services, thereby disrupting the third party's business model.

New section 91ZK clarifies the effect of a driver licence suspension. If the person holds a driver licence, the person's licence (for a Queensland driver licence) or authority to drive on a Queensland road (for any other driver licence) is suspended. If the person does not hold a driver licence, the person is disqualified from holding or obtaining a driver licence. The person will not be able to apply for a special hardship order under the TORUM Act, which authorises the person to continue driving in certain circumstances. No show cause process will apply to the suspension and the decision to suspend will not be a reviewable decision under TOPTA.

New section 91ZL clarifies that a driver licence suspension under TOPTA does not terminate a vehicle insurance policy. However, a vehicle insurance policy does not include a CTP insurance policy under the MAI Act.

Division 2 Audits

New section 91ZM states the purpose of audits under division 2, which is to allow the chief executive or an authorised person to audit compliance with relevant transport legislation (see new section 69 for the definition of relevant transport legislation) by a person in the chain of responsibility for a taxi service or a booked hire service, and to verify information given to the chief executive about the person's relevant activities. For example, TMR may wish to investigate whether an authorised booking entity has a system in place to ensure compliance with the requirement to only use authorised drivers and licensed vehicles; or whether a person in the chain of responsibility has appropriate systems in place for managing driver fatigue or other safety risks.

New section 91ZN allows the chief executive or an authorised person to give a person in the chain of responsibility an audit notice in relation to a proposed audit of the person's business activities relating to the provision of a taxi service or booked hire service or relevant motor vehicles. The audit notice may require the person to allow the audit to be carried out within the period stated in the notice and cooperate with every reasonable requirement of the chief executive or authorised person; and must state prescribed matters including the purpose and proposed duration of the audit (see also new section 120(d), which allows an authorised person to enter a place of business to conduct an audit in certain circumstances).

New section 91ZO makes it an offence for a person to fail to comply with an audit notice without reasonable excuse.

New section 91ZP requires the chief executive to give an audit report to the person whose activities have been audited. The audit report must include any matters prescribed by regulation.

New section 91ZQ applies where an audit report identifies noncompliance with relevant transport legislation by the person whose activities were audited. It allows the chief executive or an authorised person to give the person a written direction to comply within a stated period of not less than 5 business days. However, if an individual is at risk of death or serious injury or illness due to the noncompliance, the chief executive may direct the person to immediately comply and take action specified in the notice to remedy the noncompliance. It is an offence for the person to contravene a direction without reasonable excuse. While the main purpose of this provision is to give the person an opportunity to remedy the activities that are causing the noncompliance to prevent any further contravention, TMR may decide to prosecute a person subject to an audit if the chief executive identifies noncompliance.

Division 3 Other offences

New section 91ZR allows the chief executive to set maximum fares for taxi services and booked hire services by gazette notice. However, maximum fares for booked hire services can only apply for members of a personalised transport subsidy scheme; where the service is provided by using a type of vehicle, or for a class of persons, prescribed by regulation; or where mentioned in section 75 (that is, where a booked hire service may be provided only in a taxi or limousine in a particular taxi service area). The section also prohibits a person from charging more than the maximum fare; and clarifies that *charging a fare* includes deciding or otherwise controlling the amount of the fare, such as by administering an electronic system that determines the amount automatically using a computer program.

The intention is to only regulate maximum fares where it is necessary to protect consumers and prevent price gouging. For example, maximum fares will be retained for taxi services because customers are not usually in a position to compare rates and negotiate the fare when obtaining a taxi at a rank or hailing it off the street. Maximum fares for booked hire services prescribed by regulation may include, for example, fares for services provided using wheelchair accessible vehicles. Without this protection, people with disability may be expected to pay more for these specialised services.

New section 91ZS allows a regulation to prescribe a maximum payment surcharge for a fare for a taxi service or booked hire service; and defines *payment surcharge* as an amount charged in addition to the fare for processing payment of the fare or for paying the fare using one payment method over another, such as a credit card surcharge. The section also prohibits a person from charging more than the maximum payment surcharge for a taxi service or booked hire service if a maximum payment surcharge applies to the service; and clarifies that *charging a payment surcharge* includes deciding or otherwise controlling the amount of the surcharge, such as by using a device to process payment of the surcharge.

As a result of amendments to the *Competition and Consumer Act 2010* (Cth) in 2016, a payment surcharge for a fare for a booked hire service provided by a vehicle other than a taxi must

comply with the Reserve Bank of Australia's surcharging standard. To ensure appropriate consumer protections apply to services provided by taxis, the maximum payment surcharge for these services will be capped at a percentage of the fare by regulation under section 91ZS.

Part 6 General provisions

Division 1 Taxi service areas

New section 91ZT allows the chief executive to declare taxi service areas and fix the number of taxi service licences for a taxi service area by gazette notice. In fixing the number of taxi service licences, the chief executive must consider whether there are enough taxi service licences for the area to meet public demand. The effect of these provisions is to retain a cap on the number of taxi service licences that may be issued in each taxi service area.

New section 91ZU makes it an offence for a person to use a taxi to provide a public passenger service for a journey that starts in a taxi service area unless that area is the taxi service area stated in the taxi service licence for the taxi or a licence condition allows for this. A condition of a licence may, for example, allow a taxi to provide a service for a journey that starts in another taxi service area for a short period to service a special event. However, the broad intention is to allow a taxi to pick up passengers only in the taxi service area stated in the taxi service licence for the taxi, in order to enforce market entry restrictions in each taxi service area. This will assist in the reliable supply of taxi and booked hire services for public use in each taxi service area. This offence does not apply to public passenger services provided using a taxi under a contract with a government entity; these services are able to start in a taxi service area other than the taxi service area for the taxi.

New section 91ZV clarifies that compensation is not payable in relation to the making, amendment or repeal of a declaration of a taxi service area, or the fixing or amendment of the number of taxi service licences fixed for a taxi service area, under section 91ZT. For example, no compensation is payable where taxi service areas are amalgamated regardless of any consequential change to licence values. Also, no compensation is payable where a licence condition authorises a taxi used to provide a public passenger service for a journey starting in a taxi service area other than the taxi service area for the taxi.

Division 2 Taxi industry security levy and fund

New section 91ZW allows the chief executive to impose a taxi industry security levy for a financial year on holders of taxi service licences for prescribed taxi service areas. The purpose of this levy is to contribute to the costs of improving the security of taxi services, including secure taxi ranks in late night entertainment precincts to minimise incidents of alcohol-fuelled violence. This section continues the existing taxi industry security levy under TOPTA, and also clarifies that the chief executive can decide not to impose the levy for a particular financial year.

New section 91ZX continues the existing Taxi Industry Security Fund into which taxi industry security levies are paid.

Division 3 Other provisions

New section 91ZY allows a regulation to provide a scheme under which the State subsidises the provision of public passenger services provided to particular groups using taxis, limousines or booked hire vehicles. This scheme is currently called the Taxi Subsidy Scheme and is provided for in part 6, division 5 of the *Transport Operations (Passenger Transport) Regulation 2005*. It is proposed to continue this scheme for subsidising taxi services and booked hire services using taxis for eligible persons with disability, but to allow for the scheme to be extended to limousines and booked hire vehicles in the future if this is considered appropriate.

Clause 19 removes the words ‘or operate’ from section 100 relating to a direction to comply with standards as a result of the new definition of *drive*.

Clause 20 amends section 120 relating to powers of authorised persons to enter places. The amendment allows authorised persons to enter a place of business of a person in the chain of responsibility for a taxi service or a booked hire service to whom an audit notice has been given under section 91ZN if the authorised person believes entry is necessary to carry out the audit (see also new section 91ZF, which provides that a place of business of an authorised booking entity’s local nominee is taken to be a place of business of the entity).

Clause 21 omits section 124A. Section 124A allows an authorised person to require a limousine to be moved to a place where it may lawfully ply or stand for hire if it is plying or standing for hire at an unauthorised place. As TOPTA will prohibit the provision of a public passenger service in a motor vehicle that plies or stands for hire at a public place and is not a taxi (see new section 74), section 124A should be removed.

Clause 22 omits section 145. Section 145 allows the chief executive to declare a vehicle to be a forward-control passenger vehicle or a luxury motor vehicle. This provision is no longer needed in TOPTA as a consequence of the removal of the definition of passenger car which relates to limousines and it is no longer intended to define luxury motor vehicles.

Clause 23 inserts new sections 150B and 150C to clarify the application of penalties for offences relating to taxi and booked hire services. Section 150B lists the offence provisions under TOPTA that are each counted for working out whether a person has committed a first or subsequent offence, which includes each time a person is convicted of an offence against a relevant provision or is served with an infringement notice for a relevant provision which has been dealt with under the SPE Act pursuant to section 150C. Under section 150C, a person *commits an offence* for certain provisions of TOPTA if the person has been convicted of the offence or served with an infringement notice for the offence which has been dealt with under the SPE Act.

Clause 24 amends section 153B of TOPTA to include additional evidentiary provisions to support the new chapter 7. This amendment allows for a certificate signed by the chief executive stating certain matters to be evidence of that matter in a proceeding for an offence against TOPTA. For example, a certificate stating that at a particular time, a stated motor vehicle was or was not a taxi, limousine or booked hire vehicle is evidence of the matter.

Clause 25 amends section 154H to replace a reference to limousine service with a reference to booked hire service, as a consequence of the removal of the definition of limousine service from TOPTA.

Clause 26 amends section 155 to prescribe additional regulation-making powers to support the new chapter 7. The amendments clarify that the power to make regulations about the safety of public passenger services includes the use of security cameras in relevant vehicles. The amendments also extend the existing regulation-making powers about fares and requirements for booking entity authorisation.

Clause 27 amends section 155A relating to the *Taxi and Limousine Industry Assistance Scheme Regulation 2016* to preserve certain current definitions in TOPTA for the purposes of this section.

Clause 28 inserts a new chapter 13, part 18 containing transitional provisions for the *Transport and Other Legislation (Personalised Transport Reform) Amendment Act 2017* (the *amending Act*).

New section 208 contains definitions of *amending Act* and *previous* for part 18.

New section 209 clarifies that existing taxi service bailment agreements continue in force despite the repeal of chapter 4A of TOPTA.

New section 210 states that existing service contracts for the administration of taxi services under chapter 6, part 3 of TOPTA will end on the commencement; but this does not affect a right, liability or obligation under the service contract that relates to the Taxi Subsidy Scheme.

New section 211 clarifies that existing declared taxi service areas prior to commencement are taken to be declared under new section 91ZT.

New section 212 clarifies transitional booking record requirements on existing operators of limousine services.

New section 213 clarifies that taxi or limousine service licence suspensions in effect immediately before the commencement continue in effect despite the enactment of the amending Act.

New section 214 states that decisions related to taxi service administration contracts made before the commencement will no longer be reviewable under chapter 10 of TOPTA.

New section 215 states that certain decisions related to taxi service licences and limousine service licences made before the commencement continue to be reviewable under chapter 10 of TOPTA.

New section 216 clarifies that compensation is not payable by the State because of the amendment of TOPTA by the amending Act.

Clause 29 corrects a minor error in the heading of schedule 1A relating to driver disqualifying offences.

Clause 30 makes consequential amendments to schedule 2 relating to reviewable decisions under TOPTA. Decisions under new chapter 7 of TOPTA that will be reviewable include the requirement to pay an amount as a condition of transfer of the taxi service licence between areas; refusal to issue a booked hire service licence; imposing a condition on a taxi service licence or booked hire service licence; amendment of a taxi service licence, limousine service licence or booked hire service licence; suspension or cancellation of a taxi service licence, limousine licence or booked hire service licence (other than immediate suspension); refusal to grant booking entity authorisation; imposing a condition on a booking entity authorisation; amendment of a booking entity authorisation; suspension or cancellation of a booking entity authorisation (other than immediate suspension); and giving a direction to comply with relevant transport legislation under audit provisions.

Clause 31 omits, amends and inserts definitions in schedule 3 to reflect the new regulatory framework for personalised transport services contained in this Bill.

Part 3 Amendment of the Transport Operations (Road Use Management) Act 1995

Clause 32 states that part 3 of the Bill amends the TORUM Act.

Clause 33 amends section 78 relating to the offence of driving a motor vehicle without a driver licence. The effect of this amendment is that a court must disqualify a person from holding or obtaining a Queensland driver licence for a further 1 to 6 months if the person is convicted of this offence while the person's driver licence was suspended under TOPTA.

Clause 34 amends section 79 relating to vehicle offences involving liquor or other drugs. A zero blood alcohol concentration (BAC) requirement currently applies to taxis and limousines under section 79. The amendments extend the zero BAC requirement to persons who drive, attempt to put in motion, or are in charge of, any other motor vehicle that is available to be used, is about to be used, or is being used to provide a public passenger service under TOPTA.

The zero BAC requirement for drivers of vehicles used to provide public passenger services is intended to apply regardless of whether passengers are in the vehicle. For example, a driver of a booked hire vehicle must have a zero BAC while connected to a booking service, platform or app and awaiting a job, and while the driver is on the way to pick up a passenger.

Clause 35 amends section 87 relating to the issue of a restricted licence to a disqualified person. The effect of the amendment is that a driver licence suspension under TOPTA is not considered a suspension, cancellation or disqualification for determining whether to issue a disqualified person with a restricted licence if a person is convicted of an offence under section 79 or 80(5A).

Clause 36 amends section 129A to clarify the effect of suspension of a driver licence under TOPTA will be consistent with the current effect of a suspension under the SPE Act. The suspension has the same effect as if the licence was suspended under the TORUM Act. If the suspension ends before the licence would ordinarily expire, it does not extend the period the licence would have otherwise remained in force. If a person must hold a driver licence for a stated period, the stated period is extended by one month and the suspension does not break

the continuous period for which the person must hold the licence. If the licence expires before the suspension ends, the person must not apply for or obtain a driver licence until the suspension ends. A person whose licence is suspended must not otherwise apply for or obtain a Queensland driver licence.

Part 4 Other amendments

Clause 37 states that schedule 1 of the Bill amends the Acts it mentions.

Schedule 1

Schedule 1 makes the following consequential amendments to other Acts:

- The definition of *limousine licensee* in section 14B(2) of the *Liquor Act 1992* will be amended to replace the reference to a ‘limousine service licence’ with a ‘limousine licence’ as a consequence of definitional changes in TOPTA.
- The definition of *public passenger vehicle* in section 26ZKB(7) of the *Tobacco and Other Smoking Products Act 1998* is amended to include a booked hire vehicle for the purposes of smoking offences relating to public transport waiting points.
- The definition of *busway service provider* in section 335A of the *Transport Infrastructure Act 1994* is amended to replace the term *limousine service* with *booked hire service*.
- The definition of *public passenger transport infrastructure* in the *Transport Planning and Coordination Act 1994* is amended to remove the reference to a limousine rank or limousine standing area.