

Transport Legislation (Taxi Services) Amendment Bill 2015

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Stirling Hinchliffe MP

Title of the Bill

Transport Legislation (Taxi Services) Amendment Bill 2015

Objectives of the Amendments

The principal objectives of the amendments are to facilitate prosecutions relating to the offence of providing a taxi service without the required authority (**the taxi offence**), support compliance and enforcement activities and deter non-compliance.

Achievement of the Objectives

The objectives of the amendments will be achieved by:

- clarifying that the taxi offence applies to the driver;
- simplifying the elements of proof in a prosecution for the taxi offence;
- introducing evidentiary aids for certain matters;
- clarifying the circumstances in which an authorised person may exercise the power to require information;
- allowing an authorised person to require a person to produce a driver licence in certain circumstances; and
- increasing the maximum penalty and infringement notice fine for the taxi offence.

Alternative Ways of Achieving Policy Objectives

The current compliance and enforcement issues relating to the taxi offence largely result from existing complexities in the *Transport Operations (Passenger Transport) Act 1994*. Amendments are required to allow for effective compliance and enforcement activities.

Estimated Cost for Government Implementation

The costs for government implementation of the amendments are expected to be minimal. Costs of any additional compliance and enforcement activity will be within existing resources.

Consistency with Fundamental Legislative Principles

The proposed amendments may breach fundamental legislative principles (FLPs).

The amendments that provide a defence for a person providing a cross-border taxi service or an excluded public passenger service reverse the onus of proof (see new clause 3, new section 70(3)). The amendments are justified on the grounds that matters relating to cross-border taxi services and excluded public passenger services are solely within the defendant's knowledge. Proving such matters would require that the Department of Transport and Main Roads (the Department) obtain detailed information about the operation of the service including, for example, information about whether the service is funded or subsidised out of public money or by a charity; or whether the vehicle being used to provide the service is a licensed taxi in New South Wales or is leased. It would be onerous for the Department to prove many of these elements without broad investigative powers to access an alleged offender's financial and operational records, which may raise other FLP issues and potentially result in extensive and costly investigations for the Department.

The proposal to introduce evidentiary aids may also breach the principle that legislation should not reverse the onus of proof (see new clause 3D, new section 153B). The amendments are considered appropriate because the proposed evidentiary matters are non-contentious and not in dispute. For example, a defendant is unlikely to dispute whether a passenger car is a motor vehicle. Further, a defendant will still have an opportunity to tender evidence in court to rebut a factual matter.

The proposal to increase the maximum penalty and infringement notice fine for committing the taxi offence to 200 penalty units and 20 penalty units respectively may breach the principle regarding the proportionality and appropriateness of offences (see new clause 3, new section 70(1) and new clause 5(1)). The amendment is justified on the grounds that the current penalties for the taxi offence have proven ineffective in deterring non-compliance and the penalties appropriately reflect the seriousness of the offence.

Consultation

The Department of the Premier and Cabinet, Department of Justice and Attorney-General, Queensland Treasury and the Office of Best Practice Regulation were consulted on the proposed amendments to the Bill.

No public consultation has been undertaken on the amendments.

NOTES ON PROVISIONS

Amendment 1 inserts new clause 1A into the Bill

New clause 1A provides that the Act commences on 28 April 2016.

Amendment 2 replaces clause 3 of the Bill with a new clause 3

New clause 3 replaces section 70 of the *Transport Operations (Passenger Transport) Act 1994* (Requirement for taxi service licence or peak demand taxi permit) with a revised section 70 (Taxi service may only be provided using a taxi). The revised section 70 provides that it is an offence for a person to provide a taxi service using a motor vehicle that is not a taxi. A person who provides a taxi service includes the driver. The revised section 70 simplifies the elements of proof in a prosecution for an offence against section 70(1), without changing the intent of the current offence, and provides a defence for a person to prove that the service was a cross-border taxi service or an excluded public passenger service. The maximum penalty for the revised offence is 200 penalty units.

Amendment 3 inserts new clauses 3A to 3F into the Bill

New clause 3A amends section 128 of the *Transport Operations (Passenger Transport) Act 1994* (Power to require information from certain persons) by omitting the words ‘public passenger’ from subsection (1)(b). This will clarify the circumstances in which an authorised person may exercise the power to require a person to give information about a relevant offence.

New clause 3B inserts new section 129AA of the *Transport Operations (Passenger Transport) Act 1994* (Power to require production of driver licence) to support compliance and enforcement activities. It is important that authorised persons are able to readily identify an alleged offender. There is an existing power in section 129 to require the production of photographic identification where the person holds a relevant authorisation (for example, driver authorisation). However, some drivers providing unlicensed taxi services do not hold a relevant authorisation to which this power would apply and therefore cannot be identified. New section 129AA allows an authorised person to require a person in control of a motor vehicle to produce a driver licence where the authorised person reasonably suspects that the person has committed, or is committing, an offence against the *Transport Operations (Passenger Transport) Act 1994*. Where the person cannot immediately comply with the requirement but holds an open licence, the person may produce the licence at a place nominated by the chief executive within 2 business days after the requirement is made.

New clause 3C makes a minor consequential change to the heading of existing section 153A of the *Transport Operations (Passenger Transport) Act 1994* (Facilitation of proof).

New clause 3D inserts new section 153B of the *Transport Operations (Passenger Transport) Act 1994* (Facilitation of proof—general) which facilitates the proof of certain matters in a proceeding.

New sections 153B(1)(a) and 153B(1)(b) provide that a certificate signed by the chief executive, or an allegation or averment in a complaint, stating certain matters is evidence of

the matters. The prescribed matters are non-contentious and include whether a thing was or was not a vehicle.

Under new section 153B(1)(c), evidence that a number plate was attached to a motor vehicle is taken to be evidence that the motor vehicle corresponds with the motor vehicle noted in the register of vehicles as defined in new section 153B(2).

New section 153B(1)(d) provides that a document (or a copy of a document) purporting to be an invoice, receipt or other record of an amount that is or was payable, or has been paid, for a service for the carriage of passengers is evidence of a matter stated in the document. This will allow the Department to tender documents that relate to a journey (for example, an invoice or receipt sent to a person's mobile device or email inbox at the end of a journey). Matters contained in such documents are reliable and relevant to establishing the facts about a service for the carriage of passengers. This provision will also support a prosecution where the entity responsible for creating the document may be difficult to identify for the purposes of giving evidence.

New clause 3E inserts new section 206 of the *Transport Operations (Passenger Transport) Act 1994* (Application of s 70). New section 206 provides that the amendments to section 70 only apply to an offence committed after the commencement.

New clause 3F amends the definition of 'excluded public passenger service' in schedule 3 of the *Transport Operations (Passenger Transport) Act 1994* to include a charter bus service. This clarifies that a charter bus service is not a taxi service.

Amendments 4 to 6 replace Part 3 of the Bill with a new Part 3 (new clauses 4 and 5)

New clause 4 provides that Part 3 of the Bill amends the *State Penalties Enforcement Regulation 2014*.

New clause 5 increases the infringement notice fine for the taxi offence to 20 penalty units in order to further deter non-compliance. It also makes the offence under new section 129AA(4) of the *Transport Operations (Passenger Transport) Act 1994* an infringement notice offence with an infringement notice fine of 4 penalty units.

Amendments 7 to 9 replace Part 4 of the Bill with a new Part 4 (new clauses 6 and 7)

New clause 6 provides that Part 4 of the Bill amends the *Transport Operations (Passenger Transport) Regulation 2005*.

New clause 7 omits section 96A of the *Transport Operations (Passenger Transport) Regulation 2005* (Services for which taxi service licence not required). Section 96A is no longer required as it will be a defence to a prosecution for the taxi offence to prove that the service provided was a cross-border taxi service.

Amendment 10 amends the long title of the Bill.