



# Taxi Industry Innovation Review

## *Supporting Analysis*

September 2015

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# 1 Contents

<b>List of acronyms</b> .....	5
<b>List of terms</b> .....	6
2 Executive summary.....	8
3 ACT on-demand public transport at a glance.....	9
4 Actions to be implemented – main features.....	10
4.1 <i>Ridesharing and alternate booking services will be allowed in the ACT</i> .....	10
4.2 <i>Fares</i> .....	10
4.3 <i>Setting the playing field</i> .....	11
4.4 <i>Other actions</i> .....	12
5 Opportunity for reform .....	13
5.1 <i>Basis for community consultation</i> .....	13
5.2 <i>Objective of consultation</i> .....	13
5.3 <i>Current industry regulation and approach</i> .....	13
5.4 <i>Other jurisdictions</i> .....	14
5.5 <i>Options for a new environment</i> .....	14
5.6 <i>The opportunity</i> .....	16
6 Foundations for regulating a changing industry .....	17
6.1 <i>Rank and hail services</i> .....	17
6.2 <i>Booked services</i> .....	17
6.3 <i>The merits and risks of ridesharing</i> .....	17
6.4 <i>Economic benefits to the community</i> .....	19
6.5 <i>Risks of ridesharing</i> .....	21
6.6 <i>Right frameworks for the right outcomes</i> .....	23
7 Enabling the entry of ridesharing and new booking services .....	23
7.1 <i>Background</i> .....	23
7.2 <i>Transport Booking Services</i> .....	24
7.3 <i>Passenger privacy</i> .....	26
7.4 <i>TBS reporting on performance</i> .....	28
7.5 <i>Other Australian and ACT legal requirements</i> .....	28
7.6 <i>Driver regulation</i> .....	29
7.7 <i>Operator regulation</i> .....	33
7.8 <i>Work relations – between TBSs, operators and drivers</i> .....	33

7.9	<i>Vehicles</i> .....	36
7.10	<i>Costs of regulation</i> .....	36
7.11	<i>Fares</i> .....	37
7.12	<i>Cross border arrangements</i> .....	39
7.13	<i>Other ridesharing matters</i> .....	40
7.14	<i>Other transport activities</i> .....	42
8	<i>Levelling the playing field for taxis and hire cars</i> .....	44
8.1	<i>Restricting markets to taxi activity</i> .....	44
8.2	<i>Booking services and taxis</i> .....	47
8.3	<i>Reducing regulatory impediments</i> .....	49
8.4	<i>Insurance</i> .....	54
8.5	<i>Taxi supply and other measures</i> .....	56
8.6	<i>Direct consumer measures</i> .....	58
8.7	<i>Other service impacts</i> .....	61
9	<i>Possible outcomes and further actions</i> .....	62
9.1	<i>Consumers</i> .....	62
9.2	<i>Industry</i> .....	64
10	<i>Integration and future opportunities</i> .....	65
10.1	<i>Buses/light rail</i> .....	65
10.2	<i>Accessibility</i> .....	65
10.3	<i>Airport, rail and interstate buses</i> .....	65
10.4	<i>Autonomous vehicles</i> .....	65
	<i>Appendix A – Taxi Innovation Review Terms of Reference</i> .....	66
	<i>A.1 Purpose</i> .....	66
	<i>A.2 Responsibilities</i> .....	66
	<i>Appendix B - Status of other jurisdictions</i> .....	67
	<i>B.1 Australian jurisdictions</i> .....	67
	<i>B.2 International jurisdictions</i> .....	68
	<i>Appendix C – Summary of Consultation Comments</i> .....	69
	<i>Appendix D – Community Consultation Phase – Summary of Submissions and Meetings</i> ....	75

## List of acronyms

ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ATO	Australian Taxation Office
ARR	Australian Road Rules
CBS	centralised booking service
CIE	the Centre for International Economics
CMTEDD	Chief Minister, Treasury and Economic Development Directorate, ACT Government
CTIA	Canberra Taxi Industry Association
CTP	Compulsory Third Party [insurance]
DRT	demand responsive transportation
DSAPT	<i>Disability Standards for Accessible Public Transport 2002 (Cth)</i>
GST	Goods and Services Tax
HOTS	high occupancy taxis
IPART	Independent Pricing and Regulatory Tribunal, New South Wales
ITOP	Independent Taxi Operator Pilot
JACSD	Justice and Community Safety Directorate, ACT Government
LTA	Land Transport Authority, Singapore
MSS	Minimum Service Standards
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NICTA	National Information Communications Technology Australia
NSW	New South Wales
RBA	Reserve Bank of Australia
RRT	Regulatory Reform Team, CMTEDD, ACT Government
RTA	Road Transport Authority, Access Canberra, ACT Government
RTO	Registered Training Organisation
TAMS	Territory and Municipal Services Directorate, ACT Government

TBS	Transport Booking Service
TCCI	Taxi Cost Calculator Index
TNC	transportation network company
TSS	Taxi Subsidy Scheme
WAT	wheelchair accessible taxi
WCBS	Wheelchair Accessible Taxi Centralised Booking Service
WWVP	Working with Vulnerable Peoples

## List of terms

App	Application – a digital product that can be downloaded onto a smart phone, tablet or other electronic device. <sup>1</sup>
Carpooling	Carpooling is a service in which parties heading to a common destination share transport with passengers either paying a nominal amount to cover (part of) the driver’s cost or taking turns at driving.
Dynamic pricing	Pricing that changes and is formed around the current demand for (also known as and supply of a particular type of on-demand transportation, such as surge pricing) ridesharing.
Fittings	Specialised equipment affixed to, or stored in, public transportation vehicles. Examples are taxi meters and security cameras.
Hire car	A vehicle (other than a bus, taxi or demand responsive service vehicle) that: (a) is used, or is intended to be used, for the transport of passengers under a contract; and (b) does not stand or ply for hire for the transport of passengers along a road or road-related area. <sup>2</sup>
On-demand public	Unscheduled, point-to-point passenger transport provided for transport a fee or charge.
Operator	An individual who owns or leases an on demand passenger vehicle licence, such as a taxi, hire car or rideshare vehicle.
Ridesharing	The sharing of motor vehicle transport for-profit or reward using a booking service.

<sup>1</sup> *Macquarie Dictionary Online*, 2015, Macquarie Dictionary Publishers, an imprint of Pan Macmillan Australia Pty Ltd, [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au)

<sup>2</sup> *Road Transport (Public Passenger Services) Act 2001*, s. 42, <http://www.legislation.act.gov.au/a/2001-62/default.asp>

Sharing economy	An economic model in which individuals are able to borrow or rent assets owned by someone else. <sup>3</sup>
Taxi	A vehicle (other than a bus or demand responsive service vehicle) that stands or plies for hire for the transport of passengers along a road or road-related area. <sup>4</sup>
Standard taxi	Taxi that is not designed specifically to accommodate passengers in wheelchairs.
Casual driver	For the purposes of this paper, a casual driver is a driver that is not also the owner or operator of a taxi vehicle.
Wheelchair	Taxi that is designed specifically to accommodate passengers in accessible taxi wheelchairs.

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<sup>3</sup> 'Sharing economy', Dictionary, Investopedia.com, [www.investopedia.com](http://www.investopedia.com)

<sup>4</sup> *Road Transport (Public Passenger Services) Act 2001*, s. 45.

## 2 Executive summary

This analysis paper provides analysis and information that provides context for the Government's taxi industry innovation reforms.

The reforms are forecast to offer net economic benefits to the Territory in the order of \$3.5 million per annum after five years.

Under the proposed reforms, traditional taxi networks, ridesharing providers and third-party app-based booking services, will be regulated consistently on the basis of their booking and dispatch operations.

The proposed regulatory framework will also put in place a hierarchy of vehicle/driver licensing and operation based on information flows and features of the respective services to address risk, as follows:

- Taxis – will operate in both the rank and hail sector as well as booked services; they may operate independently or through a transport booking service (TBS)
- Hire cars – will only provide booked services, but can operate independently or through a TBS
- Ridesharing – will only operate as a booked service through a TBS.

For industry, substantive revisions to fees and charges which represent a barrier to both entry and the ability to compete will support a more level playing field. Regulation of industry will be refocussed on safety, accessibility and community outcomes. In a competitive environment, industry participants will be permitted to have charge of consumer service matters (subject to general consumer laws), and will face less prescriptive requirements on operational matters.

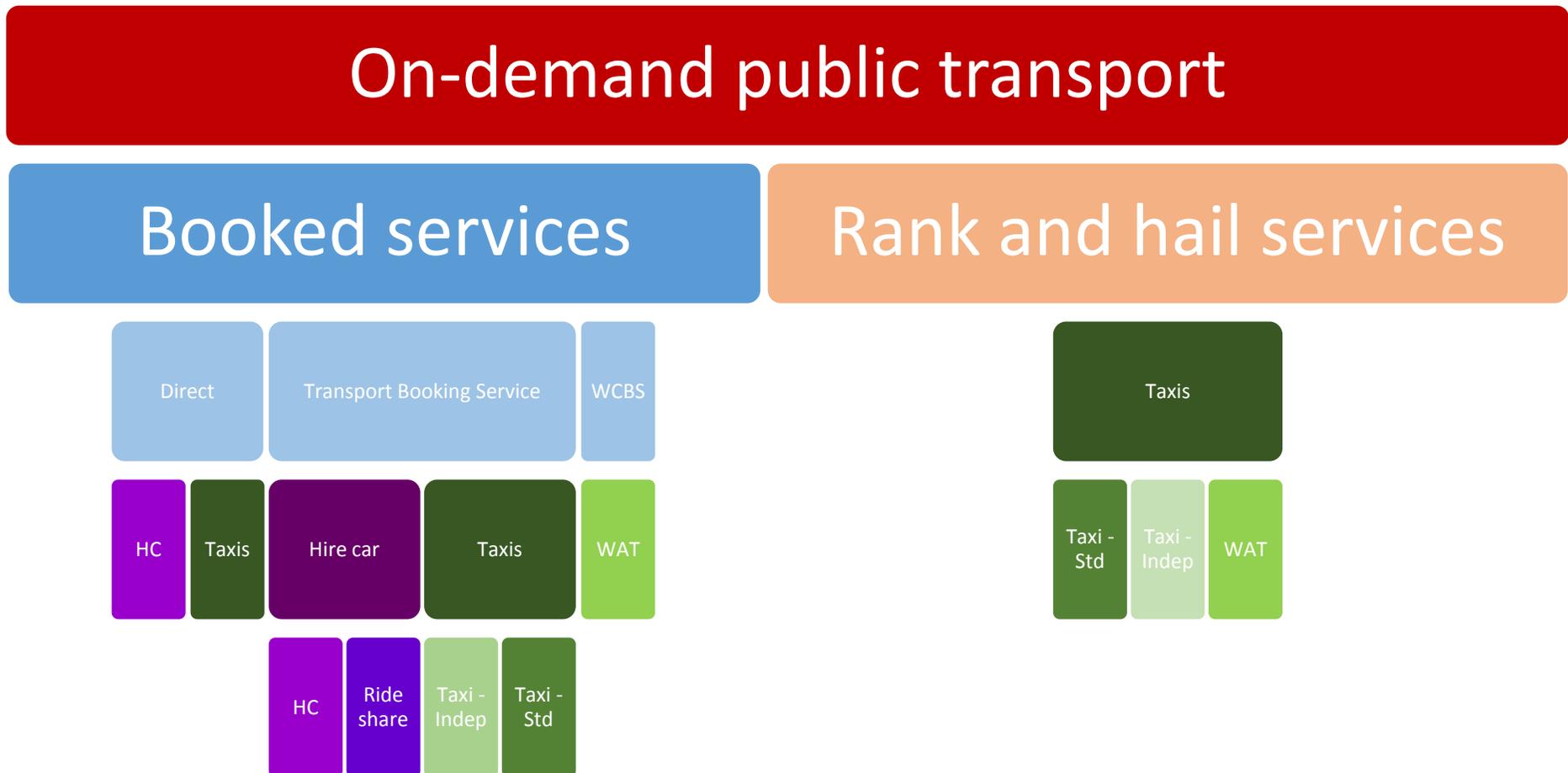
For drivers, there will be the opportunity to access multiple booking services with additional actions to support outcomes – through workers' compensation, dispute resolution and education on bailment agreements.

For consumers there will be opportunity for improved price and service competition with new entrants to the market. This will be backed up by the safety net of regulated fares for taxis remaining until effective competition is confirmed, and the regulation of electronic payments surcharges. Safety outcomes will be provided for through appropriate licensing, accreditation and insurance requirements for on-demand transport providers.

For vulnerable people and those living with a disability, the wheelchair accessible taxi (WAT) and centralised booking services arrangements will remain. These elements will be closely monitored as industry transitions to the new environment. The prospect of service innovation will be enabled through education and training of drivers and passengers.

### 3 ACT on-demand public transport at a glance

HC = Hire Car; WAT = Wheelchair Accessible Taxi; WCBS = Wheelchair Accessible Taxi Centralised Booking Service



## 4 Actions to be implemented – main features

### 4.1 Ridesharing and alternate booking services will be allowed in the ACT

#### 4.1.1 Transport Booking Services (TBS)

- Accredited TBSs – including rideshare, taxi and third-party booking services to operate in the ACT.
- Require TBSs to provide (telephone and/or electronic) booking services with appropriate conditions to encourage competition.
- All rideshare hirings are to be arranged through TBSs (this will ensure that safety and fairness features in the app are triggered i.e. no rank or hail without app booking permitted).
- TBSs will be subject to all applicable Australian laws and regulatory requirements.
- TBSs will be required to operate appropriate security features and provide access to review-and-dispute processes.
- Actions will be put in place to support the privacy of passengers and drivers.
- Accessible legal recourse within Australia and the Territory will be ensured.

#### 4.1.2 Drivers, operators and vehicles

- Ridesharing participants will be licensed and accredited (similar to hire cars). For example, the following will be required:
  - Driver history and criminal checks
  - Annual vehicle inspections
  - Compulsory Third Party (CTP) and public passenger vehicle insurance coverage.
- Vehicles will be able to be identified when a ridesharing app is in use.

### 4.2 Fares

- Fares for ridesharing (as for hire cars) will be unregulated.
  - This will be subject to the provision of specified information on pricing.
  - Surge pricing in declared emergency situations will be limited.
- Up-front tipping will be prohibited.
- Regulated fares to for rank and hail taxi service will remain.

- Regulated fares for booked taxi services will remain until effective competition is demonstrated.
- Current regulated maximum taxi fare structures will be retained for 12 months and will be monitored for industry competition effects on pricing.
- Electronic payment processing charges will be regulated at 5 per cent.

### 4.3 Setting the playing field

#### 4.3.1 Restricted markets

- Taxis will retain sole access to rank and hail work.
- Wheelchair Accessible Taxi (WAT) service arrangements will be retained.
- Service outcomes will be monitored.

#### 4.3.2 Booked services

- There will be access to multiple TBSs.
- Independent taxi operators will be allowed.

#### 4.3.3 Reducing regulatory impediments

- Government fees will be reduced including annual taxi licence lease fees, operator and vehicle accreditation fees.
- Training and service requirements will be less prescriptive with a focus on safety and community services. Requirements for medical checks will align with those in other states.
- Insurance policies will be subject to alternate payment arrangements to promote affordability.
- CTP Regulator will review the relativities of CTP insurance costs.
- Access to secondary markets for fittings and services will be supported, and general standards provided if necessary.

#### 4.3.4 Supply

- A 'list system' for the release of Government-owned taxi licences, up to the current regulated cap, will be launched.
- On-demand vehicle supply will be monitored as the industry transitions.

#### 4.3.5 Industrial relations

- All non-operator taxi and hire car drivers will be entitled to workers' compensation coverage.
- All rideshare drivers who do not own their rideshare vehicle will be entitled to workers' compensation coverage (with some exceptions such as non-commercial and family arrangements).
- Exclusive arrangements between a TBS and operator (owner of a vehicle in the case of rideshare) or a TBS and driver will be considered a work arrangement for the purpose of workers' compensation law and the operator or driver will be entitled to workers' compensation coverage. An exclusive arrangement is where the TBS does not permit the operator or driver to take bookings from any other TBS.
- Educational support and specified items for contracts including bailment is to be provided.

#### 4.4 Other actions

- Financial viability will be removed from accreditation requirements. This is a matter for the market.
- Reporting and monitoring will be undertaken on the industry's transition.
- There will be a continued zero tolerance of alcohol and drugs for public passenger drivers.
- Child restraint requirements will apply to ridesharing.
- The use of apps while driving is not permitted under Australian Road Rules and this will not change as a result of these reforms.
- A trial of loading zone parking arrangements for rideshare vehicles is anticipated.
- Regulation of commercially organised carpooling will be introduced.
- Stretch limousines will be regulated as hire cars (rather than buses).
- Hire car special event arrangements will be streamlined.
- Further opportunities for intermodal integration will be pursued.

## 5 Opportunity for reform

### 5.1 Basis for community consultation

Taxi and hire car markets in Australia and around the world are experiencing significant change including new entry to markets and consumer take up of new business models, such as ridesharing, and electronic forms of access, for example, via smartphone apps.<sup>5</sup> These models offer the opportunity to advance outcomes for consumers through increased competition and innovative means of provision of services. However, a measured response is necessary to ensure effective competition and community safety.

The ACT Government established the Taxi Industry Innovation Review ('Review') and undertook community consultation to examine regulatory settings with a view to allowing greater innovation and competition in the taxi and hire car market.

The structure and function of our present-day taxi and hire car industry is discussed in the Taxi Industry Innovation Review Discussion Paper (May 2015), which can be found at: <http://www.cmd.act.gov.au/policystrategic/regreform/2015-taxi-industry-innovation-review>

### 5.2 Objective of consultation

The objective of industry and community consultation has been to explore the best outcomes for consumers and the broader community under a regulatory framework that provides for effective competition and, over time, the entry of new and unforeseen transportation business models. Further detail on the factors to be considered can be found in the review Terms of Reference (see Appendix A).

Consultation outcomes generally supported the proposition that taxis and hire cars provide services that are integral to the Territory's public transport system<sup>6</sup>. Supply of on-demand passenger transport supports business, government and community activity. For some members of the community, they provide an essential service that enables access to vital support services and engagement with the community.

### 5.3 Current industry regulation and approach

Currently, the ACT's regulatory framework draws a distinction between taxis and hire cars, based primarily on the ability to solicit off-the-street passengers ('rank and hail'). Taxis can offer a rank and hail service, while hire cars cannot. Both types of vehicle are able to accept booked services; however, the approach in terms of the business models, flow of information and fare transactions, varies.

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<sup>5</sup> While some submissions (see Appendix C) to the Review argued that the use of app-based booking services is not new. The Review however considers that such matters are new from a regulatory perspective and current settings do not fully recognise the potential implications of such systems. Moreover, their potential for consumer take up is much greater than at the time of the last ACT Government review in 2010.

<sup>6</sup> However, some submissions did seek to distinguish taxis from other forms of public transport, for reasons such as they could not undertake mass transport (see Appendix C).

The business model for taxis normally involves several centralised functions provided through a network. The network supplies its services, including booking services, to operators (owners of vehicles) and drivers (which may or may not own a vehicle). For hire cars, bookings are typically undertaken through the operator as a result of word of mouth or advertising, and with some use of third-party booking services.

A range of regulations are applied to support public safety outcomes, consumer protection and to help manage industry supply and conditions. For example, taxi fares are regulated to a maximum charging structure; hire car fares are subject to negotiation between the operator and the passenger for each trip.

## 5.4 Other jurisdictions

Most other Australian, and many overseas jurisdictions, are currently examining their taxi industries and developing regulatory approaches to new technologies (see Appendix B). Their approaches have been considered as part of our process.

## 5.5 Options for a new environment

In light of potential entry of new business models, the options for the ACT Government include:

1. not reacting
2. adjusting regulatory settings to ban ridesharing and third party app-based booking services
3. adjusting regulatory settings to allow ridesharing and third party app-based booking services.

### 5.5.1 Option 1

The overall outcomes from doing nothing are undesirable and are likely to result in negative outcomes associated with the unregulated entry of ridesharing into the ACT market.

The taxi and hire car industry may continue operating, as is, but should expect the entry of new participants, given:

- the understood operation of third-party taxi booking apps in the ACT already
- pre-emptive actions of ridesharing companies in other markets, and expressed interest for ridesharing in the Australian Capital Territory (ACT).

New entrants to the market under the do-nothing approach may result in:

- inefficient outcomes for consumers, with potential issues such public safety and insurance matters remaining unaddressed
- the taxi industry facing an unfair playing field on which to compete

- ongoing compliance and enforcement action that draws resources from government, industry and consumers without an overarching benefit.

To an extent, ridesharing could operate under the current hire car regulatory framework. However, potential, desirable consumer outcomes may not be fully achieved given existing barriers to entry related to matters such as licensing/accreditation and insurance costs.

Economic modelling undertaken as part of this process suggests a potential limited economic benefit (of around \$0.9 million per annum to the community)<sup>7</sup> from the entry of ridesharing as an illegal service, which is less than the benefit anticipated under Option 3 below. This modelling may overstate the benefits because it does not account for associated compliance and enforcement costs.

### 5.5.2 Option 2

Banning ridesharing and third-party booking apps is unjustified given the comparability of their operation to hire cars and the booking services of taxis, which are permitted subject to regulation. All provide for access for on-demand passenger transport.

Moreover, banning ridesharing and third-party booking apps may not be effectual given actions in other jurisdictions. As per Option 1, there may also be ongoing compliance and enforcement action that draws resources from government, industry and consumers without an overarching benefit.

### 5.5.3 Option 3

Public passenger transport via ridesharing and app-based booking services can be 'legalised' and viewed simply as another access channel for the booking of transport services (taxis and hire cars being among them).

Appropriate regulation of ridesharing and third party app-based booking services offers the potential for new competition in the market, to drive improvements in consumer outcomes both in price, service choice and service quality. For existing industry participants, such as drivers and operators, there is an opportunity for competition to drive new service access channels and to reduce costs, thereby promoting viability.

Overall, new service models can lead to higher net economic surplus (\$3.5 million within five years) for the entire community. This is discussed further in section 6.4.

As a general approach, the desired regulatory framework should incorporate measures to recognise and mitigate potential harms to an appropriate level, through a risk-based regulatory approach. In doing so, consistency in approach should also be applied to ensure there is no regulatory bias in the operation of the market.

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<sup>7</sup> The CIE, *Model results* (Prepared for the ACT Government), July 2015.

## 5.6 The opportunity

Progressing regulatory changes to provide for ridesharing and third-party app-based booking services, while removing inefficient regulatory arrangements that may impede effective competition, offers a net benefit to the Territory.

There are risks of market disruption, however, and these will need to be carefully managed.

## 6 Foundations for regulating a changing industry

Regulatory arrangements were examined to ensure efficient and effective means to deliver reliable, safe and sustainable transport options for the ACT, while reducing unnecessary costs and barriers to entry. This included different levels of information afforded by different platforms/access channels.

### 6.1 Rank and hail services

Soliciting passengers off the street and from taxi ranks is distinctive in that there is limited flow of information to parties involved in the transaction and provision of the transport service. Such information factors include:

- the identity of both passenger and driver
- vehicle condition
- price (including the ease in ability to compare and negotiate)
- payment methods.

The current regulatory settings limit these services to taxis, with requirements for such items as approved livery, presentation of driver accreditation, regulated pricing and operation of a security camera.

Community consultations did not identify the opportunity for new information technologies and business models to eliminate safety risks in this context. Accordingly, this sector of the market is to remain limited to taxis.

### 6.2 Booked services

Booked services typically involve a greater information flow between parties to the transaction (that is, driver and passenger) and can be supported by intermediary services to obtain custom and direct dispatch of services.

In distinguishing between regulatory requirements for taxis versus hire cars and ridesharing, it is the difference in information involved in the transaction that forms the basis for the proposed changes.

### 6.3 The merits and risks of ridesharing

#### 6.3.1 The nature of ridesharing

Third-party booking apps and the ridesharing business model associated with the apps are a form of access to on-demand public transportation.

Ridesharing in particular can be viewed in a number of ways but, from a regulatory perspective, it is point-to-point transport on demand with a driver and vehicle that can provide a service to a paying passenger. Fundamentally, this is the same commercial proposition that exists for services provided by taxis and hire cars.

The ridesharing booking service provided via a centralised third-party provider is akin to a booking service/network provided for taxis. Both match passengers to drivers and vehicle based on underlying criteria (for example, sequential hiring or priority hiring). The information collected and made available between booking service platforms can vary.

- Third-party booking app models normally provide several, key identifying pieces of information about and to both passengers and drivers before rides are undertaken.
- Telephone-based booking processes utilised by traditional taxi networks generally afford more limited information to passengers and taxi drivers.

Features of the ridesharing transaction also resemble hire cars, with negotiated fares and identification of parties (and vehicle) determined prior to the provision of the service. Ridesharing with app-based platforms essentially reduces the time to negotiate and source passenger transport.

### 6.3.2 Benefits of ridesharing

#### 6.3.2.1 Choice, competition – and quality

The legislated introduction of ridesharing and other third-party app booking business models in the ACT will present a wider choice of on-demand travel opportunities for travellers. As evidenced from other locations where ridesharing has entered the market, it provides strong competition to existing suppliers, including taxis and hire cars. This has resulted in benefits to consumers in terms of pricing and service quality.

- Analysis of Uber and taxi prices in New York City has suggested improved opportunities for consumers to benefit from price comparisons and shopping between services.<sup>8</sup>
- In Chicago during 2014, there were fewer complaints made against taxis for reckless driving (20 per cent reduction), rejecting credit card payments (37.3 per cent reduction) and for rude behaviour (25 per cent reduction).<sup>9</sup>

#### 6.3.2.2 Householders becoming drivers

The value proposition ridesharing presents is also attractive to prospective drivers. Foremost, ridesharing presents the opportunity to utilise an existing asset – the driver's own vehicle. Ongoing costs of entry to ridesharing can also be managed in such a way that drivers can more easily enter the business, and undertake either little or substantial driving activity to earn a net

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<sup>8</sup> See - <http://www.technologyreview.com/view/535886/data-mining-reveals-when-a-yellow-taxi-is-cheaper-than-uber/>

<sup>9</sup> See - <http://www.dnainfo.com/chicago/20141106/river-north/cab-drivers-friendlier-than-usual-uber-lyft-competition-could-be-why>

income. Drivers can therefore use ridesharing to supplement existing incomes, or to bridge gaps between full-time employment.<sup>10</sup>

### 6.3.3 Householders becoming passengers

For other households, greater affordability of on-demand public passenger transport may provide the opportunity to reduce private vehicle use and/or ownership.

### 6.3.4 Community

The reduced costs of public passenger transport may also offer community benefits in terms of opportunities to make wiser risk-based transportation choices, such as avoiding drink driving.<sup>11</sup>

More innovative and differentiated public transport solutions, such as ridesharing, also align with key Government priorities. They can:

- support economic growth in the Territory (as indicated by economic modelling)
- provide a competitive environment that services consumers well
- contribute to making Canberra a leading digital city (for example, by utilising the access to and capabilities of public wifi).

## 6.4 Economic benefits to the community

Economic modelling undertaken for the Review estimates that, in 2019/20, the ACT community is estimated to be \$3.5 million better off, annually. This is a conservative estimate that does not account for gains from greater consumer choice and feedback to improve the quality of taxi services.

The model showed significant change in the taxi industry; it also revealed an overall increase in driver-hours for the entire on-demand transport industry.

In considering the availability of latent demand in the market and its potential contribution to outcomes, the Government recognised ridesharing as a differentiated service as well as the potential for effective price competition<sup>12</sup> (supported by reduced industry costs) to place downward pressure on prices and attract greater patronage.

### 6.4.1 The economic merits of ridesharing<sup>1</sup>

A simulation model was used to understand potential economic impacts of the entry of ridesharing and other policy changes on the ACT market. Several broad scenarios were

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<sup>10</sup> Uber notes that, on average, 52 per cent of its drivers are part-timers, with no previous professional driving experience, and 75 per cent of them have other jobs. This data was based on 601 drivers interviewed in 20 markets, in December 2014. See: The Benson Group, *Uber - The Driver Roadmap*, Santa Monica, California, 2015, p. 2.

<sup>11</sup> See- <http://www.madd.org/media-center/press-releases/2015/new-report-from-madd-uber.html?referrer=https://www.google.com.au/>.

<sup>12</sup> The cost of taxi fares was the issue of most concern to respondents to general surveys conducted (less than 19 per cent were satisfied; and over 80 per cent sought improved prices).

modelled, including: 1) the legal entry of ridesharing, with Government making several regulatory changes, to create a more level playing field (“Base policy scenario”); 2) the illegal entry of ridesharing to the market; and 3) no entry of ridesharing to the market.

The information below focuses on the outcomes of the legal entry of ridesharing, or the “Base policy scenario”.

#### *Base policy scenario – key assumptions*

- Ridesharing would be permitted to operate legally in the ACT, beginning early 2016
- A number of policy changes would be made to create a more level playing field for the taxi and hire car industry, including:
  - reducing the Government-owned taxi licence annual lease rate from \$20,000 to \$10,000 (with further phasing down over time)
  - a reduction of hire car and ridesharing fees below \$1,000 per year
  - reducing Taxi prices by 5 per cent.
- Ridesharing is assumed to acquire around 30 per cent of the market by 2019/20, based on the market take-up experience of a similar market, Newcastle, NSW.

#### *Base policy scenario – outputs*

Under the base policy scenario, both consumers and society as a whole experience incremental benefit from the legal entry of ridesharing, versus no entry of ridesharing. Elements of the taxi industry also experience incremental benefit.

Under this scenario, the following key outcomes are anticipated in 2019-20:

- Society in total is \$3.5 million per year better off.
- There is an increase in the taxi fleet of 52 vehicles. As costs of entry for operators have decreased the taxi fleet would be around 15 per cent larger.
- An increase in required driver labour hours of 300,000 annually, equivalent to 160 full time driver jobs. This represents a combination of hours in the taxi, hire car and ridesharing sectors.

Under the base policy scenario it is well understood that the taxis industry will face new competition, and taxi vehicle utilisation could be altered. The changes proposed to make the taxi industry more competitive and attractive to consumers, seeks to mitigate impacts by ensuring that the taxi fleet can be maintained at close to or above existing levels. For drivers, the distribution of activity among new and existing modes of transportation will change, as well.

While impacts on elements of the incumbent industry are to be expected under the base policy scenario, it should be noted that the Government would expect to experience a decline in revenues, as it contributes to a lowering in costs for taxi and hire car operators and reductions in barriers to entry. The Government will undertake these changes with the central purpose of

increasing competition in the on-demand transportation sector and delivering a net surplus to the ACT community as a result.

## 6.5 Risks of ridesharing

### 6.5.1 Activity- and safety-based risks

As in all public passenger services, there are activity-based and safety-related risks of harm to passengers, the public and drivers through the operation of ridesharing vehicles on public roads.

### 6.5.2 Transitional risks

These are risks to stakeholders that emerge when an industry undergoes change.

Transitional risks may arise with the introduction of ridesharing, as the industry and economy adjust to alternate service arrangements, including:

- disruption to incumbent services as the industry adjusts
- investment risk for existing industry equity investments, namely in perpetual plates and taxi vehicles.

### 6.5.3 Risk to community-service commitments

The on-demand transport industry also delivers on a range of the community service commitments that support equity and access for Canberrans in point-to-point services. These include:

- ACT-wide, 24/7 service
- defined performance standards and wait-times for telephone booking-service and booked taxi pick-up
- the acceptance of alternate forms of payment – cash and electronic
- WAT service, provided by specially-trained drivers and through specialised vehicles.

The operation of ridesharing, even if not directly undertaking any particular type of service, or targeting a specific segment of the market, may affect the overall viability of existing industry participants to supply such services. For example, WAT operators and drivers rely on non-WAT trips to support their income. A loss of WAT services due to a significant decline in economic viability would have social impacts, including the isolation of vulnerable people, potentially limiting their access to medical and other services.

Feedback from the Community Consultation process also pointed to concerns with the potential viability of ridesharing itself in the ACT (see Appendix C). These related to:

- a lack of population density in the ACT (as outlined in the work of Professor Graham Currie of Monash University<sup>13</sup>)
- the extent of latent demand in the market – based on declining taxi patronage in recent years.

#### 6.5.4 Risks to the environment

The use of private vehicles for ridesharing raises the potential for a greater diversification of the overall public passenger fleet in the ACT. With the taxi fleet involving a significant proportion of hybrid vehicles,<sup>14</sup> compared to the private vehicle population, use of private vehicles for public passenger transport may have negative implications for carbon emission levels. However, market behaviours indicate that ridesharing companies may limit the age of vehicles (for service quality reasons) comparable to that specified in regulations for taxis.<sup>15</sup> As such, with an age-limited fleet, vehicle efficiencies could be expected to increase over time. In addition, management of fuel costs, particularly in an urban environment, may motivate more intensive providers of ridesharing to purchase more efficient vehicles.

Some jurisdictions, such as New York City, are investigating effects on traffic flows that have coincided with the introduction of ridesharing. Increasing traffic congestion in some jurisdictions, and its believed association with ridesharing has warranted such investigations.<sup>16</sup>

##### 6.5.4.1 Carpooling and the environment

Carpooling is a service in which parties heading to a common destination (for example, the same workplace) share transport with passengers either paying a nominal amount to cover a portion of the drivers cost or taking turns at driving. This type of service is recognised as contributing to positive environmental outcomes.<sup>17</sup> Third-party booking apps are providing services to support carpooling, including Uber<sup>18</sup>.

#### 6.5.5 Risk of taxi deregulation

A range of public submissions<sup>19</sup> sought to raise concerns with any action that would act to deregulate the taxi industry, citing outcomes from the Northern Territory, Victoria Ireland and New Zealand – reduced customer service, fare increases, a deterioration in vehicle standards and safety, and financial hardship for taxi drivers and operators – as evidence of the difficulties in undertaking reform of the taxi industry.

<sup>13</sup> See - <http://www.slideshare.net/ElliottFishman1/professor-graham-currie-the-uber-verdict>

<sup>14</sup> Of the standard taxi fleet, 58.3 per cent at hybrid vehicles (as at 12 August 2015). Source: RTA

<sup>15</sup> Standard taxis cannot be used for more than 6 years and must not be 8 years or older. Uber restricts vehicles to 9 years.

<sup>16</sup> See - [http://www.nytimes.com/2015/07/28/upshot/blame-uber-for-congestion-in-manhattan-not-so-fast.html?\\_r=0&abt=0002&abg=1](http://www.nytimes.com/2015/07/28/upshot/blame-uber-for-congestion-in-manhattan-not-so-fast.html?_r=0&abt=0002&abg=1)

<sup>17</sup> For example, motoring organisation NRMA cites the benefit of ridesharing - see <http://www.mynrma.com.au/blog/2007/10/22/car-pooling/>.

<sup>18</sup> See - <http://www.theguardian.com/technology/2015/apr/17/uber-taxi-sharing-service-saves-120-tonnes-co2-month>

<sup>19</sup> Aerial Capital Group, Australian Taxi Federation, P. Skipper. Some submissions also sought to specifically refute the work of Professor Allan Fels for the Victorian Taxi Industry Inquiry (See Appendix C).

The ACT Government acknowledges these difficulties however and has addressed the substance of these concerns in its reforms to the taxi industry and approach to regulations on ride sharing.

## 6.6 Right frameworks for the right outcomes

The ability to derive a net community benefit for the ACT from ridesharing is reliant on the adoption of regulatory, industry and educational frameworks that sufficiently mitigate the above-mentioned risks while also reducing barriers to entry to a minimum.

Some factors, such as population density<sup>20</sup>, present market risks that may not be readily addressed. This does not however, mean that Government should preclude activity in the face of those risks.

The changes being progressed to achieve a positive outcome are outlined in the following sections.

## 7 Enabling the entry of ridesharing and new booking services

### 7.1 Background

Allowing the entry of ridesharing has been strongly contested by existing industry stakeholders with a number of concerns raised including:

- ridesharing is a public passenger transport service
- there is an absence of appropriate regulation (to support safety for example) and therefore a level playing field for competition is required
- the use of smartphone apps is not new, as they have been available in relation to taxis for some time.

Against these concerns, the application of a risk-based regulatory approach that allows for competition in the market suggests that:

- regulation for ridesharing (as is the case for hire cars currently) does not need to be fully aligned with taxis
- the regulatory framework needs to better reflect different risks associated with the different booking models
- there are opportunities to reduce barriers to entry to the on-demand transport industry.

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<sup>20</sup> Urban infill (with an associated increase in population density) is part of the ACT *Government Infrastructure Plan 2011 – 2021*.

As outlined in section 6.5 of this paper, there are similar activities and risks between hire car, taxi and ridesharing business models. Accordingly, similar actions in accrediting and licensing providers will be applied to address identified risks.

## 7.2 Transport Booking Services

One significant approach that will be taken to provide a more level playing field and address risks will be for any business providing TBSs in the ACT, to be accredited and subject to the same standards. This includes taxi booking services or third-party booking apps.

Within this framework, the regulation of current taxi networks will be revised to focus on TBSs. Secondary services, such as security equipment sales and repairs, and collective purchase of insurance, currently offered by networks may continue to be offered by TBSs. However, such features may equally be sourced from alternative providers, as is the case for independent taxis.

A TBS will become the common element between taxis, third-party apps and ridesharing. Many non-industry stakeholders consider that there is no reason to prohibit TBSs from servicing operators across the entire on-demand public transport sector – that is, taxis (excluding WATs, see section 8.1.2), hire cars and ridesharing.

### 7.2.1 Approach to Accreditation

Consistent with current regulation for taxi networks, the accreditation of TBSs will focus on safety aspects, community service and core competencies to operate. This will include ensuring the accreditation of affiliated drivers and vehicles, and requirements for service background checks on prospective TBS directors and senior managers.

Requirements regarding evidencing financial viability will be removed. The factors for viability fluctuate in a competitive environment, particularly one undergoing change. Given this, it is not considered appropriate for the Government to be assured of the financial viability of a particular entity in such circumstances. Rather, as with other essential systems and services such as banking, the Government will undertake contingency planning in the event of a significant failure, in order to mitigate any harm to the community.

#### **Action**

- *The Government will accredit all TBSs in the same manner - including rideshare, taxi and third-party booking services to operate in the ACT.*
- *The Government will remove financial viability as an accreditation requirement.*

### 7.2.2 Approaches to General Service Obligations

Public submissions during the consultation phase strongly supported attention to service, safety, and consumer and performance outcomes.

To support the availability of services, a TBS will be required to support their drivers to provide booking services 24 hours per day, seven days a week (24/7) year round and to service all areas of the ACT. This is a matter of community service to support transport of Canberrans, wherever and whenever they require.

To allow for innovation over time, the means to provide booking services will be specified in a technologically-neutral manner, and therefore may include telephone and/or electronic means.

#### **Actions**

- *A TBS will be required to provide booking services on a 24/7 basis year round for all areas of the ACT.*
- *A TBS will be allowed to provide booking services through telephone and/or electronic means.*

#### 7.2.3 Safety

A TBS will only be able to supply ridesharing services using accredited and licensed drivers and vehicles (as for taxis and hire cars currently). To allow for appropriate audit and enforcement activity the Government, through the Road Transport Authority (RTA), will have timely access to, or provision of, details of membership and accreditation of ridesharing (and other) affiliated drivers and vehicles.

Incidents and accidents during operation will also be subject to timely reporting to authorities.

As required of hire car operators and existing taxi networks, TBSs will also be required to have formal passenger complaint processes in place and to respond in a timely manner. This will include consideration of disputes relating the rating of passengers by drivers. The nature of the rating process is discussed in section 7.8.1. Enabling RTA access to records of all complaints will permit the audit of outcomes.

#### 7.2.4 Specific obligations for ridesharing versus taxis

Recognising the different risks of service interactions and transactions between taxis, hire cars and ridesharing as a result of different levels of information and equipment available, a TBS's ability to provide service to ridesharing and hire cars will depend on a number of key factors – principally the ability to identify parties and price. For example:

- while taxis will be required to have security cameras installed, the absence of such safety infrastructure in rideshare vehicles will create a responsibility for the TBS to take reasonable steps to identify the passenger before it can refer a booking to rideshare. (Information provision will be limited to that required to undertake the transaction and to support privacy outcomes – see section 7.3.)
- bookings will only be supplied to drivers and vehicles that are licensed and accredited (as per taxis and hire cars currently).

- without regulated pricing (see section 7.11), a TBS will need to advise the full price of services (including any additional fees such as payment surcharges) upfront to the passenger, within an estimated range, before they accept the booking.

### 7.2.5 Further security

Features such as GPS-tracking and panic alarms have been introduced by industry as part of promoting travel safety to passengers. Unlike cameras for taxis (see section 8.1.1), these are not subject to current public passenger services regulation on their use or availability.

Regulations to provide such features and related monitoring, reporting and system maintenance obligations will support consumer confidence in the operation of business models. Where cash is available as a payment option there are greater associated risks, and features such as cameras and a driver's panic alarms are to be used. For ridesharing- and app-based TBS platforms, such features would rely on the operation of the driver's and passenger's smartphone.<sup>21</sup> For other circumstances, security features could be arranged by the operator with a third-party provider (see section 8.2.3)

Accordingly, the TBS and the vehicle operator will be subject to obligations to ensure the operation of security features dependant on circumstances.

#### *Actions*

- *Service obligations will be applied on TBSs to support ridesharing safety and consumer outcomes*
- *Additional requirements to be applied where cash transactions are used (security camera).*

## 7.3 Passenger privacy

### 7.3.1 Data and TBSs

Third-party digital booking apps have the capacity to collect certain data from passengers, including the location of registered app users' smartphones, even when the registered user has not requested a ride or a ride is not underway. Further some apps have the ability to send promotional information to registered users and their friends who are connected to the registered user through internet-based social sites. Finally, some booking apps may also collect the means and content of communications (calls and SMS) between drivers and passengers.

The capacity of booking apps to collect data like that described, and additional types of data would be expected to increase over time, and such apps may be in common use across all types of public passenger transport.

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<sup>21</sup> For taxis, security arrangements involving specialised equipment will be available through alternate providers. Accordingly, obligations would not extend to the TBS but, rather, place responsibility on the vehicle operator (see section 8.2.3).

All applicable federal and ACT privacy laws will operate.

#### 7.3.1.1 *Electronic commerce*

Electronic payment processing for trips is an essential component of third-party digital booking apps, and also for non-cash transactions undertaken within taxis and hire cars. Passengers' submission of bank-card and other personal information upon registering with TBSs, and individual transaction information carries privacy implications similar to those described above.

Such activity is expected to be subject to the above Acts, where applicable, but also to Australian and international standards specific to electronic financial transactions. This includes the international Payment Card Industry Data Security Standards (PCI-DSS, which covers the appropriate usage of branded credit cards.<sup>22</sup>

A TBS will therefore need to comply with the following:

- 1) *Privacy Act 1988 (Cth)*
- 2) *Electronic Transaction Act 2001 (ACT)*, which covers aspects of the transmission of data, including personal information, and the signing of contracts electronically
- 3) PCI-DSS.

#### 7.3.1.2 *TBS information to drivers and passengers*

Operators and drivers, as independent contractors, would not fall within the privacy requirements placed on TBSs, including NPPs. TBSs will therefore need to limit information to that necessary for the conduct of the transaction (as noted in section 7.2.4) or have arrangements in place to maintain privacy. For example, information is not to include names but will instead use independent identifiers such as booking numbers and public passenger drivers licence numbers.

#### 7.3.2 *Data and ACT Public Agencies*

Data collected by TBSs may routinely be shared with ACT Government agencies in their capacity of ongoing regulators and law enforcement. Further, TBS data will be important to certain Government agencies for analysis of any reform actions and implications for: industry, accessibility, community service obligations, safety, integration and other matters. Such data will be subject to provisions of the *Information Privacy Act 2014 (ACT)*, which governs data handled by ACT Government agencies.

#### *Action*

- *Privacy rights consistent with Australian and ACT privacy standards will apply.*

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<sup>22</sup> Concerns were raised by Aerial Capital Group as part of its submissions (see Appendix C).

## 7.4 TBS reporting on performance

Introduction of ridesharing could cause substantial change to the ACT's on-demand transportation industry. The ACT's goals of maintaining safety, service, competition and viability may well be achieved in the on-demand transportation industry as it spontaneously changes.

It does, however, need to be monitored and evaluated. Monitoring key performance aspects of ridesharing and other new business models will be crucial to understanding what Government objectives are or are not being met, why, and if further action is required.

Therefore, TBSs will be required to provide a range of data that would support the Government's evaluation and review of reforms to the sector. In relation to taxi services, provision of a range of information to the Roads Transport Authority (RTA) is already required to understand customer performance outcomes (in particular for WAT services). TBSs will also be required to provide a range of data on hire car and rideshare hirings for example, on wait-times, trip volumes, trip locations, fleet sizes, fare levels and complaints.

Data from TBSs and the operators of independent taxis, hire cars and the WAT centralised booking service (WCBS) will assist in understanding the viability, sustainability and competitiveness of different aspects of the industry. Such actions are not costless and will involve administrative costs to both industry and government. If the market is functioning well, there will be potential for government to reduce performance reporting requirements over time.

### **Actions**

- *A TBS will be required to report (and monitor) on safety- and consumer dispute-related aspects of its operation.*
- *A TBS will be required to report information to support evaluation of performance and reforms.*

## 7.5 Other Australian and ACT legal requirements

More generally, community expectations are that a TBS will be subject to all applicable Australian laws and regulatory requirements, including those related to taxation<sup>23</sup>, immigration and work health and safety (see section 7.8).

Just as non-Australian drivers may be subject to visa conditions in determining their ability to work, TBSs will be required to ensure that their systems for hirings do not inappropriately allocate work outside of those conditions.

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<sup>23</sup> The ATO has outlined its arrangements for ridesharing (see <https://www.ato.gov.au/Business/GST/In-detail/Managing-GST-in-your-business/General-guides/Providing-taxi-travel-services-through-ride-sourcing-and-your-tax-obligations/>). These arrangements are subject to legal challenge by Uber (see report <http://www.abc.net.au/news/2015-07-31/uber-launches-legal-challenge-to-overturn-atos-directive/6664234>).

With the potential for entry of multinational corporations<sup>24</sup> into the ACT market, it may be necessary to ensure accessible legal remedy for operators, drivers and passengers in the event of disputes or complaints going beyond local alternate resolution mechanisms (see section 4.1.1 above). Actions will include obligations for:

- the TBS to designate a responsible person who is available within the Territory for legal service
- any legal disputes regarding contracts or arrangements are to be heard in an appropriate Australian court.

### **Actions**

- *TBSs will be required to operate subject to all applicable Australian laws and regulatory requirements.*
- *Drivers, operators and passengers will be afforded legal access within Australia and the ACT.*

## 7.6 Driver regulation

### 7.6.1 Safety

The extent and nature of regulation of drivers and vehicles in on-demand transport could be shaped in large part by the type of information that flows between trip participants as it pertains to various risks.

As discussed earlier in this section, the nature and amount of safety-related information that flows between drivers and prospective passengers traditional hire car models and digital booking models, such as ridesharing, are similar. Otherwise, the actual transport of passengers can accrue similar risks (as related to factors such as frequency of operation, location and time of day).

Accordingly, it is reasonable to require that initial and upfront accreditation and ongoing responsibilities of hire car and ridesharing drivers be aligned.

As a consequence, accreditation of hire car and ridesharing drivers will have the following safety-related requirements:

- a. Driver history check
- b. National Police Check (changing to Working with Vulnerable People (WWVP) Check with other hire cars by 2018)
- c. Commercial Driver's Health Assessment

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<sup>24</sup> Uber contracts with drivers via Uber BV, with terms governed by the laws of The Netherlands including dispute arbitration.

Currently, hire car drivers must also have the following level of driving experience:

- a. be at least 20 years of age
- b. be an Australian resident or hold a visa to work in Australia
- c. have held a Full driver licence for at least one year (or periods totalling one year in the last 3 years)
- d. if holding a foreign driver licence, have held a full Australian licence for at least one year.

Ridesharing drivers will only be permitted to operate through a TBS, to support safety arrangements. To ensure such action occurs, the following requirements will be applied:

- a. driver registration with booking service(s)
- b. licensing through the RTA to include reporting of registration status with one or more TBSs.

The potential for competitive entry in the on-demand transport market also provides the opportunity to revise training requirements for hire cars (and ridesharing) to focus on aspects such as work safety (e.g. intoxicated passengers training) and community accessibility (such as disability awareness).

As discussed below, the onus for a range of training elements will be on industry in order to ensure their own service quality.

*Work Safety* – As public passenger drivers, ridesharing drivers will be interacting with a range of passenger types. These passengers can pose potential risks to the driver, themselves and others, for example, being intoxicated or having behavioural issues.

*Disability awareness* – While taxis will remain the primary service point in the on-demand sector for people living with disabilities, rideshare drivers may still need to provide services to people who require special assistance.

*Vulnerable people* – More generally, ridesharing may be used by other vulnerable members of the community such as unaccompanied minors or the elderly. Driver and criminal history checks will be required, moving to WWVP background checks with scheduled changes to taxi and hire car requirements by 2018.

*Health and driving* – Ridesharing drivers may drive for extended periods of time and in higher-risk areas. Uber states that uberX ridesharing drivers work on average 20 hours per week in the Sydney and Melbourne markets.<sup>25</sup> Ridesharing drivers may work longer hours in the ACT market and will be included in the same health checks category as other public passenger drivers (see also section 8.3.4.2). However, a 3 month grace period will be permitted for new industry entrants, unless over 70 years of age or having a pre-existing medical condition.

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<sup>25</sup> Uber.

*Route planning* – Ridesharing drivers normally derive their passenger hirings and route arrangements from a GPS-based process<sup>26</sup>. Accordingly, training for route planning will be left as a matter for the TBS.

*Driving skill* – Ridesharing and hire car services can share similar vehicle ownership behaviour. Given the anticipated socio-economic background of many rideshare drivers (a dominant number participate in the service to supplement other incomes, or to act as an income bridge between other occupations)<sup>27</sup> an even higher percentage of rideshare drivers will drive their own vehicles. The reputational aspects<sup>28</sup> and driver performance ratings of ridesharing align to promote driver quality and incentives for industry to undertake further driver training on their own initiative as required. (See also discussion of training versus performance incentives at 8.3.4.1.)

#### **Actions**

- *Apply consistent licensing requirements between hire cars and ridesharing drivers.*
- *Review relevant training to focus on safety and community aspects.*

#### 7.6.2 Direct bookings

Prohibiting ridesharing drivers from offering direct bookings to passengers will support safety since the TBS provides passenger identification and ensures the accreditation of the driver and vehicle. Direct bookings with ridesharing drivers would otherwise introduce risks that the regulatory framework has sought to reduce.

#### **Action**

- *All rideshare hirings must be booked through TBSs.*

#### 7.6.3 Alcohol and drugs

Consistent with other public passenger service drivers, rideshare drivers will be subject to zero blood alcohol and drug level requirements when they are providing rideshare services. For practical monitoring and enforcement, provision of ridesharing services would occur when the driver is logged on to a ridesharing app.

#### **Action**

- *Any tested presence of drugs or alcohol will not be tolerated.*

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<sup>26</sup> Taxi and hire car drivers are increasing their use of GPS for route planning also.

<sup>27</sup> The Benson Group, *Uber - The Driver Roadmap*, Santa Monica, California, 2015, p. 2

<sup>28</sup> This also applies to hire cars, in line with their reliance on repeat custom.

## 7.6.4 When providing service

### 7.6.4.1 Identifying drivers and vehicles in service

Ridesharing drivers and vehicles will need to be able to be identified in situations outside of a transaction with a passenger – such as for enforcement of drug and alcohol requirements.

Permanent marking of a vehicle (for example a licence plate marking) would permit ready identification and could support use of vehicles in circumstance, as for plated hire cars (for example, use of bus lanes). However there are also negatives to this approach, such as higher costs of administration related to the creation of a new plate, and the potential to encourage hailing of ridesharing vehicles. Also it would not readily confirm when a vehicle is being used for ridesharing rather than for private purposes.

As an alternative, rideshare drivers will be required to display a removable permit or label on the dashboard or windscreen (akin to a parking permit) when in service to allow ready identification by enforcement agencies, such as the RTA and police. The label will also assist passengers to identify accredited vehicles by providing further confirmation on entering.

### 7.6.4.2 Distractions while in service

The use of smartphones when driving is also a matter of public safety due the potential for distractions. The placement and use of the smartphones by rideshare drivers will need to comply with existing road rules requiring appropriate use of holders and their placement. The use of smartphone apps for bookings will only be permitted when parked.<sup>29</sup>

### 7.6.4.3 Parking for rideshare vehicles

To support the safe provision of services, the ACT Government will consider the availability of parking (that is, for standing only – not leaving the vehicle) for ridesharing vehicles (when on-app but not en route to or transporting a passenger). Outside of the development of dedicated parking arrangements<sup>30</sup>, the Government anticipated trialling the use of parking facilities in loading zones or public parking areas. Allowing for the parking of ridesharing vehicles within taxi zones would be inappropriate as it may imply an ability to provide rank and hail services.

See also Australian Road Rules below at section 7.13.

#### **Actions**

- *Identification of vehicles when a ridesharing app is in use will be required.*
- *The use of smartphones for ridesharing will be consistent with general driving requirements.*
- *Ridesharing vehicle parking or standing in loading zones will be trialled in the ACT.*

<sup>29</sup> Australian Road Rules, Rule 300 – see

[http://www.legislation.act.gov.au/ni/db\\_37271/current/pdf/db\\_37271.pdf](http://www.legislation.act.gov.au/ni/db_37271/current/pdf/db_37271.pdf).

<sup>30</sup> See also 'Integration' for discussion of parking arrangements at Canberra Airport. As a booked service, parking for ridesharing need not be as proximate to transport nodes as taxis providing rank and hail services (with the placement of ranks near to bus interchanges and other services.)

## 7.7 Operator regulation

In public passenger transport, operators are the parties responsible for the vehicle and its licence. They can be owners or lessees. Under some ridesharing models the operator and driver is the same person. However, this does not mean that the operator and the driver will be the same person in all instances of ridesharing.

Operators of taxis and hire cars must be accredited, with requirements for:

- citizenship or permanent residency
- criminal history checks
- meeting Minimum Service Standards
- providing appropriate insurance coverage (see also section 7.10.2).

### 7.7.1 Minimum Service Standards

Minimum Service Standards (MSS)<sup>31</sup> provide a number of obligations in relation to the provision of services by the present-day taxi operator, including the maintenance of the vehicle and responsibility to notify to the RTA, with details such as drivers using the vehicle. For ridesharing, a number of these requirements are not applicable to a ridesharing operator or will be satisfied by the affiliated TBS, such as recording details of trips.

CTP and comprehensive vehicle insurance will remain the responsibility the operator.

## 7.8 Work relations – between TBSs, operators and drivers

Ridesharing companies argue their contractual arrangements with operator/drivers are as independent contractors and do not constitute an employment relationship. In the US, this claim is currently subject to dispute in several jurisdictions.<sup>32</sup>

The Australian taxi and hire car industry maintains a similar argument with its use of bailment contracts.<sup>33</sup>

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<sup>31</sup> Minimum Service Standards for taxis and hire cars could also be reviewed and refocused (see section 7.7.1).

<sup>32</sup> The California Labor Commission issues ruling that an Uber driver was an employee - see <http://cdn.arstechnica.net/wp-content/uploads/2015/06/04954780-Page0-20.pdf>. Uber is reported to be appealing the decision – see <http://www.forbes.com/sites/ellenhuet/2015/06/17/uber-drivers-are-employees-not-contractors-rules-california-labor-commission/>.

<sup>33</sup> As supported the Full Bench of the Fair Work Commission in the matter of *James Voros v Alan Dick* [2013] FWCFB 9339 – see summary at <http://www.workplacelaw.com.au/media/e-updates/182-work-health-and-safety-law-and-employment-law-e-update-december-2013>.

The legalities of the ridesharing claim have not been tested but this section of the Analysis Paper:

- assumes the independence argument holds for both taxis and ridesharing
- applies equivalent requirements between the parties.

#### 7.8.1 Driver performance and TBS responsibilities

Ridesharing drivers can be subject to performance obligations as part of the overall service and brand proposition under contracts. Drivers are encouraged to provide high quality and responsive service, in terms of courteousness, short waiting times, prompt return of lost property and service ‘extras’ that distinguish ridesharing from taxi service, such as water during hot seasons, to opening umbrellas for passengers when it rains.<sup>34</sup>

Drivers are motivated to serve their passengers well, through mandatory passenger ratings of drivers after each trip. Poor ratings (below a defined rating over a certain number of trips) can mean automatic removal from a ridesharing TBS. Turning down a set number of rides may also cause a driver’s exclusion from such a program.<sup>35</sup>

One ridesharing business has submitted that the obligations of its platform and incentives it offers are outlined in documentation and training materials before drivers join the platform.<sup>36</sup> It also notes, equally importantly, that affiliated drivers have a full choice in the hours worked on a per-week and long-term basis.

While taxi drivers, especially those driving vehicles carrying the livery of a TBS brand, may have less flexibility in the hours they work, they too, have historically been obliged to abide by a number of obligations to uphold the quality of a transportation brand. Hire car drivers (and the owners/drivers) face similar pressures to preserve and protect the luxury service expectations associated with the car.<sup>37</sup>

To support procedural fairness to drivers and operators, provision will be made for any disciplinary arrangements to include the opportunity for formal review of sanctions.<sup>38</sup>

#### **Action**

*TBSs will be required to provide access to formal, documented review and dispute processes.*

#### 7.8.2 Work Health and Safety (WHS) and workers compensation insurance

Ridesharing TBSs, operators and drivers will be subject to general work health and safety requirements consistent with taxis and hire cars, through the regular operation of existing legislation.<sup>39</sup>

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<sup>34</sup> Informal testimony to the Review from Canberra users of Sydney ridesharing service.

<sup>35</sup> Uber mandates such arrangements in Australia.

<sup>36</sup> Uber.

<sup>37</sup> The Review expects that examples of this can be seen with third-party booking brands, like

<sup>38</sup> Some public submission sought additional processes. The Australian Taxi Federation proposed the establishment of an independent tribunal, similar to the Queensland Industrial Relations Commission.

Consistent with taxi operators (owner-drivers), ridesharing owner-drivers' access to workers compensation will be dependent on their corporate arrangements. If they are incorporated, workers compensation arrangements will apply; however sole traders will not have access. However, further income protection and medical insurance is available in the marketplace. Arrangements will be put in place to educate prospective ridesharing drivers of insurance arrangements and the risks of operating without such insurance.

Casual drivers (that is, sub-contracted drivers) will have access to workers compensation consistent with taxis and hire cars. This approach is discussed further in section 8.4.3.

Educational materials will clearly define the obligations of different parties to providing these benefits, and how to access these benefits and further consultation with relevant stakeholders will be undertaken.

#### **Action**

- *TBSs providing ridesharing services and ridesharing operators will be required to provide affiliated drivers with the right to information and education on obtaining WHS and workers compensation. The same is proposed for the taxi and hire car sector.*

#### 7.8.3 Exclusivity and work relations

Some TBSs may require their affiliated drivers (or operators) to establish exclusive arrangements, whereby they may not use other TBSs. This is a commercial prerogative of a TBS, operator and drivers, particularly if the brand image and unique service is shown on vehicles and delivered by drivers of those vehicles.

The elements of the reforms discussed here seek to promote competition by booking services for both passengers and operators/drivers. Accordingly, exclusive service arrangements or agreements with barriers to exit would work against this intent.

Moreover, both taxi and ridesharing providers have argued strongly that the operators and drivers are independent contractors or partners. The taxi industry bailment agreements that assert such independence are part of the basis for the Fair Work Commission's determination that an employment relationship does not exist.

To promote effective competition, the Government could:

- prohibit exclusive arrangements contracts; or
- deem agreements that restrict the ability of operators and drivers to access alternate TBSs to be a 'worker' arrangement for the purposes of the Territory's industrial relations jurisdiction, specifically its workers' compensation laws.

The latter option will better align with the deregulation approach and ability of industry participants to have access to a range of alternate business models.

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<sup>39</sup> For example, rideshare drivers would need to have first aid kits available. See - <http://www.legislation.act.gov.au/ni/2015-330/current/pdf/2015-330.pdf>.

### **Action**

- *Employer/worker relationship will be recognised under workers' compensation laws if a TBS imposes exclusivity on an operator or driver.*

## 7.9 Vehicles

### 7.9.1 Safety and licensing

Risks to the road-worthiness of vehicles used for ridesharing and hire car service are similar and should be addressed accordingly.

Hire cars are typically luxury vehicles, and are cared for to a higher standard as part of the value proposition of 'black-car' service. Under some ridesharing models, cars used may not be luxury brands, but are generally driven by their owners and afforded the same level of care.

From a safety perspective, age is less of a consideration compared to the actual roadworthiness and condition of the vehicle. Age may become a factor where there is excessive use of the vehicle (as with taxis), as it contributes to wear on vehicle components. Age may also be a factor in environmental considerations, as fuel efficiency has been improving in more recent vehicle models. Currently, ridesharing companies appear to have comparable vehicle age requirements to taxis. The Government however will retain the ability to specify additional rideshare vehicle characteristics to align with its environmental policies, if industry requirements are not aligned.

Given comparable operating activity, rideshare vehicles will be held to the same licensing and routine maintenance standards as those of hire car vehicles. This includes an initial road-worthiness inspection, and annual inspection. The Government will also consider monitoring use of individual vehicles to determine if there is excessive mileage accrued on rideshare vehicles.

## 7.10 Costs of regulation

### 7.10.1 Fees and charges

Licensing, accreditation and training aspects will be at a cost to ridesharing providers.

### 7.10.2 Insurance

As previously stated the activity risks associated with ridesharing services match those for taxis and hire cars. Accordingly, requirements for CTP insurance (priced for an appropriate risk class) and for public passenger vehicle insurance to a value of \$5 million will be applied.

### **Action**

- *CTP and public liability insurance coverage requirements for rideshare will be applied.*

### 7.10.2.1 Assessing risk and pricing

In developing requirements for insurance and pricing of insurance, a fundamental issue has been determining the risk level of ridesharing, and verifying how it compares to that of taxi and hire car services. This consideration should also include risk to third-party individuals and to public property.

Based on information provided and the views of the insurance industry<sup>40</sup>, ridesharing appears to carry some similar risk to that of hire car service, but not necessarily identical. One point that was certainly considered was that hire cars are used more exclusively for commercial purposes, whereas rideshare cars may also be used substantially for private transportation by owners.

Notwithstanding this, appropriate structuring of insurance will require establishing an appropriate risk-rating of ridesharing and pricing.

### 7.10.2.2 CTP - Interim and long-term solutions

In the short term, ridesharing vehicles will be classed as a CTP passenger vehicle class given the interim period of the classification; an initial assessment of the risk profile suggests that ridesharing is more closely aligned with the CTP passenger vehicle class than other classes; and the timing required for insurers to submit a premium filing for ridesharing and to create a new ridesharing CTP class.

To reduce the potential for premiums to restrict entry, alternate payment arrangements, such as monthly payments, may reduce immediate financial requirements on rideshare providers.

#### **Action**

- *Develop interim arrangements for ridesharing CTP insurance.*

After the interim period, ridesharing vehicles will move to a ridesharing CTP insurance vehicle class, which over time, will be adjusted based on claims history; cost of claims and other information.

Determining the appropriate pricing of insurance for the ridesharing CTP class would prevent cross subsidisation of insurance pools with premiums set commensurate with the risk of causing bodily injury.

## 7.11 Fares

Hire cars are not subject to regulated prices but are able to negotiate prices before each ride. The activity allows consumers to shop around for services informed by price.

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<sup>40</sup> In confidence.

Technologies such as smartphone apps and web-based platforms allow consumers to receive information on pricing in a timely and convenient manner that permits consumers to similarly seek out the best value for money service.

Provided that there is clear information provided to consumers on the final price prior to the provision of the service (including any additional changes such as electronic payments), ridesharing and hire cars could operate subject to unregulated price.

#### **Action**

- *Consumer decisions are to be supported by information on pricing for rideshare and hire cars.*

#### 7.11.1 Dynamic or surge pricing

The caveat to allowing an unregulated price for rideshare and hire cars relates to the application of a surge price component during high demand situations. Other jurisdictions (such as Washington DC) have regulated to ensure such pricing is not active during an emergency situation, as it would be viewed as extortive by the community.

The Government will also consider limiting surge pricing for ridesharing to a predetermined level – for example, a multiple of the regulated price for taxis (say two times) until such time as it is assured that there is effective competition in the market. However, concerns about the effectiveness of competition are more relevant to the behaviour of the incumbent, rather than the new entrant.

Moreover, maintaining regulated maximum fares for taxis may prove sufficient to contain ridesharing prices until such time as the Government is assured of effective competition in the marketplace. This approach would limit market intervention by the Government and rely on the risk to ridesharing providers' reputation and substitution of services for taxis.

#### **Actions**

- *Limit surge pricing in declared emergency situations.*
- *Monitor surge pricing outcomes with regulated taxi fares.*

#### 7.11.2 Up-front tipping

Related to dynamic pricing is the ability with some booking apps for customers to suggest an upfront additional payment (a 'tip') to incentivise vehicle availability and driver service.

This particular practice raises some points of concern:

- clarity on whether the full amount of the tip is received by the driver or shared with the booking service – as a tip, the customer expectation would be that the gratuity is provided to the driver in full

- the level of information available to customers to decide on an appropriate tip – the risk being that if the passenger does not have adequate information, transport providers may derive supernormal earnings. This would arise as they obtain the maximum of a passenger’s willingness to pay rather than the equilibrium market price based on supply and demand at a point in time
- the potential for upfront tipping to become part of the base price – as driver expectations act to require the payment before service is offered.

To permit an informed decision on upfront tipping, the prospective passenger would need to be clearly advised before the hiring of:

- who receives the tip
- information on market conditions – such as, current average market prices (including tips) or likely vehicle availability based against a range of prices.

Given the potentially limited decision timeframes involved, the range of personal abilities to make effective decisions (due to circumstance or otherwise) and possible driver behavioural response, the Government considers it prudent not to permit upfront customer determined tips at this time. These propositions will be tested further by industry through technical studies.

#### **Action**

- *Up-front tipping for rideshare drivers will be prohibited.*

### 7.12 Cross border arrangements

As with taxis and hire cars, the surrounding New South Wales border creates a need for inter-jurisdictional cooperation and regulatory recognition. With arrangements for on demand transport still subject to review in New South Wales, the ability for ridesharing to operate seamlessly across the ACT-NSW border will be restricted – as ridesharing is illegal in that state.

The ACT Government will need to undertake further discussion and negotiation to permit transport of passengers by ridesharing into or from New South Wales, if legalised. To expedite matters, while awaiting the outcome of the New South Wales Government’s deliberations, the ACT Government will ensure that the appropriate legal frameworks are in place to permit recognition such as with cross-border taxi licences.

No vehicles registered in New South Wales will be permitted to be accredited for ridesharing in the ACT.

#### **Action:**

- *The ACT Government will prepare for cross-border operation of ridesharing.*

## 7.13 Other ridesharing matters

### 7.13.1 Child restraints

Consistent with other public passenger service light vehicles, rideshare vehicles will be required to include appropriate approved child restraint anchorage.

Currently, the ACT applies Australian Road Rules (ARRs)<sup>41</sup> exempt taxis (and public minibuses) from 'approved child restraint' requirements<sup>42</sup> where there is no suitable restraint available and the passenger is not in the front of the vehicle. However, there is an additional requirement that children aged from one (1) to seven (7) years old must wear a seatbelt.

The ARR's exempt taxis from the mandatory requirement to use child restraints as it would not be feasible to have all types of restraints available in a taxi.<sup>43</sup> The exemption does not apply to hire cars.

It could be argued that the reasoning for the taxi exemption can be applied to rideshare and hire car vehicles. However, the increasing prevalence of mobile phones (and their improving functionality) over time, means that there may be a greater opportunity to book a hiring with the appropriate child restraints at a given time.

Further changes to occupant protection and child and young people's safety in vehicles in the past decade or so have been made to make the requirements more stringent and therefore improve the safety for the occupant. This is particularly so for occupants who are unable to make decisions for themselves.

Changes to the ARR's are evidence based and further investigation would be required before any change could be considered.

#### **Action**

- *Child restraint anchorage points are required in rideshare vehicles.*
- *Ridesharing (and hire cars) will be subject to child restraint requirements.*

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<sup>41</sup> February 2012 version. Other jurisdictions such as Queensland, Victoria, South Australia also apply the ARR's in a comparable form. New South Wales applies modified arrangements for taxis, where children under 12 months must be properly fastened in an approved child restraint. [NSW - [http://www5.austlii.edu.au/au/legis/nsw/consol\\_reg/rr2014104/s266.html](http://www5.austlii.edu.au/au/legis/nsw/consol_reg/rr2014104/s266.html)] [Vic - <http://www.racv.com.au/wps/wcm/connect/racv/internet/primary/road+safety/child-restraints/the+law+and+standards+on+child+restraints/the+law+and+standards+on+child+restraints>]

<sup>42</sup> Section 266 ARR

<sup>43</sup> See -

<http://www.racv.com.au/wps/wcm/connect/racv/Internet/Primary/road+safety/roads+ +traffic/road+rules/differences+between+australian+and+victorian+road+rules>

### 7.13.2 Where ridesharing vehicles can travel

Under the ARR and Road Transport (Safety and Traffic Management) Regulation 2000, ridesharing vehicles will not be permitted to drive in a bus lane when providing ridesharing services. Also, stops, pick-ups or set-downs in the following areas will not be permitted:

- bike lanes
- transit lanes
- clearways
- taxi zones
- near fire hydrants.

Given that ridesharing will involve the sole provision of services based on bookings (as compared to rank and hail activity) there is the opportunity to make arrangements for the safe pick up or set down of passengers as per other road users.

### 7.13.3 Fire extinguishers

Public passenger vehicles are presently required to carry and maintain fire extinguishers under the Road Transport (Vehicle Registration) Regulation 2000.

The overall benefit of this requirement will be investigated to ensure there is a community benefit above the cost to fit each vehicle. Vehicle performance and reliability has improved over time. The increased availability of mobile phones and emergence of other emergency assist features in vehicles acts to improve the access to and timeliness of, emergency service response and reduces the need for inexpert action. Vehicle operators are subject to regulated requirements for vehicle inspections and have their own incentives to care for their own vehicles.

Until further investigation is undertaken, new taxis, hire cars and ridesharing vehicles will be exempt from requirements for fire extinguishers so as not to incur unnecessary costs. Moreover, consideration of this requirement should be undertaken with respect to work health and safety, rather than specifically as a public passenger services matter.

#### **Action**

- *Fire extinguisher requirements will not apply to new on-demand transport providers as a matter of work health and safety.*

### 7.13.4 Lost property policies

With multiple access arrangements for drivers, current obligations relating to lost property for industry participants may require changes. For example, a driver may not be immediately aware of whose property has been found and hence the relevant TBS, if booked. As such, it may be more efficient for lost property to be retained by the driver or operator (rather than passed to a TBS).

TBSs, operators and drivers would need to ensure appropriate arrangements are in place to return any lost property.

**Action**

- *Industry to arrange formal processes to handle lost property.*

## 7.14 Other transport activities

### 7.14.1 Carpooling

A further product offering of TBSs may be the provision of logistical/booking support for carpooling activities. This would commercialise previous informal or related party arrangements. These have traditionally been excused from public passenger service regulations<sup>44</sup>.

Despite the driver not acting for profit, the actions of the TBS would be commercial in nature and would bring together previously unknown parties (and vehicle) in providing the service. In bringing together the parties to the transport service, the TBS creates a range of expectations and responsibilities. The underlying risks in these arrangements are consistent with a ridesharing service and arguably should be regulated as such.

Care however, needs to be taken to ensure that regulation does not inhibit the opportunity to reduce support for positive environmental outcomes.

The intent of the existing exemption for carpooling should remain. Where the booking service is not provided for commercial gain and the parties have a pre-existing relationship – for example, carpooling organised by a workplace or community group – an exemption will apply for the operation of the booking service, operator/driver and vehicle. Non-active management – for example, where parties select rides from an electronic bulletin board – will not be regulated as this venture will be undertaken at the parties' own risk.

Where a carpool booking service is run for commercial gain and there is active management of booking and dispatch then the operator should be regulated as a TBS.

**Action**

*Commercially organised (fee for service) carpooling will be subject to regulation.*

### 7.14.2 Car sharing/Rental of private vehicles

New self-drive hire car services are being supported by technology such as smartphone apps. While some build on a traditional fleet model of existing self-drive hire car companies, some

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<sup>44</sup> Section 125, Road Transport (Public Passenger Services) Act 2001

allow for use of private vehicles. The latter require further consideration of matters such as insurance arrangements and vehicle inspection requirements to ensure that they can operate effectively and safely.

#### 7.14.3 Dial-a-Driver/Hire-a-Guide

A number of services were brought to the attention during the review that had characteristics similar to regulated on-demand transport services. Information provided did not permit consideration of these to a level allowing determination of whether they fall within regulated public passenger services or not.

The RTA may wish to garner a better appreciation of their operations. If any action is necessary, this could be addressed readily through conditional exemptions powers under the *Road Transport (Public Passenger Services) Act 2001*.

#### **Action**

- *Further consideration of related services to be undertaken.*

## 8 Levelling the playing field for taxis and hire cars

Taxis are an important component of the ACT's on-demand transport sector. It will be vital for service continuity that any regulatory framework provides this section of industry with the opportunity and ability to compete effectively. Further, it is essential that the community-service component of taxis' current operations, including WAT service, continues to be provided. This is an underlying premise in considering levelling the playing field for the taxi industry.

### 8.1 Restricting markets to taxi activity

#### 8.1.1 Rank and hail

Based on public submissions and advice provided<sup>45</sup>, rank and hail work comprises approximately half of the trips currently provided by taxis in the Territory.

Without existing regulatory requirements for taxis, rank and hail work would involve negligible information exchange between prospective passengers and drivers.

Regulatory and network arrangements have evolved to mitigate risks of harm arising from this lack of information. Measures such as regulated pricing and taximeters, taxi livery with dedicated license plates, and driver identification provide consumers with the confidence to know that they are dealing with an accredited driver and roadworthy vehicle. For the driver, security cameras and other features support their safety on the job.

While requirements outlined above add costs to market entry, the Review considers that they remain a necessary measure to reduce public safety risks. The ridesharing/hire car business models do not extend to these features or otherwise address limits in information in off the street transactions. Accordingly, it is appropriate for the prohibitions on hire cars (now extended to rideshare) undertaking rank and hail to remain.

#### **Action**

- *Taxis will retain sole access to rank and hail work.*

#### 8.1.2 Wheelchair Accessible Taxi (WAT) service

The ongoing provision of services to people with disabilities is an important community service component of taxi services.

To ensure supply of services, the Government contracts and funds a WCBS. It also provides a range of incentives for operators and drivers including lower taxi licence lease fees, and

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<sup>45</sup> CTIA.

activity-based payments such as lift fees and other driver incentives. With these benefits come additional responsibilities for drivers including required prioritisation of bookings and training to undertake the service.

For consumers, the Government provides further subsidies through the Taxi Subsidy Scheme (TSS). The ACT TSS provides financial assistance to ACT residents with a disability or significant mobility restrictions that prevent them from using public and community transport. It is intended to assist members to access essential activities such as medical appointments, employment commitments, and social and family gatherings.

In examining the new booking services and business models, feedback was received that while there may be opportunities going forward for people with disabilities to engage with new technologies, at present they are not assured of the ability to access and use these services (see Appendix C). In Australian markets where rideshare has entered, assistance services are limited or are developing (for example, UberAssist was only announced in May 2015).

- Survey responses indicated a general satisfaction with WAT services, though there were some specific instances of complaint (see ‘Survey of people living with disabilities’ below).

The continuation of wheelchair services as currently provided via WATs and the WCBS, as well as existing subsidy arrangements with the TSS to remain limited to taxis, would ensure ongoing availability of service and quality at this time. Given potential limits on competition in this area of the market, existing regulations in relation to training and conduct will remain. Submissions also noted a desire for greater community organisation engagement in the TSS tendering arrangements than provided to date.<sup>46</sup>

The Government will monitor the supply of WATs in the marketplace to ensure incentives are sufficient to maintain services. Other possible reform measures discussed in this document will influence the relative benefits of operating WATs compared to operating standard taxis, hire cars or ridesharing vehicles. As such, it may be necessary to revise community service obligation payments to WATs to engage the desired level of supply and service.

### 8.1.3 National Disability Insurance Scheme (NDIS)

The introduction of the NDIS in the ACT will affect people with a disability seeking transport assistance and providers.

NDIS participants that cannot use public transport without difficulty due to their disability will generally be able to access funding through the NDIS for transport assistance. The National Disability Insurance Agency (NDIA) funds three levels of transport assistance. This provides participants with a budget they can use to purchase transport services, including taxis and potentially ridesharing services.

Increased competition and reduced pricing may mean NDIS participants’ transport funding goes further - that is more trips for the same amount of funding.

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<sup>46</sup> People with Disabilities (ACT)

The proposal to introduce ridesharing in the ACT aligns with a key principle of the NDIS to increase choice and control for people with disability.

Transport service providers in the hire car and ridesharing markets should not be restricted from developing or supplying assistance services to people with disabilities or specialised needs.<sup>47</sup> Parties could also undertake further actions such as seeking NDIA Registration as a provider of transport services. However, their services should be clearly distinguished from the WAT services – noting the differential regulated booking, training, vehicle and subsidy elements involved. Parties would however, need to refer specific requests for WAT services through to the WCBS. The Government will consider a review to determine any further service opportunities.

#### **Action**

- *WAT service arrangements will be retained, but the development of new alternate assistance services will also be permitted.*

#### 8.1.4 Disability Standards for Accessible Public Transport (DSAPT)

Commonwealth DSAPT requirements will continue to apply to taxis. Hire cars and ridesharing are not subject to DSAPT. Under these arrangements:

- Braille would be required on taxis but not on hire cars
- response times would continue for taxis
- visual access to taxi meters and driver identification would still be required.<sup>48</sup>

The Commonwealth Government is to review DSAPT requirements in 2017.

In the interim, app-based booking services will be encouraged to investigate options to support the use of services through their products and services. Monitoring of rideshare consumers would also permit evaluation of reform outcomes for accessible services.

#### **Action**

- *Services will be monitored with a view to supporting a review of DSAPT.*

#### 8.1.4.1 Survey of people living with disabilities

The Review sought the opinions of people living with disabilities in the ACT on a range of issues related to on-demand transportation, including WAT, standard-taxi service and potential new transportation models, such as ridesharing.

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<sup>47</sup> ACTCOSS also suggested that the Government look to incentivise the development of new transport apps that target the unmet transport needs of disadvantaged Canberrans as part of the Digital Canberra Initiative.

<sup>48</sup> Note this would not be relevant for rideshare and hire cars services as the pricing is pre-determined.

It was found that 71 per cent of respondents used standard taxis; while 23 per cent used WAT taxis and that a proportion of users experienced some difficulty in accessing standard taxis or hire cars. Most users of WAT vehicles were generally happy with the service of their drivers.

## 8.2 Booking services and taxis

The concept of a taxi network is currently used in regulation and includes taxi booking services. As discussed in relation to ridesharing, the regulatory focus will move more to TBS as the common point for competition and service delivery.

TBS for taxis will continue to be available 24 hours per day, seven days per week to service community demand. These arrangements align with requirements for TBS generally (see section 7.2).

Other service elements of taxi networks will either be incorporated into requirements for TBS or opened to contestability of service as described below.

### 8.2.1 Multiple service provision and access

The provision of booking services is a common facility across the on-demand sector. The only limits that should apply relate to nature of the transaction and associated risks.

Under level playing field arrangements, existing taxi networks/booking services will be able to compete for business in the hire car and ridesharing sections of the market subject to relevant public safety requirements as per any other TBS.

Similarly, taxi operators and drivers as independent contractors will be able access multiple booking channels, including direct bookings, to service their business and afford them the greatest opportunity for work (rather than be affiliated with a single TBS). Again further actions related to public safety and the nature of the transactions will apply.

Rather than prohibiting actions that restrict operators and drivers to working with a single TBS, exclusive working arrangements will be possible subject to conditions – that is, where exclusive arrangements apply, operators and drivers will be subject to employment conditions such as workers' compensation (noting they are already covered under work health and safety legislation)<sup>49</sup>.

Taxi operators will also have the ability to operate independently of a TBS, with arrangements to be put in place for the Independent Taxi Operator Pilot (ITOP) including some further reduction in accreditation requirements. While the ITOP only had a limited number of participants, those participants reported an ability to operate on a financially viable basis<sup>50</sup>. In

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<sup>49</sup> Note any changes to workers' compensation arrangements would be subject to consultation with the ACT Work Safety Council. The application of National Employment Standards and employment arrangements would be a matter for the Australian Government to consider under the *Fair Work Act 2009 (Cth)*.

<sup>50</sup> RTA.

addition, there is no reason to limit a person’s ability to make commercial decisions regarding their business arrangements where public and community safety elements are addressed.

### **Actions**

- *Access to the market for TBSs will be opened up; with the on-demand operators and drivers as independent contractors and vice versa (subject to the public safety requirements).*
- *The continued operation of independent taxi operators will be allowed.*
- *Employment conditions will be applied in the case of exclusive contracts with TBSs.*

#### *8.2.2 Booking service channel choices*

Taxi booking services will remain available to the public as per other TBSs – that is, via telephone and/or electronic means<sup>51</sup>. The availability of voice-based services is important from an accessibility perspective and will be monitored as industry transforms in the wake of the introduction of ridesharing.<sup>52</sup>

Telephone-based booking services are more costly to operate than app-based bookings<sup>53</sup>, but remain a significant component of the taxi booking service market. Differential pricing (e.g. via a booking fee) as operated in other jurisdictions will support continued availability of the service, but would also require a review of TSS payments to provide equitable outcomes for vulnerable consumers.<sup>54</sup>

Alternatively, it has been proposed that TBSs supplying taxis, but not providing telephone services, could be required to either be affiliated with a TBS that did offer a telephone service channel or contribute to an accessibility fund. There is likely to be sufficient ongoing demand for telephone booking services to remain viable in the medium term. The Government will monitor the provision of telephone booking services.

### **Actions**

- *The provision of different service channels will be monitored and evaluated.*
- *WCBS will be required to maintain voice based services.*

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<sup>51</sup> The CTIA advises 4.5 per cent of taxi bookings are dispatched through web-based apps. The remainder of bookings are through telephone, text, SMS and reception bookings.

<sup>52</sup> Aerial Capital Group indicates that telephone-based bookings have been and will be a substantial part of their operations for the foreseeable future.

<sup>53</sup> As indicated by Aerial Capital Group in its submission (see Appendix C).

<sup>54</sup> Booking fees previously applied in the ACT but were incorporated into the flag fall. Any action to reintroduce booking fees to differentiate service channels would need to recognise the previous change to flag fall charges so as not to double up on fees.

### 8.2.3 Non-booking services and secondary markets

Consistent with competition principles supporting open affiliations for TBSs, access to secondary markets for fittings and vehicle service requirements (such as payment and security systems) are to be open. TBSs will be able to compete with other providers on service and price in all aspects of service to operators and drivers.

Current regulatory requirements and responsibilities for networks/booking services will be revised to permit secondary market competition. For example, responsibilities are currently prescribed for networks in the operation of security cameras in taxi vehicles. These will be amended to recognise the potential for alternative providers, as is the case for independent taxi operators.

Specifications for security cameras will be retained and also reviewed for other safety requirements (such as GPS tracking) to ensure minor technical differences across platforms do not add to entry and exit costs or limit competition. Specifications will also be examined for new features (such as GPS tracking or smartphone recordings) to permit their use in enforcement and legal proceedings. As competition develops in secondary markets the requirement standards will be re-evaluated.

#### **Action**

- *The Government will support access to secondary markets for non-booking services and provide general standards as necessary.*

## 8.3 Reducing regulatory impediments

Changes to regulatory requirements for taxis will reduce burdens on industry and provide a more level playing field. Doing so will free up taxis' ability to compete with expected new entrants from ridesharing. Such changes will also offer benefits to consumers as cost reductions are passed through.

### 8.3.1 Fees and charges

Government fees and charges will be reduced to support overall benefits for the community (around half of the benefits derived from the introduction of ridesharing come from reducing costs to industry as outlined in the economic modelling - see section 6.4). Elements of the fee changes and their impact are discussed in the following sections.

Coupled with the removal of cost burdens on industry would be a reduction in government revenue.

### 8.3.2 Annual licence fees

Annual lease fees for government-owned taxi licenses are \$20,000, while for hire cars the licensing fee is \$4,600 per annum. These are significant amounts which may act as a barrier to entry in the market, particularly for services such as ridesharing, where vehicles undertake far fewer paid kilometres per vehicle than taxis and hire cars. They may also constrain operators' ability to provide remuneration and incentives that attract drivers in a more competitive environment. Ultimately, such costs are reflected in consumer prices. There is, however, an opportunity for Government to reduce regulatory costs on industry and to revise fees to apply a cost recovery approach.

The level of licence fees does not reflect the costs of administration, compliance and enforcement undertaken by government. Nor does the fee necessarily align with a market value of the taxi licences (including their scarcity value given the regulated cap on their supply), as it has not been market tested through a competitive process.

#### 8.3.2.1 *Setting licence fees for taxis*

Reductions in licensing fees have been cited over time as a means to support the ongoing viability of taxi operators, including in the ACT's 2010 Taxi Industry Review.

Under a level playing field argument, annual licence fees should reflect a comparable fee for access to the booked services component of the on-demand market (that is, approximately half of the market). A scarcity value may not be maintained with respect to the booked services component of the market as competition develops in the hire car/rideshare component of the booked market, as caps on supply do not apply.

To have annual taxi licence lease fees reflect operating costs for Government would be a considerable shift (as discussed in 'Perpetual licences' below) and a transitional or phased approach would be appropriate. The timing and extent of any change in lease fees may cause some degree of market disruption as taxi operators seek to take advantage of reduced costs – for example, by moving from the lease of a perpetual licence to a government-owned plate or seeking to renegotiate terms of any existing lease arrangements. Reductions in lease fees will also reduce government revenue over time.

#### 8.3.2.2 *Pricing*

As an interim approach, taxi licences will be leased to reflect a price component of \$10,000 for access to the rank and hail market based on the rank and hail share of the current taxi market and current annual lease fees. The pricing of fees will then be further transitioned – to \$5000 after 12 months.

### 8.3.3 Perpetual licences

Recently, the uncertainty regarding the operation of ridesharing has been reported as affecting sales nationally as the threat of competitive entry has upset market expectations.<sup>55</sup>

Average ACT perpetual taxi licence trading values have been in decline since 2010.<sup>56</sup> However, trading in ACT licences has continued through 2015, with values in the order of \$250,000 (consistent with 2014).<sup>57</sup>

The Government began to shift away from the model of a fixed number of tradeable perpetual taxi licences by issuing non-transferable plates, beginning in 1996. This approach was intended to make it easier for the Government to control the supply of taxis on the road as well as reduce the barriers to entry for prospective operators.

In the ACT, there are 217 perpetual licences holders (out of a total of 358 taxi licences), of which 19 are current operators.

Government-owned licences are a direct substitute to perpetual licences for operators to lease and enter the industry. The changes to annual lease fees for government-owned licences would be expected to place downward pressure on lease prices (and hence the value) of perpetual licences. However, the effect remains constrained by the regulated cap on taxis. Changes to annual fees have been flagged for some time. Reductions in licence fees were flagged in the ACT Government's 2010 review of the industry.<sup>58</sup>

Other reforms will support the value of perpetual licences, by supporting the taxi operators' ability to compete through reduced costs and access to new booking services (while preserving existing rank and hail and WAT markets).

The holding of perpetual licences as an 'investment' is subject to a risk-reward trade off. The licences, which are privately traded, are built on the basis of a set of regulatory arrangements which points to the associated sovereign risk involved with such investments. Licence holders have already received the benefit income streams over time from the leasing or operation of those licences.

Given the current retention of trading values of perpetual licences, the Government will monitor industry outcomes and consider arrangements once there is greater clarity of any industry impacts.<sup>59</sup>

#### **Action**

- *Government fees will be reduced.*

<sup>55</sup> See example - <http://www.couriermail.com.au/business/queensland-taxi-licence-owners-fear-price-drop-as-uber-gains-traction/story-fnihsp3-1227299178966>

<sup>56</sup> ACT Government, *Taxi Industry Innovation Review: Discussion Paper* (May 2015) p. 60

<sup>57</sup> RTA.

<sup>58</sup> TAMSD, ACT Government, *Review of the ACT taxi industry* (November 2010), pp. 5, 41 & 44

<sup>59</sup> A more detailed examination of perpetual licence and compensation issues is at Appendix D.

- *Regulated maximum taxi fares will be maintained initially and competition outcomes monitored.*

#### 8.3.4 Drivers

##### 8.3.4.1 Relationships with operators

Aspects of driver viability have been considered with supply and service quality.

In 2013, the Fair Work Commission affirmed that bailment arrangements were not in themselves contracts of employment. However, as stated in section 8.4.3, casual drivers will be deemed to be workers for the purpose of workers compensation, while for the owner-driver the position will depend on their business decisions.

An instructive (rather than prescriptive<sup>60</sup>) approach to the supporting driver conditions is an option. In submissions to the Review, driver conditions were argued as a factor influencing consumer experience. Elements of proposed options are intended to promote competition by TBSs for drivers/operators as well as passengers<sup>61</sup>. To then prescribe factors such as fare splitting would reduce the market's ability to adjust and adapt in the face of intended competition.

To support driver decisions on working for operators and booking services the minimum required topics to be included in a bailment agreement will be specified but not extend to terms. A sample template bailment agreement will also be drafted (but not mandated) to educate drivers on the issues they should consider when entering into a contract.

#### **Action**

- *Items required for bailment agreements will be prescribed and a draft sample agreement to educate drivers developed.*

Australian Transport Ministers agreed to implement National Taxi Driver Competency Units and the National Minimum English Standard from 1 July 2010. This was to provide a national standard of training for taxi drivers and address concerns regarding jurisdiction shopping for licences under mutual recognition arrangements between the states and territories. Since that time, Victoria has withdrawn and put in place its own taxi driver accreditation arrangements.<sup>62</sup>

Consistent with the approach for rideshare drivers, regulated training requirements will be reviewed to focus on community and public safety aspects. Service related training requirements will be determined by industry balancing costs against the skills needed to attract

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<sup>60</sup> As indicated in the Discussion Paper, Victoria has regulated terms for bailment agreements including fare splitting. <http://www.victaxi.com.au/operators-and-networks/vta-bailment.html>

<sup>61</sup> As per the discussion of rideshare, taxi drivers will have the opportunity to access multiple booking services.

<sup>62</sup> See - <http://www.taxi.vic.gov.au/drivers/taxi-drivers/driver-accreditation-training>

custom in a competitive environment. In doing so, further consideration will be given to adopting performance incentives for drivers that may better support consistent customer service quality than intermittent training with accreditation (see 'Upfront training and ongoing performance' below).

Consumer outcomes will be monitored to evaluate the impact of any changes to standards following the reforms.<sup>63</sup>

#### 8.3.4.2 Medical checks

Taxi and hire car drivers (and other commercial drivers) are subject to medical checks. In the ACT, a blanket approach applies requiring all persons to have a check annually with a visit to their General Practitioner. This is an additional cost each year that does not match the associated risks. Other jurisdictions adopt a risk-based approach, only requiring checks on accredited drivers, after specified periods of 3 to 5 years and more regularly after specified ages or identification of health concerns<sup>64</sup>. To provide a level playing field with medical checks will be aligned with 5 yearly drivers' licensing (and with states such as Queensland, Western Australia and the Northern Territory).

#### **Action**

- *Accreditation and training requirements will be prescribed to meet community and public safety outcomes. Industry will be allowed to determine customer service focused training requirements.*
- *As a general rule, medical checks will be required every 5 years.*

#### 8.3.5 Operators

##### 8.3.5.1 Relations with TBS

For taxi operators, restrictions on affiliation to a network will be removed, allowing operators to source booking and other services involved in the maintenance and operation of taxi vehicles from a range of competitors. This approach will promote downward pressure on prices or improve the quality of goods and services on offer.

Moreover, based on advice from the RTA, the accreditation process can be time consuming which comes at an administrative cost. To improve processes, the Government will examine application processes with a view to simplifying and streamlining – for example, through the use of smart forms, supporting information and education materials, and an incentivised fee structure (such as that used for Development Applications) to encourage the lodging of complete and correct applications.

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<sup>63</sup> The ability to prescribe service and conduct requirements will be retained in the legislation, in case new entrants to the on-demand transport market do not prove to provide effective competition that promotes positive consumer outcomes.

<sup>64</sup> <http://www.austroads.com.au/drivers-vehicles/assessing-fitness-to-drive>

### Action

- *Operator accreditation requirements, processing and charges will be revised.*

#### 8.3.6 Other matters

A range of further actions to reduce and align regulatory requirements or to educate participants to support the industry's viability over the longer term will be adopted including:

- *Less prescriptive service requirements* – By focusing on desirable outcomes, parties will be able to determine the most efficient means of delivery service outcomes. For example, service standards will no longer prescribe the method for an operator to clean a vehicle
- *Removal of administrative costs associated with demonstrating financial viability for all accreditations* – Industry has its own incentives to be viable. An upfront examination by the RTA, who are not financial advisers, will not promote the financial capability of industry participants over time
- *Stretch limousines will be regulated as hire cars (rather than buses)* – currently limousine services are captured as buses for regulatory purposes due to seating numbers. This is inconsistent with the nature of the service provided and will be revised to accord with hire car regulation.

## 8.4 Insurance

Insurance costs for taxis and hire cars are significant. Some public submissions called for regulatory measures to reduce premiums, including regulation to set premiums or inclusion of taxis and hire cars in insurance pools with other classes of vehicle. Such actions however, would act to transfer costs onto other road users rather than address the underlying risks that contribute to the costs.

Specific regulatory requirements for insurance include CTP under a specified risk class (for taxis and hire cars) and public liability insurance to a value of \$5 million. In broad terms, these provide insurance coverage to third-party individuals and property if there is an accident or incident.

Coverage of drivers and the vehicles is not prescribed in public passenger service regulation. Drivers may be covered by CTP where they are not at fault. Workers compensation insurance may apply also to drivers in certain circumstances (see section 8.4.3).

### 8.4.1 Purchasing

Consistent with proposed insurance arrangements with the introduction of ridesharing, collective purchase opportunities will be available for taxis. Whereby, relevant coverage can be

purchased by TBSs (or alternate provider) to promote economies of scale in approaching the insurance market.

The ability to access multiple service arrangements (see below) moving between booking services would require the alignment of TBSs, operators and drivers. To ensure that insurances are in place, TBSs would need to confirm arrangements with the operator before providing services to a driver, if the driver is not the operator.

#### **Action**

- *Insurance policies may be purchased by the TBS, operator or driver, subject to confirmation of required insurance arrangements of related parties before public passenger services are provided.*

As part of the premium setting process, insurers assess appropriate CTP insurance premiums for all vehicle classes.

#### 8.4.2 Public passenger vehicle insurance

Stakeholders did not propose an amended level of public passenger vehicle coverage for taxis and hire cars – which stands at least \$5 million to cover property damage. Equivalent requirements will apply for ridesharing as the nature of the activity and associated outcomes in terms of potential impacts to property are comparable. (See discussion at section 7.10.2.)

#### 8.4.3 Workers' compensation

In the ACT, workers may be eligible or entitled to coverage under workers' compensation. Under the *Workers Compensation Act 1951*, drivers can be deemed to be workers and be entitled to workers' compensation if they are incorporated as a proprietary limited company or if they are "under a contract of services". Operator-drivers will only be eligible to workers' compensation if they are incorporated.

Bailment arrangements with regular casual drivers may be considered contracts of service but not for irregular drivers. However this may not be well understood by drivers, particularly given the potential for variation in bailment agreements.

The opportunity exists for workers' compensation arrangements to be simplified by deeming drivers that work under contracts of bailment to be workers for the purpose of the Act. In doing so, individual terms of bailment arrangements should not confuse the requirement for insurance. This is consistent with arrangements in other jurisdictions such as New South Wales<sup>65</sup>, Victoria<sup>66</sup>, South Australia, Tasmania and the Northern Territory.<sup>67</sup> Such amendments

<sup>65</sup> See - <http://www.legislation.nsw.gov.au/fragview/inforce/act+86+1998+sch.1+0+N?tocnav=y>

<sup>66</sup> See - <http://www.worksafe.vic.gov.au/insurance-and-premiums/contractors-and-workers/types-of-workers>

<sup>67</sup> Queensland however maintains that a contract of bailment is not a worker for WorkCover purposes – see <https://www.worksafe.qld.gov.au/insurance/which-insurance-product-is-right-for-you/accident-insurance/who-should-i-cover/worker-determination-from-1-July-2013/contract-for-performance-of-work>

to taxi driver coverage will result in increased costs for some operators. However, this may be countered by significant cost reductions through other reforms to regulatory fees and charges. There may also be system changes for insurers and brokers but they may already be operating under such arrangements in other jurisdictions.

For operator-drivers, moving to a company arrangement shifts responsibilities from the individual. There is disparity in workers' compensation coverage outcomes for operator-drivers, however insurance products are available on the market that allow sole traders to obtain insurance coverage for income protection and medical insurance.

Potential options include:

- requiring workers' compensation for all owner-drivers of public passenger vehicles
- removing coverage requirements for incorporated owner-drivers
- educating owner-drivers of the risks and matters to be consider around workers' compensation insurance coverage.

Adding a requirement for workers' compensation for operator-drivers as sole traders would add to operating costs and take away from the individual's ability to choose an appropriate level of insurance coverage as part of decisions on other commercial arrangements.

Comparable insurance coverage is available in the market. While removing coverage for operator-drivers under company arrangements would fail to recognise the nature of the business structure that the operator-driver has established. Either of these approaches arbitrarily risks redefining workers' compensation arrangements more generally.

As operator-drivers will be making a range of decisions on their business and insurance coverage arrangements, the Government's preferred approach is to educate parties and leave options as to the desired coverage to the individual. Operator-drivers would be incentivised to develop the best approach to business arrangements including insurance arrangements based on their own preferences.

#### **Action**

- *Taxi operators and drivers will be supported by clarifying the application of workers' compensation arrangements and developing education materials for casual drivers and operator-drivers.*

## 8.5 Taxi supply and other measures

### 8.5.1 Regulated cap

A regulated cap applies to the number of available taxi licences for lease, currently standing at 358 standard taxi and WAT vehicles.

The entry of ridesharing to the ACT on demand transport market will add complementary/substitutive supply for booked taxis to the marketplace. There is uncertainty as to the extent of likely entry and availability of service through alternate providers. However, given outcomes from other jurisdictions and suggested interest in the ACT, new entry could be significant even in the shorter term.

Economic modelling of reforms to permit regulated ridesharing with reduced costs for taxis (under a level playing field) suggests that in some circumstances demand for taxi licences may be maintained or exceed the current cap.

In light of the uncertainty surrounding alternate market supply, an adjustment to the cap is not considered prudent at this time.<sup>68</sup> Rather, market supply and service outcomes will be closely monitored and scrutinised over the next 2 years, with a view to reviewing the cap arrangements. Such a review will include consideration of a formula-based approach to determining cap arrangements to provide transparent arrangements for industry from which to make decisions.

#### **Action**

- *Supply over the next 2 years will be monitored as part of a review of licence cap arrangements.*

#### 8.5.2 List system and ease of entry

While a regulated cap applies to taxi licences, current ad-hoc ballot arrangements for Government leased plates do not allow taxi licence supplies to operate up to that point on a consistent basis. Accordingly, effective taxi supply will tend to be at a level below the cap as operators move through the system and hand in licences (for various reasons).

To permit taxi supply to better meet the pre-determined cap, either regular ballots could be held or a 'list system' could be applied. To be efficient, regular ballots would need to balance timing between administrative costs of running processes (for both industry and government) against the number of licences available at a point in time. Under the list arrangements, individuals who apply for a licence, who meet certain accreditation requirements and have a proper vehicle, will be eligible to lease a licence if one is available. This process can take about 60 days for an applicant, and it presents an easier way to participate in the industry.

#### **Action**

- *A list system for the release of Government leased taxi licences will be developed, to promote consistent supply up to the regulated cap. The system will not be permitted operate past current level for an interim period.*

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<sup>68</sup> The Australian Taxi Federation supports no new plates at this time, and then a consultation process to determine licence numbers.

### 8.5.3 Taxi operator education

Given industry changes, to support informed decision-making by (new and current) taxi operators the Government will prepare educational materials on revised costs and requirements on the take up of a licence.

In supporting informed decision-making by taxi operators, the Government will also reduce 'churn' in the leasing of government-owned taxi licences with fewer licence returns and associated administration costs.

#### **Action**

- *The Government will develop educational materials on regulatory requirements and costs.*

### 8.5.4 Hire cars and special events

Limited period, high demand occasions such as special events, concerts and conferences can result in a need for additional hire cars and drivers to service demand. While regulatory arrangements are available to address supply constraints, administrative actions will be improved by no longer requiring a notifiable instrument and instead allowing for RTA authorisation. Allowing for RTA authorisation will also address potential security concerns with such functions associated with publicly notifying details of vehicles (for example, foreign dignitary vehicles).

#### **Action**

- *Hire car arrangements for special events will be streamlined.*

## 8.6 Direct consumer measures

Several measures can be taken that have an immediate impact on the passenger experience, but that also help to level the playing field for the taxi industry.

### 8.6.1 Electronic payments surcharges

The Reserve Bank of Australia's (RBA) ongoing Review of Card Payments Regulation has included consideration of excessive surcharging in the taxi industry.<sup>69</sup> In the interim, regulatory caps on electronic payment processing charges introduced by New South Wales and Victoria

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<sup>69</sup> RBA, *Review of Card Payments Regulation, Issues Paper*, March 2015, page 31.

<http://www.rba.gov.au/payments-system/reforms/review-of-card-payments-regulation/pdf/review-of-card-payments-regulation-issues-paper.pdf>. Note the RBA regulates charges between card schemes and merchants, not end user surcharging.

for consumers has directly reduced charges of up to 11 per cent on the price of transactions to 5 per cent.

For taxis, submissions indicated that some payment processing firms may return a proportion of these charges to support operator incomes which may be reduced under a regulated charge.<sup>70</sup> Based on advice received, the funding of operators is understood to not be consistently received by all operators.<sup>71</sup> At the least, there is a lack of transparency for consumers, with the cross-subsidisation of operators not evident from the charge.

For payment processing companies, anecdotal evidence indicates that emerging competitors to the dominant provider Cabcharge have been negatively affected and the incumbent's turnover has increased substantially. Further reports have suggested legal action by alternate providers against what was argued to be anti-competitive legislation.<sup>72</sup>

While concerned with the potential to negatively impact the development of competition, the Government will regulate electronic payment processing charges consistent with New South Wales. The limited ACT market (less than 1 per cent of taxi jobs nationally in 2014<sup>73</sup>) may not otherwise be sufficient to promote the development of new entrants required for competition in a national payments market.

As New South Wales-based taxis operate in the ACT, the regulated lower charge provides a competitive price advantage to those taxis. This is being considered by the Government to be the more immediate concern promoting this regulatory action.

#### **Action**

- *Electronic payment processing charges will be regulated for consistency with those in New South Wales (5% cap).*

### 8.6.2 Regulated fares

Taxi fares were a major issue raised in general public surveys, and were generally perceived as unsatisfactorily high.

#### 8.6.2.1 Fares for rank and hail

Limited information on prices for rank and hail work prohibits consumers' ability to shop around for the best price. Touting for business on the street is currently prohibited to reduce behaviours of pressure sales and public nuisance or disturbance. Regulated fares (and

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<sup>70</sup> CTIA

<sup>71</sup> In confidence.

<sup>72</sup> Aerial Capital Group, CTIA submissions (see Appendix C). Also reports in the media – see <http://www.smh.com.au/business/banking-and-finance/cabcharge-changes-gear-20150517-gh2pyn.html>, <http://www.smh.com.au/business/cabcharge-rival-live-taxiepay-may-sue-nsw-and-victoria-over-new-taxi-payment-laws-20140912-10g1td.html>

<sup>73</sup> <http://www.atia.com.au/wp-content/uploads/2014-State-Territory-Taxi-Statistics.pdf>

restrictions on touting) will remain for rank and hail due to limits on effective competition and potential undesirable consumer pressures.

#### 8.6.2.2 Fares for booked services

For booked services, taxi fares will be deregulated or remain on regulated maximum fares.

With sufficient information provided through the TBS at the time of booking, consumers will be able to compare prices.

While the reforms are open on allowing industry to direct service competition elements from the start of any reform, the Government wishes to be more circumspect on pricing until such time as it determines there to be effective competition in the market place. This is particularly so as the taxi industry in the ACT is subject to a dominant provider.

Retention of a maximum fare will also restrict the ability of taxis to obtain higher prices while competition develops. It will also prevent the setting of prices below the regulated maximum as competition develops (see 'Adjusting for reforms' below).

Moreover, a regulated maximum fare for taxis will help provide a community safety net as industry transitions to a new competitive environment. As a substitute for hire cars and ridesharing, it may also limit upper pricing of fares in the unregulated section of the market.

Any consideration of deregulation of taxi fares, will need to consider explicit arrangements for ensuring community access and funding of community service obligations.

#### 8.6.3 Upfront tipping

Further to arguments presented in section 7.11.2 for negotiated prices and ridesharing, upfront tipping does not appear to be in line with the intent of a maximum regulated fare for taxi services. Accordingly, a TBS supplying services to taxis will not be permitted to offer this function.

#### **Action**

- *Regulated fares will remain for rank and hail services.*
- *Regulated fares will remain for taxi booked services until effective competition is demonstrated.*
- *The current regulated fare (in operation since July 2015) will be retained for 12 months and monitored for industry competition effects on pricing.*
- *Upfront tipping will not be permitted.*

## 8.7 Other service impacts

### 8.7.1 Re-examination of current industry practice

In adjusting fares and introducing greater competition, funding for current industry practices and operations could be re-examined by industry providers with a reprioritisation or cessation of some activities. For example, one area raised by industry as potentially subject to further review, is the administrative charging arrangements for operators currently undertaken by taxi networks to pay for Canberra International Airport Commissionaires.

### 8.7.2 Personal impacts of change

Periods of significant change within an industry can affect stakeholders at a number of levels. This can include personal and emotional challenges as people seek to understand and adapt as circumstances adjust around them.<sup>74</sup>

There are a range of existing services that offer support to people – including legal, financial and personal counselling. The reform implementation strategy will highlight the availability of services, such as those through the ACT Government Assistance website (<http://www.assistance.act.gov.au/>).

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<sup>74</sup> Submissions, including the Australian Taxi Federation, noted instances of suicide in other jurisdictions where taxi deregulation had been pursued (see Appendix C).

## 9 Possible outcomes and further actions

### 9.1 Consumers

Consumer outcomes are a central focus of the options put forward, and their interests are prominent within the Terms of Reference of this Review.

Consumers, in several travel capacities, including people with disabilities, have provided a sense of their present transport experiences, and how they would like those experiences to improve through submissions and in response to survey questions.

#### 9.1.1 New competition-derived benefits

The resolutions in this paper provide for alternative types of services and will also promote competitive forces in the industry by reducing barriers to entry. Within the context of competition they are designed to foster a viable and sustainable industry, and one that is fairly priced. These policy positions offer consumers:

- additional choices in how to travel
  - improved service quality from existing travel models (new entrants will encourage this, and continuous innovation will incentivise this further)
- strong quality of service in new models by not restricting innovative driver rating systems
- improved fare levels, through market-based competition (or regulation where required)
- opportunities for NDIS participants' transport funding to go further
- greater choice among existing, new and innovative travel options over the long run
- opportunities for progressive integration of on-demand choices with other modes of public transport.

These new experiences respond to the core issues outlined in the Review's Terms of Reference (see Appendix A), as well as public-transportation objectives set by the Government for consumers.

#### 9.1.2 Consumers and safety

Agreed reforms apply risk-based approaches to the regulation of the various elements of the new business models, and similarly against the existing practices and requirements for taxis and hire cars:

- licensing, accreditation and insurance requirements for new providers in ridesharing and third-party applications emphasise safety for passengers, drivers and the public

- cameras, driver-passenger information requirements, driver and vehicle identification, driver and vehicle accreditation, and insurance requirements are also in place.

### 9.1.3 Consumers and accessibility

Agreed reforms also place central importance on accessibility for consumers:

- current safety and accessibility parameters will remain for standard and WAT taxis
- the Wheel Chair Booking Service (WCBS) and its standards will remain unchanged
- DSAPT standards will remain applicable to standard and WAT taxis
- the TSS will continue to apply to standard and taxi WAT taxi service to ensure ongoing availability of service at this time (see section 8.1.2)
- accessibility features in new business models will be encouraged, and their regulation reviewed, as required.

In the taxi sector, under agreed measures, WCBS standards for WAT vehicles, and DSAPT standards for taxis, will remain the safety parameters for accessible services to people with disabilities and mobility limitations.<sup>75</sup>

Although these standards are in place for incumbent service providers, new providers will be able to supply differentiated services. Development of any accessibility services in ridesharing will be monitored, and the regulatory approach reviewed over time. The community will also be educated as to the accessibility features and limitations of these new services.

A baseline understanding of disability-transport issues is valuable to transport suppliers and the community they serve. All on-demand transport drivers will receive disability awareness training as part of their licensing, as a means to support community access.

#### 9.1.3.1 Disability Standards for Accessible Transport (DSAPT)

Rideshare vehicles as hire cars will not be subject to Commonwealth DSAPT requirements, although all drivers will receive disability-awareness training within six months of commencement. That ridesharing and hire car service is considered similar is the basis for excluding both service modes from DSAPT requirements.

There is also the potential for the Commonwealth Government review of DSAPT in 2017 to explore new roles for DSAPT in new on-demand transportation models.

#### 9.1.3.2 Vulnerable consumers

Approaches in this paper also provide for an improved on-demand transportation environment for vulnerable passengers:

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<sup>75</sup> The Government will, as part of any education campaign, ensure that the community is made aware of these arrangements.

- vulnerable passengers will be provided with a broader choice of travel options – among which they can select a service choice they are most comfortable with
- new innovations, such as parental tracking of trips of minors, may enter the ACT market
- requirements are designed to establish baseline safety levels of drivers, vehicles and TBSs, for different transportation models in the ACT.

To support informed decisions about the changed environment, education may be required to assist vulnerable members of the community with the move to new methods of accessing transport.

## 9.2 Industry

The agreed approach addresses key objectives for the on-demand industry going forward:

- a level playing field for industry to compete with regulation based on risks and information to support decisions
- substantive decreases in Government charges that will help incumbents to compete and support their viability in a new competitive environment
- industry will be given the opportunity to take greater responsibility for its performance standards
- there will be greater freedom in secondary service markets for operators (and drivers)
- drivers will have better clarity on workers' compensation
- education will help support drivers' and operators' ability to make informed choices.

### 9.2.1 Benefits to industry as a whole

Modelling undertaken for the Review identifies that consumers and the broader community will benefit from the proposed reform options.

Within the industry, different outcomes for specific participants can be anticipated. Lower economic rents for certain participants may be experienced as the industry transitions to a more competitive environment. However, the on-demand public transport sector should expand.

## 10 Integration and future opportunities

### 10.1 Buses/light rail

Buses, light rail and taxis all contribute to the movement of people within the Territory. Going forward, the Government will seek to promote mobility across different modes and public and private transport.

With greater use of information and digital connectivity opportunities exist to better plan and service passenger transport. For example, linking the booking of taxis and ridesharing with real time information from buses may be possible and this may be particularly useful in supporting accessible transport.

In this context, taxis will maintain their priority standing with access to ranks in proximity due to their access to rank and hail work. Ridesharing and hire cars will continue to use public parking facilities for pick and set down in a safe manner. It is recognised that education, policing and enforcement activity, at least during transition, may be required to support public safety outcomes.

### 10.2 Accessibility

To support accessibility and opportunity through new technologies, the Government will work with TBSs and community representative groups to educate people with disabilities on the role of the new technologies. There may also be opportunity to build on applications to further support access.

### 10.3 Airport, rail and interstate buses

Introduction of greater competition and new services will improve the experience of visitors and residents at Canberra International Airport and other transport hubs.

### 10.4 Autonomous vehicles

The potential use of autonomous vehicles was raised in public consultations as a longer term proposition.

The introduction of autonomous vehicles into the market may represent a more fundamental and structural shift in the operation of on-demand public transport in the Territory than the introduction of ridesharing. Not only in terms of removing a layer of industry (drivers), but also with relationships to other modes of transport including scheduled buses and the use private vehicles.

It may also represent a tipping point at which there is a consolidated move to corporatisation and vertical integration of on-demand transport services – between booking services and vehicle fleet management.

This is a much longer term issue.

## Appendix A – Taxi Innovation Review Terms of Reference

### A.1 Purpose

To evaluate whether there are opportunities to reform taxi and hire car regulation, including having regard to the emergence of digital public transport booking services and their potential ability to increase competition and provide differentiated transport services to the public.

Matters to be considered as part of the review include:

- the entry to the marketplace of digital alternative-booking regimes;
- the safety of passengers, drivers and vehicles, and the community;
- efficient and sustainable supply to the marketplace (including for special transport needs) and synergies with other modes of public transport;
- the level of surcharge on electronic taxi fare payments (including surcharges applied by other jurisdictions across Australia);
- compliance among existing and new drivers and operators with the *Disability Standards for Accessible Public Transport 2002 (Cth)*.

The review will also consider matters arising from:

- a report prepared for the Canberra Taxi Industry Association (CTIA) in June 2014, entitled *An Evaluation of the Current State of the ACT Taxi Industry* (the CTIA Report); and
- The Commonwealth Government's *Competition Policy Review Draft Report*.

### A.2 Responsibilities

An inter-directorate working group chaired by Chief Minister, Treasury and Economic Development Directorate and including Justice and Community Safety Directorate will oversee the review.

Consultation will involve initial industry stakeholder meetings, the development of a discussion paper, and broader community engagement to commence in early to mid-2015.

The working group will report to Government during the latter half of 2015.

Background on the Review can be seen at this link:

<http://www.cmd.act.gov.au/policystrategic/regreform/current>

## Appendix B - Status of other jurisdictions

*As at 1 August 2015*

### B.1 Australian jurisdictions

Third-party booking systems have been taking highly proactive strategies to entering Australian and international transportation markets. As a consequence, all Australian jurisdictions are at various stages of developing responses and approaches to regulating new business models.

#### **New South Wales**

An independent-taskforce review of the taxi industry is currently underway and a discussion paper was released on 28 August 2015. The review is examining subjects beyond innovation and cover differential aspects of urban and regional transportation. In considering outcomes a special focus is on fostering a level playing field for stakeholders. The taskforce is expected to produce high-level recommendations, which the government will use to develop an approach to regulation.

#### **Victoria**

Victoria concluded a major review of the taxi industry in 2013, in which change was made to several aspects of taxi service, including workforce relations.

The Victorian Taxi Services Commission is taking major steps to legalise ridesharing. In early February 2015, the TSC allowed person to undertake ridesharing if they are, or become, accredited as hire-car drivers. The next step must be that rideshare vehicles become somehow accredited, and this must be accomplished through legislation. This is being currently considered.

#### **Queensland**

A review of the taxi industry will be undertaken later in 2015, with consideration made of allowing ridesharing to operate in the jurisdiction, in combination with some measure of deregulation of the taxi industry.

#### **Western Australia**

WA has recently begun a review of the on-demand transportation sector. Consideration of the entry of new technologies and business models is a central part of the review. A Green Paper was issued on 20 July 2015 as a basis for community consultation, where community input will continue until mid-October 2015. A final report with recommended reforms is planned for completion in early 2016.

#### **South Australia**

This year SA plans to launch a review of the taxi industry. The SA Government will meet with industry and other stakeholders and then issue a discussion paper. Consideration of taxi service performance and alternative business models will form basis of its review. A specific review timetable is under development as is the governance and staffing of the review.

## **Northern Territory**

A review of the on-demand transportation sector is to be undertaken in 2015. A position paper was issued in November 2014 as a basis of community consultation. Recommendations of the paper cover a broad range of subjects including: safety, service for people living with disabilities, industry barriers to entry and mismatches of supply to demand. Results of this review will feed into a broader review of transportation integration strategy, which will continue through 2015.

## **B.2 International jurisdictions**

### **California**

During June 2015, the California Labor Commissioner's Office determined that an uberX driver-partner should be classified as an employee and not a contractor, in relations to her reimbursement for certain business expenses over a certain period of time. While this decision applied for that employee only, and the decision can be appealed, it could set a precedent for similar arguments for employee status in other jurisdictions. Similar cases like these are being tried elsewhere in the United States.

In this case Uber Technologies argued that the flexibility in hours afforded to driver-partners places her appropriately in the category of contractors. More broadly, those advocating for employee-like rights in such business models contend that driver-partners face substantial uncertainty over their wages and job status.

### **Singapore**

In mid-2015, Singapore's Land Transport Authority (LTA) allowed third-party booking app providers to offer services to taxis and hire cars. Ridesharing using private cars will not be allowed to operate out of concern of increasing traffic congestion. New third-party apps are subject to restrictions on fares, such as pre-tipping and up-front fees. Taxis have regulatory access to the use of any number of apps available.

### **The Philippines**

On 13 May 2015, Philippine authorities allowed ridesharing to operate. Its transport authority saw the lawful entry of ridesharing as a means of improving overall consumer services, and compelling improved quality of taxi service through market forces. The Philippines is the first nation as a single jurisdiction to enable the operation of ridesharing.

## Appendix C – Summary of Consultation Comments

Stakeholders	Comments
<b>Taxi companies and associations</b>	<ul style="list-style-type: none"> <li>• Ridesharing apps such as Uber should be subject to the same regulations as taxis, and severe penalties should be imposed for non-compliance</li> <li>• A range of measures should be in place to ensure drivers are appropriately trained and vehicles a suitable for service</li> <li>• Ridesharing vehicles may not be appropriately covered by insurance</li> <li>• Uber does not offer the same service features to passengers that taxis do (e.g. security cameras, brail sticker, or first aid kits.)</li> <li>• The idea that self-regulation will be sufficient for protecting consumers is unfounded</li> <li>• If the taxi industry loses viability it could limit options for disabled passengers</li> <li>• Ridesharing will perpetuate the low wages of drivers</li> <li>• Regulation drives up the cost of fares and the industry cannot compete against the lure of cheap fares by an illegal ridesharing system</li> <li>• Ridesharing is not a new form of transport and is no different to taxis</li> </ul> <p><u>The following organisations contributed input: Australian Taxi Federation, Cumberland Cabs Co Pty Ltd, Queensland United Hire Drivers Association, Sikh Taxi Drivers Association, Australian Taxi Drivers Association, Canberra Taxi Industry Association (CTIA)</u></p>
<b>Uber</b>	<ul style="list-style-type: none"> <li>• Uber requires all perspective drivers to pass a police check</li> <li>• Uber requires all vehicles to be no more than 9 years old and must be subject to independent inspection</li> <li>• app allows users to notify friends or family of where they are</li> <li>• Uber contributes to public safety by providing safe affordable transport during Friday nights and weekends</li> <li>• Passengers and drivers rate each other</li> <li>• The majority of taxi licences in Canberra are owned or controlled by one network centralising wealth creation by locking out competition</li> </ul>

	<ul style="list-style-type: none"> <li>• Licensing is not part of the ridesharing model. The elasticity of supply is essential to its success. Ridesharing is more responsive to demand</li> <li>• There is no justification for surcharges that taxis make for credit card payments</li> <li>• Uber has a special app (the “UberASSIST” brand) for disabled passengers so they can be served by drivers who can accommodate special needs. In addition, Uber is also working to improve this service by having drivers that have ramps and lifts.</li> </ul>
<p><b>Taxi Support-Service Companies</b></p>	<ul style="list-style-type: none"> <li>• Regulators need to understand the constraints they place on the industry, so the industry can reform and survive</li> <li>• Regulators need to be independent from ministers</li> <li>• Taxi apps will not deal with the problem of availability during peak times because they face the same fulfilment problems that taxi networks do</li> <li>• concerned that ridesharing drivers will not get adequate background checks</li> <li>• Insurance today will not cover ridesharing</li> <li>• Concerned that ridesharing will lower interest in driving WAT vehicles</li> <li>• Compliance costs for taxi networks should be lowered</li> <li>• The cost of offering non-cash payment systems is high</li> <li>• Smartphone apps offer a new way to book taxis</li> <li>• Such apps should comply with existing regulation</li> <li>• Ridesharing is misleading and is no different to a taxi service</li> <li>• Ridesharing may not be covered by insurance because the activity does not comply with the associated level of risk of the premiums paid TNC insurance is rarely invoked</li> </ul> <p><u><a href="#">The following organisations contributed input: Cabfare – National Billing Group Pty Ltd, Cabxpress, Cabcharge</a></u></p>
<p><b>Insurance Industry</b></p>	<ul style="list-style-type: none"> <li>• Taxi services and ridesharing must be subject to the same consumer and safety regulatory requirements</li> <li>• Ridesharing activity is a higher risk than personal-driving activity, and insurance arrangements should be structured accordingly</li> <li>• There needs to be an appropriate regulatory framework for Uber</li> </ul>

	<ul style="list-style-type: none"> <li>• There is considerable uncertainty for how the insurance industry will treat ridesharing as most insurance companies do not want to insure Uber drivers. Until this is resolved Uber drivers and passengers expose themselves to significant risk.</li> </ul> <p><u>The following organisations contributed input: Insurance Group Australia (IGA), Insurance Council of Australia (ICA)</u></p>
<p><b>Aerial Capital Group</b></p>	<ul style="list-style-type: none"> <li>• ACGL believes innovation and competition is currently strong in the ACT on-demand market</li> <li>• The ITOP program was supposed to attract about 30 drivers, and this did not happen. This is an indication of the failure of the Program and the unique market structure of the ACT taxi industry</li> <li>• Ridesharing will not create net new demand for on-demand transportation. Instead, it will destroy existing supply and service quality, and create abandoned areas for service. This will lead to higher prices.</li> <li>• ACGL expresses concern with potential marked loss of consumer privacy with new privacy rules. According to ACGL, Uber can now: <ul style="list-style-type: none"> <li>○ Track passengers 24/7</li> <li>○ Collect data about passenger journeys</li> <li>○ Access address books on customer devices</li> <li>○ Collect information from passenger social-media accounts linked with Uber registration</li> </ul> </li> <li>• Uber says that this data-mining power can be disallowed at the discretion of the Uber passenger</li> </ul>
<p><b>Disability Groups</b></p>	<ul style="list-style-type: none"> <li>• The government should communicate its overarching vision for the future of integrated public and private transport system in the ACT</li> <li>• The government should consult people with disabilities further prior to determining the scope and implementation of its regulatory approach</li> <li>• Make public the findings of the survey into the experiences of people with disabilities in using transport services. This should then be used for a detailed analysis of needs of people with a disability when using transport services.</li> <li>• Government should undertake a needs analysis to measure the unmet demand for transportation services</li> <li>• An app that compared different transport options would be beneficial</li> </ul> <p><u>The following organisations contributed input: ACTCOSS, People With Disabilities ACT</u></p>

## Union Groups

- Worker conditions of taxi drivers are currently very low with taxi drivers being paid less than minimum wage
- As a result the industry cannot retain skilled drivers
- The industry is often unaware of its rights
- Uber could make conditions worse as Uber drivers are not given any protection as they are not considered employees

Uber drivers should be considered employees.

- There are never enough taxis to meet demand, so Uber offers the opportunity to rectify that shortage
- service standards should improve as Uber will bring more competition to the on-demand space
- Price controls should be in place for Uber to ensure passengers are not excessively charged as a result of surge pricing
- It would be worth allowing the industry to set its own standards for service, subject to review by the ACT Government
- The method of users reviewing drivers could ensure a good standard of service
- The cap on licences should be removed
- The rise of ridesharing has seen the earnings of the taxi industry decline
- Experience in the US has shown this to lead to taxi drivers leaving the industry and joining Uber
- The same safeguards that exist in the taxi industry do not exist in ridesharing
- The introduction of ridesharing will exacerbate the problems of low pay and conditions currently in place
- Non-standard employment often leads to jobs that should be classed otherwise, leading to poor working conditions
- Contract workers (such as Uber drivers) should be entitled to the same working conditions as normal drivers

[The following organisations contributed input: ACTU, TWU](#)

<p><b>Canberra Airport</b></p>	<ul style="list-style-type: none"> <li>• There are never enough taxis to meet demand, so Uber offers the opportunity to rectify that shortage</li> <li>• service standards should improve as Uber will bring more competition to the on-demand space</li> <li>• Price controls should be in place for Uber to ensure passengers are not excessively charged as a result of surge pricing</li> <li>• It would be worth allowing the industry to set its own standards for service, subject to review by the ACT Government</li> <li>• The method of users reviewing drivers could ensure a good standard of service</li> <li>• The cap on licences should be removed</li> <li>• There is likely to be conflict between industry and regulators as to what is appropriate for ensuring vehicles remain roadworthy</li> <li>• Current standards may not be sufficient to keep Uber vehicles roadworthy</li> <li>• With ridesharing there is an opportunity to deregulate standards around driver languages, cleanliness of vehicle and uniforms, and other items</li> <li>• The Airport is happy to trial ridesharing drop-off and pick-up at its facilities</li> </ul>
<p><b>Individuals</b></p>	<ul style="list-style-type: none"> <li>• Uber should come to Canberra to enable better options for consumers as individual believes taxis currently offer poor service</li> <li>• The cost of obtaining a license high and squeezes the earning potential for taxi drivers</li> <li>• There is a growing shortage of taxis to meet demand</li> <li>• Taxi's in Canberra are expensive</li> <li>• Insurance issues with ridesharing not being covered</li> <li>• The costs imposed by Arial are excessive</li> <li>• Regulation should be reduced to make taxis more competitive</li> <li>• End of compulsory affiliation to any booking company</li> <li>• Playing field needs to be levelled to ensure the taxi industry is not disadvantaged against Uber</li> <li>• Service from Uber is better than taxis</li> <li>• Drivers should not be able to access personal information, other than first name</li> </ul>

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|  | <ul style="list-style-type: none"><li>• Feedback should be anonymous</li><li>• Uber drivers should be subject to the same BAC reading as taxi drivers. Also how will ridesharing drivers be identified by police to ensure this?</li></ul> |
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## Appendix D – Community Consultation Phase – Summary of Submissions and Meetings

### Written submissions – Non-confidential

- Australian Taxi Federation
- Cumberland Cabs / Premier Cabs
- Canberra Airport
- Queensland United Hire Drivers Association (QUHDA)
- Sikh Taxi Drivers Association (STDAC) of the ACT
- Australian Taxi Drivers Association (ATDA)
- Uber Australia
- Canberra Taxi Industry Association (CTIA)
- Cabfare
- Insurance Council of Australia (ICA)
- Aerial Capital Group Limited (ACGL)
- Australian Council of Trade Unions (ACTU)
- Transport Workers’ Union of Australia, NSW Branch (TWU)
- Insurance Australia group (IAG)
- People with Disabilities ACT (PWD ACT)
- Council on the Ageing ACT (COTA ACT)
- ACT Council of Social Services (ACTOSS)

### Written Submissions - Confidential

- 44 submissions

### Surveys

- 1,953 Public Transport Surveys
- 80 Accessible Public Transport Surveys