

# Legislation changes to support *Creating Better Connections for Queenslanders*

Discussion paper

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## Acronyms and terms

accommodation transfer service	<p>In passenger transport legislation, this is defined as a public passenger service, other than a booked hire service that:</p> <ul style="list-style-type: none"> <li>• is provided for travellers arriving in or departing from an area, and</li> <li>• operates between an airport, ferry terminal, intercity bus terminal or railway terminal and an accommodation house in the area, and</li> <li>• requires journeys on the service to be pre-booked and travel documentation for the journeys to be issued before the travellers arrive in the area.</li> </ul>
ADRs	<p>Australian Design Rules</p> <p>National standards for vehicle safety, anti-theft and emissions, applicable to vehicles newly manufactured in Australia or imported as new or second hand vehicles, and supplied to the Australian market</p>
BEA	<p>Booking Entity Authorisation</p> <p>In passenger transport legislation, this is defined as an authorisation under which a person may provide booking services for a booked hire service.</p>
BHSL	<p>Booked Hire Service Licence</p> <p>In passenger transport legislation, this is defined as a licence issued by the chief executive (of the Department of Transport and Main Roads) under which the holder may provide booked hire services using the motor vehicle stated in the licence.</p>
booked hire service	<p>In passenger transport legislation, this is defined as a public passenger service for a journey that starts in Queensland:</p> <ul style="list-style-type: none"> <li>• provided by the hire, other than the hire on-the-spot, of: <ul style="list-style-type: none"> <li>– a motor vehicle that has not more than 12 seating positions, including the driver's position, or is a limousine, and</li> <li>– a person to drive the vehicle, and</li> </ul> </li> <li>• that may be used by the public (or a substantial part of the public).</li> </ul>
community transport service	<p>In passenger transport legislation, this is defined as a service for the carriage of passengers funded or subsidised out of public money or by a charity and provided for the benefit of a particular group.</p>
courtesy transport service	<p>In passenger transport legislation, this is defined as a service for the carriage of passengers provided, free of charge, by an entity using a vehicle owned or leased by the entity for customers, clients or students of the entity.</p>
DA	<p>Driver Authorisation</p> <p>In passenger transport legislation, this is defined as an authorisation that authorises the holder to drive a vehicle to provide a public passenger service of a particular kind.</p>
declared service contract area	<p>Locations where TMR has declared that a market entry restriction is enforced onto general route services or school services</p>
fixed route	<p>A route that has pre-set stops and runs at regular intervals</p>

	<p>This includes services that are:</p> <ul style="list-style-type: none"> <li>• conducted on a route in accordance with a timetable for the service</li> <li>• a loop service</li> <li>• a shuttle service</li> <li>• a route deviation service.</li> </ul>
flexible route	A service that is not a fixed route (see definition of a 'fixed route')
HVNL	Heavy Vehicle National Law (Queensland)
general route service	<p>In passenger transport legislation, this is defined as a scheduled passenger service that may be used by the general public, or a substantial part of the public, or a person who pays a subscription or a membership fee that is paid principally for the service.</p> <p>A general route service does not include services that are provided for one specific purpose (see definition).</p>
loop service	A service conducted on a route that forms a circle or loop
market entry restriction	A restriction on entry to the passenger transport market in a defined geographical area, where this is in the public interest to promote the availability and quality of passenger transport services
OA	<p>Operator Accreditation</p> <p>In passenger transport legislation, this is defined as an accreditation that authorises the holder to provide public passenger services of a particular kind.</p>
OA service	<p>A service for which an operator is required to hold Operator Accreditation</p> <p>These services are called 'relevant services' in passenger transport legislation.</p>
on demand transport	A type of flexible service that brings together people who live near one another and want to travel to key locations (such as stations or shopping centres) at the same time or at times when other services are not available
operator	In passenger transport legislation, this is defined as a person carrying on the business of providing a public passenger service.
passenger transport legislation	Passenger transport legislation in Queensland is comprised of the <i>Transport Operations (Passenger Transport) Act 1994</i> , <i>Transport Operations (Passenger Transport) Regulation 2018</i> and <i>Transport Operations (Passenger Transport) Standard 2010</i>
personalised transport licence	A booked hire service licence, a limousine licence or taxi service licence
personalised transport service	A booked hire service, booking service, limousine service or taxi service
Prescribed School Service Contract	A contract between TMR and a delivery partner to provide a service for the transport of students to and from schools or other educational establishments, outside of a declared service contract area, under section 144 of the <i>Transport Operations (Passenger Transport) Act 1994</i>

public passenger service	<p>In passenger transport legislation, this is defined as a service for the carriage of passengers if:</p> <ul style="list-style-type: none"> <li>• the service is provided for fare or other consideration, or</li> <li>• the service is provided in the course of a trade or business (but not if it is provided by an employer solely for employees), or</li> <li>• the service is a courtesy transport service or community transport service.</li> <li>• It includes a driver service but does not include services exempted under the Regulation.</li> </ul>
QPS	Queensland Police Service
route deviation service	A service under which the vehicle used may, at the request of individual passengers, deviate from the usual route from time to time.
scheduled passenger service	<p>In passenger transport legislation, this is defined as a public passenger service that is:</p> <ul style="list-style-type: none"> <li>• conducted on a route in accordance with a timetable for the service, or</li> <li>• conducted on a route that forms a circle or loop (commonly called a 'loop service'), or</li> <li>• conducted on a continuous basis between two points (commonly called a 'shuttle service'), or</li> <li>• under which the vehicle used may, at the request of individual passengers, deviate from the usual route from time to time (commonly called a 'route deviation service'), or</li> <li>• under which the actual route to be traversed may vary within a corridor or zone at the request of individual passengers each time the service operates (commonly called a 'dial and ride service').</li> </ul>
school service	In passenger transport legislation, this is defined as a scheduled passenger service that is only or primarily for the transport of school students to and from school (other than for school excursions) on days that schools are open for instruction.
service contract	In passenger transport legislation, this is defined as a contract between the Queensland Government and an operator to provide a public passenger service for an area or route in a way that meets or exceeds performance levels stated in the contract.
service that is provided for one specific purpose	<p>A scheduled passenger service that is restricted to use for one specific purpose, such as for spectators travelling to or from a football game or tourists travelling to and from a common tourist attraction.</p> <p>These services cannot be considered general route services.</p>
shared flexible service	<p>A public passenger service that is:</p> <ul style="list-style-type: none"> <li>• provided non-exclusively to passengers who share a ride</li> <li>• characterised by some flexible delivery element, such as a flexible route, flexible timetable and/or flexible stops</li> <li>• available to the public (or a substantial part of the public).</li> </ul> <p>Shared flexible services do not include services provided for one specific purpose, such as a tourist service, accommodation transfer service or school service.</p>
shuttle service	A service conducted on a continuous basis between two points

taxi service	<p>In passenger transport legislation, a public passenger service for a journey that starts in Queensland:</p> <ul style="list-style-type: none"> <li>• provided by the hire of: <ul style="list-style-type: none"> <li>– a motor vehicle that has not more than 12 seating positions, including the driver’s position (or is a limousine), and</li> <li>– a person to drive the vehicle, and</li> </ul> </li> <li>• under which the vehicle plies or stands for hire by members of the public in a public place.</li> </ul>
the Act	the <i>Transport Operations (Passenger Transport) Act 1994</i>
the Regulation	the <i>Transport Operations (Passenger Transport) Regulation 2018</i>
the Standard	the <i>Transport Operations (Passenger Transport) Standard 2010</i>
TMR	Department of Transport and Main Roads
tourist service	<p>In passenger transport legislation, this is defined as a pre-booked public passenger service operated in accordance with a publicly available itinerary to:</p> <ul style="list-style-type: none"> <li>• a common scenic or tourist attraction, or</li> <li>• if the service is not wholly within a service contract area or route, a major sporting or cultural event.</li> </ul>
tourist transfer service	<p>In passenger transport legislation, this is defined as a public passenger service, other than a booked hire service, that operates between an accommodation house and tourist attraction or tourist service, and for which journeys are pre-booked before the time of travel.</p>
WHS Act	<i>Work Health and Safety Act 2011</i>



# Introduction

## The purpose of this discussion paper

*Creating Better Connections for Queenslanders*, the 10-year plan for passenger transport in Queensland, outlines our vision of creating a single, integrated passenger transport system accessible to everyone.<sup>1</sup> The Department of Transport and Main Roads (TMR) invites you to have your say about how elements of passenger transport legislation could be shaped to support our priorities for reliable and safer services, responsiveness to changing community needs and seamless end to end journeys.<sup>2</sup>

This discussion paper presents options and proposals that aim to:

- make it much clearer how services are classified and which authorisations and requirements apply
- apply more consistent safety requirements across services
- encourage more market innovation in service provision.

This discussion paper is not a wholesale review of passenger transport legislation. We have reviewed its objectives and found them to be relevant, and many aspects of legislation continue to work well. The industry and passenger numbers are also recovering from the impacts of the COVID-19 pandemic. This paper also does not propose significant changes for the limousine, taxi and ride-booking industries. These services have undergone significant reform in recent years, which TMR is continuing to monitor. Instead, this paper focuses on opportunities to amend legislation where this will create flexibility to respond to and anticipate future change in services and technology, while continuing to ensure safety, fairness and accessibility.

This discussion paper is structured around potential for change to:

- Part A: The regulatory framework for passenger transport:
  - Chapter 1: Reclassifying services to make the laws easier to understand
  - Chapter 2: Simplifying Operator Accreditation
  - Chapter 3: New safety laws
  - Chapter 4: Simplifying equipment requirements for four-wheel drive tourism
  - Chapter 5: Safety laws when transporting children to and from school
- Part B: Market entry restrictions:
  - Chapter 6: Clearer rules for shared flexible services
  - Chapter 7: Simplifying and updating rules about market entry restrictions.

TMR now invites feedback from stakeholders to help it understand the impact of the proposals, options and ideas in this paper. This information will help determine what changes are implemented and how.

## Passenger transport in Queensland

This discussion paper is about road-based passenger transport. This includes urban bus services throughout the state as well as community and courtesy transport, long distance services, school transport services, taxi services, booked hire

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<sup>1</sup> Department of Transport and Main Roads (TMR) 2022, *Creating Better Connections for Queenslanders: A 10-year plan for passenger transport*, page last updated 16 August 2022, accessed 16 August 2022, <https://translink.com.au/creatingbetterconnections>.

<sup>2</sup> Passenger transport legislation in Queensland is comprised of the *Transport Operations (Passenger Transport) Act 1994*, *Transport Operations (Passenger Transport) Regulation 2018* and *Transport Operations (Passenger Transport) Standard 2010*.

services and on demand transport. These services provide essential connections for Queensland communities, fuel economic growth and enable participation in work and social life.

In Queensland, TMR has state-wide responsibility for managing the passenger transport system, contributing to our vision of creating a single, integrated transport network accessible to everyone. The commercial passenger transport industry plays an equally important role in contributing to this integrated network by delivering public passenger services.

To ensure services are safe, fair and accessible for customers and the community, TMR regulates certain public passenger services through the *Transport Operations (Passenger Transport) Act 1994* (the Act). The Act determines who can provide these services, where they are able to be provided, what safeguards are in place for our industry providers, customers and the community, and what services should be exempt from authorisations.

## Why review passenger transport legislation?

The passenger transport market has evolved significantly since the introduction of the Act in 1994, when many services were either timetabled buses or taxi services. There has since been growth in the number and diversity of services TMR regulates beyond buses and taxis, including charter and tourist services, community and courtesy services, special event services and others.

TMR continues to fund many urban and school services through service contracts, some services are funded by other levels of government and other government agencies and others are delivered commercially or by community or courtesy transport operators. While these services operate differently, TMR regulates them all through the same framework.

Passenger transport legislation was significantly changed in 2016 as a result of reforms to personalised transport. The changes strengthened standards for the personalised transport industry, provided customers with greater choice and flexibility and built a framework focused on innovation and customer service. Some newer parts of the legislation adopted a more modern principles-based approach, distinct from other parts that are more prescriptive. Passenger transport legislation has also been amended at other times over the years to ensure all services continue to be regulated effectively.

These legislation changes over time have also generated some unintended complexity and consequences. The legislation now recognises many different services and prescribes many different requirements. Some arrangements for personalised transport services and other services are inconsistent, which impacts on providers offering both kinds of services. It can be complicated for industry to understand what is needed to comply with all requirements. There is opportunity now to explore alternative settings.

Legislation in other sectors that impacts on passenger transport has changed. Significant examples are the *Work Health and Safety Act 2011* (the WHS Act) and *Heavy Vehicle National Law Act 2012* (HVNL). The overlapping policy intent of these laws – to promote safety for the public – means requirements may have been duplicated. This may create costs for industry and the community without generating any additional value, such as improved safety.

An important external factor is the development of new technology and changing customer expectations that services are tailored or personalised. Passengers now have a wide selection of tools to connect them to a variety of passenger transport options that were not available in 1994. This has encouraged new and different models of delivery to emerge, such as shared flexible services. These services carry groups of passengers and have some flexibility in delivery, like a flexible route. They can be government funded, for example, on demand transport, or provided commercially, such as Didi Share or Uber Pool. These services enable more mobility, connection, opportunities and choice for customers, but do not fit easily into the existing regulatory framework. This will become increasingly challenging as the passenger transport market develops into its future state of Mobility as a Service, in which different service types are integrated and consumed through a common booking and payment platform.

Alongside the evolution of services, vehicle technology is changing all the time. There has been a proliferation of alternative fuel types, each with its own opportunities and challenges. New vehicles also have an increasing number of driver assistance features and fully autonomous vehicles are being tested in Queensland.

*Creating Better Connections for Queenslanders* also highlights safety as being critical across all passenger transport services. Safety considerations will change as both technology and service models evolve. The prescriptive approach in some parts of passenger transport legislation does not serve the community well in managing emergent risk from new technologies. In addition, the priorities of responsiveness to changing community needs and seamless end to end journeys mean that regulatory settings must be right to allow for market innovation as an enabler.

Moving forward, *Creating Better Connections for Queenslanders* also outlines key investments in passenger transport which will provide valuable jobs and a pipeline of opportunities for local businesses. Initiatives include services, infrastructure and technology improvements spreading investment across multiple sectors of the local economy.

### What stage is this work at?

TMR has developed these proposals and options for consultation and they do not reflect government policy. This consultation is happening early in the process of policy development so stakeholder perspectives can be understood. In some chapters, it presents firm proposals. In others, options or ideas are still being considered. We will use your feedback to help us make decisions about which ideas may be taken forward, if any adjustments need to be made and if further investigation is needed.

We regularly review passenger transport legislation and consult on opportunities for change. Alongside this discussion paper, we are undertaking a 'sunset' review of the *Transport Operations (Passenger Transport) Standard 2010* (the Standard) as part of our ongoing work to ensure regulations have continuing relevance to the economic, social and general wellbeing of Queensland. Consultation through this discussion paper will help to inform the review of the Standard. In particular, feedback on the proposal for a safety duty (see Chapter 3) will inform whether current prescriptive requirements in the Standard are retained, amended or removed. More detailed industry consultation will follow in coming months.

### How can I have my say?

This discussion paper is public and anyone can provide feedback. We are particularly interested in hearing from stakeholders who would be directly impacted by the options, proposals and ideas we are presenting. You can find a list of these stakeholders at the beginning of each chapter.

Each chapter includes specific questions. You can respond to the questions on the Queensland Government's Get Involved portal at [www.getinvolved.qld.gov.au](http://www.getinvolved.qld.gov.au) by clicking on 'Legislation changes to support *Creating Better Connections for Queenslanders*'. The consultation closing date is on the Get Involved page.

You can also contact us directly and/or make a submission at [regulatorysettings@tmr.qld.gov.au](mailto:regulatorysettings@tmr.qld.gov.au).

In your submission, you may wish to address the following:

- do you think we have identified the right issues and impacts? If not, what else do we need to know?
- what impact could these proposals have on you and/or your business or services – both positive and negative?
- do you support the options in the paper?

Please also answer the questions at the end of this paper to tell us more about you and your service.

A Plain English version of this discussion paper is also available on the Get Involved portal.

### What will happen next?

We will review all feedback received and consider it as part of our policy development. We may consult further with affected stakeholders to better understand the issues and impacts, as needed.

Importantly, some chapters have options that impact on options presented in other chapters. We will continue to consider these interrelationships during subsequent policy development.

If analysis suggests changes are justified, we will present options for government consideration. If legislation changes are needed, implementation can take more than a year.

We will communicate to stakeholders about plans for change and updates on progress.

# PART A: The regulatory framework for passenger transport

## How does regulation classify services?

Under the current regulatory framework, there are two classifications of public passenger services that require authorisation:

- **personalised transport services** which require a taxi service licence, limousine licence or booked hire service licence (BHSL). Entities that take bookings for personalised transport services also need to have a Booking Entity Authorisation (BEA). Personalised transport services have specific safety, customer protections and other requirements like a safety duty, security cameras, data keeping and reporting, maximum fares and fare estimates
- services that are called 'relevant services' in passenger transport legislation. These services are required to hold Operator Accreditation (OA). They have specific safety and customer service requirements such as incident management plans and incident reports, a code of conduct for school students and signs and lights on school buses. This paper will refer to these services as **OA services**.

Drivers of personalised transport services and OA services must have a driver authorisation (DA).

A third group of public passenger services are currently **exempt** from the requirement to have an authorisation. These are locally significant event services and some community and courtesy transport services. These exemptions were intended to minimise the regulatory burden for certain operators, and apply to some charities and not-for-profits, and businesses for whom transport is an incidental part of their operations. These service providers do not have to meet the same safety and service standards for their transport service as other operators.

For community and courtesy transport services, the service must meet one or both of the following criteria to be considered exempt:

- **based on the fleet:** no more than two vehicles are available at any time to provide the service and the vehicle/s may be driven under a Class C driver licence, or
- **based on the passenger cohort:** the service is not available to the general community, for example, a service provided only to persons with a disability and their carer, or a service provided solely for residents or clients of facility such as an aged care or respite care facility.

The framework is summarised in the diagram below.

## Summary of the regulatory framework – current state

	Services that require an authorisation		Public passenger services exempt from authorisation
	Personalised transport services	OA services	
What kinds of services?	Taxi services and booked hire services (including limousines)	Other kinds of services – such as bus services, charter services, accommodation transfer services, other tourist services and some community and courtesy transport services	Locally significant event services and some community and courtesy transport services
What authorisations must be held for the service?	<ul style="list-style-type: none"> <li>Taxi service licence, limousine licence or BHSL</li> <li>BEA</li> </ul>	OA	Nil
Does the driver require an authorisation?	Yes – drivers must hold DA (BHTX)	Yes – drivers must hold DA (BHTX, General or Restricted)	No
What are some examples of the specific safety and service requirements that apply?	Key examples include: <ul style="list-style-type: none"> <li>safety duty</li> <li>data requirements*</li> <li>security cameras* (if risk criteria are met)</li> <li>fares – maximums and estimates*</li> <li>programmed vehicle safety inspections</li> </ul>	Key examples include: <ul style="list-style-type: none"> <li>incident management plans</li> <li>signs and lights on school buses*</li> <li>code of conduct for school students*</li> <li>customer service standards</li> <li>programmed vehicle safety inspections</li> </ul>	Limited requirements
Industry snapshot	As at 30 June 2022, there were: <ul style="list-style-type: none"> <li>455 BEAs</li> <li>18,212 personalised transport licences</li> <li>27,186 BHTX DA holders</li> </ul>	As at 30 June 2022, there were: <ul style="list-style-type: none"> <li>1,258 OA holders</li> <li>24,357 General DA holders</li> <li>1,521 Restricted DA holders</li> </ul>	As legislation does not require these services to hold an authorisation, the number of operators, drivers and services is unknown

\* Applies to some providers only.

## Why are services classified differently?

The different classifications for personalised transport services and OA services dates from the personalised transport reforms implemented from 2016. The broad objectives for a safe, accessible, affordable and accountable industry are shared across the regulatory framework. However, the reforms mean this is achieved differently for personalised transport services and OA services.

## How is a service classified?

It is important to be able to easily identify how a service is classified to determine what aspects of regulation apply.

To be considered a 'personalised transport service', a public passenger service must have the following characteristics:

- it is provided by the hire of a vehicle and a person to drive the vehicle
- it may be used by the public (or a substantial part of the public)
- the vehicle used to provide the service has no more than 12 seats, including the driver's (unless it is a limousine).<sup>3</sup>

The definitions are mutually exclusive. If a service is not a personalised transport service, it is an OA service (unless it is a service exempt from authorisation).

<sup>3</sup> In this discussion paper, all references to a vehicle's seating capacity includes the driver's seat.

# 1. Re-classifying services to make the laws easier to understand

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## Who would be impacted by the options in this chapter, if adopted?

- Providers of road-based services that must hold operator accreditation
  - Providers of personalised transport services
- 

This chapter describes options for changing legislation to simplify how passenger transport services are classified. Through this discussion paper, we are seeking stakeholder feedback before we further develop a position.

## 1.1 Challenges

Evaluation has found the reforms to personalised transport regulation implemented from 2016 have delivered overall benefits in safety, choice and flexibility for stakeholders.

For industry, the reforms work best for those providers that exclusively offer services that are unambiguously personalised transport services. However, we have observed and heard from stakeholders that the reforms have had unanticipated outcomes for some other kinds of services (services other than traditional taxi, limousine and ride-booking services), and providers of personalised transport services that also provide OA services.

For providers of these services:

- it is less clear about how to classify the service and work out which authorisations and requirements apply
- the regulatory outcome may seem inequitable
- some providers may require two sets of authorisations and comply with requirements for both service classifications.

These outcomes are explored in more detail below.

### Ambiguity

Feedback from industry stakeholders suggests it can be unclear whether a service is a personalised transport service or not. As a result, people may not understand the authorisations they are required to have and their safety obligations.

The initial focus of the personalised transport reforms was to respond to the signification disruption occurring in the taxi, limousine and ride-booking industries. Now the reforms have been completed, we are turning attention to the implications of the personalised transport reforms for other services.

Ambiguity is mostly an issue for services that are flexible (for example, they may not always follow a fixed route or timetable), provided in smaller vehicles or restricted to particular passenger groups.

Two aspects of the current legislative definitions relevant to personalised transport services may be contributing to the ambiguity:

- **‘Hire’:** If a passenger ‘hires’ a service, they have some ability to ‘control’ the vehicle and the driver. This could mean controlling pick-up and drop-off locations, the route, departure time and whether other people travel in the vehicle. It isn’t always easy to determine whether a passenger controls all of these elements. It will become more of an issue with the growth of new technology-enabled services that allow passengers to book and share vehicles in real-time
- **‘May be used by the public or substantial part of the public’:** A transport service could be similar irrespective of whether the service is used by the public (or a substantial part of the public) or restricted to a particular group. For example, school services provided in taxis to students with disability could be considered similar to personalised

transport services. However, under the legislation, these services are treated differently and have different requirements.

### Treating services fairly

There may also be a perception that some services are treated unfairly in terms of the different requirements that apply, especially where services are similar. In some circumstances, this could be viewed as giving some services an advantage over others.

### Duplication

Some people provide both personalised transport and OA services. These providers need to comply with both sides of the framework. This means obtaining (and paying for) both a personalised transport licence<sup>4</sup> and OA, and complying with both sets of regulatory requirements. See the table below for some examples.

### Examples where a provider may need multiple authorisations and need to comply with two sets of requirements

Overview of services being provided	Personalised transport services	OA services
<p>A tourism business that offers:</p> <ul style="list-style-type: none"> <li>transport to a tourist attraction, according to a public itinerary, and</li> <li>private bespoke tours using vehicles with 12 seats or fewer</li> </ul>	<p>The <b>private bespoke tour</b> is a personalised transport service because:</p> <ul style="list-style-type: none"> <li>the passenger determines where and when the service operates – so the driver and vehicle are 'hired'</li> <li>the service is not available to other passengers (or groups of passengers) seeking a similar service</li> </ul>	<p>The <b>scheduled tourist service</b> is an OA service because:</p> <ul style="list-style-type: none"> <li>the passenger does not control where the service operates</li> <li>the service may be boarded by other passengers (or groups of passengers) seeking a similar service</li> </ul>
<p>An operator of charter services with a mix of larger vehicles (over 12 seats) and smaller vehicles (12 seats or fewer) in their fleet</p>	<p>Because the driver and vehicle are 'hired' and the vehicle size is smaller than 12 seats, the <b>charter services in smaller vehicles</b> are personalised transport services</p>	<p>While the driver and vehicle are also 'hired', the <b>charter services in larger vehicles</b> (over 12 seats) are OA services because of the vehicle size</p>
<p>A business using a limousine to offer services for weddings and school formals, and transfer services between people's homes and the airport (where trips are shared)</p>	<p>The <b>service for weddings and formals</b> is a personalised transport service because:</p> <ul style="list-style-type: none"> <li>the passenger determines where and when the service operates – so the vehicle and driver are 'hired'</li> <li>the service is not available to other passengers (or groups of passengers) seeking a similar service</li> </ul>	<p>The <b>shared airport transfer service</b> is an OA service because the service may be boarded by other passengers (or groups of passengers) seeking a similar service</p>
<p>An operator that offers taxi and booked hire services, and the Sunshine Coast Council's FlexiLink services</p>	<p>The <b>taxi services and booked hire services</b> are personalised transport services because:</p> <ul style="list-style-type: none"> <li>the passenger determines where and when the service operates – so the vehicle and driver are 'hired'</li> <li>the service is not available to other passengers (or groups of passengers) seeking a similar service</li> </ul>	<p><b>FlexiLink</b> is an OA service because:</p> <ul style="list-style-type: none"> <li>the passenger does not control where the service operates</li> <li>the service may be boarded by other passengers (or groups of passengers) seeking a similar service</li> </ul>

To date, we have not strictly enforced the current rules on industry in all circumstances, such as the requirement to hold more than one authorisation, giving consideration of the impact on individual businesses and services for customers. TMR currently applies some workarounds for these services to enable them to operate.

However, this situation is sub-optimal now, and will have a bigger impact in the future as more diverse services enabled by technology are made available to customers – an outcome we want to enable. A more permanent solution is needed.

<sup>4</sup> A personalised transport licence is a booked hire service licence, a limousine licence or taxi service licence.

## 1.2 Opportunities – what could be done differently?

TMR has investigated alternative ways to classify services to provide more clarity and address duplication and inequity. This discussion paper presents four options to redefine personalised transport services and (because the definitions would be mutually exclusive) OA services. The options involve classifying services based on a combination of:

- the type of service provided in the vehicle, and/or
- the seating capacity of the vehicle.

Only vehicles that have 12 seats or fewer are being considered for potential re-classification.

In developing these options, we have considered the nature of different transport services, their risk profiles and the extent to which they deal with the challenges described above. We have also considered approaches used in other Australian jurisdictions.

These options are intended to provide for a simpler and fairer outcome for the providers of services in the long term. Although the changes may involve a degree of disruption during the transition phase, the resulting end state should be much simpler and fairer for whole of the industry.

### 1.2.1 Summary of the options

The options for classifying services define personalised transport services (and therefore OA services) in the following way:

- **Option A – Exclusive hire:** This option continues to classify services using the concept of a ‘hire’ service in a vehicle with 12 seats or fewer. Personalised transport services would continue to be services that are available to the public and involve the hire of a driver and vehicle, where the vehicle has 12 seats or fewer. ‘Hire’ would be defined as control over all of the following elements of the service: the origin and destination, time of travel, route taken, and other people travelling in the vehicle
- **Option B – Demand responsive service:** This option classifies services based on control over the origin or destination and the time of travel. Personalised transport services would be services where the passenger determines the origin or destination, it is requested at a time convenient to the passenger and provided in vehicles with 12 seats or fewer. This definition only considers the passenger’s control over a limited number of service elements
- **Option C – No regular route:** This option classifies a service based on whether it uses a regular route and operates at regular intervals. Personalised transport services would be services which do not have a regular route, provided in vehicles with 12 seats or fewer
- **Option D – Seating capacity of the vehicle (nine seats or 12 seats):** This option classifies services based on the seating capacity of the vehicle used. A personalised transport service would be any service provided in smaller vehicles – the capacity thresholds could be 9 seats or 12 seats. This option sees a wide mix of services considered personalised transport services.

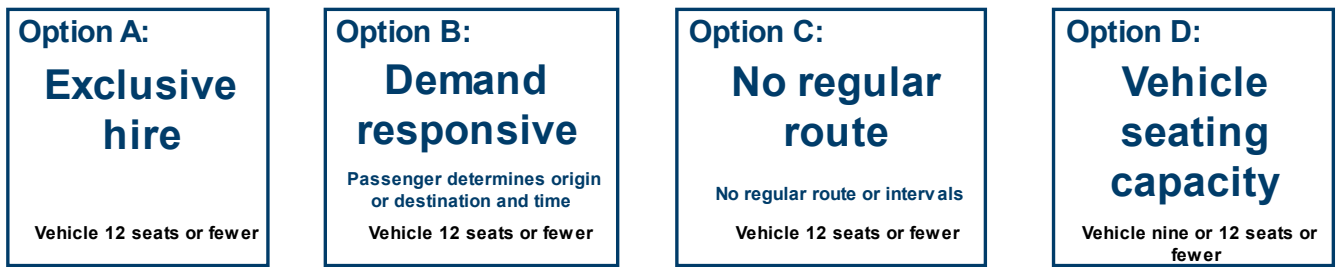
These options are presented along a continuum in the diagram below. As you move from Option A to Option D, each option successively captures more services as personalised transport. All options define personalised transport services to mean more than the taxi, limousine and ride-booking industries, as applies currently.

In general, as we move from Option A to Option D, each successive option better addresses the challenges of the current state. However, each successive option incorporates more services into the personalised transport definition. This means the specific legislative requirements that apply to personalised transport services (for example, security cameras for personalised transport services that meet a particular risk profile) will have more impact which will need to be considered.

More information about each of the options is provided below, including examples of services that would change classification and other potential impacts.



**Options for redefining personalised transport – compared**



**Impacts**



**1.2.1.1 What would these options mean for existing personalised transport services?**

Providers of personalised transport services offering exclusive hire would not change classification to OA services, except for a limited number of services under Option D, which is explained fully below.

Existing personalised transport services provided in vehicles over the proposed seating threshold – including some taxis, limousines and other wheelchair accessible vehicles – would remain as personalised transport.

Other services provided in taxis, limousines or booked hire vehicles (such as shared flexible services) could change classification depending on which option is progressed. However, in the main, these services would be reclassified from OA services to personalised transport services, which would reduce the degree of duplication that providers experience.

The implications of the options for existing personalised transport services are explained under each option.

**1.2.1.2 What would these options mean for services that are exempt?**

Under the options in this chapter, services that are currently exempt from authorisation (and the requirements associated with authorisation) would continue to be exempt. They would not be considered OA services or personalised transport services. The implications of the options for providers currently exempt from authorisation are explained under each option.

Please note that an option to change the exemptions available for some community and courtesy transport services (where this is a scheduled service transporting children to and from school) is proposed in Chapter 5 of this discussion paper. TMR may also review the exemptions available for other services in the future.

**1.2.1.3 What would these options mean for community and courtesy transport services that are not exempt from authorisation?**

These services may change classification under the different options depending on the nature of the services provided and the seating capacity of the vehicles used. The implications for these services are explained under each option.

**1.2.1.4 What would these options mean for services funded by TMR?**

Services funded by TMR that change classification under the options would continue to be funded.

## 1.2.2 The options – in detail

### 1.2.2.1 Option A: Exclusive hire

#### 1.2.2.1.1 Description

This option continues to employ the current definition for personalised transport services but clarifies what is meant by the ‘hire’ of the driver and vehicle to mean ‘exclusive hire’ only.

Services would be classified as follows:

- **personalised transport services** would be services available to the public, that involve the hire of a driver and vehicle where the vehicle has 12 seats or fewer
- **OA services** would be services in vehicles with 12 seats or fewer that are not available to the public and/or that do not involve the hire of driver and vehicle. OA services also include all services in vehicles with more than 12 seats.

This option would reduce the current ambiguity around hire by defining it to involve the hirer having control over all of the following factors: the origin and destination, time of travel, route, and others travelling.

An exclusive hire service could only be shared with other people that have a common origin and/or destination and for which one fare is charged, such as:

- family, friends, colleagues or acquaintances (for example, splitting a ride home after dinner with friends who live nearby)
- people you have met prior and arranged to travel with (for example, sharing a taxi with another person waiting in line at the airport).

The hirer is effectively able to exercise a right of exclusion over who travels in the vehicle.

#### 1.2.2.1.2 Rationale

Services that are controlled by the hirer are different in nature to services that are not hired.

Hire services are controlled by the passengers which means the origin and destination as well as the route are not necessarily familiar to the driver. This can create risks for the passenger associated with uncertainty over origin and destination, the route and the correct charging of fares. This is particularly an issue for services that are hired for immediate travel.

In particular, there can be unpredictability over:

- **the origin or destination:** flexibility can result in unsafe spots being chosen for pick-up and drop-off which are not conspicuous and visible to other road users. This can increase the chances of injury or a crash. Drivers can also be lured to isolated locations, which can increase the potential for theft or robbery
- **the route:** passengers like tourists who are not familiar with the area may allow the driver to choose the route who may take the ‘long way’ due to either inexperience or dishonesty. Overcharging due to the use of a less efficient route may contribute to disputes
- **fares:** as fares charged are generally variable based on the origin and destination, higher than expected fares can contribute to fare evasion, disputes and even assaults
- **time of travel:** vehicles that fail to arrive in a timely fashion or at all can leave passengers alone in unsafe places.

Hire services do not traditionally involve sharing with other unknown passengers so some risks related with co-mingling with other passengers are reduced. However, because the services are not generally shared then the driver and/or passenger may be isolated. As a result, the passenger may be at more risk of harm from the driver and, likewise, the driver may also be at greater risk of harm from the passenger. This includes risks of assaults, robbery and fare evasion.

### 1.2.2.1.3 Application

Determining whether a service is a personalised transport service is likely to be a complex, multi-faceted assessment – having to consider a range of factors including the extent to which the hirer controls the origin and destination, the route taken, time of travel and also whether other people travel in the vehicle.

It can also be difficult to assess each of these factors with any certainty. For example, it may be questionable whether the passenger ‘controls’ the origin and destination when:

- the passenger’s preferred origin or destination coincides with the provider’s pre-set origin or destination (for example, where the provider only provides services to or from the airport)
- a passenger has to walk to a nearby pick-up spot nominated by the provider (for example, a pick-up zone several streets away).

### 1.2.2.1.4 Service impacts

TMR anticipates this option would impact very few services as it aligns with the current definition of personalised transport service (and therefore OA services). Most services would therefore not change classification.

Personalised transport services would:

- continue to capture exclusive hire services available to the public provided by the taxi, limousine and ride-booking industries – which is the majority of services provided by these vehicles
- include other exclusive hire services in vehicles with 12 seats or seats like charter services and bespoke tours.

However, services provided by taxis or limousines that do not involve exclusive hire or are not available to the public (such as TMR-contracted services for students with disability to travel to school) would not be considered personalised transport services but would be OA services – as is currently the case.

In addition, ride-pooling services (or shared ride-booking services) and FlatFare taxis would also be considered OA services because they would not involve the exclusive hire of the vehicle.

## 1.2.2.2 Option B – Demand responsive services

### 1.2.2.2.1 Description

This option classifies services based on whether a passenger (or the person requesting the service) determines the origin or destination of the service and whether it is requested for a time that is convenient to the passenger.

Services would be classified as follows:

- **personalised transport services** would be services in vehicles with 12 seats or fewer where the passenger determines the origin or destination and time of travel. These services are able to be shared with people that are not family, friends or acquaintances. Passengers do not necessarily have to share a common origin and/or destination either
- **OA services** would be services in smaller vehicles with 12 seats or fewer where the passenger does not determine the origin or destination nor the time of travel. OA services would also include any service in vehicles with more than 12 seats.

### 1.2.2.2.2 Rationale

Services where passengers determine the origin or destination as well as the time of travel can, as with hire services, have risks associated with the unpredictability of the origin or destination, the route, fares and timeliness of service.

Drivers also tend to bear more responsibility for services that operate on-demand – while the role of the operator in delivering the service may be reduced. Therefore, some risks like speeding and fatigue can also be exacerbated because of the lack of additional oversight.

### 1.2.2.2.3 Application

As with hire services, it can be difficult to assess whether a person controls the origin or destination and time of travel. For example, it may be unclear whether the passenger determines the origin or destination when:

- passengers can choose their pick-up or drop-off locations from a wide range of accommodation places advertised by a provider (such as hotels in the central business district)
- tours operate on a publicly available itinerary but the passenger requests changes to add in additional stops and extend the finishing time of the tour
- services are restricted to a ‘zone’ (or limited geographic area) and the origin or destination must be within that zone (like with some ride-pooling services currently).

Also, some services may be a combination of fixed route and demand responsive. On the one service, there could be passengers travelling who did not determine either their origin or destination because they boarded and alighted on the fixed route section while there may be other passengers who determined their origin or destination in the flexible roam zone. Under this option, it is unclear how the service would be classified.

This option seems to be more ‘future-proof’ and clearer than Option A. Providers that offer a service that allows passengers to choose their origin and destination could change the services to only take passengers to or from a number of key destinations in an area (for example, only to and from shopping centres or transport hubs), and in doing so the service would not change classification. This allows more scope for service innovation.

#### 1.2.2.2.4 Service impacts

This option would see some services that are currently OA services change classification to personalised transport services. Industry feedback will help TMR determine the scale of this impact.

Under this option, the following would be considered personalised transport services (and therefore not OA services) when provided in a vehicle with 12 seats or fewer:

- exclusive hire services provided by the taxi, limousine and ride-booking industries and also charter services and bespoke tours
- community or courtesy transport services that are not exempt from authorisation but only where the passenger determines the origin or destination as well as the time of travel
- any other service where the passenger determines the origin or destination and time of travel. This can include services that only travel to a limited number of pre-determined stops so long as the passenger is able to choose their origin and request their travel time (for example, a shared airport shuttle that picks passengers up from home).

### 1.2.2.3 Option C – No regular route

#### 1.2.2.3.1 Description

This option classifies services based on whether the service is provided on a regular route or not (in conjunction with the seating capacity of the vehicle).

Services would be classified as follows:

- **personalised transport services** would be services that are not operated on a regular route at regular intervals where those services are provided in a vehicle with 12 seats or fewer
- **OA services** would be services that operate on a regular route in a vehicle with 12 seats or fewer. This would include services conducted on a route to a timetable (including a route deviation service), a ‘loop service’ and a ‘shuttle service’ between two points. OA services would also include all services provided in vehicles with more than 12 seats.

#### 1.2.2.3.2 Rationale

Services that are provided on a regular route at a regular interval are different in nature and tend to involve different risks, so it could make sense to classify services on this basis.

Services on a regular route and at a regular interval are, by definition, more likely to be predictable both spatially (where they operate) and temporally (when they operate). This means predictability in relation to origin and destination, route, time of travel and fares. Services provided on a regular route generally avoid some of the issues associated with those that are not on a regular route. Services that are not on a regular route are not as predictable which raises unique issues, as discussed earlier.

### 1.2.2.3.3 Application

A 'regular route' is a concept that will be familiar to and understood by much of the industry.

Nevertheless, there is still likely to be some ambiguity when classifying services in this way. For example, it may not be clear whether the following constitute a service on a 'regular route':

- route deviation services – particularly if large deviations from the route are permissible
- a passenger is able to choose between a wide range of publicly available pick-up and drop-off locations
- routes where stops are regularly omitted or made in a different order (for example, between airports and multiple hotels)
- passengers can request changes to a standard tour itinerary.

In all of these examples, there is likely to be a 'tipping point' where a regular route is no longer being employed.

The challenges with using regular route to classify services are likely to be exacerbated as technology allows for more flexibility and tailoring of services to individual preferences. This means this option may also not be 'future-proof' and could restrict innovation, so it would need to be revisited as services evolve.

### 1.2.2.3.4 Service impacts

This option means that some services that are currently OA services would change classification to personalised transport services. Industry feedback will help TMR determine the scale of the impact.

Under this option, the following would be considered personalised transport services (and therefore not OA services) when provided in a vehicle with 12 seats or fewer:

- exclusive hire services including traditional taxi services and ride-booking services but also charter services and bespoke tours
- community or courtesy transport services that are not exempt but only where the service is not provided on a regular route
- any other service that is not provided on a regular route.

## 1.2.2.4 Option D – Vehicle seating capacity (nine seats or 12 seats)

### 1.2.2.4.1 Description

This option uses the seating capacity of the vehicle to determine how the services are classified.

Services would be classified as follows:

- a **personalised transport service** would be any service provided in a smaller capacity vehicle
- an **OA service** would be a service provided in a larger capacity vehicle.

Two thresholds are being considered to distinguish between smaller and larger capacity vehicles – nine seats (Option D1) or 12 seats (Option D2). The different thresholds are outlined in more detail in the table below. More vehicles will be impacted by the 12-seat threshold than the nine-seat threshold. Industry feedback will help TMR determine the scale of the impact.

Vehicle seating capacity is proposed because the end state is simple to understand and unambiguous.

We also considered other options for distinguishing between smaller and larger vehicles (such as light vehicles versus heavy vehicles). However, we discounted these because they would impact many more vehicles and have a bigger impact on industry, while not effectively addressing the challenges of inequity and duplication.

### Options for classifying a service based on the number of seats

	Option D1: Nine-seat threshold	Option D2: 12-seat threshold
<b>Why might this be the right threshold?</b>	<p>A nine-seat threshold is consistent with:</p> <ul style="list-style-type: none"> <li>the definition of a ‘bus’ in the Act. Most safety requirements for public passenger services are applied to buses, such as bus padding, maximum age and signs and lights on school buses</li> <li>legislation about road vehicle standards and the Australian Design Rules (ADRs). This framework differentiates between smaller vehicles with up to nine seats and buses with more than nine seats</li> </ul>	<p>A 12-seat threshold is consistent with:</p> <ul style="list-style-type: none"> <li>current rules about personalised transport</li> <li>driver licensing legislation which permits a vehicle with 12 seats or fewer (including the driver) with a maximum weight of 4.5 tonnes to be driven on a C Class driver licence</li> <li>the Queensland Road Rules in which vehicles over 12 seats (including the driver) are considered a ‘bus’</li> </ul>
<b>Service impacts</b>	<ul style="list-style-type: none"> <li>This option will impact fewer vehicles</li> <li>It will have less of an impact on current OA services</li> <li>This is because it is more consistent with the regulation for OA services prior to the personalised transport reforms. This means that vehicles with more than nine seats are not commonly used to provide OA services</li> </ul>	<ul style="list-style-type: none"> <li>This option will impact more vehicles</li> <li>This option will have more of an impact on current OA services like school services. This is because it is more consistent with the current definition for personalised transport services</li> </ul>

#### 1.2.2.4.2 Rationale

The rationale for choosing vehicle seating capacity to classify services is because larger capacity vehicles generally provide different types of services (mass transit services) and have different vehicle design (like buses). These factors tend to be associated with different risks.

Services provided in smaller vehicles generally avoid some of the issues associated with larger vehicles. This is because they carry lower passenger volumes, are faster, have greater manoeuvrability and are more versatile. Smaller vehicles are also designed so that passengers are seated which means they are less likely to encounter issues such as standing passengers, overloading, seatbelts and the need for padding. Capital and maintenance costs are also generally lower due to mass manufacturing so the quality of the vehicle may be higher. Smaller vehicles also require less skill to drive.

In contrast, services provided in smaller vehicles sometimes raise unique issues. For example, they are more likely to involve passengers travelling on their own or in small groups which carries risks for both passengers and drivers. Also, the types of services they provide are also more likely to be flexible which has unique risks. Because smaller vehicles cannot always access dedicated infrastructure like bus stops, passenger pick-up and drop-offs can also be more challenging.

This option is also likely to be relatively future proof and could also provide a sound basis for future regulation as services and vehicle technologies (like automated vehicles) are introduced.

#### 1.2.2.4.3 Application

This option increases the number, type and diversity of services that operate under the personalised transport framework – as any service provided in smaller capacity vehicles would be considered personalised transport services. It also allows more scope for service innovation.

However, not all of these services are similar in nature which means that the way specific requirements currently apply may need to be changed so that consistent principles are applied to services that are similar in nature.

#### 1.2.2.4.4 Service impacts

This option means that some services that are currently OA services would change classification to personalised transport.

All services provided in a smaller capacity vehicle would be considered personalised transport services including:

- exclusive hire services including traditional taxi services and ride-booking services but also charter services and bespoke tours
- shared flexible services

- tourist services, accommodation transfer services and tourist transfer services
- fixed route services, including services open to the public and school services
- community and courtesy transport services unless they are exempt from the requirement to hold an authorisation.

Taxis and limousines will not change classification even when the vehicles exceed the proposed seating threshold. A lot of taxis that exceed the seating threshold are wheelchair accessible and retaining them as personalised transport services will ensure they are available to provide services to people with disability. However, services will change classification when provided in vehicles with a BHSL that exceed the threshold that are not wheelchair accessible.

### 1.2.3 Understanding the impact of the options

The options will provide for a simpler and fairer outcome for many services.

The main impacts of these options would be experienced in the implementation phase. Some services would change classification. This could mean change to the authorisations needed and the legislated specific requirements for safety and service.

The clearest and simplest outcome would be to treat all services in the same classification in the same way. But this approach may not be appropriate for all services. We therefore need to consider how authorisations and requirements might apply for the services that would change classification, focusing on the elements that are most different on either side of the framework, as outlined in the table below.

#### Which authorisations and requirements need to be considered?

	What is unique to personalised transport services?	What is unique to OA services?
<b>Authorisations</b>	<ul style="list-style-type: none"> <li>• Personalised transport licence</li> <li>• BEA</li> <li>• BHTX DA</li> </ul>	<ul style="list-style-type: none"> <li>• OA</li> <li>• General and Restricted DA</li> </ul>
<b>Requirements</b>	<ul style="list-style-type: none"> <li>• Driver training in anti-discrimination, including sexual harassment and disability awareness</li> <li>• Security cameras</li> <li>• Data-keeping and reporting</li> <li>• Maximum fares and fare estimates</li> <li>• Taxis can only provide services that are not pre booked (that is, services 'on-the-spot')</li> <li>• Specific Compulsory Third Party insurance classes – for example, class 3 (taxis) and 26 (booked hire vehicles)</li> </ul>	<ul style="list-style-type: none"> <li>• Driver training in obligations under the Act</li> <li>• Code of conduct for school students</li> <li>• Incident management plans and incident reports</li> <li>• Warning signs and lights for school buses</li> </ul>

For the providers of these services, these changes could impact their costs and the way they do business. Not all requirements may be appropriate or needed for each provider, and imposing additional requirements may adversely affect certain service types more than others.

We need to hear from you about your business, so we can further analyse and develop proposals for change. To help us with this analysis, we have included some questions for your response.

## 1.3 Questions for stakeholders

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- (1) Do you think we have identified the right issues (ambiguity, duplication and inequity) with the way that services are currently classified? (Yes / No) What else do we need to know?
  - (2) What are the impacts due to the way we currently classify services?
  - (3) Do you support the options presented for re-classifying services by defining personalised transport services as:
    - (a) Option A: Exclusive hire (*Strongly oppose / Oppose / Neutral / Support / Strongly support*)
    - (b) Option B: Demand responsive services (passenger determines origin or destination and time of travel) (*Strongly oppose / Oppose / Neutral / Support / Strongly support*)
    - (c) Option C: No regular route (services do not operate on a regular route at regular intervals) (*Strongly oppose / Oppose / Neutral / Support / Strongly support*)
    - (d) Option D1: Services in smaller capacity vehicles – nine seats or fewer (*Strongly oppose / Oppose / Neutral / Support / Strongly support*)
    - (e) Option D2: Services in smaller capacity vehicles – 12 seats or fewer (*Strongly oppose / Oppose / Neutral / Support / Strongly support*)
  - (4) Are there any other options for classifying services we have not considered?
  - (5) For the services you provide in small vehicles (12 seats or fewer):
    - (a) Do you provide exclusive hire services? (*Yes / No / Not sure*)
    - (b) Do you provide services where the customer determines the origin or destination and time of travel? (*Yes / No / Not sure*)
    - (c) Do you provide services that do not operate on a regular route at regular intervals? (*Yes / No / Not sure*)
    - (d) Do you provide services that are available to the public? (*Yes / No / Not sure*)
    - (e) Do you carry school children? (*Mostly / Sometimes / Rarely / No*)
    - (f) Do you provide a school service (taking children between their home and school)? (*Mostly / Sometimes / Rarely / No*)
    - (g) Do passengers pre-book their services? (*Mostly / Sometimes / Rarely / No*)
    - (h) Do you accept cash? (*Mostly / Sometimes / Rarely / No*)
  - (6) Are you willing to participate in follow-up discussions regarding the application of these requirements? (Yes / No) If yes, please provide email address. We will only use your email to contact you about this survey.
  - (7) Is there anything else you want to tell us?
-



## 2. Simplifying Operator Accreditation

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**Who would be impacted by the options in this chapter, if adopted?**

- Operators of OA services
  - TMR-approved OA Workbook assessors
- 

**This chapter describes options for changing legislation to simplify Operator Accreditation (OA) categories and training requirements. Through this discussion paper, we are seeking stakeholder feedback before we further develop a position.**

### 2.1 OA categories

#### 2.1.1 Current state

The purpose of OA, as outlined in the Act, is to encourage the high-quality operation of public passenger services by raising standards and awareness of operators about safety and service delivery and ensuring operators are held accountable for complying with the standards specified in legislation.

The requirements for OA need to strike a balance between delivering appropriate standards for passenger transport, while keeping regulation to a minimum. Accredited operators (that is, persons who hold OA) must meet and maintain standards relating to safety, the operation of vehicles, customer service, and driver management. Drivers who provide services for accredited operators are regulated through the DA scheme.

Passenger transport legislation provides that the chief executive of TMR is responsible for administering the OA scheme.<sup>5</sup> OA categories are established under this scheme but are not specifically mentioned in legislation. The current OA categories are defined in policy and largely reflect the type of service being provided. The exception to this is General OA which covers several different service types, such as tourist services and accommodation transfer services.

The grouping of service types under different OA categories was historically based on the types of vehicles that could be used to provide the service and the fees payable. The vehicles that can be used to provide a service was relaxed in 2018 with the introduction of the personalised transport reforms. At this time the number of OA categories was also reduced from 12 to 10 with taxi and limousine operators no longer required to hold OA. However, no other changes were made to the OA categories at this time.

An operator must hold the OA category applicable to the service they provide, which can mean that operators may hold multiple categories of OA. For example, if an operator operates both urban scheduled and motorcycle tourist services then the operator must hold both Urban Scheduled OA and General OA.

TMR currently administers 10 different categories of OA (see table below).

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<sup>5</sup> Refer section 16 of the Act.

## Categories of OA

	OA category	Required by
1	Urban Scheduled	Operators of general route services provided under a service contract in an area or on a route with a population greater than 15,000 people
2	Minor Scheduled	Operators of general route services that are either: <ul style="list-style-type: none"> <li>not provided under a service contract</li> <li>provided under a service contract in an area or on a route with a population of 15,000 or less people</li> </ul> 'Minor Scheduled Services' refers to bus operators of non-urban scheduled services that operate village to town, village to village and town services without a peak hour component and school bus operators who carry fare paying passengers. An off-peak service will operate between 9.00 am and 5.00 pm
3	Long Distance Scheduled	Operators of a general route service where passengers are carried on an established route: <ul style="list-style-type: none"> <li>for an average of at least 40km, or</li> <li>between non-adjointing service contract areas or routes</li> </ul>
4	School Scheduled – Unfunded/ Declared Area	Operators providing non-TMR funded school services within a declared area. This includes: <ul style="list-style-type: none"> <li>schools operating their own services</li> <li>operators providing services in a declared area under an arrangement with a school</li> </ul>
5	School Scheduled – Unfunded/Non-Declared Area	Operators providing non-TMR funded school services in a non-declared area
6	School Scheduled – (Prescribed)	Operators of school services under a funding or contractual arrangement with TMR
7	Community	Community transport service operators, if not exempt
8	Courtesy	Courtesy transport service operators, if not exempt
9	General	Operators of services not falling under any other OA category, including, but not limited to: accommodation transfer services, tourist transfer services, tourist services, unscheduled long distance passenger services, and bus charters
10	Motorcycle Tour	Operators of tourist services that use motorcycles

As of 30 June 2022, there were 1,258 accredited operators holding 1,937 OA categories. When an operator holds more than one category, the operator only pays for the category with the highest fee.

OA fee units are prescribed in schedule 8 of the *Transport Operations (Passenger Transport) Regulation 2018* (the Regulation). The table below outlines the annual OA fees by category.

### Annual OA fees by category

Categories	Fee (\$)
Urban scheduled Minor scheduled Long distance scheduled School scheduled (unfunded/declared area) School scheduled (unfunded/non-declared area)	\$198.70
School scheduled (prescribed school services)	Nil
Community Courtesy	\$198.70 or nil Community and Courtesy OAs are free if the holder qualifies for a vehicle registration fee concession as a charitable or community organisation
Motorcycle Tourist or General	Up to including 10 vehicles: \$398.25 More than 10 vehicles: \$1,993.40

## 2.1.2 Challenges

The 10 categories create confusion because they are complex. This complexity relates to determining the type of service being provided. Some service types are very similar operationally and it can be difficult for applicants to know which OA category to apply for. The OA requirements are also mostly the same, therefore there is no benefit in holding a different OA category for similar service types.

The 10 categories increase the administrative burden on operators who provide various services that fall under different OA categories. Furthermore, the various categories may impede innovation by deterring operators from providing services that fall outside their OA category.

## 2.1.3 Opportunities – what could be done differently?

It is proposed to reduce the number of OA categories from 10 to three, these being:

- **General OA:** this would authorise the holder to operate any kind of public passenger service (for which OA is required) other than services that are captured by the Contracted OA category and Restricted OA category
- **Contracted OA:** this would authorise the holder to provide services that are funded or contracted by TMR, including a prescribed school service<sup>6</sup>, an urban and minor scheduled service and a long distance scheduled service. Note: Under this proposal, an operator who provides a school service that is not funded by TMR would also need to hold General OA
- **Restricted OA:** this would authorise the holder to operate a community transport service and a courtesy transport service. This is a new category and would apply to operators who currently hold Community OA or Courtesy OA. Retaining a discrete category for community and courtesy transport services recognises the unique regulatory arrangements applicable to these services. For example, operators of Community or Courtesy OA have the ability to issue Restricted Driver Authorisation to their drivers.<sup>7</sup> No other operators have this ability.

The table below demonstrates the proposed simplification of OA categories.

### What does the proposed change look like for current OA holders?

Current OA category	New OA category
Urban scheduled	General
Minor scheduled	
Long distance scheduled	
School scheduled (unfunded/declared area)	
School scheduled (unfunded/non-declared area)	
General	
Motorcycle Tourist	
School scheduled (prescribed school services)	Contracted
Urban scheduled – if funded or contracted by TMR	
Minor scheduled – if funded or contracted by TMR	
Long distance scheduled – if funded or contracted by TMR	
Community	Restricted
Courtesy	

<sup>6</sup> A prescribed school service is provided by an operator who is funded or contracted with TMR to provide the school service.

<sup>7</sup> Restricted driver authorisation (RDA) is a driver authorisation that allows the holder to drive for the accredited operator who issued the RDA. For more information, please see <https://www.tmr.qld.gov.au/Licensing/Passenger-transport-driver-authorisation/Restricted-driver-authorisation>.

It is not proposed to implement a hierarchy of OA categories, therefore, operators who fall into more than one category will still need to apply for and hold all relevant OA categories. For example, an operator who provides a community transport service (Restricted OA) and a long distance scheduled service (General OA) would still need to hold both OA categories. In this scenario the operator will only pay the higher fee, they will not need to pay for both OA categories.

The simplification of OA categories may impact on fees that operators pay if they move from one OA category to another. Due to the range of options presented in this discussion paper, further investigations and analysis are required to be undertaken prior to determining any potential changes to fees. Consultation will be conducted with all relevant stakeholders seeking their views and input prior to any changes to the fee structure being made.

## 2.1.4 Questions for stakeholders

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- (8) Will the simplification and reduction of Operator Accreditation categories be beneficial to you? (Yes / No) Why? Is there anything else we should know?
- (9) Do you think we have the right naming and grouping of the three proposed Operator Accreditation categories? (Yes / No) Why? Is there anything else we should know?
- 

## 2.2 OA training requirements

### 2.2.1 Current state

The *Transport Operations (Passenger Transport) Standard 2010* authorises TMR to specify training requirements for OA. To fulfill the training requirement, operators must either:

- hold an equivalent qualification<sup>8</sup> recognised by TMR, being:
  - a Statement of Attainment from a Registered Training Organisation that covers relevant competencies from the Transport and Logistics Training Package, or
  - a Certificate of Transport Management or an equivalent university qualification recognised by TMR

or

- complete the TMR Operator Accreditation Training Workbook (OA Workbook).

The equivalent qualifications are national competencies that cover different and broader topics than those included in the OA Workbook. The equivalent courses do not cover the requirements and standards under the Act that OA holders must comply with.

The OA Workbook was introduced in 2005. Prior to the introduction of the OA Workbook, all operators held provisional OA unless they had completed one of the equivalent qualifications.

The primary benefit of the OA Workbook is that it serves as a means of informing new operators who are required to hold OA about the requirements and standards applicable to the provision of a public passenger service in Queensland. The OA Workbook informs operators about relevant TMR Information Bulletins and legislation. It also has regard to some matters outside specific TMR legislation, these mostly relate to WHS, anti-discrimination, disability standards, vehicle fleet management, and customer service.

Once completed by the operator, the OA Workbook is independently assessed by a TMR-approved OA Workbook assessor. OA Workbook assessors are approved by TMR to assist OA applicants with the workbook, assess the completed workbook and provide written confirmation that the workbook has been completed. The assessment helps assure TMR that operators have read and understood this information.

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<sup>8</sup> An applicant who holds an equivalent qualification recognised by TMR may be granted full OA.

A fee of \$65 is paid to TMR for the production and issue of the hard copy OA Workbook. A fee is also charged by a TMR-approved OA Workbook assessor for an independent assessment of the applicant's completed workbook. The maximum permitted fee that an assessor may charge is \$197 plus GST.

The OA Workbook is divided into seven sections:

- sections 1 to 5 must be completed for all OA categories and relate to vehicle maintenance, the operation of a public passenger service, compliance with vehicle design, safety and operational requirements, and business management skills. Applicants for Community, Courtesy, General and Motorcycle Tours are not required to complete any further sections of the workbook
- section 6 must be completed by persons who are seeking to provide school scheduled services and relates to TMR's code of conduct for school students
- section 7 must be completed by persons who are seeking to provide scheduled services and contains some additional questions about timetabling and route planning, marketing and service standards.

New applicants who choose to complete the OA Workbook, instead of one of the equivalent qualifications, are granted provisional OA for a three month period. The OA Workbook must be successfully completed within this timeframe to obtain full OA. If it is not successfully completed, the OA will not be renewed preventing the operator from continuing to provide a public passenger service. There are no operational restrictions that apply to provisional OA.

Nearly all holders of full OA choose to complete the OA Workbook rather than the equivalent qualifications.

## 2.2.2 Challenges

A number of challenges have been identified with the training requirement, including:

- persons completing the OA Workbook may be required to answer questions that have no relevance to the service they actually provide
- there is no evidence that the introduction of the OA Workbook has resulted in significant improvements to professional standards or compliance with requirements
- there is no continuing requirement for a person within an organisation to have completed the required training. For example, if the person who completed the OA Workbook or the equivalent qualification is no longer employed by the OA holder, there is no requirement for another person to meet the training requirement
- accountability comes with holding OA. Training to meet these accountability requirements is not required in other schemes. For example, under the personalised transport framework, parties are legislatively accountable for various requirements, and training is not required to support this
- the OA Workbook is a hard copy booklet only and is difficult and costly to update in its current format
- the OA Workbook and the assessment guide used by TMR-approved OA Workbook assessors have had minor updates to ensure accuracy, however, they have not been reviewed to modernise or confirm they meet the needs of industry and TMR. If they were to be retained, the documents would need to be reviewed to ensure their relevance to a modern OA scheme
- the equivalent qualifications do not include information about the requirements and responsibilities of OA holders operating a public passenger service in Queensland.

## 2.2.3 Opportunities – what could be done differently?

### 2.2.3.1 Option 1: Maintain an OA training requirement

Under this option, the training requirement would be maintained. However, a comprehensive review of the OA Workbook would be undertaken to improve its relevancy and application to any OA category changes.

To modernise the OA Workbook, an electronic version could be provided for operators to complete. This approach would streamline the process for operators and assessors and make it easier for TMR to update the workbook content. Under

this option, TMR would remove the \$65 OA Workbook fee, however TMR approved OA Workbook assessors may continue to charge a fee for assessment.

### 2.2.3.2 Option 2: No longer require OA training

This option proposes to remove the training requirement (that is, the OA Workbook and the equivalent qualifications).

New operators would have electronic access to information to be made aware of their obligations under OA and would be required to declare when applying or renewing that they are aware of and understand their responsibilities and requirements.

By removing the training requirement, costs and red tape will be reduced for new operators. It will also see a reduction of costs and administrative requirements on TMR in relation to monitoring and processing an operator's completion of the training requirements. The provisional OA step prior to being issued with full OA would be removed.

TMR-approved OA Workbook assessors will still be able to market their training and expertise to benefit other industry members, if required. The equivalent qualifications administered by Registered Training Organisations or tertiary institutions will still exist for other purposes.

The electronic information will better cater for a range of accessibility requirements that the current hard copy OA Workbook is unable to provide.

## 2.2.4 Questions for stakeholders

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- (10) Are the current training requirements a burden on your industry? (Yes / No) Why?
- (11) Are you willing to participate in any follow-up discussions regarding all the options outlined in this chapter? (Yes / No) If yes, please provide your email address. We will only use your email to contact you about the survey.
-

## 3. New safety laws

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### Who would be impacted by the proposal in this chapter, if adopted?

- Providers of OA services
  - Providers of community and courtesy transport services and locally significant event services who do not currently hold OA
  - Providers of personalised transport services
- 

**This chapter describes a firm proposal for changes to the law to implement a safety duty and safety management plan. Through this discussion paper, we are seeking stakeholder feedback to help us further develop this proposal for consideration by the government.**

### 3.1 Current state

Passenger transport legislation currently imposes a general obligation on drivers and operators of OA services to operate a vehicle safely.<sup>9</sup> This includes ensuring a number of safety risks do not occur (for example, the vehicle is not overloaded and standing passengers are not carried in certain circumstances). To comply with this general safety obligation, all relevant safety matters should be considered to ensure the vehicle is safely operated, although the legislation does not specify how or the steps to take.

In contrast to the obligation on OA services, a ‘safety duty’ was adopted in passenger transport legislation for personalised transport services during reforms to that industry. A broad-based duty was considered suitable given the emergence of new service models with potential unknown safety risks.

Both categories of passenger transport service must also comply with other prescriptive requirements for safety.

Passenger transport providers are also complying with a safety duty where it has been adopted in other relevant legislation impacting on passenger transport, including the *Work Health and Safety Act 2011* (the WHS Act) and the *Heavy Vehicle National Law Act 2012* (HVNL) (where it is referred to as the chain of responsibility).

A review of the WHS Act commenced in September 2022. We will consider the outcomes of this review to determine if there are any implications for the proposals in this discussion paper.

### 3.2 Challenges

The general obligation for the safe operation of a vehicle and prescriptive requirements in our legislation has provided for the overall safe industry for Queensland passengers today. However, this approach does not encompass the full breadth of risks exposed to passengers and other road users.

While we do not have comparable local data, we know that in Victoria it is estimated 405 bus related incidents occur each year, including safety incidents with potentially serious consequences, such as children left on buses, bus rollaways and assaults.<sup>10</sup> Public passenger services also have a higher road safety risk profile in comparison with travel in private vehicles. Owing to the greater number of trips and vehicle kilometres travelled, passenger transport vehicles have a higher exposure to the general road safety risks faced by all road users. Passenger transport vehicles also tend to carry

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<sup>9</sup> Refer sections 11 and 22 of the *Transport Operations (Passenger Transport) Standard 2010*.

<sup>10</sup> Department of Transport (Victoria) 2020, *Bus safety regulations 2020: Regulatory impact statement*, page last updated 24 May 2021, accessed 1 July 2022, <https://www.vic.gov.au/regulatory-impact-statements-2020>.

more passengers than private vehicles. These factors mean a single incident has the potential to be more severe, due to the severity and number of possible casualties.

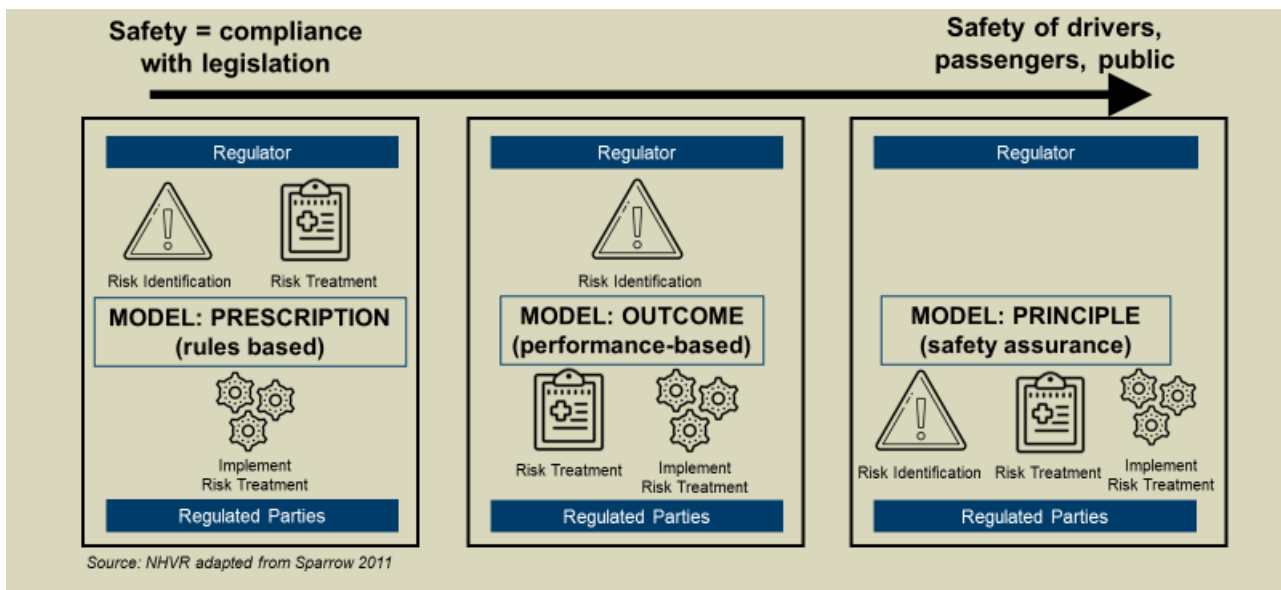
Changes in technology, services and vehicles are also bringing new risks to the industry. For example, new zero emissions technologies currently being trialled have unique risks. Hazards are potentially deadly and include fire, explosion and toxicity. While all fuels carry risk, risks with alternative fuels are likely to be more pronounced because they are relatively new and the regulations and safety procedures in this area are still being developed and refined.

Prescriptive legislation cannot comprehensively anticipate and manage all existing and emerging safety risks. It also may not be appropriate where there is not one well established way to control a particular risk, or there may be a number of effective controls available. The pace of change also means prescriptive legislation could quickly become out of date.

These pressures are not unique to passenger transport and are being experienced in many sectors. As a result, the trend in safety regulation has been toward outcome- and principles-based approaches that allow for some flexibility in risks and controls, depending on what is reasonable in the circumstances (see diagram below). The adoption of a safety duty in the WHS Act and HVNL reflects how this approach to regulation is becoming more common.

While most operators of passenger transport services are already required to comply with a safety duty under the WHS Act and HVNL, these laws are not contextualised to the passenger transport industry, and sit alongside our current prescriptive legislation, making it challenging for operators to comply. TMR is also limited in its ability to take action directly as the regulator with lead responsibility for passenger transport. If a similar risk-based approach was introduced consistently across passenger transport legislation, it would empower TMR to take action when needed and contribute to a larger, more aligned compliance effort overall.

**Safety risks can be dealt with in legislation in a number of different ways**



### 3.3 Opportunities – what could be done differently?

*Creating Better Connections for Queenslanders* reiterates TMR’s commitment to safety first. The safety of customers and passenger transport workers is paramount. TMR is committed to maintaining a strong safety focus in passenger transport legislation and a consistent safety duty would contribute to this objective.

It is proposed that the safety duty that currently applies to personalised transport services in passenger transport legislation will continue to apply with some minor changes. The existing safety obligation for OA services to ‘operate a vehicle safely’ would be repealed and, for the first time, a consistent safety duty will be applied to all road-based passenger transport services. This would include OA services and those services currently exempt from authorisation (including community and courtesy transport services and locally significant event services). To complement the safety duty, it is also proposed to require a safety management plan (see below for more detail).



A safety duty and a safety management plan are considered superior to the current general safety obligation for OA services as it more clearly specifies the nature of industry’s responsibilities.

To ensure that services are as safe as reasonably possible, providers will need to have a plan to identify and manage the risks of their particular operations. This approach recognises that providers are often in the best position to identify and act on new and emerging safety risks, rather than waiting for government to develop specific legislation. In this way, industry should feel empowered to manage their safety risks.

The proposals would align closely with requirements under the WHS Act and HVNL. These laws also have a safety duty. The safety duty in passenger transport legislation would be designed so that it complements the existing duties and requirements in the WHS Act and the HVNL. It is envisaged that only a single plan would be required to satisfy requirements under all three Acts. This will mean less duplication and red tape for industry, and that the safety of passengers and employees in all types of passenger transport vehicles is assured in a consistent manner.

This approach would also be in line with other Australian jurisdictions that impose a safety duty, a plan to manage safety or both on providers of road-based public passenger services through their passenger transport legislation. A safety duty along with a plan to manage safety is required in New South Wales, Victoria, Western Australia and Tasmania for the equivalent of their personalised transport services. Victoria and Western Australia also impose such requirements on other road-based passenger transport services. New South Wales requires bus and coach operators to have a plan to manage safety, without imposing a safety duty.

### **3.3.1 Proposal: Introduce a safety duty**

#### **3.3.1.1 Rationale for a safety duty specific to passenger transport**

The proposal is intended to introduce a contemporary regulatory framework to road-based passenger transport that can be applied to a diverse industry and can be used to manage changes associated with new technologies and service models.

While a safety duty exists in other legislation, there are benefits associated with having a distinct safety duty for passenger transport. For example, while there is a safety duty in HVNL, the hazards and risks in passenger transport can be quite different to those encountered in freight because the former involves the carriage of people while the latter involves the transport of goods. The heavy vehicle freight task is concerned with loading, restraining loads and unloading which is not directly comparable to buses and coaches where the operating task is to carry passengers. The different nature of these tasks can result in different operational hazards and risks. A safety duty in passenger transport legislation would allow TMR to work with industry to identify the issues being experienced along with proactive strategies to manage these risks.

The safety duty in passenger transport legislation is proposed to be specific to participants in the passenger transport industry. The safety duty would identify drivers, operators of services, and registered operators of vehicles – which are well established roles within the passenger transport industry.

#### **3.3.1.2 What is a safety duty?**

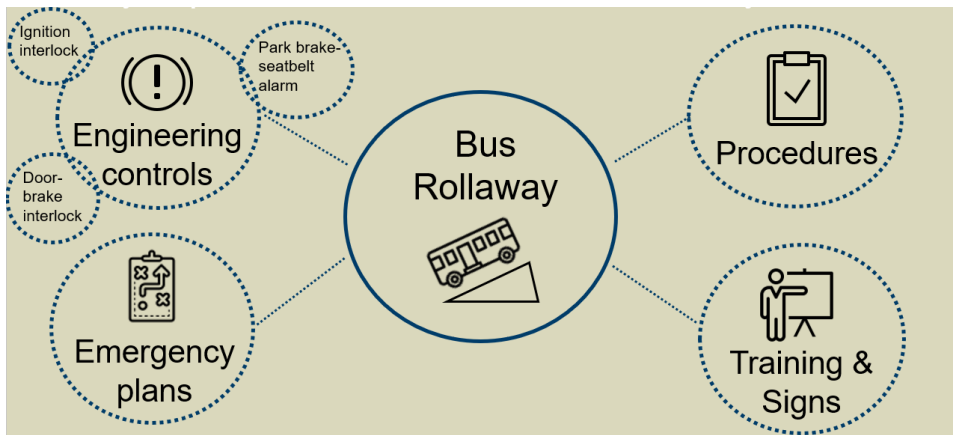
A safety duty means that all persons who may influence the safety of services have an obligation to ensure safety, so far as is reasonably practicable. The principal aim of the safety duty is to ensure the safety of drivers, passengers, the public and others by eliminating or mitigating risks.

A safety duty is a positive obligation. It requires a person to do something to ensure safety. In contrast, most other safety requirements in passenger transport legislation involves a prohibition – that is, it identifies what a person cannot or must not do.

A safety duty does not remove the need for all prescriptive legislation. Some will remain where there are well established and accepted controls, complementing the safety duty.

Therefore, a safety duty goes beyond compliance with prescriptive requirements set out in legislation. Instead, it requires providers to take a proactive and preventative approach to safety. A safety duty can cover the diversity of services and their different risks, risks that have a variety of controls (refer diagram below) and emerging risks.

### A safety duty will help manage those risks that have a variety of possible controls – like bus rollaways



#### 3.3.1.3 Duty holders

Persons that would hold such a duty under the proposal are: drivers, registered operators of vehicles, operators of all road-based public passenger services, personalised transport licence holders and booking services for personalised transport services. The same person may have a duty because they perform multiple functions. For example, the registered operator of the vehicle may also be the operator of the service.

The safety duty that currently applies to personalised transport services identifies the following as having a safety duty: drivers, registered operators of vehicles, operators, licence holders and booking services. Holders of the safety duty are sometimes currently referred to as a party in the chain of responsibility. These persons would continue to hold a safety duty and would be joined by drivers, operators and registered operators of vehicles providing any other road-based public passenger service.

The safety duty will capture as duty holders those persons who have a significant and active function in providing road-based public passenger services. These persons will be considered duty holders and responsible for minimising or eliminating risks associated with the service.

Consideration was given to imposing a duty on additional parties that can influence safety such as vehicle manufacturers, third party vehicle repairers, builders of bus stops or even persons who procure a service. However, at this time, it is not proposed to capture these other parties. It was noted that extending the heavy vehicle safety duty to such persons was not supported by the bus industry during consultation recently on potential HVNL changes as some parties are already required to comply with Australian Design Rules and existing codes or even negligence under civil liability legislation (although the latter relies on there being a breach of the duty of care and associated damages).<sup>11</sup>

This list of duty holders may, however, become outdated as new business practices and models evolve, so the power will exist to nominate specific other duty holders through subordinate legislation in the future. This would provide certainty regarding which parties are captured but also enable changes to duty holders to be made relatively easily.

#### 3.3.1.4 Duties in a safety duty

Holders of the safety duty are required to ensure safety.

##### 3.3.1.4.1 Ensuring safety equates to eliminating or reducing risks

In the context of the safety duty, 'ensuring safety' means eliminating risks and, if that is not possible, to reduce those risks. This concept of ensuring safety recognises that it may not be possible to always eliminate a risk but, where that is the case, then efforts still need to be made to reduce the risk. The identification and management of risks are the core of the safety duty with duty holders required to assess all relevant risks to safety and consider and implement controls to eliminate or mitigate those risks. The duty to ensure safety would apply to all duty holders apart from drivers (see section 3.3.1.4.3 below).

<sup>11</sup> Bus Australia Network 2020, *Review consultation regulation impact statement*, last updated 19 November 2020, accessed 1 July 2022, <https://movingpeople.com.au/wp-content/uploads/doc/BIC0006.pdf>.

#### 3.3.1.4.2 So far as is reasonably practicable

It is proposed that a duty holder must do what is 'reasonably practicable' to manage a risk. The concept of reasonably practicable provides guidance about which risks should be being targeted and in which way.

Reasonably practicable, in relation to the safety duty, generally means what is reasonably able to be done, weighing up all relevant matters, including:

- the likelihood of a safety risk happening
- the harm that could result from the risk
- what the person knows, or ought reasonably to know, about the risk
- what the person knows, or ought reasonably to know, about the ways of eliminating or reducing the risk
- the availability and suitability of those ways
- the cost associated with the available ways.<sup>12</sup>

These matters must be weighed up and a balance achieved that will provide the highest possible level of protection that is reasonable in the circumstances. This concept generally requires weighing the likelihood or severity of the risk against the resources needed to eliminate or reduce the risk to determine whether a control is proportionate. The onus is on the duty holder to demonstrate that the additional risk controls would be disproportionate to the benefits.<sup>13</sup> The resulting controls will therefore generally be focussed on those risks that are more likely to occur or more likely to cause a greater degree of harm.

#### 3.3.1.4.3 Drivers must take reasonable care

The nature of the duty for the driver is proposed to be different. Drivers are not proposed to have a duty to ensure safety but, rather, to take reasonable care.

The duty proposed for drivers will require the driver to take reasonable care of their own activities in relation to their own safety or the safety of other persons who may be impacted by their acts or omissions. This means the driver must take reasonable care of themselves and not do anything that would affect the health and safety of others. This includes the driver complying with any reasonable instruction that is given by another duty holder, and co-operating with any reasonable policy or procedure of another duty holder to allow that person to comply with their safety duty.

However, the nature of the duty to take reasonable care does not impose a requirement on the driver to take pre-emptive actions to consider and manage risks. This requirement reflects that the driver may have limited capacity or responsibility for setting business practices that determine the safety of the service.

The proposal would represent a change to the safety duty for drivers of personalised transport services. Currently, these drivers have the same duty as all other duty holders for personalised transport services – to ensure safety. However, the proposed duty on the driver to take reasonable care is consistent with safety duties for road-based passenger transport services in other Australian jurisdictions, other transport modes (rail and maritime) and workers' duty under the WHS Act. (Drivers are not currently considered a duty holder in HVNL.)

Finally, if a driver performed another function in addition to their driver function (such as an operator or the registered operator of a vehicle) they would still have the duty to ensure safety in that capacity (as above).

#### 3.3.1.5 To what services would a safety duty apply?

The safety duty in the Act currently applies to personalised transport services only. It is proposed that the safety duty will be extended to all road-based public passenger services, including OA services and services that are exempt from authorisation.

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<sup>12</sup> Refer section 83 of the Act.

<sup>13</sup> Bus Safety Victoria 2014, *Managing the risks to bus safety: Factsheet*, page last updated 2 September 2021, accessed 1 July 2022, <https://transportsafety.vic.gov.au/bus-safety/risks/managing-the-risks-to-bus-safety>.

### 3.3.1.5.1 Community transport services, courtesy transport services and locally significant event services

The safety duty would apply to those community transport services, courtesy transport services and locally significant event services that are currently exempt from the requirement to have an authorisation.<sup>14</sup>

Historically, many of the safety requirements that apply to public passenger services including the requirement to be authorised have not applied to these services. The objective was to minimise costs and the regulatory burden for organisations like charities or for whom transport is an incidental part of their business. However, the result is that the safety of these services for passengers, drivers and the public could be diminished. Critically, community transport services provide services to some of the most vulnerable members of the community. Furthermore, the nature of these sectors – particularly the community transport sector – is evolving because of individualised funding models in disability and aged care that means organisations other than charities now regularly provide these services.

Therefore, it is proposed that drivers, operators and registered operators of a vehicle used to provide community transport services, courtesy transport services and locally significant event services would also be subject to the safety duty for passenger transport, even if they are not currently required to be authorised. The impact on these providers is difficult to determine because they are exempt from the requirement to have an authorisation, so there is no means for TMR to identify them.

However, the financial and administrative impacts of a safety duty in passenger transport legislation are not expected to be particularly onerous because these providers are likely already required to comply with safety duty requirements in WHS as a Person Conducting a Business or Undertaking (PCBU). This is supported by feedback from the community transport peak body in New South Wales that indicated the introduction of safety requirements (including a safety duty) for their point to point transport services were not difficult for community transport providers to meet because safety frameworks were already part of their 'business as usual'.<sup>15</sup>

In the event of a safety-related incident, TMR would be able to investigate providers of these services so that they make improvements to their services.

### 3.3.1.5.2 Other transport modes

The safety duty is only proposed to apply to road-based public passenger services, and not to other modes.

Other passenger transport modes have dedicated safety regulators. Specifically, rail and maritime (that is, ferry) services, are regulated by national safety regulators such as the Office of the National Rail Safety Regulator and Australian Maritime Safety Authority and are already required to comply with a safety duty under respective national legislation. While air services are regulated by the Civil Aviation Safety Authority and subject to a safety management system. Therefore, it is not considered necessary to apply the proposed safety duty to public passenger services provided using other modes.

### 3.3.1.6 Penalties and sanctions

An offence of failing to comply with the safety duty captures a range of behaviours, some extremely serious. Offences and penalties for failing to comply with a person's safety duty under the Act are proposed to align with those that apply to personalised transport services currently in the Act and also to duty holders under the WHS Act and HVNL. These penalties are graduated depending on whether the person is an individual or a corporation and the seriousness of the offence (see table below). The proposed maximum penalty is particularly significant for offences that involve exposing a person to death or serious injury.

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<sup>14</sup> Refer section 19 of the Regulation.

<sup>15</sup> Transport for New South Wales 2020, *Point to Point Transport Independent Review: Report to the Minister for Transport and Roads and the Minister for Regional Transport and Roads*, accessed 1 July 2022, <https://www.transport.nsw.gov.au/projects/programs/point-to-point-transport/point-to-point-independent-review-2020>.

### Proposed penalties for an offence against the safety duty

	Category 1: Reckless and exposes a person to death or serious injury	Category 2: Exposes a person to death or serious injury	Category 3: Other circumstances of a failure to comply with the safety duty
<b>Individual</b>	3,000 penalty units (\$431,250 in 2022-23) and/or five years imprisonment	1,500 penalty units (\$215,625 in 2022-23)	500 penalty units (\$71,875 in 2022-23)
<b>Corporation</b>	30,000 penalty units (\$4,312,500 in 2022-23)	15,000 penalty units (\$2,156,250 in 2022-23)	5,000 penalty units (\$718,750 in 2022-23)

It is also proposed that TMR continue to be able to refuse a person's authorisation (their DA, OA, personalised transport licence or BEA) and to take action against a person's authorisation for failing to comply with the Act which will include failing to comply with the safety duty.

### 3.3.2 Supporting proposal: Introduce a requirement for a safety management plan

The requirement to have a plan to manage safety – a safety management plan – is intended to complement the safety duty.

A safety management plan is a documented plan for managing the hazards and risks associated with a person's operations.

It supports a provider to implement safety initiatives based on the nature and context of their services, the scale of their operations and their history of incidents. It gives providers the ability to address safety issues without needing legislation to prescribe the specific response they should adopt for each risk they confront.

A safety management plan also provides evidence that a person is meeting their safety duty by adopting a proactive approach to managing safety hazards and risks.

Currently, the safety duty for personalised transport services is not supported by a requirement in legislation to have a safety management plan. Nevertheless, a plan to manage safety is considered one of the most effective ways for a person to demonstrate they comply with their safety duty. Therefore, when conducting audits of providers of personalised transport services, TMR officers ask to see a copy of a provider's safety management plan.<sup>16</sup> Under this proposal, a safety management plan would become mandatory to provide clarity for personalised transport services.

A safety management plan would also be mandatory for OA services and services that are exempt from authorisation.

Operators of OA services are currently required to have an incident management plan which sets out procedures for events that might disrupt or prevent the provision of a service. This requirement is likely to duplicate the requirement for a safety management plan to some extent. Therefore, an incident management plan may no longer be required for OA services if a requirement for a safety management plan is introduced.

#### 3.3.2.1 What would a safety management plan include?

The safety management plan would require a person to identify hazards, risks and controls. Specifically, it is proposed that the matters to be contained in the safety management plan are:

- identify and describe the hazard that could cause harm and the risk which arises because of exposure to the hazard
- outline the action to be taken to eliminate or reduce the identified risk
- the person (within the organisation) responsible for taking the action to manage the risk.

<sup>16</sup> See, for example: Personalised Transport Chain of Responsibility Audit Compliance Checklist at: <https://www.tmr.qld.gov.au/business-industry/Taxi-and-limousine/Industry-information/Industry-regulations/Chain-of-responsibility>.

The proposed safety management plan focuses on hazard identification and risk management but does not include other elements that may be found in other safety management systems like an explicit management commitment to safety, safety promotion and training or safety investigations.

By not being overly prescriptive of the matters that must be included in a safety management plan, it can scale to the complexity of a provider's context. More complex safety management plans could be adopted where appropriate.

The safety management plan would have to be in writing and all related documents would need to be kept for five years, consistent with many record-keeping requirements for OA services.

The development of a safety management plan would assist a duty holder in meeting their safety duty requirements (including under the HVNL and WHS Act).

Under the WHS Act, all PCBUs must comply with the code of practice on *How to manage work health and safety risks*<sup>17</sup> which provides practical guidance on how to manage risks to health and safety. This code applies to all types of work and all workplaces covered by the WHS Act.<sup>18</sup> This code of practice covers identifying hazards, assessing risks, controlling risks, reviewing controls, and keeping records. The WHS code of practice is therefore consistent with the proposal for a safety management plan which also canvasses hazards, risks and controls

While HVNL does not require a safety management plan, guidance is provided to the heavy vehicle industry on preparing a safety management system. This guidance deals with a comprehensive range of matters including safety policy and documentation, safety risk management, safety assurance and safety promotion and training. The requirements for a safety management plan for passenger transport would therefore be broadly consistent with the requirements on all PCBUs under the WHS Act and with expectations under HVNL.

We envisage that a provider's workplace health and safety management plan or HVNL safety management system, where it also comprehensively identifies passenger transport risks and controls, can be considered a safety management plan for passenger transport. This is the document TMR would request for review during an audit or investigation as a result of an incident.

### 3.3.2.2 Hazards

The hazards and risks expected to be identified in the safety management plan are those that are new or emerging, and existing risks that have several different controls.

It is not the intention for legislation to prescribe the specific hazards and risks that would have to be considered in the safety management plan. However, for illustrative purposes, some of the common hazards and risks for public passenger services that could be managed through a safety management plan are:

- assault of drivers and passengers
- alcohol and drugs
- fatigue
- bus rollaways
- fires
- services in remote or isolated areas
- general passenger safety – like passenger entrapment in doors, pick-up and set-down of passengers using on demand transport services and leaving children on the bus unattended at the end of a run
- new technologies, for example, alternative fuel and automated features in vehicles.

A risk assessment should be done when one or more of the following circumstances apply:

<sup>17</sup> Workplace Health and Safety Queensland (WHSQ) 2021, *Code of practice: How to manage work health and safety risks*, last updated 23 February 2021, accessed 1 July 2022, <https://www.worksafe.qld.gov.au/laws-and-compliance/codes-of-practice>.

<sup>18</sup> WHSQ 2021, *Code of practice: How to manage work health and safety risks*, last updated 23 February 2021, accessed 1 July 2022, <https://www.worksafe.qld.gov.au/laws-and-compliance/codes-of-practice>.

- there is uncertainty about how a hazard may result in injury or illness
- the work activity involves a number of different hazards and there is a lack of understanding about how the hazards may interact with each other to produce new or greater risks
- changes at the workplace occur that may impact on the effectiveness of control measures.

A detailed risk assessment may not be required in certain situations, for example, where there are well known and effective controls that are in use in the particular industry that are suited to the circumstances.

A risk assessment would also not be required when legislation requires a hazard or risk to be controlled in a specific way – these specific requirements must be complied with.

### 3.3.2.3 Persons that must have a safety management plan

It is proposed that the following persons will be required to have, maintain and implement a safety management plan:

- operators of all road-based public passenger services, including:
  - operators of OA services
  - operators of community and courtesy transport services and locally significant event services that may currently be exempt from the requirement to have an authorisation
  - operators of personalised transport services (taxi services and booked hire services), and
- booking services for personalised transport services.

It is not considered appropriate to impose a requirement for a safety management plan on other duty holders (like drivers or registered operators of a vehicle) because they:

- may have less direct control over services to mitigate risks and ensure safety
- are not necessarily involved in the direct provision of services (like some registered operators of the vehicle)
- are not all obligated to actively eliminate or reduce safety risks (drivers are only proposed to have a duty to take reasonable care of themselves and others).

Drivers and the registered operators of a vehicle would not have to proactively prepare a safety management plan but would still have a safety duty.

#### 3.3.2.3.1 Smaller providers

The safety management plan is intended to scale with the size and complexity of operations. Large providers may encounter a greater range of hazards and may need a more comprehensive safety management plan to effectively manage their safety risks. Smaller providers may not have as many risks to manage in their safety management plan.

However, smaller providers do not always have lower risks as the number and types of risks are ultimately a reflection of the specific service a person provides. Also, smaller providers may face challenges in managing risks as they may not possess the same level of expertise or experience within their operation. For example, they may not have the resources to employ dedicated staff specifically trained to oversee the safety of their services.

Although the requirement for a safety management plan would place a burden on these smaller providers, they still have risks associated with their services. All providers are also required to comply with the WHS Act and the proposed approach would broadly be consistent with the requirements on all PCBUs under the WHS Act. Therefore, the additional impost on smaller providers from the requirement for a safety management plan is anticipated to be minimal.

### 3.3.2.4 Obligations in relation to others

It is proposed that a person that is responsible for a safety management plan has obligations to others in relation to their safety management plan. Specifically:

- the safety management plan must be readily accessible to other duty holders like drivers
- there must be consultation with other duty holders in the development and review of the safety management plan. Consultation must be inclusive and timely, and clearly documented

- safety incidents from passengers or the public that are notified to the provider must also inform the development and review of the safety management plan.

Although some small costs are associated with these obligations, particularly consultation, they are considered reasonable in order to ensure safety is considered from a variety of perspectives.

### 3.3.2.5 Review

A safety management plan needs to be reviewed to keep it up to date and relevant. Therefore, it is proposed that the person responsible for developing a safety management plan would need to review it at least annually or on the direction of TMR. The minimum frequency of reviews is not considered to be overly burdensome for industry.

### 3.3.2.6 Penalties and sanctions

It is proposed that an offence of not having, maintaining or implementing a safety management plan, would carry a maximum penalty of 100 penalty units (\$14,375 in 2022-23) for an individual and 1,000 penalty units (\$143,750 in 2022-23) for a corporation. The penalty amounts are within the range of penalties for similar offences under passenger transport legislation in other Australian jurisdictions.

Given it should be a relatively simple matter to determine whether a person has a safety management plan in writing and whether the safety management plan has been reviewed as required, then it is suggested that this is an offence for which a fine can be issued.

Furthermore, action could be taken against a person's authorisation (that is, their OA or BEA) for failing to comply with the requirements related to a safety management plan.

## 3.3.3 Expected impacts of the safety duty and safety management plan

### 3.3.3.1 Costs

#### 3.3.3.1.1 Industry

The costs for industry associated with the safety duty and the safety management plan are intertwined as the safety management plan is the most direct means to comply with the safety duty.

The main costs for industry are therefore associated with the development of a safety management plan and its periodic review. Operational costs associated with implementing the safety management plan also apply, such as the purchasing of equipment and education or training.

The proposed requirement for a safety management plan is designed to be complementary to the requirements under the WHS Act and HVNL. Almost all of the persons that are proposed to be required to develop a safety management plan are already required to comply with the WHS Act or HVNL which impose similar requirements. In addition, many TMR contracted operators also have similar obligations in their service contract. Therefore, all persons should already have developed a safety management plan or similar to manage safety, and there should be no or relatively few costs directly attributable to the safety duty or safety management plan proposal. It is envisaged that operators would need to maintain only one safety management plan, provided it satisfies all requirements.

#### Costs for development and review of the safety management plan

The time to develop the safety management plan will vary depending on the scale and scope of the operation and the expertise available. The level of effort required to prepare the safety management plan will also vary depending on other risk management documents that had been previously prepared by the organisation for other regulatory requirements or business processes.

It is difficult to estimate how much the typical safety management plan would cost to develop. Victoria's Department of Transport completed a Regulatory Impact Statement that assessed their existing risk management plans (referred to as a



‘Management Information System’) and they assumed it would take 25 hours to develop at a cost of \$1,909.<sup>19</sup> This is considered to reflect the upper range that would be experienced in Queensland as Victoria arguably requires a more comprehensive risk management plan.

All operators and booking services will incur the costs associated with the development of a safety management plan. These include approximately 1,258 operators of OA services, 455 booking services for personalised transport services and an unknown number of operators of community transport services, courtesy transport services and locally significant event services.<sup>20</sup> Because these latter operators do not have to be accredited, their numbers are unknown but are expected to be at least several hundred.

The cost of reviewing the safety management plan annually would be incurred by all persons required to have one – but is not expected to be as onerous as the cost to develop one initially. This is also likely to vary depending on the scale and size of the plan. As a reference point, Victoria recently assumed a review would take 10 hours and cost \$763.70.<sup>21</sup>

### Costs of implementing controls

The implementation of the controls identified in the safety management plan are likely to be the costliest element. However, any costs associated with implementing appropriate controls would already be broadly required in order to comply with either the WHS Act or the HVNL. Therefore, these costs are not considered to be directly attributable to the requirement for a safety management plan for passenger transport. Almost all providers would have incurred these costs regardless of this proposal.

### Overall costs

The additional costs attributed to the safety duty and safety management plan are likely to be negligible as these requirements are consistent with a person’s obligations under the WHS Act and the HVNL currently (and their contract). Any costs estimated here are expected to reflect the upper bound of related costs. The extent to which costs may be attributable solely to this proposal is not able to be quantified, but is expected to be minor.

#### 3.3.3.1.2 Government

The proposal poses some administrative costs for government relating to providing information and guidance to industry to develop a safety management plan contextualised to passenger transport. This is not expected to be particularly onerous given the high quality information already produced by Workplace Health and Safety Queensland and passenger transport regulators in other jurisdictions. There may also be minor marginal costs in including the safety management plan in TMR’s current audit process for providers or in undertaking additional investigations.

### 3.3.3.2 Benefits

#### 3.3.3.2.1 Community-wide

The expected benefits of the proposal are to:

- increase the safety of road-based public passenger services, particularly to enable the safe introduction of new technologies and service models
- encourage a safety culture which proactively manages risks and encourages continuous improvement in safety
- promote public confidence in public passenger services.

The overall objective is to prevent and reduce deaths and injuries associated with public passenger services by facilitating better risk and safety management. However, the benefits of proactively managing risks before they become an issue are difficult to quantify.

<sup>19</sup> Department of Transport (Victoria) 2020, *Bus safety regulations 2020: Regulatory impact statement*, page last updated 24 May 2021, accessed 1 July 2022, <https://www.vic.gov.au/regulatory-impact-statements-2020>.

<sup>20</sup> Numbers correct as at 30 June 2022.

<sup>21</sup> Department of Transport (Victoria) 2020, *Bus safety regulations 2020: Regulatory impact statement*, page last updated 24 May 2021, accessed 1 July 2022, <https://www.vic.gov.au/regulatory-impact-statements-2020>.

A systematic review conducted for the Australian Transport Safety Bureau found that incorporating safety management systems into normal business operations does appear to reduce accidents and improve safety. The review concluded that transport organisations that provide an appropriate investment and commitment to a safety management system should receive a positive return on safety. However, it was unclear as to whether any particular elements of a safety management system have a stronger influence on safety. Therefore, it is not clear if the same benefits would be realised from the proposed safety management plan which focuses on hazard identification and risk management but does not include other elements sometimes included in safety management systems.<sup>22</sup>

### 3.3.3.2.2 Industry

For industry, there are likely to be immediate and long term savings of future costs as a result of reducing risks and preventing incidents (for example, reduction in insurance premiums).

The introduction of a safety duty could also present the opportunity to scale back some ‘red tape’ – that is, prescriptive safety requirements currently in passenger transport legislation. These could be managed instead through the safety duty. This would give industry more flexibility in how they manage some risks.

There would still be an expectation that these risks will be managed under the safety duty so far as is reasonably practicable. TMR would also still have a safety assurance role and the ability to monitor and enforce compliance with these risks as part of the safety duty.

An example of a prescriptive safety requirement under legislation that could be repealed and instead managed through a safety duty are the equipment requirements for tourist services provided in small four-wheel drive vehicles. This is discussed further in Chapter 4 of this discussion paper. Other requirements will be reassessed as the legislation is progressively reviewed.

Initially, some operators may need assistance guidance in producing safety management plans. Operators may wish to address this in their responses to this discussion paper.

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<sup>22</sup> MJW Thomas 2011, ‘A systematic review of the effectiveness of safety management systems’, *Transport Safety Report XR-2011-002*, Australian Transport Safety Bureau, page last updated 7 April 2014, accessed 1 July 2022, <https://www.atsb.gov.au/publications/2012/xr-2011-002>.

## 3.4 Questions for stakeholders

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- (12) Do you think we have identified why new safety laws may be required? (Yes / No) If no, what else do we need to know?
- (13) Do you support the proposed changes to passenger transport legislation to:
- (a) introduce a safety duty for providers of all road-based public passenger services? (*Strongly oppose / Oppose / Neutral / Support / Strongly support*)
  - (b) require a safety management plan for operators of all road-based public passenger services and booking services for personalised transport services? (*Strongly oppose / Oppose / Neutral / Support / Strongly support*)
- (14) Do you think:
- (a) the right people have responsibility for the safety duty and safety management plan? (*Yes / No*)
  - (b) it is fair that drivers have a duty to take reasonable care rather than the requirement on other duty holders to ensure safety? (*Yes / No*)
  - (c) the matters to be considered in the safety management plan (hazards, risks, actions to be taken and the person responsible) are appropriate for both small and large operators alike? (*Yes / No*)
  - (d) it is appropriate to have to review your safety management plan at least once a year? (*Yes / No*)
  - (e) it is reasonable for providers of services that are currently exempt from the requirement to have an authorisation to have to comply with the safety duty and safety management plan? (*Yes / No*)
- (15) What impact would a safety duty and safety management plan have on you? If there will be costs or savings, can you estimate how big they could be? Do the estimates provided accurately reflect the likely costs?
- (16) Are the impacts on your business from a safety duty and safety management plan over and above those you currently experience as a result of complying with the WHS Act and/or Heavy Vehicle National Law? (*Yes / No / Not applicable*)
- (17) Is there anything else we should know?
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## 4. Simplifying equipment requirements for four-wheel drive tourism

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**Who would be impacted by the options in this chapter, if adopted?**

- Operators of tourist services provided in small four-wheel drive vehicles who hold OA
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**This chapter describes options for changing legislation to simplify regulatory requirements for four-wheel drive tourism. Through this discussion paper, we are seeking stakeholder feedback on these options before we further develop a position.**

### 4.1 Current state

Passenger transport legislation includes some special requirements for certain services, some of which have been in place for some time. An example is tourist services provided in off-road passenger vehicles (that is, small four-wheel drive vehicles with up to nine seats, including the driver, and off-road capability). These are mainly scenic and adventure tours. Operators of these services must hold OA and the drivers DA.<sup>23</sup>

Passenger transport legislation requires these vehicles carry certain equipment. Operators must ensure the vehicles are fitted with all of the following:

- a fire extinguisher
- a tail shaft guard
- and, for journeys lasting over one day:
  - a winch
  - a first aid kit
  - a Royal Flying Doctor radio or satellite phone.

The equipment requirements have been in place with little change since 1994. If TMR finds the equipment is missing or not in working order, it may impose a fine of up to 20 penalty units (or \$2,875 in 2022-23) and take other action against the operator, including amending, suspending or cancelling an OA.

We have identified that reviewing the equipment requirements for four-wheel drive tourism as an opportunity to modernise and simplify legislation to cut red tape for operators without compromising safety for drivers and passengers.

### 4.2 Challenges

The equipment requirements are intended to improve safety for the driver and passengers using these services. However, prescribing a specific list of equipment in legislation may not be the best way to achieve this outcome. A 'checklist' approach does not incentivise a good safety culture. A good risk management plan will include much more than merely having basic equipment available.

The WHS Act and codes of practice also overlap some of the requirements. Under the WHS Act, a workplace – which includes a vehicle – must have safety and emergency equipment on hand as well as a plan and training in how to use it, including firefighting, first aid and emergency communications equipment.

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<sup>23</sup> Refer section 219 of the Regulation.

Also, changes in vehicle design mean that a tail shaft guard is no longer an essential safety enhancement for all four-wheel drive vehicles. Many modern light vehicles with rear wheel drive (including four-wheel drive) are constructed with independent rear suspension, where the main parts are fixed to the body of the vehicle. This keeps the tail shaft fixed, stable and therefore less vulnerable to breakage. Due to the low likelihood of damage, a tail shaft guard does little overall to improve safety for such vehicles. Stakeholders are already asking TMR for discretion in meeting this requirement.

To support good safety outcomes, legislation should instead encourage operators to comprehensively plan to identify and manage their risk. For existing operators of four-wheel drive tourism services, this may not represent much change in practice. Many if not all operators will already have a plan in place that identifies the risks of their services – such as a vehicle becoming bogged, a fire and a driver or passenger injury – and how these risks will be managed. This is due to requirements in the WHS Act (as discussed in Chapter 3) and the requirement in passenger transport legislation for OA holders to have an incident management plan.

## 4.3 Opportunities – what could be done differently?

TMR is proposing to remove the requirements from passenger transport legislation. This could be done in two ways.

### 4.3.1 Option 1: Remove the equipment requirements from legislation

Under this option, there would no longer be any specific equipment requirements outlined in passenger transport legislation for tourist services provided in small four-wheel drive vehicles. By default, the risks of these services would be managed through the existing obligations of the WHS Act.

A limitation of this approach is that the WHS Act is broadly targeted and its laws and codes of practice are not fully contextualised to the passenger transport industry.

### 4.3.2 Option 2: Remove the equipment requirements from legislation and manage risk through a safety duty

Under this option, there would no longer be any specific equipment requirements outlined in legislation for tourist services provided in off-road passenger vehicles. Instead, risks for these services would be managed through a safety duty, as described in Chapter 3.

If the options in Chapter 1 go ahead, these services may change classification and move to the ‘personalised transport’ side of the framework, where a safety duty already applies.

Under the safety duty requirements, providers would be required to consider the risks of their service, develop a safety management plan and implement it. Practically, this could be done by carrying appropriate safety and emergency equipment. TMR would review safety management plans during audits and check the provider has identified and is managing the risks of providing their service. Due to the unique safety duty in passenger transport legislation, we would also be empowered as the regulator to take action where needed and contribute to an overall compliance effort to improve safety, alongside WHS.

Initially, some operators may need assistance with producing safety management plans. Operators may wish to address this in their responses to this discussion paper.

## 4.4 Questions for stakeholders

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- (18) Does this discussion paper accurately identify and describe the issues affecting the safety of four-wheel drive tourism? If not, what else do we need to know?
- (19) Do you support the option to remove the equipment requirements from:
- (a) passenger transport legislation (*Strongly disagree / Disagree / Neutral / Agree / Strongly agree*)
  - (b) passenger transport legislation and replace them with a safety duty? (*Strongly disagree / Disagree / Neutral / Agree / Strongly agree*)
- (20) Tell us about the impact on your business of the option to:
- (a) remove the equipment requirements from passenger transport legislation
  - (b) remove the equipment requirements from passenger transport legislation and replace them with a safety duty.
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## 5. Safety laws when transporting children to and from school

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### Who would be impacted by the options in this chapter, if adopted?

- Schools and other organisations that operate a service transporting children between school and their home (or other pick-up/drop-off points in the community) on a schedule, and do not currently hold OA and DA
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This chapter describes options for changing legislation to simplify rules for scheduled services transporting children to and from school. Through this discussion paper, we are seeking stakeholder feedback on these options before we further develop a position.

### 5.1 Current state

Most services transporting children between school and their home (or other pick-up/drop-off points in the community) on a schedule are required to have OA and DA and comply with safeguards. But some school scheduled services can also meet the criteria to be considered an exempt community or courtesy transport service (refer **Part A: The regulatory framework for passenger transport**). These services tend to be provided by schools whose students must meet additional enrolment criteria beyond living in the local community. For example, they have been referred to a specialist school because they have found mainstream education difficult.

### 5.2 Challenges

The exemptions were intended to minimise the regulatory burden for certain operators, and apply to some charities and not-for-profits and businesses for whom transport is an incidental part of their operations. It also means these service providers do not have the same obligations in legislation for safety oversight as other operators, beyond the road rules that apply to all road users. Passenger transport legislation currently imposes a general obligation on drivers and operators of OA services to operate a vehicle safely. This includes ensuring a number of safety risks do not occur, for example, the vehicle is not overloaded, standing passengers are not carried in certain circumstance and ensure their drivers are not fatigued. They also are exempt from the requirement to maintain an incident management plan to deal with risks such as fire and injury.

The drivers of these services are also exempt from the requirement for a DA. To obtain a DA, a person must pass checks by TMR that determine a person's suitability to drive a public passenger service. This includes a review of their criminal history, licence status, traffic history and medical fitness. TMR also regularly monitors new criminal charges (which are prescribed in the Act) laid against people who hold a DA. TMR can suspend or cancel a DA if a holder is charged or convicted of an offence relevant to a job in passenger transport. Some serious offences, prescribed in the Act, can disqualify a person from ever holding a DA and working as a driver of a public passenger vehicle.

DA is designed to provide the community with confidence that drivers of public passenger services have the appropriate qualifications and character to perform this important role safely. Without DA, the suitability of people driving a public passenger service will be determined by the organisation's own screening processes. Some of these service providers may require their drivers and other adults in the bus to obtain a Working With Children Check, known as the blue card, but this system and requirements are entirely separate to DA.

This situation means there is inequity among scheduled school services:

- for some services, operators and drivers are required to attain (at a cost) the relevant authorisations and comply with their safety and service requirements. TMR is able to have oversight of the safety of these services and their drivers

- for other services, operators and drivers are not required to hold an authorisation, and no further regulatory safeguards apply. TMR has no oversight of the safety of these services and drivers.

It is unlikely this situation meets community expectations for the safety of these services.

## 5.3 Opportunities – what could be done differently?

It is not clear that the exemptions from regulatory safeguards were intended to apply to some scheduled school services. Therefore, we are proposing two regulatory options that aim to close the gap between school services and improve safeguards for those school services that are currently exempt.

As the operators and drivers of these services do not hold OA and DA requirements, TMR has no visibility of these services. Their number is unknown. We need to know more about these services in order to calculate how the options in this discussion paper will impact on this group. This is why this discussion paper includes some questions about the characteristics of these services.

These options have been considered alongside the options for clarifying how the regulatory framework classifies services outlined in Chapter 1. We will take into account feedback in both sections and continue to consider these interrelationships during subsequent policy development.

This discussion paper is proposing changes only for some exempt services (being services carrying school children between their home and school on a schedule). Rules for services carrying schoolchildren for excursions, and other exempt services, are not being proposed at this time. However, changes for these services may be considered in the future, if there is a case to improve safety.

### 5.3.1 Option 1: Amend legislation to regulate all scheduled school services in the same way

Under this option, the government would amend legislation to provide that services transporting children between their home (or other pick-up/drop-off point in the community) and school cannot be considered an exempt community and/or courtesy transport service. This would mean that all operators must hold the appropriate authorisation for their vehicle and service type, all drivers must hold DA, and both must comply with the safety requirements of these authorisations. If the proposal described in Chapter 3 to implement a safety duty goes ahead, these service providers would also need to comply with a safety duty.

Removing the exemption for these services would ensure the same (or similar) safeguards apply to all school services.

The current exemptions in place for other community and/or courtesy transport services would continue unaffected at this time. However, we may review the exemptions available for these services in the future.

#### 5.3.1.1 Expected impacts

Services transporting children between school and their home that do not currently hold an authorisation for their service would need to obtain these. It is expected that most services would need to obtain OA and all drivers would need to obtain DA. These authorisations incur a fee:

- **OA:** A fee of \$47.65 applies for TMR's initial criminal history check on application and the annual fee applicable for OA for a school service or non-exempt community or courtesy transport service is \$198.70. The OA fee is waived for charitable and community organisations receiving a registration concession<sup>24</sup>
- **DA:** Drivers may hold either a:

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<sup>24</sup> Fees are presented for the 2022-23 financial year. More information is available at <https://www.qld.gov.au/transport/public/operators/fees>.



- **General DA:** A fee of \$47.65 applies for TMR’s initial criminal history check on application. The applicant will also have costs to maintain a medical certificate to commercial standard<sup>25</sup>
- **Restricted DA:** No fees may be payable. TMR absorbs the cost of the criminal history check. The applicant may also have costs associated with obtaining a medical certificate to commercial standard if a medical condition is declared.

Organisations may also have costs in setting up and maintaining administrative systems to ensure they are complying with requirements. Other costs may also be incurred associated with upgrading their service to ensure it meets requirements. The additional obligations may be considered onerous for some organisations

This option also means that all services transporting children between school and their homes would be subject to the same safeguards. There would be a level ‘playing field’ for all services transporting children between school and their homes. TMR would be able to proactively audit all services transporting children between their homes and schools in the same way. Together, TMR and these services meet the community’s expectations that school services are consistently regulated for safety.

### 5.3.2 Option 2: Regulate the risks of exempt school services through a safety duty

This option links to the proposal in Chapter 3 of this discussion paper to introduce a safety duty. The requirement to hold a safety duty would be extended to all public passenger services, including community and courtesy transport services that are exempt from OA.

Unlike in Option 1, there would remain a discrepancy between the regulation of exempt and non-exempt services in terms of specific requirements associated with holding an authorisation. These services would continue to be exempt. However, they would be required to maintain a safety management plan.

A new requirement for a safety duty may not be onerous given service providers are likely following WHS laws. A PCBU has a safety duty under this legislation already. A safety duty covering the transport aspect of their services to students may already be part of ‘business as usual’. The value of having this additional safety duty is that it requires service providers to identify and manage the transport related risks of their service. It also provides a basis for TMR to take action in the event of an incident. We would be able to work with the organisation to amend their safety management plan and reduce the likelihood of future incidents.

#### 5.3.2.1 Expected impacts

This option would mean less change costs for service providers.

It would mean that all scheduled services transporting children between school and their homes would be subject to similar (but not the same) safeguards. TMR would be unable to audit all services transporting children between their homes and schools in the same way. However, in the event of an incident, we could request a copy of a provider’s safety management plan for review.

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<sup>25</sup> Fees are presented for the 2022-23 financial year. More information is available at <https://www.qld.gov.au/transport/public/operators/fees>.

## 5.4 Questions for stakeholders

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- (21) Do you support:
- (a) requiring Operator Accreditation (OA) and Driver Authorisation (DA) for all school scheduled services?  
(*Strongly disagree / Disagree / Neutral / Agree / Strongly agree*)
  - (b) requiring exempt school scheduled services to comply with a safety duty? (*Strongly disagree / Disagree / Neutral / Agree / Strongly agree*)
- (22) If your organisation provides a service that transports children between school and their home (or other pick up/drop-off point in the community) on schooldays, and does not have Operator Accreditation and Driver Authorisation:
- (a) describe your service, including how safety risks are managed
  - (b) describe the impact the requirement to hold Operator Accreditation and Driver Authorisation would have on your service and organisation.
- (23) Do you think the community and courtesy services that are currently exempt from the requirement to hold Operator Accreditation and Driver Authorisation should continue to be exempt?
-

## PART B: Market entry restrictions

### What are market entry restrictions?

The Act was enacted on the foundation of providing the best possible public passenger transport at a reasonable cost to the community and government, keeping government regulation to a minimum.

One form of regulation applied by the department under the Act is to restrict market entry and regulate the supply of public passenger services in some areas of Queensland. This limits the competition within a market. Market entry restrictions are recognised by the Act as potentially being needed in the public interest.

Before market entry restrictions can be introduced, the Minister must be of the opinion that the following criteria are met or can be substantially met:

- the level of services would be greater than the level that would otherwise be provided
- access to public passenger transport would be greater than would otherwise be achieved
- service innovation would be greater than would otherwise be achieved
- the particular public passenger services would better meet the government’s social justice objectives at a lower cost to the government than would otherwise be achieved.<sup>26</sup>

This is often referred to as the market entry test. In other words, without market entry restrictions, services may not be delivered at the necessary frequency, quality or cost to ensure the public interest is met.

### Why do they exist?

Public transport is key to enabling personal mobility necessary to access health and education, shops and services and social engagement which are all part of our quality of life. A primary objective of government investment in public transport is on community social grounds to provide an attractive and affordable alternative means of transport for people without ready access to private transport.

Services which are provided to any member of the public and for multiple purposes of connecting communities and enabling access to jobs, goods, services and recreational activities, are often candidates for market restrictions. In contrast, passenger transport services provided to more specific customer cohorts (for example, community or courtesy transport services) or which are provided for one specific purpose (for example travel to a football game or an attraction) are not subject to market entry restrictions. These services can operate in an open market where competition is not regulated.

Market entry restrictions can be applied to both government funded and unfunded public transport. The policy behind restricting competition in areas where TMR subsidises a service is that TMR is then able to plan integrated public transport networks that extend to urban fringes and operate over a broad span of hours. Profitable routes and times cross-subsidise the non-profitable services by exploiting economies of scale and scope. Without market entry restrictions, commercial operators may only service profitable routes at profitable times to the detriment of overall service levels, access, innovation and the government’s social justice objectives.

Where unfunded services operate, market entry restrictions can apply when there is an inefficient allocation of passenger transport services in a free market. This is typically evident in markets which experience weakness or irregularity of demand. TMR may employ market entry restrictions to afford operators protection from competition (to sustain their viability) in exchange for providing suitable service coverage and minimum service levels. For example, the operator is asked to meet certain service levels which include providing services at times/locations that may not be profitable (provide services from 5am to 10pm every day even though services are only profitable on weekdays at peak times). The Brisbane airport bus service is an example of this. Market entry restrictions under this scenario are less applied.

National Competition Policy requires that jurisdictions review their criteria and the market entry settings periodically to ensure they are not unnecessarily restricting competition. In Queensland’s case this policy still stands up to scrutiny. Continued population growth in the urban fringes as signalled in *ShapingSEQ* and other Regional Plans, make it difficult

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<sup>26</sup> Refer section 36 of the Act.

to provide integrated services across such a large footprint. The model of using market entry restrictions to cross-subsidise profitable and non-profitable routes and times, and the integration this enables, provide significant benefits to customers in terms of improved access and mobility. Government intervention is still at a lesser level than many other jurisdictions which restrict entry as a default position.

## What types of services are we talking about?

This discussion paper considers market entry restrictions for general route services and school services. It will outline some emerging shared services where we would welcome views on whether market entry restrictions should be used.

The personalised transport reforms opened up the market for personalised transport. There is no cap on the number of booked hire licences that can be issued. Market entry settings for taxi licences remain and any changes will be considered separately to this discussion paper.

## How do market entry restrictions work?

Market entry restrictions for general route services and school services operate through the use of service contracts and declarations.

The service contracting framework described in the Act provides a licence to operate as well as describing service and performance criteria. In other words, the **service contract** is both the permission to operate and the commercial relationship with the department.

Under the Act, a **declaration** (which is an administrative process) that a service contract or written agreement is required to provide a certain service for a particular area or route is used to restrict where services can operate. By declaring an area or route, only operators who have a service contract or written agreement with the department to provide a public passenger service described in the declaration can operate in that area or on that route. It is an offence under TOPTA to provide a service in declared areas/routes without a service contract (or other written agreement).

The Act sets out processes for the entering into, amendment of and renewal of service contracts which give existing operators or contractors the right to make the first offer for a contract, subject to the offeror having operated services to a satisfactory level. The detailed service contracting provisions could be modernised to improve administrative costs for both industry and government. This may be the subject of further review work.

## The future of market entry restrictions

While patronage has suffered due to COVID-19 and the resulting changes to working patterns, patronage prior to the pandemic was rising. Customer satisfaction levels for services delivered through a service contract remain high.<sup>27</sup> The department's aspirations to improve further on patronage and satisfaction are set out in *Creating Better Connections for Queenslanders*.

Over the past 25 years, Queensland's population has increased significantly with the development footprint of many towns and cities expanding. These trends are expected to continue, particularly in South East Queensland.

Subsidies and the associated market entry restrictions have been effective in ensuring that more and higher quality services are available in Queensland communities than would exist otherwise. Accordingly, market entry restrictions will play a crucial and ongoing role as a tool of passenger transport regulation into the future.

The passenger transport market has also evolved significantly during this period. The development of connected technology has provided new ways for the passenger transport market to provide innovative transport options, including through sharing flexible services.

*Creating Better Connections for Queenslanders* describes how we can improve end to end journeys to make them more seamless. TMR is engaged in pilots of Mobility as a Service which has passenger transport at its core but uses many other types of transport to achieve door to door journeys. Personalised transport is an important component but shared

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<sup>27</sup> As at June 2022, for services in South East Queensland, customer satisfaction was rated 4.1 out of 5 for ferry, bus, tram and train services, and 4.18 for bus services only. Refer *Translink Customer Experience Survey Monthly Snapshot, June 2022*, page last updated 12 August 2022, accessed 26 August 2022, <https://www.publications.qld.gov.au/dataset/translink-public-transport-performance-snapshots>.

transport options are more efficient and more affordable. *Creating Better Connections for Queenslanders* signals that TMR will get the regulatory settings right to allow more market innovation.

To support these objectives, this discussion paper outlines options for change in the services to which market entry restrictions apply and ideas to streamline the administrative process of declarations and the areas where market entry restrictions can apply.

## 6. Clearer rules for shared flexible services

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**Who would be impacted by the options in this chapter, if adopted?**

- Operators of shared flexible services
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**This chapter describes options for changing legislation to modernise and clarify rules for shared flexible services. Through this discussion paper, we are seeking stakeholder feedback on these options before we further develop a position.**

### 6.1 Current state

Under our current arrangements:

- market entry restrictions are often used to restrict general route services and school services, which are open to the public and enable movement between communities, jobs, education and leisure, often on a regular route
- services provided to a specific cohort are not generally restricted
- flexible services, such as booked hire services are not subject to market entry restrictions.

However, changes in technology have led to the development of shared flexible services which do not fit neatly into our current regulatory arrangements.

A shared flexible service is a public passenger service provided to any passengers who share a ride. They are characterised by some flexible delivery element, such as a flexible route, flexible timetable and/or flexible stops. It does not include services provided for one specific purpose, such as a tourist service, accommodation transfer service or school service.

Shared flexible services are marketed under many names, including micro transit, ride-pooling, demand responsive transport, on demand transport, dial and ride and route deviation services. Some are funded by government, such as Gold Coast On Demand Transport or Logan Demand Responsive Transport, and others are fully commercial, such as Didi Share and Uber Pool. These services have not been operating since the start of the COVID-19 pandemic.

How any service is classified in legislation determines whether market entry restrictions apply, in this case, whether a service contract is required. This is determined by whether the operator is operating a general route service or personalised transport service:

- if the service meets the criteria in legislation to be considered a general route service, and the service operates in a declared service contract area, the operator must have a service contract
- if the service meets the criteria in legislation to be considered a personalised transport service, the operator does not require a service contract (but must still comply with the other requirements of the Act).

This chapter considers all known shared flexible services and whether market entry restrictions should be applied to these services into the future. This analysis will also involve examining the definition of a 'general route service' and will assist in determining whether changes to this definition (or a scheduled service) and its application of market entry restrictions is appropriate for the future passenger transport marketplace.

### 6.2 Challenges

Shared flexible services are an emerging market. Other Australian jurisdictions are also considering the best way to regulate these services.

It can be difficult to clearly classify some shared flexible services as general route services or personalised transport services. In some cases, we have had to seek legal advice to establish a clear position. The lack of clarity has led to some inequity in the way that market entry restrictions have been applied to shared flexible services that are currently operating. For example, when TMR has funded a shared flexible service it has considered the service as a general route service and issued a service contract. However, when Didi Share was operating prior to the pandemic, the service was considered as booked hire and not service contract provided, an interim position TMR formed, while further analysis about the service and its impacts were explored. Moving forward a consistent and equitable position is needed.

Operators need certainty about what characteristics will result in a shared flexible service being classified as a general route service or a personalised transport service. New business models often need to flex and evolve in response to customer demand, and the regulatory framework needs to provide clear parameters within which industry can innovate.

The market entry test requires an assessment needs to be made about whether shared flexible transport services operating in an open market would be in the public's best interest or whether they would adversely impact on existing general route services in an area to the detriment of overall service levels and social, economic and environmental benefits.

It is widely recognised that traditional fixed mass transit is not as effective in areas which have low population density, dispersed development and restrictive road network layouts or street widths. In these areas, where mass transit services are absent, then non-subsidised personalised transport has been the mainstay passenger transport service available for the public. However, shared flexible services potentially provide a more affordable and efficient mobility option, and government funded services such as Logan DRT and the new On Demand Transport service on the Gold Coast have demonstrated how these services can complement the network. Emerging shared flexible transport providers are typically operating smaller fleets that carry fewer than 12 passengers, which lend themselves better to some of these scenarios where traditional mass transit is not as effective.

However, shared flexible transport services can interfere and impact on the existing network of public transport, where they are competing for customers. This risk is exacerbated if there are no market restrictions. In reality these commercial services are only likely to operate at profitable times and on profitable routes, which undermines the ability to cross-subsidise services, to the detriment of those who rely on public transport and of the taxpayers who fund it.

On balance, there is little justification for restricting this emerging market. The opportunities below focus on how to redefine what is considered a general route service where a service contract should apply.

## 6.3 Opportunities – what could be done differently?

Two options are proposed to change the definition of a general route service. The objective of each is to provide clarity and remove market entry barriers for shared flexible services where this will open the market for innovation and encourage greater availability of commercial solutions. This will support the priorities in *Creating Better Connections for Queenslanders*. Other options which would result in market entry restrictions for a broader range of services were considered and discarded, primarily because they did not meet the market entry test and there was insufficient justification for restricting the market.

The options in this section have been designed to try to delineate between public transport buses and shared flexible services, by using route characteristics and by using the size of the vehicle. We want to hear how changing the definition could impact on other types of passenger transport services.

No changes to market entry restrictions are proposed for existing personalised transport services through this paper.

Passenger transport services that are provided for one specific purpose, such as tourist services, most accommodation transfer services and school services, are not subject to market entry restrictions. These services can operate in an open, competitive market. No change to market entry restrictions is proposed for these services either.

These options have been considered alongside the options for clarifying how the regulatory framework classifies services outlined in Chapter 1. We will take into account feedback in both sections and continue to consider these interrelationships during subsequent policy development.

### 6.3.1 Option 1: The nature of the route (fixed or flexible) determines whether market entry restrictions apply

In this option:

- all services provided to the public (or substantial part of the public) and operating on a flexible route would be able to operate commercially without the requirement of a service contract with TMR as permission to operate
- services operating on a fixed, regular route, including route deviation services, would have market entry restrictions applied
- these arrangements would apply regardless of the size of the vehicle used to provide the service.

This option would mean that fully flexible services that do not have a regular route, timetable or regular stops, such as Didi Share or Uber Pool, and services operating to or from fixed origins or destinations, such as on demand transport, would not need a service contract to operate. These services could compete with mass transit and other contracted services within a declared area or route.

The option allows more diverse services to operate within a market without being subject to market entry restrictions.

**What would constitute a fixed route?** Routes can be fixed or flexible. A fixed route may have pre-set stops and runs at regular intervals. It would include services that are:

- conducted on a route in accordance with a timetable for the service
- conducted on a route that forms a circle or loop (commonly called a ‘loop service’)
- conducted on a continuous basis between two points (commonly called a ‘shuttle service’)
- under which the vehicle used may, at the request of individual passengers, deviate from the usual route from time to time (commonly called a ‘route deviation service’).

A service that is not a fixed route is a flexible route. The challenges with using regular route to classify services are likely to be exacerbated as technology allows for more flexibility and tailoring of services to individual preferences. Therefore, this option may need to be revisited as services evolve.

Under this option, TMR would ensure its ability to contract any route service, fixed or flexible.

#### 6.3.1.1 Expected impacts

This option provides opportunities for incumbent general route service and personalised transport operators to diversify their services. Innovative and responsive services may enter the market, providing customers with greater choice and increased speed to market. There are fewer barriers to entry and more opportunities to trial new services, for the benefit of customers. However, the innovation/agility of the business model may be constrained by a route based definition.

While this option offers greater potential for shared flexible services to compete with fixed route services, It also maintains some ambiguity in determining what is a fixed route, particularly in relation to route deviation.

### 6.3.2 Option 2: The number of seats in the vehicle determines whether market entry restrictions would apply

Under this option, the size of the vehicle used to provide the service would determine whether market entry restrictions would apply. Emerging shared flexible transport providers are typically operating in small vehicles, which lend themselves better to some of these scenarios where traditional public transport is not as effective or not available.

This could happen in one of two ways, based on the number of seats:

- **Option 2A: Nine-seat threshold**

Any fixed and flexible service provided to the public (or substantial part of the public) and operating in a vehicle with nine seats or fewer, including the driver, would not have market entry restrictions applied. These services would be able to operate commercially as the requirement for a service contract with TMR (as permission to operate) would no longer be applicable.



- **Option 2B: 12-seat threshold**

Any fixed and flexible service provided to the public (or substantial part of the public) and operating in a vehicle with 12 seats or fewer, including the driver, would not have market entry restrictions applied. These services would be able to operate commercially as the requirement for a service contract with TMR (as permission to operate) would no longer be applicable.

Under either Option 2A or 2B, TMR would ensure its ability to contract with and provide funding to any route service, in a small or large vehicle, giving us the ability to choose the most appropriate solution for any location.

Vehicle seating capacity is proposed because the end state is simple to understand and unambiguous. The two seating capacities outlined here are the same as those proposed in Chapter 1 and align with current definitions, however the rationale for choosing these as a market entry threshold are different.

The size of the vehicle obviously impacts the degree to which sharing is possible, and the potential cost savings for customers, which have impacts for the viability of a shared flexible service. Analysis will also consider the competition effects for public transport. However, regardless of the favoured seating threshold, both options would open up a proportion of the industry that is currently in an ambiguous state.

These options have been considered alongside the options for clarifying how the regulatory framework classifies service which are outlined in Chapter 1. We will take into account feedback in both sections and continue to consider these interrelationships during subsequent policy development.

### 6.3.2.1 Expected impacts

This option is unambiguous and is likely to be more future proof.

It opens up the market for shared flexible (and fixed route) services in a smaller vehicle, as a service contract is no longer required. For example, services operating in small vehicles (services similar to Didi Share and Uber Pool) can compete with other contracted services.

This option applies market entry restrictions according to vehicle size rather than service characteristics and should function well in the future to capture new service models. It also allows for innovation and diversity as operators can provide small passenger vehicle services without being subject to market entry restrictions. This could encourage more services entering the market

It may also provide opportunities for incumbent operators of general route services and personalised transport services to diversify their services and explore other opportunities. There could be increased speed to market with fewer barriers to entry and more opportunities to trial new services.

## 6.4 Questions for stakeholders

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- (25) Do you think we have identified the right issues and impacts for shared flexible services? If not, what else do we need to know?
- (26) Do you support these options?
- (a) Option 1: The nature of the route (fixed or flexible) determines whether market entry restrictions apply (*Strongly disagree / Disagree / Neutral / Agree / Strongly agree*)
  - (b) Option 2A: Nine-seat threshold for market entry restrictions (*Strongly disagree / Disagree / Neutral / Agree / Strongly agree*)
  - (c) Option 2B: 12-seat threshold for market entry restrictions (*Strongly disagree / Disagree / Neutral / Agree / Strongly agree*)
- (27) What impact both positive and negative could the options have? If you are planning to expand or offer new services, how would the options affect these plans?
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## 7. Simplifying and updating rules about market entry restrictions

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### Who would be impacted by the ideas in this chapter, if adopted?

- Operators of OA services
  - Operators of school services
  - Operators that hold a TMR service contract
- 

This chapter describes ideas for changes to legislation and procedures to simplify and future-proof how market entry restrictions are administered. Through this discussion paper, we are seeking stakeholder feedback to help us further develop these ideas.

### 7.1 Current state

Market entry restrictions can be applied to types of public passenger services identified in the Regulation. Each of these different service types will have a different set of criteria for which the restriction can apply.

For general route services, market entry restrictions can only be imposed where one or more of the following criteria, set out in legislation, have been met:

- cities and towns with a population of more than 7,500
- routes for distances not more than 40 kilometres between cities or towns each with a population of more than 7,500
- routes for distances not more than 40 kilometres between a village and a city or town if the village has a population of more than 500 and the city or town has a population of more than 7,500.

In addition, market entry restrictions can also be applied in certain specific locations in the Whitsunday region (discussed further below).<sup>28</sup>

In some locations in South East Queensland, additional market entry restrictions are imposed on services that operate within the Integrated Mass Transit Area (IMTA), which is prescribed in the Act. This enables different types of services to be integrated into the Translink ticketing and fare structure.

In the personalised transport side of the framework, there is no cap on the number of booked hire licences that can be issued. Market entry settings for taxi licences remain and any changes will be considered separately to this discussion paper.

Market entry restrictions are not automatically mandated once the criteria are met. Before market entry restrictions apply, TMR must first 'declare' the exact location and type of services where these restrictions apply.

This process of 'declaring' is an administrative and consultative process. TMR must first review local market conditions to determine whether market entry restrictions are required and in the public interest. TMR is required to consult with any affected operators in locations where TMR is proposing to introduce or amend a declared service contract area, as proposed changes could have a negative impact on existing operators. The resulting declared service areas are then published<sup>29</sup>.

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<sup>28</sup> These areas are in legislation and include: Airlie Beach, Cannonvale, Proserpine, Shute Harbour, Shute Haven and the routes between them, and routes between Proserpine and Proserpine Airport. Refer Schedule 1 of the Regulation.

<sup>29</sup> TMR maintains a full list of declared service contract areas on its website at <https://www.tmr.qld.gov.au/Travel-and-transport/Public-transport/Declared-service-contract-areas.aspx>.

Other Australian jurisdictions also impose market entry restrictions on their passenger transport market, but they operate differently. Most other jurisdictions impose market entry restrictions across the entirety of the state. This means certain service types are required to obtain a permit or service contract to operate the service regardless of where they are located. This reduces complexity, as these jurisdictions do not have to introduce declared service contract areas. However, it reduces flexibility, particularly in areas where there may not be a strong need for market entry restrictions. It also may increase red tape, as all services, no matter where they are located, will likely need a contract or permit unless they are automatically exempted.

## 7.2 Challenges

### **TMR cannot easily contract new services in new geographical areas**

Queensland's population is currently 5.3 million, growing faster than the national average and is expected to reach at least 6 million people by 2032. As Queensland's population continues to grow, additional transport options are needed in newly developing areas. Often, these locations are based outside of the border of existing declared service contract areas or in new high-growth areas where no declared service contract area exists.

South East Queensland is particularly affected by these issues. The local government areas projected to experience the most significant population growth are those on the fringe of the capital city area: Ipswich, Scenic Rim, Logan, the Sunshine and Gold Coasts and Moreton Bay.

Services that operate outside of a declared service contract area cannot be easily incorporated into the integrated Translink network. As population growth is occurring on the outer edges of existing declared service contract areas, or in rapidly growing locations that are not yet located inside a declared service contract area, frequent amendments to these declared service contract areas would be required to ensure that we can provide adequate passenger transport options where market failures exist and to integrate these services into the Translink network.

### **Criteria outdated**

The 7500/500 population criteria have not been reviewed since the establishment of the first iteration of the Regulation. These population metrics were set at a point in time (in 1995) and did not take into account future population growth. No other jurisdiction in Australia imposes similar population-based requirements.

The phrasing of the criteria notes that the location must meet the 7500/500 population threshold and be classified as a 'village', 'town' or 'city'. This terminology is outdated, and the terms are not defined in legislation which leads to queries. This causes further delays and costs during the development of the declaration.

The Regulation identifies specific locations in the Whitsunday region identified as being exempt from the criteria, as mentioned above, and no reasons for this are provided. They are believed to be locations where support for the tourism industry is warranted, but these might benefit from review alongside the population criteria.

### **Arrangements do not incentivise innovation**

While there has been rapid, technology-enabled evolution in passenger transport services in recent years, rules about market entry may deter the emergence of new innovative solutions and service delivery models in these areas.

Where TMR has entered into a service contract with an operator for a contract term (of no more than seven years) in a declared area, new commercial general route services are unlikely to be introduced during that period. There are few incentives for the existing operator to innovate during the term of the contract, as competition is restricted inside these markets.

### **Complexity and inconsistency**

Market entry restrictions can be difficult to navigate. The rules are technical and use jargon. Also, as declared service contract areas operate independently from each other, the terminology is not consistent across all areas in Queensland.

While TMR takes care in ensuring that the information on declared service contract areas is accurate and available, the current mapping tools used to provide information on the TMR website can be difficult to interpret. Operators may find it difficult to determine whether their service operates inside or outside the boundary of a declared service contract area.

In some instances, passenger transport stakeholders need to seek independent advice or contact TMR directly to determine the impact on their proposed service.

### **Administrative burden**

The time and resources required to undertake declarations are significant. Internal costs for this process depend on the complexity of the proposal but are often proportionally significant when compared to the contracted value of the service change.

Current policy is to amend declared areas as needed. As the population continues to increase, incremental declarations are likely to increase creating further administrative burden for the department and for those responding to consultations.

Changes to some general route services can be difficult to pre-identify before the need arises. Specifically, minor modifications to school service routes are often required and are unlikely to be identified until after the school year has commenced.

## **7.3 Opportunities – what could be done differently?**

We are considering modernising market entry restrictions. It is important for us to understand the underlying market conditions before any changes can be recommended.

TMR seeks feedback about how to best determine the impacts that changes to rules about market entry will have on the passenger transport market, and to ensure that the best available passenger transport service is accessible for customers across Queensland.

### **7.3.1 Idea 1: Update phrasing and publishing for all declared service contract areas in Queensland**

Under this approach, TMR would review the language that is currently used in the declared service contract areas in Queensland to make the phrasing easier to understand and to remove unnecessary jargon. Once completed, TMR will consider repealing all existing declared service contract areas and replace them with the new, easy-to-understand terminology.

As a result, all declared service contract areas will use consistent phrasing across Queensland. It will provide an opportunity for TMR to improve how the declared service contract areas are published, particularly improvements on the mapping of declared service contract areas.

### **7.3.2 Idea 2: Consider a South East Queensland declared service area**

Under this approach, TMR could consider implementing similar market entry models that are applied in other jurisdictions, including options to introduce broader geographical boundaries for existing declared service contract areas. This could eliminate the need for incremental changes. In particular, to better integrate different service types into the Translink network, options could be investigated to create a declared service contract area to encompass all of South East Queensland. This would create a single declared service contract area to encompass the boundaries of the following local government areas:

- Brisbane City Council
- Redland City Council
- Ipswich City Council
- Lockyer Valley Regional Council
- Logan City Council
- Moreton Bay Regional Council
- Scenic Rim Regional Council
- Somerset Regional Council

- Sunshine Coast Regional Council
- Noosa Shire Council
- Toowoomba Regional Council.

The implementation of this option may create both positive and negative impacts to how public passenger services can operate, particularly in South East Queensland.

### 7.3.3 Idea 3: Amending the criteria for when declared service contract areas can be introduced

The current population criteria used to establish market entry restrictions may no longer be fit for purpose given recent population growth trends. TMR could review these criteria to better understand its relevance given current conditions and investigate options to allow TMR to provide improved public transport options in newly developing high-growth areas.

## 7.4 Questions for stakeholders

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- (28) Do declared service contract areas create any other issues that impact the operation of your service that the Department of Transport and Main Roads (TMR) have not identified?
- (29) Do you support:
- updates to the phrasing and publishing for all declared service contract areas? *(Yes / No / Unsure)*
  - the introduction of a broad declared service contract area in South East Queensland? *(Yes / No / Unsure)*
  - amendments to the population criteria that allow TMR to introduce declared service contract areas? *(Yes / No / Unsure)*
- (30) Taking these options in account, what are the impacts (both positive and negative) that these options will have on your service?
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# Have your say

## How can I have my say?

This discussion paper is public and anyone can provide feedback. We are particularly interested in hearing from stakeholders who would be directly impacted by the options, proposals and ideas we are presenting. You can find a list of these stakeholders at the beginning of each chapter.

Each chapter includes specific questions. You can respond to the questions on the Queensland Government's Get Involved portal at [www.getinvolved.qld.gov.au](http://www.getinvolved.qld.gov.au) by clicking on 'Legislation changes to support *Creating Better Connections for Queenslanders*'. The consultation closing date is on the Get Involved page.

You can also contact us directly and/or make a submission at [regulatorysettings@tmr.qld.gov.au](mailto:regulatorysettings@tmr.qld.gov.au).

In your submission, you may wish to address the following:

- do you think we have identified the right issues and impacts? If not, what else do we need to know?
- what impact could these proposals have on you and/or your business or services – both positive and negative?
- do you support the options in the paper?

Please also answer the questions at the end of this paper to tell us more about you and your service.

A Plain English version of this discussion paper is also available on the Get Involved portal.

## What will happen next?

We will review all feedback received and consider it as part of our policy development. We may consult further with affected stakeholders to better understand the issues and impacts, as needed. Importantly, some chapters have options that impact on options presented in other chapters. We will continue to consider these interrelationships during subsequent policy development.

If analysis suggests changes are justified, we will present options for government consideration. If legislation changes are needed, implementation can take more than a year. We will communicate to stakeholders about plans for change and updates on progress.

## Questions about you and your business

(1) Who are you responding on behalf of:

- (a) Individual
- (b) Company or organisation (provide name)
- (c) Peak or representative body (provide name)
- (d) Other (please specify)

(2) Are you a: (note: able to choose multiple)

- (a) Booking entity
- (b) Customer (including parents of customers)
- (c) Driver
- (d) Licence Holder (Taxi Service Licence, Limousine Licence, Booked Hire Service Licence)
- (e) Looking to provide a public passenger transport service in the future?
- (f) Operator
- (g) Service contract holder
- (h) Other (please specify)

(3) Do you currently have:

- (a) Driver Authorisation (*Yes / No / Not applicable*) If yes, tell us what driver authorisation type – BHTX, General, Restricted, Don't know
  - (b) Operator Accreditation (*Yes / No / Not applicable*) If yes, please list all your Operator Accreditation categories
  - (c) A personalised transport licence (*Yes / No / Not applicable*) If yes, please select which ones from the following list: Taxi Service Licence, Limousine Licence, Booked Hire Service Licence
  - (d) Booking Entity Authorisation (*Yes / No / Not applicable*)
  - (e) A service contract with TMR (*Yes / No / Not applicable*) If yes, tell us what type, if known – for example, Prescribed School Service Contract
- (4) Fleet and company/organisation:
- (a) Can you tell us the number of vehicles in your fleet? (specify the number)
  - (b) Does your fleet consist of (tick all that apply):
    - (i) vehicles that have up to and including 9 seats (including the driver's seat)
    - (ii) vehicles that have 10 to 12 seats (including the driver's seat)
    - (iii) vehicles that have more than 12 seats (including the driver's seat)
- (5) Do you consider your organisation to be:
- (a) Small
  - (b) Medium
  - (c) Large
- (6) Do you provide services:
- (a) On a regular route
  - (b) Where the customer determines the origin or destination and route
  - (c) Other – please describe.
- (7) Are your customers (able to choose multiple):
- (a) the general public
  - (b) school students
  - (c) targeted groups (for example, people with disability, residents of an aged or respite care facility, customers of your business, children enrolled in a childcare centre) – please specify
  - (d) Other – please specify
- (8) Where do you provide services:
- (a) South East Queensland
  - (b) Regional Queensland (please specify)
  - (c) Other (for example, another state)
- (9) Are your services (able to choose multiple):
- (a) Funded by the Department of Transport and Main Roads
  - (b) Funded by another part of government (State, Federal or Local)
  - (c) Funded by a charity
  - (d) Fully commercial (without funding)
  - (e) Other