

Commercial Passenger Vehicle Industry Regulations 2018

Regulatory Impact Statement

Executive Summary

The government has undertaken major reforms to the commercial passenger vehicle industry. The reforms will drive better services, a safer and more accountable industry and cheaper fares. The reforms were implemented through two pieces of legislation, the *Commercial Passenger Vehicle Industry Act 2017* (CPVI Act) and the *Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017*. The new legislation replaces the existing law governing the commercial passenger vehicle industry under the *Transport (Compliance and Miscellaneous) Act 1983*.

The CPVI Act provides the Minister for Public Transport with the power to recommend to the Governor in Council to make regulations in relation to the commercial passenger vehicle industry. Transport for Victoria (TfV) has prepared this Regulatory Impact Statement (RIS) to inform consideration of the exposure drafts of a new set of regulations to be made under the CPVI Act. This RIS also considers the merits of changes to the Road Safety Road Rules which are consequential to the commercial passenger vehicle reforms.

The proposed draft regulations, the Commercial Passenger Vehicle Industry Regulations 2018 (the proposed Regulations), will prescribe safety and other operational requirements for commercial passenger vehicle services and the vehicles used to provide those services, and establish consumer protections for the users of those services.

The proposed amendments to the Road Safety Road Rules 2017 (the proposed Rules), clarify the application of the Road Rules to the commercial passenger vehicle industry following the enactment of the CPVI Act.

The objective of the proposed Regulations is to:

- contribute to the achievement of high levels of passenger and driver safety in the commercial passenger vehicle industry
- ensure that transactions undertaken in the market for commercial passenger vehicle services are transparent
- reduce information barriers between commercial passenger vehicle service providers and consumers of those services
- ensure that regulatory costs are minimised, consistent with the need to ensure that the above objectives are met.

In developing the regulations, TfV has considered the requirements imposed in the current Regulations and whether the requirements should be retained, modified or removed. In addition, TfV has considered whether new requirements should be imposed on the industry, reflecting the new focus of the legislation (e.g. the safety of commercial passenger vehicle services through the safety duties scheme). TfV has developed the exposure draft of the proposed Regulations which are proposed to be made. In addition to the exposure draft of the Regulations, TfV has considered further proposals which are not included in the Regulations and TfV is seeking further information and feedback on these proposals during the public comment period. TfV will make a final decision in relation to these proposals before the proposed Regulations are made.

The release of the exposure draft of the proposed Regulations, the proposed Rules and this RIS is intended to provide the community and the industry to have their say. You are invited to make written submission to TfV by email or by post (refer to section 1.9 for details). The public comment period closes on 27 April 2018. The RIS includes specific stakeholder questions for which TfV is seeking feedback. In addition, TfV encourages feedback and submission on all aspects of the proposed Regulations, proposed Rules and the RIS.

Why are regulations needed? (See Chapter 2 for further discussion)

Under the CPVI Act, there is no longer regulation of vehicles licensed as ‘taxis’ or ‘hire cars’, instead commercial transport of passengers in motor vehicles is regulated generally as a ‘commercial passenger vehicle service’. Vehicles used to provide commercial passenger vehicle services may be registered as a single category of commercial passenger vehicle. While the legislation does not differentiate between different type of commercial passenger vehicle services, regulations can be made to address problems with different sub-categories of services. The problems, that may give rise to the need for the regulation under the new legislative framework, are:

- the nature of unbooked commercial passenger vehicle services
- the safety of services
- vulnerable users of commercial passenger vehicle services.

The nature of unbooked commercial passenger vehicle services

There are differences in the risks and problems between types of commercial passenger vehicle services, specifically for unbooked (services procured from a rank or hailed from the street) and booked services.

For unbooked services, services are procured in situations where the consumer has limited opportunity to make choices between competitors. This could be due to a lack of availability of services which is dependent on the time of the week the customer is trying to travel, or the availability of vehicles in the near vicinity and this may be exploited by the driver or the passenger.

In addition, unbooked services are typically conducted such that there is usually limited information exchanged between the passenger and the driver. Accordingly, there is a degree of anonymity in the transaction. Moreover, in the market for unbooked services, there may be limited scope for repeated transactions and customers and service providers may not form ongoing relationships. This may limit the incentives for service providers and drivers to provide a good service.

For these reasons, TfV is recommending imposing additional requirements on vehicles used to provide unbooked services.

Regulating for the safety but not the quality of the service

Under the previous model of commercial passenger vehicle service regulation, new market participants were restricted from entering the market to provide services. Effectively, this lack of competition gave rise to service problems, which successive governments attempted to address through regulation. TfV considers that the competitive setting for the market for commercial passenger vehicle services is now sufficient to no longer warrant heavy-handed service quality regulation. For this reason, there are range of current regulations which are proposed not to be remade in the proposed Regulations (see section 8.2 for further discussion of these regulations).

With the changes to vehicle licensing and fares, service providers have more flexibility in the type of services that may be offered and how they are priced. To support this new system of fare setting, there is merit in considering the extent of information flow between service providers and consumers, especially in relation to the fare for the services. This is further considered in Chapter 4 of this RIS.

The safety of the service also forms part of the service offering. Safety regulation can be justified on the basis of the external impact of a safety incident or an under appreciation of risk causing individuals to engage in more risky behaviour. Under the new regulatory framework, safety is regulated through a principle-based safety duties scheme which is comprehensive in its coverage. This RIS considers whether any further safety requirements are needed to be prescribed in regulation to support the safety scheme provided for in the primary legislation. This is further discussed in Chapter 3.

Vulnerable users

Some users of commercial passenger vehicle services are reliant on those services for mobility. This includes users with mobility issues and tourists. Regulations could assist these users in accessing the service and ensuring a safe service is provided.

What are the requirements of the Act that would apply in the absence of the regulations?

There are a range of requirements imposed on industry participants under the CPVI Act. The following requirements apply:

- All drivers of commercial passenger vehicles are required to hold a driver accreditation. To gain accreditation, the driver must pass a criminal background check and medical check.
- The vehicle used to provide services must be registered with the Taxi Services Commission (TSC). The owner, or another person with permission of the owner, may apply to register the vehicle.
- All booking service providers must be registered with the TSC. Any booking service provider may apply for registration.
- All industry participants have a duty to ensure safety, so far as is reasonably practicable. This includes owners of vehicles, booking service providers, and persons who have control over the provision of services.
- Fares for unbooked services are regulated. The Essential Services Commission (ESC) is empowered to set maximum fares.
- Surcharges for payments made by non-cash means (credit card or debit card etc.) are regulated. The ESC has power to set the cap for surcharges.

These requirements form the base case for the analysis.

Commercial Passenger Vehicle Safety (see Chapter 3 for further discussion)

Assaults and other crime

One of the main types of incidents that threatens the safety of individuals involved in the provision of a commercial passenger vehicle service are incidents where there is harm against a person. This includes assaults, sexual assaults, and thefts. The victims of these incidents may be the driver of the vehicle or the passenger.

There are a range of measures in place to mitigate the risk of an incident in a commercial passenger vehicle. Drivers may employ strategies to reduce the risk of an incident (e.g. screening potential passengers). Such actions may go some way to reducing the likelihood of an incident initiated by a passenger. In addition, the driver accreditation scheme, which screens the driver based on their criminal background, medical history and driving history, also reduces the risk of harm towards a passenger.

Such incidents are not common but are more likely to occur in taxis operating in metropolitan and urban areas. There is a range of evidence to suggest that there will continue to be a problem with crime in unbooked commercial passenger vehicle services. Images downloaded from security cameras installed in taxis give an indication of the types of crimes commonly committed in and around commercial passenger vehicles. These include assaults, theft, and property damage.

There has been little data recorded in relation to non-taxi commercial passenger vehicles. This could indicate that there is not a significant problem in relation to other commercial passenger vehicles. However, this conclusion is largely based on historical data where there has been a significantly greater number of taxis compared to other commercial passenger vehicles. This may not stay the same in the future. TfV considers that the safety of booked commercial passenger vehicle services should be closely monitored by the TSC as the

reforms are implemented and seeks feedback in relation to whether there is a problem that warrants further intervention.

Stakeholder question:

- ***Is there any evidence to suggest that there is a problem with assaults and crime in non-taxi or booked commercial passenger vehicle services that potentially warrants a regulatory response?***

The condition of the vehicle

The condition of the vehicle used to provide a commercial passenger vehicle service may affect the safety of the service. The safety of motor vehicles, more generally, is regulated under the *Road Safety Act 1986* (RSA). The RSA specifies the standards to which vehicles used on Victorian roads must comply with. The standards are set out in the Road Safety (Vehicles) Regulations 2009.

The majority of rectification notices, issued in respect of commercial passenger vehicles, are for minor infractions relating to the vehicle or non-compliance with some minor regulatory requirements. This indicates there is not a sufficient problem to justify further regulatory intervention. TfV considers that no additional regulatory requirements should be imposed above what is required by the RSA and regulations made under that Act. Authorised officers have powers to inspect vehicles to monitor compliance with the vehicle standards made under the RSA and are able to issue defect notices under that Act as well.

TfV considers that there is merit in considering whether additional requirements should be imposed on wheelchair accessible vehicles. These vehicles are modified and equipped to carry one or more passengers in a wheelchair. The Disability Standards for Accessible Public Transport (DSAPT) sets the standards for these vehicles. While this law regulates the standard for wheelchair accessible vehicles, there are gaps in the application of those standards as:

- TSC authorised officers would be unable to monitor compliance with such vehicle standards
- there may be uncertainty in the application of the DSAPT standard as Victorian law no longer licenses commercial passenger vehicles as taxis.

Stakeholder question:

- ***Do you agree with TfV's conclusion that commercial passenger vehicles should be subject to the same vehicle standard as other motor vehicles?***
- ***Is there any evidence to suggest that commercial passenger vehicles should be subject to a higher vehicle standard? If so, what standard(s) are appropriate?***

Anonymity of unbooked commercial passenger vehicle services

In the market for commercial passenger vehicle services, passengers may not readily identify some aspects of the quality of the service including the driver's background, safety record and fitness to drive when choosing a commercial passenger vehicle service. The driver accreditation scheme goes some way towards addressing information asymmetry. However, despite the existence of the accreditation scheme, the passenger may still have difficulty in ascertaining whether the driver is actually accredited. For this reason, TfV is considering additional regulations to ensure that the passenger has sufficient information in relation to the service.

What options are available?

There are a range of measures that could be implemented to address issues of safety relating to commercial passenger vehicle services.

Security cameras

TfV has considered the following options to address the incidence of assaults and other crimes occurring in or near commercial passenger vehicles:

- requiring security cameras to be used in all commercial passenger vehicles
- requiring security cameras to be used in commercial passenger vehicles used to provide unbooked services
- requiring security cameras to be used in commercial passenger vehicles used to provide unbooked services in the Melbourne Metropolitan Zone and the Urban and Large Regional Zone.

TfV is proposing to require the use of security cameras in vehicles used to provide unbooked commercial passenger vehicle services in metropolitan and urban areas of the state.

TfV has undertaken a break-even analysis to assess the impact of this requirement. The reason for this approach is that the compliance costs of the proposed intervention are able to be estimated, but the expected benefits are unable to be readily calculated. This is because the efficacy of the policy is not known with certainty.

TfV estimates that the cost of the proposed requirement is \$5.7m per annum, which includes the purchase cost of the camera unit and its installation. Section 3.4.1 of this RIS explains how this cost estimate was derived. The expected benefits of the intervention are the avoided costs associated with the crime. The avoided costs reflect the tangible costs incurred by the community. Based on an assumption on the average cost of crime (\$3,318), TfV calculated there would need to be approximately 1,718 avoided incidents for the expected benefits of the intervention to be equal to the expected costs.

TfV has presented a conservative analysis of the options using best available data and information. There is some uncertainty, based on the estimated cost of cameras and of crimes presented in this RIS, as to whether the expected benefits would outweigh the expected quantified costs. There is incomplete data in relation to:

- the efficacy of the security cameras in reducing crime in commercial passenger vehicles
- the data in relation to the current number of incidents in the commercial passenger vehicles.

Notwithstanding this, TfV recommends that the proposed Regulation be made. TfV considers that the proposed requirement will:

- reduce and deter the incidence of assaults and crime in certain commercial passenger vehicles, particularly where there has been a history of such incidents
- facilitate the general enforcement of crime occurring near commercial passenger vehicles not related to the provision of the service
- facilitate the investigation of incidents occurring in commercial passenger vehicles.

Risk register

Since the imposition of general safety duties will be a new requirement under the CPVI Act, the industry may not have mature safety systems in place to comply with their safety duties. To ensure that certain safety risks are identified and managed, the regulations could require specific actions to be taken, such as implementing specific systems or processes, in addition to the requirement to ensure safety, so far as is reasonably practicable.

This type of approach mirrors those undertaken in other safety schemes, where systems like safety management systems are required to be established and maintained. For example, rail transport operators are required to maintain a safety management system under rail safety legislation (e.g. the *Rail Safety (Local Operations) Act 2006*).

TfV is proposing that a booking service provider be required to prepare documentation that would identify the safety risks that apply to their own commercial passenger vehicle

operation, how these risks are proposed to be managed, and who is responsible for managing those risks.

The proposed regulation would require the risk register to be reviewed annually. The duty holder would need to have the document available if the regulator undertakes an audit as part of its compliance monitoring and enforcement activities. The duty holder, however, would not be required to submit this document to the regulator for approval.

The primary benefit of a requirement to develop and maintain a risk register is to ensure that risks to the safety of commercial passenger vehicle services are appropriately identified and documented. The requirements of the safety duty specified in the CPVI Act already mean that duty holders are required to identify and eliminate or mitigate risks. The benefit is likely to be greatest when there are complex commercial passenger vehicle operations. TfV estimates the expected costs of the requirement – the preparation and maintenance of the register – as ranging between \$80,000 and \$160,000 per annum.

TfV also considered the merits of requiring owners of vehicles to also prepare a register of safety risks. TfV concludes that the safety risks that could reasonably be managed by the owner of the vehicle are not likely to be sufficiently complex and should be apparent to the owner of the vehicle. Additionally, such a requirement may impose an unnecessary burden on that cohort of duty holders. TfV is seeking feedback in relation to whether it is appropriate to impose such a requirement on vehicle owners.

Stakeholder questions:

- *Are the expected costs of a requirement to prepare a risk register reasonable and accurate? Do you have any evidence to support this?*
- *Do you agree with TfV's conclusion that a requirement for a vehicle owner to prepare a risk register may impose an unnecessary burden on that duty holder?*

Notifiable incidents

A proposed regulation specifies that duty holders would have an obligation to notify the regulator of certain incidents. This would include booking service providers, vehicle owners and drivers. The regulation would support section 272 of the CPVI Act, which requires duty holders to notify the regulator of prescribed safety incidents.

The incidents proposed to be prescribed include:

- incidents involving attendance of emergency services, such as police or paramedics
- incidents involving an assault of any person
- incidents involving injury or death of a person
- incidents in which the vehicle is unable to safely complete its journey.

The relevant person would be required to report to the TSC within 72 hours of being aware of the incident occurring. The relevant person would also be required to report in a form determined by the regulator.

Stakeholder questions:

- *What are the expected compliance costs of a requirement to notify the regulator of safety incidents? Do you have any evidence to support this?*
- *Has TfV considered all options in relation to notifiable incidents?*
- *Does the proposed list of notifiable incidents include the right type of incidents? Should any types of incidents be added or removed?*

Standards for wheelchair accessible vehicles

TfV is proposing that there be a regulation which would enable the TSC to set standards for wheelchair accessible vehicles used to provide commercial passenger vehicle services.

The standards would primarily duplicate those required by the Disability Standards for Accessible Public Transport (DSAPT) and the Commonwealth's Disability Discrimination Act 1992 (DDA) which means that compliance costs would already be incurred by the owner of the vehicle. Therefore, the expected compliance costs associated with this requirement are expected to be minimal.

Driver identification

TfV is proposing to require the driver of a commercial passenger vehicle to display identification issued by the TSC, unless the information on the ID (the photo of the driver and the accreditation number of the driver) is provided to the hirer by the booking service provider before the trip commences.

TfV expects the display of driver identification or the provision of this information will improve the availability of information to passengers of commercial passenger vehicle services, particularly in relation to the status of the driver's accreditation. There are two benefits that arise from this change:

- The passenger of the service is also able to use the information on the ID to confirm that the driver is accredited on the TSC's public register accessible on its website.
- The hirer of the vehicle is empowered to make a complaint if there is an issue with the service provided.

TfV estimates that the cost, incurred by the TSC, in issuing a driver ID is \$0.4 million. Additionally, the driver of the vehicle will incur minor compliance costs from displaying the identification when using the vehicle to provide commercial passenger vehicle services.

Stakeholder questions:

- ***Do you agree with TfV's analysis of the expected benefits and expected costs of this option? Why or why not?***
- ***What are the expected compliance or implementation costs of the proposed new requirement for a booking service provider to provide certain information to the hirer?***

Consumer protections (see Chapter 4 for further discussion)

Under the new regulatory framework and in a market with a broader offering of fares, service types and provider options, passengers will require information to be provided to them or be provided with access to information. This will enable the passenger to make an informed decision relating to the purchase of commercial passenger vehicle services. In most circumstances, the exchange of information between the supplier of the service and the consumer of the service is expected to occur with minimal problems. However, additional intervention may be needed to reduce transaction costs and to ensure that fares (including any fare components) are transparent.

The following matters give rise to the need for regulations that provide consumer protections:

- *Fare complexity* — Where service providers are able to set their own fares for services, there may be a lack of easily accessible information about this broader variety of fares particularly when the hirer has limited scope to compare fares.
- *Transparency* — Regardless of the method by which the service provider chooses to offer fares (fixed or variable) It may be the case that suppliers of services impose additional charges that are hidden, or do not directly relate to the service being provided or are imposed in certain circumstances.
- *Problems arising from a regulated fare* — A regulated fare may cause the driver to adopt practices to maximise the amount of the fare, given that the fare rate itself is capped.
- *Proof of transaction* — The information contained in a receipt empowers consumers to make a complaint in the event they receive poor services. Without additional information

included on receipts, the customer may be unable to adequately identify the service provider.

- *Complaints* — There may be insufficient incentives for service providers to adequately address complaints.

What options are available?

Fare disclosure

TfV has identified that complexity in fares and hiring rates are a potential problem for transactions relating to commercial passenger vehicle services. Therefore, one option is to require the disclosure of fares.

TfV proposes that a range of regulations requiring the disclosure of fares be made, including:

- requiring fares to be displayed in vehicles providing unbooked commercial passenger vehicle services
- requiring service providers to provide an estimate of the fare when requested by the hirer
- requiring service providers to make fare information available (such as on a website).

TfV makes this recommendation on the basis that:

- disclosure will provide for the efficient operation of the market, especially where fares may differ across service providers or deviate from the regulated maximum for unbooked services
- the expected compliance costs are not expected to be high, and are also likely to be costs that would have otherwise been incurred by most providers as regular business costs.

Fare calculation devices

A fare calculation device (FCD) calculates the fare on behalf of the driver and the passenger based on pre-calibrated rates. For most devices, consumers can also see the progressive cost of the journey in real-time. A fare calculation device offers a level of protection for consumers, as the fare rates are programmed into the device, are unable to be changed easily, and provide an objective calculation of the total cost of the fare.

TfV is proposing that a fare calculation device must be used for all unbooked services. The owner of the vehicle will need to install the device and ensure that it complies with the specifications and is functioning when the vehicle is being used to provide an unbooked commercial passenger vehicle service.

The driver will need to operate the device, including complying with restrictions regarding when the meter must be turned on or turned off, or when the meter must not be used.

A requirement for fare calculation devices to be used in a vehicle used to provide an unbooked commercial passenger vehicle service is expected to generate benefits for consumers, such as providing certainty to the hirer that the fare is charged in accordance to what is expected.

The compliance costs associated with this requirement, which includes the purchase and installations costs of the fare calculation devices are estimated in the order of \$0.3 million per annum.

Regulating driver behaviour and practices

A regulated fare structure may create incentives for drivers to use other ways to increase their fare revenue at the expense of consumers. One option to address this issue is to make a regulation(s) which prohibit the driver from undertaking certain practices such as:

- taking an indirect route or refusing to take the route nominated by the passenger
- not providing reasonable assistance to passengers of commercial passenger vehicles.

TfV is proposing that regulations be made to address these practices. The main benefits of this requirement are that passengers, including vulnerable users, are not exploited and are not provided poor service. The main costs are borne by the driver, in the form of time or marginal loss of fare revenue.

TfV makes this recommendation on the basis that there are likely to be minor benefits derived from this regulation which offset the minor compliance burden.

Require information to be included on a receipt

To ensure that a consumer has sufficient information about the service provided, enabling the consumer to make a complaint, the regulations could:

- duplicate requirements of Australian Consumer Laws in the industry specific regulation to require a receipt to be provided when a commercial passenger vehicle service has been provided
- require specific information to be included in a receipt, noting that other laws already require a receipt to be provided to a consumer.
- TfV proposes that a receipt must be provided to the hirer on request following the provision of a commercial passenger vehicle service. It is proposed the receipt be legible and include: the driver's signature, if the receipt is provided by the driver, unless the receipt is produced using electronic facilities
- the registration plate number of the vehicle used to provide the service
- the accreditation number of the driver of the vehicle
- all the items that make up the fare and any additional rates and charges
- the total amount paid
- the date of the payment
- the name of the booking service provider, if the service was facilitated by a booking service.

The main benefit of the requirement to include additional specified information is that it will make it easier for consumers to make complaints should the person have an issue with the service provided. TfV expects that there are minimal costs associated with this requirement.

Complaints handling

The primary rationale for intervening in this area is that there has been a history of poor service outcomes by certain parts of the industry and a resistance by the industry to sufficiently addressing customer complaints. There are options to implement regulation, requiring the industry to implement complaints handling procedures.

One of these options is for all registered booking service providers to implement and maintain a complaints handling scheme consistent with a pre-determined Australian (or other equivalent) standard such as the AS/NZS 1000:2014 (Guidelines for complaint management in organizations). Another option is to specify an alternative set of standards which could be prescribed in the regulations. Such a standard could refer to performance-based outcomes that the regulated party would need to meet.

Based on the consultation undertaken as part of the RIS for the 2017 Regulations, TfV understands that many booking service providers already have some complaints handling arrangements in place. Therefore, the expected costs associated with this requirement are the costs to make the complaints system consistent with the Australian standard (i.e. the difference in costs between the current complaints handling arrangements and the Australian standards). The RIS for the 2017 Regulations asserted that the compliance costs are minimal. TfV considers that this continues to be the case as it is unlikely that costs in complaints handling systems have significantly changed in the last year.

TfV is recommending that the proposed Regulations include a requirement for booking service providers to implement a complaints handling system consistent with the Australian standard AS/NZS 10002:2014.

Operational Requirements (see Chapter 5 for further discussion)

The RIS considers a range of operational requirements to be imposed on commercial passenger vehicle service providers.

Vehicle identification

TfV is considering the merits of regulations requiring the identification of commercial passenger vehicles to:

- ensure that the regulator is able to identify which vehicles are being used to provide commercial passenger vehicle services so it can undertake effective and efficient compliance monitoring and enforcement
- ensure that vehicles available to provide an unbooked service are appropriately identifiable.

Under the reforms, any vehicle can be registered as a commercial passenger vehicle. The registration requirement enables the regulator to know which vehicles are going to be used to provide a commercial passenger vehicle service. The regulator can rely on technology, such as automatic number plate recognition technology, to confirm whether a vehicle is registered under the CPVI Act. For this reason, it is not proposed that all registered commercial passenger vehicles be required by the regulations to affix a special registration plate.

This is in contrast to the previous licensing scheme, where a licensed vehicle would have a special taxi or hire car number plate affixed to the vehicle and, generally, be used for the sole purpose of providing a commercial passenger vehicle service.

It is expected that a greater number of vehicles will be used for dual purposes as both a private vehicle and a commercial passenger vehicle.

While the regulator is able to readily establish that a vehicle is registered, it may not be able to readily establish that a vehicle is in service and not being used for private purposes at any specific point in time. This impedes compliance monitoring and enforcement because it is more difficult for the regulator, authorised officers and Victoria Police to establish whether a person is committing an offence under the CPVI Act or regulations. For this reason, it is necessary to consider whether all commercial passenger vehicles should be required to indicate that the vehicle is being used to provide a commercial passenger vehicle service.

TfV proposes that the regulations prescribe the following things as possible ways to identify vehicles:

- signs, symbols, notices or labels indicating that the motor vehicle is a commercial passenger vehicle
- signs, symbols, notices or labels identifying the registered booking service provider to which the driver is associated
- signs, symbols, notices or labels of a type or design approved by the regulator
- number plates identifying the vehicle as a commercial passenger vehicle of a type or design approved by VicRoads and the regulator.

While the new legislation and the regulations no longer regulate ‘taxi’ services, there is a general understanding in the community about what are ‘taxi’ services. This term has meaning within the community even though it is not defined in legislation. Typically, taxi services are those that are available without booking, such as at ranks or cruising the streets.

TfV considers that the word ‘taxi’ is associated with the act of providing unbooked commercial passenger vehicle services, and there is merit in considering whether there should be some form of restriction in the use of the term ‘taxi’ by commercial passenger vehicles.

Stakeholder questions:

- *Should commercial passenger vehicles used to provide a booked commercial passenger vehicle service be required to display additional signs? Why or why not?*
- *Should vehicles that do not meet all the requirements applicable to the provision of unbooked commercial passenger vehicle services be prohibited from being identified as a taxi? Why or why not?*

Registration exemptions – booking service providers

The CPVI Act establishes a registration scheme for booking service providers. All persons who provide a booking service are required to be registered under the CPVI Act. A person provides a booking service if the person carries on the business of:

- receiving requests for persons to be provided with commercial passenger vehicle services
- arranging or facilitating the acceptance of those requests by or on behalf of the driver of commercial passenger vehicles.

This definition captures a variety of persons, including large body corporates acting as intermediaries in between consumer and the providers of services. It also captures individual drivers providing bookings to fellow drivers (the driver would technically be providing a booking service).

The legislation provides for the exemption of certain persons from the requirement to be registered. Therefore, the proposed Regulations could include such a regulation to minimise the regulatory burden on persons, while still being consistent with the purpose of the registration scheme.

The purpose of the registration scheme for booking service providers is to:

- establish the identity of providers and responsible persons
- regulate booking service providers for public safety purposes
- regulate booking service providers to ensure they meet safety standards.

This purpose should inform whether it is appropriate to exempt certain persons from this requirement. In addition, it is important to ensure that the regulatory burden on service providers, some of which may be small businesses, is minimised.

TfV has considered the following options for exemptions:

- a person who accepts bookings for commercial passenger vehicle services provided using only vehicles registered in the name of that person but only if the person has less than 3 (i.e. one or two) commercial passenger vehicles registered in the person's name
- a person who accepts bookings for commercial passenger vehicle services provided using only vehicles registered in the name of that person but only if the person has less than 20 commercial passenger vehicles registered in the person's name
- a person who accepts no more than a specified number of bookings for commercial passenger vehicle services by associated drivers in any one day.

These options are discussed in sections 5.3.2 and 5.4.2 of this RIS. TfV's preferred position is that there are no exemptions provided in the Regulations, noting that there may be unintended consequences associated with making an exemption regulation. For this reason, the exposure draft of the proposed Regulations does not contain an exemption regulation. TfV has put forward several options for consideration and seeks the views of the public on the merits of such a regulation.

Stakeholder question:

- *What other options could TfV consider in relation to exemptions for booking service providers?*
- *Do you support exempting certain persons from being required to register as a booking service provider? If so, why?*
- *Are there any possible risks or possible unintended consequences of exempting certain providers from registration?*
- *Should TfV consider a different limit on the number commercial passenger vehicles registered in a person's name (other than 3 or 20) that could trigger exemption from registration as a booking service provider? What is it and why?*

Insurance

In Victoria, each vehicle is required to pay compulsory third party insurance premiums to the Transport Accident Commission (TAC). This insurance covers owners of a Victorian registered vehicle for the injury or death caused by their vehicle to another person, with the TAC paying for any treatment and support services for people injured in transport accidents. There is no requirement for private vehicle to hold third-party property or comprehensive insurance in relation to their vehicle.

Insurance requirements are currently specified as conditions that are implied in every driver agreement (also known as a bailment agreement). Currently, it is an implied condition of every driver agreement that the operator of a taxi service hold an insurance policy with an insurer regulated by the Commonwealth Government.

In normal circumstances, the driver would seek to take out insurance in respect of the vehicle. However, the driver of a vehicle may not have the capability to take out insurance in respect of the vehicle as no such insurance product is available in the market. Therefore, in the event of an accident or some other damage to the vehicle, the driver could be liable for the full cost of repairs and would need to accept this risk without insurance.

TfV has considered whether there is a need to regulate commercial passenger vehicle services in relation to insurance. TfV's assessment is that there may be a need to require insurance in some circumstances, particularly where the driver is unable to take out insurance in respect of the vehicle, such as where the driver is not the owner of the vehicle.

However, this problem is mitigated by the following factors:

- insurance is already required where there is a driver agreement in place between the owner of the vehicle and the driver
- there is expected to be a greater number of owner-drivers under the new legislative arrangements
- the existence of alternative additional insurance products taken out by entities such as booking service providers providing protection to drivers and third parties.

There a range of options that could be considered, such as:

- requiring the owner of the vehicle to indemnify the driver
- requiring the owner of the vehicle to hold certain insurance policies
- require another person, such as the booking service provider, to take out certain insurance policies, such as contingent liability insurance.

The proposed Regulations do not prescribe requirements in relation to insurance for commercial passenger vehicles. TfV is seeking further information from stakeholders in relation to:

- the nature and extent of the problem
- the options available
- whether insurance requirements should be prescribed in the regulations.

Stakeholder question:

- *Do you agree with TfV's assessment of the problem in relation to insurance? Why or why not?*
- *Is there any evidence to suggest that there is continuing problem in relation to insurance of commercial passenger vehicles?*
- *Are there other options that should be considered? Are there other forms of insurance that should be considered?*
- *Should any insurance requirements be prescribed in the Regulations? Why or why not?*

Smoking

Governments have banned smoking in public places in recognition of the harmful effects of smoking and second-hand smoke on others. Typically, there are prohibitions on smoking indoors, in sheltered places or at recreational areas, including enclosed restaurants, enclosed workplaces, retail centres and patrolled beaches. Additionally, it is an offence to smoke in motor vehicles if a person under 18 is present. It is in these areas, where smoke is contained, that non-smokers are exposed to tobacco smoke and its harmful effects.

To address the externality associated with smoking inside a vehicle, the proposed Regulations prohibit smoking in all commercial passenger vehicles.

Assistance Animals

The Disability Discrimination Act 1992 (Cth) makes it unlawful to treat a person with a disability less favourably because he or she is accompanied by an assistance animal.

There have been cases where persons accompanied by an assistance animal have been refused service because of the animal they are accompanied by.

It may be difficult to enforce the requirement under the DDA, as it requires the passenger to make a complaint to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC). The VEOHRC would be able to investigate the complaint, and could rely on the cooperation of the TSC, such as identifying the service provide or the driver, to take action.

Having industry specific requirements will enable more effective and efficient enforcement. For this reason, TfV proposes to prohibit the driver from refusing service to a person accompanied by an assistance animal. This will allow the requirement to be enforced by TSC authorised officers.

Identification of Authorised Officers

Authorised officers are appointed under the CPVI Act by the regulator to undertake compliance monitoring and enforcement activity. Authorised officers are conferred a range of investigation powers, including powers relating to entry, search and inspection. In some circumstances, such as when entering a commercial passenger vehicle, the authorised officer is required to produce an identity card.

Section 162 of the CPVI Act enables the regulations to prescribe matters to be included on an authorised officer's identity cards. It is intended to exercise this power, and prescribe details that must be included on the identity card. It is intended to specify that the officer's appointment number or badge number be one of the details to be included on the card.

Records and record keeping (see Chapter 6 for further discussion)

Effective compliance monitoring and enforcement of the CPVI Act and regulations by the regulator relies on ensuring that the regulator is able to access evidence of compliance with the law. The CPVI Act enables the regulator to direct regulated parties to produce records

that are required to be kept under that law or information or documents that are in possession of the person.

In order to adequately discharge its functions, the TSC will need to access a range of records to undertake its functions which includes ensuring that the law is being complied with. This includes functions in relation to:

- non-cash payment surcharges
- the price monitoring function conferred on the TSC
- consumer protections
- the commercial passenger vehicle service levy.

TfV proposes that the following records will be required to be kept:

- trip records (including the date, location and time the trip commenced and finished, the distance travelled and the fare paid for the trip)
- records of complaints
- records relating to non-cash payment surcharges

TfV proposes that records be kept in a form determined by the regulator and for a period of five years.

TfV considers that the expected benefits of the requirement to keep specific records in relation to the commercial passenger vehicle industry are likely to outweigh the costs. This judgement is made based on the following factors:

- compliance costs, which have not been quantified or valued in this RIS, are expected to be low because these records would already be kept as part of business management requirement or for tax purposes.
- the records will be used for a range of strategic and operational policies, and inform the TSC's compliance monitoring and enforcement operations, and facilitate risk-based regulation of the industry.

Stakeholder question:

- ***Do you agree with TfV's assessment that these records would already be kept as part of business management or tax purposes? If not, why not?***
- ***Are the expected costs of the proposed record keeping requirements likely to impose a significant burden? If so, do you have any evidence to support this?***

Changes to the Road Safety Road Rules 2017 (see Chapter 7 for further discussion)

The Road Safety Road Rules 2017 (the Road Rules) contains a number of rules by which taxis are exempt. The purpose of the exemptions was to ensure that taxis are able to operate efficiently and meet passenger needs by, for example, stopping in certain road areas to pick up or drop off passengers.

Taxis are exempt from the following Road Rules:

- driving in a bicycle lane (Rule 153)
- driving in a transit lane (Rule 156)
- stopping in a clearway (Rule 176)
- stopping in a loading zone (Rule 179) (note that this exemption applies to all licensed commercial passenger vehicles, which includes licensed hire cars)
- stopping in a bus lane, tram lane, tramway, transit lane, truck lane, or on tram tracks (Rule 187)
- stopping near a fire hydrant (Rule 194).

Licensed taxis are also permitted to stop in a “taxi zone” (Rule 182). Taxi zone is the term in the Road Rules used to refer to a taxi rank. This specific rule ensures that there is road space for taxis to stand in a rank and wait for customers.

The Road Rules require the use of seatbelts and child restraints. Taxis are provided exemptions from using child restraints. This exemption was provided on the basis that it posed logistical difficulties for a taxi service provider to carry all types of child restraints or booster seats to cater for all types of passengers, especially when the trip is not booked.

Given the changes under the CPVI Act, the Road Rules need to be redrafted to reflect the language of the new legislation. The legislative reforms to the commercial passenger vehicle industry have meant that there are no longer vehicles licensed specifically as a “taxi”.

There are three matters that need to be addressed:

- Who may stand at taxi ranks?
- Should exemptions or special privileges afforded to taxis/commercial passenger vehicles continue?
- Should the exemptions from the use of child restraints be removed?

What options are available?

TfV proposes that access to the use of taxi ranks be restricted to a subset of commercial passenger vehicles equipped to provide unbooked services. In order to be able to access taxi ranks, the commercial passenger vehicle will need to be equipped with:

- a security camera that meets the specifications determined by the TSC
- a compliant fare calculation device.

TfV considered the following options in relation to the exemptions and special privileges in relation to the Road Rules:

- extending exemptions and special privileges to all commercial passenger vehicles
- maintaining exemptions and special privileges to vehicles used to provide unbooked commercial passenger vehicles services
- extending exemptions and special privileges to vehicles transporting passengers with a disability or who use a wheelchair
- removing all exemptions.

Exemptions and special rules are effectively a trade-off between the original purpose of the lane or zone and the benefits accrued to the vehicle provided with the exemption. In the case of commercial passenger vehicles, there are benefits in the form of improved travel times (e.g. using transit lanes) and improved safety and efficiency in picking up and dropping off passengers.

With the commercial passenger vehicle reforms enabling a greater number of vehicles to be used to provide a commercial passenger vehicle service, TfV considers that it is not appropriate to extend exemptions to all commercial passenger vehicles. The reason is that it may defeat the original purpose of that lane or zone, noting that the impacts will be distributed differently based on road use (e.g. there is a higher volume of traffic in the Melbourne CBD).

However, TfV considers that it is still appropriate to maintain exemptions in the Road Rules for vehicles clearly marked as available to provide an unbooked commercial passenger vehicle service. This reflects that unbooked services, by definition, will pick up passengers when hailed from the street—an exemption will assist in the safe and efficient pick up of passengers of those services.

TfV considered two options regarding the application of the Road Rules in relation to commercial passenger vehicles and child restraints. These are to:

- maintain exemptions for vehicles used to provide unbooked services (e.g. taxis)
- remove exemptions for vehicles used to provide unbooked services.

Should the exemption be revoked, TfV expects there to be improved safety and service outcomes for passengers with young children. Providers of unbooked commercial passenger vehicle services will carry child restraints, and will be able to pick-up and transport passengers accompanied by young children safely. However, the removal of the exemption means that providers of unbooked commercial passenger vehicles will incur costs in purchasing and carrying child restraints. In some circumstances, this may not be feasible (as the service provider would be required to carry multiple types of child restraints), and the service provider may choose to refuse service if the restraints happen to not be carried.

TfV considers that the matter is finely balanced as both options impact on road safety outcomes, service outcomes, and compliance costs of removing the exemption. The main trade-off is between compliance costs on the industry and road safety.

TfV considers that the safety of road users is paramount. The industry may come up with efficient ways to service this cohort of users. In addition, parents and guardians of children less than seven years old that are required to use specific restraints should also take responsibility for compliance.

TfV seeks the community views on the merits of both options noting that TfV recommends the removal of the exemption. The exposure draft of the proposed Rules includes amendments which remove the exemption.

Stakeholder question:

- ***Do you agree with TfV's assessment of the impacts of the removal of an exemption to use child restraints in taxis? Why or why not?***
- ***Do you support the proposal to remove the exemption to use child restraints in taxis? Why or why not?***

Preferred Option (see Chapter 8 for further discussion)

The analysis conducted in Chapters 3, 4, 5 and 6 indicates that there is merit in regulating certain aspects of commercial passenger vehicle services. TfV estimates that the total quantifiable compliance costs associated with the regulations, incurred by the industry, are about \$6.33 million per annum on average, plus the one-off costs of the vehicle ID requirements of \$800,000 (or \$54.2 million over 10 years in net present value terms¹).

The proposed Commercial Passenger Vehicle Industry Regulations 2018 are available for public comment and contain the requirements that will apply to the commercial passenger vehicle industry following the commencement of the new law. The proposed Regulations include requirements relating to the safety of the service, consumer protections, operational requirements, and records.

An additional set of regulations, the proposed *Road Safety Road Rules (Commercial Passenger Vehicle Industry) Amendment Rules 2018* are also available for public comment reflecting the discussion of the changes in Chapter 7. The proposed Rules make consequential changes to the Road Safety Road Rules 2017 to clarify the application of the Road Rules to the commercial passenger vehicle industry. The amendments to the Road Rules also remove the exemption for taxis to carrying children without a child restraint.

The proposed regulations are to support the new commercial passenger vehicle framework established by two new statues, the CPVI Act and the amending Act. Therefore, some matters covered in the previous regulations for the commercial passenger vehicle industry, the Transport (Buses, Taxi-Cabs and Other Commercial Passenger Vehicles) (Taxi-Cab Industry Accreditation and Other Matters) Regulations 2017, have been assessed as no longer being required. Table 8-1 summarises the regulations proposed not to be made and the reasons for their omission.

¹ Calculated using a four per cent discount rate.

Implementation (see Chapter 9 for further discussion)

The TSC will be the primary regulatory agency to implement the proposed Regulations. There are a range of other agencies involved in the compliance, monitoring and enforcement of commercial passenger vehicle laws, including Victoria Police, VicRoads, the ESC, and the State Revenue Office.

The TSC's role, following the commencement of the legislation and the proposed Regulations, will be centred on the safety of the service, fare monitoring and enforcing consumer protections and accessibility (note that accessibility matters are generally non-legislative and include administering the Multi-Purpose Taxi Program). In order to implement the new legislation and proposed Regulations, the TSC will be required to make a range of changes to processes and systems, especially in relation to industry permissions (e.g. vehicle registration, driver accreditation and booking service provider registration).

The proposed regulations will be made to support the new CPVI Act. The new legislation has a default commencement date of 7 July 2018. TfV expects that the actual commencement date of the CPVI Act and the proposed Regulations will be close to the default commencement date.

The TSC will communicate with the industry regarding the commencement of the new laws, and the approach to compliance monitoring and enforcement before the new laws commence.

Evaluation (see Chapter 10 for further discussion)

The proposed Regulations are made as a new set of regulations under a new legislative framework implemented as part of the commercial passenger vehicle reforms. The new legislative framework is a substantial departure from how the industry has been regulated in the past, with the focus of regulation shifting from economic regulation to safety regulation. Therefore, an evaluation of the proposed Regulations will also need to consider the performance of the new legislative framework, and its impact on outcomes for the users of commercial passenger vehicle services. TfV will review the operation of the proposed Regulations before their expiry. The review will evaluate the effectiveness of the proposed Regulations and inform whether the proposed Regulations should be remade in part or in full. This review would commence approximately 12 to 18 months before the expiry of the proposed Regulations in 2028. TfV also intends to undertake a mid-term review of the new legislation and proposed Regulations to assess how these are operating.

The evaluation of the proposed Regulations will include an evaluation of:

- the safety of commercial passenger vehicle services
- competition in the market for commercial passenger vehicle services
- protections for users of commercial passenger vehicle services.

Chapter 10 summarises the proposed evaluation methodology which includes:

- Identifying indicators — the changes in outputs or outcomes providing an indication that the objectives of the intervention are being achieved.
- Identifying the baseline data — the data that will be collected prior to the commencement of the intervention. This data will be used as the basis of the analysis.
- Stating the data to be collected — the data that will be collected after the commencement of the intervention. This data will be assessed against the baseline data.
- Evaluating outcomes — The evaluation will consist of a comparison of the outputs and outcomes post-implementation against the baseline data.

Glossary

Booked service	A commercial passenger vehicle service which has been booked or ordered through a BSP.
BSP	Booking service provider — a person or body corporate who provides a booking service, taking bookings from customers and arranging drivers to fulfil those booking requests for services. Examples include 13Cabs, Uber, and Silver Top Taxis.
Commercial passenger vehicle service	The carriage of passengers for a fare or other consideration in a commercial passenger vehicle
CPV	Commercial passenger vehicle — a vehicle used to provide commercial passenger vehicle services
CPVC	Commercial Passenger Vehicle Commission — the new name of the industry regulator on commencement of the new law, currently known as the Taxi Services Commission
CPVI Act	<i>Commercial Passenger Vehicle Industry Act 2017</i> — the new legislation for the commercial passenger vehicle industry.
DEDJTR	Department of Economic Development, Jobs, Transport and Resources
Disqualifying offences	A set of categorised offences. If a person has been convicted or found guilty of one of these offences, they are disqualified from being able to hold a driver accreditation.
ESC	Essential Services Commission — the Victorian independent economic regulator. The ESC regulates fares for unbooked services.
FCD	Fare calculation device, also known as a taximeter or meter
RIS	Regulatory Impact Statement
TCMA	<i>Transport (Compliance and Miscellaneous) Act 1983</i> — the Act which contains the old law governing commercial passenger vehicles.
TfV	Transport for Victoria — an administrative office in the Department of Economic Development, Jobs, Transport and Resources tasked with integrating the planning and oversight of the state's transport system.
TSC	Taxi Services Commission — the current name of the industry regulator, will be renamed the Commercial Passenger Vehicle Commission on commencement of the new law.
Unbooked service	A commercial passenger vehicle service that is provided other than as a result of a booking service. This includes services procured from a rank or hailed from the street.

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1 Background

1.1 Introduction

Commercial passenger vehicle services are private commercial transport services which take passengers from one destination to another using a motor vehicle. Such services may take a variety of forms (e.g. taxi services, hire car services, tour and wedding services etc).

Commercial passenger vehicle services are a critical component of the transport system enabling passengers to move when there may be limited alternatives. Commercial passenger vehicle services are important to users who are unable to move independently such as by public transport or by road. For this reason, it is important to ensure that the commercial passenger vehicle industry is able to thrive and innovate without unnecessary and burdensome regulation.

This document will outline the rationale for making a new set of regulations following the legislative reforms to the commercial passenger vehicle industry implemented by the Victorian Government.

1.2 Reforms to the Commercial Passenger Vehicle Industry

On 23 August 2016, the Premier of Victoria announced significant reforms to the regulatory framework for commercial passenger vehicles. The reforms include:

- \$378 million made available to provide fair and reasonable assistance to licence holders to help them transition to the new legislative framework.
- A \$75 million Fairness Fund to provide targeted support to industry participants experiencing immediate financial hardship as a result of these changes, including \$25 million to improve access to convenient, reliable point-to-point transport for people with a disability.
- All commercial passenger vehicle providers charged a levy² to fund the transition to the new system including support for existing licence holders during the transition.
- All existing licences removed to allow for more flexible fares to drive competition and reduce the cost of travel for passengers.
- All drivers accredited by the Taxi Services Commission (TSC) which will include passing police, medical and driving history checks and all drivers will be subject to ongoing criminal data matching.
- An Australian first of a dedicated Commissioner for disability services to the TSC.
- Rank and hail work only open to those providers that meet stringent requirements including cameras and fare meters.
- The ineffective, inefficient and costly Knowledge Test abolished and replaced by a simple system of industry accountability for all drivers.

The reforms were implemented in two stages. The first stage provided for the abolition of taxi and hire car licence fees, and the regulation of booking service providers. The second stage provided for a new framework for the regulation of commercial passenger vehicles, replacing the existing framework in the *Transport (Compliance and Miscellaneous) Act 1983*.

² The original announcement was that the levy would be \$2 imposed on every trip. However, the amount of the levy was amended to \$1 per trip as part of Parliamentary debate on the Commercial Passenger Vehicle Industry Bill 2017.

1.3 The Commercial Passenger Vehicle Industry Act 2017

The *Commercial Passenger Vehicle Industry Act 2017* (CPVI Act) implements the first stage of reforms to the commercial passenger vehicle industry. The first stage of reforms simplified the licensing scheme by removing high taxi and hire car licence fees, provided for the regulation of all booking services for commercial passenger vehicles, and established a \$1 levy on all commercial passenger vehicle trips.

The licensing reforms commenced on 9 October 2017. The licence fees for taxi and hire car licences were abolished and replaced with a \$52.90 administration fee. On 2 November 2017, all booking service providers were required to be accredited under the Act.

1.4 Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017

The Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017 (the amending Act) is the second stage of legislative reform providing for a new regulatory framework for commercial passenger vehicles which focuses on the safety of commercial passenger vehicle services and the provision of consumer protections.

The amending Act inserts new parts in the CPVI Act. The CPVI Act replaces the *Transport (Compliance and Miscellaneous) Act 1983* (TCMA) as the primary legislation governing the operation of commercial passenger vehicles.

The key changes made by the amending Act include:

- establishing a safety duties scheme
- providing for the registration of commercial passenger vehicles (replaces the existing licensing scheme for taxis and hire cars)
- providing the commercial passenger vehicle service industry with the flexibility to set their own fares for booked services and enabling regulations to be made in relation to consumer protections
- re-enacting components of the existing regulatory framework necessary for the future regulation of commercial passenger vehicle services (e.g. continuation of driver accreditation requirements)
- consequential amendments to other Acts, including amending the Road Safety Act 1986 to require a zero blood alcohol concentration for drivers of commercial passenger vehicles when in service.

1.4.1 Safety Duties

The CPVI Act establishes a principle-based safety duties scheme by placing safety duties on commercial passenger vehicle industry participants. The scheme mirrors the general duties in the *Occupational Health and Safety Act 2004*.

The Act outlines who holds a safety duty. The following industry participants have a duty to ensure safety, so far as is reasonably practicable:

- booking service providers (BSPs)
- owners of commercial passenger vehicles
- persons who have control over the provision of commercial passenger vehicle services
- suppliers of services and equipment.

Section 22 of the CPVI Act outlines what is meant by ‘ensuring safety so far as is reasonably practicable’. Duty holders are required to identify, eliminate and reduce risks to the safety of commercial passenger vehicle services to the extent that these actions are reasonably practicable. What is reasonably practicable depends on the degree of influence that a duty holder has over certain safety aspects, availability of ways to manage risks and the cost-

effectiveness of such mitigations. In other words, a duty holder has flexibility to determine what steps they should take, or what they should not do, to achieve safety outcomes.

Drivers, under section 27 of the CPVI Act, also have a duty to take reasonable care for their own safety and safety of others. This is the same duty on employees imposed under the *Occupational Health and Safety Act 2004*. As drivers have operational control of the vehicle, the safety duties imply drivers must ensure their actions do not affect the safety of themselves, passengers, other road users and pedestrians.

Given that there is some level of uncertainty regarding what may be done to ensure the safety of commercial passenger vehicle services, the CPVI Act enables the making of codes of practice in relation to the safety duties. A code of practice is a document which can outline ways of complying with the safety duties imposed by the CPVI Act, or aspects of those duties. Compliance with a code of practice is not mandatory, but if a duty holder complies with a code of practice, that duty holder is taken to have complied with that duty. The TSC is developing codes of practice and will consult with the industry and the community separately.

1.4.2 Fare deregulation and consumer protections

The CPVI Act allows all commercial passenger vehicle service providers to have the flexibility to set their own fares for booked services, including the ability to choose whether to charge fixed fare or set fares according to a schedule. The CPVI Act also establishes a scheme to regulate fares for unbooked services. Unbooked services are those that are not provided through a booking service. This includes services hired from a rank or hailed from the street. The Essential Services Commission (ESC) has the power to set fares for unbooked services. To ensure consumers are protected, the regulator is provided with price monitoring powers and the Act enables regulations to be made to require the adequate disclosure of fares to consumers and other related protections. Regulations relating to consumer protections are further considered in Chapter 4.

1.4.3 Registration of commercial passenger vehicles

The CPVI Act establishes a registration scheme for commercial passenger vehicles. All vehicles used to provide a commercial passenger vehicle service (i.e. carrying passengers for a fare or other consideration) are required to be registered as a commercial passenger vehicle. The owner of a vehicle, or another person with the owner's permission, may apply to the TSC to register the vehicle. This requirement is in place to aid compliance monitoring and enforcement of commercial passenger vehicle law.

The registration scheme will enable the regulator to keep track and identify vehicles used as commercial passenger vehicles and the person(s) responsible for those vehicles.

1.4.4 Re-enacting the existing regulatory framework

The amending Act remakes a number of components of the existing regulatory framework.

Accreditation of drivers

All drivers of commercial passenger vehicles will continue to be required to hold a driver accreditation when driving a vehicle to provide commercial passenger vehicle services. The driver accreditation scheme ensures that new and existing drivers are "competent", have passed relevant character checks, have a good driving history, are medically fit to conduct services and are "fit and proper" persons to carry out services.

Under the re-enacted scheme, accreditations are perpetual (i.e. no longer have a three year limit). The proposed Regulations will not affect the operation of the driver accreditation scheme as the legislative scheme operates without requiring further matters being prescribed in the regulations. However, this RIS will consider the merits of requirements complementary to the accreditation scheme, such as identification.

Registration of booking service providers

As part of the first stage of legislative reforms, all providers of booking services are required to be accredited under the TCMA.

This requirement is continued under the new regulatory framework with amendments. Accreditation is re-labelled as registration, to better reflect the nature of the permission. In addition, registration will no longer be subject to disqualifying offences³ in relation to responsible persons of booking service providers. Instead, the TSC will assess whether the booking service provider is a fit and proper person to provide booking services.

Driver agreement

Driver agreements will continue to be regulated, with the TSC having power to set conditions that must be included as a condition in all driver agreements.

Non-Cash Payment Surcharges

It will continue to be unlawful for commercial passenger vehicle services to impose or collect a non-cash payment surcharge in excess of the prescribed amount. The prescribed amount is set at 5 per cent until subsequently determined by the ESC.

Register of permission holders

The TSC will keep a register of permission holders. Under the CPVI Act, permission holders are: booking service providers, drivers, and persons who have registered a motor vehicle as a commercial passenger vehicle.

Compliance and Enforcement

The TSC is provided with a range of compliance investigation powers under the amended Act. In addition, the TSC is provided with a range of enforcement tools, including issuing improvement notices, prohibition notices, infringement notices, applying for injunctions against permission holders, and taking disciplinary action against permission holders such as cancelling or suspending permissions.

Compliance monitoring and enforcement will be undertaken by authorised officers appointed under the CPVI Act.

1.4.5 Other changes

The amending Act makes a range of changes to other Victorian Acts. Many of the changes are minor or technical in nature, reflecting the changes in the new regulatory framework.

Other changes include a requirement of zero blood or breath alcohol concentration for all drivers of commercial passenger vehicles.

1.5 The Commercial Passenger Vehicle Commission – the industry regulator

The new Commercial Passenger Vehicle Commission (currently named the Taxi Services Commission) is established under the *Transport Integration Act 2010* as the commercial passenger vehicle industry regulator.

³ These are offences which automatically disqualify the person, which includes body corporates, from being eligible to register as a booking service provider.

1.6 Transport for Victoria

Transport for Victoria (TfV) is Victoria's lead transport agency whose purpose is to integrate the transport network and improve the transport user experience for the community. TfV brings together the planning, managing and coordinating of the transport system into one organisation.

TfV is part of the Department of Economic Development, Jobs, Transport and Resources and supports the Public Transport, Ports, and Roads and Road Safety Ministerial portfolios. TfV has responsibility for legislation and regulatory policy.

1.7 Proposed new regulations

Since the existing regulatory framework specified in the TCMA is repealed by the amending Act, the existing regulations for the taxi and hire car industry, the Transport (Buses, Taxi-Cabs and Other Commercial Passenger Vehicles) (Taxi-Cab Industry Accreditation and Other Matters) Regulations 2017, will be revoked and need to be reviewed in the context of the new CPVI Act.

This RIS examines the nature and extent of the problem that leads to the need to make regulations, the various options available to address the identified problems, and the preferred option. This analysis is undertaken in the context where there is:

- open entry to providing commercial passenger vehicle services (subject to registering a motor vehicle and holding a driver accreditation)
- a focus on the safety of services and the provision of consumer protections.

1.8 Requirements of the Subordinate Legislation Act 1994

The RIS has been prepared in accordance with requirements of the *Subordinate Legislation Act 1994* (SLA) and the *Victorian Guide to Regulation*.

Section 2 provides a broad overview of the nature and extent of problem that the proposed regulations intend to address and the objectives of the regulations.

Sections 3 to 7 describe and explain discrete parts of the proposed regulations and presents the assessment of benefits and costs for the relevant regulations as well as for feasible alternatives. The following sets of headings are used in each of the sections:

- nature and extent of the problem
- objective(s) of the proposed regulations
- identification of options
- assessment of benefits of costs.

Section 8 details the preferred option, including the impact of the proposed regulation on competition and small business.

Section 9 presents the assessment of the proposed regulations against the National Competition Policy.

Section 10 explains the proposed approach to implementation and enforcement strategy.

Section 11 specifies the evaluation strategy.

Section 12 outlines the consultation process.

1.9 How you can have your say

You are invited to make comments on the RIS and the proposed regulations.

Submission may present analysis of alternative options and recommend changes to the proposed regulations.

Submissions are required to be made in writing and can be emailed to:

transport.regulations@ecodev.vic.gov.au

Or posted to:

Commercial Passenger Vehicle Industry Regulations
Transport for Victoria
GPO Box 2392
Melbourne Victoria 3001

Submissions must be provided to Transport for Victoria on or before 27 April 2018.

Please note that all submission will be treated as public information unless you request otherwise.

Submissions will be published on Transport for Victoria's website unless you clearly indicate that you would like all or part of your submission not to be published.

All content considered to be defamatory, vilifying or otherwise inappropriate will not be published.

You should be aware that all submissions are subject to the *Freedom of Information Act 1982*.

Personal information may be used to contact you regarding your submission and the outcomes of the consultation. Please clearly state in your submission if you do not wish for this to occur.

2 Overview

2.1 Nature and extent of the problem

Historically, commercial passenger vehicle regulation has largely been concerned with economic regulation. Entry into the market for commercial passenger vehicle services had been restricted through the licensing scheme, where all vehicles were required to be licensed but licences were not freely available. This approach necessitated additional regulatory controls including regulating fares for services and regulating for service quality through accreditation schemes. There has also been some regulation of the safety of services.

Previous regulation also focussed on regulating taxi services compared to other commercial passenger vehicle services. Taxi services are commercial passenger vehicle services which are available for hire from a taxi rank or available to be hailed from the side of the street in addition to being available to be booked for work. The case for additional regulation of taxi services arises from nature of this service. Drivers usually have no prior or ongoing relationship with customers and limited information, such as contact details, is exchanged as part of the transaction.

The government's reforms are a shift away from this regulatory model where one type of service is subject to greater regulation. Under the new model, any person may register a motor vehicle as a commercial passenger vehicle. In law, there is no difference between a taxi service, a hire car service, a rideshare service or any other commercial passenger vehicle service. In order to provide services, a person must also hold a driver accreditation.

Service providers are able to set fares for their own booked services. For most commercial passenger vehicle services, this is not new. However, on the commencement of the reforms, taxi service providers in the Melbourne Metropolitan Zone and the Urban and Large Regional Zone will be able to set fares for their booked services. Fares for unbooked services commencing in the Melbourne Metropolitan Zone and the Urban and Large Regional Zone will continue to be regulated as maximum fares by the ESC.

2.1.1 What are the problems that give rise to the need for regulation under the new legislative framework?

The nature of unbooked commercial passenger vehicle services

For unbooked services, services are procured in situations where the consumer has limited opportunity to make choices between competitors. This could be due to a lack of availability of services, which is dependent on the time of the week the customer is trying to travel, or the availability of vehicles in near vicinity. This may be exploited by the driver or the passenger.

In addition, unbooked services are typically conducted such that there is usually limited information exchanged between the passenger and the driver. Accordingly, there is a degree of anonymity in the transaction.

Moreover, in the market for unbooked services, there may be limited scope for repeat transactions and customers and service providers may not form ongoing relationships. This limits the incentives for service provider and drivers to provide a good service.

Some of these problems are potentially addressed through the use of technology, such as smartphone apps with global positioning systems. Such technology effectively blurs the lines between an unbooked service and a booked service, as it enables passengers to procure services on-demand thereby reducing the costs of searching for alternative services. The added benefits are that there is more information about the service (including who is providing the service) and the capability to provide feedback.

This RIS considers whether additional requirements should be imposed on unbooked commercial passenger vehicle services (i.e. rank and hail services) to reflect the nature of those services.

Regulating for safety and service quality

The regulation of service quality typically involves the government imposing minimum standards of service which must be met by all service providers. Generally, this type of regulation can be ineffective and it can be difficult to establish the right incentives for the market to provide good quality services.

Given the right conditions – such as unrestricted entry and exit into a market, no limitations on the number of suppliers and adequate information flow between market participants – competition acts to ensure that customer service needs are met and good service quality is delivered.

Under the previous model of commercial passenger vehicle service regulation, new market participants were restricted from entering the market to provide services. Effectively, this lack of competition gave rise to service problems, which successive governments attempted to address through regulation. TfV considers that the competitive setting for the market for commercial passenger vehicle services is sufficient to no longer warrant heavy-handed service quality regulation. However, there is merit in considering the extent of information flow between service providers and consumers especially in relation to the fare for the services. This is further considered in Chapter 4 of this RIS.

The safety of the service also forms part of the service offering. However, it can be argued that safety regulation can be justified on the basis of the external impact of a safety incident (public costs are diverted to the health system and other road users are impacted by a safety incident) or due to an under appreciation of risk causing individuals to engage in more risky behaviour.

Under the new regulatory framework, safety is regulated through a principle-based safety duties scheme which is comprehensive in its coverage. This RIS considers whether any further safety requirements are needed to be prescribed in regulation to support the safety scheme provided for in the primary legislation. This is further discussed in Chapter 3.

Vulnerable users of commercial passenger vehicle services

There are a variety of users of commercial passenger vehicle services. Some users are reliant on commercial passenger vehicle services for mobility.

Users with mobility issues, such as the elderly, and people with a disability or medical condition, may be reliant on commercial passenger vehicle services. In some cases, such users may not be able to travel independently or may not be able to use public transport.

Similarly, tourists to the state may be reliant on commercial passenger vehicle services because of a lack of alternative transport arrangements or due to an unfamiliarity with the area.

2.1.2 What is the base case and what are the requirements of the Act?

Without further regulatory intervention, the commercial passenger vehicle industry is subject to the requirements of the CPVI Act.

In summary, the following requirements apply:

- All drivers of commercial passenger vehicles are required to hold a driver accreditation. To gain accreditation, the driver must pass a criminal background check and medical check.
- The vehicle used to provide services must be registered with the TSC. The owner, or another person with permission of the owner, may apply to register the vehicle.
- All booking service providers must be registered with the TSC. Any booking service provider may apply for registration.

- All industry participants have a duty to ensure safety, so far as is reasonably practicable. This includes owners of vehicles, booking service providers, and persons who have control over the provision of services.
- Fares for unbooked services are regulated. The ESC is empowered to set maximum fares. The objective of the ESC, specified in section 110C of the Act, when making a fare determination is to promote the efficient provision and use of unbooked services. This objective complements the objectives for the ESC stated in the *Essential Services Commission Act 2001* which is to promote the long-term interests of Victorian consumers. The ESC undertakes a public process when making determinations including by releasing a draft report and inviting public submissions. Service providers are permitted to charge fares below the regulated maximum.
- Surcharges for payments made by non-cash means (credit card or debit card etc.) are regulated. The ESC has power to set the cap for surcharges. The ESC's objective in determining such a charge is to promote efficiency (see section 122 of the Act). As with the setting of fares, the ESC undertakes a public process before making a determination. Note that no determination has been made to date).

These requirements form the base case as a point of reference for the analysis.

How is the market likely to respond in the absence of regulations?

Under the current regulations, there are more requirements imposed on taxi services than on hire car services. Therefore, when considering how commercial passenger vehicle service providers are likely to respond in the absence of regulations being made, TfV expects that the unbooked services are likely to be impacted the greatest.

Specifically, for reasons outlined later in this RIS, TfV expects that there would be:

- a large variance in how vehicles are branded and identified to provide unbooked commercial passenger vehicle services
- a higher risk of assaults and crime in unbooked commercial passenger vehicles (e.g. if security camera requirements are not maintained)
- a range of fares being offered for the provision of unbooked commercial passenger vehicle services – consumers may find it more difficult to understand, compare and choose between the fare offerings across service providers, particularly where there is limited time to make a decision
- drivers of unbooked commercial passenger vehicle services may engage in practices that are to the detriment of the consumer such as purposefully taking a route longer than is necessary.

The recent entrants to the commercial passenger vehicle market providing 'rideshare' services may give some indication of how the market is likely to respond in the absence of regulations. However, rideshare services are essentially booked commercial passenger vehicle services, which already operate in a more lightly regulated environment. Despite being available to be booked on-demand, which is similar to an unbooked service, TfV considers these services are unlikely to provide further insight into how unbooked services providers would respond in the absence of regulations. The reason is that the nature in which the service is provided – including the provision of driver information and ratings, ability to track the vehicle remotely via GPS, and cash-less transactions – demonstrates how potential issues could alternatively be addressed by market participants. These features are generally unavailable in unbooked services meaning that there is a gap that regulations could potentially address.

2.1.3 What type of regulations can be made?

The CPVI Act gives the Governor in Council power to make regulations for the commercial passenger vehicle industry. Schedule 2 of the CPVI Act outlines the subject matter for the regulations which may be made under the Act. This includes regulations relating to:

- safety duties and safety standards
- the registration of vehicles as commercial passenger vehicles
- booking service providers
- driver accreditation
- consumer protections in respect of fares
- non-cash payment surcharges
- operational requirements
- infringement offences
- the commercial passenger vehicle service levy
- forms.

While Schedule 2 of the CPVI Act specifies a range of matters for which regulations may be made, it does not mean that regulations for all of these matters must be made. The legislation effectively gives an indication of the matters that could be the subject of the regulations.

This RIS examines the potential problems that may give rise to the need for regulation of commercial passenger vehicle services following the reforms. Primarily, the RIS will concentrate on safety issues and consumer protections.

2.2 Objectives

The main focus of the new framework for the regulation of commercial passenger vehicle services are the safety of services and providing consumer protections. This is reflected in the objectives specified in the CPVI Act. The objective of the CPVI Act is to promote–

- (a) competition in the market for commercial passenger vehicle services
- (b) commercial passenger vehicle safety
- (c) the effective management of safety risks arising out of the provision of commercial passenger vehicle services
- (d) continuous improvement in the management of commercial passenger vehicle safety
- (e) public confidence in the safety of commercial passenger vehicle services
- (f) the involvement of relevant stakeholders in commercial passenger vehicle safety
- (g) a safety culture among persons who participate in the provision of commercial passenger vehicle services
- (h) protections for users of commercial passenger vehicle services
- (i) transparency in transactions for the provision of commercial passenger vehicle services.

Any regulations proposed to be made will need to be consistent with the objectives of the CPVI Act.

Accordingly, the objectives of any proposed interventions are to–

- (a) contribute to the achievement of high levels of passenger and driver safety in the commercial passenger vehicle industry
- (b) ensure that transactions undertaken in the market for commercial passenger vehicle services are transparent
- (c) reducing information barriers between commercial passenger vehicle service providers and consumers of those services
- (d) ensure that regulatory costs are minimised, consistent with the need to ensure that the above objectives are met.

3 Commercial Passenger Vehicle Safety

3.1 Nature and extent of the problem

The CPVI Act establishes a safety duties framework whereby general safety duties are imposed on commercial passenger vehicle industry participants to ensure the safe operation of commercial passenger vehicle services.

Commercial passenger vehicle services are generally safe. However, this does not mean that the services are provided without incident. The typical safety incidents that arise in this industry relate to crimes against the person, such as assaults and thefts, incidents that relate to the vehicle, such as a traffic accident, and factors that affect the health and fitness of the driver.

The safety duties scheme provides the framework for considering whether additional safety requirements should be prescribed in regulation. The following sections describe the main types of safety incidents that are likely to occur in the provision of commercial passenger vehicle services.

3.1.1 Assaults and other crimes

One of the main types of incident that threatens the safety of individuals involved in the provision of a commercial passenger vehicle service are incidents where there is harm against a person. This includes assaults, sexual assaults, and thefts. Victims of these incidents may be the driver of the vehicle or the passenger.

Historically, incidents resulting in harm have been in taxis more so than other commercial passenger vehicles. In taxi services, there is some anonymity in the transaction. All else equal, drivers have limited ways of identifying or ascertaining the background of passengers who are picked up at ranks or hail services from the street. Strategies such as screening passengers that may be drunk or disorderly are sometimes used by drivers to reduce risks of an incident occurring.

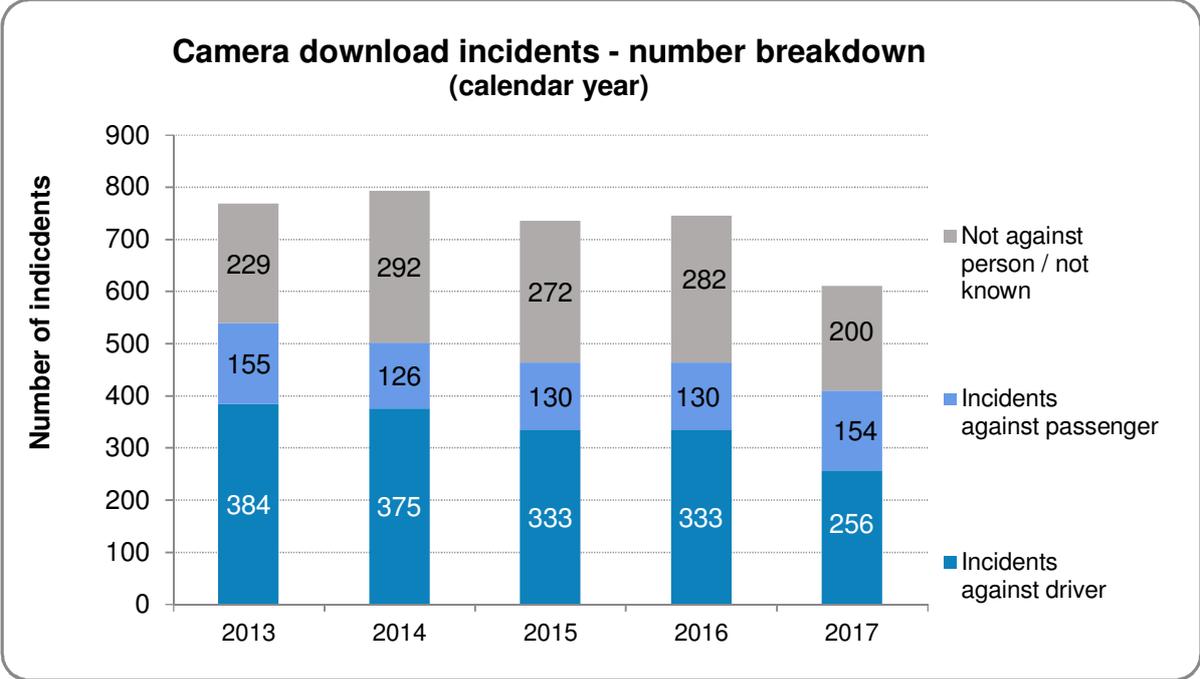
There have also been incidents of assaults and other crimes committed by the driver against the passenger. This risk is mitigated by a requirement for all drivers of commercial passenger vehicles to be accredited. The accreditation process screens drivers in respect of their character and fitness to drive. Character requirements include regular background checks, where drivers are disqualified from driving a commercial passenger vehicle if they have committed a categorised offence. The regulator takes different action depending on whether the offence was a category 1, 2 or 3 offence. For category 1 offences, such as murder or sexual assault, the regulator is required to refuse or cancel an accreditation. For category 2 offences, such as causing acts of violence leading serious injury or drug trafficking, the regulator has discretion, but should presume in favour of refusing or cancelling and accreditation. Finally, for category 3 offences such as traffic infringements, the regulator has discretion to either refuse/grant or cancel an accreditation. This accreditation system provides significant measures of protection for passengers from being victims of criminal behaviour on the part of drivers. Specifically, these measures provide the public with confidence to use commercial passenger vehicle services.

While there are accreditation requirements and background checks, a driver may not be complying with the requirement to hold an accreditation. Without further information, a passenger has no way of knowing whether a driver is appropriately accredited.

How big is the problem?

All taxis in the current Melbourne Metropolitan Zone and the Urban and Large Regional Zone are required to have a security camera installed and operating in the vehicle. Images are usually taken or downloaded from security cameras when an incident is being investigated. Figures 3-1, 3-2 and 3-3 summarise the number of incidents resulting in a camera download.

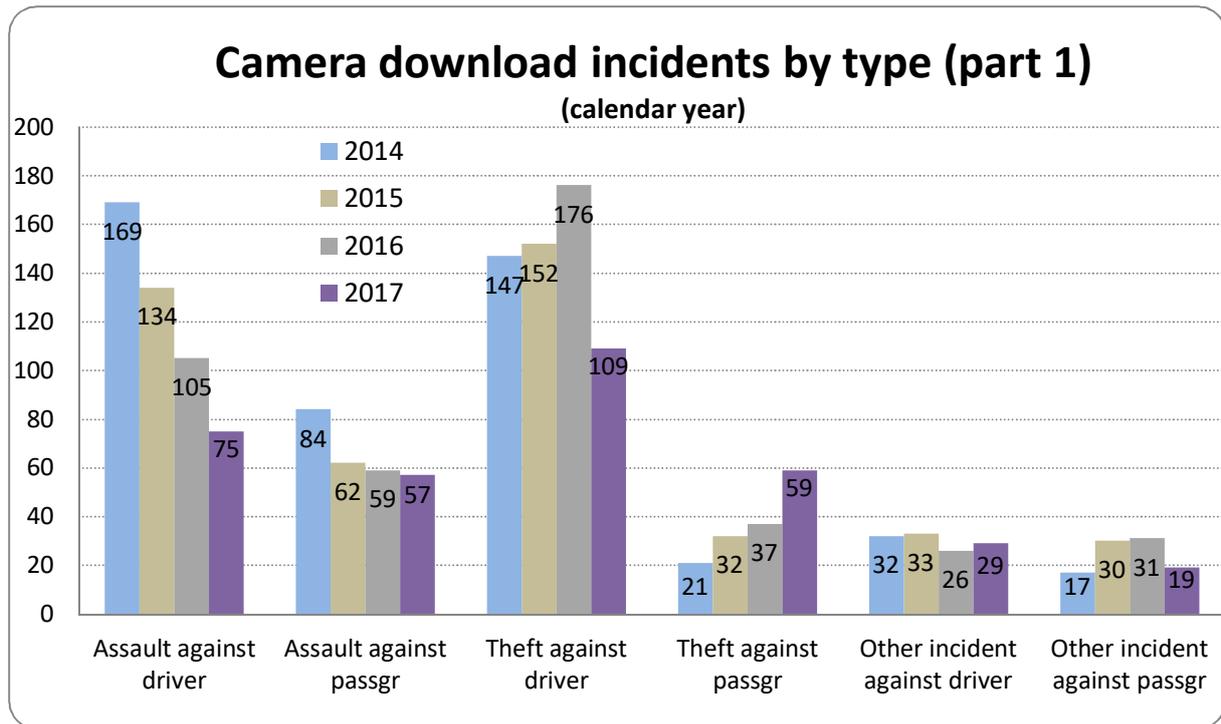
Figure 3-1 — Number of incidents resulting in a camera download



Source: Taxi Services Commission

On average, there are about 700 to 800 instances of camera downloads per year. Approximately, 46 per cent of camera downloads are triggered because of an incident against the driver of the vehicle. Incidents against a passenger represent a smaller proportion of camera downloads, with an average of 19 per cent of camera downloads. There are also a range of other incidents captured by the data, not all of which are not related to the taxi (i.e. sometimes the cameras capture more general crimes occurring near the taxi). This including thefts, assaults with weapons, property damage and other minor incidents.

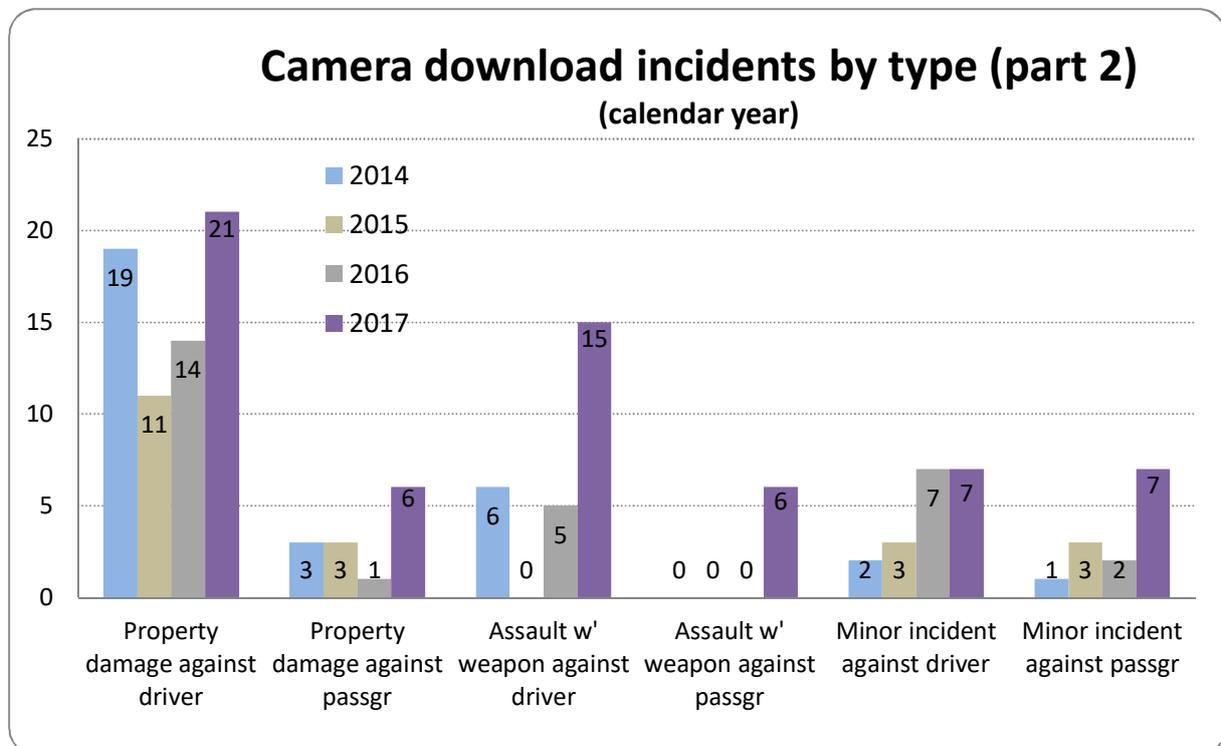
Figure 3-2— Count of camera downloads by incident type (part 1)



Source: Taxi Services Commission

As a proportion of the total number of taxi trips (approximately 20 million), there is a low incidence of assaults and crime occurring in taxis. A significant proportion of incidents are directed against the driver of the vehicle rather than against the passengers.

Figure 3-3— Count of camera download by incident type (part 2)



Source: Taxi Services Commission

Security camera data may not be representative of the full nature and extent of any problems in commercial passenger vehicles. This is because not all incidents will require images to be

downloaded from the security cameras, such as minor incidents. In addition, some security camera images, such as images captured from the outward facing camera, are used by authorities like Victoria Police to enforce general crimes unrelated to the use of commercial passenger vehicles. If a vehicle is found to be in the general vicinity of a crime being investigated, images may be downloaded from the vehicle to aid police investigations. The camera download data is therefore likely to overrepresent the extent of any safety problems specific to commercial passenger vehicles.

Data on crimes in Victoria is processed, analysed and published by the Crimes Statistics Agency. Some crimes data is recorded in terms of the location of where the crime was committed.

Table 3-1 — Offences recorded by offence categories in Public Transport

	2014	2015	2016
Crimes against the person	1,919	1,786	2,000
Property and deception offences	5,055	4,700	6,847
Drug offences	636	657	775
Public order and security offences	2,669	2,262	2,544

Source: Crime Statistics Agency

Table 3-1 summarises offences recorded in public transport locations, which includes those committed at railway stations, tram stops and bus stops and on trains, trams and buses between 2014 and 2016. The public transport data also captures offences recorded in taxis. The public transport data provides an indication of the extent of any problems specific to taxis.

Property and deception offences, which includes offences such as criminal damage and theft, are the most common type of offences recorded in public transport locations. On average, there have been approximately 5,500 incidents of property and deception offences in and around public transport. Offences relating to crimes against the person (e.g. assaults), and public order and security (e.g. disorderly conduct and public nuisance offences) are also recorded at public transport locations. There has been an average of 1,900 incidents of crimes against a person, and 2,490 incidents of public order and security offences recorded in public transport locations over the three-year period between 2014 and 2016.

Table 3-2 — Offences recorded by offence categories in taxis compared to public transport (PT)

	2014 taxis	2014 PT	2015 taxis	2015 PT	2016 taxis	2016 PT
Criminal damage	33	1709	26	1564	15	1508
Steal from a motor vehicle	12	932	8	643	9	1262
Other theft	100	979	69	840	49	1017

Source: Crime Statistics Agency

While Table 3-1 provides some data for offences recorded in relation to public transport, it does not give an indication of any problems specific to taxis. Comparing public transport patronage, in the range of 600 million boardings, to the number of trips undertaken in taxis (approximately 20 million), it is reasonable to expect that a small proportion of the data presented in Table 3-1 relate to incidents in taxis.

Table 3-2 compares the offences recorded in both taxis and public transport (which includes taxis) for a limited set of offences. As indicated in the table, incidents in taxis form a small proportion (approximately one per cent) of recorded offences in public transport. The exception is the category of 'other theft' which is a miscellaneous category covering theft other than theft of a motor vehicle, goods, bicycle or stealing from a motor vehicle. A larger proportion of such recorded offences in public transport are committed in taxis.

The proportion of offences recorded in taxis, when comparing against offences recorded in public transport locations, will likely vary across different types of crimes. As indicated by the data relating to camera downloads, assaults and theft are the most common types of crimes committed in taxis. This means that a larger proportion of the recorded crimes against the person presented in Table 3-1 could be committed in taxis. In any case, the data presented in Table 3-1 represents an upper limit on the number of crimes committed in taxis.

Table 3-3 — Offences recorded by offence categories in Victoria

	2014	2015	2016
Crimes against the person	68,252	71,207	79,212
Property and deception offences	272,798	298,592	331,530
Drug offences	25,960	30,370	31,157
Public order and security offences	37,103	37,118	35,964

Source: Crime Statistics Agency

To put the data into context, Table 3-3 presented the number of offences recorded across the state of Victoria for the same categories over the same period. A relatively small proportion of crimes against a person is committed on public transport, let alone taxis, when compared to the total number of crimes recorded.

What about other commercial passenger vehicles?

The data presented here has largely referred to crimes committed in and around taxis. There has been little data recorded in relation to non-taxi commercial passenger vehicles. This could indicate that there is not a significant problem in relation to other commercial passenger vehicles.

However, this conclusion is largely based on historical figures where there has been a significantly greater number of taxis compared to other commercial passenger vehicles. This may not stay the same in the future with the proliferation of app-based booking technology. Such technology makes it easier for the consumer to procure services and has rapidly become popular. The number of incidents could change in the booked market as new service providers enter the market and as the booked market increases in size.

TfV observes that the anonymous nature of unbooked commercial passenger vehicle services increases the risk of assaults and crime. However, evidence of general crimes in the community indicate that anonymity and a lack of information regarding the other person means that having such information is not necessarily an effective deterrent against criminal behaviour. Indeed, a number of crimes are committed against person where the persons involved in the incident know each other. For this reason, these incidents need not be exclusive to unbooked commercial passenger vehicle services.

Therefore, while there have been a small number of criminal incidents in booked commercial passenger vehicles, TfV considers that the safety of booked commercial passenger vehicle services should be closely monitored by the TSC as the reforms are implemented.

Additionally, booking service providers have duties to ensure the safety of services and will need to respond accordingly to safety risk as they change over time. This monitoring should also inform whether any further interventions, over and above the safety duties scheme, are warranted.

Stakeholder question:

- ***Is there any evidence to suggest that there is a problem with assaults and crime in non-taxi or booked commercial passenger vehicle services that potentially warrants a regulatory response?***

What would happen in the absence of regulations?

A key consideration for this analysis is what would happen in the absence of the regulations. There are multiple elements that could influence the outcomes. The first is whether, the owners of vehicles would otherwise install and use security cameras in vehicles.

The second is to what extent do security cameras deter the driver and passenger from committing crimes. This is an important question, because it is a question of how effective security cameras are in reducing crime and assaults in commercial passenger vehicles.

The requirement to install a security camera has been in place, in Victoria, since 2001. Other jurisdictions implemented this requirement at various times (cameras were introduced in Western Australia in 1997 and Queensland in 2005). Some trials and studies were undertaken prior to the introduction of security cameras in taxis in Australian jurisdictions to evaluate their effectiveness. Results of these trials and studies indicated that security cameras could reduce incidents against a person by up to 60 per cent.⁴ TfV does not have better data or information to ascertain the efficacy of security cameras in commercial passenger vehicles. Accordingly, TfV makes conservative assumptions in relation to its efficacy. Additionally, the high cost of security cameras (based on the current specification) may deter owners and operators from using cameras, or may incentivise the use of cameras of a lower quality.

On the other hand, there are several sources, such as interviews and surveys, indicating general industry support for the use of security cameras. This suggests the industry would use security cameras of some form in the absence of regulations.

Based on this information, TfV expects that the number of assaults and crime occurring in commercial passenger vehicles to be higher in the absence of the regulations. This is based on the assumption that security cameras have a tangible effect on the number of assaults and crime in commercial passenger vehicles. However, it is difficult to quantify the extent to which this is the case.

3.1.2 Condition of vehicles

The condition of the vehicle used to provide a commercial passenger vehicle service may affect the safety of the service. The condition of the vehicle is influenced both by the choice of vehicle (based on car type, size, year manufactured etc) and the maintenance of the vehicle.

The safety of motor vehicles, more generally, is regulated under the *Road Safety Act 1986* (RSA). The RSA specifies the standards to which vehicles used on Victorian roads must comply with. The standards are set out in the Road Safety (Vehicles) Regulations 2009.

Given that the vehicle itself is an important input into the provision of a commercial passenger vehicle service, the condition of the vehicle is naturally an important factor to the safety of the service. Therefore, the safety duties under the CPVI Act will imply that the vehicle will need to be maintained to a safe standard. At a very minimum, the vehicle will need to comply with the road safety standard.

Section 23 of the CPVI Act outlines the safety duty for owners of commercial passenger vehicles. Section 23(2) provides some statutory examples of the duty entails, including:

- maintaining the vehicle in a fit, serviceable and safe condition
- providing for maintenance of any equipment or systems used in the vehicle in accordance with the regulations
- providing sufficient information or instructions to the driver of the vehicle who is using it to provide commercial passenger vehicle services to enable that driver to provide those services safely.

⁴ See: Mayhew, C. Preventing Assaults on Taxi Drivers, No. 179, Australian Institute of Criminology, 2000

The safety duties mandate that safety is a shared responsibility of the industry. This means that other duty holders also have a duty to ensure that the vehicle is maintained to a safe standard. This includes booking service providers and suppliers of maintenance and repair services for vehicles, to the extent that the supplier knows that the vehicle is used to provide commercial passenger vehicle services.

Wheelchair accessible vehicles

Wheelchair accessible commercial passenger vehicles are vehicles that are modified and equipped to carry one or more passengers in a wheelchair.

Since the construction of wheelchair accessible vehicles usually need to be modified to enable the carriage of wheelchairs, it is important to ensure that the modifications are done in such a way that the vehicle is safe to use and the passengers inside are transported safely.

The Disability Standards for Accessible Public Transport (DSAPT), made under the *Disability Discrimination Act 1992* (DDA) of the Commonwealth, sets the standards for such vehicles. This includes regulations relating to:

- allocated space for wheelchairs, including head room
- manoeuvring areas
- access paths
- doorways
- ramps (including width and slope).

The DSAPT standards also apply to other commercial passenger vehicles (not just wheelchair accessible vehicles). Under the DDA, it is unlawful for a person to contravene a disability standard.

What is the problem?

While there are already laws that regulate the standard for wheelchair accessible vehicles, there are gaps in the application of those standards as:

- TSC authorised officers would be unable to monitor compliance with such vehicle standards.
- There may be uncertainty in the application of the DSAPT standard as Victoria law no longer licenses commercial passenger vehicles as taxis.

Inspections

The TSC undertakes inspection of vehicles. An inspection is an examination of the vehicle to determine whether it is safe and whether the vehicle complies with the requirement of the (current) regulations. In 2017 (to October), the TSC completed approximately 16,000 inspections of vehicles (which includes 7,700 inspections of conventional taxis, 800 inspections of wheelchair accessible taxis, and 7,500 inspections of non-taxi commercial passenger vehicles). In 2016, the TSC undertook approximately 19,000 vehicle inspections (with a similar distribution of vehicle types).

If a vehicle is not safe or does not comply with the regulations, the TSC may issue a rectification notice, requiring the owner or operator of the vehicle to rectify the defect. A total of 4,255 and 5,588 rectification notices were issued in 2017 and 2016, respectively. Table 3-4 outlines the primary reasons for issuing a rectification notices including the number of notices issued by the regulator.

Table 3-4 — Rectification notices issued by the TSC for vehicle-related issues

	2016 (Amount)	2016 (% of total)	2017* (Amount)	2017* (% of total)
Security cameras	357	6.4%	430	10.1%
Tyres	302	5.4%	415	9.8%
Seatbelts	148	2.6%	199	4.7%
Headlights	184	3.3%	197	4.6%
Number plate lights	152	2.7%	193	4.5%
Stickers	347	6.2%	168	3.9%
Park lamps	152	2.7%	160	3.8%
Dome lights / sign on taxi	209	3.7%	119	2.8%
Decals	154	2.8%	110	2.6%
Bumper bars	154	2.8%	100	2.4%
Total	5,588		4,255	

Source: Taxi Services Commission

*Partial year

Conclusion

The majority of rectification notices are for minor infractions relating to the vehicle or non-compliance with specific CPV regulatory requirements. This indicates there is not a sufficient problem to justify further regulatory intervention. TfV considers that no additional regulatory requirements should be imposed above that what is required by the RSA and regulations made under that Act. TSC authorised officers have powers to inspect vehicles to monitor compliance with the vehicle standards made under the RSA and are able to issue defect notices under that Act as well.

Stakeholder question:

- ***Do you agree with TfV’s conclusion that commercial passenger vehicles should be subject to the same vehicle standard as other motor vehicles?***
- ***Is there any evidence to suggest that commercial passenger vehicles should be subject to a higher vehicle standard? If so, what standard(s) are appropriate?***

3.1.3 Anonymity of the transaction

In the market for commercial passenger vehicle services, passengers may not readily identify some aspects of the quality of the service including the driver’s background, safety record and fitness to drive when choosing a CPV service provider.

The CPVI Act goes some way towards addressing information asymmetry. The accreditation scheme under the CPVI Act requires all commercial passenger vehicle drivers to hold a driver accreditation. The accreditation scheme screens drivers based on their driving competency, criminal background, and medical fitness. Only drivers that hold a Victorian driver’s licence under the RSA can be accredited to drive a commercial passenger vehicle. The purpose of driver licensing under the RSA is to ensure that people who drive motor vehicles are competent drivers and that the drivers are aware of safe driving practices and road law. A person cannot hold a driver accreditation if they do not also hold a driver’s licence.

In addition to holding an appropriate drivers licence under the RSA, the accreditation scheme provides that drivers of commercial passenger vehicles must pass character requirements, as well as any other checks or tests required by the regulator.

In terms of character requirements, the CPVI Act outlines a framework in which the probity check is applied to applicants. The probity check is structured around three categories of offences:

- Category 1 offences include serious violent and sexual offences. The regulator must refuse applications for accreditation if the person has been found guilty of such offences.
- Category 2 offences include violent, sexual, driving and drug offences. The regulator must refuse accreditation unless there are special circumstances or the regulator is satisfied that issuing an accreditation is appropriate having regard to the public care object.
- Category 3 offences include certain traffic offences such as driving under the influence, safety work infringements and other criminal offences that are not Category 1 or Category 2 offences. The regulator must take Category 3 offence into account when considering an application.

The driver accreditation scheme is intended to work in such a way that if a passenger engages a commercial passenger vehicle service, the passenger has confidence that the vehicle is only driven by an accredited driver which has undergone strict screening.

However, while the requirement to hold an accreditation applies to all drivers, the passenger will have difficulty in ascertaining whether their particular driver is accredited. The TSC maintains a public register which contains information relating to the accreditation of all drivers, and the public can access the register to determine whether a person's accreditation is valid. However, the primary access point to the public register is through the person's driver accreditation number.

There may be other means for passengers to establish information relating to the background, competency and fitness of a commercial passenger vehicle driver. Information may be derived from other factors such as the reputation of the booking service provider (i.e. booking service providers undertake their own screening of drivers and only engage quality drivers), the appearance of the commercial passenger vehicle (e.g. cleanliness, age of vehicle) or hiring services from trusted drivers that the passenger has used before.

In-vehicle information can provide assurance to the passenger that the driver is appropriately accredited and has not been found guilty of certain serious offences. However, a person still needs to get into a vehicle before being able to identify the driver and then ascertain whether the driver is accredited. At this point, it may be too late, both from a contractual perspective and a safety perspective, or too awkward to leave the vehicle.

Access to information, such as in-vehicle information, relating to the driver is also an important consumer protection. It enables complaints to be made regarding the service. Consumer protections are considered in Chapter 4 of this RIS.

3.1.4 Requirements under the Act to ensure safety

Under the CPVI Act, industry participants, which includes booking service providers, owners, drivers, persons who have control over the provision of services and suppliers, have a duty to ensure safety so far as is reasonably practicable. This requires duty holders to ensure safety in a manner relevant to the circumstances of each duty holder.

The safety duties imply that each duty holder would need to take steps to identify and eliminate or manage the safety risks, including those identified earlier in section 3.1, to the extent that the person has control over that risk. This includes, but is not limited to, ensuring that:

- the right equipment is installed in a vehicle and that any persons that may be required to use that equipment understands how to use it
- maintaining the vehicle so that it is safe to use

– implementing policies and procedures to address safety risks.

Given that compliance with the safety duties can be achieved in a number of different ways, general safety duties can give rise to uncertainty with ensuring compliance with the law. Commercial passenger vehicle service providers may be uncertain whether their actions in relation to ensuring safety as far as is reasonable practicable is compliant with their safety duties under CPVI Act. The broad requirements under the CPVI Act relating to the responsibilities of duty holders to ensure safety means that the regulator’s assessment of how a duty holder is complying with their safety duties provides scope for subjectivity and interpretation.

3.2 Objectives

As outlined in Chapter 2, several objectives of the CPVI Act relate to safety. Indeed, the primary scheme established under the CPVI Act relates to ensuring the safety of commercial passenger vehicle services.

The safety objectives, specified in section 5C of the CPVI Act, are to promote:

- commercial passenger vehicle safety
- the effective management of safety risks arising out of the provision of commercial passenger vehicle services
- continuous improvement in the management of commercial passenger vehicle safety
- public confidence in the safety of commercial passenger vehicle services
- the involvement of relevant stakeholders in commercial passenger vehicle safety
- a safety culture among persons who participate in the provision of commercial passenger vehicle services.

The objectives of the proposed regulations build on this safety objective. In particular, any regulations or other government interventions relating to safety should complement the safety duties scheme and any other scheme established in the CPVI Act.

3.3 Identification of options

There are several options available to address the identified safety issues.

3.3.1 Security cameras

One safety measure that could be required to address issues of personal safety for both passengers and drivers is the use of security cameras in commercial passenger vehicles. Security cameras can act as a deterrent to persons inside the vehicle from committing crimes against other persons in the vehicle. As there are restrictions in the CPVI Act (see sections 270 and 271) regarding who may access images from security cameras in the vehicle, only the regulator would be able to access images from the security camera for enforcement purposes.

The owner of the vehicle would be required to install the camera in the vehicle and ensure it is in good working order. Similarly, the driver would be restricted from driving the vehicle unless the security cameras is operating (i.e. turned on and recording images).

Should there be restrictions on the type of security cameras required?

There are already limitations placed on any security cameras used in a commercial passenger vehicle by the CPVI Act, since the security camera must not record audio in a commercial passenger vehicle. In addition, the legislation restricts access to security camera images to certain person authorised by the regulator to download those images. Therefore, not all security cameras available on the market are suitable for use in Victorian commercial passenger vehicles. In addition, there may be other requirements or restrictions that need to

be imposed on security cameras. Some examples are requirements relating to image quality, image storage, location or viewing angles. Such requirements ensure that the images are fit for compliance monitoring and enforcement purposes.

The regulations could:

- prescribe which camera types or models can be used
- prescribe a standard or specifications to which the camera must meet
- give power to the regulator to set camera standards and specifications.

Prescriptive-based regulations may involve regulations specifying security camera units to be installed in vehicle and/or installed in a specific manner. While this removes all ambiguity in relation to the complying with the requirements for security cameras, it may impose significant costs to the providers of commercial passenger vehicle services, particularly for vehicles that are only used as a commercial passenger vehicle on a casual basis. This will include the cost of purchasing the unit, as well as costs for installation and inspections by the TSC for each unit installed.

Performance-based regulations, such as standards and specifications, may require that security footage be recorded in each commercial passenger vehicle, and may broadly outline what and how the footage is to be captured and/or stored. This may include specifying the resolution of the footage, the period for which the footage needs to be kept, stamped details on the footage (e.g. time, location, driver identification). The benefit of performance-based regulation is that it enables a greater variety of devices used.

Another sub-option is that the regulator is given power to set security camera specifications. This sub-option builds on the prescriptive based regulations but enables the regulator to change the specification without making changes to the regulations. The regulator would still be required to undertake public consultation with the industry and the community if the regulator wanted to make changes to the standard. This would include preparing a regulatory impact statement if the changes were significant.

Overall, TfV considers that it is most appropriate to enable the regulator to set a standard for security cameras. The reason is that it provides flexibility both to industry, in complying with the requirement, and the regulator, in setting those requirements. It is appropriate to delegate the determination of the standard to the TSC noting that there would be proportional consultation with the community on changing the standard.

Should all commercial passenger vehicles be required to use security cameras?

The previous section outlined the nature and extent of the problem in relation to assaults and crime impacting personal safety. However, instances of assaults and crime are not equally distributed across commercial passenger vehicle services. Accordingly, the requirement to install a security camera could be restricted based on:

- the type of services provided (e.g. booked or unbooked)
- the location of operation (e.g. metropolitan areas or country areas).

As discussed earlier in this chapter, assaults and crime are more prevalent in taxis, and there is limited evidence to suggest that there is a significant problem in relation to other types of commercial passenger vehicle services. This suggests that it is appropriate to consider an option that only requires security cameras installed in vehicles used to provide unbooked commercial passenger vehicle services.

The assaults and crime identified as a problem in commercial passenger vehicles are largely observed in metropolitan and urban environments (noting that this could reflect the higher number of trips and/or population in those areas). This indicates that it may not be necessary to impose regulatory burden on the owners of commercial passenger vehicles outside of these areas. To the extent that assaults and crime in commercial passenger vehicles is a significant problem in other areas, the owner of the vehicle, in order to fulfil their safety obligations under the safety duties under the CPVI Act, has the option to the install security cameras in the vehicle. While this is the case for owners of vehicles generally, because

assaults and crime appears to be a specific issue in metropolitan and urban areas, TfV proposes that the safety duty be complemented by a specific regulation requiring security cameras to be used. This ensures that the class of the commercial passenger vehicles all have the same equipment used in the vehicle, which provides ancillary benefits to general law enforcement (i.e. images from cameras are used by Victoria Police).

There are some options for specifying the use of security cameras based on geographical areas. Currently, security cameras are required to be used for vehicles operating in the Melbourne Metropolitan Zone and the Urban and Large Regional Zone. The same zone structure could also be used for the purposes of security camera requirements in the future. Alternatively, the geographical area could be specified by Local Government Area or the Australian Bureau of Statistic's statistical areas. TfV considers that the area defined by the current Melbourne Metropolitan Zone and the Urban and Large Regional Zone is the most appropriate. This will continue the operation of the current regulation while minimising compliance costs (additional vehicles outside of this area are not subject to additional regulation) and transitional costs (it is easier for owners of vehicles to understand whether they are subject to regulation).

Summary

TfV puts forward several options for further consideration. This includes imposing a requirement to install security cameras in:

- all commercial passenger vehicles
- commercial passenger vehicles used to provide unbooked services
- commercial passenger vehicles used to provide unbooked services in the Melbourne Metropolitan Zone and the Urban and Large Regional Zone.

Other safety equipment

Based on past approaches to address issues of crime in commercial passenger vehicles, there is an option to further prescribe safety equipment that must be used or installed in these vehicles. For example, under the current regulations, there are requirements to:

- purchase driver protection screens and install them where requested by the driver
- install and use emergency warning devices.

In the past, the approach to address safety issues of personal safety, particularly in relation to drivers, is for regulations to prescribe equipment that must be used or procedures that must be complied with.

As explained in section 3.1.4, the safety duties scheme requires duty holders to assess how to ensure safety in commercial passenger vehicle operations. A means to ensuring safety could involve the use of certain types of equipment. Notwithstanding the safety duties scheme under the CPVI Act, there is an option to continue to prescribe specific safety measures. The prescribed safety measures would complement the safety duties scheme, meaning that compliance with the prescriptive safety measures would form part of this duty.

A prescriptive approach allows to target specific safety issues to be targeted and also allows the regulator to objectively assess industry compliance with the regulations. The trade-off is that this model does not allow the market to find efficient methods to address safety concerns.

For example, some commercial passenger vehicle service providers may find a number of alternative methods to protecting drivers from assaults other than using protection screen or security cameras. This may include strategies such as driver training, cashless payments systems, flashing emergency lights, two-way communications with other drivers, or mobile security.

TfV does not propose to further consider these requirements on the basis that:

- these requirements effectively duplicate the requirements of the safety duties scheme, with duty holders having the option to use and install such equipment in vehicles

– there is an option for the TSC to specify these requirements in a code of practice (further discussed below).

Codes of practice

Another option is to develop codes of practice to provide certainty of compliance to duty holders.

Under the CPVI Act, the Minister has the power to approve a code of practice. A code of practice can provide practical guidance to the commercial passenger vehicle industry to comply with their safety duties by providing examples of actions to be taken by the duty holder to meet their duties. While not mandated by law, meeting the requirements of the code of practice means that the duty holder is taken to have fulfilled their safety duties and obligations in relation to their safety duties. A code of practice may provide guidance on the presentation, identification, assessment and control of safety risks in the commercial passenger vehicle industry.

A code of practice benefits commercial passenger vehicle service providers, particularly smaller or less experienced providers, by minimising the cost imposed on these providers that may arise from efforts to develop their own means to identify and manage safety risks. It also minimises costs imposed on providers by allowing for greater certainty with whether they are complying with the law.

In determining whether regulations should be made, it is good practice to consider two matters: (1) whether there is a sufficient problem that justifies government intervention; and (2) whether a proposed intervention will make the community better off (e.g. do the expected benefits outweigh the expected costs). This approach ensures that the minimum necessary interventions, such as regulations, are applied.

In the context of a general safety duties scheme where there are legislative requirements to ensure safety, so far as is reasonably practicable, the same principles to making regulations hold. The safety duties also form part of the base case, since duty holders will be required to ensure the safety of services. In this context, the process of making regulations also takes into account what duty holders would do to fulfil their duties. As a mandatory requirement, the regulations can also ensure that safety risks are addressed in a specific way, such as in compliance with a standard.

However, the absence of regulations targeting a specific problem, does not mean that there are no additional safety risks that need to be managed. A code of practice, being a voluntary requirement, can provide assistance to industry in addressing and managing specific safety risks that are common to the industry. In this sense, a code of practice serves as a form of guidance. This may be especially helpful for smaller operators.

TfV considers that there is merit in developing codes of practice as a means of providing guidance to the industry in relation to the safety duties. The development of codes of practice may form one of the implementation tasks in preparation for the commencement of the new regulatory framework. Accordingly, the development of codes of practice will not be considered further in this RIS.

3.3.2 Actions to support the implementation of safety duties

Since the imposition of general safety duties will be a new requirement under the CPVI Act, the industry may not have mature safety systems in place to comply with their safety duties. Therefore, to address this gap, the regulations could require specific actions to be taken, such as implementing specific systems or processes, in addition to the requirement to ensure safety, so far as is reasonably practicable to ensure that certain safety risks are identified and managed.

This type of approach mirrors those undertaken in other safety schemes, where systems like safety management systems are required to be established and maintained. For example, rail transport operators are required to maintain a safety management system under rail safety legislation (e.g. the *Rail Safety (Local Operations) Act 2006*).

Under this option, specified duty holders would be required to implement procedures to demonstrate that the person is complying with their duties to ensure safety, so far as is reasonably practicable.

What additional actions should be required to support the implementation of safety duties?

TfV considers that any additional requirements to support the safety duties scheme should be informed by the nature of the scheme and any gaps that may exist.

The regulations could be prescriptive and prescribe a range of requirements that must be complied with in addition to the duty. For example, the regulations could require that duty holders implement procedures relating to emergency management, drug and alcohol controls, fatigue management and vehicle maintenance. However, the downside of this approach is that it assumes that all duty holders face the same risks and that each duty holder has the same capacity to manage such risks. As there are likely to be different business models developing under the new market for commercial passenger vehicle services, this approach may be overly prescriptive. That is, some participants could be required to implement systems for risks that the person has little control over. Additionally, TfV considers that, on the whole, commercial passenger vehicle operations are not inherently unsafe, especially when compared to major hazard facilities or other similarly inherently risky operations, indicating overly prescriptive regulations may not be required.

Safety regulation of the commercial passenger vehicle industry has historically been modelled on prescriptive requirements, meaning that the industry has not been required by law to consider managing safety risks as part of their operations. Therefore, an option is to require the person to identify the risks that are relevant to the person's role in the industry as part of a risk register. This ensures that identifying and managing risks is actively undertaken.

The benefit of this option is that the size of the systems that must be implemented scales with the level of control over safety risks that the person has. For example, an owner of a vehicle can control the maintenance of the vehicle, and the type of equipment that is installed in the vehicle, but the owner of the vehicle may have little control over how, where and when services are provided by an independent driver. In this case, the owner of the vehicle could develop systems relating to the vehicle rather than driving practice (e.g. fatigue management). As part of the identification of risks, the person could also be required to detail how the risks are to be managed and who is responsible for the management of those risks.

In developing this requirement, there are some further matters to consider, including:

- which duty holders should be required to prepare a risk register
- how often should the risk register be reviewed and maintained.

Who must prepare a risk register?

The following industry participants have a general safety duty under the CPVI Act: owners of vehicles, booking service providers, persons who have control over the provision of services, drivers and suppliers of services and equipment. It is necessary to consider whether all or only a subset of these duty holders should be required to implement specific safety systems. The reason being that safety system requirements should reflect the nature and control over commercial passenger vehicle operations and therefore may not be suitable for all duty holders.

Drivers of commercial passenger vehicle have a duty to take reasonable care, which is similar to the duty imposed on employees under the *Occupational Health and Safety Act 2004* (OHSA). This type of duty does not impose a requirement on the driver to consider and manage risks but instead to take care for their own safety during work. This duty also includes taking reasonable care for the safety of persons who may be affected by the driver's acts or omissions. Essentially this duty requires drivers to do things during the provision of services rather than to take pre-emptive actions. Therefore, it is unnecessary and inconsistent with the nature of the duty under the OHSA to impose regulations requiring the driver to implement safety systems.

A booking service provider may need to consider a range of safety risks in relation to the driver and the passenger. The booking service provider may have control over a range of risks and could implement systems that address fatigue management, emergency procedures, driver behaviour and training. Consequently, it is appropriate to further consider the types of safety systems that should be implemented by a booking service provider.

The owner of a commercial passenger vehicle largely has responsibility over the vehicle and the driver's use of the vehicle. The owner of the vehicle would typically maintain the vehicle, install equipment in the vehicle and maintain that equipment, and instruct the driver on how to safely use the vehicle. Accordingly, the systems implemented by owners are not expected to be overly complex.

A duty is also imposed on persons who have control over commercial passenger vehicle services. This is an additional duty holder intended to capture different business models in the commercial passenger vehicle industry. Accordingly, a range of persons in the industry could have control over the provision of services, including where a person is also a booking service provider and/or an owner of a vehicle. Therefore, at this stage, TfV considers it is not necessary to impose a specific requirement on this duty holder, as the requirement would be captured by the owner or the booking service provider.

Suppliers of equipment and services are not directly involved in the provision of commercial passenger vehicle services but provide support services to enable commercial passenger vehicle services to be provided. Accordingly, suppliers are only indirectly involved in the industry and do not have direct control over commercial passenger services. TfV considers there may be limited benefit from imposing safety system requirements on this category of duty holders.

Options relating to the preparation and maintenance of a risk register

The regulations could also prescribe how the risk register is developed, maintained and reviewed. This will ensure that the register is kept up-to-date and are relevant.

Specific sub-options include prescribing:

- how often the register must be reviewed (e.g. every six months, annually, biennial, or regular review)
- who must review the register
- how the register must be maintained
- whether the regulator is required to approve, endorse or sign-off on the register or undertake regular or random audit of the register.

Summary

TfV has determined that two options be considered further in this RIS:

- a requirement for a commercial passenger vehicle owner to prepare a risk register
- a requirement for a booking service provider to prepare a risk register.

3.3.3 Notifiable incidents

Section 272 of the CPVI Act requires a person who holds a safety duty to notify the regulator of prescribed incidents. The purpose of this requirement is to enable the regulator to have timely information in relation to certain incidents. Not all types of incidents are suitable or necessary for this requirement. Incidents should:

- relate to safety of the service
- have serious consequences.

The information would be used to identify the causes of the incident and to determine whether a person involved in commercial passenger vehicle operations has breached a safety duty under the CPVI Act.

The requirement to notify the regulator of prescribed incidents is enlivened if there are types of incidents prescribed in the regulations. This means that if no incidents are prescribed then there is no requirement to notify the regulator.

There are a range of incidents that could be prescribed for the purposes of this requirement, including:

- incidents resulting in injury to a person or a fatality in or near a commercial passenger vehicle
- crimes, such as assaults or thefts, occurring in a commercial passenger vehicle
- incidents resulting in police and/or paramedic attendance
- incidents where the vehicle was towed away or unable to continue the journey
- incidents where the vehicle was involved in an accident or is damaged.

Some incidents such as those where the vehicle was involved in an accident may be relatively frequent and may provide trivial information to the regulator, suggesting that it may not be suitable to prescribe this incident as a notifiable incident.

Other incidents, such as assaults and other crime, occur relatively infrequently (refer to section 3.1.1 for the available data) and have serious consequences which relate to the safety of the service.

How should the regulator be notified of a prescribed incident?

Such a regulation, as provided for in section 272 of the CPVI Act, may also prescribe:

- the timeframe for notification
- the level and type of information to be provided to the regulator.

The purpose of requiring the industry to alert the regulator that a specific type of incident has occurred is to enable an investigation to be conducted, if necessary in the circumstances. This means that the regulator should be notified relatively quickly after the incident has occurred rather than providing a report to the regulator on a monthly or quarterly basis. Taking a similar requirement in other safety schemes, one option could be to require notification within 72 hours of an incident occurring. An alternative that could be considered is that the person has one week to notify.

Additionally, the regulator may also require a minimum level of information in order to assess whether to proceed with an investigation. A notification should contain sufficient information about the service (e.g. who the driver was, which vehicle was used to provide the service etc).

The regulations could prescribe the specific matters that must be provided when an incident happens and a notification is made. Alternatively, the regulations could specify that a notification must be made in the manner and form determined by the regulator.

3.3.4 Standards for wheelchair accessible vehicles

The DSAPT sets standards for wheelchair accessible taxis. To ensure that DSAPT requirements are able to be enforced by a state agency such as the TSC, one option is to duplicate the requirements in state regulation. This could be achieved by either:

- prescribing standards in regulation
- delegating power to the regulator to set the standard.

In practice, there is likely to be little difference between these two options because TfV and the TSC would be involved in the making of the standards which would be largely based on the Commonwealth standard. Additionally, TfV considers it is appropriate to delegate power to the TSC in this way because:

- The power is limited in scope, it applies to a subset of wheelchair accessible commercial passenger vehicles, and is specific to matters relating to accessibility and safety.

– A determination of standards would be a legislative instrument, which means that the TSC would be required to consult with the community when considering making changes.

For these reasons, TfV considers it appropriate to include a power in the regulations for the TSC to set the standard for wheelchair accessible vehicles used to provide commercial passenger vehicle services.

Should the standards apply to all commercial passenger vehicles?

Any standards in relation to wheelchair accessible vehicles would be made for the purpose of accessibility and safety. That is, ensuring that all persons are able to use the vehicle and are able to be transported safely, including when getting in and out of the vehicle. Therefore, accessibility and safety issues apply equally to all types of commercial passenger vehicle services, including whether it is a booked service or an unbooked service.

3.3.5 Driver identification

One option to address issues of anonymity is to require the driver to display some form of identification when providing a commercial passenger vehicle service. This requirement is intended to convey information to a passenger by allowing passenger to identify whether a particular driver is appropriately accredited and have complied with relevant public safety measures when providing commercial passenger vehicle service.

There are some sub-options to this requirements that can be considered, including who must display identification (should all drivers be subject to this requirement or only a subset of drivers?), what information needs to be displayed, and how this information should be displayed.

Who must display driver identification?

There is a question as to whether all drivers of commercial passenger vehicle services should comply with driver identification requirements, or whether it should apply to a subset of drivers. The rationale for the requirement is to address issues of anonymity. Since unbooked commercial passenger vehicle services are inherently more anonymous than other types of commercial passenger vehicle services, it may not be necessary to require an identification to be displayed for booked services.

In the case of an unbooked service, the information that may be made available to the customer prior to hiring the service is limited and so the customer's ability to make an informed decision is also limited. The reason is that less will be known in advance about the commercial passenger vehicle service when a passenger hires a commercial passenger vehicle service off the rank or hails from the street since the hirer of a service is unlikely to repeatedly engage the same provider. In this case, the passenger has almost no prior information about the commercial passenger vehicle service or the driver prior to getting in the vehicle. This type of environment is conducive for anonymity and the case for requiring driver identification is stronger for unbooked services, given the lack of information.

For booked services, it is likely that some information has already been conveyed to the passenger about the commercial passenger vehicle service to be engaged, such as the identity of the driver or information about the booking service provider. However, TfV notes that information such as the driver's accreditation number is not typically provided or made available to the hirer of the vehicle. In the booked segment of the market, passengers are likely to have had time to become relatively informed about certain aspects of the commercial passenger vehicle service prior to hiring the service. Otherwise, customers may trust certain providers based on the quality of the service or the driver. This could be through a direct relationship with the driver, or it could be trust placed in the booking service provider (that the service provider undertakes sufficient vetting of the driver in addition to the statutory checks undertaken by the regulator).

What information should be provided as part of the driver identification?

The information conveyed to the passenger needs to be sufficient to ensure that the passenger is able to identify that the driver is accredited and that the driver is who they say they are.

There are two pieces of information that can achieve this:

- a photo of the driver
- the accreditation number of the driver.

Photos or digitised images are the most straightforward way to identify a person. Other forms of identification, such as fingerprinting, is not practical nor feasible in this context.

In ensuring a driver is appropriately accredited, the second piece of information that could be required is the accreditation number of driver. The TSC provides a public register which can be searched by any member of the public who wishes to search accreditation status of drivers using the accreditation number. This provides an easy method by which passengers can assure themselves that a driver is appropriately accredited to provide safe commercial passenger vehicle services. The TSC reports that passengers access the public register of drivers to look up and verify that the driver is who they say they are. However, specific metrics are not available to TfV on publication of this RIS.

There is other information that the identification could also display, such as the name of the driver. TfV considers that it is not necessary to require this information, in the interests of protecting the driver's privacy.

Manner of displaying driver identification

The manner in which the identity of the driver is conveyed to the passenger can be achieved in a number of different ways. This includes:

- the regulator issuing identification to all drivers
- requiring the driver to display or provide certain information
- requiring the booking service provider to provide this information.

Prescriptive-based regulations may involve a requirement for driver identification to be placed in the vehicle in a certain position and be of a certain size. This allows for no ambiguity in relation to the complying with the requirements to display driver identification.

Outcome-based regulations may require identification to be conveyed to the passenger, but does not specify how this information must be conveyed. This allows providers of commercial passenger vehicle services to decide how to display driver identification information, such as through a physical ID card, display on a digital in-vehicle screen, or directly delivered via email/app to the passenger. This, however, may result in the provision of fraudulent driver identification information to passengers. For example, the photo of a driver could be provided with an incorrect driver accreditation number. The passenger would be able to look up the accreditation number on the public register and see that the status of the accreditation is valid but it is another driver's accreditation. This would defeat the purpose of the requirement.

Alternatively, the booking service provider may be in a position to provide accreditation information directly to the hirer. The booking service provider would only be able to do this in respect of booked services. However, depending on the method of booking, it may be more or less difficult to provide this information to passenger.

Summary

TfV considers there is merit in assessing in more detail in this RIS the following options:

- requiring drivers of unbooked commercial passenger vehicle services to display identification issued by the regulator
- requiring drivers of all commercial passenger vehicle services to display identification issued by the regulator

– requiring booking service providers to provide specified information to the hirer of the commercial passenger vehicle service.

The reason is that the provision of this information will support the operation of the driver accreditation scheme which is intended to improve public safety.

3.4 Benefits and Costs

Having established the likely types of safety problems that may arise when delivering commercial passenger vehicle services, the objectives of government interventions and potential options for interventions, this section of the RIS will consider the expected costs and benefits of the identified options.

3.4.1 Security cameras

The option to require a security camera to be installed in certain commercial passenger vehicles is a regulatory burden primarily placed on the owner of the vehicle. An ancillary regulation is also placed on the driver of the vehicle to ensure the security camera is working at the time of use.

Owners of certain commercial passenger vehicles would be required to purchase and installed a security camera, of a type and model which has been approved by the TSC. While there are a range of options in terms of which vehicles to which the requirement applies, for the purposes of this analysis, it is proposed that the requirement apply to vehicles used to provide an unbooked commercial passenger vehicle service (i.e. vehicles allowed to stand at a rank or be hailed from the street) in the Melbourne Metropolitan Zone and the Urban and Large Regional Zone.

Expected benefits

TfV expects the use of security cameras to deter criminal behaviour such as assaults, thefts and property damage. The presence of a security camera is intended to alert to the person that their activity (footage in picture format) is being recorded, and indicate that there is an increased likelihood of being caught. It will also help to investigate criminal behaviour if or when it occurs.

This change in behaviour is expected to provide benefits to the community in the form of a reduction in crime and incidents in commercial passenger vehicles. This means that the safety of persons using commercial passenger vehicle services is improved.

The key policy question is to what extent does the installation and use of security cameras reduce crime in commercial passenger vehicles. The size of the public benefit associated with this proposed regulation is the difference between the number of crimes committed in vehicle not subject to the regulation and the number of crimes committed in vehicle subject to the regulation. Accordingly, it is important to estimate how many crimes would be committed in a commercial passenger vehicle not subject to any security camera regulations.

The data presented in section 3.1.1 shows the number of incidents in commercial passenger vehicles even with security cameras installed. There are approximately 700 to 800 serious incidents occurring in and around commercial passenger vehicles, significant enough to warrant the downloading of footage recorded by the camera in that vehicle. A small proportion of the 10,000 incidents of crime recorded as occurring on public transport involves a taxi.

Previous studies and regulatory impact statements have assumed that the use of security cameras reduce crimes and assaults by between 50 to 60 per cent in taxis.⁵ However, TfV does not have sufficient information to verify this statistic or to derive an estimate.

⁵ See:

Mayhew, C. Preventing Assaults on Taxi Drivers, No. 179, Australian Institute of Criminology, 2000

The total benefits of the intervention will equal the expected reduction in crimes and incidents multiplied by the dollar amount of the expected costs of such incidents. The dollar amount of the expected cost of each incident represents the costs avoided by the community.

Different types of crimes and incidents impose different costs on the community. The costs will vary across different types of incidents and include costs associated with enforcement by Victoria Police and costs associated with treatment at hospital. Therefore, the estimated costs of the different crimes only represent the tangible component of the costs incurred by the community.

Estimates of costs of different crimes will be used as part of a break-even analysis, because the benefits of this intervention are difficult to measure. A break-even analysis estimates the degree of benefits that are needed for a proposed intervention for the expected benefits equal the expected costs. For the purposes of this analysis, TfV will assume the costs outlined in Table 3-5.

Table 3-5 — Estimates of costs of crime in Australia by category

	Estimate of cost in 2011 \$	Estimate of cost in 2017 \$
Assault	\$2,620	\$2,933
Sexual Assault	\$4,100	\$4,590
Theft	\$3,676	\$4,116
Property Damage	\$1,853	\$2,074

Source: Australian Institute of Criminology⁶

Security cameras in commercial passenger vehicles may also generate ancillary benefits to the community, as the images generated by the cameras could be used for general enforcement of crimes by agencies such as Victoria Police. The images could be used for evidentiary purposes for crimes committed in the near vicinity of the commercial passenger vehicle.

Expected costs

The primary costs associated with this requirement is purchasing and installing a security camera unit. There are also secondary costs associated with ensuring the security camera is in good working order by undertaking an inspection of the camera, and undertaking any necessary maintenance work.

There are also costs incurred as a result of security camera downloads, where the owner of the vehicle is directed to produce the vehicle to an inspection location, so an authorised person may download images from the security camera. The opportunity cost to both the owner or the driver could be significant depending on the circumstances. Not all vehicles may be called in to download images as not all vehicles will be involved in an incident, or be near an incident. Section 8.3 of this RIS, which looks at the small business impacts of the proposed Regulations, considers this cost in more detail.

To calculate the cost to the industry of purchasing security cameras, information relating to the purchase cost of the security cameras and how many vehicles will need to be fit-out with security cameras is necessary.

⁶ http://www.aic.gov.au/media_library/publications/rpp/129/rpp129.pdf. See also: https://business.monash.edu/_data/assets/pdf_file/0009/338688/costs_of_crime_in_victoria.pdf

Given it is proposed only security cameras of a type that complies with a specified standard may be used in commercial passenger vehicles, there is potentially a restriction on the range of suppliers of security cameras. The extent of this restriction depends on the security camera specifications. That is, more restrictive and onerous specifications will reduce the number of suppliers of compliant security cameras which in turn may impact on the purchase cost.

The TSC made a determination for a new camera specification in 2016. The new specification is much simpler than the previous specification and several new camera units have been approved by the TSC since the new determination has been made.

The purchase cost of a security camera unit depends on which units are approved for use in commercial passenger vehicles. In the RIS for the Transport (Buses, Taxis and Other Commercial Passenger Vehicles) (Taxi-Cab Industry Accreditation and Other Matters) Regulations 2017 (the 2017 Regulations), which was released for public consultation in May 2016, DEDJTR assumed that the cost of a security camera cost was approximately \$3,800. This cost was based on a weighted average of observed market prices for security cameras for both conventional vehicles and wheelchair accessible vehicles. Following the recent approval of new security cameras, which are generally available to be leased from the provider, the current market rate for approved security cameras ranges from \$600 to \$700 per annum. Overall, the cost of security cameras has not changed significantly since May 2016. For this reason, TfV will assume that the purchase cost of the camera is \$3800.

In addition, the owner of the vehicle incurs costs in installing the camera in the vehicle. Based on the analysis undertaken, for the 2017 Regulations, the installation costs of a security camera are assumed to be in the order of \$750. This figure will be used for this analysis, as TfV understands that the cost has not significantly changed since May 2016.

The compliance costs also depend on how broadly the regulation applies. The number of vehicles that a security camera would need to be installed in is a key input. Under this option, the security camera requirements would apply to vehicles which are used to provide unbooked commercial passenger vehicle services in the Melbourne Metropolitan Zone or the Urban and Large Regional Zone (e.g. trips that commence in those zones). Under the new legislation, the equivalent vehicles are vehicles licensed as taxis.

However, since the market for commercial passenger vehicle services has been reformed, the size of the market in the future is unknown. On 9 October 2017, the legislation, which removed annual licence fees that applied to all taxi licences, commenced. The likely effect of this change is a significant expansion of the market for taxi services. Accordingly, the supply side of the market is still expanding, and the true size of the market is not known with any certainty.

Up until 31 December 2017, approximately three months since the introduction of low-cost taxi licences, there have been 2,220 taxi licence issued, with 2,000 of those for vehicles intending to operate in the Melbourne Metropolitan Zone. Prior to 9 October 2017, there were approximately 5,400 taxis operating in those two zones. For the purpose of this analysis, the current number of taxi licences issued ($5,400 + 2,220 = 7,461$) will be used as the basis of the size of the market. There are some caveats to this figure:

- The expansion since 9 October 2017 is a one-off expansion reflecting the fact that low-cost licences were available from this date. Prior to this date, taxi licences in the Melbourne Metropolitan Zone were available subject to an annual fee of \$23,000. Based on the rate of new applications for taxi licences in late 2017 and early 2018, TfV does not expect that the growth of the market to continue at this rate.
- There may be some service providers who currently only provide booked services who may wish to also provide unbooked services. Based on the proposed requirement, the vehicle would need to have a security camera installed in the vehicle. TfV has not observed this yet, noting that the current regulations which impose additional requirements on taxis such as livery is likely to limit this. The proposed Regulations, which are not as restrictive as the

current regulations, may encourage more service providers to equip their vehicles to be able to provide unbooked services.

- Ongoing growth in the unbooked sector is likely to reflect the demand for commercial passenger vehicle services. This could be influenced by factors such as population growth, economic conditions and disposable income for individuals. Additionally, the number of booked services, which includes both vehicles and booking services providers may influence the number of unbooked services.

These factors will influence the size of the unbooked segment of the market. If the size of the supply of vehicles were to expand, then the total cost of this intervention will increase proportionately.

Average life of security camera: The RIS for the 2017 Regulations assumed that security cameras would be replaced every 7 years. TfV will assume that this estimate is still current. This means that one in seven vehicles will be required to replace the camera in their vehicles (incurring the cost of purchase of the camera and the cost of installation). This equates to approximately 1,066 vehicles needing to replace their security cameras per annum (= 7461 /7).

Based on this data and assumptions, the total indicative estimated compliance costs associated with purchasing and installing a security camera are approximately \$5.7m per annum.

Table 3-6 — Summary of expected compliance costs of requiring security cameras in vehicles providing unbooked services

	Calculation	Average annual cost	Estimated discounted cost over 10 years ⁷
Cost of security camera unit	1066 x \$3,800	\$4.9m	\$41.33m
Cost of camera installation	1066 x \$750	\$0.8m	\$6.75m
Total cost		\$5.7m	\$48.08m

Source: Taxi Services Commission with Transport for Victoria analysis

Break-even analysis

The previous sections identified and calculated the expected benefits and expected costs of the intervention. In order to determine whether there is merit in the proposed intervention, tools such as net present value or benefit-cost ratio can be used to determine whether an intervention should go ahead. A proposed intervention has merit if the intervention has a positive net present value (greater than zero), or if the benefit-cost ratio is greater than one.

However, since the efficacy of the policy intervention is not known, it is not possible to derive these estimates without making several strong assumptions.

In order to assist decision making about the merits of the proposed regulation, a break-even analysis methodology has also been used to complement the analysis. A break-even analysis provides an indication of the level of benefits the community would need to observe for the proposed intervention to 'break-even' (i.e. the benefits of the intervention would be equal to the costs of the intervention). Specifically, how many crimes would need to be avoided, for the intervention to be worthwhile.

The estimated annual compliance costs to industry of \$5.7m from the requirement to install security cameras, as calculated above, will be used (although these may overestimate the

⁷ Calculated with a discount rate of 4 per cent.

true cost to industry because, in practice, some operators would likely install some form of security camera in taxis even if not required). In addition, based on the data presented in Table 3-5, which only reflects the tangible costs of different categories of crimes incurred by the community, TfV will assume that the weighted average avoided cost per incident is approximately \$3,318.

Therefore, there would need to be approximately 1,718 incidents per annum reduced or avoided for the regulation to 'break-even'. In order to inform whether there is merit in the regulations requiring security cameras to be used in some commercial passenger vehicles, it is necessary to consider whether this range of benefits is realistic and achievable.

The following matters should inform this consideration:

- In comparison to current incident rates, this number of incidents appears to be higher than the current level of incidents. Therefore, based on previous estimates of the efficacy of security cameras, which is approximately a 50 to 60 per cent reduction in incidents, this level of reduction in incident may be difficult to achieve.
- On a per vehicle basis (noting that the regulation would apply to at least 7,461 vehicles), such a reduction implies that approximately four to five incidents would need to be avoided each year.
- The assumed costs of an incident may underestimate the actual costs of an incident. If the actual costs are larger than what has been assumed, then the expected benefits of the intervention would also be higher. The assumed values only take into account the tangible costs and do not take into account intangible costs or costs relating to lost income (in the case of the driver).
- Other interventions, such as driver screens, are unlikely to be used to address the problem. Also, these screens are typically not used by the industry even though the regulations require them to be purchased (the regulation requiring the purchase of the screen is not proposed to be remade as part of the proposed Regulations).

Consideration of other options

The preceding analysis looked at the expected costs and benefits of the option to require security cameras in unbooked commercial passenger vehicle services in metropolitan and urban areas. Other options put forward in this RIS apply the scope of the regulation to a wider set of commercial passenger vehicles.

All commercial passenger vehicles

Based on the number of licensed taxis (8,016) and the number of licensed hire cars (13,396) as of 31 December 2017, a requirement for all commercial passenger vehicles to install a security camera in the vehicle when providing commercial passenger vehicle services, means that an additional 13,951 vehicles (which includes 13,396 hire cars and 555 country and regional taxis) would incur the expected costs.

This means that in the first of operation of the option, the owners of 13,951 vehicles would be required to fit a security camera in the vehicle, incurring the cost of the unit (\$3,800)⁸ and an installation cost of \$750. For this cohort, the costs incurred in the first year of operation total \$63.47 million. Following the previous assumption that the camera would be replaced after seven years, this cohort would incur similar costs at this time. Therefore, the incremental average annual cost of this option is \$14.7 million. The total annual cost of option is \$20.4 million (with \$5.7 million attributable to the metropolitan and urban taxis and \$14.7 million attributable to hire cars and country and regional taxis).

In deriving this estimate of the expected costs, TfV assumes that there is a fixed market of participants (i.e. there is no additional entry or exit). However, there may be considerable

⁸ TfV recognises that the imposition of such a regulation may change the cost the security camera itself. For example, with a greater market for such cameras, new providers may begin to supply cameras to vehicle owners. For simplicity and illustrative purposes, TfV will assume that the purchase cost of the camera will be unchanged in the short term.

entry and exit over the life of the regulations. This means that any entrant that wishes to provide a booked service, even if affiliated with one or more booking services or providing services casually, would be required to purchase the cameras in order to lawfully provide services. Therefore, another cost of this option is the potential impact on the market for commercial passenger vehicle services. That is, other providers, not currently providing services, may avoid entering the market, because the set-up costs are too prohibitive. TfV considers this to be an undesirable outcome.

Additionally, as indicated by TfV in the problem section, there does not appear to be a significant problem justifying this option. For this reason, TfV does not put this option forward in the proposed Regulations. TfV and the TSC will closely monitor the safety of all commercial passenger vehicle services to determine whether additional action is warranted.

All unbooked services in Victoria

In comparison to the previous analysis, under this option, an additional 555 vehicles would be required to install a security camera in the vehicle, reflecting the current number of licensed taxis operating in the Regional Zone and the Country Zone.

In the first (and eighth) year of operation of the regulations, country and regional commercial passenger vehicle owners would incur costs of \$2.5m. This represents an average annual cost over the 10-year life of the Regulations of \$0.58 million. Therefore, the total additional cost of this option is \$6.28 million (with \$5.7 million attributable to metropolitan and urban taxis and \$0.58 million attributable to country and regional taxis).

Conclusion

The purpose of the requirement for security cameras in commercial passenger vehicles is to act as a deterrent against crimes against persons in a commercial passenger vehicle. Security cameras also assist in the general enforcement of crime.

TfV estimates that the compliance costs are \$5.7m per annum. This cost is incurred by the owner of the vehicle and includes purchase and installation costs. The benefits are difficult to value because TfV is unable to estimate the efficacy of the use of a security camera in reducing assaults and crime in commercial passenger vehicles.

However, the break-even analysis suggests that there would need to be a reduction of approximately 1,718 in assaults and other crime committed in commercial passenger vehicles for the intervention to be considered worthwhile. TfV has presented a conservative analysis of the options using best available data and information. There is some uncertainty, based on the estimated cost of cameras and of crimes presented in this RIS, as to whether the expected benefits would outweigh the expected quantified costs. As noted above, however, there is incomplete data in relation to both the efficacy of the security cameras in reducing crime in commercial passenger vehicles, the data in relation to the current number of incidents in commercial passenger vehicles, and the cost estimates on which this analysis are based are conservative. More complete information could support the case for requiring the use of a security camera as a deterrent to assaults and other crime in commercial passenger vehicles.

On balance, therefore, TfV considers that the proposed requirement will:

- reduce and deter the incidence of assaults and crime in certain commercial passenger vehicles, particularly where there has been a history of such incidents;
- enable the general enforcement of crime occurring near commercial passenger vehicles not related to the provision of the service; and
- enable the investigation of incidents occurring in commercial passenger vehicles.

For these reasons, TfV recommends that the proposed regulation be made.

3.4.2 Risk register

This option requires a regulated person, or body corporate, to prepare documentation that would identify the safety risks that apply to their own commercial passenger vehicle operation, how these risks are proposed to be managed, and who is responsible for managing those risks.

The proposed regulation would require the risk register to be reviewed annually. The person, subject to their requirements, would need to have the document available if the regulator undertakes an audit as part of its compliance monitoring and enforcement activities. The duty holder, however, would not be required to submit this document to the regulator for approval.

This section of the RIS will consider the merits of the requirement applying to certain safety duty holders – vehicle owners and booking service providers.

Expected benefits

Since the requirement is to document the safety risks, the expected change associated with this intervention is that affected parties will be required to actively identify safety risks and document how those risks will be managed. This should lead to an improved understanding and management of safety risks in the context of commercial passenger vehicle operations. Ultimately, this should lead to improvements in commercial passenger vehicle safety as risks and hazards are appropriately managed.

Since industry participants already have a duty to ensure safety, the expected benefits to the safety of commercial passenger vehicle services may be marginal. However, the proposed regulation is designed to be complementary to the safety duties scheme under the CPVI Act. TfV expects that the benefits of developing a risk register will be greater for more complex commercial passenger vehicle operations, as measured by the size of the operation or the type of services provided. The reason is that such operations are likely to face, and be in control of, a greater range of risks.

In contrast, documenting safety risks for less complex operations, such as a vehicle owner managing a small number of vehicles (e.g. one to two), will generate lower benefits since there are likely to be a smaller range of risks to be managed. For example, an owner of a single vehicle will need to ensure that the vehicle is appropriately maintained (addressing vehicle risks or equipment failure), or ensuring that equipment affecting safety is installed in the vehicle. Therefore, when safety risks are immediate and obvious, such a regulation may impose an unnecessary burden on the industry.

The development and maintenance of a risk register will also aid the TSC in compliance monitoring and enforcement. The document will provide a point of reference to authorised officers undertaking inspection of duty holders when investigating compliance with the safety duties. The authorised officers will be able to assess how the duty holder proposes to manage certain safety risks and whether the duty holder has implemented the proposed mitigations and controls.

Expected costs

The main costs associated with this option is the administration and compliance costs associated with preparing the risk register.

Based on data held by the TSC, there are approximately 130 booking service providers and 8,830 owners of licensed vehicles. Under the proposal, each of these persons or entities would be required to prepare a risk register. Table 3-7 presents data in relation to the distribution of vehicle owners by reference to the number of vehicles licensed in the owner's name. More than 90 per cent of owners (8,250 out of 8,830) are in control of either one or two vehicles. In comparison, there are a small number of vehicle owners in control of a large fleet of vehicles (e.g. 20 or more vehicles).

Table 3-7 — Count of vehicle owners by category of commercial passenger vehicle

Number of vehicles	Taxi (amount)	Taxi (% of total)	Hire cars (amount)	Hire cars (% of total)	Total (amount)	Total (% of total)
1-2	4,477	92.7%	3,773	94.3%	8,250	93.4%
3-9	298	6.2%	212	5.3%	510	5.8%
10-19	33	0.7%	12	0.3%	45	0.5%
20+	20	0.4%	5	0.1%	25	0.3%
Total	4,828		4,002		8,830	

Source: Taxi Services Commission

As the size and complexity of the register is intended to scale with the size and complexity of the commercial passenger vehicle operations, not all risk registers will be the same across all duty holders. The risk registers will also scale depending on the level of control over risks that a duty holder has. For example, an owner of a vehicle has responsibility and control over the condition of the vehicle, and any equipment that is used in the vehicle. Accordingly, TfV considers it is likely that a risk register for an owner of a single vehicle will not be long or complex.

The operations managed by other duty holders, such as booking service providers, are more complex. For example, the booking service provider may manage emergency procedures and protocols, manage driver issues such as fatigue, or provide induction, instruction and training to drivers. However, between booking service providers the range of risks may also vary, meaning that the size of the risk register could vary greatly. Booking service providers that handle a small amount of bookings are also likely to have significantly less complex operations than those that handle a large number of bookings.

Therefore, for this analysis, TfV will assume that vehicle owners of a small number of vehicles (one to two vehicles) will prepare a shorter version of the risk register. This reflects the assumption that such vehicle owners will need to manage a smaller range of safety risks. In order to minimise compliance costs, the TSC could prepare a template risk register for the owner of the vehicle to complete.

The remaining duty holders (booking service providers and owners of a fleet of vehicles⁹) are assumed to be managing a greater range of safety risks and therefore will need to spend more time preparing a risk register.

The compliance costs associated with changing systems to mitigate or eliminate risks are not attributable to the proposed regulation requiring the preparation of the risk register. The reason for this is that the requirement to ensure safety, which is a requirement to identify and manage safety risks, is a requirement already imposed by the CPVI Act. The proposed Regulation only requires the documentation of a process which is required by the Act.

TfV estimates that an owner of a small number of vehicles would require half a day to prepare the risk register. This assumption is based on the following factors:

- the owner would take advantage of a risk register template developed by the TSC
- the range of safety risks are apparent and will be similar across owners these owners.

⁹ The number of registered booking service providers will depend on the proposal to exempt booking service providers from the requirement to register. This proposal is considered in Chapter 5 of this RIS. TfV's preferred position is that there are no exemptions. Subject to the outcomes of consultation and the final decision of the Minister of Public Transport, this means that additional entities will be required to register. However, the number of entities that will need to register is unknown. For the purpose of this analysis, TfV assumes that fleet owners may also act as a booking service provider and would

On the other hand, a duty holder with more complex operations, such as a booking service providers and fleet owners, would require approximately 1 to 2 days to develop a risk register by senior management.

The estimated compliance costs incurred by vehicles owners are:

– 8,250 vehicle owners x 4 hours x \$50 cost of time = \$1.65 million (or \$200 per vehicle owner)

The estimated compliance costs incurred by booking service providers and owners of a fleet of vehicles are:

– 200 entities x 8 -16 hours x \$50 cost of time = \$80,000 to \$160,000 (or \$400 to \$800 per entity).

Following the initial development of the register, the person or entity would be required to review the register on an annual basis. TfV estimates that the time taken to review the register will not take as long as the initial development of it. However, as a conservative estimate, TfV will assume that the regulated person will incur the same costs each year to review the register. Therefore, the total compliance costs are estimated at \$1.73 to \$1.81 million per annum, if the option to impose the requirement on vehicle owners and booking service providers were to be implemented. The compliance costs for booking service providers are estimated to be \$80,000 to \$160,000.

Summary

The primary benefit of a requirement to develop and maintain a risk register is to ensure that risks to the safety of commercial passenger vehicle services are appropriately identified and documented. The requirements of the safety duty specified in the CPVI Act already mean that duty holders are required to identify and eliminate or mitigate risks.

The expected compliance costs of this requirement, if imposed on owners of a small number of vehicles, as well as booking service providers and fleet owners, are estimated at \$1.73 to \$1.81 million per annum, with most of the costs incurred by owners who own a small number of vehicles.

The benefit is likely to be greatest when there are complex commercial passenger vehicle operations. For this reason, TfV considers that the expected benefits of the requirement exceed the costs in the case of booking service providers. Booking service providers will have control over a range of safety risks which are likely to differ across different booking services.

However, TfV considers that the costs of the proposed requirement for owners of vehicles to implement a risk register exceed the benefits of the proposed intervention. For this reason, TfV does not propose the making of such a regulation. TfV forms this view because the safety risks that could reasonably be managed by the owner of the vehicle are not likely to be sufficiently complex and should be apparent to the owner of the vehicle. Therefore, such a requirement may impose an unnecessary burden on that cohort of duty holders. TfV seeks stakeholder views in relation to the compliance costs of this requirement for these vehicle owners.

TfV is proposing that only registered booking service providers be required to prepare and maintain a register of safety risks. TfV is not proposing to impose this kind of requirement on the owners of vehicles. TfV draws the reader's attention to other parts of the RIS which considers the merits of exempting certain persons from the requirement to register as a booking service provider. TfV's preferred position is that the proposed Regulations do not prescribe any exemptions to the registration requirement but is seeking feedback on this position. This means that there may be some vehicle owners who, under the new law, would be required to also register as a booking service provider. Under the proposed requirement, the owner of the vehicles would, in their capacity as a booking service provider, need to prepare a risk register considering the safety risks that it needs to manage in relation to its booking service, but not as a manager or owner of commercial passenger vehicles.

Stakeholder questions:

- *Are the expected costs of a requirement to prepare a risk register reasonable and accurate? Do you have any evidence to support this?*
- *Do you agree with TfV's conclusion that a requirement for vehicle owners to prepare a risk register may impose an unnecessary burden on that duty holder? Is there merit in imposing a requirement on owners of a large fleet of vehicles to prepare and maintain a risk register?*

3.4.3 Notifiable incidents

The proposed regulation specifies the duty holders who would have an obligation to notify the regulator of incidents. This would include booking service providers, vehicle owners and drivers.

The incidents proposed to be prescribed are, in relation to the use of a commercial passenger vehicle when in service:

- incidents involving attendance of emergency services, such as police or paramedics
- incidents involving an assault of any person
- incidents involving injury or death of a person
- incidents in which the vehicle is unable to safely complete its journey.

The relevant person would be required to report to the TSC within 72 hours of being aware of the incident occurring.

The relevant person would also be required to report in a form determined by the regulator. Information that could be required to be provided may include information relating to the parties involved in the incident (such the driver, the booking service provider), the vehicle involved in the incident (e.g. registration number, make and model of the vehicles), a short description of the incident and the circumstances of the incident (e.g. was the driver fatigued, was the driver under the influence of alcohol etc.).

Expected benefits

The expected benefits of the requirement to notify the regulator of incidents is that it enables the regulator to respond and investigate incidents involving commercial passenger vehicles in a timely manner.

In addition, it will also provide the regulator with data to implement risk-based regulatory compliance monitoring and enforcement activities. For example, should the regulator observe that a number of safety incidents are occurring in certain parts of the market (such as the unbooked market) or associated with a certain booking service provider, then the TSC can target its resources to address safety issues where they are needed most.

It will also be used to inform future policy development, such as safety codes of practice.

A requirement to notify may also change the behaviour of duty holders. For example, a duty holder may act to reduce the likelihood of a prescribed incident more than other types of safety risks, in order to avoid having to report on the incident to the regulator.

TfV notes that there may be a risk of non-compliance with this requirement which would affect the expected benefits. It is possible that some duty holders may avoid reporting on an incident if, for example, the person has breached their safety duty. A consequence of not being notified in time is that the TSC would be able to undertake a timely investigation of the duty holder. This risk is mitigated by the TSC relying on alternative sources of information, such as reports and information through information sharing arrangements with Victoria Police. This would provide a level of industry intelligence to inform a risk-based approach to compliance monitoring and inspections.

Expected costs

There are initial costs with implementing the systems, and ongoing costs associated with notifying the regulator. The main costs associated with this option are the costs of providing information to the regulator when a prescribed type of incident occurs. The costs of providing information are affected by the systems that the regulator puts in place to enable the duty holder to notify the regulator of the incident. For example, the TSC could permit a duty holder to report on the incident by phoning its call-centre with the information being recorded by the call-centre employee. On the other hand, information could also be provided by filling in a form available on the regulator's website.

The costs of providing information is also influenced by the type and amount of information required to be provided by the regulator. At a minimum, the regulator will require sufficient information to be able to identify the parties involved in the incident and the circumstances of the incident, such as the information outlined earlier in this section.

The initial costs to the regulator are expected to be minor. Assuming that the regulator will implement the two systems discussed here: it would require the regulator to implement an additional site on its current website. In addition, the regulator may also provide additional scripts to call-centre employees enabling that information to be recorded. TfV considers that the implementation costs are minor.

Ongoing costs relating to the notification of incidents will depend on the expected number of incidents which are unknown to TfV at this time. However, on a per incident basis, TfV expects that the notification process may take up to one hour, noting that this is subject to the regulator implementing systems that make it simple for duty holders to comply with this obligation.

Stakeholder questions:

- *What are the expected compliance costs of a requirement to notify the regulator of safety incidents? Do you have any evidence to support this?*
- *Has TfV considered all options in relation to notifiable incidents?*
- *Does the proposed list of notifiable incidents include the right type of incidents? Should any types of incidents be added or removed?*

Summary

TfV expects that the benefits of such a regulation outweigh the costs because:

- the regulator will be provided with information to investigate incidents to determine compliance with the safety duties
- the expected costs of this requirement are expected to be low.

For these reasons, TfV proposes that the regulation should be made.

3.4.4 Standards for wheelchair accessible vehicles

The proposed regulation would enable the TSC to set standards for wheelchair accessible vehicles mirroring those that are imposed under the DSAPT and the DDA. The TSC would be given power to set standards for all commercial passenger vehicles or a subset of all vehicles, such as those used to provide an unbooked service. The owner of the vehicle would be required to ensure that the vehicle is compliant with this standard when the vehicle is used to provide commercial passenger vehicle services.

Given that TSC authorised officers do not have the power to enforce the requirements of the DDA, there is limited ability by the industry regulator to inspect vehicles to confirm compliance with these requirements. Therefore, TfV identifies that the primary benefit of making wheelchair accessible vehicle regulations is to enable compliance monitoring and enforcement of these requirements. This will ensure that applicable vehicles conform to the standards and that vehicles are accessible and safely transport passengers accompanied by a wheelchair.

The standards primarily duplicate those required by the DSAPT and the DDA which means that compliance costs would already be incurred by the owner of the vehicle. Therefore, the expected compliance costs associated with this requirement are expected to be minimal.

However, TfV notes that incorporating the standards in state specific regulations is expected to increase the compliance with the requirements, since the requirements would be more easily enforced by the regulator and authorised officers. This means that the compliance costs associated with this requirement would be higher. However, the TSC advises that compliance with the requirements is high (noting that there are currently regulations that duplicate this requirement and TfV is unable to estimate what levels of compliance there would be without the regulations), meaning that the additional compliance costs may not be that significant.

For these reasons, TfV recommends that this regulation be made.

3.4.5 Driver identification

This option is the requirement to display driver identification. There are two parts to this option:

- the TSC will have the discretion to issue a driver ID to the accredited driver; and
- the driver is required to display the ID when providing commercial passenger vehicle services.

Expected benefits

TfV expects the display of driver information to improve the provision of information to passengers of commercial passenger vehicle services, particularly in relation to the status of the driver's accreditation. There are two benefits that arise from this change.

The first benefit is that the passenger of the service is also able to use the information on the ID to confirm that the driver is accredited on the TSC's public register accessible on its website.

The second benefit is that the hirer of the vehicle is empowered to make a complaint, if there is an issue with the service provided. The information on the driver ID is another source of information that the consumer can use to identify who has provided the service and who may be responsible for the service. The consumer can use the information to either make a complaint with the booking service provider or another person responsible for the service or the TSC.

The expected benefits are intangible in nature. Accordingly, TfV considers that it is difficult to accurately quantify and assess the value of the expected benefits.

Expected costs

There are two different types of costs associated with this option. The first is the cost of issuing the photo ID to the accredited driver. The second is the cost of displaying the ID when required to display it.

In order to issue the ID, the TSC requires that the driver provide photographs, and the driver is required to give up time to take the photographs and provide them to the TSC.

Based on the calculations in the RIS for the 2017 Regulations, the cost of a photograph is estimated at \$17 based on the standard Australia Post charge for passport photos. This figure is still current. In addition, 30 minutes of driver time is allowed for at a rate of \$15 per hour (the estimate of average driver income). Therefore, the cost of issuing the ID is estimated at \$24.50.

According to TSC records, there are 16,537 active taxi drivers. This provides an indication of the number of drivers that may provide unbooked commercial passenger vehicle services.

Therefore, the total expected cost of the issuing a driver ID is estimated at \$405,157.

In the case of drivers of booked services, the booking service provider may provide this information to the passenger. The compliance costs associated with the provision of this information will depend on the method of providing the information. However, some booking service providers already provide information about the driver to the passenger. This means that the compliance costs of a requirement imposed on booking service providers will not be as high. For example, in the case of some rideshare booking services, the information provided includes a photo of the driver and the first name of the driver.

In comparison to the requirement in question, the information currently not provided is the accreditation number of the driver. Therefore, some compliance costs may be incurred to ensure this extra information (such as an accreditation number) is provided. If the booking service provider uses email or a smartphone app, the costs relate to changing the systems to provide the required information when the hirer makes the booking. For the remaining booking methods, information could be provided using different systems, such as sending an email to the person. The actual compliance costs will vary across booking services, depending on the level of information that is already provided and the type of system used to provide that information.

Do the expected benefits outweigh the expected costs of this option?

There are expected benefits arising from the requirement to display driver identification issued by the TSC and TfV considers that the expected benefits are likely to outweigh the expected costs.

This judgement is informed by:

- the number of commercial passenger vehicle services provide per annum – approximately 28.8 million trips; and
- estimated compliance costs of \$0.4m incurred by drivers of vehicles providing unbooked services and compliance costs incurred by booking service providers.

Accordingly, TfV has proposed making this regulation.

Stakeholder questions:

- ***Do you agree with TfV's analysis of the expected benefits and expected costs of this option? Why or Why not?***
- ***What are the expected compliance or implementation costs of the proposed new requirement for a booking service provider to provide certain information to the hirer?***

4 Consumer protections

4.1 Nature and extent of the problem

One of the features of an efficient and well-functioning market is the flow of information between participants in the market.

The effect of the government's commercial passenger vehicle reforms is that all fares for all booked commercial passenger vehicle services will not be set by a regulatory authority. The industry will be responsible for determining fares for services for this segment of the market. Fares for unbooked services will continue to be regulated.

As a result of these changes, there may be a change in how consumers go about procuring commercial passenger vehicle services. This section considers whether there is a need for regulations relating to consumer protections by reference to the past rationale for regulating fares and potential problems that may arise when fares are deregulated.

4.1.1 Historical rationale for regulating fares for taxi services

Fare regulation has historically been justified on the basis that potential market failures may arise in the market for taxi services. In this sense, fare regulation has been a key method for addressing market failures and regulatory failures – ensuring consumers are protected from being charged higher prices than what would otherwise occur in other markets subject to greater levels of competition.

There are three primary justifications for fare regulation and government involvement in the traditional taxi market. These are dealt with below along with some discussion highlighting where failures have arisen from over-regulation of the industry.

Market power and transaction costs

Taxi fares have been regulated in large part due to the restrictions on competition imposed through government regulation. In an environment of restricted supply, regulation of fares is required to ensure that the prices for services reflect the cost of providing that service, and that taxi businesses are not able to abuse market power to charge consumers more than the efficient market price. However, in practice, market power has been exacerbated by past regulatory intervention, including severely restricting license numbers, zoning and restricting hire cars to luxury vehicles.

In addition to systemic market power caused by licensing restrictions, this segment of the commercial passenger vehicle market may also give rise to market power in a spatial sense or a temporal sense. Effectively, a passenger that wishes to procure commercial passenger vehicle services without booking will be limited to the services that are available in the immediate vicinity of the person. In some circumstances, there may only be a small number of vehicles available. Those vehicles in the area may enjoy market power, if the person is unable to access alternatives, such as in situations where the person does not have a mobile phone to book a vehicle either via phone booking or via an app.

Searching for alternative providers may increase transactions costs, which in turn increases the total cost of the travel (which includes the actual fare paid by the person and the time and resources spent searching for alternatives). Alternatively, people may avoid travelling altogether as the total cost of travel is more than the person is willing to pay for the service. Fare regulation may reduce transaction costs as it guarantees the maximum fare to be paid by the passenger. On the other hand, some persons may choose to incur the costs of searching for alternative cheaper fares, if it is known that there are alternative service providers available who provide services at a cheaper rate.

4.1.2 Rationale for providing service providers with fare flexibility

Providing fare flexibility is a response to changes in the regulatory environment for commercial passenger vehicles. The regulatory framework enables new entrants to start providing commercial passenger vehicle services and the entry restrictions associated with the commercial passenger vehicle licensing framework has been removed. Evidence of this competition is found through the emergence of new competitors, and new technological platforms.

In supporting the new market environment, it will no longer be necessary to regulate fares for booked services.

Stronger competition within the CPV market

With a significantly more competitive and diverse market and lower barriers to entry, competitive market forces will keep fares for services in check. New entrants will put pressure on businesses to offer the lowest fare and the highest quality service in order to attract customers. With a greater supply and diversity of CPVs on the road, consumers will have a greater choice of services on offer.

TfV also expects that competition in the booked segment of the market will have an impact on the unbooked segment. As cheaper fares are offered by booked services, providers of unbooked services will be pressured by the market to compete for passengers. Such competition will be evidenced by service providers offering fares that are lower than the regulated maximum. Under a regulated maximum fare, there is no impediment to service providers offering a fare that is lower than the maximum.

The TSC has a new role in monitoring fares for commercial passenger vehicle services. One part of this task could be to examine differences in fares in the booked segment of the market compared to fares for unbooked services.

New technologies

Technological advancements that improve access to and the availability of information – including provision of fare estimates, vehicle availability data, quality ratings, estimated arrival times and real-time GPS tracking – will significantly reduce information asymmetries.

New technologies effectively reduce transaction costs and blur the lines between different categories of commercial passenger vehicles. Passengers are able to access information about where vehicles are and the prices for those services. Passengers are also able to more easily book vehicles on the spot. This is effectively an electronic form of hailing a vehicle. The difference being that the user has more information about the service, including information about the vehicle, the driver, the fare and the quality of the service provided. New technology has the potential to curb spatial and temporal monopolies for persons that are able to access and use that technology.

4.1.3 The base case

Under the base case, there are no regulations in place. The powers and requirements of the CPVI Act, however, apply. Under the primary legislation, there is a scheme for the regulation of fares for unbooked commercial passenger vehicle services. These fares are regulated as maximums meaning that service providers can set fares lower than the regulated maximum. The ESC will be responsible for setting the regulated maximum. Fares for booked services are not regulated.

In addition, the TSC is conferred a price monitoring function. This function enables the TSC to monitor trends in fares for commercial passenger vehicle services. This serves as a form of consumer protection, as it enables the government to be informed of the performance of the market for commercial passenger vehicle services.

Additionally, the Australian Consumer Law (ACL) provides some level of protection to consumers for transactions in the economy generally. Provisions relating to information

standards, pricing practices and false or misleading representations exist under consumer law and anti-discrimination laws, meaning there may not be a need to explicitly include similar offences and requirements in the regulations.

4.1.4 Residual problems

Under the new regulatory framework and in a market with a broader offering of fares, service types and provider options, passengers will require information to be provided to them or be given provided with access to information in order to make an informed decision to purchase commercial passenger vehicle services. In most circumstances, the exchange of information between the supplier of the service and the consumer of the service is expected to occur with minimal problems. However, additional intervention may be needed to reduce transaction costs and to ensure that fares (including any fare components) are transparent.

Fare complexity

Where service providers are able to set their own fares for services, there may be a lack of easily accessible information about this broader variety of fares, particularly when the hirer has limited scope to make comparisons between fares. Should information about fares be unavailable at the time of purchasing a service, there is a risk that the passenger makes an ill-informed decision. Regulation of fares for unbooked services addresses this potential issue for that segment of the market. In the case of booked services, there is usually some exchange of information, including in relation to the fare, so problems in relation to information exchange can be avoided in this market.

In addition, fare transparency for commercial passenger vehicle services is important because of how fares for services have been set in the past. Traditionally, fares for commercial passenger vehicle services (particularly taxi services) have been set based on fare rates in a schedule rather than being fixed or with the total amount agreed to upfront or before the trip commences. However, as noted above, stronger competition between booked and unbooked services could impact on the fares offered by providers of unbooked services. These providers may choose to offer fixed fares as a competitive point of difference. In addition, hire car services have traditionally operated on fixed fares, but now with technology there is greater opportunity for that part of the market to use variable fares. Therefore, there may be a greater mix of fixed fare or variable fare formats offered by commercial passenger vehicle service providers.

A fixed fare works on the basis of offering a service at a pre-determined cost for a trip to a fixed location, an example being a trip from Melbourne CBD to the airport. A fixed fare will include all applicable charges, such as booking fees and tolls. The consumer is aware of the exact trip cost prior to the commencement of the trip and payment may occur prior to (in the case of a booked trip), at the beginning or end of a trip.

In contrast, a variable fare makes use of a fare schedule in which the exact cost of the trip is not pre-determined. A fare schedule may specify and utilise a rate per kilometre or unit of time, as well as separately outline additional charges that may be applicable such as a flag fall or booking fee. The rates per kilometre or time may vary at different times of the day or when demand for services changes. The consumer is not aware of the exact trip cost prior to the commencement of the trip and payment is made at the end of the trip.

Where service providers are able to set their own fares, there is no guarantee that service providers will choose variable fares on the same basis. This increases complexity for the consumer when comparing fares across service providers. For example, one provider could adopt a fare structure that includes a fixed component and a variable component based on the distance travelled. In contrast, another provider could adopt both a fare structure that includes component based on distance and a time charge based on the speed of the vehicle.

The uncertainty that exists when a service uses a fare schedule to calculate a trip cost may make it difficult for a passenger to calculate how much a journey is costing them. If there is no meter or fare calculation device in place that is capable of accurately calculating the cost, at the end of a trip the passenger may find themselves in a situation where they cannot

easily verify the amount asked to be paid, and once again may be incorrectly charged or overcharged.

Transparency

Regardless of the method by which the service provider chooses to offer fares — fixed or variable — it may be the case that suppliers of services impose additional charges that are hidden, or do not directly relate to the service being provided or are imposed in certain circumstances. Examples of charges that are not currently part of the base fare but commonly added to it include a surcharge for paying by credit card, or passing on charges or fees incurred by the service provider in providing the service (e.g. road tolls, airport charges, levy). Such charges or fees add to the total amount paid by the consumer for the provision of the service. This may influence the choice of service provider, so if a supplier hides additional fees to appear cheaper than the competition, this is likely to mislead the consumer in purchasing a service. To this end, requirements relating to fare information standards may be necessary to provide full disclosure and transparency of rates and charges for consumers.

Problems arising from a regulated fare

Lastly, a regulated fare may cause the driver to adopt practices to maximise the amount of the fare, given that the fare rate itself is capped.

Complaints made to the TSC provide some evidence that instances, or potential instances, of abuse relating to charging of fares and fare payment are occurring. This information is summarised in Table 4-1. In the 2017 calendar year, the TSC received 385 complaints about driver conduct where the issue was in relation to taxi fare disagreements or overcharging (out of a total of 4,253 complaints made to the regulator in that year). On average, over the last five years, there have been 449 complaints made for this issue.

Table 4-1 — Complaints made to the regulator - fare disputes and overcharging¹⁰

	2013	2014	2015	2016	2017*
Taxi	497	468	425	468	385
Hire car	2	3	0	1	1
Rideshare	0	0	0	2	1
Total (fare)	499	471	425	471	387
Total (all)	4253	3853	3363	3158	2458

Source: Taxi Services Commission

* 11 months of data in 2017

The extent of these complaints gives an indication of the types of problems that arise with transactions in the commercial passenger vehicle market. However, it is possible that such complaints arise as a consequence of a regulated fare, and in a market which is subject to greater competition and a light-handed regulatory regime, the issues that give rise to customer complaints may no longer be an issue (as they are addressed through better quality services and lower fares). Additionally, a regulated fare may provide a reference point to consider whether a person has been overcharged. As shown in Table 4-1, there have been significantly less complaints made to the regulator in relation to fare disputes for booked-only services (which includes hire car services and rideshare services). The lower level of complaints for these services could be explained by a number of factors, including that:

¹⁰ More detailed information relating to the complaints data, such as the outcomes of the complaint, was not available to TfV at the time of publication.

- fares for such services are not regulated and the customer needs to accept that fare before the trip commences, including agreeing to a fixed amount for the trip
- the quality of these services is better, and the customer may be willing to pay more for a better quality of service
- the driver does not directly collect the fare meaning that customers may perceive they are not being overcharged.

Another issue is that the driver may attempt to maximise the time or length of the trip by either taking a circuitous route or driving slowly. Such a problem arises because the driver is legally restrained in terms of the amount that may be charged on a per kilometre basis. Therefore, the response is to increase the distance of the trip to maximise the fare. This could be a problem for persons who are unfamiliar with the best route or do not have access to technology, such as GPS and map software on a smartphone or tablet. Tourists may be particularly vulnerable to this. This problem is mitigated to the extent that the passenger is able to identify the driver is purposefully not taking the shortest route, such as with the aid of technology.

Another problem is that the driver may refuse service to certain passengers because the distance that the passenger wishes to travel is too short resulting in a fare that is not worth the driver's time. This issue arises because the flag fall (the fixed component of the fare) is not sufficient to cover the fixed costs of providing commercial transport services or where the next fare is uncertain (the destination is in an area of low demand causing dead-running as the driver drives back without a passenger to an area of high demand or there is low demand at that time of the week). This issue is exacerbated where the driver has been waiting for a long time between fares – the longer the driver waits for the next fare the higher the driver wants the next fare to be. An example of where short-fare refusal is particularly widespread, is at the Melbourne Airport taxi rank. This problem is somewhat mitigated through technology as the driver is able to access one or more booking services to maximise the utilisation of the vehicle. The incentive to refuse fares decreases as the time between jobs decreases.

The driver of the vehicle may avoid providing help or assistance to passengers, in order to quickly accept or search for another job. This could include assisting the passenger with luggage or assisting the passenger to get in and out of the vehicle. In some cases, this is a service quality issue that would be best left to the market to resolve. However, this behaviour is likely to impact on vulnerable users of commercial passenger vehicle services than others, meaning that there may be merit in considering government intervention to ensure that this cohort of users are not left without help.

The practices of drivers of wheelchair accessible vehicles also may be influenced by the regulated fare structure. In the past, high occupancy tariffs have incentivised drivers to seek long trips at Melbourne Airport rather than using the vehicle to provide transport services to passengers with a disability.

Some of these practices are evidenced by complaints made against drivers to the regulator, which are summarised in Table 4-2.

Table 4-2 — Complaints made to the regulator – specific driver issues

	2013	2014	2015	2016	2017*
Route issues	198	201	169	164	214
Fare refusal¹¹	473	350	218	170	140

Source: Taxi Services Commission

* 11 months of data in 2017

These issues are typically associated with unbooked services. Since fares for booked services will be unregulated, different service providers will be able to tailor fares to suit their own business models. Similarly, booking a service through a booking service provider is likely to provide more certainty to the hirer, because the availability and price of the service can be arranged and/or agreed in advance.

Since fares for unbooked services will continue to be regulated, it may be necessary to review existing protections currently prescribed in the regulations. However, it should be noted that such problems are mitigated by both drivers and passengers through:

- the use of technology to provide more information about the trip, such as the current location and most direct route through mapping software
- the use of booking services — booking services are able to better match supply with demand, providing greater certainty to both the driver and the customer
- fare flexibility — the option to tailor fares, including through the use of discounting fares, are likely to mitigate some of the incentive problems associated with the regulated fare structure.

4.1.5 Other possible issues related to consumer protections

Receipts for services

Receipts are exchanged as part of an economic transaction as a proof of purchase or transaction. Providing a receipt is a standard business practice and consumer expectation. Providing the passenger with a proof of transaction is a basic practice that offers the consumer visibility about what they have been charged, the components of the fare and details relating to the trip and service provider, which can be kept as a record should they wish to make a complaint.

The ACL outlines that a supplier of a service must provide proof of transaction for services value at \$75 or more, and if less than \$75, a consumer can request one. Alternatively, consumers have 30 days to request an itemised bill to be supplied within seven days, regardless of the value of the transaction. A document provided as proof of transaction must display the following:

- Identity of supplier
- Supplier's ABN (or ACN)
- Date of supply
- Services supplied
- Price of services

The information contained in a receipt empowers consumers to make a complaint in the event of poor service. Currently, there are regulatory requirements in relation to the provision of receipts by the driver of a taxi. Receipt requirements also specify the information that must

¹¹ The data indicates that complaints relating to fare refusals have been declining since 2013. This could be explained by a number of factors including the proliferation of on-demand booked services (an increase in short trips provided by those services) or improvements in services quality by taxi drivers.

be included in a receipt, which includes information typically found in a receipt. However, the regulations also require information about the vehicle used to provide the service (in the form of the registration plate number) and the driver (in the form of the driver's accreditation number).

While, by and large, there is compliance with the requirement to provide a receipt, there is evidence of driver failure to provide a receipt or a proper receipt. There were 146 complaints made to the TSC in the 2017 calendar year and 141 in the 2016 calendar year. In comparison to approximately 20 million trips undertaken in taxis, the number of complaints as a proportion of trips (and therefore receipts provided) is low.

Processes for complaints

As a normal course of business, a customer may have a complaint about the quality of the service provided. The question is whether the service provider, which could be the driver, the booking service provider, or some other person with control over the service has the right incentives to address complaints. It can be expected that in markets where reputation does not matter or is not important that there would be limited incentive to address complaints. This is most likely to occur in the segment of the market where there is unlikely to be repeat business (such as the unbooked market).

The reforms, which are aimed at increasing competition in the sector, are expected to incentivise service providers to improve services. This includes improving processes to address customer complaints. TfV considers that there may be a rationale for requiring the industry to implement complaints handling procedures for an industry that is subject to significant regulatory reform and for an industry which has historically had a reputation of providing poor service and not addressing consumer complaints appropriately. The purpose of this requirement is to ensure that complaints about services are sufficiently addressed. TfV also recognises that most of the industry, particularly booking service providers, already have complaints processes in place.

The TSC has a statutory role in enforcing commercial passenger vehicle laws. As part of this role, it will also take complaints from the public about the provision of services by the industry it regulates. Commercial passenger vehicle services will be operating under a new regulatory framework that focuses on safety of services and the provision of consumer protections. Therefore, the TSC should focus on non-compliance in areas of safety and consumer protections. This would include taking complaints in relation to the safety of the service. It is expected that the TSC could also play a role in assessing whether complaints are managed and addressed by a service provider. TfV expects that the TSC's role in addressing complaints about service quality to diminish.

4.1.6 Summary

In summary, the following problems warrant consideration of further interventions:

- complicated fare structures may differ between service providers, imposing transaction costs on the consumer of services
- fares for unbooked services will be regulated which may create incentives for drivers to adopt non-price practices that may disadvantage consumers
- there may be insufficient incentives for service providers to adequately address complaints and consumers may require additional information to make complaints.

4.2 Objectives

In addressing the identified problems relating to consumer protections, the following objectives specified in the CPVI Act are relevant:

- competition in the market for commercial passenger vehicle services
- protections for users of commercial passenger vehicle services
- transparency in transactions for the provision of commercial passenger vehicle services.

In assessing the available and feasible interventions to establish appropriate consumer protections in the market for commercial passenger vehicle services, the following considerations are relevant:

- efficiency in the market for commercial passenger vehicle services
- equitable and fair outcomes for consumers
- minimising compliance costs on industry.

4.3 Identification of options

4.3.1 Fare disclosure

This RIS has identified a complexity in fares and hiring rates as a potential problem for transactions relating to commercial passenger vehicle services. Therefore, one option is to require the disclosure of fares. This could be implemented by requiring the provision of fare information (such as a fixed fare or the rates applicable to the journey) directly to the hirer of the service, either well in advance of the trip commencing or immediately before the trip commences.

Should a fare disclosure requirement apply equally across different types of commercial passenger vehicle services?

Fares for booked services will no longer be set by a regulatory authority under the new framework. Businesses will be responsible for setting their own fares for booked services. It is expected that different fares or different fare structures may emerge from this sub-sector of the market. Therefore, the consumer will need access to information relating to the fare. TfV expects that this exchange of information would occur as part of the normal exchange of information between the supplier and the consumer of the services. This indicates that it may not be necessary to apply additional regulation to the booked segment of the market. However, there may be merit in providing regulatory protections to consumers where a market, which has previously been heavily regulated, is undergoing significant reform. In particular, taxi services (which offer both booked and unbooked services) may have different rates applied depending on how the services are procured – this was not the case under the previous regulatory scheme. A driver or a service provider may choose to offer unbooked services and also be affiliated with one or more booking service providers.

In contrast to the booked segment of the market, fares for unbooked services will continue to be regulated. Fares cannot go above what is regulated, and so the consumer could expect that a fare for service is the same for all providers. However, since the regulated fare is a maximum fare set by the ESC, there is scope for service providers to set fares below the regulated maximum. Under the scheme, the service provider is not restricted to the same fare structure as determined by the ESC, and may offer other fare structures such as a schedule of fixed fares.¹²

In such cases, it would be reasonable to expect the disclosure of fare rates to consumers, as different providers of unbooked services may offer different fares, and may offer this information as a point of difference to other service providers.

What fare information should be disclosed?

The purpose of a requirement to disclose fares is to address potential issues of transparency. Therefore, TfV considers that the regulation should require all components of the fare to be provided, including any additional charges (e.g. road tolls, booking fees, levies etc.) that may be incurred and passed on to the hirer.

In the case of unbooked services where a regulated maximum fare applies, the regulations could also require the provision of fare information about both the regulated fare and the

¹² The TSC has the function for enforcing the maximum regulated fare and a compliance monitoring and enforcement strategy could include comparing fares schedules ex-ante and/or comparing the total amount charged.

actual fare (or to specify that the actual fare is the regulated fare). This information could facilitate decision making by alerting the hirer to whether or not the fare is cheaper than the maximum fare.

Other options to ensure the disclosure of fares

Unbooked commercial passenger vehicle services are such that they are generally procured vehicle-side and a hirer makes decisions about whether to take a service in a short period of time. Accordingly, the potential hirer has limited time to assess the nature of the service.

In the past, the community has not differentiated between different service providers, with 'taking the first cab off the rank' being a cultural norm supported by the regulations. However, with open entry into the market, and relaxation of fare controls, TfV expects to see a greater level of choice exercised by consumers including in relation to the procurement of unbooked services. For such transactions, the hirer has limited time to assess the fares for the service, and may not be able to substantiate the fares offered by the driver. To address this problem, the regulations could require the fares to be displayed in the vehicle and on the outside of the vehicle.

A requirement to display fares could serve two purposes:

- Provide fare information to the consumer before the trip commences – the consumer would have the information regarding the fares for services and make a decision on this basis.
- Provide fare information to the consumer during the trip — the consumer would be able to verify that the total amount charged is calculated consistently with the fares as advertised.

A requirement to display fares could be supported by additional regulations to achieve specific objectives such as accessibility. For example, a regulation could require the information to be of a certain font or size or be provided in another format, such as braille. This format would assist different cohorts of users such as the elderly or persons with a disability.

Summary

TfV considers that options for fare disclosure and display warrant further analysis. This is because fare information will assist customers in deciding between different service providers where fares are no longer regulated (i.e. booked services) or where fares, which are subject to regulation are priced below the regulated maximum. A more detailed discussion of these options is presented below.

4.3.2 Fare estimates

The provision of a fare estimate prior to the commencement of a trip is an option that is one step further than providing the fares or fare rates applicable for a service. The service provider (this could be the driver or the booking service provider) would be responsible for providing the estimate. This requirement would be particularly useful where complex fare structures are used to calculate the full cost of the trip.

However, an estimate may not be needed in all situations. For example, the hirer of a service may take a particular route often (such as to the airport) and is aware of the likely estimate for a given set of fare rates. Therefore, instead of a requiring an estimate to be provided in all circumstances, an estimate could be required only when the hirer requests one.

A fare estimate could be provided as:

- a non-binding estimate
- a non-binding estimate provided with information about the estimate's accuracy
- a binding estimate.

Non-binding estimate

Providing a non-binding estimate would provide the hirer of the service with a likely amount of the total cost of the fare, but the actual fare would still be calculated according to schedule

of rates agreed to before the hiring commenced. This means that the actual fare could differ from the estimated fare. Any discrepancies will not necessarily be an issue because a fare estimate could differ for a variety of reasons such as unpredictable road conditions (traffic congestion, weather, road works, etc.). These circumstances would affect the final fare, but the driver or the booking service provider may not be able to predict this when providing the estimate.

Non-binding estimates provided with its accuracy

In addition to providing a non-binding estimate, the service provider could also be required by the regulations to provide the level of accuracy of the estimate provided. This could be done by giving a range (e.g. the fare is estimated to be between \$30 to \$40).

Alternatively, the accuracy of estimates provided by that service provider could also be published on the service provider's website or provided to the TSC and published on the regulator's website. Customers would be able to access this information before deciding to travel, in order to choose between service providers. Service providers who provide better estimates may be more attractive as service providers compared to those who have less accurate estimates.

Binding estimates

A step beyond simply providing a fare estimate would be to consider an option that requires the service provider to provide an estimate that is binding. Under this option, the service provider or driver would provide an estimate of the fare to the customer which would then be final amount of the fare for the trip.

A regulation binding an estimate could place an undue burden on a service provider as the estimate could not change, even if changes in traffic conditions or unforeseen circumstances would warrant it. Essentially, a binding fare estimate would force a fixed fare for the trip.

This may serve as a protection to the consumer by limiting what could be charged to the consumer. However, this requirement could also have unintended consequences. Drivers might attempt to overestimate the fare (based on 'worst-case', rather than likely, scenarios), in order to reduce risks of the service taking longer than expected, such as when there is traffic congestion. This could result in higher fares for consumers on average.

Does an estimate need to be provided in all cases?

Customers may not need to be given an estimate of the fare that applies in all cases. This includes circumstances where:

- the customer has a good understanding of the likely fare, such as when the customer takes a route frequently using the same service provider
- fares are based on the regulated maximum fares and are calculated using a fare calculation device
- the fare is negotiated and fixed before the trip commences.

There could be a range of other circumstances where the customer does not need or chooses not to ask for a fare estimate. This indicates that a regulation requiring the provision of a fare estimate should not be required for every single commercial passenger vehicle transaction. Instead the regulation could require the service provider to provide it when requested to do so. Such a requirement could minimise the regulatory burden on service providers while still providing the regulatory protection to consumers.

Should this requirement apply to all commercial passenger vehicle services?

In the past, hire car services were generally provided on a fixed fare basis. However, with the rising use of smartphone apps to access commercial passenger vehicle services, more hire car services are offering variable fares. Therefore, the issue of complexity in fares is not limited to the unbooked segment of the market. TfV considers that it would be appropriate to apply this requirement to all commercial passenger vehicle services.

What happens when circumstances change?

Where a fare estimate is provided and circumstances of the trip change (such as when the hirer changes the destination), the original fare estimate become invalid. The hirer of the service has agreed to the fare structure and not the estimate itself (since it is proposed that fare estimates are not binding). While the regulations could require the service provider to recalculate and provide a new estimate, this may be overly burdensome on the driver or the service provider depending on how the estimate is calculated, especially if the driver is required to stop the vehicle to provide the new estimate. The main purpose of requiring the estimate to be provided, is to provide a way for the hirer to understand what the fare schedule means in practice. The hirer agrees to be charged in accordance to that schedule and so should understand that, if the route is changed, then the hirer will be still charged in accordance with that schedule of rates.

Summary

TfV considers that options relating to the provision of fare estimates for all commercial passenger vehicle services warrant further analysis because this requirement could serve as a simple means to convey relevant information to hirers. A more detailed discussion of these options is presented below.

4.3.3 Fare calculation devices

A fare calculation device (FCD) calculates the fare on behalf of the driver and the passenger based on pre-calibrated rates. For most devices, consumers can also see the progressive cost of the journey in real-time. A FCD offers a level of protection for consumers, as the fare rates are programmed into the device, are unable to be changed easily, and provide an objective calculation of the total cost of the fare. One option is to require the use of a FCD in commercial passenger vehicles.

There are several sub-options to be considered including, in what situations must a FCD be used, and the standards for a FCD, and restrictions relating the use and operation of FCDs.

Should a fare calculation device be required to be used in all commercial passenger vehicle services?

The rationale for requiring the use of a FCD is to provide an objective basis for calculating the final fare where:

- the driver has an influence on the amount that may be charged
- a schedule of fares is used.

Not all commercial passenger vehicle services exhibit these characteristics. There are services where fares are fixed, and, therefore, the driver has little influence over the amount that may be charged during the course of the trip or when the trip finishes.

A FCD is necessary when the service uses a fare schedule or rates to calculate prices. Manually calculating a final fare based on a schedule of fares can be difficult if the schedule is complex, and human error or disputes over the calculated amount are likely to occur. The use of a FCD would ensure trip costs are automatically calculated without having to rely on manual calculation by a driver. For this reason, even without further regulation, it is likely that the provider of a service would use some type of FCD to calculate the fare. This view is supported by TfV and the TSC, however, it is also recognised that there is a risk that some unaffiliated service providers may avoid the use of a FCD to misrepresent the fare.

The use of fare rates, while typically used by taxi services as part of the regulated fare, need not be used exclusively by such providers. Fare schedules could also be used by booked service providers. There are two possible scenarios for such services if a fare schedule is used:

- the fare is calculated using a meter installed in the vehicle
- the fare is calculated using an app which, in the case of booked services provided through an app, the app could serve as a meter.

Standards for fare calculation devices

The sub-options here relate to determining what is a FCD, what functionality a meter should be required to have, and what other standards the FCD should comply with.

There are also options here relating to how these standards are set. One option is to prescribe the standard in the regulations themselves. Alternatively, the regulations could provide the regulator with a power to set the standards for the devices by notice in the Government Gazette.

A prescriptive approach would specify the specific devices that could be used as a FCD which would need to be approved by the TSC. While such prescriptive approaches provide certainty to the industry, it often also limits innovation. However, prescriptive approaches to equipment may limit the number of suppliers of that equipment, resulting in undesirable outcomes such as a higher cost of equipment or shortages in supply of equipment. For this reason, an alternative is to prescribe the performance-based standards or outcomes that the FCD should meet.

Currently, there is no standard prescribed requirement for FCDs and the TSC does not type-approve devices for use in vehicles. The only requirement, which is prescribed in the offence provision, is that the device needs to be able to be clearly read from each forward-facing seating position in the vehicle and record and display the fare and additional charges applicable to the hiring.

Options relating to the use of fare calculation devices

Since the driver of the vehicle may have an influence over the amount of the fare, including through the use of a fare calculation device, the regulations could require the driver to operate the FCD or prohibit the operation of the FCD in certain circumstances.

Options include:

- requiring the FCD to be turned on when the trip commences — this would ensure the use of the FCD, noting that the driver has a commercial incentive to turn on the FCD as soon as the trip commences.
- prohibiting the FCD from being used if the vehicle is not being used to provide a service to a passenger — this regulation would ensure that the FCD is not operated before the hirer has agreed to the service being provided.
- requiring the FCD to be turned off when the trip finishes — some drivers could delay turning off the FCD to obtain a slightly higher fare.
- requiring the FCD to not be used in specified circumstances, such as when the vehicle is being repaired or refuelled — such a regulation would ensure that the passenger is not charged for when they are not being provided a service, however, this practice is likely to be correlated with bad service and may be weeded out if a driver has a bad reputation.

Summary

TfV considers that options relating to fare calculation devices warrant further analysis. This is because a fare calculation device provides a level of assurance to the hirer of the service in relation to the fare rates that apply to the journey. A more detailed discussion of these options is presented below.

4.3.4 Regulating driver behaviour and practices

As discussed in earlier sections, a regulated fare structure may create incentives for drivers to use other ways to increase their fare revenue at the expense of customers. One option to address such issues is to make a regulation which prohibit the driver from undertaking certain practices such as:

- taking an indirect route or refusing to take the route nominated by the passenger
- refusing short fares by requiring the driver to provide a service to any person who requests it

- refusing to provide reasonable assistance to passengers of commercial passenger vehicles.

Another option that may change the incentives of the driver is to change the structure of the regulated fare. For example, the practice of short fare refusal could be curbed by increasing the fixed component of the fare. The incentives for drivers of wheelchair accessible vehicles to congregate at the airport could be fixed by changing the fare structure to favour shorter trips. It should be noted that there are two reasons why this is not a feasible or a necessary option. The first is that the regulated fare is determined by the ESC and not the Governor-in-Council (on recommendation by the Minister for Public Transport). Secondly, the fares are only regulated for unbooked services, meaning that issues with incentives could be addressed by service providers and competition in the market.

4.3.5 Proof of transaction

From a consumer perspective, a proof of transaction is useful for retaining a personal record of when the trip occurred, what it cost and who provided the service, which consequently assists when making a complaint against a service provider. In the case of the latter, transparency about who provided the service and what price was paid is key. As indicated earlier, there are already regulatory requirements that require the provision of a proof of transaction under the ACL.

Therefore, to ensure that a consumer has sufficient information about the service provided enabling a complaint to be made, the regulations could:

- duplicate requirements of the ACL in the industry specific regulations to require a receipt to be provided when a commercial passenger vehicle service has been provided
- require specific information to be included in a receipt, noting that other laws already require a receipt to be provided to a consumer.

The option to duplicate the requirements of the ACL would serve to ensure that a proof of transaction is provided to the customer. If this requirement is prescribed in the industry specific regulations, then receipt requirements could be enforced by the TSC and authorised officers rather than Consumer Affairs Victoria as the State's consumer regulator.

In addition, such a regulation would ensure that certain information is provided to the consumer as part of the receipt. This would enable the consumer to make a complaint to the service provider or the TSC. Information, such as the vehicle registration number and driver accreditation number, also ensures that the respondent is able to easily identify the service that is the subject of the complaint.

Since the provision of a receipt is already a requirement under the ACL, it may not be necessary to duplicate this requirement. Alternatively, a regulation could build on the existing consumer law and only prescribe information that must be included in a receipt when it is provided to the consumer. This information could include information relating to the vehicle used to provide the service (such as the registration plate number) and the driver of the vehicle (such as the accreditation number). The regulation could also alert the reader that the requirement to provide a receipt is a requirement of the ACL specifying when it must be provided to the consumer.

Should the requirements apply to all commercial passenger vehicle services?

It does not appear that the nature of the problem is different across types of commercial passenger vehicle services. As discussed, whether the service is booked or unbooked, under the ACL, the service provider has an obligation to provide a proof of transaction to the consumer of the service.

Regardless of the type of services provided, there is no guarantee that the consumer is given this additional information. Even if the service is booked, the consumer may not take a record of the vehicle used to provide the service and driver identification requirements may differ across different service types (in this RIS, it is proposed that drivers of unbooked services be required to display a regulator issued identification).

In the case of a booked service, additional information may be required. The customer may also require, if it is not immediately available, the name and contact details of the booking service provider.

Thus, TfV considers that any intervention in this area should apply to all commercial passenger vehicle services.

4.3.6 Complaints handling

Complaints arise when services are not delivered to a customer's expectations or a customer believes the service provided has not been conducted in accordance with relevant laws or standards. They provide an important way for providers to identify problems and service failures, and ensure customers' dissatisfaction is dealt with effectively and promptly.

In most parts of the economy, there are other ways for consumers to make their dissatisfaction known, including by choosing alternative service providers, or by leaving reviews on public forums such as the internet. The reforms are intended to facilitate consumer choice, primarily by permitting open entry into the market.

The primary rationale for intervening in this area is that there has been a history of poor service outcomes by certain parts of the industry and a resistance by the industry to sufficiently addressing customer complaints. There is an option to implement regulation, requiring the industry to implement complaints handling procedures to a certain standard. The requirement would reinforce that the responsibility for addressing complaints is on the industry in the first instance and to hold the industry to a minimum standard in relation to complaints. It also provides consumers with a clear point of contact for complaints.

Effectively, this option continues the current requirements, specified in the regulations, for the industry to implement complaints handling procedures. While the intent of the reforms is to improve competition and service quality, it is unknown how quickly this will occur and therefore it serves as a layer of protection to consumers as the service outcomes start to manifest.

What standard of complaints handling?

There are some sub-options for minimum standards in relation to complaint handling schemes. One of these options is for all registered booking service providers to implement and maintain a complaints handling scheme consistent with a pre-determined Australian (or other equivalent) standard such as the AS/NZS 1000:2014 (Guidelines for complaint management in organizations).

Another option is to specify an alternative set of standards which could be prescribed in the regulations. Such a standard could refer to performance-based outcomes that the regulated party would need to meet. This could include how quickly complaints need to be responded to and resolved, or the form of communication to and from the complainant.

There is also a question of who should be required to implement a complaints handling system. One option is to require this of booking service providers only. Doing so would cover the large number of trips in the market that are booked, while also ensuring trips in the unbooked market which are provided by affiliated services will also be subject to a complaints handling scheme. This will avoid imposing a compliance burden on smaller commercial passenger vehicle service providers.

The above options are regulatory options designed to ensure that complaints handling systems are in place. A non-regulatory option is for the industry to subscribe to a code of practice which would outline what the person would do in relation to complaints. To facilitate this, the regulator could issue a code of practice consistent with Australian standards with respect to complaints handling that would assist booking service providers in implementing these systems.

Summary

TfV considers that options relating to complaints handling procedures warrant further analysis because the requirement will ensure that the industry is made responsible for taking and addressing complaints in relation to service quality. A more detailed discussion of these options is presented below.

4.4 Benefits and Costs

4.4.1 Fare disclosure

This is a requirement placed on the industry (booking service providers, providers of commercial passenger vehicle services or drivers) to provide information to the consumer regarding the fare rates that apply to the trip.

There are a few ways this could be implemented or complied with.

Fare display

This is a requirement to display the fares that apply to unbooked commercial passenger vehicle services.

For services to which a regulated fare applies, the vehicle will need to display the fare rates that apply to the service, this could be either the regulated maximum fares or, if fares are lower than the regulated maximum, those fares. In the case of an unbooked services in country areas (e.g. a non-regulated zone), the requirement is that the vehicle will need to display the fare rates that apply to the service provided in that vehicle.

Expected costs

There is a compliance cost associated with this requirement. Primarily it is the cost of the sticker or sign and the time impost of applying/installing the sticker or sign in the vehicle.

The sticker or sign will need to be replaced every time fares change. In the case of a regulated fare, the ESC is required to review fares every two years. However, while it is likely that new fare schedules would be determined every two years, it is not necessarily the case that a new determination must be made.

In the case of non-regulated fares (or where the service provider chooses to charge fares less than the regulated maximum), it will be up to the service provider to determine how often fares change. If a fixed fare schedule is adopted, then this will need to be included in the sign outlining the fares.

To calculate the expected cost, TfV will assume the service provider:

- in the case of unbooked services where a regulated fare applies, will need to change stickers or signs with fares every two years
- in the case of unbooked services where fares are not regulated or the service provider offers fare below the regulated maximum, will need to change stickers or signs with fare every year.

Therefore, based on the number of licensed taxis as at 31 December 2017, it is assumed there are:

- a total of 7,461 vehicles subject to regulated fares (the number of vehicles currently licensed to operate in the Melbourne Metropolitan Zone and the Urban and Large Regional Zone)
- a total of 555 vehicles subject to unregulated fares (the number of vehicles currently licensed to operate in the Regional Zone and the Country Zone).

At this stage, TfV cannot ascertain the number of service providers subject to fare regulation who may wish to offer fares lower than the regulated maximum. For this analysis, TfV will assume that all service providers subject to fare regulation will offer the regulated fare.

Consistent with the RIS for the 2017 Regulations, TfV estimates that the cost of a sign or sticker is \$40.

The compliance cost is calculated as follows:

- for regulated fares: $\$40 \times 3731 = \$149,240$
- for unregulated fares: $\$40 \times 555 = \$22,200$

Therefore, the total compliance cost for the requirement to display the fare in-vehicle is estimated to be approximately \$171,440 per annum.

TfV notes that a requirement to display fares in this manner could also influence decisions to change fares or offer different or more complex structures of fares – the service provider may avoid incurring the costs of changing the stickers or labels that contain the fares. However, TfV also notes that the cost of a new sticker is relatively minor, suggesting that this requirement may not significantly impact such decisions.

4.4.2 Fare estimates

This is a requirement for a service provider, either the booking service provider or the driver of the vehicle, to provide an estimate of the fare when requested by the customer to do so.

Expected costs

Compliance costs associated with the requirement to provide a fare estimate are likely to vary depending on how estimates are calculated and provided to the hirer, and the complexity of the fare schedule used (i.e. whether fares are based on time or distance, or the speed the vehicle is travelling at). Automated systems, such as those in smartphone apps, may have large upfront development (fixed) costs and low ongoing costs. On the other hand, manual systems may have lower upfront costs, but the estimates may take longer to calculate, if, for example, it is calculated manually by the driver.

TfV considers that the compliance costs of providing a fare estimate are not high. This is based on the fact that there are a number of booking service providers who already have implemented systems to provide fare estimates either through their website or through a smartphone app.

Other factors likely to influence total compliance costs are the proportion of all commercial passenger vehicle trips provided by service providers using variable fares or the extent to which providers of unbooked commercial passenger vehicle services choose to charge rates lower than the regulated maximum. TfV is unable to determine the extent to which service providers will change business models or fares as a result of the commercial passenger vehicle reforms. This will be monitored as the reforms commence, including by the TSC when monitoring fares as required by the legislation.

Other means of fare disclosure

There are some other ways that commercial passenger vehicle service providers could disclose their fares to hirers of the service. This includes:

- providing a pamphlet which outlines the fares and all other charges that apply to the service
- posting fares on the service providers' website.

The expected compliance costs will vary, but TfV expects that these are normal business costs that would have otherwise been incurred. TfV forms these assumptions based on the current practices of the segment of the market which has not been subject to fare regulation.

Expected benefits

The expected benefits associated with the requirement to display fares in the vehicle or disclose fares is the improved flow of information to consumers in respect of the fare that applies to the commercial passenger vehicle service. The requirement provides certainty of the fare to the consumer of the service.

In respect of the requirement to provide a fare estimate, the purpose is to enable the customer to compare fares across service providers, especially in situations where:

- complicated schedules of fare rates are used (including where the fare is regulated)
- fares or fare rates differ across service providers, since fares are unregulated for the booked segment of the market or fares may be lower than the regulated maximum in respect of unbooked services.

The provision of a fare estimate should assist the hirer of the service in making comparisons of fares thereby reducing search/transaction costs for consumers of commercial passenger vehicle services. This benefit is particularly pronounced when the hirer is attempting to procure an unbooked service, and there is limited time to make decisions regarding the fare for the service.

Summary

TfV proposes that a range of regulations requiring the disclosure of fares be made, including:

- requiring fares to be displayed in vehicles providing unbooked commercial passenger vehicle services
- requiring service providers to provide an estimate of the fare when requested by the hirer
- requiring service providers to provide fare information to the hirer or make the fare information available (such as on a website).

TfV makes this recommendation on the basis that:

- the expected benefits are intangible but will provide for the efficient operation of the market, especially where fares may differ across service providers or deviate from the regulated maximum for unbooked services
- the expected compliance costs are not expected to be high, and are also likely to be costs that would have otherwise been incurred as regular business costs.

4.4.3 Fare calculation devices

TfV is proposing that a FCD must be used for all unbooked services. The owner of the vehicle will need to install the device and ensure that it complies with the specifications and is functioning when the vehicle is being used to provide an unbooked commercial passenger vehicle service.

The driver will need to operate the device, including complying with restrictions regarding when the FCD must be turned on or turned off, or when the FCD must not be used.

Expected benefits

The expected change in behaviour is that fare calculations devices continue to be used when the vehicle is providing an unbooked commercial passenger vehicle service.

The following outcomes are expected:

- greater certainty to the hirer of the unbooked commercial passenger vehicle service that the amount charged is not greater than the maximum regulated fare
- display of current fare as the service is being provided
- greater certainty to the hirer that the total fare is calculated in accordance with the rates advertised.

The extent of these benefits may be limited by the fact that it is expected that a number of service providers would continue to use meters or fare calculation devices to calculate the cost of the fare.

Expected costs

There are compliance costs associated with the purchase and installation of a fare calculation device.

Based on average market rates for fare calculation devices, the cost of a device is approximately \$400. However, it should be noted that the purchase cost of the device will depend on the specifications adopted in the regulations. There are currently no specifications set in relation to fare calculation devices and the regulations only require that the device is installed in a position that is visible from each seating position and records and displays the fares applicable to the hiring. This means that a wide-range of devices could potentially be used in the vehicle.

The proposed requirement would apply to all vehicles used to provide an unbooked commercial passenger vehicle service. As of 31 December 2017, there were 8,016 vehicles licensed as a taxi in Victoria. This suggests that there are likely to be at least 8,016 vehicles used to provide an unbooked service when the legislative reforms commence.¹³ While it is possible that some taxi providers may choose to stop providing unbooked services when the reforms commence and only provide booked services, TfV assumes that these providers will not take this option and continue to provide unbooked services in the future.

The RIS for the 2017 Regulations assumed that FCDs would be replaced every 10 years. TfV will use this same assumption for the purposes of this analysis. There have been no changes in circumstances that indicate this assumption is no longer relevant. Therefore, TfV will assume that 802 (8,016 / 10) vehicles will need to replace their meter every year. The purchase cost is calculated as follows:

– Number of vehicles affected annually (802) x cost of the meter (\$400) = \$320,800.

A requirement to comply with a direction by the regulator or an authorised officer to present the fare calculation device for inspection by a person authorised by the regulator may impose a compliance cost on the regulated person. In order to comply with this direction, the owner of the vehicle would need to ensure that the device or the vehicle containing the device is made available for inspection. The compliance costs of this direction will depend on the frequency of this inspection. The frequency of inspection is up to the discretion of the TSC and may be exercised regularly, such as annually, or in a risk-based manner, based on intelligence or other metrics. The costs attributable to the direction is the lost income that cannot be earned while the vehicle or the device is not able to be used. Because of the uncertainties associated with when and how inspections will be undertaken, TfV has not estimated these costs.

Therefore, the total compliance cost for the requirement to purchase and install a meter is estimated to be approximately \$0.3 million per annum.

Do the expected benefits outweigh the costs?

A requirement for fare calculation devices to be used in a vehicle used to provide an unbooked commercial passenger vehicle service is expected to generate intangible benefits, such as providing certainty to the hirer that the fare is charged in accordance to what is expected, for the consumers of those services.

The compliance costs associated with this requirement, which includes the purchase and installation costs of fare calculation devices are estimated in the order of \$0.3 million per annum.

Despite being unable to value the benefits, TfV considers that this requirement is appropriate.

¹³ The discussion of the expected costs associated with the proposed requirement to use a security camera outlines some of the assumptions and limitations of this estimate.

4.4.4 Regulating driver behaviour and practices

It is proposed that the Regulations include requirements which regulate the behaviour of drivers in certain circumstances. These are:

- requiring the driver to take the most direct route or the route nominated by the passenger
- requiring the driver to provide reasonable assistance to the passenger.

Expected benefits

The main change resulting from this regulation is that a small cohort of drivers is expected to change their behaviour in line with these requirements. The expected outcome is that some hirers of commercial passenger vehicles are provided financial protection (i.e. the final fare paid for the service is lower) or the hirer avoids making a complaint about the driver. This requirement also protects consumers in situations where, prior to the trip, the consumer is unable to assess whether the driver will provide a good service.

Therefore, TfV considers that there are some benefits associated with this regulation which would impact on a small cohort of passengers, including vulnerable users of commercial passenger vehicles. This is because it is expected that the majority of drivers already provide a good service and would already engage in behaviour that would not be to the detriment of consumers.

Expected costs

The main costs associated with this regulation are the opportunity costs associated with compliance. A driver who does not take the most direct route or the route nominated by the passenger would no longer be able to do engage in this behaviour, resulting in a minor loss in income. The extent of this cost depends on the level of demand at the time (which would influence how easily or quickly the driver would be able to find further work).

Summary

TfV considers that the compliance burden associated with this regulation is not high. In addition, there are minor benefits that may be derived from making this regulation.

4.4.5 Proof of transaction

The proposal is to require a receipt to be provided to the hirer on request following the provision of a commercial passenger vehicle service. It is proposed the receipt be legible and include:

- the driver's signature, if the receipt is provided by the driver, unless the receipt is produced using electronic facilities
- the registration plate number of the vehicle used to provide the service
- the accreditation number of the driver of the vehicle
- all the items that make up the fare and any additional rates and charges
- the total amount paid
- the date of payment
- the name of the booking service provider, if the service was facilitated by a booking service.

Expected benefits

Similar, to the proposed requirement to display driver identification, the main benefit of the requirement for a receipt to be provided to the hirer on request and for the receipt to include specified information is that it will make it easier for consumers to make complaints should the consumer have an issue with the service provided.

The consumer is able to ask for a receipt, which will contain information on both the vehicle used to provide the service and the driver. This information should be sufficient for the booking service provider, the person responsible for the service or the TSC to investigate any complaints, and take appropriate actions to address these complaints.

Expected costs

TfV expects that there are minimal costs associated with this requirement, and that the compliance costs will depend on how the receipt is provided to the customer.

If the receipt is handwritten, the person will need to include, by writing it, additional information on the receipt.

Similarly, if the receipt is emailed, the email would also need to include this information. Some adjustment to the email template and systems that generate these emails would be required.

Lastly, a receipt could be printed on-the-spot via a machine and provided to the customer. Most receipt printers used in taxis already includes this information on the receipt, so no additional compliance costs would be incurred.

Do the expected benefits outweigh the costs?

Overall, TfV considers that the expected benefits of the proposed requirement for a receipt to be provided to the hirer on request and for the receipt to include specified information for a commercial passenger vehicle service outweighs the costs. This assessment is made on the basis of low expected compliance costs.

4.4.6 Complaints handling

The requirement is for booking service providers to implement a complaints handling system consistent with the Australian standard AS/NZS 10002:2014.

Expected benefits

A regulation that requires complaints handling systems to meet the Australian standard is expected to support efficient and effective complaints handling processes. This means that, if a consumer of commercial passenger vehicle services has a problem with the delivery of services, the consumer's complaint to the service provider is taken and addressed within a reasonable period of time.

This, in turn, is expected to lead to improved service quality as service providers improve their services in response to complaints (but also to avoid complaints in the first place) and to minimise risks to reputation.

Expected costs

There are compliance costs associated with implementing complaints handling systems.

The attributable compliance costs are the costs associated with implementing systems that are consistent with the standard. Based on the consultation undertaken as part of the RIS for the 2017 Regulations, TfV understands that many booking service providers already have some complaints handling arrangements in place.

Therefore, the expected costs associated with this requirement are the costs to make the complaints system consistent with the Australian standard (i.e. the difference in costs between the current complaints handling arrangements and the Australian standards). The RIS for the 2017 Regulations asserted that the compliance costs are minimal. TfV considers that this continues to be case as it is unlikely that costs in complaints handling systems have significantly changed in the last year.



Summary

TfV proposes that the regulations relating to complaints handling arrangements be made.

5 Operational requirements

There are some operational practices which could have an impact on a range of matters, such as the safety of the service, compliance monitoring and enforcement, and consumer outcomes. The practices could affect the driver or the consumer of the services.

5.1 Nature and extent of the problem

5.1.1 Vehicle identification

A service provider may choose to display information on the vehicle to identify that the vehicle is available to provide commercial passenger vehicle services or to brand the vehicle, such as displaying information on how to book the vehicle. The degree of branding or information displayed on the vehicle will depend on the type of service that the vehicle chooses to provide. If the vehicle is used to provide unbooked services, the vehicle may have a dome light, or display the word 'taxi' on the vehicle or contact details (to date, these have been regulatory requirements for taxis in Victoria). However, if a vehicle is only able to be booked, similar to hire car services, there may be little on the vehicle to identify that the vehicle is used to transport passengers on a commercial basis. Accordingly, TfV expects that if no regulations were to be made, then not all commercial passenger vehicles would be marked as available to provide a commercial passenger vehicle service. While this in itself is not a problem, two potential issues arise:

- ensuring that the regulator is able to identify which vehicles are being used to provide commercial passenger vehicle services so it can undertake effective and efficient compliance monitoring and enforcement
- ensuring that vehicles available to provide an unbooked service are appropriately identifiable.

Identification for purposes of compliance monitoring and enforcement

Under the reforms, any vehicle can be registered as a commercial passenger vehicle. The registration requirement enables the regulator to know which vehicles are going to be used to provide a commercial passenger vehicle service. The regulator can rely on technology, such as automatic number plate recognition technology, to confirm whether a vehicle is registered under the CPVI Act. For this reason, it is not proposed that all registered commercial passenger vehicles be required by the regulations to affix a special registration plate.

This is in contrast to the previous licensing scheme, where a licensed vehicle would have a special taxi and hire car number plate affixed to the vehicle and, generally, be used for the sole purpose of providing commercial passenger vehicle service.

In addition, it is expected there will be a greater number of vehicles that will be used for dual purposes (a vehicle can be used both as a private vehicle or a commercial passenger vehicle). This is possible because there are no longer restrictions or requirements in relation to when the vehicle must be used to provide commercial passenger services or that a vehicle must be used as a commercial passenger vehicle at all times.

This is enabled by the new legislation because different laws apply to the vehicle and driver depending on whether the vehicle is operating as a commercial passenger vehicle or operating in a private capacity. For example:

- the driver of a vehicle being used to provide a commercial passenger vehicle service must hold a driver accreditation issued by the regulator but this requirement does not apply when passengers are not being transported on a commercial basis
- a zero blood or breath alcohol concentration (BAC) limit applies to drivers when providing commercial passenger vehicle services but a 0.05 BAC limit applies otherwise.

While the regulator is able to readily establish that a vehicle is registered, it may not be able to readily establish that a vehicle is in service and not being used for private purposes. This impedes compliance monitoring and enforcement activities because it is more difficult for the regulator and authorised officers to establish whether a person is committing an offence under the CPVI Act or regulations. For this reason, it is necessary to consider whether all commercial passenger vehicles should be required to indicate that the vehicle is being used to provide a commercial passenger vehicle service.

Identification of vehicle as available to provide an unbooked commercial passenger vehicle service

Section 3.1.3 of this RIS asserts that the anonymous nature of the transaction in the case of unbooked commercial passenger vehicle services may lead to safety issues. This section also considered the merits of a requirement for a driver of a commercial passenger vehicle to display identification.

The problem of anonymity also arises in the context of the vehicle, where the hirer of the vehicle may not know whether the vehicle is a genuine commercial passenger vehicle service provider when attempting to hire an unbooked service. However, as discussed earlier, service providers should have a commercial incentive to advertise the vehicle is available to transport passengers especially when the service provider wishes to provide an unbooked service.

These issues do not necessarily arise in the booked segment of the market. An unmarked vehicle could be used to provide a booked service if the passenger has sufficient information about the vehicle used to provide the service. In the case of on-demand booked services, such as those provided by rideshare services, this information is provided through the app. Where it is booked by other means this information could be provided over the phone or via SMS or email. This suggests that a regulatory intervention requiring the vehicle, undertaking only booked work, to display something that indicates that the vehicle is being used to provide a commercial passenger vehicle service may not be required.

While the new legislation and the regulations no longer regulate 'taxi' services, there is a general understanding in the community about what a 'taxi' service is. This term has meaning within the community even though it is not defined in legislation. Typically, taxi services are those that are available without booking, such as at ranks or cruising the streets. Some service providers advertise their commercial passenger vehicle service by writing the word 'taxi' on the vehicle. This could give the impression to the public that the vehicle is available for hiring on-demand. As discussed in Chapters 3 and 4, TfV proposes that the regulations require vehicles used to provide unbooked services to have a security camera and fare calculation device installed in the vehicle. If not compliant with these proposed regulations, the service provider would be committing an offence if a customer is picked up without a booking. This means that a customer may be entering a vehicle which is not compliant, potentially unsafe, or not a bona-fide taxi service provider.

TfV considers that the word 'taxi' is associated with the act of providing unbooked commercial passenger vehicle services, and there is merit in considering whether there should be some form of restriction in the use of the term 'taxi' by commercial passenger vehicles.

5.1.2 Registration of booking service providers

The CPVI Act establishes a registration scheme for booking service providers. All persons who provide a booking service are required to be registered under the CPVI Act. A person provides a booking service if the person carries on the business of:

- receiving requests for persons to be provided with commercial passenger vehicle services
- arranging or facilitating the acceptance of those requests by or on behalf of the driver of commercial passenger vehicles.

This definition captures a variety of persons, including large body corporates acting as intermediaries in two-sided markets between consumer and the providers of services. It also captures individual drivers providing bookings to fellow drivers (the driver would be providing a booking service).

The purpose of the registration scheme, as specified in section 52 of the CPVI Act, is to:

- provide a method of establishing the identity of:
 - the providers of booking services
 - the persons responsible for managing activities relating to the provision by those providers of those services
- enable booking service providers to be regulated for reasons of public safety
- ensure that booking service providers meet prescribed safety standards.

The legislation provides for the exemption of certain persons from the requirement to be registered. If a class of person is prescribed in the regulations, then that person would not need to apply for registration as a booking service provider. The primary reason for considering whether a class of persons is suitable for an exemption is that the registration of that person acting as a booking service provider is not necessary given the purpose of the scheme. Section 5.3.2 considers some of the criteria for determining whether a person should be exempt.

In addition, the CPVI Act and the proposed Regulations impose several requirements on booking service providers. These include:

- a requirement to ensure the safety of services (e.g. safety duties)
- a requirement to ensure that drivers are accredited and vehicles are registered in accordance with the CPVI Act
- a requirement for information to be included on the TSC's public register
- a proposed requirement to implement complaints management system
- a proposed requirement to keep certain records
- a proposed requirement to develop a register of safety risks
- a proposed requirement to provide fare information and/or a fare estimate to passengers.

While some of these requirements apply to all booking service providers regardless of whether or not the provider is registered (such as the safety duty), some requirements are only imposed on registered booking service providers. Therefore, if the Regulations were to exempt certain persons from the requirement to be registered, this would mean those persons would not need to comply with the requirements imposed on registered booking service providers.

5.1.3 Insurance

The purpose of insurance is to protect against incurring excessive financial costs as a result of an unlikely event. Insurance can be taken out for a range of events that would otherwise impose a large financial cost on the individual. These type of adverse events can relate to a person's health, professional liability and personal property. The most relevant insurance for the commercial passenger vehicle industry is insurance for the motor vehicle.

In Victoria, each vehicle is required to pay Compulsory Third Party Insurance to the Transport Accident Commission (TAC). This insurance covers owners of a Victorian registered vehicle for the injury or death caused by their vehicle to another person, with the TAC paying for any treatment and support services for people injured in transport accidents. There is no requirement for an owner of a private vehicle to hold third-party property or comprehensive insurance in relation to their vehicle.

Insurance requirements are currently specified as conditions that are implied in every driver agreement (also known as a bailment agreement). Currently, it is an implied condition of every driver agreement that the operator of a taxi service hold an insurance policy with an

insurer regulated by the Commonwealth Government. The insurance must cover the driver against liability for third-party property damage caused through the driver's use of the taxi. The operator must pay any applicable excess on the policy. Under the new regulatory framework, these implied conditions will extend to all commercial passenger vehicles to the extent that drivers are engaged through a bailment (or driver agreement). However, these requirements only apply in situations where there is a driver agreement between the owner or operator of the vehicle and the driver. This means that the driver might not be protected where the driver is not engaged under a bailment agreement (such as when the driver is an independent contractor).

Drivers of a vehicle who causes a motor vehicle accident (i.e. is at fault) may be liable for extensive costs of repairing damage or replacing a vehicle or property. Where the driver is at fault, the owner of the vehicle will try to recover the costs of damage to the vehicle from the driver. These costs may involve repairs to one's own vehicle and property as well as the cost of repairs to any third-party vehicle and property also involved in the accident. While the cost of repairs to damage or replacement of one's own vehicle may be known, the costs of repairs to damage or replacement of a third party's vehicle or property could be very significant, considering it is difficult to predict the value of vehicles or property of other road users.

Similarly, damage to the vehicle may also arise even when the driver is not at fault, and the owner of the vehicle may also seek to recover the cost of damages from the driver.

Damages to the vehicle will be the main source of risk faced by the driver. For this reason, this RIS focuses on reducing the impact of damage to the vehicle on the driver.

In normal circumstances, the driver would seek to take out insurance in respect of the vehicle. However, the driver of a vehicle may not have the capability to take out insurance in respect of the vehicle as no such insurance product is currently available in the market. Therefore, in the event of an accident or some other damage to the vehicle, the driver could be liable for the full cost of repairs and would need to accept this risk without insurance.

Stakeholder question:

- ***Do you agree with TfV's assessment of the problem in relation to insurance? Why or why not?***
- ***Is there any evidence to suggest that there is continuing problem in relation to insurance of commercial passenger vehicles?***

5.1.4 Smoking

Governments have banned smoking in public places in recognition of the harmful effects of smoking and second-hand smoke on others. Typically, there are prohibitions on smoking indoors, in sheltered places or at recreational areas, including restaurants, enclosed workplaces, retail centres and patrolled beaches. Additionally, it is an offence to smoke in a motor vehicle if an under 18 is present. It is in these areas, where smoke is contained, that non-smokers are exposed to tobacco smoke and its harmful effects.

Without further intervention, there are no regulations that prohibit smoking in commercial passenger vehicles.

The externality caused by smoking is well documented, and it is generally accepted that smoking has a negative impact on a person's health, and, through second-hand smoke, can adversely impact on the health of others nearby.

Smoking in some places is banned by the Victorian government under the *Tobacco Act 1987*. This recognises the harmful effects of smoking and second-hand smoke. To a certain extent, the offences in this Act reflect a widespread cultural acceptance in Victoria that smoking is harmful to health and produces many external costs.

Additionally, there are widespread government initiatives targeted at reducing smoking rates generally. Examples include taxes on cigarettes, the introduction of plain packaging for cigarettes, funding information and education campaigns designed to encourage smokers to

quit and stop young people from starting smoking, and supporting smokers' efforts to reduce smoking.

This implies a base case where smoking is generally not culturally acceptable, particularly in public places or in vehicles. It also suggests that the rates of smoking in vehicles is likely to be low even without specific smoking regulations for commercial passenger vehicles.

5.1.5 Assistance animals

Assistance animals can be integral to the social well-being and mobility of persons with a disability. An assistance animal could be a guide dog or a similar type of animal that assists the person.

The *Disability Discrimination Act 1992* (DDA) makes it unlawful to treat a person with a disability less favourably because he or she is accompanied by an assistance animal.

There have been cases where persons accompanied by an assistance animal have been refused service because of the animal they are accompanied by. However, it is unlawful for the driver of the commercial passenger vehicle service to refuse service to a customer who is accompanied by an assistance animal.

It may be difficult to enforce the requirement under the DDA, as it requires the passenger to make a complaint to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC). VEOHRC would be able to investigate the complaint, and could rely on the cooperation of the TSC, such as identifying the service provider or the driver, to take action.

In part, the refusal to provide services to persons accompanied by an assistance animal may arise due to lack of awareness. Firstly, there may be lack of awareness that an assistance animal is not merely a pet but that it provides a crucial function to the person. Secondly, refusals may arise due to a lack of understanding of the requirements of the DDA and what the driver's obligations are.

The carriage of other animals in commercial passenger vehicles is not proposed to be regulated. TfV considers that the decision to carry animals, other than assistance animals, should be a commercial decision left to the discretion of the service provider, as there is not a sufficient reason that warrants further government intervention.

5.1.6 Identity cards for Authorised Officers

Authorised officers are appointed under the CPVI Act by the regulator to undertake compliance monitoring and enforcement activity. Authorised officers are conferred a range of investigation powers, including powers relating to entry, search and inspection. In some circumstances, such as when entering a commercial passenger vehicle, the authorised officer is required to produce an identity card.

Section 162 of the CPVI Act enables the regulations to prescribe matters to be included on Authorised officer's identity cards. It is intended to exercise this power, and prescribe details that must be included on the identity card. Specifically, it is intended to prescribe that the officer's appointment number or badge number be included on the card. This information could assist a person who may be the subject of an investigation to identify the authorised officer. This may also assist in making a complaint against that officer's exercise of powers, if needed.

As this regulation does not impose a burden on the community, this RIS will not further consider the merits of the proposed regulation, but invites comment if the community holds any views about it.

5.2 Objectives

A wide range of matters are considered in this Chapter. The rationale for considering each matter varies and cut across different objectives of the regulatory scheme established in the CPVI Act.

In the case of vehicle identification, the objectives are to ensure efficient compliance monitoring and enforcement, and the safe use and procurement of commercial passenger vehicle services.

In the case of insurance, the objectives are to ensure that drivers of commercial passenger vehicles who are not also owners of vehicles are afforded protections.

In the case of smoking, the objective is to improve the safety and health of occupants of commercial passenger vehicles.

In the case of assistance animals, the objective is to improve mobility and social-inclusion of persons with a disability.

5.3 Identification of options

5.3.1 Vehicle identification

Section 51 of the CPVI Act makes it an offence if a person drives a commercial passenger vehicle for the purpose of providing a commercial passenger vehicle service and:

- there is not prominently displayed on the vehicle any thing that the regulations require to be displayed on the vehicle to visually indicate that the vehicle is being used to provide a commercial passenger vehicle service
- a thing that the regulations require to be installed and operating in the vehicle to indicate the vehicle is being used to provide a commercial passenger vehicle service.

Therefore, there is an option to, for the purposes of section 51, prescribe:

- things that must be displayed on the vehicle
- a device that must be installed and operating in the vehicle.

However, it should be noted that if no thing or device is prescribed then no offence is being committed.

The things or devices that could be prescribed should be informed by:

- the information that needs to be conveyed to the regulator, authorised officers and police officers
- when it needs to be displayed.

What information is required?

The type and format of information conveyed to indicate that a vehicle is a commercial passenger vehicle needs to be sufficient to ensure that the regulator is able to identify that the vehicle is in service.

Simple text or standardised logos are the most straightforward way to identify a vehicle. The text or logo must be simply and unique enough to ensure that it is easy to recognise. The logo could also be the logo of the booking service provider that the service provider is affiliated with.

An alternative is the use of special number plates that are issued and approved by the regulator in conjunction with VicRoads.

When does the identification need to be displayed?

Another important consideration is the temporal element of the operation of a commercial passenger vehicle. As discussed in earlier sections, a motor vehicle that is registered as a commercial passenger vehicle can have a dual use, and does not need to be used to provide commercial passenger vehicle services at all times. The new legislation regulates the use of the vehicle *at a particular point in time*.

It would not be desirable, nor appropriate, for a vehicle to be identified as providing a commercial passenger vehicle service if it were in fact being used for private purpose at that

point in time. This is because certain requirements, such as the requirement to hold a driver accreditation, compliance with safety duties, and requirements to have a zero BAC, would apply to the driver of the vehicle. This indicates that any regulations should permit the removal of any thing or sign when the vehicle is not being used to provide services.

Therefore, any commercial passenger vehicle identifier should be required when, and only when, the vehicle at a particular point in time is used to operate or be available as a CPV. The definition of when a vehicle is operating or is available as a commercial passenger vehicle should include times when the vehicle is ready to provide a service, as well as when the vehicle has a passenger. This will include times when the vehicle is sitting in a rank or is logged into a booking app.

What type of things or device should be required?

TfV proposes that the regulations prescribe the following things:

- signs, symbols, notices or labels indicating that the motor vehicle is a commercial passenger vehicle
- signs, symbols, notices or labels identifying the registered booking service provider to which the driver is associated
- signs, symbols, notices or labels of a type or design approved by the regulator
- number plates identifying the vehicle as a commercial passenger vehicle of a type or design approved by VicRoads and the regulator.

The service provider would be given a choice on how to comply with this requirement, as the regulation would require one or more of the things to be displayed. A person would be committing an offence if the vehicle does not have something displayed on it to indicate that it is being used to provide services. This means that when the vehicle is not in service, the vehicle does not need to have the sign. Additionally, the person would have an incentive to not display it as additional requirements apply when the vehicle is available to provide a commercial passenger vehicle service (i.e. safety duties, zero BAC, driver accreditation etc.).

Should there be further restrictions on how things are displayed?

Section 51 of the CPVI Act requires that anything that is displayed on the vehicle must be i) prominently displayed and ii) clearly visible to person approaching the vehicle. However, there may be a need to further restrict how the sign, symbol or notice is displayed on the vehicle.

TfV considers that a further regulation may be required to prohibit the removal of the sign while the vehicle is in service or require the thing to be displayed such that the driver is unable to remove the sign while seated in the driving position of the vehicle. Such a regulation would support the original purpose of the provision, which is to indicate to enforcement authorities that the vehicle is a commercial passenger vehicle and that it is in service. If the sign were able to be removed, then the enforcement officer may be unable to adequately identify the vehicle.

Should there be additional requirements placed on unbooked commercial passenger vehicle services?

As discussed in section 5.1.1, there are commercial incentives to ensure that when being available to provide an unbooked service, that the vehicle is visible and identifiable. However, since there the term 'taxi' has meaning within the community, the behaviour of the public is likely to be influenced if a vehicle displays the word 'taxi' on it.

There are two options that could be considered:

- require vehicles used to provide an unbooked service to display the word 'taxi'
- prohibit vehicles from using the term 'taxi' if the vehicle is not providing an unbooked service.

The first option, requiring vehicles doing unbooked work to display the word 'taxi', would ensure that all vehicles that are available to be hired without booking are consistently marked as taxis. This would support the public's understanding of the word, and assist in the public's hiring of commercial passenger vehicles.

The second option would not require the use of the term 'taxi' for all vehicles, but instead ensure that vehicles that are not generally available for hire on-demand are not misrepresented as available to provide that type of service. Vehicles that are available to provide an unbooked service, would be able to use the term 'taxi' or some other term to indicate they are providing an unbooked service.

The proposed Regulations do not contain additional requirements that apply to the providers of unbooked commercial passenger vehicle services. Instead, TfV is seeking feedback on the two options put forward in this section before making a recommendation. TfV will make a recommendation to the Minister for Public Transport before the proposed Regulations are made on whether to proceed with one of the options or to not make a regulation.

Stakeholder questions:

- ***Should commercial passenger vehicles used to provide a booked commercial passenger vehicle service be required to display additional signs? Why or why not?***
- ***Should vehicles that do not meet all the requirements applicable to the provision of unbooked commercial passenger vehicle services be prohibited from being identified as a taxi? Why or why not?***

5.3.2 Registration of booking service providers

In order to determine which class of persons should be exempt from the registration requirement some guiding criteria are necessary. The criteria should align with the purpose of the registration scheme while minimising the regulatory burden associated with the registration requirement and other requirements of the CPVI Act.

Regulating BSPs to establish the identity of providers and responsible persons

There are three permissioning schemes established under the CPVI Act. These are: a vehicle registration scheme, a BSP registration scheme and a driver accreditation scheme. Effectively, the TSC establishes the identity of persons who are the owners of vehicles, those who provide booking services, and those who drive vehicles. In the case of persons who have multiple roles, such as driver and BSP, or owner and BSP, an exemption could serve to reduce regulatory burden in circumstances where the TSC already has granted a permission to an industry participant.

For individuals, it is clear who is responsible for the booking service. However, in the case of a body corporate, it may not be immediately apparent who is responsible for the service. This indicates that an exemption should not be afforded to body corporates, if it is important to identify the responsible persons of the body corporate.

On the other hand, it also may be important for the regulator to know who is providing booking services, even if they have already been granted a permission of a different type. One reason for this is that the safety duties impose a different safety standard on booking service providers compared to drivers.

Regulating BSPs for public safety purposes

One of the requirements for BSP registration is that the person, or in the case of a body corporate the responsible person, is a fit and proper person. This requirement is imposed primarily for reasons of public safety. There may be a case to consider providing an exemption to a person if the person has undergone a similar process and gained a permission that effectively meets this test. For example, if the person also holds a driver accreditation, the person has already met a stricter test (fit and proper person test and

screening for disqualifying offences). This would indicate that these persons would not need to also register for the purposes of public safety.

Regulating BSPs to ensure they meet prescribed safety standards

There are no safety standards, above the safety duty itself, specified in the CPVI Act or proposed Regulations. This indicates that this criterion does not need to be given much weight. However, should safety standards be prescribed in the future, the nature of the standard should influence whether a person is exempt from being a registered BSP. As a matter of course, any exemptions should be reviewed as part of the development of safety standards.

Regulatory burden

There are a number of requirements imposed on booking service providers by the primary legislation and the proposed Regulations, including some requirements that are only imposed on registered booking service providers. Some booking service providers, which are small businesses, may be disproportionately affected by the regulations.

Options for exemptions

Section 131A of the TCMA is the current offence provision which requires a booking service provider to be accredited under that CPVI Act.¹⁴ This provision also specifies who is currently exempt from this requirement. The persons currently exempt are:

- The driver of a commercial passenger vehicle (when receiving or accepting a request for person to be provided with a commercial passenger vehicle service).
- The holder of a commercial passenger vehicle licence (when receiving or accepting a request for person to be provided with a commercial passenger vehicle service and arranging or facilitating the provision of that service).
- The driver of a commercial passenger vehicle providing a booking service as a member of an unincorporated body or association.
- The owner or operator of a commercial passenger vehicle (when receiving or accepting a request for person to be provided with a commercial passenger vehicle service and arranging or facilitating the provision of that service).

Under the new regulatory framework, there are no licence holders as there are no licences. Additionally, vehicle operators are not regulated. Therefore, based on the current exemptions specified in the TCMA, further consideration could be given to prescribing an exemption to:

- certain accredited drivers
- certain owners of vehicles.

In addition, booking services who take a small number of bookings within a certain period could also be considered for an exemption.

Drivers

Individual drivers who receive a booking and fulfil the booking by providing the commercial passenger vehicle service themselves do not fall within the definition of providing a booking service and are already not required to be registered as a booking service provider. However, some drivers may receive a booking but, instead of fulfilling that booking themselves, pass on the booking to another driver. This action does fall under the definition of a booking service and the driver would need to apply for BSP registration. Applying the criteria to this situation:

- the driver is already required to be accredited, so the TSC does not need the driver to register in order to identify that person

¹⁴ On the commencement of the *Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017*, section 131A of the *Transport (Compliance and Miscellaneous) Act 1983* will be repealed and new provisions will be inserted in the *Commercial Passenger Vehicle Industry Act 2017*. Effectively, this means that booking services will no longer be required to be accredited under the TCMA, but will be required to be registered under the CPVI Act.

- the driver, being accredited by the TSC, has already satisfied that they are a fit and proper person and have passed the criminal background check
- the driver would need to ensure that the services provided by the other driver are safe and would need to ensure the other driver is accredited and the vehicle they are driving is registered.

Owners of vehicles

There are some business structures where an owner of one or more vehicles may take direct bookings from customers and the bookings are fulfilled by drivers using the owner's vehicles. In other cases, the owner could merely supply the vehicle, and not be involved in taking bookings.

In this situation:

- the owner is identifiable —the TSC has oversight of the commercial passenger vehicle and the owner of vehicle through the vehicle registration scheme;
- the vehicle registration scheme does not require the owner of the vehicle to go through a background check; and
- the owner of commercial passenger vehicle has a duty to ensure the safety of the commercial passenger vehicle service. For small operations, such as owners who look after a small number of vehicles, the complexity of the operation is lower.

If an exemption were to be prescribed in respect of owners, then there is a question of how few vehicles the owner should be responsible for before being required to register as a booking service provider. There is no single right answer to this question.

Based on data from the TSC provided in Table 3-7, the majority of vehicles owners are responsible for one or two vehicles. Therefore, one option is to exempt owners of vehicles who have one or two vehicles registered in their name and take booking to be fulfilled using their vehicles. There are 8,250 vehicle owners. However, not all vehicle owners take bookings directly, meaning that not all of these owners would be required to register as a booking service provider in the absence of an exemption. So, this figure represents the upper limit of owners that would benefit from an exemption. TfV does not have data in relation to the number of owners who do take bookings, and therefore would be exempt under this option.

Alternatively, another option is to exempt vehicle owners with less than 20 vehicles registered in their name. There are 555 owners of vehicles (totalling 8805 owners with fewer than 20 vehicles) responsible for between three to 19 vehicles.

Low volume operations

Under the definition of a booking service, any person who supplies a booking to another person is taken to be providing a booking service. This could include an owner-driver providing a booking to another driver on a one-off or ad-hoc basis.

Therefore, the requirement to be registered as a booking service provider (and complying with the requirements that registered booking service providers are subject to) may be overly onerous on these persons and may deter the provision of services. This can lead to poorer outcomes for consumers.

So, one option that could be considered is to exempt persons based on the number of bookings that the person takes during a specified time. For example, one option could be to exempt a person if they take less than 30 bookings during a single day. There are a range of options that could be considered, include a higher or lower number of bookings taken in a single day or month. In order to ensure that drivers who take bookings on an ad-hoc basis are not subject to the registration requirement, the exemption could only exclude those that take a handful of bookings per day (e.g up to 5 bookings).

However, the trade-off associated with an exemption based on the volume of bookings is that it may also capture persons who solely provide booking services and are not directly involved in the provision of commercial passenger vehicle services. This means that such persons

would be otherwise not identifiable by the TSC, or screened for the purposes of public safety through a background check.

TfV is seeking feedback on the option to exempt persons who accept no more than a specified number of bookings for services in a day. TfV is also seeking feedback on the appropriate number of services that should be used as the cut-off point for exemption.

Summary

The primary legislation allows for the making of regulations to exempt persons from the requirement to register as a booking service provider. There are exemptions currently specified, which on commencement of the new law will no longer be in force. In order to minimise the regulatory burden on persons, while still being consistent with the purpose of the registration scheme, TfV is seeking feedback on the following options to exempt persons from the requirement to register as a booking service provider:

- a person who accept bookings for commercial passenger vehicle services provide using only vehicles registered in the name of that person but only if the person has less than 3 (i.e. one or two) commercial passenger vehicles registered in the person's name
- a person who accept bookings for commercial passenger vehicle services provide using only vehicles registered in the name of that person but only if the person has less than 20 commercial passenger vehicles registered in the person's name
- a person who accepts no more than a specified number of bookings for commercial passenger vehicle services by associated drivers in any one day.

TfV notes that drivers who directly take bookings from customers and who also provide the transport service would not need to be registered as a booking service provider anyway.

TfV will consider the costs and benefits of these exemptions in a later section of this chapter. In addition, Chapter 9 considers the implementation issues arising from this proposal and how any problems can be managed.

5.3.3 Insurance and indemnities

There are private incentives for parties that have a financial interest in a motor vehicle used as a commercial passenger vehicle to obtain insurance for that particular vehicle. In the absence of regulations, it is likely that most of these parties would voluntarily take out insurance, subject to the size of the premiums of that insurance, to cover any potential losses from damage or theft to their vehicle.

However, where the driver has use of the vehicle and is not the owner of the vehicle, the driver is unable to take out insurance in respect of the vehicle. Additionally, the driver is not required by commercial passenger vehicle law to take out professional indemnity insurance. Insurance against injury to persons is provided for by the scheme administered by the Transport Accident Commission.

Indemnity

One option to ensure that drivers are covered against risk of damage to the vehicle is to require the owner of the vehicle to indemnify the driver for any damage to the vehicle unless the damage is due to the fault of the driver.

This means that the driver is not liable to pay the costs of the damage to the vehicle or equipment in the vehicle, unless the damage is the fault of the driver. Therefore, in the event of an incident occurring which is not the fault of the driver, the driver is afforded a level of protection by the regulations.

Insurance requirements

Another option is to mandate that insurance must be taken out in respect of every commercial passenger vehicle. This would provide a further layer of protection to the driver. This option could be required as a complementary measure to the requirement the driver to be indemnified. That is, even if indemnified, there may be circumstances such as where an

owner does not take out insurance and is unable to pay for damage to a third-person, the third-party may attempt to seek the cost of the damages from the driver.

Such a regulation would need to specify the level and type of insurance that would need to be taken out by the owner. If prescribed, the level of insurance would need to be sufficient to recover the costs of rectifying damage to the vehicle and equipment. In addition, there may be a need to regulate the amount of the excess relating to an insurance product to ensure that the owner does not seek to lower their premiums by choosing an insurance product with a higher excess. Such moral hazard could be addressed by prescribing the maximum excess that could be chosen.

Part of the reason that the commercial passenger vehicle industry has typically not taken out insurance has been the lack of products or the availability of products with reasonable premiums and / or excesses. For this reason, a requirement to take out a specified level of insurance may place an unreasonable burden on the owner of the vehicle.

Other forms of insurance

Some booking service providers also have insurance products in respect of commercial passenger vehicle services provided on their platform that is additional to any insurance that is taken out by affiliated drivers or the owners of those vehicles.

A form of insurance such as contingent liability insurance provides a level of coverage to drivers ensuring that the driver and third parties are protected when other forms of insurance do not apply or when there is no insurance in place.

Therefore, one option that TfV could consider is requiring booking service providers to hold a contingent liability insurance policy to ensure that the driver is protected, whether or not there is insurance taken out in respect of the vehicle.

Summary

TfV has considered whether there is a need to regulate commercial passenger vehicle services in relation to insurance. TfV's assessment is that there may be a need to require insurance in some circumstances, particularly where the driver is unable to take out insurance in respect of the vehicle, such as where the driver is not the owner of the vehicle.

However, this problem is mitigated by the following factors:

- insurance is already required where there is a driver agreement in place between the owner of the vehicle and the driver
- there is expected to be a greater number of owner-drivers under the new legislative arrangements
- the existence of alternative additional insurance products taken out by entities such as booking service providers providing protection to drivers and third parties.

There a range of options that could be considered, such as:

- requiring the owner of the vehicle to indemnify the driver
- requiring the owner of the vehicle to hold certain insurance policies
- require another person, such as the booking service provider, to take out certain insurance policies, such as contingent liability insurance.

The proposed Regulations do not prescribe requirements in relation to insurance. TfV is seeking further information from stakeholders in relation to:

- the nature and extent of the problem
- the options available.

Stakeholder questions:

- *Has TfV considered the full range of options available to address potential problems of insurance?*
- *Are there other forms of insurance that should be considered?*
- *Should any insurance requirements be prescribed in the Regulations? Why or why not?*

5.3.4 Smoking

To address the externality associated with smoking inside a vehicle, one option is to prohibit smoking in commercial passenger vehicles.

Given a general cultural non-acceptance of smoking, the expectation is that smoking should be restricted as much as possible in public vehicles and where second-hand smoke may be likely to harm others. As commercial passenger vehicles are enclosed places, the proposed regulations would reflect the intent of the *Tobacco Act 1987*, amongst other social norms.

Given the objective of the regulations is to protect passengers from safety risk, the proposed regulations prohibit smoking in all commercial passenger vehicles.

5.3.5 Assistance animals

TfV has identified some cases where persons accompanied by an assistance animal have been discriminated against and refused service. To address this issue, one option is to prohibit the driver from refusing service to a person accompanied by an assistance animal.

However, since the problem is likely to be due to a lack of awareness, in relation to both the requirements of the DDA and what an assistance animal is and their importance to the person that it accompanies, TfV considers that greater education and information on assistance animals be provided to drivers and service providers. Such information would indicate to the driver the importance of not refusing service to persons accompanied by an assistance animal, and how to identify an assistance animal. This information could be provided by the regulator or booking service providers as part of a driver's induction or training.

5.4 Benefits and Costs

5.4.1 Vehicle identification

TfV proposes that all commercial passenger vehicles be required to display one or more of the following things to identify that the vehicle is in service:

- signs, symbols, notices or labels indicating that the motor vehicle is a commercial passenger vehicle (note this would include a sign that contains the word taxi)
- signs, symbols, notices or labels identifying the registered booking service provider to which the driver is associated
- signs, symbols, notices or labels of a type or design approved by the regulator
- a number plate identifying the vehicle as a commercial passenger vehicle of a type or design approved by VicRoads and the regulator.

Expected costs

The primary costs are the compliance costs associated with purchase of the solution adopted to identify the vehicle.

Given that the proposed Regulations provide the industry with flexibility, the compliance costs will vary with the type of solution adopted. Additionally, some service providers may wish to use removable signs to ensure that the vehicle can also be used for private purposes.

There are a range of existing solutions that gives an indication of the costs of this requirement. This includes:

- a dome light – approximately \$200 purchase cost
- custom number plates – the costs are in the range of \$400 - \$500
- labels or decals – the costs are in the range of \$30 to \$50 dollars per decal.

The costs of installation will also likely vary with the type of solution adopted. A removable solution is likely to incur very low compliance costs, reflecting the time taken to put up a sign (e.g. instantaneous). However, more permanent solutions may take longer to install. For example, the RIS for the 2017 Regulations assumed that the installation costs of fitting a dome light are approximately \$50 (i.e. one hour of time valued at \$50 per hour).

The extent of compliance costs will depend on the size of the industry. As of 31 December 2017, there were 8,016 licensed taxis and 13,396 licensed hire cars, suggesting that the size of the industry, on the commencement of the reforms, will be at least this amount. Therefore, the total number of vehicles that the proposed requirement applies to will be at least 21,412.

New entrants to the industry will also incur the cost of compliance with the vehicle identification requirements. The future growth of the industry is unknown and unable to be estimated with reasonable accuracy. For this reason, TfV has not calculated the industry wide compliance costs for new entrants over the life of the regulations. However, TfV draws the reader's attention to the expected per-vehicle costs outlined in preceding paragraphs which would apply to new entrants.

If simple low-cost solutions are adopted then the compliance costs could be approximately \$0.8 million in industry-wide costs (21,412 vehicles¹⁵ x cost of a sign or decal at \$40).

Vehicles currently licensed as taxis may wish to continue to use a dome light in conjunction with several decals on the vehicle. Therefore, on a per vehicle basis, compliance costs for vehicles used to provide an unbooked service could total \$400 (which includes a dome light, and three to four decals). However, this would go over and above the requirement proposed, meaning that such costs would not be attributable to the proposed Regulations but instead be considered as regular business costs.

TfV also notes that the majority of the licensed vehicles would already be compliant with the proposed requirement, meaning that the incremental compliance costs of this proposed requirement would be lower for those vehicles. This includes the 8,016 vehicles currently licensed as taxis, which are required to have a dome light and several decals which contain the word 'taxi'. In this case, costs would only be incurred when the identifier is replaced.

Expected benefits

The main benefit of the proposed requirement is to aid compliance monitoring and enforcement, enabling enforcement officers, including TSC authorised officers and police officers, to identify vehicles being used to provide a commercial passenger vehicle service. This is especially the case for those requirements that apply when the vehicle is in service, such as the requirement for the driver to be accredited or to have zero BAC when driving.

There may be some ancillary benefits to users of commercial passenger vehicle services if vehicles are marked in a meaningful way to the customer (because commercial passenger vehicles are able to be identified as such). This includes assisting the customer in identifying that the vehicle is providing a commercial passenger vehicle service and is not operating as a private vehicle.

Summary

TfV recommends a regulation requiring all commercial passenger vehicles display some form of identification when the vehicle is in service. This requirement will assist the TSC and Victoria Police in compliance monitoring and enforcement of the CPVI Act and the proposed

¹⁵ This figure consists of 8,016 licensed taxis and 13,396 licensed hire cars.

Regulations. The proposed requirement will also ensure that vehicles are identifiable as a commercial passenger vehicle. This requirement will impose compliance costs on owners of vehicles which will depend on the type of solution adopted by the service provider. The design of the regulation ensures that there is suitable flexibility and any identification can be removed when the vehicle is not in service. Assuming the simplest solutions are adopted compliance costs for the entire industry are approximately \$0.8 million.

5.4.2 Registration of booking service providers

TfV proposes that the following persons be exempt from the requirement to register as a booking service provider:

- a person who accept bookings for commercial passenger vehicle services provide using only vehicles registered in the name of that person but only if the person has less than 3 (i.e. one or two) commercial passenger vehicles registered in the person's name
- a person who accept bookings for commercial passenger vehicle services provide using only vehicles registered in the name of that person but only if the person has less than 20 commercial passenger vehicles registered in the person's name
- a person who accepts no more than a specified number of bookings for commercial passenger vehicle services by associated drivers in any one day.

Expected benefits

The benefits of the exemption will accrue to the persons who are no longer required to be registered as a booking service provider. For the exempted person:

- the costs of registering as a booking service provider are avoided
- the compliance costs associated with the requirements of the CPVI Act and the proposed Regulations that are imposed on registered booking service providers are avoided.

The process of registration involves completing the application, such as providing sufficient information about the booking service provider and that persons responsible for the service (e.g. company directors), and undertaking a police check of the responsible persons (which costs approximately \$50 per person).

The avoided costs of the proposed Regulations are discussed in other sections of this RIS. Chapter 3 outlines the expected costs for the proposed requirement to maintain a risk register (the primary cost being the compliance costs associated with the preparation and maintenance of the register which is estimated at \$80,000 to \$160,000 per annum). Chapter 6 outlines the expected compliance costs of the proposed record keeping requirements (which are estimated to be minor due to being records that would normally be kept as part of general business administration).

Expected costs

While an exemption to registration will benefit those that are no longer required to be registered, the trade-off is that the TSC will have a reduced level of information about the industry, in particular those persons who provide booking service on a small scale or casual basis.

This may hinder compliance monitoring and enforcement, as the TSC will not have a comprehensive understanding of who is providing booking services.

However, as discussed in preceding sections, this impact may not be that significant because:

- the TSC will have information in relation to the owners of vehicles through the vehicle registration scheme (however, they TSC may not know whether the owner is providing booking services)
- the TSC is unlikely to target such providers to audit their compliance with the CPVI Act as a booking service provider (such as the safety duties scheme) based on the volume of bookings undertaken by that person.

Summary

TfV has considered various options and the benefits and costs of exempting certain booking service providers from the requirement to register with the TSC. TfV expects that the avoided costs imposed on certain industry participants outweigh the impacts on compliance monitoring and enforcement efforts from limiting information provided to the TSC, noting that this may impact on compliance and enforcement of safety duties. TfV expects that, if exempted, a person would avoid the costs of registration (i.e. filling in the application form and undergoing a police check) and some additional requirements proposed to be included in the regulations (such as the requirement to prepare a risk register).

However, care needs to be taken in designing and drafting such an exemption regulation, to ensure that there are no unintended consequences. TfV's preferred position is that there are no exemptions provided in the Regulations. For this reason, TfV has not included any exemptions in the exposure draft of the Regulations. TfV is seeking stakeholder feedback in relation to expected impacts of the proposal and alternative options before making a recommendation regarding which entities should be exempt from the registration requirement. TfV will make a final recommendation on this matter to the Minister for Public Transport before the proposed Regulations are made. Section 9.6 of the RIS discusses the potential transitional issues associated with this proposal and how they can be managed.

Stakeholder question:

- *Has TfV considered the full range of options in relation to exemptions for booking service providers? If not, what other options are available?*
- *Do you support exempting certain persons from being required to register as a booking service provider? If so, why?*
- *Are there any possible risks or possible unintended consequences of exempting certain providers from registration?*

5.4.3 Smoking

A regulation prohibiting smoking in commercial passenger vehicles will mean passengers will be required to forgo smoking during their trip. This will impose compliance costs on these individuals, albeit likely minor given that societal norms dictate that smoking would not be expected in the vehicle. Therefore, TfV considers that the benefits outweigh these costs through a reduction in the negative externalities from second-hand smoke ranging from reducing the discomfort to reducing negative health effects that can materialise over time.

5.4.4 Assistance animals

A regulation prohibiting the driver from refusing service to a person accompanied by an assistance animal may impose a small compliance burden on the service provider. However, TfV considers that this compliance burden is offset by the benefits to passengers accompanied by an assistance animal who will be able to reliably use commercial passenger vehicle as a mode of transportation. Additionally, the proposed Regulation will ensure that the TSC is able to enforce the requirements, such as by issuing an infringement notice, taking disciplinary action against the driver's accreditation, or commencing criminal proceedings without relying on the enforcement options under the Commonwealth's DDA.

6 Records

6.1 Nature and extent of the problem

Effective compliance monitoring and enforcement of the CPVI Act and regulations by the regulator relies on ensuring that the regulator is able to access evidence of compliance with the law. The CPVI Act enables the regulator to direct regulated parties to produce records that are required to be kept under that law or information or documents that are in possession of the person.

The regulator may require a range of records to be produced to enable it to undertake its functions, which includes ensuring that the law is being complied with. This may include records relating to:

- non-cash payment surcharges
- the price monitoring function conferred on the CPVC
- consumer protections
- the commercial passenger vehicle service levy.

Regulations may be required to ensure that records are kept enabling compliance monitoring and enforcement of requirements specified in the CPVI Act, any proposed regulations and other subordinate instruments. Requiring records to be kept ensures that the regulator is able to inspect them for these purposes.

6.1.1 The base case

While there are no specific requirements to keep records under commercial passenger vehicle primary legislation, there are various requirements for businesses to keep records under other laws, such for the purposes of taxation.

Therefore, in the absence of regulation, there will still be market (e.g. business management) and regulatory (e.g. compliance with Australian tax law) incentives to maintain records of business activities.

However, despite the incentives for service providers to maintain records, these records may not be the same as those required by the regulator to fulfil its functions.

6.1.2 Information gaps

Non-cash payment surcharges

The legislation establishes a scheme to regulate surcharges for non-cash payments in commercial passenger vehicles. The persons involved with the supply of devices (such as card terminals or smartphones with apps etc.), the programming of devices and the facilitation of non-cash payment transactions are not otherwise regulated. Such persons would likely keep records in relation to the supply, programming and use of devices in the absence of regulations. This information assists the regulator in determining whether an offence has been committed in relation to this scheme. However, if these records are not required to be kept, then the regulator cannot require these persons to produce the records for inspection by authorised officers.

Fare monitoring

The TSC will have a function to monitor fares for commercial passenger vehicle services. The TSC may lack certain information in relation to the fares to form a view about:

- the economic performance on the industry
- trends in fares for commercial passenger vehicle services
- whether there are potential areas of misuse of market power that warrant further investigation.

Commercial passenger vehicle service levy

The \$1 levy is applied to every trip undertaken in a commercial passenger vehicle. The Commissioner of State Revenue (and the State Revenue Office (SRO)) administers the levy. Records of the number of trips will be required to determine compliance with the levy. The TSC will be able to share information, such as trip records, with the SRO to undertake compliance monitoring and enforcement activity. If no trips records are kept, then this would detrimentally impact compliance monitoring and enforcement of the levy.

Consumer protections

It is proposed to require complaint handling arrangements to be implemented in accordance with the specified Australian standard. Records of each complaint will be required to allow the regulator to determine compliance with this regulation.

6.2 Objectives

The objective of interventions relating to the keeping of records is to enable the efficient and effective compliance monitoring and enforcement of the requirements of the CPVI Act.

Any intervention should also ensure that compliance costs on regulated persons are minimised.

6.3 Identification of options

The ability for the regulator to ensure compliance with various aspects of the CPVI Act and regulations is reliant on access to certain records which otherwise may not be kept. Records are an important requirement to operationalise the new legislative arrangement established under the CPVI Act.

The type of records required is dependent on the specific information that is needed for commercial passenger service providers to demonstrate compliance with requirements under the CPVI Act and the regulations. The following sections outlines the type of records required in order to provide for the regulator's compliance monitoring and enforcement activities.

6.3.1 Trip records

A requirement to keep records of all commercial passenger vehicle trips would serve two purposes. The first would be to support the effective collection, administration and enforcement of the commercial passenger vehicle service levy. The second would be to support the TSC's price monitoring function. To support these two functions, the following records, in relation to each trip, could be required to be kept:

- the date and time a booking was made (if the service is booked)
- the date, location (either kept as the address or the GPS coordinates) and time the trip commenced
- the date, location (either kept as the address or the GPS coordinates) and time the trip finished
- the distanced travelled
- the full fare paid for the trip
- the vehicle used to provide the service, identified by its registration plate number
- driver accreditation number of the person who drove the vehicle.

To support the collection of information about the trip, there is also an option to require the use of a global positioning system (GPS) device, in addition to the requirement to keep records. This would ensure that the information is kept to a consistent standard and provides a sufficient level of detail and accuracy (i.e. location is provided as GPS coordinates rather than a street address). However, TfV does not propose that specific GPS units, complying

with a prescribed technical standard, be required to be installed in the vehicle. TfV recognises that the industry has commercial incentives to use GPS devices and is likely to continue to use them. By not prescribing a GPS unit as equipment required in the vehicle, a greater range of solutions could be adopted, including the use of smartphones. Note that the industry will not be precluded from the option to use GPS units as means of complying with the record requirements.

Alternative sources of information (fare monitoring)

Information about the trip and the fare paid for the trip could be used to analyse trends in fares for commercial passenger vehicle services. However, this is not the only way that the TSC could collect information to fulfil this function. The TSC could also undertake consumer and/or industry surveys to collect similar information. Under this option, the TSC could base its analysis on a sample of fares rather than collecting extensive information from the industry.

6.3.2 Consumer protections and complaints

Since it is proposed to impose complaints handling requirements on booking service providers (see Chapter 4 for this discussion), there is an option to also require booking service providers to keep records of complaints.

Records of complaints would enable the TSC to investigate booking service providers to see whether there is compliance with the standards set out in the regulations.

To be able to investigate complaints, the regulator will need sufficient information about the complaint, and how the complaint was dealt with. The standard requires processes to be implemented in relation to the tracking, assessment, and investigation of the complaint, in addition to communication with the complainant. The following records, which would need to be kept in order to adequately deal with the complaint, would provide evidence of compliance with the standard and would complement any investigation or audit of the booking service provider:

- the date the complaint was received
- the nature of the complaint
- the capacity in which the complainant made the complaint (for example, as a customer, driver, member of the public)
- the name and the address or other contact details of the complainant
- all actions taken by or on behalf of the booking service provider in response to the complaint
- the date and time that any actions were taken
- the outcome of the complaint.

6.3.3 Non-cash payment surcharges

Since non-cash payment surcharges will continue to be regulated under the CPVI Act, there will still be a need to require some records to be kept. The records are intended to provide evidence identifying the surcharges that were imposed for non-cash transactions, how and where the surcharges were imposed, and who is responsible for the surcharge. This information would be needed in a prosecution, if a person is alleged to have committed an offence relating to the non-cash payment surcharge scheme. The records proposed to be required are:

- information relating to the transaction, such as the amount of the surcharge and the fare
- information about the total number of transactions, including the total amount of surcharges imposed and the total amount of the fares
- information about devices used to process transactions (i.e. where they are installed, who supplied it, who programmed it, when it was used).

6.3.4 How records are to be kept

The practical purpose of record keeping requirements in the regulations is largely to enable the regulator to access information needed for compliance monitoring and enforcement purposes when required.

In order for records to be useful, to the extent that it supports the regulator's compliance monitoring and enforcement activities, records need to be kept and made available to the regulator when requested.

Alternatively, the regulations could also require the regular provision of records to the regulator, such as quarterly, every six months, or every year. The provision of information to the regulator would impose a compliance cost on the industry, which needs to be balanced with the objective of efficient compliance monitoring and enforcement.

Information and records, that are largely required to be kept to assist in compliance monitoring and enforcement, do not necessarily need to be provided at regular intervals. TfV considers that it would be more appropriate to require these records to be kept and have the regulator require the production of those records when it undertakes compliance activities in relation to a specific industry participant (e.g. booking service providers, owners or drivers). This would be consistent with a risk-based approach to compliance monitoring and enforcement. This applies to records relating to complaints and non-cash surcharges.

In the case of records relating to trips and fares, the regulator is more likely to require these on a more regular basis. For example, the TSC is required to produce an annual report on its monitoring activities. There may be some benefit in prescribing the submission of records, say at every six months to enable this function. However, taking a risk-based approach, compliance costs are minimised if fare monitoring is targeted at specific cohorts, such as accessible services, services in a particular region, or where cursory monitoring shows potential issues in a segment of the market. For this reason, TfV does not recommend this approach. The TSC has powers under the CPVI Act to ask for documents and information to be provided and may exercise them to obtain this information.

There are also options to consider regarding the manner and period of time records are required to be kept.

Regulations that specify records are required to be kept in a specific form and/or format ensures that information provided to the regulator is meaningful and useful. In addition, records to be made available for inspection or for copies to be made and provided on request ensure that the regulator is able to properly enforce record keeping requirements by enabling the regulator to check for compliance with the requirements.

Specific options for recording information include:

- paper form or electronically
- prescribing the format records are required to be kept
- enabling the regulator to determine the format required to be kept.

Providing flexibility to the industry to determine the manner in which records are kept would help minimise the compliance costs of keeping records but may increase the time taken by the regulator to 'clean' the data. TfV proposes that records be required to be kept:

- in the English language
- in a form determined by the regulator.

While allowing the regulator to determine the form in which records are required to be kept may lead to uncertainty, it is unlikely that the form in which records need to be kept would frequently change. The TSC advises TfV that this power would be exercised so as to enable easier data analysis.

In terms of length, regulations could require records to be kept for a specific period of time. This includes keeping records for a year, three years, five years or ten years. Records will need to be kept for a sufficient period of time to enable access to records at a later date and facilitate compliance monitoring and enforcement. However, the longer the records are

required to be kept, the higher the compliance costs associated keeping the records are likely to be. TfV proposes that records be required to be kept for a period of five years, as this period aligns with the requirements for record keeping under taxation law.

6.4 Benefits and Costs

Expected benefits

As outlined earlier in the chapter, the primary benefit of the record-keeping requirement is to enable the regulator to access data and information for the purposes of compliance monitoring and enforcement, and other functions of the TSC. Specifically, the record-keeping regulations will assist with:

- the TSC’s price monitoring function
- compliance monitoring and enforcement of the commercial passenger vehicle service levy
- compliance monitoring and enforcement of the non-cash payment surcharge
- compliance monitoring and enforcement of other proposed regulations, such as complaints handling processes.

The requirement to keep records may generate ancillary benefits such as increased compliance with some requirements such as the payment of the \$1 per trip levy.

Expected costs

The primary costs associated with the record-keeping requirement are the compliance costs of keeping specified records.

TfV considers that the compliance costs are minimal, largely reflecting the fact that most of the records required to be kept would, in the absence of a regulatory requirement, already be kept for business management and tax purposes by booking service providers, owners and other persons.

There may be some additional compliance costs attributable to the requirement to keep records that results from the ancillary benefits such as increased compliance.

Stakeholder question:

- ***Do you agree with TfV’s assessment that these records would already be kept for business or tax purposes? If not, why not?***
- ***Are the expected costs of the proposed record keeping requirements likely to impose a significant burden? If so, do you have any evidence to support this?***

Do the expected benefits outweigh the costs?

TfV considers that the expected benefits of the requirement to keep specific records in relation to the commercial passenger vehicle industry are likely to outweigh the costs.

This judgement is made based on the following factors:

- compliance costs are expected to be low
- the records will be used to a range of strategic and operational policies, and inform the CPVC’s compliance monitoring and enforcement operations, and risk-based regulation of the industry.

Accordingly, TfV proposes that the regulations be made.

7 Amendments to the Road Safety Road Rules

7.1 Nature and extent of the problem

An object of the Road Safety Road Rules 2017 (the Road Rules) is to specify behaviour for all road users that supports the safe and efficient use of roads in Victoria. Some of the rules specify instances where vehicles cannot travel or stop in certain road areas as they are designated for specific purposes. This is to ensure that vehicles do not stop in these areas or that the road is clear for traffic.

The Road Rules contains a number of rules by which taxis are exempt. The purpose of the exemptions was to ensure that taxis are able to operate efficiently and meet passenger needs by, for example, stopping in certain road areas to pick up or drop off passengers.

Taxis are exempt from the following Road Rules:

- driving in a bicycle lane (Rule 153)
- driving in a transit lane (Rule 156)
- stopping in a clearway (Rule 176)
- stopping in a loading zone (Rule 179) (note that this exemption applies to all licensed commercial passenger vehicles, which includes licensed hire cars)
- stopping in a bus lane, tram lane, tramway, transit lane, truck lane, or on tram tracks (Rule 187)
- stopping near a fire hydrant (Rule 194).

Exempting taxis from prohibitions relating to driving in bicycle lanes and transit lanes gives taxis priority to use these lanes over private passenger vehicles. Similarly, exemptions from prohibitions relating to stopping in certain road areas, such as a clearway or loading zone, ensures the efficient operation of taxis that are hailed off the street – this allows taxis more opportunities to stop and pick up the passenger on the side of a street.

Given that taxis only make up a small proportion of all light vehicles, the benefits from ensuring the efficient use of this transport service outweighs the potential costs from road congestion or unsafe roads.

Licensed taxis are also permitted to stop in a “taxi zone” (Rule 182). Taxi zone is the term in the Road Rules used to refer to a taxi rank. This specific rule ensures that there is road space for taxis to stand in a rank and wait for customers.

The Road Rules require the use of seatbelts and child restraints. Taxis are provided exemptions from using child restraints. This exemption is provided on the basis that it posed logistical difficulties for a taxi service provider to carry all types of child restraints or booster seats to cater for all types of passengers, especially when the trip is not booked.

7.1.1 Why are changes being considered now?

Given the changes under the CPVI Act, the Road Rules need to be redrafted to reflect the language of the new legislation. The legislative reforms to the commercial passenger vehicle industry have meant that there are no longer vehicles licensed specifically as a “taxi”. Also, there are no longer restrictions on the number of vehicles that can operate as a commercial passenger vehicle.

These changes have meant that a review of the Road Rules, to the extent that Road Rules affect road use by commercial passenger vehicles, is required to reach the right balance between the operation of commercial passenger vehicle services and the objectives of the Road Rules.

Under the new registration scheme, any privately-owned vehicle with a VicRoads registration plate can be registered as a commercial passenger vehicle. Furthermore, each registered

commercial passenger vehicle may have a dual use – the same vehicle can be used as a private vehicle or operate as a commercial passenger vehicle.

Given that reforms to the commercial passenger vehicle industry effectively opens up the market to allow for new entrants, there will potentially be a greater number of commercial passenger vehicles operating on Victorian roads compared to the number of taxis and hire cars operating under the old regulatory framework. The impact of a greater number of commercial passenger vehicles is likely to be seen during periods of higher demand, like Friday and Saturday nights, and at certain locations, such as the CBD or Melbourne Airport. At other times of the day or other locations, there may not be significant differences in the supply of vehicles. This reflects a more casual use of vehicles as commercial passenger vehicles.

This has the potential to place greater burden on exempt road areas at these specific times and locations as a result of road congestion. With the exception of taxi zones, which are specifically designated for the use by commercial passenger vehicles, continuing exemptions from the use of the abovementioned road areas may undermine the purpose of the Road Safety Road Rules which is to support the safe and efficient use of roads in Victoria.

7.1.2 The base case

The requirements and exemptions specified in the Road Rules already apply. This includes:

- a rule permitting a taxi to stand at a zone designated as a taxi rank
- certain exemptions from the Road Rules afforded to taxis (e.g. driving in transit lanes, stopping in clearways or loading zones)
- an exemption afforded to taxis from a requirement to use child restraints.

However, it is important to note that the drafting of the current Road Rules reflects the old legislation, meaning that the references to taxis are redundant. In this case, no provisions of the Road Rules would apply (e.g. no vehicles are permitted to stand at taxi ranks) and amendments would be needed to clarify how the rules should apply under the new law.

7.2 Objectives

The Road Rules specify the behaviour for all road users that supports the safe and efficient use of roads in Victoria.

7.3 Identification of options

There are three separate matters that need to be considered.

7.3.1 Who may stand at taxi ranks?

The exemption for taxis in relation to stopping in a “taxi zone” (Rule 182) needs to be updated to reflect the reforms to the commercial passenger vehicles industry, provided that there is no longer a legal distinction between taxis or hire cars. Given the purpose for taxi zones under the previous framework was to ensure adequate parking space for taxis to provide rank and hail services, any amendments should ensure that services by commercial passenger vehicle delivering similar services (e.g. unbooked commercial passenger vehicle services) can still stop in a taxi zone.

While there is an increasingly blurred line between booked on-demand services and unbooked services, especially from the consumers perspective, the regulations are able to continue to impose different requirements based on the method of procurement. This is because the terms ‘booked commercial passenger vehicle service’ and ‘unbooked commercial passenger vehicle service’ are defined in the CPVI Act. Furthermore, in the proposed Regulations (see Chapter 8), a number of requirements are imposed of unbooked services and the vehicles used to provide that type of service.

As such, TfV considers that amendments should ensure that only registered commercial passenger vehicles that comply with the requirements that apply to unbooked CPV services (i.e. display a sign or symbol that indicates the vehicle is available to provide commercial passenger vehicle services, have a security camera installed in the vehicle, and have a fare calculation device installed in the vehicle) are allowed to stop in a “taxi zone”.

7.3.2 Should the current Road Rules exemptions continue?

The exemptions to specific rules under the Road Rules are intended to enable the efficient operation of commercial passenger vehicle services, including the use of various lanes or the ability to stop in particular zones or areas. The use of various lanes reduces travel times for commercial passenger vehicle services. Being able to stop in zones or areas enables the efficient and safe pick-up and drop off for passengers.

There are three broad options:

- remove all exemptions and special rules relating to commercial passenger vehicles
- extend exemptions to all commercial passenger vehicles
- apply exemptions only to a class of commercial passenger vehicles.

Removing all exemptions relating to commercial passenger vehicles means that the same rules that apply to private motor vehicles and some other commercial vehicles. The rationale for considering this option is based on the number of likely vehicles that could access the exemptions and special rules. Since it is easier to register a vehicle as a commercial passenger vehicle, there may be an increase in the number of vehicles accessing these exemptions. An increase in the number of vehicles accessing special lanes, such as bus and bicycle lanes, would defeat the purpose of the original rule restricting the use of the lane.

Another option is to extend exemptions and special rules to all commercial passenger vehicles. This would mean that all commercial passenger vehicles will be able to access special lanes and zones. This option recognises that commercial passenger vehicle services, not just unbooked services, could make use of the exemptions and special rules.

Lastly, exemptions and special rules could be applied to a class of commercial passenger vehicles, such as those providing:

- unbooked services — this would clarify the differences between booked services and unbooked services, noting that it is proposed that additional requirements are imposed on unbooked services. Unbooked services are more likely to be using areas like loading zones to pick up passengers, and providing this type of access would maintain the safety for users of those services.
- specific services such as those transporting persons with a disability or using wheelchairs — these services may need to utilise the road space differently. For example, requiring additional room to lift wheelchairs in and out of the vehicle.

7.3.3 Should the exemptions to the use of child restraints be removed?

An exemption to the use of child restraints is effectively a trade-off between road safety and the compliance costs associated with the carriage of (up to three different types of) child restraints.

The Road Rules do not currently exempt booked services, such as those provided by hire cars, from the requirement to use a child restraint. Therefore, there are two options, in relation to the use of child restraints:

- remove exemptions that currently apply to taxis — all commercial passenger vehicles would need to have the appropriate child restraints, whether or not the service is booked or unbooked
- apply exemptions only to vehicles when they are providing an unbooked commercial passenger service — a subset of vehicles would be subject to an exemption but only when

it is not booked. If the vehicle is booked, then the appropriate restraints would need to be used.

7.4 Benefits and Costs

This section will examine the merits of changes to the Road Rules which would be consequential to changes made as part of the commercial passenger vehicle reforms.

7.4.1 Use of taxi ranks

Under this option, access to the use of ranks is restricted to a subset of commercial passenger vehicles. In order to be able to access taxi ranks, the commercial passenger vehicle will need to be equipped with:

- a security camera that meets the specifications determined by the TSC
- a compliant fare calculation device
- be marked to indicate the vehicle is available to provide an unbooked commercial passenger vehicle service (such as having a sign on the roof of the vehicle, or displaying the word 'taxi' on the vehicle).

Expected benefits

The imposition of this restriction works together with the other requirements considered in this RIS in relation to security cameras, fare calculation devices, and vehicle identification. The reason is that this regulation is necessary to implement the other regulations and addresses issues of safety, anonymity, and large transaction costs. Therefore, TfV expects this restriction will enhance the benefit associated with the other requirements in the proposed Regulations. That is:

- improvements in safety (i.e. reduced assaults and crime committed in commercial passenger vehicles)
- increased consumer protections (i.e. more efficient transactions and greater information flow to the hirer of the service)
- increased safety and public confidence as the vehicle is able to be identified as meeting the requirements for providing unbooked services.

Additional benefits associated with this restriction is reduced congestion in areas designated as ranks, as the general public is unable to stand or park at taxi ranks. This provides sufficient road space to persons who are available to provide an unbooked commercial passenger vehicle service.

Expected costs

Restriction of access to ranks means that one segment of commercial passenger vehicles (the booked market) does not have access to this space. Other road users are also unable to use the road space that is allocated to a subset of commercial passenger vehicles.

As of 31 December 2017, there were 8016 vehicles licensed as taxis, and 13,396 vehicles licensed as a hire car (i.e. permitted to only provide a booked service).

This indicates that approximately 62 per cent of commercial passenger vehicles would be restricted from providing unbooked services.

Conclusion

TfV considers that the expected benefits of this restriction (permitting the use of taxi ranks by commercial passenger vehicles providing unbooked services and compliant with certain regulatory requirements) are likely to outweigh the costs. TfV forms this conclusion on the basis that this is an amendment which is consequential to the proposed Regulations and the

change will enhance the benefits, in terms of safety and consumer protections, of the other requirements.

7.4.2 Exemptions to various road rules

This section will consider the following road rules in respect of a commercial passenger vehicle:

- driving in a bicycle lane
- driving in a transit lane
- stopping in a clearway
- stopping in a loading zone
- stopping in a bus lane, tram lane, tramway, transit lane, truck lane or on tram tracks
- stopping near a fire hydrant.

These exemptions and special rules are considered collectively, across the four options identified.

Option 1 — Extend exemptions and special rules for all commercial passenger vehicles

Expected benefits

All commercial passenger vehicle services enjoy the benefits of the exemptions and special rules. Specifically:

- reduced travel times by being able to travel in lanes which are otherwise restricted
- facilitating easier and safer pick-up and drop-off of passengers by temporarily using loading zones.

Expected costs

Given the expected number of current commercial passenger vehicles licensed as both taxis and hire cars and the ease of which a vehicle may be registered as a commercial passenger vehicle, the trade-off for this option is that it may defeat the original purpose of restricting the use of certain lanes or zones. For example, certain loading zones may become congested preventing vehicles from efficiently loading/unloading goods, or some clearways may become congested interrupting the flow of traffic at peak times. TfV notes that these outcomes may not eventuate equally across different areas or different times of the day/week, meaning that such lanes or zones may not always be impacted.

Option 2 — Maintain exemptions and special rules for vehicles providing unbooked commercial passenger vehicle services

Expected benefits

The proposal to maintain a range of exemptions to vehicles providing unbooked commercial passenger services is expected to:

- improve safety for passengers of unbooked commercial passenger vehicle services, as the vehicle is able to temporarily use curb-side space to safely pick-up and drop-off passengers
- reduce travel times for certain commercial passenger vehicles when transporting passengers.

In comparison to the option to extend exemptions to all commercial passenger vehicles a smaller proportion of vehicles (and passengers) will benefit from this option.

Expected costs

Providing exemptions and special rules will affect the operation of the lanes and zones in question. For example, permitting the use of a bus lane by an unbooked commercial passenger vehicle may affect the efficient operation of the public transport system. In

comparison to the option to extend exemptions to all commercial passenger vehicles, the impact of this option is likely to be not as large. This is mainly due to a smaller number of vehicles currently licensed as taxis to provide unbooked services.

Option 3 — Extend exemptions and special rules for vehicles transporting passengers with disabilities or wheelchairs

The expected benefits and costs of this options are similar to the option to extend exemptions and special rules for vehicles providing unbooked commercial passenger vehicle services. That is:

- this cohort of vehicles will enjoy the use of lanes and zones (expected benefit); and
- other road users, for which the lanes and zones are set aside for, may be affected.

To date, there are approximately 660 commercial passenger vehicles modified and equipped to carry wheelchairs. Additionally, all of these are currently licensed as taxis. Therefore, this option is covered by option 2. However, TfV recognises that, in the future, there may be commercial passenger vehicles that are modified to take wheelchairs but do not provide unbooked services.

Option 4 — Remove exemptions

The expected benefits and costs of this option are the opposite to the previous options. Removing the exemptions are expected to have a negative impact on unbooked commercial passenger vehicle services both in terms of road access and safety. In addition, under this option, there are limited anticipated benefits, as removing the exemptions is likely to have a small impact on other road users (e.g. non-commercial passenger vehicles).

Conclusion

Certain lanes and zones on the road are set aside for specific purposes. In some cases, these lanes are set aside to give a benefit, such as clear road access, to a specific type of vehicle, such as a bus. In other cases, the areas are set aside to ensure that traffic flows smoothly (e.g. clearways). There are some exemptions already provided to certain vehicles in the Road Rules. This includes taxis licensed under the old legislation.

These exemptions and special rules are effectively a trade-off between the original purpose of the lane or zone and the benefits accrued to the vehicle provided the exemption. In the case of commercial passenger vehicles, there are benefits, in the form of improved travel times (e.g. using transit lanes) and improved safety and efficiency in picking up and dropping off passengers.

With the commercial passenger vehicle reforms enabling a greater number of vehicles to be used to provide a commercial passenger vehicle service, TfV considers that it is not appropriate to extend exemptions to all commercial passenger vehicles. The reason is that it may defeat the original purpose of that lane or zone, noting that the impacts will be distributed differently based on road use (e.g. there is a higher volume of traffic in the Melbourne CBD).

However, TfV considers that it is still appropriate to maintain exemptions in the Road Rules for vehicles clearly marked as available to provide an unbooked commercial passenger vehicle service. This reflects that unbooked services, by definition, will pick up passengers when hailed from the street – an exemption will assist in the safe and efficient pick up of passengers of those services.

7.4.3 Child restraint exemptions

There are two options regarding the application of the Road Rules in relation to commercial passenger vehicles and child restraints. These are to:

- maintain exemptions for vehicles used to provide unbooked services (e.g. taxis)
- remove exemptions for vehicles used to provide unbooked services.

Maintain exemptions

Expected benefits

Maintaining an equivalent exemption for unbooked commercial passenger vehicle services is expected to reduce costs for these service providers as the costs of purchasing and carrying multiple types of child restraints are avoided.

Expected costs

If child restraints are not required to be used, then there may be two different outcomes:

- reduced usage of commercial passenger vehicle services (since they are unable to be used safely by young children)
- increased risks to safety of young children by not being safely restrained while being transported in a commercial passenger vehicle.

In practice, there have not been significant issues to safety as a result of this exemption. However, this does not mean that there is no underlying problem. The child restraint laws in the Road Rules are in place to address a specific risk in relation to the carriage of young children in motor vehicles. This risk extends equally to commercial passenger vehicles.

Remove exemptions

Expected benefits

With the removal of the exemption, TfV expects there to be improved safety and service outcomes for passengers with young children. Providers of unbooked commercial passenger vehicle services will carry child restraints, and will be able to pick-up and transport passengers accompanied by young children safely.

Expected costs

The removal of the exemption means that providers of unbooked commercial passenger vehicles will incur costs of purchasing and carrying child restraints.

These costs would only be incurred by service providers who choose to carry passengers accompanied by young children.

As the case may be the carriage of young children may not be feasible in some circumstances as the service provider would be required to carry multiple types of child restraints. For this reason, the service provider may choose to refuse service if the provider does not happen to be carrying a particularly child restraint required at the time. Therefore, the removal of the exemption may result in customers being refused service.

It should be noted that, in practice, this problem may not be overly significant, as customers will have a greater choice of service providers as a result of the reforms and are likely to have an option to book a service offering child restraints or be able to provide advance notice that a special restraint may be needed.

Conclusion

TfV considers that the matter is finely balanced as both options impact on road safety outcomes, service outcomes, and compliance costs of removing the exemption. The main trade-off is between compliance costs on the industry and road safety. TfV considers that the safety of road users is paramount. The industry may come up with efficient ways to service this cohort of users. In addition, parents and guardians of children less than seven years old that are required to use specific restraints should take responsibility for compliance.

TfV seeks the community views on the merits of both options. However, TfV is proposing the removal of the exemption. The exposure draft of the proposed Regulations contains amendments which give effect to this policy.

Stakeholder questions:

- *Do you agree with TfV's assessment of the impacts of the removal of an exemption to use child restraints in taxis? Why or why not?*
- *Do you support the proposal to remove the exemption to use child restraints in taxis? Why or why not?*

8 Preferred Option

This section of the RIS provides a summary of the proposed regulations.

8.1 Summary of the proposed regulations

The analysis conducted in Chapters 3, 4, 5 and 6 indicates that there is merit in regulating certain aspects of commercial passenger vehicle services. This includes regulations relating to the safety of the service, consumer protections, operational requirements, and records. The requirements would form part of the proposed *Commercial Passenger Vehicle Industry Regulations 2018*. The draft regulations are available for comment.

The structure of the draft regulations is as follows:

Preliminary matters

This section of the proposed Regulations outlines the objectives, authorising provisions, commencement, revocations and definitions applicable to the proposed Regulations.

Matters relating to safety

The following regulations are proposed:

- Regulations which require booking service providers to establish and maintain a register of safety risks.
- A regulation which prescribes the type of incidents that must be notified to the regulator.
- A regulation which requires driver identification to be displayed by accredited drivers.
- A regulation which requires vehicles used to provide unbooked commercial passenger vehicle services in the Melbourne Metropolitan and Urban and Large Regional Zones to have a security camera installed and operating.
- A regulation which gives the TSC power to determine standards and specifications for: wheelchair accessible vehicles, fare calculation devices, and security cameras. The TSC may also exempt certain providers from the specifications in certain circumstances.

Consumer protections

The following requirements are proposed:

- Regulations which requires fare information to be displayed in the vehicle and to be provided to the hirer when requested.
- Regulations which requires the use of fare calculation devices in vehicles used to provide an unbooked commercial passenger vehicle service.
- Regulations which oblige both booking service providers and drivers to provide a fare estimate when requested by the hirer.
- A regulation which requires a receipt to be provided to the hirer on request and certain information about the service to be included in the receipt provided to the customer.
- A regulation which requires that a booking service provider have a complaints management system that complies with the Australian standard.

Operational requirements

The following requirements are proposed:

- A regulation prescribing the type of vehicle identification that must be displayed on a commercial passenger vehicle while it is in service.
- A regulation prohibiting smoking in a commercial passenger vehicle.
- A regulation prohibiting the driver from refusing to accept assistance animals.
- A regulation requiring drivers to given reasonable passenger assistance.

- A regulation requiring drivers to take the route nominated by the passenger or the most direct and practicable route.
- A regulation prescribing matters to be included in an identity card for an authorised officer.

Record-keeping requirements

- Establishes records that must be kept by booking service providers and registered person of commercial passenger vehicle. Records must be kept for 5 years, and in a manner or form determined by the regulator (such as an electronic format). The specific records are established in the schedules of the regulations, and include booking information and complaints (for booking service providers), and trip information (for registered person of a commercial passenger vehicle). This also establishes records keeping requirements for non-cash payment surcharges.

An additional set of regulations are also attached which make consequential changes to the Road Safety Road Rules 2017 (reflecting the discussion in Chapter 7). The draft regulations are available for comment.

The draft changes include:

- permitting commercial passenger vehicles complying with the requirements of the proposed Regulations to stand at taxi ranks
- continuing to provide exemptions from some Road Rules to certain commercial passenger vehicles
- the removal of the exemption to use a child restraint in a taxi. A child restraint of an appropriate type will be required to be used in all commercial passenger vehicles when children are passengers. The Regulations will not, however, require all CPVs to carry child restraints
- consequential changes to reflect the change in the name of the regulator from the TSC to the CPVC.

8.2 Regulations not proposed to be made

The proposed regulations are to support the new commercial passenger vehicle framework established by two new statutes, the CPVI Act and the amending Act. Therefore, some matters covered in the previous regulations for the commercial passenger vehicle industry, the Transport (Buses, Taxi-Cabs and Other Commercial Passenger Vehicles) (Taxi-Cab Industry Accreditation and Other Matters) Regulations 2017, have been assessed as no longer being required.

Some of the regulations have been removed due to changes made by provisions in the primary legislation (e.g. removal of operator accreditation) and some regulations duplicate those in the legislation (e.g. powers to inspect vehicles).

Regulations that are no longer proposed to be remade include:

- Livery and uniforms — these requirements relate to the branding of service. It is proposed to leave these matters up to the service providers. This is consistent with the new legislative and competitive environment which places additional accountability on service providers to improve the quality of their services. Additionally, the new legislative framework focuses on regulating the safety of the service rather than matters relating to service quality. Vehicle identification requirements are included in the proposed Regulations, providing the industry with a range of options to comply (including signs, number plates etc). TfV is also seeking feedback on whether vehicles providing unbooked services should be subject to additional identification requirements.
- Safety equipment — specific safety equipment is not proposed to be prescribed in the proposed Regulations except for security cameras in vehicles providing unbooked commercial passenger vehicle services. The TSC will investigate whether it is appropriate to specify such equipment in a safety code of practice made under the CPVI Act.

Table 8-1 — Summary of current regulations not proposed to be remade

No.	Previous regulation	Reason for not remaking the regulation
6	Prescribed class of person that may give medical certificate	No longer required. The TSC has power under the Act to ask for this information as part of an application for accreditation.
11	Licensing authority may authorise persons to inspect taxi-cabs	The powers to inspect vehicles are now located in Part 7 (“Investigative Powers”) of the CPVI Act.
12	Inspections of commercial passenger vehicles	The powers to inspect vehicles are now located in Part 7 (“Investigative Powers”) of the CPVI Act.
13	Notice to rectify defects	The powers to inspect vehicles are now located in Part 7 (“Investigative Powers”) of the CPVI Act.
14	Evidence of inspections	The powers to inspect vehicles are now located in Part 7 (“Investigative Powers”) of the CPVI Act.
18	Commercial passenger vehicle licences	No longer required to be prescribed. There are no licences under the CPVI Act.
20	Emergency warning device	Not proposed to be remade. Duty holders have the option to use these devices (or alternatives) to comply with their respective safety duties under the CPVI Act.
22	Protective screens	Not proposed to be remade, however, this equipment could be specified in a code of practice. Duty holders have the option to use this equipment to comply with their respective safety duties under the CPVI Act.
23	Interference with equipment in or on taxi-cab	This offence is no longer required because the range of equipment required to be used in vehicle is significantly less than previous Regulations.
24	Livery	The industry will be free to brand their vehicles subject to complying with the proposed Regulations relating to vehicle identification.
25	Sign on taxi-cab	The proposed Regulations contain vehicle identification requirements, and a sign on a commercial passenger vehicle could be one of the means of complying with this requirement. TfV is also seeking feedback on whether vehicles used to provide unbooked services should be required to comply with additional regulations.
28	Driver appearances	Not proposed to be remade. Subjective and unnecessary. Service providers to set and

No.	Previous regulation	Reason for not remaking the regulation
		maintain own standards.
29	Fares and additional charges	The content of this regulation is covered by other regulations that are proposed.
29A	Payment of fares and additional charges	<p>It is proposed to no longer make an offence, under commercial passenger vehicle law, to not pay the fare and additional charges for the service. The new framework for the regulation of commercial passenger vehicles is intended to improve service quality and to empower consumer choice. TfV considers that it may be appropriate to permit the consumer of the service to dispute the fare in certain circumstances (such as when the service provided is not in accordance with what was agreed). For this reason, it is not proposed to make it an offence to not immediately pay the fare for a commercial passenger vehicle service.</p> <p>The non-payment for services is already a criminal offence under the Crimes Act 1958. TfV notes that the removal of the sector specific offence may make it more difficult to enforce this offence.</p>
39	No drinking liquor or possessing open liquor containers	Ability for passengers to consume alcohol in vehicles needs to be preserved for specialist hire car services (e.g. weddings, tours, etc).
41	Driver must not consume alcohol	No longer required. The Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017 amends the Road Safety Act to require all drivers of commercial passenger vehicles to have a zero blood or breath alcohol concentration.
43	Applications for accreditation	No longer need to be prescribed, taxi-cab operator accreditation no longer regulated under the new CPVI Act.
45	Records to be kept by taxi-cab operators	Taxi-cab operators are no longer required to be accredited under the new CPVI Act. Proposed Regulations require BSPs and providers of unbooked services to keep records.
51	Driver health and fitness (condition of taxi-cab operator accreditation)	Taxi-cab operators are no longer regulated under the new CPVI Act.
52	Drivers of wheelchair accessible taxi-cabs (condition of taxi-cab operator accreditation)	Taxi-cab operators are no longer regulated under the new CPVI Act.
56	Global positioning system	These devices no longer proposed to be required. However, the proposed Regulations will

No.	Previous regulation	Reason for not remaking the regulation
		require trips records to be kept, including the location of the origin and destination of the trip (either as an address or GPS coordinates). A GPS device could be used to fulfil this requirement.
57	Global positioning system records to be kept	The proposed Regulations will require trips records to be kept, including the location of the origin and destination of the trip (either as an address or GPS coordinates). The proposed Regulations will require these trip records to be kept.
58	Global positioning records to be provided	The proposed Regulations will require trips records to be kept, including the location of the origin and destination of the trip (either as an address or GPS coordinates). The CPVI Act provides the regulator with the power to require records to be provided to the regulator

8.3 Impact on small business

The purpose of this section is to analyse the proposed Regulations and assess whether any elements of the proposed Regulations impose a disproportionate burden on small businesses operating in the commercial passenger vehicle industry.

8.3.1 Structure of the industry

The commercial passenger vehicle industry is made up of a diverse group of industry participants. The industry is made up of:

- booking service providers
- vehicle owners or operators
- drivers.

Some industry participants may fulfil more than one of these roles.

Generally, vehicle owners/operators and drivers are likely to be small businesses. It is common to have a person who owns the vehicle to also drive that vehicle, and they also may engage another driver to drive the vehicle when the vehicle owner does not drive it.

It is also common for drivers to operate independently as a contractor or as a bailee driver (i.e. under a bailment or driver agreement with the owner of the commercial passenger vehicle). In such an arrangement, the driver of the vehicle runs a small business.

In most, if not all, cases, a booking service provider is unlikely to be a small business. In addition, there are some vehicle operators who operate a large number of commercial passenger vehicles who may not be classified as a small business.

8.3.2 Which requirements have potential effects on small businesses?

Of the requirements imposed by the proposed Regulations, the following have the potential to have the most significant impact on small businesses.

In the case of owners:

- the development and maintenance of a risk register

- the notification of certain incidents to the regulator
- the installation of security cameras in the vehicle
- the display of fare information in certain commercial passenger vehicles
- the installation and use of fare calculation devices
- the requirement to indemnify of drivers for damage to commercial passenger vehicles
- the requirement to keep certain records of trips.

In the case of drivers:

- the display of a thing to indicate the vehicle is being used to provide a commercial passenger vehicle service
- the display of accreditation identification
- the need to ensure that the security camera is operating when providing services
- the provision of fare information and fare estimate
- operational requirements including those relating to:
 - assistance animals
 - passenger routes
 - passenger assistance
 - requirements and other restrictions on the use of meters or fare calculation devices.

8.3.3 Do the proposed Regulations place a disproportionate burden on small businesses? How is this mitigated?

Small businesses may be disproportionately affected by regulations, especially where the scale of operations in the business means that small businesses:

- are unable to sufficiently interpret regulatory requirements
- find that the resources required to comply with regulatory requirements are higher relative to the size of their operations and/or cost/revenue base
- are less able to keep pace with regulatory change.

TfV has assessed that the proposed Regulations are required to address the problems identified in earlier sections of this RIS, and to support the implementation of the new regulatory framework for commercial passenger vehicles. However, the design of the proposed Regulations, has taken into account the impact of the regulations on small business. This is outlined in the following sections.

Interpretation of and compliance with technical standards

The proposed Regulations provide the TSC with power to set standards for fare calculation devices and security cameras, which are required to be used in certain commercial passenger vehicles. Small businesses may have limited resources to assess whether certain security camera units are compliant with the specified standard.

Such a burden can be mitigated by the regulator either issuing guidance to the industry specifying whether certain equipment is compliant with the specifications or through a type approval process, where the regulator pre-approves certain equipment for use in commercial passenger vehicles. Compliance with the regulations is made easier for the small business if such guidance is provided.

In addition, the proposed Regulations continue the current specifications for security cameras, meaning that industry participants are still permitted to use the devices that are currently installed in vehicles. This means that current service providers will not incur costs in purchasing new equipment on the commencement of the proposed Regulations. Given that

the cost of the recently approved security cameras is equivalent¹⁶ to the existing cameras, vehicle owners will incur similar costs when they are required to replace the units.

Relative compliance costs

The proposed Regulations require the use of certain equipment, such as security cameras and fare calculation devices. The compliance costs associated with these requirements may pose a disproportionate burden for small businesses. In the case of the commercial passenger vehicle industry, the equipment requirements are imposed such that each vehicle is required to have equipment installed. This means that the relative compliance costs need to be compared to the revenue capacity of each vehicle. This also means that the burden associated with equipment requirements scales across the size of the vehicle fleet (i.e. the burden is proportionate to the number of vehicles managed).

Given that these requirements are imposed on vehicles providing unbooked services, the revenue earning capacity of a taxi is relevant here. On a per vehicle basis, revenue for a taxi undertaking both booked and unbooked work is approximately \$100,000 to \$150,000 per annum. In contrast, the purchase costs of a security camera and a fare calculation device are in the range of \$3,500 and \$400 respectively. This means that the regulatory equipment requirements form a small proportion of vehicle revenue (approximately two to four percent). Additionally, such equipment can be used for several years, meaning that viewed over several years, the compliance costs are minor.

However, one requirement, which is likely to disproportionately affect smaller businesses, is a direction by the regulator to bring the vehicle in to download camera footage. While this requirement is not directly imposed by the proposed Regulations, it is a burden that is indirectly imposed as a result of the requirement to have this specific piece of equipment installed. For businesses with a small fleet of vehicles, a direction to produce the vehicle means that it is unable to be used to provide services. The time that the vehicle is out of service will depend on the circumstances, with vehicles operating near Melbourne Airport (where the regulator facilities are located) being less affected. This requirement affects the income of the owner and the driver on shift. Businesses with a larger fleet of vehicles would be less affected if alternative vehicles are available to be used to provide services.

Less onerous requirements imposed on drivers compared to vehicle owners

There are several regulations in the proposed Regulations that place a less onerous burden on drivers of commercial passenger vehicles compared to booking service providers or vehicle owners.

For example, the owner of a commercial passenger vehicle has an obligation to install a security camera in the vehicle and ensure that the camera is in good working order. In comparison, the obligation on the driver is to ensure that the camera is operational. Essentially, the driver is only required to ensure that the camera is on and working, and not required to assess whether the camera is compliant with the standard.

On the other hand, a non-operational camera may have a greater impact on a small business compared to one with a greater number of vehicles available. If the camera is not working, then a driver might switch to using a different vehicle that has an operational camera. This could happen if the driver is working with an owner of a large fleet of vehicles. However, a single owner-driver may not have this opportunity. This means that the owner-driver would need to forgo income while the camera is being repaired or replaced in the vehicle. This time could range from a day to a few days.

The majority of regulations, which the driver is required to comply with, are prescriptive regulations which leave little room for interpretation. TfV considers this is appropriate because, in most cases, these regulations relate to driver practices, which are not suitable for performance-based or principle-based regulations. The majority of these regulations will

¹⁶ The recently approved security cameras are available on a monthly lease from the providers. The cost of the cameras is equivalent assuming a useful life of 5-7 years for the cameras.

impose minor compliance costs on the driver, which are largely intended to change driver practices.

Providing guidance to industry of regulatory change

With the establishment of the new framework for the regulation of commercial passenger vehicle services, there has been substantial change to the regulatory requirement imposed on commercial passenger vehicle services. The industry will need to be kept informed of the range of changes, both in terms of the legislative requirements and the new requirements in the proposed Regulations.

The proposed Regulations present a substantial simplification of the regulatory requirements. While TfV has proposed to re-make some regulatory requirements, there are also a number of requirements which will no longer be required by the Regulations.

The TSC will need to, as part of its implementation activities, communicate these changes to the industry. This includes information regarding:

- new obligations imposed on the industry and how to comply with those requirements
- current obligations that are imposed that will continue to be imposed
- current obligations that are imposed that will no longer be required.

8.4 Statement of compliance with National Competition Policy

8.4.1 Background

The National Competition Policy agreements set out specific requirements arising out of new legislation adopted by jurisdictions which are party to those agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle which must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:

- (a) The benefits of the restriction to the community as a whole outweigh the costs;*
and
- (b) The objectives of the regulation can only be achieved by restricting competition.*

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).

Therefore, all RISs must provide evidence that the proposed regulatory instrument is consistent with these National Competition Policy obligations. The Organisation for Economic Co-operation and Development (OECD) Competition Assessment Toolkit provides a checklist for identifying potentially significant negative impacts on competition in the RIS context. This is based on the following four questions:

- Does the proposed regulation limit the number or range of suppliers?
- Does the proposed regulation limit the ability of suppliers to complete?
- Does the proposed regulation limit the incentives for suppliers to compete?
- Does the proposed regulation limit the choices and information available to consumers?

According to the OECD, if all four of these questions can be answered in the negative, it is unlikely that the proposed regulations will have any significant negative impact on competition and further investigation of competition impacts is not likely to be warranted.

8.4.2 Assessment

In comparison to the previous legislative structure for the taxi and hire car industry under the TCMA, the current legislative structure governing the commercial passenger vehicle industry involves a significant improvement in the competitive and diverse environment of the industry. The new legislative framework enables new entrants to compete without substantive barriers to entry. Therefore, the new framework for the regulation of commercial passenger vehicle services is designed to increase the choices and information available to the consumers of those services, encouraging new providers to enter the market and provide services.

In this context, the regulations aim to allow for a flexible environment in which commercial passenger vehicle service providers, as well as suppliers, provide services to the community.

From the analysis of the costs and benefits, it can be confirmed that the proposed Regulations in this RIS do not limit the number or range of supplies, limit the ability of suppliers to compete, nor reduce the incentive of suppliers to compete vigorously.

However, it should be noted that, the proposed regulations would impose some costs on the commercial passenger vehicle industry. While most compliance costs are expected to be minimal, some costs will be incurred complying with the purchase and installation of equipment requirements such as security cameras. Such compliance costs could impose a barrier to entry.

While not included in the proposed Regulations, TfV expects that the TSC will continue the operation of the current specifications for equipment required to be used, including security cameras. While this means that current service providers will not incur costs in replacing equipment and devices, new service providers will incur these costs. These costs may affect the decision to enter the market as a new service provider. However, given the compliance costs associated with the requirement, TfV does not consider that the proposed Regulations would place potential entrants at a disadvantage and does not appear to have deterred entry in the past. Accordingly, TfV considers that this regulation which enables the TSC to continue the operation of existing equipment specifications is not likely to have a substantial effect on competition with providers of unbooked services.

Lastly, to the extent that the proposed Regulations require security cameras to comply with a specified standard limit competition in the production of cameras, this is mitigated through recent actions that the TSC and other state taxi regulators have taken to harmonise the security camera standards. The collective regulators have adopted the Victorian standard, which was amended in December 2016. This enables suppliers to create products to be used in taxis or commercial passenger vehicles across the nation. In addition, the standards are put in place on the grounds of safety, restricting the operation of security cameras and restricting the downloading of images from security cameras.

However, consistent with the legislative changes that aim to reduce barriers to entry, the proposed Regulations focus on an outcomes-based approach to safety and consumer protections that allows for innovation and new technologies to deliver outcomes. TfV thus considers that, to the extent that costs are imposed, the proposed Regulations are the minimum necessary to achieve the policy's objectives, the benefits outweigh the costs (as outlined above), and any alternative approaches would not lead to a higher net benefit.

9 Implementation

The TSC will be the primary regulatory agency to implement the proposed regulations. There are a range of other agencies involved in the compliance, monitoring and enforcement of commercial passenger vehicle laws, including Victoria Police, VicRoads, the ESC, and the SRO.

9.1 Making of the proposed Regulations

Following the public comment period, TfV will consider all submissions and comments made by stakeholders on the proposed Regulations and the proposed Rules. Following this, TfV may make changes to the proposed Regulations and the proposed Rules.

There are several proposals, considered in this RIS but not included in the proposed Regulations, for which TfV is seeking comment on:

- registration of booking service providers
- insurance requirements for commercial passenger vehicles
- requiring vehicle owners to prepare and maintain a risk register
- use of term ‘taxi’ by unbooked commercial passenger vehicle service providers in identifying the vehicle.

For these proposals, TfV will also consider submissions and comments and make changes, by adding new regulations, to the proposed Regulations before they are submitted for making.

After this, TfV will submit its final recommendations to the Minister for Public Transport for approval. The Minister for Public Transport will publish a notice of decision in the Government Gazette and in newspapers which will outline the changes from the exposure draft of the proposed Regulations TfV expects the regulations to be made in late May or early June 2018.

9.2 Role of the regulator

9.2.1 Powers of regulator and authorised officers

Commercial passenger vehicle industry laws are enforced by the TSC or authorised officers appointed by the Commission.

Authorised officers have certain statutory powers under the CPVI Act. For this reason, persons may only be appointed as an authorised officer if the regulator is satisfied that the person is qualified or suitably trained to exercise the powers under the CPVI Act and the regulations. Officers must have knowledge of the relevant areas of procedure and law, including the application of their powers, responsibilities and law enforcement processes. Their authorisation is assessed and renewed periodically.

Under Part 7 of the CPVI Act, the regulator and authorised officers have a range of investigative powers, including powers of entry, search and inspection, seizure and direction powers.

The regulator or authorised officers have different regulatory enforcement measures available under Part 8 of the CPVI Act:

- Improvement notices are served by the regulator or an authorised officer if a person is found to contravene a provision under the CPVI Act or the regulations.
- Prohibition notices are served by the regulator or an authorised officer reasonably believes that an activity is occurring or may occur that will likely involve an immediate risk to safety.
- Infringement notices are served by authorised officers to persons who are believed to have committed a prescribed infringement offence.

– Applying for injunctions against regulated parties in certain circumstances such as when booking service providers are not registered under the Act.

Authorised officers are also able to inspect vehicles and issue defect notices under the RSA.

9.2.2 Safety

The focus of the new commercial passenger vehicle legislation is on the safety of the service provided. The TSC has a new role in compliance monitoring and enforcement of the safety of commercial passenger vehicle services by way of the safety duties imposed on the industry.

9.2.3 Fare monitoring and consumer protections

The TSC has a role in consumer protection under Part 6 of the CPVI Act under fare monitoring provisions.

As discussed previously, the CPVI Act provides for a maximum fare scheme for unbooked commercial passenger vehicle services. Fares for booked services are not regulated.

Given the significant reforms to the commercial passenger vehicle industry, fare monitoring ensure that consumers and Government is informed about the economic performance of the CPV industry and supports the efficient operation of the industry.

Fare monitoring allows the regulator to identify and highlight potential areas of misuse of market power and support measures to protect consumers from market failures that may arise from partially deregulated fares.

The regulator is required to monitor fares for 5 years from the commencement of the CPVI Act.

9.2.4 Accessibility

The TSC plays an important role in the oversight of accessible commercial passenger vehicle services for persons with a disability. The TSC also administers the Multi-Purpose Taxi Program (MPTP). The MPTP subsidises taxi travel costs for persons with a disability.

The regulator also administers grants. For example, the regulator is responsible for administering grants under the Taxi Rank Safety Program, a Victorian Government initiative that provides grants to Victorian councils to improve the safety, quality and amenity of taxi ranks.

TfV is undertaking a separate review of accessible point-to-point transport services. The review is examining the overall approach to supporting the delivery of accessible point-to-point transport services to identify an approach that improves outcomes for users. The review is focussing on how non-legislative measures, such as user subsidies and industry incentives, can be more effectively targeted to facilitate a competitive and commercially viable market that provides adequate incentives to industry to provide a diverse range of services that are timely, safe and reliable. TfV is consulting with a range of stakeholders on the review.

Implementation of measures to promote access are outside the scope of this RIS, as these are non-legislative measures. TfV will work with the TSC to implement any recommendations arising from the review.

9.3 Role of other agencies

9.3.1 Victoria Police

Victoria Police has an important role to play in promoting road safety and, consequentially, the police have a role in compliance monitoring and enforcement of commercial passenger vehicle laws. Victoria Police are granted powers under Division 6 of Part 8 of the CPVI Act to issue infringement notices to persons found contravening the Act or the regulations.

Victoria Police also enforces compliance with other relevant laws, including investigating criminal matters relating to drivers and passengers such as theft, assault and fraud. In these cases, where appropriate, Victoria Police may authorise images from security cameras to be downloaded by the regulator for use by Victoria Police in investigating alleged crimes. Victoria Police also has a role in ensuring the safety of commercial passenger vehicles under the RSA. For example, Victoria Police perform blood and breath alcohol concentration (BAC) tests to ensure that drivers of CPVs maintain a zero BAC.

9.3.2 Essential Services Commission

The ESC is an independent statutory body regulating essential services and provides advice to the Victorian Government on commercial passenger vehicle fares. The main role of the ESC is to set maximum fares for unbooked commercial passenger vehicle services.

The ESC is required, by law, to make a new fare determination under the CPVI Act within one year of the amending Act coming into operation. Assuming a 2 July 2018 commencement date, this means that the ESC is required to make a new fare determination by 2 July 2019.

9.3.3 State Revenue Office

The SRO will be responsible for the administration of the commercial passenger vehicle service levy, which is a \$1 per trip levy imposed on all commercial passenger vehicle service transactions.

9.4 Timing of commencement

The proposed regulations will be made to support the new CPVI Act. The new legislation has a default commencement date of 1 July 2018. TfV expects that the actual commencement date of the Act and the proposed Regulations will be close to the default commencement.

TfV have worked closely with the TSC to devise an implementation strategy for the commencement of the Act and the proposed regulations.

While the commencement of the amending Act and the proposed Regulations have a fixed default commencement date, there is an option to stage compliance monitoring and enforcement by the TSC.

This is the approach taken by the TSC in relation to the commencement of low-cost licences. Providers of booked services had until 31 December 2017 to licence any vehicles and become accredited. During this time, the TSC undertook an education role, informing the industry of the requirement to be licensed particularly in relation to rideshare and on-demand hire car services, rather than taking a heavy-handed enforcement role. The exception to this is where the vehicle used is found to be unsafe. With the commencement of the amending Act, the TSC will continue compliance monitoring and enforcement of industry compliance with the new law.

The TSC will communicate with the industry regarding the commencement of the new laws, and the approach to compliance monitoring and enforcement before the new laws commence.

9.5 Changes to processes and systems

In order to implement the new legislation and proposed regulations, the TSC will be required to make a range of changes to processes and systems, especially in relation to industry permissions (e.g. vehicle registration, driver accreditation and booking service provider registration).

The TSC will have a new responsibility to monitor fares, with the regulator now required to report annually on commercial passenger vehicle fares. The TSC will now be gathering fare

data from the commercial passenger vehicle industry. Records of trip data will also be collected for the purposes of the per trip levy and to support the regulator's price monitoring function. The TSC will implement data collection and storage to ensure that the data collected can be used in a meaningful way.

The TSC will largely build on and modify existing systems, meaning that the costs of the implementing new processes are not expected to be significant. Many of the systems associated with the package of commercial passenger vehicle reforms have already been built and implemented (such as online applications for driver accreditation and vehicle licences/registrations). Additionally, many of the proposed Regulations are already existing requirement meaning that no further system changes will be required.

The TSC has power to set fees for applications required to be made under the CPVI Act and annual fees to be paid by permission holders (e.g. vehicle owners, booking service providers and drivers). A new determination of fees will need to be made. In doing this, the TSC will consider the efficient costs incurred by the TSC that are attributable to the administration of the Act and proposed Regulations and an appropriate level of cost recovery. This analysis will inform the level and type of fees that could be made. TfV expects the TSC will prepare a RIS to support this analysis, but notes that the current fees may need to continue in the interim while new fees are developed.

9.6 Implementation of proposals not included in the proposed Regulations

The proposal to exempt certain persons from the requirement to register as a booking service provider, which is not included in the proposed Regulations, may impact on the nature of TSC's implementation task. TfV is considering whether regulations should be made to exempt certain persons from the registration requirement.

If regulations are made, then the persons and entities who would otherwise be required to register will not have to. If this option is implemented, then there will be little impact on the TSC as no additional booking service providers will need to be registered. Under the Act, all accredited booking service providers prior to the commencement of the new law are automatically registered meaning those persons and entities do not have to reapply for registration.

If no regulations are made, then TfV expects that a significant number of persons and entities will be required to register as a booking service provider. The exact number is not known to TfV at the time of publication of the RIS. However, given the expected timing of the making of the regulations and the proposed commencement of the new law, TfV expects that there will need to be a transitional period as regulated parties take the steps to comply with the new law. As per the approach to licences and driver accreditation following 9 October 2017 when low-cost licences became available, one option for the TSC may involve taking a light-handed approach to compliance and permitting persons to apply for registration over time. This will give the TSC sufficient time to process applications for registration. Another option is to make regulations to exempt persons from the registration requirement for a specified period of time, enabling regulated parties and the TSC sufficient time to make and process applications for registration. The benefit of this option is that it provides certainty to the industry that they are not committing an offence(s) during the transitional period.

TfV, following consideration of submissions and feedback in relation to this proposal, will work with the TSC to determine an appropriate course of action. TfV and the TSC will advise stakeholders of the outcome and what is required and by when.

9.7 Infringements

The amending Act enables certain offences to be prescribed as infringement offences. This means that an infringement may be served on a person if a TSC authorised officer or a police officer has reason to believe that a person has committed an offence. Infringement offences are effectively imposed as an administrative bargain, meaning that the alleged offender admits that an offence has been committed but accepts a lower penalty for that contravention. The benefit is that the regulator avoids some of the costs of enforcement such as prosecution of the alleged offender.

Infringements policy and processes are governed by the *Infringements Act 2006*. The Attorney-General's guidelines provide guidance as to the prescription of offences as infringement offences. This includes guidance relating to:

- the appropriateness and suitability of certain offence as infringement offences
- the levels of infringement penalties.

The draft exposure Regulations do not prescribe offences as infringement offences at this stage. TfV proposes to do this at a later stage before the proposed Regulations commence. Table 9-1 outlines the offences which TfV currently considers should be made infringement offences, the maximum penalty that applies to a contravention of that offence and the proposed infringement penalty. Readers are also advised that there are several offences in the Act and the proposed Regulations which are not proposed to be made as infringement offences. In many cases, these offences are not suitable to be made as infringement offences due to the nature of the offences. For those offences, the TSC will need to use alternative enforcement options.

Table 9-1 – Proposed infringement offences and infringement penalties

Section of the Act / Regulation number	Offence	Maximum penalty for offence (penalty units)	Maximum penalty for offence (in 2017-18 \$) [†]	Proposed infringement penalty (in penalty units)	Proposed infringement penalty (in 2017-18 \$) [†]
Offences under the Commercial Passenger Vehicle Industry Act 2017					
37	Offence to drive unregistered vehicle for commercial passenger vehicle service	60	\$9,514.2	12	\$1,902.84
47	Offence to fail to comply with conditions of registration (individual)	120	19,028.4	12	\$1,902.84
51	Indication that a vehicle is a	60	\$9,514.2	12	\$1,902.84

Section of the Act / Regulation number	Offence	Maximum penalty for offence (penalty units)	Maximum penalty for offence (in 2017-18 \$) [†]	Proposed infringement penalty (in penalty units)	Proposed infringement penalty (in 2017-18 \$) [†]
	commercial passenger vehicle				
70	Offence for driver to provide services without accreditation	60	\$9,514.2	12	\$1,902.84
82	Offence to fail to comply with conditions of driver accreditation	30	\$4,757.1	7.5	\$1,189.28
87	Offence not to sign certificate of accreditation on receipt	5	\$792.85	1.25	\$198.22
88	Offence not to notify change of address and return certificate of accreditation	5	\$792.85	1.25	\$198.22
89	Offence not to notify of suspension or cancellation of driver accreditation	5	\$792.85	1.25	\$198.22
90	Offence not to notify of being charged with, or found guilty of, a disqualifying offence	5	\$792.85	1.25	\$198.22
91	Offence to retain illegible certificate of accreditation	5	\$792.85	1.25	\$198.22
92	Offence to retain certificate if accreditation suspended or cancelled	5	\$792.85	1.25	\$198.22
93	Offence not to carry certificate of accreditation when driving	5	\$792.85	1.25	\$198.22
94	Offence not to produce certificate of accreditation	5	\$792.85	1.25	\$198.22

Section of the Act / Regulation number	Offence	Maximum penalty for offence (penalty units)	Maximum penalty for offence (in 2017-18 \$) [†]	Proposed infringement penalty (in penalty units)	Proposed infringement penalty (in 2017-18 \$) [†]
	when asked				
Offences under the proposed Commercial Passenger Vehicle Industry Regulations 2018					
9	Driver identification not visible in commercial passenger vehicle	5	\$792.85	1.25	\$198.22
13	Providing a CPV service without security camera	20	\$3,171.4	5	\$792.85
16	Failure to display fare information	20	\$3,171.4	5	\$792.85
17 & 18	Providing commercial passenger vehicle service without fare calculation device	10	\$1,585.7	2.5	\$396.43
20	Failure to provide fare estimate	10	\$1,585.7	2.5	\$396.43
21	Failure to provide receipt	10	\$1,585.7	2.5	\$396.43
24	Smoking in vehicle	5	\$792.85	1.5 / 0.5*	\$237.86 / \$79.29
25	Refuse to accept assistance animal	10	\$1,585.7	2.5	\$396.43
26	Failure to provide passenger assistance	5	\$792.85	1.25	\$198.22
27	Failure to comply with passenger routes	10	\$1,585.7	2.5	\$396.43

[†] The dollar values of the penalty units are presented in values for the 2017-18 year. The value for penalty units for 2018-19 have not yet been determined.

* The smaller penalty is the penalty that applies to a child, if a child is alleged to have committed that offence.

The infringement values, as per the Attorney-General's guidelines are determined by multiplying the value of the penalty unit, which is set every year by the Department of Treasury and Finance, and the amount of the infringement penalty.

TfV considers that the proposed penalty levels are appropriate as the penalty levels of the infringement offences have been chosen based on the following factors:

- the maximum proportion recommended by the Attorney-General's guidelines (infringement penalties should be no greater than 25 per cent of the maximum penalty)
- the nature and the gravity of the offence (more serious offences with greater consequences should attract a higher penalty)
- consistency with other offences (the penalties for similar offences should be comparable and consistent)
- consistency with the same offences under the previous regulatory framework (reduces transitional costs for the TSC and the cost of understanding and complying with the law).

TfV seeks feedback on the proposed infringement offences.

The regulations which will prescribe certain offences as infringement offences will depend on the final form of the proposed Regulations. For this reason, TfV will prepare and draft the infringement regulations after the public consultation period for the proposed Regulations finishes.

9.8 Communication and consultation

The TSC holds a range of forums which involve industry stakeholders.

The Industry Implementation Group (IIG) was established by the then Taxi Services Commission to provide input into the implementation of the government's reform agenda. While not a decision-making body, the SRG assists the regulator in delivering and implementing reforms effectively.

The TSC also provide updates and communication to the industry in a variety of ways such as via its website, letters to stakeholders and other stakeholder forums.

The TSC will be the primary agency to undertake communication and consultation with the industry and the public to implement the new legislation and regulations.

10 Evaluation Strategy

10.1 Purpose of an evaluation

It is important to undertake an evaluation of the proposed Regulations to assess whether the proposed Regulations are the appropriate intervention to meet their identified objectives. An evaluation strategy outlines how the evaluation will be undertaken.

The proposed Regulations are made as a new set of regulations under a new legislative framework implemented as part of the commercial passenger vehicle reforms. The new legislative framework is a substantial departure from how the industry has been regulated, and the focus of regulation is shifting away from economic regulation to safety regulation. Therefore, an evaluation of the proposed Regulations will also need to consider the performance of the new legislative framework, and its impact on outcomes for the users of commercial passenger vehicle services.

10.2 The approach to evaluation

10.2.1 Timing, evidence and monitoring

All regulations expire after ten years. TfV will review the operation of the proposed Regulations before their expiry. The review will evaluate the effectiveness of the proposed Regulations and inform whether the proposed Regulations should be remade in part or in full. This review would commence approximately 12 to 18 months before the expiry of the proposed Regulations in 2028.

Additionally, since the CPVI Act is new legislation, TfV also intends to undertake a mid-term review of the new legislation and proposed Regulations to assess how these are operating. This mid-term review will occur approximately five years after the commencement of the new legislative framework (i.e. commencing in 2023).

The evaluation methodology, outlined below, will be used as the basis for both evaluations. TfV will undertake the evaluation drawing on information and input from the TSC.

TfV will primarily draw on data and information collected by the TSC. This includes compliance data, information and data kept by the industry as records (as required by the proposed Regulations). As part of the mid-term review, TfV may commission additional research and/or surveys to fill in data gaps if necessary to support the analysis.

The TSC has a role to provide advice to the Head, TfV and the Minister for Public Transport in advising on strategic and regulatory policy in relation to the commercial passenger vehicle industry and the operation of the legislation. It is expected that the TSC and TfV will work closely together to identify areas of improvement on a continuous basis once the reforms commence.

10.2.2 What will be evaluated and how?

The objectives of the proposed Regulations build on the objectives of the CPVI Act. Broadly, the objectives relevant to the evaluation strategy in this RIS are to support:

- safety of commercial passenger vehicle services
- competition in the market for commercial passenger vehicle services;
- protections for users of commercial passenger vehicle services.

Accordingly, an evaluation of the CPVI Act and proposed Regulations would be structured around these areas. The following sections outline, for these three areas, the proposed approach to the evaluation, and include:

- Identifying the proposed Regulations or provisions in primary legislation, or changes in such law, that are relevant to the specific objective.

- Identifying indicators —the changes in outputs or outcomes providing an indication that the objectives of the intervention are being achieved.
- Identifying the baseline data — the data that will be collected prior to the commencement of the intervention, that will be used as the basis of the analysis.
- Data to be collected — the data that will be collected after the commencement of the intervention. This data will be assessed against the baseline data.
- The evaluation will consist of a comparison of the outputs and outcomes post-implementation against the baseline data.

The evaluation strategy specified here is provided as a high-level methodology. TfV will develop a more detailed strategy once the proposed Regulations are made and prior to the commencement of the proposed Regulations. This will be undertaken as part of the task of implementing the new legislation and regulations. The systems and processes for data collection can be designed with the evaluation in mind.

Safety

The safety of the commercial passenger vehicle industry will be a focus of the new CPVI Act. Safety objectives are primarily addressed through the imposition of safety duties. The proposed Regulations also support the safety objective and the operation of the safety duties scheme through the requirements to:

- use a security camera
- develop and maintain a risk register
- display driver and vehicle identification.

This should be considered when undertaking an evaluation of the current regulatory proposal. A review of the safety duties scheme will need to assess whether safety outcomes for the commercial passenger vehicle industry have improved, and whether the industry is actively managing safety risks.

In terms of the proposed Regulations, the evaluation will consider whether the requirement to use a security camera is still appropriate or whether the industry is adopting different approaches to managing safety. A change in the proportion of unbooked commercial passenger vehicle services compared to booked services and the relative safety outcomes will give an indication of whether the security camera requirement is needed.

As discussed in earlier sections of this RIS, the safety of booked services will need to be monitored as the booked segment of the market expands with the rise of use of rideshare and app-based on-demand booking. This includes monitoring whether there are proportional levels of assaults or other crimes consistent with unbooked services.

Indicators

Safety outcomes are measured through the number of deaths, injuries and vehicle incidents. In terms of the safety of commercial passenger vehicles services, the number of deaths, injuries and vehicle incidents resulting from commercial passenger vehicle operations will be the main indicators of performance.

An indicator of whether the industry is actively managing safety risk is whether the industry is adopting new ways of addressing safety risks. This could be assessed through the risk registers developed by booking service providers and owners. The risk registers will require the identification of risks, and specify the action taken to mitigate or eliminate each risk. An examination of a risk register could give some insight into how the industry is ensuring safety. TfV could seek stakeholder input, via interviews or survey, to inform how this is changing.

Baseline data

The evaluation will be informed by the current data available in relation to:

- vehicle inspections

- assaults and crime and camera downloads.

Information and data to be collected

The regulator will now have the power to monitor data on incidents which have an impact on driver and passenger safety in the commercial passenger vehicle industry through:

- audits of commercial passenger vehicle services and booking services, including data on the number of infringements, improvements notices and prohibition notices
- reports from notifiable incidents to the regulator.

Information and data to assess the effectiveness of the proposed Regulations will be collected through:

- safety audits
- vehicle inspections
- security camera downloads
- investigations arising from incidents notified to the regulator
- the number of unbooked commercial passenger vehicle trips undertaken.

Market competition

An objective of the CPVI Act is to promote market competition in the commercial passenger vehicle industry. Competition is facilitated through the amendments made in the primary legislation in relation to registration of vehicles and booking service providers, and the accreditation of drivers, enabling persons to register and provide services with minimum regulatory barriers.

An evaluation should also examine how the new legislative framework has impacted on the structure of the market and not just the size of the market. While the legislation largely does not differentiate between different types of commercial passenger vehicle services (except for the regulation of fares for unbooked services), some of the regulations are designed to address problems for a specific cohort of services, such as unbooked services.

In promoting market competition, the regulations should strive to achieve the identified objectives at the least costs to the industry as possible. This will ensure that any regulatory costs are proportionate to the nature and extent of the problems it aims to address without creating any excessive barriers to entry. Monitoring the changes in the use of booked or unbooked services may provide insight into the relative barriers imposed on the unbooked segment of the market resulting from compliance costs arising from the proposed Regulations.

Indicators

The primary indicator of whether there is sufficient market competition is through the level of industry entry and exit. The regulator already collects regular data on the number of commercial passenger vehicles and driver accreditations, which will form the baseline for evaluations. This can also include the entry and exit of booking service providers and will reflect competition between those participants as mediators between consumers and suppliers in a two-sided market.

A change in proportion of booked services versus unbooked services will give an indication of the change in use of commercial passenger vehicle services. However, care needs to be taken in interpreting these data because a variety of factors could influence this metric including fares for services (which could also be influenced by compliance costs), quality of services and perceived quality of services.

Post commencement of the proposed Regulations, the regulator will be able to monitor vehicle entry and exit trends using the number of registered vehicles and driver accreditations over time to signal the level of competition in the market.

In addition, the fares paid for commercial passenger vehicle services will also inform the assessment of market competition. The TSC already has a function to monitor fares for all

commercial passenger vehicle services meaning that it will observe how fares will change in the market and provide advice on any unintended consequences. An evaluation will need to consider the extent to which service providers change their fares or business models as a result of the reforms.

Baseline data

Baseline data should be informed by a snapshot of the industry before the reforms commence and during the interim period. This includes:

- the number of licensed commercial passenger vehicles as of 9 October 2017, when the interim reforms of the CPVI Act commenced
- the number of registered commercial passenger vehicles on commencement of the second stage of reforms (which include the proposed Regulations)
- the regulated fares for taxi services prior to the commencement of reforms
- actual fares for hire car services
- the regulated fares for unbooked services (as determined by the ESC as required by the second reform legislation)
- fare monitoring undertaken by ESC (in relation to country and regional areas).

Passenger usage, based on trip data, as well as level of fares, as informed by the regulator's fare monitoring scheme under the Act, will also provide an indicator of the level of competition in the market. Increasing passenger usage and/or decreasing fares could indicate that the regulations do not, at the very least, inhibit market competition.

Information and data to be collected

A range of data and information is proposed to be collected, including:

- New applications of permissions (vehicles, drivers, and booking service providers) (it is statutory requirement to hold these permission)
- Number of permission holders not renewing their permissions (TSC registration database)
- Levels and changes in fares for commercial passenger vehicle services (annual fare monitoring reports prepared by TSC)
- Number of commercial passenger vehicle trips (SRO and TSC data), including the number of booked trips and unbooked trips. Some incomplete information regarding user cohorts is also available, such as users with disabilities through the Multi-Purpose Taxi Program, or by the origin/destination of the trip (e.g. Melbourne Airport).

This data is collected by the TSC as part of its statutory functions as a regulator and is kept as part of the database that it maintains.

Some data, such as changes in the cohorts of users of different types of commercial passenger vehicle services, could be complemented by user surveys.

Consumer protections

The regulatory proposal relating to consumer protections are intended to protect users of commercial passenger vehicle services from unfair practices relating to fares, such as deceptive or misleading conduct. The proposed Regulations are intended to promote transparency in transactions for commercial passenger vehicle services.

There are two types of consumers protections:

- requiring fare information to be provided in a variety of ways (either provided directly, through a fare estimate, or the fares displayed in the vehicle)
- requiring the use of a fare calculation device in vehicles providing unbooked services.

For the first point, an evaluation of consumer protections will need to consider the practices undertaken by booking service providers, owners and drivers. This includes the level of fare information provided to consumers. An evaluation of consumer protections will need to

consider the extent to which some practices would otherwise be done in the absence of regulations. The provision of additional information above what is required and using alternative means may serve as an indicator that the consumer protection regulations are no longer required. However, an unintended consequence of the proposed Regulations may be that service providers comply with the regulations but do not provide other information that consumers may need because it is not prescribed in the regulations. Accordingly, the consumer protection regulations will need to be monitored to ensure that there are no unintended outcomes as a result of making the Regulations.

Additionally, the practices of consumers when using commercial passenger vehicle services may also serve as an indicator as to whether the proposed Regulations are still required. This means that the evaluation will also need to take into account the proportion of unbooked trips compared to booked trips as different requirements are placed on the providers of unbooked services compared to booked services. The reason is that the consumers are more likely to receive better fare information through a booked service compared to an unbooked service. Additionally, ancillary services, such as fare comparison websites or apps, may be developed for use by consumers to compare fares for and the quality of different commercial passenger vehicle service providers.

The proposed consumer protection regulation requiring the use of a fare calculation device in vehicles used to provide unbooked services has been a long-standing requirement in taxis (which are able to provide both unbooked and booked services). However, this requirement is only being proposed to be required in vehicles providing unbooked services. This means that there may be a greater number of vehicles not using a fare calculation device in the vehicle.

As discussed in earlier sections of this RIS, a fare calculation device is required, in part, when fares are based on a schedule of rates, to help calculate the fare. The greater use of alternative fare structures such as fixed fares may negate the need for fare calculation devices. In addition, there may be a wider set of devices used in vehicles with greater functionality (such as the ability to generate a fare estimate).

Indicators

A range of indicators will inform an evaluation of consumer protections, including:

- the extent to which service providers use of alternative means to convey fare information
- the provision of additional information above what is required by regulation
- the use of booked services compared to unbooked services
- the use of ancillary services, such as fare comparison sites
- the use of fixed fares in unbooked (or booked) services
- the types of devices used as fare calculation devices.

In addition to the indicators described above, complaints made to both service providers and the regulator will be used as one of the indicators to determine the efficacy of consumer protections.

Baseline data

Complaints made against drivers to the TSC in relation to driver behaviour, together with compliance outcomes (infringement notices etc) will be used as baseline data.

Information and data to be collected

The regulator will gather and monitor data and information relating to:

- complaints made to the regulator and booking service provider
- the number of trips
- fare levels and fare practices (as part of its fare monitoring function).

The regulator already collects comprehensive data on complaints. Future levels and the nature of complaints will provide an indicator of regulatory performance.



In addition to consumer complaints, TfV could collect further information about the operation of consumer protections and user experience with both booked and unbooked commercial passenger vehicle services. This could be used to complement complaints data and to gather further information not otherwise collected through complaints.

11 Consultation

A range of parties were consulted in the development of the proposed Regulations.

TfV undertook early consultation on the proposed regulations, as part of the consultation with stakeholders on the Commercial Passenger Vehicle Industry Amendment (Further Reforms) Bill 2017 before and after the Bill was introduced in Parliament. During these briefings, TfV explained to stakeholders the broad matters proposed to be included in the proposed Regulations, the timing for formal public consultation on the RIS and draft exposure Regulations. As part of these discussions, specific attention was given to regulations that would provide consumer protections, as these regulations were intended to support the implementation of the deregulation of fares.

Stakeholders consulted as part of this round of consultation:

- Victorian Taxi Association
- 13Cabs
- Victorian Hire Car Association
- Uber
- GoCatch
- London Rides
- Public Transport Access Committee
- Consumer Action Law Centre
- National Disability Services
- Vision Australia
- Disability Resource Centre
- Victorian Council of Social Service

The TSC, supported by TfV, also consulted with industry stakeholders on some specific aspects of the regulations, including some existing regulations. Discussions were held as part of the Industry Implementation Group, a stakeholder group chaired by the TSC. Matters discussed include vehicle identification, equipment, and safety duties.

There was a consensus that additional requirements should apply to unbooked services, including security cameras, printing the registration plate number on the side of the vehicle, and affixing registration plates issued by the regulator. There were mixed views on the requirements to display the name and contact details of the operator or the booking service provider on the side of an unbooked vehicle, the requirement to affix a dome light on the vehicle, and the requirement to display the word “taxi” on the vehicle.

There was also support from stakeholders to remove some existing requirements that currently apply to taxis, such as the requirement to seek approval for the colour of the vehicle.

On 27 February 2018, TfV, as part of the TSC’s Industry Implementation Group, presented and discussed the full set of regulations proposed to be made. Stakeholders noted the following matters as part of the discussion:

- whether there are alternative means of indicating that a vehicle is in service, such as via technological solutions
- what the rationale is for the differences in exemptions affording to taxis and other commercial passenger vehicles in the Road Safety Road Rules; and

– whether insurance requirements specified in the driver agreement has led to an increase of the use of ‘taxi clubs’¹⁷ leading to undesirable outcomes for drivers.

While TfV has not made any changes to the proposed Regulations as a result of the last round of consultation, TfV will follow up with stakeholders during the public comment period on the matters raised in that session. TfV will assess whether any changes to the proposed Regulations are required before they are made.

¹⁷ Taxi clubs are entities which self-insure member’s vehicles based on member’s financial contributions. The owner/operator of the vehicle pays regular contributions in return for the payment for damages and repairs to the vehicle and third-party claims for property damage. There have been reports that taxi clubs often fail to settle claims leaving the driver unprotected.

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