

Queensland Government Response to
Report on Investigation into the Taxi Industry
in Queensland by the Queensland Workplace
Rights Ombudsman

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Background

Following complaints to the Queensland Workplace Rights Office (QWRO) from taxi industry stakeholders, including drivers, the Queensland Workplace Rights Ombudsman (the Ombudsman) instigated an independent investigation into work related issues affecting taxi drivers throughout Queensland. The Ombudsman's report into the taxi industry was tabled in Parliament on 24 June 2010.

The QWRO and the Ombudsman are established under the Industrial Relations Act 1999 (the Act). The Ombudsman's position is a statutory appointment and he is not subject to direction about the way he performs his functions under the Act.

The Ombudsman's legislative functions include:

- to monitor and report to the Minister on industrial relations and other work-related matters in Queensland; and
- to investigate and report to the Minister on the impact of any aspect of industrial relations and other work-related matters affecting Queenslanders.

In his report, the Ombudsman acknowledged that the relationship between a taxi operator or owner and a taxi driver has, to date, been held to be that of "bailor and bailee" rather than employer and employee however, the functions of the Ombudsman clearly extend beyond "industrial relations" to "other work related matters".

The Ombudsman's investigation involved consideration of 438 written submissions and in excess of 80 meetings throughout the State. In addition to locations within south east Queensland, meetings took place in 18 regional areas of Queensland. A survey was also sent to over 15,000 persons in Queensland who hold taxi driver authorisation. 1,818 taxi drivers in Queensland completed and returned the survey.

In response to the Ombudsman's Report, the Minister for Transport extended the consultation period for comments to be received on the draft *Queensland Taxi Strategic Plan 2010 - 2015* by one month to 2 August 2010 to enable sufficient time for both documents to be considered in parallel.

The Queensland Government also established an interagency working group comprising of senior officers from the Departments of Transport and Main Roads (TMR), Justice and Attorney-General (DJAG), Premier and Cabinet (DPC), Queensland Treasury (QT) and Queensland Police Service (QPS) to consider the Ombudsman's Report, examine the recommendations made and provide advice to Government on the best way forward.

The work of this interagency working group has culminated in the completion of this report to Government. It provides a position on each of the issues examined by the Ombudsman and the approach to be taken to deal with these issues.

Approach to Response

The Ombudsman considered taxi industry issues under 12 headings in his Report and made a total of 56 recommendations:

- Training
- Working Relationships
- Disciplinary Processes
- Equity in Work Distribution
- Operators' Costs
- Further Operator Issues
- Licences (Market Entry)
- Industry Representation
- Taxi Subsidy Scheme
- Insurance
- Superannuation and Long service leave
- Safety

For the purposes of this response, the Queensland Government has responded to the Ombudsman's Report and its recommendations in the following format:

- Issue identified by the Ombudsman
- Government Response to the Issue
- Ombudsman's recommendations
- Government Response to recommendations
- Incorporated in Strategic Plan
- Strategic Plan References

Issue identified by Ombudsman: Training

- Major factor in determining the standard of service delivered to the public.
- Has the ability to deliver on a driver's right to a fair and safe workplace: increasing standards of service can reduce psychological injury arising from direct abuse and criticism from passengers.
- National approach to taxi driver training to be applauded
- Comments directed at current system
- Problems with language and communications skills and poor knowledge of localities and routes
- Concerns about 'Mystery Shopper' sampling
- Course content has not been monitored or audited or approved by an independent authority
- Better training and accreditation processes - first step towards improving taxi services, improved patronage, increased income for drivers and operators

Ombudsman's Recommendations:

1.	That the Chief Executive of the Department of Transport and Main Roads audit for suitability the content of all courses used by entities currently providing training to applicants for a Hire Driver Authority.
2.	That the Chief Executive of the Department of Transport and Main Roads review for suitability and approve if appropriate any test currently used to assess competence of applicants for a Hire Driver Authority.
3.	That as soon as possible, transfer responsibility for Driver Authority competence testing from private entities to the Department of Transport and Main Roads Driver licence testing body.
4.	That the Department of Transport and Main Roads Driver licence testing body be equipped with the means, authority and resources to test for appropriate driving skill, locality knowledge, route knowledge and language skills as part of the assessment of competence for the procurement of a Driver Authority.
5.	That the successful completion of Department of Transport and Main Roads test should be a prerequisite element of attaining Driver Authorisation.
6.	That in areas where there is no government driver licence testing centre, the Department of Transport and Main Roads establish a panel of entities (possibly commercial Driver Training Schools or the police) capable of testing potential taxi drivers for driving skills. In such cases the locality knowledge, route knowledge and language skills testing should continue to be conducted by the Department of Transport and Main Roads officer handling the application for the issuing of the Driver Authorisation.
7.	That the Department of Transport and Main Roads, not a taxi booking company, should select the appropriate driving schools for inclusion on any panel of testers.
8.	That the Department of Transport and Main roads should periodically review the panel of approved testers and be empowered to add or remove names as appropriate, especially in the event that it is established that a driver was incorrectly assessed as competent.
9.	That in the development of suitable testing methods regard should be had to the circumstances under which taxi driver operates and the higher demands on a taxi driver compared to a private driver e.g.

	interpreting passenger directions on the run, attending to job allocation equipment and security equipment.
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Government Response to recommendations:

Recommendations 1 – 9

Supported in principle

The Queensland Government supports the Ombudsman's position that training has the ability to generate improvements in the capability and professionalism of taxi drivers and therefore the standing of the taxi industry in the community and the capacity of the industry to deliver a high quality service. TMR notes that the Ombudsman advises that the comments and recommendations made in regard to training are directed at the current system of training and accreditation, due to a lack of knowledge about the new training regime in terms of standards and accountability.

The view taken by the Ombudsman that the objectives of the national taxi driver training are to be applauded is supported. At the same time, the Ombudsman's concern that this national approach did not meet the original timeframe of 1 July 2010 is acknowledged.

TMR was closely involved in the development of the national taxi driver training core competencies by the Transport and Logistics Industry Skills Council and in the development of the National Minimum English Standard for taxi drivers by ISLPR Language Services. This work commenced after agreement by the Australian Transport Council (ATC) in May 2008 and culminated in the National Taxi Driver Training Framework agreed to by the ATC in April 2010.

TMR is progressing the implementation of this Framework. Work is well progressed to meet the revised implementation dates for:

- the introduction of the national minimum English standard for all new taxi drivers in Queensland from November 2010; and
- the introduction of the national taxi driver training core competencies delivered through Registered Training Organisations in major contracted areas from January 2011.

All new taxi driver authorisation applicants who intend to drive in contracted areas that have 35 or more taxi service licences will be required to satisfactorily complete RTO delivered training in the seven competency units endorsed by the Australian Transport Council and approved by the National Quality Council.

The seven competencies are:

- Complete induction to the transport industry (TLIL6009A)
- Drive a taxicab (TLIC907C)
- Use communication systems in a taxi cab (TLIB9009A)
- Comply with safety and security procedures (TLIF7209A)
- Identify major roads, services and attractions (TLIH407B)
- Provide Taxicab customer service to industry (TLII1909A)
- Carry out financial transactions and maintain records (TLIQ1609A)

Under the new requirements, taxi booking companies or operators in the areas affected by this change who currently conduct their own taxi driver training will be required to either become an RTO or partner with an established RTO.

These new requirements are part of the reforms announced in July 2009 designed to improve safety and service standards for the taxi industry in Queensland. They follow the legislative amendments made in November 2009 that introduced a minimum age of 20 years

for taxi drivers and a requirement for them to have held an Australian driver licence for at least 12 months in addition to an open Australian driver licence.

These new English and training requirements will need to be met, where applicable, for a taxi driver authorisation to be issued.

Registered Training Organisations delivering and assessing the competencies will be audited by the Department of Education and Training and a Memorandum of Understanding has been developed that ensures that TMR as the industry regulator participates in this audit process.

TMR believes its approach to future training requirements will deliver on the outcomes sought by the Ombudsman. The requirements for all new taxi drivers to meet the minimum English standard and for those driving in major contracted areas which have a fleet size of 35 or more to successfully complete the national taxi driver core competencies strikes an appropriate balance between safety and service improvements for the public and commercial viability for operators and drivers.

Incorporated in Strategic Plan:

Yes

Strategic Plan Related References:

Principle – Safety

Strategy 1 Improve and enforce driver competency standards and enhance passenger perceptions of safety

Actions:

1.1	Introduce a requirement for all applicants of taxi driver authorisation to meet the national minimum English standard from November 2010.
1.2	Introduce a requirement for new applicants for taxi driver authorisation who will drive in major contracted areas to undertake training through a registered Training Organisation and demonstrate competency in the national taxi driver training core competencies from January 2011.

Further comments:

In addition to the improvements in entry-level training, the Queensland Taxi Strategic Plan 2010-15 goes a further step in Action 1.3 by including a requirement for ongoing professional development for taxi drivers in the future.

1.3	Introduce a requirement for ongoing professional development of taxi drivers following the introduction of new requirements for applicants of taxi driver authorisation.
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Issue identified by Ombudsman: Working Relationships

- Variety of bailment arrangements in place
- Set pay-in arrangement unfair and inappropriate
- Mandatory bailment agreement required

Ombudsman's Recommendations:

10.	That the <i>Transport Operations (Passenger Transport) Act 1994</i> be amended to require that all bailment arrangements between a bailor and bailee of a taxi be contained in a signed contract.
11.	That the <i>Transport Operations (Passenger Transport) Act 1994</i> be amended to include a set of terms prescribing minimum conditions to be contained in bailment agreements.
12.	That the terms referred to in recommendation 11 prescribing minimum conditions to be contained in bailment agreements be known as Minimum Bailment Terms
13.	That the Minimum Bailment Terms include <ul style="list-style-type: none">a) 50% of gross fares earned go to the driver;b) The Bailor be responsible for 100% of fuel costs; andc) A minimum renewable term of agreement of 12 months for all but irregular drivers used to cover unforeseen shortfalls in available drivers.
14.	That inclusion of the prescribed Minimum Bailment Terms in each and every bailment contract be mandatory. NOTE: See Insurance Section for recommendation on accident and injury insurance costs and Minimum Bailment Terms.
15.	That the Ombudsman recommends the amendment of either <i>Transport Operations(Passenger Transport) Act 1994</i> or the <i>Transport Operations (Passenger Transport) Regulation 2005</i> to ensure that all taxi bailment contracts must not contain "set pay in" arrangements

Government Response to recommendations:**Recommendation 10****Supported****Recommendations 11, 12, 14, 15****Supported in principle****Recommendation 13****Not Supported**

Bailment agreements are central to the financial structure of the taxi system. Within the taxi industry, bailment agreements are used as the basis of the business relationship between taxi operators and taxi drivers whereby the driver agrees to pay the operator a set percentage of the takings or a set pay-in (fixed amount regardless of takings).

The Queensland Government acknowledges that bailment arrangements require attention and to this end, over recent years, efforts have been directed to resolve concerns around working relationships including the development of a Model Taxi Bailment Agreement (MTBA) and Code of Practice. Additionally, determining the most appropriate mechanism to manage disputes has been central to this work which has been overseen by the Taxi Industry Health and Safety Committee hosted by TMR and including industry representatives and officers from TWU, QPS and JAG as well as independent drivers.

In response to the Ombudsman's Report, it is proposed that the *Transport Operations (Passenger Transport) Act 1994* (TOPTA) will be amended to require all bailment arrangements be contained in a signed agreement. This will ensure that drivers and

operators have written proof of their agreements so that they can be legally enforced. The requirement for a compulsory written bailment agreement will not only provide an important evidentiary tool in the event of a bailment arrangement being contested, but will also provide a formal mechanism from which to promote increased transparency and accountability within the taxi industry with regards to the remuneration and working arrangements of taxi drivers. Disputes in regard to the agreement reached can be adjudicated by the Queensland Civil and Administrative Tribunal (QCAT).

Legislation will require bailment agreements to be written and signed and include the date the agreement was formed, the operator's and driver's details including accreditation and authorisation numbers, what the driver will pay the operator per shift to bail the taxi, who will pay for fuel or if sharing fuel cost, what percentage each party will pay, what personal accident and injury insurance the bailor has in place for the bailee and how this will be evidenced, and the amount and frequency of contributions a driver must make as a contingency against an insurance excess charge resulting from an at-fault accident.

The Government will release a Model Taxi Bailment Agreement (MTBA) and encourage operators and drivers to use this agreement to meet the requirements of the legislation.

The Government does not support the Ombudsman's recommendation for minimum bailment terms to be prescribed in legislation and will not intervene in private business agreements which have significant financial impacts on operators and drivers. TMR has recently commissioned an independent economic analysis into the taxi industry which has been undertaken by LEK Consulting. Work done to date clearly indicates that mandating that a driver takes 50% (with the operator paying fuel) is not a sustainable model for all operators and would have significant negative impacts on their economic viability. Due to this, TMR recommends that the MTBA continues to promote a range of bailment payments from a maximum payment of 55% to the operator with the operator paying fuel to a maximum of 50% payment to the operator with the driver paying a percentage of the fuel cost. This provides operators and drivers with the ability to enter into flexible arrangements which may include incentive payment schemes for drivers.

The Government does not support mandating a minimum renewable term of agreement of 12 months for all but irregular drivers, as this is an impractical restriction to be placed on parties that will prevent them from altering and renegotiating bailment terms. There are a number of possible negative outcomes from this form of regulation. For example, an operator may stop using a driver because they have negotiated more favourable terms with a new driver and because of this requirement, they are prevented from offering this to the current driver, or a driver who originally entered into a regulated 12 month agreement may wish to negotiate for a better pay percentage, which would not be possible.

The Ombudsman has called for the abolition of the practice of set pay-ins. Under the set pay-in method, the driver pays a set bailment fee for the shift and is entitled to retain all fares received above this amount. Additionally, it is usual for the driver to be responsible for the cost of fuel as well as any other contributions for insurances and/or provision for loss of earnings. By entering into a set pay-in arrangement the driver assumes all of the risk and keeps all of the profits associated with the taxi earning fares greater than the set pay-in amount.

While acknowledging that a small number of drivers are satisfied with set pay in arrangements, the Ombudsman raised concerns that this system is being imposed on taxi drivers with little bargaining power. The Ombudsman asserts that for these drivers it becomes a choice between set pay-in or nothing.

The industry has mixed views on set pay-in arrangements. Historically, it was the experienced drivers who tended to negotiate a bailment fee as a set pay in amount per shift.

Changing the commercial market by removing set pay-ins altogether may have a disproportionately negative effect on those experienced drivers who are relying on a legitimate competitive advantage i.e. their experience and skill acquired over a significant period of time, to generate greater returns.

Rather than eliminating set pay-ins altogether, the legislation mandating written signed bailment agreements will include a provision for set pay-ins only to be in place where the driver has held Driver Authorisation in Queensland for a minimum period of 12 months and the arrangement is at the request of the driver. This would mean that only experienced drivers and drivers who explicitly choose set pay-ins have access to this commercial option.

It is proposed that these initiatives to address bailment issues will be closely monitored by TMR over a 12 -month period to test the effectiveness of this approach to improving working relationships within the taxi industry.

Incorporated in Strategic Plan:

Yes

Additional text and a specific action have been added to the draft Strategic Plan to outline the work to be done on Bailment as outlined.

Strategic Plan Related References:

Principle – Customer oriented

Strategy 11 Investigate and implement options for reducing or better controlling taxi industry costs

Actions:

11.1	Build on current research to develop a detailed and contemporary understanding of the taxi industry cost structure.
11.2	Identify and evaluate options for reducing/controlling industry costs and make recommendations to government
11.3	<i>Amend legislation to introduce a requirement for written signed bailment agreements and release and recommend the use of the Model Taxi Bailment Agreement.</i>

Issue identified by Ombudsman: Disciplinary processes

- Some unfair treatment of drivers by operators
- Operators have no formal dispute procedures
- Fines and suspensions of drivers by operators minimal
- Complaints about drivers made to taxi booking companies
- Taxi booking companies (TBCs) have process for disciplining drivers; details of policies and procedures contained in by-laws
- No legislative basis for imposing penalties by TBCs on drivers
- Appeals process not independent of TBCs
- TBC decisions in regard to drivers bind operators
- Bailment agreement needs a fair, cost effective dispute procedure

Ombudsman's Recommendations:

16.	That the Minimum Bailment Terms contain a dispute resolution procedure.
17.	That the Minimum Bailment Terms contain provision for compensation payable by one party to the other in the event that unfair or inappropriate actions in contravention of the dispute resolution procedure causes loss to a party.
18.	That the <i>Transport Operations (Passenger Transport) Act 1994</i> be amended to provide for an independent tribunal capable of economically and quickly dealing with matters in dispute in taxi industry
19.	That in respect of such independent tribunal: <ul style="list-style-type: none">a) The tribunal be empowered to act in a manner similar to that followed by the Queensland Industrial relation Commission (QIRC), that is, to conciliate all disputed matters in the first instance and to arbitrate at the request of a party where conciliation has filed;b) The tribunal be empowered to issue enforceable orders;c) Provision be made for an appropriate appeals mechanism;d) The scope of the work of the tribunal should include disputes between bailees and bailors, bailees and taxi booking companies as well as between bailors (operators) and taxi booking companies;e) Representation of parties at conciliation should exclude legally qualified persons; andf) Representation of parties by legally qualified persons at hearings be only by leave of the presiding tribunal member having regard to the circumstances.

Government Response to recommendations:**Recommendations 16-19****Supported in principle**

The MTBA will recommend that disputes arising under bailment agreements are resolved through QCAT's minor civil dispute jurisdiction. While QCAT will not be able to insert new conditions into a bailment agreement, QCAT provides an effective mediation aspect as

well as having the capacity to make enforceable decisions on civil disputes under the original bailment agreement between the parties.

QCAT application fees currently range from \$20.50 to \$92.00 depending on the amount that is claimed under the dispute. There are additional appellant fees (\$255.00) if the parties seek review of the decision. Once an applicant files a claim with QCAT, they have 28 days to serve notice of the claim on the respondent. The length of time to have the matter finalised depends on the complexities of the case and the willingness of the parties to resolve the issue at mediation which is a free service provided by QCAT.

As taxi related disputes are already able to be addressed through a number of mechanisms including QCAT, JAG dispute resolution services or through the courts, the cost to government of establishing a separate tribunal is not considered to be warranted.

Incorporated in Strategic Plan:

Yes

Additional text and a specific action on Bailment have been added to the Strategic Plan.

Strategic Plan Related References:

Priority – Customer oriented

Strategy 11 Investigate and implement options for reducing or better controlling taxi industry costs

Actions:

11.1	Build on current research to develop a detailed and contemporary understanding of the taxi industry cost structure.
11.2	Identify and evaluate options for reducing/controlling industry costs and make recommendations to government.
11.3	<i>Amend legislation to introduce a requirement for written signed bailment agreements and release and recommend the use of the Model Taxi Bailment Agreement.</i>

Issue identified by Ombudsman: Equity in Work Distribution

- Practice of 'feeding' needs to be addressed
- Taxi booking companies owning, leasing and operating taxis in direct competition with their operator affiliates
- Taxi booking companies need to do more to prevent 'no shows'

Ombudsman's Recommendations:

20.	That the Government create a regulatory requirement that all work, to the extent possible, be allocated equitably by taxi booking companies and that data be kept and provided to the Department of Transport and Main Roads on a periodic basis that would enable not only monitoring but the ability to investigate allegations of unfair practices in the distribution of work. Operators and driver should also have access to this data on request.
21.	That in the event of allegations of this type being substantiated, penalties ranging from a minimum of the payment of full compensation to the operator and drivers concerned through to the cancellation of the service area contract should be available for application by the Chief executive of the Department of transport and Main Roads.
22.	That taxi booking companies be require to provide information to the Department of Transport and Main Roads, operators and drivers advising of policies and procedures in place and efforts made to reduce "no shows". (The term "no show" used to describe those circumstances where a taxi arrives to collect a passenger as directed by a taxi booking company only to find no customer is waiting.)
23.	That representatives of the Department of Transport and Main Roads, operators, drivers and taxi booking companies meet to review processes for minimising "no shows" and discuss necessary improvements where appropriate.

Government Response to recommendations:**Recommendations 20 – 21****Not supported****Recommendation 22****Supported in principle****Recommendation 23****Supported**

'Feeding' is the preferential allocation of work to certain drivers. The Ombudsman makes no finding that the practice of feeding has occurred nor is there a finding that it hasn't. There is a finding that it can happen and as a consequence requires monitoring.

TMR is aware that there is a perception that 'feeding' by taxi booking companies occurs, but has not found any evidence to support this. Strategy 6 of the draft Queensland Taxi Strategic Plan 2010 – 2015 aims to improve data collection capacity, data sets and data management systems. With greater access to meaningful data, government will be able to better monitor the performance of taxi booking companies. Performance based contracts that are in place with taxi booking companies allow penalties to be applied by TMR. The data warehouse project is well underway with direct downloads of data from taxi booking companies to TMR expected from early 2011.

'No shows' are likely to be more prevalent in areas where two taxi booking companies exist – Brisbane, Redcliffe and Toowoomba.

Customer behaviour is influenced by past experiences. Customers who have experienced extended waiting times for a taxi or have waited for a taxi that didn't arrive at all may be tempted to phone both taxi booking companies and take the taxi that arrives first. Others using mobile phones will book a taxi and then hail one or find a taxi at a rank.

Yellow Cabs has recently completed an upgrade of their dispatch system. This system has a 'message on approach' capability which sends an automated SMS to a customer's mobile phone or an automated call to a customer's landline on the approach of the booked taxi. The system also gives customers who make online bookings the ability to see a map showing the location of the car being dispatched to them.

It is expected that this technology will reduce the number of 'no shows' for Yellows' services in Brisbane, Toowoomba and Redcliffe. It is expected that Black and White Cabs and other taxi booking companies will also introduce this technology.

While TMR will play a role in encouraging taxi booking companies to introduce this new technology, it will also work with taxi booking companies, operators and drivers to explore strategies to reduce the number of 'no shows'. TMR is aware that a number of options to reduce 'no shows' have been proposed by various industry stakeholders. These include the banning of bookings in Brisbane's CBD in peak times and blacklisting repeat offenders. TMR is of the view that neither of these strategies is in the interests of the public nor the industry. However there may be other options to consider that may prove to be workable and effective.

Incorporated in Strategic Plan:

Yes

Strategic Plan Related References:

Principle – An accountable system

Strategy 6 Improve TMR's data collection capacity, data sets and data management systems

Actions:

6.1	Implement a data warehouse for taxi booking company data.
6.2	Develop a business case for expanding the data warehouse to incorporate all other industry data requirements.

Principle – Commercially viable

Strategy 12 Improve the productivity of the taxi system

Actions:

12.3	<i>Work with taxi booking companies, operators and drivers to develop strategies to reduce 'no shows'.</i>
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Issue identified by Ombudsman: Operators' Costs

- Significant fixed costs borne by operators
- Cost burden on operators has a significant impact on their approach to revenue sharing with driver

Ombudsman's Recommendations:

24.	That the government review all statutory and other costs met by operators over which the government has control with a view to minimising costs and streamlining the manner in which the administrative charges are applied.
25.	That the review of all statutory and other costs met by operators over which the government has control include consultation with the Operators' Consultative Committee the establishment of which is recommended in Recommendation 37.

Government Response to recommendations:**Recommendation 24****Supported****Recommendation 25****Supported in principle**

The Ombudsman's report calls on government to review costs met by operators over which the government has control with a view to minimising these costs. TMR had already signalled, via the draft Queensland Taxi Strategic Plan 2010 - 2015, an intention to investigate and implement options for reducing or better controlling taxi industry costs.

The draft strategic plan noted that further detailed analysis was required to understand how cost drivers might be better controlled or even reduced over time with a view to limiting the extent of future fare rises.

Work has already commenced on an economic analysis of the industry with LEK Consultants engaged to undertake this work. Operators have been consulted and engaged in the work done to date as TMR recognises the need to consult widely during a review process.

The results of this work will have a significant impact on the policy decisions that will be made by TMR and other government agencies. The consequences of these decisions in terms of their potential impact on the financial viability of individual industry stakeholders need to be clearly understood.

Incorporated in Strategic Plan:**Yes**

Additional text has been added to the Strategic Plan to strengthen the reference to the need to work with all industry stakeholders including operators to deliver on the plan.

Strategic Plan Related References:

Principle – Customer oriented

Strategy 11 Investigate and implement options for reducing or better controlling taxi industry costs

Actions:

11.1	Build on current research to develop a detailed and contemporary understanding of the taxi industry cost structure.
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11.2	Identify and evaluate options for reducing/controlling industry costs and make recommendations to government
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Section 3 – The Future

Working with Industry and the Community

Issue Identified by Ombudsman: Further Operator Issues

- Sub-leasing implications on operators and taxi operations
- Power of TBC and control exercised through sub-leasing
- Disaffiliation of operators
- Sub-lessee - financial captive of the holder of the head lease
- Cost of sub-lease impact on revenue distribution
- Conflict of taxi booking companies as operators
- Favouritism in job allocation
- No shows

Ombudsman's Recommendations:

26.	That holders of area service contracts should not be competitors with any provider of taxi services in that area.
27.	That the government should establish a reasonable time frame for taxi booking companies to divest themselves of taxi fleets used in competition with affiliated holders of taxi licences.
28.	<p>In the event that the recommendations regarding taxi booking companies divesting themselves of taxi operating interests is not adopted, that a regulation be established which provides that the affiliation fee charged by taxi booking companies be structured as a nominal flat monthly fee plus a service fee for each job successfully allocated to a taxi.</p> <p>Note: This would provide another tool for monitoring the fair allocation of work. An added benefit is that it would give taxi booking companies more incentive to eliminate "no shows" and more incentive to generate business in that the more successful allocations made, the greater the income from affiliation as opposed to the current flat charge payable by operators which doesn't vary, regardless of the quality of service provided to operators.</p>
29.	That the practice of subleasing of taxi licences should end.
30.	<p>Transitional Arrangements – Subleasing.</p> <p>That at midnight on 31 December 2010 all current sublease be deemed to be leases directly between the licence owner and current sublessee.</p>
31.	That in the mean time, no sublease in place at the time of the release of this report to the Attorney-General and Minister for Industrial Relations should be withdrawn by the head-lessee or licence owner save for serious issues of performance, or non payment of agreed amounts by the sublessee, in which case, such action to be reviewed by the Chief Executive of the Department of Transport and Main Roads.
32.	That sub-lessees of taxi licences should pay all and any monies owing to the head-lessee by virtue of the sublease arrangement by close of business on 30 December 2010. (Note – this should not include amounts unrelated to subleases such as affiliation and other taxi booking company charges).
33.	That at that point in time when the lease is deemed to be established between the owner and the former sublessee (1 January 2011), the holder of the former head-lease is to transfer all monies held by way of deposit bone or advance lease payments received from the former sublessee to the owner/lessor.
34.	That between the adoption of these changes and 31 December 2010 the Department of Transport and Main Roads facilitate discussions between sublessees and licence owners aimed at establishing ongoing lease conditions satisfactory to both parties. Such facilitation would include the provision of names and contact details of the owner to the sublessee and vice versa and also include advice of

	impending changes.
35.	That if agreement between the owner and intended lessee is not finalised by 31 December 2010 the financial arrangement and conditions of the new lease between the owner and the former sublessee be deemed until 30 June 2011 to be the same conditions as those contained in the former head-lease. After 30 June 2011 the owner and lessee would be free to maintain, alter or abandon the lease arrangements as they choose.

Government Response to recommendations:

Recommendations 26 – 28

Not Supported

Like all entities, taxi booking companies and individuals who own them have a fundamental right to acquire/purchase property. Unless there is clear evidence that there is a conflict of interest between holding a service contract and owning or operating a taxi service licence, the government does not intend to take any steps to restrict individuals and companies from participating in both aspects of the industry. While there may be perceptions within the industry in regard to job favouritism, no evidence has been provided to suggest that this is the case.

The reasonableness of affiliation fees is being examined by TMR. This is being analysed in terms of value for money, jurisdictional comparisons and booking company returns for the 23 contract holders for taxi administration services. The work done in the Brisbane taxi service area suggests that the affiliation fees being charged by taxi booking companies are reasonable in that they provide good value for money and are in the range of affiliation fees observed in capital cities in other jurisdictions. Further work is underway to assess the reasonableness of affiliation fees in other taxi service areas.

The recommendation made by the Ombudsman to charge the affiliation fee through a service fee approach would appear to be administratively burdensome. It is believed that the additional costs associated with this arrangement would need to be passed onto operators by taxi booking companies through increased fees making what the Ombudsman seeks to achieve through the recommendations redundant.

Incorporated in Strategic Plan:

No

Recommendations 29 – 35

Not supported

Sublease arrangements within the taxi industry are based on the commercial decision of industry participants which are formalised by way of commercial contracts. The Ombudsman is of the view that detrimental outcomes arise as a result of the practice of subleasing and therefore subleasing should end. An issue raised by the Ombudsman is the levels of control currently in the hands of taxi booking companies i.e. their ability to withdraw subleases and disaffiliate operators at any time.

The Ombudsman also provides the observation that “ To simply ban subleasing would put all of the subleased licences back into the hands of the head-lessor, usually the taxi booking companies or related entity leaving the operators with damaged or ruined businesses. “

The Government does not intend to put an end to the ability of individuals to invest in the taxi industry, nor to their options of how they choose to manage and operate that investment. The independent research undertaken by LEK Consulting found that sub-leasing through taxi booking companies provides industry stability in that owners have greater certainty around lease payments, booking companies have greater certainty about

the numbers of taxis in their fleet which, in turn, stabilises affiliation fees for operators. Benefits of this form of sub-leasing also include more stable lease values and consequently a reduced likelihood that inexperienced operators would agree to excessive lease payments.

While the government does not intend to ban sub-leasing at this time, as it has no evidence that it needs to do so, it is keen to investigate ways to encourage those wanting to be active in the industry to participate in it. For this reason, TMR will explore alternate options to perpetual licences that will lower the barriers to licence ownership and encourage active participation in the industry. This may include placing certain conditions on licences that require the owners to maintain active involvement in the industry. This is outlined in Action 4.3 of the Queensland Taxi Strategic Plan.

Incorporated in Strategic Plan:

Yes

Strategic Plan Related References:

Principle – A reliable system

Strategy 4 Implement an improved model for reviewing and varying the number and mix of taxi licences on a periodic basis including an improved process for issuing new taxi licences.

Actions:

4.3	Review the process for issuing new taxi licences to provide greater flexibility and certainty to government, the taxi industry and the public
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Issue Identified by Ombudsman: Licences (Market Entry)

- Range of factors to be considered when determining need for additional licences
- Impact on earnings of existing operators and drivers

Ombudsman's Recommendations:

36.	That section 36 of the <i>Transport Operations (Passenger Transport) Act 1994</i> (considerations to be made by the Chief Executive of the Department of Transport and Main Roads prior to issuing extra licences in an area) be amended by adding a sub-section. i. The financial impact on entities already authorised to provide the service would be negligible.
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Government Response to recommendations:

Recommendation 36

Not supported

In terms of market entry, the Ombudsman calls for consideration of the financial impact on existing entities before issuing extra licences, that is, issuing too many licences in an area may adversely affect the commercial returns of existing stakeholders.

When issuing extra licences in an area, TMR strives to strike a balance between the number of taxi licences issued and the underlying demand for taxi services. A key measure is waiting times. If evidence shows that service levels are not being met, consideration is given to issuing additional licences. The issuing of additional licences addresses unmet demand, in that excessive waiting times mean that customers who have choice will move to use other forms of transport. While the additional licences are intended to reverse this trend, there is no doubt that additional licences have a financial impact on operators and drivers of existing licences at least in the short term. However the model used by TMR ensures that this impact is minimal.

Strategy 4 of the draft Queensland Taxi Strategic Plan 2010 – 2015 outlines TMR's efforts to implement an improved model for reviewing and varying the number and mix of taxi licences.

Incorporated in Strategic Plan:

Yes

Strategic Plan Related References:

Principle – A reliable system

Strategy 4 Implement an improved model for reviewing and varying the number and mix of taxi licences on a periodic basis including an improved process for issuing new taxi licences.

Action:

4.1	Finalise the new Taxi Service Licence Model by July 2010
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Issue Identified by Ombudsman: Industry Representation

- Cab Drivers' Association of Queensland – 300 members
- Transport Workers Union (Queensland) – 6 – 10 members and others engaged in transport industry generally who were also taxi drivers
- Taxi Council of Queensland (TCQ) – full voting membership centred on TBCs as corporate members
- Full TCQ membership restricted to TBCs and licence owners
- Operators who don't own licences and drivers not able to fully participate or vote formally
- Operators who are not owners required to pay full TCQ membership fee but not entitled to full membership is unreasonable
- TCQ work benefits or is designed to benefit industry generally
- Problem arises when there is a clash in interests between operators and taxi booking companies

Ombudsman's Recommendations:

37.	<p>That until the Taxi Council of Queensland alters its constitution to facilitate operators as full members:</p> <ul style="list-style-type: none">a) Taxi booking companies be prevented from recouping their Taxi Council of Queensland membership dues from operators (Note this can be done by the Chief Executive of Department of Transport and Main Roads declaring the charge to be an unreasonable affiliation charge pursuant to the service area contract);b) Officers of the Department of Transport and Main Roads and others in Government familiarise themselves with the structure of the Taxi Council of Queensland and be cognisant of the structure and true nature of representation of Taxi Council of Queensland when assessing taxi industry submissions and issues;c) The Department of Transport and Main Roads establishes an Operator's Consultative Committee with a membership of at least ten (10) with the committee members being drafted with regional balance in mind;d) Operators' Consultative Committee positions be filled by the calling of nominations and where more than the required number of nominations is received from a region, the majority view of operators in that region be the determining factor;e) Nominations and voting for Operator's Consultative Committee should not involve any taxi booking company executive officer or director (even though they may also be an operator) nor should it involve anyone connected with the operator arm of a taxi booking company or related entity;f) The Department of Transport and Main Roads review the make up of the Taxi Industry Advisory Committee with a view to representative balance and having regard to the current industry participation levels namely:<ul style="list-style-type: none">I. 15000 authorised drivers;II. 2808 accredited operators; andIII. 22 Taxi Booking Companies.
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Government Response to recommendations:**Recommendations 37a, e****Not supported****Recommendations 37b****Supported****Recommendation 37c, d, f****Supported in principle**

To address the issue of representation within the Taxi Industry, the Ombudsman calls for changes to the constitution of the Taxi Council of Queensland (TCQ). This would include taxi booking companies (TBC) being prevented from recouping their TCQ membership dues from operators. While TMR does not have power to direct changes to the TCQ constitution, examination of the reasonableness of affiliation fees is being investigated. Membership of the TCQ is currently based on a rate of \$176.00 per year. Work on affiliation fees is currently being undertaken - in terms of value for money, jurisdictional comparisons and booking company returns.

The independent LEK Consulting investigation into the affiliation fees charged in Brisbane found that the affiliation fees being charged by taxi booking companies are reasonable in that they provide good value for money and are in the range of affiliation fees observed in capital cities in other jurisdictions. TMR will continue the work undertaken by LEK to examine the reasonableness of affiliation fees in the other 19 taxi contract areas. This specific action has been added to the Taxi Strategic Plan.

One group of stakeholders within the taxi industry whose interest the Ombudsman identified as being under represented are operators, specifically those who are not licence owners. The Ombudsman recommended for the government to establish an Operators' Consultative Committee.

An operators' group under the name of Queensland Taxi Advisers Inc has been established by operators. A representative of this group was invited and has joined the Taxi Industry Advisory Committee.

In 2009, TMR established the Taxi Industry Advisory Committee (TIAC) which is comprised of representatives from TMR, and industry and community representatives, including representatives from:

- Taxi Council of Queensland
- SEQ taxi booking company
- Regional Queensland taxi booking company
- Cab Drivers Association of Queensland
- Independent Taxi Driver
- Independent Taxi Operator
- Transport Workers Union of Australia
- Ethnic Community Council of Queensland
- Disability Services Queensland

TMR also has dealings with taxi industry stakeholders on a day to day basis, on the ground through its extensive regional network administered by the Transport Services Division (TSD) and at a head office level through the Passenger Transport Division. This informal engagement can be relied upon to alert TMR to potential industry issues and concerns with the implementation of the strategic plan if and when they first emerge.

As well, TMR engages with the taxi industry on a formal basis through a number of established forums:

- Taxi Industry Strategic Planning Committee (SPC)
- Bi-monthly taxi operational issues meetings chaired by a TSD Regional Director
- Taxi Industry Health and Safety Committee
- Taxi Industry Disability Discrimination Act (DDA) Reference Group.

These forums provide an effective framework for a more structured engagement with industry stakeholders as do industry-initiated processes like Operators Forums.

Not all sectors of the taxi industry are fully represented in these formal structures, however, nor are all those stakeholders whose interests are otherwise adequately

represented able to participate directly in them. TMR will augment these established consultative arrangements by conducting an annual round of open stakeholder forums across the state. These new forums will provide the opportunity on a regular basis for a two-way engagement between TMR and the taxi industry at large about progress toward the achievement of the Queensland Taxi Strategic Plan 2010 – 2015.

Incorporated in Strategic Plan:

Yes

Strategic Plan Related References:

Principle – Customer oriented

Strategy 11 Investigate and implement options for reducing or better controlling taxi industry costs

Actions:

11.1	Build on current research to develop a detailed and contemporary understanding of the taxi industry cost structure.
11.2	Identify and evaluate options for reducing/controlling industry costs and make recommendations to government
11.3	Amend legislation to introduce a requirement for written signed bailment agreements and release and recommend the use of the Model Taxi Bailment Agreement.
11.4	<i>Examine the reasonableness of affiliation fees</i>

Section 3 The Future

Working with Industry and the Community

Issue Identified by Ombudsman: Taxi Subsidy Scheme

- Increase in maximum subsidy amount would encourage more use of taxis and contribute to operator and driver income
- Inappropriate driver behaviour towards disabled passengers
- Use of taxi security cameras used as proof of untoward behaviour
- Support for the driver photographic identification display requirement announced by the Minister for Transport

Ombudsman's Recommendations:

38.	That the State Government reviews the Taxi Subsidy Scheme upper monetary limit with a view adjusting it upwards to compensate for fare increases.
39.	That it be brought to the attention of all drivers that the Ombudsman would regard proven instances of taxi drivers making uninvited and unwanted advances to disabled passengers as justification for the immediate termination of bailment agreement and dependent upon the circumstances – criminal charges.
40.	That passengers in taxis be informed that the Security Camera System does not automatically include voice recording and that they may make their own arrangements to record comments if they feel such recording is warranted.

Government Response to recommendations:**Recommendations 38 – 40****Not supported**

The Taxi Subsidy Scheme (TSS) is a Queensland Government initiative that aims to improve the mobility of persons with severe disabilities. A subsidy of half the total taxi fare is paid by the Queensland Government to a maximum subsidy amount of \$25.00.

The TSS provides over \$14 million in subsidies each year to a membership of over 46,000 Queenslanders. The average subsidy paid is currently \$8.25, and approximately 2% of the 1.9 million trips that are undertaken claim the maximum subsidy amount of \$25.00.

In 2008, TMR convened an Inter-Agency Advisory Group comprised of representatives from Queensland Treasury, Department of the Premier and Cabinet, Department of Communities and Queensland Health to consider the eligibility and funding of the TSS. This group developed and considered a range of options restricting the eligibility and level of subsidy of the TSS to address the growth in government funding required to support the increased amount of subsidies being paid through the TSS. TMR has been allocated additional funding to support the increase in TSS subsidies based on the current eligibility criteria and subsidy arrangements.

Passenger safety is of paramount concern to the Queensland government. The Ombudsman raised concerns regarding the security of passengers and the accountability of drivers who engage in poor or inappropriate conduct.

Taxi drivers are held accountable for complying with appropriate standards. Proven instances of inappropriate behaviour by taxi drivers are dealt with through TMR's Driver Authorisation process. Legislation provides TMR with the authority to collect information and make decisions on a person's suitability to hold operator accreditation (allowing the person to operate a taxi) or driver authorisation (allowing the person to drive a taxi). To be

eligible to hold a driver authorisation, an applicant must have a satisfactory criminal history record having regard to the safety of children, other vulnerable members of the community, personal safety of passengers and their property. Checks of all passenger transport drivers are undertaken prior to a driver authorisation being issued and then on a daily basis. Immediate action is taken if drivers have been charged or convicted of a disqualifying offence.

If a taxi passenger deems it necessary to raise the issue of a taxi driver's conduct, identifying the driver's details will be made easy in the near future. Amendments to legislation are to be made that will require all drivers to display their driver identification.

Security cameras are used to provide evidence of untoward behaviour against taxi passengers. However, security cameras do not currently capture voice recordings. The Ombudsman calls for passengers to be informed of this limitation. Passengers are currently advised by security camera stickers that they will be photographed.

Work is underway to review and determine camera specifications which will include consideration of voice recording.

Incorporated in Strategic Plan:

Yes

Strategic Plan Related References:

Principle – Safety

Strategy 1 Improve and enforce driver competency standards and enhance passenger perceptions of safety

Action:

1.4	Introduce a requirement for taxi drivers to display photographic identification in taxis from 2011.
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Strategy 2 Improve driver safety

Action:

2.1	Ensure that technological safeguards (eg taxi security cameras) are in place and working.
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Issue Identified by Ombudsman: Insurance

- Insurance excess levy is not limited
- Lack of refund of unused insurance excess levy
- Personal accident and injury insurance cover not understood by drivers
- Not all drivers covered for personal accident and injury despite paying a levy

Ombudsman's Recommendations:

41.	That WorkCover initiates a process aimed at providing standardised quality workers' compensation arrangements for the taxi industry.
42.	That the process described involve discussions with taxi bailors and taxi bailees, the Taxi Council of Queensland, the Cab Drivers' Association of Queensland, the Transport Workers Union of Queensland and the recommended Operators' Consultative Committee (see Recommendation 34), for the purpose of establishing agreement regarding the basis for work cover insurance.
43.	That in the event of failure to reach agreement, that the State Government considers implementing the legislative changes necessary to establish WorkCover arrangements with operators and drivers as though they were Employer and Employee respectively.
44.	That in respect of the "at-fault accident levy" <ul style="list-style-type: none">a) Bailment contracts must include that Agreement be reached between the bailor and bailee regarding the amount and frequency of contributions a driver must make as a contingency against an insurance excess charge resulting from an at-fault accident; andb) Minimum Bailment Terms include a legislative or regulatory provision that the amount of levy deducted does not exceed the sum for which the driver might be liable; andc) That unused amounts of insurance excess payments be refunded at the conclusion of a bailment agreement.
45.	That in the event that the WorkCover proposal is not adopted, <ul style="list-style-type: none">a) Minimum Bailment Terms include a requirement that bailors must arrange reasonable personal accident and injury insurance for bailee drivers;b) Bailors must provide to bailees in respect of personal accident and injury insurance full details of all insurance cover they have in place affecting the bailee, the amounts paid and copies of receipts verifying payments of premiums prior to finalising amounts of any driver contribution to be included in Bailment Contractsc) Any variation to insurance to be advised to the bailee promptly and any proposed increase to the bailee's contribution level be the subject of negotiation and genuine agreement.

Government Response to recommendations:**Recommendations 41, 42, 44, 45****Supported in principle****Recommendation 43****Not supported**

The Department of Justice and Attorney General met with WorkCover to commence a process to consider workers' compensation arrangements for the taxi industry.

The Queensland Workers' Compensation Scheme and *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) were reviewed in late 2009 through the *Ensuring*

Sustainability and Fairness Review to address WorkCover's ongoing financial position and scheme viability.

A further review of the WCR Act is proposed for 2012. It is proposed to have the issue of bailment contracts considered as part of that review, including any legislative changes recommended by the Ombudsman.

During consultation industry stakeholders indicated they were not in favour of a WorkCover managed workers' compensation scheme. Stakeholders' preference is for insurance provided for by private sector companies. A WorkCover insurance scheme covering the taxi industry was not seen desirable given the expectation that such a scheme would impose greater financial costs than insurance provided by private sector insurance companies.

Taxi Industry Advisory Committee members expressed a preference to have issues associated with insurance dealt with through a Model Bailment Agreement.

Consideration will be given to these issues in the review of the Model Bailment Agreement before it is released.

Legislation will require bailment agreements to include information on the personal accident and injury insurance the bailor has in place for the bailee and how this will be evidenced, and the amount and frequency of contributions a driver must make as a contingency against an insurance excess charge resulting from an at-fault accident.

The MTBA contains a section which requires the bailor and bailee to expressly agree to the amount and frequency of contributions a driver must make for the vehicle and personal accident insurance and that the bailee has sighted the relevant insurance policy. It also includes an item which relates specifically to contributions relating to at-fault insurance excess amounts.

The unused amount of insurance excess payments at the end of bailment agreements is a matter to be considered between the two parties negotiating the terms of their agreement.

Incorporated in Strategic Plan:

Yes

Strategic Plan Related References:

Principle – Customer oriented

Strategy 11 Investigate and implement options for reducing or better controlling taxi industry costs

Actions:

11.1	Build on current research to develop a detailed and contemporary understanding of the taxi industry cost structure.
11.2	Identify and evaluate options for reducing/controlling industry costs and make recommendations to government
11.3	<i>Amend legislation to introduce a requirement for written signed bailment agreements and release and recommend the use of the Model Taxi Bailment Agreement.</i>

Issue Identified by Ombudsman: Superannuation and Long Service Leave

- Unfunded or under-funded retirement for drivers
- Urgent need for mandatory superannuation savings
- Federal Court ruling – refusal to classify taxi drivers as employees for the purpose of superannuation
- No take up of invitation to make specific legislation to cover bailee taxi drivers

Ombudsman’s Recommendations:

46.	That, as the situation in other states is no different, it would be appropriate that the Queensland Government initiates talks at a federal level with a view to creating the legal basis for taxi drivers to be regarded as independent contractors for the purpose of an entitlement to occupational superannuation.
47.	That in the absence of progress on superannuation at a federal level, the Queensland Government considers the inclusion in the Minimum Bailment Terms a provision that would enable drivers and operators to contribute to retirement and long service leave fund for taxi drivers through a fund operated by QLeave.

Government Response to recommendations:

Recommendation 46 - 47

Not supported

An issue of concern as identified by the Ombudsman is the completely unfunded or under-funded retirement of taxi drivers. The relationship between a taxi operator or owner and a taxi driver has been held to be that of bailor and bailee rather than employer and employee. As a result of this legal distinction, taxi drivers do not have an entitlement to occupational superannuation or long service leave.

Overcoming this position would require the co-operation of the Federal Government to legislate to provide taxi drivers with an entitlement to occupational superannuation.

New payment transfers by way of superannuation or long service leave levies will disturb the commercial arrangements in the taxi industry and require further investigation and actuarial modelling by the parties. At the same time, current industry participants may hold views about how proposed changes affect their short term income, their long term interests and the cost of the service.

During consultation industry representatives expressed a strong preference for a voluntary facility to be available for the purposes of superannuation and long service leave savings for drivers through the Model Bailment Agreement.

Given the views of stakeholders that superannuation and long service leave should be voluntary Recommendations 46 and 47 are not supported at this stage. However, the option remains open to the industry stakeholders to seek the assistance of the Department of Justice and Attorney-General in the future should their efforts prove unsuccessful to establish voluntary arrangements.

TMR supports drivers and operators being enabled to contribute to retirement and long service leave if there is a strong push from industry for this initiative, however it is TMR's view that the MTBA is not an appropriate mechanism for regulating superannuation.

Incorporated in Strategic Plan:

No

Issue Identified by Ombudsman: Safety

- Personal safety – abuse and physical assault
- Suggested numbered docket procedures to be used at secure taxi ranks to reduce arguments about queue jumping and encourage reasonable passenger behaviour
- Use of security cameras to capture passenger identification
- Inadequate seat anchorage of mobility scooters
- Inadequate set down areas for wheelchairs and scooters
- Taxis used to extract violent persons from scenes of crime
- Fare evasion is a growing problem
- Reporting fare evasion is a cumbersome process
- No compensation for driver if infringement notice issued
- Enforcement of vehicle standards between six monthly inspections requires attention
- Further resources needed to ensure compliance with standards
- Support for the Minister for Transport’s proposal for a stand alone taxi compliance unit

Ombudsman’s Recommendation:

Personal safety

48.	That necessary legislative or regulatory changes be made so as to require passengers who wish to travel after 10pm and before 5am to produce and have recorded on the taxis security camera their driver’s licence or other acceptable form of identification to facilitate safe taxi driving between these hours.
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Government Response to recommendation:

Recommendation 48

Not supported

The installation of security cameras in taxis, which was funded by the Queensland government, provides a level of protection for taxi drivers. These security cameras have the ability to record images of patrons, thereby providing a mechanism to detect criminal acts. The cameras are also considered to provide a deterrent effect to crime as a person is more likely to adjust their behaviour if they believe that behaviour is being observed.

While the government supports consideration of measures that will improve the safety of Queensland taxi drivers, the practicalities and potential privacy issues associated with requiring all members of the public to produce and have recorded personal information such as place of residence needs to be considered and balanced against the safety benefits of this proposal.

Prepayment of taxi fares between 10pm and 5am for instance may prove to be a strategy to adequately address the personal safety concerns for drivers, as well as fare evasion. Victoria has recently legislated for the prepayment of taxi fares between 10pm and 5am

and Monash University is currently undertaking an evaluation of this change to determine if it has assisted in reducing fare evasion and the number of assaults on taxi drivers. Examination of the prepayment of taxi fares has been added to the strategic plan.

Incorporated in Strategic Plan:

Yes

Strategic Plan Related References:

Principle – Safety

Strategy 2 Improve driver safety

Action:

2.4	Examine options for introducing mandatory 'up-front' fare payments where circumstances warrant (for example, late at night) to reduce fare evasion crimes against taxi drivers.
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Ombudsman's Recommendations:

Wheelchair Accessible Taxis

49.	That the Department of Transport and Main Roads and Workplace Health and Safety Queensland investigate: <ul style="list-style-type: none"> a) The design of wheelchairs and mobility scooters and their appropriate rating for use in taxis; and b) The appropriate methods for anchoring wheelchairs and mobility scooters depending on the rating of the wheelchair as determined in part (a) of this recommendation.
50.	That Local Government review the number of wheelchair and mobility scooter access points in kerbing for city streets in consultation with appropriate representatives of users of mobility scooters and wheelchairs
51.	That Local Governments consider running public education campaigns, including increased focus on issuing fines, so to ensure bays set aside for the set down of passengers using wheelchairs and mobility scooters are utilised only for their intended purpose.

Government Response to recommendations:

Recommendations 49 – 51

Supported in principle

The design of equipment and the appropriateness of anchoring mechanisms is a matter dealt with by a technical standards development body such as Standards Australia. It is not a matter regulated by Workplace Health and Safety Queensland (WHSQ) or TMR.

In Queensland, generally WHSQ does not enforce Australian standards. They are voluntary, and where there is no relevant specific regulation or code of practice on a matter, duty holders under the Workplace Health and Safety Act 1995 (WHS Act) can raise compliance with an Australian standard as a defence.

While two Australian Standards (AS3696.19 2009 and 10542.2 2009) have been developed on this matter under the auspices of Accessible Public Transport National Advisory Committee (APTNAC), no state or territory has any compliance regime around the design of wheelchairs and scooters or their anchoring mechanisms in vehicles. For Queensland to take any action in this regard may be seen to be contrary to the national approach to occupational health and safety.

Taxi Industry Advisory Committee members also indicated the design rating and anchoring issues were national issues and, as such, suggested it would not be appropriate for one state to act independently of the APTNAC process.

TMR will meet with the Commonwealth agencies responsible for developing this compliance regime to request that work be progressed in this area as a matter of urgency. In the meantime, TMR will continue to support the transport industry and operators in the interpretation of the Commonwealth Disability Standards for Accessible Public Transport 2002 to ensure their compliance and that all passengers travel with the same level of safety.

TMR is also planning an education and awareness-raising campaign for passengers and transport operators regarding the safe use of mobility scooters and wheelchairs on public transport. The campaign will ensure information is available in a variety of formats (ie website, brochure etc) to assist passengers with a disability to make informed decisions when selecting and using mobility aids, and to travel with greater confidence and safety on passenger transport services.

TMR sought further advice from the Ombudsman about the action that he considered necessary to implement recommendations 50 and 51. As a result of this clarification, TMR will write to councils and the Local Government Association of Queensland requesting that local government give consideration to the recommendations made by the Ombudsman.

Incorporated in Strategic Plan:

No

Ombudsman’s Recommendations:

Crimes against drivers

52.	That the fare evasion “infringement notice” fine be increased from \$400.00 to \$600.00 out of which the driver is compensated for the loss of the fare up to \$200.00. In the alternative, should the government not wish to increase the fine, that 50% of the current fine be paid to the driver as compensation. (Note where the driver is a bailee, the amount paid to the driver would be shared with the operator in accordance with their bailment arrangements.)
53.	That the Queensland Police Service take steps to encourage officers to place a higher priority on crimes against taxi drivers, and also ensure that at least one officer on duty at a station at any time has the knowledge and skill to access taxi security camera images.
54.	That the crime of assault perpetrated against a taxi driver be treated as a serious assault pursuant to s 340 (i) (g) of the Criminal Code as opposed to common assault.

Government Response to recommendations:

Recommendations 52, 53

Supported in principle

Recommendation 54

Not supported

The Queensland government views fare evasion as a serious offence however, any consideration of increasing fines for such matters needs further consideration. It should also be noted that monies obtained through the “infringement notice” (State Penalties and Enforcement Regulation) process are provided to General Revenue and would not be able to be redistributed to compensate drivers for the loss of fare.

If a fare evader is apprehended, police may either issue an infringement notice or commence proceedings for the alleged fare evader to appear in court. If the matter is dealt with by the court and the defendant is found guilty, the court has the capacity to award restitution to compensate the driver for the loss of the fare. Police Service policy is that officers will not issue an infringement notice for an offence of fare evasion unless the complainant agrees to that course of action. In such cases, the complainant is to be advised that restitution for the loss of earnings will not be available.

Taxi drivers currently have the authority to require a deposit or prepayment of a taxi fare. However consideration is to be given to the mandatory prepayment of taxi fares for journeys taken at times when fare evasion is currently prevalent. This may assist in reducing fare evasion. Victoria has introduced a mandatory prepayment of taxi fares and Monash University is currently evaluating this change to determine if it has assisted in reducing fare evasion and the number of assaults on taxi drivers. Prepayment of taxi fares is to be added to the strategic plan for further examination.

The priority afforded to crimes by the QPS is determined by a range of factors which include the seriousness of the offence and demands for service at the particular time. Whilst the occupation of the victim is not taken into consideration when assessing the degree of priority, it is acknowledged that police response to offences against taxi drivers may be improved through a closer relationship between the QPS and the taxi industry.

Officers from the Community Safety and Crime Prevention Branch currently represent the QPS on the Taxi Industry Workplace Health and Safety Committee convened by TMR. It will be proposed to extend this involvement by appointing Regional Police Taxi Industry Liaison Officers throughout the state.

Under current arrangements, responsibilities for downloading images from taxi security cameras are shared between the Queensland Police Service and taxi booking companies. Depending on the seriousness of the offence under investigation, images may be downloaded by Scenes of Crimes Officers or authorised download technicians employed by taxi booking companies. The investigating officer is responsible for determining the appropriate download option.

Appropriately trained Scenes of Crimes Officers are available at District level at all times to download and process evidence from taxi security cameras. Extending that capacity to ensuring trained officers are available at stations at all times cannot be justified on current demands for this service. Part of the role of Regional Police Taxi Liaison Officers will be to assess the need for additional trained officers in particular areas or work with TMR and taxi companies to improve access to authorised civilian download technicians.

In general terms, the offence of serious assault applies to assaults committed upon police and other public officers performing a function of their office, and the elderly and disabled.

Whilst the Queensland Government acknowledges the valuable service provided by the taxi industry, it is not considered appropriate to extend the provisions of s.340.

Queensland's Criminal Code contains a range of offences to protect taxi drivers and other citizens from assault and other acts of violence including:

- Assault occasioning bodily harm which carries a maximum penalty of seven years imprisonment or 10 years imprisonment if committed whilst armed or in company;
- Grievous bodily harm which carries a maximum penalty of 14 years imprisonment or life imprisonment if committed with intent; and
- Robbery which carries 14 years imprisonment and life imprisonment if armed or in company.

During consultation, Taxi Industry Advisory Committee members suggested that taxi drivers fall into a category of "vulnerable" workers, and as such should be afforded greater protections against assault. However, it could be argued that preventative measures to improve the personal safety of drivers are more effective method of overcoming serious assaults. Accordingly, action is occurring regarding improvements to personal safety of drivers (as reflected in Recommendation 48).

Despite the wishes of stakeholders, it is not considered appropriate to amend Queensland's Criminal Code to extend the offence of serious assault to apply to minor assaults against taxi drivers, which would otherwise be charged as common assault. If bodily harm results from the assault, the offence of assault occasioning bodily harm applies which carries the same maximum penalty (with an increased maximum if committed whilst armed or in company).

Incorporated in Strategic Plan:

Yes

Strategic Plan Related References:

Principle – Safety

Strategy 2 Improve driver safety

Actions:

2.3	<i>Work with the Queensland Police Service (QPS) to establish a Regional Taxi Liaison Officer in each QPS region in which taxis operate.</i>
2.4	<i>Examine options for introducing mandatory 'up-front' fare payments where circumstances warrant (for example, late at night) to reduce fare evasion crimes against taxi drivers.</i>

Ombudsman's Recommendations:

Vehicle Safety

55.	That the existing Taxi Compliance Unit of the Department of Transport and Main Roads becomes a stand alone unit staffed by dedicated taxi inspectors except in those regions where the number of active licences would not warrant a full time inspector.
56.	That with the involvement of Workplace Health and Safety Queensland the lines of responsibility for vehicle safety, vehicle condition and the safe operation of a vehicle be both clarified and simplified, if necessary through legislative amendment.

Government Response to recommendations:

Recommendation 55 - 56

Supported

The Ombudsman called on additional resources to be made available to ensure compliance with standards in the Queensland taxi industry such as vehicle roadworthiness.

The Queensland government acknowledges that vehicle safety is an important factor in this industry. Accordingly, additional resources will be allocated to undertake increased taxi compliance activities. TMR will implement an extensive compliance campaign by establishing a stand-alone taxi service compliance unit.

The taxi compliance unit will be focused on raising standards of compliance within the taxi industry through targeted enforcement campaigns. Twelve additional compliance officers are to be allocated to the taxi compliance unit: 10 officers in south east Queensland and two in the Northern Region. While officers are assigned to this unit, they will be dedicated to taxi compliance activities. TMR will also continue to undertake taxi compliance activities through the broader transport inspector workforce throughout the state.

The Workplace Health and Safety Act 1995 places a duty on a person who conducts a business or undertaking to ensure the workplace health and safety of all persons

(including themselves) who might be affected by the way that person conducts their business or undertaking. Under the Act, the owner of a vehicle used as a taxi (the bailor) and let out to another to operate and the operator (the bailee) each conduct a business or undertaking and, therefore, have separate duties under the Act to ensure their own health and safety, that of each other and of passengers and the public.

The scope of the duty is defined by those matters which are under their respective control. For example, matters relating to the safety and condition of the vehicle would be within the control of the bailor and any incident resulting from a malfunction or lack of maintenance of the vehicle would be the responsibility of the bailor.

On the other hand, matters relating to the operation of the vehicle, such as driving competency, excessive speed and fitness to drive, would be matters within the control of the bailee, and any incident attributable to one of these factors would be the responsibility of the bailee.

Industry stakeholders expressed the view that no legislative amendments were necessary regarding responsibility with respect to obligations under the WHS Act. Instead, stakeholders indicated that clarification about the lines of responsibility for health and safety was due to a general lack of understanding that could be addressed via a targeted communication strategy.

Following on from consultation, work has commenced by WHSQ on the development of a communication strategy, to be implemented by March 2011, with appropriate information being added to existing publications, websites and industry publications. .

Incorporated in Strategic Plan:

Yes

Strategic Plan Related References:

Principle – An accountable system

Strategy 7 Improve TMR’s capability to analyse industry performance and to enforce industry compliance with performance benchmarks

Action:

7.5	Undertake ongoing, targeted compliance activities
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Issue	No	Recommendation	Government Response
Training	1.	That the Chief Executive of the Department of Transport and Main Roads audit for suitability the content of all courses used by entities currently providing training to applicants for a Hire Driver Authority.	Supported in principle National training framework to be implemented from January 2011. Content prescribed in national taxi driver training core competencies.
	2.	That the Chief Executive of the Department of Transport and Main Roads review for suitability and approve if appropriate any test currently used to assess competence of applicants for a Hire Driver Authority.	Supported in principle National training framework to be implemented from January 2011. Assessment criteria prescribed in national taxi driver training core competencies.
	3.	That as soon as possible, transfer responsibility for Driver Authority competence testing from private entities to the Department of Transport and Main Roads Driver licence testing body.	Supported in principle Assessment of driving competency is carried out through the Department of Transport and Main Roads driver licence testing regime. National taxi driver core competencies will be assessed by Register Training Organisations.
	4.	That the Department of Transport and Main Roads Driver licence testing body be equipped with the means, authority and resources to test for appropriate driving skill, locality knowledge, route knowledge and language skills as part of the assessment of competence for the procurement of a Driver Authority.	Supported in principle Assessment of driving competency is carried out through the Department of Transport and Main Roads driver licence testing regime. National taxi driver core competencies will be assessed by Register Training Organisations.
	5.	That the successful completion of Department of Transport and Main Roads test should be a prerequisite element of attaining Driver Authorisation.	Supported in principle The successful completion of the national taxi driver core competencies will be a pre-requisite for obtaining DA to drive in taxi service areas with a fleet size of 35 or more (90% of Queensland's taxi fleet).
	6.	That in areas where there is no government driver licence testing centre, the Department of Transport and Main Roads establish a panel of entities (possibly commercial Driver Training Schools or the police) capable of testing potential taxi drivers for driving skills. In such cases the locality knowledge, route knowledge and language skills testing should continue to be conducted by the Department of Transport and Main Roads officer handling the application for the issuing of the Driver Authorisation.	Supported in principle Assessment of driving competency is carried out through the Department of Transport and Main Roads driver licence testing regime. National taxi driver core competencies will be assessed by Register Training Organisations.
	7.	That the Department of Transport and Main Roads, not a taxi booking company, should select the appropriate driving schools for inclusion on any panel of testers.	Supported in principle Assessment of driving competency is carried out through the Department of Transport and Main Roads driver licence testing regime. National taxi driver core competencies will be assessed by Register Training Organisations.
	8.	That the Department of Transport and Main roads should periodically review the panel of approved testers and be empowered to add or remove names as appropriate, especially in the event that it is established that a driver was incorrectly assessed as competent.	Supported in principle Through a Memorandum of Understanding with the Department of Education and Training, the Department of Transport and Main Roads, as the taxi industry regulator will participate on the audit panel for registered training organisations.
	9.	That in the development of suitable testing	Supported in principle

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		methods regard should be had to the circumstances under which taxi driver operates and the higher demands on a taxi driver compared to a private driver e.g. interpreting passenger directions on the run, attending to job allocation equipment and security equipment.	National taxi driver core competencies will be assessed by Register Training Organisations and will require the demonstration of competency on the job.
Working Relationships	10.	That the <i>Transport Operations (Passenger Transport) Act 1994</i> be amended to require that all bailment arrangements between a bailor and bailee of a taxi be contained in a signed contract.	Supported The <i>Transport Operations (Passenger Transport) Act 1994</i> (TOPTA) will be amended to require all bailment arrangements be contained in a signed agreement.
	11.	That the <i>Transport Operations (Passenger Transport) Act 1994</i> be amended to include a set of terms prescribing minimum conditions to be contained in bailment agreements.	Supported in principle Legislation will require the bailor and bailee to agree on a set of terms in the bailment agreement but will not prescribe the minimum conditions of those terms. The Government will release a Model Taxi Bailment Agreement (MTBA) and encourage operators and drivers to use this agreement to meet the requirements of the legislation.
	12.	That the terms referred to in recommendation 11 prescribing minimum conditions to be contained in bailment agreements be known as Minimum Bailment Terms	Supported in principle Legislation will require the bailor and bailee to agree on a set of terms in the bailment agreement but will not prescribe the minimum conditions of those terms. The MTBA will make recommendations on these minimum bailment terms.
	13.	That the Minimum Bailment Terms include a) 50% of gross fares earned go to the driver; b) The Bailor be responsible for 100% of fuel costs; and c) A minimum renewable term of agreement of 12 months for all but irregular drivers used to cover unforeseen shortfalls in available drivers.	Not supported Government will not intervene in commercial business arrangements between bailors and bailees and will not prescribe a set of conditions that may have significant negative impacts on the economic viability of industry participants. The Government does not support mandating a minimum renewable term of agreement of 12 months as this is an impractical restriction to be placed on parties that will prevent them from altering and renegotiating bailment terms.
	14.	That inclusion of the prescribed Minimum Bailment Terms in each and every bailment contract be mandatory. NOTE: See Insurance Section for recommendation on accident and injury insurance costs and Minimum Bailment Terms.	Supported in principle While the legislation will require bailors and bailees to reach agreement on a specified set of bailment terms as a minimum, the conditions of these terms will not be prescribed.
	15.	That the Ombudsman recommends the amendment of either <i>Transport Operations (Passenger Transport) Act 1994</i> or the <i>Transport Operations (Passenger Transport) Regulation 2005</i> to ensure that all taxi bailment contracts must not contain "set pay in" arrangements	Supported in principle Changing the commercial market by removing set pay-ins may have a disproportionately negative effect on those experienced drivers who are relying on a legitimate competitive advantage to generate greater returns. Rather than eliminating set pay-ins altogether, the legislation mandating written signed bailment agreements will include a provision for set pay-ins only to be in place where the driver has held Driver Authorisation in Queensland for a minimum period of 12 months; and the arrangement is at the request of the driver. This would mean that only experienced drivers and drivers who explicitly choose set pay-ins have access to this commercial option.

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Disciplinary processes	16.	That the Minimum Bailment Terms contain a dispute resolution procedure.	Supported in principle Disputes arising under bailment agreements can already be resolved through Queensland Civil and Administrative Tribunal's (QCAT) minor civil dispute jurisdiction.
	17.	That the Minimum Bailment Terms contain provision for compensation payable by one party to the other in the event that unfair or inappropriate actions in contravention of the dispute resolution procedure causes loss to a party.	Supported in principle QCAT has the capacity to make enforceable decisions on civil disputes between parties under a bailment agreement.
	18.	That the <i>Transport Operations (Passenger Transport) Act 1994</i> be amended to provide for an independent tribunal capable of economically and quickly dealing with matters in dispute in taxi industry	Supported in principle QCAT is an established, independent tribunal capable of economically and quickly dealing with matters in dispute in taxi industry.
	19.	That in respect of such independent tribunal: <ul style="list-style-type: none"> a) The tribunal be empowered to act in a manner similar to that followed by the Queensland Industrial Relation Commission (QIRC), that is, to conciliate all disputed matters in the first instance and to arbitrate at the request of a party where conciliation has failed; b) The tribunal be empowered to issue enforceable orders; c) Provision be made for an appropriate appeals mechanism; d) The scope of the work of the tribunal should include disputes between bailees and bailors, bailees and taxi booking companies as well as between bailors (operators) and taxi booking companies; e) Representation of parties at conciliation should exclude legally qualified persons; and f) Representation of parties by legally qualified persons at hearings be only by leave of the presiding tribunal member having regard to the circumstances. 	Supported in principle QCAT is an established, independent tribunal empowered to conciliate and arbitrate on a wide range of matters. It has the capacity to make enforceable decisions and parties can appeal a QCAT decision if they are dissatisfied with the outcome. All parties involved in a matter before QCAT must represent themselves. Except in certain circumstances, all parties must apply to QCAT if they want to be represented.
Equity in Work Distribution	20.	That the Government create a regulatory requirement that all work, to the extent possible, be allocated equitably by taxi booking companies and that data be kept and provided to the Department of Transport and Main Roads on a periodic basis that would enable not only monitoring but the ability to investigate allegations of unfair practices in the distribution of work. Operators and driver should also have access to this data on request.	Not supported While there may be a perception within the industry that taxi booking companies do not distribute work fairly, there is no evidence to support this.
	21.	That in the event of allegations of this type being substantiated, penalties ranging from a minimum of the payment of full	Not supported Performance based contracts that are in place with taxi booking companies allow penalties to be applied by

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		compensation to the operator and drivers concerned thorough to the cancellation of the service area contract should be available for application by the Chief executive of the Department of Transport and Main Roads.	the Department of Transport and Main Roads.
	22.	That taxi booking companies be required to provide information to the Department of Transport and Main Roads, operators and drivers advising of policies and procedures in place and efforts made to reduce "no shows". (The term "no show" used to describe those circumstances where a taxi arrives to collect a passenger as directed by a taxi booking company only to find no customer is waiting.)	Supported in principle Under current contracts, taxi booking companies are required to provide certain performance data to the Department of Transport and Main Roads. Direct downloads of data from taxi booking companies to the Department is expected from early 2011. The Department will encourage taxi booking companies to communicate with operators and drivers about their efforts to reduce the number of 'no shows'.
	23.	That representatives of the Department of Transport and Main Roads, operators, drivers and taxi booking companies meet to review processes for minimising "no shows" and discuss necessary improvements where appropriate.	Supported The Department of Transport and Main Roads will play a role in encouraging taxi booking companies to introduce technology to assist in changing customer behaviour. It will also work with taxi booking companies, operators and drivers to explore strategies to reduce the number of 'no shows'.
Operator Costs	24.	That the government review all statutory and other costs met by operators over which the government has control with a view to minimising costs and streamlining the manner in which the administrative charges are applied.	Supported The Department of Transport and Main Roads had already signalled, via the draft Queensland Taxi Strategic Plan 2010 - 2015, an intention to investigate and implement options for reducing or better controlling taxi industry costs.
	25.	That the review of all statutory and other costs met by operators over which the government has control include consultation with the Operators' Consultative Committee the establishment of which is recommended in Recommendation 37.	Supported in principle Work has already commenced on an economic analysis of the industry and operators have been consulted and engaged in the work done to date. The Department of Transport and Main Roads recognises the need to consult widely during review processes.
Further Operator Issues	26.	That holders of area service contracts should not be competitors with any provider of taxi services in that area.	Not supported Unless there is clear evidence that there is a conflict of interest between holding a service contract and owning or operating a taxi service licence, the government does not intend to take any steps to restrict individuals and companies from participating in both aspects of the industry.
	27.	That the government should establish a reasonable time frame for taxi booking companies to divest themselves of taxi fleets used in competition with affiliated holders of taxi licences.	Not supported Relates to recommendation above.
	28.	In the event that the recommendations regarding taxi booking companies divesting themselves of taxi operating interests is not adopted, that a regulation be established which provides that the affiliation fee charged by taxi booking companies be structured as a nominal flat monthly fee plus a service fee for each job successfully allocated to a taxi. Note: This would provide another tool for monitoring the fair allocation of work. An added benefit is that it would give taxi	Not supported The reasonableness of affiliation fees is being examined by TMR. Charging the affiliation fee through a service fee approach would be administratively burdensome. It is believed that the additional costs associated with this arrangement would need to be passed onto operators by taxi booking companies through increased fees making what the Ombudsman seeks to achieve through the recommendation redundant.

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	<p>booking companies more incentive to eliminate "no shows" and more incentive to generate business in that the more successful allocations made, the greater the income from affiliation as opposed to the current flat charge payable by operators which doesn't vary, regardless of the quality of service provided to operators.</p>	
29.	<p>That the practice of subleasing of taxi licences should end.</p>	<p>Not supported</p> <p>The Government does not intend to put an end to the ability of individuals to invest in the taxi industry, nor to their options of how they choose to manage and operate that investment. Alternate options to perpetual licences that will lower the barriers to licence ownership and encourage active participation in the industry will be explored.</p>
30.	<p>Transitional Arrangements – Subleasing.</p> <p>That at midnight on 31 December 2010 all current sublease be deemed to be leases directly between the licence owner and current sublessee.</p>	<p>Not supported</p> <p>Relates to recommendation above.</p>
31.	<p>That in the mean time, no sublease in place at the time of the release of this report to the Attorney-General and Minister for Industrial Relations should be withdrawn by the head-lessee or licence owner save for serious issues of performance, or non payment of agreed amounts by the sublessee, in which case, such action to be reviewed by the Chief Executive of the Department of Transport and Main Roads.</p>	<p>Not supported</p> <p>Relates to recommendation above.</p>
32.	<p>That sub-lessees of taxi licences should pay all and any monies owing to the head-lessee by virtue of the sublease arrangement by close of business on 30 December 2010. (Note – this should not include amounts unrelated to subleases such as affiliation and other taxi booking company charges).</p>	<p>Not supported</p> <p>Relates to recommendation above.</p>
33.	<p>That at that point in time when the lease is deemed to be established between the owner and the former sublessee (1 January 2011), the holder of the former head-lease is to transfer all monies held by way of deposit bone or advance lease payments received from the former sublessee to the owner/lessor.</p>	<p>Not supported</p> <p>Relates to recommendation above.</p>
34.	<p>That between the adoption of these changes and 31 December 2010 the Department of Transport and Main Roads facilitate discussions between sublessees and licence owners aimed at establishing ongoing lease conditions satisfactory to both parties. Such facilitation would include the provision of names and contact details of the owner to the sublessee and vice versa and also include advice of impending changes.</p>	<p>Not supported</p> <p>Relates to recommendation above.</p>
35.	<p>That if agreement between the owner and intended lessee is not finalised by 31 December 2010 the financial arrangement and conditions of the new lease between the</p>	<p>Not supported</p> <p>Relates to recommendation above.</p>

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		owner and the former sublessee be deemed until 30 June 2011 to be the same conditions as those contained in the former head-lease. After 30 June 2011 the owner and lessee would be free to maintain, alter or abandon the lease arrangements as they choose.	
Licences (Market Entry)	36.	<p>That section 36 of the <i>Transport Operations (Passenger Transport) Act 1994</i> (considerations to be made by the Chief Executive of the Department of Transport and Main Roads prior to issuing extra licences in an area) be amended by adding a sub-section.</p> <p>i. The financial impact on entities already authorised to provide the service would be negligible.</p>	<p>Not supported</p> <p>When issuing extra licences in an area, the Department of Transport and Main Roads strives to strike a balance between the number of taxi licences issued and the underlying demand for taxi services. While additional licences have a financial impact on operators and drivers of existing licences at least in the short term, the model used by the Department of Transport and Main Roads ensures that this impact is minimal.</p>
Industry Representation	37.	<p>That until the Taxi Council of Queensland alters its constitution to facilitate operators as full members:</p> <p>a) Taxi booking companies be prevented from recouping their Taxi Council of Queensland membership dues from operators (Note this can be done by the Chief Executive of Department of Transport and Main Roads declaring the charge to be an unreasonable affiliation charge pursuant to the service area contract);</p> <p>b) Officers of the Department of Transport and Main Roads and others in Government familiarise themselves with the structure of the Taxi Council of Queensland and be cognisant of the structure and true nature of representation of Taxi Council of Queensland when assessing taxi industry submissions and issues;</p> <p>c) The Department of Transport and Main Roads establishes an Operator's Consultative Committee with a membership of at least ten (10) with the committee members being drafted with regional balance in mind;</p> <p>d) Operators' Consultative Committee positions be filled by the calling of nominations and where more than the required number of nominations is received from a region, the majority view of operators in that region be the determining factor;</p> <p>e) Nominations and voting for Operator's Consultative Committee should not involve any taxi booking company executive officer or director (even though they may also be an operator) nor should it involve anyone connected with the operator arm of a taxi booking company or related entity;</p> <p>f) The Department of Transport and Main Roads review the make up of the Taxi Industry Advisory Committee with a view to representative balance and</p>	<p>37a, e Not supported</p> <p>37b Supported</p> <p>37c, d, f Supported in principle</p> <p>The government recognises the Taxi Council of Queensland as the taxi industry's peak body. The TCQ membership fee as part of the affiliation fee will be part of the Department of Transport and Main Roads' examination of the reasonableness of affiliation fees.</p> <p>The Department of Transport and Main Roads is familiar with the structure of the Taxi Council of Queensland.</p> <p>A group of operators has established an operators advisory group. A representative of this group has been invited to join the Taxi Industry Advisory Committee.</p> <p>The Taxi Industry Advisory Committee was established to assist in the development of the Queensland Taxi Strategic Plan 2010 – 2015. The Department of Transport and Main Roads engages with the taxi industry on a formal basis through a number of established forums. TMR intends to augment these established consultative arrangements by conducting an annual round of open stakeholder forums across the state. These new forums will provide the opportunity on a regular basis for a two-way engagement between TMR and the taxi industry at large about progress toward the achievement of the Queensland Taxi Strategic Plan 2010 – 2015.</p>

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		<p>having regard to the current industry participation levels namely;</p> <p>I. 15000 authorised drivers;</p> <p>II. 2808 accredited operators; and</p> <p>III. 22 Taxi Booking Companies.</p>	
Taxi Subsidy Scheme	38.	That the State Government reviews the Taxi Subsidy Scheme upper monetary limit with a view adjusting it upwards to compensate for fare increases.	<p>Not supported</p> <p>The TSS provides over \$14 million in subsidies each year to improve the mobility of persons with severe disabilities. The average subsidy paid is currently \$8.25, and approximately 2% of the 1.9 million trips that are undertaken claim the maximum subsidy amount of \$25.00. The allocation of funding provided by Government is based on the current eligibility criteria and subsidy arrangements.</p>
	39.	That it be brought to the attention of all drivers that the Ombudsman would regard proven instances of taxi drivers making uninvited and unwanted advances to disabled passengers as justification for the immediate termination of bailment agreement and dependent upon the circumstances – criminal charges.	<p>Not supported</p> <p>Taxi drivers are held accountable for complying with appropriate standards. Proven instances of inappropriate behaviour by taxi drivers are dealt with through the Department of Transport and Main Roads' Driver Authorisation processes.</p>
	40.	That passengers in taxis be informed that the Security Camera System does not automatically include voice recording and that they may make their own arrangements to record comments if they feel such recording is warranted.	<p>Not supported</p> <p>Passengers are currently advised by security camera stickers that they will be photographed. A review is underway to determine future camera specifications, which includes consideration of voice recording.</p>
Insurance	41.	That WorkCover initiates a process aimed at providing standardised quality workers' compensation arrangements for the taxi industry.	<p>Supported in principle</p> <p>A review of the <i>Workers' Compensation and Rehabilitation Act 2003</i> is proposed for 2012. It is proposed to have the issue of bailment contracts considered as part of that review.</p>
	42.	That the process described involve discussions with taxi bailors and taxi bailees, the Taxi Council of Queensland, the Cab Drivers' Association of Queensland, the Transport Workers Union of Queensland and the recommended Operators' Consultative Committee (see Recommendation 34), for the purpose of establishing agreement regarding the basis for work cover insurance.	<p>Supported in principle</p> <p>Discussions with the Taxi Industry Advisory Committee indicated that a WorkCover insurance scheme covering the taxi industry was not seen as desirable, given the expectation that such a scheme would impose greater financial costs than insurance provided by private sector insurance companies.</p>
	43.	That in the event of failure to reach agreement, that the State Government considers implementing the legislative changes necessary to establish WorkCover arrangements with operators and drivers as though they were Employer and Employee respectively.	<p>Not supported</p> <p>Discussions with the Taxi Industry Advisory Committee indicated that a WorkCover insurance scheme covering the taxi industry was not seen as desirable, given the expectation that such a scheme would impose greater financial costs than insurance provided by private sector insurance companies.</p>
	44.	<p>That in respect of the "at-fault accident levy"</p> <p>a) Bailment contracts must include that Agreement be reached between the bailor and bailee regarding the amount and frequency of contributions a driver must make as a contingency</p>	<p>Supported in principle</p> <p>Legislation will require bailment agreements to include the amount and frequency of contributions a driver must make as a contingency against an insurance excess charge resulting from an at-fault accident.</p> <p>The unused amount of insurance excess payments at</p>

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		<p>against an insurance excess charge resulting from an at-fault accident; and</p> <p>b) Minimum Bailment Terms include a legislative or regulatory provision that the amount of levy deducted does not exceed the sum for which the driver might be liable; and</p> <p>c) That unused amounts of insurance excess payments be refunded at the conclusion of a bailment agreement.</p>	<p>the end of bailment agreements is a matter to be considered between the two parties negotiating the terms of their agreement.</p>
	45.	<p>That in the event that the WorkCover proposal is not adopted,</p> <p>a) Minimum Bailment Terms include a requirement that bailors must arrange reasonable personal accident and injury insurance for bailee drivers;</p> <p>b) Bailors must provide to bailees in respect of personal accident and injury insurance full details of all insurance cover they have in place affecting the bailee, the amounts paid and copies of receipts verifying payments of premiums prior to finalising amounts of any driver contribution to be included in Bailment Contracts</p> <p>c) Any variation to insurance to be advised to the bailee promptly and any proposed increase to the bailee's contribution level be the subject of negotiation and genuine agreement.</p>	<p>Supported in principle</p> <p>Legislation to be introduced will require bailment agreements to include information on the personal accident and injury insurance the bailor has in place for the bailee and how this is evidenced. The Model Taxi Bailment Agreement contains a section which requires the bailor and bailee to expressly agree to the amount and frequency of contributions a driver must make for the vehicle and personal accident insurance and that the bailee has sighted the relevant insurance policy.</p>
Superannuation and Long Service Leave	46.	<p>That, as the situation in other states is no different, it would be appropriate that the Queensland Government initiates talks at a federal level with a view to creating the legal basis for taxi drivers to be regarded as independent contractors for the purpose of an entitlement to occupational superannuation.</p>	<p>Not supported</p> <p>New payment transfers by way of superannuation or long service leave levies will disturb the commercial arrangements in the taxi industry and require further investigation and actuarial modelling by the parties. During consultation industry representatives expressed a strong preference for a voluntary facility to be available for the purposes of superannuation and long service leave savings for drivers.</p>
	47.	<p>That in the absence of progress on superannuation at a federal level, the Queensland Government considers the inclusion in the Minimum Bailment Terms a provision that would enable drivers and operators to contribute to retirement and long service leave fund for taxi drivers through a fund operated by QLeave.</p>	<p>Not supported</p> <p>The Department of Transport and Main Roads supports drivers and operators being enabled to contribute to retirement and long service leave if there is a strong push from industry for this initiative, however it is the Department's view that the Bailment Agreement is not an appropriate mechanism for regulating superannuation.</p>
Safety – Personal	48.	<p>That necessary legislative or regulatory changes be made so as to require passengers who wish to travel after 10pm and before 5am to produce and have recorded on the taxis security camera their driver's licence or other acceptable form of identification to facilitate safe taxi driving between these hours.</p>	<p>Not supported</p> <p>While the government supports consideration of measures that will improve the safety of Queensland taxi drivers, the practicalities and potential privacy issues associated with such a requirement outweigh the safety benefits of this proposal. Other initiatives such as the prepayment of taxi fares between 10pm and 5am may prove to be a better way to address the</p>

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			personal safety concerns for drivers, as well as fare evasion.
Safety – WATs	49.	That the Department of Transport and Main Roads and Workplace Health and Safety Queensland investigate: <ul style="list-style-type: none"> a) The design of wheelchairs and mobility scooters and their appropriate rating for use in taxis; and b) The appropriate methods for anchoring wheelchairs and mobility scooters depending on the rating of the wheelchair as determined in part (a) of this recommendation. 	<p>Supported in principle</p> <p>The design of equipment and the appropriateness of anchoring mechanisms is a matter dealt with by a technical standards development body such as Standards Australia. It is not a matter regulated by Workplace Health and Safety Queensland or the Department of Transport and Main Roads.</p> <p>The Department of Transport and Main Roads will meet with the Commonwealth agencies responsible for developing this compliance regime to request that work be progressed in this area as a matter of urgency.</p>
	50.	That Local Government review the number of wheelchair and mobility scooter access points in kerbing for city streets in consultation with appropriate representatives of users of mobility scooters and wheelchairs	<p>Supported in principle</p> <p>The Department of Transport and Main Roads will write to councils and the Local Government Association of Queensland requesting that local government give consideration to this recommendation made by the Ombudsman.</p>
	51.	That Local Governments consider running public education campaigns, including increased focus on issuing fines, so to ensure bays set aside for the set down of passengers using wheelchairs and mobility scooters are utilised only for their intended purpose.	<p>Supported in principle</p> <p>The Department of Transport and Main Roads will write to councils and the Local Government Association of Queensland requesting that local government give consideration to this recommendation made by the Ombudsman.</p>
Safety – Crimes against drivers	52.	That the fare evasion “infringement notice” fine be increased from \$400.00 to \$600.00 out of which the driver is compensated for the loss of the fare up to \$200.00. In the alternative, should the government not wish to increase the fine, that 50% of the current fine be paid to the driver as compensation. (Note where the driver is a bailee, the amount paid to the driver would be shared with the operator in accordance with their bailment arrangements.)	<p>Supported in principle</p> <p>If a fare evader is apprehended, police may either issue an infringement notice or commence proceedings for the alleged fare evader to appear in court. If the matter is dealt with by the court and the defendant is found guilty, the court has the capacity to award restitution to compensate the driver for the loss of the fare.</p>
	53.	That the Queensland Police Service take steps to encourage officers to place a higher priority on crimes against taxi drivers, and also ensure that at least one officer on duty at a station at any time has the knowledge and skill to access taxi security camera images.	<p>Supported in principle</p> <p>The priority afforded to crimes by the Queensland Police Service (QPS) is determined by a range of factors which include the seriousness of the offence and demands for service at the particular time. As Police response to offences against taxi drivers may be improved through a closer relationship between the QPS and the taxi industry, QPS will appoint Regional Police Taxi Industry Liaison Officers throughout the state.</p>
	54.	That the crime of assault perpetrated against a taxi driver be treated as a serious assault pursuant to s 340 (i) (g) of the Criminal Code as opposed to common assault.	<p>Not supported</p> <p>It is not considered appropriate to amend Queensland's Criminal Code to extend the offence of serious assault to apply to minor assaults against taxi drivers, which would otherwise be charged as common assault. If bodily harm results from the assault, the offence of assault occasioning bodily harm applies which carries the same maximum penalty (with an increased maximum if committed whilst armed or in company).</p>

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Safety - Vehicle	55.	That the existing Taxi Compliance Unit of the Department of Transport and Main Roads becomes a stand alone unit staffed by dedicated taxi inspectors except in those regions where the number of active licences would not warrant a full time inspector.	<p>Supported</p> <p>Additional resources have been allocated to a stand-alone taxi compliance unit to undertake increased taxi compliance activities.</p> <p>TMR will also continue to undertake taxi compliance activities through the broader transport inspector workforce throughout the state.</p>
	56.	That with the involvement of Workplace Health and Safety Queensland the lines of responsibility for vehicle safety, vehicle condition and the safe operation of a vehicle be both clarified and simplified, if necessary through legislative amendment.	<p>Supported</p> <p>Clarification about the lines of responsibility for health and safety will be addressed through a targeted communication strategy. Following on from consultation, work has commenced by Workplace Health and Safety Queensland on the development of a communication strategy, to be implemented by March 2011, with appropriate information being added to existing publications, websites and industry publications.</p>