



Equal Opportunity Tasmania

Taxi and Hire Vehicle Industries Regulatory Review

Submission by the Anti-Discrimination Commissioner (Tas)

March 2017

Equal Opportunity Tasmania

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Embracing Equality**

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Introduction

Thank you for providing me with an opportunity to comment on the Taxi and Hire Vehicle Industries Regulatory Review.

The follows identifies issues relevant to ensuring that the taxi and hire vehicle industry, including ride-sharing services such as Uber, meet the requirements of discrimination law.

I note in this context my Office's long involvement with the taxi industry to ensure that the needs of vulnerable consumers, including those with disability are met. My principle concern is to ensure that any changes to the regulatory structure government the taxi and hire vehicle industry take account of obligations under discrimination law and that industry regulation achieves an appropriate balance between encouraging industry innovation and the needs of vulnerable service users.

I note in this context that separate reviews are being undertaken of the Wheelchair Accessible Taxi (WAT) scheme and the Transport Access Scheme (TAS) and I look forward to contributing to those processes in due course.

With respect to the parameters of this particular review, my concern relates to those persons with disability accessing conventional taxi services as well as to other stakeholder groups such as the elderly and people of diverse race or ethnic origin who rightly expect to be provided with services on a non-discriminatory basis.

Whilst Uber and related ride-sharing services are in their infancy in this jurisdiction, ongoing issues related to the taxi and ride-sharing industries both here and in other jurisdictions include matters such as declining to transport assistance animals; refusal to provide services to persons who use wheelchairs or other mobility devices (where no WAT service is required); and/or denying access to service because of the racial or ethnic background of the passenger.

For this reason it is imperative that existing service providers and all new entrants continue to be aware of their obligations under discrimination law and that any new regulatory framework meets accessibility and social inclusion objectives.



Sarah Bolt
ANTI-DISCRIMINATION COMMISSIONER

Regulation of the industry as whole

Consultation Questions:

Do stakeholders support the Government's proposed policy objectives and regulatory principles for the regulation of the taxi and hire vehicle industries? If not, what changes would you propose?

How do we ensure our regulatory regime can accommodate emerging technologies and business models and minimise the need for major changes that create uncertainty for industry?

What opportunities are there to utilise new technologies in a way that more efficiently and effectively manages risks in the industry as a whole? What can we learn from other jurisdictions and other industries?

The provision of equitable access to public transport is of ongoing interest and concern to Equal Opportunity Tasmania. Barriers to the provision of equitable transport services to people with disability can arise for a number of reasons:

- Some people, because of the nature of their disability, are unable to obtain a driver's licence. For example, there are people with physical disabilities who are unable to drive a motor vehicle and there are people with neurological conditions such as epilepsy who are not permitted to obtain a driver's licence.
- Some people with disability who have or are able to obtain a driver's licence are unable to purchase a suitably modified vehicle which would enable them to achieve independent mobility because of economic disadvantage and additional costs involved.
- Some people with disability because of the nature of their disability are unable to physically access conventional public transport or are unable to understand or effectively engage with public transport systems. For example, people with cognitive impairments may not be able to understand information about routes and timetables for scheduled services and people with social phobias or some forms of psychiatric illness may not feel safe or confident enough to use mass public transport.
- Some people with disability are unable to obtain the necessary information to safely and independently use public transport systems. For example, people with vision impairments may not have access to timetabling information, information about arriving and departing vehicles at public transport stops or information about stopping points while on public transport if this information is only provided in print form. Similarly, people with hearing impairments may not have access to relevant information if it is provided only in audible formats.

- The situation facing people with disability seeking to travel independently within urban areas and between communities in Tasmania is also affected by the lack of alternative modes of transport (such as passenger rail services or trams).

As a result of these and related barriers people with disability often face particular challenges in participating fully in employment and the cultural and social life of their communities.

One consequence of this is that people with disability in Tasmania place significant importance on taxi or hire vehicle services to assist them move around the community.

It also means that the Tasmanian Government has a particular responsibility for ensuring equitable access to effective transport options for all people with disability across all available transport platforms.

International Obligations

Australia is bound by the provisions of the *Convention on the Rights of Persons with Disabilities* (CRPD).¹ Of particular relevance to the current review is Article 9 of the CRPD which states, among other things:

- 1) To enable persons with disabilities to live independently and participate fully in all aspects of life, State Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation...both in urban and rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
 - a) ...transportation...

...

Discrimination law

Since the introduction of the federal *Disability Discrimination Act 1992* (Cth) (DDA) and the Tasmanian *Anti-Discrimination Act 1998* (Tas) (ADA) it has been unlawful for public transport service providers to discriminate against people with disability by failing to make their services accessible.

Neither the ADA nor the DDA specify ways in which compliance is to be achieved. However, the *Disability Standards for Accessible Public Transport 2002* (the Transport Standards) set out the requirements for public transport providers across a range of modes of transport (or conveyances), including taxis.

¹ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, UN Doc A/61/611, (entered into force 3 May 2008, ratified by Australia 17 July 2008, entered into force for Australia 18 August 2008)

The Transport Standards prescribe the following requirements for taxis.

Schedule 1 Part 2, 31 December 2012 Transport Standards Compliance Requirements

- 2.2 Full compliance (100 per cent) with the relevant Standards by operators and providers in relation to surfaces, handrails and grab rails.
- 2.3 Full compliance with the relevant Standards by accessible taxi operators in relation to 1,500 mm minimum headroom and vertical door opening.
- 2.4 Operator/provider compliance with the relevant Standards by 55 per cent of each type of service in relation to resting points, boarding, allocated space and street furniture.
- 2.5 Operator/provider compliance with the relevant Standards by 55 per cent of each type of service in relation to access paths, manoeuvring areas, passing areas, ramps, lifts, stairs, toilets, tactile ground surface indicators, controls, doorways and doors.

Schedule 1 Part 1, 31 December 2007 Transport Standards Compliance Requirements

- 1.1 Full compliance (100 per cent) with the relevant Standards by operators and providers in relation to waiting areas, furniture and fittings, information, booked services, food and drink services, belongings and priority.
- 1.2 Full compliance (100 per cent) with the relevant Standards by operators and providers in relation to symbols, signs, alarms, lighting and hearing augmentation.
- 1.3 Response times for accessible vehicles are to be the same as for other taxis.

Importantly for the purposes of this review, however, the Transport Standards do not apply to limousines (including chauffeured hire cars) or water taxis and the focus of the Transport Standards as they relate to taxis is largely on the provision of WAT services.²

Notwithstanding the scope of the Transport Standards, all transport service providers are required to meet legal obligations under national and State discrimination law. That is, if the Transport Standards do not deal with an issue, the requirements of the *Disability Discrimination Act 1992* (Cth) and relevant State law such as the *Anti-Discrimination Act 1998* (Tas) continue to apply. Further, the Transport Standards make clear that ensuring vehicles premises or infrastructure is only a means to facilitate the provision of non-discriminatory services and the use of a 'standard' conveyance does not relieve operators of the obligation to comply with the Transport Standards. I examine in more detail the particular status of ride-sharing services in later sections.

The DDA makes it unlawful for providers of goods, services and facilities to discriminate on the basis of disability. This means that a transport provider cannot:

- Refuse to provide a person with a disability with a service. For example, a person cannot be refused access to transport services because they have a guide dog or because they use a mobility aid

² *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.12(2)

- Provide services on less favourable terms or conditions. For example charging a person with a higher kilometre rate because he or she uses a wheelchair or mobility aid
- Provide services in an unfair manner. For example making insulting remarks or disparaging comments or delaying services simply because the person has a disability.

In addition, at the State level the ADA prohibits discrimination on the grounds of a range of attributes or characteristics including disability, age and race. The Act applies to a broad range of public activities, including the provision of facilities, goods and services. This includes transport services.

The ADA also prohibits a person from engaging in any conduct which offends, humiliates, insults or ridicules a person on the basis of a range of attributes including race, age, sexual orientation, gender or disability.³ It also prohibits inciting hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the grounds of a range of attributes including race, disability or sexual orientation.⁴

Disability includes physical limitations and disfigurement, sensory impairments such as sight or hearing loss, neurological conditions such as multiple sclerosis and motor neurone disease, psychological and psychiatric illnesses, learning and intellectual impairments, injury and illness. It does not matter how severe the disability is or for how long it lasts.

Protections against discrimination provided under the ADA apply to any conduct that occurs in Tasmania and protection is not limited to Tasmanians, but applies to any person who is discriminated against in Tasmania or by a person or organisation in Tasmania. So, for example, a person visiting Tasmania from interstate has the same protection against discrimination as a Tasmanian resident.

To be against the law discrimination must be related to a specified area of activity, such as employment; education and training; provision of facilities, goods and services; accommodation; membership and activity of clubs; administration of any law of the State or any State program; and/or awards, enterprise agreements or industrial agreements.⁵ The term services is given a wide meaning and includes services connected with transportation or travel.

Discrimination prohibited under the Act includes both 'direct' and 'indirect' discrimination.⁶ Section 14 provides that:

³ *Anti-Discrimination Act 1998 (Tas)* s 17(1)

⁴ *Anti-Discrimination Act 1998 (Tas)* s 19(b).

⁵ *Anti-Discrimination Act 1998 (Tas)* s 22.

⁶ *Anti-Discrimination Act 1998 (Tas)* s 14(1).

- (2) Direct discrimination takes place if a person treats another person on the basis of any prescribed attribute, imputed prescribed attribute or a characteristic imputed to that attribute less favourably than a person without that attribute or characteristic.
- (3) For direct discrimination to take place, it is not necessary –
 - (a) that the prescribed attribute be the sole or dominant ground for the unfavourable treatment; or
 - (b) that the person who discriminates regards the treatment as unfavourable; or
 - (c) that the person who discriminates has any particular motive in discriminating.

Indirect discrimination is defined in section 15:

- (1) Indirect discrimination takes place if a person imposes a condition, requirement or practice which is unreasonable in the circumstances and has the effect of disadvantaging a member of a group of people who –
 - (a) share, or are believed to share, a prescribed attribute; or
 - (b) share, or are believed to share, any of the characteristics imputed to that attribute –more than a person who is not a member of that group.
- (2) For indirect discrimination to take place, it is not necessary that the person who discriminates is aware that the condition, requirement or practice disadvantages the group of people.

Charging a person a different fee for a service because they have a disability is a form of direct discrimination. Starting the meter for a taxi fare from the time the taxi pulls up to pick up a passenger and continuing to run the meter until the person leaves the vehicle may amount to indirect discrimination if the practice is used to disadvantage a person with disability who may take longer to embark or disembark from the vehicle than other passengers.

Under the Tasmanian Act, an exception applies where a respondent can demonstrate that the discrimination was 'reasonably necessary' to comply with 'any law of this State or the Commonwealth'.⁷ Section 48(b) also provides an exception to the provision of goods and services, if that would cause unjustifiable hardship.⁸ Those wishing to take advantage of the exceptions provided in the Act are responsible for making the case that the exception applies.

⁷ *Anti-Discrimination Act 1998 (Tas) s 24.*

⁸ *Anti-Discrimination Act 1998 (Tas) s 48(b).*

It is clear, therefore that those providing services have an obligation to ensure that appropriate adjustments are made to service delivery arrangements where required. This includes ensuring that drivers understand how to respond to the diverse needs of passengers with disability.

Ride-sharing services

Uber, Lyft and other ridesharing services are not exempt from discrimination law. As indicated earlier, the definition of services under both national and State discrimination law is broad and the provision of booking services and the delivery of transport services would both be captured by the obligations under discrimination law.

As with the broader taxi industry, however, how these legal frameworks apply to ride-sharing services is not always clear.

Section 104 of the ADA places obligations on organisations to take reasonable steps to ensure that its members, officers, employees or agents do not engage in discrimination or prohibited conduct.

However, uncertainty surrounds whether those providing ride-sharing services are an employee or agent of the booking company or an independent contractor. The structure of the taxi industry is such that the dispatch services consider that their role is to co-ordinate taxis so that a passenger can call a single phone number to book a taxi. Operators are considered distinctly separate businesses operating though an affiliation or partnership to provide taxi services. Dispatch services do not own any taxis nor are taxi drivers considered employees. Operators who do not driver the taxis themselves may engage 'bailee' drivers. These drivers are considered to be self-employed and generally operate under a fare-sharing agreement.

A similar view is held in relation to those providing ride-sharing services.

At the same time, however, it is clear that the dispatch companies have the capacity to penalise drivers by suspending access to booking services and are known to use this approach in relation to situations where the driver does not meet the requirements of discrimination law. In these and related circumstances dispatch companies would appear to exercise responsibility for ensuring that regulatory obligations are met.

If drivers are considered employees, then the booking service will also attract liability under discrimination law. If drivers are considered independent contractors then obligations under discrimination law will fall exclusively on the driver and differential considerations apply to whether it is reasonable for the independent driver/operator to make appropriate adjustments to accommodate people with disability.

Implication for transport service providers

Whilst it is clear that all providers of transport services are required to meet obligations set out under discrimination law the complex nature of the taxi industry in Tasmania means that responsibility for meeting these standards is not always clear.

The taxi industry in Tasmania – involving as it does multiple entity types including vehicle owners, accredited operators, licensed drivers, networks and licence plate owners – mean that it is difficult to ascertain in some circumstances which entities have what obligations. The inter-relationships between these entities are complex and not consistent and impact significantly on the ability to monitor compliance with the Transport Standards and related discrimination law obligations. This gives rise to situations where there are gaps in regulation meaning that there is not clear responsibility for particular matters.

The lack of a single radio network to manage taxi bookings means the obligation to meet equivalent response times, for example, is fragmented: where an operator does not work through a radio room or is not part of a co-operative there is no basis to make the comparison and there is arguably no clear obligation on such operators.

The lack of standardised regulatory arrangements leads, in part, to a reliance on complaints under discrimination law to gauge the extent to which obligations under discrimination law are being met. For taxis, as for other transport modes, reliance on complaint data is not necessarily a good indicator of compliance as it relies on knowledge of and capacity and willingness to go through formal complaint processes. It is also affected, rightly or wrongly, by genuine fear by people with disability that services will be withdrawn or withheld from them if they complain.

In August 2006, the Tasmanian government implemented a new training program for the carriage of passengers with disability. This training course applies not only to WAT drivers but is a pre-requisite for all new taxi drivers, irrespective of whether they intend to drive WAT vehicles or standards taxis.

Whilst this move is welcomed and should be continued, we have expressed ongoing concern about the level of awareness of disability among existing drivers who drive conventional vehicles. We are also concerned about the level of training being made available to new and existing drivers more broadly and in relation to their understanding of obligations around carriage of and needs of people with assistance animals, people with vision impairments more broadly, people who use manual wheelchairs and walkers and people with communication difficulties, including people with hearing loss and people with disabilities that affect their speech and motor control.

Despite the fact that there is an offence under Tasmanian regulations to refuse to carry an assistance animal travelling with passengers and a breach of both State and federal discrimination laws, EoT continues to receive reports of refusals of drivers leaving the taxi rank or by-passing a fare when a person with an assistance dog approaches.

Similarly, people reliant on manual wheelchairs or walkers who are able to transfer into a conventional vehicle have reported a lack of assistance and, in some cases, refusal to accept the fare. With drivers sometimes arguing that the person has to use a WAT.

Regulation of supply

Consultation questions:

What do stakeholders see as the principal objective of the current licensing regime? Can this objective be met through alternative or less onerous/costly arrangements, such as the safety-based frameworks being rolled out in other jurisdictions?

Is there evidence that taxi and hire vehicle licensing delivers safety or consumer protection outcomes which could not otherwise be achieved through the regulation of operators, drivers, vehicles and tariffs?

Whilst Equal Opportunity Tasmania has no particular view on the issue of the liberalisation of the taxi market, we note that any decision by Government to phase out licensing regimes may have flow on impacts to the industry as a whole and to WAT services in particular.

As outlined in the discussion paper, the cost and availability of acquiring a standard taxi licence currently poses a major barrier to the entrance of new service providers. The existence of this barrier has been used as a basis for providing incentives to the provision of WAT services.

Under current licencing arrangements, the number of WAT licences issued is uncapped and issued at the cost of processing and administration (around \$150.00). The decision to uncapped the number of WAT licences made available and provide the licence at minimal cost aims to provide an incentive for the increased provision of WAT services

Whilst the licensing arrangements for WATs have resulted in an increased take-up of WAT licences (83 as of August 2016) there remain many areas of the State where no WAT services are available.

Our concern, therefore, is to ensure that incentives to the take-up of WAT licences continues and that the introduction of new service arrangements does not result in diminution of services to those who require specialised vehicles.

From a positive perspective, particularly as the roll-out of the NDIS gains momentum, we consider there may also be opportunities for those who have purchased wheelchair accessible vehicles for private use or community transport groups who have access to wheelchair accessible vehicles may also be able to enter the ride-sharing market and would want to ensure that there are no impediments to being able to do so. This approach appears to be of interest to Uber Australia.¹⁰

We are mindful, however that up to a point, the fact that there are more WATs on the road does not necessarily equate to more availability for wheelchair users if there are other customers that drivers consider equally if not more commercially attractive.

¹⁰ Uber Australia, Submission to the Australian Capital Territory Taxi Innovation Review (June 2016)

These are matters that have not been clearly resolved in law. However, I note that the verdict in some cases has been to find that Uber drivers are employees and not independent contractors.⁹

Government Policy Objectives

Policy objective 3 of the review consultation paper sets out the following policy objective in relation to the accessibility of services:

Providing for the **adequate** delivery of accessible services, particularly for Tasmanians with certain needs arising from disability or age.

The paper further notes that the review will ‘take into account **potential impacts** on the Government’s broader accessibility and social inclusion policy goals when developing reform options’.

My concern with this approach is that it provides relatively weak commitment to meeting commitments to the provision of services on a non-discriminatory basis. ‘Adequate’ for example, could mean meeting minimum benchmarks, but no better than that. Similarly, the explanatory text implies these impacts will be ‘taken into account’ without making any commitment to ensuring that accessibility and broader social inclusion policy objectives are met.

Further the consultation paper appears to place a premium on market mechanisms delivering positive outcomes for consumers.

The assumption underlying this approach is that consumers are fully informed and have the skills and knowledge to make choices related to the transport options available to them. However, people with disability may not have the knowledge and skills to exercise control and make choices or the digital literacy required to support access to new transport options.

Regulating quality and safety standards is therefore vital to ensure that all market entrants – existing and new – meet existing quality standards.

⁹ Victorian Equal Opportunity and Human Rights Commission, *Submission to the (Victorian) Inquiry into Ride Sourcing Services* (August 2016) p7.

From the description provided by Uber Australia, UberASSIST will be specifically targeted at passengers with folding wheelchairs, walkers and collapsible scooters: services currently provided by conventional taxi vehicles.

Our concern with this approach is that it risks further segmenting the conventional taxi market and potentially creates a separate category of service users with disability or impairments arising from their age.

Under current arrangements conventional taxis are required to accommodate folding wheelchairs, walkers and mobility aids other than those that require a specialist vehicle or service. It would be expected that Uber services would also do the same.

As I have indicated earlier, some people who are reliant on manual wheelchairs or walkers who are capable of transferring into a conventional vehicle have reported a lack of assistance and, in some cases, have been refused a fare on the basis that they should request a specialist WAT vehicle. This is contrary to discrimination law.

The use of a standard or conventional vehicle does not diminish responsibility for making appropriate adjustments to existing methods of service delivery where required.

WATs are not restricted to providing services to customers with disability. WATs are permitted to provide taxi services to any passengers who wish to hire them. WATs in fact can provide a wider range of services than standard taxis as they can transport larger groups of people and passengers with luggage than cannot safely be transported in a standard taxi. This means that there are particular routes, for example airport transfers, that are equally if not more attractive to WAT drivers than bookings for passengers requiring a wheelchair accessible taxi.

As a consequence EoT has previously called on the Tasmanian Government to consider implementing minimum service level requirements for WATs in relation to the provision of taxi services to people who use wheelchairs.

Whilst some of these issues are more appropriately addressed through the proposed review of WAT scheme arrangements, we express concern that the removal of licensing requirements for taxis may remove incentives to take up WAT licences and further diminish access to taxi services for wheelchair users. Particularly given the disparate costs associated with acquiring a vehicle suitable for the provision of WAT services.

An alternative (and perhaps less attractive) approach would be to require that all taxis and ride-sharing services meet universal design criteria, such that there is no need for specialised WAT services.

UberASSIST

Model regulations made available by Uber include provisions requiring non-discrimination on the basis of destination, race, colour, national origin, religious belief or affiliation, sex, disability, age or sexual orientation/identity.¹¹ All drivers are to comply with this policy and are also required to comply with application laws relating to the accommodation of service animals. No additional charges are imposed for providing services to people with physical disabilities because of those disabilities. Passengers are also to be provided with an opportunity to indicate whether they require a wheelchair-accessible vehicle.

Notwithstanding this approach, in some markets where Uber has commenced operation it has also launched an app called UberASSIST which allows riders to request the provision of a vehicle that can accommodate folding wheelchairs, walkers and collapsible scooters.¹² In circumstances where this service is offered drivers are required to undertake specifically designed training. UberASSIST rides are the same price as standard UberX rides.

UberASSIST vehicles do not have accessible ramps or lifts and therefore do not provide services to individuals who are unable to safely transfer out of a wheelchair into a conventional vehicle (ie, services currently provided by wheelchair accessible taxis).

¹¹ Uber Australia, Submission to the Australian Capital Territory Taxi Innovation Review (June 2016)

¹² Uber Australia, Submission to the Australian Capital Territory Taxi Innovation Review (June 2016)

Regulation of prices

Consultation questions:

Is there a case to de-regulate some services as some other jurisdictions have done, such as pre-booked taxi services? Which services still justify economic regulation and why?

Is there support from industry or other stakeholders for a less prescriptive approach to regulating taxi fares – for example a weighted average price cap? What might this look like and how could it work?

Independent mobility for people with disability often comes at significant cost, both to the individual (because of the reliance on taxis as a primary source of travel) and to Government (through the provision of transport subsidies).

Whilst changes to arrangements for the provision of taxi subsidies are likely to occur as a result of the introduction of the National Disability Insurance Scheme (NDIS), under current Transport Access Scheme (TAS) arrangements people with disability are eligible for a discount of 50% up to \$25.00 for a non-wheelchair dependent person and 60% up to \$30.00 for a wheelchair dependent person.

People with disability have, however, raised a number of concerns about the current arrangements:

- Differential fare structure: fares paid by people travelling in WATs in their wheelchairs (Tariffs 3 & 4) are higher than the fares charged by standard taxis (Tariffs 1 & 2)
- The imposition of a cap per trip on the subsidy which means that if a person reliant on a wheelchair undertake longer journeys the subsidy is no longer sufficient to offset the higher tariff
- Pick up subsidies are paid to the owner/operator of the taxi licence and not the driver and may therefore reduce the incentive for drivers to pick up wheelchair-reliant travellers.

Of particular concern in the context of the current review is the differential fare structure which raises the potential of discrimination. Tasmania is the only Australian jurisdiction where fares paid by people travelling in WATs are higher than the fares charged by standard taxis. However the detriment arising from the differential fare structure is, up to the level of the per-trip cap, mitigated by the provision of the taxi fare concession (subsidy) provided under the TAS.

Less prescriptive approaches to regulating fares may, however, risk the imposition of a differential fare structure for people with disability in circumstances where the service provider either does not want to take the fare or where they factor in additional timeframes for servicing the customer. Either of these outcomes would be inconsistent with discrimination law.

Market based mechanisms have the capacity to increase (in circumstances where services are scarce) or decrease (due to increased competitiveness) prices. It is not a foregone conclusion

that price mechanisms for lead to better outcomes for consumers, particularly in circumstances where the customer requires specialised assistance.

Of concern also would be the adoption of arrangement whereby the person with disability would be required to seek reimbursement for any amount over the fare that would have been paid by a non-disabled person for the same journey. This would require the person with disability to understand their right to claim such a reimbursement and to know when that right is properly triggered. Some people with disability may, because of a disability, be unable to exercise that right. Such a scheme would also inevitably involve people with disability having to make claims when they were uncertain about whether or not the fare was higher and the Government needing to establish a system for assessing such differences in circumstances where comparative fares are extremely difficult to determine.

I am supportive, therefore, of the need for more detailed modelling of the level of competition in both metropolitan and regional markets and consider this should include variables aimed at reflecting the impact on highly vulnerable consumers, such as people with disability and the elderly.

This matter should also be given further consideration in the review of the TAS scheme.

Regulation of operators

Consultation questions:

Is the current operator accreditation regime efficient and effective in terms of the current requirements, processes and costs? What improvements could be made?

Would there be any benefits in adapting the accreditation regime so this it is better able to tailor its requirements to different business models eg, single vehicle owner-operators versus multi-vehicle, multi-driver passenger transport businesses?

Should the Government require booking and dispatch services – including both taxi radio rooms and ride-sourcing platform providers like Uber – to be accredited? What would be the advantages and disadvantages of booking service accreditation? Could this pave the way for a relaxation of the regulatory burden on other entities in the industry, such as individual drivers?

If booking services were to be accredited, should membership by drivers be mandatory or optional?

The public interest in regulating taxi and hire-vehicle services is, in part, to meet social objectives and service quality levels and minimise negative outcomes for vulnerable transport users.

The introduction of greater competition, contestability and user choice is evident across of range of service areas. The provision of disability support services through the introduction of the NDIS represents, for example, a significant shift in approach.

It is important to recognise, however, that users of these services include many disadvantaged and vulnerable Tasmanians and that the Government continues to have a critical role in developing regulatory arrangements to underpin those services and ensure they are equitable and accessible.

Regulations governing the industry must ensure access and equity principles are met to ensure that innovative service options are available to all. It is our view that minimum accessibility service levels should be specified. This should include specific regulatory obligations in relation to obligation to hire; requirement to take the most direct route and obligations in relation to the carrying of assistance animals.

Regulations must cover taxis, hire cars and rideshare services and should ensure that all providers of commercial passenger services – including taxi networks, hire car business and ride-sharing booking companies.

This should include booking and dispatch services.

The nature of the regulatory requirements should in many cases determine where the responsibility sits within the industry.

The following table sets out the minimum regulatory requirements we would like to see in place for both conventional taxi and ride-sharing services. It does not include issues associated with regulating wheelchair accessible taxis.

The regulatory requirement is linked to the current obligations under either the *Disability Standards for Accessible Public Transport 2002* or the *Taxi Industry Regulations 2008* (Tas). Where no existing regulatory provisions are identified we consider this to be a gap in regulation that should be rectified.

Regulatory Requirement	Existing Regulatory provision	Objective	Recommended approach
Require the carriage of assistance animals	<i>Taxi Industry Regulations 2008</i> (Tas) s57(5)(h)	Ensures that people with disability who are vision impaired or otherwise require the services of an assistance animal are able to travel with their animal	Retain
Obligation to pick up and set down as close as practicable to destination	No current provision	Meets appropriate standards of service quality for passengers who may have mobility issues.	Include requirement to pick up and set down as close as practicable to destination.
Provide reasonable assistance to passengers to enter and alight from vehicle, including assistance with mobility aids	No current provision	A person with disability or mobility impairment due to age may require assistance to make sure their aid is stowed in the vehicle and is made available once the destination is reached	Include requirement to provide reasonable assistance to passengers entering and alighting vehicle.
Provide assistance to passengers with disability transferring luggage into and out of the vehicle and to a point where the person can obtain other assistance	No current provision	Provide assistance to passengers with disability transferring luggage into and out of the vehicle and to a point where the person can obtain other assistance	Include requirement to provide reasonable assistance with luggage.
Passengers to be delivered to destination following the most direct practicable route	<i>Taxi Industry Regulations 2008</i> (Tas) s57(2)	Protects passengers that may be vulnerable to exploitation because of lack of knowledge of most appropriate route	Retain
Prohibit refusal to hire vehicle to passengers unless authorized by regulation	<i>Taxi Industry Regulations 2008</i> (Tas) s57(5)(a)	Prohibits services refusing to take passengers for discriminatory reasons	Retain
Operator to display tactile	<i>Disability Standards</i>	Enables those who have	Include requirement for

registration number on the exterior of the passenger door	<p><i>for Accessible Public Transport 2002 Part 17, cl 17.7</i></p> <p>No relevant provisions exist in current regulation.</p>	vision impairment to identify the vehicle	tactile registration number to be fixed on the exterior passenger door of the vehicle to enable those who have a vision impairment to identify the taxi or hire vehicle.
Non-discriminatory fare structure	<p><i>Taxi Industry Regulations 2008 (Tas) s18(f) and 21(3) requires uniform tariff other than for wheelchair accessible taxis.</i></p> <p>s26(1) provides that a driver must not start the taximeter before the commencement of the hiring period (defined as such time as the taxi that has been hired is put in motion) and must stop the meter immediately at the conclusion of the hiring period.</p> <p>s55 sets standard fares and charges. s 56 outlines circumstances in which a trip subsidy is paid.</p>	Ensure no financial disadvantage on the basis of irrelevant attributes or characteristics. No additional charges. No differential fare calculation other than as permitted by Regulation.	Ensure consist fare structure for all passengers
Transparency	<i>Taxi Industry Regulations 2008 (Tas) s18(b)</i>	Information about charges and fare structure to be made available	Retain
Accessible payment options	No current provision	Some people with disability, including those who are vision impaired, may require adaptive technology to make electronic payments	Include requirements around the provision of payment accessibility
All drivers to have successfully completed training in the provision of services to persons in wheelchairs	Partial: s58(1) refers to WAT drivers only	Safety of passengers that are mobility impaired and in need of special assistance to enter or depart vehicle	Include requirement for all drivers to complete a course of instruction in the provision of non-discriminatory services,

			including instruction on the conveying of persons with disabilities.
Complaints	No relevant provisions exist in regulations. However we understand that as part of the accreditation of operators of taxis in Tasmania, the responsible operator is to have a mechanism for customers to complain and keep a log of complaints	Requires operators to have an appropriate complaint system in place. Particular requirements to be placed on sole owner-operators	Include requirement in regulation for operators to have a mechanism for customers to complain and to keep a log of complaints. This should include any complaints made under the ADA and the DDA. Complaints should be reported on annually.
Penalties	No relevant provisions.	There is a need for appropriate penalties for instances where operators or their drivers fail to provide non-discriminatory services	Include appropriate penalties for breach of regulations.

Regulation of drivers

Consultation questions:

Are the different knowledge and training standards and requirements for different service types – for example taxi versus hire vehicles – still justified?

Is the current driver authorisation regime efficient and effective in terms of the current requirements, processes and costs? What improvements could be made?

EoT supports mandatory discrimination awareness training for drivers across all service types as a pre-condition of accreditation. This should include compulsory training regarding the assistance they must reasonably provide to people with disability.

The *Vehicle and Traffic Act 1999* (Tas) establishes a requirement for a driver of a public passenger vehicle to hold an ancillary certificate. To hold an ancillary certificate to drive a taxi, a person must have successfully completed a taxi driver training course. The course includes an induction to the transport industry and information regarding customer services. Particular training covers the provision of wheelchair access requirements for passengers with disabilities.

There is, however, no requirement for applicants to understand or apply discrimination law more broadly and we are of the view the training currently provided to taxi drivers through the government accredited provider is insufficient.

It is our view that for a person to obtain a certificate of competence, driver obligations under discrimination law should be a pre-requisite and that this training should be supplied by suitably qualified persons able to fully relay the details of legal obligations to drivers.

This proviso should apply across all service types, including those providing ride-sharing services.

Refresher training should also be required at set intervals and with increased frequency in circumstances where a driver, operators or dispatch service is the subject of complaint with regard to the level of service for people with disability.

Regulation of vehicles

Consultation questions:

What changes could be made to bring down the cost and complexity of vehicle standards and requirements without unreasonably compromising safety?

Could emerging technologies or approaches like real-time GPS trip tracking via ride-sourcing applications and/or mandated pre-payment of fares reduce or replace the need for security cameras or other equipment that is currently required by regulation?

The use of emerging technologies has the capacity to provide real benefits for people with disability, but only in circumstances where that technology is adapted to their particular requirements.

A visually impaired person may, for example, benefit from the use of GPS-trip tracking, but only in circumstances where speech output is enabled and this is turned on by the driver.

Similarly, pre-payment of fares has the capacity to provide significant advantages, but only if the technology used to make those payments is accessible. Touch-screen based payments for example may be completely inaccessible to people who are vision impaired. As a consequence braille or touch-enabled eftpos terminals may be required.

Unfortunately experience would suggest that adapted options for enabling people with disability to take advantage of services are often not provided unless required by law.

Any decision to replace the need for equipment currently required by regulation should take into account the capacity for any new technologies to meet the needs of vulnerable consumers.

Compliance and enforcement

Consultation questions:

How can regulators efficiently maximise compliance with regulatory requirements and minimise the prevalence of passenger services operating outside of the law?

What do stakeholders think about the prospect of moving to a 'trust and verify' type approach to the regulation of the taxi and hire vehicle industries if it meant greater flexibility and control for those industries over how compliance is maintained and risks are managed?

What changes would be required to support this kind of approach and ensure that safety objectives were not unreasonably compromised? What type of enforcement activity would be required for the success of such a model?

As I have outlined elsewhere in this submission, the complexity of the taxi industry in Tasmania significantly impacts on the ability to monitor compliance with the Transport Standards and with discrimination law. It also gives rise to situations where there are gaps in regulation because there is no clear responsibility for particular matters.

The lack of a single radio network to manage bookings means that the obligation to meet, for example, equivalent response times is fragmented and where an operator does not work through a radio room or is not part of a co-operative there is no basis for making comparison and there is arguably no clear obligation on such operators.

Similarly, in situations where a complainant under the ADA has named a taxi dispatch service as a respondent to a discrimination complaint, the taxi service has indicated that it does not believe it is responsible for the alleged conduct and that the responsibility for any transgressions rests with solely with the responsible operator and/or the driver.

While such a complaint could result in an individual taxi company, driver or operator changing their approach, it is limited in its capacity to drive systemic change and ensure that the industry as a whole is compliant with its obligations under discrimination law.

Our interest, therefore, is in ensuring that the regulatory framework governing all aspects of the industry are clear and transparent and that responsibility for meeting the requirements of discrimination law are clearly understood.

We do not consider that this is currently the case.

Nor does there appear to be a clear statement regarding possible penalties in circumstances where those regulations are transgressed.

We are supportive, therefore, of ensuring that there is a clear statement of responsibilities and that the pathways for seeking compliance are clearly articulated.

Under current taxi industry regulations, whilst the operator is required to have policies and procedures in place to manage reportable incidents, the incidents reported may in some circumstances be investigated by the operator/driver themselves.

Of particular concern to us, however, is the dearth of information contained within current accreditation arrangements for either the registered operator or driver to understand or apply discrimination law in the operation of their service.

Apart from requirements around training for wheelchair accessible taxi drivers and statements regarding the transport of assistance animals there are no clear statements about obligations under discrimination law and what this means for the conduct of their business.

EoT works closely with businesses across the Tasmanian community. In all cases we encourage organisations to have in place clear policies regarding the non-discriminatory delivery of services. This is an approach that we consider should be adopted in both the taxi and ride-sharing industry. Those policies should not only state the requisite obligations under discrimination law, it should also be clear about the sorts of actions that should be taken to meet those obligations. This includes, for example, the requirement to make adjustments to meet the needs of people with disability.